In Congress Electric: The Need for On-line Parliamentary Procedure, 18 J. Marshall J. Computer & Info. L. 963 (2000)

Phil Reiman

IN CONGRESS ELECTRIC: THE NEED FOR ON-LINE PARLIAMENTARY PROCEDURE

by PHIL REIMAN†

I. INTRODUCTION

As digital communication filters into more and more of our lives, we begin to expect more from it. As one author put it, "technology is becoming less revolutionary."[1] Technology is becoming more and more familiar. Email messaging, web pages and chat rooms are all now firmly established in our culture. Digital communication has already proved itself within the business community by enabling huge gains in efficiency and flexibility.[2] It seems natural, that we would attempt to use this same technology to bring some of those benefits to the operation of government.[3]

Driven by a fear of being left behind and are drawn by visions of efficiency, local,[4] state[5] and federal levels of government[6] are plunging

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1. Emmanuel G. Mesthene, *Technology and Wisdom, in* PHILOSOPHY AND TECHNOLOGY, 110 (Carl Mitcham & Robert Makey eds., 1983).

2. *See* Rachel Konrad, *Will B2G Become the "Next Big Thing"?*, CNET NEWS.COM, (June 1, 2000) <http://cnet.com>.

3. *See* Langdon Winner, *Cyberlibertarian Myths and the Prospects for Community, in* CYBERETHICS, 319 (Robert M. Baird *et al.* eds., 2000).

4. *See* Linda Meggett, *Folly Committee Meets Online*, THE POST AND COURIER, March 20, 2000 at B3. On February 25, 2000, in the town of Folly, North Carolina, a committee of the City Council held its first online meeting. *Id.* "We got on, and we got off," stated Bill Klauber, Committee Chairman, "[i]t was the thrill of being the first to do this. It was amazing." *Id.*

5. *See* Jeffery A. Eisenach, *Foreword, to* THE DIGITAL STATE 1998 (Progress and Freedom Foundation 1998) <http://www.pff.org/digital98.html>. Mr. Eisenach states the vision of an efficient e-government:

> Businesses increasingly demand the ability to interact electronically with state governments, just as they do with other customers and suppliers. And, many ob-

ahead. Brock Meeks, in his essay *Better Democracy through Technology*, paints a partial picture of local e-government:

> The old town hall meeting will take on new meaning and new implementation. Jacked in from their homes, citizens will 'attend' city council meetings at record levels . . . [i]t will lead to more face-to face participation as well. City councils will be held more accountable as more citizens participate and voice their concerns. The dialogue will be animated, more informed. Why? Because for a week or so before the actual meeting, neighborhood groups, already used to working out problems at the "street level," will have met, formed an agenda . . . and have that agenda presented that agenda to the council members while they watch from the videoconferencing port."[7]

There are problems in this portrayal, but proponents still hail the day when we will be able to apply for permits, pay our taxes, and vote for candidates in a "digital democracy."[8] But these are just consumer services. They are only suggestions of the real purpose and function of government: the creation of public policy. Before we rush to electrify our government[9], an essential first step is an examination of how our democratic traditions might function online.

These traditions are echoed in our private associations and local communities. They appear in all aspects of our lives from the PTA to the House of Representatives, these private associations, build our democratic traditions and reinforce our sense of community. Yet, the conve-

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servers attribute citizen dissatisfaction with government, at least in part, to their sense that governments are running behind in achieving the efficiencies and providing the convenient services digital technologies permit. At the same time, digital technologies are providing state governments with opportunities to integrate programs, involve citizens and manage information in ways never before possible. Increasingly, states are taking advantage of these opportunities. Via the Internet and other digital technologies, citizens around the country are finding their way to government agencies and services without ever having to leave their homes, offices or cars.

Id.

See also Jeffery A. Eisenach, *Creating the Digital State: A Four-Point Program, Release 6.5,* (Aug. 1999) <http://www.pff.org>. Eisenach's four points are: the creation of a digital infrastructure; creation of a digital legal infrastructure; a deregulation of telecommunication industry; and lowering taxes on the telecommunication industry. *Id.*

6. *See* Jeffrey A. Eisenach, *The Need for a Practical Theory of Modern Governance* (visited Sept. 24, 2000) <http://www.pff.org/POP_7.7ModernGovernance.htm>.

7. Brock Meeks, *Better Democracy Through Technology, in* CYBERETHICS, *supra* note 3, at 292.

8. *See, e.g.,* Eisenach, *supra* note 5, at 6. The term, digital democracy in the context of this Comment is meant only to describe the decision-making procedure of an online assembly. *Id.* Other authors use the term to include access to laws, the legislators in addition to the democratic process. *Id.*

9. *See* Esther Dyson et al., *Cyberspace and the American Dream: A Magna Carta for the Knowledge Age, Release 1.2* (visited Aug. 22, 1994) <http://www.pff.org/position.html>.

nience and efficiency of digital communication is undeniable and these associations have already begun to work online.[10] Unfortunately, the old framework that guided these groups has not yet been adapted to the new medium. If we are going to maintain our democratic traditions and continue to build viable communities, we need a way to put classic parliamentary procedure to work for these groups. Part of this process requires we recognize that "[communication] is, however, only a single dimension of the experience of community . . . [a]long with a sense of belonging, historical communities have carried a strong sense of obligation, imposing demands, sometimes highly stringent ones, upon their members."[11] The creation of an effective association of independent people therefore, needs to fulfill some basic cultural values. Our traditions will not digitize as easily as a bar code or SKU number.

