Murmurs of the Silenced:
Secure Reporting of Misconduct Settlements

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A 40+ Year Debate *Against Settlement* *

COMMENT: Against Settlement 🔔 🔗

May 1, 1984   93 Yale L.J. 1073

| Document | Citing Decisions 17 | History 1 | **Other Citing Sources 1519** |

Timeline ⌃

1984   2024
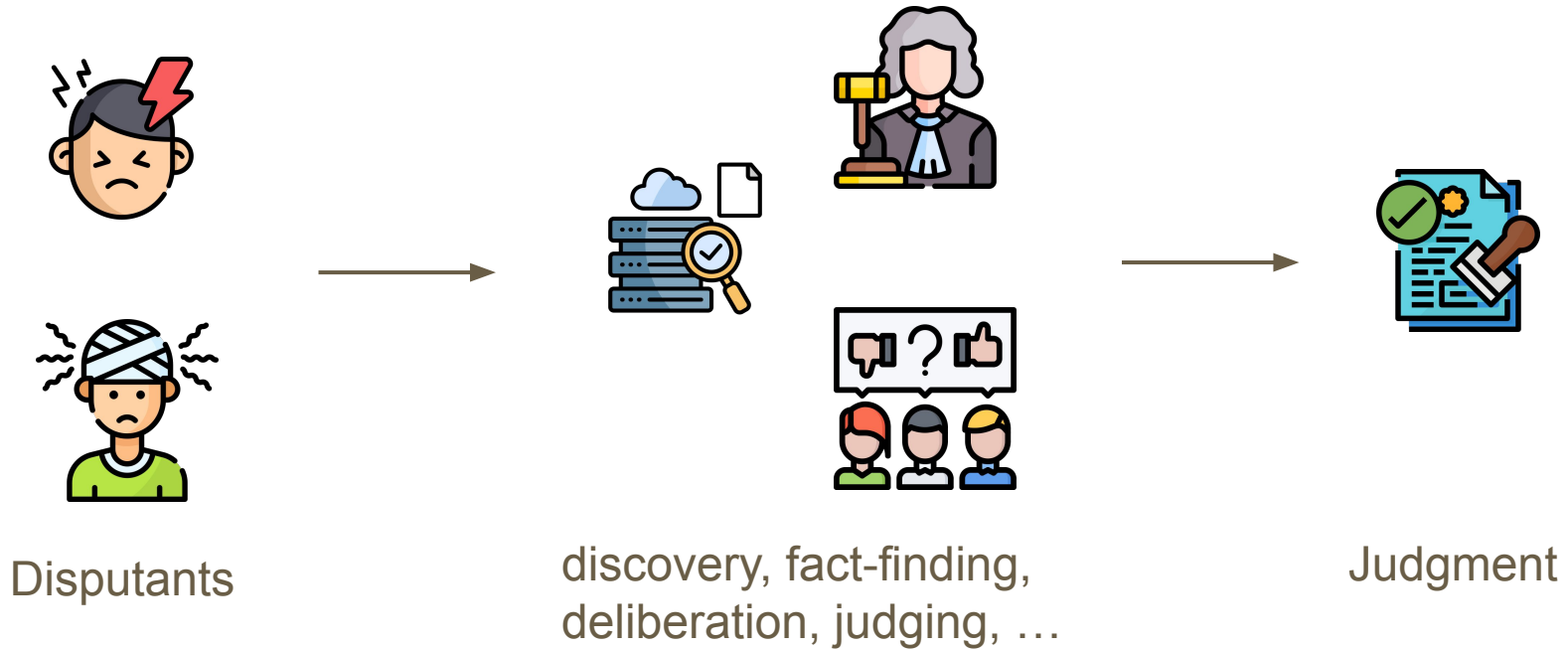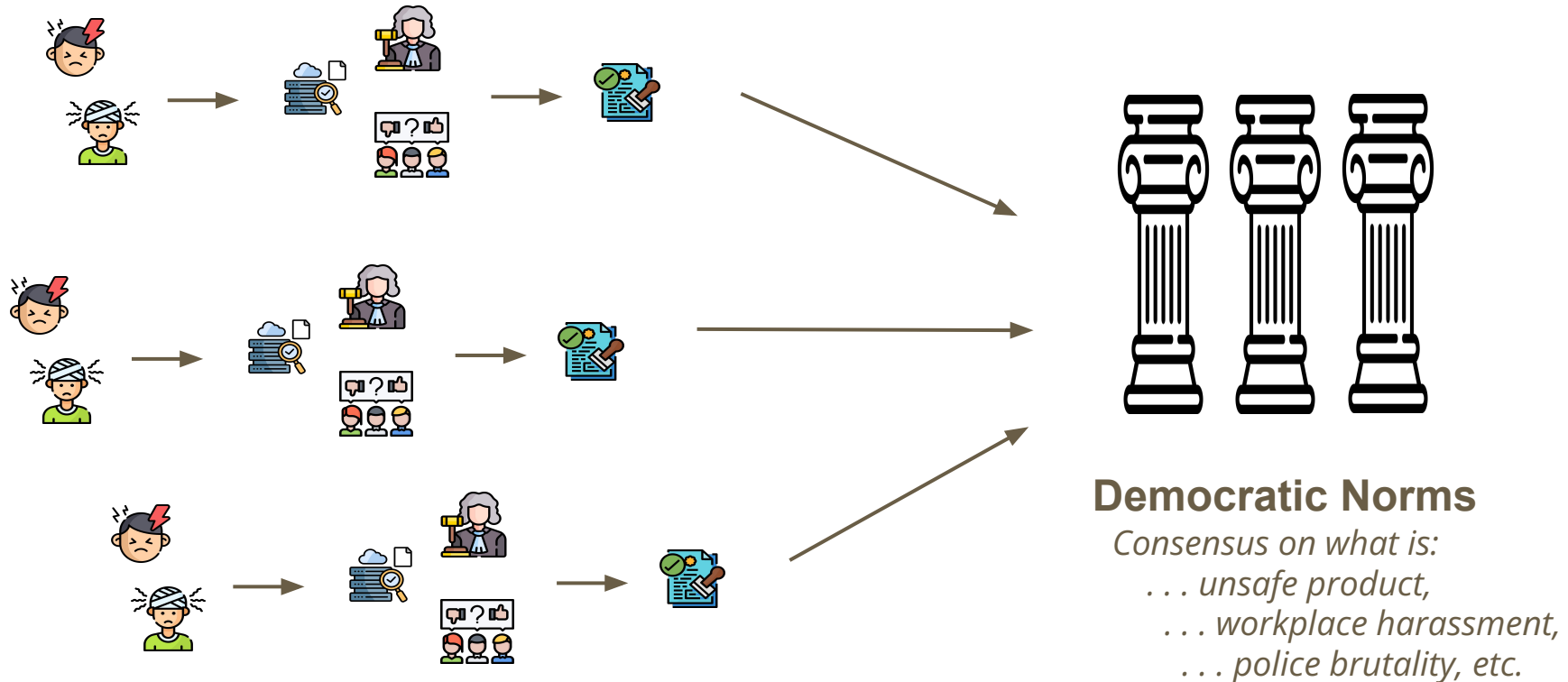
01/01/1984 📅   12/31/2024 📅

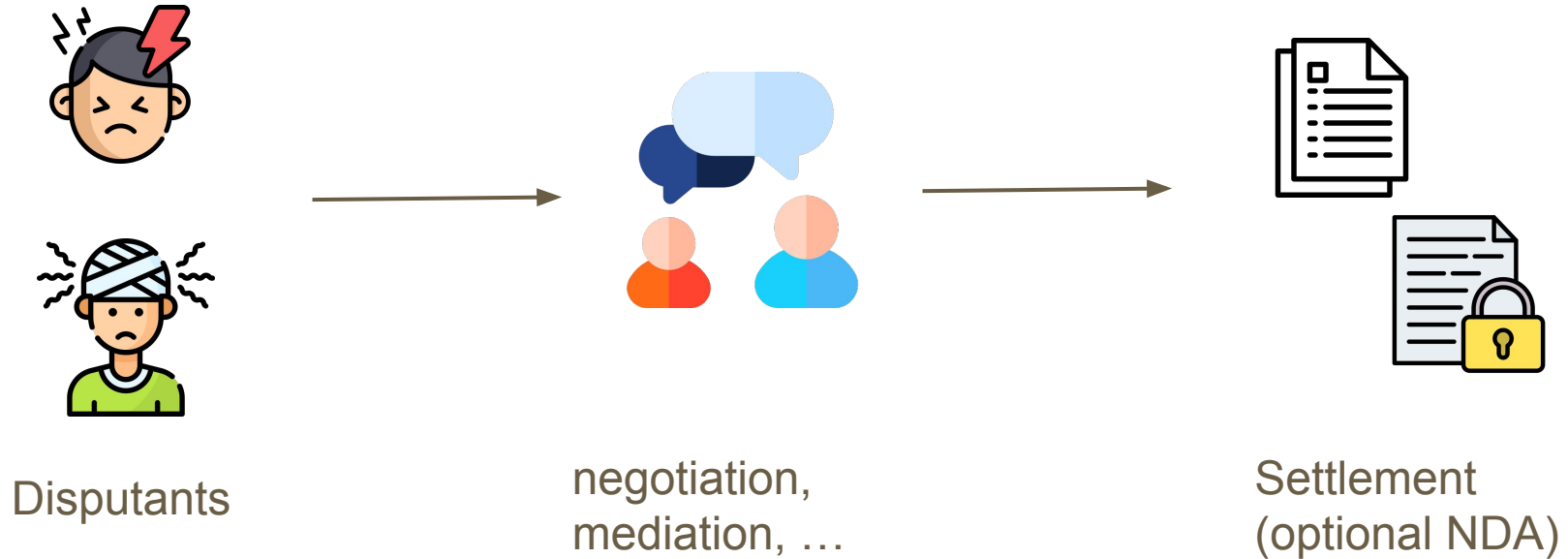* Owen Fiss, *Against Settlement*, 93 Yale L.J., 1073–1090 (1984)   2

