

8. Sortition: envisaging a new form of democracy that enables decision-making for long-term sustainability

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INTRODUCTION

Our methods of making public decisions, and governance do not favour sustainability. Democracies regularly fail to make long-term decisions in the interests of all humankind, let alone other living things and future generations. To assure long-term interest, the public needs to be in the driver's seat. However, to take wiser directions towards a more sustainable future, that public needs sufficient focus and attention. It has to engage slow and deliberative thinking minds – what leading psychologist Daniel Kahneman (2011) calls 'system 2 thinking', rather than relying on superficial and easily manipulated off-the-cuff opinion. Secondly, the public needs good information about the probabilities of long-term outcomes that would likely result from particular policies. Thirdly, more authentically representative bodies need to deliberate if better decisions are to be made. These necessary features are almost always absent in any mass election.

In 1776 John Adams, who would later become President of the United States, composed an essay entitled *Thoughts on government*. He wrote that a legislature 'should be in miniature an exact portrait of the people at large. It should think, feel, reason and act like them' (Adams, 1776, n.p.). The famous set of prepositions of popular rule in Abraham Lincoln's Gettysburg Address – 'government *of* the people, *by* the people, *for* the people' (Lincoln, 1863, n.p.) – encapsulate the true spirit of democracy. Elected legislatures consistently fail both of these definitions. To understand how we could achieve self-government which makes wiser long-term decisions in the interests of sustainability, it is important to understand why our current electoral systems are ill-suited to the task.

Elected legislators suffer from a crucial problem of distorted motivations. Legislators face a set of electoral imperatives that stymie long-term decision-making. These include catering to moneyed interests that fund

campaigns, concern for crafting positions that will appeal to ill-informed voters and policies that will have a beneficial effect within the timeframe of the next election. Politicians can rarely afford to look long term for fear they won't be in office if they don't focus on the short term. Global warming is an example of an issue that elected officials have side-stepped for decades largely because they feared that although the future benefits to society would be huge, the immediate costs imposed on constituents would result in their losing re-election.

In addition, voters are not able to effectively use elections as an accountability tool. Because the chance that any individual's single vote will change the outcome of a mass election is near zero, voters do not have the motivation (let alone the time and ability) to learn about all of the candidates' positions, policy options, or incumbents' performance. Economists refer to this as 'rational ignorance' (Downs, 1957). Voters inevitably rely on a variety of questionable heuristics (mental shortcuts), or simply refrain from voting at all.

Sustainable democracy also requires respect for future generations and the ecosystem. A number of ecologically-oriented political theorists have proposed expanding the list of those needing representation beyond just the adult citizenry to include agents able to advocate on behalf of future generations and non-humans (Eckersley, 2004). A focus on the essential, though neglected, democratic function of *receptive listening* is also essential (Dobson, 2010). Those who seek and win elections tend to be highly opinionated speakers and not listeners.

This chapter describes the use of sortition – randomly selected citizens in deliberative assemblies – as a democratic tool that could be integrated with electoral, direct, or participatory democratic models, or stand alone. Though originating in Ancient Greek democracy, modern implementations and theory are presented. The remainder of the chapter presents an ideal model of how a democracy could function using sortition without elections.

SOME DEMOCRATIC SOLUTIONS APPLIED ACROSS THE GLOBE

The non-sustainability problem of modern democracy is not the failing of democracy itself, but of the particular type of democracy, with its total reliance on the election tool. One solution that could be considered is so-called direct democracy, either through referendums or innovative use of communications technology to allow everyone to vote on legislation. Freed from the short-term pressures of the electoral imperative and campaign

donors, average citizens might be expected to favour long-term solutions over short-term expediency. This approach, however, suffers the same difficulties of the candidate elections, i.e. the prevalence of rational ignorance and the ability of moneyed interests to capitalize on voters' ignorance to manipulate outcomes.