Principally, an online association[12] will have to meet our democratic ideas of popular sovereignty and of joint deliberation. Henry M. Robert collected our deliberative traditions over 100 years ago under the title *Robert's Rules of Order*.[13] This set of rules handles public deliberation in every sort of association,[14] from the local Rotary, to corporate boardrooms, to the House of Representatives.[15] These parliamentary traditions are a comprehensive set of rules for ordering the deliberative process. Applying these well-established rules to virtual associations is the path to creating a truly deliberative online body.[16]

It would be a mistake to think that our democratic traditions could be mechanically applied to online associations. We have seen:

> [I]n case after case, the move to computerize and digitize means that many preexisting cultural forms have suddenly gone liquid, losing their former shape as they are retailored for computerized expression. As

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10. *See The United States House of Representatives* (visited Sept. 24, 2000) <http:// www.house.gov>. *See also Parent Teacher Association* (visited Sept. 24, 2000) <http:// www.pta.org>.

11. Winner, *supra* note 3, at 326. "You know you are in a community when the phone rings and someone informs you that it is your turn to assume the burden, devoting months of your time to a chore the group deems necessary" *Id.* "Unfortunately most writings about online relationships blithely ignore the obligations, responsibilities, constraints and mounds of sheer work that real communities involve." *Id.*

12. Digital communications may offer us the to stand in the center of a virtual Parliament and never know any difference from the real thing. At that point, the rules that we use in an ordinary meeting may work just as well in virtual setting.

13. HENRY M. ROBERT III, ROBERT'S RULES OF ORDER NEWLY REVISED (9th ed.1990).

14. *See* James H. Slaughter, *Schools of Procedure Rules*, AMERICAN BAR ASSOCIATION JOURNAL, July 2000 at 70.

15. *See* ROBERT III, *supra* note 13, at xxxvii. *Roberts Rules* were originally based on the rules of the House of Representatives. *Id.*

16. Any online government activity has the potential to appear clandestine. Online deliberation would probably trigger the Open Meetings laws of most states. *See* discussion *infra* note 100.

new patterns solidify, both useful artifacts and the texture of human relations that surrounds them are often much different from what existed previously. This process amounts to a vast, ongoing experiment whose long-term ramifications no one fully understands.[17]

Building a set of rules for operating an ordered, effective online association is the first step toward building virtual communities and the first step[18] toward a democratic "e-government."[19]

Disputes online are not rare; they are just rarely resolved. Currently, online forums are watched over by a moderator, who is charged with keeping the discussion on track, and to keeping the debate from getting personal. Almost everyone who has been in an online discussion is aware of "Netiquette", the informal rules that govern chat room conversations. Everyone is equally aware that these rules are often ignored. While the exchange of ideas is present, online groups have no framework by which to develop a consensus.[20] In most forums, the idea is to gather information and swap opinions on topics of mutual interest.[21] When the members tire of a topic they drop it, without reaching any resolution. Besides, since the effort needed to enter or exit any given discussion is minimal; those who disagree simply leave the forum. From this, it appears that there are elements of digital communication that will inhibit the direct translation of our parliamentary procedure to the new medium.[22]

Therefore, an online form of parliamentary procedure is necessary to build the bonds that create lasting communities and ensure that our new form of government reflects our traditional belief in popular sovereignty and public deliberation. The focus of this Comment is to suggest how *Robert's Rules* might be applied to online associations and to foster the deliberative process in our new communities. It offers a brief outline of parliamentary procedure as embodied in *Robert's Rules* and a short discussion of the undemocratic features of digital communication. Then there is a suggestion that a system based on a centralized clock and on information unit could[23] make *Robert's Rules* work[24] in an online

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17. *See* Winner, *supra* note 3, at 319.

18. *See* Ellul, *The Technological Order*, *in* PHILOSOPHY AND TECHNOLOGY, at 90.

19. *Gore Envisions "E-government" System*, BLOOMBERG NEWS, (June 5, 2000) <http://cnet.com>.

20. Consensus is not usually the goal of the members.

21. The current state of digital communication still reduces most online meetings to an exchange of letters, although teleconferencing, with real-time video and sound is now both affordable and widespread.

22. *See generally* Deborah G. Johnson, *Is the Global Information Infrastructure a Democratic Technology?*, *in* CYBERETHICS, *supra* note 3.

23. *See* Randy Connolly, WORLDPERFECT 7.0, 2-5 (Sep. 16, 1999) (unpublished manuscript, on file with the *John Marshall Law School*).

association.[25]

II. BACKGROUND

A. PARLIAMENTARY PROCEDURE

Parliamentary procedure contains elements of sociology in that

> [a] great part of that order which reigns among mankind is not the ef-
> fect of government. It had its origin in the principles of society and the
> natural constitution of man. It existed prior to government, and would
> exist if the formality of government was abolished. The mutual depen-
> dence and reciprocal interest which man has in man, and all the parts
> of a civilized community upon each other, create that great chain of con-
> nection which holds it together.[26]

This ancient and natural tendency to cooperate was distilled over
centuries of western culture into the customs of the English Parlia-
ment.[27] Henry M. Robert tried to codify this common understanding[28]
as a uniform set of rules for American parliamentary procedure.[29] Since
its publication, *Roberts Rules of Order* has been rewritten and revised

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24. *See* Stephen Mihm, *Utopian Rulers, and Spoofs, Stake Out Territory Online*, N.Y.
TIMES, May 25, 2000 at D7. Virtual "nations" are already popular sites on the Internet. *Id.*
In addition several companies provide a variety of virtual meeting places. *See, e.g.,
MyPlace.com You're your Home on the World Wide Web* (visited Sept. 18, 2000) <http://
www.myplace.com>; *eCircles.com* (visited Sept. 18, 2000) <http://www.ecircles.com>.

