

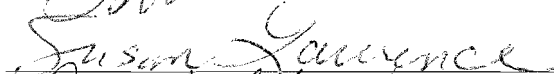
DEBUGGING DEMOCRACY: A CRITICAL ANALYSIS OF THE RHETORIC OF
GOV 2.0 AT THE USPTO

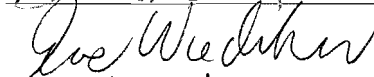
by

Benjamin Lucas
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Submitted to the
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English

Committee:


_____ Director






_____ Department Chairperson


_____ Dean, College of Humanities
and Social Sciences

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A thesis submitted in partial fulfillment of the requirements for the degree of Master of Arts at George Mason University

by

Benjamin Lucas
Bachelor of Arts
Bowling Green State University, 2006

Director: Douglas Eyman, Professor
Department of English

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George Mason University
Fairfax, VA



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ABSTRACT

Debugging Democracy: A Critical Analysis of the Rhetoric of Gov 2.0 at the USPTO

Benjamin Lucas, M.A.

George Mason University, 2012

Thesis Director: Dr. Douglas Eyman

In its first year, the Obama administration established the Open Government Initiative, a program requiring all executive agencies to use digital media to advance transparency, collaboration, and participation. In this thesis, I consider the consequences of the initiative for democratic communication by examining an open government program administered by the United States Patent and Trademark Office. The USPTO is using an online platform called IdeaScale to allow the public to suggest revisions to the written policies in the office's Manual of Patent Examining Procedure. First, I situate the program within the discourse of key proponents of the Open Government Initiative. Second, drawing on public contributions on the IdeaScale website and interviews with officials in the USPTO, I analyze IdeaScale as a site of generic communication. Third, I consider the way that the computer process implemented by IdeaScale functions as an expression of open government rhetoric. My analysis shows that the Open Government Initiative represents a shift away from the deliberative public-sphere model of communication and

toward a competitive information-exchange model, drawing on a tradition of neoliberalism that is modulated by open-source development methods.

CHAPTER ONE: INTRODUCTION

On his first day in office, President Obama sent a memo to executive agencies titled “Transparency and Open Government” that said:

My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in Government.

The memo led to the establishment of the Open Government Initiative, which sought to increase the use of new communication technologies by federal agencies. Departments began to incorporate blogs, wikis, and related technologies in their public communications strategies. These tools introduce a new definition of open government. Openness has traditionally been understood in U.S. law in terms of government transparency – that is, the obligation of government to disclose information to the public (e.g., the 1966 Freedom of Information Act; the 1996 Electronic Freedom of Information Act; the 2001 Information Quality Act). In the Open Government Initiative, on the other hand, openness also means government participation – that is, the obligation of the public to disclose information to the government.

The justifications offered for this technological and conceptual transformation are illuminating. Obama’s memo identifies two justifications: to strengthen democracy and promote efficiency and effectiveness. Other open government apologists offer similar

pragmatic justifications: new technologies aggregate dispersed information that no single official can possess (Sunstein, 2010), they harness private innovation by enlisting the public as co-creators (O'Reilly, 2010), and they overcome deficiencies in bureaucratic knowledge (Noveck, 2009). Democratic communication, in this view, is an instrument of administrative efficiency.

This is not the consensus scholarly view of democratic communication. Kenneth Burke, for example, defined democracy as “organized distrust,” arguing that “inefficiency is the one thing [democracy] has in its favor” (1968, p. 114). Chantal Mouffe has offered a complementary definition of democracy as agonistic pluralism, arguing that “the illusion of consensus and unanimity...should be recognized as being fatal for democracy and therefore abandoned” (1993, p. 5). Distinct from these perspectives, but similarly arguing for critical discursive engagement, Jürgen Habermas (1991) understood democratic participation as rational-critical debate that takes place in a deliberative public sphere existing between the private lives of citizens and the public machinations of government. But open government apologists view the new communication practices as an evolution beyond deliberative democracy, claiming that deliberation is “toothless” (Noveck, 2009, p. 35), and that it “suffers from extremely serious flaws” (Sunstein, 2006, p. 11).

The pivot between open-government-as-transparency and open-government-as-participation is therefore not just a technological project. It is a political one, in that it depends on and conjures forth a particular definition of political participation and a particular understanding of democracy. Noveck says that the object of the Open

Government Initiative is to “reinvent our democracy as we know it today” (2010, p. 16). In this thesis, I examine the political implications of the Open Government Initiative by looking at new communication platforms as sites of rhetorical action. I analyze both the broad theoretical justifications of the open government apologists and the situated communication practices of a specific open government project. The United States Patent and Trademark Office (USPTO) is using a web tool called IdeaScale to allow the public to suggest revisions to the written policies in the office's Manual of Patent Examining Procedure, or MPEP. Though the MPEP does not carry the force of law, it guides the way that patent examiners determine whether a patent can be issued. Through analysis of the IdeaScale website, analysis of participant comments, and interviews with USPTO officials who administer the website, I examine the way that new communication tools shape and are shaped by assumptions about political participation. I situate this individual website within the discursive networks formed between the federal government, the public, and the communication practices and technologies that connect them. Though the single node of the MPEP IdeaScale website is not a metonym for the whole network, it does vibrate in sympathy with it.

Digital rhetoric and government

Studies of the politics of online communication have often been oriented around the Habermasian ideal of the public sphere, where the *demos* can freely participate in rational-critical debate (Calhoun, 2004; Carlin et al., 2005; Barton, 2005; Warnick, 2007). For example, Warnick's *Rhetoric Online* (2007) optimistically describes “the internet's potential as a platform for public discussion and persuasion and thus for

reinvigoration of the public sphere” (p. 23). She cites examples of social activism and political resistance enabled by the internet’s affordability, accessibility, and horizontal structure. Matthew Barton (2005) similarly argues that blogs, wikis, and discussion boards can revitalize the public sphere. Barton argues that “the strength of the wiki...is its presentation of a document as a process of rational-critical debate” (p. 187). Barton cites Ward Cunningham, the inventor of the wiki, who claims in *The Wiki Way* with co-author Bo Leuf: “Wiki is inherently democratic—every user has exactly the same capabilities as any other user” (2001, p. 17).

While the internet may enable social activism, it also enables government management practices, a fact that problematizes the “inherent” democracy of online tools. After all, as Chadwick (2006) explains, “Authoritarian regimes, such as Singapore and even China, for instance, have also been quick to develop their own distinctive e-government programs” (p. 178). Jenkins and Thorburn (2003) make a similar point against simplistic techno-determinism, drawing on Raymond Williams: “Different cultures and different political regimes will exploit nascent technologies in radically different ways, as a comparison of the early history of television in Britain, the United States, and Nazi Germany dramatically illustrates” (p. 5). Of course, this does not entail that new communication technologies will conform completely to the ideological contours of the political regime that wields them. Technological affordances and social practices work together to inscribe the discursive possibilities of online communication. The writers of the online book *Collaborative Futures* (a team of digital writers, activists,

and artists, including a vice president of Creative Commons) suggest an approach closer to Michel Foucault's "microstructures" of power:

We are all the time besieged to Participate! Choose! Vote! Share! Join! And Like! And yet, we are all, already, integrated into structures of participation (whether we "like" it or not). We worry that a veneer of engagement only obscures deep flaws in the participation paradigm. Too often, it seems, progressives believe that power operates exclusively from above, that command and control emanate from some centralized, closed authority. It is no wonder that many latch on to notions of openness, transparency, and participation as radical ends in themselves; however we must not fetishise process over product.

Participatory frameworks are not in and of themselves politically significant, nor is power limited to distant and impersonal structures. Power is diffuse and distributed, operating through us and on us; participation therefore can turn into a vector for dominant ideologies as easily as it can liberate. (Linksvayer et al., 2010).

Theoretical approach

This is the angle at which my study intervenes: to understand not only the deliberative transaction between users of the government's web 2.0 technologies, but the distributed network of theoretical justifications, technological affordances, and suasive effects through which open government rhetoric flows. My approach considers three interfaces between rhetoric and new open government technologies:

- Open government technologies as the object of rhetoric. Using a Foucauldian lens, I analyze the rhetoric of three open government apologists: Beth Simone Noveck, former head of the Open Government Initiative; Tim O'Reilly, facilitator of the Gov 2.0 Expo; and Cass Sunstein, the chief of the White House Office of Information and Regulatory Affairs. I argue that the connection between openness-as-transparency and openness-as-participation relies on two competing but overlapping discursive threads that surface in these authors' arguments: the

discourse of neoliberalism and the discourse of free/open-source software (F/OSS).

- Open government technologies as the site of rhetoric. Using the framework of genre, I analyze the rhetorical actions of users on the MPEP IdeaScale website. I rely on the theory of genre sketched out by Campbell and Jamieson (1978) and expanded by Miller (1984). I argue that rhetorical action on the website is structured by generic constraints to adopt a F/OSS modality that serves as a neoliberal instrumentality.
- Open government technologies as an expression of rhetoric. I analyze the MPEP IdeaScale website as an instance of procedural rhetoric. Procedural rhetoric, according to Ian Bogost (2007), is the use of processes to mount an argument or formulate an expression, especially via computerized media. I argue that the MPEP IdeaScale tool models a particular definition of political participation: the detection of administrative bugs by niche communities of experts. It also models a particular definition of political collectivism: the aggregation of information via the “invisible hand” of the network.

Though distinct, these perspectives are interrelated. Foucault’s central insight that discursive knowledge constructs ontological categories like the state or the subject provides a prompt to examine the evolution of open government as a product of discursive justifications. In the *Birth of Biopolitics* (2008), Foucault describes his theorization of the neoliberal American state as an attempt to “grasp the way in which this practice that consists in governing was conceptualized both within and outside

government... In short, we could call this the study of the rationalization of governmental practice in the exercise of political sovereignty” (p. 2). Foucault provides a genealogy of the ensemble of practices that he calls “governmentality,” examining the discursive transformations that created a regime of neoliberalism in the U.S. and Germany in the postwar period. I extend this genealogy to consider how the discourse of neoliberalism is adapted in the rhetoric of open government apologists to accommodate F/OSS discourse.

The justifications of open government apologists, and the ontological schema they bring to life, serve to stabilize the rhetorical situation for citizens who engage with the government’s web 2.0 tools. Simultaneously, the IdeaScale platform provides key affordances that structure the rhetorical form of citizens’ interactions. For Campbell and Jamieson (1978), the fusion of situation and form are constitutive of genre, where genre is understood not merely as a taxonomic system but as a dynamic set of conventions. Miller (1984) contributes the idea of genre as social action, perceiving that genres are socially negotiated and therefore embody mutually construed knowledge. Winsor (2000) argues that this also entails a political dimension to genre. I analyze the rhetorical action of IdeaScale participants through a generic lens to understand the socially shared political work that operates to constrain and define IdeaScale discourse.

IdeaScale participants’ mutual understanding of appropriate rhetorical action is reinforced by the IdeaScale website itself, which is not only a platform for generic communication, but is itself a rhetorical expression. Ian Bogost argues in *Persuasive Games* that computer processes can be rhetorical, by modeling the world and enthymematically eliciting user participation (2007). Bogost illustrates his theory of

procedural rhetoric with video games, but argues that other processes are susceptible to this type of analysis. While I do not claim that the USPTO uses IdeaScale disingenuously—as “participation theater,” in the words of Sifry (2010, p.148)—I argue that the tool serves a dual function: it both enables the public to communicate with the agency, and works to model a particular conception of state-citizen interaction.

CHAPTER TWO: A BRIEF HISTORY OF OPEN GOVERNMENT POLICY

Though it is in many ways novel, the Open Government Initiative has historic roots. Carl Malamud (2010) situates it within a continuum going back to the nation's founding. Malamud is an open government advocate who helped put government information online in the 1990s. He argues that openness via the internet constitutes a third wave in the government's information-sharing policies. For Malamud, the first wave is no less fundamental than the founding of the nation itself, which "established the principle that government must communicate with the people" (p. 43). This was followed by a second wave that was initiated with Lincoln's creation of the Government Printing Office in 1861, which "established the principles of documentation and consultation" (p. 43), culminating in the creation of the Federal Register under Franklin Roosevelt. In the third wave, technological developments like the electronic storage of records, the computerization of databases, and the development of the internet suddenly made it "possible, and then trivial, to copy entire databases and serve them in a totally different manner" (p. 44). Thus in Malamud's view, though new technologies in this third wave produced a Cambrian explosion of openness, the impulse toward openness is latent in the nation's founding principles.

Martin Halstuk and Bill Chamberlin (2001) provide a more direct lineage of the evolution of information policy. They trace open government's legislative roots to the 1966 passage of the Freedom of Information Act, which required agencies to provide

government records at the public's request. FOIA applied only to paper-based records, however; computerized records received a brief mention in a Senate report on FOIA amendments in 1974, but were not ultimately included in the law (p. 47). Then in 1980, Congress passed the Paperwork Reduction Act, which mandated the use of computer technology to make information management more efficient. The OMB issued a report known as OMB Circular A-130 in 1985 to clarify the government's electronic information policy. During this time, according to Halstuk and Chamberlin, the computerization of records increased rapidly (p. 53), although neither FOIA nor the Paperwork Reduction Act provided the public with a right of access to these records. This began to change following a 1985 Congressional hearing on EDGAR, an electronic filing system piloted by the SEC. (Carl Malamud helped to get the EDGAR database published online.) Partly due to this hearing and subsequent hearings on FOIA, the Electronic Freedom of Information Act was introduced in 1991 and was eventually passed in 1996. EFOIA established a public right of access and made explicit the value of usable electronic information.