Dispute Resolution by Public Adjudication

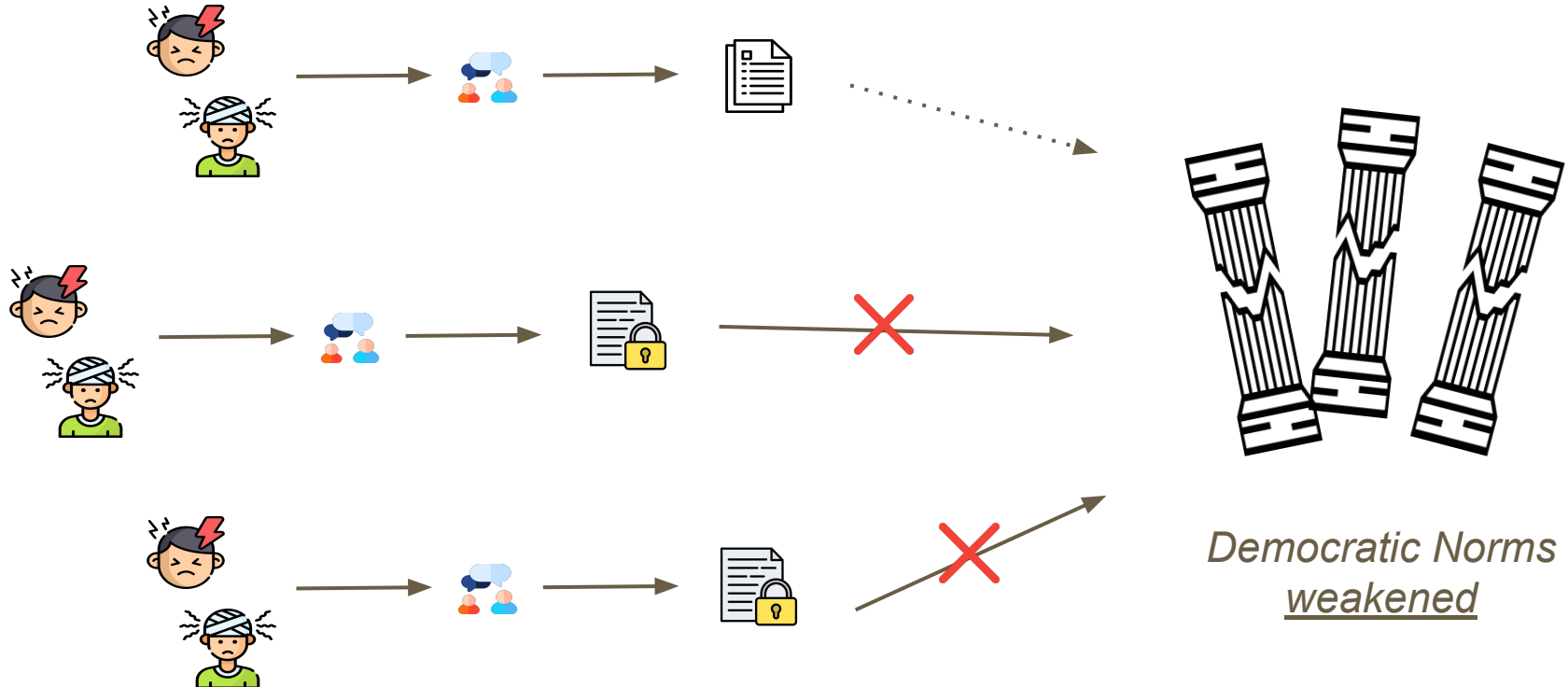Disputants

discovery, fact-finding, deliberation, judging, …

Judgment

Adjudications Converging to Democratic Norms

Democratic Norms
Consensus on what is:
. . . unsafe product,
. . . workplace harassment,
. . . police brutality, etc.

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Dispute Resolution by Private Settlement

Disputants

negotiation,
mediation, …

Settlement
(optional NDA)

Settlements Erode the Public Realm*

Democratic Norms weakened

Unequal Parties Dynamics In Private Settlement

Disputants

unequal resources,
ignorance of fair outcome,
…

Biased Settlement

Owen Fiss, *Against Settlement*, 93 Yale L.J., 1073, 1076 (1984)

Paradigmatic Example - #MeToo (Sexual Misconduct)

Alyssa Milano ✓
@Alyssa_Milano

If you've been sexually harassed or assaulted write 'me too' as a reply to this tweet.

Me too.

Suggested by a friend: "If all the women who have been sexually harassed or assaulted wrote 'Me too.' as a status, we might give people a sense of the magnitude of the problem."

3:21 PM · Oct 15, 2017

18.9K Reposts   **15.2K** Quotes   **43.6K** Likes   **280** Bookmarks

More Examples of Misconduct Hidden by Settlements
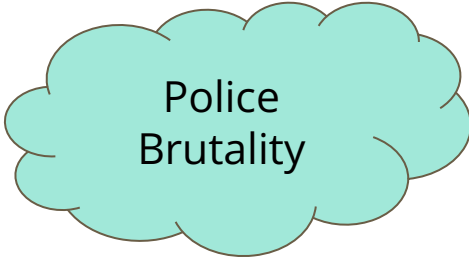
Environmental Pollution

Employment Discrimination
(age, sex, religion, …)

Housing Discrimination

Attorney Malpractice

Police Brutality

Research Question

Can widespread private settlements of misconduct be

compatible with maintaining oversight and the public realm?

Our Contribution

Can widespread private settlements of misconduct be

compatible with maintaining oversight and the public realm?

Yes, with **Secure Misconduct Settlement Registries** to allow
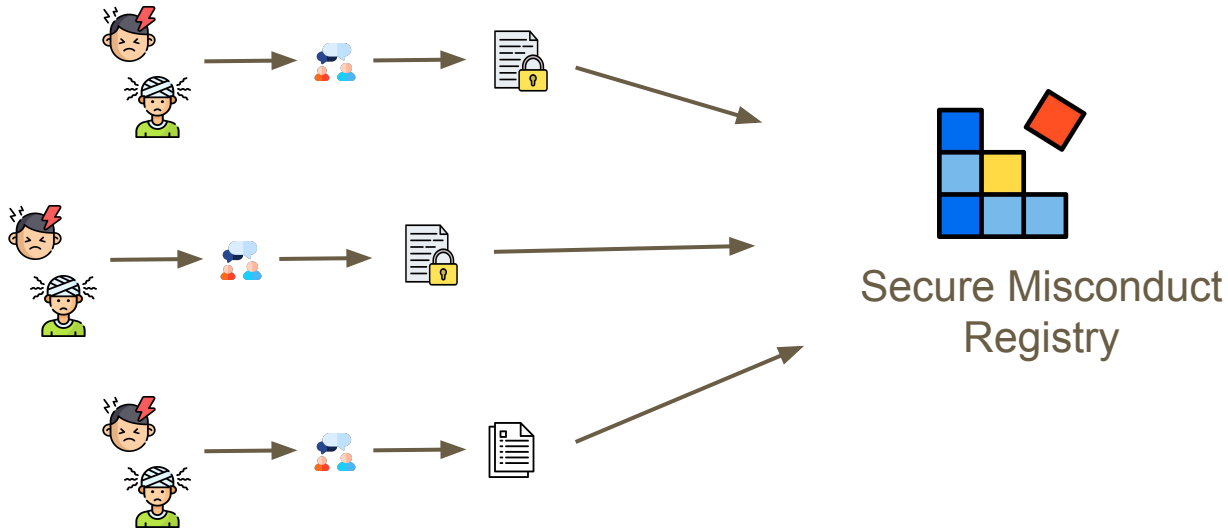
oversights and public awareness of misconduct.

