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and Deliberative Reasoning**

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This is a copy of the accepted author manuscript of the following article: Owen, D. and Smith, G. (2018) Sortition, Rotation and Mandate: Conditions for Political Equality and Deliberative Reasoning, *Politics and Society*, 46 (3), pp. 419-434. The final definitive version is available from the publisher Sage at:

<https://dx.doi.org/10.1177/0032329218789892>

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## Sortition, Rotation and Mandate: Conditions for Political Equality and Deliberative Reasoning

David Owen and Graham Smith

The sortition chamber proposal laid out by John Gastil and Erik Olin Wright defends extending sortition into the legislative branch of government and specifies how such a body would work. We sympathize with the motivation for this enterprise: Sortition ought to be more widely institutionalized within contemporary democratic polities. Nevertheless, reflection on the practice of antecedents of the sortition chamber—in particular its historical use in Ancient Greece and more recent application in contemporary minipublics—raises questions about its feasibility and desirability. Our critical analysis considers primarily the democratic value of the proposal to replace one half of a bicameral elected system with a sortition chamber. We also offer general considerations for situating a sortition chamber within a democratic ecology more favorable to its operation.

Our central concern is that selection to the legislature by sortition in the form proposed by Gastil and Wright will fail to realize sufficiently two fundamental democratic goods, namely political equality and deliberative reasoning. As the proposal is currently conceived, there is a failure to recognize that, in both historical and contemporary practice, sortition is combined with other institutional devices to achieve these goods. First, the use of sortition for selection of members has typically been paired with sortition in allocation of offices within the institution, along with regular rotation of membership and offices after short periods of service. Second, such institutions have had a limited mandate rather than broad agenda-setting powers. We contend that there are good reasons to believe that, without the application of regular rotation and a limited mandate, the sortition chamber is unlikely to be able to defend its members against

asymmetries in social and economic power to the extent necessary for such a body to be democratically effective and realize the goods of political equality and deliberative reasoning. If cogent, this objection undermines the feasibility and desirability of the proposed sortition chamber, both as a democratic institution and as a means of advancing the longer-term cause of participatory or deliberative democracy.

We conclude with an alternative proposal, which envisions a responsive sortition legislature that makes more extensive use of internal sortition and rotation and recognizes the importance of establishing limited mandates. We also argue for a steep increase in the number of members. As a first step toward infusing sortition into the legislative branch, we argue that our alternative is both more realistic (from a democratic standpoint) and more utopian (from a strategic standpoint).

#### <A>Sortition and institutional design—historical and contemporary lessons

Prior to the rise of mass political parties in the late 19<sup>th</sup> and early 20<sup>th</sup> century, sortition was recognized as a more democratic mechanism of selection of representatives than election. It was seen as being less susceptible to the influence of economic and social power than electoral processes and as enacting a stronger commitment to political equality. In this section, we offer a brief reconstruction of the circumstances of sortition in two contexts—Athenian democracy<sup>1</sup> and

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<sup>1</sup> There are other significant historical periods of the use of sortition – in particular, the Renaissance republicanism of Italian cities such as Venice and Florence in the thirteenth and fourteenth centuries and under the Crown of Aragon. In these periods, sortition was utilised primarily to select major and minor offices rather than assemblies, but this has some resonance with Athenian practice because sortition was introduced as a defence against faction and unstable

the contemporary practice of deliberative minipublics—to explain the democratic reputation of sortition and the conditions of its effective use.

### <B> Athenian democracy

For Aristotle, democracy as a specific type of regime is defined by citizens ruling and being ruled in turn. Establishing this principle involved citizens being eligible for all non-specialist offices and selected by lot to fill them, where offices had short terms. These mechanisms and offices enabled and constrained the sovereign assembly as the open participatory space within which each citizen could speak. As exemplified in Athens, following Cleisthenes' reforms in 507 BCE, the *Ekklesia* (Assembly) was surrounded by an ecology of institutions that used random selection: the *Boule* (the Council of Five Hundred), magistracies, the *Dikasteria* (People's Courts) and, following the reinstatement of democracy after the Peloponnesian war in the fourth century BCE, the *Nomothetai* (Legislative Boards). The Council had a variety of functions that cut across our modern understanding of legislative, executive and judicial functions, most notably preparing the work of the Assembly, implementing many of its decisions, and overseeing public administration. The People's Court played a critical political function by overseeing all

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coalitions. See Morgens Herman Hansen, *The Athenian Democracy in the Age of Demosthenes* (Oxford: Blackwell, 1991), Oliver Dowlen *The Political Potential of Sortition* (Exeter: Imprint Academic, 2008) and Yves Sintomer, *From Radical to Deliberative Democracy? Random Selection in Politics from Athens to the Present* (manuscript, 2017), originally published as *Petite histoire de l'expérimentation démocratique. Tirage au sort et politique d'Athènes à nos jours*, (La Découverte, Serie 'Poches', Paris, 2011). Our reconstruction of the institutions of Athenian democracy that follows draws on these texts.

the other organs of the political system. The Legislative Boards reviewed proposals from the Assembly; only where there was a majority would a proposal become law or an existing law be repealed.