Another democratic approach raised as an alternative to elections is to broaden participation, through such methods as participatory budgeting. This of course can only be applied to a limited number of issues. Burn-out or lack of widespread interest in the vast number of issues needing decisions suggests that genuinely representative mass participation cannot be maintained and self-selection bias will lead to special interest domination.

SORTITION AS A METHOD CAPABLE OF IMPROVING GOVERNANCE FOR SUSTAINABILITY

There is a democratic tool that can be integrated with direct and participatory goals, while overcoming rational ignorance, self-selection bias, and the power of moneyed elite. *Sortition* can be an alternative to elections. It refers to the use of random selection (or scientific sampling) of people to perform some public function. That function might be deliberation over some problem in order to develop solutions, listening to pro and con presentations and voting 'yes' or 'no' on some public question, or serving as an oversight body reviewing performance, or hiring or firing of executive branch officials. When a randomly selected group is intended to be representative of the broader population it is referred to as a *mini-public*. Ideally this mini-public should think, feel, reason, and act as would the whole population were they given the same opportunity and incentive to focus and learn about issues. Thus a sortition-selected group may deliberate, judge, advise, decide, mediate, or oversee. It can tap the wisdom of crowds, and serve a mediation, anti-corruption, or anti-tyranny role. The trial jury is the only example of sortition with which most people are familiar today. Nevertheless, this concept was a foundation of the original Greek democracies and is now increasingly being used on policy matters around the world (Van Reybrouck, 2016).

While the People's Assembly (*ecclesia*) is the feature of Athenian democracy that is learnt about in school, it was the use of sortition that really defined Greek democracy. Assemblies existed in many non-democracies, such as Sparta, but with the agenda under the control of the aristocracy. However, in Athens and other Greek city-states, a randomly selected council of citizens (*boule*) controlling the agenda was seen as crucial to the existence of democracy (Ober, 2007). Courts of randomly selected

citizens could overrule the Assembly. Following the overthrow of the 30 Tyrants and the restoration of democracy in Athens in 402 BCE, the People's Assembly transferred the power to pass laws to randomly selected legislative panels (*nomothetai*). In this reformed democracy the People's Assembly could only initiate the process of adopting a law by calling for the creation of a randomly selected single-purpose legislative panel, which had the sole power to adopt new laws.

Although elections are seen as integral to democracy today, in Athens elections were limited to a handful of executive offices such as generals, where unique skills or other traits were considered crucial. From the time of Aristotle through to the time of European Enlightenment thinkers such as Rousseau and Montesquieu, elections were seen as aristocratic, while sortition was seen as democratic. The American and French revolutionaries of the 18th century settled on elections as an alternative to both monarchy *and* democracy, not as a means of achieving democracy. For people like James Madison, 'democracy' was a system to be avoided, not pursued (Madison, [1787] 2008). It was only over time and with the slow expansion of the franchise that the term *democracy* changed to encompass a system of government by elites selected by elections (Manin, 1997).

A number of 20th-century thinkers wrote about the modern possibilities of sortition (Burnheim, 1985; Callenbach & Phillips, 1985; Crosby et al., 1986), and some small-scale implementations took place in the United States and Denmark in the 1980s. However, the large-scale redeployment of this ancient Athenian democratic tool can be traced to the Citizens' Assembly of British Columbia (B.C.), Canada, in 2004 which was charged with recommending whether the province's voting method should be reformed. The Assembly included one man and one woman from each legislative district picked through random selection from the voter lists (excluding politicians and their families). Meeting mostly on weekends, over many months, participants went through a learning phase, a public hearings phase, and a deliberative phase. They produced a referendum proposal to enact method of proportional representation, which went directly to the voters, linking deliberative democracy with mass participatory democracy to enhance public legitimacy (Sintomer, 2010). Although the referendum garnered a strong majority throughout the province, the enabling law creating the Citizens' Assembly had established a super-majority requirement, so the reform did not end up being enacted.

