**The Dispute Resolution Community Should Actively Craft a DRTech Roadmap to Produce Technology That Will Promote Collaborative Justice**

Theory-of-Change Symposium

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Chris Draper believes that technology is not being strategically implemented to take advantage of the expansive potential of dispute resolution. He advocates development of a strategic dispute resolution technology (DRTech) roadmap to transform our legal system into one that enables dynamic, collaborative justice. He is Managing Director of Trokt, a cloud-based platform that controls complex collaborations.

As a Xennial engineer with an expertise in reducing risks of human interactions with technology, I got into the dispute resolution community by accident. With nearly two decades' experience in the early-stage startup space (and as the son of a litigator), "justice" too often seems like a game played by specialists in back rooms where powerful experts exploit weak lay people.

Having been immersed in efforts to use technology to prevent miscommunications from interfering from meaningful collaboration, I am convinced that access to collaborative justice – where people's desires do not conflict with others' dynamically, collaboratively-defined rights – is at the intersection of technology, dispute resolution, and society.

The current narrow, specialized, and siloed uses of DRTech are promoting a conception of dispute resolution as a separate function within our legal system as opposed to fundamental practices that could redefine justice. To date, DRTech has been focused on solving two narrow sets of problems: delivering "justice" faster and making injustice transparent.

Efforts to expedite justice include applications that help people pay parking tickets or court fees online, track cases with electronic records, and manage scheduling across organizations. While these are valuable tools, their application paradoxically risks an acceleration of *injustice*. By making processes too fast, making language too simple, or making actions too permanent, these types of tools can allow the powerful to more efficiently exploit the weak. This can divert us from the potential to transform our current legal system into a dynamic system of collaborative justice.

Efforts to make injustice transparent include applications that help examine sentencing bias, inequitable taxation policies, and standardized testing bias. These technologies have allowed us to more accurately characterize the mathematical uncertainties that our minds gloss over, finding correctable trends hidden in the noise of our complex societies. Yet these tools cannot see hidden truths regarding the "why" behind the data.

DRTech that makes injustice transparent can only increase the speed and clarity of correlations for which we must determine causation.

**Using DRTech to Promote Collaborative Justice**

The dispute resolution field has seen most of the DRTech challenges as needs for process improvements. DRTech provides the opportunities to do more than that – to promote substantive justice when the underlying technologies are designed, built, and released in a deliberate and coordinated manner.

DRTech currently is nibbling around the edges of technological structures that could deploy dynamic, collaborative concepts to promote justice and that could be expanded. Here are some examples:

**Peer Optimization.** We are already seeing tools that can optimize who receives jury summonses based on past participation data. Yet more could be done. What if we could be sure that – no matter where we are – any jury presiding over any dispute is truly made up of our peers? What if any of us could be a juror from the convenience of our own home, presiding over anonymized facts? What if our expertise could be called upon for the moments when it is most useful, preventing under-informed rulings on specific issues without requiring our presence when we are less effective?

**Collaborative Judgment.** We are already seeing tools that can help large groups refine complex problems into actionable decisions. Yet more could be done. What if we could define what is "right" by how an unbiased representation of our community views the case? What if the variability produced in modern jury trials could be smoothed by adding opinions of "appropriate" people until the "just" answer emerges?

**Restorative Regulation.** We are already seeing tools that automatically cluster regulatory comments so they can be more effectively addressed. Yet more could be done. What if we directly bridged the gap between disputes and policy? What if performance regulations were no longer modified by precedent, but instead were defined by the collaborative judgment of our peers?

**Addressing the Fears of Technology**

For those who are wary of the technologies that would be required to bring these aspirations to fruition, many of these ideas can seem outlandish, impossible, or downright scary. For example, even our current process of selecting jurors imperfectly from an often-biased pool can easily feel safer than using data needed to make that process better. The onslaught of Russian bots can make it seem like there is nothing we can do to provide a level of identity security equivalent to a modern courthouse. Our current face-to-face processes involving human qualities that often are now lost in technological translation may make us doubt that future generations will ever be able to effectively convey emotion or empathy online. The historic dependence on current technological applications with socioeconomically inequitable accessibility can make us

forget that the technology landscape is rapidly shifting to become more personalized and ubiquitous all the time.

It is easy to forget that Facebook did not set out to be a menace to society. It became a menace because it did not have a plan for growing with society.

The technology failures that rightfully scare non-technologists can most often be attributed to opportunistic design. When there are no rules, no plans, or no substantive thought about cause and effect, innovative technologies likely will produce troubling results. Just because a piece of technology can be built does not mean it *should* be built.