The introduction of selection by sortition is best understood as a response to the experience—and continuing threats—of tyranny, oligarchy, and civic strife posed by aristocratic pursuit of power. But it would be a mistake to focus on sortition alone because its introduction was complemented by other institutional reforms.

First, Cleisthenes took the rural villages and city neighborhoods (both called *demes*) as the basic units of political organization. These were then re-arranged into ten tribes or *phylai*. This re-articulation of the tribes—and their use with respect to selection for the Council (fifty from each tribe), People's Courts and Legislative Boards, and for election to the office of *stratego*i (one from each tribe)—was designed to break up both existing aristocratic alliances and established patron/client relationships based on aristocratic kinship networks.

Second, rapid rotation of membership and rotation of offices within sortition bodies reduced the risks of concentrations of power. An annual lot chose the five hundred members of the Council, with fifty citizens aged thirty or over from each of the ten *phylai*, where the number from each *deme* within each *phylai* was proportional to its population.

The use of sortition extended further into the operation of the Council, with fifty *bouletai* selected at a time to take on its main tasks for one tenth of the year, with one randomly selected each day to act as chairman. No one could serve more than twice on the Council, which ensured widespread citizen participation in this key institution. Roughly one third of all citizens are estimated to have served as a Council member.

There was also widespread participation in the Courts. For this purpose, six thousand citizens were selected by lot annually. Though there were occasional plenary sessions, most of the work of the popular courts took place in smaller courts, which varied in size from 501 for lesser cases up to 1501 for the most serious. Not only were the jurors selected by lot from those willing to serve, but those selected were divided by lot into the number of groups required for each operating courtroom. Finally, each group was assigned by lot to a particular courtroom with checks to make sure that only assigned jurors entered the designated court. Courts sat for one day only.

When the Legislative Boards were introduced, they operated in a similar fashion — also drawing from the pool of six thousand. Neither the Courts or the Boards were deliberative in the modern sense. Members heard arguments from both sides, but they did not deliberate with each other before making a decision.

This widespread use of sortition in ancient Athens was designed to block threats to the democratic principles of *isonomia* (equality before the law) and *isegoria* (equality in the right to speak or participate). Sortition enacted and protected political equality in a society characterized by high levels of social and economic inequality. Cleisthenes' use of territorial units fractured existing clientalist relationships and the use of territorial representation (in both electoral and sortition contexts) entrenched relationships based on *deme* and *phylai* against aristocratic kinship-based networks. The use of sortition in all roles not requiring specialist knowledge acted as a bulwark against concentrations of power and the effectiveness of bribery, especially in court judgments.

Two further features are salient for our purposes. First, the length of service was limited to a maximum of one year before rotation of membership. In many cases, active service was

considerably less (e.g., as little as one day in each Court and Board). Second, the institutions that used sortition were primarily *responsive* rather than *initiating* institutions. Put a little too simply, the *Ekklesia* set the agenda and the *Boule*, the magistracies, and the *Diskateria* (and later the *Nomothetai*) exercised enabling, scrutiny, accountability, and implementation functions.

What can we draw from Athenian practice to inform the design of a sortition legislature? First, there is no direct historical equivalent to such a body. The People's Courts or the later Legislative Boards bear the closest family resemblance, but these are a long way from the type of sortition chamber Gastil and Wright propose because of the Athenian bodies' more limited functions, larger size, rapid rotation, and non-deliberative character. Second, although the application of sortition can be a bulwark against the power of economic and social factions and realize particular forms of political equality, in Athenian institutions this was achieved by combining sortition with rapid rotation.

#### <B>Deliberative minipublics

Sortition has been used extensively in legal juries in countries such as the United States, United Kingdom and France, but rarely has it been considered for selection in modern political institutions. Recent years, though, have witnessed increasing interest in sortition within deliberative minipublics. Such bodies are typically sponsored by a political authority, but organized by an independent agency that facilitates group discussions among a (near) random sample of citizens, who take evidence from experts and interested parties.<sup>2</sup>

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<sup>2</sup> Graham Smith, *Democratic Innovations: Designing Institutions for Citizen Participation* (Cambridge, Cambridge University Press, 2009), pp.72-110; Kimmo Grönlund and André Bächtiger and Maija Setälä (eds), *Deliberative Mini-Publics: Involving Citizens in the Democratic Process*

The recent wave of minipublics traces back to the pioneering work of Peter Dienel in Germany and Ned Crosby in the US who, respectively, created and organized planning cells and citizens' juries.<sup>3</sup> The intervening decades have seen the emergence of other designs that incorporate forms of sortition, including deliberative polls, consensus conferences, citizens' assemblies, reference panels and G1000s. Notable experiments include the incorporation of elected politicians as members in the Irish Constitutional Convention and broader sets of social and political actors in G1000s in the Netherlands alongside randomly-selected citizens. Very few minipublics, with the exception of cases such as the Citizens' Initiative Review, are an institutionalized element of political systems. Most are sponsored in an ad-hoc fashion and the adoption of their recommendations is far from systematic.