As internet capabilities and access spread, the government developed its online services beyond the publication of data. Agencies began to use the internet as a portal for serving customer needs online. In these new e-government initiatives, As Andrew Chadwick (2006) explains, the customer-service model was at the fore of e-government reforms in the late 1990s and 2000s:

E-government was thus perceived as a continuation of a computerization of government agenda that began back in the 1960s. But the emulation of new private sector management practices was also at the forefront of the program...

The U.S. e-government program was heavily oriented around introducing new ways for customers to transact with government (p. 181).

The customer interface introduced the possibility of two-way interaction with government bureaucracies: the internet allowed agencies to not only publish information to citizens, but receive information from them. This interaction primarily occurred through what Chadwick calls the “consultative approach,” exemplified in the federal government’s rulemaking system that allows the public to comment on proposed rules online (p. 99). But Chadwick observed that e-government practices “may begin to open up new channels of communication between civil society and government” (p. 322).

The Open Government Initiative

President Obama issued his memo on open government on his first day in office, January 21, 2009. The memo instructed the OMB director (at that time, Peter Orszag) to issue an Open Government Directive that would provide federal agencies with instructions about how to implement their own open government plans. The directive (OMB M10-06) was issued on December 8, 2009. It required agencies to take four steps: publish government information online, improve the quality of government information, create and institutionalize a culture of open government, and create an enabling policy framework for open government. Though various requirements already existed for publishing government information, the directive specifies that this information is to be published online in an open format, which it defines as “one that is platform independent, machine readable, and made available to the public without restrictions that would impede the re-use of that information.”

The directive departs from previous information policy in its strong emphasis on user participation, even in areas that might imply a passive role for the citizen, such as publishing information online. It requires each agency to include a mechanism for public participation on its Open Government webpage that would allow citizens to provide feedback about the quality of the information, the selection of data to be released, and the agency's Open Government Plan. Previous guidance from the OMB on releasing information had already required a more limited form of public feedback, but focused on administrative rather than technological solutions. In guidance related to the implementation of the Information Quality Act of 2001, the OMB had instructed agencies to "establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency" (OMB, 2001). Thus, although feedback was incorporated in the 2001 guidelines, it was limited to correction of the released information, whereas the 2009 directive requires agencies to actively seek input about the nature and type of the information released. This signals an expanded role for citizens, not merely as the passive recipients of information, but as co-producers who determine what and how the government communicates. Indeed, e-government efforts have arguably evolved since their inception toward greater reliance on citizens as co-producers of content (Chadwick, 2006, p. 198).

The USPTO's open government plan

The agency that oversees the USPTO is the Commerce Department. Commerce published its Open Government Plan at <http://open.commerce.gov> in April 2010 in response to the OMB directive. The latest version of the plan, released on June 30, 2011,

outlines the transparency and participation initiatives undertaken by each of its organizations, including the USPTO. The report details six datasets and 25 tools that the USPTO has released, ranging from the publication of machine-readable patent fee data to the creation of a blog and Twitter channel.

The report says that the Commerce Department has “led the way in experimentation with government-citizen collaboration” (2010, p. 29), by implementing Peer-to-Patent, a project started in 2007 by law professor Beth Simone Noveck of New York University. The project used an online tool to gather input from the public to identify prior art, i.e., extant publications used to assess a patent application’s novelty. The Commerce report notes that “this crowd-sourcing activity helped lay the groundwork for the President’s Open Government Initiative” (p. 29). Indeed, following Obama’s election, Noveck was appointed to lead the Open Government Initiative as deputy CTO. Commerce followed up on the 2007 Peer-to-Patent effort with a pilot program in 2010.

The Commerce plan also describes the agency’s use of the IdeaScale tool for various initiatives. It used IdeaScale to solicit input about its Open Government Plan (p. 31), resulting in two suggestions from the public that were incorporated into the published report. The first was to develop an “ideation platform” like IdeaScale for further uses within Commerce, which Commerce says it is exploring (p. 33). The second was to use open-source software for IT development. Commerce says it is already using the open-source platform Drupal and “plans to increase this use in the future” (p. 34). The Commerce report also discusses the introduction of the IdeaScale tool to revise the USPTO’s examination manuals. According to the report:

In January 2011, the USPTO launched an online tool for public discussion of ideas for improving the MPEP and TMEP [Manual of Patent Examining Procedures and Trademark Manual of Examination Procedures]. Collected suggestions and comments will be considered during the production of subsequent editions of these important publications. In the first six weeks, activity on the MPEP site resulted in 56 ideas, 135 comments, and 247 votes (p. 25).

Thus, IdeaScale supports several components of Commerce's plan, and the agency is considering further uses. Nor is Commerce the only department to deploy the tool.

IdeaScale claims on its website that 23 federal agencies began using the tool as a result of the Open Government Directive.

IdeaScale

IdeaScale's proliferation across the government was partly driven by an initiative by the General Services Administration to provide the tool to federal agencies at no cost. The GSA announced in January 2010 that it had developed a tool based on the IdeaScale platform that federal agencies could use for free. In the announcement, the GSA said that using a common tool would "simplify the public engagement process" and make the process "as efficient as possible" (GSA, 2010). According to a September 2009 IdeaScale blog post, the company decided to offer the platform to government agencies for free after attending the Gov 2.0 Expo, a conference convened by O'Reilly Media to discuss open government practices (Hoehn, 2010).

Though widely used for citizen engagement, the IdeaScale platform was initially conceived as a market research tool. IdeaScale explains on its website that the tool evolved from a SaaS-based online market research platform called QuestionPro that was developed by a team at Brigham Young University in 2003. In 2004, the team founded a private venture-backed company called Survey Analytics LLC, which launched the

IdeaScale platform in 2007. IdeaScale’s website markets its platform to government as a way of allowing citizens to be heard and as an efficient way to collect feedback. The website appeals to the desire for controlled participation (“open a direct dialogue on your turf – instead of out in the wild”) and the desire to demonstrate openness (“Build a strong relationship with your citizens by confirming that their voice is heard”).

MPEP IdeaScale

The USPTO announced that it would use IdeaScale to revise the MPEP in a blog post from the director, David Kappos. The post read:

If you’ve been following along with my blog for a while, you already know we’ve been looking at ways to reengineer the MPEP and TMPEP. In Part 2 of this series we reported that one important part of the new MPEP/TMPEP philosophy would be continuous outreach and collaboration with the IP community to ensure the documents are accurate and current and maximally effective. There was broad consensus that there should be a tool that allows for outside contributions to the content of these manuals while ensuring that the USPTO is the keeper of the official versions of the documents.

I’m thrilled to announce to our readers that we have now put out what we believe is a radically new way for us to work in collaboration with colleagues and stakeholders in getting this important job done. The vehicle we chose to bring that philosophy to action is the Internet, more specifically an online discussion tool. Now for the first time in history, the IP world can work with the USPTO, together and collaboratively make the MPEP and TMPEP into state-of-the-art practice documents (2011, January 14).

The USPTO officials I interviewed concurred with Director Kappos that IdeaScale is a “radically new” way of working. They said that although the office previously tried to maintain open lines of communication by receiving emails and talking to people at meetings, IdeaScale was a more proactive channel, allowing the USPTO to “go out and put [the MPEP chapters] in front of you.” Initially, the USPTO allowed discussion of two chapters from the MPEP. After several months, it closed discussions on those chapters

and introduced five new chapters for review. The USPTO officials said that it was important to “control the number of chapters that go out at any one given time,” given the size of the overall manual and the task of managing the discussion.

The IdeaScale tool encourages multi-modal forms of participation. The tool focuses primarily on users’ contribution of ideas, but also provides other means for interaction. Users can also comment on others’ ideas, vote on ideas, and vote on comments. This variety of participatory modes recalls Andrew Chadwick’s (2009) argument about the use of web 2.0 technologies in political participation. Citing the concept of the “long tail” used in online retail (reaching more customers by selling a lower number of a wider variety of products), Chadwick argues that online government participation can be more realistically elicited with small-scale, low-threshold activities that channel the collective intelligence of more users (p. 24). From this perspective, democratic participation includes not only sustained deliberation but low-intensity activities that can be aggregated into meaningful participation. The USPTO officials told me that while they do not use votes and rankings to assess ideas in a strictly quantitative sense, they do pay attention to each element of the IdeaScale platform. Perhaps as importantly, the voting and ranking features are a way of shaping discussion by bringing the user’s attention to the most popular ideas.



Figure 1 Inflection points in US information policy

CHAPTER THREE: THE DISCURSIVE WARRANTS OF THE OPEN GOVERNMENT INITIATIVE

Obama's open government memo defines two types of openness: openness as transparency and openness as public participation. The connection between these two types of openness may seem paradoxical. The former requires the agency to disclose information to the public; the latter requires the public to disclose information to the agency. The former invites the public to critique the agency; the latter invites the public to cooperate with the agency. The former limits the autonomy of the federal agency; the latter infinitely expands its labor and knowledge pool. Yet when administration officials and open government advocates explain the democratic value of new communication technologies and practices, they frequently assume a connection between these two definitions.

In the spirit of Foucault's genealogical projects, I want to map two divergent, yet overlapping, discursive traditions that ground this connection. On the one hand, the connection is informed by an internet-age adaptation of the neoliberal governmentality whose genealogy Foucault carefully mapped out in *The Birth of Biopolitics*. In Foucault's account, neoliberalism is a theory of government (he prefers "government rationality") that seeks to secure the well-being of the state by interpreting social phenomena through the grid of economic analysis, intervening to secure competition in markets and pseudo-

markets, and activating *homo œconomicus* as an entrepreneur of himself. Neoliberalism ties up the transparency of the market with the participation of individual enterprise.

On the other hand, the connection is also informed by the free and open-source software (F/OSS) tradition. The F/OSS tradition ties up the transparency of software code with the participation of many voluntary users. Early on, this tradition drew a clear contrast with neo-liberalism: it emphasized sharing over competition, and it subordinated the individual, atomistic *homo œconomicus* to the networked community of actors, creating what some have called a digital gift economy (Barbrook, 2005). However, as the acronym's slash mark implies, the F/OSS tradition is not unitary, having splintered in the late 1990s over disagreements over precisely such economic and political issues: while rooted in collective, communitarian ideals, open source now serves as a management technique for private enterprise.

The evangelists of the Open Government Initiative justify open government practices by drawing on both of these discursive traditions. After a brief recap of each, I will show how their use as metaphorical models for the Open Government Initiative rearranges the relationship between the government and its citizens, positing a new governmental rationality with significant consequences for the meaning of political participation and therefore the meaning of democracy.

A note before proceeding: it may seem curious to speak about the role of neoliberalism in the Obama administration's open government policies. After all, Obama himself has been accused of being a food stamp president and a European-style socialist, caricatures of the very style of government that neoliberal theorists reacted against.

Obama's economic policies may indeed be Keynesian. Yet as I will argue, the Administration's communication practices emerge in a dynamic relationship with neoliberalism.

Foucault: governmentality and the birth of neoliberalism

Foucault argues that the model of sovereign authority of the feudal era in Europe, typified by Machiavelli's *The Prince*, began to be transformed in the sixteenth century into a set of administrative and regulatory practices that Foucault calls "governmentality." The sovereign model of power articulated in *The Prince*, Foucault argues, leads to an ultimately circular rationale for governing: the exercise of sovereignty serves to maintain sovereignty, and "the end of sovereignty is the exercise of sovereignty" (1991, p. 95). Conversely, the new governmental mode of power has a different object: the welfare and security of the state.

Foucault writes that governmental power was conceived by early writers like La Mothe Le Vayer as a continuity between three types of governing: "The art of self-government, connected with morality; the art of properly governing a family, which belongs to economy; and finally the science of ruling the state, which concerns politics" (1991, p. 91). The governmental mode related the economic with the political, thereby bringing the management of the family under the jurisdiction of the state. In the demographic and agricultural expansion of the eighteenth century, the basic economic unit of the family was subsumed by the new concept of population. For Foucault, it was the emergence of the idea of population in the eighteenth century that was decisive for the development of administrative governmentality. This concept required, and was

equally enabled by, a new science of the state (i.e., statistics) capable of managing “the welfare of the population, the improvement of its condition, the increase of its wealth, longevity, health, etc.” (1991, p. 100). The art of governing the family was reconfigured as the biopolitical management of population; the convergence of biopower (economy) with the science of governing the state (politics) gave rise to political economy, a new form of governmentality.

In Foucault’s account, political economy then underwent a further transformation in postwar Germany and the United States. A neoliberal form of political economy began to take shape, in which economy was not only a supplement to politics but became the schematic grid for understanding non-economic social phenomena, representing an “inversion of the relationships of the social to the economic” (2008, p. 240). This neoliberal governmentality relied on the third type of government: the art of governing the self. As Colin Gordon explains, neoliberal government recasts “the interface between state and society in the form of something like a second-order market of governmental goods and services. It becomes the ambition of neo-liberalism to implicate the individual citizen, as player and partner, into this market game” (1991, p. 36).

