

**E-Democracy as Deterrence:
Public Policy Implications of a Deterrence
Model of Democratic Accountability**

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Abstract

How is it that democracy seems to work pretty well despite citizens' meager knowledge of candidates for public office? One mechanism of accountability depends on what voters actually know and do. Another mechanism of accountability, what this paper calls the "deterrence model of democratic accountability," depends on what they might know under various hypothetical conditions before the next election. The e-democracy literature has given short shrift to this type of mechanism when considering the impact of information technology on democracy. Consistent with a deterrence model of e-democracy, this paper describes the current public meeting system and suggests a variety of reforms. The reforms assume that this institution, often thought to be the paradigm of direct democracy, has been misconstrued: given a tradeoff between designing a public meeting system around deterrence or public participation, deterrence should be given priority because of its greater efficiency in achieving democratic accountability. But it leaves the proof of this proposition to further research.

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For many years, political scientists have puzzled over the mechanism of democratic control: how is it that democracy seems to work pretty well despite citizens' meager knowledge of candidates for public office? A variety of solutions to this dilemma have been proposed. For example, voters can use a seemingly infinite variety of "information shortcuts," including party label, interest group endorsements, likeability, race, place of residence, occupation, socio-economic status, and religion, as reasonably accurate stand-ins for detailed candidate information (Popkin 1991; Sniderman et al. 1991). Similarly, democracy has a great ability to filter out mistakes in judgment. If individuals taken one at a time are only correct 51% of the time, then when a 1,000 such individuals vote on an issue, statistics indicate that their collective judgment will be correct more than 99% of the time with a high degree of confidence (Page and Shapiro 1992). What these proposed solutions have in common is the assumption that what ultimately counts in a democracy is what people know. They only differ in the types of information they need to know (comprehensive vs. heuristic information); and who needs to be right (the individual vs. the collective).

Another solution to the dilemma of democratic control completely ignores what people know and focuses on what they might know. This is what I call the "deterrence theory of democratic accountability." Douglas Arnold has become the best known advocate of this type of thinking, which he calls the "alternative model" (1993).

Citizens do not instruct legislators on how to vote, nor do they necessarily have well-defined policy preferences in advance of congressional action. Legislators nevertheless have strong incentives to consider citizens' potential preferences when they are deciding how to vote for fear that making the wrong choice might trigger an unfavorable audit. The fear is not simply that citizens will notice on their own when a legislator errs, but that challengers will investigate fully a legislator's voting record and then share with citizens their interpretations of how he or she has gone wrong. (1990: 272-3).

The basic notion of deterrence is central to rational choice theory and can be widely found throughout the political science literature. But it strangely occupies a slum dwelling in the political science discipline most concerned with voter information, public opinion (e.g., Glynn et al. 1998). A few noted public opinion scholars have observed the critical importance of "latent public opinion" to democratic representation (Key 1964; Zaller 1998), but the logical implications of such thinking have not been pursued. Mainstream public opinion scholars still conceptualize public preferences in terms of what's actually in people's minds rather than what might enter their minds prior to the next election as a consequence of external information incentives.

In this paper, I assume that the deterrence model of democratic accountability has at least some validity and that the ongoing revolution in information technology will continue. If

so, what are the public policy implications? In particular, what are the implications for the institution of the public meeting and its corresponding public record?

Surprisingly, the e-democracy literature, like the public opinion literature, has failed to address this question. For at least 20 years, both the scholarly literature and popular literature, have equated e-democracy (the application of new telecommunication technology to enhance the democratic process) with direct democracy. According to this reasoning, if new telecommunications technology doesn't directly change what voters know or do, it doesn't have a material impact. The deterrence theory, in contrast, argues that information technology can enhance the democratic process not only without increasing citizen engagement but also by dramatically reducing it.

Early advocates of e-democracy focused on the ability of new telecommunications technology to replace representative democracy with direct democracy. Many hoped to use new technology to reinvigorate the traditional New England Town Meeting, where voters both discuss proposals and vote on them, bypassing modern style political representation (Toffler 1980; Becker 1981; Naisbitt 1982; Slaton 1992). For the most part, political scientists had a field day attacking these proposals as naïve and utopian (Arterton 1987; Abramson et al. 1988). Later work on e-democracy has explored a vast number of potential effects of e-democracy on society, but has continued to search for direct effects on what large numbers of citizens know or do (Firestone et al; Grossman; Toffler).

For our purposes, the literature on e-democracy can be divided into two categories: the public policy oriented ("dot-gov") and the non-profit and commercial oriented ("dot-org" and "dot-com). During the Clinton Administration, the most popular "dot-gov" issue was whether the Internet is leading to a "digital divide," a world of information haves and have-nots (Wilhelm 2000). When they explicitly deal with democracy, these studies assume that if there is differential access to information, some segments of society will become politically disenfranchised and democracy will suffer. Many bills have been introduced in Congress with the express purpose of reducing this digital divide. More recently, the presidential vote counting fiasco has shifted focus to the potential of the Internet to enhance voting reliability and ease of access. This paper focuses on the dot-gov world but without seeking to change citizen behavior directly.

In the first section of this paper, I will explain the concept of deterrence, the place of intermediaries in a system of deterrence, and the reason that investment in deterrence may be a public good. In the next section, the bulk of the paper, I will suggest specific reforms to make the public meeting system, often thought of as the paradigm of direct democracy, an effective vehicle for deterrence.

By public meeting, I mean a formal public meeting where government officials make laws and regulations and have traditionally been required to post notices of upcoming meetings, invite public comment, vote on legislation, and keep records of what happened at the meeting. By public record, I mean a record that the public has a legal right to access.

My interest in these matters originally stemmed from my experience serving on a school board in Burlington, Vermont. I was surprised by the fact that although only a tiny audience watched our meetings on TV, the school board adjusted to television by making controversial decisions at untelevised public meetings. I was also surprised by the school administration's extreme sensitivity about releasing public records that might not reflect well on itself. Burlington, with a population of approximately 40,000, was the largest city in Vermont. The Burlington school board's budget, larger even than the city council's budget, was the largest budget for a local government in Vermont.

Subsequently, the Secretary of State appointed me to chair a task force on information technology and democracy, where I got a statewide perspective on these issues. Later I got a national perspective on these issues when I participated in conferences put on by the Alliance for Community Media (the individuals who run government access TV channels), the National Association of Telecommunications Officers and Administrators (the individuals who negotiate with local telecommunications providers and fund government access television), and the American Society of Access Professionals (the officials who administer the federal Freedom of Information Act). More recently, I worked on Capitol Hill as an American Political Science Association Congressional Fellow in Communications and Public Policy. As part of that fellowship, I helped research a white paper, co-authored by Senator Leahy (D-Vt) and Representative Goodlatte (R-Va), entitled "The Internet and the Future of Democratic Governance." The examples taken here are primarily drawn from what I know best: Congress (a large, wealthy public body with professional politicians) and Burlington, Vermont (a relatively small public body dominated by amateur politicians).

Deterrence Theory

The deterrence theory of democratic information systems asserts that what counts in a democracy is not what citizens currently know but what they can be anticipated to know under various plausible future scenarios. What is central is not what is already in people's heads but the contingent probabilities it could get into their heads by the next election. Consequently, the impact of new information technology should be measured in terms of potential, not actual, public opinion, where public opinion is defined as what people have in their head and where actual public opinion is a small subset of potential public opinion.

The term "deterrence" is derived from an analogy with military deterrence. The mark of success of America's \$300 billion annual military budget is less the number of wars fought and won than the number of wars deterred by a strong military. Similarly, Western powers have spent more than \$1 trillion on nuclear weapons since 1946. Despite the fact that not one of these weapons has been used in combat, nuclear programs are widely deemed a success. In the words of Aleksei G. Arbatov, deputy chairman of the defense committee in Russia's Parliament: "Nuclear weapons are virtual weapons, designed and deployed never to be used." (Patrick E. Tyler, "With U.S. Missile Defense, Russia Wants Less Offense," New York Times, November 15, 2000, p. A16)

Of course, the basic notion of deterrence is not new either in military or other contexts. The ancient Chinese military strategist Sunzi observed that every battle is won before it's

ever fought. The ancient Roman military strategist Vegetius observed that proper preparation for war reduces its likelihood. But these types of ideas have been strangely absent from the literature on e-democracy.

Deterrence works because it changes the costs of certain future actions, thus making those actions undesirable. In the case of America's military, deterrence increases the costs of military aggression. In the case of America's democracy, deterrence increases elected officials cost of acting opportunistically in relation to their constituents. According to this reasoning, a democratic information system is improved to the extent it raises elected officials' cost of opportunistic behavior so high that such behavior is deterred. Opportunistic behavior occurs when two or more individuals have an implicit or explicit agreement with each other and one violates it without the other's knowledge and consent.

Deterrence theory, as used here, can be viewed as the enforcement mechanism of contract theory (Hart 1995; Salanie 1997), where the contract is an implicit or explicit promise made by a candidate to voters, and the penalty for breaking the contract is the deterrence. Contracts are important because they make possible the division of labor, which is the foundation of civilization, wealth, and good government.

The value of a contract is in direct proportion to its enforceability, the ability to detect and penalize contract breaches. Without enforceable contracts, rational people will not enter them in the first place. In popular parlance, an unenforceable contract isn't worth the paper it is written on. To the extent that contracts between representatives and citizens aren't enforceable, rational citizens will forego the benefits of the political division of labor. In the extreme case, a political system where voters have to do all the heavy lifting, like a marketplace where there is no division of labor between consumers and producers, should properly be equated with barbarism, not advanced society.