There are differences in the way that these institutions apply sortition. Most use stratification techniques to ensure a demographically representative cross-section of particular social characteristics (e.g. gender, ethnicity, age). To a certain extent, this resonates with selection from the *demes* in ancient Athens. Larger minipublics, such as deliberative polls, rely on simple random selection. Again, there are differences in the length of time that such bodies sit. G1000s are one-day events; most of the others run over 2 to 4 days. The outlier here are citizens' assemblies which have run over a number of weekends. For example, the British

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(Colchester, ECPR Press, 2014); Maija Setälä and Graham Smith, 'Mini-publics and deliberative democracy', in André Bächtiger, John Dryzek, Jane Mansbridge and Mark E. Warren (eds), *Oxford Handbook of Deliberative Democracy* (Oxford University Press, 2018).

<sup>3</sup> The characteristics of these and other minipublic designs discussed in this section are explained in Smith, op cit; Grönlund, Bächtiger and Setälä, op cit; and Setälä and Smith, op cit.



Columbia Citizens' Assembly (BCCA) brought together 160 citizens and ran over a dozen weekends over a period of 11 months.

Why is sortition used in these institutions? First, organizers value sortition as a selection mechanism for its capacity to realize a particular form of political equality (i.e., equal probability of being invited). Whether or not claims of descriptive representation can be sustained (given the impact of self-selection and/or stratification), sortition generates a more diverse sample of participants than established engagement mechanisms, which tend to replicate differential participation rates and thus differentials of power across social groups. Second, the combination of sortition with facilitation and balanced information creates the conditions for deliberative reasoning and considered judgement.

For advocates such as James Fishkin, minipublics are important because they combine random selection with deliberation to generate a counterfactual will formation—"What the public would think, had it a better opportunity to consider the question at issue."<sup>4</sup> In our view, more important is the connection with Athenian practice: Minipublics represent a safe haven<sup>5</sup> in which citizens are politically equal and protected from economic and social power. Unlike their

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<sup>4</sup> James S. Fishkin, *The Voice of the People* (Durham, Duke University Press, 2007). In *From Radical to Deliberative Democracy?*, Yves Sintomer points out that the Greeks did not have access to ideas about probability sampling and thus the generation of random samples and the idea of counterfactual judgements was not part of their understanding of sortition bodies.

<sup>5</sup> Simone Chambers, 'Behind Closed Doors: Publicity, Secrecy, and the Quality of Deliberation', *The Journal of Political Philosophy* 12 (2004): 289-410

Athenian forebears, however, minipublics are sites of collective deliberation and not just public judgement.

How can the practice of deliberative minipublics inform the design of the proposed sortition chamber? There has been an explosion of social scientific research, much of which provides evidence for the promise of minipublics: Citizens who participate appear willing and able to reach sound judgments and recommendations on highly complex technical issues;<sup>6</sup> in turn, minipublics are viewed as trusted institutions by the wider public.<sup>7</sup>

Selection through sortition helps enable a deliberative politics by ensuring that a diversity of social perspectives is brought to bear, but it is only one amongst many design characteristics, not all of which transfer so easily to a permanent legislative body. Mini-publics rely extensively on trained facilitation to ensure that interactions between the diverse participants, with very different capacities and experience, are free and fair. How suitable is such interventionist facilitation for a legislative body? Also, deliberative minipublics generally have been one-off affairs, which ensures a *de facto* rotation of membership between minipublics (as well as changes in sponsors, organizers and facilitators). The longest period of participation has been around a dozen weekends for citizens' assemblies held in Canada, the Netherlands, and Ireland. The Irish Assembly (and its mixed Constitutional Convention cousin) is a rare example where a single minipublic has dealt with more than one issue. Finally, previous minipublics have been carefully crafted spaces in which citizens are protected from partisan interests. In this sense,

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<sup>6</sup> Setälä and Smith, 'Mini-Publics and Deliberative Democracy'.

