

The Lottery as a Democratic Institution

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This report will answer three questions regarding the lottery as a democratic institution (sometimes known as *sortition*). First, what can random selection contribute to politics? Second, how can random selection best be incorporated into modern democratic institutions? Third, what research questions on sortition still need to be addressed?

1) What can random selection contribute to politics?

Scholars concerned with random selection all agree that the practice can make a number of contributions to decision-making, including the assignment of public or political responsibilities. They disagree, however, whether these contributions can all be explained by a general theory of lottery use. Both Oliver Dowlen, in *The Political Potential of Sortition* (2008), and Peter Stone, in *The Luck of the Draw: The Role of Lotteries in Decision Making* (2011), defend the idea that a general theory is possible (see also Dowlen 2009 and Stone 2009). Their accounts are similar, in that both point to the fact that lotteries make decisions in a manner unconnected to rationality or reasons. Dowlen speaks of the “arationality” of lotteries as the fundamental contribution they make, whereas Stone argues that lotteries provide the sanitizing effect of a process unaffected by reasons. Dowlen and Stone do have some disagreements. Both, for example, agree that lotteries have “weak” uses (in which the primary property of lotteries—the lack of connection to rationality/reasons—contributes nothing, even though it does not detract from decision-making) and “strong” uses (in which the primary property makes a positive

contribution). The use of lotteries as a cheap, quick, and convenient decision-making tool, for example, is a weak use. But while both Dowlen and Stone acknowledge that lotteries can be used to ensure descriptive representation (to be discussed further shortly), Dowlen describes this use as weak, whereas Stone regards it as strong (see also Stone 2010b).

Proponents of a general theory of lottery use have surveyed numerous proposed contributions that lotteries might make, in order to show that they can safely be described in terms of a single contribution made under different circumstances. Peter Stone, for example, has critically scrutinized two major works on lotteries—Jon Elster’s *Solomonic Judgments* (1989) and Barbara Goodwin’s *Justice by Lottery* (2005)—and argued that all of the advantages and disadvantages discussed in these works can be expressed in terms of the sanitizing effect of a process unaffected by reasons (Stone 2009, 2010a). Other scholars, however, remain sceptical of the idea of a general theory. And so they continue to offer lists of distinct contributions that lotteries can make to decision-making. A good example of such a list appears in Gil Delannoi’s “Reflections on Two Typologies for Random Selection” (2010).

These disagreements are reflected in current debates over the advantages and disadvantages of lottery use for the specific purpose of assigning public responsibilities. The use of lotteries for this specific purpose is sometimes called *sortition*.¹ These debates revolve around three questions. First, what can sortition contribute to politics? And second, how do the contributions made by sortition relate to each other? Third, how do these contributions relate to political theory more generally? We will confine attention here to the first two questions, taking up the third one in the final section.

¹ Not everyone restricts the term in this manner; some use it to refer to decision-making by lot without regard for the type of decision being made. But there are serious advantages to having a term to describe specifically the assignment of public office by lot, and “sortition” seems to be the most appropriate term available.

Proponents of sortition evoke at least eight distinct contributions that lottery use can make to the political process. Not all of these contributions are considered equally important, with a few of them meriting attention sporadically if at all. The contributions, listed in roughly ascending order of controversy, are the following:²

- a) *Descriptive representation.* Sortition ensures that any property appearing in the general population will also appear in the same proportions on a randomly-selected decision-making body. This property of sortition is very robust so long as two conditions hold. *First*, the decision-making body must have a significant number of members (ideally, several hundred). Obviously, descriptive representation is a meaningless standard to apply to an office occupied by only a single individual; one president cannot, in any meaningful sense, be said to represent descriptively the entire country. But this is not a serious objection to sortition; there are no examples in the historical record of lotteries being used to select single officeholders, and virtually no live proposals today to attempt this. Still, sortition has been employed to select small decision-making bodies that are minimally capable of ensuring descriptive representation; it was used, for example, to select various 10-member administrative boards in classical Athens, and it is used to select 12-member juries in the Anglo-American world today. Such uses of sortition cannot robustly be justified in terms of descriptive representation. *Second*, random selection must proceed from a pool consisting of the entire population it is supposed to represent descriptively. Adding additional selection criteria—by requiring citizens to volunteer for duty, for example, or even by allowing citizens to opt out of the selection process—will alter the population to be represented. Efforts to ensure that officeholders

² To say that sortition *can* make one of these contributions is not to say that it will always do so, or that the contribution is always desirable. The question of the circumstances under which sortition makes its contributions in a maximally desirable way is a live one that is definitely receiving attention in contemporary debates.

possess motivation, experience, ability, or any other criteria not possessed by the entire population thus threaten to work against the ideal of descriptive representation.