For Foucault, then, modern governmental rationality consists in “the invention of a secular political pastorate which couples ‘individualization’ and ‘totalization’” (Gordon, 1991, p. 8). The totalizing effect of neo-liberalism results from its attention to the management of population, which is effected through the grid of economic knowledge. On the other hand, the individualizing effect of neo-liberalism results from the subject’s position in this grid of economic knowledge as *homo œconomicus*, the

subject understood as a collection of rational self-interests. For Foucault, *homo oeconomicus* presents “the surface of contact between the individual and the power exercised on him, and so the principle of the regulation of power over the individual” (2008, p. 253). In classical liberalism, *homo oeconomicus* was understood as a partner in an exchange, responding to market interventions (such as the Keynesian New Deal of the 1930s and the Great Society of the 1960s). Foucault argues that neo-liberals reevaluated this model from the perspective of the worker as an economic subject, rendering *homo oeconomicus* as the entrepreneur of himself; that is, “being for himself his own capital, being for himself his own producer, being for himself the source of his earnings” (2008, p. 226). Rather than intervening in the market to regulate or compensate for its excesses, neoliberalism posited that government should intervene to produce competitive individuals, managing the population through investments in self-enterprise.

F/OSS and hacker culture

The existence and persistence of open-source software raises vexing questions for neoliberal theories about *homo oeconomicus*. “What puzzles researchers in economics, business science and related fields is that several issues of the OSS phenomenon cannot be explained by off-the-shelf theories,” say Jürgen Bitzer and Philipp J.H. Schröder in the introduction to *The Economics of Open Source Software Development* (2006, p. 12).

Economist Maria Rossi points out in her review of the literature on F/OSS that “conventional understanding is that F/OSS is a world where *homo oeconomicus* had been banned” (2006, p. 15), though she identifies economic models that have attempted to

account for the open-source participant with both extrinsic and intrinsic explanatory factors.

The forerunners of F/OSS were consciously opposed to market competition and individual financial reward. Eric Raymond, the author of the seminal open-source text *The Cathedral and the Bazaar*, traces the inception of F/OSS to MIT in the 1960s. Raymond notes that with the 1969 development of ARPAnet, the first computer network, hackers “discovered (or re-invented) themselves as a networked tribe” (Raymond 2000a), developing a hacker culture and hacker ethics. Though ARPAnet was a military project, it was used by hackers in a more or less unauthorized fashion to collaborate on projects ranging from developing an operating system to maintaining a dictionary of hacker slang. One of the operating systems to emerge from this hacker culture was the GNU OS developed by Richard Stallman, a programmer that Raymond describes as Bell Labs’ “most fanatical holdout against the commercialization of Lab technology” (Raymond 2000a).

Stallman founded the Free Software Foundation, or FSF, in the 1980s, which still continues to advocate for “having control over the technology we use in our homes, schools, and businesses, where computers work for our individual and communal benefit, not for proprietary software companies or governments” (FSF 2012a). Raymond (2000a) says the FSF “would largely define the public ideology of the hacker culture” of the 1980s. Steven Levy’s *Hackers: Heroes of the Computer Revolution* (1984) defined this hacker culture in a series of principles that emphasized openness, sharing, and decentralization: access to computers should be unlimited (p. 40); information should be

free (p. 40) authority should not be trusted (p. 41); hackers should be judged on skill rather than credentials (p. 43), you can create art and beauty on a computer (p. 43), computers can change your life for the better (p. 45).

However, the publication of Raymond's *The Cathedral and the Bazaar* in the late 1990s diverted the anti-commercial course that FSF had charted by introducing the idea that open-source projects could be both peer-organized and commercially viable. Raymond and others founded the Open Source Initiative in 1998, replacing the "moralizing and confrontational attitude" of free software with a "new rhetoric of pragmatism and market-friendliness" (OSI n.d.). Raymond's work was credited as the inspiration for the Mozilla browser (originally Netscape), a major early commercial project that used open-source methodology (Raymond, 2000b). In effect, the open-source movement incorporated the unmarketable and ungovernable hacker culture into a commercially palatable management style. Major commercial organizations adopted it – for example, Martin Fink's *Business and Economics of Linux and Open Source* (2002) provides a description of Hewlett Packard's open-source program.

Open-source software development figures overtly as a conceptual model for the Open Government Initiative (see Pyrozhenko, 2011), though its admixture with government bureaucracy forms a necessarily impure matrix. Beth Simone Noveck, who led the Open Government Initiative until stepping down in 2011, introduced the pilot program for collaborative government in 2007, Peer-to-Patent. According to the description in her book *Wiki Government* (2009), the project "combines open-source volunteer participation with government's central coordination, issue framing, and bully

pulpit” (p. 16); it is an “attempt to apply open-source principles in the monopolistic culture of the patent system” (p. 93); and it is a way of “applying collaborative open-source methods to the closed practices of the USPTO” (p. 95). Noveck says that Peer-to-Patent invited participation from the Free Software Foundation, which declined to participate, and the Groklaw and Linux open-source communities, which did participate (p. 95). Noveck also draws on the Mozilla Foundation’s open-source practices as a model for collaborative policy-making (pp. 6, 32, 166). David Booth (2010) likewise mines the Mozilla approach for useful open government strategies, arguing that “Mozilla’s commitment to collaborating with its browser users... suggests parallels with the Obama administration’s philosophy of participatory governance” (2009, p. 2). Booth cites the Peer-to-Patent project as an example of open-source government, as well as projects by the EPA and the White House.

While the gift economy of the early hacker culture could be seen as a repudiation of competitive, atomistic neo-liberalism, open-source management recuperates the hackers’ methods as strategies of private enterprise. Richard Barbrook (2005) observes that Netscape/Mozilla’s adoption of open source has paradoxical implications: “The commercial survival of Netscape depends upon successfully collaborating with hackers from the hi-tech gift economy. Anarcho-communism is now sponsored by corporate capital.” Barbrook argues that this mixed economy has become accepted as an unremarkable underlying feature of the internet, in which information is simultaneously a gift and a commodity. As a strategy for government, then, open source straddles two

spheres: it draws on an ethic of volunteerism, but engages management techniques that support the development of competitive private enterprise.

The two meanings of openness

With this background, the logic connecting openness-as-transparency and openness-as-participation begins to emerge. Openness-as-transparency renders the government legible through the neoliberal grid of economic analysis. Openness-as-transparency reflects neoliberal distrust of the state and faith in private enterprise; by requiring agencies to disclose information, Obama's open government policies turn the panoptic eye inward. This follows "a policy which Foucault terms the 'disciplinarization of the state,' that is to say, a focusing of the state's immediate interest in disciplinary technique largely on the organization of its own staffs and apparatuses" (Gordon, 1991, p. 27). Transparency not only makes critique possible, but instates this critique as a permanent technique of neoliberal governmentality. Foucault says, "The economic grid will or should make it possible to test governmental action, gauge its validity, and to object to activities of the public authorities on the grounds of their abuses, excesses, futility, and wasteful expenditure" (2008, p. 246). In contrast to sovereign rule which justifies itself through the exertion of power, or social contract government which justifies itself as an implicit agreement between ruler and ruled, neo-liberal government demonstrates its validity to the extent that it meets criteria of economic efficiency.

Cass Sunstein, the Administrator of the White House Office of Information and Regulatory Affairs, made the following comments in a speech titled "Open Government is Analytic Government":

If regulatory choices are based on careful analysis, and subject to public scrutiny and review, we will be able to identify new and creative approaches designed to maintain and to promote entrepreneurship, innovation, competitiveness, and economic growth.

...

By promoting accountability, transparency policies can help to track government's own performance and in that way make public officials accountable for what they do, including in the regulatory arena... Regulatory analysis is best seen as a form of performance review. (2010, p. 1, 4).

In Sunstein's view, transparency makes it possible to review the government's performance, improving government practice by exposing it to economic critique; transparency becomes an instrument of economic efficiency. As an example, consider the dashboard the USPTO created to display performance metrics as part of its transparency initiative (see Figure 3). In a blog post summarizing the USPTO's work in 2011, Director Kappos describes the dashboard:

It's also why we're proud of tools like our Dashboard and our newly revamped website. Such features give visitors real access to tools for navigating the IP system, and real insight into our performance, whether it's the state of our backlog, inventory positions, or pendency. Ultimately, this doesn't just show the public where we stand, it also motivates us to take an honest look at how differing processes are faring in terms of efficacy and efficiency—and improve upon them. Measures like the Dashboard and P2P help make our government more transparent and accountable to the American people. (2011, December 21).

In Kappos's account, transparency is valuable not just as an instrument of visibility but as an instrument for increasing the efficacy and efficiency of the USPTO.



Figure 2 USPTO patents dashboard

Transparency-as-openness thus functions as a technique of neo-liberal governmentality. At the same time, openness-as-transparency resonates with F/OSS values. Transparency makes information free, as in the Freedom of Information Act; it opens government agencies to critique. But it also makes information free, as in free software: “Free software is a matter of the users’ freedom to run, copy, distribute, study, change and improve the software” (FSF, 2012b). President Obama’s memo on open government says, “Information maintained by the Federal Government is a national asset” (2009). In the Open Government Initiative, transparency does not just mean visibility; it means accessibility and manipulability. Obama’s memo directs agencies to “harness new technologies to put information about their operations and decisions online” in forms that the public can “readily find and use” (2009). The OMB’s Open Government Directive similarly calls for making information available for use and re-use – essentially, for hacking.

The idea that information should be useful depends on the functionality provided by new information technologies. Transparency in government works as an instrument of efficiency by making agencies responsive to market demands. As information technologies developed, however, the reverse began to be true as well: efficiency began to work as an instrument of transparency. As government information was computerized, it became possible to efficiently store and share large amounts of data in electronic databases (Malamud, 2010). This new-found efficiency made it possible for legislators to relate FOIA's obligations of disclosure with the Paperwork Reduction Act's mission to make information more accessible and usable (Halstuk & Chamberlin, 2001). Information as the object of a right to know becomes, in the words of Obama's open government memo, information as a national asset.

It is at this juncture that the two meanings of openness converge. If openness-as-transparency means that the public has the right to use information, openness-as-participation means that the public has the obligation to use that information. The citizen shifts from information consumer to information asset manager. Neoliberal governmentality provides the discursive nexus between the two divergent senses of openness. The Open Government Initiative subjects the government to economic critique by requiring it to disclose information. Simultaneously, *homo oeconomicus*, as the entrepreneur of himself, is implicated in using the new channels of communication to ensure that he is being heard, that his government is serving him, etc. This neoliberal governmentality recruits open-source principles as a management technique, a way of designing for productive social organization. By disclosing its information online in

reusable form, the Open Government Initiative invites a reciprocal act of disclosure from the private citizen, and openness shifts from a mechanism for distributing information to a mechanism for aggregating dispersed information. The government agency's divestment of information becomes an investment in human capital, eliciting contributions from individual actors to help the agency run more efficiently and effectively. This investment provides the point of contact for power relations between the government and *homo æconomicus* (or perhaps we should now say *homo informaticus*, because the capital being exchanged is not financial but informational).

The exposure of such points of contact is, of course, what is at stake in Foucault's genealogies, and I will now turn to explore how it surfaces in the rhetoric of three open government apologists: Cass Sunstein, Obama's information chief; Tim O'Reilly, the facilitator of the Gov 2.0 Expo and CEO of O'Reilly Media; and Beth Noveck, the erstwhile leader of the Open Government Initiative.

Cass Sunstein: The problem of dispersed knowledge

Cass Sunstein explicitly draws on neoliberal economic theory in his discussions about how to get citizens to disclose information. In his speech on open government, he pivots between the two definitions of openness by citing the neoliberal economist

Friedrich Hayek:

Transparency promotes not merely accountability and use of data, but access to widely dispersed information. Here the theme of public participation moves to the fore.... To understand the point, we would do well to consult one of the great theorists of information, Nobel Prize winner Friedrich Hayek. (2010, p. 5).

Sunstein draws on Hayek not for his financial insights but for his contribution to a theory of information that ties transparency to participation. Sunstein notes, "Hayek's initial

concern was the price system... Later in his career, Hayek emphasized that a number of social institutions, and not only the market, have the function of aggregating dispersed knowledge” (2010, p. 5-6). As Foucault observed, in Hayek’s work the neoliberal economic grid becomes a schema for analysis of other institutions throughout society.

Sunstein continues:

In the current era, it is far easier than ever before to have access to dispersed knowledge. Consider the rulemaking process itself. A large advantage of notice-and-comment rulemaking is that it allows agencies to offer proposals, and supporting analyses, that are subject to public scrutiny, and that can benefit from knowledge that is widely dispersed in society. (2010, p. 6).

Here, Hayek’s idea of the market as a site for aggregating dispersed knowledge acts as the conceptual model for openness-as-participation; the task for policy-makers becomes how to structure the information marketplace to elicit this widely dispersed knowledge.

Sunstein has addressed this task more fully in earlier writings like the 2006 monograph *Infotopia: How Many Minds Produce Knowledge*. Sunstein argues that deliberation as a mechanism for aggregating dispersed information “suffers from extremely serious flaws” (2006, p. 11), because it can be distorted by groupthink, informational influences, and social pressures (see also Sunstein 2007). He posits that “we have to investigate some creative and fresh mechanisms for aggregating information from many minds. Some of the most promising of those mechanisms involve the internet” (2006, p. 102). He discusses three models: prediction markets, open-source software, and wikis. In his account of prediction markets (where participants bid on the outcome of events), Sunstein draws directly from Hayek. Eliciting knowledge in prediction markets is a fairly straightforward application of neo-liberal intervention: by

attaching financial rewards to the disclosure of correct information, prediction markets produce competition by creating “strong incentives for revelation of whatever information people actually hold” (2006, p. 106).

