

## Review Essay

# Turning GOLD into EPG: Lessons from Low-Tech Democratic Experimentalism for Electronic Rulemaking and Other Ventures in Cyberdemocracy

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Reviewing ARCHON FUNG AND ERIK OLIN WRIGHT, EDS., *DEEPENING DEMOCRACY: INSTITUTIONAL INNOVATIONS IN EMPOWERED PARTICIPATORY GOVERNANCE* (VERSO, 2003).

### ABSTRACT

*Empowered Participatory Governance, or EPG, is a model of governance developed by Archon Fung and Erik Olin Wright that seeks to connect a set of normative commitments for strengthening democracy with a set of institutional design prescriptions intended to meet that objective. It is derived partly from democratic theory and partly from the study of real-world attempts to institutionalize transformative strategies for democratizing social and political decision making. This essay reviews Fung and Wright's recent volume, Deepening Democracy: Institutional Innovations in Empowered Participatory Governance, and considers the relevance of the authors' and other contributors' insights for the future of a phenomenon called "electronic rulemaking." Electronic rulemaking is a species of government on-line deliberation, which the author abbreviates "GOLD," that seeks to facilitate greater citizen involvement in the formal processes of elaborating the binding administrative rules that implement federal law. Although the Fung and Wright volume hardly mentions information and communications technologies at all, there appears to be an extraordinary fit between the capacities of new ICTs and the needs of EPG, in terms of both accomplishing a supportive context and actually implementing the recommended institutional designs. Whether electronic rulemaking will prove a significant way station towards EPG is uncertain, but, given the promise of the EPG experimental agenda and the need to enlarge opportunities for meaningful citizen participation in decisions that*

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*affect their lives, EPG proponents should give more active consideration to the potential role of GOLD initiatives in achieving EPG aims.*

For cyberdemocrats – researchers and activists who champion the potential for new information and communications technologies (ICTs) to improve upon our practice of democracy – electronic rulemaking seems a tantalizing prospect. Federal agencies engrafting web-based tools onto notice-and-comment rulemaking are operating across a domain of policymaking that affects the lives of every American. Within this domain, federal law already mandates, even if indirectly, that agency experts and their politically accountable supervisors take some deliberative account of public input.<sup>1</sup> The federal commitment to electronic rulemaking thus seems to hold out the potential to enlarge significantly a genuine public sphere in which individual citizens participate directly to help to make government decisions that are binding on the entire polity.

Central to this vision of what might be called “Government On-Line Deliberation,” which I abbreviate GOLD, are values of democratic collaboration and participation that align the project of cyberdemocracy with a family of reforms that political scientist Archon Fung and sociologist Erik Olin Wright call Empowered Participatory Governance, or EPG. EPG is a style of deliberative democracy that seeks to “deepen the ways in which ordinary people can effectively participate in and influence policies which directly affect their lives.”<sup>2</sup> Fung and Wright’s superb volume, *Deepening Democracy: Institutional Innovations in Empowered Participatory Governance*, employs a combination of specific case studies and more general analysis to assess the prospects for institutionalizing real-world governance reforms in pursuit of that aspiration. Such reforms would facilitate “active political involvement of the citizenry,” forge

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<sup>1</sup> Agencies engaged in making rules must ordinarily publish their rules in proposed form for public comment. 5 U.S.C. § 553 (c). Under 5 U.S.C. § 706(2)(A), final rules can be set aside by a court if found to be “arbitrary” or “capricious.” Among the grounds available for challenging a rule as arbitrary or capricious is that the agency neglected to take into sufficient account those issues brought to the agency’s attention through public comment on the agency’s proposed rules. *United States v. Nova Scotia Food Prods. Corp.*, 568 F.2d 240 (2d Cir. 1977) (vacating FDA regulations on the processing of smoked whitefish on the ground, in part, that the FDA failed to respond adequately to regulatory alternatives suggested during the notice-and-comment period).

<sup>2</sup> Archon Fung & Erik Olin Wright, *Thinking About Empowered Participatory Governance*, in *DEEPENING DEMOCRACY: INSTITUTIONAL INNOVATIONS IN EMPOWERED PARTICIPATORY GOVERNANCE* 3, 5 (Archon Fung & Erik Olin Wright eds., 2003) [hereinafter *Thinking About EPG*].

“political consensus through dialogue,” and help implement “public policies that ground a productive economy and healthy society.”<sup>3</sup> The authors seek what they call “real utopias,” that is, “pragmatically accessible” reforms that are genuine “waystations” toward a more just and more inclusive form of governance.<sup>4</sup> EPG, as they describe it, is “part of a broader collaboration to discover and imagine democratic institutions that are at once more participatory and effective than the familiar configuration of political representation and bureaucratic administration.”<sup>5</sup>

Although *Deepening Democracy* mentions the use of information and communication technology (ICT) only once, and rather trivially,<sup>6</sup> the twelve authors assembled by Fung and Wright have produced a uniformly well-written, insightful, and well-integrated volume that can be of enormous use to cyberdemocrats. That is because *Deepening Democracy* attends thoughtfully to the significant issue that, so far, is the topic least usefully theorized in the burgeoning literature on electronic democracy, namely, the conundrum of power. Researchers and activists have persuasively demonstrated the theoretical potential for ICTs to undergird more robust democratic practices, strengthening both the deliberative and representative aspects of our institutional life.<sup>7</sup> What has been less successfully addressed is the question of how to get “there” from “here.” In particular, what are the social conditions and conditions of political power that would make it practicable to implement and sustain some version of GOLD that is genuinely collaborative, participatory, and democratic? To put the question another way, to the extent that ICTs might enable state power to be deployed with greater transparency, broader participation, and more stringent accountability, why would those already in power embrace such changes?

In the hope of both doing justice to *Deepening Democracy* on its own terms and also exploiting its insights for the development of cyberdemocratic theory, I will now briefly do three things. First, I will

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<sup>3</sup> *Id.* at 3.

<sup>4</sup> Erik Olin Wright, *Preface: The Real Utopias Project*, in *DEEPENING DEMOCRACY: INSTITUTIONAL INNOVATIONS IN EMPOWERED PARTICIPATORY GOVERNANCE* vii (Archon Fung & Erik Olin Wright eds., 2003).

<sup>5</sup> *Thinking About EPG*, *supra* note 2, at 15.

<sup>6</sup> See *infra*, text at note 58.