The competence and commitment of the participants in this sortition deliberative process was inspirational:

(the politicians) invited 160 British Columbians – ordinary British Columbians, they called them . . . [T]hese 160 British Columbians feel a great sense of

responsibility to all British Columbia. They have become the most extraordinary British Columbians the government could have created . . . Attendance at the meetings is about 98%. This is a Guinness-Book-of-Records kind of statistic. I have not in my life belonged to an organization where there has been such dedication and commitment. (Blaney, 2004, n.p.)

The B.C. Citizens' Assembly is an example of a one-time, special topic use of sortition. In the past decade, this has been the most common type of implementation. Other examples are the Ontario Citizens' Assembly of 2006, which also dealt with the election reform question. Also in 2006, a Netherlands' Citizens' Assembly (*Burgerforum*) was established by sortition to advise the parliament on election reform. This panel proposed maintaining the existing system of proportional representation, but reforming some details of the election law, which were subsequently passed by the parliament. Sortition has been used on a variety of policy matters all over the world including in Australia, Austria, Belgium, China, Denmark, Iceland, India, Ireland, Italy, the Netherlands, Ontario in Canada, and Oregon in the USA.

A THEORETICAL MODEL OF SORTITION AS A METHOD TO IMPROVE GOVERNANCE FOR LONG-TERM SUSTAINABILITY

The specific design elements, procedures and other characteristics of these implementations of sortition show not only its general potential as a democratic tool but also a variety of shortcomings that might be overcome with different design. Some factors that need to be considered are: size, duration, agenda creation, mode of deliberation, selection method, and advisory vs. decision-making authority. These elements interact with each other creating a vast range of permutations. Size, for example, has an impact on the degree of statistical representativeness of the deliberating body. A jury of 12 will have a greater likelihood of being unlike the population as a whole than will a well-drawn sample of 400, or 1,000. However, if the size is too large and the members begin to feel that their one vote is insignificant, that too becomes problematic. Large juries might function better by simply listening to pro and con arguments and then voting without back and forth debate among members, while smaller (yet still diverse) groups with lots of interaction might enable more creative problem-solving.

Long duration terms will limit those willing to serve, making the body less representative than a short-term body. In addition, the longer a given group of people remain in a position of power, the greater the risk of

their becoming unrepresentative of the population from which they were drawn – the notion of power corrupting. Yet, having a term of service that is too brief may preclude adequate learning to fully understand the issues at hand.

Taking lessons from diverse sources, including Ancient Athens, modern sortition implementations, and social psychology, we can envisage an ideal democratic system through sortition without mass elections. Proposing how such a democracy could function is intended to help free us from the thrall of elections and the assumption that they are the essence of democracy. While such an all-encompassing system is exceedingly unlikely to be instituted in the foreseeable future, an ideal design may be a useful tool (what architects call a ‘reference design’) to aid in working out particulars of real-world hybrid (sortition and election) implementations in the near term.

FRAMEWORK FOR AN IDEAL SYSTEM OF DEMOCRACY THROUGH SORTITION – WITHOUT MASS ELECTIONS

Rather than finding a one-size-fits-all optimal or compromise design for a sortition body, it makes sense to take a page from the Athenian model and structure a system that incorporates several separate bodies, each with its own specially crafted selection method, size, term of office, deliberation procedure, and other traits, so that each can tackle a distinct piece of the decision-making process. Using multiple bodies allows them to be selected, organized, and run in different ways to optimally harness the strengths of particular design elements.