Sunstein also uses the Hayekian model to describe wikis and open-source software, though he is careful to draw distinctions as well. Sunstein writes, “Perhaps any particular [Wikipedia] article, at any particular time should be seen as a kind of ‘price’ that is a product of many minds,” but he notes that “this is only a metaphor” (2006, p. 157). The difference is that there is no economic incentive; instead, Sunstein says, people are motivated by other factors, such as self-expression and the desire to be helpful. Likewise, open-source software is Hayekian in that it “benefits from the inclusion of countless bits of information from widely dispersed people” (2006, p. 173), but is distinct from a literal price market in that financial incentives are not the only motivator.

For Sunstein, then, neoliberal theory frames his discussion about how to elicit dispersed knowledge. But the F/OSS model redraws the surface upon which neoliberal power relations are engaged: to aggregate information requires not just straightforward financial interventions, but thoughtfulness about how to motivate people to volunteer information for free. The problem for Sunstein is discerning the mechanisms from these models that will get people to disclose what they know: “For private and public institutions, the overriding question is how to alter people’s incentives in such a way as to increase the likelihood of disclosure” (2006, p. 203). Sunstein argues that for open-source software, social norms provide the incentive to engage critically and disclose information

(2006, p. 204). He invokes Raymond's "The Cathedral and the Bazaar" to explain F/OSS as a gift culture, where status motives play a key role (2006, p. 174).

Raymond (2000b) uses the economic market as the conceptual model for open-source participation, where the open-source project leader's role is to create the market conditions to allow individual competition to flourish. In Raymond's exposition, the open-source community that developed the Linux operating system worked via a reputation market; it was like a "free market or an ecology, a collection of selfish agents attempting to maximize utility," except that the utility was not profit, but "the intangible of their own ego satisfaction and reputation among other hackers" (2000b). Raymond describes the project leader's role as a matter of securing this egoistic participation: "We may view Linus's [Torvald, leader of the Linux project] method as a way to create an efficient market in 'egoboo'—to connect the selfishness of individual hackers as firmly as possible to difficult ends that can only be achieved by sustained cooperation" (2000b). As in neoliberalism, effective implementation of an open-source project demands an investment in human capital. Project leaders need to invest in creating the conditions that elicit participation: "Properly cultivated, they [users] can become co-developers... Treating your users as co-developers is your least-hassle route to rapid code improvement" (2000b).

Sunstein places the open-source model in opposition to the conventional deliberative model. Unlike deliberation, which works toward group consensus, prediction markets and open-source software development encourage atomized individual self-interest that, in the aggregate, increases and improves the information available. With its

economic metaphors, Sunstein's model recalls what Jodi Dean (2008) has called communicative capitalism. Dean argues that there has been "a shift in the basic unit of communication from the message to the contribution" (p. 103), where communicative acts do not form a deliberative public sphere but instead "circulate in a massive stream of content, losing their specificity and merging with and into the data flow" (p. 107). For Sunstein, the government's task is to provide the market conditions that allow these contributions to enter public circulation. Government becomes a platform for private development.

Tim O'Reilly: Government as a platform

Tim O'Reilly, who is often credited with coining the term "Web 2.0" to designate the new collaborative practices embodied by wikis, blogs, and social media tools, introduces the cognate "Gov 2.0" to designate the collaborative practices of the Open Government Initiative. In O'Reilly's vision, Gov 2.0 is government "stripped down to its core, rediscovered and reimagined as if for the first time" (2010, p. 12). Gov 2.0 is enabled by new communication technologies, but is legitimized by the nation's founding principles. O'Reilly argues that the use of Web 2.0 collaborative technologies allow citizens to engage in the "participatory government envisioned by our nation's founders" (2010, p. 12). Invoking Raymond's bazaar metaphor, O'Reilly suggests that Gov 2.0 should be viewed as a "convener and an enabler rather than the first mover of civic action," "the manager of a marketplace," and "an open platform that allows people inside and outside government to innovate" (2010, p. 13). O'Reilly says government is a site of

collective action, but like Sunstein, he sees collective progress emerging from individual innovation and private competition, not group consensus or deliberation.

O'Reilly's government-as-a-platform model is an adaptation of neoliberal governmentality that uses information technology as its metaphor. Its intent is to limit the power of the state by cultivating the participation of private entrepreneurs: "Government 2.0 will require deep thinking about...how to use the platform power of the government not to extend government's reach, but instead, how to use it to better enable its citizenry and its economy" (2010, p. 18). The purpose of its intervention is to secure the competition of private participants, investing in human capital to generate improvements: "One of the most important ways that government can promote competition is not through after-the-fact antitrust enforcement but by encouraging more innovation" (p. 17). The style of its intervention is to provide a market infrastructure in which citizens undertake modifications to secure their own welfare, rather than an administrative architecture in which public institutions perform ongoing modifications in the market (p. 22).

Raymond uses Cass Sunstein's notion of "choice architecture" to explain how Gov 2.0 should design for participation (2010, p. 24). Sunstein and Thaler (2009) define a choice architect as the person "with the responsibility for organizing the context in which people make decisions" (p. 3). Sunstein and Thaler affix choice architecture with the paradoxical label "libertarian paternalism" (p. 5), a theory of governing in which individuals retain freedom of choice, but government and commercial institutions structure choices to attempt to influence people to choose behaviors that improve their

lives. As in Foucault's description of neoliberalism, then, government-as-platform is not a model of laissez-faire market anarchism, but a well-structured architecture that influences private actors to participate out of self-interest in actions that contribute to the collective good. As O'Reilly states, "In the context of government as a platform, the key question is what architectures will lead to the most generative outcome. The goal is to design programs and supporting infrastructure that enable 'we the people' to do most of the work" (2010, p. 25).

Beth Noveck: Designing for democracy

Participatory architecture is central in Beth Simone Noveck's account of the Peer-to-Patent project. Noveck piloted the Peer-to-Patent project in 2007 and went on to lead the Open Government Initiative until 2011. In her words, "the Peer-to-Patent experience demonstrates the importance of thinking about how to *design* participation to address the institution's goals... if nothing else, Peer-to-Patent teaches us that design matters" (2009, p. 184, emphasis in original). She argues for the development of democratic software design, which she describes as a new science for government that "involves creating screens that guide people through novel and potentially complex practices that may be unknown to them, like public participation" (p. 185). Noveck introduces the term "visual deliberation" to describe how the Peer-to-Patent screen models collaboration, which she defines as using "the graphical screen to mirror and reflect the work of the group back to itself" (p. 71). Noveck says that Peer-to-Patent used visual deliberation to communicate a group's physics—i.e., the rules, norms, and social practices of the group (p. 71). It also visually reflected the group's culture—i.e., its values, identity, and purpose (p. 72).

Noveck suggests that granularity is an important feature of the physics of a wiki-style system, breaking down content into discrete categories (p. 82). Granularity is a key contribution of open-source principles to open government practice (Booth 2010; Chadwick 2009). Granularity identifies the discrete problems that need to be solved. In Peer-to-Patent, this meant designing the screen to show what the tasks were and which tasks remained outstanding. Noveck says, “‘Seeing’ reduces the cost to a person of deciding which groups to join and where to invest time and expertise” (2009, p. 127). Granularity thus channels users into specific patterns of participation. It is a participation architecture that authorizes certain forms of participation; it is a choice architecture that nudges users toward efficient and organized behavior. “The highly granular process communicated via visualizations helps to ensure successful governance (physics) of the open all-volunteer, wiki-style community” (Noveck, 2009, p. 72).

Noveck also advocates for “groupness” as a feature of the culture mediated by the screen. Groupness makes the group “more than the sum of its individual parts by reinforcing its identity as a group” (2009, p. 81). The screen provides “a nudge toward collaborative behavior that will make the collective more aware of itself, its goals, and the various roles members can play” (p. 86). Groupness gets short shrift in the competitive individualism of neoliberal theory, but has a complicated relationship with open-source development. In open-source projects, contributors are conceived as communities of actors. Says Eric Raymond: “While coding remains an essentially solitary activity, the really great hacks come from harnessing the attention and brainpower of entire communities” (2000b). Meanwhile, Raymond understands the

individual's relation to this community in terms of competition for status and reputation. Similarly, Peer-to-Patent relies on a collective identity, in which the individual has "the chance to work with and gain the recognition of a community of his peers" (Noveck 2009, p. 80). Yet within this community, participants compete for reputation. Peer-to-Patent used visual deliberation to provide recognition for participants who contributed, and also provided a mechanism for others to rate the quality of participants' contributions. For Noveck, these reputational tools are instruments for increased participation: "The ability to acquire a reputation in a professional community could create an impetus to increased participation" (p. 90).

Deliberating or debugging?

For Noveck, the Open Government Initiative is part of a trajectory "that will devolve power downward to the people" (Noveck 2010, p. 15). In the closing section of *Wiki Government*, Noveck contrasts Foucault's view of power, which she characterizes as "the ability to dominate other social groups," with the collective power of collaborative democracy, which she characterizes in Bertrand Russell's terms as the ability to "produce intended effects" (2009, p. 189-190). Noveck suggests, "We can conceive of 'power over' as 'power to' and produce the operational mechanisms for collective action" (p. 190).

But despite Noveck's glancing comment, "power to" is precisely what is at stake for Foucault. In the Foucauldian view, relations of power not only negatively constrain individuals through domination; they also positively ground individuals by authorizing forms of subjectivity and social practice. Power is a complex of material practices and

discursive justifications that permeates the field of action. “Power is exercised rather than possessed,” Foucault argues, which means that power relations “go right down into the depths of society; that they are not localized in the relationship between the state and its citizens or on the frontier between classes” (1979, p. 26-27). Foucault’s key insight about neoliberalism is that power relations did not disappear as the state’s reach receded in 20th century America; rather, they acquired a new shape, operating not by minute disciplinary interventions but by securing a competitive marketplace and enlisting citizens as self-entrepreneurs. Neoliberalism is a form of governmental power that invests in human capital to produce its end, which is the well-being of the state. Operating within the genealogy of neoliberal discourse, these open government advocates outline a theory of government that enlists citizens as collaborators, empowering individuals to take responsibility for the welfare of the state through online participation. Yet whereas neoliberalism emphasizes the economic form of human capital, the open-source tradition emphasizes softer forms of capital like social status and reputation. By importing open-source principles, the Open Government Initiative locates new points of contact for relations of power, by developing structures that encourage people to share their dispersed knowledge (Sunstein), compete to produce innovation (O’Reilly), and address well-defined problems through collaboration (Noveck). The exposure of these points of contact is the critical payoff for the exposition I have undertaken.

An exposition of power relations does not inevitably demand their overthrow. There may be strong ethical reasons to prefer governing apparatuses that permit open-source collaboration. But the theory of government espoused by these authors presents a

vision of democratic communication that calls for a new critical orientation for rhetoricians. Rhetorical study of online government communication has focused on the internet as a site of political action in the deliberative public sphere. But Sunstein, O'Reilly, and Noveck blast deliberation as ineffective. In a speech for the Long Now Foundation, Noveck has said:

There is the world of deliberative democracy which long has been held up as the great ideal to which we should aspire, where neighbors talk to one another in civic and civilized discourse. The problem with deliberative democracy is that it puts all the emphasis on talk rather than action. While it is very nice to come together with one's neighbors, if what we really have to do is make change happen and take action, we have to think not only about the inputs – not only about how we talk together – we also have to think about the outputs. How do we actually take action together? How do we solve problems? How do we get stuff done? That is what I would term “collaborative democracy.” (2010, p. 5).

Elsewhere Noveck derides deliberation as “toothless” (2009, p. 32). Similarly, Sunstein makes an empirical argument that deliberation as an information-gathering mechanism “suffers from extremely serious flaws” (2006, p. 11). And O'Reilly argues that in “the existing model of government...our ‘participation’ is limited to protest...collective action has been watered down to collective complaint” (2010, p. 13). In the new collaborative democracy, communication is an instrument for doing rather than talking. The purpose of democratic communication is not to contribute to a consensus-building public sphere, but rather to provide actionable information. Noveck says: “Collaboration yields better information. We should want government to make the best-informed decisions possible” (2009, p. 189). Thus, the key task for democratic governance is developing techniques to draw out this information by engaging citizens as collaborators.

Viewing the government's use of new communication technologies in terms of power relations exposes the warrants that justify certain communicative practices to the exclusion of others. The Open Government Initiative authorizes certain forms of communication – those that are constructive within well-defined structures of participation. Consequently, the Open Government Initiative authorizes certain purposes for communication – those that improve existing practices, taking for granted the value of the practices themselves. As Eric Raymond says, “One can test, debug and improve in bazaar style, but it would be very hard to originate a project in bazaar mode” (2000b). The new tools not only affect how efficiently the government does its business; they channel the communicative possibilities between government and citizen. They define a purpose for communication, grounded in doing rather than deliberating. They invoke a set of conventions for communication, derived from open-source practices and web 2.0 technologies.

In the following chapters, I will explore the non-deliberative rhetorical functions of the Open Government Initiative's communication practices. I will explore how government-citizen communication on the MPEP IdeaScale website, as a particular instance of Open Government architecture, is shaped by generic demands. I will also explore how the IdeaScale architecture justifies this style of communication through procedural rhetoric.