25. *See* Connolly, WORLDPERFECT 7.0, *supra* note 23, at 2. For all the potential that
digital communication holds, its promise may be over-sold. *Id.* Every breakthrough, from
the expansion of the railroads, to the telegraph and to the telephone has been offered as a
means to establish a better society. *Id.* In turn, each technology altered our society by
bringing us closer in some ways and pushing us farther apart in others. *Id.*

26. THOMAS PAINE, THE RIGHTS OF MAN 131 (1987).

27. *See* ROBERT III, *supra* note 13, at xxvi- xxviii.

28. *See, e.g., Brown v. Hansen*, 973 F.2d 1118 (3d Cir. 1992). It may help to explain
that the rules of parliamentary procedure are not laws, and in most cases, our courts do not
exercise jurisdiction over these issues. *Id.* The court found that a breach of procedure by
the territory's legislature is not a justiciable question. *Id.* Courts have repeatedly stated
that they will not function as a "Grand Parliamentarian" over private associations. *See,
e.g., Association of Contracting Plumbers of the City of New York v. Local Union No.2 et al.*,
676 F.Supp.523, 531 (S.D.N.Y. 1988). Although courts usually limit their concerns to
whether the law of the land is followed, a heavily regulated group that fails to follow its
own procedures may give the courts a reason to maintain jurisdiction. *See, e.g., Reform
Party of the United States of America v. Gargan*, 89 F. Supp.2d 751, 760 (C.C.W.D.Va.
2000) (reviewing the procedures of a federally funded political party); *See also Howard v.
Weathers*, 139 F.3d 553 (7th Cir. 1998) (reviewing procedures of federal postal workers
union). For a thorough look at judicial oversight of private associations *see* Henry H. Per-
ritt Jr., *Dispute Resolution in Electronic Network Communities*, 38 VILL. L. REV. 349 (1993).

29. *See* LAURIE ROZAKIS, MERRIAM-WEBSTER'S RULES OF ORDER (1994); HUGH CANNON,
CANNON'S CONCISE GUIDE TO RULES OF ORDER (1995) (providing other sets of parliamentary
rules). *See also* FLOYD RIDDICK, RIDDICK'S RULES OF PROCEDURE (1985) (reflecting practice
of the U.S. Senate); and ALICE STURGIS, THE STANDARD CODE OF PARLIAMENTARY PROCE-
DURE (1993). According to the Revision Committee for the third edition of the *Standard
Code*, "[m]ost organizations today, even though they may list Roberts Rules as their au-

extensively,[30] but has served as a commonly accepted set of rules for the conduct of public deliberation for almost 125 years. In fact, it is common to find *Robert's Rules* incorporated as part of the by-laws and constitutions of all sorts of associations.

Henry M. Robert wrote his rules in the form of a book and users found it hard to agree on how the rules should have been applied. To help the users, later editions of the manual were divided into three parts. The first portion laid out the rules.[31] The second part functions as a primer on parliamentary procedure and included examples of how *Robert's Rules* should be put into practice.[32] It set out the duties of the Officers, explained the operation of committees and established the classes of motions. The third part dealt with important, but more obscure technical issues such as the right of assemblies to punish or eject their members.[33] In the current ninth edition, the examples for each section are woven into the descriptions and rules.

Underlying *Robert's Rules* are four concepts.[34] The first is that the assembly constitutes an independent legal person. Secondly, like a corporation, an assembly is limited in the scope of its activities. The third idea is that the assembly members can listen to only one person speaking on one subject at a time. Likewise, the assembly can only address one issue at a time. Fourth, the assembly may then act on the issue by adopting a resolution by majority vote.[35] Most people recognize and abide by these principals. However, this kind of cooperation requires a certain level of respect for public order and without it nothing gets done.

To assist the assembly in maintaining a proper level of order, the members of an assembly address the group's business through the use of formal motions.[36] Typically, a motion goes through several steps.[37] Initially, the member asserting the motion must state the type of motion.[38] Then the motion is offered to the assembly for a second, and if there is no

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thority, simply ignore the more burdensome provisions, such as complex limitations on reconsideration or the quaint ritual of the 'committee of the whole.'" *Id.* at xx.

30. *See* Kenneth A. Michaels Jr., *A Primer on Robert's Rules*, 11 CHI. B. ASS'N REC. 48 (Sept. 1997).

31. HENRY M. ROBERT, ROBERT'S RULES OF ORDER, THE STANDARD GUIDE TO PARLIAMENTARY PROCEDURE ILLUSTRATED § 1-45 (1986) (adapting of the eighth edition of *Robert's Rules*). These parts were integrated into the newly numbers sections and the sections were reordered in the Newly Revised edition. *Id. See generally* ROBERT III *supra* note 13.

32. *See* ROBERT *supra* note 31, at §§ 46-65.

33. *See id.* at § 66-70.

34. *See* Michaels Jr., *supra* note 30.

35. *See id.*

36. *See* ROBERT III, *supra* note 13, § 3, at 26- 28.

37. *See id.* § 10, at 117.

38. *See id.* § 10, at 101.

second, the motion fails.[39] If there is a second, the Chair restates the motion and presents it to the assembly for debate.[40] Eventually a member calls "are you ready for the question on . . ."[41] the assembly will the cease its debate[42] and will vote on the main motion. Finally, the Chair announces the result of the vote to the assembly.

