

CONTINUING THE DEBATE ABOUT PRESIDENTIAL DEBATES

*By Alexander J. Blenkinsopp**

Last month, the Commission on Presidential Debates announced the moderators of the upcoming debates between Senators Barack Obama and John McCain. One of the Commission's criteria for selecting the moderators was reportedly an "understanding that a moderator's role is to facilitate conversation between the candidates, not participate in it."¹ The Commission could have been paraphrasing a line from Professor Charles Collier's recent piece, which proposed modeling the debates upon legal trials.² Collier's proposal flows from his belief that the current debates are too superficial and that the candidates should spend their time questioning each other without the active participation of a moderator. He argues that the questioning should resemble a legal trial, where each advocate first has the opportunity to present a "version of the truth," and the jury—the electorate—then decides which version to accept.³ He further argues that the moderator should assume a role similar to that of a judge at a trial: one who "makes no substantive contribution to the discussion but simply polices the outer boundaries of what is in essence a supervised dialogue."⁴

The idea has already stimulated discussion.⁵ This is unsurprising, given the proposal's obvious appeal to policy wonks craving more detail about the candidates' positions, lawyers who wish they were cross-examining the candidates, and enthusiasts of competitive debate (like me) who want the presidential debates to be less "fluffy." The Commission seems to share Collier's sentiment to some extent; less than a week before the first debate,

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¹ Rebecca Dana, *Lehrer, Brokaw Among Fall Debate Hosts*, WALL ST. J., Aug. 6, 2008, at A4, available at <http://online.wsj.com/article/SB121798420317015485.html> (link).

² Charles W. Collier, *Presidential Debates and Deliberative Democracy*, 117 YALE L.J. POCKET PART 288 (2008), <http://yalelawjournal.org/images/pdfs/695.pdf> (link).

³ *Id.* at 293.

⁴ *Id.*

⁵ *See, e.g.*, Posting of Howard Wasserman to PrawfsBlog, <http://prawfsblawg.blogs.com/prawfsblawg/2008/06/presidential-de.html> (June 24, 2008, 07:39 EST) (link); Posting of Aaron Zelinsky to The Presidential Debate Blog, <http://presidentialdebateblog.blogspot.com/2008/07/channing-debates-allowing-questioning.html> (July 29, 2008, 02:31 EST) (link).

it announced the modification of the format to “open the possibility of the moderator inviting candidates to question each other,” citing the need for “more expansive discussion.”⁶ While I sympathize with Collier’s effort to increase the value of presidential debates, his proposal suffers from three deficiencies. First, Collier romanticizes and mischaracterizes trials. Second, he does not acknowledge the constraints on the time and attention span of the debates’ audience. Finally, he fails to recognize the virtues of the current format of the debates. Still, he correctly identifies some serious flaws in the current format, and I attempt to capture the value of those insights in a timely counterproposal that reserves an active role for the moderator and suggests rethinking the criteria used to select the moderator.

I. THE DEFICIENCIES

The first deficiency in Collier’s argument is his idealization of trials, as evidenced by his claim that the trial model will help produce an “unfettered interchange of ideas”⁷ that is “wide-open.”⁸ But a judge in a trial certainly does not “ensure[] that all questions are answered.”⁹ Instead, judges ensure that certain questions are not asked and certain things are not said. For example, judges deem evidence inadmissible, sustain objections to certain questions, and even forbid words like “rape” and “crime scene” in some trials so as not to prejudice the jury.¹⁰ A courtroom is not a free marketplace of ideas, as Collier suggests, in part because of the role of the judge.

It is not true in a trial that the questions the parties “want answered are the questions that most need asking.”¹¹ Instead, the parties ask the questions that they believe will give them the best chance of winning the trial. In this respect, a debate might actually be similar to a trial: if left to their own devices in a debate, the candidates and their campaigns would probably choose questions that help them win. The fact that the questions in a trial or in a debate are chosen to facilitate victory, however, does not mean that the questions actually facilitate the emergence of truth. Attorneys might ask questions to confuse a jury, to play on the jurors’ emotions, or to fluster an honest opposition witness and undermine his credibility. Legal teams use jury consultants to see what questions and tactics will be effective, just as presidential campaigns use political consultants and focus groups. And when Collier bemoans the disadvantage presidential candidates face if they are “the nervous, sweating character” rather than “the smiling, confident

⁶ Press Release, Commission on Presidential Debates, Commission on Presidential Debates Hails 2008 Formats as “Historic Breakthrough” (Sept. 21, 2008), available at http://www.debates.org/pages/news_092108.html (link).

⁷ Collier, *supra* note 2, at 291 (quoting *Roth v. United States*, 354 U.S. 476, 484 (1957)).

⁸ *Id.* (quoting *New York Times v. Sullivan*, 376 U.S. 254, 269 (1964)).