- b) *Prevention of corruption and/or domination:* The democratic process can be severely undermined when officeholders use their offices to benefit themselves. Sortition hampers this process by ensuring that those anxious to obtain office for venal purposes cannot obtain it more reliably than anyone else. (Obviously, sortition can do nothing if the majority of the population desires office for such venal purposes, although other institutions can be adopted alongside sortition to address the problem.) More seriously, the process can be undermined when outside interests suborn officeholders so as to make the latter advance the former's agenda at the expense of the general interest. This can happen either because the special interests influence the selection process (ensuring that only those favouring the special interest cause obtain office), or because they influence those selected according to other criteria (through bribes and/or threats). Sortition obviously prevents special interests from influencing the selection process; it can also prevent bribes and threats provided that the random selection process is suitably insulated. (This requires, for example, that the selected officials assume office immediately, and that either they are sequestered or that access to them is suitably controlled or monitored.)
- c) *Mitigation of elite-level conflict:* Political competition, like economic competition, is desirable only when it serves the interest of the broader public. Market competition between firms can do this by producing lower prices, higher quality, etc. But market competition founders if firms either form cartels to restrain competition, or engage in destructive forms of competition (e.g., blowing up rival factories). Similarly, political

competition between elites can benefit the public when educated, informed, and motivated politicians compete for public support by offering socially desirable policies. But this competition founders when elites either compete too little (by establishing “political cartels”) or too much (at the limit, by engaging in civil war). The former effect can be curtailed through sortition by preventing elites from controlling the selection process. This is the “protection against domination” effect described previously. The latter effect is similarly curtailed through sortition; because no faction of the elite can stack randomly-selected bodies with its supporters, no elites need fear such a faction taking control of the entire political system. (One could also dub this the mitigation of *partisanship*.)

- d) *Control of political outliers*: Small groups with outlier preferences may be highly motivated to suborn the political process. They may thus gain a measure of political influence totally disproportionate to their size. Sortition can mitigate this by ensuring that such outlier groups cannot obtain vastly oversized representation; at the limit, when perfect descriptive representation is attained, no such group can obtain political office in numbers larger than its presence in the general population. Deviations from proportionality will of course weaken this effect; if sortition is used to select only among volunteers, for example, an outlier group might become radically overrepresented.³ And sortition can only mitigate the effects of outlier preferences; if a majority or a large

³ This may, of course, be regarded as a strength. John Burnheim, in his book *Is Democracy Possible?* (2006), defends sortition from a pool of volunteers as a way of ensuring that those who care the most about issues are the ones who make decisions regarding those issues. This might have the effects of increasing stability and ensuring that decision-makers are knowledgeable. But the mere fact that volunteers want something different from what the public as a whole wants poses a challenge to democratic theory, even if volunteers have no venal motivations. And the beneficial effects are far from certain. If volunteers are sharply divided on an issue, then empowering them could increase stability. And those who care the most about an issue may be motivated to become knowledgeable about the subject, but they also may not (e.g., creationists).

minority has despicable preferences, sortition can do little to mitigate this fact. (But then again, no democratic process can do much better.)

