



Universiteit  
Leiden  
The Netherlands

## **Between a rock and a hard place: challenges, strategies and resolution of value conflict mediation**

Illes, R.M.

### **Citation**

Illes, R. M. (2021, September 23). *Between a rock and a hard place: challenges, strategies and resolution of value conflict mediation*. *Dissertatiereeks Kurt Lewin Instituut*. Retrieved from <https://hdl.handle.net/1887/3213609>

Version: Publisher's Version  
License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)  
Downloaded from: <https://hdl.handle.net/1887/3213609>

**Note:** To cite this publication please use the final published version (if applicable).

## **CHAPTER 3**

### **The value of our values:**

Threatening litigation when  
mediating value conflicts

### Introduction

On October 4th 2019, Daryl Morey, the then general manager of the American professional basketball team the Houston Rockets, sent out a tweet in support of protestors in Hong Kong. The region was in an ongoing fight for freedom and democracy from the Chinese state (BBC, 2019). What Morey believed would be a simple act of voicing his opinion, which implied that the Chinese government was violating human rights, turned into an expensive international value conflict. Three days after the tweet was sent out, two National Basketball Association (NBA) teams, the Los Angeles Lakers and the Brooklyn Nets, were on a flight to China to play the annual exhibition games. By the time they landed, their promotional banners were taken down, the logos of sponsors were ripped from the venue and the brighter star athletes began receiving calls about cancellations of their private events. One of these events included an endorsement deal between a Laker player and a Chinese company in the amount of \$1 million (McMenamin, 2019). Even though Morey had deleted his tweet and apologized for offending the team's—and the NBA's friends in China, the NBA commissioner Adam Silver addressed the issue in a news conference in Japan, where he defended Morey's actions by referencing freedom of expression—which Silver claimed was “one of the league's core values” (McMenamin, 2019, para. 31). After the commissioner's statement, China cancelled all exhibition games and the teams were sent to return to the USA with no indication on if they (or their business) will be welcomed back.

On the one hand, China was defending their authoritarian values, which shape their policies, and on the other hand, the NBA tried to stand by their American value of democracy, which includes freedom of speech. However, with the NBA earning an estimated \$4 billion in China (Silverman, 2019),

it seemed the cost of defending their American value was extremely high. According to Silverman (2019), the only way the NBA could avoid self-censorship and yielding to China is to cut ties with them entirely. However, he did not believe this would happen as he claimed “doing so would require calling into question if democratic values can stand firm against the profits afforded by global capital—whether in a pro sport or any other billion-dollar industry” (Silverman, 2019, para. 20). He was right as the NBA has since been silent on the issue.

The above account illustrates a moment when the costs of defending one’s values becomes extremely high. Indeed, demonstrating the monetary consequences of fighting for what one believes is right can prove an effective strategy to obtain concessions from a counterpart. But what happens if the monetary threat sparks outrage for even suggesting to put a price on sacredly held values? Under such circumstances, the monetary threat to gain compliance may backfire and cause opponents to stand even stronger by their values. In this chapter, I explore the efficacy of the cost-risk tactic of threatening litigation in the mediation of value conflicts to determine when such an approach may prove beneficial and under which circumstances it could be detrimental.

## **Conflicts**

Conflicts arise when two or more parties pursue incompatible goals or hold contradictory values (Prein, 2009). One of the best ways to foster win-win solutions in many conflicts is through mediation (Pruitt & Carnevale, 1993). However, conflicts become particularly difficult to mediate when they include diverging values such as justice and religion (Illes et al., 2014). When parties are unwilling to negotiate on their views, a mediation session may quickly lead to stalemates. It is then up to the mediator to decide

which tactic to employ to encourage open-mindedness and flexibility among disputants in order to achieve reconciliation. One technique currently utilized by mediators when intervening in value conflicts is threatening litigation (Illes et al., 2014). Like many mediation tactics, we are aware of their characteristics (Pruitt, 2012), yet the circumstances under which an intervention such as threatening litigation should be employed has yet to be investigated. The present study forms the first step to explore the mechanisms involved when a mediator threatens litigation when intervening in value conflicts.

### **Mediating Value Conflicts**

Conflict management literature separates value conflicts from other types of conflicts such as disputes about time, money and other scarce resources (Harinck & De Dreu, 2004; Harinck et al., 2000). In contrast to conflicts about tangible issues, value conflicts concern deeply held beliefs. Think of a student wearing a necklace bearing a religious symbol in a school where public displays of religion are forbidden. In this example, the school requests that the student alter his behavior while the student may feel the school should alter its policy. Both demands require one party to give up on their values. Since our values are central to our identities and represent who we are as people, a request to abandon these values is likely to generate strong objection (Prein, 2009; Wade-Benzoni et al., 2002).

According to previous research, if the above dispute were to reach a mediation table, both the student and the school board are likely to exhibit more competitive rather than cooperative attitudes (Hinds & Mortensen, 2005), experience strong negative emotions, show higher levels of distancing (Skitka et al., 2005), intolerance and egocentrism (Wright et al., 2008) and see less common-ground (Kouzakova et

al., 2012). For the mediator then, encouraging the student and the school board to seek win-win opportunities would be particularly difficult (Harinck et al., 2000), while compromises (e.g., placing the necklace inside the shirt) are likely to be viewed as unacceptable (Druckman et al., 1977; Harinck et al., 2000; Harinck & De Dreu, 2004; Tetlock et al., 2000; Wade-Benzoni et al., 2002). Instead, the student and the school board are more likely to push solutions that are in their favor (Rapoport, 1964), possibly leading to stalemates. In such cases, a mediator must decide how best to overcome the impasse in order to reach an agreement.

Resolving value conflicts may be easier said than done. In fact, among the limited techniques specifically geared at value conflicts (Druckman et al., 1977; Druckman et al., 1988; Druckman & Zechmeister, 1970, 1973; Korper et al., 1986; Kouzakova et al., 2012; Prein, 2009; Rexwinkel et al., 2012), mediators are sometimes advised to allow parties to agree to disagree and conclude that the conflict cannot be resolved (Prein, 2009). However, leaving the issue unresolved is not always feasible. For example, when divorced couples are in a mediation session where agreements about proper childcare should be made, decisions must be made in order for them to continue their new lives in a constructive and organized manner.

When dealing with headstrong parties disagreeing on core beliefs, a mediator may then opt to employ more forceful tactics in an effort to promote flexibility and move the negotiation process along. Such tactics generally pertain to the directive mediation style (Kressel, 1972; Pruitt 2012) or are assigned to the broader category of 'pressing' (Wall et al., 2001). Previous research interviewing professional mediators confirmed that these tactics are indeed being employed when attempting to resolve value conflicts (Illes et al., 2014). Specifically, mediators are using the

cost-risk tactic of threatening litigation to alert parties on the consequences of failing to reach an agreement at the mediation table. However, the efficacy of this intervention, when employed in value conflicts, remains unclear.

### **Threatening Litigation**

When a mediator threatens litigation, parties are reminded of the benefits of mediation while warned on the consequences of litigation. Specifically, mediation often fosters win-win solutions because parties are encouraged to shape their own outcome. This opportunity is not granted when parties decide to settle their disputes by means of litigation. In court cases, a judge assigns a verdict, which typically favors one party over the other, resulting in zero-sum outcomes. In addition, judicial procedures are generally more expensive than mediation (e.g., attorney fees). By warning parties that if they do not come to a solution at the mediation table the case will proceed to court—where they will lose control of the outcome and face increased costs—a mediator may resolve an impasse and motivate parties to participate constructively during the mediation sessions.

Indeed, previous research found that disputants anticipating a binding decision from a fourth party if no solution was reached at the mediation table yielded more rapidly (Johnson & Puit, 1972) and were more likely to make agreements (Kochan & Jick, 1978) than parties anticipating a non-binding recommendation from the mediator. Research has also identified possible moderators of the efficacy of pressing techniques. Bigoness (1976) showed that the intensity of the conflict might influence the outcome reached under such threats. Conflict intensity is considered to be low when disputants have low bargaining demands (Bigoness, 1976) or when the importance of the issues differs among disputants—thereby making trade-offs feasible (Erickson et

al., 1974). High conflict occurs when disputants have high bargaining demands (Bigoness, 1976) or when their preferred interests are the same—thereby inhibiting the logrolling process (Erickson et al., 1974). In terms of employing threats under high and low conflict conditions, research found that the more forceful the technique (e.g., compulsory arbitration), the more agreements were reached under low conflict conditions (Bigoness, 1976). Parties in high conflicts on the other hand, reached settlements more often when they were allowed to negotiate without a third party.

In addition to conflict intensity, the extent to which parties felt a need to save face was also found to moderate the success of the threats (Johnson & Tullar, 1972). Specifically, disputants with a low need to save face were more likely to reach an agreement when they anticipated arbitration (i.e. a binding decision from a third party). Disputants with a high need to save face however, were more conciliatory when they anticipated no third-party intervention. Drawing on the above insights, a mediator contemplating on whether to threaten parties with litigation may be advised to do so but under low (not high) conflict conditions and when parties have a low (not high) need to save face.

In light of these prerequisites, it would appear that value conflicts are not eligible disputes to which the tactic of threatening litigation should be applied. Considering disputants in value conflicts often regard the conflict issue as non-negotiable, it can be inferred that value-based disputes are often high conflict conditions. Further, since the conflict issue represents disputants' core beliefs, which are tied to their identities, it can be inferred that attempts to—even slightly—abandon these views could be considered as losing face. It should be noted however, that the above findings are generated from studies utilizing bargaining games, where participants are asked to negotiate about scarce resources.

As we have seen, not all conflicts concern issues such as money, property or material. More importantly, disputants in conflict about their values—where both the conflict intensity and the need to save face are likely to be high—may respond negatively to threats of consequences of not reaching an agreement. Mediating value conflicts may indeed require more forceful tactics, however, the efficacy of pressing techniques such as threatening litigation, when employed in value conflicts, merits a specific and detailed investigation.

### **Threatening Litigation in Value Conflicts**

As mentioned previously, values represent who we are as people (Wade-Benzoni et al., 2002). For this reason, value conflicts are also termed identity conflicts (Prein, 2009). When parties are defending their values and, in turn, their identities, they become unwilling to give in on their views (Wade-Benzoni et al., 2002; Harinck et al., 2000). Warning parties that if they continue to hold strong on their values, the dispute will have to be resolved in court, may not guarantee that parties will suddenly exhibit flexibility in relation to their views.

