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Pressures that can escalate conflict

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Suppose you attend a concert but you're bored and skeptically conclude, "This is not going to get better." Do you leave? Suppose you paid money for the ticket. Would that affect your decision?

If the concert was free, most people would leave. But the more it costs you, full price for the ticket plus parking, for example, the more likely you will endure a boring performance. "Sunk costs" are like gravity; the bigger the mass, the stronger the pull.

This phenomenon influences us beyond economics. We value how others think about us as litigators, risk managers, judges, mediators, et al. We also value how we see ourselves. We like to think that we don't make poor decisions, that we honor our commitments, and that we see things through to completion. So even when we recognize that a case, project, or activity is not turning out well, we may be more likely to obscure its status by sticking with it. The social costs of changing your mind can be steep.

We may not realize it, but this opens us up to manipulation. If we comply with one request, we are more likely to comply with another because we value consistency and dependability in others and in ourselves. Fundraisers do this. No matter how small your initial donation may be, you are more likely to donate again and increase the amount of your donation in the future.



Police officers do it, too. They may ask to enter your house "just to talk" and then ask to have a "look around." Mediators do the same thing. Parties commit to general aspirations or principles at first, and later agree to wider, more substantial requests or concessions. Parties who have invested significant time and energy in the mediation process are more likely to agree to last-minute modifications even if those changes make the deal less beneficial to them.

Why cases don't settle

Litigation escalates in a similar way. Even after significant financial investments are made, or after strategic setbacks, litigants usually recommit. Recall that we experience loss more intensely than the same amount of gain. In other words, it hurts more to lose \$500 than it feels good to win \$500.

Therefore, we will assume more risk in the face of potential loss, spending "good money after bad," escalating our commitment to losing causes beyond the point it is rational. This is one reason why cases do not settle as early they could and perhaps should.

In addition to loss aversion, other psychological impediments include our preference for and over-valuation of evidence that supports our position, while we tend to ignore or downplay evidence that contradicts our position.

Another reason why conflict escalates is the allure and effectiveness of perseverance. One of my favorite quotes is attributed to Calvin Coolidge:

“Nothing in this world can take the place of persistence. Talent will not – nothing is more common than an unsuccessful man with talent. Genius will not – unrewarded genius is almost a proverb. Education will not – the world is full of educated derelicts. Persistence and determination alone are omnipotent.”

There are innumerable cultural and social messages that promote the spirit to keep going “against all odds.” On the one hand, this has served society well. Perseverance is critical for social justice to prevail. On the other hand, it can create the illusion that determinism and resolve are sufficient to resolve intractable problems.

Hollywood loves to tell stories about lawsuits that look futile at first, but turn out famously well in the end. Competitive and acrimonious litigants are unfriendly to each other and will fight endlessly out of spite. Psychologically, without a way to “save face,” people will fight on.

Despite the psychological and social forces that encourage irrational commitments to questionable or failing courses of action, it is possible to reduce (but probably not eliminate) the phenomenon.

When possible, develop a clearly defined exit strategy. Who will be in charge of which part of the plan? When will it be executed? What’s the measurement for success? If circumstances allow, perhaps other opportunities for gain should be pursued. Is there an alternate path that will pay dividends or recoup losses?

Perhaps the same people who made the decision to invest in the problem should not decide whether to escalate or withdraw. A fresh set of eyes (and minds) can lead to new ideas and better decisions that save time and money and improve outcomes – including attendance at worthier concerts.

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