- e) *Distributive justice*. The citizens of classical Athens regarded public office as a good, one to which all citizens had equal claims (Mulgan 1984). Most modern citizens are not so covetous of officeholding; witness the lengths to which people will go to avoid jury duty. But if public office were, not a valued social benefit, but a genuine social burden, then one might make the argument that the avoidance of public office is a good to which all citizens have equal claims.⁴ Either way, a lottery is a fair way to distribute benefits (burdens) among those who have equal claims to them (avoiding them) (Stone 2007; Stone 2011, part II). But neither of these positions is widely held today; most citizens of modern democracy tend to think political equality as an equal right to select political officials, as well as an equal right to pursue office, but not an equal right to office itself (Manin 1997). This understanding fits well with the idea of a society-wide division of labour, which allows some to specialize in politics while leaving others free to pursue other goals (Constant 1988). Most modern proponents of sortition share this view. While they recognize the limits of making politics a vocation (not to mention its dangers—those most motivated to obtain political expertise are often those with the most to gain by corrupting the political process), and tout the advantages of a certain amount of political amateurism, few defend the idea of political office as a good in itself.⁵

⁴ On the avoidance of a burden as a benefit, see Sher (1980).

⁵ Equality and impartiality are sometimes expressed as separate values advanced by a lottery. But it is difficult to see how both values could be specified in a manner that leaves them distinct. Impartiality, on most accounts, involves keeping irrelevant factors out of the decision-making process. (This is what is normally meant by the saying, “Justice is blind.”) But if equality is a democratic value, in the sense that all citizens are equally entitled to hold office, then *all* distinctions between citizens are irrelevant for purposes of filling those offices. Conversely, if there exist legitimate reasons for distinguishing between citizens in assigning public responsibilities, then citizens should receive unequal but impartial access to those responsibilities.

- f) *Participation*. While few proponents of sortition explicitly argue that political office should be regarded as a good, many share the widespread concern with declining political participation and citizen apathy. They believe it is important both for political systems to provide genuine opportunities for participation and to ensure that such participation takes place. (This is sometimes described as the problem of making the system “inclusive.”) Rarely, however, do they explain why political systems should do this. Again, the counterargument is that politics is a profession, like any other, and best left to the experts. There is therefore no reason to fret if many refuse to get involved with politics, any more than if many took no interest in particle physics or chemical engineering or patent law. The political process may work better if politics is not left to the professionals, but this fact is properly captured by the other advantages to sortition listed above.
- g) *Rotation*. Proponents of sortition also frequently tout the fact that the practice ensures rotation of political office. It is unclear whether this virtue is reducible to the others catalogued here. The answer will surely depend upon the argument as to why rotation should be considered valuable. If the argument is grounded in participation, the sharing of office as a valuable good, or the prevention of domination by elite groups, then the reduction is most likely possible.
- h) *Psychological benefits*. It is transparent that officeholders selected by lot are not selected on the basis of any personal quality, positive or negative, they might possess. Therefore, it is difficult for those who win office to feel any special entitlement to office,⁶ or for those who lose office to feel any special deference to those who win. It is an open

⁶ But not impossible, if the lottery is interpreted as expressing the will of some higher power, such as God or fate. To see the lottery this way, however, is to see it as not being a real lottery at all. See Stone (2010a).

question how strong this effect really is, although its existence seems very likely. This effect does, however, seem parasitic on the others described here.

2) How Can Random Selection Best Be Incorporated into Modern Democratic Institutions?

It is difficult to address this question without first considering *why* it is that we might value sortition in the context of modern democracy. The question of *how* then follows logically as the means of achieving the desired solution.

One approach is to see the current interest in sortition as a response to perceived deficiencies or problems with the current paradigm of liberal democracy. There is a sense that the magnitude of the perceived need for sortive measures is in direct proportion to the dissatisfaction with liberal elective politics. A severe critic would like to see majority voting *replaced* by sortive measures (See Callenbach and Phillips 2008; Mueller et al. 1972; Sutherland 2004). A less severe critic would prefer to see sortition as a means of complementing and enhancing existing elective measures. A mild “improver”, on the other hand might envisage sortition as useful only on the margins of the body politic exiled to the judiciary (as it currently is) or confined to local municipalities.