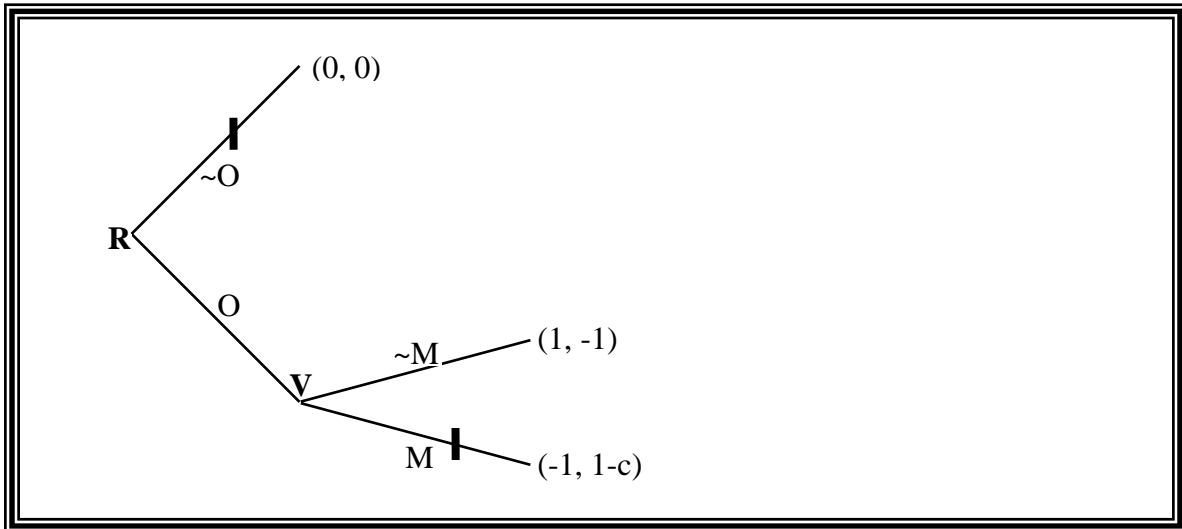
Contract theory, in short, allows us to see that deterrence has a first and second order benefit. The first order benefit is deterring opportunistic contract breaches. The second order benefit is creating conditions that make possible the division of labor via the entering into of contracts in the first place.

Deterrence theory is based on the common sense idea that people will avoid costly actions. Figure 1 depicts this idea in a simple decision tree. Representative R has two choices: act opportunistically (O) or act as a fiduciary (~O). Voter V has two choices:

² The astute reader will observe that this model makes the self-contradictory assumption that the voter can observe the representative's opportunistic behavior before it is in fact observed. Such contradictions are involved in all decisions to acquire costly information, for one doesn't know the exact quality of what one buys before one buys it, but after one inspects the information for quality one has already consumed the information and no longer needs to buy it. This dilemma can be mitigated through the use of Baye's theorem and a more complex decision tree, but it cannot be completely eliminated. The game tree used here provides a simple illustration of the key concepts of deterrence without unnecessary complexity, so it will serve our purposes.

monitor representative R (M) or don't monitor ($\sim M$) representative R. Assume that the relative values of the three possible payoffs for the voter and representative are as follows. The status quo condition is that the representative doesn't act opportunistically and the voter doesn't monitor. This gives our benchmark payoff of zero (0) each. Ignoring the cost of monitoring, let's assume that the best outcome (+1) for the voter is to catch the representative acting opportunistically (who can then be replaced with a representative who doesn't waste the voter's money) and that this is the worst outcome (-1) for the representative (who loses his job). Correspondingly, let's assume that the best outcome (+1) for the representative is to act opportunistically without being caught and that this is the worst outcome (-1) for the voter. The preferences ordering over these three payoffs, then, is 1,0,-1. What counts is not the absolute value but the relative ranking of the three outcomes.

Figure 1. A Simple Deterrence Model



Representative R will choose the course of action with the highest payoff. The course chosen is the “equilibrium path.” All courses not chosen are “off the equilibrium path.” The decision chosen at each decision node is marked by a dash. Deterrence occurs when the anticipated payoff of a decision prevents that decision from being made, thus keeping it off the equilibrium path.

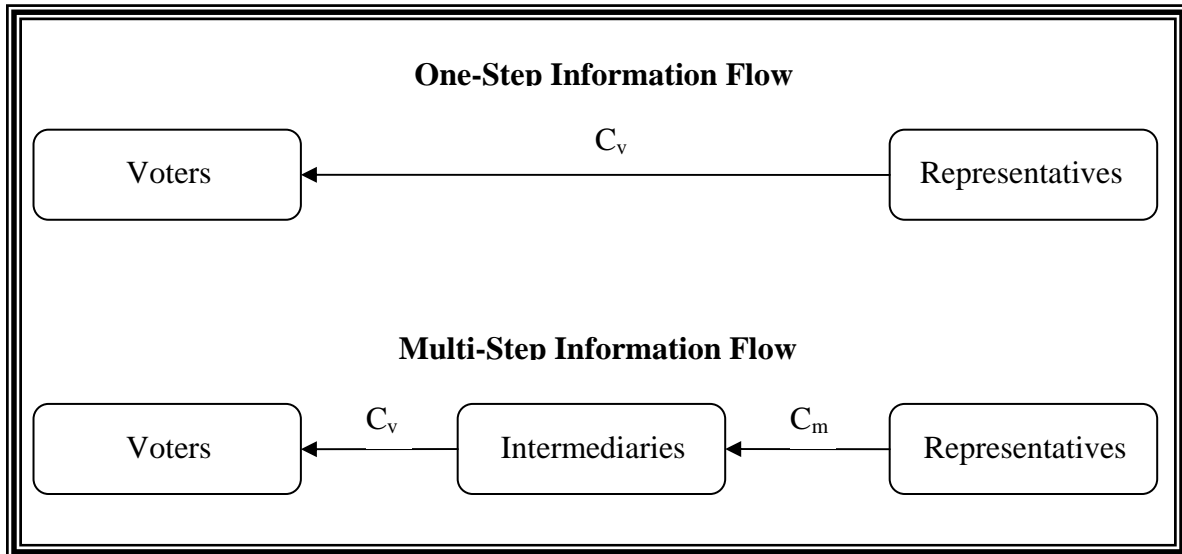
Specifically, the representative reasons as follows: if he acts opportunistically, the voter will monitor him because the voter's payoff for monitoring (+1) is greater than the payoff for not monitoring (-1). If the voter monitors, then the representative's payoff from opportunistic behavior is -1. Since the payoff for not acting opportunistically (0) is greater, he chooses not to act opportunistically. The voter's hypothetical decision to monitor is off the equilibrium decision path because the voter is not in fact called on to monitor. The representative's actual decision not to act opportunistically is on the equilibrium path because it is a decision made in the real world, not a hypothetical world.

Let's now add an important variable to our model: the voter has an unknown cost, c , to monitor. If c is small, then the voter monitors and in equilibrium the representative doesn't act opportunistically. If c is large, then the voter's cost of monitoring outweighs the cost of the representative's opportunistic behavior, and in equilibrium the representative acts opportunistically. If c is a function of information technology and corresponding institutional design, then the state of information technology affects whether in equilibrium the representative will act opportunistically. This model of deterrence overlooks many important details, but it gets across the key idea that decisions on the equilibrium path are driven by expectations about what will happen off the equilibrium path.²

The Relation Between Deterrence and Delegation

The size of c will be heavily dependent on whether voters can delegate the cost of gathering information about representatives to intermediaries. Figure 2 depicts two models of voter information acquisition. In the one-step model, voters directly acquire information about representatives; that is, in one step. In the multi-step model, voters delegate these costs to intermediaries. The direct costs to the voter are labeled C_v . The indirect costs to the voter, born by the intermediary, are labeled C_m . E-democracy models that focus on lowering C_v to the exclusion of C_m may miss an important variable.

Figure 2. One-Step and Multi-Step Models of Democratic Accountability



Political scientists have long appreciated the efficiencies in control that can come from delegating monitoring costs to intermediaries (Downs 1957; McCubbins and Schwartz 1987; Weimann 1994; Lupia 1998). In Arnold's words, "Citizens are capable of learning a great deal when they are presented with information indirectly; they simply have little incentive to acquire it directly" (1993, p. 411). Downs (1957) went so far as to argue that voters could in theory delegate almost all the costs of monitoring representatives to intermediaries, such as political parties, with little loss of control. It is obvious, for example, that it is more efficient for a reporter or opposition candidate to dig through stacks of information, whether in paper or electronic form, and pass on the

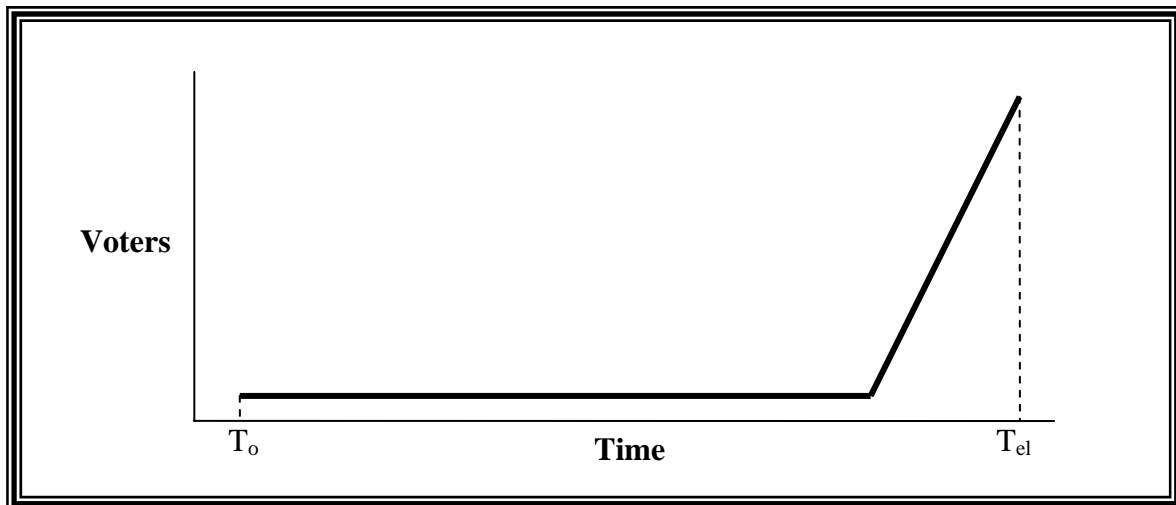
highlights, than for an entire citizenship to do the same. Consequently, C_v in one-step information flows will tend to be much larger than C_v in multi-step information flows.

Many scholarly articles dismiss advocates of direct e-democracy based on evidence that even the best information technology in the world is not going to convince citizens to spend the better part of their lives participating in public affairs and monitoring their elected representatives (Arterton 1987; Abramson et al. 1988). Let's assume that these critics are right and that deterrence will rarely work in one-step information systems. This shifts our attention to the possibility that using information technology to lower intermediaries' costs, C_m , to gather, analyze, and distribute information may be the most effective way to deter opportunistic behavior.

