

IGNORANCE, IRRATIONALITY, ELECTIONS, AND SORTITION

Part 2

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Part 1 of this article, which appeared in the first installment of the *Common Knowledge* symposium “Antipolitics,” argues that elections are not the best basis for democracy. Elections promote corruption, do not result in accurate representation of the populace in government positions, and prevent open-minded dialogue about reliable information as the means to arrive at optimal decisions on public policy. Here, in this second installment of “Antipolitics,” part 2 of my project treats an alternative and epistemically superior basis for democratic self-rule—sortition, “a system whereby multiple, short-duration, representative samples of the full population are constituted into bodies that, like large courtroom juries, are chosen randomly from among ordinary equal citizens.”¹ Parts 1 and 2 both focus on the American electoral experience, and while some of its faults may not be relevant to other electoral systems (such as those with party-based, proportional representation), the core of the argument does apply to elections generally.

1. Bouricius, “Ignorance, Irrationality, Elections, and Sortition,” 238–39.

Competence

When the idea of having randomly selected, ordinary people making laws and public policy decisions is suggested, the more accurate descriptive representativeness that would result is quickly understood, but many people immediately worry whether such representatives would have the necessary competence. There is a common assumption that elected representatives must have some special competence, knowledge, and skills. Interestingly, there is also a common assumption that elected representatives are mostly corrupt and more interested in the desires of special interests than in those of ordinary people. In part 1 of this article, the reality and reasons that elected representatives are not especially competent, knowledgeable, or skilled in policy domains were presented. But would a randomly selected group be somehow even worse?

Randomly selected representatives would run the gamut. But the key consideration is not the competence of each *individual* member, but the competence of the group as a *whole*. The differences in the motivations and psychological traits of elected members, as compared to randomly selected members, is crucial. The self-selection bias of an elected chamber assures a body of “know-it-alls” who lack diversity and are severely encumbered when asked to absorb new information that contradicts their campaign and party positions. Electoral imperatives and partisan power struggles also sharply reduce their ability to seek out information that may contradict their established policy preferences. Ordinary people, who are not immersed in a competitive electoral milieu and who will generally recognize their own prior lack of knowledge about various policy domains, are ideally suited to seek and absorb information from diverse and expert sources.

Reliable, Agreed-Upon Information

A crucial element of effective deliberation is the marshaling of reliable information rather than mere beliefs or cherry-picked and misleading data. Too much of what passes for deliberation consists of listing supposed but unsubstantiated “facts” that have been asserted by opposing sides. Elected partisan representatives tend to rely on a closed loop of information-sourcing that institutionalizes confirmation bias within each party. While some kinds of information are best gathered from a diverse range of individuals reporting their lived experiences, others must come from “experts.” As Frank Fischer of Rutgers University notes in his book *Democracy and Expertise*, “Citizens have a good deal of information but much of it remains tacit, fragmented, and disconnected. To be useful, it has to be organized. Professional experts need methods and practices that can help them to do this.”² Scientific, statistical, and other complex bits of information

2. Fischer, *Democracy and Expertise*, 110.

that few citizens know and that are useful for making any particular decision must be made intelligible. Fischer points out that experts often present a “closed package” of information in a kind of code that does not really allow for deliberation and “thus maintain[s] a barrier to a fuller form of democratization.”³ More immediately, comprehensible language is possible, and the professional staff of randomly selected mini-publics could be expected to provide it.

Thus, a major advantage of decision-making by mini-publics is that they enable opposing sides, to the greatest extent possible, to agree on a common set of facts, just as lawyers may stipulate to agree on facts in a court case. The professional staff for a mini-public can facilitate the development of agreed-upon facts among experts who disagree on whatever policy is under consideration. While it is true that misperceptions are difficult to correct, we should not conclude that every kind of democratic deliberation is powerless against misinformation. Indeed, studies suggest that certain types of deliberation will more effectively favor the correction of false beliefs than others.⁴

