DEMOCRACY

Without Politicians



GOVERNMENT

By the People

Terry Bouricius

ROUTLEDGE

DEMOCRACY WITHOUT POLITICIANS

This book explains how electoral "democracy" is inherently *un*democratic—enshrining rule by elites rather than popular self-rule—and argues that *sortition* (the use of random selection to form genuinely representative deliberative bodies) is a superior democratic alternative.

Making the case that representative government can function better without the exclusive reliance on elections, the author sets out the problems with modern elections, the inadequacies of the commonly proposed reforms, and examines the cognitive biases, detrimental psychological effects and societal polarization that elections exacerbate. The book further delves into the progression of democracy and sortition in ancient Greece, and the abandonment of sortition in the framing of the American Constitution and French Republic. Finally, it sets out both immediate and long-term prospects for renewing democracy through the use of multi-body sortition.

Written by a former elected politician and policy analyst, this book will be of interest to students, researchers and citizens interested in comprehensive democracy reform.

Terrill "Terry" Bouricius is a political theorist and recovering politician. From 1981 to 2001, he served as a City Councilor and then as a member of the Vermont House of Representatives. After a decade working on election reform internationally, his focus shifted to sortition. He has written influential journal articles on sortition, and helped found the international democracy reform organization, Democracy R&D.



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Government By the People

Terry Bouricius

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PART I

The Current Situation



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1

DEMOCRACY IN DYSFUNCTION

Distress over the poor performance of our modern democracy seems to be constantly reaching new heights (or perhaps "sinking to new depths" is more fitting). Public focus on democracy's failures may wax and wane, but the problems become readily apparent whenever the system is stressed. The election and re-election of Donald Trump as US President shocked and dismayed liberals and many traditional free-market conservatives, but also substantiated the depth of the disdain many Americans feel for politics as usual. Our elective government and politics are indisputably failing. During the periodic crises over raising the national debt ceiling, many commentators acknowledge that the American political system is completely dysfunctional. Some even suggest it might be beyond repair. In discussing President Obama's concessions to Republican demands back during the July 2011 standoff, Nobel Memorial Prize-winning economist Paul Krugman wrote in the *New York Times*:

> In the long run, however, Democrats won't be the only losers. What Republicans have just gotten away with calls our whole system of government into question. After all, how can American democracy work if whichever party is most prepared to be ruthless, to threaten the nation's economic security, gets to dictate policy? And the answer is, maybe it can't.
>
> *(Krugman 2011)*

Republican Senate leader Mitch McConell said at the time, "What we did learn is this—it's a hostage that's worth ransoming" (quoted by Benen 2012). Since that standoff, Congressional leaders have repeatedly resorted to the strategy of

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threatening national default, and quite plausibly a collapse of the global economic system based on the US dollar, for political advantage.

Nobody really expects democracy to completely live up to the ideal. But when the distance between ideal and reality grows too great, we should re-examine our assumptions and reflect on ways our democracy might function better. In the final days of the notorious Trump–Clinton election, a *New York Times*–CBS poll found that more than 80 percent of Americans said they were repulsed rather than excited by the campaign (Martin, Sussman, and Thee-Brenannov 2016). While 2016 seemed like an extreme example at the time, the trend toward popular disgust with politics has only accelerated.

We must, however, take into account both the political process and the policy outputs of our democracy. Even if the process is distressing, if the results serve the public reasonably well, people will generally tolerate it. Congressional pundits often quip that nobody likes to see how sausage, or legislation, is made. But they assume that the unseemly processes are equally necessary for achieving the final (at least palatable) products. It's long past time to reconsider our assumptions about both process and output in American democracy today.

Even before Trump, Americans complained about hyper-partisanship, uncivil smears, poor representation, domination by special interests, public alienation, and politicians who seem unable to tackle critical and urgent issues. On countless matters, including war, taxes, corporate bail-outs, health care, etc., there is a stark divergence between Congressional actions and public attitudes, as revealed in opinion polls. Our elected leaders seem eager to talk about, but unwilling or unable to effectively deal with severe economic problems, budget deficits, decaying infrastructure, the growing chasm between the "99 percent" majority of Americans and the super-rich, and the steadily growing effects of climate change. These are just a few examples of the repeated failures of our politicians to face up to issues that knowledgeable people agree only get worse by delay.

For years, surveys have typically shown that around two-thirds of Americans believe that the rich benefit most from the policies of the federal government, while only a tiny percentage think that the middle class benefits most. More than three-quarters of respondents typically agree that members of Congress are more interested in serving special interest groups, especially large corporations, than the people they allegedly represent. A 2016 Associated Press–GfK poll found that nearly 80 percent of Americans felt dissatisfaction or anger at the federal government. A CBS news story about the poll stated:

> This anger isn't so much driven by political ideology as it is by an overall disdain for a political system that doesn't seem to be working, voters said in follow-up interviews. They're upset with both parties, as well as career politicians and Washington insiders who, those surveyed said, don't put their constituents' interests first.
>
> *(CBS News 2016)*

A Pew Research Center poll in 2023 found that 63 percent of Americans agreed that all or most elected officials at the local, state and federal level ran for office "to make a lot of money", and only 15 percent believed that all or most of them ran to serve the public (Pew Research Center 2023). Another survey, conducted by the Pew Research Center, found that 67 percent of Americans agreed that the phrase "most politicians are corrupt" described their country well (Pew Research Center 2021). Though it is possible that the people are simply mistaken about the performance of their elected politicians, overwhelming evidence indicates that they are correct. It is not a coincidence that most people believe government policy favors an elite. I will argue that this is a direct result of our electoral system. While various election reforms may ameliorate some of the failings, by their fundamental nature, elections are unfixable. However, this book is not primarily about documenting the poor performance of politicians in our electoral system. If you're reading this, you probably don't think politics are satisfactory as they are. My jumping off point accepts this dismal situation as a proven fact. Instead, in this book I examine why this is so, and suggest what can be done about it.

Some among us accept these disheartening characteristics of American politics as the unavoidable price of admission for nations wishing to join the democratic club. Others actually revel in the spectacle and gamesmanship of contemporary politics. But many people, myself included, decry these as threats to our society's long-term health and even survival. Is democracy doomed to endlessly suffer from such failings? Or might there be a better form of democracy itself? That is the question that underlies this project.

Fears of the Framers

The distressing traits of electoral democracy discussed here are frequently treated by commentators as if they were new, or at least far worse than in the past. But the inherent flaws of elections were already recognized by the Founders and Framers of the United States government. In a 1787 essay setting forth the failings of the Articles of Confederation, entitled "Vices of the Political System of the United States", James Madison presented this troubling dynamic of elective representation. He wrote that those seeking elective office had one of three motives: "1. Ambition" and status, "2. Personal interest" and financial gain, or "3. Public good." He determined that "Unhappily the two first are proved by experience to be most prevalent" (Madison 1787a).

Madison also worried about factions. He hoped to dilute this problem to some extent by sheer force of size; he figured that a vast nation would have so many competing interests that they couldn't easily consolidate and control the government. But this turned out not to be the case. The underlying imperatives of competitive elections quickly caused these dreaded factions to coalesce in the form of national political parties—with their attendant partisan rancor. Ironically,

Madison himself helped found one of the first national political parties in the new republic.

The partisan political system we have in the United States, in which two dominant parties maintain a duopoly over all levels of government, is exactly what many of our Founders feared most for their republic. John Adams, in a 1780 letter to his friend Jonathan Jackson discussing the soon-to-be-released Massachusetts Constitution, stated that:

> There is nothing which I dread so much as a division of the republic into two great parties, each arranged under its leader, and concerting measures in opposition to each other. This, in my humble apprehension, is to be dreaded as the greatest political evil under our Constitution.
>
> *(Adams 1780)*

George Washington also warned about partisanship in his 1796 Farewell Address to the nation:

> The alternate domination of one faction over another, sharpened by the spirit of revenge, natural to party dissension, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries, which result, gradually incline the minds of men to seek security and repose in the absolute power of an individual; and sooner or later the chief of some prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purposes of his own elevation, on the ruins of Public Liberty.
>
> *(Washington 1796)*

The feared partisanship blossomed almost immediately with the rise of the Federalists, aligned with Hamilton, and the Democratic-Republicans, aligned with Madison and Jefferson. Hyper-partisanship has been the reality in American politics from the beginning. The relatively brief interludes of civility and bipartisanship, such as in the 1950s and 1960s, have been the exception rather than the rule. Around 1800, the *Federalist Connecticut Courant* warned that if Thomas Jefferson became president, "Murder, robbery, rape, adultery, and incest will be openly taught and practiced, the air will be rent with the cries of the distressed, the soil will be soaked with blood, and the nation black with crimes" (quoted in Hartford Courant 2021).

It's clear that American democracy, and Western democracy in general, hasn't lived up to the ideal, yet support for that ideal has nevertheless spread across the globe over the past two centuries. However, a joint Harvard–University of Melbourne study in 2017 suggests that trend has reversed. By drawing on data from the European and World Values Surveys, researchers found there has been

a precipitous decline in public commitment to governments based on competitive elections. In well-established electoral systems, such as the United States, Britain, and Australia, the percentage of people who say they feel it is "essential" to live in a democracy has steadily dropped since World War II, from roughly 75 percent down to just over 25 percent by the time of the study. While not as precipitous, this diminution is even occurring in famously liberal countries such as Sweden and the Netherlands. Widespread disdain for democracies' "establishment politicians" is a global phenomenon (Foa and Mounk 2017).

Most observers agree that the election of the non-politician Donald Trump in the United States was largely a result of that growing public sentiment. In 2020, researchers compiled a new dataset combining more than 25 data sources, 3,500 country surveys, and 4 million respondents between 1973 and 2020, asking citizens whether they are satisfied or dissatisfied with democracy in their countries. The authors wrote, "We find that dissatisfaction with democracy has risen over time, and is reaching an all-time global high, in particular in developed democracies".

By 2020, the percentage of residents in electoral democracies who reported that they were dissatisfied with democracy in their own country reached 57.5 percent. Between the 1990s and today, dissatisfaction with democracy in the United States has fluctuated, but overall has had the sharpest rise of any country surveyed (Foa et al. 2020).

This brings me to a central thesis of this book. I argue that it is not the principles of democracy—self-rule and government of, by, and for the people—that are causing dissatisfaction, but rather partisan electoral politics and politicians.

So, is there a remedy? There may well be. But the optimal route to a better democracy is not along the path toward improving elections, which most reformers assume is the only way forward. In normal parlance, democracy and elections have become synonymous (though, as we will see, this wasn't originally the case). After all, elections are seen as the quintessential means for holding leaders accountable. "Free and fair elections" are almost universally considered the cornerstone of representative democracy. But could elections themselves be the root of the problem?

This book is about the numerous inherent democratic defects of elections, and how we might build a better democracy without exclusively relying on them. It is difficult to recognize what things we "take for granted" simply because we know nothing else but what exists. As the saying goes, "fish would be the last to discover water". The notion that fixing democracy is just a question of fixing the electoral process is an assumption we must overcome. But in order to move forward, it is essential to first determine in which direction we should go. Where is democracy's North Star?

This book systematically sets out the case that democracy's North Star is *sortition*. Though a little-known term, this concept was fundamental to the Ancient

Greek democracies, and can be the basis for rebuilding a vibrant democracy today as well.

Sortition

"Sortition" refers to the process of selecting public officials, such as for deliberative bodies, by random lottery. Sortition was central to the flourishing of democracy in Classical Athens. Aristotle wrote that selecting panels by lottery "is thought to be democratic, and the election of them oligarchical" (Aristotle 2016, 108). For over two millennia, from when the word "democracy" was originally coined in Ancient Greece, through the Age of Enlightenment, it was understood that elections were a tool for aristocracy (violating political equality and favoring the wealthy elite and well-connected), while "democracy" (meaning "people's power") required sortition.