CHAPTER FOUR: IDEASCALE AS A SITE OF GENERIC COMMUNICATION

When I spoke with the USPTO officials about the IdeaScale MPEP tool, I asked them if there were any features they would change, or if there was anything that bothered or frustrated them about the tool. The first official responded, “Is there anything that bothers or frustrates me? I would say people that don’t use it for what it’s intended for.” He thought for a moment, then continued: “I never really had used wikis, so I don’t have a great frame of reference. Maybe [the other interviewee] would be able to comment.” The second official concurred: “I would say people that don’t use it for its intended purposes. We did have some technical issues with getting the new chapters uploaded, but those have all been resolved.” I had asked about the tool, but the officials redirected attention to the rhetorical content. In rhetorical terms, their greatest concern was the perceived mismatch between the situational exigence and the communicated message. The specific function of the website, and the conventions of wiki discourse in general, demanded a particular type of rhetorical act that some users had failed to provide.

Some IdeaScale users were likewise sensitive to this perceived mismatch. When one thread on IdeaScale veered into a broader discussion about creating a separate wiki to foster collaboration between examiners and practitioners (i.e., patent attorneys), a user remarked:

I think we are deviating from the purpose of this blog. This site is to monitor and assist with amendments to the MPEP. Examiners and practitioners have identified

typos, wording and other inconsistencies over the years that we can help the MPEP editors improve the MPEP. I think a practitioner/examiner wiki would be formatted slightly different and would have to present a range of possibilities. My practices and procedures are different than other practitioners, each having validity for different types of practice. There is no 1 right answer for a practitioners wiki, whereas a lot of ideas here typically come to a conclusion or recommended amendment to the MPEP text. THANK YOU USPTO FOR SOLICITING OUR INPUT, I HOPE IT HELPS.

These statements by USPTO officials and IdeaScale users reveal an understanding of appropriate rhetorical action that is shared by the community (or at least some members of it). For these members of the community, the IdeaScale tool is not an open discussion forum. Rather, it calls for a particular type of recurrent communicative act. The user comment quoted above prescribes a specific purpose for IdeaScale contributions: to eliminate typos and wording errors in the MPEP. It also prescribes a particular form for contributions: a single conclusion or recommendation, rather than a set of possibilities. And it notes the specificity of IdeaScale's style of communication as distinct from a more general wiki. The comment, in effect, engages in genre criticism. It evaluates the discussion thread by identifying socially negotiated understandings regarding the purpose, form, and style of a set of recurring communicative messages.

Theorizing genre

Genre analysis provides a useful heuristic for a rhetorical understanding of communication on IdeaScale. Contra the rigid Aristotelian forms of rhetoric (deliberative, epideictic, and forensic), recent genre theorists have emphasized the socialness and fluidity of genre, arguing that genres embody the communicative norms of the rhetorical community for a given situation. In the introduction to their edited volume, Campbell and Jamieson (1978) summarize the critical work that contributed to the appearance of

contemporary genre studies. They cite Edwin Black's 1965 *Rhetorical Criticism: A Study in Method* as one of the first critical approaches that understood genres not as fixed taxonomies but rather as "modes of discourse characterized by certain strategies that seemed more likely to occur in certain kinds of situations" (Campbell and Jamieson, 1978, p. 14). Lloyd Bitzer's essay on the rhetorical situation elaborates on the connection between modes of discourse and situation. Bitzer (1968) argued that "a particular discourse comes into existence because of some specific condition or situation which invites utterance" (p. 4). Campbell and Jamieson link Bitzer's situational analysis to genre, noting that for Bitzer "comparable situations prompt comparable responses" (1978, p. 15). The authors draw on Jamieson's prior work to observe that the rhetorical situation is a function of not only the historical moment but also "conventions, traditions, prior rhetoric" (p. 17), so that "rhetorical acts are born into a symbolic/rhetorical context as well as into an historical/political milieu." (p. 17). Thus, Campbell and Jamieson understand genre as a constellation of rhetorical acts that draw on certain rhetorical conventions to address certain situations. The authors advocate genre analysis as a critical strategy not because it imposes taxonomic structure onto discourse, but because it identifies continuities between rhetorical acts that provide historical and social insights.

Carolyn Miller (1984) extends Campbell and Jamieson's theory of genre, drawing attention to two features of Campbell and Jamieson's approach. Because of their emphasis on responses to situational demands, Miller observes that genre is "pragmatic, fully rhetorical, a point of connection between intention and effect, an aspect of social action" (p. 153). Second, because Campbell and Jamieson index genres to social action,

Miller notes that “the result is that the set of genres is an open class, with new members evolving, old ones decaying” (p. 153). Miller’s pivotal revision to genre theory is her insight that rhetorical situation is not a materially objective reality, as in Bitzer’s account. It is instead a form of social knowledge. Situational exigence is “a mutual construing of objects, events, interests and purposes that not only links them but makes them what they are: an objectified social need” (Miller, 1984, p. 157). For Miller, genre is a way of “mediating private intentions and social exigence” (p. 163). An individual’s rhetorical act embodies a genre to the extent that it meets socially construed expectations for responding to a given situation. This axiom can be stated in the inverse: if a rhetorical act does not address a mutually recognized exigence in a socially appropriate way, it fails as a member of the genre. The implication of Miller’s anti-materialist insight is that “what we learn when we learn a genre is not just a pattern of forms or even a method of achieving our own ends. We learn, more importantly, what ends we may have” (p. 165).

For Miller, genre knowledge has a socializing effect. Learning a genre means learning “an aspect of cultural rationality” (1984, p. 165). Miller’s perspective might suggest that the social milieu structures individual action in a deterministic way. But the social milieu is not objectively distinct from individual action; it is, after all, nothing more than the composite of numerous individual actions and beliefs. Berkenkotter and Huckin (1995) clarify the linkage between social structure and individual action in genre knowledge. Drawing on structuration theory in sociology, they argue that organizational and disciplinary genres display a duality of social structure: “We *constitute* social structures (in professional, institutional, and organizational contexts) and simultaneously

reproduce these structures” (p. 17). For Berkenkotter and Huckin, duality of structure counters the idea that the individual lacks agency due to his or her determination by social demands. Individual action and social structure are “implicated in each other rather than being opposed” (p. 18). From a social-structure perspective, genre knowledge determines the individual’s range of possible responses to a situation; from an individual perspective, genre knowledge provides strategies that the rhetor can apply as a communicative agent.

Genre analysis provides a way of understanding the social action of the discourse community. Miller writes that “for the critic, genres can serve both as an index to cultural patterns and as tools for exploring the achievements of particular speakers and writers” (1984, p. 165). Berkenkotter and Huckin likewise observe that “genre conventions signal a discourse community’s norms, epistemology, ideology, and social ontology” (1995, p. 21). Latent in this observation, but not explicitly stated, is the political nature of genre: genre analysis can be used as a heuristic for identifying the social practices and norms that embody power relations. Dorothy Winsor has argued that genre is “more political than commonly acknowledged in theoretical discussions about genre, which tend to treat it as a rather neutral concept” (2000, p. 177). Understood as social action, genres help “the social system’s participants to see it as ordered in a certain way, and participants then act in accordance with the order they perceive” (p. 180). Genres can lend institutional heft to certain types of speech or certain types of actors.

Is talk on the MPEP IdeaScale website generic? The form does not seem to have a commonly recognized name: the Department of Commerce called it an ideation tool in

their Open Government Plan, the USPTO officials I spoke with called it a wiki, and some users called it a discussion forum and a blog. None of these labels fit neatly (ideation tool is the most precise name for the software, but it labels a technological form rather than a discursive form). Giltrow and Stein (2009) point out that the rapid development and evolution of internet genres and sub-genres poses a challenge to the naming of genres; after all, a new online medium does not automatically make for a new online genre, and new forms have both similarities and subtle distinctions from their ancestors (p. 9). However, as Myers (2010) observes, while “the software certainly does not determine the content” of a new online form like a blog or wiki, it “shapes and is shaped by what people want to do with it” (p. 7).

In assuming a generic approach to talk on the MPEP IdeaScale website, therefore, I do not assume that all such talk belongs to a single genre. Indeed, the question of where to locate individual IdeaScale texts on a continuum between singularity and recurrence is a potential obstacle to genre claims, but a fruitful site of inquiry for genre analysis. Berkenkotter and Huckin usefully suggest that “genericness is not an all-or-nothing proposition and that there is not a threshold as such. Instead, communicators engage in...various degrees of generic activity” (1995, p. 17). They argue for an approach in which “individual texts are seen to contain heterogeneous mixtures of elements, some of which are recognizably more generic than others” (p. 17). Talk on the IdeaScale tool is not generic just because it occurs on the same website. A number of comments on the site perform a gatekeeping function (i.e., identifying and shutting down extraneous discussions), which illustrates both the communicative norms of the community and the

frequency with which they are violated. A generic approach, however, focuses attention on the continuities of situation and form. To the extent that IdeaScale's user community mutually construes the situation and the appropriate form for responding to it, IdeaScale rhetoric generically performs social, and political, action.

IdeaScale talk as an ensemble genre

The technological structure of the IdeaScale environment is fundamental to its generic potential. IdeaScale incorporates a variety of types of texts and interactive modalities. The fundamental text is the user-submitted idea. By clicking a button, a user can submit an idea, title it, sort it to the appropriate category, and tag it with keywords. On the entry page of the website, these ideas are presented in a running list. To interact with a particular idea, the user clicks on it, bringing him or her to a page with the idea at the top and numerous interactive mechanisms below. Users can vote on the idea, add tags, report a comment that violates the terms of service, add a comment, and reply or vote on others' comments. Figure 4 shows a sample idea page on the MPEP IdeaScale website, with the interactive mechanisms circled in red.



Figure 3 Sample IdeaScale submission

Users can vote by selecting one of two simple expressions: “I agree” or “I disagree.” Each of these expressions has semantic content on its own. But voting also has a further rhetorical effect on the fundamental idea around which the page is organized. By voting, users contribute to the ranking of the idea, which determines how prominently it is displayed on the site. A highly ranked idea not only gains credibility, it gains salience, rising to the top of the page where it can attract further votes and interest. Users can also contribute comments. Like votes, comments have their own individual semantic value, but they also contribute to the fundamental idea’s rhetorical effect. Because comments become a persistent part of the page, comment threads can rhetorically

strengthen an idea by either indicating the community's assent (if comments are positive) or indicating that the idea has survived initial dissent (if negative comments are deliberately resolved into agreement). On the other hand, a comment can rhetorically weaken an idea if dissent is widespread or unresolved. Moreover, an absence of comments and votes is also rhetorically significant, possibly indicating that the community has not found the idea interesting, valuable, or susceptible to interaction.

The variety of possible communicative acts is what Andrew Chadwick (2009) has called "the low threshold co-production behavior characteristic of what has come to be known as 'web 2.0'" (p. 12). Chadwick contrasts the deliberative public sphere e-government approach with this web 2.0 approach, in which "different repertoires of engagement sit side-by-side, from postings to comments to ratings to wiki editing and so on" (p. 34). On IdeaScale, it is through combining different repertoires of engagement that the idea performs its rhetorical action. While each individual idea, comment, and vote can be seen as a distinct rhetorical act, the votes and messages also coalesce around the fundamental idea, helping it to achieve its effect – to persuade the USPTO to implement a particular revision to the MPEP.

Voting and commenting are dialogic in a sense; they present a series of communicative acts that respond to an initial posting. But they also present an integrated whole, a unitary rhetorical ensemble organized around the idea. As an ensemble form, IdeaScale talk bears resemblance to the genre of public proceedings described by Michael Halloran (1978). Halloran analyzes public proceedings like the Nixon impeachment hearing, noting that the proceedings are both a series of messages and "an ensemble, a

single message addressed to the spectator by the body conducting the proceeding” (p. 118). Halloran compares public proceedings to a play, which is composed of a series of messages between actors, but forms a contemplative whole for the audience. IdeaScale functions in a similar way: the fundamental idea acquires its effect through the low-threshold communicative acts of multiple users. The audience – comprising the citizen participants and the USPTO administrators – perceives the individual’s idea within a mesh of multiple supplementary communicative acts. The USPTO officials I interviewed expressed their appreciation for the multiple perspectives afforded by this structure, stating that they use the votes and rankings to see how the community perceives the idea. They expressed a preference for this ensemble model over the individual author model. One official related, “We had a person who submitted an idea, and they voted on their idea, and they commented on their idea. We want more input, more perspectives from the public.” For the USPTO, the fuller the ensemble, the more meaningful the contribution.

Situational appropriateness

The MPEP IdeaScale website operates in a rhetorical situation that is strongly institutionally defined. The USPTO officials I interviewed emphasized repeatedly and without prompting (indeed, several times even before the interview officially began) that the MPEP IdeaScale project was developed in response to Obama’s Open Government Initiative. It therefore emerges from the theoretical justifications and management practices elaborated in the previous chapter: the neoliberal theory of government, where democratic participation is seen as the responsibility of private enterprise to correct bureaucratic inefficiency and informational deficiency, and the open-source style of

management, where voluntary community-oriented informational disclosure is encouraged through site design and social norms. Participatory projects conceived in this matrix therefore call for responses that offer constructive information – texts that perform “doing” work rather than “deliberating” work. For the MPEP IdeaScale website, the work consists of bringing to light inaccuracies in the MPEP. In a blog post introducing the MPEP IdeaScale website, Director Kappos explained its function as part of the new MPEP philosophy of “continuous outreach and collaboration with the IP community to ensure the documents are accurate and current and maximally effective” (2011a). The blog post funnels the wide range of possible rhetorical acts enabled by the IdeaScale tool to respond to a particular exigence: the need to improve the accuracy and effectiveness of the manual.

