

Disputation Arenas: Harnessing Conflict and Competitiveness for Society's Benefit

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I. THE NEED FOR A NEW KIND OF DISPUTE RESOLUTION

Nowadays you hear a lot about how the Internet is going to transform society and people living in it more than any innovation since the printing press. Beyond all the trendy applications in art and commerce, the electronic realm is seen as a vital locus for developing new kinds of dispute resolution, and even law. Some enthusiasts perceive it as a way to bypass older systems of social authority, allowing users to create their own self-organizing structures. Indeed, the Internet's rapid development seems surpassed only by its potential. Still, far too many enthusiasts focus on just one side of the equation—the technology. The other half—the human half—is more important, believe it or not.

How do real people behave, when confronted by opportunities and capabilities they never imagined? History shows that new media don't always liberate. At first, printing enflamed Europe's sixteenth century religious hatreds. In the 1930s, burgeoning exposure to radio and loudspeakers helped consolidate the power of tyrants. Only time and the development of user maturity in a competitive environment turned these media into tools for cooperative citizenship.

In the long run, the Internet will serve us best if it enhances two seemingly contradictory traits—*individualism* and *accountability*. This may seem an odd blend, but their synergy is what brought us nearly everything we cherish about the modern era. Exploring ways to utilize this synergy in order to create new systems of dispute resolution will be the aim of this Article.

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A. *The Fecundity of Chaos*

First, if you want to see clues about our future, step away from your computer screen. Go outside and stand near a four-way intersection that's regulated only by stop signs. Watch for a while as drivers take turns, not quite stopping while they gauge each others' intentions, negotiating rapid deals with nods and flashes of eye contact. You'll spot some rudeness, certainly. But exceptions seldom rattle this silent dance of brief courtesies and tacit bargains—a strange mixture of competition and cooperation.

The four-way stop doesn't work in some cultures, and it's hard to picture anything like it functioning in times past, when mostly-illiterate humans lived in steep social hierarchies and "right-of-way" was a matter of status, not fair play. Nor would robots, adhering to rigid laws, handle traffic half so well as the drivers I see, dealing with a myriad fuzzy situations, making up micro-rules and exceptions on the spot, even as they talk on cell phones or quell squabbles among kids riding in the back seat. This phenomenon visibly illustrates how simple rules can be used by sophisticated autonomous systems (e.g., modern citizens) to solve intricate problems without any authority figures present to enforce obedience.

How does it happen? Experts in *complexity theory* coined a term—"emergent properties"—to describe new levels of order that seem to arise out of chaos, when conditions are right.¹ For example, Kevin Kelly's book, *Out of Control*, depicts how rudimentary genetic drives coalesce into the fantastic flocking behavior of birds.² When intelligence extends this process to higher levels, the result—our own unique kind of flocking—is called civilization.

Can the Internet enhance and extend this self-organizing marvel to untold heights?

Alas, despite the glad cries of cyber-utopians, today's Internet just doesn't look ready. Not yet.

B. *An Example: How We Avoid Fatal Errors*

No complex entity can survive for long without a way to combat internal flaws or repair damage that otherwise might cause ruin. Our bodies do this with an immune system.³ Cultures throughout history tried to accomplish the

¹ See JOHN H. HOLLAND, *EMERGENCE: FROM CHAOS TO ORDER* 158 (1998); M. MITCHELL WALDROP, *COMPLEXITY* 152, 193(1992).

² See KEVIN KELLY, *OUT OF CONTROL: THE NEW BIOLOGY OF MACHINES, SOCIAL SYSTEMS AND THE ECONOMIC WORLD* 10–11 (1995).

³ See STUART KAUFFMAN, *AT HOME IN THE UNIVERSE* 143 (1995).

same thing through rulership—exhorting people to live by rigid principles, then squelching deviations with the sword.

That approach never worked well, and it's *not* how nature does it. There is no map inside you depicting your ideal, healthy self. Instead, our bodies throng with semi-independent agents, caroming randomly through blood and lymph, sniffing for trouble like lone marshals of the Old West. Chief among these roving deputies are "T-cells," assigned to detect threats and emit chemical summons for help.⁴ Our lives count on having a variety of these little trouble-shooters, each alert for something different.⁵ If one agent fails to catch a problem, the next might.⁶ This system, half a billion years old, is more flexible than any kind of central control.

Can societies emulate it? In fact, we've already spent generations moving gradually away from old centralized prescriptions toward a program that is much more like nature's. Forget all the noise about "Big Government." It has only marginal importance, up or down, compared to society's true immune system against error—fierce and reciprocal *criticism*.

Our neo-western civilization throngs with "human T-cells"—educated, skeptical, independent-minded, and ego-driven to pounce on some terrible mistake or nefarious scheme. Some are in government, but most aren't. In fact, this description enfolds far more than news reporters, activists, and muckrakers. Any of you reading this can envision friends who exhibit the following traits: (1) strongly held opinions; (2) claiming to see patterns that others cannot; (3) distrust of some (or all) authority; (4) profound faith in their unique individuality; and (5) utter dependence on freedom of speech. Perhaps you proudly avow these traits in yourself. If so, you're not exceptional. They were drilled into millions of us from an early age by one of the most pervasive (and weirdly ironic) ongoing propaganda campaigns of all time. The characters we admire in books and films—from *Mad Max*⁷ and *E.T.*⁸ to the literary novels of Pynchon⁹ and Doctorow¹⁰—nearly always exhibit traits of driven individualism. Irked by limiting routines, they sniff for mistakes or dubious plots by those in charge. Above all, these fictional protagonists display suspicion toward authority. Authority in all shapes and sizes. Such heroes—rare in times past—throng every popular medium today. Can you deny they played a role in shaping the individualist you are? Is it

⁴ See *id.* at 216.