<sup>7</sup> See, e.g., A. Michael Froomkin, *Technologies for Democracy*, in *DEMOCRACY ONLINE: THE PROSPECTS FOR POLITICAL RENEWAL THROUGH THE INTERNET* 3 (Peter M. Shane ed., 2004).

sketch the theory of EPG as Fung and Wright present it, and as it is refined by other commentators in their volume. Second, I will argue for the centrality of the issues of power highlighted by Fung and Wright to any realistic assessment of the future of electronic rulemaking. I will do this by elaborating on how questions of power pervade every aspect of the electronic rulemaking agenda as it is currently being both studied and implemented, and consider the lessons to be drawn from *Deepening Democracy* for the future of this particular form of GOLD. I will ask, following Fung and Wright's model, whether electronic rulemaking can itself be envisioned as a waystation en route to more robust forms of EPG. Finally, I will discuss whether there is a role for GOLD or other ICT initiatives in EPG projects other than electronic rulemaking. That is, to the extent Fung, Wright, and their collaborators identify obstacles to EPG in the low-tech case studies they put forth, what might be the role of ICTs in addressing those obstacles or limitations?

### I. WHAT IS EPG?

EPG is a model of governance that Fung and Wright derive partly from democratic theory and partly from the study of real-world attempts to institutionalize "transformative democratic strategies"<sup>8</sup> for democratizing social and political decision making. The model seeks to connect a set of normative commitments for strengthening democracy with a set of institutional design prescriptions intended to meet that objective. *Deepening Democracy* begins with a general essay, in which Fung and Wright explain their model and the issues they believe it poses for both researchers and activists. Four succeeding chapters present case studies of experiments in democratic transformation that, to a greater or lesser extent, illustrate the potential for EPG in action. These are a participatory budgeting program in Porto Alegre, Brazil;<sup>9</sup> decentralized planning efforts in West Bengal and Kerala, India;<sup>10</sup> neighborhood governing councils addressing

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<sup>8</sup> *Thinking About EPG*, *supra* note 2, at 4.

<sup>9</sup> Gianpaolo Baiocchi, *Participation, Activism, and Politics: The Porto Alegre Experiment*, in *DEEPENING DEMOCRACY: INSTITUTIONAL INNOVATIONS IN EMPOWERED PARTICIPATORY GOVERNANCE* 45 (Archon Fung & Erik Olin Wright eds., 2003).

<sup>10</sup> T. M. Thomas Isaac & Patrick Heller, *Democracy and Development: Decentralized Planning in Kerala*, in *DEEPENING DEMOCRACY: INSTITUTIONAL INNOVATIONS IN EMPOWERED PARTICIPATORY GOVERNANCE* 77 (Archon Fung & Erik Olin Wright eds., 2003).

issues of policing and of public education in Chicago;<sup>11</sup> and habitat conservation planning under the federal Endangered Species Act.<sup>12</sup> Five more chapters by other democracy scholars interrogate the Fung and Wright model in light of the case studies. Although all are supportive of EPG, the commentators pose a number of significant questions that remain unanswered, but which the authors believe should animate further empirical research or theoretical inquiry. Implicitly or explicitly, their comments highlight issues related to the generalizability of the EPG model and call into question whether all of the proffered case studies truly amount to EPG in practice.<sup>13</sup>

Perhaps most pressing in this last regard are issues related to what Joshua Cohen and Joel Rogers call the “conditions of background power”<sup>14</sup> that make more or less reasonable “the hopeful, radical-democratic assumption”<sup>15</sup> that underlies EPG. This is the assumption “that ordinary people are capable of reducing the political role of untamed power and arbitrary preference and, through the exercise of their common reason, jointly solving important collective problems.”<sup>16</sup> Doubts about that assumption are not only, or even primarily, a reflection on the capacities of the participating citizens themselves. As Rebecca Neaera Abers poses the key issue:

[W]hy would governments transfer decision-making power to deliberative spaces in which “ordinary people” have influence and why would those ordinary people, most of whom have little political experience beyond the occasional vote, voluntarily subject

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<sup>11</sup> Archon Fung, *Deliberative Democracy, Chicago-Style: Grass-roots Governance in Policing and Public Education*, in DEEPENING DEMOCRACY: INSTITUTIONAL INNOVATIONS IN EMPOWERED PARTICIPATORY GOVERNANCE 111 (Archon Fung & Erik Olin Wright eds., 2003).

<sup>12</sup> Craig W. Thomas, *Habitat Conservation Planning*, in DEEPENING DEMOCRACY: INSTITUTIONAL INNOVATIONS IN EMPOWERED PARTICIPATORY GOVERNANCE 144 (Archon Fung & Erik Olin Wright eds., 2003).

<sup>13</sup> At least some of the Habitat Conservation Plans discussed by Thomas, *id.*, rather plainly do not conform to the requirements of EPG. Bradley C. Karkkainen, *Toward Ecologically Sustainable Democracy?*, in DEEPENING DEMOCRACY: INSTITUTIONAL INNOVATIONS IN EMPOWERED PARTICIPATORY GOVERNANCE 208 (Archon Fung & Erik Olin Wright eds., 2003).

<sup>14</sup> Joshua Cohen & Joel Rogers, *Power and Reason*, in DEEPENING DEMOCRACY: INSTITUTIONAL INNOVATIONS IN EMPOWERED PARTICIPATORY GOVERNANCE 237, 241 (Archon Fung & Erik Olin Wright eds., 2003).

<sup>15</sup> *Id.* at 240.

<sup>16</sup> *Id.*

themselves to time-consuming and often frustrating deliberative processes?<sup>17</sup>

A concluding chapter by Fung and Wright tries to come to grips explicitly with these questions.<sup>18</sup> This chapter, along with the first, can be synthesized into a fairly clear account of Fung and Wright's theory of what EPG is and the conditions likeliest to create and sustain it.

Most generally, EPG is a form of institutionalized deliberative democracy. That is, it is a way of producing legitimate governmental decision making through reasoned public dialogue that is conducted under conditions of equality. As described by Fung and Wright, EPG projects seek to involve those people who are affected by specific, tangible problems in addressing those problems through the deliberative development of solutions that are actually implemented by institutions of state power.<sup>19</sup> Citizen forums to help determine the allocation of public budget resources to specific neighborhood projects in Porto Alegre, Brazil;<sup>20</sup> the "grama sabhas" or local assemblies of citizens engaged in planning efforts in Kerala, India;<sup>21</sup> and the Local School Councils elected for every school in the Chicago Public Schools<sup>22</sup> all illustrate this idea. The emphasis on specific, tangible problems is intended to facilitate collaboration in democratic decisionmaking among erstwhile policy competitors who are enabled to focus their problem solving attention on a constrained set of issues.<sup>23</sup> The direct engagement of ordinary citizens assumes that their experiential knowledge and immediate participation will improve problem solving through enhanced information, as well as increase accountability for the implementation of any solutions developed.<sup>24</sup>

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<sup>17</sup> Rebecca Neaera Abers, *Reflections on What Makes Empowered Participatory Governance Happen*, in DEEPENING DEMOCRACY: INSTITUTIONAL INNOVATIONS IN EMPOWERED PARTICIPATORY GOVERNANCE 200, 201 (Archon Fung & Erik Olin Wright eds., 2003).