⁹ *Id.* at 293.

¹⁰ See Tresa Baldas, *Courts Putting Hot-Button Words on Ice*, NAT’L L.J., June 16, 2008, available at <http://www.law.com/jsp/article.jsp?id=1202422274880> (link).

¹¹ Collier, *supra* note 2, at 293.

contender,¹² he disregards the fact that nervous, sweating witnesses, defendants, and attorneys are similarly disadvantaged in trials. These features are not conducive to deliberative democracy, but they are common to both debates and trials.

The second problem with Collier's argument is that he does not sufficiently acknowledge the constraints on the audience of presidential debates. The fact is that the public (and perhaps the media) is the audience and arbiter of presidential debates, and the public is constrained by lack of time, interest, and knowledge. In light of these limitations, candidates will do the same thing as competitive high school debaters¹³ and appellate litigators alike: they will adapt their styles and arguments to the judges. This means witticisms, snappy remarks, and affability become the candidates' goal.¹⁴ If the audience were a collection of academic elites, then the debates would look more like Congressional hearings, which are hardly a big hit with the public when broadcast on C-SPAN. Collier's proposal might make more sense for a trial, where the jury is a captive audience that has, effectively, unlimited time. Unfortunately for Collier's plan, the public watching the debates on television at home has very different constraints, and Collier has not shown how his proposal fits within them.

The third shortcoming of Collier's argument is that he ignores the key benefit of the current system: its effectiveness at demonstrating the candidates' persuasiveness. Numerous scholars of the presidency have convincingly made the intuitive point that persuasion is very important to a President.¹⁵ An unpersuasive President would have a hard time calming the populace during a national crisis or convincing the country to rally around an important social cause. Importantly, the debates showcase the candidates' persuasive powers within the audience's constraints.

¹² *Id.* at 290.

¹³ See GARY ALAN FINE, GIFTED TONGUES: HIGH SCHOOL DEBATE AND ADOLESCENT CULTURE 122–24 (2001).

¹⁴ Some of the presidential and vice-presidential debates' bon mots are vividly remembered for years. Many—including Collier, who cites the exchange—will recall Ronald Reagan dismissing Jimmy Carter in a 1980 debate by saying, "There you go again!" See Collier, *supra* note 2, at 289. Another example is when Lloyd Bentsen famously put down Dan Quayle in 1988 with, "Senator, you're no Jack Kennedy." See Posting of Aaron Zelinsky to The Presidential Debate Blog, <http://presidentialdebateblog.blogspot.com/2008/08/presidential-debate-one-liners-of-all.html> (Aug. 25, 2008, 06:17 EDT) (ranking and providing links to videos of "The Top Ten Presidential Debate One Liners of All Time") (link).

¹⁵ See SAMUEL KERNELL, GOING PUBLIC: NEW STRATEGIES OF PRESIDENTIAL LEADERSHIP (1997) (describing how the President can further his agenda by appealing directly to the public); RICHARD E. NEUSTADT, PRESIDENTIAL POWER AND THE MODERN PRESIDENTS (1990) (arguing that the President's power depends more on his ability to persuade than on his formal powers); JEFFREY K. TULIS, THE RHETORICAL PRESIDENCY (1987) (contending that popular rhetorical leadership has become essential to the presidency).

II. THE CURRENT FORMAT, THE MERITS OF COLLIER'S ARGUMENT, AND A COUNTERPROPOSAL

The formats for this year's debates largely resemble those of recent presidential elections. All will have a single moderator. The first and third debates will consist of nine segments of nine minutes each. In each segment, the moderator will introduce a topic he selected, and each candidate will have two minutes to comment. After these initial answers, there will be five minutes of "free-flow conversation/ discussion between the candidates including the possibility of direct exchange between the candidates."¹⁶ In the second presidential debate, the moderator will field questions from audience members and the Internet, and each candidate will have two minutes to respond. This will be "followed by one-minute discussion for each question."¹⁷

Several of Collier's criticisms of this status quo certainly ring true. The candidates surely are not given enough time to speak.¹⁸ In past elections, the campaigns have indeed colluded—with facilitation by the Commission on Presidential Debates—to produce a format that they feel is in their interest, but which might not be in the public's interest.¹⁹ As I argue below, the debates can in fact be made more educational and substantive. And at its core, the trial model makes sense: like the presidential debates, trials are supposed to help regular people to understand and evaluate complex information before rendering an important decision.

I propose an alternative. In light of the death of Tim Russert in June 2008, it is fitting to propose a format inspired by that used on his NBC news program *Meet the Press*, where an informed moderator does what both Collier and I hope someone would do: "hold the candidates' feet to the fire."²⁰ Russert provided his show with several important—and uncommon—features: formidable knowledge of politics, policy, and his guests' track records; a refusal to accept evasive or superficial responses to his questions; a nonpartisan insistence that the guests grapple with past contradictory or misleading statements; an ability to expose and inquire about the weak joints of any argument; and a tenacious focus on getting his guests to take a stand on important policy issues. These are traits that could make for excellent presidential debates.