The contributions of IdeaScale’s participants worked to support this institutionally defined exigence. I looked at 36 ideas that were contributed over a 12-month period between January 2011 and December 2011. Seven of these were contributed to a section focused on discussion of the IdeaScale tool itself, which the USPTO opened when the site was introduced to gather feedback about its deployment. Users’ appreciative comments in this section reflected their shared understanding of purpose. For example, a user wrote, “This website is a great idea, and seems to provide a great avenue for clarity (and perhaps conciseness) to be added to the MPEP.” The remaining 29 contributions hewed to this shared understanding in varying degrees. The successful ideas, those that were highly ranked through user voting, uniformly provided specific revision suggestions: changing case law citation format, adding hyperlinks to other sections or

other relevant documents, correcting typographical errors, and the like. Conversely, the less successful ideas were loosely related to the MPEP, but did not provide specific suggestions.

The capacity to provide feedback on other users' contributions provided a mechanism for users to police the genre. Users' comments served a gatekeeping function, making sure that discussions stayed focused on MPEP corrections. The USPTO administrators had the capability to remove posts, which they told me they had exercised for posts that clearly violated the terms of use. More often, though, the users themselves moderated discussion threads to ensure they met the rhetorical exigence. For example, one idea that had been removed had already attracted several community-policed comments before the administrators had gotten to it. One commenter objected to the content: "This is not a recommendation for amendment to the MPEP. This may not be the appropriate forum for your question." The same user posted a second comment identifying how to cure the idea's deficiency: "This site is designed to propose new language for the MPEP. Propose a revision to the MPEP that is within CFR/USC (i.e., allowed). I don't think this is a Q&A forum." That is, the commenter observed that the post violated the communicative norms of the website, and provided suggestions about how to revise the idea to a more appropriate form. The user demonstrated a strong understanding of the appropriate content (MPEP revisions) and form (proposals or recommendations) by noting how the post failed to meet these generic expectations.

The communicative norms of the MPEP IdeaScale discussion tool therefore focus the range of possible responses to those that are productive rather than deliberative,

constructive rather than reflective. These norms are shared by most users, who put them into practice by flagging errant posts. One user described this gatekeeping function as a countermeasure to hijacking:

The voting up or down should also allow the community to police those who seek whatever space is made available on the Internet to vent whatever grievances they have on whatever issue they are bothered about. It would be a shame for a useful tool like this to be hijacked, so community involvement from commenting to voting seems essential.

This comment suggests that the situational boundaries have to be defended: contributions that are outside the scope of the forum pose a threat to the integrity of the tool, which has a utilitarian function that excludes the general airing of grievances. But defensive boundaries not only enclose appropriate rhetorical acts, they fence out inappropriate acts, authorizing some forms of expression at the expense of others. Another user replied:

Whether this forum can provide a reasonable opportunity to provide feedback to those within the Office who have policy and/or rulemaking authority/responsibilities is somewhat doubtful at this point, given the current Terms of Participation, item 1 of which requires that “To ensure a productive discussion, those who elect to participate agree to post only ideas or comments directly related to the MPEP and its contents.”

Until this Term is changed, it looks like any of our ideas or comments that are not directly related to the MPEP or its contents are not welcomed here.

The original commenter responded:

I guess I don't see why there is any reason to be upset that a discussion forum for the MPEP would limit comments to the MPEP. Why would a discussion forum dedicated to the MPEP be an appropriate place to air any and all opinions, comments and grievances?

The original commenter's point is quite reasonable; the utility of an information-gathering tool depends on its ability to channel user responses into digestible forms. This is what Noveck (2009) argues when she presses for granular site design in participatory

government websites. To the extent that IdeaScale talk generically performs political work, it does so not by pernicious censorship but by supporting institutionally driven priorities.

Situational considerations form one of several layers of constraints on IdeaScale. One layer is technology-driven: the software organizes discussion threads around a single idea and orders ideas according to their ranking, which enables idea-based discussions but discourages more fluid dialogic forms. Another layer is policy-driven: the terms of use and the moderation policies prevent discussions from roaming too far afield, since they will simply be removed if they are in violation. The layer of situation, however, is rhetorically driven: addressing a mutually recognized exigence is a strategic move designed to secure the audience's attention and assent. Comments from IdeaScale users seemed to indicate anxiety over making sure that the USPTO was listening and would continue to listen. One participant had addressed the USPTO directly to ask when new sections would be opened for discussion, and had not received a response. Another commenter responded,

Sounds like we need a superhero that can cut through red-tape. I believe any moderator who wants to answer this question probably has to get approval. I believe the approver would have to get approval... etc.

Let us as a community demonstrate the utility of this section. Hopefully they will open more sections soon.

That is, users were motivated to provide appropriate responses because they were more likely to find an audience with the USPTO. Posts that appropriately addressed the rhetorical situation defined by the USPTO (i.e., a need for specific recommendations

about clarity and correctness in the MPEP) would prove that users' contributions were useful, compelling the USPTO to listen.

This point is clearest in posts that failed to command the USPTO's attention. For example, some posts used the MPEP as a launching point to discuss the America Invents Act, a patent reform bill that Congress introduced and passed in 2011. These posts worked within the technological constraints of IdeaScale by pegging their discussion to appropriate sections of the website, and within the website's policies by linking them to the manual. But the posts did not effectively address the perceived rhetorical situation. For example, one participant used the MPEP section that related to payment of fees to discuss concerns arising from the fee changes in the new law. Another comment suggested that the USPTO could use IdeaScale to facilitate discussion of the MPEP amendments entailed by the new law so that users could identify "both the intended and unintended consequences of the America Invents Act." Both of these posts failed as appropriate responses: in both cases, the USPTO replied with a stock message directing users to post comments about the law to another forum, ending discussion. The USPTO officials I spoke with emphasized that they did forward these comments to the appropriate channels, where they may have had some incidental rhetorical effect. They failed, however, as appropriate generic responses on the MPEP IdeaScale website.

To be successful, then, an idea needed to address a specific problem with the MPEP and provide a revision that addressed the problem. Successful contributions also relied on particular types of justificatory supports. IdeaScale's format did not require that contributors provide reasons for their ideas; posts could be, and often were, simple

assertions. In the back-and-forth discussion threads where users discussed ideas, however, certain types of reasons tended to prevail.

First, participants relied on their experience with the manual or with the patent office. For example, the highest-ranked idea in the posts that I examined suggested adding HTML links between MPEP sections and the sections of the Code of Federal Regulations (CFR) to which they refer. Other participants replied in the comments that this might be too difficult or untidy to implement. The original contributor defended the idea by appealing to experience with the manual: “I often know the code section without knowing the location in the MPEP that includes the USPTO’s interpretation of the code section.” The idea attracted the most votes and the USPTO posted a response signaling that it would consider it. Similarly, one of the lowest-ranked ideas was successfully batted down by a commenter who appealed to personal experience with the USPTO: “Have you ever had an examiner tell you that a standard tool is not described sufficiently? ... Examiner’s [*sic*] are not always reasonable and incorporation by reference is one way to demonstrate what is available to a person of ordinary skill in the art.”

Second, users often drew on their knowledge of the CFR to identify inaccuracies or inconsistencies. For example, one user noted that while the MPEP required inventor address changes be initialed and dated, the federal rules did not: “Pursuant to 37 CFR 1.63 (c), the inventor’s address information does not need to be on the Oath or Declaration if an ADS is submitted.” Another user pointed out that the manual incorrectly cited the code: “in the html, the quoted 37 CFR 1.703 needs correction to include proper version of paragraph (a)(2). Right now it is duplicative of (a)(1); should recite a ‘reply

under §1.111' vs an 'application was filed under 35 U.S.C. 111(a)'.” The USPTO responded to this latter idea that it would consider revising the manual accordingly.

Experience and regulatory expertise were effective justifications because of the composition of the audience (which, simultaneously, acted as the participant community). Participants had to secure the assent of their peers in order for their ideas to rise in the rankings, and they had to secure the assent of the USPTO in order for their contributions to be incorporated into the MPEP. To demonstrate an idea's merit, participants appealed to experiences that would be familiar to other practitioners, and to federal regulations that were recognized as the legitimate basis for the MPEP. Effective posts showed an appropriate understanding of audience by demonstrating relevant experience and expertise, thereby helping to define generic expectations.

IdeaScale talk as social action

A generic approach therefore illuminates the socially negotiated form of appropriate communication on the MPEP IdeaScale website. The website emerged as the site of rhetorical action aimed at addressing an institutionally defined exigence: the need to gather the dispersed knowledge of private actors as a corrective to bureaucratic informational deficiencies. Participants demonstrated their understanding of the exigence positively by providing situationally appropriate responses (specific revision proposals and recommendations), and negatively by policing contributions that were inappropriate. Appropriate responses had similar features, partly technological (uniting multiple forms of interaction into an ensemble text) and partly linguistic (couching ideas as specific

recommendations rather than general concerns; using appeals relevant to patent practitioners).

These generic features perform political work. First, they privilege certain types of communicative acts: those that inform over those that deliberate, question, complain, explore, analyze, etc. In the words of the participant quoted above, using IdeaScale to vent grievances amounts to “hijacking” the forum, which prevents useful talk from being performed. The point recalls O’Reilly’s notion of protest as ineffectual “collective complaint” (2010, p. 13). As a site of open government practice, the MPEP IdeaScale website facilitates talk that addresses well-defined institutional needs, but leaves aside deliberation about the merits of the policies themselves. Some users did attempt to use the site to open a discussion about policy, like those who posted about the America Invents Act, but these attempts failed because they did not meet generic expectations (although they were not entirely futile since the USPTO relocated them to more appropriate channels).

Second, these generic features authorize certain types of actors to participate. The website is open to the public, but generic competence requires specialized knowledge about the USPTO and patent law. This fact is both a consequence of the membership of the discursive community and a contributor to it. On the one hand, shared social expectations result from the fact that members are self-selected MPEP experts. As Noveck observed about Peer-to-Patent, “Anyone can join, but only an expert would” (2009, p. 10). On the other hand, self-selection is a result of shared social expectations. Eric Raymond says that in open-source software development, “It’s doubly important that

open-source hackers *organize themselves* for maximum productivity by self-selection—and the social milieu selects ruthlessly for competence” (2000b). Similarly, the user community on the MPEP IdeaScale site selects for competence through a socially negotiated understanding of what counts as a legitimate contribution.

Nothing in this scheme is particularly sinister; it is reasonable to want the government to base its decisions on the best information available, which entails organizing effectively for productive participation and soliciting the help of non-government experts. To the extent that members of the Obama administration see projects like the MPEP IdeaScale site as ushering in a new era of democracy, however, it is worth pausing over the website’s political implications. Open government leaders like Beth Noveck have simplistically described such participatory projects as redistributions of power from government to citizen. Yet as I have attempted to show, these projects can serve to reinforce institutional priorities, marginalizing rhetorical acts that call them into question. Drawing together two discursive traditions that are sometimes in tension, the MPEP IdeaScale website combines an open-source modality with a neo-liberal instrumentality. Like open-source projects, the website provides a venue for self-selected participation where expert lay users can collectively work to find and remove “bugs” in the manual, invoking the values of volunteerism and collectivism. Through what Noveck calls “visual deliberation,” this work is channeled toward making the agency efficient, effective, and error-free – a neoliberal mode of power that works not by disenfranchising individuals, but by the opposite: by drafting them to perfect the administrative regulations by which they operate. The USPTO makes this *telos* quite clear: the IdeaScale website

provides “continuous outreach and collaboration with the IP community” not to enliven some public-sphere ideal of democratic engagement, but “to ensure the documents are accurate and current and maximally effective” (Kappos, 2011 January 14).

As a platform, the IdeaScale tool has broad rhetorical potential. In fact, various users suggested on the site that it could be used as a forum to discuss policy, as a tool to train patent practitioners, and as a platform to facilitate discussion between examiners and practitioners. As a site of generic action, however, the MPEP IdeaScale website has a narrow rhetorical function: to aggregate information to improve the manual. The website is not hegemonic. It does not stamp out online deliberation. It is one small constellation of conversation in an online universe of communicative acts. Yet it nudges users toward a form of political subjectivity that interchanges political participation with administrative contribution.

I now turn to examining how the website reinforces this political subjectivity procedurally, modeling participation via a digital process.

CHAPTER FIVE: IDEASCALE AS PROCEDURAL RHETORIC

I want to return to the opening words of President Obama's memo on transparency and open government:

My Administration is committed to creating an unprecedented level of openness in Government. We will work together to ensure the public trust and establish a system of transparency, public participation, and collaboration. Openness will strengthen our democracy and promote efficiency and effectiveness in government.

I have argued that the ends of democracy and efficiency become intertwined in the discourse of open government apologists, structuring the rhetorical field for participants on the MPEP IdeaScale website. But the memo also suggests another end, ensuring the public trust. The memo suggests that open government projects can establish a positive ethos for the executive branch by enhancing its credibility, a key focus of rhetorical practice. That is, new tools of open government can be monstrative as well as managerial. In this view, platforms like the MPEP IdeaScale website do not merely structure rhetoric. They perform rhetorically.

This reflexive rhetorical function emerged in my interviews with the USPTO officials. I asked the officials to explain the USPTO's reasons for adopting the IdeaScale tool. At first, they focused straightforwardly on the administrative effectiveness of IdeaScale. Aside from the policy imperative from the White House administration, they said that the tool was adopted to get additional input from the public. One official

explained that USPTO director David Kappos “came from the IP community. He understood that there were great thoughts out there that he wanted to mine.” This explanation fits with Sunstein’s conception of information as broadly dispersed throughout society. The other official said that the goal was to get “input from practitioners that we would not normally think of.” This explanation fits with Noveck’s conception of open government as a corrective to bureaucratic deficiencies.

