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Commentary on “DAMmed If You Do, DAMmed If You Don’t”: DAMMIT—Dominant Adversarial Model: Minded Instead of Terminated

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1. Introduction

The Dominant Adversarial Model (DAM) has arguers in a metaphorical battle, each arguer seeking to destroy the other’s argument. In this commentary on “DAMmed If You Do, DAMmed If You Don’t” by Sharon Bailin and Mark Battersby (which is itself a commentary on a paper by Dan Cohen on the Dominant Adversarial Model) I raise one issue about the metaphor and suggest an alternative metaphor. Cohen thinks we should reject or replace or supplement the DAM. Bailin and Battersby agree but think Cohen does not go far enough.

2. The dominant adversarial model

The DAM of argumentation has it that when I argue for a conclusion, say X, and you argue for not-X at least an important part of your job is to point out weaknesses in my argument. I then seek either to show that the alleged weakness is not what you have tried to make it appear or I try to shore it up in some way and I point out flaws in your argument (which you patch up as best you can). Each of us is responsible for advancing our own argument, attacking the other person’s counter-arguments, and improving her own argument. And the winner is the one that does the best at the tasks of presenting, attacking, and defending against attacks. If I advance a weak argument from analogy for X, you (the not-X defender) attack my analogy. You do not point out that there is a knockdown disjunctive syllogism with highly plausible premises that leads directly to X. And I employ the same strategy—point out weaknesses but never suggest stronger means for you to reach your conclusion.

As Dan Cohen points out we criticize you if there is a weakness in my argument that you fail to point out. If my alleged analogy has a serious and relevant respect in which it is dis-analogous and you do not point this out, you are at fault. But if there is a way to make my case better your remaining silent is not taken as a failure. Indeed, your speaking up may well be seen as a vice.

And Cohen and Bailin & Battersby are surely right in thinking that the dominance of the adversarial model has something to do with this. My own view is that the model just reflects the way people actually behave when evaluating how competent arguers are, not that it discourages argument evaluators to ignore ways an argument might be improved. It merely reports that fact. But, of course, we all know that reporting something as though there was nothing wrong with what we are reporting—the facts, Ma’am, just the fact—tends to justify that something.
But we also know that argumentation which fits the adversarial model can be extremely productive. (As philosophers we know from Descartes’ letters, from the Leibniz/Clark debate, from Russell/Frege, from Wittgenstein/Russell, from Ramsay/Wittgenstein, et cetera. And we all read those Festschrifts where prominent philosophers attacked the view of an even more prominent philosopher who then responded.\(^1\)) But, as with everything, there are downsides.\(^2\) Here I will refrain from offering an instance that fits the model and, instead, offer one observation that the model may not be as ubiquitous as sometime thought and one suggestion about moving beyond, rather than away from, the DAM.

3. **The DAM courtroom**

In both papers under discussion courtrooms are casually taken as instances where the DAM is, well, dominant. But this is a bit misleading. In both the Anglo-American and so-called Continental legal systems the model can be squeezed into civil cases (though even here it a squeeze) but it simply does not fit criminal cases. And, from the terminology they use, it is clear that our authors are thinking of criminal cases when they suggest that legal trials are instances where the DAM holds. But in such cases judges regularly rely on rules of evidence to exclude information that, while perfectly relevant, is likely to be more prejudicial and probative. Furthermore the prosecution—or the “Crown” as we Canadians so colloquially and colonially call it—has a duty to both present evidence and arguments for conviction and any evidence and arguments for acquittal that the defense attorneys failed to present and to point out epistemic (as opposed to rhetorical) improvements on arguments they do present. And this is a duty the better prosecutors take seriously.\(^3\) And while the DAM is more plausible for the defense side, there too there are constraints. For instance, defense attorneys are not permitted to offer into evidence testimony they know to be false or explicitly advance arguments relying on premises known to be false.\(^4\) So despite initial appearances the courtroom does not really offer a pure case of DAM.

4. **Coaching**

We might try thinking of argumentation theorists as coaches for competitive sports such as hockey or tennis. (Here, for simplicity I will talk about singles tennis, though I actually think team sport coaching may be more illuminating.) Coaches, of course, do presuppose that their players are seeking to exploit weaknesses in their opponents. So part of the job of a good coach seems to fit the DAM perfectly. And it might seem that that is pretty much all there is to it. But

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1. You really only counted as a major philosopher if you made it into the Schlipp *Library of Living Philosophers* series (now edited by Lewis Hahn). And we all go to conferences on the work of X where at least 80% of the papers attacked some part of X’s work and at most a fifth of the papers offered improvements on X’s work.

2. Thus Bailin & Battersby quote Catherine Hundleby who notes that “Adversarial and aggressive metaphors can foster interpersonal aggression, encouraging people to slide into arguing against each other when they disagree rather than just questioning each other’s ideas. Adversarial structures in law, politics, and debate, and the personal stake we often have in our own views heighten the likelihood that opposing opinions will slip into aggressive modes that interfere with rational exchange” (Hundleby, p. 240).

3. Perhaps the two most famous Crown’s in this province in the last century—Edward Greenspan and Roy McMurty—were both known for offering better arguments for defence positions than the defendant’s lawyers sometimes came up with.

4. Which is part of the reason—though only a part—that defense attorneys do not want to hear everything from their clients. Once they do they are more constrained in the sorts of defenses their professional codes of ethics permit them to make.
that would be to focus solely on game-day coaching. Here the coach tells her player about the weaknesses of the scheduled opponent and how to best exploit them. She makes her own player aware of any weaknesses the opponent may try to exploit and how best to counter those attacks.

But that is just one aspect (or set of aspects) of coaching. Another set has to do with developmental coaching. Here the coach points out things that her student needs to improve in the medium to long term and how to go about doing so. With young players who are still developing the range of skills needed to be a well rounded tennis player the tasks the coach is engaged in are very much similar to the sorts of things that Cohen and Bailin & Battersby are hoping to get those engaged in argument to focus on. A good coach looks at those areas where her young prodigy will more or less grow into naturally. (I can see that young Serena is going to have an awesome serve someday.) She will also see areas that are going to require extra work and attention if they are not to become serious weaknesses which opponents might later exploit. And the development coach is quite properly blamed for missing those areas that could be improved. Almost every promising new tennis player has areas that need more attention than others. Figuring out what those areas are and how to best set up a program for developing the skills needed to overcome potential shortcomings is mostly what we hire tennis coaches for. And anyone who has spent time watching such coaches knows that they will sometimes be getting their students to concentrate on areas which might not be the most effective in the short-term so that they will be better players in the longer-term. (I know your opponent today is unusually tall and consequently it is difficult to successfully lob them. But I want to you use your drop shot and draw them to the net so you can practice your lob. It is what really needs work. Do it even if it means you lose this match.)

The coaching metaphor—with the two roles of game-day coaching and development coaching—might help to illuminate the very helpful distinction that Bailin and Batterby offer between dialectical and epistemological conceptions of argumentation.

5. Conclusion

I think we can all agree that argumentation theorists should figure out how to best encourage people to both find flaws in arguments and ways to get people to point out ways to improve existing arguments. Cohen and Bailin & Battersby are to be applauded for the tricky task of figuring out how to do the second task without undermining the first.

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References