<sup>7</sup> Mark Warren and John Gastil, John, 'Can Deliberative Minipublics Address the Cognitive Challenges of Democratic Citizenship?' *The Journal of Politics*, 77, 2 (2015): 582-574.

there is a shared trajectory with the historical precedent of Athens. Interest groups, political parties and the media are kept at arms-length. In sum, the one-off nature of minipublics, the variety of different sponsors and the independence of organizers and facilitators all help to protect these spaces.

Ironically, protection from outside pressures and interference may also derive significantly from the fact that, to date, minipublics have been relatively marginal political institutions. Were minipublics to be used more extensively and to have more significant political import, this would almost certainly generate “powerful incentives for interest groups and partisan elites to try to manipulate [these] deliberative forums.”<sup>8</sup> Here, we can draw parallels between minipublics and legal juries. The history of legal juries, as expressed in the evolution of laws against jury-tampering and of options such as sequestration, points to the risks posed by external manipulation. Such devices may be used rarely today precisely because their availability serves as a general deterrent against external manipulations, while their presence serves both to register the gravity of the threat when such manipulation does occur and the seriousness with which it is regarded. The sortition chamber proposal in its current form does not avail itself of these kinds of protections.

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<sup>8</sup> Michael A. Neblo, *Deliberative Democracy between Theory and Practice* (Cambridge: Cambridge University Press, 2015), p.181; see also Yanis Papadopoulos, ‘On the embeddedness of deliberative systems: Why elitist innovations matter more.’, in John Parkinson and Jane Mansbridge (eds.) *Deliberative systems* (Cambridge: Cambridge University Press, 2012), pp. 125-150.

Though the functioning of deliberative minipublics offer some grounds for optimism for the practice of a sortition legislature, differences in structural function and design make them a poor analogy for the proposed sortition chamber. Gastil and Wright's proposal requires much more significant time contributions from participants, engagement across a range of issues, and has significant political power – factors that enable and motivate the exercise of systematic pressure by interested external agents.

#### <A>Evaluating the sortition legislature proposal

Our exploration of the circumstances of sortition in both historical Athens and its contemporary application in deliberative minipublics suggests that the sortition chamber has qualitatively different characteristics from previous sortition institutions. First, there is no precedent for a political institution exercising significant public power that uses sortition as a selection mechanism, but does not combine this with regular rotation and, where relevant, the use of sortition in the distribution of offices within the institution. Second, there appears to be no precedent for a sortition body that has such an expansive mandate ranging from agenda-setting to scrutiny. Specifically, we cannot find any examples of the effective use of sortition bodies to undertake agenda-setting functions.

These historical and contemporary examples provide support for our contention that the proposed sortition chamber is wanting from a democratic perspective. The failure of the chamber either to combine sortition with rotation or to limit its mandate leave the membership exposed to

negative expressions of social and economic power.<sup>9</sup> We explore each of these design weaknesses in turn. Without incorporating these institutional devices, we claim, it is unrealistic to expect the chamber to be a body in which equals engage in a process of public reasoning orientated towards shared practical judgements.

### <B>The case for rotation

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The use of sortition to select members to the proposed sortition chamber exemplifies a *formal* commitment to enacting political equality in the way that it brings a diversity of citizens into the center of formal and official political power. In so doing, it has the potential to alter citizens' self-understanding of the meaning of citizenship, being a vivid example of Aristotle's conception of democratic citizenship as ruling and being ruled in turn. Given the relatively small number of members, even if such chambers were implemented at other levels of governance, the chance of any particular citizen being selected for any such body during their lifetime remains slim. Nevertheless, one should not underestimate how transformative the political effects of such a change could be with citizens seeing their peers in decision-making positions.

However, the realization of political equality is potentially only formal rather than substantive. This is because the proposal's sole focus on sortition in terms of selection unhelpfully abstracts from its historical pairing with other mechanisms and processes, such as regular rotation of membership and the use of sortition and rotation for offices *within* the sortition body. The application of these mechanisms is absent, leaving the functioning of the

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<sup>9</sup> In the analysis that follows we consider a simple legislative assembly and avoid discussion of the UK case in which government ministers are drawn from both legislative assemblies. This would add a further level of complexity to the design of a sortition chamber.

assembly, in particular its capacity to promote deliberative rather than strategic action, vulnerable to those who would aim to subvert it for their own ends.

Two aspects of the proposal are particularly concerning for how power is exercised in the legislative body: the length of service and the distribution of offices within the assembly. Two options are envisaged for terms of office: either a five-year term or a two-year term with an option for renewal. In both instances, membership would rotate, with a portion of the body being refreshed each year.<sup>10</sup> Once selected, members would be allocated committee membership based on length of service and their preferences: “Current committee members who remain in the assembly could retain their most preferred committee assignments, then enter into a lottery with the rest of the selectees, each of whom would have ranked their preferences like students signing up for courses.”<sup>11</sup>

To our knowledge, such long terms of continual service and the freedom of members to choose areas of work according to preference and length of service are unprecedented for a sortition body. In ancient Athens, where the Council, Courts and Boards selected members randomly by lot, there was relatively rapid rotation of tasks and offices. In the Council, which had the longest term of service of one year, members held the most significant posts for only one-tenth of the year before rotation and in the Courts and Boards citizens were randomly selected and rotated between cases.