The Superflock Approach to Governance

Elections are often regarded as a way to get the best among us together to solve the problems of society. But this conception is, to say the least, problematic—for reasons set forth memorably by Margaret Heffernan, a professor of management at the University of Bath, whose interest in productivity drew her to the work of the evolutionary biologist William Muir. He studied hens, because it is so easy to measure their productivity (you simply count the eggs). To determine what might make hens more productive, Muir devised an experiment: he selected an average flock and let it alone for six generations but also separated out the individually most productive chickens and put them together in a superflock. In each successive generation, he selected only the most productive for breeding. After six more generations had passed, he found that the first group, the average group, was doing well. The hens were all plump and fully feathered, and their egg production had increased dramatically. In the superflock, however, all but three hens were dead. The three had pecked the rest to death. The individually productive chickens had achieved their success by suppressing the productivity of the others. As Heffernan observes, most organizations and some societies are run in accordance with this superflock model, on the assumption that success is achieved by picking superstars and giving them all the resources and power. The result has been the same as in Muir’s experiment: aggression, dysfunction, and waste.⁵

Even if, naively, we believed that, say, the US Congress was made up of the

3. Fischer, *Democracy and Expertise*, 109.

5. Heffernan, “Forget the Pecking Order at Work.”

4. See Brown, “Propaganda, Misinformation, and the Epistemic Value of Democracy,” 14.

best and brightest, the homogeneity of the members is not only unrepresentative but also a liability when making decisions.⁶ Cass Sunstein, in his book *Why Societies Need Dissent* (2003), explains how research consistently shows the importance of diversity to optimal decision-making. The observation that diversity trumps homogeneity in groups of problem-solvers is hardly startling: two heads are better than one only if the two are thinking somewhat differently from one another. But the importance of diversity goes far deeper. As James Surowiecki notes in *The Wisdom of Crowds*, diverse groups outperform homogeneous ones in many situations, even when the homogeneous group is made up of experts. By definition, experts are those who have experience solving certain kinds of problems, but while that experience may be helpful, it may also act like blinders (hence the adage that generals are always fighting a previous war of their experience). One is better off relying on a diversity, rather than a specialization, of experience and expertise; as Surowiecki observes, “If you put together a big enough and diverse enough group of people and ask them to make decisions affecting the general interest, that group’s decisions will, over time, be intellectually superior to the isolated individual, no matter how smart or well informed he is.”⁷ Exactly what kind of diversity is desirable depends on the task at hand. There may happen to be substantial cognitive diversity within a demographically homogeneous group; for other tasks, a diverse set of life experiences may be more relevant. Seeking out any particular sort of diversity may be a fool’s errand, in which case random selection would be the best strategy to adopt.

The “common sense” assumption is that groups of experts will outperform panels of nonexperts. The “Delphi method,” named for the oracle and advanced by the RAND Corporation at the beginning of the Cold War, was based on this assumption. Experts were polled about a particular issue, such as the effects of technological changes on future wars. Initial results were shared with the experts, who then had the chance to modify their previous responses, in a series of iterative rounds. The Delphi method had, at best, mixed results. Presumably one reason is the so-called groupthink dynamic and confirmation bias that promotes agreement, regardless of whether the point of convergence is right or wrong. As Surowiecki explains this counterintuitive reality: “Bringing new members into the

6. Sheen S. Levine, Evan Apfelbaum, and fellow researchers at MIT conducted studies with experimental markets, in the United States and Singapore, in which participants could earn money through trading stocks. Homogeneous groups were far more likely to overvalue stocks and develop market bubbles. In an article published in the *Proceedings of the National Academy of Sciences*, they wrote, “In our experiments, ethnic diversity leads all traders, whether of majority or minority ethnicity, to price more accurately and thwart bubbles.” Rather than minority

members simply bringing new information to the fore, in these cases diversity promoted better individual decision-making in general: “It is clear that people work harder in diverse settings, socially and cognitively. So when it comes to creating the conditions that promote cold hard accuracy in decision-making, diversity may be an invaluable asset.” See Massachusetts Institute of Technology, “Ethnic Diversity Reduces Risk”; Levine et al., “Ethnic Diversity Deflates Price Bubbles.”

7. Surowiecki, *Wisdom of Crowds*, xvii.

organization, even if they are less experienced and less capable, actually makes the group smarter simply because what little the new members do know is not redundant with what everyone else knows.”⁸ Awareness of this phenomenon dates back at least to Aristotle, who said, “For the many, of whom each individual is but an ordinary person, when they meet together may very likely be better than the few good, if regarded not individually but collectively, just as a feast to which many contribute is better than a dinner provided out of a single purse.”⁹ One might almost conclude that Aristotle knew about Wikipedia and “crowdsourcing.”

