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E-RACING E-LECTIONS

*Jerry Kang**

I. INTRODUCTION

E-voting is inevitable.[1] Given its clear benefits in ease and efficiency, e-voting will soon be widespread, my guess within ten years. This new method of voting raises a myriad of questions, not only about voting mechanics but also about how this new techno-political practice may affect electing and governing. On these issues, the papers by Professors Alvarez and Nagler,[2] and Professors Moglen and Karlan,[3] offer numerous insights. Responding to these papers from a "critical race technology"[4] perspective, I discuss how those interested in forging a digital civil rights agenda should respond.

My organization follows the clarification made by Professors Moglen and Karlan at the close of their paper. As they explain, when we typically discuss the right to vote, we confuse three separate concepts: the mechanics of *voting*; the ways in which we *elect* our representatives; and finally, how we *govern* ourselves.[5] As Professor Rick Hasen stated in the Symposium's introduction, the issues surrounding e-voting mechanics, albeit important, are put to one

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1. E-voting is defined as voting through any computer-mediated device (e.g., desktop computer, cellular telephone, personal digital assistant, Internet appliance) from any geographical location that the voter chooses, through a communications network, such as the Internet.

2. *See* R. Michael Alvarez & Jonathan Nagler, *The Likely Consequences of Internet Voting for Political Representation*, 34 LOY. L.A. L. REV. 1115 (2001).

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

4. I coined this term in Jerry Kang, *Cyber-race*, 113 HARV. L. REV. 1130, 1207 n.327 (2000).

5. *See* Moglen & Karlan, *supra* note 3, at 1114.

side.[6] Our focus instead is on broader normative questions concern-
ing electing and governing.

II. E-LECTING

What is the demographic make-up of the people who vote in to-
day's world, *without* e-voting? In tomorrow's world, *with* e-voting,
will the racial and ethnic make-up of those who vote change?
Probably yes. One reason why people do not vote is transaction
costs.[7] E-voting promises to decrease the transaction costs of voting
substantially. Instead of fighting through rush-hour traffic, I can vote
in the comfort of my pajamas through my home broadband connec-
tion. Accordingly, those with easy Internet access will probably vote
at a higher rate than those without such access. Since access to the
Internet differs by race,[8] there should be no surprise that civil rights
groups have expressed concerns about e-voting.[9]

On this point, the two papers on this panel offer both good and
bad news. The bad news comes from Professors Alvarez and Nagler,
who examined, among other things, the 2000 Arizona Democratic
primary election. They report significant differences in the demo-
graphics of the electronic versus paper electorate. Those who voted
using the Internet were more female, more urban, and less minority
than those who voted using paper ballots.[10] Not being a social

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6. *See* Richard L. Hasen, *Internet Voting and Democracy*, 34 LOY. L.A. L.
REV. 979, 980 (2001).
7. *See* Dick Morris, *Direct Democracy and the Internet*, 34 LOY. L.A. L.
REV. 1033, 1051 (2001).
8. *See, e.g.*, U.S. DEP'T OF COMMERCE ET AL., FALLING THROUGH THE
NET: TOWARD DIGITAL INCLUSION, A REPORT ON AMERICANS' ACCESS TO
TECHNOLOGY   TOOLS   xv   (2000),   *available   at*   http://www.ntia.doc.
gov/ntiahome/fttn00/falling.htm [hereinafter DIGITAL INCLUSION] (reporting
racial differences in household access to the Internet: Asian/Pacific Islanders
(56.8%); Whites (46.1%); Blacks (23.5%); and Hispanics (23.6%)). Because
income and education are highly correlated with household access to the Inter-
net, the report adjusted these figures to account for the fact that Blacks and
Hispanics, on average, earn less income and have fewer years of education
than the national mean. Taking into account these factors, the adjusted pene-
tration rate for Blacks was 31.6% and for Hispanics was 34.7%, still well be-
low the national average of 41.5%.
9. *See* Stephen B. Pershing, *The Voting Rights Act in the Internet Age: An
Equal Access Theory for Interesting Times*, 34 LOY. L.A. L. REV. 1171 (2001).
10. *See* Alvarez & Nagler, *supra* note 2, at 1147. They also report the re-

scientist, I will not try to cut the data in different ways.[11] Instead, I will focus on what those concerned about the digital divide and racial equality may do in response to such findings.