The longest time commitment in a single contemporary minipublic has been the twelve weekends of the British Columbia Citizens’ Assembly, which met over ten months. The Irish

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<sup>10</sup> John Gastil and Erik Olin Wright, ‘Legislature by Lot’ (manuscript, 2017), p.17.

<sup>11</sup> Ibid, p.20.

Citizens' Assembly met over a longer period of time (sixteen months) but demanded one fewer weekend of service from participants. In some deliberative minipublics, there are times when participants break into self-selected working groups. Even then, those subgroups are designed to avoid concentrating power in the hands of a small cadre of members, and facilitators ensure free and fair deliberation between participants.

This combination of length of service and choice of work areas based on that service has potentially serious negative effects on the capacity of the sortition chamber to realize political equality and deliberative reasoning in its day-to-day workings. We can see this in two ways. Internally, concentration of power—and with it the capacity to strongly influence proceedings of the Assembly—is likely to rest with a small number of members who hold significant committee offices. There is brief mention in the sortition chamber proposal of possible experimentation with trained facilitators (or, more worryingly, current or former sortition legislators who would not necessarily have the relevant capacities), but it is not clear how this would be combined with the work of self-selected committees over long periods. If trained facilitators are not present or their role is reduced substantially compared to deliberative minipublics, so the domination by more powerful and socially privileged members is likely to appear and, with it, group dynamics that are antithetical to democratic functioning. In the current formulation of the sortition chamber, the relationship between facilitation and emergent modes of leadership is underspecified, although it is difficult to conceive how the style of facilitation common in minipublics could map onto this type of sortition body. It is then a reasonable concern that substantive equality and deliberative reasoning between members will be diminished. Secondly, the relatively small number of members and their relatively long period of service expose the institution to the dangers of subversion by powerful interests beyond the chamber, including targeting by media outlets, yet

members have relatively little protection unless significant changes are made to the wider institutional ecology. This is likely to be exacerbated where particular individuals within the sortition legislature are able to concentrate power by holding onto positions on committees (including the position of chair). These individuals will inevitably become particular targets for external groups looking to influence the deliberation and decisions of those committees, not least since they are also likely to become power-brokers within the assembly.

Sortition is intended to guard against the negative impact of expressions of economic power and social influence, but once members of the sortition chamber are selected, they are vulnerable to traditional lobbying activities that transmit the inequalities of civil society to the formal political domain. They are left exposed in the same way as elected legislators—but without the defenses that membership of a political party can offer. Being a representative who is part of an organized political party reduces the scope of individual discretion over agenda-setting, party discipline reduces discretion over voting and party competition provides incentives for monitoring the conduct of legislators. While parties may undermine the deliberative potential of legislatures, as collective organizations they can, at their best, exercise power over their legislative representatives in ways that counter incentives for external targeting of individual representatives and their susceptibility to such targeting, while the accountability of party leaders to the wider membership acts as an obstacle to successful external targeting of the leadership.

A sortition chamber embedded within a bicameral system, as envisioned by Gastil and Wright, will also be subject to pressures from the elected chamber, especially when there is disagreement between them. We are familiar with bicameral legislatures competing with—and employing strategies of de-legitimation towards—one another. It would be naïve not to expect politically experienced politicians from the elected chamber to employ such strategies to



embolden their standing and influence vis-à-vis the sortition chamber. It is not at all clear what resources the sortition chamber will be able or willing to bring to bear to withstand such strategic action.<sup>12</sup>

The small number of members, length of term, and specialization of roles also invites more insidious forms of influence—namely, corruption and bribery. Some of the practices that Gastil and Wright suggest as defenses against this, such as periods of private discussion and the use of secret ballots,<sup>13</sup> can have the opposite effect by reducing mutual accountability within the assembly and the already limited degree of public accountability generated by public voting.

It is plausible that these vulnerabilities may be reduced if legislators in both chambers as well as individuals and organizations seeking to influence them, are subject to disciplinary scrutiny by a body such as the People’s Court on the Athenian model. No doubt, other changes—such as strengthening laws governing lobbying—could also act to reduce these vulnerabilities.

These problems are liable to be worsened by factions, alliances and party organization within the body. Gastil and Wright stress that “a place for traditional caucusing should remain,” or “members could organize themselves into a larger number of more cohesive groups of like-minded legislators, who share common values and priorities.”<sup>14</sup> Either of these—and especially their combination—threatens to move the legislature away from the deliberative ideal of

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<sup>12</sup> We thank Terrill Bouricius for stressing this important point during the 2017 Real Utopias workshop.