Our Approach

Can widespread private settlements of misconduct be compatible with maintaining oversight and the public realm?

Yes, with **Secure Misconduct Settlement Registries** to allow oversights and public awareness of misconduct.

Interwoven, statutory-technological design enables a system that is:

- Secure and confidential
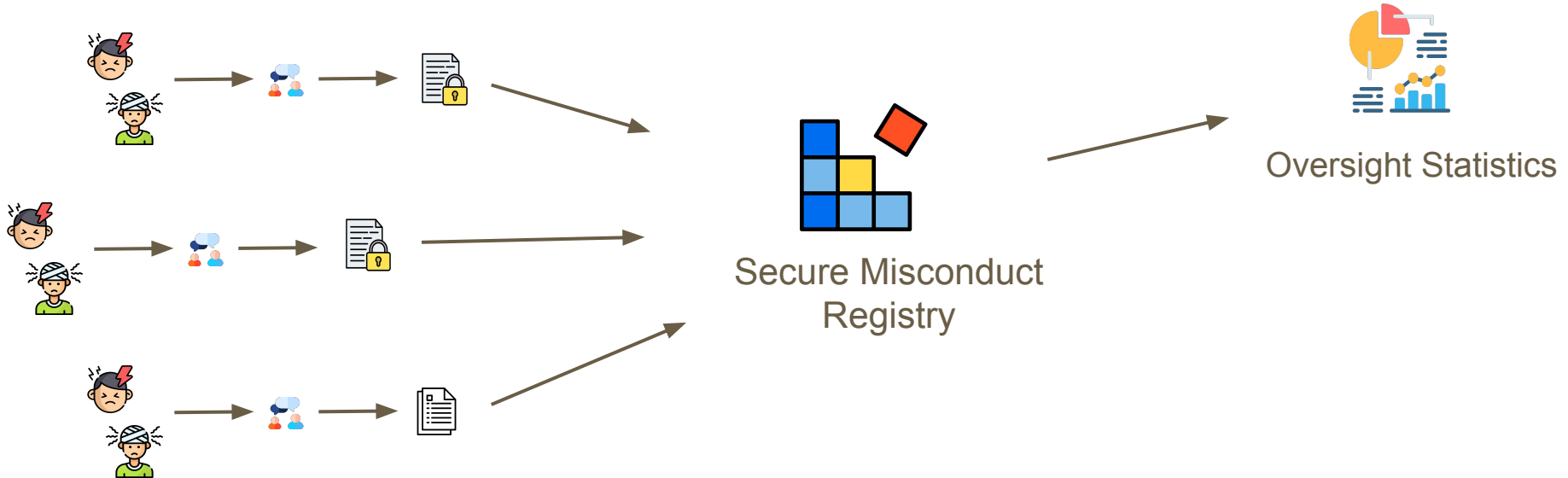- Statistically correct
- Legally safe
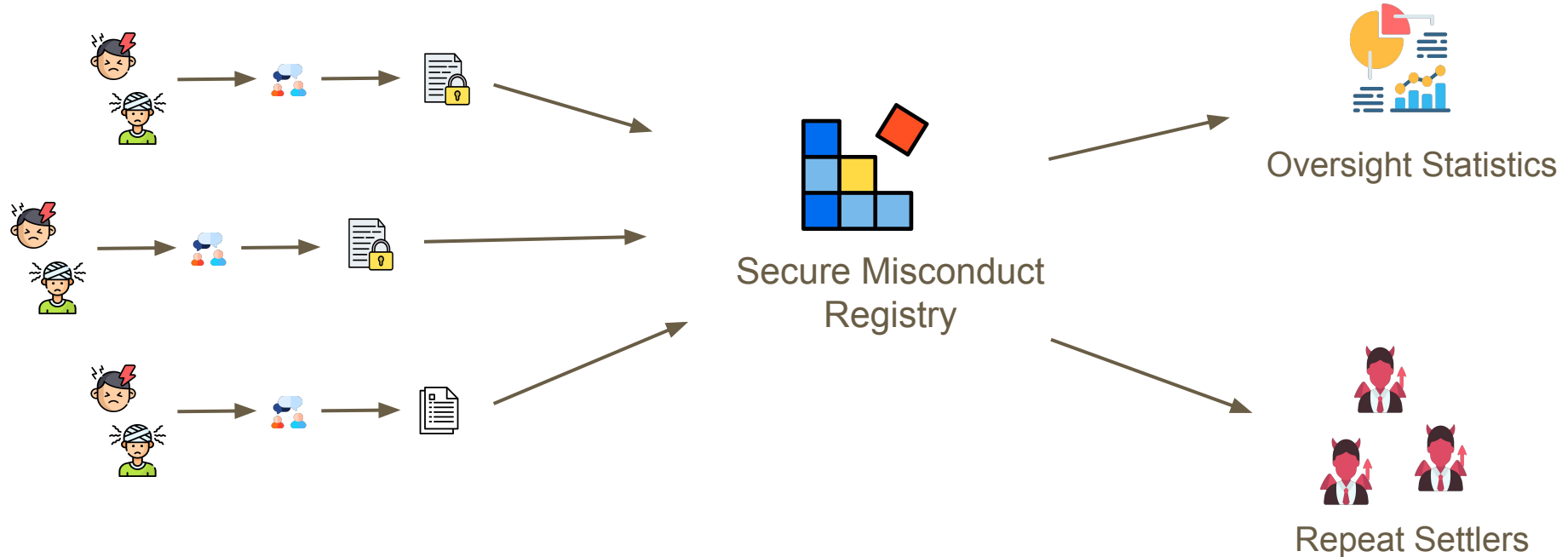
Our Proposal - Secure Misconduct Settlement Registry
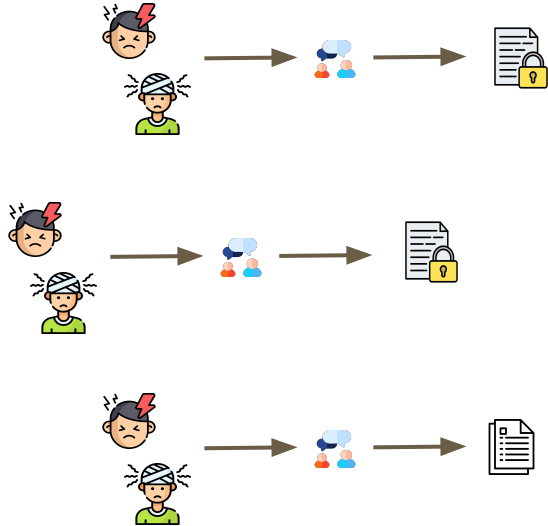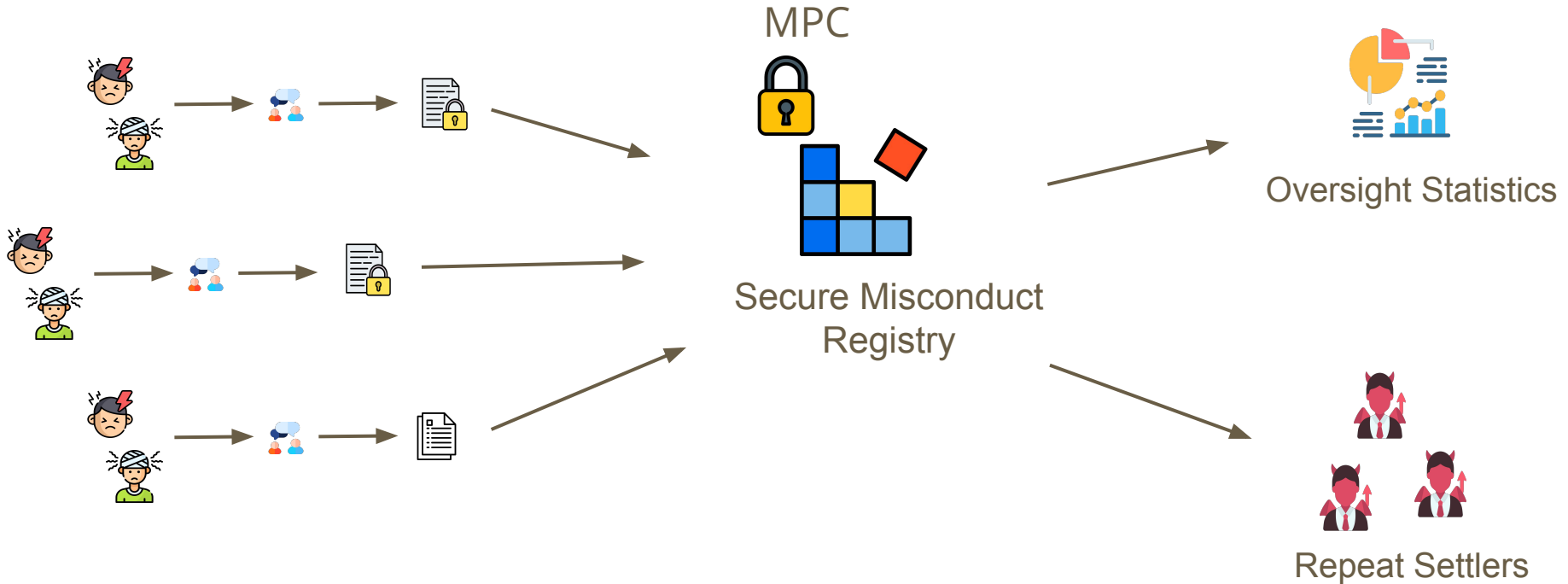
Our Proposal - Secure Misconduct Settlement Registry