Even a conservative such as Edmund Burke saw value in diversity within a legislature, with deliberators representing every relevant point of view. At the time of the debates over the ratification of the US Constitution, the issue of diversity was raised implicitly in many arguments of Anti-Federalists. Melancton Smith, a prominent merchant and major land owner in New York, argued in 1788 that good governance required that legislators not be restricted to members of the “natural aristocracy” or “first class.” To have the necessary knowledge to adopt wise public policies, the representative body must include the middle classes. In addition to the knowledge held by the wealthy and well educated, the legislature “should also comprehend that kind of acquaintance with the common concerns and occupations of the people, which men of the middling class of life are in general much better competent to than those of the superior class.”¹⁰ Including members of racial, religious, and cultural minority groups in deliberation as well has the potential to increase understanding and sympathy for other perspectives and policy preferences among majority participants. (This result is not automatic, however, and some research suggests there is also a potential for increased polarization.)

The details of how the deliberation is structured and conducted is crucial. Diversity does not merely refer to familiar demographic parameters such as race, class, and sex. Researchers such as Hélène Landemore have stressed “cognitive diversity” or problem-solving styles as well. Cognitive diversity is not just a matter of different perspectives arising from different upbringings and life experiences, which may be associated with categories such as race, sex, or class, but differences in personality and even brain function—different ways of seeing, interpreting, and making predictions about the world. Landemore has written extensively about the epistemic benefits of maximizing cognitive diversity in political decision-making bodies, which she argues can optimally be achieved through random selection of group members.¹¹ The ability of random selection to

8. Surowiecki, *Wisdom of Crowds*, 31.

9. Aristotle, *Politics* 3, pt. 11. Aristotle, *Politics*, 121.

10. *The Founders' Constitution*, vol. 1, chap. 13, document 37. See <https://press-pubs.uchicago.edu/founders/documents/v1ch13s37.html>.

11. See Landemore, “Why the Many Are Smarter” and “Deliberation, Cognitive Diversity, and Democratic Inclusiveness.”

generate a far more representative body than elections is, she argues, self-evident, and also confirmed by all sorts of pilot sortition implementations in the form of citizens' assemblies. This representativeness is not symbolic or token, but deep. It reflects not only the sex, race, class, age, ethnic makeup, values, life experiences, religious beliefs (or lack thereof), occupations, interests, and political philosophies present in the community but also its range of cognitive styles, in a way that no elected chamber could ever match.

Needed Changes in Legislators' Functions

In part 1, I focused on the many negative features of electoral democracies. There are certain functions of elective office, however, that are generally accepted as positive but that I would suggest be removed from legislators in a sortition-based democracy.¹² Three such functions that elected legislators are commonly expected to take upon themselves are political leadership, constituency service, and the provision of expertise:

- (1) Political leadership is an extremely misunderstood and convoluted phenomenon. Leadership is a category that will never go away, because "followership" has apparently been hardwired by evolution as a default survival strategy of *Homo sapiens*. But leadership has both positive and negative effects.¹³ I would argue that it tends to be dramatically overrated.¹⁴ When a widely shared difficulty arises, some people will take on, or be thrust into, leadership roles. Sortition bodies are not exempt from this tendency, and indeed juries in most current court systems select a foreman. There are many different types and styles of leadership, some of which serve the group and some of which are self-serving and feed a hunger for domination. There is no evidence that people who seek election as political leaders are better leaders for groups than people who do not seek election. There is a logic to the witticism that anyone who desires

12. Settling on an optimal popular term for this form of democracy is problematic, at least in the English language. Theorists and advocates have proposed *open democracy* (Landmore, *Open Democracy*) or *lottocracy* (Guerrero, "Epistemic Pathologies of Elections"), and many use the broad term *deliberative democracy*, while others, such as the political activist Adam Cronkright, use the phrase *democratic lotteries*. In this article, I sidestep the issue by using, the admittedly suboptimal descriptor *sortition-based democracy*.

13. I share the sentiments expressed by union organizer and Socialist Party presidential candidate Eugene Debs in the first part of twentieth century, in which he questions

the usefulness of leaders: "I am not a Labor Leader; I do not want you to follow me or anyone else; if you are looking for a Moses to lead you out of this capitalist wilderness, you will stay right where you are. I would not lead you into the promised land if I could, because if I led you in, someone else would lead you out. You must use your heads as well as your hands, and get yourself out of your present condition." Quoted in Heller, 2019.