⁵ See *id.*

⁶ See *id.*

⁷ See *MAD MAX* (Kennedy Miller Productions 1979).

⁸ See *E.T.* (Universal Pictures 1982).

⁹ See generally, e.g., THOMAS PYNCHON, *THE CRYING OF LOT 49* (1967).

¹⁰ See generally, e.g., E.L. DOCTOROW, *RAGTIME* (1975).

any wonder that millions of us choose some subject to get irate about, or some cause to champion, making noise until the error gets fixed or at least discussed?

Many social thinkers decry this combatively personal way of confronting a complex world. In *The Argument Culture*,¹¹ Deborah Tannen defines *agonism* as “a prepatterned, unthinking use of fighting to accomplish goals that do not necessarily require it.”¹² University of Southern California Professor Barry Glassner sees much of today’s relentless criticism as unbalanced and needlessly dispiriting.¹³ In *The Culture of Fear*, he claims that exaggerated doom-mongering misleads Americans into believing things are much worse than they really are.¹⁴

I don’t completely disagree with Tannen and Glassner. Indeed, the media do sensationalize. And Hollywood’s reflexively upthrust finger toward all authority can become a tedious cliché, making movies far dumber than they need to be.¹⁵ When this endlessly repeated sermon is taken too seriously and simplistically by some people, the result can be a perversion of individualism that approaches paranoia, even solipsism.

And yet, as I discuss in some detail elsewhere,¹⁶ the astonishing thing about all this raging individualism is how well it works at generating mutual and reciprocal criticism that is unavoidable even by elites. It’s by far the best system ever created for discovering—and even preventing—errors that might cause real harm.

For every crisis that takes us by surprise, there are a thousand bullets we seem to have dodged because someone hollered in time. It makes for a *noisy* society—and an uncommonly successful one.

¹¹ See generally DEBORAH TANNEN, *THE ARGUMENT CULTURE: MOVING FROM DEBATE TO DIALOGUE* (1998).

¹² *Id.* at 8.

¹³ See BARRY GLASSNER, *THE CULTURE OF FEAR: WHY AMERICANS ARE AFRAID OF THE WRONG THINGS* at xi (1999).

¹⁴ See *id.* at xi–xv.

¹⁵ Some of the best films, like *The Fugitive*, *Silence of the Lambs*, and *Ransom*, are memorably different, in part because they eschew this reflex. See *THE FUGITIVE* (Warner Bros. 1994); *RANSOM* (Touchstone Pictures 1996); *SILENCE OF THE LAMBS* (Orion Pictures 1991). They depict plot-driving mistakes by authority figures, but mix these with sympathetically realistic portrayals of public servants actually trying to do their jobs.

¹⁶ See generally DAVID BRIN, *THE TRANSPARENT SOCIETY: WILL TECHNOLOGY MAKE US CHOOSE BETWEEN FREEDOM AND PRIVACY?* (1998).

C. *What Already Works for Us*

New technologies like the Internet have many traits that could enhance the effects I just described, or perhaps ruin them. To see how it can go either way, take a look at what already works for us.

Despite an appearance of raucous chaos, society's vigorous exchange of criticism is not without pattern. It is not just a maelstrom of screaming egotists. You'll recall that I claimed a second ingredient—*accountability*—actually complements individualism, helping it truly to flower.

Consider four marvels of our age—*science, democracy, the justice system, and fair markets*. In each case the participants (scientists, litigants, politicians, and capitalists) are driven by selfish goals. That won't change; not until we redefine human nature. But for years, rules have been fine-tuned in each of these fields of endeavor to reduce cheating and let quality or truth win much of the time. By harnessing human competitiveness instead of suppressing it, these "accountability arenas" nourished much of our unprecedented wealth and freedom.

The four arenas aren't always fair or efficient! A good theory, law, or commercial product may flounder or else face many trials before prevailing. But remember that organic systems needn't be efficient, only *robust*. Likewise, our core institutions have to keep functioning despite individual incompetence, and especially despite the most everlasting individual human temptation—to cheat. In achieving this, the four old accountability arenas have done pretty well by us, so far.

D. *A Fifth Arena?*

Here's my key point. I think the Internet has potential for creating a fifth great arena, equal to the others. Many of the traits it would need are already there, online: vast troves of information; the freedom to make, break, and reform associations; relatively low-cost and -skill barriers to access; a potential for every fallible idea to face relentless scrutiny. But something is also missing. Take a closer look at how science, courts, democracy, and markets actually work. In each arena, the process has two phases.

First, *centrifugal structures* help participants go off on their own, to organize and prepare in safety. Scientists have their labs, lawyers and their clients get confidentiality, politicians rally their parties, and businessfolk lead companies. People need secure enclaves to gather allies, make plans, and prepare for coming battles.

The Internet already has proved magnificent at emulating this phase! On

Usenet¹⁷ and the Web, interest groups coalesce around any topic imaginable. Minority and fringe groups take shelter behind password-protected walls where members may organize safely, separated even by oceans. My 1980s novel, *Earth*,¹⁸ foresaw something like this, though the overwhelming fecundity of it all goes beyond what I imagined.