# Our Proposal - Secure Misconduct Settlement Registry

Oversight Statistics

Secure Misconduct Registry

Our Proposal - Secure Misconduct Settlement Registry

Oversight Statistics

Secure Misconduct Registry

Repeat Settlers

Our Proposal - Secure Misconduct Settlement Registry

MPC

Secure Misconduct Registry

Oversight Statistics

Repeat Settlers

Our Proposal - Secure Misconduct Settlement Registry

MPC

Secure Misconduct Registry

Oversight Statistics
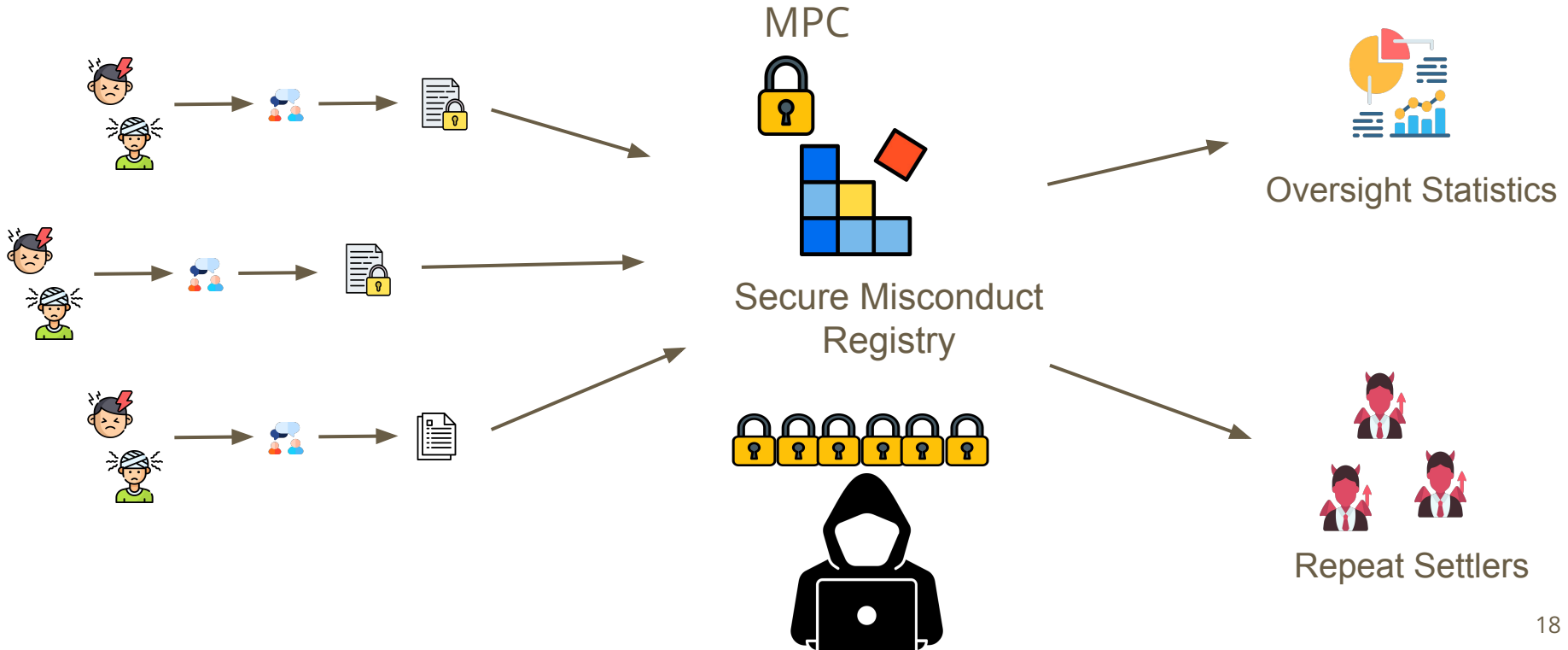
Repeat Settlers

Statutory Provision - Processing Definition

Oversight Statistics
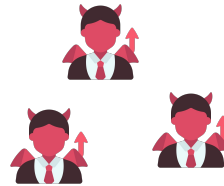
Repeat Settlers

Certificates

Statutory Provision - Enforcement Requires Submission

Secure Misconduct Registry

Certificate
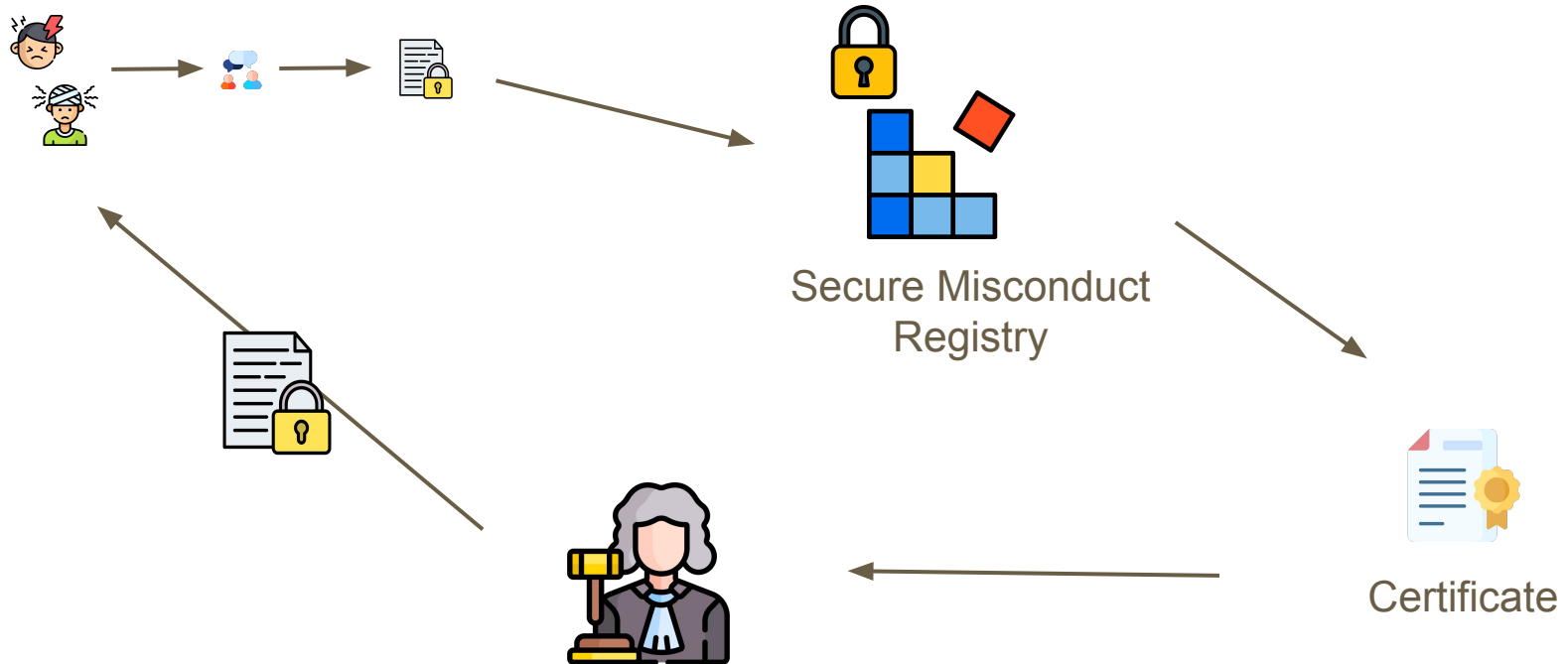
Statutory Provision - Submission Not Disclosure