Consider for example the discussions surrounding the Black Pete (Zwarte Piet) character in the Dutch holiday Sinterklaas. Black Pete is the helper of the Dutch Santa Clause. Typically, his role in the festivities celebrated on the 5th of December, is to distribute gifts, amuse children and hand out candy. Black Pete is portrayed by participants in blackface, wearing curly wigs, red lipstick, large earrings and colorful costumes. His origin dates back to the time of slavery. Since 2011, every December has been met with an ongoing debate on whether or not Black Pete belongs in present society. Those against Black Pete consider the character offensive and racist. Supporters regard Black Pete as a beloved part

of their valued tradition. Imagining advocates yielding under a threat of litigation during a mediation about whether or not to include Black Pete in the festivities in their district is not self-evident. When strongly held values are at stake, parties may actually welcome litigation in an effort to stand by their views through any means necessary. Nevertheless, some mediators intervening in value conflicts are currently achieving positive results when threatening parties with litigation (Illes et al., 2014). A closer look at the nature of the threat itself provides insight enabling initial theorizing.

As mentioned previously, when a mediator threatens litigation, two consequences are inevitable. First, disputants face losing control of the outcome as a judge will make a binding decision. Second, disputants face incurring increased costs as commencing a court case will require each party to invest in the judicial procedures. A closer look at each consequence suggests they can indeed motivate disputants to resolve a value conflict at the mediation table, but the consequences can also spark a strong desire to take their opponent to court.

Consider the first consequence, where a judge makes a binding decision of which the disputant no longer has control over. As disputants in value conflicts tend to declare their views as non-negotiable and are likely to approach the mediation session with their own fixed outcome in mind, it can be inferred that a threat of losing control over the decision may be productive. Specifically, people in value conflicts aim to protect their values. In order to do so, one must maintain influence on the outcome. Indeed, being threatened with losing control over the final decision might motivate parties to exhibit more flexibility and open-mindedness to reach agreements that may still reflect their views.

On the other hand, since people in value conflicts are reluctant to give in on their views, presenting the case in

front of a judge might provide parties with the opportunity to resolve the matter without betraying their values (i.e. saving face). By consenting to receive a binding decision from a judge, disputants can later justify the outcome by claiming it was out of their hands, that is, the mediator threatened, upon which the disputants held firm and the issue was inevitably resolved in court. In this case, threatening litigation framed as loss of control of the outcome may be counterproductive to continuing the mediation session.

Similarly, the efficacy of threatening litigation framed as incurring increased costs also shows underlying mechanisms leading to both productive and counterproductive tendencies. Previous research showed that people respond with moral outrage to the idea of trading off their values for monetary purposes (Tetlock et al., 2000). Drawing from this finding, it may be the case that requesting parties to exhibit more flexibility merely to avoid the increased costs that will apply if one continues to strongly defend his or her position, may also spark moral outrage causing parties to welcome—if not seek—litigation.

Alternatively, it could also be argued that everything has its price. Consider for example the value conflict of marriage equality. In the United States, Arizona governor Jan Brewer rejected a bill in 2014, that would have permitted religious owners of enterprises to deny serving LGBT customers (Lang, 2014). However, the governor's campaign did not endorse gay marriage nor did the governor previously support the LGBT community. Governor Brewer's stance was driven by the awareness that passing laws that discriminate against homosexual individuals would cause the state to lose significant businesses:

This wasn't a moral conviction that equality is the right thing to do. It was a good decision economically. I think one of the most powerful tools that gays and their allies have is the business community, which

can put pressure on legislators and governors. You have to have a strong relationship with business leaders, because when the economic imperative is on our side, we win (Rick Garcia, as cited in Lang, 2014).

The above anecdote implies that under certain circumstances, people may give in on their convictions for economic reasons. Research by Tenbrunsel et al. (2009) showed that in negotiations concerning sacred issues, people show flexibility in relation to their values depending on the attractiveness of their alternative. When negotiators had strong Best Alternative to a Negotiated Agreement (BATNA) and could afford to stand by their values, sacred values were treated as sacred. When negotiators had a weak BATNA however, negotiators were willing to trade off their values, despite the issues being tied to a sacred value, as the circumstances rendered them no longer able to afford standing by their views. In the latter case, Tenbrunsel et al. (2009) termed such values pseudo-sacred, since if they were truly sacred, the trade-offs would not have been dependent on the attractiveness of the negotiators' alternatives. A good example of a pseudo-sacred value trade-off occurred in the African country of Uganda.

In December 2013, the Ugandan government passed an anti-homosexuality bill, which authorized the sentencing of homosexual individuals to life imprisonment. The western world, including the United States, Denmark, Norway, the Netherlands and Sweden, considered this legislation a violation of human rights and responded by cutting funds to Uganda (BBC, 2014). By withholding financial aid, the western countries protested and pressured Ugandan officials to vacate the anti-homosexuality law. In August 2014, the law was indeed annulled by the Constitutional Court—not on account of its content, but due to a technicality, as the bill was passed illegally without the required quorum. Consequently, the government of Uganda was still prepared

to challenge the ruling in the Supreme Court and re-issue the law. However, reports on the issue claimed that Ugandan President Yoweri Museveni was contemplating softening the law by not imposing penalties when homosexual acts occur between two consenting adults. That sudden sign of flexibility by Museveni was not sparked by the initial withholding of funds by the western countries, but by a second—seemingly more significant—threat also framed in terms of monetary concerns. Biryabarema (2014) reported in the Huffington Post:

...Museveni said he was not worried by the aid cuts that followed the initial law, but warned of a trade boycott by companies in the West. He said re-issuing the anti-gay law would likely antagonize consumers in the West, risking access to a rich export market. “To carelessly and needlessly open unnecessary wars with useful customers is irresponsible to say the least,” he wrote.

Whereas originally, President Museveni held firm on his position despite losing financial aid and being pressured by the West (BBC, 2014), later, in the face of an apparently larger monetary threat, he was prepared to negotiate on his views.

The actions by Arizona governor Brewer and Ugandan President Museveni suggest that warning people about monetary consequences that may apply does not always spark a desire to stand even stronger by their views, but could possibly promote flexibility. A mediator who threatens litigation framed as incurring increased costs may be granting parties a tangible way to assess the value of their values. Once faced with increased costs, disputants may cease to consider the conflict in terms of non-negotiable views and assess the dispute in terms of negotiable monetary concerns. Referring to the monetary costs of standing by their original views can also make it possible for disputants to reconsider their position without losing face or seeming inconsistent. A

decision to give in on their sacredly held values under such circumstances can even make them seem responsible.

As we have seen, the mediation tactic of threatening litigation can be framed as losing control of the outcome or incurring increased costs. The impact this technique has on disputants arguing about deeply held beliefs however remains to be established. It can be argued that a threat of loss of control of the outcome may motivate parties to mediate in an effort to maintain influence on the outcome or prompt parties to litigate in order to reach an outcome while not deliberately abandoning their views. A threat of increased costs may motivate parties to mediate in an effort to avoid costs that surpass the value of their values or litigate in order to defend their views under any pressure.

The present study aims to explore the circumstances under which threatening litigation serves as a fruitful mediation technique when intervening in value conflicts. By extracting the mediation tactic of threatening litigation in two forms of framing (i.e. warning parties that they will lose control of the outcome versus warning parties that they will face increased costs) two studies were conducted to investigate the effects that this threat poses on disputants in conflict about values. In the first study, a controlled experimental approach was adopted by placing all participants in an identical predetermined value conflict. In the second study, a naturalistic setting was used where the conflict issue concerned participants' self-experienced value conflicts. The research design and results of each approach are discussed in the following sections.

### **Study 3.1**

The present study aimed to investigate the efficacy of threatening litigation by mediators when intervening in value conflicts. Although previous research has studied the impact of such cost-risk tactics on parties in resource conflicts

(Bigoness 1976; Erickson et al., 1974; Johnson & Puit, 1972; Kochan & Jick, 1978), the effectiveness of utilizing this technique to resolve value conflicts has not been studied. As a first step to determine whether or not mediators should be threatening their clients with litigation when their values are at stake, a paradigm was developed which allowed all participants to consider the same value conflict. By doing so, we hoped to minimize the external factors potentially influencing participants' responses.

Considering the topic of value conflicts include beliefs that are central to people's identities, designing an experimental scenario that will indeed be perceived as a value conflict by different participants is particularly challenging. For this reason, we selected a value conflict that is experienced on a national level in the Netherlands. Specifically, the conflict issue of the present study concerned the controversial character *Zwarte Piet* (Black Pete) of the Dutch holiday *Sinterklaas* (St. Nicholas).

In 2011, Curaçaoan performance artist and activist Quinsy Gario was arrested in the Netherlands for protesting against the Black Pete character by means of his art project entitled "Zwarte Piet is Racisme" (Dutch for Black Pete is Racism). The origin of St. Nicholas' helper Black Pete dates back to the time of slavery and, according to Gario, no longer fits in present society. After his arrest was videotaped and shared globally, Gario gained media attention as well as national and international support. By 2013, Verene Shepard—head of the United Nations research group assigned to investigate and advise the United Nations on the origins of Black Pete—released a letter expressing that the figure is a racist portrayal of black people. With Black Pete under scrutiny, advocates of the Dutch tradition rose to support and justify the helper of St. Nicholas. A grassroots Facebook petition to preserve Black Pete and his characteristics generated one million likes

in one day—becoming the fastest growing Facebook page in the Netherlands (Poort, 2013). As the debate continued, changes in the appearance of Black Pete were observed among several communities and organizations that adopted the Chimney Pete (i.e., soot strokes on the face) while others introduced the Rainbow Pete (i.e., face painted in different colors).

Nevertheless, to date, several St. Nicholas parades continue to be held featuring the original Black Pete character and are often met with protesters. Indeed, this debate has been and continues to be a heated one, at times even including violence leading to arrests (Paauwe, 2018). For advocates, to criticize Black Pete is to criticize a valued Dutch tradition, which, in turn, is often perceived as a direct attack on those who celebrate and cherish this holiday. In the eyes of the opposing party however, refraining from changing or eliminating Black Pete is to choose to adopt racist attitudes and engage in discrimination. It is evident that the discussions surrounding the Black Pete debate forms part of a larger nationally experienced value conflict. Considering the fact that the majority of Dutch citizens are likely to have weighed in, whether publicly or privately, we identified this conflict as an appropriate dispute to include in the research design.

By placing participants in this value conflict to defend their personal views related to Black Pete, we explored the impact a threat framed as losing control of the outcome versus incurring increased costs had on their attitudes and intended behaviors.