Ruling elites pushed sortition to the periphery. In modern times, lottery selection is mostly relegated to the creation of court jury pools. However, in the past couple of decades, nearly a thousand jury-like citizens' assemblies have been impaneled around the world. They used democratic lotteries to create panels that could tackle thorny public policy issues. The size, design, powers, and procedures of these panels selected using democratic lotteries vary, as does the name—variously known by names such as citizens' assemblies, planning cells, policy juries, or mini-publics. I will discuss some of these exciting innovations in subsequent chapters. A good summary of the benefits of randomly selected mini-publics is offered by Phil Parvin of Loughborough University:

> Strategies which seek to incorporate the perspectives of small groups of citizens into the traditionally configured institutions of representative democracy may serve to open up the decision-making process to the views of all citizens and, hence, serve to break up the structural asymmetries in influence which emerge as a consequence of too heavy a reliance on widespread, society-wide participation. They also offer a possible solution to the lack of political knowledge among marginalised citizens by providing opportunities for reflective deliberation and knowledge gathering in controlled environments: inviting small groups of citizens to reflect collectively on issues, providing these citizens with the relevant facts on which to reflect, and then incorporating the resulting insights either formally or informally into the decision-making process may go some way to plugging the epistemic gaps which characterise contemporary mass societies, improve decision-making, and provide a real voice for citizens who have been genuinely empowered to know and defend their own interests
>
> *(Parvin 2017, 48).*

Parvin is describing the use of sortition as a supplement to existing political institutions. While sortition will necessarily take an ancillary role initially, I hope to show that with appropriate design and implementation, sortition can be superior to elections as a *central* tool for democratic popular self-rule.

My Path

My own path to the concept of sortition did not begin in academia. Although I majored in political science, I never read a thing about sortition in college. My interest in sortition grew from decades of in-the-trenches involvement in electoral politics, two decades as an elected lawmaker, and decades as an election reform policy analyst. During my time as a legislator, it became obvious to me that the "People's House" was not very representative of the people who actually lived in Vermont. My epiphany came while dealing with a bill about the rights and responsibilities of tenants and landlords in an eviction situation. My fellow committee members were an outgoing and garrulous bunch. Shy wallflowers almost never become legislators.

During a break between witnesses, one committee member regaled a few of us with a story about how a landlord friend of his had had an apartment trashed by a renter. The story had vivid details about damage to the carpeting and walls. While not directly relevant to the bill under consideration, the story did create a frame with a clear perpetrator and victim. Nobody offered a counter-story in which a tenant had been abused by a bad landlord. While discussing the eviction bill during committee "mark-up" (when committee members propose amendments, etc.) I realized that committee members were relying more on anecdotal information from their own circle of contacts and those of their fellow committee members than on any statistical reports or formal testimony from scheduled witnesses. They also naturally interpreted any testimony through the filters of their own life experience, giving extra credence to information that corresponded with their preconceived ideas, and re-interpreting or discounting testimony that didn't fit their worldview. Testimony on behalf of tenants seemed to be especially discounted. With hindsight, I recognize that I did the same thing, but on the opposite side from most of my colleagues. I saw that the experiences and beliefs of legislators shape legislation far more than facts.

Roughly one-third of Vermonters were renters, but not one of the committee members was a renter. I did an informal survey of the House, and as far as I was able to determine, only one out of 150 members was a tenant (no, it wasn't me—my wife and I had recently purchased a house). It was readily apparent that the interests of tenants were under-represented in the legislature, and the resulting statutes reflected that fact. I thought that if the House were genuinely representative of the population, meaning one-third of the legislators had been renters, that

the nature of the debate, and possibly the outcome, could have been very different. While research indicates that mere diversity of opinion within a group does not necessarily mean a melding of views (the method of deliberation is key, as will be discussed later), one might hope that the debate would have been more robust, with questionable assumptions actually being questioned.

After that experience, I frequently commented that any 150 Vermonters pulled from the phone book would be more representative than the elected House membership. While the transition away from landlines to cell phones makes the "phonebook" an outdated reference (not to mention that phone books of the twentieth century often only listed the male "head of household"), a *genuinely* random sample would be more representative, not only in terms of the renter/landlord diversity, but also in every other respect, including gender, class, race, age, cognitive style, and political philosophy.

The intellectual conservative William F. Buckley, Jr. made a similar point decades earlier, when he quipped that he would "sooner live in a society governed by the first two thousand names in the Boston telephone directory than in a society governed by the two thousand faculty members of Harvard University" (Buckley 1963, 134). Buckley was probably attempting to belittle the elite faculty of Harvard, rather than seriously proposing sortition. However, this sentiment, that random citizens might be better than elites, is actually rather widespread. A public opinion survey by Rasmussen Reports conducted in January of 2010 found that just 36 percent of Americans thought Congress did a better job than a random group of Americans selected from a telephone book could do, while 45 percent thought the random sample would do a better job (Rasmussen Poll 2010). By 2024, just 27 percent thought Congress would do better, while the share who thought a random group of people selected from the phone book would do better than Congress had grown to 54 percent (Rasmussen Poll 2024b). This response might just be an expression of disdain, as in "a monkey could do a better job than Congress". But when made more concrete, support for the concept of sortition actually increases. The Center on Policy Attitudes, associated with the School of Public Affairs of the University of Maryland, did a survey in 1999, which included the following more detailed question:

> Imagine that a group of 500 American citizens was selected from all over the country to be representative of the entire US population. This group then met and was informed on all sides of the policy debate on a number of public policy issues and had a chance to discuss these issues. They were then asked to make decisions on what they thought was the best approach to these issues. Do you think the decisions of such a group would probably be better or worse than the decisions that Congress makes?
>
> *(quoted in Morin 1999, 34)*

From the survey, 66 percent thought the representative group would be better than Congress, and just 15 percent thought they would be worse (the survey results were reported in Morin 1999, 34). A more recent poll released by a democratic lottery advocacy organization, Of By For, showed almost identical results in 2020 (Of By For 2020). A 2021 survey of over 4,000 Americans conducted by the Pew Research Center (though with less specific question wording) found essentially the same attitudes (Pew Research Center 2021). My decade of experience serving in the state legislature convinces me that this popular assessment is correct. While there are some exceptional individual legislators (both good and bad), and elected legislators are probably more extroverted and egotistical than the average citizen, I saw no evidence that they are more competent, intelligent, compassionate, or capable than any random group. However, as I will demonstrate in subsequent chapters, elected policymakers have unique electoral imperatives and psychological biases that make them generally *less* competent and capable than ordinary people.

I stepped down as a legislator after ten years and went to work with a national voting reform organization called FairVote: the Center for Voting and Democracy as a policy analyst. For the next decade, I primarily worked on proportional representation and a ranked ballot voting system known as *instant runoff voting* or *ranked choice voting*.

The ground-breaking use of a democratic lottery in the Canadian province of British Columbia sparked my interest in this fundamentally different model of democracy. In 2004, 160 randomly selected residents (one man and one woman from each of the province's 79 legislative districts, plus an aboriginal man and woman) were convened as a "citizens' assembly" with a mandate from the provincial government to evaluate the electoral system. If they deemed it superior, they were to propose a new one for the province. Over many months, they went through a learning phase, a public hearings phase, and a deliberative phase to produce a final referendum proposal. As an election reform expert, I gave testimony to this citizens' assembly. The representativeness, competence, and freedom from corruption of this citizens' assembly of everyday people, selected by lot, was inspiring. This was my "aha moment". I came to the stunning realization that "this is what democracy should look like!"

Sortition in an Electoral World

While this book will constantly contrast election and sortition, it is *not* simply a matter of replacing elected legislators with members selected by lot. A sortition-based democracy would need an entirely different set of institutions and processes. A multitude of randomly selected panels would each deal with distinct policy domains and different aspects of the lawmaking process, rather

than having a single group of legislators that handles all issues and legislation—setting agendas, drafting bills, advocating for or against those bills, and then judging whether to adopt them.

The existing all-issue legislative design is an antiquated hand-me-down from the elite parliaments constructed to advise, and later to counterbalance the monarchy. It was not designed nor intended to be used for a democracy. The expansion of the franchise over time, to include men without substantial property, women, and people of all races, is often described as "democratizing" legislatures. However, expanding the franchise has not changed the fundamental nature of such chambers. They remain to this day a bastion of rule by elites over a population. This book will demonstrate why such bodies are incapable of genuine deliberation or democratic lawmaking.

It is hard to imagine a society advancing to sortition without maintaining a parallel system of elections for a substantial time. While I have published several journal articles and book chapters describing how a democratic system could function without any elections (Bouricius 2013, 2017a, 2018), a step-by-step replacement seems the most plausible transition. Countless events of the past, including the Macedonian Empire's destruction of Greek democracy, and the decision of the leaders of the American colonies to use election and not sortition, have restricted what next steps we can realistically take today. This "path dependence", as social scientists call it, simply means we must start from where we are. Societies rarely get a blank slate on which to write a completely new design. Familiarizing more people with the concept of sortition as an alternative democratic tool and expanding its use is a good near-term goal. It is tempting to focus on Congressional elections as an archetype of electoral failure. However, sortition could play a beneficial and more immediate role in state and local government, enterprise democracy at the workplace, homeowners' associations, oversight of non-governmental organizations, and even of supra-national (international) entities. Sortition is also being advocated by researchers such as Aviv Ovadya as a tool for governing emerging artificial intelligence (AI) systems (Ovadya 2023) and social media content moderation (Ovadya 2021). A survey of 3,000 Americans asked how content moderation to remove harmful false information from social media should be done. The researchers found that content moderation done by nationally representative juries, or juries of domain experts, was much preferred over teams of journalists, algorithms, or the corporate owners of the social media site (Martel et al. 2025).

Sortition is rapidly becoming mainstream globally. In a 2017 speech, Kofi Annan, the former Secretary General of the United Nations, identified random selection as a potential means of fostering inclusion and "prevent[ing] the formation of self-serving and self-perpetuating political classes disconnected from their electorates" (Annan 2017). Sortition may seem radical, but in many places around the world, it is rapidly becoming a reality.

A Word About Words

Certain words and terminology will occur frequently in this book. The meaning of the word *democracy* is contested ground. The ancient Greeks, who invented the word, used it to describe a system based on lotteries and direct participation. But today it generally refers to elected rulers. Sometimes a modifier is attached, such as *representative*, *developed*, *liberal*, or *Western*, but "democracy" often appears without any qualifying adjective.[1]

It would be reasonable to refer to these systems as *elective oligarchies*, rather than democracies, since so few members of society are actually involved with ruling the rest. Elected lawmakers are roughly one-tenth of 1 percent of the population. The other 99.9 percent of the population only get to play a de minimis role in helping to choose between the teams of elites on offer who would rule over them. They do not engage in actual *self*-rule. The overwhelming majority of that minuscule pool of elected lawmakers are at the local level, such as city councils and school boards. They have very limited powers and authority, as set by state and federal lawmakers, or the Constitution.

Many elected lawmakers serve term after term, constituting a political class. This squarely fits the definition of an oligarchy as the rule by a few over the many. Of course, this ignores the largely hidden and unofficial powers of the wealthy and large corporations, who effectively determine, or at least powerfully influence, the boundaries of what laws and policies the elected lawmakers will even consider. Thus, the term *plutocracy*, rule by the wealthy, may also fit.

However, constantly referring to what are commonly called "developed democracies" as "elective oligarchies" would come off as strident and frankly confusing ("is he referring to countries with token elections like North Korea?"). Since this book is about competing concepts of *democracy*, for the remainder of this book, when I am referring to existing electoral systems of selecting rulers, I will generally use some term that makes this clear, such as "electoral governments". However, when I am quoting or paraphrasing *others* who have written about such elective systems by using the word *democracies*, I will let the word stand, rather than constantly dispute their terminology.

Note

1 While I wish I could restore the word *democracy* to its original definition, the effective meaning of common words is fundamentally determined by those who read or hear the words based on their years of experience and culture, rather than by the writer or speaker (and here I am disputing Humpty Dumpty in *Alice Through the Looking Glass*, who tells Alice that words can mean whatever we choose them to mean).

2

THE HOPES AND CLAIMS OF DEMOCRACY AND ELECTIONS

Optimistic and Minimalist Views of Democracy

Over the centuries, the meaning of the word *democracy* has undergone a fundamental transformation. The Founders and Framers of the American experiment were, by and large, opponents of democracy, equating it to chaos and "mob rule". They were forming a *republic*, modeled on Ancient Rome, which nominally derived its authority from a segment of the population, but was distinctly not about democratic "self-rule", as in Athens. James Madison wrote in the *Federalist Paper No. 10*: "Democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and have in general been as short in their lives as they have been violent in their deaths" (Madison 1787b).

Eventually, the term "democracy" changed what it had meant for thousands of years. The word was redefined to refer to electoral systems, which had originally been adopted as a defense *against* democracy. Rather than using it as a derogatory term, elected rulers started using it as a positive ideal. Some historians credit the presidential campaigns of Andrew Jackson for the rehabilitation of the word, while others trace it back to Thomas Jefferson's Democratic-Republican Party founded near the end of the eighteenth century. By 1835, when Alexis de Tocqueville published his acclaimed book, *Democracy in America*, the word had completed its transformation.