Alas, centrifugal effects are only half of the process. All by themselves, they guarantee only dispersal, isolation, mutual suspicion, and eventually war. Nowadays we see the Web fostering miniature rallies of the faithful: insular tribes, where commitment to dogma is paramount, and our ancient nemesis—self-deception—reigns supreme. Within these perfect sanctums, true believers grow used to demonizing their opponents, replacing their true identities and arguments with easily despised caricatures.

What each of the older accountability arenas has—and today's Internet lacks—is *centripetal focus*. A counterbalancing inward pull. Something that acts to draw foes together for fair confrontation after they've made their preparations in safe seclusion.

No, I'm not talking about goody-goody communitarianism and "getting along." Far from it. Elections, courtrooms, retail stores, and scientific conferences all provide fierce testing grounds in which adversaries come together to have it out and in which *civilization* ultimately profits from their passion and hard work. This process may not be entirely nice. But it is the best way we ever found to learn, through fair competition, who may be right and who is wrong.

Yes, counter to the fashion of postmodernism, I posit the existence and pertinence of "true and false"—better and worse—needing no more justification than the pragmatic value these concepts have long provided. In science you compare theory to nature's laws. In democracy you try policies until one works. Markets test goods and services that entrepreneurs proclaim "best" while catering to varied tastes. In a myriad fields, this process slowly results in better theories, notions, laws, and products. Again, it is murky and inefficient—and it works.

My point is that today's Internet currently lacks good processes for drawing interest groups, many of them bitterly adversarial, out of those passworded castles to arenas where their champions can have it out—where ideas may be tested and useful notions get absorbed into an amorphous but growing general wisdom.

¹⁷ Usenet is "a world-wide system of discussion groups, with comment, passed among hundreds of thousands of machines. Not all USENET machines are on the *Internet*, maybe half. USENET is completely decentralized, with over 10,000 discussion areas, called newsgroups." Matisse Enzar, *Matisse's Glossary of Internet Terms* (visited Feb. 21, 2000) <<http://www.matisse.net/files/glossary.html#U>>.

¹⁸ See generally DAVID BRIN, *EARTH* (1990).

Some claim that such arenas *do* exist on the Internet—in a million chat rooms and Usenet discussion groups—but I find these venues lacking in dozens of ways. Many wonderful and eloquent arguments are raised, only to float away like ghosts, seldom to join into any coalescing model. Rabid statements that are refuted decisively simply bounce off the ground, springing back like the undead. Reputations only glancingly correlate with proof or ability. Imagine anything good coming out of science, law, or markets if the old arenas ran that way!

Opinions rage and spume with utter freedom and abandon—a good thing, I suppose. But down at rock bottom I am selfish and practical. I want something more out of all the noise. Eventually, I want good ideas to win. Foolish ones should fade gradually, making room for lots of new ideas—both good and bad—to test all over again.

No king or sage or jury is qualified to decide such things, but *we* are. Over time. That is, if we hope to keep growing better.

E. A *Parallel with Nature*

There is a parallel for the process we just described—one that may be much more than a metaphor.

As a mechanism for drawing order out of chaos, evolution has no known peer. This natural process produced the vivid and wonderful creatures we see around us, as well as bringing into existence beings like us, capable of contemplating the universe and ourselves.¹⁹ True, the concept of evolution draws little warmth from the heart, even from those who appreciate its copious creativity, because of the inevitable image it evokes—relentless competition by tooth and claw. But recent studies have shown that the general principle goes far beyond mere “survival of the fittest.”²⁰

Even some of the benign processes that take place *within* our own bodies seem to utilize or emulate evolution, as cells compete with other cells while differentiating into a myriad sub-types, such as muscle or nerve tissue.²¹ Countless minuscule contests take place under prim rules that keep things from getting out of hand. The upshot of all this micro-opposition somehow benefits the whole. Overall cooperative synergy seems to arise out of jostling rivalry on the cellular level, resulting in something that is both robust and potent.

¹⁹ See generally CHARLES DARWIN, *THE ORIGIN OF SPECIES* (Random House 1993) (1859).

²⁰ See generally BRIAN GOODWIN, *HOW THE LEOPARD CHANGED ITS SPOTS: THE EVOLUTION OF COMPLEXITY* (1994).

²¹ See ThinkQuest, *The Guide: Cells and Their History* (visited Mar. 15, 2000) <http://library.thinkquest.org/27819/ch1_1.html>.

In any event, evolution is how species on Earth became complex, adept, and adaptable over time, arriving somehow at solutions that are “correct” for a given ecological time and place. So it should not be surprising that civilization stumbled into problem-solving techniques that emulate nature’s.

Biologists know that evolution operates in two steps, as follows: (1) A rich variety of organisms is generated, most often through dispersal and separation of genetically different subgroups. While they are apart, unable to interbreed, their genetic uniqueness grows until each group becomes a new species. (2) Nature selects. Often this happens when new species come back into contact with each other. The better-adapted flourish. Others fail. Many millions more species have appeared on earth than ever managed to thrive.²²

Isn’t the same thing true of commercial products, policies, theories, and ideas?

