Crowd Arbitration: Crowdsourced Dispute Resolutions

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Meaningful artificial intelligence is still a far-away technology. But crowdsourced intelligence, which harnesses the collective knowledge, experience, and analysis of a large group of people, is quickly becoming a powerful and effective method for solving problems. Crowdsourcing works by utilizing the power of large numbers. While an individual may have biases and mistakes, and is only able to generate a few particular ideas, a large group of people can balance out the problems of the individual, and come up with a much greater body of new ideas. With so many ideas and perspectives pooled together, a superior kind of thinking can emerge.

Can crowdsourcing be applied to alternative dispute-resolution? My Hot Topic paper will explore the potential that this method, made possible by current technology, could have to provide a radical alternative to current dispute resolution processes.

What if you could reproduce a jury trial millions of times, for almost no cost, and even less time? What if you could average the views and decisions of a large selection of judges on a single issue? These are the kinds of possibilities that crowdsourcing opens up for dispute resolution.

Crowdsourcing

According to Merriam Webster, "Crowdsourcing" means "the practice of obtaining needed services, ideas, or content by soliciting contributions from a large group of people and especially from the online community rather than from traditional employees or suppliers." *Crowdsourcing,* Merriam-Webster.com, http://www.merriam-webster.com/dictionary/crowdsourcing (last visited March 23, 2014).

Real crowdsourcing became possible with the invention of the internet, which allowed many people to vote and participate in discussions online quickly and cheaply. Many online projects can be considered crowdsourcing, such as Wikipedia, Threadless, and Kickstarter. Brabham, Daren, *Crowdsourcing as a Model for Problem Solving: An Introduction and Cases*, Convergence: The International Journal of Research into New Media Technologies Vol 14(1): 75–90 (2008), http://www.clickadvisor.com/downloads/Brabham_Crowdsourcing_Problem_Solving.pdf. Mechanical Turk is Amazon's service dedicated to crowd intelligence; it allows employers to post cheap, minor tasks for mass amounts of people to complete. *See* Mechanical Turk, available at https://www.mturk.com/mturk/welcome. Many psychological studies and translation companies use Mechanical Turk to utilize crowd intelligence.

Brabham explains that:

> This 'wisdom of crowds' is derived not from averaging solutions, but from aggregating them: 'After all, think about what happens if you ask a hundred people to run a 100-meter race, and then average their times. The average time will not be better than the time of the fastest runners. It will be worse. It will be a mediocre time. But ask a hundred people to answer a question or solve a problem, and the average answer will often be at least as good as the answer of the smartest

> member. With most things, the average is mediocrity. With decision making, it's often excellence. 'You could say it's as if we've been programmed to be collectively smart.'

Brabham, *supra* at 79-80 (quoting James Surowiecki, The Wisdom of Crowds, Anchor Books 2005).

Crowdsourcing in dispute resolution

Crowdsourcing is a potential source of substantial benefits to dispute resolution. The main reason for these benefits is that crowdsourcing easily pools together the views of a large amount of people, far more than could be collected into a single room for arbitration or a courtroom. By moving dispute resolution into the virtual space, the physical limitations of dispute resolution are eliminated. As experiments with Amazon's Mechanical Turk crowd intelligence platform show, crowdsourcing can be extremely efficient in time and money. Winter Mason & Siddarth Suri, *Conducting Behavioral Research on Amazon's Mechanical Turk,* Stevens Institute of Technology (Oct. 12, 2010), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1691163.

The rise of mass online communications have the potential to change the options for dispute resolution. *See* John Gregory, *Crowdsourced Online Dispute Resolution*, SLAW MAGAZINE (Nov. 5th 2012), http://www.slaw.ca/2012/11/05/crowdsourced-online-dispute-resolution/. In a court or traditional arbitration proceeding, the decision-makers must be in the same room as the parties, evidence, and documents in order to resolve a particular dispute. The costs of going through arbitration or litigation can be prohibitive for claims with only small amounts under dispute. Many of these disputes are procedural; everyone involved must gather in a room and assemble briefs and documentation for each dispute about the process itself. An online crowd-sourced arbitration, on the other hand, can assemble thousands of people to review documents and provide resolution virtually for the same small cost as running a web forum.

The ease and low cost of crowd-sourced arbitration allows effective dispute resolution to be available to any party. Even lay people with no counsel can easily understand the process. A party does not need experience or much sophistication on the issues to upload his or her evidence. And because the decision-makers can be the general community, and not legal or technical professionals, the outcome will likely be intuitive and unsurprising to the layperson. The simplicity of the process, the lack of need for counsel, and the lack of costs for the process make this dispute resolution method available for almost anyone, for even minor disputes. With this method available, common disputes that are not worth bringing to court can finally be resolved, such as a freelancer not being paid for services, or conflicts between neighbors over property.

The next major benefit to consider is speed. Because crowd-sourced arbitration operates virtually, there is no need to arrange for everyone to hear the dispute at one time. Any crowd arbitrator may consider the evidence, discuss the dispute, and render a decision on his or her own time. Additionally, because the pool of crowd arbitrators is potentially very large, there will be many crowd arbitrators available to hear the dispute at any one time. While it may still take time for the parties to assemble their evidence and arguments, the timesaving potential of crowd arbitration makes it a beneficial option to even the most sophisticated parties.