<sup>18</sup> Archon Fung & Erik Olin Wright, *Countervailing Power in Empowered Participatory Governance*, in DEEPENING DEMOCRACY: INSTITUTIONAL INNOVATIONS IN EMPOWERED PARTICIPATORY GOVERNANCE 259 (Archon Fung and Erik Olin Wright eds., 2003) [hereinafter *Countervailing Power*].

<sup>19</sup> *Thinking About EPG*, *supra* note 2, at 15-16.

<sup>20</sup> *See generally* Baiocchi, *supra* note 9.

<sup>21</sup> *See generally* Isaac and Heller, *supra* note 10.

<sup>22</sup> *See generally* Fung, *supra* note 11.

<sup>23</sup> *Thinking About EPG*, *supra* note 2, at 16.

<sup>24</sup> *Id.*

Experts remain deeply engaged in such institutions, but, ideally, as enablers, not deciders. Experts are important to “facilitate popular deliberative decision-making and to leverage synergies between professional and citizen insights.”<sup>25</sup>

The case studies in *Deepening Democracy* highlight three design features on which EPG initiatives generally rely in order to stabilize and deepen the practice of its animating principles. First, EPG seeks to “devolve” decision making authority to empowered local units. This reflects the skepticism among many contemporary activists about the problem-solving capacities of highly centralized state organizations.<sup>26</sup> On the other hand, because local units cannot solve all problems themselves and can also benefit from the sharing of insights and from objective oversight, EPG initiatives tend, as a second feature, to depend upon “formal linkages of responsibility, resource distribution, and communication”<sup>27</sup> between local units and central state offices. Finally, EPG must be embodied in state institutions that actually make decisions and are capable of implementing an allocation of public resources that is both more effective and more equitable in addressing public problems.<sup>28</sup> EPG thus envisions a kind of “inside” revolution. The authors emphatically distinguish EPG from the wholly voluntary and spontaneous organizational efforts that seek to influence state outcomes through outside pressure alone. Instead, “these transformations attempt to institutionalize the ongoing participation of ordinary citizens, most often in their role as consumers of public goods, in the direct determination of what those goods are and how they should be best provided.”<sup>29</sup> In adumbrating these three design features – devolution, linkage, and embeddedness in state institutions – Fung and Wright recognize that they are identifying only design features that seem common to EPG initiatives thus far; too little is known to be sure that they are absolutely necessary to the success of EPG.<sup>30</sup>

Of course, EPG projects cannot be expected to arise or be sustained by good intentions or noble aspirations alone. The likelihood of engaging citizens successfully in such ventures will depend, for

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<sup>25</sup> *Id.* at 17.

<sup>26</sup> *Id.* at 20.

<sup>27</sup> *Id.* at 16.

<sup>28</sup> *Id.* at 22.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 20.

example, on their own attitudes and capacities, such as literacy. The case studies seem to demonstrate, however, that attitude and capacity are far from insurmountable obstacles. Even at an early stage in this field of research, evidence shows it is possible to mobilize ordinary citizens, including those of profoundly modest means, into genuinely deliberative institutions that effectively make significant public decisions.

The tougher hurdle is one of political context, namely, the existing allocation of political decision making power in the domain over which activists might wish to achieve EPG. EPG is an effort, as Fung and Wright state, to “try to change the central procedures of power rather than merely attempting occasionally to shift the vector of its exercise.”<sup>31</sup> The existing procedures of power, however, are likely in all societies to reflect some imbalance of influence and control, in which relatively advantaged groups are disproportionately able to direct the distribution of social resources in their favor. As Fung and Wright recognize, these “inequalities of background power can subvert the democracy-enhancing potential of institutional designs such as EPG.”<sup>32</sup> The question is, what can be done about it?

Fung and Wright do not so much offer a confident answer to this question as underscore its significance. They elaborate on the possibility of what they call “countervailing power,” a “variety of mechanisms that reduce, and perhaps even neutralize, the power-advantages of ordinarily powerful actors.”<sup>33</sup> Mechanisms of countervailing power may include such things as effective grass-roots organizing or a judicial order requiring some powerful institution to respond in particular ways to less powerful interests. Fung and Wright do not yet have a theory as to the mobilization of countervailing power or how much is enough to achieve the democratic potential of EPG institutional designs. They do, however, assert four relevant propositions:

- EPG will not yield its intended benefits in a context without a substantial presence of countervailing power;
- The sources and forms of countervailing power that are efficacious in the collaborative exercise of power are likely to differ from those sources or forms that are effective in

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<sup>31</sup> *Id.* at 22.

<sup>32</sup> *Countervailing Power*, *supra* note 18, at 260.

<sup>33</sup> *Id.*



redressing power imbalances under conditions of adversarial interest group pluralism;

- The adversarial and collaborative forms of countervailing power are not easily converted to one another, so that actors effective in mobilizing for the underrepresented in one context may not have the “skills, sources of support, and bases of solidarity,”<sup>34</sup> necessary for success in the other; and
- Well-designed public policies and institutional designs can facilitate, but will not themselves generate, the countervailing power needed for collaborative governance.<sup>35</sup>

Fung and Wright point to political parties, “adversarial organizations,” and social movements as sources of countervailing power, but do not develop the idea much further. They urge that both proponents and critics of EPG move beyond intuitive responses to the problem of power and actually study “the roles, forms, and sources of political power in the distinctive structure and politics” of EPG.<sup>36</sup>

The facial plausibility of Fung and Wright’s four cautionary propositions might alone be thought sufficient to generate a fair amount of pessimism about the future of EPG. EPG’s prospects seem more than a little remote if (a) governance reforms are unlikely to meet EPG’s transformative aspirations without the presence of substantial countervailing power that new political policies and institutions are themselves unlikely to originate, and (b) if we are unlikely to derive effective countervailing power from forms and institutions that already exist and prove somewhat efficacious in the context of “adversarial pluralism” – think of the role, for example, of groups like the Sierra Club or Natural Resources Defense Council in environmental litigation against the federal government for the last three decades.<sup>37</sup>

On a more hopeful note, it may be a mistake to think about transformation in general, or EPG specifically, in quite such categorical terms. Sociology graduate student Rebecca S. Krantz, focusing insightfully on the Porto Alegre case study through the lens of her own research into participatory planning in Madison, Wisconsin, suggests it is most helpful to understand EPG reforms as part of a larger trend toward direct participatory innovation, a trend that may be

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<sup>34</sup> *Id.* at 266.

