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POLITICAL INTERMEDIARIES AND THE INTERNET “REVOLUTION”

*Elizabeth Garrett**

I. INTRODUCTION

Those who prognosticate about the effect of the Internet on democratic institutions fall into two groups. Some, like Dick Morris, proclaim that “[t]he Internet offers a potential for direct democracy so profound that it may well transform not only our system of politics but our very form of government.”¹ He identifies several ways in which our governance system will be revolutionized. First, candidates will need less money to run successful campaigns, so political parties will wither away.² Second, citizens will no longer rely on traditional media sources for political information but will receive their news in an unmediated way as they roam the Internet.³ Third, the country will move to a de facto direct democracy as voters participate in hundreds of online votes to run the government themselves rather than relying on elected representatives.⁴ Morris is not the only proponent of this view,⁵ known as “mobilization” theory

* Professor, University of Chicago Law School. I am grateful for comments by Jamil Jaffer, Doug Lichtman, Andrei Marmor, Judith Maute, and Eric Posner; insights provided by Keith Halverstram, students in my Fall 2000 seminar on the legislative process, and participants at the Internet Voting and Democracy Symposium at Loyola Law School; and the research assistance of Heather Kirby. I also appreciate the financial support of the James H. Douglas Fund for the Study of Law and Government and the Law and Government Program Endowment at the University of Chicago Law School.

1. Dick Morris, *Direct Democracy and the Internet*, 34 LOY. L.A. L. REV. 1033, 1033 (2001) [hereinafter Morris, *Direct Democracy*]; see also DICK MORRIS, VOTE.COM (1999) (making similar claims) [hereinafter MORRIS, VOTE.COM].

2. See Morris, *Direct Democracy*, *supra* note 1, at 1044-46.

3. See *id.* at 1044.

4. See *id.* at 1046.

5. Unlike some of the other proponents, however, Morris’s personal stake

because it envisions that voters will participate in governance more frequently and in different ways than they do now.⁶

A second group of observers reaches more measured conclusions. This group of "reinforcement" theorists,⁷ to which I belong, agree that new forms of communication and technology will cause changes in political institutions. However, the Internet will not so transform our system that it will look radically different in the next ten, fifteen, or twenty years. Instead, political parties will remain institutions that shape elections and influence candidates, and voters will continue to rely on established intermediaries with credible reputations for their political information. Representative government will survive at the federal level while the states will retain governance systems that are largely representative with some elements of direct democracy in states that permit initiatives and referendums. In the following comment, I briefly expand on these conclusions that are consistent with reinforcement, not transformation, of established political patterns.

II. POLITICAL PARTIES AND THE INTERNET

Morris argues that political parties are influential largely because they funnel money to candidates who desperately need cash to run increasingly expensive campaigns.⁸ He maintains that the Internet will substantially reduce the costs of campaigning by reducing the importance of television advertising.⁹ Therefore, the importance of money to candidates will shrink, and, as a result of this change,

in the success of one of the instruments of this revolution, Vote.com, may lead him to overstate its likelihood and its breadth.

6. See Pippa Norris, *Who Surfs? New Technology, Old Voters, and Virtual Democracy*, in *DEMOCRACY.COM?: GOVERNANCE IN A NETWORKED WORLD* 71, 72 (Elaine Ciulla Kamarck & Joseph S. Nye, Jr. eds., 1999).

7. See *id.* at 72-73. For one of the best examples of this perspective, see RICHARD DAVIS, *THE WEB OF POLITICS: THE INTERNET'S IMPACT ON THE AMERICAN POLITICAL SYSTEM* (1999) (arguing that the mobilization of public expression will still largely be the creation of groups and individuals who currently dominate the political landscape).