The main line of critical thought—prefigured by writers such as Michels (1915) and Schumpeter (2010) and taken up more widely after the post WWII triumph of liberal democracy—is that the liberal democratic form encourages government, not by the people, but by competing elites. Despite electoral rights and the right of free political expression, a gap opens up between a professional political caste and the people at large. Citizen participation is limited to periodic voting and cheapened in that activity by the use of modern image-based advertising. Voting systems themselves are seen as unfair to entrenched minorities; the political

process itself is seen as dominated by self-interested partisan groups, extra-political industrial lobby groups and career interests. The current interest in sortition can be seen first and foremost as a response to this situation, and the primary quality that sortition can bring to this context is seen as the delivery of much needed citizen participation to an arena dominated by these forces. In this respect the interest in sortition is part of the same political impulse that brought us participatory democracy and deliberative democracy.⁷

A closer understanding of the qualities of the sortive process and the history of its use leads us to a somewhat different viewpoint. The process of random selection is one that cannot be interfered with. It is strategy-proof and corruption-proof. It denies the power of appointment to political actors and thus it can contribute to the breakup of concentrations of power within the body politic. This anti-factional, anti-partisan role is manifest in its use in the late medieval city republics of north Italy and (arguably) underpins its systematic and widespread use in Ancient Athens. From this point of view sortition has the capacity to generate citizen participation, but the random mechanism has the capacity to bring other attributes with it.⁸ The proposition to use sortition merely and simply to facilitate citizen participation would constitute, in fact, a weak use of sortition since, stated thus, there is no real need to use an arational decision-making procedure.⁹

Understanding this enables us to approach the *Why?* question from another direction. If we want to see improvements in the quality of the political process, fairer politics, more open politics, politics insulated against factional intrigue, partisan manipulation and authoritarian domination, then the carefully managed use of sortition can help to realise this vision. What is

⁷ Pateman (1970) and Barber (1984) are important examples of this.

⁸ See Stone's "sanitizing effect" (Stone 2011) and Delannoi's highlighting of the quality of serenity (Delannoi 2011).

⁹ See Dowlen (2008) pp 11-30 for the formulation of the distinction between weak and strong use.

more, because an appointment by sortition is unmediated by any third party or interest group, widespread use of sortition can create a new direct relationship between citizen and state. This can be one in which, by careful constitutional planning, the citizenry can be instrumental in protecting the integrity of the political system itself.

We start, therefore, from the premise that citizen participation is a desirable good, but that citizen participation in defence of an open, fair, inclusive, rule governed polity is also a desirable good more commensurate with the qualities of the lottery process. The question of *How?* can now be addressed with greater clarity.

The first question that demands attention is whether sortition should be used *instead of*, or *in combination with* election. There may well be better arguments in support of a combination. If we are seeking a fairer system of government, with a greater emphasis on the rule-governed control of political power, then it is clear that here are many aspects of the process of consent by election that serve to promote these ends.¹⁰ Moreover voting, despite all its defects in the aggregation of votes, is a system that involves the conscious decision-making capacity of the citizen body. This would be denied by a totally sortive system. It should also be recognised that sortition and liberal democracy belong to the same tradition of open participatory government; to this extent they are not in competition with each other (Dowlen 2010). Furthermore in historical practice they were invariably used *with* each other, each taking a distinct role in the entire process of selecting officers, or each used to select a different type of officer. The arational is used in combination with the rational. A move to an entirely sortive scheme might constitute a step in the dark and would therefore only be justified by the existence of an overriding reason to adopt an arational mechanism in preference to a rationally based system *in all its aspects*. Such a reason might be the complete bankruptcy or corruption of electoral politics. Even then an

¹⁰ Manin (1997) is particularly strong on the relationship between consent and sortition.

exclusively sortive scheme could be resorted to as a temporary measure rather than as a permanent institution.

One of the most straightforward ways that sortition and election could work well together would involve a bicameral system where election was used for one legislative chamber and sortition for the other. In such cases it might make sense that each chamber should have a constitutionally distinct role so that it would be very clear where legislative sovereignty lay (Barnett and Carty 2008). An alternative to this would be a single chamber with members selected by sortition sitting alongside elected members (Peonidis 2010). This could, indeed, temper some of the excessive partisanship of the elected members, but the presence of citizen members amongst professional politicians could also work to the detriment of the citizens unless each were given specific roles and duties.