In Athens, individuals were able to bring forward proposals for new laws, but these needed to go before the randomly selected Council of 500 (which served for a year) before being placed on the agenda of the Assembly. In the reformed or second democracy of Athens, if the Assembly concluded the change was worth considering it had to authorize the calling of a large, randomly selected legislative panel of citizens. The members of the panel served for a single day and would listen to advocates for and against the proposed law. Without debate among themselves, they would then vote to approve or reject the law. As the Greek historian Mogens Hansen notes, this was a beneficial reform because ‘the double consideration of a proposal allowed the possibility of coming to a better decision’ (Hansen, 1991, p. 209). It also gave ‘breathing-space to overcome the effects of mass psychosis such as a skilled orator could whip up in a highly charged situation’ (Hansen, 1991, p. 209). Finally, a case challenging the new law might be

brought before the courts, where a different jury could overrule a decision made by the Assembly or a legislative panel as being contrary to the constitution. This system can be thought of as foreshadowing the later dictum of separation of powers with checks and balances.

What follows is a hypothetical institutional design of a multi-body sortition democracy, describing the public bodies and functions each would handle.

Agenda Council

One of the most crucial elements of democracy is control over the agenda, in particular which issues will be tackled over the year. Sometimes an issue is thrust upon the public stage by circumstances in the wider world. However, many items are tackled (and others ignored) by conscious choice, often determined by how helpful an issue will be to re-election rather than its importance to society. In addition, there is virtually no meaningful policy deliberation in the formal legislative process. The result is ‘symbolic politics’, wherein media and public relations or special interests with money are pivotal. In the news media as well, the salience of a threat easily trumps sober risk assessment. Taking a more rational approach than short-term partisan interests, an Agenda Council drawn by lot could bring in diverse experts and undertake cost-benefit analysis on a national or global basis.

In nearly all recent implementations of sortition, the agenda of the allotted body was established by some pre-existing authority. For example, in Wenling City, China (He & Warren, 2011), and in Canada Bay, Greater Geraldton, and Melbourne, Australia (Weymouth & Hartz-Karp, 2015) the local government empanelled mini-publics to make recommendations on a particular issue. In the latter examples the recommendations were on 100 per cent of the forthcoming year’s operational budget and/or 100 per cent of the long-term local government budget. On a broader scale, during 2005–2009 in Western Australia, a state minister – Alannah MacTiernan – used sortition to resolve around 20 different planning and infrastructure problems. However, in other cases, such as the Australian Citizens’ Parliament (ACP), the pre-established agenda was relatively open (namely, how the Australian government could be strengthened to better serve the people). However, the ACP was initiated by several universities and an NGO, the newDemocracy Foundation, with the federal government only stating they would consider the recommendations (Carson et al., 2013).

In a sortition-based democracy, an Agenda Council might consist of 150 randomly selected members. They might serve for several years with staggered roll-over so that only a minority would be new at any given time.

Due to the time commitment required and the challenging nature of the work, a significant portion of those initially called to serve would likely defer. In order to approach a representative sample, scientific sampling with stratification according to a variety of demographic traits would be appropriate. The risk of corruption is minimized both by a limited term of service (making attempts at bribery less fruitful), but more importantly by giving this body no ultimate policy decision-making authority. For example, if the Agenda Council concluded that the current system of healthcare funding was problematic, it could put out a call for new ideas to deal with that, but they would not draft the proposals, nor adopt them. An alternate means of placing some issue on the public agenda could also be instituted, such as a petition procedure in which a sufficiently large number of citizens could place an item onto the agenda, though any such proposal would still need to go through the review and adoption process described later.

Interest Panels

Supporting the Ancient Greek democratic principles of *isegoria* and *ho boulomenos* – the rights of any citizen who wishes to speak and make a proposal – once a call for proposals was issued by the Agenda Council, or by petition, any citizen who wished to do so could join one of a large number of small Interest Panels of perhaps a dozen people each to work out specific proposals.

All kinds of experts without the personality, financial backing, or other traits necessary to win elections could actively participate in policy generation. These Interest Panels would obviously suffer severely from self-selection bias in that they could be populated by members of special interests. This is why they would not be empowered to enact any laws, only to provide raw material for other jury-like groups to review. Since these Interest Panels would know that their proposals would need to pass muster with subsequent allotted bodies, they would be inclined to temper their more extreme proposals, and try to craft compromises that could possibly win ultimate approval from a jury. Some Interest Panels would likely fall apart or fail to reach a consensus, but those which developed a proposal would pass it up to the next level and then go out of existence.