8. See Morris, *Direct Democracy*, *supra* note 1, at 1044-45; MORRIS, *VOTE.COM*, *supra* note 1, at 60-61.

9. See MORRIS, *VOTE.COM*, *supra* note 1, at 57-58; see also Reed E. Hundt, *The Public's Airwaves: What Does the Public Interest Require of Television Broadcasters?*, 45 *DUKE L.J.* 1089, 1100-01 (1996) (providing figures on campaign media expenses).

the role of parties will be minimized and perhaps eliminated.¹⁰ In contrast, Paul Schwartz explains that he expects campaigns to remain expensive—even with the growing role of the Internet—because of the enduring need to advertise on network and cable television stations, over radio, and through other traditional means of mass communication.¹¹ Schwartz's view strikes me as the more realistic one; if he is correct, then expensive broadcast advertising will continue to be an important part of any campaign. In addition, effective Internet campaigning will require resources—human and financial—and this reality will reinforce candidates' needs for money and expertise.¹² Political parties and other established players, like well-known political consultants who turn their attention to opportunities presented by the Internet, will serve these needs and thus continue to exert influence in the political arena.

Internet lore is replete with stories of candidates like Jesse Ventura, who with only six hundred dollars set up an Internet website that contributed to his successful campaign for governor.¹³ To be effective in an increasingly competitive and sophisticated world of Internet politics, however, a website must catch the attention of political browsers and keep their attention from wandering to other websites. Similarly, candidates who plan to inundate potential voters with e-mail communications must figure out how to convince recipients to open and read the e-mail rather than deleting it as electronic junk mail.

Businesses have learned that successful Internet marketing can be costly. Websites require continuing attention to keep them timely and interesting to repeat visitors and to take full advantage of the possibility of interactivity. Candidates are only beginning to learn

10. See MORRIS, VOTE.COM, *supra* note 1, at 53-61.

11. See Paul M. Schwartz, *Vote.com and Internet Politics: A Comment on Dick Morris's Vision of Internet Democracy*, 34 LOY. L.A. L. REV. 1071, 1072-77 (2001); see also James Fallows, *Internet Illusions*, N.Y. REV. BOOKS, Nov. 16, 2000, at 28 (reviewing DICK MORRIS, VOTE.COM (1999)). Fallows notes that the Internet sites themselves need to advertise on traditional television and radio stations, as well as through print sources, in order to attract attention. See also DAVIS, *supra* note 7, at 117 (making the same point).

12. See MICHAEL MARGOLIS & DAVID RESNICK, POLITICS AS USUAL: THE CYBERSPACE "REVOLUTION" 73-74 (2000).

13. See Dana Milbank, *Virtual Politics*, NEW REPUBLIC, July 5, 1999, at 22.

these tricks; most studies conclude that political websites are not particularly well-designed or effective in grabbing attention.¹⁴ Internet campaigning is less than a decade old, however, and it has really been an important aspect of campaigning only in the 1998 and 2000 election cycles. Candidates will soon learn that they need expertise and funding to campaign effectively via the Internet, particularly challengers who must compete with incumbents who have relatively sophisticated government-funded official webpages.

More important perhaps than help in Web design and architecture, however, is the need for expertise in targeting the candidate's substantive message to particular voters. Successful Internet campaigning depends on the campaign's ability to use it to personalize mass communication by setting up and encouraging one-on-one personal relationships. This "customized campaign"¹⁵ relies on an array of software and artificial intelligence programs and the expertise of political consultants to target personalized messages to voters based on demographic data available from on-line services. This data is then augmented as the campaign follows the voter's "cookie" and develops additional information for more tailored communication.¹⁶ For example, John Kasich had different home pages tailored to voters in Iowa, New Hampshire, and Ohio.¹⁷ Candidates can use zip codes or information gleaned from someone's use of a website providing weather information to enable them to target geographic

14. See Elaine Ciulla Kamarck, *Campaigning on the Internet in the Elections of 1998*, in DEMOCRACY.COM?, *supra* note 6, at 99, 101; David C. King, *Catching Voters in the Web*, in DEMOCRACY.COM?, *supra* note 6, at 125, 126.

15. Milbank, *supra* note 13, at 24.

16. See Schwartz, *supra* note 11, at 1085-86 (discussing ramifications of this use of somewhat private information and suggesting that it might cause people to withdraw from the political sphere).