The Relation between Deterrence and Public Records

Citizens hold representatives accountable by being able to trace public policy outcomes to the specific actions of representatives. To achieve this traceability, intermediaries often need good public records. Figure 3 depicts the importance of public records by showing the relationship between voter salience and time. The y-axis marks the number of voters aware of a representative's action; the x-axis marks time. At T_o , when a representative acts on a public policy issue, a handful of people observe his act. If a public record of the act exists, however, by time T_{el} , the next election, the act can be brought to the attention of a larger public.

Figure 3. The Salience of an Issue over Time



Representatives' rational response to this logic is to attempt to change voter incentives to acquire information at T_{el} . Specifically, depending on the act, they pursue one of three T_{el} strategies: 1) If a representative is confident the act will be popular, he tries to create a detailed, accessible public record for later audiences. 2) If he is confident the act will be unpopular, he tries to inhibit the creation of any public record that could be used to inform later audiences. 3) If he is uncertain about the act's future reception and thinks it might be unpopular or controversial, he seeks to maintain maximum control of record creation and access. Maximum control allows him to selectively reveal the record to supporters and hide it from opponents. And depending how the wind is blowing near

election time, he may or may not release it. Given that there will often be large uncertainty about how an act will later be interpreted (today's solution to a problem may in hindsight look unwise), and given that controversial decisions often form the heart of an opponent's campaign, representatives like to maintain maximum control of records, selectively creating and releasing only those they believe will be to their own advantage.

Direct models of democratic accountability focus on the size of the audience at time T_o . Deterrence models of democratic accountability focus on the probability that a much larger audience will be activated at T_{el} .

Kingdon (1989) vividly illustrates the links between deterrence, intermediaries, and public records. He asked a member of Congress if any constituent would actually notice his vote and got this reply:

“No. I know that nobody will notice it right now. People never do. But it may be used against you in the next campaign. I learned that lesson in my first campaign for reelection. About five days before the election day, they hauled out the charge that I was prohomosexual because I cast a vote against some ridiculous District [of Columbia] bill. You see, most people don't notice it. But your opponent will comb down through every aspect of your record, every vote you've ever cast, looking for dirt and using it.”
(cited in Arnold p. 10). The types of audience at T_o are likely to differ.

Often, only special interests will be watching at T_o . If no record exists, they will be the only politically relevant group. Consider a markup hearing, where legislators amend legislation. According to this reasoning, if a markup hearing is opened to the public but lacks a good public record, openness will lead representatives to represent special interests, not the general public. Only when a so-called open meeting is combined with a good record does the public have a chance to become politically relevant. According to this reasoning, advocates of open meetings who do not also insist on accurate and accessible meeting records may actually be helping the special interests, not the public.

Good public records may deter opportunistic behavior without changing elected officials' expected re-election prospects: the elected official need only adjust his behavior to the new higher probability that he could be monitored. However, a system of good public records could still increase an elected official's electoral risk, where electoral risk is defined as a representative's difficulty in accurately predicting the electoral outcome of his behavior. The problem is that present audiences are certain but future audiences are not. Consequently, a shrewd representative should try to minimize his risk by minimizing any discrepancy between attentive voters at T_o and T_{el} ; that is, he should have a bias against good records he doesn't control. When this bias is coupled with the fact that present audiences are more likely than future audiences to be special interests, the result is a political system that disproportionately favors special interests.

Deterrence as a Public Good

For a variety of reasons, private markets for political information, left purely to their own devices, fail to provide adequate democratic accountability. Of course, market failure is not unique to political information markets. The government requires many private entities to disclose information that they would otherwise prefer to keep confidential. But market failure may be worse in political information markets because of severe free rider problems. As many democratic theorists have observed, it is individually rational to be politically ignorant but collectively harmful (Downs 1957; Olson 1965; Popkin 1991). This means that the demand for political information is less than socially optimal.

Here's an example: If a citizen invests in becoming well-informed about the most competent candidate and then goes out and votes for him or her, it is impossible to exclude others from the benefits created by this good citizenship. The citizen bears all the costs but must share the benefits. In contrast, if the citizen invests his time in choosing a consumer good like a suit or car, he gets the full benefit for himself of any information he acquires. The benefits of political information are also likely to be small. In a two party system, the difference among candidates is unlikely to be large, at least in the general election. This is because the attributes of candidates tend to converge toward the middle in two party systems. If the expected choice is between Tweedle-dee and Tweedle-dum, even a decisive vote on who wins won't be worth much for a voter. The voter must also remember that he is only one of many votes, so he must multiply the net benefit of acquiring information and voting by the probability that his vote will be pivotal in the election. In a national election, the probability of this happening is likely to be less than one in a million. In a local election, the probability is still likely to be low.

The government may also be the low cost provider of certain types of information. Consider the public meeting. Let us conceive of the public meeting as part of the two step system of democratic accountability described above. The government generates lots of low cost raw information. Then opinion leaders, including the press, gather, analyze, and disseminate this information for further public consumption. Government subsidy and coordination may be the cheapest or only feasible way to provide these opinion leaders with certain types of information.

Consider the press. Despite the flaws of the public meeting from the reporter's perspective (it usually bores the reporter and wastes his time), press coverage of state and local government is heavily dependent on what reporters learn from public meetings. Reporters need to generate a regular and predictable flow of articles at minimal cost. The public meeting has proven to be an excellent source of information for such purposes. Publishers, except at the largest and wealthiest media outlets, are unwilling to send reporters off on risky, open ended investigations that are unlikely to generate bona fide news.

The public meeting appears to be a low cost, high quality source of news for reporters for three reasons. First, public meetings provide one stop shopping for differing points of view. Officials and members of the public with well-thought out views are likely to

participate at public meetings. This saves the reporter the tiresome process of identifying story ideas and then locating qualified local sources willing to speak on the record.

Second, the reporter gets useful information without sacrificing objectivity. This is because a reporter who must ask a public official for information outside of a public meeting or other public forum must often trade favorable coverage for access and so lower the quality of the news, especially in communities lacking competitive news outlets. This sacrifice is unnecessary when the information comes from a public meeting.

Third, public meetings provide media outlets with “privilege” from libel (Associated Press Stylebook and Libel Manual 1996). Many publishers, especially local ones with minimal budgets for lawyers and damage claims, seek news that is as close to 100% free of libel risk as possible. This is very difficult when it comes to writing about potential behavior against the public interest, because, by definition, this information is harmful to the reputations of the people to which it refers. The most thorough way to protect against libel protection is to check and cross check and investigate every factual claim. But this is inordinately expensive and impractical for competitive news that needs to get to the public quickly.

The law alleviates these concerns by creating legal hurdles for public officials and public figures to bring libel charges against publishers, thus reducing the publishers’ fact checking costs and increasing their range of reportable news. Since a public figure is one who interjects himself into a public debate, any one who speaks up at a public meeting tends to lose libel protection, thus making them safe sources of information. The fact that a government document says a person spoke up at a public meeting gives publications good legal evidence that the person is in fact a public person.

More generally, a publication is automatically granted special privilege from libel for any information presented at a public meeting. Hence, all other things being equal, publishers sleep restfully at night and bolster their bottom lines when they get their government information from public meetings.

Another libel-related reason that public meetings tend to be good sources of information is that the law grants public officials, as the public’s democratic representatives, immunity from libel for questions and allegations raised at a public meeting. As a public official, you may not wonder publicly on the evening news if person X beats his wife—that’s libelous if false—but you can publicly state this concern at a public meeting without having definitive evidence that this statement is true. More to the point, as elected officials representing the public, they can do things like hold oversight hearings and ask probing questions that would otherwise be grounds for libel. Once these comments are made in public, they are fair game for reporters under special privilege.

The symbiotic relation between media and public meetings is reflected in the media’s preferential access to public meetings. In Congress, every committee room and the floor of both houses has a special section reserved for the exclusive use of journalists. In the Capitol, arguably the most valuable political real estate in the United States, journalists

are given offices in the rooms surrounding the floors of both the House and Senate. They need do no more than walk out of their office door to see Congress in action.

Given that the press and other opinion leaders rely on public meeting information, if the information isn't presented at a public meeting—and in a highly accessible way--it may never get reported. Those who believe that the private sector is the preferred source for all civic information should keep this practical reality in mind.

The public meeting, by allowing political actors to “go on the record,” may also be a low cost system for creating credible political contracts. In Congress, very little of what a witness says in a hearing will be new to committee members. The witnesses will be selected for known views. They will submit their comments ahead of time for approval. Often the witnesses will have had extensive conversations in private with the committee members. Nevertheless, the hearing is very important politically because members know there is a huge difference between a private and public statement. If an agency nominee tells one member he favors a particular program in private, the member won't have much confidence that he isn't telling another member something else or might conveniently change his mind in the future, until he's had the chance to ask the same question again in public. Similarly, a member can hold an interest group to its word once the statement's been made publicly. Members also use public meetings to enforce contracts with each other. A member may strike a deal with another member in private, but until the member goes on the record with his agreed upon position, his word will be in doubt.

The public meeting is also a way for members and witnesses to send costly messages to the public. If a member makes a passionate speech on the floor of the House to protect the spotted owl, he sends a different and more compelling message to environmentalists and their opponents than if he only makes that statement in a private meeting with Sierra Club activists.

The alternative of getting everything in a conventional written legal contract would create huge inefficiency and make many government services impractical. Depending on the media to create costly speech can be equally inefficient. Due to lack of commercial demand, the media generally have a very small news hole for political information. And what information they do include may be paraphrased, distorted, and inaccessible after the date of publication. It is thus extremely inefficient to require politicians and others to use the media as their exclusive mechanism to go on the record. It is hard to imagine that the private sector could ever usurp from government the roll of low cost.

In sum, all information about democratic accountability tends to be a public good because it is rational for individuals to be ignorant about public affairs and there is correspondingly little commercial demand for this type of information. The public meeting is a case in point. The public meeting creates records that are valuable for deterrence. And these records are a public good because there is minimal commercial incentive to create the type of records that elected officials need to operate efficiently and the public needs to hold elected officials accountable. The very reason that the average

citizen finds public meetings boring and always will find them boring is why they need to be government funded.

Public Policy Implications

Public policy has been lax to exploit the opportunities created by the new information technologies to make elected representatives more accountable to the public. This is in striking contrast to the to the private sector's use of information technology to make employees more accountable or to elected officials own use of information technology to make their own employees and competing branches of government more accountable.