Walter Lippmann, the twentieth-century writer and political observer, noted that

> The American people came to believe that their Constitution was a democratic instrument … It is a fair guess that if everyone had always regarded

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> the Constitution as did the authors of it, the Constitution would have been violently overthrown, because loyalty to the constitution and loyalty to democracy would have seemed incompatible.
>
> *(Lippmann [1921] 2018, 283)*

A leading twentieth-century political scientist, Robert Dahl, used the term *polyarchy* to describe the system of electoral government commonly referred to as "representative democracy". Dahl noted that no real-world governments were *actually* democracies. Unlike monarchies or traditional oligarchies, in which family lineage determines who should rule, polyarchies have multiple competing alliances of elites contending for oligarchic power. Recognizing that elections revolve around subsets of elites competing for the right to govern, Dahl believed there were various cultural and institutional prerequisites for a functioning polyarchy, such as an independent press, freedom to form political parties, and a near-universal adult franchise. A polyarchy may be placed somewhere between democracy (rule by the people) and an authoritarian oligarchy (rule by the few).

Dahl set out a more demanding set of criteria to constitute an actual democracy. Citizens would need equal rights and equal opportunities to influence the public agenda. They would need to have information, time and other resources necessary to form enlightened opinions and form policy preferences. They would need equally weighted power. In particular, the necessity for an entire citizenry to be well-informed makes achieving this vision of democracy by means of election a Utopian goal, rather than a possible reality. Nevertheless, Dahl believed existing polyarchies might be judged as either more, or less democratic.

However, these distinctions between *polyarchy*, *republic*, and *democracy* are generally only recognized within academia. In common parlance, polyarchy is unknown, while the republic of Madison has essentially been rebranded as a *representative democracy*. The word "democracy" among ordinary people and politicians is now a catch-all term that is underpinned by different, and perhaps mutually exclusive, ideals. Free elections, political equality, the rule of law, freedom, majority rule, and the prevention of tyranny are some of the commonly understood ideals of democracy.

The hope of electoral democracy can be grounded in at least two distinctly different claims—one optimistic and one minimalist. In brief, the optimistic claim is that by voting for preferred candidates, the population can steer the ship of state in their preferred direction. It is forward-looking. The minimalist view is that at least when things go badly, voters can throw the bums out.

The optimistic claim is grounded in the notion that the people know their own interests best, and therefore democracy allows for optimal decision-making by a society. Utilitarian philosophers like Jeremy Bentham argued in the eighteenth century that each person was the best judge of their own self-interest. Setting

aside concerns of individual self-delusion or circumstances that foster error, extrapolation of an individual's ability to judge self-interest to society as a whole is still complicated. Since individual interests vary and are often in conflict, it is not certain that "the people" can also judge their collective self-interest. Yet the notion that everyday people (as opposed to powerful elites) are the better judges of their own interests seems reasonable as a general rule. Each individual does have some unique knowledge about what makes them happy, but perhaps more importantly, each individual, and the people collectively, are unlikely to intentionally work *against* their own interests. Even if people make mistakes in judging their own best interests, at least they will sincerely *seek* to promote them, and won't have corrupting hidden agendas. Such corruption is nearly inevitable when an oligarchic elite substitutes its judgment for the people's.

When we overlay an electoral scheme on this optimistic view of democracy, the hope is that voters, knowing their own preferences, will judge the candidates by this measure and elect candidates who most closely match their policy preferences. But careful examination of actual voter behavior refutes this optimistic view of elections. In his book *Follow the Leader? How Voters Respond to Politicians' Policies and Performance*, Gabriel Lenz summarizes his research, indicating that

> Voters don't choose between politicians based on policy stances; rather, voters appear to adopt the policies that their favorite politicians prefer. Moreover, voters seem to follow rather blindly, adopting a particular politician's specific policies even when they know little or nothing of that politician's overall ideology.
>
> *(Lenz 2012, 3)*

As an example, Trump supporters chanting "build the wall" at a campaign rally in New Hampshire almost certainly took up their candidate's policy opinion, rather than having a policy preference about the Mexican border (2,000 miles away) first and then seeking out a candidate who had such a position. The optimistic view also requires that voters know the policy positions of both incumbents and challengers on myriad issues and have given enough thought to have formed distinct preferences of their own. In Part II of this book, I will examine the interplay between candidates, partisan supporters, and policies, showing why this positive democratic vision, when translated through elections, is a mirage.

"Throw the Bums Out"—The Minimalist View of Democracy

The minimalist, or perhaps pessimistic, argument for electoral democracy is agnostic about the first optimistic claim (that people are the best judges of their own interests, and will use an election system to elect candidates that match

their preferences), but asserts that at least giving people the ability to replace the current ruling elite with a different ruling elite is a powerful defense against tyranny. In this view, democracy is about the power to throw the current bums out, and little more. This concept of democracy is more widely held than generally acknowledged (even by those holding it) because the shibboleths like "self-rule" will still be piously mouthed.

The celebrated American philosopher, John Dewey, described Lippmann's book, *Public Opinion* (Lippmann [1921] 2018) as possibly the most effective indictment of existing democracy ever penned. Lippmann argued that real democracy was dependent on the general public being nearly omniscient and omnicompetent, which was impossible. He pointed out that most citizens would not take a keen interest in policy, study the facts, read reports and carefully monitor their representatives' daily activities. The media critic, Eric Alterman, summarized Lippmann's views, saying he compared the average citizen to a deaf spectator in the back row of a sports stadium. "He does not know what is happening, why it is happening, what ought to happen; he lives in a world which he cannot see, does not understand and is unable to direct" (Lippmann quoted by Alterman, 2008). Thus, it fell to the media and the elite to "manufacture consent".

Voters may not know what particular candidates will actually do in the future if elected, nor know what policies would be optimal, but, so the thinking goes, they can vote retrospectively and remove the current crop of politicians if things have gone badly lately. This has been compared to driving a car while only looking in the rear-view mirror, taking note of what carnage your car is leaving in its wake.

The American experience of democracy through elections clearly comes up short of the "optimistic" hope, but with a solid incumbent reelection rate typically above 90 percent, there isn't any evidence that it satisfies the minimalist "throw the bums out" vision in most elections either. The one scenario where there is evidence of this dynamic being in play is the election of chief executives. Political science research has proved beyond any doubt that vanishingly few voters have a good grasp of the vast array of policy issues, have been able to monitor the incumbents' performance on these countless issues, understand the proposals of the incumbents' competitors, or have even formed opinions one way or the other on which policies would be better. The one thing voters presumably can evaluate is whether their personal circumstances, or their community's, have recently gotten better or worse.

In their book *Democracy for Realists: Why Elections Do Not Produce Responsive Government*, Christopher Achen of Princeton University and Larry Bartels of Vanderbilt University examined the relationship between growth or decline in disposable income per capita during the preceding immediate period and the election prospects of incumbent party in national elections through much of the 20th and early 21st century in the United States and various other countries (Achen and Bartels 2017). They confirmed that there is a definite correlation.

While this broad-brush analysis does not affect all voters (since many have a persistent partisan favoritism), enough voters are swayed by what they call this "myopic" view to throw elections one way or the other. It is not clear how much influence incumbent presidents actually have over the typical ups and downs of business cycles. It is also not clear whether policies that may result in short-term pain or benefit, compared to long-term impact, should be weighed more heavily.

Yet there is an argument to be made that the threat of being thrown out of office by vindictive voters may induce politicians to do all they can to assure positive economic outcomes in the period immediately preceding the election (and for parties in opposition to try and tank the economy, knowing the dominant party will take the blame).

As an analogy, imagine that the optimal course for the ship of state is due east. If one team of partisan politicians steers off to the northeast, the voters might remove that team and replace it with one that steers back to the southeast, resulting in a zig-zagging course in the desired direction. But instead, as we will see, the course changes are much more chaotic. Depending on the politicians offered on the ballot, emotional triggers, and countless unknown factors, one team may head due north while their replacements head southwest, making no progress at all along the optimal easterly route.

Achen and Bartels did an analysis of the impact of the international "Great Depression" of the 1930s. They looked at both the real GDP per capita and government elections of eight major countries, finding that:

> Around the world, electoral reactions to the Depression produced momentous realignments of established party systems in a bewildering variety of configurations. Incumbent governments were deposed with impressive consistency during the worst days of the Depression, regardless of their ideologies. And new incumbents who presided over robust economic recoveries [not of their doing] were rewarded with long runs in office—again, regardless of ideologies
>
> *(Achen and Bartels 2017, 201–202).*

So, throwing the bums out in the United States led to replacing the Republican President Herbert Hoover with the Democrat Franklin Roosevelt, while in Germany the same "throw the bums out" dynamic replaced a center-left government (akin to Roosevelt) with Adolf Hitler (far to the right of Hoover).

Achen and Bartels also report that factors for which politicians cannot reasonably be blamed can have a similar effect on reelection prospects. In one interesting example, they point to a spate of shark attacks on swimmers at New Jersey beaches in 1916, and the apparent effect on that year's vote totals in President Wilson's reelection. They compared Wilson's level of support in 1912 and 1916 in waterfront beach counties, where the local tourism-dependent economy

had suffered, with inland New Jersey counties, which had seen no impact from the more distant shark attacks. They found a substantial diminution in Wilson's vote percentages in counties that had experienced the shark attacks.

If your economic (or shark) situation gets worse, your emotional instincts steer you to vote the incumbents out. Voter anxiety or elation resulting from matters that politicians have no impact on at all decides elections all the time. The authors write, "Politics is full of complexities and uncertainties, even for those who can devote full time to it. The voters, not knowing what the best policies are, content themselves with asking at election time whether events have gone well or badly lately. Then they vote that myopic judgment" (Achen and Bartels 2017, 211).

Imagine a scenario in which the dominant incumbent party was pursuing the objectively best possible policy to deal with some crisis. The voters, having minimal information or policy awareness, cannot know this is the case. Further, imagine that the opposition party did everything in its power to sabotage and undercut those beneficial policies. If the crisis was too powerful to fend off or the sabotage worked, the "throw the bums out" minimalist dynamic would likely result in replacing the beneficial policies with worse ones.

About Voter Participation

Election participation rates in the United States are far lower than in most other developed democracies. Partisanship and fear prompted a spike in turnout in recent federal elections, but typically fewer than half of eligible voters turn out for most elections, with municipal elections often having turnout below 20 percent, and even dropping into single digits.

Collective political activity of all sorts has been in decline for decades. In their book *Downsizing Democracy: How America Sidelined Its Citizens and Privatized Its Public*, Matthew Crenson and Benjamin Ginsberg make the argument that mass mobilization of citizens through politics (whether voting or street demonstrations) has been giving way to special interest professionalism, and the management of mailing lists (and today, email lists and social media) (Ginsberg and Crenson 2002). They argue that a heavy reliance on lawyers for litigation, lobbying of regulatory agencies and legislators, etc., has reduced the role of average citizens to symbolic supporters on online petitions, or sources of funding for these professionally-run interest groups. Some citizens still comment from the sidelines through blogs and letters to the editor, but real politics is the realm of professionals. Citizens are essentially encouraged to contribute money, cheer or jeer the activities of the professionals, but keep out of the way.

What's more, with few exceptions, membership in political parties in developed democracies has also been declining for decades. In Britain, membership in any political party dropped from 20 percent in 1950 to around 8 percent by

1970 and just 1 percent today" (*The Economist* 2014). Low voter participation is a symptom of a much bigger issue, and the solution is not to simply drag more people to the polls.

Voting as the primary form of participation can be described as "feeble", and does not manifest the essential civic character of democracy. Democracy requires the sense of a society-wide common project, using give-and-take to forge a path for the community as a whole, which includes the needs of the minorities within it. Participation confined to voting and election campaigns is more akin to a mobilization of a symbolic volunteer army to defeat or even destroy the "other side".

Partisan Polarization

Periods of government gridlock and partisan "bickering" have been regular components of politics. Each nation has its own unique variant, but the dynamic is extremely common. In the United States, it is standard now to describe this polarization with a "red state/blue state" metaphor. Indeed, it is true that most politicians and political partisans have sorted themselves via the Internet and choice of media news sources into camps of like-minded adherents. They hear and see a constant stream of corroborating information that reinforces their existing biases and world views. Here I will be focusing on the United States, but this dynamic is playing out around the world.