Most people are likely to remember *Meet the Press* for its extended one-on-one interviews, but the show also regularly featured segments in

¹⁶ Commission on Presidential Debates, *supra* note 6.

¹⁷ *Id.*

¹⁸ See Collier, *supra* note 2, at 288–89.

¹⁹ See *id.* at 291; see also Memorandum of Understanding Between Kerry-Edwards, '04, Inc. and Bush-Cheney, '04, Inc., at 2 (Sept. 20, 2004), available at <http://www-tc.pbs.org/now/politics/2004MemorandumUnderstanding.pdf> (making sponsorship of the debates by the Commission on Presidential Debates contingent on the Commission accepting the debate structures created by the Kerry-Edwards and Bush-Cheney campaigns) (link).

²⁰ *Id.* at 292.

which Russert simultaneously interviewed two guests who were on opposite sides of an issue. During these interviews, Russert ensured that his guests directly rebutted each other's contentions, and that they did so without resorting to circumlocution or mischaracterizations. He also prevented the guests from "filibustering" or relying on well-packaged but empty talking points.

It is with the success of these interviews in mind that I propose retaining the moderator's role as questioner, while focusing each debate on a narrow topic. It is not feasible to lengthen debates because viewers will tune out and networks will resist, so debates should be kept the same length. In addition, the questions should be aimed at probing candidates' positions on a particular topic more deeply. Scattering the questions over a wide range of topics enables the candidates to give superficial answers, and reduces the amount of time each candidate has to defend a position.²¹ If the moderator asks precise follow-up questions and continues to press until the candidates provide answers, banalities could not pass for intelligence. The moderator can also provide the viewing public with relevant facts as he asks the questions. This will ensure that the public can follow along at home, regardless of how little they know about the subject. Finally, the well-prepared moderator should be able to catch factual inaccuracies and inquire about them.

III. A COMPARISON OF THE TWO FORMATS

As I mentioned above, there is no guarantee that Collier's format will prompt the candidates to ask "the questions that most need asking."²² More likely, they will ask questions that will score political points. For example, the direct-questioning arrangement led to acrimonious recriminations between Senator Gary Hart and Governor Michael Dukakis in a Democratic presidential primary debate in 1988.²³ Collier states that "[t]he French have shown what is possible" when presidential candidates question each other in a debate.²⁴ He omits to mention, however, that the candidates in the last French presidential debate criticized each other's tempers, interrupted each other, demanded not to be pointed at, and tossed incorrect factual assertions

²¹ Even "foreign policy and national security" and "domestic and economic policy," the respective topics of two of the three 2008 presidential debates, are too broad. Broader still, the other presidential debate will have a "town meeting format" that "will include any issues raised by members of the audience, and the vice presidential debate will include domestic and foreign policy." Press Release, Commission on Presidential Debates, Commission on Presidential Debates Announces Sites, Dates, Formats and Candidate Selection Criteria for 2008 General Election (Nov. 19, 2007), *available at* http://www.debates.org/pages/news_111907.html (link).

²² Collier, *supra* note 2, at 293.

²³ Andrew Rosenthal, *Hart and Dukakis Clash at Debate in Boston*, N.Y. TIMES, Jan. 26, 1988, at A21, *available at* <http://query.nytimes.com/gst/fullpage.html?res=940DE3D81230F935A15752C0A96E948260> (link).

²⁴ Collier, *supra* note 2, at 293.

back and forth.²⁵ Indeed, the French have shown us what is possible, and it is not a good thing.

Furthermore, we have no reason to believe that the ability to conduct a cross-examination is a good measure of a presidential candidate. Nor can we expect the viewers of a presidential debate to know whether the candidates are asking the right questions, or if their responses are accurate. Collier is unhappy with how the public mistakes put-downs for gravitas and one-liners for depth, but his solution does not solve the problem. After all, why would the public cease to be impressed when those same put-downs or one-liners come in response to a question from the other candidate instead of a moderator?

My proposal revolves around a moderator who is knowledgeable and who aims to educate the public; someone who is relentless and can refute arguments of all political leanings. The participation of such a moderator ensures that no candidate is let off the hook just because her opponent happens not to be a good cross-examiner. It also reduces the confrontation level between the candidates. This reduction is desirable because so much of the media coverage of presidential campaigns focuses on the candidates' personalities²⁶ and the "horse race"²⁷ instead of the policy issues that will have a much more significant impact on the nation. Placing a moderator between the candidates subordinates the toe-to-toe element of the debate—including the stage presence of the candidates as they duke it out—to the content of the candidates' answers and a comparison of how well they did fending off the hard-hitting substantive moderator. The debate becomes a matter of how well the candidates defended their views, not how well they did making their opponent look bad. Finally, the moderator could present a clear and informative summary of the debate's issues, so that a public expecting a rhetorical wrestling match will also be treated to a primer on the important issues of the day.