17. This tailoring presents candidates with an opportunity to engage in cheap talk by providing one message to one group of voters and another, perhaps inconsistent, message to another group. See David Austen-Smith, *Strategic Models of Talk in Political Decision Making*, 13 INT'L POL. SCI. REV. 45, 54-55 (1992); McNollgast, *Legislative Intent: The Use of Positive Political Theory in Statutory Interpretation*, LAW & CONTEMP. PROBS., Winter 1994, at 3. With sophisticated targeting techniques, neither group may become aware of the differing messages, and it may be difficult for monitoring institutions, like challengers or the press, to learn of the tactic. The opportunity for cheap talk in the present system causes voters to discount what candidates say; even greater discounting may occur in the future.

location, or candidates can direct particular messages to people based on which websites they visit regularly. Entrepreneurs like Dick Morris can sell information about their subscribers to politicians, political parties, and consultants, as well as offering their services so that the information is used effectively. The resulting targeting will not be limited to banner advertising, which Morris believes is not particularly effective,¹⁸ but it will shape the content and architecture of the webpages themselves.

Certainly, the Internet reduces costs for all candidates who can set up webpages relatively cheaply and use electronic mail to organize and inform volunteers.¹⁹ Campaigns have also discovered that e-mail is a particularly effective means of communicating cheaply and quickly with the press.²⁰ Sophisticated use of this new technology, however, will depend on expertise, and in most cases, candidates will not possess such expertise and may not be able to obtain it through volunteers. Instead, expertise will be purchased from savvy political operatives, or it will be provided by political parties to ensure the election of partisans and control of the legislative and executive branches. It should not surprise us that Dick Morris, a player in the old world of print and broadcast campaigning, remains a player in the new world of cyberspace campaigning. The same political consultants and lobbying firms that dominated the old world of influence peddling continue to dominate the new world of grassroots lobbying using new technology to communicate and organize.²¹ These consultants and lobbyists are now turning their attention to candidate and issue campaigns. Similarly, the Deputy Chief of Staff of the Republican National Committee views the Internet not as a threat or a foe that will destroy the political party but as an opportunity to reinforce the influence of parties in elections. During the 2000 elections, he assigned ten percent of his one hundred fifty staff members at the

18. His conclusion is contested. See, e.g., Tom Hockaday & Martin Edlund, *Banner Advertising as a Voter Outreach Tool*, CAMPAIGNS & ELECTIONS, May 1999, at 13-14.

19. See KEVIN A. HILL & JOHN E. HUGHES, *CYBERPOLITICS: CITIZEN ACTIVISM IN THE AGE OF THE INTERNET* 184-86 (1998); Morris, *Direct Democracy*, *supra* note 1, at 1044-46.

20. See Chris Mooney, *The Virtual Campaign*, AM. PROSPECT, Nov. 6, 2000, at 37 (terming the process "e-spin").

21. See DAVIS, *supra* note 7, at 80.

national headquarters to focus on Internet campaigning and to provide Republican candidates with expertise.²² Seventy-three percent of candidates' websites in the 1998 elections included links to the website of a political party.²³ In short, the established players are adapting to the new technology and working to become as instrumental in an Internet campaign as they are in more traditional politics. Thus, claims of the demise of political parties and other fixtures on the political landscape, like consultants, may be premature and inaccurate.²⁴

III. THE MEDIA AND THE INTERNET

Morris also predicts that media outlets will find their dominance destroyed in the new Internet world as millions of websites with political information and opinions spring up in cyberspace. Certainly, the Internet provides citizens with a tremendous amount of information.²⁵ As Bruce Cain convincingly argues in his comment, this substantial increase in the amount of available information should lead to the worry that the Internet will overwhelm voters' ability to process information.²⁶ Cain also maintains that much of the news on the Internet is "garbage," and thus voter competence may actually decline when voters make electoral decisions on the basis of information found in the Drudge Report or even more dubious websites.²⁷ The Clinton-Lazio debates may have offered a glimpse of the future when the candidates were asked for their position on a fictional

22. See Leslie Wayne, *On Web, Voters Reinvent Grass-Roots Activism*, N.Y. TIMES, May 21, 2000, at A22.

23. See Kamarck, *supra* note 14, at 117 tbl.10.

24. Some have noted that other advances in communications and other technology have benefited centralizing entities by increasing their ability to influence, organize, and control greater numbers of people and larger areas. See, e.g., Joseph S. Nye, Jr., *Information Technology and Democratic Governance*, in DEMOCRACY.COM?, *supra* note 6, at 1, 9. Transformation theorists answer that the Internet is different from these other technology "revolutions" and that its primary effects will be decentralizing ones. At this point, it is hard to determine which is more likely, although both are plausible and the reinforcement theorists have history on their side.