breach of NDA, defamation,
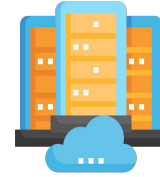notice/opportunity to object, …
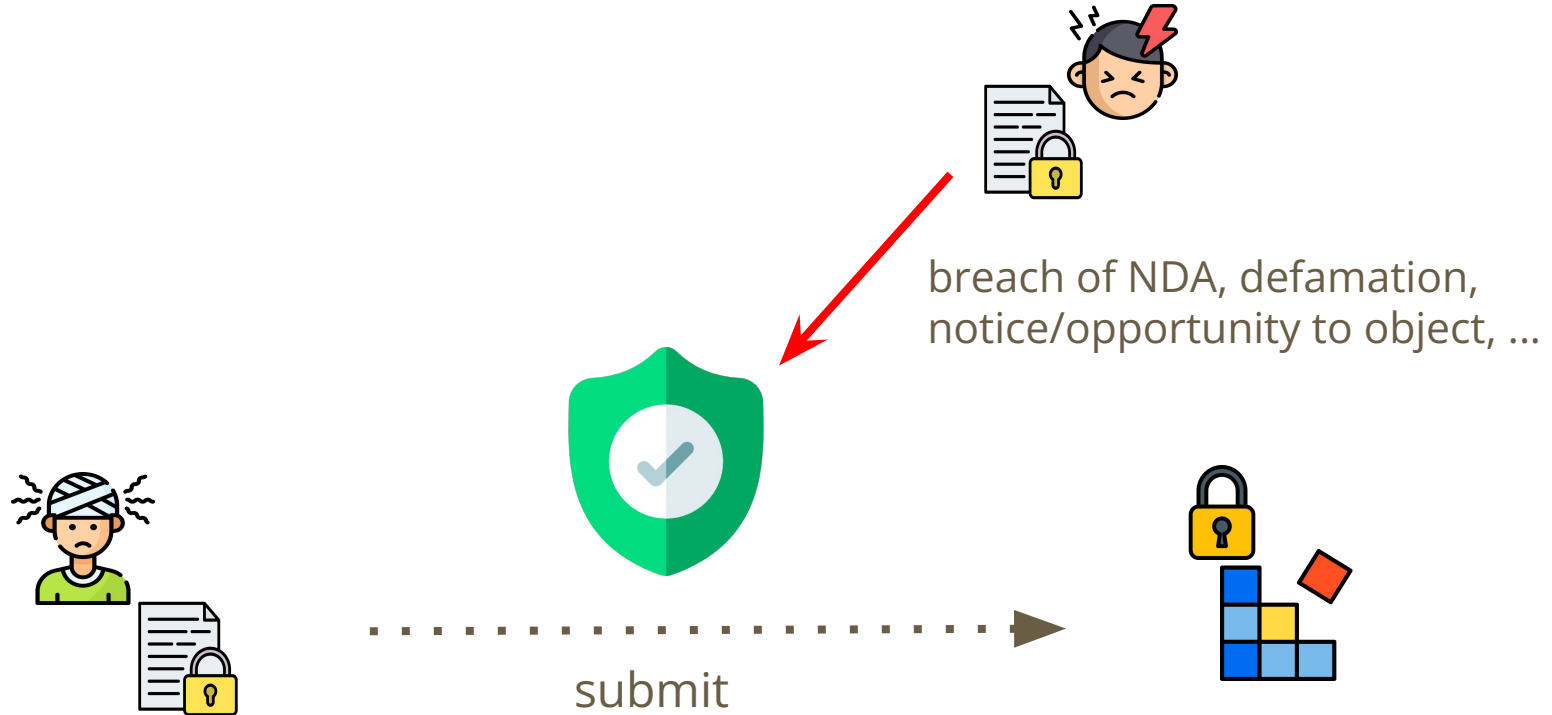
submit

Registry Operation - Establishment

Legislature

Administrative Agency

Compute Party 1

Compute Party 2

Registry Operation - Cryptographic Submission

Compute Party 1

Compute Party 2
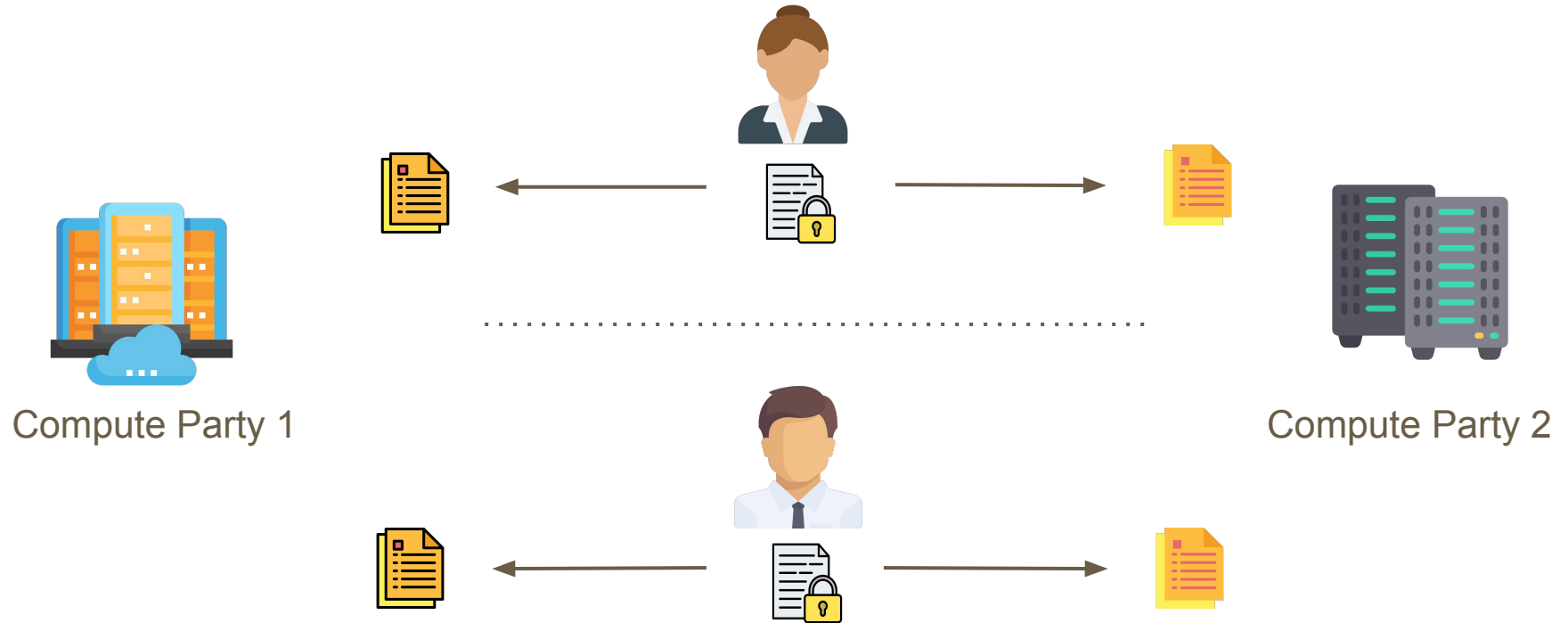
Registry Operation - Processing