To illustrate the practical implications of a deterrence theory, I will discuss the public meeting system, the conventional paradigm of direct democracy. After presenting a series of findings suggesting the archaic nature of these institutions, I will offer a series of reforms with the goal of enhancing deterrence, not direct participation. Enhanced direct participation may be a byproduct of these reforms but it will not be the test of success. The goal of a deterrence model is to increase the quality, not quantity, of citizen input. The quantity and quality of information may often be correlated, but this is not necessarily so. These reform ideas are driven by plummeting information costs, which are dramatically changing the economics of public record and public meeting speech.

The Correspondence of Public Records to Public Meetings

In an ideal world, public records would correspond to public meetings. In the real world, they do not.

There are 87,504 government units in the United States.³ These government units are headed by public bodies such as school boards, city councils, county commissions, and state legislatures. Each year these bodies conduct more than 1,000,000 meetings that must, by law, be open to the public.⁴ A government public body ("public body") and a government public meeting ("public meeting") are distinguished from other deliberative bodies, such as an AOL chat room, by their connection to government units.⁵

³ As of June 1997, the U.S. Census Bureau reported that there were 87,504 governmental units in the United States (U.S. Census Bureau, U.S. Department of Commerce, 1997 Census of Governments, August 1999, Volume 1, p. v).

⁴ Author's conservative estimate. The actual number may be much larger. For example, I estimate that the Burlington School Board held approximately 144 regularly scheduled public meetings in a given year. This includes two meetings a month for the full board and two meetings a month for each of its five standing committees. It excludes special meetings and the meetings of temporary board appointed committees. Every time two board members on a committee of three wanted to speak together, a public meeting would have to be held because they constituted a quorum. Large public bodies, such as the U.S. Congress, may hold upwards of 1,000 public meetings per year.

⁵ The U.S. Census provides a detailed definition of a government unit as opposed to, say, an administrative unit of a government unit or a private entity (pp. ix-xi). Many public bodies that are required to hold public meetings, including cemetery boards, airport boards, library boards, planning boards, professional licensing boards, and executive

Although most meetings of public bodies must, by law, be open to the public, only a tiny fraction of the citizens represented by a public body will actually choose to attend any given one of its public meetings. At the same time, the records of public meetings kept by these public bodies usually contain only a small fraction of the politically relevant information generated at the public meeting. The combination of poor attendance and poor records makes the typical public meeting, for most practical purposes, a private meeting.

Attendance

A public body typically subdivides itself into sub-bodies, each with its own public meetings. The entire public body is the “committee-of-the-whole” and it may be subdivided into committees and subcommittees. In Congress, The House and the Senate each meet as a unit on their respective “floors,” but the bulk of their business is done in 198 committees and subcommittees (Vincent 1997, p. 2).

Even small public bodies typically break up into committees where they do the bulk of their business. In Burlington, Vermont, the school board was divided into five permanent committees: personnel, finance, policy, curriculum, and agenda. In addition, there were special committees, often composed of distinguished members of the community appointed by the school board. In Burlington, special bodies were appointed to negotiate with the teachers’ union, select a new superintendent, and consider the school system’s treatment of minorities.

The audience for public meetings is typically largest for the committee-of-the-whole, but I know of no case, even when such meetings are televised, where audience attendance regularly approaches even 1% of the electorate. In Congress, C-SPAN broadcasts 100% of floor proceedings and a smattering of committee hearings. Some committees stream live audio of hearings over the Internet. My estimate, based on sitting in dozens of meetings, is that public attendances at congressional committee meetings averages about 100 persons give or take a factor of two. That comes to about 0.00005% of the electorate. Most committee rooms cannot even hold more than several hundred people. It is fairly often the case that more people want to attend a public meeting than can physically fit in the room. Sometimes a separate room with an audio feed is set up to handle the overflow. Audience members in these rooms—or listening over the Internet—may receive no handouts, see none of the speakers’ visual aids, and have trouble tracking the identity of the person speaking. Crowded meetings tend to be dominated by well-heeled lobbyists who can afford to hire “line standers” to wait in line for hours at a time to secure an audience seat. Credentialed journalists, staff members, and guests of witnesses are usually also guaranteed seats, so the number of seats open to the public may be limited.

agencies such as the FCC, FTC, and FEC, are usually characterized as administrative units of government units rather than government units in their own right.

In Burlington, it was unusual for more than .05% of the population (20 of 40,000) to physically attend a board meeting of the committee-of-the-whole. Often there would be no citizens, just school staff and union representatives. Most residents in attendance were asked to testify by the board or came to seek something specific from the board. Many people only stayed for the part of the meeting that concerned their particular lobbying effort.

When I first joined the board, about 75% of the time the school board's committee-of-the-whole spent in session was televised. After I left the board this number dropped to under 50% when a professional non-profit entity took over video responsibilities⁶. The meetings or parts of meetings that were televised would presumably attract larger audiences, but hard numbers on viewers were unavailable and sustained audiences (e.g., watching for more than 30 minutes as opposed to stopping for a minute while grazing up and down the dial) certainly rarely approached even a tenth of one percent.

With the exception of hearings whose purpose was to solicit public comment, committee meetings rarely had even a single uninvited member of the electorate present. In the entire year I served on the school system's personnel committee, not a single member of the public attended a meeting. An uninvited guest was so rare that it was always cause for notice.

One especially noteworthy occasional audience member was the education reporter for the local paper, the Burlington Free Press. The local reporter, who is supposed to stand in for the public, has a special status in Vermont open meeting law. Local reporters can request that a public body send them a copy of meeting notices and agendas. Other individuals must actively look for these notices in one of three public places designated by the board.

School board meetings in Burlington and more than a half dozen surrounding communities constituted the education reporter's beat. If only because of scheduling conflicts among the numerous public meetings scheduled by these boards, a single human being could attend only a small fraction of school board meetings. Although Burlington had by far the largest school system in Vermont and also received the lion's share of coverage in the local newspaper, I recall that this reporter attended less than half of the meetings of the committee-of-the-whole, and I do not recall her ever attending a committee meeting. Perhaps she attended 5% of the total public meetings conducted by the board. Her attendance at portions of meetings that dealt with controversial issues,

⁶ Meetings held outside school administration headquarters were not televised. These included budget hearings and other meetings held in school buildings throughout the district. Special meetings, such as to ratify one of five union contracts, would also not be televised, ostensibly because the meetings came at an irregular time and didn't fit into the predetermined TV schedule. (This was an interesting use of TV because the contract settlement meeting, which invariably averted a threatened strike, was arguably the most important, controversial, and reported action the school board would take in the course of a year.) After the school board met in executive session for an indeterminate period of time, the camera crews would leave, even though the meeting would continue after the secret session. Later, the school board transferred video coverage to a non-profit entity, which reduced coverage to every 2nd regularly scheduled meeting.

such as votes on agreements with the teachers' union, was high. Despite her low attendance at public meetings in general, most of the news she reported on school policy reflected issues already posted on board agendas or raised at board meetings. I do not recall a representative from the electronic media ever attending more than a small fraction of a meeting, although the TV cameras might be waiting outside a meeting to get a quick comment after a controversial decision.

Record Fidelity

Meeting records can be divided into video, audio, and print. Print records can be further divided between verbatim records and summary records. A verbatim record contains a complete record of every word spoken. Prior to publication, individual members of public bodies typically reserve the right to make off-the-record alterations of comments in the verbatim record of a public meeting. These changes require no public record.

Summary print records are ubiquitous for all types of public meetings. Audio records are less common, and video records even less common. Generally, the higher the recording media's fidelity to the meeting content, the less frequently the recording media is used. Verbatim print records, except for the largest and wealthiest public bodies such as Congress, have historically been rare because they required a skilled and expensive stenographer.

In the typical legislative cycle, from agenda setting to final bill passage, there are frequently gaps where public records are either wholly missing or practically useless. Congress mandates that committees keep thorough records of their proceedings and make these available to committee members. But it leaves it up to the discretion of the committee chair whether or not to make these records public. For example, it is rare for committees to release a public record of their markup sessions. Markup sessions, where members propose amendments to legislation, are otherwise open to the public and widely attended by lobbyists.

The Congressional Record contains a verbatim record of words spoken and votes taken on the floor of the House and Senate.⁷ In contrast, minutes of a Burlington school board meeting only contained a "general description" of the meeting. This included the place, date, and time of the meeting; the names of the board members present; the names of the people who spoke; the subject on which they spoke; and the motions passed by the board. Every hour of a meeting would generate approximately one page of minutes. The descriptions of deliberations were of the sort: "So-and-so spoke about foreign language," or "So-and-so spoke about all programs." (Burlington Board of School Commissioners,

⁷ As with many public bodies, it is a verbatim record subject to editing. Several years ago I attended a C-SPAN training seminar for academics interested in using C-SPAN videotapes. One speaker pointed out that the amount of editing appears to have lessened as a result of C-SPAN and the greater ease of comparing a video record with a verbatim transcript. Individual members may now be afraid that changes to the print record may draw TV news coverage of the comments they want hidden.

Minutes from March 22, 1994). The arguments were neither summarized nor quoted. Motions were often ambiguously expressed (e.g., a motion might be “to approve the budget submitted by the finance committee”), revealing little useful information to anyone without substantial background knowledge or a willingness to do a lot more digging.

The detail with which votes are recorded varies significantly. In Congress, roll call votes are common. A roll call vote allows a voter to connect a lawmaker with a piece of legislation. The U.S. Constitution states that “the Yeas and Neas of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal...” (Article 1, Section 5, Clause 3). In Burlington, roll call votes were rare, even in the committee-of-the-whole. The names of the two board members who proposed and seconded a motion would be included in the minutes but otherwise the minutes would only include information about whether or not a motion passed.

The fidelity of records tends to decline with the breakdown of the public body into subgroups. Thus, the record of the committee-of-the-whole tends to be more accurate than the record of committees. For a given public body, there is usually a large variance in the fidelity of records for different public meetings.

In Burlington, committee records were usually kept by the officials who attended the meeting. Dissenting views expressed at the meeting would rarely find their way into the record. No video or audio records were created. On the personnel committee on which I served, the accuracy of the summary print record was usually dependent on the checks and balances provided by the handful of people present: two or three board members and one top level administrator. Although Vermont law required minutes to be finished and submitted for the public record within five days of a meeting, I do not recall anyone noticing, let alone objecting, when this process took considerably longer.