However, both officials downplayed the idea that there was a gap in the USPTO’s knowledge that required public input. The first official explained that “many here are former practitioners, so we are aware” of issues that the IdeaScale tool addresses. The second official clarified that the benefit of the IdeaScale tool was that the USPTO could receive input “from [the practitioner’s] perspective. It’s not that we would not think of ideas.” They told me that any ideas they received that would involve significant changes would be elevated to the Assistant Commissioner for Patent Examination, but when I asked if they had done so with any ideas they had received, the first official said, “I don’t think we got that level of comment yet.” When I asked if they had received any ideas that they were going to incorporate in the next revision of the manual, the official said the ideas they are incorporating are limited to “suggestions on clarity – for how things are worded.” He explained,

You could say the tool had a hand in the changes being made. Some of the suggestions were things that we had already identified but hadn’t had an opportunity to change. Some ideas we got will be incorporated. Some of the things, like the Graham factors,¹ I had gotten emails saying this needed to change.

¹ Graham factors are factors derived from patent case law to determine whether a patent is “nonobvious,” i.e., whether the claimed invention is distinct from prior art and not obvious to a person “skilled in the art.”

Graham factors had already been noted. Yes, IdeaScale tagged it, but I already had received emails about it too.

In short, both officials said the IdeaScale tool was useful for gathering ideas, but downplayed the utility of the ideas they received. They acknowledged that the tool could be used to gather knowledge outside the agency, but resisted the idea that there was a significant gap in the agency's knowledge. Yet they expressed appreciation for the tool and found it valuable. Trying to determine how they assessed its value, I asked if there were a minimum number of participants or minimum quality of comments below which the program would not be maintained. One official responded, "As long as we continue to get input, we wouldn't want to take it down. [...] One good suggestion would be fine. If the community feels the need for it, I'm good with it." In other words, they did not index the value of the tool to its steady supply of good ideas. Public demand was also a factor.

Based on these comments, I suggested that the IdeaScale program seemed to offer two benefits: it is a way of gathering ideas and it is a way of showing to the public that the USPTO is open, transparent, and collaborative. The officials agreed, telling me that they used Twitter, Facebook, and other channels for "pumping up our exposure so it looks like we're more responsive – we want to say to the public that if you participate, we're going to participate to the best that we can." These two benefits are rhetorical in two different ways. As explored in the previous chapter, IdeaScale is a platform for rhetorical action directed from the public to the government. But IdeaScale itself also serves as an expression of rhetoric directed from the government to the public. This is not to say that the USPTO is using IdeaScale only for show; the officials I spoke with repeatedly expressed the belief that the ideas gathered on IdeaScale could be valuable.

Yet IdeaScale does perform rhetorically, by modeling a certain relationship between the USPTO and the public. It models this relationship, not through text or images, but by implementing a computer-driven participatory procedure.

Procedural rhetoric

Ian Bogost has provided a useful account of the way that processes, particularly computer-implemented processes, can serve as expressions of rhetoric by modeling real-world procedures. Bogost defines procedural rhetoric as “the art of persuasion through rule-based representations and interactions rather than the spoken word, writing, images, or moving pictures” (2007, p. 10). Computers are procedural by design; they execute a series of rules. Therefore, they structure user interaction in certain determined ways. But in Bogost’s reading, a computer process can provide more than a structure for behavior. It also has an “expressive capacity” that allows its designers to invoke “interpretations of processes in the material world” (p. 20). This means that a computer procedure can have a representational function, “representing process with process” (p. 34). Bogost argues that procedures have “figures, forms, and genres” just as written and visual media do (p. 31). He identifies common procedural tropes such as graphical logics (e.g., object physics in videogames), textual logics (e.g., natural language processing and text parsing), interface logics (e.g., scrollbars and buttons), and input/output logics (e.g., mechanisms for opening and saving files).

Bogost situates procedurality within a trajectory that claims an expanded scope for rhetoric. From Aristotle’s emphasis on oral persuasion to Burke’s broader concept of identification to the “emerging discipline” of visual rhetoric, the expanded range of

rhetorical forms “reinforces the idea that rhetoric is a general field of inquiry, applicable to multiple media and modes of inscription” (p. 48). The computer, therefore, provides a new mode of inscription that bears rhetorical investigation. However, Bogost observes that most studies of digital rhetoric focus on the computer simply as a new platform for the classic forms of rhetoric, and do not account for “the unique properties of computation, like procedurality” (p. 50). Bogost proposes procedurality as a new domain for rhetoric, which makes arguments or formulates expressions through “the construction of dynamic models” (p. 54) rather than through the presentation of words or images.

Bogost suggests that the participatory nature of many procedures is important to their rhetorical effect. Computer procedures can incorporate user interaction as an input for the procedure, and this interaction can increase the user’s engagement with the procedure. Bogost suggests that interactivity can be understood as a type of Aristotelian enthymeme (p. 75). That is, computer procedures can provide a symbolic representation of real-world procedures. By incorporating interactivity, they enlist the user to complete the representation, supplying the assumptions that fill in its logic. Bogost argues against the idea that greater interactivity necessarily implies greater user empowerment. Instead, computer procedures structure interaction so that some processes are included and others are excluded – which Bogost understands not merely as a means of constraining action, but as the basis for procedural expression.

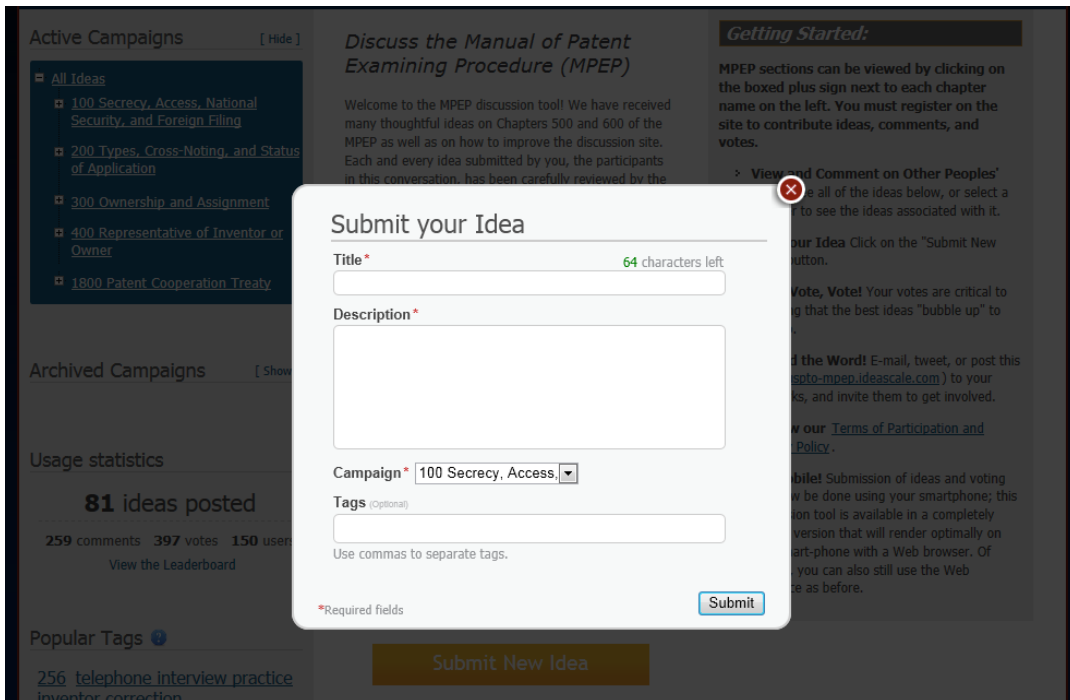
Bogost claims that videogames are a particularly expressive type of procedure, and most of the uptake of his argument has focused on videogames (e.g., Voorhees, 2009; Harper, 2011; Evans, 2011). Nevertheless, Bogost maintains: “I intend the reader to see

procedural rhetoric as a domain much broader than that of videogames, encompassing any medium—computational or not—that accomplishes its inscription via processes” (2007, p. 80, original emphasis). Elizabeth Losh has drawn on Bogost’s work to argue for a similarly broad understanding of procedural rhetoric: “Procedural rhetoric, which naturalizes and denaturalizes specific procedures, extends to other digital genres through which state organizations communicate with their stakeholders” (2009, p. 78). Losh demonstrates the point with an analysis of the procedural rhetoric of an online sexual harassment training course.

Procedurality can therefore contribute to the rhetorical performance of the MPEP IdeaScale website, though it is not a videogame. The website is intersected by many procedures. There are bureaucratic procedures: the tool fulfills a policy mandate from the White House, and operates as an input on the MPEP revision process. There are social procedures: participation on the website entails a particular community of contributors and a particular form of appropriate interaction. There are also technological procedures, which structure the social and bureaucratic procedures by giving them specific embodiment in code. For example, there are technological procedures for contributing ideas, voting and commenting on ideas, and for presenting the ideas in ranked order. To read these procedures as rhetorical is to evaluate them as models of the world. Procedural literacy, for Bogost, requires understanding the rules of the system, the significance of these rules over other rules, and the claims they make about the world (2007, p. 371). I now turn to the rules of IdeaScale and the way they model the world.

The rules of IdeaScale

The fundamental procedure on IdeaScale is idea submission. This procedure is itself strongly interactive, depending on user input for its content, and also grounds interactions from other users. The procedure affords text input in three fields: Title, Description, and Tags. It also requires users to select a category to which the idea belongs. All fields except tags are required, as indicated by the asterisks (see Figure 4). Consequently, every contribution must take the form of an idea, and every idea must correspond with a specific section of the MPEP. The significance of these procedural requirements can be seen most clearly in contrast with similar procedures.



The screenshot displays the IdeaScale interface. A central modal window titled "Submit your Idea" is open, featuring the following fields and elements:

- Title ***: A text input field with a character count of "64 characters left".
- Description ***: A larger text area for the idea's description.
- Campaign ***: A dropdown menu currently set to "100 Secrecy, Access, National Security, and Foreign Filing".
- Tags (Optional)**: A text input field with the instruction "Use commas to separate tags." below it.
- Submit**: A blue button at the bottom right of the modal.
- *Required fields**: A small note at the bottom left of the modal.

The background interface includes:

- Active Campaigns**: A list of campaigns with a "Hide" link.
- Archived Campaigns**: A list of archived campaigns with a "Show" link.
- Usage statistics**: A section showing "81 ideas posted", "259 comments", "397 votes", and "150 users".
- Popular Tags**: A section showing "256 telephone interview practice" and "inventor correction".
- Getting Started:** A section with instructions on how to use the site.
- Submit New Idea**: A prominent orange button at the bottom center.

Figure 4 Submitting an idea on IdeaScale

Before the Open Government Initiative, the government engaged in public e-consultation primarily by soliciting public comments via a Notice of Proposed Rulemaking in the Federal Register (Chadwick, 2006, p. 99). This communication channel is still used for all proposed federal rule changes. The public can provide comments via email, mail, or a web form on Regulations.gov (see Figure 5). There is a prima facie resemblance between the IdeaScale submission form and the Regulations.gov submission form. Both implement a similar technological process: users click a button that opens a web form, enter their contribution in the text input field, and click a button to submit the entered text to a web database. Yet there are key differences between the two processes.

First, the MPEP IdeaScale process calls for ideas, and requires those ideas to be pegged to particular sections of the MPEP (implicitly limiting participants to those users with expertise in the MPEP). IdeaScale uses the visual deliberation tactic of granularity (Noveck, 2009), in which problems are narrowly articulated in order to elicit well-defined contributions. On the other hand, the Regulations.gov process calls for a comment – which may be an idea from an expert practitioner, but may also be a protest from a private citizen, a concern from a watchdog group, or a political rant from a partisan organization. The IdeaScale procedure effectively deputizes the private citizen into the agency, while the rulemaking procedure affords an array of stances toward the agency, all of them external.

regulations.gov
Your Voice in Federal Decision-Making

Home Help Resources Feedback and Questions

Submit a Comment

[View Docket Folder](#) | [Alternate Ways to Comment](#)

You are commenting on a Proposed Rule:
Supplemental Examination Provisions of Leahy-Smith America Invents Act and Reexamination Fees (Document ID PTO-P-2011-0075-0001)

Please note that you are provided 20 minutes to complete this form and submit your comment. If you receive a timeout prompt, you must choose to extend your session to avoid being timed out.

* Required fields Fields that will be viewable on Regulations.gov

1. ENTER INFORMATION

First Name

Middle Name

Last Name

Mailing Address

Mailing Address 2

City

Country

State or Province

2. TYPE COMMENT

Comment

2000 characters remaining

3. UPLOAD FILE(S) (Optional)

4. SUBMIT COMMENT

[Preview Comment](#)

Figure 5 Submitting an idea on Regulations.gov

Second, the IdeaScale procedure requires contributors to go through a sign-up process that badges them as members of a community. On the other hand, the Regulations.gov submission procedure allows anyone to submit a comment without logging in. As Figure 5 shows, there are fields for personal information, but only the comment field is required. IdeaScale therefore uses the visual deliberation tactic of groupness, as proposed by Noveck (2009). That is, whereas Regulations.gov creates a broad platform for public input, IdeaScale creates a niche user community by logging and displaying its members' contributions and activities. Registered users receive email alerts

about activity on the website and are eligible for placement on the leaderboard, a reputation tool that ranks users by the volume of their contributions (see Figure 6). Noveck argues, “The best way to ensure openness is to think about every piece of information as a potential community” (2009, p. 109). The IdeaScale site’s login procedures support this understanding by stabilizing the identities of actors within the community.