While the main motion is pending, other motions, such as a motion to amend or divide the question, take precedence over the debate. This ranking is the source of the infamous motion tables that confuse so many newcomers to parliamentary procedure.[43] Knowing these rules, however, gives a member the ability to slow a tyrannical majority[44] and to work for the adoption of minority views. These techniques, as collected in *Robert's Rules*, are representative of our parliamentary traditions: they allow for effective minority expression, but still provide for majority rule.

B. AN UNDEMOCRATIC MEDIUM

It is a widely held belief that the Internet is a tool for promoting democratic institutions on a global scale.[45] After all, proponents argue, "information is power."[46] This credo is based on the use and control of information.[47] Moreover, governments, more than individuals have the resources to take advantage of these increases in power. There is also the idea that since the Internet could one day connect "everyone to everyone else",[48] its enormous scale makes it democratic.[49] It takes more than a sea of chat rooms and vast amounts of information to produce democratic institutions.[50] More important than breadth is who is talking to whom, what they are talking about and what procedural rules are

39. *See id.* § 4, at 34- 35.

40. *See id.*

41. *Id* § 16, at 194. This is also known as the more confusing "previous question" or "calling the question." *Id.*

42. *See id.* § 15, at 188- 89. A vote to limit debate and actually vote on the underlying motion requires a two-thirds majority. *Id.*

43. *See* Michaels Jr., *supra* note 30, at 48.

44. *See Survival Tips on Parliamentary Procedure* (visited Sept. 24, 2000) <http// www.calweb. com/~laredo/parlproc.htm>. To defeat a measure, a member could move to amend the main motion in an unpalatable manner; prolong debate until the majority agrees to postpone the matter; or a member could interrupt the debate with motions that do not need a second. *Id.*

45. *See generally* Andy Pelander, *Pajama Patriotism Does the Internet Promise a Future of Living-Room Voting*, 4 SILICON ALLEY REP., Issue 34, at 95- 100, 138- 46.

46. Deborah G. Johnson, *Is the Global Information Infrastructure a Democratic Technology?, in* CYBERETHICS, *supra* note 3, at 315.

47. *See id.*

48. *See id.* at 318.

49. *See id.*

50. *See* Mesthene, *supra* note 1, at 117-19. Our use of technology reflects our values. *Id.*

in place.[51] These arguments overlook that fact that the Internet requires us to maintain an enormous technical infrastructure and this is increasingly done by commercial enterprises that are by nature, centralized and hierarchical.[52]

The Internet is distinctly lacking in two areas essential to deliberative bodies: digital communication does not, by itself, place power in the hands of the people, nor does it automatically foster to joint deliberation.[53] Beneath democracy, "lies the idea of popular power, of a situation in which power, and perhaps authority too, rests with the people. That power or authority is usually thought of as political, and it often therefore takes the form of an idea of popular sovereignty - the people as the ultimate political authority."[54] This idea of popular sovereignty is the foundation for a majority of the ideas that we associate with democratic systems, such as holding elections, following majority decisions and debating issues.[55] The term 'individual power' has been defined as the ability to receive and transmit information.[56] Under that definition, we must be sitting at a new crest of personal power, since we are riding a tidal wave of information.[57] However, we cannot assume that the ability to broadcast more information will directly influence our political effectiveness.[58] For example, since the members of Congress filter information the same way as every one else, the ability to send email to 458 separate congressional representatives at a single click[59] does not necessarily make us more influential or more connected with our government.[60] The most influential power will lie with those who filter our information[61] and not with the public that generates it. In the end, indi-

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51. *See* Johnson, *supra* note 46, at 317. The focus of these ideas is on the technology, and what the technology facilitates not on the social relationships between the users. *Id.*

52. *Id.* In the marketplace individuals can vote by spending money on ideas produced by manufacturers. *Id.* at 316.

53. *See id.* at 315.

54. *Id.*

55. *See id.*

56. *See id.* at 316.

57. *See* Johnson, *supra* note 51, at 317.

58. *See* DEMMING, INFORMATION WARFARE AND SECURITY, 321-26 (1999) (focusing on biometric security systems). While verifying the identity of individuals is a problem on with computer based communication, undoubtedly some combination of hardware and software will be capable of instilling sufficient trust in the system. *Id.*

59. *See* Ilona Nickels, Virtual Democracy: The Age of the Cyber-Citizen, (Apr. 7, 2000) (remarks made at the Annual Member Conference of Public Technology Inc. in Denver, Co.)

60. As with telephones, we are not more influential than anyone else with a phone; only in relation to those without a phone.

61. Of course this does not begin to address the conflicts over the use of information that we create such as transactional information, or even genetic information, shows that for every increase in individual power, the increase in commercial and governmental power is at least as great.

viduals in the age of digital communications will simply be more precisely targeted, not more influential.[62]

The second undemocratic feature of the new medium is that digital communication is not conducive to joint deliberation. Open discussion is abundant, but democracy requires more public debate. It requires, "getting together as a group or in subgroups for debate and discussion of issues they *face jointly* (emphasis added). In joint deliberation, individuals put their ideas on the table and listen to the responses of others . . . [a]nd bonds are developed between people as they jointed [sic] confront difficult issues."[63] In the past, groups were arbitrarily plunged into the same circumstances by geography. When we left our groups, we were forced to face different points of view.[64] Digital communication has removed this restraint. As a result, the new torrent of communication contains a countercurrent of isolationism and insularity.[65] Online, people choose to interact with, "like-minded people to chat with and news slanted in the direction of their already-formed biases; they will seek information on the interests they already have."[66] There is no reason for a Netizen[67] to interact with someone with views hostile to their own. We can already point to flaming[68] and spamming[69] as evidence that once these restrictions are eliminated, both the character and conduct of communicators change.[70] Moreover, the entry and exit costs of online communities are generally zero, and thus, the members are free to enter, discharge their thoughts, and leave without a thought as to the impact on the group.[71]

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62. Winner, *supra* note 3, at 323. Most users believe that the Internet is private property, which means commercial property. *Id.*

63. Deborah G. Johnson, *Is the Global Information Infrastructure a Democratic Technology?, in* CYBERETHICS, *supra* note 51, at 317.