But do the time and cost savings make crowd arbitration a less reliable means of dispute

resolution? In fact, the result is the opposite--having more people participate is actually likely to make the dispute resolution far more reliable and predictable than any other method. This reliability comes from the power of numbers. Statistically, averaging a larger sample provides a more accurate reflection of the community's reasoning and values. Put another way, crowd arbitration eliminates the issue of bias and outliers that plague decisions rendered by only one or a few people. Crowd arbitration is like having hundreds or thousands of jury trials or arbitrations and then averaging the results--no party would ever be able to blame a result on random chance, bias, or a fluke. By reviewing past crowd arbitrations, parties can create very strong predictions about what the most likely outcomes will be before they even submit their dispute.

The power of numbers in crowd arbitration can also provide benefits in the form of copious amounts of data. Large amounts of data in crowd arbitration can indicate trends and biases of the community. Like a continuous statistical experiment, crowd arbitration can show whether certain word choices, race, or age contribute to statistically significant differences in outcomes. For example, perhaps misspellings contribute to a higher likelihood of loss in the final outcome. These trends are easy to spot when so much data is available. Thus, these factors can potentially be balanced and adjusted for by parties or the arbitration service itself in order to create fairer arbitrations. Similarly, individual arbitrators who show consistent bias (for example, against certain races) can have their own individual weight adjusted or be banned from the community.

Historically in the US, jury trials have been valued as ways to gauge the values and views of the community. However, US jury trials are only small samples of any particular community, and because of various disqualification rules and peremptory challenges, they often differ from the larger community. Crowd arbitration, with its larger sample size, reflects the viewpoints of the community much more accurately than jury trials ever could.

The largest issue may be privacy. Because of the number of people reviewing a dispute in crowd arbitration, that many people will also be familiar with the embarrassing details of the parties. For individuals, it may be undesirable to have personal conflicts put on display to the world. For businesses, it may be impossible, as it could harm their commercial image, or leak trade secrets or proprietary information. While names and identifying detail could be censored somewhat to decrease the impact of this issue, for large businesses where privacy is of more importance than the other benefits discussed for crowd arbitration, traditional arbitration may be preferable.

Another potential issue with crowd arbitration is the risk of manipulation of the process. For example, one party might try to use advertisements or money to recruit participants to weigh in on the dispute. This is an issue that many online communities and polls face. Wikipedia, for example, bans "canvassing," which is the recruitment of voters to a dispute from elsewhere on the internet. *See* Wikipedia, Wikipedia: Canvassing, available at http://en.wikipedia.org/wiki/Wikipedia:Canvassing (last visited March 23, 2014). However, because arbitrators would likely be randomly assigned to disputes, and additionally, vetted first through lower-stakes disputes, this problem could be minimized. Furthermore, abuse would likely be easier to spot in crowd arbitration than traditional arbitration, since statistical trends of arbitrators could be compared and anomalies identified.

The demographics of people arbitrating in crowd arbitration may differ significantly from the traditional arbitration community. The demographics would likely be similar to the internet and

other large web communities: young and more likely male, etc. *See Demographics of Internet Users*, Pew Research Center's Internet & American Life Project, http://www.pewinternet.org/data-trend/internet-use/latest-stats/ (last visited March 23, 2014). The community would likely be less educated than traditional arbitrators, especially on legal questions. However, because of the ability in crowd arbitration to give different weights, and control for bias, this problem can be easily eliminated.

Another problem that arises with large amounts of people is "mob mentality." This is due to the fact that people often side with popular opinions--In other words, the influence of peer pressure might skew the results of some disputes. This is only an issue in crowd arbitrations where arbitrators can have open discussions and see the opinions of others. However, even in this scenario, the influence of popular opinions may be justifiably persuasive. The popularity of an idea may be due to its merits, and not simply peer pressure. Thus, "mob mentality" may not always be a negative thing.

Crowd arbitration and justice

Can crowd arbitration do justice? It depends, of course, on the definition of justice. According to H.L.A. Hart in *The Concept of Law,* justice means having like cases being treated alike. H.L.A. HART, THE CONCEPT OF LAW (2nd ed., Oxford, Clarendon Press, 1994), Ch. VII. Only relevant differences should be considered when reaching a different result from another case. *Id.* Under this definition, crowd arbitration's justness depends on the consistency of the community in similar cases. Because crowd arbitration uses large samples, it is likely to be much more consistent than traditional arbitration or litigation. On the other hand, the community may be consistent about certain differences that are not relevant, which would be contrary to Hart's definition of justice. For example, the community might consistently reach decisions unfavorable to African American parties. That would be consistent, but only based on an irrelevant detail of the dispute. In crowd arbitration, these factors might be censored or controlled. Judges, juries, or traditional arbitrators are not necessarily less likely to rely on biases or arbitrary details. Therefore, crowd arbitration provides a way to minimize the reliance on irrelevant details that is not currently possible in other forms of dispute resolution, making it conform better with Hart's theory of justice.