Partisanship has shifted in recent decades, primarily in terms of negative attitudes toward the other party, more than support for one's preferred party. Even before the rise of the Trump phenomenon, political scientists Alan Abramowitz and Steven Webster observed in a 2015 essay entitled "The Only Thing We Have to Fear Is the Other Party",

> The rise of negative partisanship in the American electorate appears to be part of a vicious cycle of mutually reinforcing elite and mass behavior. Confrontational politics in Washington and in many state capitols is causing Democratic and Republican voters to develop increasingly negative views of the opposing party and to vote along party lines from the top of the ticket to the bottom. Negative views of the opposing party among voters, in turn, encourage political elites to adopt a confrontational approach to governing. Given these mutually reinforcing patterns of elite and mass behavior, negative partisanship is likely to remain an important feature of American politics for the foreseeable future.
>
> *(Abramowitz and Webster 2015)*

Over the decade-plus since that essay appeared, the trend these researchers noted has gotten even more extreme.

While a divergence of partisan candidate and media preferences is real, the sharp political divide of the red state/blue state shorthand is far too simplistic. The extreme polarization has been confirmed among elected officials of different parties by a stringent scientific analysis of Congressional voting behavior. There appears to be a reinforcing feedback loop between elected officials and partisan activists who make up a relatively small segment of the general public, but can be decisive in party primaries in which even fewer voters participate. As Josh Pacewicz, assistant professor of sociology and urban studies at Brown University, observed in a 2016 interview: "That American politics has been polarized more by changes among party activists than changes among voters is fairly well established in political science" (Kiley 2016).

Two researchers at Stanford and Princeton, Shanto Iyengar and Sean Westwood, showed through various experiments that members of the public who identify with either the Democratic or Republican Party sort themselves into distinct social groups. Interestingly, this in-group–out-group division is independent of policy preferences. Partisans are inclined on both a conscious and unconscious level to discriminate against people seen to be part of the opposing party, even on purely non-political matters. While driven by candidate campaigns and hyper-partisan activists, this polarization seeps out into the wider public. In a 2014 article published in the *American Journal of Political Science*, the researchers wrote,

> The mass public may offer centrist preferences, but they certainly sense that 'the other side' is an out-group. While Americans are inclined to 'hedge' expressions of overt animosity toward racial minorities, immigrants, gays, or other marginalized groups, they enthusiastically voice hostility for the out-party and its supporters.
>
> *(Iyengar and Westwood 2014)*

Stunningly, their rigorous psychology experiments showed that "the level of partisan animus in the American public exceeds racial hostility." They analyze this finding by stating:

> Unlike race, gender and other social divides where group-related attitudes and behaviors are constrained by social norms … there are no corresponding pressures to temper disapproval of political opponents. If anything, the rhetoric and actions of political leaders demonstrate that hostility directed at the opposition is acceptable, even appropriate. Partisans therefore feel free to express animus and engage in discriminatory behavior toward opposing partisans.
>
> *(Iyengar and Westwood 2014)*

The elections during the 2020s that occurred after that particular study was done have only increased the social acceptability of personal attacks on Democrats by Republicans and on Republicans by Democrats. To some extent, this is a "chicken or egg" question—does partisan animosity among citizens simply reflect fundamentally different world views, values, or psychology, which prompts politicians to respond in kind, or do the campaign strategies and attack ads of candidates and associated pundits model and generate such animosity? In a reinforcing feedback loop, candidates encourage citizens to be suspicious of the motives and even morals of candidates and supporters of the other party, and then cater to that suspicion to win votes in their party primaries.

But this red/blue polarization exaggerates divisions within the general population as far as *policy* is concerned, except for a handful of signature issues that serve to define in-group membership. Even purveyors of this color cliché readily admit the obvious fact that all states have a combination of "red" and "blue", conservative and liberal leaning citizens, and no state is fully red or blue. This self-evident observation only scratches the surface of the simplification in the red/blue state description. Researchers from the University of Pennsylvania and Brigham Young University conducted a study that looked at what policy polarization actually exists among residents of red and blue states. Using Utah as the archetypal red state and New York as the blue, they found that 77 percent of voters in the two states generally agree on social policy and 69 percent have common ground on economic issues. Indeed, any one voter from Utah has a 46 percent chance of scoring more liberal than a random voter selected from New York on economic issues and a 51 percent chance of being more liberal on social issues. So if the voters in red states and blue states are generally pretty similar, why are their elected officials so polarized? The researchers suggest "this points to the key role played by electoral institutions", such as primaries and winner-take-all plurality election rules. The election process magnifies slight differences in public preferences into extreme electoral outcomes (quoted in Collins 2011).

Even when people have divergent policy preferences, those preferences aren't necessarily set in stone. In one study published in *The Journal of Politics* in 2025, researchers asked 500 people to write persuasive arguments for their view on three currently hot topic issues: immigration, climate change, and transgender rights. Over three thousand "receivers" who held a different view were presented with one of these randomly selected persuasion arguments, and a surprising 30 percent changed their opinion on the issue. These were not professionally crafted persuasion pieces, just the arguments of ordinary people. The lead researcher, Martin Naunov, noted that

> this shows while there isn't a cascade of attitude change, it's also not the hopelessly calcified political landscape we often hear about. Yes, Americans

> are increasingly polarized, but at least among ordinary citizens, there's still a fair amount of openness to competing political viewpoints.
>
> *(Kulke 2025)*

Many ordinary people can change their policy preferences, but politicians simply aren't very representative of the population. The Rasmussen Reports polling firm found in 2010 that "76 percent of voters generally trust the American people more than political leaders on important national issues" (Rasmussen Poll 2010). While responses to such survey questions fluctuate from year to year, Rasmussen Reports concludes that over time, 65 percent of Americans "tend to trust the wisdom of the crowd more than their political leaders and are skeptical of both big government and big business". What's more, "a majority of Republicans, Democrats and unaffiliated voters share those views". The other end of the spectrum of opinion—those who support the "political class"—according to Rasmussen, make up a mere 4 percent. The rest are somewhere in between these extremes. In 2023, the Rasmussen survey on the same question found 70 percent still held this view (Rasmussen 2023), despite Donald Trump's oft-repeated exhortation to his followers that "only I can fix it".

This provides a tantalizing hint that the standard right–left, Republican–Democrat, red–blue spectrum that the political parties and the media focus on may mask another, more significant axis of concern about a democracy deficit and elite power. Whether a conservative, a moderate, a liberal, or a progressive, most Americans, whether politically active or not, look at Congress and recognize that something is fundamentally wrong with how our supposed democracy is working.

The Un-Representative Congress

Elected politicians do not *only* have a heightened level of polarization compared to the average citizen. They are unlike their constituents across a vast array of demographic, ideological, and even psychological dimensions. I will be using the US Congress as my primary example, because I am familiar with it, but most of what appears below could be applied to elected legislatures around the world.

As we will examine in later chapters, there is a common-sense view that a representative body should be like the population represented. John Adams, who would later become the second President of the United States, composed an essay in 1776 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). The famous proposition of equality, expressed as a set of prepositions in Abraham Lincoln's Gettysburg Address—"government *of* the people, *by* the people, *for* the people"—encapsulates the true spirit of democracy.[1]

Political scientists describe a demographic match between the legislature and the population as being "descriptively representative". Elected members of Congress, as a whole, are quite unlike the population, and hardly an "exact portrait of the people at large".

A 2011 analysis by the *Washington Post* found that over a twenty-five-year period, the inflation-adjusted median net worth of Americans declined slightly, while the median net worth of members of the House of Representatives increased by 259 percent. According to an analysis by the Center for Responsive Politics, by 2012 a majority of the members of Congress were millionaires (Choma 2014). Typically, about half of the ten richest members are Republicans and half are Democrats. The median wealth of Democratic and Republican members of Congress is virtually identical. Nicholas Carnes of Duke University examined the class background of members of Congress during the twentieth century and the impact on voting behavior. He concluded:

> One of the defining features of America's political system is that men and women from the working class seldom occupy important political offices. If legislators' class backgrounds shape their political outlooks in some systematic way, the numerical underrepresentation of working-class Americans could have dramatic effects on who wins and who loses in the policymaking process. The evidence presented in this paper suggests that this is the case.
>
> *(Carnes 2012)*

In 2023, women still made up only 29 percent of the House and 25 percent of the Senate (the most ever), though both declined slightly by 2025. The percentage of African Americans in the Senate peaked at 3 percent. The US House of Representatives also under-represents most minorities (other than rich white males, who are over-represented by a huge factor), though less so than the Senate. This is thanks to gerrymandered "majority-minority" *de facto* racial districts. Members of Congress come overwhelmingly from legal, business and finance backgrounds. Congress is a strikingly homogeneous group, compared to the diversity of the people it purportedly represents. As Peter Stone wrote in the introduction to the new re-release of Callenbach and Phillips's book, *A Citizens Legislature*, "Congressional elections, notoriously, are marvelously good at electing wealthy white men, mostly lawyers, and not very good at electing anyone else" (Stone 2008, 11).

Some might argue I am making too much of descriptive unrepresentativeness. Whether selecting a dentist, or a lawyer for yourself, or a politician, you want a skilled agent who will work on your behalf, regardless of demographic traits. But there is no evidence that elections reliably pick uniquely skilled agents working on our behalf. Psychologist Steve Taylor of Leeds Beckett University notes that:

> There's a great deal of research showing that people with negative personality traits, such as narcissism, ruthlessness, amorality or a lack of empathy

> and conscience, are attracted to high-status roles, including politics. In a representative democracy, therefore, the people who put themselves forward as representatives include a sizeable proportion of people with disordered personalities—people who crave power because of their malevolent traits. And the most disordered and malevolent personalities—the most ruthless and amoral—tend to rise to the highest positions in any political party, and in any government.
>
> *(Taylor 2023)*

Political scientist Kevin O'Leary argues in his book *Saving Democracy: A Plan for Real Representation in America*, that elected politicians, at least on a national level, and in the larger states, constitute a breed apart—a virtual elected royalty, complete with fawning personal staffs.

> Within their world, legislators are the center of attention, the star attraction, the king or queen of their domain. It is not so much that national legislators are economically and socially part of the upper strata, though many are, given the cost of winning a seat in Congress. What is more important is the psychological distance that gradually grows between them and their constituents. True, successful politicians develop what Richard Fenno calls a "home style" for dealing with constituents back in the district. But this technique masks the psychological distance that naturally grows when elected officials take up residence in Washington, DC, or the state capitol and become players in the capitol scene.
>
> *(O'Leary 2006, 19)*

Just as members of Congress become alienated from their constituents, constituents become alienated from Congress. Congress suffers from abysmally low approval ratings, occasionally dipping into the single-digit percentages. When Americans are asked about their confidence in various institutions, Congress often ranks at the absolute bottom, below every other institution listed by the pollsters. Interestingly, the distrust is mutual.

The Pew Center conducted a survey of members of Congress in 1998. When asked, "Do Americans know enough about issues to form wise opinions about what should be done?" just 31 percent of members of Congress responding answered "yes" (Pew Research Center 1998). Interestingly, this distrust of American decision-making ability is even more extreme at the level of local government. A survey of elected and appointed local officials conducted by researchers at The Center for Local, State, and Urban Policy at the University of Michigan found that while sixty-four percent of Michigan officials said that people should be encouraged to give input,

> Few [of the legislators surveyed] see deeper roles for citizens, whether by identifying policy options from which officials would choose (7 percent), by

> recommending specific policy choices (9 percent), or actually making decisions on behalf of the local government (1 percent).
>
> *(Ivacko and Horner 2013)*

It seems likely that this has a lot to do with an assessment of public ignorance, rather than inherent incompetence. Politicians primarily come in contact with citizens who either have not studied the issues or are motivated activists with extreme views. I will dig into the issue of public ignorance in subsequent chapters, showing how citizens' assemblies have repeatedly overcome that default problem.

As a general rule, Americans do not think Congress cares about the people or is responsive to them. A 2013 Rasmussen poll found that just 16 percent of likely voters believed most members of Congress cared what their constituents thought (Rasmussen Poll 2013a). This likely *overstates* the level of public confidence, since non-voters were not included in the survey, and they may have an even more negative view. Yet, efforts by political scientists to quantify how responsive elected legislatures are to the population by comparing public opinion survey data to legislative action have found some correlation—that is, legislatures are more likely to pass laws that most people favor, than laws that most people oppose. However, correlation does *not* indicate causation. These studies could only examine the coherence of public opinion and legislative action on those few issues that were raised to a sufficient level of prominence that they made it onto polling organizations' surveys. The countless "under the radar" issues that legislatures deal with couldn't be analyzed through such studies.