You can see the parallel between evolution and our civilization’s four great testing grounds—our accountability arenas—science, democracy, courts, and markets. In each case, the *centrifugal* phase allows groups to consolidate and prepare in relative safety, much like the variety-generating step that nature provides through isolation and speciation. A *centripetal* phase then draws together adversarial groups, pitting them against each other, in a manner much like natural selection.

This parallel offers a somewhat bloody image. But the evolution metaphor does focus attention on the *class of thing that’s evolving*. What is evolving in our four accountability arenas? In the market system, clearly, it is saleable goods and services. In science, it is models that enhance our understanding of the world around us. In democracy, policies and practical ways to balance individual needs and living as a member of a community. In the justice system, beyond winners and losers, it is also the law itself that evolves.

What might a *fifth accountability arena* test? What type of thing should it be good at both generating and winnowing at the same time? Judging from what already fills the Internet today, it might be opinions, memes, schemes—ideas themselves.

F. An Arena for a New Millennium

How would *you* design a new accountability arena? One that utilizes the raw information-handling power of the Internet—its capacity for memory and relentlessness? One that’s worthy of a rambunctious civilization filled with joyfully argumentative individualists?

²² See generally DARWIN, *supra* note 19.

How might we draw a myriad adversaries together, to face off under rules that foster fair competition without squelching any of their righteous passion? Into arenas that compare *opinions* just as well as science, markets, and the law handle their own fractious debates? Into realms where the ultimate punishment for being proved wrong would be to lose our attention as we turn away from dull rants toward the next riveting argument?

Sound like wishful thinking? Like aiming both to have your cake and eat it too? Well, as a child of this culture, I expect to have, eat, and share the cake—and to see it grow. Why not?

It's called "positive-sum" thinking.²³ And yes, that very concept is another emergent property of this new society we're forging, even as we shake off countless old tradeoffs and limitations that our ancestors thought intrinsic to the world. Like the notion that individualism and accountability don't go together—a notion that our descendants will chortle at, like maps of a flat earth.

It's said that we are plunging toward a future beyond all our powers to predict. That may be. And yet, *perhaps it doesn't matter*. What counts is whether we create conditions that work with our natures—that make cheating futile while encouraging diversity, harnessing the vast human potential to solve problems and discover errors before they explode in our faces.

The way to do this will not, and cannot, resemble top-down hierarchies or hoary old ideologies, because no human brain can model or encompass the complexity of our problems or our true potential to address them.

But the systems that do emerge—if we foster them—may engender wisdom and civilization far greater than any of us individually deserves.

II. DISPUTATION ARENAS

A. *Toward a New Dispute Resolution Process for the Twenty-First Century*

Picture a venue where adversaries no longer can get away with just screaming past each other, but actively must answer each others' accusations, criticisms, and complaints. A place where one group's vision—or model of the world—can be tested, dented, appraised, and possibly improved under the

²³ In modern game theory, a "zero sum" situation is one in which every point that you lose is a point for me, and vice versa. There can be only one winner. "Positive sum" occurs when both sides in a game or conflict or negotiation realize that there are potential strategies under which both can win at the same time. See generally JOHN MAYNARD SMITH, *EVOLUTION AND THE THEORY OF GAMES* (1982); ROBERT WRIGHT, *NONZERO: THE LOGIC OF HUMAN DESTINY* (2000).

watchful gaze of an interested public. A site where the disprovable can be disproved, the ambiguous can be pinned down a bit more, and good ideas may get deserved attention just a bit sooner.

Until recently, this kind of role was performed (albeit shallowly) by the press, whose code of professionalism dictated that news articles should present fair capsule summaries of both sides in any issue.²⁴ For all the flaws and lapses we have seen during the last half century, journalism served this function pretty well overall, partly because many issues were simple and their latency times were long enough for leisurely debate. But lately, even some professional journalists such as James Fallows have suggested that the accelerating pace and complexity of modern life renders newspapers and television much less effective at midwifing public consensus.²⁵

An answer may be found in the twenty-first century's tool kit. If the Internet has proved helpful to advocacy groups bent on marshalling their forces, there also might be hope for it to provide the venues for bringing factions together for argument, comparison, negotiation, and even accord.

In the European middle ages, there was a tradition of holding occasional *disputations* between Catholic and Jewish theologians. Though these events were seldom fair and often were rigged in advance, they nevertheless shed a little light in a dark era.

Since then, the art of debate has gone through many changes. For instance, we've come to expect that presidential candidates will have face-to-face encounters, and we complain when candidates for other offices won't agree to do the same. Yet, the art of direct and open confrontation seems to have been refined only in the one place where decent folk loathe ever finding themselves—the courtroom. Outside of the justice system we live awash in opinions, savoring caricatures of our opponents, and seldom use the truth-telling power of adversarial accountability to cut through stubborn clichés.

Now, some philanthropist *might* endow a series of televised debates concerning some of the major issues of the day, say, abortion, or gun control, or the Drug War. Speakers would be chosen not for their passionate radicalism, but for an ability to paraphrase accurately their opponents' positions, showing that they listen well enough at least to comprehend the other side's deeply felt concerns. Each party then would pose questions, with the answers judged by an expert panel for specificity, not polemical appeal. What if it became traditional for advocacy groups to exchange one speaker per year with the opposition? Not out of civility, but from direct self-interest.

²⁴ See TOM GOLDSTEIN, *KILLING THE MESSENGER: 100 YEARS OF MEDIA CRITICISM* 232–246 (1989); see also JIM WILLIS, *JOURNALISM: STATE OF THE ART* 36–43 (1990).