Again, I believe that e-voting is inevitable; thus, litigating to stop such technological progress seems Paul Bunyan-esque.[12] So, what should we do? First, we should not confuse the short term with the long term. In the short term, a racialized digital divide does exist. But in the long term, by which I mean ten years, that digital divide will close substantially. My optimism comes from a trend of data that shows all people of all races gaining access to the Internet at a phenomenal rate.[13] With the expansion of Internet appliances, I believe that Internet access will go the way of television and PlayStations. After all, who frets about a digital divide in cable television or game consoles?

I do not mean to be flippant. We should not forget that telephone penetration, necessary for even narrowband connection to the Internet, is astonishingly low in certain communities, such as Indian

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sults of a CBS poll conducted from January 27, 1999 through February 2, 1999, which reveals that the politically active Internet-using population is more White than the adult population. *See id.* at 1135.

11. *But see* Frederic I. Solop, Digital Democracy Comes of Age in Arizona: Participation and Politics in the First Binding Internet Election (prepared for presentation at the American Political Science Association national conference, Washington, D.C., Aug. 31-Sept. 3, 2000) (unpublished manuscript, on file with the Northern Arizona University Department of Political Science) (finding no statistically significant connection between race and choice of voting through the Internet or through traditional voting).

12. I confess to know little about the details of election law. However, as explained by Stephen Pershing in this Symposium, there are good reasons to think that Internet voting does not violate any law, as currently construed. *See generally* Pershing, *supra* note 9 (discussing the constitutionality of Internet voting pursuant to the Voting Rights Act).

13. According to a report released by the National Telecommunications and Information Administration in August 2000, 51.0% of U.S. households own a computer, and 41.5% have access to the Internet. *See* DIGITAL INCLUSION, *supra* note 8, at xv. Just two years earlier, in December 1998, the Administration reported that 42.1% of households owned a computer, and 26.2% had access to the Internet. This is a radical change. By one count, the Internet took only seven years to hit thirty percent penetration into U.S. households. By contrast, the personal computer took thirteen years, television took seventeen years, and the telephone took thirty-eight years. *See* U.S. INTERNET COUNCIL, STATE OF THE INTERNET: USIC'S REPORT ON USE & THREATS IN 1999, at 5 (1999), *available at* http://www.usic.org/papers/stateoftheinternet99.htm.

reservations.[14] Also, in our capitalist society, there will always be differential access between rich and poor to any pay service, especially if it requires education to operate. Put bluntly, even in ten years, law professors—predominantly male and White—will more likely have Internet access at home than piece-work seamstresses— predominantly female and Latina or Asian American—who labor in our textile sweatshops.[15] Still, we must not let the short term blind us from long-term strategies.[16]

Long-term strategies must focus on why it is that people generally and racial minorities specifically do not vote; they must also explore what to do about the fact that numerical minorities lose big in simple majoritarian "winner take all" election schemes.[17] These questions and their answers are not uniquely or even especially Internet-specific. Still, the Internet raises the possibility weakening various linguistic, informational, and attitudinal barriers to voting and making those votes count. I will explain more on this later.

If Professors Alvarez and Nagler bring bad news, then Professors Moglen and Karlan bring good news. They suggest that widespread use of the Internet may move the American political system away from current election schemes in which the winner takes all,

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14. *See* James McConnaughey, *Universal Service and the National Information Infrastructure (NII): Making the Grade on the Information Superhighway, in* MAKING UNIVERSAL SERVICE POLICY: ENHANCING THE PROCESS THROUGH MULTIDISCIPLINARY EVALUATION 189, 190 (Barbara A. Cherry et al. eds., 1999) (reporting 1990 census data that telephone penetration rates for American Indians generally was 76.8%, and on reservations, 47.0%).

15. *See* JEFFREY I. COLE, UCLA CTR. FOR COMMUNICATION POLICY, THE UCLA INTERNET REPORT: SURVEYING THE DIGITAL FUTURE 11-12, *at* http://www.ccp.ucla.edu (last visited Feb. 12, 2001) (explaining that higher educated people are more likely to use the Internet, however recognizing a trend for those with less education and lower income to log on in greater number).