14. Phil Rosenzweig argues that our impressions of the value and performance of leaders is warped by a variety of psychological and cognitive biases and are largely mistaken. Rosenzweig, *The Halo Effect*.

power should be disqualified from political leadership. As for the aspect of leadership involving inspiration to get a group, or even a whole society, working toward a common goal: there is no reason that this role should be fulfilled by members of the legislative branch, or by government at all. A nonelectoral, sortition-based democracy would still have many policy leaders with broad appeal seeking to gain public support for particular proposals; they simply would not be elected officials. Elected leaders are expected to lead on a wide range of issues. An elected official who is leading in a positive direction on issue A (some program regarding education, let us say) may also unknowingly undercut the public well-being by *misleading* on issue B (some issue regarding transportation). Rather than taking leaders as package deals for a host of policies, society might benefit from recognizing issue leaders *à la carte*.

- (2) As for constituency service, I mean the assisting of citizens to wend their way through a confusing government bureaucracy to obtain services to which they are entitled. A significant portion of congressional staff time is devoted to such service. Rather than accepting this service as positive, we should recognize that it is a failing of government that supplies a built-in incentive for legislators to ignore, rather than fix, systemic problems. It is in the elected legislators' interest to preserve a faulty system that feeds a constant stream of voters to them, seeking help. Like the various patronage schemes of old, constituency service allows incumbents to curry favor with voters in the hope of receiving their support in due course. An impartial system of ombudsmen, combined with a steady improvement of systemic flaws, would be a natural alternative in a sortition-based democracy.
- (3) The expectation of expertise on the part of legislators goes, in any case, unfulfilled. Many assume that society has grown so complicated that legislators must develop expertise at least in the policy areas of their committee assignments. But elected politicians are, by and large, experts only on negotiation, public relations, and campaigning, while leaving to lobbyists and professional staff the tasks of mastering policy and drafting legislation. In his memoir of 2009, Senator Edward Kennedy estimated that 95 percent of the bill drafting, and even negotiating, in Congress is done by staff rather than legislators.¹⁵ And how much of that legislative language originally comes from lobbyists varies from congressional office to congressional office. Legislators learn sufficient terminology and memorize enough key details and budget numbers to seem well informed, but only occasionally do any become bona fide experts on policy matters.

15. Kennedy, *True Compass*, 486.

They focus, rather, on the implications of policy for their next campaign. Even when legislators bring experts into their offices to advise them, it is these considerations that their staff often bring to the top of the agenda rather than the substance of policy.

Our current electoral scheme is in part based on the assumption that society is so complicated that average citizens do not know enough to govern themselves. In my experience, rather than being closer to that level of adequacy, legislators are further from it. Average citizens in an allotted decision-making body at least have an inherent interest in finding genuine and impartial experts for advice, without the overwhelming diversion of electoral campaign and public-relations concerns. Thus, putting random citizens in charge enhances the likelihood that true and appropriate experts will be called on as needed. When facing the notion of having average citizens make complex policy decisions, many people recoil in fear, imagining that doing so would mean a loss of policy expertise. The reverse is much more likely. Elected politicians have the overwhelming incentive to seek advice from public-relations experts and especially from lobbyists for special interests that could potentially make large campaign donations. In a sortition-based democracy, the decision-makers have no such distorting incentives.

The use of sortition for the review and adoption of legislation offers, as we have seen, many benefits over governance by elected officials—and to each of these advantages I will now turn more systematically.

Lobbying and Campaign Finance

Obviously, an absence of campaigning eliminates the corruption problems associated with raising campaign funds. While public campaign finance reform could make some headway against the more egregious corruption that borders on buying votes, quid pro quo, this reform cannot overcome the continued opportunity for wealthy interests to make independent expenditures to sway election outcomes and buy influence. Under a sortition system, independent expenditures could theoretically be made in order to influence the public in general on topics where a legislative jury is likely to be called. But such expenditures would be dramatically less effective than traditional campaign spending. In an electoral campaign, there are standard advertising methods to turn enough ill-informed, undecided voters to affect the outcome. If applied in a sortition context, however, that kind of superficial persuasion would be negated by the intensive learning and focused attention fostered by being in a small, randomly selected legislative jury. Perhaps such a body should even be sequestered as a defense against jury tampering (lobbying or bribery), as is often done in criminal trials. Elected representatives need to be able to speak with their constituents (and by extension,

with lobbyists)—but jurors do not have constituents. Where there is brazen corruption, the rules of sortition can be adjusted for added rigor.