Martin Gilens examined the same polling data and found that this apparent responsiveness masks, rather than reveals, the full story. Gilens compared the "responsiveness" of Congress to policy preferences of high-income people (top ten percent), with Congress's "responsiveness" to the preferences of the poor (bottom ten percent), specifically for those policies where the wealthy and poor had significantly different preferences. He found a fairly strong correlation between Congressional action with the top income preferences, but a "complete lack of responsiveness to the policy preferences of the poor" (Gilens 2005). Of course, the poor may have different preferences than most people, so he then compared Congressional "responsiveness" to the wealthy with "responsiveness" to middle-income people. Gilens found that "median income Americans fare little better than the poor when their policy preferences diverge from those of the well-off".

Since Gilens published his research, some other academics have called his methods, analysis and conclusions into question. In my view, the entire issue of politician "responsiveness" may be spurious. I put the word "responsiveness" in quotes because this research didn't establish whether the correlation between Congressional action and the policy preferences of the wealthy is the result of

Congress *responding* to the wealthy (perhaps due to campaign contributions), or merely reflects the fact that nearly all members of Congress are themselves in the top 10 percent, and naturally share the preferences of their economic class. It may be that politicians reward campaign donors, but since most actions of politicians are completely invisible to their nominal constituents, as a ruling elite, they are generally free to do whatever they (or their donors) wish.

There is also a common opinion in the US that many, or most, elected officials are corrupt, or are at least looking out for "special interests" rather than the general public. Over the past decades, the Rasmussen polls have found that typically 12 percent of respondents thought members of Congress were sincerely interested in helping people, while 76 percent said members of Congress were more interested in their own careers. The popular rating of the job Congress is doing peaked in 2023 when just over one-fourth of respondents said it was good or excellent (Rasmussen poll 2023). However, typically around 40 percent said that *most* members of Congress (not just a few bad apples) were corrupt, and only one-third disagreed with this view. These attitudes are hardly new.

Since 1952, the University of Michigan's Center for Political Studies has conducted an opinion survey of the American public every two years. One of their standard questions has been "Would you say the government is pretty much run by a few big interests looking out for themselves or that it is run for the benefit of all the people?" Substantial majorities (often more than two-thirds) believe government is run by "a few big interests". For decades, this has been the finding in every survey, except the one conducted following the September 11, 2001, terrorist attacks, when forty-eight percent held this negative view. As Professor John Gastil wrote in the introduction to his book *By Popular Demand*, "There are two fundamental problems in American politics. The first is that most Americans do not believe that elected officials represent their interests. The second is that they are correct" (Gastil 2000, 1).

While distrust of elected politicians is particularly rampant in the United States, it is not a uniquely American complaint. In an article entitled "What's gone wrong with democracy?", the British magazine *The Economist* reported that "A survey of seven European countries in 2012 found that more than half of voters 'had no trust in government' whatsoever" (The Economist 2014).

The old adage that we "get the government we deserve" is a blame-the-victim rationalization that disguises the inherent failings of our electoral system. Our elected representative bodies are extremely *un*-representative. It is stunning just how unlike the American people Congress is. Though Adams's 1776 definition of "the people" did not include women, indigenous people, slaves or non-property-owning white men, his likeness principle of representation is compelling. Yet, despite progress, after more than 230 years, working-class people, women, racial minorities—indeed, as I stated above, almost all demographic groups other than old, wealthy, white men—are dramatically under-represented in our legislatures.

Presidential and Other Executive Elections

Selecting a chief executive, such as a president, governor, or mayor, is a very different task from electing a representative legislative body. Simple random selection would be a mistake. Lotteries are appropriate for selecting a group rather than an individual (unless the pool has first been narrowed such that any one of them would be good). A chief executive needs specific skills. It is also impossible for a single person to be descriptively representative of a diverse population, so the analysis in the previous section dealing with a legislature cannot apply.

A chief executive is thought of as being either an agent working on behalf of the population through careful administration of the laws adopted by the legislative branch or as a *leader* who sets a path, guiding the legislative branch and the population as a whole. The Framers of the American Constitution intended the legislature to be the principal center of federal power, with a primarily administrative president, who could also respond to actual emergencies. Over time, however, more and more power has shifted to the executive. Many political observers have written of the rise of an "imperial" presidency, and during the presidency of Franklin Roosevelt and again of Donald Trump, even the risk of an authoritarian one. Vesting both administrative *and* policy powers in a chief executive is a holdover from non-democratic governments and monarchies of the past, and is not appropriate for a true democracy.

One vision of modern political leadership involves policy promotion and inspiration to get the group, or even a whole society, working for a common goal. Competitive elections for offices such as the presidency limit the effectiveness of leaders as unifiers in crises or times of national disaster. Unlike a symbolic head of state, like a modern figurehead king or queen, a policy-drenched elected executive inevitably has opponents who may seek out opportunities to undercut the office holder. It can be argued that following the terrorist attacks of September 11, 2001 that President George Bush successfully played that unifier role. However, he soon took advantage of the role to enact policy initiatives unrelated to the attack, including the invasion of Iraq.

A sortition-based democracy would certainly still have many policy leaders seeking to gain public support for particular proposals—but they would not have power over people. One problem with elected leaders is that each is expected to lead on the full range of issues. Thus, an elected official who is leading in a positive direction on issue A may also be undercutting the public well-being by misleading on issue B. Rather than taking leaders as package deals for a whole host of policies, it would be better if society could recognize issue leaders à la carte.

Political leadership is an extremely misunderstood and convoluted phenomenon. It is a practice that has been culturally enshrined. But beyond custom, a readiness to embrace leadership, with its enabling and necessary correlate—*followership*—may be hard-wired into us by evolution. Followership is one of our pre-human survival strategies for handling the problem of group coordination

(Van Vugt 2006). Members of a pre-language hominid band might have had different ideas about whether it would be better to look for ripe fruits by heading into the valley now, or up on the hillside. What mattered *more* was that they didn't get separated such that a member got picked off by some predator. Which decision is made often matters less than whether the group acts together. Literally following a leader could have solved that problem by facilitating coordinated action. Followership also reduced the overall cognitive burden on the community.

The development of language has allowed alternative means of coordination, such as *teaming* (non-hierarchical teamwork) that is not based on the stereotypical followership–leadership dynamic, but instead on synergistically pooling diverse knowledge and skills. In the modern world, the negative effects of hierarchical leadership and followership often outweigh the positive. Leadership's benefits are often dramatically overrated due to a hindsight *halo effect*. Renowned professor of business management Phil Rosenzweig examined this in his book *The Halo Effect: How Managers Let Themselves Be Deceived* (Rosenzweig 2008). When things go well for an organization or government, we tend to credit the "leader", rather than the actions of many others and the countless random factors that the leader had no control over, or even awareness of. Likewise, when things go badly, it is satisfying to personify the failings as those of a bad leader. We have a psychological proclivity for seeing outcomes as being the result of specific actions and intentions—what is called *narrative bias*. Straight line cause and effect presumptions are satisfying—even comforting. It is uncomfortable to realize how much of what ends up happening is the result of a vast array of unknowable chance events. As the political scientist Murray Edelman observed in his incisive book, *Constructing the Political Spectacle*, "Leaders are ready symbols of good and evil, while historical trends, social conditions, relations of production, and modes of discourse are not. Leaders become objectifications of whatever worries or pleases observers of the political scene because it is easy to identify with them, support or oppose them, love or hate them" (Edelman 1988, 39).

Edelman goes on to argue that the vilification and focus on "bad" leaders serve to reinforce the underlying structural problems of the society.

> To personify failure in a conspicuous official is to minimize the chance that public restiveness or protest will force institutional change. Individuals are expendable so that established power relationships and modes of allocating resources can continue with minimal challenge in spite of unpopular policies.
>
> *(Edelman 1988, 42–43)*

The quality of leadership, like our ability to judge good or bad leaders, is suspect. However, in any group of people, when a communal difficulty arises, it is common for some people to take on, or be thrust into, leadership roles. This

will doubtless be true in a sortition-based democracy as well, just as 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, narcissistic, or feed an individual's hunger for status or domination over others. There is no evidence that people who seek election as political leaders make any better leaders for groups than people who don't seek election. Indeed, harking back to Steve Taylor's observations earlier in this chapter, there is some logic to the witticism that anyone who seeks power over others through political leadership should automatically be disqualified.

I subscribe to the social construct analysis of political leadership advanced by Murray Edelman. Rather than viewing it as a noble or inherently positive thing for democracy, he argued that "belief in leadership is a catalyst of conformity and obedience" (Edelman 1988, 37). A popular political leader with savvy public relations skills can be an existential threat to the survival of a true democracy. The psychiatrist and Former Foreign Secretary of the UK, David Owen, had a close-up, insider's view of political leadership, and argues that many "great men" in power succumb to what he calls *hubris syndrome*, leading to harmful narcissistic behavior. He even proposed that it become a medically recognized and diagnosable psychiatric condition (Owen 2012).

As Rosenzweig argues, narratives about the accomplishments of "great leaders" should be treated with extreme skepticism. As one example, Winston Churchill is facilely remembered today as having been a great leader. But that halo is tarnished when the fact is recalled that his openly racist views of the British Empire prompted him in 1943 to order the diversion of grain supplies from starving Indian civilians to top up already well-stocked European stores, leading to the preventable deaths of approximately three million people. Edelman observed that

> Beliefs about success and failure are among the most arbitrary of political constructions and perhaps least likely to be recognized as arbitrary. The issue turns on which actions and which consequences are to be highlighted and which ignored, for every act brings a chain of consequences that help some people and hurt others. The acts that rationalize and perpetuate incumbent leadership are for the most part those that can readily be dramatized; they consist largely of defeats of foreign and domestic enemies and threats. Slow contributions to the well-being of large numbers of people are rarely the stuff upon which leadership is built, and gradual declines in such well-being are easily ignored as well.
>
> *(Edelman 1988, 43)*

Much of the criticism of elections in this book does indeed apply to the election of a chief executive as well as a legislature. However, the remedy is significantly different for the two branches. A successful democracy requires a chief executive who is fundamentally an honest, competent administrator, more akin to a recruited city manager than an elected mayor. There is a serious danger in using direct popular elections from among those few citizens who have the inflated ego, connections, access to money, and public relations skills to seek to elevate themselves to an exalted position. The fact that the citizens get to vote is not a failsafe. It is worth remembering that Hitler began his rise to power through free and fair elections. I will return briefly to the issue of selecting an executive in Part III of this book, but the bulk of our attention will be devoted to the selection of representative lawmakers.

Note

1 Lincoln did not coin this phrase. Variants of this phrase had been used by many orators, including abolitionist preacher Theodore Parker in the 1850s. Although it long pre-dates the Gettysburg Address, it is almost universally associated with Lincoln.

3

ELECTORAL IMPERATIVES

Election Campaigns

The cornerstone of existing "democracies" is supposed to be "free and fair elections". The actual ruling or governing is done by elected partisans and their appointees. This hierarchical specialization, in which an elite few govern, effectively excludes the public from any meaningful process of deliberation or policy decision-making. The role of the general public is, by and large, limited to the fleeting participation of voting for, or against, those who will govern them. The Enlightenment philosopher Jean Jacques Rousseau famously said the English people who got to elect members of parliament mistakenly believed themselves to be free, yet "as soon as the members are elected, the people is enslaved, it is nothing" (Rousseau [1762] 1997, 114).

Bernard Manin, author of *The Principles of Representative Democracy*, aptly referred to the restriction of political endeavor to elections alone as "audience democracy" (Manin 2002). This is the reality of electoral politics, even if the commercial media did not exacerbate the problem by reducing political news coverage to what some have called superficial "politainment". Even for that small minority who feel that they are deeply involved in grassroots politics, "participation" is generally limited to the trivial posting of lawn signs or distribution of brochures, with the crafting of the "message" (let alone the underlying policy) being left to the elites and professionals. Indeed, in many Congressional campaigns, even the candidates themselves are not involved in deciding on issues and message. This detail is often turned over to hired campaign consultants using focus groups, with the candidates merely retaining veto power. These campaign professionals recognize the marketing principle that during a campaign you can't really engage in deliberation or education.

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While most would agree that policymaking should be based on the complicated facts of reality, elections are based on fiction. The renowned historian and author Yuval Noah Harari observes:

> People tend to prefer simple explanations over complicated ones … The truth can be painful, unattractive. We often don't want to know the truth about ourselves [as individuals or] at the level of entire nations. You know, each nation has its own dark episodes, its own skeletons or cemeteries in the closet that people don't want to know about. A politician that in an election campaign would just tell people the truth, the whole truth, and nothing but the truth, is unlikely to win many votes.
>
> *(Harari 2024, 17–25)*

As a candidate myself, I learned that the winning strategy is to say what voters want to hear—things that they already *feel* they know and agree with. Identifying and turning out supportive voters, while suppressing the turnout of other voters, completes the strategy. Electoral politics slides irresistibly toward the art (and now *science*, as I will discuss later) of finding the most effective emotional hot buttons and "wedge issues" to corral a plurality of voters, from the pool of those citizens who are still willing to vote. And this pool is a minority of adults in most elections in the US. It does no good to plead with, berate or cajole candidates to run upstanding issues-based campaigns. Candidates and their advisers recognize *that* as a recipe for defeat. As John Gastil notes, "The point here is that such behavior is not irrational, but rather an honest attempt by campaigns to tailor their messages to the reality of the American political environment". As voter alienation grows and participation declines, civic skills atrophy. "To put it mildly, the American electoral process does not appear to be a self-correcting system" (Gastil 2000, 67).

