

Blockchain & Swarm Governance Offers alternatives to Litigation, Mediation and Arbitration.

Having spent several many years working with lawyers in litigation practice, I came to the conclusion that while litigation is a necessary evil within our legal system, it is also inefficient and inherently unfair. Instead of helping parties find a mutually-beneficial solution, the system is designed to have a third party impose a (generally unilateral) ruling. One that is often disputed, leading to relitigating the same matters in a new venue, and ultimately, the only “winners” are the lawyers.

These issues surrounding the cost and efficacy of litigation are not new, which is why bar associations and enterprising former judges have come up with myriad forms of alternative dispute resolution including mediation, arbitration, collaboration and the like. Still, many of these forms leave no room for finding “the best” solution to the problem, or perhaps even a good one. Even in the case of mediation, where a mediator serves as a disinterested third party whose sole job is to work the problem as it is presented, often has biases that tip the scales in one direction, or may simply be too old and tired to fully resolve a dispute. Furthermore, if the resolution is agreed in advance to be “binding”, the less fortunate of the parties is left with little recourse short of incurring exorbitant expense.

These shortcomings are in themselves cause for designing a new system, but the stakes become even higher, and the process becomes even murkier when dealing with entities that are “different” such as those operating in different countries, those that are decentralised (DAOs) or those that operate without any formal domicile or liability protection. With the advent of blockchain-based industries, the ability to create shared business value and distributed governance (and thus liability) has never been easier. Simply minting a native token on any chain allows anyone (anonymous or doxxed) to establish a community, raise funds, and direct those funds towards any mutually agreed goal, no matter how altruistic or nefarious. Worse yet, the cryptographic and trustless nature of blockchains makes it very difficult to issue rulings like an international banking tribunal may be able to issue penalties to a sovereign bank that has been acting in bad faith.

On the bright side, while the participants may be difficult to identify, their actions are typically entirely transparent. That goes for transactions of tokens, and often governance decisions as well. Perhaps the natural evolution of native tokens will incorporate ratings for how each community behaves, and if they have taken fiduciary responsibilities seriously, such as setting aside a stable-coin backed fund for rainy-day disputes. It isn't hard to envision a world where such a fund is locked or “staked,” and earns interest for good behaviour, but an objective tribunal could execute a smart contract that will tap into the fund to pay out a claim if (and only if) such a judgement is made. This would circumvent not only the issues outlined above, but could also take into account various means by which to issue a ruling. For instance, a real estate dispute would probably need to take into account the local laws and ordinances, while an inter-state transportation issue may need to take into account precedent in case-law at the circuit court level, yet a software dispute may simply need to heed notions of prior similar disputes or merely employ common law principles for determining the outcome. Over time, it would make sense to develop a more codified or tiered structure that contains features applicable to the type and size of a dispute, and allows for multiple opportunities to reach resolution at various levels of involvement and cost.