Participation

Sortition is not fundamentally a form of “participatory democracy.” That it is not simultaneously participatory and deliberative is the key to sortition-based democracy. It does not ask all citizens to participate (as, for example, in Switzerland) in deliberation all of the time but only relatively small numbers for focused periods. However, using the standard model of the relatively small, long-term legislature while simply substituting lottery selection for elections is problematic.¹⁶ It is possible to institutionalize sortition both with long-duration, policy-development bodies and in such a manner that large numbers of short-duration decision-making panels are established, each dealing with a distinct policy matter, thus allowing nearly all citizens to participate in governing their polity at some time. This plan would also be responsive to the participatory impulse.

These characteristics of sortition adjust the calculus used by critics of deliberation, such as Richard Posner and Ilya Somin, in important ways.¹⁷ In order to overcome what economists term “rational ignorance,”¹⁸ it is essential that a relatively small number of citizens be engaged in deeply investigating and then deciding on the fate of legislation. Sortition is, thus, a form of “representative democracy.” On the other hand, sortition can be structured so as to greatly increase the number of citizens engaged in democratic self-governance. If a sortition-based legislature simply replaced an elected legislature, with numbers of members and terms of office left intact, then the only increase in participation would be due to the unlikelihood of any person serving multiple terms by chance. But if policy juries meet for relatively short durations to study and decide on single pieces of legislation (at local, state, and national levels), the numbers of personnel required would be substantial.

Sortition-based democracy could also encourage citizen participation by allowing all who wish, to work with other citizens on designing draft proposals to submit for consideration by legislative juries. Such open participation would be substantially more significant as a means of developing democratic culture than the kind of mass participation available to citizens in an electoral representative system. In an elite electoral (which is to say, a competitive) regime, participation

16. See Bouricius, “Why Hybrid Bicameralism Is Not Right for Sortition.”

17. See Somin, “Deliberative Democracy and Political Ignorance”; Posner, *Law, Pragmatism, and Democracy*.

18. “Rational ignorance,” as discussed in part 1 of this article, is the result of knowing that I, with only one vote out of a vast number, can have almost no chance of changing the outcome of an election. The ignorance comes from a rational unwillingness to waste the time and effort to become well informed.

is largely confined to putting up campaign signs, making campaign phone calls, giving campaign donations, or writing letters to editors or elected officials. Only the letter-writing may have any meaningful civic thought involved. The vast majority of citizen “participation” in electoral systems is only a matter of marketing. A sortition system, especially if it exists at local, state, and national levels on an issue-by-issue basis, could involve vastly more citizens in meaningful democratic deliberation. Such participation spreads democratic skills and appreciation of the challenges of good decision-making—the “civic virtue” for which republican theorists have always hoped.

Contending with “Rational Ignorance”

A central feature of sortition-based democracy is its ability to overcome rational ignorance. Instead of having one vote out of millions cast in an election, jurors selected by lottery are quite limited in number and, therefore, have the motivation (as well as the time, resources, and circumstances) to become informed enough to make considered judgments. In his highly acclaimed book *The Principles of Representative Government*, Bernard Manin asserts that those who win elections must be somehow different and distinct from the general population. From Plato to James Madison through to the current day, many have hoped that voters would select the “best” among us. But an impartial observer scanning the range of elected officials might note egomania, wealth, public-relations skills, and other distinctive characteristics, but probably not “merit.” It is not rational to expect that millions of people will devote the amount of time and effort needed to understand the ramifications of the options presented by an election, when each single vote is a drop in the ocean. It is inevitable that most voters will not be adequately informed to make the choices presented, and so the candidates’ campaigns will work to influence voters based on factors wholly unrelated to merit. The manipulation of inevitably ill-informed voters by those with access to wealth and thus to the news media was always a problem, but by now the manipulation of voters has become a scientific endeavor. By reducing the number of decision-makers to a group that could fit in a single room, most of the participants, with appropriate staff support, will have the motivation and rational basis to give the time and focus necessary to make an informed decision.

There is still a danger that members of even a small body of decision-makers might blindly follow “leaders,” from inside or outside the body, whether from partisan, ethnic, religious, or other “communities.” Thus, while sortition offers the best chance for overcoming the rational ignorance that plagues elections, the exercise of independent thought will depend on the structure, culture, and supports associated with legislative juries.