<sup>35</sup> *Id.* at 266-267.

<sup>36</sup> *Id.* at 286.

<sup>37</sup> *Id.* at 264.

advanced by steps more partial or gradual than the case studies Fung and Wright highlight. The key question, she posits, is not whether EPG can erupt full-blown, but whether “gradualist forms of participatory civic innovation might contribute to more widespread adoption of EPG.”<sup>38</sup> Under the Krantz model, what is needed to nudge things forward is only a political context in which sufficient countervailing power is present to trigger some degree of participatory institutional reform. This reform, in turn, can generate new governance structures, which may influence civil society sufficiently in a positive direction to strengthen the forces of countervailing power, thus reshaping the political context sufficiently to trigger yet another round of institutional reform.<sup>39</sup>

In this way, there might be hope, in the words of Fung and Wright, for a “reorganization of formal state institutions [to] stimulate democratic engagement in civil society, and so form a virtuous circle of reciprocal reinforcement.”<sup>40</sup> This could happen, for example, if institutional reform yielded benefits both to those traditionally empowered and to those traditionally disempowered. As expressed by Rebecca Abers: “[T]he success of participatory institutions depends on a dual process of commitment-building.”<sup>41</sup> The key is for each round of reform to intensify the motivation of “state actors (ranging from politicians to bureaucrats) and ordinary people . . . to support, take part in, and respect EPG experiments.”<sup>42</sup>

Krantz is herself cautious even about this more realistic prognosis, however. EPG depends upon the embeddedness of reform in state institutions, but that embeddedness may itself pose obstacles to genuinely deliberative citizen participation. Already empowered state actors may simply not want to share discursive, much less decisionmaking power with the citizenry. But, as Krantz explains:

If a participatory process educates people about decision-making without allowing them to question the process or the norms of bureaucratic and expert disciplines that constrain decisions, the

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<sup>38</sup> Rebecca S. Krantz, *Cycles of Reform in Porto Alegre and Madison*, in DEEPENING DEMOCRACY: INSTITUTIONAL INNOVATIONS IN EMPOWERED PARTICIPATORY GOVERNANCE 225 (Archon Fung & Erik Olin Wright eds., 2003).

<sup>39</sup> *Id.* at 231.

<sup>40</sup> *Thinking About EPG*, *supra* note 2, at 15.

<sup>41</sup> Abers, *supra* note 17, at 201.

<sup>42</sup> *Id.*

process is less than fully deliberative, and the net effect on civil society could be one of co-optation rather than empowerment.<sup>43</sup>

Taken as a whole, then, these essays perform three services of enormous use to researchers and practitioners in cyberdemocracy: They offer a model of EPG under which institutional reforms would truly deepen democratic effectiveness and legitimacy. They offer a sensible rubric for conceptualizing conditions under which reforms tending toward EPG are likely, at least, to be plausible. They identify the obstacles likeliest to impede the realization of those conditions. These elements provide a firm basis for asking the question: what is the role of GOLD in the future of EPG?

## II. ELECTRONIC RULEMAKING AND EPG

At first blush, electronic rulemaking of the sort now either implemented or on the “drawing board” of the federal “E-Rulemaking Initiative,” does not easily fit the EPG model.<sup>44</sup> As noted above, EPG’s aspirations are (1) to involve “ordinary people” in (2) addressing specific, tangible problems through (3) the deliberative development of solutions that (4) will actually be implemented by state institutions. Electronic rulemaking as presently conceived is open to any citizen and does involve the solicitation of citizen opinion with regard to administrative decisions that will be implemented by the state. But, as Beth Noveck explains, the process is not deliberative.<sup>45</sup> Current electronic rulemaking resembles a global suggestion box, appended to an electronic library. Agencies use the World Wide Web as a vehicle for facilitating both citizen access to information about rulemaking and the capacity to submit comments efficiently. But electronic rulemaking does not yet involve actual dialogue among citizens or between citizens and agencies about either proposed rules or about comments already submitted.<sup>46</sup> Neither does anything about the

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<sup>43</sup> Krantz, *supra* note 37, at 234.

<sup>44</sup> See Regulations.Gov, *E-Government Information*, at <http://www.regulations.gov/erulemaking-2.cfm> (last visited Nov. 19, 2004), for links to key documents explaining the Federal E-Rulemaking Initiative; see Regulatory Policy Program at Harvard University’s Kennedy School of Government, *E-Rulemaking Resource Web Site*, at <http://ksgwww.harvard.edu/cbg/rpp/erulemaking/home.htm> (last visited Nov. 19, 2004), for additional background information and research.

<sup>45</sup> Beth Simone Noveck, *The Future of Citizen Participation in the Electronic State*, 1 I/S 1 (2005).

<sup>46</sup> See Regulations.Gov, *Welcome to the eRulemaking Initiative*, at <http://www.regulations.gov/eRuleMaking.cfm> (last visited Nov. 19, 2004). Phase II of the Federal E-

process provide assurance that agencies will give greater weight to electronically transmitted citizen comments than to citizen views conveyed in the days of pre-digital notice-and-comment rulemaking.

Nor is there any necessary connection between the citizens who participate in electronic rulemaking and some set of specific problems that the rules address and that affect the commenting citizens in specific and tangible ways. Rulemaking operates on a national scale; there is no devolution at work. The interest a rule elicits may have more to do with abstract ideology than actual problem solving. For example, as of the occasion of writing this review, the Department of Education has open for comment via electronic rulemaking a proposed regulation on equal access for the Boy Scouts of America to the facilities of the nation's public schools.<sup>47</sup> It seems a safe guess that there will be a great many people motivated to comment on this issue who have no direct involvement with it. They will comment chiefly out of the desire to prompt regulatory action that vindicates their personal values, whether or not they belong to the Boy Scouts, attend public school, or have children or students who belong to the Boy Scouts or attend public school.

This is not to say that electronic rulemaking, even in its current form, has no significant role to play in deepening the quality of democratic life. The Regulations.Gov website,<sup>48</sup> a centralized portal through which citizens can obtain access to all open rulemaking dockets at dozens of federal agencies, represents an exponential leap in the degree of transparency that attends the rulemaking process. Because of the Regulations.Gov search engine, it is not necessary for citizens to know which agencies are in charge of which rules; keyword searches make it easy to find open rulemakings on a particular topic, no matter which or how many agencies are engaged in policymaking relevant to that topic. It is possible, moreover, that increased citizen participation will increase the quality of rulemaking by bringing to the attention of agency technical personnel a wider range of information

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Rulemaking Initiative, currently under development, will be "a federal government-wide centralized docket management system. This system will allow [users] to access and search all publicly available regulatory material, such as *Federal Register* notices and rules, supporting analyses, and comments submitted by the public." The advent of universal access to public comments under Phase II will enable far more deliberative commenting because of the capacity of each discussant to refer to arguments made by others.