²⁵ See generally JAMES FALLOWS, *BREAKING THE NEWS: HOW THE MEDIA UNDERMINE AMERICAN DEMOCRACY* (1996); JONATHON RAUCH, *KINDLY INQUISITORS* (1993).

If the public demanded this—the way they now demand presidential debates—it might become pretty hard to refuse.

A few isolated efforts have been made in this direction. In Europe, “citizen juries” have attracted some attention. In the United States there have been widely televised “town meetings” of thirty or more respected sages, journalists, and intellectuals who mull over an issue together, guided by a roving moderator with a microphone. But these attempts all suffer from many of the same old problems—limited time, rambling discourse, and comments left hanging in the air that never get the follow-up attention they deserve. Similar drawbacks dog Internet-based discussions, such as *Hotwired’s* “Brain Tennis” program and *Slate’s* “Committee of Enquiry.”²⁶

Might new technologies offer a key to taming today’s bilious arguments into useful criticism and debate? Current Internet discussion technologies are inadequate for several reasons. For example, they have weak mechanisms for filtering good ideas from noise, and huge numbers of posts quickly can drown the quality ideas (the so-called “death of Usenet”). In addition, they have little structure to support task-oriented debates or value-adding discussions, putting a large burden on moderators to keep things moving.

Above all, there is an imbalance on the Internet between the centrifugal and centripetal forces we discussed earlier. Safe and complacent within walls of self-drawn isolation, leaders of radical movements may concentrate on group consolidation through polemics, spinning dramas to preserve the fervor of their followers, without ever having to support their assumptions, programs, or goals. This lack of criticism may be satisfying in the short-term, but it doesn’t help the advocates of a cause to refine their arguments or eliminate flaws in their proposals. Moreover, there is no organized venue for onlookers to observe a fair dispute and draw conclusions by comparing the evidence in an organized way—as juries, voters, and consumers do in markets, elections, courtrooms, and scientific journals.

This is a terrible deficit in a society that counts on Mutually Enforced Accountability as its principal mistake avoidance strategy. Unfortunately, today’s Internet takes us down an old road, toward the quasi-religious fervor of the Nazis’ Nuremberg rallies in 1936, when in-group solidarity was also reinforced by new communication technologies—radio and loudspeakers.²⁷

²⁶ See *Brain Tennis* (visited Mar. 15, 2000) <<http://hotwired.lycos.com/braintennis/aboutus/>>; *Committee of Enquiry* (visited Mar. 15, 2000) <<http://slate.msn.com>>. *Committee of Enquiry* has been renamed *Ballot Box*, inviting debate and commentary on various issues. See *id.*

²⁷ There are countless historical cases when purified information-flows wrought catastrophe. Before the U.S. Civil War, nearly every newspaper in the southern states depicted abolitionism as equivalent to devil worship. See CARL SENNA, *THE BLACK PRESS AND THE STRUGGLE FOR CIVIL RIGHTS* 22–30 (1993); MARTIN E. OANN, *THE BLACK PRESS 1827–1890*,

Clearly, something more is needed. Something tomorrow's Internet might easily provide. We need some way to critique thoroughly ideas, plans, opinions, and policies, letting good ones rise while fallacious ones lose repute. The Internet seems to offer potential for a new style of debate, by establishing disputation arenas for truly extended and meticulous appraisal of a topic, moderated by groups or individuals whose passionate avocation is for neutral intellectual rigor. The more interesting the arguments, the more attention each arena would receive and the less likely that adversaries could turn down invitations to take part.

How to prevent the artful evasions we see so often in political debates? Superficial and brief, these pointless glamour shows reward charismatic prevarication more than argument, and evidence plays almost no role at all.

One of the Internet's great virtues may be its potential for *relentlessness*. Unlike debates in the real world, there would be no two-hour time limits. Extended online confrontations might last weeks or months, shepherded by proctors whose picky personalities (we all know the type) won't let go of a logical inconsistency on this side of frozen hell. Ideally, each side doggedly would pursue its opponents, forcing them to relent and give real answers, while reciprocating the favor.

If people in the world at large were ever to gain confidence in such a system of well-mediated confrontations, the events might acquire the kind of moral force that men used to invest in duels of honor, incurring shame upon those who do not show up or fight by the rules. The most important enforcement tool in any arena will be *credibility*.

Moreover, the Internet also can provide many of the implements of science, e.g., analytical projection software and statistical tools drawing on vast databases, enabling advocates to create detailed models of their proposals—and their opponents'—for presentation in the arena. This will be crucial because, as University of California at San Diego Professor Phil Agre has pointed out, much of the so-called "data" being bandied about on the Internet these days is of incredibly poor quality, often lacking provenance or any discussion of error bars, sensitivity, dependency, or semantics.²⁸ These problems can be solved best the way they are handled in science, by unleashing people with the personalities of bull terriers—critics who could be counted on to slash at every flaw until they are forced to admit (with reluctance) that they can't find any more. Discrepancies might be minimized if arena managers developed standard kits of modeling subroutines,

at 14–15 (1971). One seldom heard the other side. Similar disparities existed in the North. *See id.* Might history have changed if honest argument were part of the volatile political climate before 1861?

²⁸ *See generally* Phil Agre, *Living Data* (visited Feb. 24, 2000) <<http://www.wired.com/wired/archive/2.11/agre.if.html>>.

improving them under strict scrutiny, so that both sides in the debate must compare apples to apples, not oranges.