### **Method 3.1**

#### **Participants and Design**

A total of 101 Leiden University students participated in this study (63 females,  $M_{age} = 22.44$ ,  $SD = 3.08$ ). The majority

of participants were Dutch ( $N = 73$ ), while the remainders were either Dutch mixed with another ethnic background, such as Dutch-Moroccan ( $N = 8$ ) or had a different nationality, for example German ( $N = 20$ ). Participants were recruited on Leiden University's social and behavioral sciences campus and through the university's online participation sign-up tool. Upon completion of the experiment, participants were compensated with €3 or one course credit.

The experiment consisted of a between-subjects design, where the intervention (loss of control threat vs. increased costs threat vs. no threat) was manipulated as a between-participant factor.

### **Procedure**

On arrival in our laboratory, participants were informed that they would be participating in a study investigating people's genuine opinions regarding the Black Pete character of the Sinterklaas holiday. After being placed in an individual cubicle, participants filled out the questionnaire on a computer. They were first asked to indicate whether they were familiar with the Sinterklaas holiday and the ongoing debate about Black Pete. Subsequently, they were instructed to take a side in the debate, namely, in favor of keeping or eliminating Black Pete from the Sinterklaas festivities. To make the conflict more salient, participants were asked to type out their arguments for supporting or opposing Black Pete.

After submitting their arguments, participants were asked to imagine that they were the principal of the North campus of a primary school, who, together with the principal of the South campus of the same school, would decide on the policies affecting both campuses. They were further told that in cases where there is a disagreement between the North and South campus principals, a mediator is called in to assist in

reaching a mutually beneficial agreement.

Participants were then presented with an issue which stated that in light of the recent discussions surrounding Black Pete, all schools must decide whether they would continue to include the character in their festivities at school. As the principal of the North campus, participants were asked to adopt their own preferences, which they had indicated previously. The computerized questionnaire was preprogrammed to tell participants who initially indicated to be in favor of Black Pete that the South campus principal was in favor of eliminating Black Pete from the school festivities. In contrast, those who initially expressed to be opposed to Black Pete were automatically told that the South campus principal was in favor of keeping Black Pete. They were then asked to imagine that while discussing the issue with the other principal at the mediation table, the mediator notices that their opinions differ to a large degree. Upon realizing this, the mediator warns both principals that if they do not reach a solution at the mediation table they must present the case in front of the national school board.

### *Manipulations*

Participants in the loss of control threat condition further read the following:

... by presenting the case in front of the national school board you and the other principal will lose control of the outcome that you would have otherwise maintained. The reason you would lose control of the outcome is because the procedure states that the head of the school board reaches an outcome. If you come to an agreement at the mediation table however, both of you will maintain control of the outcome.

Those in the increased cost threat condition read:

... by presenting the case in front of the national school board you and the other principal will have to spend money from your own school budget that you would have otherwise used for other activities to reach an outcome. The reason you would need to spend money from your own school budget is because the procedure states that a fee must be paid to

reach an outcome. If you come to an agreement at the mediation table however, both of you will not have to spend money from your own school budget to reach an outcome.

Participants in the no-threat condition did not receive any warning from the mediator nor mention of the national school board. After this manipulation, participants were asked to indicate their intended attitudes and behaviors during the remainder of the mediation session.

### **Grounded Theory Coding Analysis**

A grounded theory approach (Charmaz, 1995; Glaser & Strauss, 1967) to qualitative data was used to analyze participants' arguments for being in favor of or against Black Pete. This procedure followed 3 steps. In the first step, by means of line-by-line coding, one researcher assigned codes to each argument. In the second step, the same researcher raised these codes to more broader categories derived from social- psychological phenomena. In the final step, a blind researcher placed the arguments in the assigned categories to increase reliability. Inconsistencies were discussed between both researchers and together, a decision was made on the final category.

### **Dependent Measures**

In order to investigate the effects that the mediator's threat poses on parties in a value conflict, we measured participants' expected motivation to mediate or arbitrate, their open-mindedness, conflict handling behaviors, satisfaction with the intervention and—by extension—how effective they would rate the mediator. All dependent variables were measured on 7-point Likert scales, where higher values indicate higher intention.

***Motivation to Mediate***

Motivation to mediate ( $\alpha = .77$ ) was measured by a 3-item scale (e.g., “To what extent would you be motivated to continue the mediation?” (*not at all*) to 7 (*very much*)).

***Open-mindedness***

Open-mindedness was measured by a 5-item scale ( $\alpha = .82$ ) validated in previous research (Rexwinkel et al., 2012). An example of an item assessing participants’ open-mindedness is “I am open to the arguments of the other person” (*not at all*) to 7 (*very much*).

***Conflict Handling Behavior***

The conflict handling behaviors were measured by an adaptation of the Dutch Test for Conflict Handling (Janssen & Van de Vliert (1996), for validation issues see De Dreu et al., 2001). This scale measures five distinct conflict handling behaviors by means of four items for each behavior. All items were measured on a 7-point likert scale ranging from 1 (*not at all*) to 7 (*very much*). The conflict handling behaviors include yielding (e.g., “To what extent would you give in to the wishes of the other party?”,  $\alpha = .86$ ); compromise (e.g., “To what extent would you try to realize a middle-of-the-road solution?”,  $\alpha = .92$ ); problem-solving (e.g., “To what extent would you stand for your own and the other’s goals and interests?”,  $\alpha = .92$ ); avoiding (e.g., “To what extent would you avoid a confrontation about your differences?”,  $\alpha = .90$ ) and forcing (e.g., “To what extent would you push your own point of view?”  $\alpha = .87$ ).

***Satisfaction with the Intervention***

Participants’ satisfaction with the intervention ( $\alpha = .86$ ) was measured by a 3- item scale (e.g., “How satisfied would you be with the information the mediator has given you so far?” (*not at all*) to 7 (*very much*)).

### ***Mediator Rating***

The mediator rating ( $\alpha = .82$ ) was measured by a 3-item scale (e.g., “how effective would you rate this mediator?” (*very ineffective*) to 7 (*very effective*)).

### ***Control Variables***

**Self-involvement.** Since parties in a value conflict tend to be emotionally involved (Kouzakova et al., 2012), identify with their views on the topic of the conflict (Wade-Benzoni et al., 2002) and consider the topic (i.e., their values) personally important, we assessed the extent to which respondents also felt in this manner with respect to this predetermined conflict. The self-involvement scale consisted of 3 items ( $\alpha = .80$ ), with each item measuring one of the abovementioned characteristics. Specifically, respondents’ emotional involvement was assessed by one item: “I was emotionally involved in the conflict” 1 (*not at all*) to 7 (*very much*). The extent to which respondents identified with their views on the issue at hand (i.e., centrality) was verified by one item: “I identify myself with my standpoint on this topic” (*not at all*) to 7 (*very much*). Lastly, importance of the conflict topic was measured by one item: “I find the topic of the conflict personally important” (*not at all*) to 7 (*very much*).

**Manipulation checks.** In order to establish whether the interventions were indeed experienced by participants in the intended manner, we checked the manipulations by means of two procedures.

First, we investigated the extent to which participants perceived the mediator to be concerned with the parties’ potential to lose control of the outcome on the one hand and incur increased costs on the other. The mediator’s concern for the loss of control was assessed by asking participants: “How concerned was this mediator about you having to lose control of the outcome if you present the case in front of the national school board?” 1 (*not at all*) to 7 (*very much*). The

mediator's concern for the increased costs was assessed by asking participants: "How concerned was this mediator about you having to spend money from your own budget if you present the case in front of the national school board?" 1 (*not at all*) to 7 (*very much*).

Second, we investigated the extent to which the participants were motivated to avoid losing control of the outcome on the one hand and avoid incurring increased costs on the other. Participants' motivation to avoid losing control of the outcome was measured by a 3-item scale ( $\alpha = .84$ ). An example of an item of this scale is "To what extent would you be motivated to maintain control of the outcome?" 1 (*not at all*) to 7 (*very much*). Similarly, participants' motivation to avoid increased costs was measured by a 3-item scale ( $\alpha = .78$ ). An example of an item of this scale is "To what extent would you be motivated to avoid spending money from your own school budget?" 1 (*not at all*) to 7 (*very much*).

## Results 3.1

### Content Analysis

Among our sample, 93 participants were in favor of keeping Black Pete as part of the Sinterklaas festivities while only 8 participants were opposed. The results of their arguments accounting for their choice are shown in Table 3.1. The type of argument that was mentioned most often pertained to the category of tradition. Indeed, most participants defended the presence of Black Pete by referring to how long he has been part of the Dutch culture: "*It is an old Dutch tradition that has existed for so long, one should not interfere with that.*" Supporters also referred to tradition as they expressed how fitting the character is within the Dutch holiday "*Black Pete belongs in the St. Nicholas festivities just as much as the reindeers belong to the Santa Clause (festivities).*"

**Table 3.1**

*Participants' arguments regarding the Black Pete debate (N = 101)*

| Categories   | Supporters | Opponents |
|--|------------|-----------|
| Tradition  | 66         |           |
| Justification                                      | 47         |           |
| No racial-, discriminatory- or slavery association | 29         |           |
| Harmless/Joyful children's party                   | 24         |           |
| Dismissal  | 21         |           |
| Adjustments  | 11         | 5         |
| Positive characteristics                           | 0          | 1         |
| Inclusion  | 5          | 3         |
| Sudden discussion                                  | 5          |           |
| Perspective taking                                 | 4          | 3         |
| Negative example                                   | 0          | 2         |

The second most mentioned argument included statements justifying the presence of Black Pete. These arguments primarily described the reason Black Pete is black: *“Black Pete is not black because he is a slave, he is black due to the chimney soot”* and how difficult it is to eliminate Black Pete from the festivities: *“To suddenly eliminate the Black Pete character is a choice that is not easy to make and will cause a lot of confusion among young children.”*

Supporters also described their own perception of Black Pete and their beliefs on how children perceive Black Pete: *“As a child, I never associated blackness and slavery with Black Pete. To this day children are still not aware of this and Black Petes are seen as figures that children can look up to.”*

The harmless/joyful children's party category consists of arguments describing the purpose of the Sinterklaas festivities: *“It is a party intended for children... for the children it is about conviviality. Therefore, we should consider the children. We are adults and we do not want to ruin it for the children.”*

Some supporters of Black Pete also defended the character by dismissing arguments brought forward by those against Black Pete: *“...I think the entire discussion that emerged is ridiculous. The link that is being sought with slavery is extremely farfetched... besides that, I really dislike that in the meantime, everything is being linked to discrimination, from “moorkoppen” to “jodenkoeken”<sup>2</sup>. So, really seeking out problems.”*

Both supporters of Black Pete and those in favor of eliminating the character expressed a willingness to make adjustments to the appearance of Black Pete. One supporter said, *“I would choose the colored Petes, in all the colors of the rainbow. By doing so, Black Pete becomes nullified and the Petes will represent a multicultural, LGBT-accepting symbol.”* One participant in favor of eliminating the character said, *“I would like to eliminate Black Pete from the Sinterklaas festivities and introduce the colored Petes... with the colored Petes (all colors) the party would be just as fun and everyone will get used to it quickly.”*

Ten supporters of Black Pete referred to his positive characteristics in their arguments: *“Black Pete is a figure that many young children look up to: he is smart, naughty, athletic and his role is to hand out candy and gifts.”* One opponent considered Black Pete’s positive characteristics despite wanting to eliminate him: *“These Petes make it an even bigger party for the children. However, it is racist because it probably originates from the time of slavery.”*

Both supporters and those in favor of eliminating Black Pete expressed a desire to adjust the holiday in a way that everyone will feel included. To this end, one supporter said, *“It is good to have a discussion with this group to see if there are adjustments that can be made to make sure that*

---

<sup>2</sup> Dutch pastries bearing names of specific race; “moor” as adjective is Dutch for Moor and “joden” as adjective is Dutch for Jewish.