25. See Morris, *Direct Democracy*, *supra* note 1, at 1044.

26. See Bruce E. Cain, *The Internet in the (Dis)Service of Democracy?*, 34 LOY. L.A. L. REV. 1005, 1014 (2001).

27. See *id.* at 1019.

federal bill that would allegedly tax all e-mail messages with the equivalent of an electronic postage stamp.²⁸ Both candidates proclaimed their opposition; neither knew that this proposal was an Internet urban legend spread by several political websites and discussed in political chat rooms.²⁹ Interestingly, this Internet rumor produced so much constituent outcry that the House passed an act prohibiting the imposition of access charges on Internet service providers.³⁰

Although we should worry about the decline in the quality of information caused by a greater reliance on the Internet, we should also have some confidence in voters' ability to understand the problem and to look for ways to ensure that the information that they use to form their political judgments is credible. Voters will turn to intermediaries with established reputations that can be trusted to deliver verified and accurate information. Not surprisingly, voters who currently get some of their political information from Internet sources rely largely on the websites of established news sources like CNN, the network television companies, the *New York Times*, the *Washington Post*, and other well-known newspapers.³¹ Even websites designed for political junkies, such as Morris's former competitor Voter.com, hire reporters and analysts with established reputations like Carl Bernstein, Tucker Carlson, and other syndicated columnists whose names are familiar from the more traditional media sources.³²

28. See David Emery, *Email Tax Hoax Fouls N.Y. Senate Debate*, URBANLEGENDS.COM, at <http://urbanlegends.about.com/science/urbanlegends/library/blnydebate.htm> (last visited Apr. 1, 2001).

29. See *id.*

30. See H.R. 1291, 106th Cong. (2d Sess. 2000) (enacted); see also Robert MacMillan, *Lawmakers Discuss Downside of Net Accessibility*, NEWSBYTES NEWS NETWORK, May 11, 1999, at <http://www.newsbytes.com/news/99/130458.html> (discussing a rumor that Congress was ready to pass a bill subjecting Internet access calls to per-minute charges).

31. See DAVIS, *supra* note 7, at 45-48; Norris, *supra* note 6, at 83-85 & tbl.5.

32. See Voter.com, at <http://www.voter.com/home/news/columnists/0,1171,2--,00.html> (last visited Jan. 10, 2001), for a list of Voter.com's columnists, all of whom are well-known from traditional media. Twenty percent of Voter.com was owned by Patton Boggs, one of Washington's leading lobbying law firms. See Kate Ackley, *Taking Root on the Web*, INFLUENCE ONLINE at <http://www.influenceonline.net/data/news/20000905160641.htm> (Sept. 6, 2000). Voter.com shut down in February 2001, because it was not

Again, the reinforcement theorists appear to have the better argument with respect to the effect of the Internet on the mass media—not only in describing the current state of affairs but also in predicting that it will continue in much the same fashion. Voters need mediating institutions in order to gather trustworthy information without spending the time themselves to verify accuracy. It does not surprise me that although Morris describes the Internet as providing citizens access to a horizontal panoply of information, all the providers he lists are the websites of well-established media outlets like the *New York Times*, the *San Francisco Examiner*, and the *Manchester Union-Leader*.³³ This hardly erodes the “bases of journalistic baronies,”³⁴ rather, it extends their influence to people who cannot easily receive the print version in a timely fashion.