<sup>13</sup> *ibid*, p.23.

<sup>14</sup> *ibid*, p.24.

autonomous agents swayed by the force of the better argument and towards a more structured partisanship that works across issue areas.

Historical precedent, particularly from Athens, suggests that the combination of larger numbers, sortition in both initial selection and the allocation of offices alongside rapid rotation offer a possible solution to the challenges that we have posed, while the experience of contemporary minipublics suggests that the combination of sortition with trained facilitation is critical for deliberative quality. However, addressing these problems through the complementary mechanisms that we propose constructs a deeper problem for the proposed sortition chamber. The factors that potentially undermine political equality and deliberative reasoning within the legislature and expose members to powerful economic and social interests—its small size, long service, and specialization—are arguably necessary conditions for a key aspect of the sortition chamber proposal—its agenda setting function.

#### <B>The case for limited mandate

As far as we are aware, there is no historical or contemporary precedent for a single body, selected by sortition, that combines agenda setting and scrutiny in a deliberative fashion in the way that the sortition chamber intends. In Athenian democracy, a number of sortition bodies with very different and distinct political functions were employed around the central assembly. We can draw similar lessons from another contemporary field of participatory practice where the designers of participatory budgeting in Porto Alegre crafted different institutions for different aspects of agenda setting, rule-making and decision making. They recognized that combining functions in the same body is likely to have perverse democratic results.<sup>15</sup> Later participatory

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<sup>15</sup> Smith, *Democratic Innovations*, pp.30-71.

budgeting systems have been less effective in realizing political equality, deliberative reasoning and popular control precisely because of their failure to separate these functions.<sup>16</sup>

Gastil and Wright are enthusiastic about the capacity of deliberative minipublics in making their argument for a sortition chamber. “Randomly selected bodies have shown an inclination,” they argue, “to find common ground and recommend workable solutions to the policy problems placed on their agendas.”<sup>17</sup> The final part of that sentence is indicative of the challenge the sortition chamber faces: Deliberative minipublics work on problems *placed* on the agenda by others. They do not select, or even usually *frame*, these problems. Ensuring a safe space within which common ground and workable solutions emerge may be undermined if minipublics were a site for competition over agenda setting. We have the same concern for the sortition chamber—that agenda setting and scrutiny may pull the institution in different directions. The former function may well be detrimental to its democratic capacity.

Agenda setting can be broken down into at least three separate functions: collation of ideas, filtering of ideas, and management of the agenda once it has been agreed. Within traditional elected legislatures, these functions are undertaken (or at least overseen) principally by political parties. It is not at all clear how these functions would be realized in the proposed

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<sup>16</sup> Ernesto Ganuza and Gianpaolo Baiocchi, ‘The Power of Ambiguity: How Participatory Budgeting Travels the Globe,’ *Journal of Public Deliberation*, 8, 2 (2012), Article 8; Yves Sintomer, Carsten Herzberg, Anja Röcke, and Giovanni Allegretti, ‘Transnational Models of Citizen Participation: The Case of Participatory Budgeting,’ *Journal of Public Deliberation*, 8, 2 (2012), Article 9.

<sup>17</sup> Gastil and Wright, ‘Legislature by Lot’, p.7.

sortition chamber. As for collation of ideas, sortition legislators will not have knowledge of the full range of ideas. Though a demographically diverse group is epistemically important for collective judgement, it does not equate to full knowledge of the range and dimensions of issues facing the legislature. Therefore, there will need to be processes through which members are exposed to different possibilities.

How is this to be done? We can see a range of options, all potentially undesirable from a democratic perspective. One option draws on the practice of deliberative minipublics, where facilitation and provision of balanced information and witnesses is overseen by an independent body supported by a stakeholder advisory group. In their proposal, Gastil and Wright only focus on the provision of independent facilitation: helping “citizens work through their agenda, manage speaking time, and ensure respectful discourse.”<sup>18</sup> How balanced information is to be provided to the sortition legislature is not clear, especially in relation to problem definition and agenda setting. Gastil and Wright are too relaxed, we fear, in their evaluation of the dangers of technocratic capture.<sup>19</sup> The autonomy of members is in real danger of being compromised as more responsibilities are passed to independent or administrative agencies.

A second option is that certain members of the legislature—those who have served more years, are committee chairs and/or who enter with the requisite political skills—would take on leadership roles and drive the agenda-setting process. But this immediately jeopardizes political equality and undermines deliberative equality as some members are privileged over others, while exacerbating incentives for external influence on key figures and roles within the assembly.