*everyone feels good with the festivities. But to immediately eliminate Black Pete for a small group that is against it is an exaggeration, I find.*” One participant in favor of eliminating Black Pete said, *“If it hurts other people then I think you can very well take that into consideration.”*

Supporters of Black Pete also referred to what seemed to be the sudden nature of the issues with the character: *“That Black Pete is racist (and why in the beginning it wasn’t and now suddenly it is?) I find that it is taken completely out of context.”* Supporters also felt that the discussion was not only sudden but that it would soon be over: *“Never before has it caused public outrage, this discussion is just a hype.”*

Both supporters and those in favor of eliminating Black Pete engaged in perspective taking in their arguments. One supporter said, *“I can imagine that some people find it offensive but considering Black Pete is extremely popular and according to me, not many children see him as a “slave” of St. Nicholas, I think that the festivities should continue as is.”* One participant in favor of eliminating Black Pete said *“I can very well imagine that for some people it is hurtful and that’s why I think that in 2014 we can adapt ourselves and contribute to a world without racism.”*

Two participants in favor of eliminating Black Pete felt that the character may be a negative example for children. They expressed that, *“It can give young children the wrong impression on how to deal with dark skinned people”* and that *“It is a beautiful party and it would be a shame to—by means of such a party—transmit a bad message especially to young children.”*

### ***Exploratory analysis***

The control variable of self-involvement is meant to assess how the extent to which participants were emotionally involved, identified with their views on the topic and considered the topic personally important, is related to their

attitudes and behavioural intentions. Pearson correlations revealed that self-involvement was negatively correlated with the conflict handling strategy of yielding ( $r = -.20$ ,  $p < .05$ ) and positively correlated with the strategy of forcing ( $r = .35$ ,  $p < .01$ ). Specifically, the more self-involved participants reported to be, the less they intended to give in and the more they were prepared to force their own views onto their counterpart. Further Pearson correlations between all the dependent variables are shown in Table 3.2.

**Table 3.2**

*Pearson correlations between dependent variables*

| Dependent variables                   | 1. | 2.   | 3.   | 4.    | 5.    | 6.    | 7.    | 8.     | 9.   |
|---------------------------------------|----|------|------|-------|-------|-------|-------|--------|------|
| 1. Self-involvement                   | -  | -.12 | -.18 | -.20* | -.11  | -.08  | -.09  | .35**  | .06  |
| 2. Motivation to mediate              |    |      | .06  | .23*  | .31** | .15   | .10   | -.04   | .01  |
| 3. Open-mindedness                    |    |      |      | .61** | .40** | .57   | .12   | -.45** | -.14 |
| 4. Yielding                           |    |      |      |       | .50** | .42** | .15   | .45**  | .06  |
| 5. Compromising                       |    |      |      |       |       | .53** | .30** | -.31** | .13  |
| 6. Problem solving                    |    |      |      |       |       |       | .07   | -.42** | .05  |
| 7. Avoiding                           |    |      |      |       |       |       |       | -.04   | -.02 |
| 8. Forcing                            |    |      |      |       |       |       |       |        | .19  |
| 9. Satisfaction with the intervention |    |      |      |       |       |       |       |        |      |

$N = 101$

\* $p < .05$ , \*\* $p < .01$

### Manipulation Check

A one-way ANOVA on the participant's perception of the mediator's concern for loss of control and the condition (loss of control vs. increased costs) as between-participant factors yielded a main effect of condition  $F(2, 98) = 5.32$ ,  $p < .01$ ,  $\eta^2 = .99$ . Tukey's tests revealed that participants in the loss of control threat condition reported the mediator to be more concerned with the loss of control ( $M = 4.59$ ,  $SD = 1.60$ ) than did those in the increased costs threat condition ( $M =$

3.58,  $SD = 1.50$ , ( $p < .05$ ) and no threat condition ( $M = 3.68$ ,  $SD = 1.07$ , ( $p < .05$ )). The manipulation of the loss of control intervention may be considered successful. However, the one-way ANOVA with the mediator's concern for increased costs and condition (loss of control vs. increased costs) as between-participant factors did not yield significant results ( $F < 1$ ).

Further, we explored the extent to which participants' motivation to avoid losing control of the outcome or incurring increased costs differed between conditions. A one-way ANOVA with the participants' desire to avoid losing control of the outcome and condition (loss of control vs. increased costs) as between-participant factors did not yield significant results ( $F < 1$ ). However, the one-way ANOVA with participants' desire to avoid incurring increased costs and condition (loss of control vs. increased costs) as between-participant factors revealed a main effect of condition  $F(2, 98) = 10.61$ ,  $p < .001$ ,  $\eta^2 = .18$ . Tukey tests showed that participants in the increased costs threat condition were more motivated to avoid increased costs ( $M = 5.65$ ,  $SD = 1.05$ ) than were those in the loss of control threat condition ( $M = 4.48$ ,  $SD = 1.32$ ,  $p < .001$ ) and no threat conditions ( $M = 4.70$ ,  $SD = .89$ ,  $p < .01$ ).

### Dependent Measures

A series of one-way ANOVA's with condition (loss of control vs. increased costs vs. no threat) and the dependent measures as between-subject factors were conducted to assess the impact of the threat interventions. No significant results were found on any of the dependent measures. The means and standard deviations of the dependent measures across conditions are shown in Table 3.3.

**Table 3.3**

*Means and standard deviations of dependent measures across conditions*

| Dependent variables                | Increased costs |      | Loss of control |      | No threat |      | Total |      |
|------------------------------------|-----------------|------|-----------------|------|-----------|------|-------|------|
|                                    | M               | SD   | M               | SD   | M         | SD   | M     | SD   |
| Motivation to mediate              | 5.67            | 1.18 | 5.61            | .86  | 5.47      | 1.01 | 5.58  | 1.02 |
| Open-mindedness                    | 5.29            | 1.09 | 5.11            | .93  | 5.21      | .81  | 5.20  | .94  |
| Yielding                           | 4.34            | 1.16 | 4.58            | 1.06 | 4.46      | .94  | 4.46  | 1.05 |
| Compromising                       | 5.54            | 1.33 | 5.60            | 1.12 | 5.46      | 1.15 | 5.53  | 1.20 |
| Problem solving                    | 5.63            | 1.05 | 5.70            | .95  | 5.69      | .98  | 5.67  | .98  |
| Avoiding                           | 3.70            | 1.53 | 3.68            | 1.51 | 3.70      | 1.34 | 3.70  | 1.45 |
| Forcing                            | 4.17            | 1.09 | 3.88            | 1.39 | 4.13      | .97  | 4.05  | 1.16 |
| Satisfaction with the intervention | 4.17            | 1.08 | 3.98            | 1.07 | 3.99      | .97  | 4.05  | 1.04 |
| Mediator rating                    | 4.21            | 1.10 | 4.22            | 1.22 | 4.56      | 1.03 | 4.33  | 1.12 |

### Discussion 3.1

By placing participants in a hypothetical value conflict scenario where they defended their own views, we studied the impact of threatening litigation on participants' intended attitudes and behaviors. Specifically, participants were exposed to either a mediator who warned on the negative consequences of losing control of the outcome, a mediator who warned on the negative consequences of incurring increased costs or a mediator who did not extend any warning.

The content analysis showed that participants justified their stance on favoring or opposing Black Pete by providing arguments related to their views. The majority of participants referred to elements of tradition and culture in their arguments, referencing shared values of their country and their own social-identity. Other justifications included more personal value-based arguments on upbringing and personal perspectives. The arguments suggest the Black Pete debate is indeed a conflict rooted in different beliefs rather than tangible resources.

Further, correlation analyses showed that the more self-involved participants were the less they were willing to yield and the more they desired to force their own views on their counterpart. These findings are consistent with previous research showing that parties in value conflicts tend to be more self-involved than those in resource conflicts (Kouzakova et al., 2012). The main analyses however, revealed that there were no significant differences in intended attitudes and behaviors between participants threatened with loss of control, participants threatened with increased costs and participants who did not receive any threat. The lack of significant findings may be related to the limitations of this study, which are discussed in turn.

First, the manipulation checks produced mixed results. Specifically, participants in the loss of control threat condition indeed perceived the mediator to be more concerned with parties' loss of control of the outcome than did participants in the increased costs threat and the no threat conditions. However, participants in the loss of control threat condition were not more motivated to avoid losing control of the outcome than those in the increased costs threat and no threat conditions. This pattern was reversed for the increased costs condition. Specifically, participants in the increased cost threat condition were indeed more motivated to avoid

increased costs than those in the loss of control threat and no threat conditions. However, participants in the increased costs threat condition did not perceive the mediator to be more concerned with parties' increased costs than did participants in the loss of control threat and the no threat conditions.

In other words, participants threatened with loss of control were more aware of the mediator's warning of this consequence but were not particularly motivated to maintain control of the outcome while participants threatened with incurring increased costs were more motivated to avoid increased costs but were not more aware of the mediator's warning of this consequence.

Another reason possibly accounting for the lack of differences in behavioral intentions among participants in the loss of control threat versus the increased cost threat conditions may be found in the arguments given by the participants. Specifically, participants in favor of Black Pete expressed open-mindedness to changes in the appearance of Black Pete. Among these supporters, there were participants who engaged in perspective taking and expressed a desire to shape the holiday in such a way that everyone can feel comfortable. Considering this flexibility among supporters in our current sample, perhaps the threat was not necessary to resolve the dispute. Take for example the following argument expressed by one supporter:

"In essence it does not really matter to me if he is ultimately eliminated. If people feel so offended by it, take it away. But personally I do not have any racial associations with it, as a child I have never linked it with slavery or the inferiority of people with a darker skin. Naturally I do not know if other people have made that link, but I do not have the impression that this is the case. But should it be eliminated, it doesn't mean that the St. Nicholas festivities are ruined or anything. So be it."