64. *See id.*

65. *See id.*

66. *Id.*

67. *See Netlingo: The Internet Language Dictionary* (visited Sept. 4, 2000) <http://www. netling.com/pocketdictionnary.cfm?term=netizen>. A netizen is a citizen of the Internet. *Id.*

68. *See* DEMMING, *supra* note 58, at 61. Flamming is defined as making derogatory or insulting comments about others. *Id.*

69. *Id.* at 122-24. Spamming is junk email messages that clog a users interface. *Id.*

70. This brings up the issue of automated control of online associations. If we surrender some of our debating procedures to a particular software package then we must give some element of the public debate up as well. If we give up some of the debate, then we give up a portion of popular sovereignty as well.

71. *See* Johnson, *supra* note 51, at 317- 18. The economic and social diversity of these groups is also limited to those who speak English and have access to an online computer. *Id.*

III. ANALYSIS

Clearly, taking our traditions into this new and potentially unkind arena will require more than a mere translation of our existing system. At the same time, there is increasing pressure to use the same tools that have changed so much in business, art and science to improve our private associations and to remake our governments.

A. TIME AND SPACE

Currently, even the most bare-boned parliamentary system has difficulty translating into online communications. It is not much of a surprise, since the underlying principles are based on the practical application of time and space and until recently; these were implicitly understood and impossible to evade.[72] Now all of the information we use is reduced to ones and zeros and it can be measured, counted, multiplied and repeated without reference to common concepts of time and space. Our definition of being present at a meeting has grown to include teleconferencing[73] and soon, "being there"[74] could simply mean having a computer turned on. The unspoken theme in every proposal is convenience. It is not that we could not attend meetings, exchange ideas, or vote in person, it is just so much easier if it can be done from our living room. It suddenly becomes a waste of time to attend meetings in person since there are no temporal or geographic requirements.

To fix a starting point, it would seem necessary to describe some of the common features of online associations. Although the rapid changes in technology prevent any really definitive outline for the near future, it is still possible to identify some of the broader characteristics of online associations. It goes without saying that members of an online assembly will no longer need to be same room.[75] In addition, it can be said that in

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72. *See id.*

73. *See* Eisenach *supra* note 5 at 21. The Progress & Freedom Foundation declares: [s]tates are reporting the use of Internet video technology in the field of corrections as a vehicle for arranging secure and efficient delivery of healthcare, attorney-client visitation, and family visits and court proceedings. . . Telemedicine is emerging as a leading technology application in facilities with high-risk inmates.
Id.

74. *See e.g.,* Butler v. Beer Across America, 83 F. Supp. 2d 1261, 1264-65 (N.D. Ala. 2000) (finding single sale did not create a continuing relationship); The law is still being developed in regard to the courts' jurisdiction over online activity. *Id. See generally* Zippo Mfg. Co. v. Zippo Dot Com, Inc., 952 F.Supp. 1119 (W.D.Pa. 1997), *cited in* Westcode v. RBE Electronics, 2000 U.S. Dist. Lexis 815 at *14 (E.D. Pa. Feb. 1, 2000).

75. *See generally* DEMMING, *supra* note 58, at 321- 26. While verifying the identity of individuals is a problem on with computer based communication, undoubtedly some combination of hardware and software will be capable of instilling sufficient trust in the system. *Id.*

an online association, each member's terminal device[76] will be connected to every other machine and members will also have the ability to put large amounts of information, both video and text, in front of the group instantaneously. Members can reach every other member instantly, no matter how remote. Huge volumes of information, both meaningful and useless, can be set out before the membership with the touch of a button. At the same time, each member will be able to filter this information just as quickly. Moreover, these information exchanges will not happen all at once, but continuously, with members meeting in real time connections in some circumstances and through dated posting in others. To build boundaries, online associations will have to reestablish a communal timeline.

The only constants that remain in the online association are information and membership. Therefore the rules that govern the decision-making process of an online group should be based on these constants. Reliable membership identification[77] removes the anonymity of digital communication and promotes trust and responsibility in a system in which nothing can be touched or seen directly.[78] The other constant, information, is measured in terms of bytes,[79] and commonly known as "K". Using the term K as a symbol for an established amount of information, and if each member is given a limited amount of K to contribute during a meeting, it is then possible to build a framework for debate independent of regional time and space.

B.   SYSTEM FRAMEWORK

The structure of the new system is simple. An online meeting is called and notice sent to each member. That notice[80] includes the Agenda of meeting and the period over which this meeting site will be active. Once the meeting site is opened, the meeting clock is started and the members connect to review the latest posting on various agenda items and submit

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76. *See c.f.* Peter H. Lewis, *Wireless Valhalla: Hints of the Cellular Future*, N.Y TIMES, July 13, 2000 at D1 (noting the increasing use of terminal devices such as cell phones).

77. *See generally* Anil K. Jain, *Introduction*, to BIOMETRICS, PERSONAL IDENTIFICATION IN NETWORKED SOCIETIES, (Sharath Pankanti & Ruud Bolle, eds.1999). Reliable personal identification is becoming an essential element in our society. *Id. See also generally Bio-metrics and the Future of Money: Hearing Before the Subcomm. On Domestic and International Monetary Policy of the House Comm. On Banking and Financial Servs*, 104th Cong., 1-12, (1998).