A further option could be to use randomly-selected citizens, not in direct (or even indirect) competition with elected members, but in a support role. A development of Ségolène Royal's scheme for citizens' juries¹¹ to hold elected officers to account would fit in this category. Instead of being cast in an adversarial role, however, a group of citizens could be selected both to oversee and to assist the elected member. This could be done by the citizens acting as the interface between the member and the constituency, handling appointments, public appearances, press releases, receipt of petitions etc. In this way citizens would begin to have a greater insight into the work of their representatives, and the sitting member would have closer active links with the constituency without always working for party advantage. In this role the citizens would be members of the state rather than of government: they would help to ensure the probity and smooth-running of the system rather than make decisions in a representative capacity.

¹¹ This measure was in her manifesto for the 2007 presidential election campaign.

One of the main arguments for this type of arrangement is that the role of the citizens as impartial guardians of the political system is entirely commensurate with their method of selection. The role of the MP's oversight committee is similar to that of the tribune. They act as citizen witnesses to inner workings of the political system. Once this principle is grasped it is possible to envisage numerous similar applications. Randomly-selected citizens could be incorporated into the management boards of nationalised industries or other state owned concerns; secret services could be monitored for acts against the interests of the citizenry; elections in emerging democracies could be monitored by randomly-selected citizens; the decision whether it would be in the public interest to disclose certain confidential matters of state could be made by citizens juries.¹² Where this category of use differs from the use of randomly-selected citizens in legislative or executive bodies is that citizens in the former would be expected to represent the general interest in their protection of open participatory government. In a randomly-selected chamber based on the principle of descriptive representation, citizens would be expected to act according to their self-interest or the interest of the grouping(s) of which they were a part.

A further question that could cause some difficulty is that of training. The old aristocratic argument against sortition was that those selected in this manner would lack the specialist skills needed for government.¹³ This is not, however, a coherent argument against the sortive principle itself for it is the duty of the rational designer of any scheme to match the general capacities of those in the pool with the requirements of the post for which they might be selected. Another variable in this scheme is the possible simplification of the tasks of office to suit the wide range of abilities that would be found in citizen-wide pool. The Athenians, in fact, adopted this solution

¹² We acknowledge Dr Keith Nilsen for this idea along with the proposal to use randomly-selected monitors for the secret services. See preface to Dowlen (2008).

¹³ See Socrates' criticism of sortition along these lines (Dowlen 2008, 57-58).

and arranged that magistrates should work in boards of ten so they could assist each other (Headlam 1933). The provision of training is also a means by which those in the pool, or those selected, can be made ready for the demands of the office in question. Here again there is a contrast with assumptions underlying the use of sortition for descriptive representation. With descriptive representation it is necessary that those selected take office without training so that they bring the diversity of their educational backgrounds into the decision-making of the chamber. Special training for the tasks of office could be seen as interfering with that principle.

The question of the content of the training could be problematic, but if citizens were selected to protect what they could recognise as *their* political institutions, then this would provide an incentive for them to do the job to the best of their abilities. The content of training in such a context would present no problems since it would reflect the impartial nature of the office rather than having any specific partisan ideological mission.

Participation in sortive offices would therefore be a two way process: the citizens would bring their diversity, experience and new energies to the body politic, while the office itself would educate the citizen in respect to means and methods of their political system. In addition the very existence of citizen's offices would sharpen and place new demands on the provision for citizenship training within the general education system.

Another important question concerning the incorporation of sortive methods within modern democracies is whether sortition should be voluntary or compulsory. In other words, should those selected by lottery be *required* to serve in the office for which they were selected, or should the pools for office consist only of those who put themselves forward for the post in question. If sortition was to be used for the purpose of descriptive representation this would require compulsory selection, but for other functions of sortition the question is more open. An

argument against the voluntary principle is that the offices would end up being staffed by those who were already committed or active, and these people might be merely bringing their own pre-determined interests and ambitions into the body politic. In these circumstances there would be no lowering of the threshold of participation so that “ordinary” citizens could hold office and the potential for diversity generated by the lottery principle would be lost. On the other hand there could be real problems if sortive offices were entirely staffed by reluctant conscripts.¹⁴