The above argument is expressed by a participant who—in the questionnaire—indicated they wanted to keep Black Pete

as part of the festivities. This participant's views however seem particularly open to not only change the appearance of Black Pete but to also eliminate the character altogether. Conducting the study among devoted advocates who attended protests to keep Black Pete and passionate opponents who initiated litigation to eliminate Black Pete for example, may show different results.

In addition, participants were asked to react to a hypothetical scenario. Placing participants in real conflicts may evoke genuine emotions and generate more authentic responses. One way of creating this setting is to ask participants to recall a previously experienced value conflict and consider this dispute when responding to the questionnaire. By adopting such an approach in Study 3.2, we attempt to further explore the impact of threatening litigation on disputants in value conflicts.

### **Study 3.2**

In Study 3.2, we developed a research design that allowed respondents to consider a self-experienced value conflict when responding to the questions of the study. By doing so, we aimed to validate that once threatened with litigation, respondents would react authentically to questions concerning their anticipated attitudes and behavioral intentions in a hypothetical mediation session. Although allowing respondents to provide a self-experienced value conflict—as opposed to being assigned a uniform scenario—may increase the level of authenticity among responses, this approach also results in a wide variety of conflicts that are experienced with a wide variety of counterparts. These two factors (i.e. different conflicts and different counterparts) may alter the manner in which respondents react to the threat of litigation. For this reason, an analysis of these two factors was incorporated in the investigation.

First, the extent to which the different self-experienced disputes can pertain to the category of value conflicts was assessed in two ways, namely, by measuring the respondents' level of self-involvement and by analyzing the content of their disputes. Value conflicts are particular in the feelings that they awaken in disputants. As previously mentioned, people in value conflicts consider their views non-negotiable. This inflexibility is caused by their emotional involvement (Kouzakova et al., 2012) with the issue at hand, the fact that they identify with the issue (Wade-Benzoni et al., 2002) and because they consider the topic personally important (Kouzakova et al., 2012). Exploring the extent to which self-involvement is positively and negatively related to people's attitudes and behavioral intentions, provides an indication of value conflicts among a variety of self-experienced conflicts. Further, categorizing the different conflicts by means of the five foundations of morality (Haidt & Joseph, 2008) also provides information on the content of the dispute and the values that were at stake.

Second, the different counterparts with whom these value conflicts were experienced can influence respondents' reactions to the intervention, depending on the relative power between disputants. Consider a conflict manifesting between an employee and an employer versus the same conflict emerging between two friends. It can be argued that a high-power dispersion is present in the former situation while a low power dispersion persists in the latter. Research shows that disputants' relative power is a factor influencing whether an agreement is reached through mediation (Wall et al., 2001). Specifically, mediation tactics tend to induce settlements when there is power equality between disputants (Nickles & Hedgespeth, 1991). For these reasons, it is important to control for two factors: the extent to which the conflict issue of the disputes described indeed concerned diverging values and the power dispersion between the disputants.

By requesting participants to recall a previously experienced value conflict, we investigated the effects threats framed as losing control of the outcome versus incurring increased costs would pose on their attitudes and behavioral intentions in a hypothetical mediation session.

### Method 3.2

#### Participants and Design

Responses from 104 participants were included in this study<sup>3</sup> (85 females,  $M_{age} = 21.4$ ,  $SD = 3.14$ ). Among participants, 56 were Dutch, 8 were from the Caribbean, 2 were Turkish and 1 was Moroccan, while the remaining 14 had another ethnic background. Participants were recruited by advertisements distributed across Leiden University's social and behavioral sciences campus as well as from the university's online participation sign-up tool. Upon successfully completing the experiment, participants were compensated with €3 or 1 course credit.

The experiment included a between-subjects design, where the intervention (loss of control threat vs. increased costs threat vs. no threat) was manipulated as a between-participant factor.

#### Procedure

Upon arrival, participants were given a brief introduction to the study. They were informed that they would be asked questions about how they deal with conflicts. Once participants received the introductory information, they were assigned a private cubicle where they completed a questionnaire on a computer. First, participants received a definition of value conflicts followed by 4 common examples of value conflicts that occur in society. These examples included conflicts

<sup>3</sup> One hundred and twenty-one participants originally took part in this study. Eighteen participants responded based on hypothetical conflicts or could not think of a previously experienced value conflict. These participants were omitted from all data analyses.

where the president of a fraternity has ended the membership of a homosexual fraternity member because of his sexual orientation; where a teacher forbids a student from wearing a catholic necklace of Jesus on the cross while at school; where one neighbor feels that loud noise and visitors after 10 o'clock is unacceptable while the other neighbor is accustomed to loud noise and visitors late at night; and where a soccer coach refused to include a female soccer player to a (male) team because of her gender.

After reading these examples, participants were asked to describe an unresolved value conflict that they have experienced in the past and that could have reached litigation if the conflict had escalated. After typing out their example of a previously experienced value conflict, participants were asked to imagine that they—together with the person with whom the described value conflict was experienced—approached a mediator to assist them in resolving the dispute. Participants were further asked to imagine that this mediator would inform them that if they do not resolve the dispute at the mediation table, their only alternative would be to present the case in front of a judge in court. Here, participants were randomly assigned to one of three conditions.

Those in the loss of control threat condition were further asked to imagine that the mediator would tell them that if the case proceeds to court:

...a loss of control of the outcome will be the consequence because the outcome will be made by a judge in a court case. The judge will make a decision without considering your preferred outcome. By reaching an agreement at the mediation table on the other hand, there will be no loss of control of the outcome.

Participants in the increased costs threat condition were further asked to imagine that the mediator would tell them that if the case proceeds to court:

...increased costs to reach an outcome will be the consequence because you will need to hire a lawyer and pay for the court case. The judge will make a decision without considering your financial budget. By reaching an agreement at the mediation table on the other hand, there will be no increased costs to reach an outcome.

Participants in the no threat condition (i.e. control condition) did not receive any threat nor mention of judicial procedures. Following this manipulation, participants were asked questions assessing their expectations of such a mediation session.

### **Content Analysis**

Participants' conflicts were analyzed and assigned to one of the five foundations of intuitive ethics (Haidt & Joseph, 2008). These foundations include the categories of harm/care, fairness/reciprocity, ingroup/loyalty, authority/respect, and purity/sanctity. Two researchers independently assigned the 104 different conflicts to one of the five categories. The result of this initial categorizing was compared and inconsistencies were discussed. In cases where no consensus was reached, a third researcher was asked to make the final decision as to the category a given conflict pertained to.

### **Dependent Measures**

To investigate how people would be impacted after receiving such threats while their values are at stake, we measured the same attitudes and behavioral intentions assessed in Study 3.1. In addition to these dependent variables, we also looked at the power dispersion between the counterparts.

#### ***Power Dispersion***

Insight into the relationship between the disputants was gained by one open-ended question: "With whom did you have this conflict?" The power dispersion between the disputants was assigned post hoc by the researchers. The

cases were assigned to one of two categories, namely, equal-power counterpart (e.g., a conflict where the counterpart was a colleague) and high-power counterpart (e.g., a conflict where the counterpart was an employer). All respondents described conflicts where they were either in an equal power position or in a lower power position. In other words, the conflicts described did not include cases where the respondent possessed more power than the counterpart.

### **Manipulation Check**

To assess whether the interventions were indeed experienced by participants in the intended manner, we checked the manipulations by means of two items asking participants to indicate the reason the mediator was warning that the case might reach court if no solution is reached. The threat framed as loss of control was verified by: "...because the mediator wanted to inform you that if you go to court you will lose control of the outcome?" 1 (*not at all*) to 7 (*very much*). The threat framed as increased costs was verified by: "...because the mediator wanted to inform you that if you go to court you will need to pay more money to reach an outcome? 1 (*not at all*) to 7 (*very much*).

## **Results 3.2**

### **Content Analysis**

Participants provided a wide range of previously experienced value conflicts. These disputes were categorized according to the five foundations of intuitive ethics (Haidt & Joseph, 2008). The results of the categorization procedure are shown in Table 3.4. The majority of participants described a conflict pertaining to the foundation of fairness/reciprocity. The virtues of this category include feelings of justice, honesty and trustworthiness. One participant experienced such a conflict with the members of a school board:

A conflict with a school where I was representing a student who was not admitted to the school due to—in my eyes—illegal reasons, namely, he was denied admission because of his limitation. The school considered him incapable of completing the program while they only saw him once and the dismissal was based on suspicions.

**Table 3.4**

*Participants' previously experienced value conflicts (N = 103)*

| <b>Five foundations of intuitive ethics</b> | <b>N</b> |
|---|----------|
| Fairness/Reciprocity                        | 62       |
| Purity/Sanctity                             | 21       |
| Authority/Respect                           | 12       |
| Harm/Care                                   | 6        |
| Ingroup/Loyalty                             | 3        |

The second most described type of conflict concerned the foundation of purity/sanctity. The virtues pertaining to this category are temperance, chastity, piety and cleanliness. One participant experienced such a conflict with a bartender: *"The bartender did not want to serve my homosexual friend."*

Twelve participants described a conflict pertaining to the foundation of authority/respect. The virtues of this foundation are obedience and deference. One participant described a conflict with her ex-husband: *"... after a divorce where the child is raised by both parents, which parent will have more say and whether this is justified."*

Six participants described conflicts concerning harm and care. The virtues and vices of this category are caring, kindness and cruelty. One participant described a conflict about visitation rights: *"[The conflict] concerns visitation rights of a father of a five-year old child where the father physically abuses the grandmother in front of the child."*

Only three participants described conflicts pertaining to the ingroup/loyalty foundation. The virtues are loyalty, patriotism and self-sacrifice. One participant experienced such a conflict with a potential employer: *"After applying*

*for a job once, I was not hired because I am a woman. They had an all-boys team and felt that it was irresponsible to hire a girl, they said doing so would only cause trouble.”*

### **Self-involvement**

In order to assess the extent to which respondents' feelings in relation to their conflict indeed corresponded with the typical characteristics of disputants in value conflicts, we ran a series of correlation analyses between self-involvement and the dependent measures. The results showed that the more self-involved participants reported to be, the less open-minded they intended to be ( $r = -.27, p < .01$ ), the less they were willing to yield ( $r = -.31, p < .01$ ), compromise ( $r = -.22, p < .05$ ), and exhibit avoidance behavior ( $r = -.20, p < .05$ ), and the more they were prepared to force their own views ( $r = .21, p < .05$ ). These findings indicate that across the variety of conflicts, respondents' feelings with respect to the conflict were typical of disputants' in value conflicts. Further Pearson correlations between all the dependent variables are shown in Table 3.5.