<sup>47</sup> Equal Access to Public School Facilities for the Boy Scouts of America and Other Designated Youth Groups; Proposed Rule, 69 Fed. Reg. 61,555 (2004), *available at* <http://www.ed.gov/legislation/FedRegister/proprule/2004-4/101904a.pdf> (last visited Feb. 1, 2005).

<sup>48</sup> Regulations.gov, *at* <http://www.regulations.gov> (last visited Nov. 19, 2004).

and perspectives that ought to be brought to bear in deciding among regulatory alternatives. The very fact that the government is opening itself to an unprecedented diversity and volume of citizen communication may enhance public confidence in the legitimacy of our administrative government.

Yet, the gulf between these aspects of democratic reform and the transformative aspirations of EPG remain substantial. As the Noveck paper demonstrates, the barriers to moving toward an EPG model are not technological. Software tools already exist that could be deployed to support online democratic deliberation.<sup>49</sup> It is already possible to imagine, with currently available software, the following model of electronic rulemaking: a government agency – perhaps the Environmental Protection Agency – sets up deliberative groups around the country with access to software for conducting online deliberations both asynchronously and in real time. Various of these groups are invited, depending on the issues presented, to develop deliberative recommendations concerning issues on the agency's agenda. The EPA would support "formal linkages" among these deliberative groups; it might even convene regional and national online assemblies of representatives elected from local and regional discussions, respectively. Even if the deliberative groups were not empowered with formal decisional influence, as full-blown EPG would require, such a network of deliberative bodies would much more closely resemble the style of democratic governance that Fung and Wright have in mind.

The reason this scenario seems so unlikely is not that the technology is especially daunting. It is because of the inertial force exerted by the current allocation of power with regard to federal rulemaking decisions. This is true at every level. First, insofar as rulemaking is an exercise in what Fung and Wright call "top-down adversarial governance,"<sup>50</sup> there are numerous firms and organized groups, representing business interests, government entities, and like-minded citizens, who have mastered the current system. They are able either to elicit substantive results satisfactory to their clients or to persuade their clientele sufficiently of the importance of their adversarial activity as to remain viable actors on the current political stage.

In addition, within each agency, there is an existing equilibrium of power for the management of rulemaking that the infusion of new information technologies necessarily threatens to disturb. For one thing, an exponential increase in the volume of citizen comment will

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<sup>49</sup> Noveck, *supra* note 45, at 21.

<sup>50</sup> *Countervailing Power*, *supra* note 18, at 261-62.

necessarily make the job of analysts more difficult, and might well be thought to limit what would otherwise be the discretion of agency experts to formulate and implement their own ideas of regulatory policy, relatively unhindered. Further, the resources to support new technologies and to analyze their output will have to come from somewhere. During a time of ballooning national deficits, the congressional prospects for budgetary enhancements to accommodate electronic rulemaking are slim, and any agency's internal reallocations to strengthen the operations of its CIO are going to make someone else in the agency worse off. Also, there are presumably people within every agency who have succeeded at managing the pre-digital rulemaking process; they might not have the same level of capacity or effectiveness when it comes to managing an electronically enabled process. Even tools that seem apolitical, such as the "relatedness analysis tool," advocated by Lau, Law, and Wiederhold,<sup>51</sup> can alter the balance of power within an agency by helping to produce an analytic process that is more transparent and, therefore, more susceptible to surveillance and control. On the whole, many of the potential benefits of electronic rulemaking are likely to seem both diffuse and speculative to relevant decision makers, while the jolts to existing policy and management practices are likely to seem more focused and more certain.

This does not mean that proponents of a more transformative version of electronic rulemaking are utterly without current and potential sources of countervailing power. The deregulatory forces who seem to predominate in the current Congress might become enamored of deliberative forms of electronic rulemaking if they think that more deliberative policy making will actually delay new regulations, an end that many powerful interests will likely find attractive in itself.<sup>52</sup> Moreover, if deliberative processes hold the promise of sensitizing agencies to adopting regulatory alternatives in a variety of contexts that are more palatable to small business and to state, county, and local entities, that, too, would be a boon for federal legislators. Agency decision makers could come to see genuinely

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<sup>51</sup> Gloria T. Lau, Kincho H. Law & Gio Wiederhold, *A Relatedness Analysis Tool for Comparing Drafted Regulations and the Associated Public Comments*, 1 I/S 95 (2005).

<sup>52</sup> This would not be the first time that reformers of administrative procedure would be suspected of desiring, at base, simply to delay or scuttle rulemaking altogether. Compare OMB Watch, *The Reality of Data Quality Act's First Year*, at DQ-1 (2004), available at <http://www.ombwatch.org/info/dataqualityreport.pdf> (last visited Nov. 19, 2004) ("While promoting data quality may sound reasonable and innocuous enough, many government officials, public interest groups, academics and others expressed a great number of concerns that these particular policies could be misused to delay, derail and dilute safeguards and rules being written at federal agencies.").

deliberative electronic rulemaking as a way of building public support for an agency, always helpful at budget time. And there may exist reform entities, such as the American Bar Association or the Administrative Conference of the United States,<sup>53</sup> who might be mobilized to care about quality of the decision making process, and who would be capable of nudging government forward in a more participatory direction.

One also should not underestimate the possible influence of peer reputation. The trend toward online citizen consultation is global and is likely to accelerate. (Prospects seem especially bright in the European Union, where policy makers are concerned with offsetting anxieties about the “democracy deficit” in an increasingly integrated Europe governed by community-wide bodies.<sup>54</sup>) Agency policy makers travel in international professional circles, where innovation gives rise to bragging rights. For example, in reporting to Congress on its regulatory activities, the Office of Management and Budget routinely refers to the regulatory affairs research of the international Organisation for Economic Co-operation and Development (OECD), headquartered in Paris.<sup>55</sup> The OECD has been a strong champion of cyberdemocracy efforts.<sup>56</sup>

Things also look more promising if we ask a question less ambitious than whether electronic rulemaking is likely itself to be so transformative as to generate EPG. Following Rebecca Krantz’s analysis, the better question is whether, and under what circumstances,

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<sup>53</sup> The Administrative Conference of the United States was created in 1964 to, among other things, “study the efficiency, adequacy, and fairness of the administrative procedure used by administrative agencies in carrying out administrative programs.” 5 U.S.C. § 594(1). It went out of business when Congress, in 1995, declined to continue appropriating funds for its operation. Nonetheless, Congress has recently reauthorized its funding; whether any money is actually appropriated remains to be seen. Pub. L. No. 108-401, 118 Stat. 2255 (2004).