One of the difficulties with this question is that it is normally formulated in the context of today’s non-participatory society where any compromise to an individual’s free time and personal liberty is regarded as a burden. We would envisage that any society that implemented a comprehensive programme of sortition for public offices would also address the question of how citizens could be suitably motivated and rewarded. We do not see sortive schemes operating successfully in a vacuum or in a hostile environment, but in circumstance where a general ethos of the duties and responsibilities of citizenship has a high profile.¹⁵ Sortive offices could operate easily in a system where, for instance, compulsory social conscription was the norm and in which a system of tax breaks and special payment provisions could act as incentives for those taking and holding office. In such circumstances it could be possible to combine compulsory offices of shorter duration with offices that required greater long-term commitment that operated on a voluntary or quasi voluntary basis. The guiding principle should be that the point of entry to the body politic should be compulsory (whether it be an office or a special course) and that joining the pools for subsequent offices could be voluntary. In this way the diversity and the low threshold can be maintained. To organise this efficiently, however, some sort of ranking of the

¹⁴ A discussion along these lines took place on the final day of the November 2011 Paris seminar.

¹⁵ A note should be made here of the importance of rotation in combination with sortition. Clearly different terms of tenure for office could be used to make a range of offices from “entry level” to “advanced commitment.”

pools for different offices and the careful stipulation of the requirements for any pools that were not simply citizen-wide would be necessary.

We will conclude this section by separating two distinct problematics governing the question of applying sortive based schemes in modern democracies. The first involves sortition as a mechanism for solving specific, discrete political problems. In this arena the central principle is that sortition should be used when a positive use can be made of the one or more of the essential qualities of the lottery procedure in respect to the task in hand. This judgement would also involve assessing whether the positive advantages of using an arational, non-human mechanism outweigh the possible disadvantages, and whether these disadvantages can be addressed by other aspects of the procedure as a whole. As in all design-thinking, a clear assessment of objectives is an absolute pre-requisite, and the arational lottery process then becomes an option in a process of clear, deliberate, rational calculation. Presented in this way, sortition could begin to command more consideration as a serious political problem-solving mechanism.

The second problematic relates to the larger picture of the trajectory of liberal democracy and its perceived limitations. The questions raised under this heading are more profound, far reaching and fundamental in their nature. Rather than asking how we can select members for this or that committee or choose monitors for this or that governmental operation, problems in this arena involve complex questions such as whether there is an inevitable trend towards oligarchy in party electoral politics, whether more elements of direct democracy should be introduced and to what effect, and whether the interface between civil and political society operates fairly. These, and more, questions form the background to the inquiry into the value of the wider advocacy of sortition as a new re-regenerative element in modern world democracy.

We started to answer the question *How?* with the question *Why?* We then raised the issue of participation. It is easy to see participation as a good in its own right and to see sortition as a tool by which this can be put into effect. The response would be to invert the argument and suggest that in the greater task of protecting the integrity of the open, fair political process, citizen participation is an incredibly powerful tool, particularly because a citizen-wide pool is almost impossible to corrupt or to bring under the will of any powerful individual or party. Once this central principle has been grasped, the question *How?* can be answered in numerous inventive ways.

3) What research questions on sortition still need to be addressed?

The most important outstanding research questions regarding sortition tend to fall into three categories. First, what institutional features should be used in conjunction with sortition? Second, how does sortition compare to other methods for assigning public responsibilities? Third, what precise cluster of democratic values does sortition advance? We will focus the most attention upon the third category here, as it sheds light upon the other two.

The simple recognition that random selection has properties that may prove desirable in democratic politics does not straightforwardly generate a case for sortition. For democratic institutions are complex things, and selection by lot can fit into them in numerous ways, and in conjunction with numerous different design features. The most important institutional question is, of course, just what is supposed to be selected by lot. Virtually all proponents of sortition answer, “political officials.” None, to the best of our knowledge, would select policies at random. But some are attracted to the idea of *lottery voting* (otherwise known as the “random dictator” rule). According to this rule, people make decisions by voting, but the votes are not counted; instead, a single vote is selected at random, and that vote determines the outcome. This

rule has some surprisingly attractive properties (Gibbard 1977), and so has a number of partisans (e.g., Amar 1984). But it has not yet received sustained attention by proponents of sortition.