For congressional committee proceedings, there appears to be an important distinction between creating records and making them public. Committees must keep detailed print records for the use of their members. But it is up to committee chairs to determine what records become public and on what terms. The committee chair also decides whether to create a video record. The lack of publicly accessible records has led to the growth of a private industry that attends meetings and creates its own public record for sale. This competition may have spurred Congress to do a better job making its committee records both accurate and accessible.

The lifecycle of a public record based on a meeting may be viewed as going through four stages. 1) The meeting takes place. 2) The record is created. 3) The record is made public. 4) The record ceases to be made public. The timing of steps 3 and 4, when a record becomes public and ceases to exist, may be politically important.

Often, records are not made available when they are most politically useful. In the U.S. House of Representatives, complete records of public hearings are usually not published until after the next election. Committee records belong to Congress, not to the National

Archives. Politically sensitive information, such as the proceedings of markup hearings, may not be available for 30 years (Rule VII, Rules of the House of Representatives, 107th Congress). Information designated as containing “personal data” may not be disclosed for 50 years. In Burlington, public records were often not available until after a decision was a “done deal,” thus creating major new hurdles for any potential opposition. Vermont law stipulates that records can be destroyed after 5 years.

Often, records are destroyed before the next election or before they might become politically useful. This problem is most acute with video records, which are often not subject to public records law. The use of a third party to keep records may also eliminate any requirement to keep a record. Even third parties indirectly paid for by tax dollars, such as public, educational, and government access channels, may be exempt from public records law.

In Congress, C-SPAN, an independent non-profit, broadcasts and records Congressional proceedings. These are available online for only a matter of days. In Burlington, videotapes of meetings were created by a non-profit educational access channel, and then erased after 30 days. In Vermont, the public records law does not cover access channels because they are not considered units of government. The channels may be run by government officials, but they are funded by cable operators out of a special franchise fee imposed on cable TV subscribers.

A typical pattern is to spend a large amount of money to broadcast public meetings. The money is spent on expensive equipment and professional staff to make the broadcast and the public officials look as professional as possible. It is argued that a professional broadcast, rather than just making elected officials look good, is in the public interest because it increases viewership and thus direct democracy. But when it comes to keeping even the most basic records, let alone making them publicly accessible, money is not available. For the non-profit educational access channel that broadcast Burlington and surrounding school board meetings, the ratio of total expenditures to record keeping expenditures was probably 1000 to 1. I estimate the cost of videotape for one year of recorded board meetings for Burlington would have cost less than \$100, probably much less.⁸ The board was composed of representatives from each school district. Sometimes, as in Evanston, Illinois and Denver, Colorado, no record is kept at all. The public meeting is broadcast live, but no videotape is made. At the other extreme is Washington State, where the non-profit legislative channel makes available online the proceedings of every public meeting, including committee meetings, going back to 1997. Middlebury, Vermont (population 8,000) keeps videotapes for five years and also makes them available anonymously via the public library.

⁸ Only every second regularly scheduled meeting of the entire board was broadcast. Usually, the camera crew left after the board went into executive session. Assuming 12 televised meetings per year and three hours per meeting, that comes to 36 hours of videotape. Consumer grade VHS Videotape cost about \$1/hour, for a total cost of \$36.

Sometimes records are created but political use is forbidden. As noted below, public officials are notorious for making it difficult, as a practical matter, for potential critics to access unfavorable information. But it is controversial to embed such policies in a public law or rule. Extensive use of third parties to keep records solves the problem. Congress pays for and controls the video coverage on the floors of the House and Senate but grants credentialed media the right to use the video feed for news purposes.⁹ Once a media outlet picks up the feed and attaches its logo to it, the record becomes its property and subject to the full rigors of the copyright law. Consequently, it becomes illegal to use the video for political purposes without getting permission from the copyright holder. In contrast, if the government broadcasts the proceedings, it would be illegal for the government to grant itself a copyright on public property and then use that copyright to exclude public use. C-SPAN does maintain a long-term archive of congressional hearings, but to access this archive, a user must sign a contract stating the video will not be used for political or commercial purposes.

The copyright exemption only works for public meetings broadcast by third parties. If the public body keeps its own copy, that copy may not be protected by copyright law. For this purpose, another tactic, of questionable legal validity, is to use contract law. The government keeps a public video record but requires a user to sign a contract that it will not be used for political purposes.

To get a copy of floor proceedings in the U.S. House of Representatives, for example, a citizen must go to the Library of Congress, pay more than \$100/hour for videotape, and sign a contract with the following text: "The use of tape duplication of broadcast coverage of House proceedings for political or commercial purposes is expressly prohibited by the rules of the House of Representatives." The contract adds that any violation of these terms is a criminal offense and that violators must indemnify the Library of Congress for all attorneys' fees necessary for enforcement.

Members of Congress, however, are exempt from this rule because they do not see their own use of video records to be political in nature. As part of their press releases to local TV stations, members often send video clips of their floor statements. The local stations appreciate this information because they don't have the resources or incentive to do their own monitoring of Congress. While the U.S. Senate is in session, Senate press secretaries may send out 50 or more video clippings of floor statements per week. Once the clip is aired by the TV station, it becomes the station's property and only accessible to an opponent at the station's discretion.

The Accessibility of Public Records

In an ideal world, the cost of accessing public records would not deter their use. In the real world, the cost of accessing public records is usually prohibitive.

⁹ Committee chairs also sometimes allow favored trade associations, such as the National Association of Broadcasters and the National Cable and Television Association, to videotape hearings for their own internal communications to members.

The accessibility of a public record refers to how much it costs to access useful information about the public deliberations of a public body, where costs can be measured in a user's time, money, or other valuable resource. A record that is very costly to access is, for practical purposes, a private record. Given the high cost of accessing most public records, combined with the low odds of finding useful information, only an extremely motivated individual, such as an opposition candidate, is likely to be motivated to use a public meeting record.

Although many types of government information are now available online, it remains rare for even a print version of a public record of a public meeting—or any other record with direct bearing on the performance of a public official--to be made available online. In Congress, the Congressional Record, which provides a print version of floor proceedings, is available online. But committee meetings are usually not, except by private vendors that charge large amounts for access. In Burlington, a recent inspection revealed that no public meeting records are available online. The city of Annapolis, Maryland, next to town I currently live, has an “Electronic City Hall” with large amounts of visitor and business information but no city council minutes or written testimony.

Compared to the costs of accessing a record online, the costs of accessing a record stored at a physical location are often large-- especially if the requester is looking for information that does not reflect well on a powerful public official, a common type of information to seek, which public officials know very well. These costs can be broken down into categories, including writing, travel, meeting, notoriety, and government fees:

Writing costs include finding out how to write an information request, finding the right person or office to send it to, writing the request, and often writing follow-up letters. These may include clarifying an initial request, elaborating on one's willingness to pay for staff time and photocopying, sending pre-payment, refining search ideas, complaining about non-compliance with earlier search requests, and starting the process over again when referred to another office.

Travel and meeting costs include finding directions, setting up an appointment, driving, parking, waiting to meet with a records officer, meeting with the records officer, rescheduling the meeting because of unexpected delays, and starting over again because of incompetence or delaying tactics. Documents may also be located in different places. For example, print records may be located near the place where the public meetings are held but video records may be held across town or in a regional facility serving many public bodies. For parents with young children or people with other dependents, travel costs may include hiring a babysitter or caretaker. For a worker, they may include taking time off from work during mid-day. Most records can only be retrieved during government working hours. In Vermont, the public records law stipulates that records only need to be accessible from 9am-12pm and 1pm-4pm.

Notoriety costs. It is often hard to hide the purpose of a search from a public official. Either one must tell a staff person explicitly what one is interested in so that they can find it. Or one must look through original copies oneself. To ensure that the originals are not

stolen or doctored, a records official may carefully watch one's doings. They may also insist on doing the photocopying themselves to preserve the originals and monitor the photocopying usage. Since a public official is likely to know the individual doing the requesting, the type of information requested, and the general political environment, meaningful anonymity for a requester is difficult.

At the same time, public officials often interpret accessing a public record as an extremely hostile act. In the words of an investigator for the *Wichita Eagle*, a Kansas newspaper, "What we found was that many of these offices were very protective of their records. What concerned me a great deal was the extent of the questions when someone asked for a record, questions an ordinary citizen would find intimidating" (Brown 2000, p. 7).

In a small or even a large government, word will often get around in the central office that so and so is looking for a certain type of information. Senior officials will immediately speculate on the person's motives and seek to counter likely damage. A requester may find it plausible that a smear campaign will be started to make his findings less credible. The smear campaign may not be public; it may just involve a few individuals important to the requester. A potential requester may fear that somehow or other, in ways having nothing directly to do with his request, his life will be made more unpleasant. The means available for untraceable and deniable retribution by a person in power are often great. Perhaps the parent fears that by alienating the superintendent she will by some unknown chain of events lose her good relationship with the PTO president, her daughter's teacher, the school's principal, or fellow parents at the school picnic. Perhaps she fears that as a result the school principal will no longer grant her requests to have her child placed in classes with desired teachers. Simply the fear of becoming controversial in a community is a powerful motivator for some. In Burlington, local businessmen feared being associated with a controversy that could alienate potential customers with different views. Another reporter involved in the *Wichita Eagle* investigation mentioned above found that public officials "would laugh at her and otherwise make her feel uncomfortable for requesting public records." She continued: "People just think you are weird, that you are one of those crazy citizens who make trouble, who goes to city commission meetings and talks a lot" (Brown 2000, p. 8).

Government Charges. Governments may charge for staff time and photocopying costs. In Vermont, someone requesting records that will take more than 30 minutes of staff time must pay for staff time as well as photocopying costs, usually more than 10 cents a copy. Unless a search is highly focused, it may soon be prohibitively expensive. The problem of researching meeting minutes is compounded when those documents are not self-contained. Most meeting minutes will refer to a host of documents that are the substance of the meeting but are not contained in the meeting minutes themselves. Gathering all the documents referred to in a single meeting may be a substantial undertaking.

Each of the above costs may be compounded when one seeks to do research across multiple, even thousands, of districts. For example, a public official, activist, or journalist may want to identify and learn from the experiences of other public bodies

facing similar problems. This information may only be available in the official public record, which, as we have seen, is often incomplete and inaccessible. The difficulty of making valid generalizations about local government across the United States may be one reason that studies of local and even state government occupy a slum dwelling in the field of political science. More than 95% of published political science research on government units focuses on the federal government, with much of the balance devoted to state governments and a handful of major U.S. cities. This is striking given that America has a federalist system of government, with most government services still administered locally. For example, the number of government employees in K-12 public schools alone is approximately three times the size of the entire federal civilian workforce.