16. Consider the first-year results from an ambitious longitudinal study headed by my colleague, Professor Jeffrey Cole, at UCLA's Center for Communication Studies. For those who lacked Internet access at home, 37.7% explained that it was because they lacked a computer. Interestingly, the next largest category of people, 33.3%, were simply not interested in bringing the Internet home. Next, 18.9% said they did not know how, and only 9.1% explained that it was too expensive. Finally, 4.2% feared technology, while 2.9% feared loss of privacy. *See id.* at 23-24.

17. *See* Moglen & Karlan, *supra* note 3, at 1100.

within geographically-defined districts.[18]   According to Professors Moglen and Karlan, geographic voting districts were created in the eighteenth and nineteenth centuries as a way to avoid totally at-large elections, which would lead to numerical majority domination of numerical minorities.[19] Why should racial minorities care? Because *racial* minorities are *numerical* minorities, and the kludge that is geographical districting is showing its age. Alternative electing schemes, such as cumulative voting or preference voting,[20] would serve racial minorities better.

But how can we get there from here when, as Professor Frank Michelman well explains, American society is wedded to the simple—and perhaps simplistic—idea of simple majority voting?[21] More specifically, how might the Internet facilitate this political transition in the long term? According to Professors Moglen and Karlan, the key is undermining geography. As people spend more time on the Internet and recognize how little geographical proximity matters, they will come to experience and understand political community not in terms of shared geography but shared interests, experiences, and commitments.[22] Somehow this realization will set in motion those legal changes necessary to elect political representatives based on communities of common interest, as expressed through cumulative or preference voting schemes, and not on communities of geographical compactness.[23]

I would be delighted if this actually happened, but I am skeptical. If we compared long-time users of the Internet to Internet neophytes, I doubt that we would see differences in political attitudes about alternative voting systems.[24] The connection seems tenuous. We are asking a lot from the Internet if it is to alter our political sensibilities enough to cure us from our fetish for simple majoritarian voting, based on geographic units of representation.

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18. *See id.*
19. *See id.* at 1093.
20. *See id.* at 1100-01.
21. *See* Frank I. Michelman, *Why Voting?*, 34 LOY. L.A. L. REV. 985, 993-94 (2001).
22. *See* Moglen & Karlan, *supra* note 3, at 1099.
23. *See id.*
24. *See* COLE, *supra* note 15, at 30.

I do not mean to be dismissive. I am squarely in the camp that views the Internet not as a glorified fax machine, but as a virtual world we collectively build. Depending on how we build that world, we can influence those who inhabit its environs. Still, greater specificity about how the Internet will change the polity's attitudes about voting systems would be useful. More importantly, we must recognize that it will not happen naturally.[25] If the political "gut" of the American people is to change by cyber-immersion, we must intentionally design cyberspace's architecture to have this effect.

Since it is always easier to criticize than to construct, let me offer one causal mechanism by which the Internet might alter the way we e-lect political representatives. My thoughts rely heavily on my previous *Cyber-race* paper,[26] which examines the social construction of race in the technological construction of cyberspace. Here is a brief summary.

Conceptualize race as a technology. It is a social-cognitive technology that makes use of what I call "racial schemas." These schemas consist of "(i) *racial categories*, through which the basic concept of race is understood; (ii) rules of *racial mapping*, which are used to classify individuals into categories; [and] (iii) *racial meanings*, which are cognitive beliefs about and affective reactions" to persons placed in these categories.[27] In any social interaction, we map each other into racial categories that trigger associated racial meanings. These meanings in turn influence the terms and conditions of the interaction. Over time, these micro-alterations aggregate across individuals, interactions, and time to produce macro-social effects that pile on top of the sediments of our racial past.[28]

Next, consider the technology of cyberspace. It allows for new forms of human interaction through computer-mediation. As pointed out by Professors Moglen and Karlan, geographical distance loses much of its meaning. So, if in real space certain people are unlikely to interact with each other simply because of physical distance, that

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25. *See* U.S. INTERNET COUNCIL, STATE OF THE INTERNET: USIC'S REPORT ON USE & THREATS IN 1999 (1999), *available at* http://www.usic.org/papers/stateoftheinternet99.htm.

26. *See* Kang, *supra* note 4.

27. *Id.* at 1139-40.