78. *See* DEMMING, *supra* note 26, at 322. Member identification is open to a great deal of hardware and software possibilities. *Id.* Options run from the use of simple passwords to retinal scan and fingerprint recognition. *Id.*

79. *Internet and Unix Dictionary* (last modified Aug. 29, 2000) <http://www.msg.net/ kadow/ answers/b.html>. "A byte is a set of 8 bits, usually representing a single character in English and European languages." *Id.*

80. In some networks it is possible to make the notice only effective after being opened by the recipient.

motions, resolutions and queries subject to their K limit. Each type of motion will have an associated cost in terms of K. Lengthy resolutions will use more K than brief amendments. In addition, members can exchange K among themselves to post more extensive messages on issues of importance to them. Precedence in recognition from the Chair would be determined by the amount of K that a member still had in reserve. Thus, the member who had posted the least on the issue, would be the first to be recognized.

The other engine behind this system would be the meeting clock. In an online system, the members will not get tired or hungry or have to go home at any specific time. To establish a common frame of reference, a time limit must be connected to the meeting and to each motion. If the motion is not seconded and a quorum established and the matter voted upon within that motions time limit, it fails. Some motions, like Question of Privilege, might have long timers so that communications problems can be assessed while a Point of Order, would have a short timer to prevent the motion from shutting the whole meeting down.[81] In the new system, every topic on the Agenda would be open for the duration of the meeting or until the members vote to close it. Within each of these topics, members can present their ideas, make motions, and call for votes as the overall meeting clock winds down. In the event the association has not agreed on a resolution at the end of the meeting, a vote is taken[82] as to whether the topic should continue as unfinished business on the next Agenda. With central clock ticking away and a member's options limited to what can be done with his or her available K, it is possible to bring about a workable online association.[83]

C. APPLIED TO KEY SECTIONS

A fully developed K-based adaptation of *Roberts Rules* is simply beyond the scope of this Comment.[84] However, some sections would be become more critical in an online association than others and a brief examination of how these sections might operate in a K-based system is appropriate. Section 1 defines the characteristics of deliberative assemblies as:

> [a]n independent or autonomous group of people meeting to determine,
> in full and free discussion, courses of action to be taken in the name of

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81. Clearly, the motion to address the Order of the Day, which requires an assembly to address questions on its agenda at the time listed on the agenda will need to be modified to indicate the new timing system. Likewise, the motion to Postpone to a Certain Time, will have to be modified in relation to the new system.

82. *See* ROBERT III, *supra* note 13, § 18, at 217- 22. This could be viewed as an automatic call for the orders of the day. *Id.*

83. In this respect online associations should be much more effective in narrowing the issues toward a resolution. On the other hand, it may also lead to more prominent use of advertising style slogan, but then "grandstanding" is not a new technique.

84. Ideally, actual testing would support this Comment.

the entire group . . . Persons having the right to participate – that is, the members – are ordinarily free to act within the assembly according to their own judgement . . . [i]n any decision made, the opinion of each member present has equal weight as expressed by vote . . . Failure to concur in a decision of the body does not constitute withdrawal from the body.[85]

While this does not present an obvious hurdle for a K-based system, this section symbolizes the distinction between online associations and physical ones. In physical associations, there are plenty of irregularities in parliamentary practice. Members jump from their chairs and shout out motions as the Chair tries to sort out the assembly's path along the debate. Mistakes are made and decisions disputed. It is easy to believe that online associations will be more orderly and thus more effective because the physical rowdiness is gone. Moreover, there is the temptation to implement a software system that eliminates online forms of trouble such as profanity or disruptive motions. While some software framework will be necessary, it should be pointed out that this is information filtering. As a source of power and influence over online debate and, especially if the filtering is going to be done mechanically, the scope and range of this power needs to be addressed by the members. Therefore, to respect the spirit of this section, the members should be informed of the nature of structural software and its limitations before they agree to form an association that employs it. Accordingly, a section of the by-laws[86] should list the make up of structural software and the process for amending it.

The section of *Robert's Rules* that will probably change the most, both in operation and influence in online associations, will be section 39.[87] It concerns the creation and maintenance of a quorum. In a deliberative assembly "with enrolled membership whose bylaws do not specify a quorum, the quorum is a majority of all the members."[88] In cases where member registration is unreliable, a quorum is those members that attend the meeting.[89] Online, attendance is often a bigger question than registration, since members can be logged on for hours without actually being at their machines. Without some form of feedback or control, the number of members actually attending could fluctuate without the knowledge of the assembly. In order to keep a grasp on this element, the online debate should include an automatic call for a quorum before every vote, and the online work ceases until enough members have con-

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85. ROBERT III, *supra* note 13, § 1, at 1- 2.

86. *See* ROBERT III *supra* note 13, § 55, at 559. The makeup of structural software and process for amending it should be a separate Comment in the bylaws. *Id.*

87. *See id.* at § 39, at 339.

88. *Id.* at § 39, at 340.

89. *See id.* at § 39, at 340- 41.

nected and voted on the matter.[90] While this may take some of the convienence out of online activities it will keep members informed as to the progress of the debate and occasionally draw them back to their terminals, but it will not require constant monitoring and thereby maintain the convenience of online associations.

