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Presidential Debates and Deliberative Democracy

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I. The Symptoms

First, the candidates in today's debates often get as little as thirty seconds (enforced by a demeaning system of lights and buzzers) to explain their positions on issues as complex as the war in Iraq, the economy, health care, gun control, race relations, and abortion. Even then, they sometimes seem to run out of things to say. (Which is worse?) The following exchange conveys the spirit of the proceedings:

CHENEY: I can respond, Gwen, but it's going to take more than 30 seconds.

IFILL: Well, that's all you've got.

(LAUGHTER)

Thirty seconds is just about enough time for a television commercial with a catchy but misleading slogan. At the U.S. Supreme Court, by comparison, attorneys have thirty minutes to argue their side of a legal case. In one day, the Court spends about as much time hearing cases argued as the entire country spends every four years hearing its presidential candidates debate. And federal judicial nominees often testify longer before the Senate than their presidents—who nominate them—debate before the American public.

By what standards are these "debates" judged? The historical record is full of things to avoid—losing moves as determined by popular opinion and the commentariat. Once, a candidate made the fatal mistake of checking his wristwatch during a debate (perhaps he had a pressing appointment). His son and heir apparent was widely ridiculed for scowling peevishly during an opponent's answers. Another candidate sighed repeatedly—to equally disastrous effect. All of these things made bad impressions on the television audiences and, in turn, cast serious doubt on the candidates themselves.

But there are successes too. A genial actor electrified the American electorate by chiding his opponent: "There you go again!" (That was supposed to reveal a touch of homespun genius.) One of the natural political Grandmasters of our time was able to turn a muddled

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audience question into an occasion to "feel our pain" (thereby showing how the game is played); he reportedly also practiced the all-important reaction shots (views of him when his opponent was speaking). And a vice-presidential candidate delivered the ultimate put-down by claiming (falsely) that he had never even met his youthful challenger. (Commentators widely compared this to being called into the principal's office at school.) That was taken as conclusive proof of gravitas.

How did we arrive at this pretty pass? How did our political dialogue get to the point where a candidate who vows to put Social Security in a "lockbox" (where it arguably belongs) is laughed off the presidential stage, while one who evokes movie gunslingers ("Read my lips") comes across as steely and unflinching? The rules and standards were established in the infancy of television, when one of the leading candidates declined to wear makeup and appeared to sweat profusely under the television lights. This image became a troubling metaphor for his whole candidacy; it seemed to suggest that, under the pressure of events, he might be unable to shoulder the problems and burdens of the world. (If only those burdens could be lifted by a little makeup!) Those who only heard the spoken dialogue or read the transcript thought he had won the debate. But the American public, long accustomed to forming its world-view from all available evidence, saw no reason to distinguish production values (as in television drama) from political values (as in the larger world). As everyone knows, the nervous, sweating character is always the "bad guy"; the smiling, confident contender is naturally the "good guy." More recently, various commentators have suggested (in all seriousness) that the most revealing way to watch the debates is with the sound off. Then, presumably, one would not be distracted by any intellectual content at all.

II. The Diagnosis

In 2004, the supposedly nonpartisan Commission on Presidential Debates ensured that the "debates" would be little more than glorified press conferences by implementing a key agreement (part of a binding, thirty-two-page contract) between the two major political parties: "The candidates may not ask each other direct questions, but may ask rhetorical questions."

In legal terms, that provision is at best absurd and at worst unconstitutional. The Commission's tax-exempt status and corporate sponsorship are now being challenged in federal court, but I suggest a more direct challenge based on the free speech clause of our Constitution's First Amendment, which has long protected "the right to receive information and ideas." By setting itself up (in accordance with other provisions in the candidates' contract) as the official, unilateral, and exclusive arbiter of limitations on our most important speech, the Commission (in collusion with the candidates) has deprived countless viewers and listeners of their right to see and hear an "unfettered interchange of ideas for the bringing about of political and social changes desired by the people." That right, according to the U.S. Supreme Court, "has long been settled by our decisions," which are considered against the background of "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." Furthermore, "this opportunity is to be afforded for 'vigorous advocacy' no less than 'abstract discussion.'"

The shortcomings of the presidential debates make the deficiencies of our whole electoral process more obvious and more intolerable. Without meaningful debates, American presidential campaigns quickly descend into "rhetorical drive-by shootings." No good argument goes unpunished and no bad argument goes unrewarded.