Compute Party 1

Compute Party 2

Oversight Statistics

Repeat Settlers

Certificates

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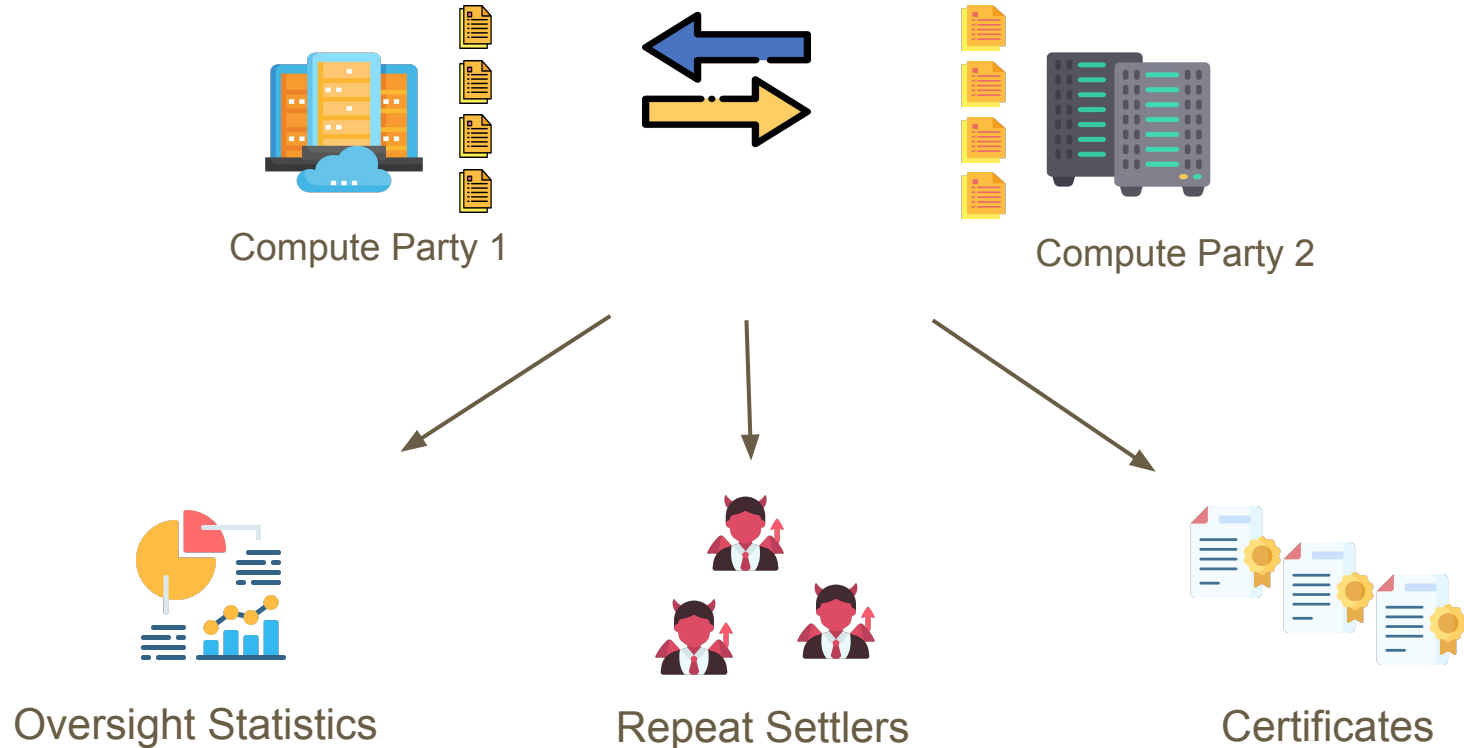
Prototype - Experimental Results

Data Size (settlement count)	2PC $/run	Processing Time
1k	~$0.01	59 sec
5k	$0.025	368 sec
100k	$0.06	~2.5 hr
200k	$2.60	~5.2 hr

Prototype - Real World Scalability

Data Size (settlement count)	2PC $/run	Processing Time
1k	~$0.01	59 sec
5k	$0.025	368 sec
100k	$0.06	~2.5 hr
200k	$2.60	~5.2 hr
560k (a, EEOC)*	$8.2*	~ 0.7 day*
35 mil (b, IRS)*	$878*	~ 78 days*

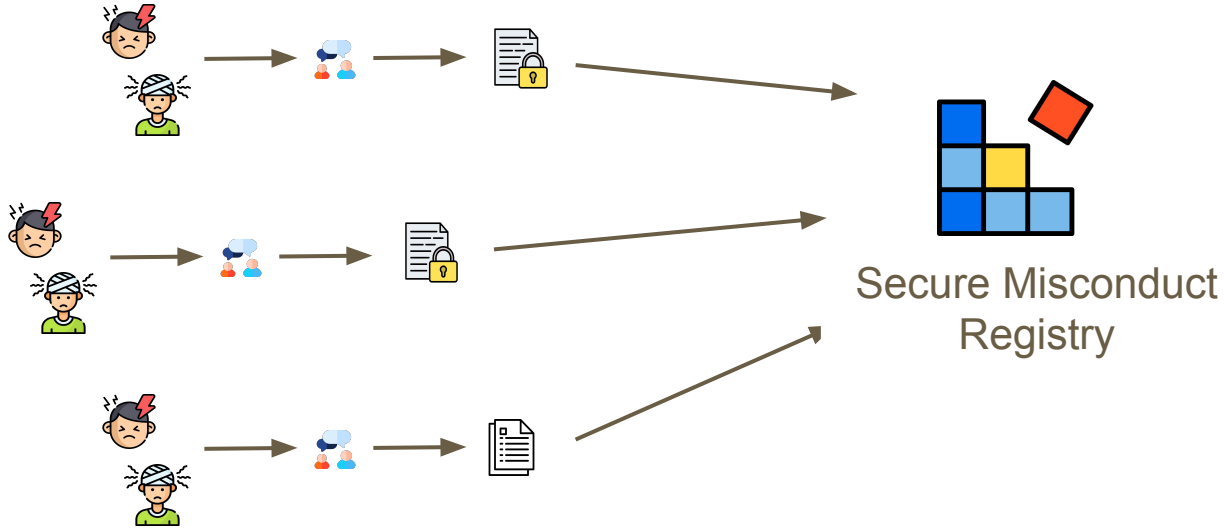a. ceiling, US EEOC workplace harassment incidents in 7-year period
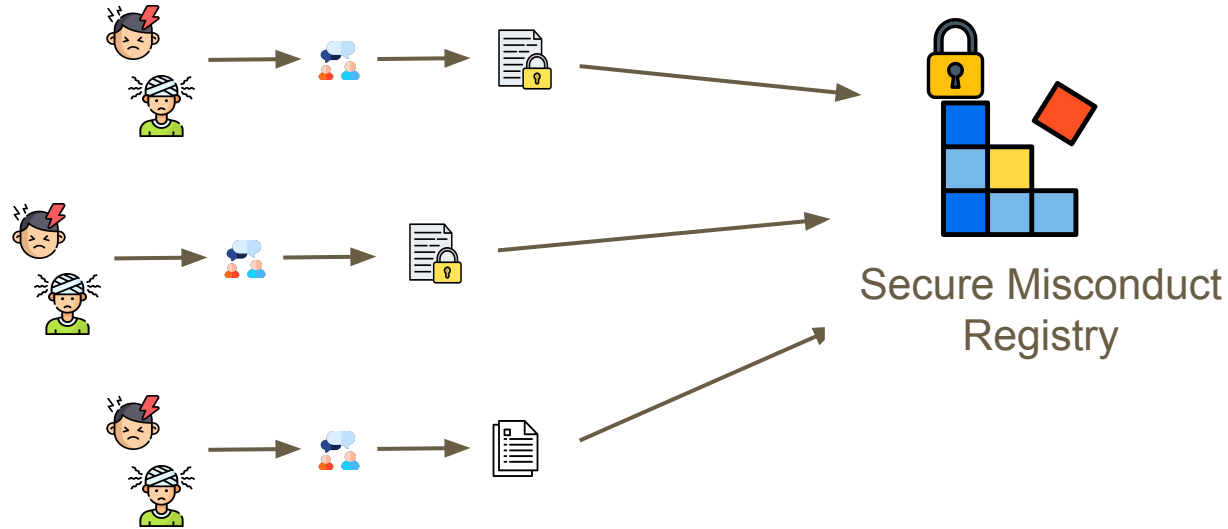b. ceiling, US IRS partnership tax returns in 7-year period
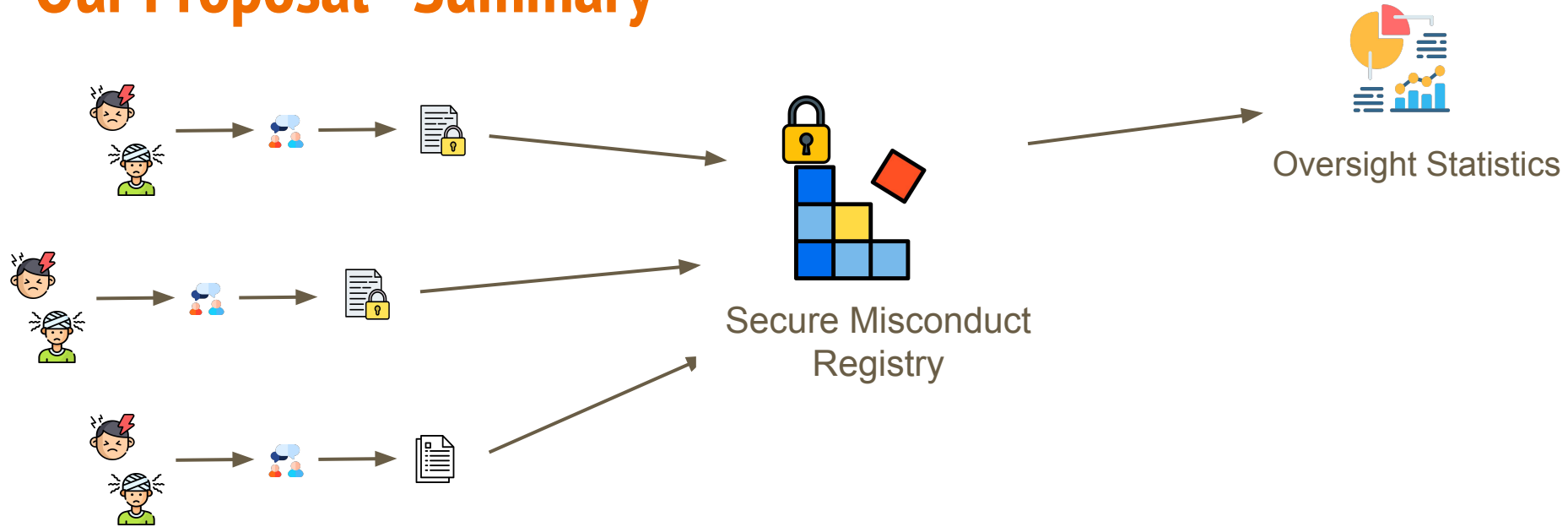*estimates
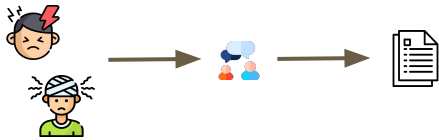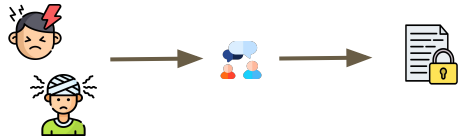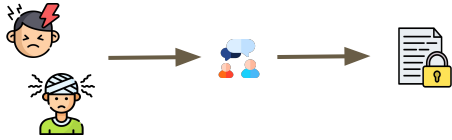
Our Proposal - Summary