In sections 3[91] and 42[92] of *Robert's Rules*, decorum is discussed. It is typical for chat rooms to have a moderator. The anonymity of the Internet makes it easy for users to make personal attacks, no matter how vicious or unkind. Likewise, the technical ease and speed of online attacks means that our definition of decorum needs to be expanded to include Netiquette, and the technical irritations such as spamming and jamming. This also raises the idea of censure.[93] In a K-based system, if an online assembly wanted to discipline a member it could reduce the member's allotted amount of K proportionately. This would limit the offending member's potential for further disruption, yet not entirely eliminate his ability to state his opinion. In addition, the member's reduced K would make him less effective for his side in the debate and thereby, promote self-discipline within the assembly. If being rude makes a member less effective, then the entire association gains in by the system.

Section 8 defines the terms session and meeting.[94] A meeting is a "single official gathering of its members in one room or area to transact business for a length of time during which there is no cessation of proceeding and the members do not separate."[95] A session, on the other hand, is a series of meetings.[96] These labels have important ramifications for physical as well as online associations. Standing rules,[97] which govern the administration of an assembly, that are made during one session do not carry over into the next session.[98] On the other hand, business raised during a session must be resolved before the session ends.[99] In practical terms, each new session may address any matter it chooses

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90. In the K-based system every motion or requirement has a time limit so that a minority cannot stall the process indefinitely with repeated motions. The percentage of the members that make up a quorum is a separate subject in itself. A quorum gives the decision legitimacy, but when it is hard to convene enough regularly attending members, private associations generally set the quorum very low. If the major attraction of online association is the convenience attending , then a quorum should constitute a much higher figure such as three-quarters or two thirds of all registered members.

91. *See generally* ROBERT III, *supra* note 13, § 3, at 21- 24.

92. *See generally id.* § 42, at 386- 89.

93. *See generally id.* § 60, at 639- 44.

94. *See id.* § 8, at 82- 89

95. *Id.* § 8, at 82.

96. *See id.* § 8, at 83.

97. *See* ROBERT III, *supra* note 13, § 2, at 17.

98. *See id.* § 8, at 88.

99. *See id.* § 8, at 83.

and it is not bound by the decisions of the previous majority. However, once a matter has been raised, it cannot be postponed beyond the end of that session, and once it has been addressed, the matter cannot be brought up a second time. In the hands of skilled parliamentarians, these rules are effective tools, but they are bound to physical limits and depend on knowing the status of the question in debate.

Members of an online assembly cannot glance around the room or a nudge to a neighbor to instantly know what was going on in a debate. Information physical assemblies take for granted, such as what matter is pending before the assembly; who has the floor; and who made the most recent motion can get fuzzy online. Moreover, it is possible that several meetings could be underway at the same moment with each having its own timetable. It would be easy for members to get lost among the motions, quorum calls, and debates. This increased complexity will make the determination of an issue's progress and a member's knowledge of every other member's status ever more vital. In terms of presenting this information, there are a lot of possibilities, but access to this information is essential if the online association is going to function as deliberative body.

One of the most familiar aspects of contemporary parliamentary procedure is the process by which a speaker is recognized by the chair. In physical associations, control of the floor given by the Chair[100] to the member that rises and addresses the Chair first.[101] In the event of a tie, preference is given to the member that made the motion, or if that person does not wish to speak, to any other member who has not yet spoken on the issue. In the spirit of balance, *Robert's Rules* grants an additional preference to those who wish to speak on the other side of the issue.[102]

In a K-based system, operating in a real-time exchange, a member who desires to address the assembly could indicate his intent to "rise" and his position with a touch of a button. Recognition from the Chair would then follow based on each member's available K, alternating between positions. With proper status indicators, a member would know at a glance who else wanted to speak, and whether he would have a chance to address the assembly on this issue. Moreover, those members who

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100. Some might argue that there is no need for the Chair in digital communication and that this role could be accomplished through software. *Id. See* Sally McGrane, *Keeping Chat Rooms Lively and Free of Hucksters*, N.Y. TIMES, June 22, 2000, at D10. *Id.* Online communities show as much a need for moderators as physical ones. A large number of equally uniformed opinions, each responding to its own priorities will rarely achieve a consensus. *Id. See* Burt Neuborne, *The Supreme Court and Free Speech: Love and a Question*, 42 ST. LOUIS L.J. 789, 791 (1998). Neuborne states that without regulation, unrestrained private action leads to the "war of all against all" *Id.*

101. *See* ROBERT III, *supra* note 13, § 41, at 371-72.

102. *See id.* § 41, at 374.

have been relatively quiet would have a preference over those who dominated previous discussions. Addressing the assembly in an email style setting, there is no need for the Chair to recognize individual members, since there is no need to listen to one speaker at a time. However, the Chair functions to rule on motions in terms of precedence. If the motion is in order, the Chair would formally set the clock running.

As to the motions themselves, Section 5 lays out the basic classifications and orders of precedence.[103] Typically, in a physical meeting, a member will rise, be recognized, and briefly state his motion. The Chair mentally classifies the motion and takes action based on the motion's level of precedence. The problem of transferring this system of classifications to online assemblies also suggests the solution. With the proper software, members could simply click on various motions and follow them up with short statements. At the same time, the Chair could use software to rank the motions instantaneously.[104] Beyond this, a K-based system could assign K values to different classes and types of motions. Main motions would require nothing other than the K used in the message itself. Subsidiary motions would use up more K and Privileged motions more still. Incidental motions, which interrupt the debate and force the assembly to deal with them immediately, should require the most K. The clock for each class of motion would follow the same scheme, with a Main motion allowed a great deal of time and incidental motions having a very short life. This would serve to force an opponent to make choices regarding the expenditure of his allotted K, rather that constantly bombard the assembly with debate-stopping motions.

