

# The Success-Failure Anxiety in Conflict Resolution

## Between Law, Narrative and Field Building

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### Abstract

*The paper discusses success as a managerial notion, on the basis of efficiency measures and consequential thinking, and contrasts it with success as a more procedural internal notion within the second generation of conflict resolution. The appeal to success in the conflict resolution field is considered as based originally on efficiency and effectiveness, while implicitly inspired by philosophical principles and moral values. Later, when new models based on identity and relationship emerged, more explicit emphasis on process and internal validity became part of the definition of success. The paper describes the particular anxiety of aspiring for consequential success in the realm of law. It also offers a model to evaluate success while assuming its open-ended and complex nature. Defining success from within a context many times helps to capture more deeply the phenomenon of conflict resolution intervention.*

**Keywords:** conflict resolution, failure, procedural, post-structural, constructive, success.

My academic upbringing has been as a lawyer at Tel Aviv University (Law and Philosophy) and Harvard Law School at a time in which ideas of law as promoting social values and as a central mechanism for social change and progress were celebrated. Judicial activism, normative dialogue, redistribution and institutional transformations through law were inspiring judicial activities for progressive legal scholars during my studies and provided stimulating anchors for legal scholars (Dworkin, 1977; Fiss, 1979). My teachers and legal professors who inspired me had happily chosen not to become frustrated lawyers and preferred to depict legal education as a journey of social responsibility and values seeking (Kronman, 1993). My initial choice was to join this drive to indeed make law look more philosophical and full of values. At some point during my studies, I began to have serious doubts, however, about the possibility of law to promote social transformation. In other parts of the university, I studied post-structural philosophy and became suspicious of any claim for truth or moral justifiability (Derrida, 1976; Lyotard, 1983/1988). The next step for me was to endorse the field of conflict resolution as a way to deal with my broken world of ideals and values seeking. The

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interest in the new emerging field came not as a consequence of long and thorough academic study. It arrived as a spark, a strong experience of emotional overflow that was followed by a lifelong academic commitment. This commitment was in a sense blind at that time. I could not do else than follow this passion.

The most frustrating encounter with my new beloved field of conflict resolution, though, was that many people in it were not seeking for humanist complex post-structural notions of truth, but were actually managing conflict in the most straightforward consequential mode possible (Fisher and Ury, 1981). I perceived them as not asking for complexities or “différance” as in Derrida's expressions. From my perspective they were asking for “success” in the most pragmatic superficial way; they were careless about values and seemed to assume that it is all about the right balance and a free market of negotiation (see criticism by Luban, 1995); they were indifferent to social inequalities and the way in which they are reinforced within conflict engagement (see criticism by Fiss, 1984; Menkel-Meadow, 1999); they were managerial technocrats who cared about building a prestige for a new profession of mediators and conflict resolution practitioners.

In my inner intellectual world, these practitioners and pragmatic professors ranked much below the academic human rights and legal values people who first inspired me. The search for success for itself was scorned by the latter, as was the practical drive and the efficiency mode. No way to reconcile my conflict resolution passion with my intellectual upbringing existed at that time. This short piece reflects my current reconciling framing of success as a head of a conflict resolution program today, and after some fifteen academic years of teaching ADR. Hopefully it reflects the maturing of the field as well as myself while searching for some intellectual mediation between practice, as searching for success, and theory, as searching for nuanced truth and advanced social morality.

On practical grounds, many of the incentives for the rapid development of our field were related to the actual need to resolve conflicts on the ground and to do this successfully and effectively. In law, there was “the popular dissatisfaction with the administration of justice” which was the main focus of The Pound conference, which is considered as founding the ADR movement (Sander, 1976). In international relations, the idea of dealing with real intractable or more manageable conflicts through emphasis on needs and problem solving was aiming to change the reality of conflicts and to produce apparent success (Azar and Burton, 1986; Burton, 1990). In the legal field, I believe it is true to argue that although the official incentive was efficiency and relieving court dockets, and this is what helped the movement spread rapidly on the ground, most of the pioneers in the field developed some underlying theory of values, which was the actual motive for their field building.

This means that on the theoretical level, some initial drive in the development of the field is related not only to a belief in actual efficient resolution of disputes or conflicts, but also to some basic claim that we carry with us from the foundational moment. This is the search for a different kind of truth, and for a success that is defined in a more self-referential way and through searching for values and internal motives of the participants (Sander, 1984). This subversive drive, which in my mind is very deep within the development of the movement,

means that no external statistics on court dockets or peace agreement rates can defy the urge for conflict resolution. No panels of socio-legal scholars in which the effectiveness of ADR is challenged may threaten the drive to develop the movement. Since the deep aspiration of the field is for a different process that has its own internal values, the external consequential perspective on success cannot determine the overall evaluation of the field.