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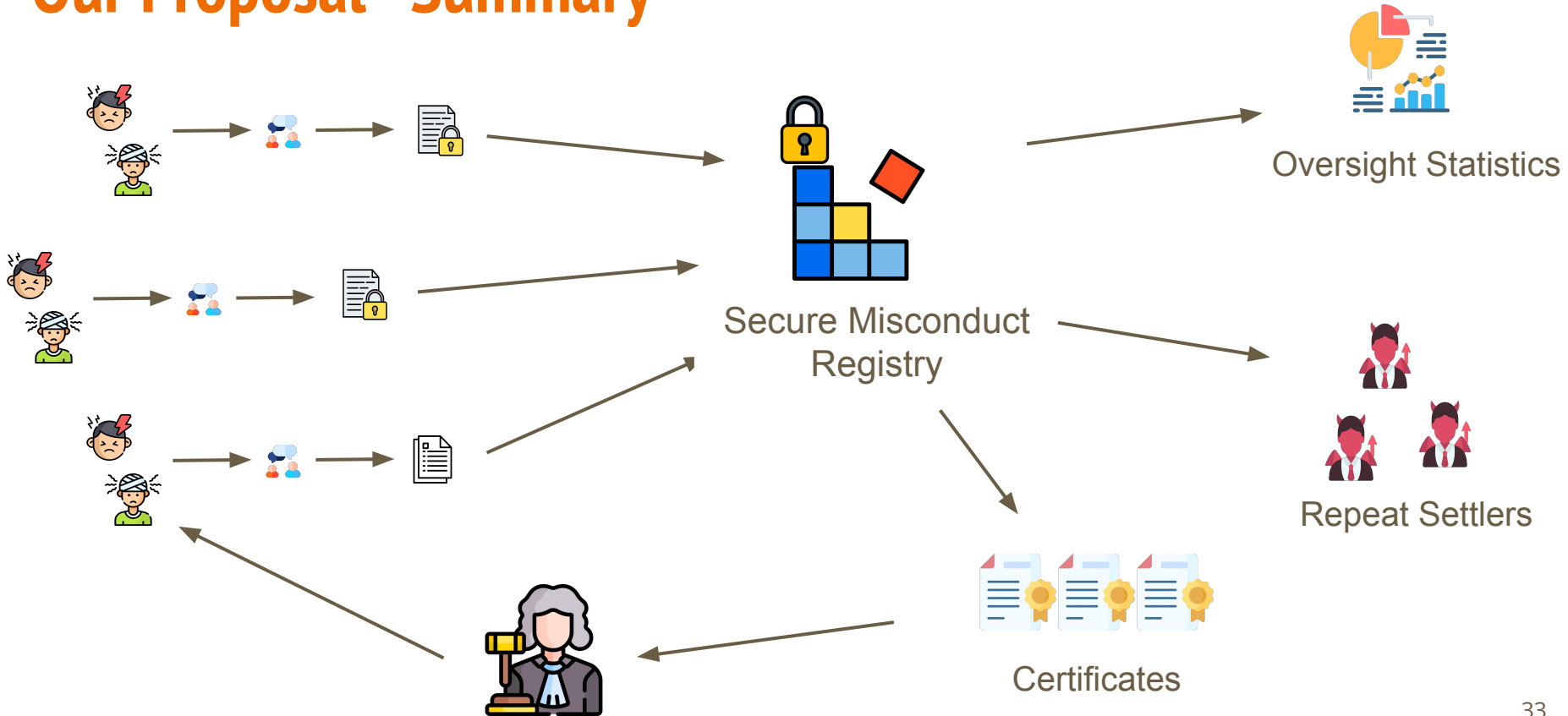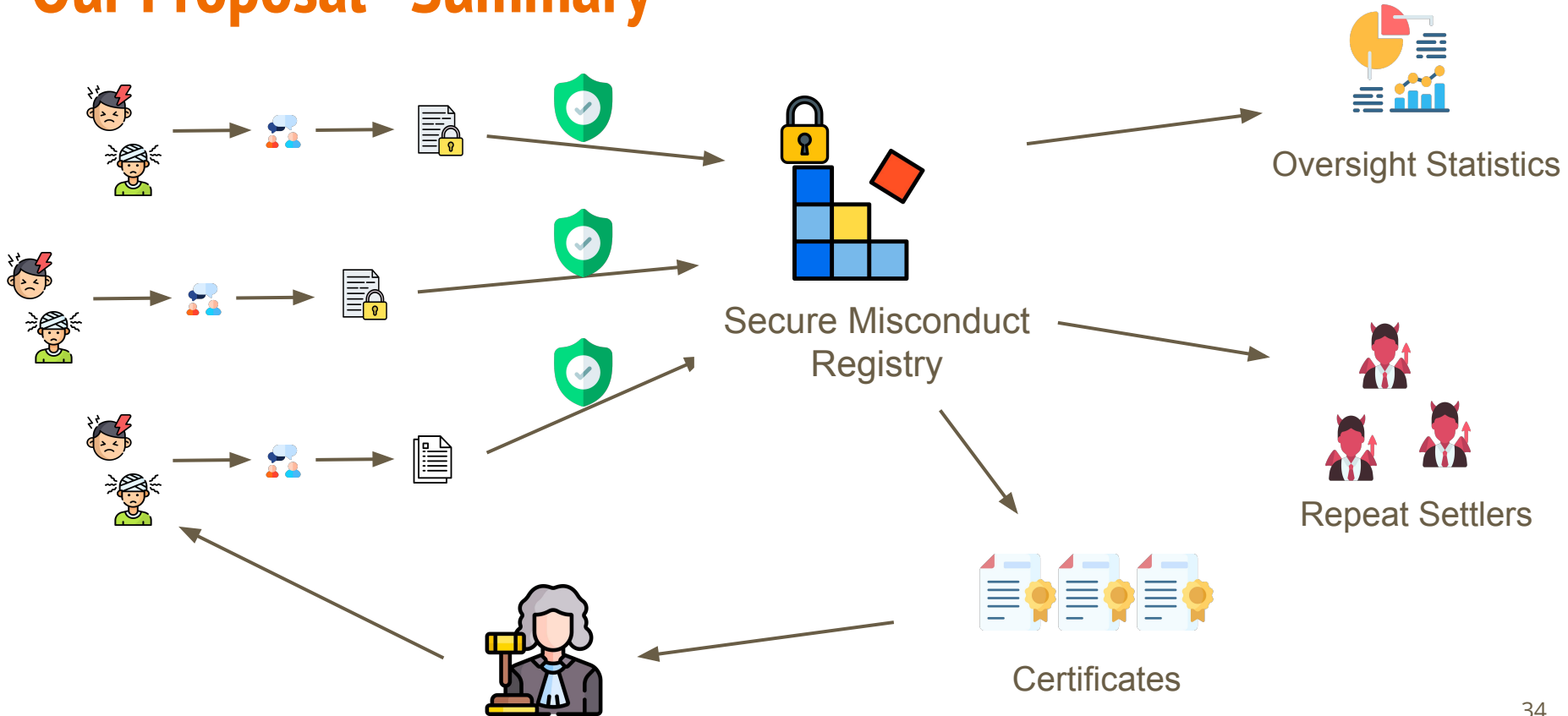
Secure Misconduct Registry
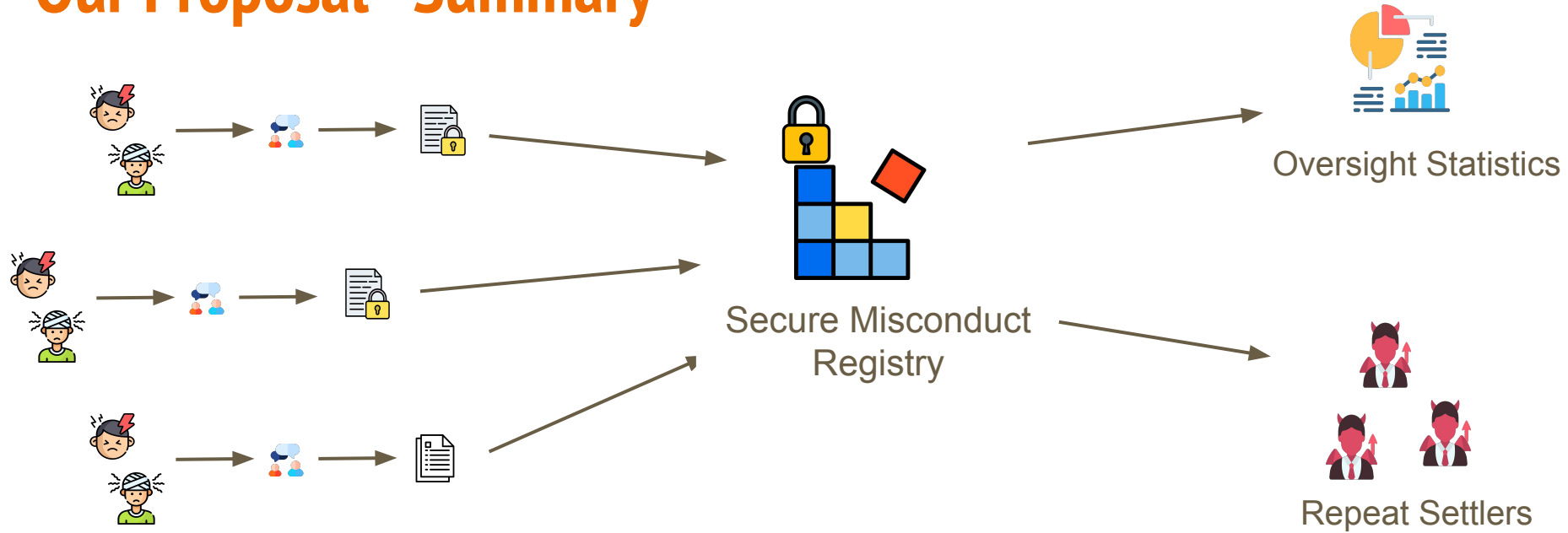
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Repeat Settlers