In his enthusiasm, Morris overlooks a possible serious negative effect of an increasing reliance on the Internet to obtain information even when most of the news is provided by credible sites with reputations for accuracy. Bruce Cain describes this effect as “segmentation,”³⁵ it is sometimes called “balkanization” in the Internet literature.³⁶ The Internet has a different structure of providing information, and that structure appears to impose a sort of tunnel vision on many users. They receive information only through custom-designed home pages and e-mail alerts, and they only visit chat rooms and issue-oriented webpages constructed by people who share their perspectives and opinions.³⁷ Users of news websites often

profitable despite the support of political parties and the established media and political players. See Ross Kerber, *Voter.com Pulls the Plug*, BOSTON GLOBE, Feb. 6, 2001, at D1.

33. See Morris, *Direct Democracy*, *supra* note 1, at 1044.

34. *Id.*

35. See Cain, *supra* note 26, at 1018; see also Lawrence Lessig, *The Constitution of Code: Limitations on Choice-Based Critiques of Cyberspace Regulation*, 5 COMMLAW CONSPECTUS 181, 189 (1997) (discussing how computer programs automatically screen information for the user and analyzing whether the government should be allowed to utilize this screening power); Cass R. Sunstein, *Deliberative Trouble? Why Groups Go to Extremes*, 110 YALE L.J. 71, 100-02 (2000) (discussing how the ability to filter information on the Internet leads to fragmentation).

36. See Cass R. Sunstein, *Television and the Public Interest*, 88 CAL. L. REV. 499, 519 (2000).

37. See William A. Galston, *(How) Does Internet Affect Community? Some Speculations in Search of Evidence*, in DEMOCRACY.COM?, *supra* note 6,

construct filters so that they receive articles and e-mails only on topics that they have selected previously. They may receive more in-depth information about these topics than they could before the rise of the Internet, but they do not tend to browse through the cyberspace news sources and happen on to a story that they unexpectedly find engaging. Furthermore, politically active Internet users participate in chat rooms that tend to reinforce, rather than challenge, their beliefs and opinions. Users segment into communities of like-minded people with the result that they are not exposed to a diversity of views. They do not have to confront convincing arguments on the other side of an issue and defend their own positions.

Thus, at the same time the Internet makes more information easily available to users, its structure tends to reduce the breadth of information that users encounter. This effect of the structure of cyberspace may lead to a decline in the richness of political discourse and a narrowing of the perspective of our citizens.³⁸ This is not a necessary result of increased use of the Internet to obtain political news. Perhaps people will work to break free of segmentation and seek out balanced or competing presentations of news, probably from established sources with good reputations because that method of combating segmentation reduces search costs.³⁹ In part, this is an empirical question, and early studies suggest that the fear of segmentation is real.

IV. DIRECT DEMOCRACY AND THE INTERNET

Morris's most revolutionary claim is that the Internet ushers in direct democracy for the United States.⁴⁰ Again, Morris insists that

at 45; Dennis Thompson, *James Madison on Cyberdemocracy*, in DEMOCRACY.COM?, *supra* note 6, at 35.

38. See Cass R. Sunstein, *Republic.com* 8-10 (2001) (discussing the negative effects of segmentation on political system); see also *id.* at 65-69, 75-77 (reviewing evidence that deliberation among like-minded people may only intensify previously held views and terming this "enclave deliberation").

39. The Federal Communication Commission's fairness doctrine was abandoned in part because of the assumption that in a balanced marketplace of ideas, consumers will seek out diverse perspectives. See *In the Matter of Inquiry into Section 73.1910 of the Comm'n Rules and Regulations Concerning Alternatives to the Gen. Fairness Doctrine Obligations of Broad. Licensees*, 3 F.C.C.R. 2050, 2051 (1988).

40. See Morris, *Direct Democracy*, *supra* note 1, at 1033.

the Internet leads to unmediated interactions between voters and the very institutions of governance.⁴¹ Once again, he overstates his case because he does not acknowledge that intermediaries will remain vitally important in his new world, although intermediaries will have to adapt to the new technology and new mediating institutions may arise.⁴² His claim has at least two parts: First, voters will e-mail their representatives more frequently and thus affect policy by this kind of mass personalized communication. Second, voters will engage in nationwide referendums, held by commercial websites like Morris's Vote.com, and these polls will have such force that elected officials will follow the poll results or they will be thrown out of office in the next election. Both claims are unconvincing.