A major problem with public records access is that public officials routinely violate the laws concerning public access (Davis and Chance 2000; Brown 2000; Gordon 1979). In general, the penalties for violating the law are minimal. Governments rarely police the law themselves, and they are hesitant to bring action against a fellow government official. In Vermont, the Secretary of State had a close working relationship with the town clerks. It would not have been smart politically for him to alienate them. Governments usually require individuals to come forward with the complaints. In the case of open meeting violations, it is often only the public officials involved who have any knowledge of the violation, and they rarely like ratting on their colleagues. The penalties themselves are minor. And it may be necessary to prove malice, rather than just incompetence, to generate a penalty. In practice, it is almost impossible to prove malice. In Burlington, the superintendent left office in the midst of a citizen led investigation of his accounting practices. He walked off with many of the school system's spreadsheets and his own personnel records. The school board asked the superintendent to return the information but did not investigate whether the returned documents were complete and unmodified. It also did not publicly disclose the extended absence of the documents.

Cost to Produce Accessible Public Records

In an ideal world, public records should be produced and made accessible at minimum cost to the government. In the real world, this rarely happens.

The Issue of Control

Members of public bodies typically seek maximum control over public record production, storage, and access. This desire can be very costly.

Production. As a rule, public officials are terrified that video cameras and microphones might catch them saying or doing something that they consider private. They worry that microphones or video cameras will be left on before or after a meeting and catch an embarrassing comment. They worry that they will not be able to make a private comment to a colleague because a microphone in front of the colleague might somehow pick it up. In New York City, the city council refused to wire the chamber for video because they were fearful of giving up control of the video cameras. They liked to watch them being set up and taken down. Robotic cameras are even more of a threat. Who knows what might be videotaped when the cameras are invisible? In Washington State,

a remote non-profit channel controls 37 robotic cameras in all 11 committee rooms in the state legislature and in the Supreme Court. A single individual can simultaneously control the audio for all eleven rooms. And a single individual can simultaneously control the three cameras per committee room. But such a high level of automation is rare. In Burlington, the school board paid \$52/hour, including time to set up and take down the cameras, for a three member video crew. When coverage was taken over by a regional non-profit, travel time to board meetings became an additional expense.

Storage and Access. Public bodies like to keep records under local lock and key, even if this type of control is costly. Many companies, especially small companies, subcontract their data services to independent vendors who can take advantage of economies of scale and maintain state-of-the-art facilities. Similarly, it would be most efficient for small government bodies to use centralized government servers to exploit economies of scale in records storage and access. Independent government providers could also do a better job guaranteeing anonymous access. But these efficiency considerations conflict with the desire of public officials to keep maximum control of records pertaining to themselves. In Congress, all information systems are maintained locally by each branch of government. In Burlington, all records were kept under lock and key by the superintendent. Given a choice between putting a potentially embarrassing document on the Internet and requiring staff time to locate, read, redact (i.e., black out confidential information), and mail out a public record, most public officials would prefer the latter, even if it costs the public more and provides an inferior service.

Voting. Roll call votes are rarely taken and recorded because members say it would take too much time to manually record the numerous votes often taken by public bodies. Only a tiny fraction of public bodies use electronic vote counting methods to tally and record votes. In Burlington, it was not uncommon to have 20 or more motions in an evening, including amendments to motions on the floor. If the votes of all 13 members had to be tallied and recorded for each motion, it probably would have added somewhere between a half hour and an hour to the length of each meeting. Moreover, someone would have had to do this unpopular task. In Congress, voting in committee is also done manually. A single recorded vote on the floor can take more than 15 minutes.

The Issue of Cost

A favorite excuse for poor records retention is cost. In Chicago, the mayor's cable coordinator hired a consultant to write a report on the cost of providing video coverage to the city council. The consultant said it would cost more than a half million dollars. The mayor and the city council decided this was too expensive. When I told the city's cable coordinator that Chicago was the third largest city in the United States, yet small towns in Vermont with under 10,000 residents somehow managed to televise their meetings, she had no response.¹⁰ In Burlington, the partial coverage of board meetings was justified

¹⁰ Over the course of more than a year, starting with the mayor's cable coordinator, I repeatedly tried to get the consultant's report. Although the cable coordinator initially promised to send the report, she never sent it, even after multiple reminder calls. Later, I

based on cost. The educational access channel also argued it was wasteful not to recycle meeting tapes after 30 days.

This is a baffling position, given government's widespread use of video records to deter even relatively minor crimes and naughty behavior. For example, many cities now operate thousands of expensive remote video cameras, attached to VCRs, to monitor public spaces. A single public garage may have 25 or more cameras. Public shopping districts, dangerous neighborhoods, traffic lights, and public transit stops are now favorite spots for government run video cameras. A large public high school may have up to a thousand cameras. Hundreds of school buses, even those catering to young elementary school children, may each have one or more cameras and VCRs. The prime purpose of these cameras is to deter bad behavior through the creation of a record. Rarely does someone ever watch the videotape. Yet public officials see no inconsistency between their positions supporting this pervasive public surveillance network and the position that recording public meetings is prohibitively expensive.

Public Meetings As a Vehicle for Democratic Accountability

In an ideal world, the public meeting would make public officials accountable to the public. In practice, they are often used as simple PR vehicles for incumbent office holders.

Garbage in, garbage out: even the most thorough and accessible system of public meeting records will fail to increase the accountability of public officials if the information generated by a public meeting is designed simply to further incumbents' career ambitions. For example, if roll call votes are structured in such a way that only popular amendments and bills are subject to roll call votes while unpopular measures are secretly included in larger popular bills and never subject to an explicit vote, then public records of roll call votes will not contribute much to democratic accountability. Finally, if authoritative dissenting voices and exposes of procedural shenanigans do not find their way into the public meeting, they will not show up in the record.

Even the broader standard of public disclosure, which subsumes public records as just one part, fails to achieve democratic accountability. The basic idea behind the design of today's public meeting is that meetings of public officials to discuss and vote on the public's business should be public. But this standard does little to guard against PR garbage. If all a public meeting generates is self-serving garbage information, then all that public disclosure will generate is garbage at public expense. The practical fact is that almost every disclosure law has a loophole. The legislative process is long and complicated, and there are a million and one legislative tricks to hide controversial actions. Unless 100% of every meeting of every legislator, staff member, and external

called my mother-in-law's Chicago city councilor, who said he made several requests to get the report from both the cable coordinator and a top mayoral aid but was unsuccessful. An aid in the cable coordinator's office told me the mayor didn't want the city council to have video coverage because it would give the council a new public platform and undermine the mayor's power.

ally is 100% public, it is easy to channel controversial decision making to invisible or at least low visibility venues. Even if a perfect record existed of 100% of the legislators' actions, it would be easy to delegate controversial negotiations to staff and lobbyists who are not covered by public meeting law. In the extreme, we might imagine a legislative body that introduces one bill per year and meets for ten seconds to introduce and vote for the bill without even a roll call vote or an opportunity to express dissenting opinion on the record. This scenario approximates what exists in a dictatorship or a public body without internal dissent.

In practice, this does not happen in democracies because of political competition. Public bodies are made up of competing individuals. Each individual is granted one vote within the public body and can use that power to insist that power in the legislative process is decentralized and open to scrutiny by other members. Once a member has access to inside information, he can release that information to the press if he believes the public body is acting against the public interest. This may include unpopular procedures as well as policies.

But it often happens that incumbents' interests differ from the general public's interests because incumbents have a joint interest in re-election while constituents have an interest in accountability. If constituents do not use their votes to force incumbent legislators to work in a competitive political environment, legislators will band together to erect barriers to competitive entry.

The key to making the public meeting a vehicle for incumbent accountability, therefore, is to ensure that entry barriers for competing voices are low and that decentralized mechanisms are in place to identify and weed out bad ideas. In practical terms, the more control a narrow group of senior politicians has over the time, place, manner, and content of speech presented at a public meeting, the less likely is the meeting to serve as a vehicle for democratic accountability.

Time

A policy proposal is often considered and amended at numerous public meetings over an extended period of time. In Burlington, a motion would often start in the subcommittee, get sent to the agenda committee for possible inclusion by the full board, and then considered at a meeting with the full board. Sometimes the proposal would be sent back to committee for further consideration. This entire process would usually take at least two weeks and often would take many months. Despite the large gap in time between when an item would be put on the agenda and when a final proposal would be presented to the entire board, public comment on the record was usually constrained to the day and evening the final decision was made. People who worked or had other obligations at the time of the meeting were out of luck. If new information came up at the meeting, there was little time for public officials and opinion leaders to react. Public comment was for the most part a monologue of one prepared speech after another with little or no time for reflection, disagreement, and dialogue. Even this minimal public participation could often be bypassed. By discussing an awkward subject at a time when the cameras were

gone and no one was likely to be in attendance—for example, after an executive session at 11pm or at a mid morning committee meeting—virtual privacy could be assured.

Place

Most public meetings still require both participants and audience to travel to a particular place. With the advent of cable TV and Internet broadcasting of meetings, audiences have increasingly been able to watch at a distance. But participation is rarely allowed at a distance. In Burlington, untelevised committee meetings were usually scheduled during the school administration's working hours. As a practical matter, it was prohibitively expensive or otherwise impossible to attend such meetings for citizens who worked, were seniors, lacked transportation, or raised young children.

Anonymity

Face-to-face meetings do not allow for anonymous participation. The traditional public meeting mandates that speakers identify themselves. This is a problem because anonymous speech, as the Supreme Court has argued on numerous occasions (e.g., *McIntyre v. Ohio Election Commission*, 1995, 514 U.S. 334), is protected by the First Amendment and vital to robust democratic deliberation. Media outlets routinely preserve the anonymity of sources, but commercial media focus on only a handful of large government bodies and generally only provide anonymity to powerful sources who demand it from journalists in return for information. There is little or no opportunity for anonymity at the local level or for the underprivileged. In Burlington, this played out in the extreme discrepancy between comments at public hearings on school budgets and actual citizen votes on school tax increases. At the hearings, support for increased budgets would be overwhelming; nobody wanted to appear publicly as anti-children. But the same budgets would go down to defeat time and again at the polls. A neighboring school board in Colchester, Vermont, which experienced numerous budget defeats at the polls, eventually decided to allow citizens to call in anonymously at a budget hearing. The anonymous voices turned out to be more reflective of actual community sentiment.