An early example of this kind of extended Internet-based discussion was the Sustainability Hyperforum experiment performed jointly by Caltech and the Rand Corporation and led by Professor Bruce Murray in 1996.²⁹ Participants used a range of analytical and graphical tools, provided as common resources by the organizers. Since then, the Hyperforum tools and methods have been refined and applied in a number of applications by the groups at RAND, Caltech, and others.³⁰

It may all sound rather dry. But polls show large numbers of people actually enjoy watching the dry charts and graphs of U.S. Senate Budget Committee hearings every year on C-SPAN.³¹ There surely would be an audience when more passionate participants display vivid graphics and feisty style in the debate arenas of tomorrow. The important point is that this process won't need majority participation to work—just the involvement of nit-pickers from all political persuasions. The rest of us will thrill over the fireworks in plenary sessions.

Naturally, early versions inevitably will seem self-serving and tendentious. The intricate procedures used in science, markets, courts, and democracy did not evolve overnight! But initial transgressions and faults would be laid bare swiftly, allowing this new accountability arena to develop much more swiftly than its predecessors.

Anyway, with so much riding on our decisions in the years ahead, what is there to lose?

III. A CONCEPT FOR IMPLEMENTATION

Ideally, a new kind of Internet-based disputation arena can have several potential uses, as follows:

- It can offer businesses and other communities a new way to handle *internal* debates and decide between disparate strategic plans, by comparing them systematically and openly.

²⁹ See generally Bruce Murray, *Promoting Deliberative Public Discourse on the Web*, in A COMMUNICATIONS CORNUCOPIA: MARKLE FOUNDATION ESSAYS ON PUBLIC POLICY (Roger G. Noll & Monro E. Price eds., 1998).

³⁰ See generally, e.g., ROBERT LEMPERS & JIM BONOMO, NEW TOOLS FOR ROBUST SCIENCE AND TECHNOLOGY PLANNING (1998).

³¹ See Brian Lamb, *C-SPAN Chairman and CEO at the National Press Club* (visited Feb. 24, 2000) <<http://www.c-span.org/about/brian2.htm>>. Just one percent of adult Americans translates to approximately two million frequent or occasional viewers. See *id.*

- It can offer a tool for alternative dispute resolution *between* groups whose bitter adversarial stance does not encourage more communitarian approaches like mediation or arbitration.
- It can offer opportunities for synthesis or consensus-building after initial adversarial phases are complete. Even if both sides of a lengthy adversarial dispute cannot come together, onlookers and outsiders will be edified by the best possible presentation and critique of each case and come away better able to find consensus solutions.
- It can offer a vehicle to solicit public comment or criticism, even when adversarial opposition is absent.
- It can move the initial phase of creating policy and legislation onto the Internet by exposing data and policy proposals to scrutiny online, eliminating obvious blunders and attempting to coalesce consensus before legislators even get involved.
- It can create a new form of entertainment—possibly profitable— attracting a myriad citizens to observe and pose challenges to intellectual champions sent by opposing sides in almost any public dispute.

A. *Phase Zero: Developing the System*

Software and servers must be combined in an initial design aimed first at offering debate moderation to groups that desire consensus. Goodwill and cooperation will be essential in early tests, since many different approaches must face trial-and-error scrutiny. Therefore, the ideal test-bed customers would be sophisticated and goal-oriented groups, for example, online “netizens” such as the Internet Council on Assigned Numbers and Names (ICANN),³² a high-profile, nonprofit organization making important decisions about the future of the Internet and the issues that appeal to a Net-literate audience.

Another possible test-bed customer would be a Net-savvy company, whose board is torn between two or more incompatible strategic plans. This, too, is a goal-oriented group whose basic desire will be to make the process work, not to obstruct. In fact, one entire branch of the disputation arenas concept would be to offer commercial services, enabling hierarchical organizations to compare and decide between competing strategies.

Only when these trials finish should a refined system be offered to acrimonious disputants in nonhierarchical settings—out on the wild frontier

³² See *Cybersquatter Evicted from AOL Domain Name in World's Second Test of New ICANN Domain Dispute Policy; Arbitrator Says "icqsms.com" Belongs to AOL, Not Registrant*, PR NEWSWIRE, Feb. 11, 2000.

of the Internet, where emotions and ambiguities rage and where the potential rewards from such a system may be even greater.

B. *Phase One: Inviting Disputants*

When the system seems ready to take on truly intractable and acrimonious social issues, some care should be taken in choosing the first participants (e.g., a top National Rifle Association theorist versus a top gun control advocate). Ideally, it should draw press attention and attract many observers.