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<sup>18</sup> *ibid*, p.22.

<sup>19</sup> *ibid*, p.21.

A third option implicit in the sortition chamber proposal relies on party caucuses or some other forms of faction to collate and filter ideas and manage the agenda-setting process. As we have already argued, this reduces political equality and replicates the very practices of elected legislatures that sortition is meant to ameliorate. The relative autonomy of the sortition legislature is lost, as is the deliberative difference that sortition bodies bring as countervailing powers. Without parties or organized factions, however, the different aspects of agenda setting will be vulnerable targets of lobbying and other more nefarious activities by organized interests.

Returning to the examples of the Athenian system and participatory budgeting, the deliberative qualities of the sortition chamber are under threat if it takes on agenda setting and scrutiny functions. Deliberating over agendas is a very different activity from deliberating over options for a particular policy or legislative decision. Thus, for example, in agenda setting there is always the danger that members' favored ideas or issues are not taken forward or given low priority. This, in turn, generates incentives to engage in coalition-building and tactical alliances (that is, mimicry of party formations), or else to confront a situation in which (except by luck) one loses out—at which stage the motivation to participate in the scrutiny of options on an issue one does not see as a priority is likely to be much reduced.

We recognize the need within contemporary democratic societies for what we might term counter-hegemonic agenda setting. Elites get their issues on the agenda too easily and too often; this is, after all, one source of their power. But we are not convinced that the sortition chamber can realize this counter-hegemonic potential. It will be subject to pressures from powerful organized interests that it will be unable to manage democratically. Those who wish to retain an agenda-setting role for a sortition legislature must provide a stronger account of how this role is

to be facilitated and how leadership is to be enacted to drive agendas in a way that does not undermine political equality and/or deliberative quality.

Consequently, we hold that there are good reasons to remove agenda setting from the sortition chamber, making it a more responsive body that engages primarily in scrutiny. It may be possible to conceive of a separate sortition agenda-setting assembly—perhaps one that is embedded in a wider order of sortition bodies that generate ideas for collation and ranking, although there is little successful historical or contemporary practice to draw on and our considerations of how it might function leave us with good reasons as to why it may be difficult to achieve. Certainly, it would be prudent to experiment with such a structure in lower risk environments to discern the relevant design issues that it would confront before inserting such a body at the apex of the formal democratic system.

<A>Conclusion: A realistic and utopian alternative

Historical and contemporary precedents suggest that for an assembly to inhibit the unjustified exercise of power by economic and social groups, selection by sortition is not enough. To counter such activities and realize political equality and deliberative reasoning, one must combine sortition in selection with rapid rotation of membership and the use of sortition and rotation for office within the assembly. Even with those features in place, a single sortition body cannot fulfil agenda-setting and scrutiny functions simultaneously.

Commented [GS3]: I removed larger pool, because it was not one of the devices we highlighted in the critique.

As it stands, the proposed sortition chamber is neither realistic nor utopian. It is too ambitious for the former, not ambitious enough for the latter. A more realistic approach to democratic design separates the functions of agenda setting and scrutiny. A more utopian outcome, in which the sortition chamber plays an agenda-setting role, requires a wholesale

restructuring of the broader institutional ecology, which in the current formulation remains relatively untouched.

For those interested in the use of sortition in contemporary politics, there is a strong tendency to focus attention on legislative bodies. Such bodies are clearly important sites for democratic reform, but we need to consider the wider political canvas and reflect on the variety of roles that sortition can play to enhance the system's democratic qualities.

To stay within the scope of this book, however, we conclude by suggesting an alternative design for a sortition legislature. In doing so, we draw most directly on the practice of the People's Courts and Legislative Boards in Ancient Athens and more recent experience of deliberative minipublics. Our proposed sortition process would play a responsive role, draw on a much wider pool of members, and use sortition and more rapid rotation to assign members to work on particular legislative issues as they emerge.

By focusing on a responsive function for the assembly, we are not arguing that it is an elected chamber that must set the agenda, just that the agenda would be set outside the sortition legislature. In the first instance, it is likely that the body would be responsive to the agenda of the elected chamber and would thus play a role in overseeing and scrutinizing legislative and policy proposals from that chamber. There are other more or less participatory ways that the agenda might be set (for example through an initiative process), but that is not our primary concern here. Neither will we be concerned with how a separate sortition body might play an agenda-setting role within the legislative system, though our earlier analysis augurs against such a body

Second, we envision a much wider pool of members of the sortition assembly. The 6,000 from which the People's Courts and Legislative Boards were selected in Athens may be a good starting point, although the number could be higher. Our preference is that service is compulsory,

with exemptions for pressing personal/professional needs, as for the summons to jury service. As in the sortition chamber proposal, legislators would be compensated generously in recognition of the significance of their role. If compulsory service were deemed unacceptable, then the selection of the 6,000 would be demographically stratified.