<sup>54</sup> Greece, during its presidency of the European Commission, made a special point of advancing an e-democracy agenda. George A. Papandreou, *e-Democracy for the European Union*, IPTS REPORT (June 2003), available at <http://www.jrc.es/home/report/english/articles/vol75/EDI2E756.htm> (last visited Nov. 21, 2004). Among its initiatives was a project called e-Vote, an effort at EU-wide online polling on important issues facing the European Union. See *e-Vote*, at <http://evote.eu2003.gr/EVOTE/en/index.stm> (last visited Nov. 21, 2004).

<sup>55</sup> See, e.g., Office of Management and Budget, *Informing Regulatory Decisions: 2004 Draft Report to Congress on the Costs and Benefits of Federal Regulations and Unfunded Mandates on State, Local, and Tribal Entities*, at 31.

<sup>56</sup> See Organisation for Economic Co-operation and Development, *Engaging Citizens Online for Better Policy-making* (March 2003), available at <http://www.oecd.org/dataoecd/62/23/2501856.pdf> (last visited Nov. 21, 2004).

electronic rulemaking could come to represent one of those “gradualist forms of participatory civic innovation [that] might contribute to more widespread adoption of EPG.”<sup>57</sup> With the transformational aim stated in such incrementalist terms, it may be that the greatest contribution of electronic rulemaking to EPG would be the imitative effort it spawns at the state and local levels. Rather than pursuing forms of electronic rulemaking now that will immediately shake our adversarial, pluralist system of federal notice-and-comment rulemaking into something collaborative and participatory, the federal government could assess tools and develop model processes for online citizen deliberation which, in turn, would be available for adoption by local governments that would not otherwise have the resources to launch such an effort.

Of course, even this may seem fanciful. It may well be that the burgeoning of ICT-infused deliberative democracy at the local level is better seen as a precondition, rather than as an objective of federal transformative efforts. In administrative procedure, however, federal models have long been influential at the state level.<sup>58</sup> It seems all but inevitable that well-publicized federal experiments in online citizen consultation, even if episodic, would stimulate local efforts along the same lines to invigorate citizen input into public policy making. People would begin to ask, “If they can do it, why can’t we?” It also seems predictable that, the more local the effort, the greater would become the likely expectation that the formal processes of actual decision making would have to take account of the input gleaned from online citizen forums. That is, for the very reasons Fung and Wright tie EPG to local decision making, the pressures to give online citizen consultation genuine decisional influence would seem greatest for smaller government units.

In sum, the obstacles to the promulgation of genuinely deliberative electronic rulemaking strongly resemble the obstacles Fung and Wright identify as facing EPG generally. Those obstacles seem quite powerful enough, in the near-term, to rebuff any serious movement toward an ICT-enabled paradigm shift in the role of citizens in federal administrative rulemaking. They seem less daunting, however, if the objective is not near-term federal transformation, but only sufficient innovation at the federal level both to inspire and facilitate local efforts. A spread of local participatory policymaking could, of course, create a new round of pressure on the federal government to intensify its democratic ambitions as well. Whether any of this is plausible will

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<sup>57</sup> Krantz, *supra* note 37, at 225.

<sup>58</sup> See, e.g., Arthur Earl Bonfield, *The Federal APA and State Administrative Law*, 72 VA. L. REV. 297 (1986) (on the influence of the federal Administrative Procedure Act on state administrative procedure).



require more substantial analysis. It is clear, however, that Fung and Wright provide helpful conceptual tools for assessing the possibilities.

### III. GOLD AND EPG

The foregoing analysis, urging that electronic rulemaking be understood as a possible prod to local Government On-Line Deliberation, or GOLD, necessarily leads to the question: would local versions of GOLD be helpful in institutionalizing EPG?

As a threshold matter, it should be stressed that, while the relationship between electronic rulemaking and EPG may seem attenuated, the more general relationship ICTs and EPG surely is not. Cyberdemocracy devotees will have little trouble, upon reading the case studies in *Deepening Democracy*, spotting innumerable ways in which new ICTs could both enhance the quality of EPG-inspired governance institutions and help mobilize the countervailing power necessary to their generation and sustenance.

The only reference to ICTs in *Deepening Democracy*, made by political scientist Craig W. Thomas, is to the potential for a web-based library of draft and final Habitat Conservation Plans, which would facilitate public input and monitoring and the diffusion of expertise in this Department of the Interior experiment in collaborative environmental planning and management.<sup>59</sup> But, of course, every one of the EPG models described in *Deepening Democracy* would benefit from online repositories of expertise, relevant data, and records of past decisions. This is true for the planning efforts in India, the budgetary assemblies in Brazil, the school councils in Chicago, and even the Chicago police beat consultation groups. Given the ease with which vast amounts of critical information can be made available cheaply to unprecedented numbers of people, one would wish that some sort of online library were incorporated into every effort at democratic reform.

Information and communication technology can also be of profound utility with regard to training, data gathering, and monitoring. In their conceptual overview of EPG, Fung and Wright stress the capacity of EPG institutions to function as “schools of democracy.”<sup>60</sup> The case studies focusing on Porto Alegre,<sup>61</sup> Kerala,<sup>62</sup>

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<sup>59</sup> Thomas, *supra* note 12, at 164.

<sup>60</sup> *Thinking About EPG*, *supra* note 2, at 29, 32. See generally the discussion of EPG’s impacts on the self-development of its participants. *Id.* at 28-29.

<sup>61</sup> Baiocchi, *supra* note 9, at 55-56.

<sup>62</sup> Isaac & Heller, *supra* note 10, at 99.

and Chicago<sup>63</sup> all emphasize the importance of training to empower citizens with the mastery of both data and deliberative processes critical to sustaining effective deliberative problem-solving at the local level. Much of this training would surely be amenable to presentation in the form of online tutorials and simulations. GIS<sup>64</sup>-oriented web sites would enable citizens to visualize much more richly the resources, opportunities and challenges confronting particular neighborhoods, towns, and counties. Interactive GIS tools could enable citizens to upload information to a community web site about the location of environmental hazards, roads in need of repair, traffic safety problems, or other geographically-based public needs.