**Table 3.5**

*Pearson correlations between dependent variables.*

| <b>Dependent variables</b>            | 1. | 2.  | 3.     | 4.     | 5.    | 6.    | 7.    | 8.     | 9.    |
|---------------------------------------|----|-----|--------|--------|-------|-------|-------|--------|-------|
| 1. Self-involvement                   | -  | .06 | -.27** | -.31** | -.22* | -.02  | -.20* | .21*   | .06   |
| 2. Motivation to mediate              |    |     | .20*   | .21*   | .23*  | .32** | .14   | -.32   | .18   |
| 3. Open-mindedness                    |    |     |        | .71**  | .58** | .52** | .20*  | -.40** | .30** |
| 4. Yielding                           |    |     |        |        | .70*  | .48** | .24*  | -.48** | .20*  |
| 5. Compromising                       |    |     |        |        |       | .61** | .40** | -.28** | .23*  |
| 6. Problem solving                    |    |     |        |        |       |       | .31** | -.22*  | .38*  |
| 7. Avoiding                           |    |     |        |        |       |       |       | -.28** | -.09  |
| 8. Forcing                            |    |     |        |        |       |       |       |        | .07   |
| 9. Satisfaction with the intervention |    |     |        |        |       |       |       |        |       |

$N = 104$

\* $p < .05$ , \*\* $p < .01$

### Manipulation Check

A one-way ANOVA with mediator's concern for loss of control and condition (loss of control vs. increased costs) as between-participant factors revealed a main effect of condition  $F(1, 77) = 14, 91, p < .001, \eta^2 = .16$ . As expected, results showed that participants in the loss of control threat condition<sup>4</sup> indicated that the mediator was warning on a loss of control of the outcome should the case proceed to court ( $M = 5.55, SD = 1.62$ ) more than did participants in the increased costs threat condition ( $M = 4.12, SD = 1.82$ ). Further, the one-way ANOVA with the mediator's concern for increased costs and condition (loss of control vs. increased costs) as between-participant factors also revealed a main effect of condition  $F(1, 77) = 21, 44, p < .001, \eta^2 = .22$ . Participants in the increased costs threat condition indicated that the mediator was warning of increased costs ( $M = 5.27, SD = 1.23$ ) more than did participants in the loss of control condition ( $M = 3.71, SD = 1.74$ ).

### Dependent Measures

A series of one-way ANOVA's with condition (loss of control vs. increased costs vs. no threat) and the dependent measures as between-subject factors were conducted to assess the impact of the cost-risk tactics. The results are summarized in Table 3.6. Significant results are discussed in turn.

---

<sup>4</sup> The data of the control condition (i.e. no threat) of the present study was collected posterior to the data collection of the two threats conditions. For this reason, the framing of the manipulation checks fit with the two threats conditions but not the control condition. The manipulation checks specifically asked participants to indicate the reason a mediator was threatening them (to avoid losing control or to avoid incurring increased costs). Presenting participants in the control condition with this question would be futile.

**Table 3.6**

*Means and standard deviations of dependent measures across conditions.*

| Dependent variables                | Increased costs |           | Loss of control |           | No threat |           | Total    |           |
|------------------------------------|-----------------|-----------|-----------------|-----------|-----------|-----------|----------|-----------|
|                                    | <i>M</i>        | <i>SD</i> | <i>M</i>        | <i>SD</i> | <i>M</i>  | <i>SD</i> | <i>M</i> | <i>SD</i> |
| Motivation to mediate              | 5.07            | 1.44      | 5.48            | 1.13      | 4.49      | 1.65      | 5.08     | 1.43      |
| Open-mindedness                    | 4.51            | 1.31      | 4.34            | .98       | 4.47      | .96       | 4.44     | 1.12      |
| Yielding                           | 3.58            | 1.44      | 3.56            | 1.00      | 3.61      | 1.21      | 3.58     | 1.23      |
| Compromising                       | 4.67            | 1.59      | 4.84            | 1.32      | 4.65      | 1.61      | 4.73     | 1.49      |
| Problem solving                    | 5.28            | 1.20      | 5.28            | .85       | 4.78      | 1.21      | 5.16     | 1.10      |
| Avoiding                           | 3.07            | 1.56      | 3.57            | 1.50      | 4.03      | 1.41      | 3.48     | 1.54      |
| Forcing                            | 5.08            | 1.16      | 4.97            | 1.10      | 4.85      | 1.19      | 4.99     | 1.14      |
| Satisfaction with the intervention | 5.00            | 1.26      | 5.49            | 1.14      | 4.32      | 1.06      | 5.02     | 1.25      |
| Mediator rating                    | 3.59            | 1.42      | 3.59            | 1.46      | 3.91      | 1.32      | 3.66     | 1.41      |

### ***Motivation to Mediate***

A one-way ANOVA with motivation to mediate and condition (loss of control vs. increased costs vs. no threat) as between-participant factors revealed a main effect of condition  $F(2-101) = 3.81, p < .05, \eta^2 = .07$ . Tukey tests showed that participants threatened with loss of control were more motivated to mediate ( $M = 5.48, SD = 1.13$ ) than those who were not threatened ( $M = 4.49, SD = 1.65, (p < .05)$ ).

### ***Avoidance***

A one-way ANOVA with avoidance and condition (loss of control vs. increased costs vs. no threat) as between-participant factors yielded a main effect of condition  $F$

(2-101) = 3.22,  $p < .05$ ,  $\eta^2 = .06$ . Tukey tests revealed that participants threatened with increased costs were less willing to exhibit avoidance behavior ( $M = 3.07$ ,  $SD = 1.56$ ) than those who did not receive any threat ( $M = 4.03$ ,  $SD = 1.41$ , ( $p < .05$ ).

### ***Satisfaction with the Intervention***

A one-way ANOVA with satisfaction with the intervention and condition (loss of control vs. increased costs vs. no threat) as between-participant factors among the two threat conditions<sup>5</sup> revealed a marginally significant result  $F(1-77) = 3.26$ ,  $p = .08$ ,  $\eta^2 = .04$ . Participants threatened with loss of control were marginally more satisfied with the intervention ( $M = 5.49$ ,  $SD = 1.14$ ) than participants threatened with increased costs ( $M = 5.00$ ,  $SD = 1.26$ ).

### ***Power Dispersion***

Since participants experienced their conflict with a number of different counterparts, we examined the power dispersion between disputants to assess whether this factor had any influence on the reported attitudinal and behavioral intentions. A total of 38 participants experienced a conflict with a counterpart who had equal power while 41 participants described a conflict with a counterpart who had higher power<sup>6</sup>. Running the analyses while including the power dispersion factor revealed significant findings on two dependent measures, namely the motivation to mediate and open-mindedness.

---

<sup>5</sup> The data of the control condition (i.e. no threat) of the present study was collected posterior to the data collection of the two threats conditions. For this reason, the framing of the satisfaction with the intervention fits with the two threats conditions but not the control condition. The items measuring satisfaction specifically asked participants to indicate how satisfied they were with the loss of control or increased costs information they have received from the mediator. Presenting participants in the control condition with these items would be futile.

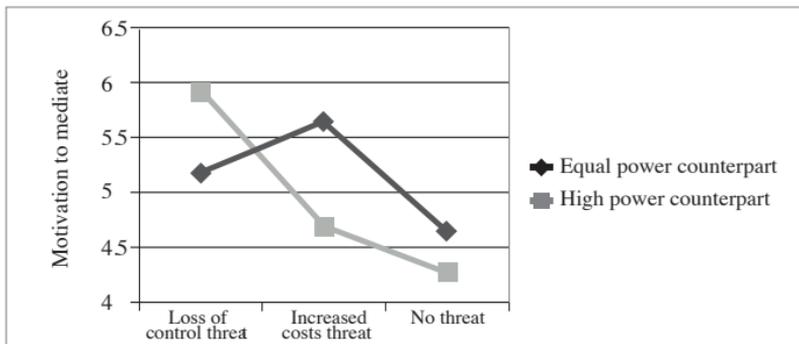
<sup>6</sup> The control condition (i.e. no threat) was not included in the analyses on power dispersion due to a low  $N$  per cell when split into equal and high power.

In terms of the motivation to mediate, a 2 (power dispersion: equal vs. high) x 2 (condition: loss of control threat vs. increased costs threat) ANOVA on the motivation to mediate yielded an interaction effect  $F(1,75) = 8.89, p < .01, \eta^2 = .11$ . Post-hoc independent sample t-tests revealed that participants who were in a conflict with a counterpart who has equal power were more motivated to mediate ( $M = 5.65, SD = .78$ ) than participants who were in a conflict with a counterpart who had more power ( $M = 4.69, SD = 1.64$ ), but only when they were threatened with increased costs should the case proceed to court  $t(36,70) = 2.49, p < .05$  (Figure 3.1).

The reverse occurred among participants threatened with loss of control. Specifically, those who described a conflict with a counterpart who has more power were more motivated to mediate ( $M = 5.92, SD = .85$ ), than those in conflict with a counterpart who has equal power ( $M = 5.17, SD = 1.22$ ),  $t(36) = -2.11, p < .05$ . Further, participants in a conflict with a higher-power counterpart were more motivated to mediate when threatened with loss of control ( $M = 5.92, SD = .85$ ) than when threatened with increased costs ( $M = 4.69, SD = 1.64$ ),  $t(37,70) = 3.13, p < .01$ .

**Figure 3.1**

*Interaction between condition and power dispersion on the motivation to mediate.*



In terms of participants' open-mindedness, a 2 (power dispersion: equal vs. high) x 2 (condition: loss of control threat vs. increased costs threat) ANOVA revealed a main effect of power dispersion  $F(1,75) = 7.62, p < .01, \eta^2 = .09$ . Participants who were in a conflict with a counterpart who had equal power intended to be more open-minded ( $M = 4.74, SD = 1.00$ ) than participants who were in a conflict with a counterpart with more power ( $M = 4.17, SD = 1.14$ ).

### Discussion 3.2

While in Study 3.1 we explored the efficacy of the mediation tactic of threatening litigation by placing participants in a predetermined value conflict, in the present study we asked them to recall a previously experienced value conflict. As participants considered an unresolved dispute, we hoped to generate the desired mindset—rooted in ongoing value conflicts. Despite providing different conflicts, participants' intended attitudes and behaviors corresponded with actions typical of disputants in value conflicts. When asked to report on their intended behaviors should their conflict reach a mediation table, the more self-involved respondents were, the less open-minded they were, the less they were willing to compromise, yield and avoid and the more they were prepared to force their views on their counterpart. This indicates that respondents' feelings with respect to their self-experienced conflict were characteristic of disputants in value conflicts (Kouzakova et al., 2012).