Figure 6 IdeaScale leaderboard

Third, IdeaScale contributions provide a basis for further user interaction like comments and votes, while Regulations.gov contributions are static, non-interactive

messages. Chadwick argues that Regulations.gov enacts a procedure antithetical to interaction: “The web form submission procedure does allow one to read others’ comments, but these are presented in chronological list format rather than the threaded format that predominates in most online discussion forums” (2006, p. 100). In contrast, IdeaScale discussions are threaded around individual ideas, and they are presented in ranked order by default, though the user can select chronological ordering by pressing a button. Voting is a key part of the IdeaScale procedure; it signals to the USPTO which ideas are worthwhile. The voting also determines which ideas receive attention from other users. This dynamic competition between ideas contrasts with the rulemaking comment procedure. The rulemaking comments are published online, but they are static, equally weighted, with the comments of powerful organizations and comments sitting unordered alongside the comments of individual citizens – a sort of “one person, one vote” model of democratic town-hall communication. Of course, this format is cumbersome for agencies; sorting through a flood of unthreaded, uncategorized comments is an administrative chore. Moreover, as Noveck notes, public comments can be overwhelmed by “large organizations and lobbyists” as well as by “individuals who carp but offer little useful information” (2009, p. 129). The IdeaScale procedure provides organization, efficiency, and crowdsourced quality management. By involving users in curating ideas, the procedure works to prioritize popular ideas and focus discussion.

To recap: in contrast with Regulations.gov, IdeaScale enacts a procedure that calls for granular contributions from expert users, binds these users into a participant community, and harnesses the community to organize and rank contributions. These

procedural rules are similar to the rules of the wiki, another crowd-sourced collaboration platform. Yet there are further distinctions that differentiate the IdeaScale process from wikis. One fundamental difference is the procedure for defining the subject matter of contributions. On IdeaScale, the website administrators create the categories to which a contribution can belong. The USPTO officials I spoke with noted that this was important for maintaining a manageable scope. On wikis, participants can create an unlimited supply of categories, adding stubs when a category does not yet exist. As Cunningham and Leuf explain: “A ‘bootstrap’ functionality to edit/create new pages lets even the least experienced newcomer create wiki content from scratch” (2001, p. 103). Another fundamental difference has to do with IdeaScale’s ranking feature. On IdeaScale, contributions are competitive; they compete with other ideas for attention, winning by attracting votes from the community. On wikis, contributions are encyclopaedic (Myers, 2010, p. 17); they complement and support other contributions through cross-linking.

The world-model of IdeaScale

These rules present a particular model of political participation, political communication, and political collective action. Noveck’s (2009) visual deliberation techniques offer a way of thinking about the model from the designer’s perspective. Visual deliberation techniques provide tools for designers to create an architecture that reflects a particular group culture and authorizes a particular participatory process. On the other hand, Bogost’s (2007) idea of procedural literacy provides a way of thinking about the model from the user’s perspective. Procedural literacy provides a heuristic for users to

interrogate the processes that a given procedural architecture naturalizes. In particular, IdeaScale models a world in which:

- Political participation amounts to the solution of administrative problems by niche communities of experts.
- Political communication amounts to a contest between ideas in a competitive arena.
- Political collective action amounts to the aggregation of granular contributions of knowledge.

Political participation as modeled on the MPEP IdeaScale website is a process in which expert users are enlisted to identify and eliminate weaknesses in government administrative processes. This is different from the model offered by Regulations.gov, in which citizens or organizations can raise legal, political, or social concerns related to government regulations. IdeaScale thereby naturalizes a process of political participation that resembles open-source software development. The process calls for self-selected expert volunteers to identify bugs in the system. It models a procedure for enlisting users to take responsibility for ensuring that government operations run efficiently and effectively.

Political communication as modeled on IdeaScale is a process in which each idea-unit (the assemblage of idea, comments, votes, and tags) competes with other idea-units for priority. This is not a representative model of democratic communication, in which constituents inform leaders about their opinions in town-hall discussions and letters. Instead, it is a marketplace model of communication, where private actors introduce

contributions that achieve salience by attracting votes. IdeaScale thereby naturalizes a process of political communication that resembles neoliberal self-entrepreneurship. The model invokes the metaphors of information-as-price (Sunstein, 2006) and government-as-platform (O'Reilly, 2010).

Political collective action as modeled on IdeaScale is a process in which community members produce knowledge through numerical aggregation. This is not a coalition-based model of collective action; the group has no essential solidarity. Rather, collective action emerges through granular individual contributions. IdeaScale is one of the “creative and fresh mechanisms for aggregating information from many minds” (Sunstein, 2006, p. 102). Noveck points out the way that this view of collective action rewrites democratic theory:

Typically, democratic theory focuses on the inputs to participation, namely the representative character of participants, the procedural rules by which they interact, and the fairness of access to the participatory process. By contrast, collaboration focuses on the outcomes of people's shared work....The results of collaborative projects should be measured for their success at achieving desired goals rather than on the basis of procedural criteria. (2009, p. 180-181).

Recent collective actions, like the Occupy Wall Street protest or the various Tea Party rallies, present the collective as a relatively coherent faction that drives political participation, functioning as an input on the participatory process. On IdeaScale, the collective is what emerges from a heterogeneous mix of contributions, functioning as an output of the participatory process.

The logic of the IdeaScale model operates via procedural enthymeme. Its representation is completed by user participation. By contributing ideas that identify typos or mistakes in the manual, the user acknowledges the view of political participation

as bug-detection. By ranking ideas and competing for votes, the user reifies the view of political communication as entrepreneurial contribution within an information marketplace. By submitting granular pieces of information, the user reinforces the idea of collective action as the aggregation of small-scale contributions.

Criticisms of the Open Government Initiative or digital democracy in general have sometimes focused on the failure of participatory programs to fulfill their potential. Dean (2008) has argued that participation in digital discourse can paradoxically lead to the foreclosure of political struggle (p. 113); citizens may experience a “registration effect” by contributing to online discourse, satisfied that their voice has been heard even if it does not result in meaningful political action, thereby displacing struggle in real life. Sifry (2010) has argued that some of the Obama administration’s early participatory efforts were managed more as media events than as true participatory procedures. Sifry has labeled this type of event as “participation theater” (p. 148). Both Dean and Sifry aim their criticisms at the gap between the participatory potential of new online media and the failure of government to realize that potential.

Procedural literacy provides a way of critically understanding new media even if they completely fulfill their participatory potential. That is, procedural literacy does not ask whether a procedure is successful; it asks what rhetorical action a completely successful procedure performs. Projects like the MPEP IdeaScale website allow citizens to have direct access to government officials and the potential to influence administrative processes. Yet the expressive effects can flow both ways. The procedures through which citizens participate on IdeaScale engage users in constructing a model of open

government as envisioned by advocates like Sunstein, Noveck, and O'Reilly. This model embraces open-source techniques for improving and perfecting government, drawing on normative constructs like openness, freedom, and non-hierarchical participation. It recasts democratic communication as a form of neoliberal self-care, where citizens vie competitively to introduce changes in the policies by which they are regulated. It dispenses with collective action by reimagining the collective as the aggregation of data, where technology functions as the invisible hand of the market to connect isolated, self-interested actions into a meaningful statistical whole.

CHAPTER SIX: CONCLUSION

Openness is a rhetorically charged term, one that carries normative weight. Some theorists of the digital state have conflated openness with individual empowerment and liberation. For example, Lawrence Lessig (2006) has argued in his book *Code 2.0*: “To the extent that code is open code, the power of government is constrained” (p. 150). Yet openness does not demolish institutions; an open network inscribes individuals as subjects as much as it liberates them, recoding them to allow protocol-based exchange. Lessig acknowledges as much: “Open code means open control—there is control, but the user is aware of it” (p. 151). Still, Lessig maintains that “open code is a foundation to an open society” (p. 153).

But the rhetoric of openness is problematized by Galloway and Thacker (2007), who update Foucault’s biopolitics for the age of informatics in their book *The Exploit*. Galloway and Thacker point out a paradox in the idea of freedom hardwired into code. They ask, “If it’s hardwired, is it still freedom? Instead of guaranteeing freedom, the act of hardwiring suggests a limitation on freedom” (p. 125). The pivotal technology that allows openness to flourish is the network, which not only enables nodes to share data openly, but depends on that open communication for its existence. “Express yourself! Output some data! It is how distributed control functions best” (p. 41). Yet the network is a highly regulated apparatus: it operates on a protocol that requires data to conform in

order to participate in exchange. To exist in the network is to share data that can interface with the network. Participation means assenting to control.

Where does this control reside? The question is a sticking point for those who would seek to translate Foucauldian exposition into political activism. In Foucault's genealogy of modern power relations, power is diffuse, implicating sovereign and subject alike. The guard in the tower is geared by the system as much as the prisoners in the panopticon. For Galloway and Thacker, the computer network is a similarly diffuse control structure. The network is both a consequence of individual actions and a constraint on them. Galloway and Thacker imagine the network as an extrahuman organism, like an insect swarm (a suggestive revision of the more neutral term "crowd," as in crowd-sourcing or crowd-wisdom). The swarm is predicated on the ongoing contributions of the participants in the network:

Today's media physically require the maintained, constant, continuous interaction of users. This is the political tragedy of interactivity. We are 'treading water in the pool of liquid power,' as the Critical Art Ensemble once put it... We are nostalgic, then, for a time when organisms didn't need to produce quantitative data about themselves, for a time when one didn't need to report back (p. 124).

Open government apologists promote new media technologies as systems that hardwire citizen empowerment. They seek to implement structures that elicit open participation from citizens, justifying these structures through the economy-driven warrants of neoliberalism and the voluntarist ethic of F/OSS. But such structures do not automatically empower users. As Foucault has said, "I think it can never be inherent in the structure of things to guarantee the exercise of freedom. The guarantee of freedom is freedom" (1984, p. 245). It is therefore important to read these new digital government structures

critically, against the assertions of open government apologists who hail their introduction as a new era of citizen-empowered democracy.

Rhetorical study can help to articulate the communicative assumptions rendered on, within, and through the new media technologies. The Open Government Initiative is novel in many ways, yet it emerges from discursive traditions with normative baggage. It merges the assumptions of neoliberalism (by applying the economic grid to the state, viewing government as a marketplace manager, and enlisting citizens as self-entrepreneurs) with the hacker ethic of F/OSS (by applying the image of the computer network, viewing government as a platform, and enlisting citizens as communitarian volunteers). The rhetoric of sharing and community gives cover to the economizing, rationalizing activities of the Open Government Initiative. Open source becomes a strategy for administrative management, or more properly, a strategy for getting citizens to manage their own administration. This discourse of openness favors certain forms of communication over others, not through censorship but through a socially negotiated understanding of appropriate rhetorical action. On platforms like the MPEP IdeaScale website, discourse in the public sphere becomes a contribution rather than a message (Dean, 2008), intended for administrative correction rather than public critique. It exhibits certain generic constraints through a mutually construed exigence (errors in the manual), medium-specific features (the ensemble of votes, comments, and ranking), and linguistic features (pointed revisions supported by demonstrations of expertise). In this way, IdeaScale provides a model for state-citizen collaboration. It models a particular definition of collective action (the aggregation of data via the “invisible hand” of the

network) and political participation (competition to identify “bugs” on behalf of the agency).

A rhetorical approach can enrich discussions of the relationship between open code and society. Galloway and Thacker observe, “Open source focuses on code in isolation... To focus on inert, isolated code is to ignore code in its context, in its social relation, in its real experience, or actual dynamic relations with other code and other machines” (2007, p. 124-125). Rhetorical inquiry can help to identify the social relations and real experiences of coded communicative acts, without simplistic deference to technological determinism. Open government apologists like Noveck, Sunstein, and O’Reilly are ready to cast off the public sphere model of deliberation in favor of the efficient, effective marketplace model of contribution. Rhetorical study can articulate what we are giving up – or what we refuse to let go of – as communicators in these particular social conditions.

Of course, if the rhetorical significance of the MPEP IdeaScale platform is a result of dynamic social relations and a localized context of use, that means its function is susceptible to reorientation should local conditions change. It will be worth watching how the open-source model continues to modulate government communication, particularly at the USPTO, the agency that apportions enclosures of intellectual property. Though I have argued that the Open Government Initiative harnesses open-source techniques as a management style in a paradigm of neoliberal control, these same techniques destabilize the strict logic of competitive neoliberal individualism by propagating hacker values. The interface between these value systems will require

ongoing articulation. In the meantime, we need not sit out. Foucault has observed that it is possible to participate in government while retaining critical distance: “To work with a government implies neither subjection nor global acceptance. One can simultaneously work and be restive. I even think that the two go together” (qtd in Gordon, 1991, p. 48). We can work to make our government better and our democracy stronger. But we need not acquiesce to a blunted version of democracy that replaces counter-statement with crowd-statement, pluralistic agonism with pluralistic aggregation.

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CURRICULUM VITAE

Benjamin Lucas graduated from Loveland High School, Loveland, Ohio, in 2002. He received his Bachelor of Arts in English and Philosophy from Bowling Green State University in 2006, graduating *summa cum laude*. He has worked as a writer and researcher in the fields of new media, technology, and intellectual property.