Similar tools could vastly improve the quality of monitoring efforts during the implementation phase of EPG governance. Projects could be publicly tracked online. Complaints could be channeled more efficiently to relevant administrators. Individual citizens could check on the progress of local agencies in responding to specific needs. Perhaps most famously, the advent of process-tracking software in Seoul, Korea not only enhanced government efficiency, but greatly reduced suspicions of “irregular” practices and municipal corruption.<sup>65</sup>

On top of all this, the proliferation of web-based organizing tools among civil society groups could greatly magnify their capacity to provide the checking and balancing of more powerful interests that is a necessary element of EPG under the theory of countervailing power. The deployment of web-based tools in the 2004 presidential election in the United States enabled the Democrats to compete with Republican fund-raising,<sup>66</sup> turn out enormous numbers of volunteers, schedule countless planning meetings, and elicit more voters for a presidential challenger than in any prior presidential election in American history.<sup>67</sup>

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<sup>63</sup> Fung, *supra* note 11, at 119-120.

<sup>64</sup> “GIS” stands for “geographic information system,” which is a combination of hardware and software designed to enable the storage, retrieval, mapping, and analysis of information tied to specific physical locations.

<sup>65</sup> Seoul’s project is called OPEN, which stands for Online Procedures Enhancement for Civil Applications. See World Bank, *OPEN: Seoul’s Anticorruption Project*, available at <http://www1.worldbank.org/publicsector/egov/seoulcs.htm> (last visited Nov. 21, 2004), for an overview.

<sup>66</sup> Jim VandeHei & Thomas B. Edsall, *Democrats Outraising the GOP This Year But Republicans Still Have Financial Lead*, WASH. POST, Jul. 21, 2004, at A1 (“From Jan. 1 through June 30, Kerry and Democrats raised \$292 million, compared with \$272 million for President Bush and Republicans.”).

<sup>67</sup> See U.S. Electoral College, *1789-2000 Elections*, at [http://www.archives.gov/federal\\_register/electoral\\_college/votes/index.html#source](http://www.archives.gov/federal_register/electoral_college/votes/index.html#source) (last visited Nov. 21, 2004), for popular vote totals for all presidential elections.

The same tools, deployed locally, could have effects of equally profound importance, focused on a smaller venue.

What, then, would GOLD add? All of the tools I have mentioned already would help provide a *context* for sustaining deliberative democracy, but would not extend deliberation itself. Among the most profound potential contributions ICTs can make to EPG is precisely that: to extend deliberation beyond the limited times and limited venues of face-to-face deliberation. I am not suggesting the substitution of one for the other, but an augmentation of face-to-face encounters through computer-mediated discussion. The reliance of deliberative democratic institutions solely on face-to-face meetings necessarily imposes a drastic limitation on the scale of possible citizen participation. By webcasting face-to-face meetings (and perhaps receiving online input even in those sessions), and then allowing conversations to be extended through both asynchronous bulletin boards and self-scheduled real-time online meetings would permit large numbers of citizens to participate who otherwise could or would not.

Delibera, an open source software product to support online deliberation, is being developed at Carnegie Mellon University precisely for the purpose of enabling users to access a rich menu of online deliberative options.<sup>68</sup> Once registered, a Delibera participant logs in and finds herself able to access one or more “forums,” each of which is a set of discussions around a particular subject or objective. Within each forum, there exist both “bulletin boards” for asynchronous posts and a “conferencing module,” for the conduct of online meetings in real time. A bulletin board or a conference can be configured for any topic within the overall framework of the forum. Users can post to the bulletin board either through text or audio. For a live conference, each person’s audio contribution is recorded, so that the conference is preserved as a sequential archive of audio clips. Users also have available an online library, to which they can upload contributions, and polling functionalities. The aim is to facilitate ongoing deliberation among groups of citizens who have available to them a sufficient range

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<sup>68</sup> Thomas Claburn, *Giving the Political Process an Online Boost*, INFORMATION WEEK, Nov. 21, 2003, available at <http://informationweek.com/story/showArticle.jhtml?articleID=16400186> (last visited Nov. 21, 2004). I am Principal Investigator (which is academic talk for “executive producer”) on the National Science Foundation-funded team that is developing Delibera. The team includes political scientist Peter Muhlberger, who developed the detailed experimental plan for our early uses of Delibera and contributed substantially to its design; Robert Cavalier, who directs the Multimedia Laboratory of the Center for the Advancement of Applied Ethics in Carnegie Mellon’s Philosophy Department, and who has taken the lead in user interface issues; and software engineer Stuart Easterling, our technical lead, who is both our senior programmer and chief project manager on the technical side.

of convenient online tools to sustain long-term discussions on virtually any topic.

It is easy enough to anticipate four possible objections to the recommendation to GOLD-enhanced EPG institutions: GOLD costs money. The “digital divide” will distort the population of online discussants. The formats for online discussion privilege those categories of citizens who prefer the modes of communication that work most effectively online. Finally, online deliberation is less likely than face-to-face discussion to induce the feelings of mutual respect and solidarity on which long-term EPG depends.

The first point is undeniable. Even if GOLD is sustained by open source software<sup>69</sup> – avoiding any issue of licensing fees – all software needs support, whether in-house or contracted to others. Any worthwhile system will entail monitoring and the updating of content. The cost of hardware systems administration will go up. These costs, however, are not likely to be prohibitive, and need to be weighed against the benefits. Government agencies may well be able to negotiate favorable terms for some of the necessary services given the volume of business involved. And EPG may lead to ideas for accomplishing sufficient economies in the spending of public resources to generate the revenues needed to sustain GOLD.

The digital divide question seems more serious because it runs counter to the aspiration for genuinely democratic vitality on which EPG rests. The digital divide is not a weighty argument for eschewing GOLD, however. As long as the legitimacy of EPG depends in part on its inclusion of substantial numbers of citizens, it is difficult to see that empowering larger numbers of citizens to contribute through online participation hurts more than it helps. This is true even if not every mechanism for expanding participation reaches every segment of the population with equal success. Moreover, there is no *a priori* reason to believe that the online participating population will always be less representative than the face-to-face participating population. Low-income single parents, people of limited physical mobility, citizens uncomfortable with speaking in public – these are just a few of the population subgroups likely to be underrepresented in face-to-face deliberations. Although significant gaps in access to hardware and Internet service remain, more than half of all U.S. households now have Internet connections.<sup>70</sup> There is virtually no access-based “digital

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<sup>69</sup> See J. T. Westermeier, *Considering the Benefits, Opportunities, and Risks of Open Source Software*, 5 COMP. TECH. L. REPT. 444 (2004), for a thorough discussion of the “open source” concept and its various legal flavors.

<sup>70</sup> U.S. Department of Commerce, *A Nation Online: Entering the Broadband Age*, at 4 (Sept. 2004), available at <http://www.ntia.doc.gov/reports/anol/NationOnlineBroadband04.pdf> (last visited Jan. 17, 2005).

divide” by gender.<sup>71</sup> Even underrepresented populations on the Internet – for example, Latinos and African-Americans, non-college educated Americans, and low-income Americans – nonetheless participate at significant rates.<sup>72</sup> Computers and Internet service are both common features of increasingly large numbers of libraries, senior centers, and community centers of all sorts, which frequently make Internet access available for free to their clienteles.