Diversity (Again)

Diversity is a companion trait to representativeness. I have stressed the value of diversity for decision-making bodies. The collective wisdom of a diverse group can outstrip that of even an expert homogeneous group. From the work of Aristotle to the most recent scholarly research, diversity has been shown to ramp up group creativity and the ability to solve problems. Even the inclusion in a decision-making body of some individuals with intellectual disabilities such as Down syndrome, for example, could help improve the quality of the overall group performance: their mere presence in the group could spark empathy and remind other members that policies being considered need to take the needs of such people, who are regularly overlooked, into account. Elections gather together individuals who, despite substantive political and philosophical differences, exhibit substantial homogeneity of other attributes and are far more similar to each other than those in random groupings. Sortition, in contrast, assures genuine diversity among policy-makers.

Self-selection Bias

A defect of elected assemblies is self-selection bias among decision-makers. The electoral nomination process is based on self-selection of those with inflated egos, strong partisan loyalty, and a level of overconfidence in themselves and certainty about what they believe that makes them relatively closed-minded and, therefore, poor deliberators. The lobbyists who besiege elected legislators are likewise self-selected, often based on how much money they stand to make or lose on a given public policy decision. Sortition will not eliminate this dynamic completely, since a strong character of this sort, when called on randomly to serve on a legislative jury, is likely to participate intently and strive to lead others, while more diffident individuals may play a less active role. Self-selection bias could be further minimized under a sortition system that features an opt-in element for drafting and refining legislation but also semimandatory jury duty (as in the criminal courts) with short-duration service for those voting on the final passage of bills. A system for selecting professional advisers of policy juries can moreover be structured to avoid self-selection (self-interest) bias through a professional civil service that structures balanced presentations. The idea would be to eliminate the reliance on hired lobbyists that we have in the existing system.

Corruption

Sortition (combined with short terms of office) was employed in ancient Greece and the Italian republics as a defense against corruption and tyranny. I will address the intersection of corruption and accountability in a later section, but

first it is worth thinking through exactly how sortition increases the ability to resist corruption. Run-of-the-mill corruption, such as giving a bribe to a public official to obtain prompt action on some needed permit, is a market transaction in a monopoly situation. Only one office can issue the permit, and the implied threat of moving an application to the bottom of the pile can be lucrative for the official, while the opportunity to move it to the top of the pile can be beneficial to the citizen. In many countries, penny-ante corruption of this kind is standard practice. The briber, the official being bribed, and perhaps that official's supervisor (who may take a cut in such transactions) have an immediate interest in the success of the bribe. An official elected or appointed to put a stop to the corruption is subject to the temptation to participate in the ongoing corruption instead.

But, ultimately, even bribers (when they have no application pending), and certainly society as a whole, have an interest in ending such corruption. Giving oversight authority, with the power to fire corrupt officials, to a randomly selected group of citizens allows this societal interest to overcome the individual interest of those who would engage in corruption. When facing a corrupt situation, there is a compelling interest for each citizen to participate in it (though perhaps reluctantly), if that is the local "norm." But in a collective capacity, these same citizens have an overriding interest in ending corruption. Random selection, in this circumstance, can solve what economists term a "collective action problem."

A separate randomly selected body could also manage corruption risks of policy-makers in a sortition-based democracy. Like the person seeking a permit in the previous example, a lawmaker, whether elected or selected by lot, may have an incentive to take bribes. But a separate randomly selected body that is not directly involved with law making has the opposite incentive and can establish procedures and monitoring that catch and discourage corrupt behavior.

Accountability

Accountability includes holding representatives to account for corruption. A politician, once bribed, may be of service to the briber for years or decades to come, but the rotation inherent in sortition reduces the utility of bribing. Although the corruption of individual members of a legislative body is less likely under sortition, there would still need to be active procedures to detect and punish attempts at bribery and the like. The issue of accountability, however, also includes any honest misdirection of policy away from the interests of the general population. It is a commonplace assumption that democracy requires procedures for removing even honest public officials by means of periodic elections to assure accountability for policy. For offices filled by random selection, this accountability tool is entirely absent. One argument against sortition goes that, without the threat

of removal from office, there is no accountability, and members of randomly selected mini-publics are free to run wild.

Do Elections Actually Hold Representatives Accountable?

Public opinion polls regularly show that most Americans think that the majority of members of Congress are corrupt, are out of touch with average Americans, and are focused on the needs of special interests rather than their constituents. Are they being held to account by elections? In the overwhelming majority of general-election contests, incumbents are reelected by landslide margins. As Todd Donovan and Shaun Bowler observe in their book *Reforming the Republic*, “Turnover in the House, as with the Supreme Court, is largely driven by incumbent deaths and retirements, rather than competitive elections.”¹⁹ A key problem is the inability of voters to know what their elected representatives have done. Studies consistently show that voters have little if any idea what their representatives are doing. Beyond the issue of rational ignorance, many of the most important actions and deals of legislators are done in private. Roll-call votes often give a false impression of a representative’s true performance.