One fundamental question to be addressed is: *why would anyone agree to enter the arena?* The prospect of tense confrontation, more relentless and extended than any previous kind of debate, may strike many as daunting. Others, who know the basic untenability of their manifestos, will not want to see them exposed to close scrutiny. Even those who have faith in their cause and confidence in their skills still may need persuading. There have to be incentives to participate. Several possibilities come to mind as follows:

- *Prizes—offered either for victory or simply for sticking it out through the end.* Foundation funding may provide this cash inducement at the start. In the long run, if disputations prove to have public entertainment value, prizes may come out of gate receipts paid by eager audiences.
- *A chance to score points and defeat opponents.* Playing this up—appealing to the self-righteous egos who propel many modern advocacy groups—definitely will be a factor.
- *Direct challenge.* If an arena achieves any sort of attention or renown, a self-fueling effect may occur. Refusing to accept a challenge may attract opprobrium and contempt. This is not a force to discount. *Cowardice* and *hypocrisy* are charges modern politicians cannot leave unchallenged, even when all else survives besmirchment. It is not absurd to consider extending this principle so that challenges tend to have a compulsory aspect, like medieval duels. After all, the passionate personality traits of fierce believers have not changed all that much across a thousand years.³³
- *The potential of achieving real change.* Arenas will grow more attractive if disputants witness actual effects taking place in the outer world of policy and public opinion. Ideally, arenas would serve as testing grounds to make ideas ready for legislative democracy.

³³ This negative inducement does not work in any other form of dispute resolution.

Whatever combination of incentives is used, the *initial challenge* ideally will come from people whose national stature would make it hard for any group to refuse.

Disputants who agree to send champions would be given two months to prepare their position papers and support materials, according to formats provided by arena organizers—formats designed to discourage polemics, forcing them to parse their position down to discrete logical elements (e.g., underlying assumptions about human nature, society, near- and long-term goals). A standard questionnaire may provide a start so that both sides will present comparable answers to the same questions and confess their underlying assumptions.

C. Phase Two: Structured Participation

There would have to be a prim definition of roles for participants.

- The *disputants* must have sufficient status in their advocacy community that they cannot easily be disowned if they are seen conceding points or compromising. Ideally, teams of half a dozen or more will enable each side to endure months of relentless questioning.
- There must be rules. An impartial *jury* will decide procedural issues and adjudicate a myriad squabbles that inevitably arise when groups have long hated and demonized each other. *Ad hominem* remarks must be penalized swiftly to keep things at least somewhat civil.
- Distinct from the jury will be a panel of *Eminent Observers* (or inquisitors) noted for a pitbull tenacity at asking piercing questions. Their backgrounds should be varied for fairness.
- *The Peanut Gallery*: an open forum for outsiders to post comments on the ongoing debate. These comments have no formal role in the dispute, but they will edify. One option would be to let the Peanut Gallery elevate some of their most incisive members to the panel of formal inquisitors.

D. Phase Three: Presentation and Critique of Manifestos

The actual dispute begins when both teams of adversaries post their manifestos or position papers plus supporting material. At this phase, no attention is paid to actual *merits* of either side's case! Instead, a month or more is spent discussing the *logic* and *consistency* of each manifesto, by picking apart each advocate's position into ever-smaller pieces, producing a string (or several strings) of logical and falsifiable statements. Each will be given its own discussion thread so that no step of logic escapes scrutiny.

A hyperforum technique would be ideal for this stage, allowing facilitators to take advantage of this new medium's slow, relentless, meticulous pace and leave no logical stone unturned. An option will be to allow more than a pair of disputants, since not all controversies have two sides. Even when there is clear bipolar opposition, it may be worthwhile to allow a formal track for those who think that both opposing groups are missing some crucial, fundamental point, or for those who wish to build a proposed compromise.

If the process has no further output than two lists of well-parsed opposing position papers, that would be a major improvement over the present murky state of affairs whenever people "debate" difficult modern issues.

E. *Phase Four: The Paraphrasing Challenge*

Here is a unique but crucial phase. After both manifestos are declared logically usable, a distinct period—say a month—will be given to each side so they may *paraphrase* the other side's position.

This step aims to ensure that each party has actually read and understood where the other one stands, so they aren't simply shouting past each other at chimeric caricatures. Paraphrasing is hard to do when you've spent years demonizing the opposition, calling them venal or stupid, and dismissing their concerns. Success at paraphrasing will be seen as a way of winning credibility. It means, "I do understand my opponents, so my disagreement with them is well-informed."

Each side may lace their formal paraphrasing with asterisks and footnotes asserting that the statements they are describing are idiotic. That's fine. But if they fail to depict their opponents' point of view in a manner that the jury finds at least generally accurate, they will be disqualified.³⁴

F. *Phase Five: Let the Battle Begin!*

At this point we have the following four documents online: each side's position paper plus the paraphrasing each side has prepared to show they understand what they are opposing.

Now commences an open-ended and far-flung season of debate in which any and every line of these four documents can be fair game, each with its own category and line of discussion. Attack and defense can be based on

³⁴ Ideally, even their opponents grudgingly will concede an accurate portrayal. Refusal to concede also will be a legitimate subject for commentary by both the Eminent Observers and the Peanut Gallery.

logic, evidence, or morality. While the Eminent Observers (or inquisitors) will be free to criticize, comment, or pose questions, the adversaries *themselves* will bear principal responsibility to refute (or concede) their opponents' points. We won't walk away from any locus of disagreement simply because it seems obdurate!

Indeed, by beginning with paraphrasing, it should be possible to expose polemical exaggerations and force stipulations from both sides, eliminating many lines of disagreement. Whenever this happens, the subcategory involved gets closed with a "Statement of Stipulation."

This stage continues until we reduce the battle to a limited number of "Core Conflicts over Substance." These then would be the focus of further intense scrutiny and research.

Note that while jurors or invited Eminent Observers would be free to criticize or comment, the adversaries themselves will bear principal responsibility to refute (or concede) their opponents' logical points.