Review Panels

All of the proposals from the various Interest Panels on a particular issue would go to a designated single issue Review Panel. Review Panels would be selected and structured similarly to the Agenda Council, except that

there would be a separate Review Panel of perhaps 150 members for each policy area. With stratified scientific sampling, Review Panels would be far more diverse and descriptively representative than elected legislatures which are strikingly *un*representative in terms of wealth, careers, sex, age, cognitive style, ego, etc. Research shows that diversity is extremely beneficial for problem-solving. Lu Hong and Scott Page (2004) clearly indicated the inherent weakness of the problem-solving approach that seeks to find a group of ‘best’ problem-solvers, who maximize individual abilities, but are inevitably less diverse than a group of randomly selected problem-solvers. According to them: ‘To put it succinctly, diversity trumps ability’ (Hong & Page, 2004, p. 16386).

Research has also shown that the heightened status and feelings or power typical of legislators tend to result in overconfidence and worse decision-making (Fast et al., 2012). This makes them even less open than ordinary people to fair analysis of information that conflicts with their preconceived notions. These factors undercut good policy by sacrificing optimal problem-solving capacity. Importantly, without the need to worry about re-election and fund-raising, Review Panel members would be able to devote far more time than elected legislators, and would focus on the policy itself, rather than the public relations aspects of policy-making. Many people assume that elected legislators are experts in the policy area of their committees, but this is often not the case. Most of the policy expertise resides within the legislative staff and lobbyists.

An early version of a Review Panel were the *Consensus Conferences* employed by The Danish Board of Technology beginning in the 1980s. Derived from German *Planning Cells* developed by Professor Peter Dienel (Dienel & Renn, 1995), Denmark employed Consensus Conferences specifically for issues of new technology, where it was recognized that policy implications extend outside the technological realm (such as genetically modified food and electronic surveillance). Hence policy or legislation being drafted should take account of the considered views of the people. Danish Consensus Conferences involved a random sample of Danes with no particular technological background to read and hear presentations from a range of experts to help guide such government policy. Between 14 and 16 demographically representative participants were randomly selected from around 2,000 residents to participate. Similar models have been implemented in Holland, England, France, Switzerland, Norway, Canada, Australia, Japan, Korea, and Israel.

The job of the Review Panels proposed for sustainability issues would be much broader. They would evaluate and debate the proposals submitted – reject some, amend, or combine others – and with professional staff draft final proposals (legislation). The Review Panel would perform traditional

legislative activities: hold hearings, invite and listen to expert witnesses, employ professional staff for research and drafting, and amend or combine elements from the proposals submitted by Interest Panels to produce a final bill. However, Review Panels would not have power to adopt legislation. Instead they would forward approved proposals to a final stage – a Policy Jury.

Policy Jury

Policy Juries would make final decisions on whether to adopt or reject a piece of legislation. Such bodies would be called for a very short duration – no more than a few weeks – with service being nominally mandatory, like jury service in court juries in the USA and Australia. This would assure that juries would be descriptively representative. The task would be very limited – listening to pro and con presentations on a single piece of legislation – with the ability to ask clarifying questions, but no public position-taking or debate among members. If a member were to take a stand this person becomes psychologically less open to real deliberation and feels a need to defend that expressed position, rather than be genuinely prepared for learning and persuasion by facts. At the conclusion, the Policy Jury would vote by secret ballot to adopt or reject the new law. This design roughly matches the practice of the Athenian legislative panels and trials by the People's Courts. The closest analogue in modern sortition experiments is the deliberative polling process developed by James Fishkin (2009), though his process does not prohibit participants from advocacy during their sub-group deliberations intended for developing questions for the expert presenters.