28. *See id.* at 1138-47.

distance becomes irrelevant in cyberspace. Greater *interactivity* between people separated by physical distance becomes possible.[29] The technology of cyberspace also allows us to alter how we present identity. At times, for example when communicating solely by text, we can become racially *anonymous* because the text-based medium does not necessarily disclose the morphological and ancestral information necessary to apply rules of racial mapping.[30] Indeed, we can even be racially *pseudonymous* and claim to be of a race that we are not, at least not in real space—what I have called a form of "cyber-passing."[31]

Having conceptualized both race and cyberspace as technologies, what possibilities emerge as we plug-and-play them together? Interestingly, we can exploit certain aspects of cyberspace to disrupt certain aspects of racial schemas. Three paths avail themselves. First, society may choose the path of *abolition*, which prevents racial mapping by promoting racial anonymity in cyberspace.[32] Recall the hackneyed line that on the Internet no one knows that you are a dog. Commentators have said similar things in a more serious vein not about species but about race. Second, society may choose the path of *integration*, which strives to reform racial meanings by promoting interracial social interaction through the Internet. This requires bridging physical and social distance—similar to what affirmative action advocates hope to achieve in the integrated university.[33] Finally, society may choose the path of *transmutation*, which disrupts the very notion of fixed racial categories by promoting racial pseudonymity or cyber-passing.[34]

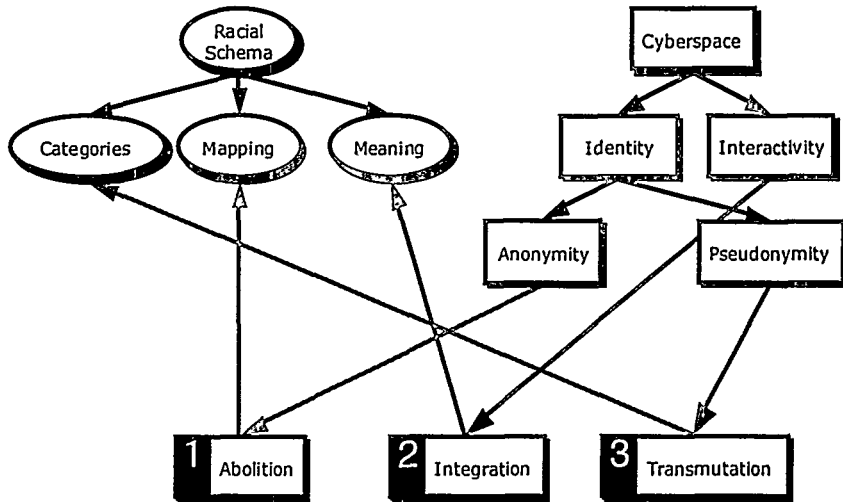
29. *See id.* at 1150-51.
30. *See id.* at 1154-55.
31. *See id.* at 1179-86.
32. *See id.* at 1154-59.
33. *See id.* at 1160-79.
34. *See id.* at 1179-86.

FIGURE 1: THE PATHS OF CYBER-RACE

In my article, after detailing each of these three paths, I argue that society does not have to adopt a single design strategy for all of cyberspace. Instead, we can diversify our policy risk and zone different cyber spaces in accordance with different racial environments.[35] As a first cut, I suggest that most market places be zoned abolition: African Americans cannot be given worse offers in auto negotiations if e-car dealers cannot map the customer's race.[36] By contrast, I argue that most social spaces should be zoned integration, with special emphasis on those environmental characteristics that social psychologists have identified as being crucial to decreasing racial prejudice.[37] This requires careful cyb(er/ur)ban planning because nothing will happen "naturally."

Let me now apply this analytic machinery to the issue of e-lecting. As Professors Moglen and Karlan emphasize, one critical difference is that cyberspace makes physical geography far less important.[38] From this point, the authors speculate an attitudinal drift

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35. *See id.* at 1186-88.
36. *See id.* at 1188-95.
37. *See id.* at 1195-205.
38. *See* Moglen & Karlan, *supra* note 3, at 1092.

away from simple majoritarian voting toward alternative forms of political representation, many of which are decoupled from geographical proximity. I see and seek a different sort of drift, in the cache of racial meanings in our heads. It is a sad fact that today, regardless of class, African Americans continue to live in highly segregated communities.[39] Because in real space social interactions require geographical proximity, segregated neighborhoods mean segregated social interactions. Assuming that in the long term the digital divide gets closed, cyberspace presents the possibility of a greater interracial interactivity.