Once participants described their value conflict, we asked them to imagine having to resolve the dispute at a mediation table where a mediator threatens litigation framing the consequence as either losing control of the outcome or incurring increased costs. The findings—which compares the impact of having received no threat versus a threat framed as losing control of the outcome or incurring

increased costs—provide initial insight into the efficacy of this technique.

The results suggest mediators prepared to threaten litigation may indeed elicit different behaviors from disputants as a result of framing. Specifically, warning parties on the loss of control of the outcome may motivate them to continue the mediation while also leaving them marginally more satisfied with the intervention. Warning parties on the increased costs on the other hand, may cause them to exhibit less avoidance behavior. At first sight, it may seem that framing the threat either way results in productive behaviors. Indeed, the less avoidance behavior elicited by a warning on litigation fees can help lead to a resolution as parties engage in highlighting their differences as opposed to ignoring them. Such confrontations can clarify parties' positions, which in turn can point to directions of possible agreements that are mutually beneficial as well as sustainable. However, in an already heated situation, which is often the case with value conflicts, more, not less, avoidance behavior may help prevent escalation or cause de-escalation. By refraining from a confrontation with their counterpart while trying to make differences of opinion loom less severe, parties can preserve their rapport while going through the mediation process. In that respect, it may be more fruitful for mediators to threaten litigation framed as incurring increased costs only when highlighting their differences proves instrumental to resolving the dispute. By exhibiting less avoidance behavior while being guided by the mediator, disputants can then welcome confrontation and embrace differences of opinion in an effort to reach a sustainable solution that reflects both their values.

Taking the above findings into account, when faced with stalemates and parties who resort to unproductive conflict handling behaviors, a mediator may threaten litigation framed

as loss of control of the outcome to promote motivation to continue the mediation session. When faced with parties in high conflict intensity however, mediators should refrain from framing the threat as incurring increased costs to avoid less avoidance behavior which can add fuel to fire.

In addition to the above suggestions, mediators contemplating to use the cost risk tactic of threatening litigation are also advised to take note of the power dispersion between the counterparts. When threatened with loss of control of the outcome, participants were more motivated to mediate when in a conflict with a counterpart with more power than when in a conflict with a counterpart with equal power. It could be the case that disputants facing counterparts with more power may feel their best chance to reach a satisfactory agreement is found at the mediation table versus in front of a court bench. A mediator works in favor of both parties to reach a mutually beneficial solution. In court, a judge considers the information presented by each parties' designated representations. Disputants facing higher-power counterparts may feel intimidated by their counterparts' ability to acquire stronger representation. Indeed, the motivation to mediate is less present when there is equal power dispersion among those threatened with a loss of control. This finding suggests mediators aiming to motivate disputants to continue the mediation session by threatening loss of control should only do so to parties with lower power. As a tactic, this is likely only possible during a caucus. Even though a mediator may exhibit this technique in the best interest of the lower-power disputant, it may raise ethical concerns as only one party will be exposed to this technique.

An unexpected reversed pattern occurred among participants threatened with increased costs. Under these circumstances, participants were more motivated to mediate

with an equal power counterpart than with a counterpart with more power. This finding was surprising as we would expect disputants facing higher-power counterparts would be more willing to mediate to avoid incurring increased costs of litigation—which their counterparts would be more likely capable of affording. It could be the case that a mediation session with an equal power counterpart may have been seen as a fair fight whereas facing a disputant with higher power at a mediation table may be more confrontational. In litigation, conflicting parties have their own representation, thus a lower party counterpart does not have to face the higher-power counterpart head on. However, the same can be said in cases where the litigation threat was framed as loss control of the outcome, yet as we have seen, parties were more motivated to mediate with a high-power counterpart under those circumstances. We must further investigate the thoughts that become salient once the threat is framed as losing control of the outcome on the one hand and incurring increased costs on the other. For example, measuring parties' level of confidence should the case proceed to court may provide more clarity on the mechanisms that are driving these results. By looking at the mindset that is prompted with each specific threat, we can begin to understand the attitudes, behaviors and decisions of disputants exposed to this technique during mediation.

Lastly, the findings showed that participants in conflict with a counterpart with equal power intended to be more open-minded than did participants faced with a high-power counterpart. This finding is in line with previous research showing that mediation techniques are likely to be productive when the power between disputants is balanced (Nickles & Hedgespeth, 1991).

### General Discussion

By means of two studies, we investigated the impact of the mediation technique of threatening litigation when employed in value conflicts. By placing participants in a predetermined value conflict (Study 3.1) and by allowing participants to recall a previously experienced value conflict (Study 3.2), we were able to compare the results generated from these two different approaches. The manipulation checks of the first approach (Study 3.1) presented challenges. Although participants in the loss of control condition indeed reported that the mediator threatened with a loss of control, participants in the increased costs condition did not report that the mediator threatened with increased costs. The partially unsuccessful manipulation checks in Study 3.1 were proven successful in Study 3.2.

In addition to a successful manipulation, the second approach (Study 3.2), which allowed participants to consider their own value conflict, also yielded more insight on the impact of threatening litigation. The results showed framing the threat in terms of loss of control of the outcome increased parties' motivation to mediate, particularly among those faced with a high-power counterpart. Warning parties of the increased costs of litigation lowered avoidance behavior and increased parties' motivation to mediate among those with equal-power counterparts. These findings form a first step to investigating the cost-risk tactic of threatening litigation when mediating value conflicts.

### Theoretical Contributions

Our findings contribute to propositions captured by the sacred value protection model (Tetlock, 2003). Specifically, the moral outrage hypotheses posit that people experience a profound aversive reaction to not only actual settlements of sacred values against secular ones (e.g., money) but also, the

mere contemplation of a taboo-trade off is enough to make them respond in anger and contempt. As we have seen, parties who were warned on the increased costs of upholding their values were less motivated to continue the mediation session than those who were reminded of the inability to control the outcome in litigation. Those threatened with increased costs were also slightly less satisfied with this form of intervention than those threatened with a loss of control of the outcome. The fact that it was those threatened with increased costs who were less willing to engage in avoidance behavior also shows they are more unwavering. These findings support the moral-outrage hypotheses although we were unable to assess the extent to which the reality-constraint hypotheses were also applicable. The reality-constraint hypotheses suggest people regularly encounter circumstances where the cost of standing by their sacred values become too much to bear (Tetlock, 2003). Once this occurs, they will begin to show more flexibility and accept alternative perspectives that render taboo trade-offs more acceptable. In Study 3.1, additional fees would have been financed by public funding and in Study 3.2 we did not specify the amount it would cost to defend the conflicting values in court. In directions for future research, we elaborate on research designs that can expand on the reality-constraint hypotheses in value conflicts.

The present results also contribute to the growing body of research illustrating the differences between the management of conflicts concerning scarce resources versus those about values (Harinck & Druckman, 2017). When resources are at stake, forceful strategies such as threatening litigation tend to be effective in low conflict situations (i.e., where interests differ, making bargaining demands achievable) and less effective in high conflict situations (i.e., where trade-offs are not feasible, Bigoness, 1976). Even though, more often than not, value conflicts are high conflict situations, disputants

can be motivated to continue the mediation session provided the threat warns them of the control they will lose of the outcome. This indicates that when mediating value conflicts, the manner in which the pressing intervention is framed is more consequential than its coerciveness.

Similarly, our results also contribute to face-negotiation theory (Ting-Toomey, 1988). In resource conflicts, threatening a binding decision from a third party is likely more effective among disputants with a low need to save face than those with a high need to save face (Johnson & Tullar, 1972). Again, we show that although disputants in value conflicts often have a high need to save face, they can be motivated to continue the mediation session if the threat to a binding decision is framed as losing control of the outcome. Whereas in resource conflicts those with high face needs may welcome binding demands as it allows them to maintain face under the forced compliance rhetoric (Johnson & Tullar, 1972), in value conflicts parties with high face needs may be dismayed by an external binding agreement, and—in an effort to not abandon their values—they become willing to mediate to reach a solution that reflects their views.

Beyond the impact of the threatening litigation strategy of mediators, the present work builds on alternative views of the avoidance conflict-handling strategy of disputants (Richardson, 1995), specifically when engaged in value conflicts. Conflict management literature has consistently categorized avoidance behavior as an unassertive and uncooperative mode of conflict resolution (Thomas, 1976). However, ethnographic evidence showed that avoidance behavior has the ability to form common identity, a sense of unity and group cohesion (Richardson, 1995). Given what we know about value conflicts and their strain on disputants, such forms of implicit bonding could benefit those at odds about their beliefs. For this reason, once our results showed

threatening litigation framed as incurring increased costs led to less avoidance behavior, we did not persistently conclude it to mean a positive impact. Indeed, the traditional view of avoidance behavior has deemed this conflict-handling strategy a passive response, where one either withdraws from the conflict or suppresses it—either way leaving the conflict unresolved. However, in some cases, a lack of confrontation can make way for unity created by avoidance, which can prove more permanent than results created by confrontation (Richardson, 1995). We argue that such consequences of avoidance behavior in value conflicts may be more productive than insistently highlighting differences through confrontation. This is not to say mediators should encourage avoidance behavior as a method of conflict resolution. Rather, it is to suggest that strategies that decrease avoidance behavior, such as threatening litigation framed as incurring increased costs, may not be as desirable in value conflicts—where the potential benefits of avoidance (i.e., cohesion and solidarity) may assist in conflict resolution.

### **Practical Implications**

On a practical level, the findings imply that threatening litigation may not always be as straightforward to implement in the mediation process. It's one thing for a disputant to threaten a counterpart with increased costs, but when a mediator acts, both parties are affected by the strategies used. As we have seen, threatening litigation impacted disputants differently based on their level of power. Lower-power disputants faced with higher-power counterparts may be more willing to mediate when threatened with loss of control. A caucus provides the mediator with an opportunity to warn only the lower-power counterpart on the risk of losing control of the outcome. In practice however, exposing a cost-risk tactic to one party only, may breach the standards

of good mediation conduct. Indeed, disputants in a caucus with a mediator can use this private time to clarify any issues, express themselves emotionally, reflect on long-term and short-term goals and review possible proposals or develop new offers (Leigh, 2018). Because these meetings are private, it can cause parties to lose trust in the mediator, their counterpart or the mediation process. Considering the robust positive correlation between constructive conflict and trust (Bijlsma & Koopman, 2003; Hempel et al., 2009; Lewicki, et al., 2006), mediators must be particularly mindful when calling for a caucus and should explain their rationale for doing so.