If a body feels a need to deal with an issue that normally would be out of order, it has the option to "Suspend the Rules" under section 25.[105] By suspending the Rules, a body can deal with issues more directly. This motion is often used to remove notice requirements on more immediate issues. As notice is an essential element in the creation of a public forum, a motion to suspend the rules requires a two thirds vote. It is even more important in online associations since the meeting does not take place in a manner that is publicly observable. On the other hand, the use of software in administering online associations may make them much more procedurally rigid than physical associations. A motion to Suspend the Rules could be very useful in those circumstances in allowing the members to dispense with the restrictions if they felt that it was interfering with open debate.

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103. *See id.* § 5, at 57-61.

104. An interesting question arises as to how to handle a motion to meet offline. In cases where the associations members are scattered this may be impractical. As a suggested rule, motions to change the manner in which the assembly meets should require a two-thirds majority.

105. *See* ROBERT III, *supra* note 13, § 25, at 259- 60.

D. QUESTION OF PRIVILEGE AND TECHNICAL DIFFICULTIES

A Question of Privilege[106] is commonly used to indicate that a member cannot hear the speaker. Inevitably, a member of an online association will be knocked out of the discussion because disk fails; sunspots or someone spills soda on the keyboard. Anyone who has used computers knows that they do not give a lot warning signs before they fail. Since a member might be yanked out of a critical debate by accidentally kicking a cord, it is necessary that the out of contact member have some influence over the debate. One solution would be to create a system that would automatically inject a Question of Privilege when a member does not properly disconnect. This question would serve to suspend the operation of the association and give the remaining members notice that this member was out of contact.

E. QUICK FIX

For those who are seeking an easier and more immediate method of meeting online, there is a way that might prove workable. Section 51 of Roberts Rules provides for the creation of a Committee of the Whole.[107] If this motion is carried, a temporary Chair is appointed, the regular Chair steps down, and the assembly debates the matter with the freedom that normally accompanies smaller committees. However, the results of any business are not the final decisions of the body until approved under the regular rules. With appropriate notice,[108] members could function as a Committee of the Whole, meeting online and debating informally at length, prepare resolutions and vote on assembly business in order to speed up conduct of business at the physical meeting.

F. OPEN MEETINGS ACT

Online meetings are not generally public[109] in the ordinary sense and they lend an air of secrecy to any action that they take.[110] Therefore, it is likely that the substantial technical requirements and the ephemeral nature of online activity would cause a court to find that online activity violated the various open meetings acts. Until a digital infrastructure is in place that will allow a large majority of the population to oversee on-

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106. *See id.* § 19, at 223- 26.

107. *See id.* § 39, at 521-30.

108. *See id.* § 10, at 118-120.

109. *Compare* Kansas Att'y Gen. Opinion, 98-49 (Sept. 16, 1998) (finding email sufficiently interactive to trigger the Kansas Open Meetings Act. KAN.STAT.ANN. § 75-4317 *et seq.*) *with* Maryland Att'y Gen. Opinion, 96-016 (May 22, 1996) (finding the lack of a physically present quorum kept email outside the control of the Maryland Open Meetings Act. MD. CODE ANN. § 10-501 *et seq.*).

110. *See* Ann Taylor Schwing, Open Meeting Laws 2d § 6.46 (2000).

line activity, this kind of issue will always be subject to dispute.[111] As a partial remedy, it should be simple matter to provide full transcripts of on line meetings and to provide these to the public. This should help dispel some of the suspicion and may promote the accountability that proponents of e-government espouse.

IV. CONCLUSION

Classic parliamentary procedure is an awkward fit in the medium of digital communications. Yet, municipal governments are seeking to copy the success of online associations and are racing ahead with new initiatives.[112] While the benefits of this new technology center around convenience, the challenge of digital communication lies in that it can do what other technologies could not. It will change the way we think.

Digital communication has begun to change the way we associate and how we address public issues.[113] Public discourse has taken on a new manner as well as a new tone. So as planners sell the "e-city" as a new ideal community, we need to think about the impact that this technology will have on of our democratic traditions of assembly and debate.[114] Likewise, it is important to recognize that "strongly bound communities, fulfilling complex public functions, are not creations of the state. They form because they must. Human beings have needs as individuals . . . that cannot be met except by cooperation with other human beings [and] [t]he pursuit of individual happiness cannot be an atomistic process; it will naturally and always occur in the context of communities."[115] The question becomes whether the deletion of the human element will erode the communal resolution that makes democracy work. If an effective mechanism for debate and resolution can be established for online associations, we can begin to confront the challenge of the new medium.

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111. *See* Progress and Freedom Foundation, DIGITAL IOWA, (1999) (noting that even in the predominately white, educated population only 48% of the citizens are connected to the Internet). The economic and social divisions between large segments of our society are undeniable and our efforts to change our government simply underscore these discrepancies. *Id.*

112. *See generally* PUBLIC TECHNOLOGY, INC., WHITE PAPERS, (2000) Public Technology, Inc. is an organization that yearly awards cities and towns that have used technology to "strengthen local institutions of economic development and democracy." *Id.* at 3.

113. Robert M. Baird, *Introduction* in CYBERETHICS, 9 (Robert M. Baird et. al, eds., 2000).

114. *See* JONATHAN W. EMORD , FREEDOM, TECHNOLOGY, AND THE FIRST AMENDMENT (1991) (Analyzing digital communication has been analyzed in the context of the First Amendment by a variety of authors). *See also* CORYDON B. DUNHAM, ET. AL., FIGHTING FOR THE FIRST AMENDMENT (1997).

115. C. MURRAY, IN PURSUIT OF HAPPINESS AND GOOD GOVERNMENT, 260 (1988).