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Yes, with **Secure Misconduct Settlement Registries** to allow

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Interwoven, **statutory-technological** design enables a system that is:

- Secure and confidential
- Statistically correct
- Legally safe

Our Approach

Can widespread private settlements of misconduct be compatible with maintaining oversight and the public realm?
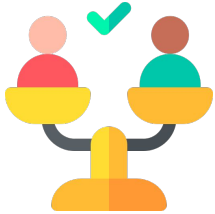
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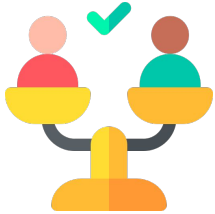- Secure and confidential
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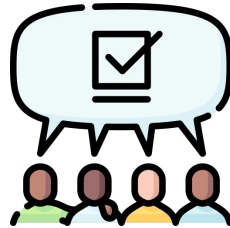
Policy Benefits

Policy Benefits

Efficient & Fair
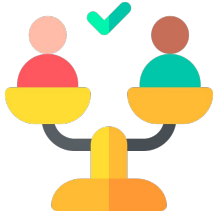Settlements

Policy Benefits

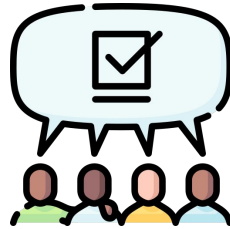Efficient & Fair
Settlements

Correct Narratives
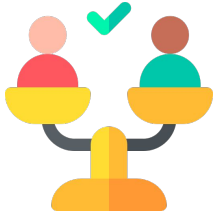Set Norms

Policy Benefits

Efficient & Fair
Settlements

Correct Narratives
Set Norms

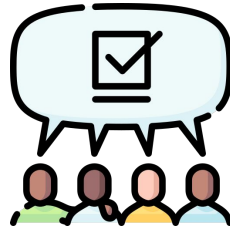Spark Investigative
Journalism

Policy Benefits

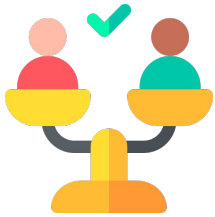|			
Efficient & Fair Settlements	Correct Narratives Set Norms	Spark Investigative Journalism	Catch Repeat Offenders

Policy Benefits - Restoring the "Public Realm"

Efficient & Fair Settlements

Correct Narratives Set Norms
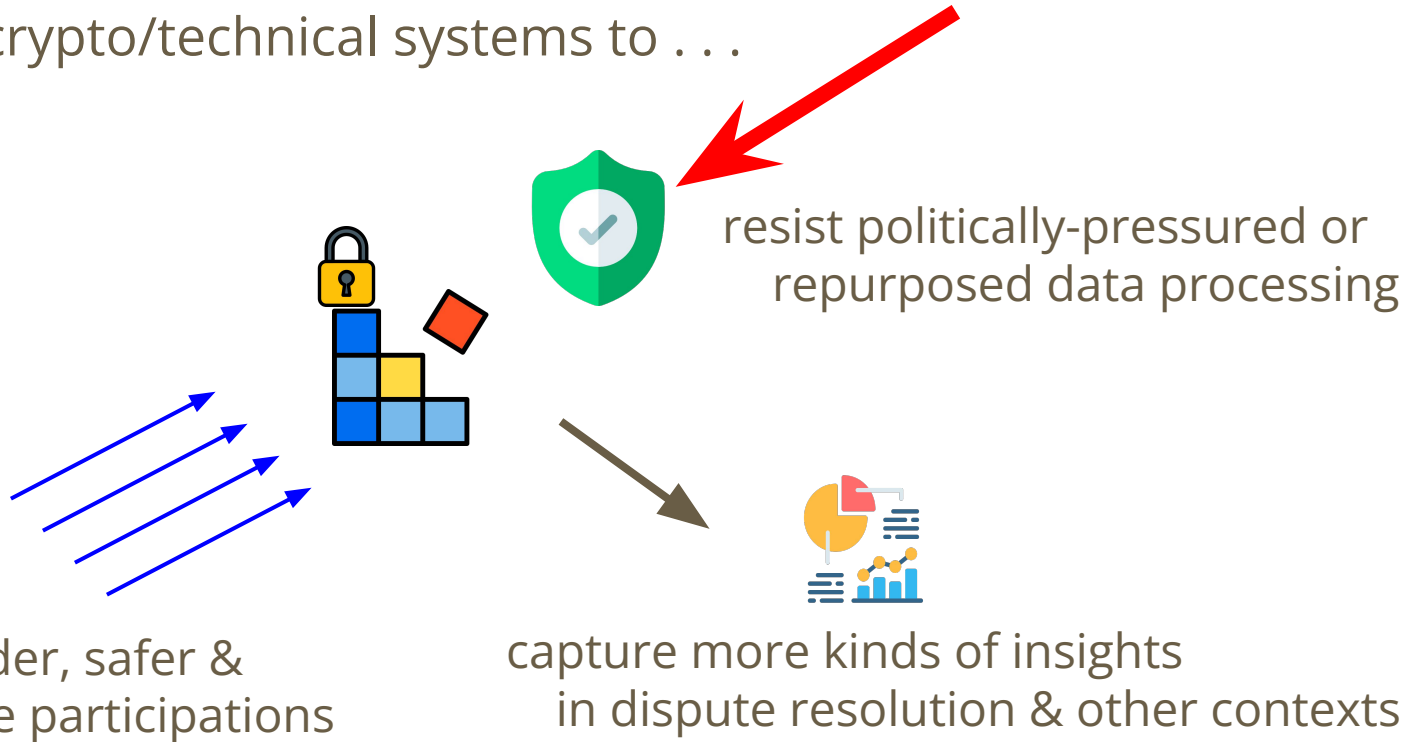
Spark Investigative Journalism

Catch Repeat Offenders

Future Work

How to design crypto/technical systems to . . .

resist politically-pressured or
repurposed data processing

encourage broader, safer &
more accurate participations

capture more kinds of insights
in dispute resolution & other contexts

… even as individual settlements are silent, their collective voices are still heard, and democratic reckoning of misconduct is possible.

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