The two notions of success – the external and internal, or, in other terms, the static and the dynamic – may need more elaboration here:

The static external notion of success deals with success as an outcome, which is predetermined. Under this perspective, success is defined through an external measure that is determined by the institutional and contextual setting in which it is examined. According to this criterion, success in conflict resolution should be defined by a strict set of norms that define the field and are considered as the overarching goals it aspires to promote. For example, if the goal of the field is to resolve conflicts and to settle them, the way to evaluate success is to measure how many conflicts were resolved following a concrete intervention. Statistics should be applied in order to evaluate the effectiveness of such intervention. If, on the other hand, the goal is to promote procedural justice and only process matters, measuring elements of satisfaction and voice should prevail, including empowerment and recognition (Bush, 1989a). For each possible perception of what the field is, there is a criterion of evaluating success, and possibilities include promoting peace, encouraging collaboration and engagement, managing interactions effectively, facilitating dialogue and many more on this list.

Taking the static perspective on success and failure might suggest that no clear-cut answers exist as to what is considered success in our field. We are still building the field and struggling with how to define it, and thus we cannot determine clearly “the criteria” for success and failure. The shift from problem solving, or “the pragmatic” of mediation to second-generation models of transformation within the field, reflects the re-emergence of values in the managerial field of the 1980s, which I had doubted. According to this perspective, the notions of success became less managerial and consequential throughout the years of the development of the field. Instead of resolving problems, the emphasis shifted to developing ethics of care (Bush and Folger, 1994), promoting pluralism, reconstructing identities (Rothman, 1997) and facilitating dialogue language. The field has become much more laden with values, as much as my legal field of the 1980s was escaping pragmatic lawyering in favor of activist promotion of values (Bush, 1989b). These values were related to more emphasis on process, but still can be explained as providing a different criterion for evaluating success from an external and static perspective. The emphasis on success as related to procedural justice and as related to values of pluralism and dialogue has not become the mainstream paradigm of the field (though some pragmatic professionals keep holding it as an undisclosed aspiration), but from an academic perspective and as a counter-image to the pragmatic drive, it has helped to make it more plural and complex. Teaching conflict resolution today involves introducing method to deal with the most public and value-laden conflicts in society, and new emerging alternative movements to law such as Therapeutic Jurisprudence, Transitional Justice

Michal Alberstein

and Restorative Justice suggest a new second-generation paradigm to deal with public conflicts.

There is another, more dynamic answer to the question of evaluating success and failure, and this perspective may in fact contain the static external discussion above. The dynamic internal notion of success relies on the fact that the question of success is always asked from within a context, it carries its own background and preconditions, it evolves and changes while answering it, and the movement of reflection on its development is what we are trying to capture. According to this idea of dynamic evaluation, the search for success is always an ongoing (succeeding) aspiration and movement. We follow success as a horizon that can never be fully reached, but still it produces and inspires our movement (Rothman and Ross, 1999). Conducting research on success in conflict resolution requires a qualitative approach based on deep listening and multidimensional inquiry. It may also involve action research, and an effort to intervene while we continue to examine the conditions for success from an internal perspective and their transformation and change. Success is always contextual and nuanced, but it does not mean that it cannot be measured and searched for.

So one reconciling formula for my theory–practice split in my academic youth is a dynamic experimentation in evaluating success and failure. We dive into the paradox of defining success by announcing in advance that we construct its boundaries while we search for it. I do not perceive today the search for success as futile, and I am not anxious anymore by the need to reach real agreements and resolutions on the ground and to measure them carefully. The two developments that can explain this new interest in success except the years that have passed by and which may have made me more pragmatic are, first, the development of the second-generation models of the field, which deal with identities, transformation, and new moralities as providing new external measures for success, and second, the development of more nuanced methods of success evaluation that take seriously its internal perspective. These methods internalize in constructive, structured ways some post-structural wisdoms on which I have been raised.

So how would a sophisticated search for success in conflict resolution look? How can the search for success correspond today with my early academic doubts? I would suggest that first, success as a constructive notion should be examined only through reference to a concrete context, while interviewing various stakeholders and trying to articulate their diverse perspectives on its essence, while holding a pluralist perception of the field. Second, the search for success in our field requires a thorough discussion of its intellectual foundations, values and history, while acknowledging its dynamic quality. Finally, I dream of a humanist-nuanced notion of success for our field, a notion that incorporates critical perspectives and carries some messianic spirit in it. Success is a horizon, is a constructive perspective to interpreting failure, and may be a self-fulfilling prophecy. It is not consequential and definitely not material, though it may have pragmatic effects and real-world manifestations. This notion brings a critical distance into my beloved field while enriching it intellectually; it also colors it with hope and faith. If I began my conflict-resolution career by being apologetic regarding the public aspirations of the field due to its emphasis on private utilitarian success, I

can now find within it deep engagement with values and a theoretical space for processing the most complex public ideological conflicts. Such aspiration can contain various intellectual schools and is by definition an ongoing process of reflection and learning. It strives for a nuanced solution to the dispute that is still yet to come, the dispute that we still must settle.

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Michal Alberstein

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