The more profound long-term “digital divide” issue may pertain not to physical access, but to an unequal distribution of the skills necessary to motivate civic engagement through the Internet. Research is showing that a potential participant’s lack of confidence that he or she knows how to use the Internet in a way that will yield a rewarding experience may be a more significant barrier to Internet use than is the lack of home computer access per se.<sup>73</sup> This does not militate against using GOLD, however, but rather, it underscores the importance of combining GOLD efforts with the proliferation of computer literacy training for all adults.

In her thoughtful chapter in *Deepening Democracy*, Jane Mansbridge points out that innumerable differences among people create inequalities, but not all inequalities are relevant to democratic legitimacy.<sup>74</sup> She asserts that, in a deliberative democracy framework, inequalities are most serious if they coincide with a particular perspective that might otherwise go unexpressed; under a participatory democracy framework, we need be concerned chiefly about inequalities that lead to a sense of being disrespected or prevent individuals from taking advantage of opportunities for participation that help them develop their faculties.<sup>75</sup> It is not clear whether the population most likely to be skilled at GOLD would be unrepresentative of the full range of policy perspectives on a given issue, but this concern should be alleviated by the co-existence of GOLD with opportunities for face-to-face deliberation. The latter concern, however, is more serious. Lack of online adeptness does

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<sup>71</sup> *Id.* at A1.

<sup>72</sup> *Id.*

<sup>73</sup> See generally Peter Muhlberger, *Access, Skill and Motivation in Online Political Discussion: Testing Cyberrealism*, in *DEMOCRACY ONLINE: THE PROSPECTS FOR POLITICAL RENEWAL THROUGH THE INTERNET* 225 (Peter M. Shane ed. 2004).

<sup>74</sup> Jane Mansbridge, *Practice-Thought-Practice*, in *DEEPENING DEMOCRACY: INSTITUTIONAL INNOVATIONS IN EMPOWERED PARTICIPATORY GOVERNANCE* 175, 192-193 (Archon Fung & Erik Olin Wright eds. 2003).

<sup>75</sup> *Id.* at 192.

deprive individuals of taking advantage of opportunities for civic participation that would enable them to develop their capacities for deliberation and problem solving. That is why, with or without GOLD, universal education in Internet literacy ought to be a priority objective of EPG activists. Citizens equipped with the capacities for information, communication, and networking afforded by the Internet may well be among the most profound sources of countervailing power in the history of human politics.

The third likely objection to GOLD, that formats for online discussion will privilege certain categories of citizens over others based on their preferred modes of communication, hugely underestimates the potential of new technologies. This might be a more serious concern if we were stuck with text-only, English-language Internet communications. Delibera, however, already supports both text and audio inputs. It is easy to imagine a version of Delibera or similar software that would support video as well. The addition of language translation software can enable multilingual exchange to a degree never before possible. Protocols for online meetings, such as software-enforced time limits to individual comments, can prevent domination of real-time discussions. Again, there is no *a priori* reason to believe that GOLD will be less potentially inclusive than face-to-face meetings of persons who differ in their articulateness or preferred modes of communication.

Finally, the objection that online deliberation is less likely than face-to-face discussion to induce feelings of mutual respect and solidarity is far from being proven; but even more to the point, this concern is all but irrelevant to institutions where face-to-face and online encounters supplement and reinforce each other. It is a great mistake to envision real space and online encounters as mutually exclusive. Not only do face-to-face interactions strengthen the community-building potential of online interaction, but the possibility of continuing discussions online means that the momentum and sense of common purpose generated by face-to-face meetings can be supported even in the necessary hiatus between such occasions.

Rebecca Abers notes that the case study literature on participatory democracy is, on the whole, pessimistic about whether participation is sufficiently widespread in such projects to sustain the claim of enhanced democratic legitimacy.<sup>76</sup> Given that fact, the appeal of new technologies that conquer the limits of time and space for deliberation, that can be configured to prevent domination and promote civil discourse, and that can hugely broaden the range of potential citizen involvement in policy discussion ought to be profound. The “hard

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<sup>76</sup> Abers, *supra* note 17, at 200.

work” of EPG research and analysis, which Fung and Wright note,<sup>77</sup> ought to include vigorous experimentation with the provision of opportunities through GOLD to enrich citizens’ capacity to participate in collective self-governance at the local level.

ICTs can also be used to create and sustain favorable circumstances for the maintenance of EPG, as well as bolstering its structural features. Deploying ICTs for community organizing will foster the countervailing power that provides EPG’s sustaining context. The Internet can support the “formal linkages of responsibility, resource distribution, and communication,”<sup>78</sup> that Fung and Wright take to be essential to EPG design. Providing online documentation of local government decision making and enabling citizens to contribute their knowledge through both deliberative and data-gathering applications will insure enhanced levels of transparency and accountability. For all of these reasons, development of ICTs aimed at strengthening EPG’s effectiveness ought to enjoy high priority status on the agenda of EPG researchers and activists.

#### CONCLUSION

The editors of and contributors to *Deepening Democracy* provide the foundation for a promising model of democratic governance, EPG. Not only does that model have desirable objectives, namely, effective problem solving, increased equity, and broad participation, but the authors provide a sensible account linking their objectives to particular features of real-world institutional design. They offer reasonable hypotheses as to the potential superiority of EPG in terms of problem-solving and implementation. They make the case that a commitment to real-world problem solving, together with the institutionalization of modes of decision making that include more direct participation by the poor and disadvantaged and in which decision procedures are governed by reason, not power, should tend toward more equitable outcomes.<sup>79</sup>

The authors are under no illusions that these will be easy outcomes to achieve. Yet, they have provided both case studies and a conceptual analysis which, even if short of a blueprint, are both clear enough and compelling enough to inspire considerable interest among cyberdemocracy researchers and activists. From a cyberdemocratic perspective, there readily appears an extraordinary fit between the

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<sup>77</sup> *Countervailing Power*, *supra* note 18, at 286.

<sup>78</sup> *Thinking About EPG*, *supra* note 2, at 16.

<sup>79</sup> *Id.* at 25-27.

capacities of new ICTs and the needs of EPG, in terms of both accomplishing a supportive context and actually implementing the recommended institutional designs. It is not clear whether electronic rulemaking will prove a significant way station toward EPG. What seems clearer, given the promise of the EPG experimental agenda and the need to enlarge opportunities for citizens to participate meaningfully in decisions that affect their lives, is that the future of GOLD at least deserves to be bright.