Jurors and disputants may at any time issue "Challenge Wagers": predictions that may prove either true or false after future investigation. Part of the fun will come from daring the other side to put themselves on the line—or to put their money where their mouth is.

G. Phase Six: Decisionmaking

1. Mediation, Consensus, or Synthesis

Some traditional accountability arenas offer explicit results—a right answer. Courtrooms give verdicts and scientific meetings shift paradigms. Markets starve some product lines and reward others. In contrast, standard approaches to mediation aim ideally for all adversaries to come away feeling relatively content with a new consensus or compromise, perceiving it as somewhat fair,³⁵ ready to cooperate and make the new solution work.

Might the process we have just described in phases one through five actually bring about such a happy and explicit resolution? As syndicated columnist Ellen Goodman wrote, "it's hard to broaden the debate during a crisis; far easier to raise the same old banners. But maybe we can only lower the decibels of this debate by staking out [some] common ground."³⁶

Certainly, any implementation of the disputation arena concept should allow for the possibility. If adversary-participants show goodwill and

³⁵ See Joseph B. Stulberg, *Fairness and Mediation*, 13 OHIO ST. J. ON DISP. RESOL. 909, 9 (1998).

³⁶ Ellen Goodman, *Lowering the Decibels in the Abortion Debate*, RECORD, Feb. 3, 1992, at A09.

substantial movement from their starting positions—if they prove able to paraphrase opponents and accept the validity of their concerns—modern mediation tools can be offered to help them travel the rest of the way. For example, the “Adjusted Winner” formula, created by New York academics Steven Brams and Alan Taylor,³⁷ may be applicable for Internet-based mediation and compromise. Provided that adversaries can agree on terms and definitions, the formula distributes enough partial victories for each side to feel better off than they were before.

Unfortunately, fractious and self-righteous human beings are not always capable of doing this. Obstinance and self-righteousness torpedo many promising attempts at intercession and negotiation. That is where a disputation arena approach may succeed where others fail. For in fact, consensus among the original adversaries is not at all necessary for a disputation arena to reach successful conclusions.

2. Settling Disputes Within a Company or Command-Structured Entity

Under certain circumstances, neither competitor has to budge a bit for there to be a decision. This is especially true for institutions that have clear and explicit chains of command.

Suppose the board of a corporation faces two apparently equal and yet incompatible strategic plans, offered by different groups of middle managers. A commercial version of the disputation arena would help decisionmakers expose every flaw in both plans as thoroughly as possible, charting the results systematically to allow direct comparison. Reciprocal learning and compromise *are* possible, even in a command-based system, but the main goal is to give chief officers every tool they need to choose wisely.

3. Beneficial Results Without Any Clearcut Decision

Suppose there is no consensus, compromise, or command decision? Generally, there will be valuable results from a structured disputation, even if nothing more is achieved than forcing opponents to be explicit about their assumptions and desires. If they further make a few moves away from caricatures and demonizations toward conceding each others’ humanity—and perhaps a few areas of common interest—all the better.

In some cases, it may be possible to prove one side or the other definitely wrong on one or more critical subpoints that urgently must be repaired,

³⁷ See STEVEN J. BRAMS & ALAN D. TAYLOR, FAIR DIVISION: FROM CAKE-CUTTING TO DISPUTE RESOLUTION 68–75 (1996).

sending them away with homework before the next time that battle is rejoined. Each side will profit from criticism, even if neither actually “wins.”

The process also would expose cracks that inevitably exist *within* a party, between moderate pragmatists and fanatical idealists who tend to dominate today’s media-drenched disputes, garnering attention by dropping simplistic sound-bites in lieu of reasoned argument. These moderates will have learned each others views and names. We will have provided an option for them to open negotiations without their fanatics present to interfere.

Finally, it must be noted that the principal beneficiaries to any disputation may not be those directly involved in the debate. Outside observers, perhaps far more numerous, will be free to draw their own conclusions, edified by the best arguments that both sides raised yet free to work out a new idea unburdened by the same emotional baggage.

IV. CONCLUSION

While the disputation arena concept resembles a courtroom in some ways—e.g., the meticulous impartiality and detail-fetishism that must be shown by its organizers—the *outcome* does not have to be formal victory for one side or another. As in democracy, it will be rare to see anything so clear-cut. Indeed, this new arena serves primarily as a *partner* to democracy—society’s messy process for floundering toward consensus and policy.

Should the organizers issue a final report? That needs to be explored down the road, when we better understand the limitations and benefits of the disputation process. Countless pragmatic questions such as these can be worked out only with experience.

The ultimate aim of a disputation arena won’t be to award “victory” to any one side but to create an atmosphere of practical problem solving, helping moderates understand each others’ concerns and reach for some mutually beneficial consensus, while leaving fanatics isolated and impotent at the wings. In today’s political climate, we all win by forcing both sides to accept a little ambiguity.

Above all, this process isn’t meant to serve disputants as much as the rest of us, by giving us a chance to peer closely and skim good ideas from *both* sides, utilizing their passion and insights without getting sucked into either purist position. Innovative styles of accountability thus may provide centripetal influences to bring us together, counteracting the centrifugally polarizing tendencies that now threaten to tear civil society apart.

Ultimately, free speech is about much more than just self-expression. It is also how humans find ways to solve problems and live with one another. Ironically, this utopian aim may be achieved best by *argument*—by the

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reciprocal accountability that comes about when adversarial opposition takes place in an arena that is both open and fair.