First, the mass e-mails, which websites like Vote.com facilitate and well-paid experts in grassroots lobbying coordinate into an apparent wave of popular discontent, are not substantially different from the mass mailing campaigns of the past decades.⁴³ Representatives often get thousands of postcards or form letters from constituents on a salient issue pending before Congress. Those missives are counted and the tallies are reported to the representatives; constituents receive a form letter—usually signed by an autopen or intern—as a response. These direct mail campaigns have an effect because

41. *See id.* at 1046.

42. Eugene Volokh and Jerry Kang presented the most exciting new form of intermediation when they predicted that affinity groups as well as political parties would provide voters with software programs that would either list endorsed candidates in a window that could be opened alongside the electronic ballot, or that might even be able to "vote" for the citizen, who would then merely "send" the ballot to the state. *See* Jerry Kang, *E-Racing E-Lectons*, 34 LOY. L.A. L. REV. 1155, 1168 (2001); Eugene Volokh, *How Might Cyberspace Change American Politics?*, 34 LOY. L.A. L. REV. 1213, 1214-16 (2001). This kind of informational shortcut would improve voter competence considerably, as would the possibility that ballots themselves would provide additional information about candidates and issues. *See* Bill Jones, CAL. INTERNET VOTING TASK FORCE, A REPORT ON THE FEASIBILITY OF INTERNET VOTING: JANUARY 2000; *see also* Elizabeth Garrett, *The Law and Economics of "Informed Voter" Ballot Notations*, 85 VA. L. REV. 1533, 1581-86 (1999) (explaining the need for voting shortcuts and suggesting ways to provide information on the ballot that would improve voter competence).

43. This was a concern mentioned in the legislative history of the Federal Regulation of Lobbying Act, passed in 1946, and has remained a focus of lobbying reform and scholarship on interest group activity at the federal level. *See* *United States v. Harriss*, 347 U.S. 612, 620-21 n.10 (1954).

they provide information to the representative about the views of constituents. But they are also discounted because they are often “artificial” in the sense that the sender would not have cared enough to contact her representative in the absence of a prod and would not have incurred much cost to do so even after being prodded.⁴⁴

Mass e-mails are treated the same way. They seldom reach the representative directly—unless the sender is a constituent with political clout—but instead go into some legislative correspondent’s inbox and receive an automatic or form response. Representatives learn of the e-mail campaign and get a tally of the votes for and against, and this information is relevant to policy decisions although it does not dictate them. Anecdotal evidence also suggests that the volume of substantive, individually written communications by constituents to representatives has increased because of the relative ease of e-mail.⁴⁵ Such individuated communications are typically given more weight by lawmakers. This phenomenon, which is likely to continue given the lower cost of e-mail communication, may change the policy agenda somewhat and require legislators to respond with clearer positions on controversial issues.

Morris claims that online referendums will change our system of governance into a de facto direct democracy, where representatives are mere conduits, implementing the result of popular votes. Presumably, as was the case with direct election of senators,⁴⁶ ultimately the de facto regime will be institutionalized as the de jure one, presumably through a constitutional amendment. This claim misapprehends the reasons why we do not now have—and are not likely to develop—a direct democracy at the federal level. It is only partly because of the inconvenience of driving to polling places and standing in line to cast our ballots, costs that are eliminated by Internet

44. See KAY LEHMAN SCHLOZMAN & JOHN T. TIERNAY, *ORGANIZED INTERESTS AND AMERICAN DEMOCRACY* 194 (1986) (noting that letter writing campaigns are the “least effective and most relied-on lobbying technique”).

45. See e-mail from Jamil Jaffer to Elizabeth Garrett (Nov. 6, 2000, 19:14:46 CST) (on file with author) (discussing change in constituent communications in the House of Representatives from January 1999 to September 2000).