During the 2004 campaign, for example, the New York Times Magazine published a lengthy cover story on Senator Kerry, who remarked in an interview: "We have to get back to the place we were, where terrorists are not the focus of our lives, but they're a nuisance . . . . It isn't threatening people's lives every day, and fundamentally, it's something that you continue to fight, but it's not threatening the fabric of your life." President Bush's gloss on this statement soon appeared in campaign speeches: "He says the war on terror is primarily a law enforcement and intelligence-gathering operation . . . . The Senator's goal is to go back to the mind-set of the 1990's, when terrorism was seen as a nuisance, and we fought with subpoenas and a few cruise missiles." Of course Kerry did not mean we should think of terrorism as if it were only a nuisance; he meant it should actually be reduced to the level of a nuisance.

But buried beneath all the qualifications and subtleties and nuances lay a seemingly simple equation that Bush, with his penchant for simplifying complex matters, promptly plucked out:

terrorism = nuisance.

This misleading equation, once fully divorced from reality (i.e., its context), took on a life of its own in the sound bites of the Bush campaign and, eventually, in the popular consciousness.

Of course both men were right—in their unguarded, unscripted moments. We need more of those moments when a glimmer of intelligent life can be detected, when the possibility of serious debate can be imagined. We need to run down those arguments relentlessly and hold the candidates' feet to the fire of bad arguments—before they take refuge in the fantastic alternative realities created by their media campaigns.

III. The Treatment

The presidential debates are crucial to our electoral process because they provide the only forum in which reason, logic, and argument have a chance of dominating the political discussion. That at least is the idea, and the ideal. Since the time of Socrates in ancient Greece a dialogue has been the model of reasoned deliberation. In a meaningful dialogue the participants join issue. At any given time they are discussing the same aspect of the same subject. Assertions that are wildly at variance with reality cannot go unchallenged. Participants who speak only in "talking points" and campaign slogans begin to look silly and increasingly incompetent. If necessary, a moderator can enforce pre-established procedures and keep the discussion on course.

In fact, we already have an institution that preserves these features of a rational discussion: the legal trial. The Anglo-American legal system, unlike its Continental counterparts, does not conceptualize the trial as the work of a little committee charged with investigating and arriving at the truth. Instead, our "adversary" system relies on the advocates for each side to make their best possible case; the tools of their trade are questions and answers. After all questions have been asked and answered, the decisionmaker (usually a jury) renders an independent judgment. The judge functions as a moderator who facilitates the work of the opposing parties for the benefit of the jury.

The judge is supposed to be "fair and balanced." The advocates are supposed to be zealous and critical, not necessarily fair and balanced. The trial is structured as a contest with a winner and a loser, not a meeting of minds. "Truth" emerges, indirectly, from the application of fair procedures to the work of unfair advocates. John Milton supplies a nice

image: “Though all the winds of doctrine were let loose to play upon the earth, so truth be in the field . . . let her and falsehood grapple; who ever knew truth put to the worse in a free and open encounter?”

The Anglo-American legal trial incorporates many features of deliberative democracy that ought to be reflected in presidential debates. First and foremost, the candidates are advocates; they prosecute their own case. Their role is to make their best case and personally interrogate their opponents. The questions they want answered are the questions that most need asking, not those of some third party. (Those who choose poor questions—or fail to ask vital ones—are poor advocates for their cause and should suffer accordingly.) The moderator functions simply as a judge who ensures that all questions are answered and all procedures followed; the judge makes no substantive contribution to the discussion but simply polices the outer boundaries of what is in essence a supervised dialogue. The electorate is the jury whose votes determine which version of the truth will prevail. “[T]he best test of truth,” remarks Oliver Wendell Holmes, “is the power of the thought to get itself accepted in the competition of the market . . . . That at any rate is the theory of our Constitution.”

The proposal set out here leaves details to be addressed, but the basic outlines are clear: the debates should be patterned on the question-and-answer format of a legal trial; the candidates themselves are the only questioners; they have unlimited discretion to formulate and pose questions directly to their opponents; and they have unlimited discretion to formulate and pose follow-up questions (subject only to equal opportunities within limited but sufficient time periods). The French have shown what is possible; the rest can safely be left to good old American ingenuity. With these reforms in place we might—with luck—be in a position to test John Stuart Mill’s maxim that “truth has no chance but in proportion as every side of it, every opinion which embodies any fraction of the truth, not only finds advocates, but is so advocated as to be listened to.”

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