My home state of Vermont is small enough that most state legislative races are not dependent on TV, radio, or Internet media. But even in this grassroots door-to-door campaign environment, electoral politics is incredibly superficial. Campaigns have almost nothing to do with presenting thoughtful policy proposals nor marshaling superior arguments. I recall knocking on a door during one re-election campaign and having an older woman open it tentatively. I explained that I was her representative and was running for re-election. She squinted at me for a moment, and then said, "I recognize you, you're one of those singers!" At that time, I was a member of a local amateur *a cappella* group that performed doo-wop rock and roll. This woman had seen us doing a pass-the-hat performance in downtown Burlington and had enjoyed the show. We chatted briefly about her favorite early rock songs, but never discussed any politics. As I clambered down the steps from her porch, she eagerly promised to vote for me in the upcoming election.

Issues may play a role during a *primary* election within a political party. But even then, rather than policy issues, the dominant "issues" are frequently whether the candidate projects a positive image, seems self-confident, or is "electable". While Donald Trump's 2016 presidential primary campaign was anything but typical in many respects, the back seat given to substantive policy matters, while highlighting a few symbolic issues, *was* typical. In general elections, candidates often simply seek to present themselves in a favorable light, leaving a positive impression with voters.

When I would campaign for re-election, my goal was to show my smiling face at every door, with some stock phrase that indicated I was on the side of the voter against the establishment. If I asked what issues the voter was concerned about, I would generally get a hesitant stare or occasionally hear about some issue that the office I was seeking had no authority to deal with. Unlike many readers of this book, most citizens, and indeed most active voters, don't think much about politics or public policy at all, and don't have ready responses to such questions. Indeed, this is also a weakness of most public opinion surveys, which squeeze respondents into one of the available standard responses, based on their off-the-top-of-the-head "opinions". For decades, politicians knew that in most circumstances it is safer to ask for voters' opinions or spout platitudes than present any potentially controversial opinions of their own (which may alienate some voters). Most candidates wanted to be known as "the candidate who listens", regardless of whether the voters had anything to say at the moment.

In recent years, however, an alternative campaign strategy has come to the fore. More extreme candidates in a more polarized environment have stopped trying to appeal to the "median voter" altogether. Instead of seeking to avoid alienating voters, they discount wide swaths of the electorate and instead focus on animating their base with extremist rhetoric. Since most adults, especially moderates, don't vote in most elections, this "revving up the base" strategy often works through targeted turnout efforts.

My legislative district was a compact urban rental neighborhood within Burlington, Vermont. I could easily walk from one side of it to the other. Campaign techniques naturally change with scale, especially once a campaign becomes dependent on mass media and paid advertising. However, the fundamental shallowness of the campaigns remains the same. Once districts become too large for a candidate to knock on every door in order to create a personal impression, party labels become a dominant factor. Voters commonly state with pride that they "vote for the person, not the party". In reality, the sheer number of offices that are subject to election in the US means that very few voters know much of *anything* about *most* candidates, other than their party, gender and maybe ethnicity gleaned from their name.

Politics based on sortition rather than election could bring substantive policy deliberation to the fore. Certainly, not all residents would deliberate on all issues, but high-quality representative deliberation would occur among those citizens

tasked with making a particular decision. Since electoral advantage would no longer be the dominant force among decision makers, the incentive to seek out relative trivia to impugn the motives of opponents, which derives from the need to prepare for the next election, would be gone.

Setting the Agenda

A democracy must have more than merely a good means for making policy decisions (drafting proposals and adopting or rejecting them). It must also have a good means for setting an agenda—deciding which issues to tackle next. The people's *control* of the agenda—deciding which "problems" the government will tackle—is fundamental to democracy. Candidates in competitive election situations naturally gravitate to certain issues and ignore others. Likewise, the media have a built-in bias that both mirrors the politicians' biases (simply by covering the candidates' press conferences and social media blasts) and adds their own agenda items. These media-generated items are influenced by ratings and advertising pressures. And of course, powerful interests with large amounts of money can place their priority interests on the agenda as well (either the public agenda or the nearly invisible legislative agenda).

Decisions about what problems *don't* get onto the public agenda are generally more grievous than the decisions about those few that *do*. As Murray Edelman explained in *Constructing the Political Spectacle*, "Perhaps the most powerful influence of news, talk, and writing about problems is the immunity from notice and criticism they grant to damaging conditions that are not on the list" (Edelman 1988, 14).

The powerful incentive for elected politicians and their supporters in an adversarial electoral system is to seek out agenda items that give opportunities for vilification of the opposition. Since it is generally more difficult to rile up voters around genuinely vital but nuanced or complicated policy issues, these crucial issues tend not to become the focus of "politics". Instead, the public is diverted with largely manufactured battles that are more suitable for sound-bites. This is not to suggest that Democrats and Republicans may not have sincere differences on matters of policy (as well as vast areas of silent agreement). But the "issues" that become part of the public awareness and debate, and on which elections may hinge, are frequently *manufactured* and quite minor in the grand scheme of things. The child-like simplicity of building a wall on the border with Mexico is merely a flagrant example of this general dynamic. Selecting issues that are based on the implied or stated "evils" of the *other* party is particularly beneficial and more useful for voter mobilization than proposing policies of one's own. Slogans are a step down from issues and are almost always intentionally vague. I half expect to see some candidate run with the self-referential slogan "Vote for me, the candidate whose slogan *means* something!"

The electoral system also encourages a tactical focus on knee-jerk "wedge issues" while intentionally ignoring complex long-term critical policy challenges. This tendency springs from the logic of the electoral system, where candidates seek to differentiate themselves with simple, emotional issues that do not require much explanation. The news media exacerbate this emphasis on easily digestible "news". Austrian Sociologist Manfred Prisching describes the symbiotic relationship as follows:

> Politicians know the rules for creating audience attentiveness, as media personnel know how to create a permanent stream of impressive "news". There is a common logic for both partners in this game. They cooperate in producing "symbolic politics", pseudo-events, political entertainment … [A] world of simulacra is produced. The fictitious world becomes the real world, and reality is dwarfed by the staged events.
>
> *(Prisching 2010, 200)*

The media focus on the electoral "horse race" and candidates' nosing ahead, or falling behind. Even outside world events are frequently squeezed into this frame, as helping or hurting particular candidates. This makes for an easier "story" than discussing the complexities that underlie issues. Will the rise in gas prices hurt the incumbent? Is the rise in unemployment good for the challenger? Media analysis of political speeches and campaign debates generally comes down to an evaluation of their performance quality. Stagecraft trumps content. Did the candidate come off as both likable and in charge?

While the media certainly focus on—and the public is most aware of—the partisan battles, in fact, much of what Congress does, or refrains from doing, is the result of bipartisan consensus. But this consensus is rarely the result of any deliberation. In many cases, this consensus is even more insidious than partisan gridlock. There are vast areas of policy in which there is virtually no deliberation and no significant difference between the two major parties. Whether the issue is funding military operations in other countries, extending the government's surveillance powers, or attending to the interests of Wall Street billionaires, this bipartisan consensus is rarely subject to significant debate in Congress. There will often be a few individual members who object (e.g. Sen. Bernie Sanders on the left and Sen. Rand Paul on the right), and the public might not agree, but as long as the leaders of Congress don't argue about a matter, it isn't deemed "newsworthy" and doesn't garner media attention nor thoughtful deliberation. Deliberation requires hearing and being open to novel and opposing points of view. The partisan divide, combined with a deep homogeneity of Congress, generally precludes any meaningful deliberation.

But there are actually two agendas. In addition to the set of issues selected for voter consumption during campaigns, there is another set of issues on which

Congress focuses its legislative effort. These are not necessarily "sexy" hot-button issues, but are still fundamentally driven by the electoral imperative. Lawrence Lessig, author of *Republic Lost*, which addresses the corruption of our campaign finance system, notes that Congress tends to seek out those issues that have the best prospect for generating a flow of campaign contributions (Lessig 2015). These are issues where lobbyists and big money interests have a financial stake.

Lessig gives numerous examples of this, such as the bank debit card "swipe" fee legislation, which he notes dominated the attention of Congress during the first several months of 2011. The issue of what percentage of each consumer transaction merchants should pay to banks when a consumer uses a debit card received more legislative time than the nation's unemployment problem, climate change, or the two wars the nation was fighting at the time. With banks (on one side) and merchants (on the other) funneling huge amounts of campaign money to try and influence Congress, the issue was tailor-made to fatten the campaign war chests of members. Unemployed workers, future Americans suffering the effects of global warming, and veterans simply couldn't compete in terms of campaign contributions.

The manner in which electoral politics establishes an agenda is extremely short-sighted and repugnant. Political scientists have long recognized that it is a mistake to assume that those issues that captivate politicians or journalists are the problems that actually matter most to the populace, or will have the greatest impact on their lives. Issues that the media and politicians obsess over are forced to the front of the public's attention by sheer repetition. Trump's wall was again an extreme example. But many issues that the general public might rather deal with, if allowed to set their own agenda, are routinely ignored. It is generally assumed that it is inevitable that elites will establish the public agenda, but the use of sortition opens the door to a new avenue. Just how this might work will be discussed in later chapters.

While issues are occasionally thrust upon legislatures by outside events (like a bridge collapse), much of what is dealt with (or ignored) is determined by an evaluation of whether raising the issue is electorally beneficial to one group of candidates or another. Construction lawyer Barry Lepatner explained to a reporter in a May 2014 interview why state politicians routinely underfund maintenance for bridges and other infrastructure. "Politicians do not think of fixing the underside of a bridge or fixing a road that's in trouble as a kind of political photo-op, or something they can get mileage on with campaign contributors" (Al Jazeera America News Archive 2014).

Ignoring serious issues is the norm. The Democrats and Republicans together paved the way for the financial crisis of 2008, as they did for the Savings and Loan crisis in the 1980s. Neither party could successfully blame the other (both being culpable), and thus these issues were not useful for campaigning. Raising

the issues prior to the impending crises would risk drawing attention to their own responsibility for laying the groundwork. Thus, the issues were expediently ignored. There were warnings, but the issues didn't have electoral "sex appeal". Then the financial disasters came to fruition, collectively costing Americans hundreds of billions or trillions of dollars (depending on exactly how that cost is measured).

As a third-party legislator, I and my fellow Progressive Party legislators in Vermont regularly ran into this barrier, preventing consideration of issues that both major parties wanted to ignore. Bills, once introduced, are sent to a committee, where they never receive a hearing. We were occasionally able to raise new ideas by offering floor amendments to other bills, though they had to be ruled germane to the bill by the Speaker of the House. With rare exceptions, by the time a bill gets to the floor for action, legislators will simply defer to the recommendations of the members of their party who served on the committees that worked on the bill, and floor "debate" is merely a ritualized performance.

An instructive lesson about agenda-setting through the use of sortition can be found in the Irish constitutional conventions convened in 2012 and 2016. Randomly selected citizens' assemblies considered a series of constitutional amendments, including same sex marriage at the first one and abortion legalization at the second. These citizen assembly-recommended amendments were subsequently enacted through a referendum. The fact that these agenda items were advanced by random citizen panels (though the first of these was two-thirds randomly selected citizens and one-third politicians) rather than being products of the elected parliament is revealing. In an overwhelmingly Catholic nation, politicians who faced election were reluctant to place these items on the agenda of parliament itself.

As the Ancient Greeks understood, when elites control the agenda, democracy does not exist. An agenda-setting body of everyday people selected by lot, without ulterior partisan or electoral imperatives, who are given the time, resources, and a full range of expert testimony, is essential for true democracy. The critical failures that result from allowing politicians to set the public agenda are exemplified by the climate change issue. The urgency of dealing with anthropogenic climate change has been known for many decades. The fact that any delay would compound the problem and dramatically increase the cost to address it was also known. Randomly selected ordinary people in a learning environment, such as at the 2019–2020 French Citizens' Convention on the Climate, have been able to quickly understand why climate change needed urgent action. Sadly, politicians didn't find climate change to be an electorally expedient issue to tackle, so it was ignored, until changing and extreme weather events proved that the crisis was upon us.