Furthermore, as I argued in *Cyber-race*, the quality of these interracial social interactions may improve for two sets of reasons.[40] First, "vicarious" experiences with other races will be replaced, at least partly, with "direct" experiences.[41] In the status quo, partly because of residential segregation and the retreat on affirmative action, most of the racial meanings in our racial schemas are programmed by vicarious experiences—"experiences" provided through mass media, especially radio and television broadcast, cable television, and film. Given the business models for the mass media industries, it should not surprise us that these vicarious experiences are filled with racial stereotypes that make stories familiar, easy to tell, and often funny. In sharp contrast, direct experiences with real people of different races are not warped in the same way. As explained, "in my direct interactions, I have little interest in performing some 'Oriental' character for anyone's enjoyment. This is partly due to self-respect. It is also because my livelihood thankfully does not depend on my doing so."[42]

Second, cyberspace is a more malleable social environment than real space. Social psychologists have identified five attributes of

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39. *See generally* DOUGLAS S. MASSEY & NANCY A. DENTON, AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS 81, 109–14 (1993) (arguing that residential segregation continues in the urban housing market). *See also* Richard H. Sander, *Housing Segregation and Housing Integration: The Diverging Paths of Urban America*, 52 U. MIAMI L. REV. 977, 978–79 (1998) (describing the persistence of Black segregation).

40. *See* Kang, *supra* note 4, at 1165.

41. *See id.* at 1165-69.

42. *Id.* at 1168.

interracial environments that contribute to decreasing prejudice: "(i) exposure to disconfirming data, (ii) interaction among people of equal status, (iii) cooperation, (iv) non-superficial contact, and (v) equality norms."[43] I have argued tentatively that it may be easier in cyberspace to produce some of these conditions than in real space.[44] Any careful reader by now should have numerous questions and objections to my argument. Given space constraints, however, I can only ask the reader to peruse my prior article, in which I tried to answer all reasonable objections and to qualify my claims appropriately. I recognize that in this comment I will be able to demonstrate at most the plausibility, not the correctness, of my argument.

My point here is not that the Internet will inevitably grow into an idyllic racially integrated space. This would be pollyanish. We must intentionally build such spaces if we desire them. That said, those who think that the Internet will never amount to much more than a fancy telecommunications device that allows us to catalog-shop without physical catalogs are also wrong. Consider the first-year findings from an ambitious longitudinal study of the Internet by my colleague Professor Jeffrey Cole at the UCLA Center for Communication Studies. Of those surveyed, 26.2% reported that they have friends—not merely acquaintances—that are purely online.[45] Although some of these friends have met in real space, the majority of them had never met face-to-face. Moreover, there does seem to be some substitution effect of the Internet for television, which makes possible the substitution of "direct" interracial experiences for "vicarious" experiences. Those with Internet access consume an astonishing twenty-eight percent less television.[46] And all this is taking place with current technology. Can you imagine what forms of computer mediated communications will be available in one decade?

Cyberspace presents the possibility of increasing interracial interactions in a well-designed environment in ways that alter the cache of racial meanings in our heads and in our culture. In turn, this may change our political beliefs and values, and also the way we talk

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43. *Id.* at 1165.
44. *See id.* at 1169-78.
45. *See* COLE, *supra* note 15, at 34.
46. *See id.* at 18.

to each other across colorlines.[47]   Surely this would have some impact on the way we elect political representatives.[48] I realize that this integration-design strategy will strike many as fanciful. To repeat, I have provided greater details and defenses in my previous work. That said, I believe this long-term strategy is at least as viable as the one suggested by Professors Moglen and Karlan. Thankfully, the strategies are not mutually exclusive.

III. GOVERNING

If "voting" refers only to the mechanics of voting—chads, butterflies, recounts, security, antifraud measures, etc.—and if "electing" refers to the procedural and deliberative processes by which political representatives are selected, then "governing" refers to the ways in which representatives once elected make law and policy, if they do at all. More specifically, this Symposium raised interesting questions about whether elected representatives will make greater use of instantaneous tracking polls made possible through the Internet. Relatedly, will elected representatives govern at all if the ease of indicating our preferences translates to widespread use of formal, binding public referenda?

We again have both good and bad news. Dick Morris, in an earlier panel, delivers the good news. According to Morris, politicians today need absurd amounts of money because of the high costs of radio and television mass media advertising.[49] The Internet makes such forms of advertising less necessary; accordingly, less money will be necessary to run campaigns. In tomorrow's world, those with money will no longer influence politicians and their parties as much as they do today.[50] Morris also celebrates the advent of true direct

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47. *Cf.* John T. Nockleby, *Hate Speech in Context: The Case of Verbal Threats*, 42 BUFF. L. REV. 653 (discussing deliberative democracy).