The Policy Juries could be quite large since the size constraints of group deliberation would not apply. The debate in Policy Juries would not be among members but, rather, in each member's own mind, weighing the evidence presented. This internal deliberation satisfies the independence requirement for the wisdom of crowds uncovered by Francis Galton (Surowiecki, 2004). As long as the pro and con presentations are balanced and well-structured, this also avoids information cascades, polarization, group-think, status deferral, and the many other impediments to independent judgement. These epistemic benefits are sufficient to support Policy Juries, which more closely reflect the population as a whole as the final step in approving legislation. Accountability could be assured by structuring into the process stringent protections against corruption.

Rules and Oversight Councils

This leads to the issue of meta-legislative functions: Who will establish the rules and procedures? Who should make presentations to the Policy Juries and assure that the professional staff behaves in a genuinely impartial and non-partisan manner? It is essential that this function be independent of the normal government bureaucracies and elected officials with a stake in the outcomes. The approach that has been used in most modern implementations has been bringing in outside facilitation experts.¹ In some cases, *ad hoc* consortiums of not-for-profit organizations or individuals have been formed for this specific purpose.²

While this ad hoc approach may work well for one-time implementations, there would need to be an institutionalized system if sortition were a regular part of government. To achieve this, Rules or Oversight Councils (a single entity or two separate ones), created via sortition, would establish the rules and oversee the staff for all of the other sortition bodies. The Rules Council might be drawn from a smaller pool of citizens who had previously served on one of the many Policy Juries or Review Panels, so they have some first-hand experience. It could constantly refine and improve rules including the scientific sampling procedure, rules for deliberation, the recruitment of expert witnesses, and the hiring and firing of staff to serve all of the allotted bodies.

The aim is to establish a wall between rule-making and the decisions about legislation itself, so the rules are not designed to further specific policy decisions but instead facilitate fairness and enhance deliberation so as to minimize cognitive biases. Such a Rules and Oversight Council would make this entire design less of a blueprint and more of a starting point for a self-correcting system with constant evolution and improvement. A Rules Council might decide that regularly including well-informed environmental experts or future generation advocates in deliberation is essential.

CONCLUSION

While this chapter focused on how sortition could be implemented at a state or national level, this broad method could be applied equally at a local or even global level. The overriding issues are similar for any level of government – setting the agenda, reviewing proposals submitted through a variety of channels, determining which policies should be developed into legislation, and creating the rules for such a system and overseeing it.

While wholesale replacement of a legislature or city council or intergovernmental body is unlikely in the foreseeable future, it is quite plausible

that defined areas of responsibility might be peeled away and awarded to some sort of jury process instead. The most obvious issue areas for this to occur are those where the government body has a built-in conflict of interest, as well as problematic topics that are 'no-wins' for politicians.

Sortition can enhance sustainability by avoiding the corruption of long-term concentrated power, as well as increasing representativeness and genuine deliberative problem-solving that involves receptive listening as much as speaking by tapping into the diffuse experience and knowledge of society without the distortion of electoral imperatives. This chapter proposes a system that could untangle some of the complexity inherent in our most pressing sustainability challenges. Critically, the design embeds more authentically representative bodies, with opportunities to build in 'system 2', slow and deliberative thinking. The design of the representative bodies purposefully separates the critical elements of decision-making: rule-making and oversight; agenda setting; opportunities for interest groups to submit proposals; review and final drafting of legislation; and final decision-making of whether to adopt or reject legislation. Such a design will go a long way towards avoiding the short-term, self-interested decision-making that has inhibited our democracies from achieving more sustainable outcomes.

NOTES

1. For example, the Jefferson Center in the USA and the newDemocracy Foundation in Australia, or academic experts, such as Jack Blaney, John Gastil, Janette Harz-Karp, and James Fishkin.
2. Such as the Anthill group in Iceland and the G-1000 group in Belgium.

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