Privacy

Face-to-face meetings make audience privacy difficult. Public officials or others present are likely to know audience members, even in large communities. Meetings that are broadcast over cable TV or the Internet have usually assured audience privacy,¹¹ but, as we have seen, this covers few meetings. And the most sensitive information is likely to be presented at an untelevised meeting. Many people do like to be seen in the audience. In Congress, many interest group representatives purposively go to meetings even if they could otherwise get the information they want because they want the members to see them and know that they care and are being watched. In Burlington, most people attended meetings specifically because they wanted to be seen. When the board proposed cutting a program, for example, as many parents as possible would show up at a meeting to give silent support to the speakers' advocating the program's preservation. But many other individuals do not want to be seen. Attending a meeting is generally a very

¹¹ Government use of "cookies" that track usage on the Internet is beginning to erode in-home viewing privacy.

powerful statement because it is so rare. In Burlington, I could often figure out why someone was in the audience without hearing them say a word. I would look at the agenda, look at the person, and make an educated guess why the person was there. If the person was a regular, I might ask them what was on their mind. Some individuals, such as those considering running for elective office or harboring controversial views, may not want to face the possible repercussions of being seen. Just as many Americans dislike expressing their political views in public and cherish the secret ballot, many Americans dislike losing their privacy to view a public meeting.

Official Control of Content

The amount of control officials have over the content of public speech varies widely among public bodies. In Congress, only invited witnesses can speak at hearings. The written comments are submitted ahead of time, witness names are publicized at the last minute, and surprise comments are remarkably rare. In Burlington, school board members could also invite witnesses. But, in addition, members of the public could speak on a first-come, first-serve basis at the beginning of a meeting on just about any public matter they could think of. Only the time, place, and manner of speech (rude, disparaging remarks about public officials and others were not allowed) could be restricted. The board also banned telephone call-ins or communication by anyone not physically present.

One of my great surprises as a school board member was how frequently no one would show up when a substantial matter of public concern was being addressed. A local PTO would spend two hours debating a \$100 expenditure but not dream of coming to the school board to debate a \$100,000 expenditure. Indeed, by the time the public knew about a school board policy change, it was often a done deal and not worth anyone's while to revisit. As noted earlier, by keeping certain proposed policy changes in an incomprehensible form or under wraps until the last second, it was usually possible to avoid any dissenting public comments. Other tactics to reduce dissenting comments were to put controversial items on the agenda of an untelevised meeting, and to stack comments (by advising certain people to get to a meeting early) so that allies would speak first and intimidate potential opponents who didn't want to take what they might have concluded to be an unpopular stand (see Noelle-Neumann 1993).

Audience Control of Content

Live, face-to-face meetings require the attention of everyone present to every comment made by anyone. Live, televised viewing makes it only a little easier to avoid unwanted speech by such maneuvers as leaving the room, flipping the channel, or taping for future fast forwarding. The fact that every one must listen to a speaker makes tight official control of speech an absolute necessity. If comments were unrestricted, no business would ever get done, meetings would be interminable, and volunteers willing to serve on public bodies and listen to public comments would dry up. Fear of the burdens stemming from low cost speech has been one of the major arguments used against using new technology to increase participation in public meetings. It has been assumed that not only would audiences have to listen to more speech but that the average quality of speech would decline.

The high cost of unrestricted speech may help explain why public participation tends to be more restricted the larger the constituency of the public body. In Vermont, the smaller communities, despite the close proximity of citizens to each other, were more likely to accept remote participation in meetings via telephone, fax, and other media. Larger communities, such as Burlington, were more likely to restrict participation to face-to-face communication. Other communities, which tend to be larger still, restrict comments to items on the agenda. In Congress, there are no open comments for the public. The same principle, however, applies to speech among members. The Senate, which less than one fourth the number of members as the House, places fewer restrictions when a member wants to speak on the floor.

For most local public bodies, such as Burlington with its first-come, first-serve comments policy, the dominant way to filter speech is through costly participation. By forcing people to subscribe to a newspaper where meeting agendas are posted, attend a meeting in person, listen to perhaps hours of irrelevant speeches at a meeting, and otherwise bear large costs to make even a short comment, speech may be effectively filtered. At first glance, cost of participation is an attractive filter because it is relatively content neutral and thus avoids First Amendment concerns. In fact, however, using cost of participation as a filter favors special interests at the expense of the general public. Mandating such a filter can only be justified if technological limitations or other practical considerations prevent the use of a less intrusive filter that continues to prevent elected officials from exercising undue control over speech content.

Public Policy Recommendations

New information technology is radically changing the economics of the public meeting system, including its ability to deter representatives from acting against their constituents' interests. But the deterrence possibilities opened up by these new economics cannot be exploited without institutional reform. Accordingly, I propose a series of reforms to both the public meeting and its records. The reforms to the public meeting overlap in points with an agenda to increase direct participation. The crucial distinction is that increased participation is not viewed as an end in itself but as a means to deterrence. The big audience most sought is not a present actual audiences but a future hypothetical audience. The emphasis is placed on efficient democratic control, not the absolute amount of actual democratic participation. There is as much emphasis on filtering out unwanted speech as there is on expanding speech. Reforms are divided into those pertaining to records and meeting design.

Records

Administration. To the extent possible, those who are held accountable by public records should not have control over them. This was impractical in an era where records were stored physically, storage economies of scale were minimal, transportation costs were high, and users were dependent on local physical access. But new information technology changes these economics and brings to the fore the common sense maxim that you should not put the fox in charge of the chicken coop.

Fidelity—Public records should replicate public meetings. The goal should be to achieve a 100% meeting record so that those not present can find documented evidence of what happened. This requires video taping all meetings and providing a verbatim transcript. All votes should be recorded by individual name.

Automated Production, Storage, and Access. To automate the creation of verbatim transcripts, all members of a public body should be required to train a speaker dependent voice recognition system before taking the oath of office. The oath of office should include a commitment to the “public’s right to know.” All witnesses to a hearing should also be required either to submit a summary written statement or be willing to briefly train a speaker dependent speech recognition system. Each member of a public body should have his own microphone, like his own nametag, to automate the connection between the voice and the speaker.

To automate video coverage, all cameras should be permanently embedded in walls and capable of remote control. Each robotic camera should have a memory of the location of every microphone and speaker location. When a speaker speaks into his microphone, the camera should automatically move to that speaker. Text identifying the speaker should also automatically be displayed at the bottom of the screen. Coverage of meetings should be done from regional facilities that have economies of scale in production, storage, and access.

To automate vote counting, every member should have a button, connected to a central computer, for yea, nea, and other types of votes. This would also save members the considerable wasted time of doing hand, paper, and voice votes, even when no record is kept of who voted for what.

Access—The public should have the option of remote access. Remote access both equalizes and reduces the cost of access for most individuals. Some may still be comparatively disenfranchised, but the entry barrier to participation is nevertheless reduced. Another advantage of remote access is that it makes it technologically feasible to provide anonymous access, something much harder to do in a purely face-to-face world. It also automates production, so that citizens don’t have to pay for staff time and photocopying expense.

Records should be well-structured to facilitate access. It should be easy to call up a particular member’s voting record, the dates of meetings, the topics of motions, and other structured information. XML, the new language to describe structured web documents, is tailor made for this type of application.

The same structure for records should be used across government units. Just as users of Nexis can search for millions of articles across thousands of publications by date, title, author, publication, and a host of other fields, citizens should be able to access records across more than 80,000 public bodies by type of body, region, official, motion, witness, witness organization, date, and other common fields.

Print, audio, and video records should be integrated into a single multimedia record. The agenda and order of witnesses should be electronically entered prior to a meeting. As each agenda item comes up, a single button should be pushed so that the time of the agenda change is entered in the multimedia record. The names of speakers, automatically called up by the use of a speaker's microphone, should be digitally encoded in the multimedia record. Roll-call votes, tallied electronically, should also be digitally encoded in the multimedia record. Motions attached to roll-call votes should be manually entered into the multimedia record at the time of the vote rather than written on a piece of paper.

All the documents cited in a meeting should be linked to the minutes of the meeting. The very structure of the multimedia record should be viewed as a portal into government. No government document should have legal standing in a meeting unless it is available electronically from a central server. The list of documents to be used in a meeting should be embedded in the agenda. When a motion refers to the document (e.g., to approve "the consent agenda," "the budget," or the "superintendent's report") the multimedia record should contain links to the document.

Every online bill or motion should contain within it an automated legislative history, including hearing dates, amendments, sponsors, and roll-call votes. The public should be able to easily track the evolution of a bill, statute, or regulation over time. A citizen should be able to look at a single document, click a button, and see an integrated link to a second document. A bill that proposes changes to a law should not only be linked to the law to which it refers but allow citizens to easily make comparisons of the law with and without the changes. Current practice, in contrast, may force a user to refer to numerous separate documents to track changes and then make time consuming comparisons to discover and make sense of those changes. By making legislative obscurantism more difficult, automated legislative histories would eliminate one of the most powerful tools available to the special interests and their allies. Contemporary word processors allow users to track document changes over time with the simple click of a button, but legislatures have not incorporated this technology except for internal use to help their own members.

Meeting Design

Access. Reforms to improve meeting access closely parallel those for records access. Citizens should be able to view and participate in live meetings remotely and anonymously. Public comments should combine a mix of asynchronous and synchronous comments. The period for asynchronous public comment should begin the moment an agenda is posted and continue up until the time the synchronous meeting begins. By the beginning of a synchronous meeting, there should already have been the opportunity for substantial public discussion. Except in the rare situation of genuine emergency business, there should be at least 30 days between the posting of an agenda item and a vote on it. This would conform to the standard practice of federal executive agencies, where 60 or more days for comments is common.