Planning to Stay in Power

Once an agenda for the current time frame is established, it is vital that an impartial and fact-based means of evaluating policy options exists. Sadly, the interests of society and the interests of politicians are in conflict. In a competitive electoral environment, politicians regularly have an incentive to spread falsehoods or misrepresent facts and policy repercussions. Since the top priorities are re-election and partisan advantage, when the facts are inconvenient or problematic, politicians have a powerful motivation to ignore, distort or lie about them. Elections also have a detrimental effect on a government's crucially important long-term planning. Politicians rarely look beyond the next election. They are like investment bankers motivated by short-term bonuses that can maximize personal gain while sacrificing long-term global economic stability. US Senator Tom Coburn (R—Oklahoma), in his book *The Debt Bomb*, observed that "Careerism—the philosophy of governing to win the next election above all else—is the root of almost all that ails Washington. Careerism is the dark matter of the political universe. It is the unseen force that bends decisions, and character, in ways that defy common sense and obvious explanations" (Coburn and Hart 2013, 37).

He has argued that Congress, including staff and lobbyists, constitute a "permanent feudal class". Campaign expediency regularly trumps long-term needs. Researchers analyzed elections and deforestation in 55 countries in the tropics, from 2001 to 2018, and found that more deforestation occurred in competitive election years. Lead researcher Joeri Morpurgo suggested that this is because some politicians use land and resources to win over voters. There are a lot of laws and regulations against monetary or real estate bribery, but not against the exploitation of nature. Therefore, this is a way to win votes from the agricultural sector, among others. Morpurgo isn't asserting that competitive elections are completely responsible for deforestation, but the study's results do suggest that they are indirectly one driving factor (Morpurgo et al. 2023).

Elections are thought to be the appropriate tool for the populace to punish or reward rulers, in order to "hold them accountable". The issue of "accountability" exists when there is a separation between the rulers and the ruled. But accountability is a double-edged sword. The fear of losing the next election (or more plausibly, of facing a serious primary opponent, given the nature of gerrymandered safe-seat districts in the US) may restrain an office holder from taking bad actions, if the bad actions would also risk being widely known and *perceived* as harmful by a politically significant subset of their possible supporters. But elections also restrain the office holder from taking *good* actions that would be extremely beneficial for society. Such actions might be unpopular simply because of inadequate understanding among the populace, but might be extremely popular if all the voters had the information, time and inclination to seriously think it

through. But such a popular, detailed examination never happens in an electoral environment. To make matters worse, the politician isn't facing a neutral, uninformed electorate. The candidate knows that opponents will try to frame the incumbent's actions as foolish or cruel by cherry-picking facts and prompting voters to take a short-term view.

The example of Ronald Reagan's campaign against President Jimmy Carter is instructive. Andrew Bacevich, in his book *The Limits of Powe*r contrasts Carter's 1979 so-called "malaise" speech about the energy crisis, the danger of rampant consumerism, and the need for sacrifice and belt-tightening to achieve foreign oil independence, with Ronald Reagan's "morning in America" campaign theme that Bacevich suggests amounted to telling voters what they wanted to hear—there are simple, painless fixes to long-term systemic problems (Bacevich 2009).

Reagan's theme was the winning one. *Washington Post* columnist Eugene Robinson noted that "while they're running for office, politicians of both parties encourage this kind of magical thinking" (Freymann 2010). This keeps citizens in a constant state of political immaturity. Political activism and participation are reduced to aggrandizing one or another political celebrity while parroting the talking point of the month, as defined by an elite, rather than dealing with the reality of the governance decisions that need to be made. When looking at long-term issues such as climate change, one could argue that this candidate-driven incentive is the Achilles' Heel of our electoral democracy (Bouricius 2017b).

Recognizing that a poor economy tends to weaken the election prospects of the party in control of the White House, elected officials of the party "out of power" have an incentive to sabotage the economy through Congressional action or inaction. Faced with a he-said-she-said blame game, voters cannot reliably assign blame, but they know when the economy turns sour. As discussed in the previous section on "throwing the bums out," the usual response is to punish the party that controls the White House. Some observers blamed Republicans for such economic sabotage leading up to the 2012 elections. It is beyond the scope of this book to evaluate this particular claim, though Senate Minority Leader Mitch McConnell provided some credence to this assessment with his statement in a *National Journal* interview in 2010 that "The single most important thing we want to achieve is for President Obama to be a one-term president" (National Journal 2010). Whether Democrats intentionally aided the economic meltdown that occurred near the end of George W. Bush's presidency, or the Republicans intentionally sabotaged economic recovery during Obama's presidency, the incentive is real. The quote from Paul Krugman at the beginning of Chapter 1 is to the point.

When legislators seek solutions to problems, they naturally seek "politically viable" solutions, remembering the catchphrase that "politics is the art of the possible". Of course, this generates a feedback loop among fellow legislators and becomes a self-fulfilling limitation—making policy with tunnel vision.

Often this means pushing bills that only pretend to address a problem, because a real solution would likely step on toes, so they can't garner the needed votes in the chamber.

When I was a member of the Vermont House of Representatives in the 1990s there was a statewide grassroots movement advocating single-payer health care reform. Instead of embracing genuine reform, the Speaker of the House helped hammer out a *political* solution—meaning one that could get a majority of votes. The fact that the plan could not possibly provide universal coverage, nor solve the health care problem, was deemed irrelevant by the Speaker and his lieutenants. The goal was to pass a bill that had the *appearance* of "moving forward", so that the members of his party could look good in their upcoming election. *Actually* tackling health care reform would involve challenging the power and inciting the wrath of insurance and pharmaceutical companies. Better to put on a good show, with the inevitable failure of the reform plan being revealed down the road, and definitely *after* the next elections. A similar dynamic infected the Clinton effort at healthcare reform and Obama's Affordable Care Act on the federal level.

Elections foster corruption as well as distorted agenda-setting and poor policy decisions. Elected officials seek to amass power—as both a means to accomplish particular goals, but also as an end in itself. The election process is what legitimates the power of elected officials, and repeated re-election increases that power, through the mechanism of the seniority system, which heaps more power on members the longer they serve. But this very process that confers legitimacy to an elite group who exercise power in society is also a process that taints public policymaking.

Congressional offices place a high priority on constituent service as one tool in the system for maintaining power. Since incumbents can garner fealty from constituents through helping them weave their way through a complex bureaucracy, there is relatively little incentive to fix the bureaucracy or provide non-partisan ombudsmen to assist citizens. It is a better re-election strategy to have one's staff perform personal favors for many individual voters, rather than fix the system. Non-incumbent challengers can't duplicate this service.

One Congressional use of power to also build power is the ability to deliver "pork-barrel" benefits to constituents and thus win favor and assure re-election. Many observers have concluded that one of the driving forces behind the federal deficit (even in years when there is no Keynesian stimulus rationale) is the desire of members of Congress to "bring home the bacon" to their districts. This indirectly buys campaign contributions from interests seeking this bacon, and votes from in-district employees of enterprises that benefit. It has been widely reported that major defense contractors spread their sub-contracts around so that as many members of Congress as possible will have some business within their district that is dependent on defense spending. Many observers suggest this explains

why members of Congress regularly push for funding military procurement contracts for systems the Pentagon doesn't even want.

As one example, in 2011 Secretary of Defense Robert Gates testified to the House Defense Appropriations Subcommittee seeking a shift of funds within the Pentagon budget, which he said was essential to protect the lives of soldiers in Afghanistan. According to *Washington Post* columnist Dana Milbank, Chairman Bill Young (R—Florida) declined to take action, "because Young objects to the money being taken away from the Army's Humvee program. Never mind that the Army has more Humvees than it wants. They were manufactured by AM General—which happens to be Young's third-largest campaign contributor. Its executives had funneled him more than $80,000, according to the Center for Responsive Politics" (Milbank 2011).

Bringing home the bacon also brings honors, with the constituents who are beneficiaries having no concern as to how corrupt the procurement process may have been. Indeed, such corruption is regularly celebrated. The retiring Senator Patrick Leahy (D—Vermont) of my home state had a variety of institutions re-named after him. For example, his earmarking $145 million for a small city airport prompted the city to rename the airport the "Patrick Leahy Burlington International Airport". The University of Vermont (UVM) re-named the Honors College after him—"The Patrick Leahy Honors College." Utilizing his leadership position on the Senate Appropriations Committee, Leahy helped direct millions of dollars in federal earmarks to Vermont and UVM in particular. In an interview, UVM President Suresh Garimella praised the largesse Leahy directed toward the university, saying Leahy is "perhaps the single greatest benefactor to the University of Vermont". Trying to calculate the vast amount of money the Senator had steered to the university, he concluded, "At this point, the answer is literally incalculable" (quoted by D'Auria 2023).

The fact that this all reflects corruption is revealed by the simple fact that if these money flows were readily justifiable based on merit, through an impartial cost/benefit analysis compared to alternative expenditures, then Leahy's involvement would not be noteworthy, and no constituent gratitude would be generated.

Pork is not delivered only through earmarked appropriations, but also through other legislative fine points, such as favorably structured tax loopholes. Within the legislative world, these are known as "tax expenditures", and often fly below the radar of the media and the public. The tax-writing committees have vast power. In the 2008 update of his book, *Citizen Power: A Mandate for Change*, former US Senator Mike Gravel states: "I hold the view that Congress will never correct our inequitable tax structure because at its core, the existing tax system is about getting and keeping power …" (Gravel [1971] 2008, 33).

There is a well-accepted economic theory that seeks to explain how Congress steadily ratchets up government commitments to various special interests.

A favor sought by a special interest, whether a new program, contract, tax loophole, or change of regulations, can have a huge impact on the special interest. It makes sense for the special interest to make the necessary lobbying efforts and campaign contributions to get its way. But because the cost of each individual favor is diffused over a huge population—and the politicians face no costs at all, since they are spending public monies—there is no interest group with sufficient harm, or resources to counter the new federal commitment. Thus, the ratchet effect produces policies that the majority does not favor, but which individually simply aren't worth actively fighting.[1]

The concentration of power and its continuation through re-election is an open door for corruption of all sorts. The predictable stability of power being held in certain hands is a fundamental enabler of corruption. Bribery (whether in the form of legal campaign contributions or illegal gifts) is much more valuable when the corrupt relationship will continue. In some cases, an initial bribe is an investment for future favors as well. In other situations, an ongoing position of some authority allows a "gatekeeper" to extract bribes from all comers. The constant rotation of power inherent in a sortition model makes bribery and corruption a much poorer investment, and more difficult to maintain or hide from view.

Along with power comes a set of rationalizations and techniques for maintaining that power. While serving in the statehouse, I repeatedly heard legislators justify actions they would normally have abhorred as necessary to assure re-election. The rationalizations continued with the notion that "bad" actions were actually "good" because they preserved the ability of the legislator to remain in office to do good another day. While there are ethics rules in Congress, which are certainly violated from time to time, much of the existing corruption does not violate any rule or statute. As long as there isn't a formal *quid pro quo* selling of a vote, the corrupt, but legal, possibilities are endless. A lot of Congressional corruption is tied to the legalized bribery that we know as the campaign finance system. The importance, but insufficiency, of campaign finance reform will be discussed in a subsequent chapter.

In the field of medicine, iatrogenesis refers to the dynamic in which some medical treatment harms rather than helps, inadvertently causing illness or death rather than preventing it. Our electoral system is iatrogenic, in that elections are thought to fight corruption by allowing voters to throw out the bad apples, but instead elections actively promote corruption in multiple ways, resulting in the entire barrel going bad. Rather than enabling healthy democracy, elections are preventing genuine democracy and harming society as a whole.

Deliberation or Denunciation?

No individual or single group can judge what is best for a society. One of the basic claims of superiority that can be made for actual democracy over oligarchy

(whether hereditary or elected), monarchy, etc., is the notion that deliberation among many members of society can lead to better decisions. Hélène Landemore at Yale University, in her book *Democratic Reason, Politics, Collective Intelligence, and the Rule of the Many*, seeks to uphold democracy on this basic epistemic ground—the collective intelligence of the many allows decision-making that is in general superior to the decisions of even expert elites, who lack the diversity of perspectives and information, as well as cognitive diversity.