46. See Vikram David Amar, *Indirect Effects of Direct Election: A Structural Examination of the Seventeenth Amendment*, 49 *VAND. L. REV.* 1347, 1352-55 (1996).

voting opportunities, at least for those who have access to computers at home or at work.⁴⁷ It is mainly because the vast majority of citizens do not want to spend time finding information about all the decisions necessary to run a country, analyzing that information, and developing opinions about the right policy. Just as our representatives rationally delegate tasks to expert staff and committees, citizens rationally delegate to representatives most of the tasks required to run government.⁴⁸ Time and attention are limited, and most people vastly prefer to spend their time making money, enjoying activities with family and friends, and relaxing in leisure pursuits than assessing and then voting on twenty to thirty issues per night. Voters in states with numerous ballot measures in each election complain about the time required to cast competent votes once every year or so; for example, voters in Oregon this fall received a 376-page information booklet with data about the twenty-six measures on the ballot in 2000.⁴⁹ Imagine their outrage if they were asked to read such a booklet every evening after dinner so that they could run the government directly through online plebiscites.⁵⁰

Realistically, most citizens will never participate in online referendums. The few who are willing to spend some of their limited time in that way will do so infrequently and only to answer policy questions posed at a very high level of generality.⁵¹ Thus, representatives will still be required, and they will continue to have a great deal of influence because of their control over the details and

47. See R. Michael Alvarez & Jonathan Nagler, *The Likely Consequences of Internet Voting for Political Representation*, 34 LOY. L.A. L. REV. 1115, 1129-31 tbls.2-3 (2001) (discussing preliminary empirical findings about differences in groups' access to the Internet).

48. See generally D. RODERICK KIEWIET & MATHEW D. MCCUBBINS, *THE LOGIC OF DELEGATION: CONGRESSIONAL PARTIES AND THE APPROPRIATIONS PROCESS* (1991) (explaining why delegation is often efficient and rational).

49. See Sam Howe Verhovek, *Oregon Ballot Full of Voter Initiatives Becomes Issue Itself in Oregon*, N.Y. TIMES, Oct. 25, 2000, at A24.

50. See DAVIS, *supra* note 7, at xiv, 23, 180.

51. Paul Schwartz's argument that the entity framing the referendum question will have extraordinary influence on the outcome is not only correct but is a powerful reason why results of polls such as those run by Morris's website should be viewed with a great deal of skepticism. See Schwartz, *supra* note 11, at 1082; see also Garrett, *supra* note 42, at 1552-53 (1999) (discussing importance of framing in electoral outcomes).

implementation of policies determined by popular vote on issues framed in very broad terms. Once we understand that this more limited vision of "direct democracy" is the only one likely, even with the rise of the Internet as a means of political communication, the vision of the future is not radically different—if at all different—from the current system. Polls and focus groups are now influential factors in a representative's decision-making process.⁵² Currently, representatives seek to determine popular opinion with regard to any issue that could potentially prompt tens of millions of citizens to vote in an online referendum—a condition that Morris admits is necessary for poll results to have sufficient force to dictate the actions of representatives. If they believe that voters will rely on the issue when they vote in candidate elections, popular opinion will be a significant factor in current decision making. If the issue is salient enough that it could prompt large citizen turnout in an online referendum, it is salient enough now for the media, challengers, or other policy entrepreneurs to highlight at election time and for voters to use in deciding whether to reelect the incumbent. In other words, it is hard to discern how the possibility of online referendums that do not suffer from the current weaknesses of Morris's polls on Vote.com, e.g., a small, skewed sample of citizens who might vote more than one time in each poll, transforms the current system in which representatives already pay close attention to popular sentiment.

Others at this Symposium have suggested that Internet technology may improve the accuracy of opinion polls, which are hampered now by citizens who use caller identification systems and answering machines to filter phone calls and avoid participating in polls.⁵³ Even under current conditions, some commentators have worried that the ubiquity and influence of opinion polls have undermined the independence of representatives and decreased the quality of their

52. See, e.g., LAWRENCE K. GROSSMAN, *THE ELECTRONIC REPUBLIC: RESHAPING DEMOCRACY IN THE INFORMATION AGE* 58-63 (1995) (discussing the inordinate influence of polls currently and arguing that the system of representative democracy has been undermined); see also John F. Harris, *Presidency by Poll*, WASH. POST NAT'L WKLY. EDITION, Jan. 8, 2000, at 9 (describing extraordinary reliance on polls that characterized policymaking in the Clinton White House).