Administration. To the extent possible, those held accountable by public meetings should not control the expression of dissenting voices. Accordingly, public officials' control of speech at public meetings should be significantly reduced. This was impractical when meetings had to be held face-to-face and everyone had to listen to each other's comments. But in a technology environment that makes it easy to empower audiences with the ability to filter out unwanted speech, the traditional efficiency excuse for giving elected officials' content control loses much of its force, and centralized government control of public meeting speech should be viewed as a First Amendment violation. I suggest the following procedure to create a robust forum for public comments:

1. Citizens should be able to receive agendas and minutes via e-mail. The agenda should include links to documents, such as proposed budgets, to which it refers. The e-mail programs should be highly customizable so that citizens need not be swamped with information.
2. The public comment period should begin when the agenda is sent.
3. The public should have the option of being e-mailed comments as they come in or by any other criteria chosen.
4. Each item on the agenda should be linked to a public comments forum open to any non-anonymous local citizen or certified host organization.
5. The agenda should include a link to a list of certified host organizations.
6. A certified host organization should have the right to host its own public forum and post select comments to the public record. Hosts should also have the right to the structured data of all government documents so that they can create their own public meeting portals. All certification criteria should be content neutral. To achieve certification, each host should have to disclose a democratic legitimacy ranking based on the number of citizens in a community that have signed a petition, either physically or electronically, stating that they believe the organization has something useful to contribute to public deliberation. Certified hosts should also be required to disclose other information, including their organization status (e.g., trade association, foundation, corporation), officers, physical location, source of all funding, and bylaws for running the forum. Certified hosts, at their own discretion, could also be the vehicle to host anonymous comments. But, like the local newspaper, the certified host would be liable for libelous comments. New technology, which allows for instant retractions and rebuttals, could minimize penalties for libel.
7. To reduce information overload, users should have extensive control to search and sort among certified hosts and posted comments. For example, a user might want to read only public comments by organizations with more than 1,000 supporters plus any comments by individuals in the user's neighborhood.

Collegial Deliberation. It is important not to have unrealistic aspirations for what the public meeting can accomplish. It is commonly thought, for example, that a public meeting should simultaneously be a medium for collegial deliberation and public education leading to democratic accountability. These two goals are incompatible. Public officials and other opinion elites with reputations to lose will not, in public, test new ideas and risk saying something that they will later regret. The televised floors of Congress, where members speak to the cameras and colleagues are no where to be found, illustrate the anti-collegial logic of truly public meetings. What members will do in public is seek new information, modify their positions based on the information gathered, and then defend their positions. Accordingly, the public meeting should be designed to take advantage of what it can do: force public officials to consider diverse information sources and defend their positions in light of that information. The key to making this happen is not openness per se but a forum for the expression of dissenting voices.

The key parts of the public meeting that need to be public are notice, comments, and voting on proposed legislative changes that have the force of law or regulate the internal operations of public bodies. As argued above: notice of a proposed legislative change should be made at least a month ahead of time, except under unusual circumstances; comments should be open to as many different voices as possible with minimal representative interference; and voting should be by roll call. None of this requires that deliberation among representatives be subject to the same strict requirements of public notice, comment, and voting. This suggests that the number of public meetings could be significantly reduced. For example, if a member of a three person public body--a common size for a local committee--wants to pick up the phone and discuss a measure with a colleague, he should not have to convene a public meeting.

Granting officials a measure of privacy for collegial deliberation addresses one of the major arguments against introducing new technology to the public meeting: grandstanding. From this perspective, grandstanding—or choosing language appropriate for a broad audience rather than just colleagues--is not a negative result of publicity but a logical and appropriate response. Having public officials and others speak to the public is fine as long as blowhards can easily be bypassed and nonsense punctured by public criticism.

Other Reforms

A reform agenda based on the deterrence theory should not be limited to public meetings and public records of public meetings. Another reform would be to require Congress (and other legislatures) to keep accurate and accessible records of the influence process, including campaign finance, lobbyist disclosure, and gift disclosure. This is already the subject of a vast literature and need not be rehashed here (e.g., Corn 2000).

A related reform would be to limit the asymmetry between records from the executive and legislative branches of government. All executive branch documents created with public money, including the president's papers, are considered public property and subject to mandatory archiving by the National Archives. But congressional records,

even those created with public funds, are considered the personal property of members of Congress. When a member of Congress leaves office, his office documents are his own personal property. Often the member will donate his office papers to a local or state library that will preserve his papers at public expense. But the member need not donate sensitive information, such as his relationship with the lobbyist he has subsequently come to work for, and may keep control over public access for an indefinite period of time. Most local congressional archivists, in my experience, are little more than an extension of a member's PR apparatus.

Another related reform would be to treat members of Congress (and other legislators) as public employees. Current law allows employers, including members of Congress, to monitor their employees' communications at will. For example, it is routine not only in private companies but in Congress for all computer and telephone communications of staff to be monitored and subject to employer review. Any inappropriate communications can be grounds for firing. It is not clear why the same standard should not apply to members of Congress in relation to their constituents.

Copyright law is also in need of reform. The press in the United States receives special legal protections as well as vast subsidies. Requiring that the press allow libraries to keep affordable news archives and that fair use provisions are generous for scholars and others who seek to keep the press accountable would be in the public interest (Snider 2000).

Political Considerations

The great dilemma of public meeting and records reform--as with all democratic reforms--is that on the one hand it is a public good but on the other hand elected officials have a conflict of interest in making themselves more accountable to the public. In the absence of a public outcry, they have no interest in making themselves more accountable. In the case of public meetings and records, they have no interest in providing opponents with easier access to information that could be used against themselves.

To date, technology is used most effectively to reform government where elected officials have no conflict of interest. Consider the contrast between e-government, defined as the use of information technology to make government operate more efficiently, and e-democracy, defined as the use of information technology to make elected officials more accountable to the public.

In the minds of elected officials, encouraging e-government is a win-win proposition. Cutting costs while improving service is popular with the public and helps politicians get re-elected. But enhancing democratic accountability, while popular with the public, offers little advantage to incumbent politicians. The result is that e-government thrives and is having a major impact on the way government delivers services and information to the public. But even the most primitive e-democracy initiatives, such as putting roll call votes online, lag behind.

One gray area where e-democracy is doing relatively well is in the executive branch of government. Congress has a reasonably strong incentive to keep executive agencies

accountable to its will in rulemaking procedures. Accordingly, it mandates a comparatively democratic system of notice, comment, and voting for executive bodies. Some of these bodies, such as the FCC, now make extensive use of the Internet in their public meetings and public records. The problem is that the rulemaking functions of executive agencies are limited to implementing and interpreting congressional statute. If the statutes are bad, even the best agency rulemaking procedures in the world cannot compensate.

A major reason that Congress mandates a high level of public participation in rulemaking is that this reduces its oversight costs. Instead of actively policing agencies, which would be very costly, it waits for interest groups to alert it to areas where the agency is not acting according to congressional intent. In this way, interest groups bear the oversight costs for Congress (see McCubbins and Schwartz 1987). The same logic could also apply to the public in relation to Congress. Instead of directly monitoring Congress, the public could use enhanced participation by interest groups to reduce its oversight costs. But legislative bodies, in the absence of strong public pressure, have strong incentives to minimize this type of oversight.

The most practical place to implement these reforms may be in small communities where elected leaders have few political aspirations and may be the most civic minded. A Colchester, Vermont can open itself to remote participation with relatively little debate and gamesmanship. A Middlebury, Vermont can allow anonymous access to public records via the public library simply because this is in the public interest. In Congress or the City of Chicago, however, it is exceedingly difficult to implement even the smallest reforms that may impact the re-election prospects of members. The catch is that small communities have the least resources to experiment with new technology, so it may take foundations or larger units of government to fund early e-democracy trials. Senator Leahy, D-Vt., and Representative Goodlatte, R-Va., co-authored a white paper, "The Internet and the Future of Democratic Governance," calling for such funding (2000).

Conclusion

In a well run democracy, the government creates an information infrastructure, including schools, libraries, telecommunications facilities, disclosure laws, public meetings, public records, and copyright law that subsidizes and facilitates democratic deliberation. The relation between the private and public sector information systems is reflected in the multi-step flow of information, where opinion leaders gather information from government sources and then analyze and distribute this information for public consumption. A good system of private democratic deliberation is unthinkable without the foundation of a good system of government democratic deliberation.

Elected officials may either be kept accountable via actual or potential public opinion. When they are kept accountable via potential public opinion, we say that they have been deterred from opportunistic behavior.

The information technology revolution promises to change both actual and potential public opinion. But its greatest power may lie in its ability to change potential public

opinion. If so, it may be wise to spend tens of billions of dollars on democratic information systems, including detailed, voluminous, and easily accessible records that the average voter will never make direct use of.

As an example, the information technology revolution encourages us to rethink the traditional public meeting and its public record. We could change these institutions to enhance actual public opinion or we could change them to enhance potential public opinion. The former approach might emphasize using tax dollars to do professional broadcasts of public meetings; the latter approach might emphasize creating detailed and accessible public records of the meetings.

A genuine e-democracy agenda faces formidable political obstacles. Legislative branches have already required or otherwise encouraged unelected executive branch public bodies, such as the Federal Communications Commission, to employ these technologies in their public meetings and records. Non-political branches of government, under the rubric of e-government, have also often made good use of the new technology to enhance public access to government information. But when it comes to keeping elected bodies accountable to citizens, elected officials have a strong motivation to resist using the new technology.

A deterrence model of e-democracy places a great responsibility on intermediaries such as the press, interest groups, and opposition candidates. The best record system in the history of mankind will do no good unless intermediaries are willing and able to sift through it and bring relevant considerations to the attention of the general public in an audience friendly format. If intermediaries collectively distort a record, they may do more harm than good. If intermediaries are ineffective or biased, then a reform agenda based on improved information disclosure of potentially opportunistic behavior (such as disclosure of lobbyists gifts to legislators) must be replaced with a more intrusive reform agenda based on banning suspected opportunistic behavior (such as a ban on lobbyist gifts).

A deterrence model of e-democracy may appear undemocratic because it suggests spending great resources for information systems that will be directly utilized by a relatively small number of citizens. However, it is unlikely that expenditures on deterrence would further concentrate today's highly concentrated system of intermediaries. Most towns and cities in America, for example, only have one daily newspaper. And at the international, national, and state levels, a handful of wire services provide most news, even if it is distributed by many different outlets. It is possible that the information provided by a good system of public meetings and records would rejuvenate America's system of intermediaries by eliminating the economies of scale enjoyed by today's media and interest groups.

To date, public expenditures on information technology have probably done more to help incumbents get re-elected than to make them accountable to the public. The technology, such as videotaping congressional floor proceedings and using official web sites to tout accomplishments, has primarily been used in support of incumbents' PR apparatus. It is

possible, however, that with sufficient public pressure this pattern could be reversed and lead to a true democratic renaissance while actually reducing the burdens of good citizenship.

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