I should note that my proposal has some distinct similarities to Collier's. It is probably not coincidental that Russert's method was often referred to as a "cross-examination" influenced by his legal background.²⁸

²⁵ Elaine Sciolino, *Candidates Spar Vigorously as French Vote Nears*, N.Y. TIMES, May 3, 2007, at A8, available at <http://www.nytimes.com/2007/05/03/world/europe/03france.html> (link).

²⁶ See Richard S. Dunham, *Journalism Old-Timers Find Campaign Coverage Disturbing: Obama Political Strategy Called the Story that Got Away*, HOUS. CHRON., May 24, 2008, A10, available at <http://www.chron.com/disp/story.mpl/politics/5800345.html> ("Jon Margolis, a retired Chicago Tribune writer, said reporters have spent too much time on the personalities of the candidates and not enough time giving readers and viewers 'some idea how these people would govern the country.'") (link).

²⁷ See generally PROJECT FOR EXCELLENCE IN JOURNALISM, JOAN SHORENSTEIN CTR. ON THE PRESS, POLITICS & PUBLIC POLICY, *THE INVISIBLE PRIMARY—INVISIBLE NO LONGER: A FIRST LOOK AT COVERAGE OF THE 2008 PRESIDENTIAL CAMPAIGN* (2007), available at <http://www.journalism.org/files/The%20Early%20Campaign%20FINAL.pdf> (link).

²⁸ See, e.g., Michael Carlson, *Tim Russert*, GUARDIAN, June 16, 2008, at 30, available at <http://www.guardian.co.uk/world/2008/jun/16/usa.television> (link); Press Release, United States Senator Arlen Specter, Specter Comments on Tim Russert (June 13, 2008), available at

Perhaps I am advocating a trial model of a different sort: one closer to that of civil law countries, where judges ask questions to obtain facts and where asymmetries between advocates are neutralized by a nonadversarial system. Regardless of how one describes our proposals, my point is simple: allowing a moderator to play an active role in the debate can actually enable the public to learn more.

I concede that the success of my format would be determined in large part by the inclinations and abilities of the moderator. We should remember, though, that we already use a format that is similarly reliant upon the fairness and competence of the moderator. In this year's debates, the moderator will have to be impartial and competent when selecting and introducing topics to discuss (or when selecting audience members to ask questions²⁹), and when facilitating follow-up discussion. The mere requirement of impartiality and competence is neither unique nor a fatal flaw in my proposal.

But would increasing the involvement of the moderator, as I propose, also call for so much more impartiality and competence that nobody could possibly fit the bill? I doubt it. Certainly, the Commission has chosen some knowledgeable and highly regarded moderators for the 2008 election,³⁰ and the chosen moderators likely possess the inclination and ability to conduct a debate in a way that bears at least a fair resemblance to my proposal.

Another reason to doubt this objection is that the Commission severely limits its options by drawing moderators from a very small pool. If more options were needed, perhaps it would be time to look beyond career journalists in order to find the best moderators. To implement my proposal, the Commission should place less of a premium on news broadcasting experience—one of their criteria this year³¹—and more of an emphasis on the traits that made *Meet the Press* successful. If there are lawyers who could moderate a debate like Russert did on his show (and who can deal with the added pressure of appearing on television), then the Commission should seriously consider selecting a lawyer instead of a news anchor. My proposal lays out a different vision for the debates—one that entails a different model

http://specter.senate.gov/public/index.cfm?FuseAction=NewsRoom.NewsReleases&ContentRecord_id=83a30a98-9f78-21c9-31af-76d3b986b8e0 (link).

²⁹ Audience questions at the second presidential debate—the “town meeting”—will be pre-screened “for the sole purpose of avoiding duplication.” Press Release, Commission on Presidential Debates, Commission on Presidential Debates Announces Moderators (Aug. 5, 2008), available at http://www.debates.org/pages/news_111908.html (discussing the format for the presidential and vice-presidential debates) (link). It is not necessarily clear, however, whether a question is duplicative. For example, allowing only one audience question about the conflict in Iraq might prevent duplication, or it might limit the discussion in a manner that favors one party over the other. That judgment will require impartiality and competence.

³⁰ See *id.* (listing the moderators for the three presidential debates—Jim Lehrer, Tom Brokaw, and Bob Schieffer—and for the vice-presidential debate—Gwen Ifill).

³¹ Dana, *supra* note 1.

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for moderators to emulate, and thus a different set of criteria for choosing the moderator. These modifications to the format and the selection criteria would represent a real step toward making the presidential debates an effective tool of deliberative democracy.