53. In much the same fashion, filtering technology may undermine pollsters' attempts to obtain representative samples via the Internet.

deliberation. If the polls are seen as more accurate because of improvements in technology, perhaps representatives will be tempted to turn to them more and increasingly abdicate their responsibilities to interact with constituents and participate in the process of preference formation. On the other hand, if the polls that develop through Internet technology are modeled along the lines of Fishkin's deliberative polls,⁵⁴ perhaps they will become a vital part of deliberative representative democracy. But the availability of opinion polls has not, and will not, change our institutions of governance so that the country is run through a perpetual town meeting in cyberspace.

Indeed, depending on how we use the new technology, it might improve the quality of representative government. For example, Internet voting provides new possibilities in designing the content of the ballot so that better information is provided to voters about candidates and issues. If voters could click on a name or ballot initiative and receive more information, perhaps through a statement by the candidates or by groups on either side of a ballot question, voter competence might improve. Or if they could obtain access while voting to electronic versions of slate mailing cards, citizens could be more certain that their votes reflected their preferences. In short, as Bruce Cain argues, the Internet does not necessarily favor one version of democracy over another, and it could be used to foster a move in the direction described by populist democrats or by civic republicans.⁵⁵ What it cannot do is establish direct democracy because it can neither expand the hours in a day nor convince voters to spend additional hours on politics rather than on other more rewarding pursuits.

V. CONCLUSION

My objective in this comment has been to bring a more realistic perspective to the exaggerated claims of Dick Morris and other

54. See JAMES S. FISHKIN, *THE VOICE OF THE PEOPLE: PUBLIC OPINION AND DEMOCRACY* 161-76 (1995); James S. Fishkin & Robert C. Luskin, *Bringing Deliberation to the Democratic Dialogue*, in *THE POLL WITH A HUMAN FACE: THE NATIONAL ISSUES CONVENTION EXPERIMENT IN POLITICAL COMMUNICATION* 3-38 (Maxwell McCombs & Amy Reynolds eds., 1999); see also Sunstein, *supra* note 38, at 84-87 (discussing the relationship between the Internet and Fishkin's work).

55. See Cain, *supra* note 26, at 1012.

mobilization—or transformation—theorists. My objective has not been to deny that the Internet will have some potentially far-reaching effects on the political system. That claim is as unrealistically modest as Morris's vision is radically extreme. Internet voting may affect turnout, especially of younger voters, and it offers new possibilities to provide all voters with shortcuts to improve their competence at election time. The Internet will expand access to information, provided by both purveyors of inaccurate rumors and urban legends on the one hand and by credible news sources on the other hand, and it will engage some interested citizens in new forms of political interactions. It may change our notions of "community" and "interest group" which in turn may change the way that we vote and participate in politics.⁵⁶ It provides new challenges to campaign finance laws,⁵⁷ and it presents new opportunities for expanded and more effective disclosure of campaign contributions and expenditures.⁵⁸ These effects deserve close attention and they will demand that existing political systems adapt to the new technology, much as they have adapted to other "revolutions" in the political world.

56. See, for example, Eben Moglen & Pamela S. Karlan, *The Soul of a New Political Machine: The Online, The Color Line and Electronic Democracy*, 34 LOY. L.A. L. REV. 1089, 1098 (2001) and the comments following.

57. See Ryan P. Winkler, *Preserving the Potential for Politics Online: The Internet's Challenge to Federal Election Law*, 84 MINN. L. REV. 1867, 1882 (2000).

58. See, e.g., *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 408 (2000) (Kennedy, J., dissenting). Justice Kennedy stated:

Among the facts the Court declines to take into account is the emergence of cyberspace communication by which political contributions can be reported almost simultaneously with payment This is a far more immediate way to assess the integrity and the performance of our leaders than through the hidden world of soft money and covert speech.