Achieving the aspirations for DRTech described above can be accomplished through straightforward development efforts – as long as we understand the appropriate balance between technology needs, wants, and dreams. Where standards like those suggested by Linda Seely can help the dispute resolution community understand the protections it "needs," discovering the technological wants and dreams for getting to collaborative justice requires a community-directed technology roadmap. To realize these opportunities, the dispute resolution community must be willing to dream together about what currently seems unattainable to avoid the rise of a "Dispute Resolution Facebook."

**A Roadmap is Possible**

While the diversity of the dispute resolution community can make some people doubt that a unifying roadmap is attainable, there are precedents for coalescing around a seemingly impossible consensus.

For example, the space launch industry was very similarly fragmented in theory and practice until the Common Standards Working Group collaboratively developed its unified regulatory strategy. In the same way those efforts created the regulatory stability that enabled pioneers like Virgin Galactic, SpaceX, and Blue Origin, the current ABA ODR Task Force efforts may similarly capture the technological needs of the dispute resolution community.

While current technological inequities can make some people doubt that any technology roadmap could be fully inclusive, there are precedents for rapidly solving seemingly impossible tech challenges. For example, mobile banking in Africa seemed impossible until the financial industry developed lightweight, text-based apps that fundamentally altered the cost and accessibility of banking technology.

And while past regulations often have seemed as if they would always be prescriptive and static, there is precedent for regulatory strategies that adapt at the pace of innovation. For example, performance-based strategies adopted in the early 2000s now enable us to implement dynamic objectives based upon evolving practices.

These successes can be replicated. Yet doing so may require many in the dispute resolution community adjust its thinking to the fundamental realities underpinning DRTech.

**Realities of DRTech**

Taking the leap from correcting transparent injustice to promoting collaborative justice requires an active effort to recognize the potential benefits of DRTech. To do this, we should recognize the following facts about use of technology.

**It's Not Magic.** DRTech's primary utility is the acceleration of communication. There is both opportunity and danger when DRTech outpaces human dispute resolution.

**The Creator Cannot Be Removed from Its Creation.** Technology can be perfectly and usefully ignorant. It always will learn as it is taught.

**Technologies are Like Prescription Medications.** When technologies are combined correctly, they can be powerful. When we ignore possible interactions, they can be lethal.

**Human Minds are Binary.** Our minds are designed to gloss over uncertainty so that we can make "black and white" decisions in a world that is fundamentally grey. As Kahneman and Tversky found, even people trained to account for uncertainty must routinely fight the natural tendency to view the world in ways that can mimic computers that can see only "1" or "0."

**Intuition and Bias are Two Sides of the Same Coin.** Like computers, human minds use data recursively to develop rulesets that develop their paths of learning. When these rulesets make us falsely believe things, we label them as bias. When rulesets help us correctly identify problems, we label them as intuition.

**Imperfect Technologies Can Be Useful.** Too often, people – including those in the dispute resolution community – assume that a technology must be "perfect" before it can be used. Of course, perfection is not possible. Instead, when considering adopting new technologies, we should compare their relative utility to the human systems they would replace by using the same risks/benefit analysis and standards.

**Principles for Designing DRTech Strategies**

As the dispute resolution community rethinks the fundamental underpinnings of DRTech's capabilities, our strategic visioning should be based on a few key activities:

**Expand Exploration of the Science Behind Dispute Resolutions Processes.** A room full of 100 mediators could explain the mediation process in at least 867 different ways. Their subjective reflections on personal experience would too often trump a rigorous analysis of the linguistic, game theory, or psychological principles being used.

We should consistently and accurately describe the basic processes and risks associated with human dispute resolution systems. Similar to the exhaustive modelling underpinning Ava Abramowitz's book, these explorations should be rooted in scientific principles and statistically significant data.

**Shifting our Technological Focus from Platforms to Processes.** Modern technology is modular, interoperable, and cross-platform. Dispute resolution should not be seen as silos separate from the traditional legal system, so our DRTech should focus on routines and algorithms embedded into current frameworks.

**Teaching How to Compensate for Tech.** Technology often dulls human senses. Dispute resolution curricula that incorporate email or video negotiations reflect an understanding that students must be exposed to these forms of communication that use modern technologies. However, effective communication techniques using these technologies as opposed to techniques in face-to-face, co-located situations are figuratively "apples and oranges." Teaching communication in technology-enabled environments requires a different, more deliberate approach to the communication process. Since communication is a core competency of effective dispute resolution, training programs should fundamentally overhaul communication strategy modules when preparing students for technology-enabled environments.

## Conclusion

Our world, including our disputes and resolutions, is moving online. There is a remarkable opportunity to weave dispute resolution into the fabric of our new reality – and provide the collaborative justice that has never been accessible in the past.