A more important question to parties, on the other hand, might be whether crowd arbitration can reach the "correct" result. However, how would one determine what the correct result is? Without the aid of a superior intelligence, the human brain is the best tool available to determine correct results. And using the collective intelligence of many people would be more reliable than any single person. While mistakes are likely to be made, without the ability to objectively determine correct results other than human minds, there is really no way to say whether crowd arbitration reaches more or less correct results.

Crowd arbitration can provide due process, depending on whether both parties can submit their evidence and arguments equally and whether there are mechanisms in place to ensure fairness. *See* Jaap van den Herik & Daniel V. Dimov, *Can the eBay's Community Review Forum Fairly Resolve Disputes?,* Proceedings of the 23rd Benelux Conference on Artificial Intelligence, Vol. 4, pp. 263-272 (Nov. 4, 2011), http://ssrn.com/abstract=1955505. Crowd arbitration providers thus need to monitor their process and work on methods to identify biased or neglectful arbitrators.

They must make sure there is no way to manipulate their system with arbitrator recruitment. As long as parties can submit their claims fully and equally, and have neutral, uninvolved, and uncompromised arbitrators to decide their dispute, crowd arbitration should be considered due process.

Current forms of crowdsourced dispute resolution

Some forms of crowdsourced dispute resolution currently exist online. These dispute resolution processes can be put into three general categories: Opinion polls, online mock juries, and privately enforced crowdsourced dispute resolution. *See* Jaap van den Herik & Daniel V. Dimov, *Towards Crowdsourced Online Dispute Resolution,* International Association of IT Lawyers (IAITL) 244-257 (Sept. 19, 2011), http://ssrn.com/abstract=1933392.

Opinion polls are found informally across the internet. Many news sites and fan blogs, for example, take informal polls of their readers. One site that attempts a more formal approach is Sidetaker.com, though it is not intended to be used for dispute resolution, and it has inadequate mechanisms in place to ensure fairness. *See* Sidetaker.com, available at sidetaker.com (last visited March 23, 2014); Jaap van den Herik and Daniel V. Dimov, *Crowdsourced Online Dispute Resolution*, Effectius Newsletter, Issue 13, (June 1, 2011), http://effectivejusticeplatform.wordpress.com/2011/06/01/effectius-newsletter-13-crowdsourced-online-dispute-resolution-jaap-van-den-herik-and-daniel-dimov/. Opinion polls are limited in effectiveness without a robust method of ensuring fairness and without the procedural steps for a full dispute resolution process.

The next type of crowdsourced dispute resolution that exists online is mock juries. The main mock juries online are virtualjury.com and ejury.com. *Id.* These sites advertise themselves as tools for legal professionals to test and evaluate their cases and arguments. *See* Virtualjury.com and ejury.com. They are theoretically available to be used as binding dispute resolution, if parties agree to it. However, their aim of simulating real jury processes limits their ability to be highly efficient and consistent. Crowd arbitration, by its nature, does not need to be confined to the burdensome aspects of the courtroom, such as the expense, evidence rules, and lack of open discussion.

Other online arbitration sites, such as Truvilo, eQuibbly, GebruikersJury, and iCourthouse are based around the idea of using one or a handful of arbitrators, and so are missing the essential "crowd" element of crowdsourced dispute resolution.

The most important category of current crowdsourced dispute resolution, however, is the privately enforced one. This category includes companies that use crowdsourced dispute resolution in order to resolve issues for their own customers. Their dispute resolution processes also promote a sense of community and democratic fairness for their customers. Some of the most notable of these are Wikipedia, League of Legends' Tribunal, and eBay's Community Review Forum. (eBay's Community Review Forum does not appear to still be in effect.) Private companies like these can enforce their dispute resolution themselves, by banning users or refunding purchases.

Wikipedia uses many different forms of dispute resolution to manage the wide variety of

disputes on the website. For the most basic ones, Wikipedia users submit their disputes to the community to invite others to participate, along with their reasons and proposals. Other users uninvolved in the dispute post their views, post questions to the users involved in the dispute, and post their votes. *See* Wikipedia, Wikipedia:Dispute Resolution, http://en.wikipedia.org/wiki/Wikipedia:Dispute_resolution (last visited March 23, 2014). Users who are abusive or malicious can be banned from the community.

League of Legends, an online battle arena game, allows its users to report behavior that violates its community guidelines in a patented dispute resolution system they created for online multiplayer games. *See* League of Legends Tribunal, http://na.leagueoflegends.com/tribunal/ (last visited March 23, 2014). Users that choose to participate review cases randomly and decide to either "punish" or "pardon," gaining or losing their own "justice rating" depending on their votes' consistency with the rest of the community. *Id.*

Conclusion

The radically new and powerful elements of crowd arbitration have the potential to transform the way that dispute resolution can be done. It has the potential to be more affordable, accessible, and understandable than traditional arbitration and litigation. More importantly, it is more consistent which, arguably, is fairer. It is also easily customizable by parties and arbitration providers. However, some aspects of traditional arbitration, such as privacy, might not be translatable to crowd arbitration.