Assume, then, that random selection is to be used to select political officials—i.e., that sortition is to be employed. Then the second most critical question to answer regarding sortition is just what sorts of tasks are best performed by randomly-selected officials. The possible answers are numerous. Randomly-selected bodies could be employed to try cases, make or implement administrative decisions, enact laws, or nominate and/or elect candidates for other offices. This last usage has not attracted much recent attention by proponents of sortition, but it is historically important; Renaissance Venice made use of sortition for this purpose, in a political system that survived for half a millennium and was the envy of republicans throughout the western world (Finlay 1980). It certainly merits further attention.

Once the decision has been made to select a body of officials at random to perform a particular task, there remain numerous other institutional design features to be chosen. Should candidates be volunteers? Should they be *allowed* to volunteer? Should they be nominated by others for inclusion in the random selection, but given the opportunity to decline? Should *everyone* be included in the random selection, whether they like it or not? And once the body has been selected, how should it make its decisions? Should it deliberate? With what sources of information should it be provided? Should it be empowered to select its own sources? Should others have the right to speak to it, or provide evidence? If so, under what conditions? Should the body vote, or pursue consensus (as with the Anglo-American jury)? Should it vote secretly or openly? Should its vote be recorded? And finally, should its decisions be binding or merely advisory? This last question currently attracts a great deal of attention; it lies at the heart of the

debate between defenders and critics of James Fishkin's deliberative opinion polls (Fishkin 2009).

Sortition is, however, only one of several alternative methods of selecting political officials. Elections are another. Appointment is another. Indeed, these three methods are the primary alternatives considered appropriate today for selecting political officials (And of course, each of these alternatives involves countless variations—elections, for example, can be conducted using any one of a vast array of possible voting rules.) Is one of these alternatives demonstrably superior to the others? (Unlikely.) If not, which alternative is appropriate under which circumstances? When can voters make good decisions in selecting officials, in the sense of doing markedly better than pure chance? When does randomization make a positive contribution to the selection process? Is it possible to specify appointment procedures that avoid the pitfalls of election and outperform sortition? Modern democratic theory has taken the superiority of elections for granted. Proponents of sortition should not repeat this mistake by presuming the superiority of sortition. Democratic theory must truly be comparative, examining impartially and dispassionately the respective contributions and limitations of all alternative methods compatible with its basic values.

There are a variety of values that conceivably might be advanced by sortition. Some are explicitly democratic values; others are values that any decision-making system should presumably embody.¹⁶ But each can be specified in various ways, and how they are specified determines how well they fit both with each other and with sortition.

¹⁶ The distinction between the two may prove difficult to draw. Descriptive representation, for example, is sometimes thought to be desirable because it enables diversity, and diversity leads to better decision-making. While the connection between descriptive representation and diversity is not crystal clear (Stone 2012), the important question here is whether this connection, if true, counts as a contribution to democracy. Is quality decision-making a democratic value? If so, how does it connect to other democratic values? The answer has yet to be settled.

Consider, for example, the ideal of descriptive representation. There is no denying that sortition can, under the appropriate conditions, advance this value, arguably better than any other procedure.¹⁷ But why should descriptive representation matter? Why should it be a good thing that a decision-making body “mirrors” the general population? The answer, typically, is that a body that “looks like” the population as a whole will make decisions that have some positive relation with the population as a whole. But what precisely is this positive relationship? How might one individual or group relate to another in a positive way? The possibilities include the following:¹⁸

- a) I am like you.
- b) I share your interests.
- c) I represent your interests.
- d) I make good decisions.
- e) I do what you want me to do.
- f) I do what you *would* want me to do, in some hypothetical set of circumstances (e.g., if you were better informed—this is sometimes described as the achievement of “enlightened public opinion”).
- g) You selected me to make these decisions.
- h) I have been authorized to act on your behalf.
- i) I have been authorized *by you* on your behalf.

Typically, the case for descriptive representation presupposes some systematic relationship among these elements (and possibly more). The case, for example, might be that a) implies b), which in turn implies c), which is defined to be equivalent to d). It might simultaneously hold

¹⁷ As noted before, Dowlen believes the connection between sortition and descriptive representation to be weak; Stone contends that it is strong.