Even if the monitoring problem could be managed through investigative news reporting and interest-group monitoring, accountability would still be problematic. Electoral accountability is inherently a retrospective tool, since the only sanction that constituents can muster (besides, in some jurisdictions, recalling an errant representative) is refusing to reelect. Moreover, this retrospective tool is blunt: elected representatives vote on a very large number of distinct questions, and if my representative votes as I wish on issues A and B, but contrary to my wishes on C, D, E, and F, what should I do in the next election? What if the only viable opponent facing my current representative is likely to vote contrary to my wishes on all six issues? How can I use the election process to hold my representative accountable?

While voters may not know exactly what their legislators have done, it is widely accepted that they know when their own situation has gotten worse and so can vote out the incumbents. The bluntness of this concept of accountability is obvious, since the incumbents may have been completely blameless regarding whatever hardship or economic disaster has befallen the voter. A stunning example is given by Christopher Achen and Larry Bartels in their important book *Democracy for Realists: Why Elections Do Not Produce Responsive Government*.²⁰ There were a series of shark attacks at New Jersey beaches in 1916 that severely hurt the tourist economy of beach communities. In the next presidential election, the percentage of the vote for the incumbent president of the United States,

19. Donovan and Bowler, *Reforming the Republic*, 46.

20. Achen and Bartels, *Democracy for Realists*.

Woodrow Wilson, was markedly reduced in these communities but not in the rest of New Jersey. This dynamic (“public pain hurts incumbents”) gives a party out of power an incentive to prevent the government from functioning well (for instance, by arranging a budget impasse and government shutdown), in the hope of winning an electoral windfall in the next election. In other words, tools meant, in an electoral system, to ensure “accountability” are apt to malfunction.

Jane Mansbridge notes that accountability, with regard to policy rather than corruption, is only an issue when the interests and beliefs of the representatives are different from those of the population they are representing.²¹ That unaccountability is a widely discussed problem in modern electoral governance is evidence that elected representatives do not accurately represent the population. Joel Parker puts the point this way: “It may be that we tend to think of accountability almost exclusively in terms of electoral sanctions not because elections are particularly effective at controlling the actions of representatives, but because our reliance on elections makes the presence of sanctions that much more necessary.”²²

Accountability under Sortition

Assuring accountability for corrupt behavior on the part of individual representatives would be enhanced in a sortition-based democracy. Unlike elected bodies that often manage their members’ corruption through internal ethics committees, while also inviting corruption through corrupting systems of campaign finance, a sortition system could have separate, allotted oversight bodies to enforce laws against jury tampering. Ancient Athens had a system (*euthynai*) of randomly selected panels to review the accounts of allotted officeholders. Some variant could be established in a modern sortition-based democracy.

The concept of policy accountability can be applied at the level of an individual representative or at the level of an entire legislative body. The concept of the policy accountability of individual representatives is simply not applicable to a system of randomly selected mini-publics, no member of which has a constituency to report to, or by which to be held accountable. Each member is expected to vote in whatever way he or she thinks best, based on the information presented to the jury. Randomly selected legislators are no one’s representatives, in the usual sense, though, as a group, they will be statistically representative of the population as a whole. They are asked to vote as they think best in the expectation that a different but also statistically representative group, or indeed the population as a whole, (if all citizens could somehow be engaged in the same deliberation) would be likely to vote in a similar way.

21. Mansbridge, *Beyond Adversary Democracy*.

22. Parker, “Randomness and Legitimacy in Selecting Democratic Representatives.”

This positive view depends, however, on the design of the legislative body in question. Imagine a body like the US House of Representatives, but selected by lot. If the members' terms extend for, say, more than a year, and if in that time they deal with all manner of issues, it is likely that power relationships will develop and that vote-trading and other untoward practices will arise. The longer a given group is in power, the less they will be typical of, or representative of, the population from which they have been drawn. While there are epistemic advantages to accrued experience, knowledge, and skills, there is also great danger of corruption. Hence I advocate separating the process in which legislation is drawn up (where extensive experience is actually helpful) from the final decision-making function, which ideally should be conducted by short-duration juries, each dealing with a single issue or legislative bill. Rotation (as practiced in ancient Athens) is a key component for avoiding all kinds of corruption. Rotation also serves as a sort of accountability device, with subsequent juries reversing what have turned out to be bad decisions made by previous allotted bodies. One-issue, decision-making legislative juries have the beneficial tendency of "regressing to the mean," as statisticians say. That is, while some random group may deviate from the representative average, unrepresentative decisions would tend to be modified by subsequent random bodies. The process of reconsideration for bad decisions of the past is enhanced because there is no pride of authorship leading legislators to cling to failed policies long after their merit has been disproved.