Among the eight elements of caucus, manipulation and control suggests mediators in caucus have the opportunity to control, manipulate, suppress and/or introduce new information—which can lead to ethical issues (Leigh, 2018). Warning a disputant of the loss of control or increased costs he or she might face if no solution is reached at the mediation table can be considered new information if only mentioned in caucus. When this information is only given to the side of the party more likely to be impacted by it, for example the lower-power counterpart, the mediator is only increasing the motivation to mediate from one side. Once out of caucus and back at the mediation table, this may result in resolution caused by one party's fear of litigation. The ethical concerns raised are related to equal treatment and transparency. As we continue to investigate the impact of threatening litigation in value conflicts, we may discover circumstances under which both parties can be warned of the undesirable consequences of litigation without prompting counterproductive effects from one side, such as negative conflict handling behaviors, a desire to litigate or a consent to unsatisfactory settlements rooted in fear. Instead, mediators threatening litigation in joint sessions could pick up on the consequences of litigation

that are undesirable for each party respectively. One side may not wish to go through a lengthy litigation process while the other may not have the financial resources to do so. In doing so, the mediator can continue to gain trust from the disputants who may recognize that the mediator is acting in their best interest in hopes of reaching a sustainable and satisfactory resolution.

### **Limitations and Directions for Future Research**

Reflecting on the methodologies of Study 3.1 and Study 3.2 one can wonder whether being threatened with litigation while in a hypothetical conflict scenario (Study 3.1), may cause participants to react less sensitively than when threatened with litigation while considering a conflict that they have actually experienced (Study 3.2). Although the latter may seem more valuable, allowing participants to consider their own conflict results in a large variety of disputes that present confounding variables, such as different levels of conflict intensity, which can impact the probability of litigation. Take for instance the following conflict described by one respondent in Study 3.2: *“During a conversation, I looked at a person from African descent in the eyes and this person was offended.”* From this description, it is not difficult to imagine that this dispute, which seems like a miscommunication caused by different cultural backgrounds, would be hashed out outside the courtroom. Now consider the following conflict described by another respondent in Study 3.2:

This is an example of a previous work experience. It is in the past but I still think about it often. During a meeting with my supervisor, I was told that he had doubts about my loyalty. To clarify this, he said that I am not always visible during meetings and activities etc. I did not see it that way. Especially by going to those places etc. I was working overtime. My supervisor assumed that I should also be available for him beyond my working hours. Not only in terms of work, but sometimes also for him privately.

This conflict between an employee and an employer seems more likely to escalate to the point where we might no longer be speaking about settling a dispute but about prosecuting a criminal act—which we have recently seen unfold in high profile court cases (e.g., Harvey Weinstein<sup>7</sup>). As conflict intensity can impact the probability of litigation and therefore influence the response to a threat of litigation, in the future we must factor in the conflict intensity on several levels. Firstly, the bargaining demands should be recorded to assess whether these demands are low, indicating low conflict intensity or high, indicating high conflict intensity. Secondly, the value conflict issue should be categorized and cross referenced with the data on types of court cases to assess probability of litigation. Lastly, and perhaps more importantly, participants' perception of the conflict intensity should also be measured, to prevent underestimations of the likelihood of litigation among conflicts that, from an outsider's perspective, may be deemed minor.

Indeed, in some cases, those seemingly minor conflicts are the ones that hold potential to escalate beyond disputes and land at the mediation table at best and in the criminal court at worst. Take the first self-experienced value conflict mentioned above. The participant described an incident where looking at another person in the eyes resulted in a conflict. Because this is the only description we have of the incident, it may seem like a simple misunderstanding between two cultures, which one can assume can be resolved through dialogue. The peaceful resolution will not only depend on what is said during this dialogue but also on how it is received and by whom. As political communications consultant Dr. Frank Luntz claimed: "It's not what you say,

<sup>7</sup> Former Hollywood producer Harvey Weinstein was found guilty of criminal sexual assault and rape in the third degree and is currently serving a sentence of up to 23 years in prison (Francescani, 2020).

it's what people hear that matters" (Luntz, 2007, p. 106).

Now consider what happened in Central Park in New York City on May 25, 2020. A bird-watcher by the name of Christian Cooper was birding in an area of the park called the Ramble. He encountered a woman by the name of Amy Cooper (no relation), who was walking with her dog off the leash. Christian Cooper asked Amy Cooper to leash her dog as per the park rules and she refused. Christian Cooper proceeded to record Amy Cooper, a white woman, who while forcefully pulling her dog by its collar, claimed she would call the police to report that the African American man was threatening her life. She made the call and Christian Cooper posted the video recording online, gaining more than 40 million views. Amy Cooper lost her job, her dog was taken away from her and she has been publicly shamed since the video went viral (Ransom, 2020). The Manhattan District Attorney proceeded to charge Amy with filing a false police report but was missing Christian Cooper's support in the case. Christian Cooper did not wish to aid with the investigation as he felt Amy Cooper had suffered enough and that the incident pointed to a bigger issue—which would not only remain unresolved by convicting Amy Cooper, but can also derail any real change:

If her current setbacks aren't deterrent enough to others seeking to weaponize race, it's unlikely the threat of legal action would change that. Meanwhile, for offenders who don't suffer consequences like Cooper's, the law is still there to exact a price (Cooper, 2020).

Here, a request to follow park rules escalated to a conflict which has been said to be rooted in white privilege, racism, history and culture (Ransom, 2020). Although Christian did not wish to pursue litigation, some social justice advocates

believe this case should be settled in court to serve as an example for others. Constitutional Law professor Gloria J. Browne-Marshall argued:

This isn't just about Christian Cooper. The community has been harmed by the actions of Amy Cooper and, in order to rectify this, then the people of New York need to have their day in court, even if Christian Cooper is a reluctant witness (Ransom, 2020).

However, Daniel Alonso, former Chief Assistant District Attorney of Manhattan claimed in order to convict Amy Cooper, prosecutors would have to prove that she did not believe in that moment that she was being threatened and that she intended to file a false police report: "A threat can be, 'I'm going to kill you,' or it can be subtle. She may well have believed at the time that his statement was threatening in her definition" (Ransom, 2020).

This example further illustrates the importance of perceived conflict intensity. Although neither parties involved wished to litigate, the high probability of litigation was brought forward due to the public attention the case received. Christian Cooper does not wish to cooperate with the investigation. Amy Cooper intends to fight the charges. Therefore, a mediator who threatens litigation may utilize this technique as a warning, which should motivate parties to continue their efforts to reach a resolution outside the courtroom. The mediation table could provide an opportunity for both parties to understand why they behave the way they do and how they can live together in society. A successful outcome of such a mediation could entail concrete agreements establishing new norms—a solution characteristic of value conflicts (Illes et al., 2014).

In addition to varying degrees of conflict intensity, another challenge of studying past value conflicts lies in the variety of counterparts and the uneven power dispersion between disputants. In Study 3.2, we factored in the power dispersion post-hoc. However, the assigned power dispersion is not self-evident. For example, in a conflict between an employer and an employee or a parent and child, we assigned the employer and parent to high power and the employee and child to low power. A conflict between two friends on the other hand, was assigned to equal power. We can imagine scenarios where power in these examples could be allocated differently. For instance, a successful and independent young adult in a value conflict with her parents may feel empowered to make life decisions that are in violation with her parents' views. Similarly, a high value employee, such as a marquee basketball player, who requests that the NBA commissioner not enforce the long-standing rule requiring players to stand during the national anthem in order to allow players to kneel in support of the Black Lives Matter movement, may have more power than his employer (Owens, 2020). If the request is rejected and the decision prompts the player to sit out games, it could lead to significant loss in revenue for the league. Measuring perceived power can allow us to categorize power levels more accurately, enabling the findings to paint a more complete picture of the impact of threatening litigation among disputants with different power dispersions.

Furthermore, in Study 3.1 participants were threatened with increased costs that would come from the school board's budget, although the amount was not stipulated. In Study 3.2, the participant would finance the litigation fee, although the amount was also not specified. People may respond differently to the threat of increased costs after evaluating their financial power, as postulated by the reality-constraint hypotheses (Tetlock, 2003) and as we have seen in the case

of Ugandan President Yoweri Museveni (BBC, 2014). Conducting a study where participants face losing their own money versus public funding while being aware of the costs, might render them more sensitive to the threat. In addition, incorporating high, low and moderate levels of increased costs may pinpoint the threshold where the cost of defending a particular value surpasses its value.

Finally, Studies 3.1 and 3.2 looked at threatening litigation framed in two different ways: incurring increased costs and losing control of the outcome. These are not the only consequences of litigation. In fact, judicial procedures can also be more frustrating (Ferstenberg, 1992), slow and more public (Stamato, 1992) than mediation. Mediation research should also investigate the effects of threatening litigation framed as risking more time, causing more strain and facing public scrutiny. If we draw from the moral-outrage hypotheses (Tetlock, 2003), it may also be the case that people will not consider it acceptable to abandon their views for the sake of time or to avoid added frustration. Also, they may even welcome the opportunity to stand by their views in public. A research design that incorporates a value conflict experienced on a national level can divide participants in conditions where the mediator warns parties on the lengthy nature of litigation, on how frustrating the process can be and the public scrutiny they might face. The findings can provide practitioners with more insight into the impact of the manner in which this cost-risk tactic is framed. This will allow mediators intervening in value conflicts to frame the threat based on what is more likely to resonate with the disputants and promote positive conflict-handling strategies.

## Conclusion

The present studies provide preliminary insight into the mechanisms involved when mediators threaten litigation when intervening in value conflicts. By framing the threat as losing control of the outcome on the one hand, and incurring increased costs on the other, we found that there is value in explicitly singling out a consequence of litigation. Mediators warning parties on the possibility of an undesired binding decision made by a judge, were able to positively influence parties' motivation and satisfaction with the intervention. Mediators warning parties on the additional monetary costs of litigation elicited less avoidance behavior. In line with existing work on taboo trade-offs, it is generally more beneficial to encourage parties to maintain control over their fate than to avoid monetary costs. Our investigations expand on the currently limited guidelines for mediators who are specifically intervening in these difficult disputes concerning non-fungible issues. As the world continues to become smaller through digitalization, where people holding contrasting worldviews and beliefs of righteousness are in constant communication, value conflicts are bound to manifest. Tactics that promote open-mindedness and foster productive conflict handling styles under these circumstances, will increasingly become imperative tools for peacemakers. With this study, we hope to have contributed to the instruction's manual of the mediator's novel toolbox for intervening in value conflicts.