¹⁸ For a similar consideration of descriptive representation, see the exchange in Griffiths and Wollheim (1960).

that d) implies f). Finally, Keith Sutherland has in recent work suggested that a) might imply i), or at least h), even though it is more typical for g) and i) (as well as g) and c)) to be connected via elections.

Many of these connections, however, are far from obvious. For example, it will be very difficult to connect f) and a) except through c). This is important, because if the interests of an agent and the goals of an agent come apart, one must decide which is most important to the political process. (The two will come apart any time an agent decides to sacrifice its interests in order to advance some other goal—e.g., when a wealthy polity decides to send money to help AIDS orphans in Africa.) Moreover, it is very difficult to evaluate the claim that I *would* do something under some hypothetical set of circumstances unless the circumstances are specified very clearly—and even then, it will be much harder to evaluate the claim for a collective body. The situation is clearer, though still theoretically complex in the collective case, if the goal is simply to connect likeness to the advancement of interests.

It is, however, the connection of i), or even h), to a) that poses the most problems. The connection of g) to i) is tenuous at best, despite the efforts of the social contract theory tradition. As this connection would have it, I am taken to have authorized a government to make various decisions affecting me even if:

- I did not vote in any election determining the composition of the government;
- I voted for a variety of candidates for the government, and they all lost;
- I voted for a variety of candidates for the government, but none of them became part of the new government;

-I voted for a variety of candidates for the government because they promised to take certain actions, and while those candidates did become part of the government they failed to take any of those actions; or even

-I voted against the enactment of the constitution creating the procedures for authorizing the government, and have not voted in any way since then.

Many of these conclusions seem counterintuitive, even absurd, as they attribute my authorization to actions or inactions that would never be understood that way in any non-political sphere.

But descriptive representation makes matters even worse. With voting, there is at least a chance that I will vote for a candidate who both wins and is willing and able to fulfil his campaign promises. There is at least some sense in which I can be said to authorize such a candidate to act for me. But even this sense does not exist when sortition is used to generate descriptive representation, for sortition ensures there will be *no* relationship between the candidates that I want and the candidates that are selected.

There are two potential ways out of this, neither very promising. On the one hand, one could point to the constitutional procedure that authorizes sortition. If I vote for the procedure, then one could claim that I have indirectly authorized the candidates selected by it. But this does not help the case for sortition. The problem of authorization by those who vote against the procedures, or refuse to vote at all, remains the same as before. Moreover, whatever authorization that constitutional enactment provides does not favour sortition in any way. If a constitutional ratification process can be said to provide collective authorization for sortition, then that same process would surely provide collective authorization for voting, or hereditary monarchy, or any other selection procedure that might survive the ratification process. But on the other hand, one could try to articulate a positive case for why descriptive representation produces

some sort of authorization. As with voting, this type of authorization would never happen outside a political context; other people are not authorized to sublet my apartment, or buy my groceries, without my consent simply because they resemble me, however closely.

The problem of descriptive representation runs deep. It is one of the most commonly evoked reasons in favour of sortition (understandably, given how efficiently sortition achieving this goal). Yet there remain deep questions regarding just why descriptive representation is supposed to be important—what values it represents and advances—and how those values fit with other values. Most importantly, as the discussion here indicates, descriptive representation raises the question of just what democracy is all about, whether there even exists a single democratic value or closely-connected set of democratic values. Most commonly, the attempt to define democratic values focuses upon authorization in some form or another. Democracy is defined in terms of self-government, which is taken to mean government by the consent of the governed. Elections were supposed to enable such government, and some proponents of sortition propose sortition as a response to the failure of elections to accomplish this goal. But the argument so far has shown why both sortition and elections fall so far short of accomplishing this goal as to raise the question whether the goal is achievable at all. And if the goal of government by the consent of the governed is not achievable, then the question becomes what sort of story about democracy is both feasible and desirable, and how does sortition fit into that story.¹⁹

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¹⁹ A closely related concept is that of democratic *legitimacy*. The exact nature of this ideal, its relationship (if any) to self-government/government by consent of the governed, and the contribution (if any) sortition can make to it also remain questions for further investigation.

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