48. Professors Moglen and Karlan, in explaining why representative democracy is superior to direct democracy, point out that political representatives are much more likely to have interracial contact with other political representatives in contrast to constituents who may experience more racially segregated worlds. *See* Moglen & Karlan, *supra* note 3, at 1113-14. This point supposes that such interracial contact is significant, which I agree it is.

49. *See* Morris, *supra* note 7, at 1044-45.

50. For reasons well articulated by Professors Elizabeth Garrett and Paul Schwartz, I do not think the "cost" news is remotely that good. *See* Elizabeth

democracy made possible by information technologies that can provide real-time measurements of mass preferences. The buzzword is disintermediation. Many digerati have commented that the Internet destroys intermediaries, and after all, what are elected representatives but intermediaries between the masses and state-sanctioned power?

The bad news comes from Professors Moglen and Karlan, who, like me, are scared of this form of "cyber-populism."[51] Direct democracy is the kissing cousin of tyranny of the majority. Professors Moglen and Karlan identify critical benefits to a republican form of democracy, and I, speaking from the subject position of a racial minority, immigrant, and Californian—the land of Propositions 187 and 209—heartily agree. So, again, what to do if the Internet makes politically binding referenda more common?[52]

We should adopt different strategies depending on whether we are talking about informal polling or formal referenda. Consider first the rise of Internet polls, as on Dick Morris's website vote.com. Obviously, these are not scientifically valid. They suffer from multiple problems, including skewed samples and uncareful or biased wording of questions.[53] Such polls, which have proliferated on the Internet, should be viewed as little more than gimmicks to drive up Internet traffic, which translates to higher advertising revenues. But we may not be smart enough to understand this. After all, Morris says that politicians will no longer be able to ignore the polls.[54] What if politicians start to take seriously the polling results sent to them daily from sites like vote.com? What if the mass media start regularly reporting and displaying Internet polling results? Even with disclaimers, exposure to such information may alter the perceptions and attitudes of the electorate of what constitutes the often sought but rarely

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Garrett, *Political Intermediaries and the Internet "Revolution"*, 34 LOY. L.A. L. REV 1055, 1056-60 (2001).

51. *See* Moglen & Karlan, *supra* note 3, at 1107-08.

52. *See* Morris, *supra* note 7.

53. For instance, on a question that was online as of November 28, 2000, whether Vice President Al Gore should give it up, ninety-four percent of those who voted said he should concede. This says far more about the kinds of people who browse vote.com than what most Americans think. *See Should Gore & Lieberman Keep Up the Fight?*, *at* http://www.vote.com (last visited Jan. 11, 2001).

54. *See* Morris, *supra* note 7.

divined "will of the people." As the recounts in Florida confirm, "spin" is everything. If we go down this path, racial minorities have good reason to be concerned; in addition to getting the vote out, we may now have to struggle to get the "poll" out.

But there is a simpler way: Hack the system.[55] It would not be difficult to write a computer program that repeatedly logs into one of these polling pages, makes specific selections, then repeats. If polling sites did not want to be hacked in this way, they would have to implement certain authentication technologies to prevent repeat voting. This raises the cost of polls, but that is precisely what racial minorities may want. If the polls are received by the culture as legitimate, those who conduct the polls should be forced to pay the costs necessary to deserve some of that legitimacy.

What about formal, legally-binding referenda? Obviously, these systems should not be hacked: That would be illegal. Still, information technologies can be exploited to get the e-vote out in new ways. Consider just two possibilities. First, information technology can be used to decrease linguistic barriers to voting. For many Asian Americans and Latinos with limited English proficiency, language is a substantial barrier to voting, especially on complicated policy initiatives or referenda. Through e-voting, we can take advantage of the computer which can offer language translation services at the click of a button. Or even more simply, the ballots can be prepared in multiple languages—something not done with paper ballots because of the prohibitive costs of printing. Printing a ballot in just a handful of the popular Asian languages—Mandarin, Hindi, Tagalog, Korean, Vietnamese—is unrealistic; producing e-ballots in these languages, by contrast, is possible.