The full membership of 6,000 citizens would only meet as a body for training purposes—to be educated about their legislative role. Following Athenian practice, a smaller pool of members would be summoned randomly from this larger body (applying stratification) to be divided by lot for smaller issue-assemblies of between, say, 150 to 300 according to the number of tasks. And then finally, the members would be assigned by lot to the particular issue. A formula would be needed to ascertain how long each separate assembly would need to meet, but the longest citizens' assemblies that have worked on complex constitutional issues have required no more than twenty-five day sessions. Those who serve in any given session would be ineligible for the next one. The 6,000 body would itself be rotated on a regular basis, every one to two years.<sup>20</sup>

Unlike the Athenian Courts and Boards, the smaller issue-based assemblies would be deliberative in character and last longer than one day. To this end, they would work in similar ways to existing deliberative minipublics. A central administrative organization would need to be established, with independence from government. This would be a specialist body whose role

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<sup>20</sup> Alexander Guerrero also takes an issue-based approach to his sortition proposal, but, similar to Gastil and Wright, argues for smaller bodies without rapid rotation. See Alexander A. Guerrero, 'Against Elections; The Lottocratic Alternative, *Philosophy & Public Affairs*, 42, 2 (2014): 135-178.



would be to select trained facilitators by lot from a general pool for each session and to select an advisory board. The board, in turn, would oversee the development of balanced learning materials and the appointment of expert witnesses, who reflect the range of viewpoints and interests on the issue before an assembly.

In designing such an administrative body, we can draw on the experience of the autonomous public bodies charged with organizing public participation such as the Tuscany Participation Authority (Italy), the National Commission on Public Debate (France), and the Quebec Environmental Public Hearings Board (Canada).<sup>21</sup> A danger of capture by technocratic or social and economic interests would remain, but that risk would be diluted by the random allocation of sortition legislators—and facilitators—to particular sessions.

As to the powers of the sortition legislature, there are a number of options. Let us assume initially that the sortition body is scrutinizing proposed legislation from the elected legislature. The weakest option would be delay—a mechanism for sending a piece of legislation back to the elected chamber for further consideration if it was not supported by a majority of the sortition legislature. This would leave the balance of power very much with the elected body.

An alternative would require a particular level of support from the sortition legislature for a bill to become law. It is possible to imagine a range of stipulations for how decision making might progress. A simple majority might be all that is needed for passage of legislation, or a supermajority might be required. For example, sixty percent support in the sortition body might

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<sup>21</sup> Laurence Bherer, Mario Gauthier, and ‘Autonomy for what? Comparing four autonomous public organizations dedicated to public participation’, paper presented at the ECPR Joint Sessions, Salamanca 2014.

be required for legislation to pass, whereas below forty percent would kill a bill. Anything in between would send the legislation back to the elected body for reconsideration.

An ingenious alternative that would bring the wider public into the process might follow the practice at Leeds University Students Union in the UK, where passage requires seventy-five percent support from within a minipublic, less than twenty-five percent means failure, but any result in between triggers a binding referendum. Moreover, the sortition legislature could link to a popular petition process that bypassed the elected chamber to give the broader citizenry the authority to propose new laws or suggest repeals.<sup>22</sup> Petitions meeting a signature threshold would come before the sortition legislature, which would treat them in the same way as a proposal from the elected chamber. In these ways, the sortition legislature would play the role of reviewing, repealing, and inspecting laws not too dissimilar from the functions played by Athenian Legislative Boards.

We believe our formulation would be protective and transformative. It is protective because the large number of members of the body and the random allocation to issue-assemblies—combined with the limited duration of each session—makes it considerably more difficult for powerful economic and social forces to affect its practice. The Athenian concern to obstruct the bribery of juries by the wealthy provides a good analogy for the concerns of contemporary democracies with lobbying (and related activities), and we think their approach to dealing with the problem merits serious attention. Like its Athenian forebear, our model also has greater transformative power, by increasing substantially the likelihood of citizens being called

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<sup>22</sup> The initiative process would need to be implemented in a different way to current practice where organized interests tend to dominate.

to serve. This transformative power would be further amplified if the proposal was adopted for the numerous sub-national legislatures within a polity.

In closing, we believe our proposal is transformative in another sense. Counterintuitively perhaps, it is utopian in its strategic ambition of being simply a *first step* toward more radical change in the democratic ecology. Our more prudent approach, grounded in historical and contemporary democratic experience, lessens the risk of damage to the reputation of sortition and citizen participation in the legislative process. As a result, we hope this would provide a stronger basis on which to develop the civic consciousness and political practices necessary for more radical future reshaping of democratic institutions through sortition.