Accountability of the group as a whole is also improved by separating the bodies that make procedural rules from those that pass laws. There is always a risk of corruption when a group with power (such as the US Congress, which sets its own election laws, ethics-enforcement procedures, and so on) defines its own procedural rules (as, for example, in the Senate, the rules regarding filibuster). The principle of separating powers, which is widely recognized as a cornerstone of protection against a concentration of power enabling tyranny, should be applied as well *within* legislative bodies. The person or entity that regulates the legislative decision-making process should not be the same as the one making the legislative decision. As James Madison wrote in the *Federalist*, no. 10: "No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time."²³ This basic principle was noted by the political philosopher James Harrington in his *Commonwealth of Oceana* (1656):

Two [children] have a cake yet undivided, which was given between them: that each of them therefore might have that which is due, "Divide," says one to the other, "and I will choose; or let me divide, and

23. Madison, *Federalist*, no. 10, para. 8.

you shall choose.” If this be but once agreed upon, it is enough; for the dividant, dividing unequally, loses, in regard that the other takes the better half. Wherefore she divides equally, and so both have right.²⁴

A distinction should also be made, in my view,²⁵ between holding the makers of law and the implementers of law accountable. Elections are ineffective with regard to both, but the reasons and remedy are different in each case. For an executive, such as a mayor, governor, or president, where competence, honesty, and faithful adherence to the law are key, it makes more sense to fill these positions through a merit-based hiring and firing process, similar to that of a city manager. But rather than having an elected council (with hidden partisan motivations) perform the task, a randomly selected jury could periodically evaluate executive performance. As a protection against corruption, it makes sense to have one jury decide whether to fire the executive but a completely different jury hire a replacement. Otherwise, a jury might have an incentive to fire the incumbent just to acquire the power (or bribes) attendant on choosing the replacement. This way of proceeding would allow much better accountability (and result in greater executive competence) than elections, which are dominated by the superficial, media-induced, and manipulated impressions of rationally ignorant voters. A relatively small “electorate,” of perhaps a hundred randomly selected citizens, could recruit a professional executive, who would be an administrator, rather than a political leader or an initiator of policy.

Elected bodies tend to evolve slowly. The procedures and rules that enabled the current dominant faction to gain and exercise power are viewed very favorably by those in power. A sortition-based democracy can more easily evolve and improve by operating with a meta legislative layer of lottery-selected people. This review-and-reform body might be drawn from the general population or perhaps from the pool of those who had served on some previous jury so as to ensure some firsthand experience. A meta legislative review panel of regularly rotated membership could be tasked with reviewing current procedures and rules of the lawmaking bodies with an incentive to constantly improve them. This self-improvement potential of sortition-based democracy is absent in elected chambers, which have an overriding motivation to maintain, or perhaps adjust, rules to enhance their own likelihood of remaining in power.

To Conclude

Since the invention of the word *democracy* in ancient Greece, “the appointment of magistrates by lot,” as Aristotle said, “is thought to be democratical, and the

24. Harrington, *Commonwealth of Oceana*, 22.

25. For an extensive discussion of the multi-body sortition design that I would favor, see Bouricius, “Democracy through Multi-body Sortition.”

election of them oligarchical.”²⁶ In any case, this understanding continued for thousands of years, through the European Enlightenment. *Democracy* began to be redefined, embracing elections, around the time of de Tocqueville and his book *Democracy in America*. It is long past time to restore democracy to its original meaning of *rule by ordinary people, taking turns by drawing lots*, instead of rule by elected oligarchic elites. I say so not in a frivolous search for purity, but rather in a serious pursuit of epistemically superior public policy decisions made on behalf of an entire population. The range of our choices needs to be expanded beyond the arbitrarily limited options of elected oligarchy and authoritarian dictatorship to include democracy through sortition.

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26. Aristotle, *Politics*, 165.

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