Second, e-voting can empower new intermediaries to provide crucial voter guidance during e-lections.[56] Even with perfect English proficiency, one must have a great deal of cognitive resources and time to make intelligent decisions on complicated referenda questions. Living in California, I am amazed that we, the public, are

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55. Of course, the injunction should be understood to stay within the bounds of law.

56. As Professor Garrett argues, the Internet does not get rid of intermediaries across the board; more often, it replaces an old set for a new set of intermediaries. *See* Garrett, *supra* note 50, at 1063-64.

asked repeatedly to make law on issues as complicated as health maintenance organizations and campaign finance reform. And my English is pretty good. To respond to what Bruce Cain identifies as information overload and voter fatigue,[57] political or community-based organizations could provide e-voting guides that do every-thing—within the confines of the law—but submit the actual ballot.

What I am imagining is the electronic extension of the paper voter guides we already receive in the mail before Election Day. But the e-version can be far more than an html or pdf version of the paper mailing. Instead, it could be a website that frames the ballot website and "checks" off the recommended votes with the user having to do nothing but click the "submit" button. In fact, on 12:01 a.m. Election Day, trusted political organizations could send to their constituents or target audiences an e-mail with the appropriate URL for this assisted voting site. Two clicks, and you are done. To be sure, security pro-tocols may require some changes in this approach of facilitated e-voting. In addition to the e-mail, there may have to be small soft-ware programs, a.k.a. "applets," delivered as well.

Exploring technical details is not my point. What is more im-portant is how this technique could be used by political organizations to harvest votes. Given the cost-savings incident to Internet, versus paper, communications, these tactics could be used even by smaller community-based organizations without war chests as large as the National Rifle Association or the American Association of Retired Persons. We thus create the possibility of new breeds of political intermediaries that do not need huge amounts of cash to function. The civil rights community should seize upon this opportunity.

In the end, what would be the impact? It is hard to know. That said, progressive civil rights organizations should recognize that these strategies will undoubtedly be used by the other side, which aggressively and efficaciously seeks contrary political ends. So, there is little choice: We must fight on the digital battlefield or risk irrelevancy. These strategies will become all the more important if the ease of e-voting makes formal binding referenda more popular, thereby increasing the threat that is direct democracy.

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

IV. CONCLUSION

For the next four years, we will hear talking heads urging adoption of e-voting because of its efficient mechanics and improved user interface. The claim will be that this new technology will avoid a repeat of the Florida debacle while not creating any new debacle in terms of data integrity or voter privacy.[58] But more important are questions about how e-voting will affect the process of electing and governing.

On issues of e-lecting, we should not let the short term blind us to the long term. Moreover, we should pay close attention to how cyberspace can be specifically designed to alter preferences and attitudes, political as well as social, of its inhabitants in particular ways. As Frank Michelman put it, "the consequences could be epic."[59] My focus has been on altering the cache of racial meanings that influence our interactions, deliberations, and behavior, and thus the process of e-lecting. Professors Moglen and Karlan focus instead on increasing general acceptance of alternative voting systems. In both cases, it is the "drift" in the meanings and attitudes in our individual heads and the collective culture that racial progressives must try to steer.

In terms of governing, the spread of the Internet may encourage more instantaneous forms of direct democracy. This is bad news for racial minorities because they are numerical minorities and people vote more in their self-interest than in the public interest. To respond to the possibility of a digital tyranny of an electronically mediated majority, racial minorities must prepare to play smart. We should start right now exploring how information technologies can counter numerical disadvantages. This might require hacking bogus polls. This might require smart electronic voting guides that "get the vote

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58. I strongly commend the work of Paul Schwartz on this issue. *See* Paul M. Schwartz, *Beyond Lessig's Code for Internet Privacy: Cyberspace Filters, Privacy Control, and Fair Information Practices*, 2000 WIS. L. REV. 743; Paul M. Schwartz, *Internet Privacy and the State*, 32 CONN. L. REV. 815 (2000); Paul M. Schwartz, *Privacy and Democracy in Cyberspace*, 52 VAND. L. REV. 1607 (1999). *See generally* Jerry Kang, *Information Privacy in Cyberspace Transactions*, 50 STAN. L. REV. 1193 (1998) (arguing in favor of a default rule that allows only "functionally necessary" processing of personal information in protecting privacy in cyberspace).

59. Michelman, *supra* note 21, at 1001.

out" in an entirely different sense.   It is politics and struggle on a new terrain.