Deliberation might entail joint fact-finding, or the weighing of information by many individuals, or the give-and-take of arguments that bring different perspectives to the fore. The benefits and hazards of various methods of deliberation will be examined in subsequent chapters. But for now, it is sufficient to state that deliberation is distinct from mere negotiation or debate. Deliberation involves political equals engaging to learn from each other and change their minds if warranted, in the search for optimal solutions. Unfortunately, electoral politics in America is nearly devoid of meaningful deliberation. As Kevin O'Leary points out, "Most political decisions are based on power calculations having little to do with reasoned debate by free and equal citizens: they are based on arbitrary power …" (O'Leary 2006, 169).

The partisan election process, which constrains and shapes how members of an elected chamber behave, is the underlying impediment. There is a lack of deliberation both during campaigns and within legislative chambers. During most "debates" in Congress, the chamber is virtually empty. Attendance would be a waste of time, since the party whips have usually already done their work, and the outcome is known in advance. Congressional staffers monitor the proceedings so that the members can show up just in time to cast their votes in case of a roll call. When the chamber isn't empty, what passes for "debate" is almost never intended to persuade other members, but rather a performance for cameras and the press. While less extreme at the committee level, this dynamic is still at play.

What little deliberation actually occurs generally takes place out of sight among members of the same party, and more commonly, among their staffers, and lobbyists. When a so-called "bipartisan" compromise exists, it is rarely the result of actual deliberation. It typically consists of either non-controversial items on which there was already agreement, or splitting the difference between prior positions that were adopted in discussions limited to each party's insiders and lobbyists. Compromise in the sense of seeking a genuine win-win synthesis that brings in new ideas and new perspectives is virtually nonexistent. Floor "debate" is widely understood to be political theater, intended to score points for the next election—with posturing, patronizing and grandstanding. In a November 2018 article in *Atlantic* magazine, Rep. Mike Gallagher (R—Wisconsin) wrote, "The reality is that Congress cannot get anything done because it is not equipped to get anything done. It is no longer a tool suited to its original purpose of making

laws and providing oversight. It has instead become a theater used by both parties to stoke the outrage of their base" (Gallagher 2018).

When I served in the Vermont legislature, I witnessed, and indeed participated in, such theatrics on a regular basis. While nominally trying to persuade my fellow legislators about some amendment in a floor speech, I knew that in the large majority of cases their votes were already locked up one way or the other. I still researched facts and tried to prepare compelling arguments. My speeches might cause the rolling of eyes, but rarely the changing of minds. But it wasn't personal vanity, nor merely liking the sound of my voice, that prompted me to play my part in these sham debates. My intended audience was the reporters and residents across the state, whom I vainly hoped would hear my arguments and, as a result, understand the necessity of voting the opposition legislators out of office. And, this behavior is even more extreme at a national level. The use of floor debate as a means for consolidating core constituency support rather than for bona fide debate was exemplified in 2011 in a floor speech by Republican whip, Senator Jon Kyl (R—Arizona). In a Senate floor "debate" about defunding Planned Parenthood, Sen. Kyl said that abortion is "well over 90 percent of what Planned Parenthood does." When it was later pointed out that abortions account for just 3 percent of Planned Parenthood's budget, his office issued an honest yet astonishing statement simply dismissing the complaint, and explaining that "His remark was not intended to be a factual statement" (Reimink 2011).

What little inter-party discussion does occur is more likely to consist of bargaining and negotiation based on vote trading, or "log-rolling", in which the merits of particular pieces of legislation are hardly a factor. There is an important distinction between genuine *deliberation* and mere *negotiation*. Deliberation and negotiation are different animals. Deliberation involves giving or receiving arguments intended to persuade. But deliberation should also be distinguished from sophistry that persuades through artful manipulation or intentional deceit without regard to facts. Deliberation involves reasoning together as a means of problem-solving. It requires openness to absorbing new information that changes one's views, often in hopes of finding common ground—the classic *win-win* scenario. Negotiation, on the other hand, essentially reflects a determination of a balance point based on the relative strength of the sides, regardless of reason. What substantive deliberation on merits does occur in legislative settings is primarily intra-party (within the caucus), or between lobbyists and legislators, or more often, their staff.

The fact that legislators are always anticipating future elections—whether their own, or their colleagues'—is a powerful incentive to portray the proposals of the opposition as evil, or at least horribly flawed, and intended to benefit the unworthy. This makes collaborative deliberation between members of different parties extremely difficult at best. Robert Kaiser, a long-term reporter and editor at the *Washington Post*, wrote an incisive book, *Act of Congress:*

How America's Essential Institution Works, and How It Doesn't. With nearly unprecedented inside access to the actual law-making process, with Congressional staff and lobbyists, he follows the adoption of the Dodd-Frank Act (Congress's anemic response to the 2008 financial meltdown) to illuminate the problems. He reveals many of the fundamental flaws that mire Congress in almost perpetual policy failures. Even when members of Congress sort of succeed—in the minimal sense that at least a bill became law—he shows how the ferocious partisan electoral imperative overwhelms policy considerations. As he writes, "most members both know and care more about politics than about substance" (Kaiser 2014, 301).

As a legislator, I remember private conversations about proposals brought forth by opponents. Rather than open-minded evaluation, the overriding concern was "can we find flaws that can make their proposal look bad, and stop them from getting any credit?" Senator Joe Manchin (D—West Virginia), a conservative Democrat, made this observation on a television interview program:

> Let me just say, the thing that I'm discouraged about—not just in the Democrat, but in the whole process, Democrat and Republican caucuses—I truly believe that what we're doing is we're taking polls, you know, the same as you're taking polls, where the American people stand on a day to day basis, on what they're upset about. Rather than taking that information and trying to say "okay guys let's fix it". Okay, now by three o'clock "How can we blame [an opponent] for that?"
>
> *(Manchin 2011)*

Of course, many people question the possibility that any politics, deliberative or not, can find win-win opportunities with any regularity. Often, politics is about choosing between mutually exclusive options that reflect a fundamental divergence of interests. In such cases with inevitable winners and losers, it still makes sense to have those decisions made by a genuinely representative body, rather than one that is corrupt and unrepresentative. However, electoral politics has a built-in tendency to treat nearly all political decisions as such zero-sum games with winners and inevitable losers. Through deliberation and skilled facilitation, some seemingly intractable conflicts can be resolved with broad agreement. This is not mere speculation. Hundreds of citizens' assemblies around the world have found this to be true.

Mary Parker Follett, a management and organizational theorist from the first part of the twentieth century, advocated an "integrative" deliberation process. Rather than focusing on the apparent conflict, she suggested that it is often possible to dig down to find the underlying desires, where commonality, rather than

mere compromise, could be found. In her 1924 book, *Creative Experience*, she gave this example:

> The integrating of wants precludes the necessity of gaining power to satisfy desire. In the library today, in one of the smaller rooms, someone wanted the window open, I wanted it shut. We opened the window in the next room where no one was sitting. This was not a compromise because there was no lopping off of desire; we both got what we really wanted. For I did not want a closed room, I simply did not want the north wind to blow directly on me; likewise the other occupant did not want that particular window open, he simply wanted more air in the room.
>
> *(Follett [1924] 2013, 184–185)*

Modern political theorists Hélène Landemore and Jane Mansbridge have used Follett's insights to argue that integrative deliberation can sometimes clarify a seemingly irreconcilable dispute. Once the underlying desires have been clarified and rephrased, this sort of deliberation may reveal a cooperative win–win option acceptable to all sides. While beneficial for society, this integrative approach is anathema to partisan politicians who place a priority on winning, or if that is not possible, demonstrating to voters how cruel or foolish the other party is. Seeking common ground isn't useful for attacking opponents in competitive elections. This isn't necessarily due to bad intentions. It is more akin to a reflex—seizing a competitive opportunity when presented, due to legislators' immersion in the competitive electoral environment. Ordinary people selected by democratic lottery do not have this distorting hidden agenda imposed by competitive elections, so they can eagerly employ this integrative approach.

Note

1 As an example, researcher Adam Przeworski and colleagues described why Congress would adopt a subsidy for the sugar industry. "By subsidizing the sugar industry, the government inflicts on each individual an annual cost of $5.75 and benefits the sugar industry to the tune of $1.5 billion. Voters will not want to spend their resources to learn about sugar policy and its effects: this information costs more than $5.75. Then the government will subsidize, get a campaign contribution from the industry, and maximize its probability of reelection" (Przeworski, Stokes, and Manin 1999, 35).

4

THE INADEQUACY OF ELECTION REFORM

With the modern assumption that elections are the very essence of democracy, each specific electoral problem engenders a reform proposal (or menu of reforms) intended to remedy it. Elections themselves, however, are never questioned. Before considering a radical concept such as sortition, it is prudent to first examine whether the failings of American democracy can be fixed using any of these commonly proposed solutions. In this chapter, I will discuss several of the most widely recognized specific problems with the American election process, present some corresponding reforms that have been proposed, and examine their likely efficacy (or lack thereof). While many reforms certainly have some merit, we will see how they all fall woefully short of fulfilling the democratic vision.

There is a profusion of reforms that have been proposed to improve the way Congress and other legislative chambers are elected. Many of these reforms also deal with changing the incentives created by the way elections are conducted so as to affect the functioning of legislative bodies. The reforms discussed below are not intended to be an exhaustive list, but are illustrative.

Term Limits

Incumbents who seek re-election almost always win. Of course, a few incumbents who have been caught in scandal, or have become unpopular for other reasons, may choose not to run again in order to avoid suffering the embarrassment of defeat. Typically, around 98 percent of members of Congress who seek re-election succeed. On occasion, there are elections in which news analysts talk of a "red wave" or a "blue wave", with many incumbents being turned out and the House or Senate changing partisan majorities. But such "sea change"

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elections, such as those in 2012 and 2018, still typically see approximately 90 percent of incumbents who run being re-elected. The longevity in office of elected politicians is sometimes blamed for corruption, a distancing from average citizens, and a counter-productive focus on re-election. Enacting term limits has been offered in response.

Term limits were historically seen as a useful defense against tyranny at the time of the nation's founding. The 1776 Pennsylvania Constitution mandated term limits, as did the Articles of Confederation. The Federal Constitution contained no term limits (though a presidential term limit was added by the ratification of the Twenty-Second Amendment in 1951). Term limits for state legislators were adopted in over a dozen states and in many local jurisdictions toward the end of the twentieth century. Imposing term limits on members of Congress would require a constitutional amendment.

Term limits at the level of the state offices, it is hoped, could reduce the long-term concentration of power and thus the potential for abuse. Researchers Michael Smart and Daniel Sturm found that this perceived diminution of accountability indeed allows incumbents to promote their sincere preferences, for good or for ill (Smart and Sturm 2013). In a study by Yacov Tsur, entitled "Political tenure, term limits and corruption", the author found that the more rapid turnover resulting from term limits affected "the learning curve of incumbents in conducting their regular task (public goods provision) and the learning curve of opportunistic incumbents in becoming effective embezzlers. I find that stricter term limits increase the frequency of corruption incidents but reduce the expected cost per incident" (Tsur 2022).

Term limits may promote a sort of mentoring process for both good and ill, as term-limited incumbents promote potential successors and in turn simply seek another, often higher, office for themselves.

One argument for term limits is the notion that it would reduce the tendency for "over-spending" by legislators seeking to "bring home the bacon" to their districts to buy votes for their re-election. However, there is no evidence of this effect. A study by H. Abbie Erler entitled "Legislative Term Limits and State Spending" reported that term-limited states actually tend to spend more than other states (Erler 2007). While term limits remain popular with voters in the states that have enacted them, studies have shown that term limits do not increase the number of women, nor generate a more representative body overall (Carroll and Jenkins 2002).

Improving Voter Turnout

As noted above, the United States has some of the poorest voter turnout rates in the world. Typically, between 10 and 20 percent of eligible people vote in local elections (and in many municipal elections, it drops into single-digit percentages),

around 40 percent vote in congressional election years, and only in presidential years is it common for over half of the eligible people to cast ballots.[1] Many US election reformers, especially those on the left, focus on ways to make voter registration and casting a ballot easier, although many on the right express concern about unsupported allegations of non-citizen voting and voter fraud.

The reform strategies have sought to make registration easier and include same-day voter registration, or universal automatic voter registration, which is the norm in most electoral democracies. However, even if registered, many prospective voters fail to vote in most or all elections. So, in addition to making registration either more convenient or automatic, many reformers focus on making voting itself more convenient.

To make the voting process easier, reformers have proposed extending the voting period, making election day a holiday, and, most recently, voting by mail. The COVID-19 pandemic made vote by mail, including ballot drop-off boxes, the standard rather than the exception in many jurisdictions. Some states automatically mail voters a ballot, without a request. Researchers found that universal vote by mail resulted in only about a 2 percent increase in voter turnout, however (Thompson et al. 2020).

It is now apparent that institutional barriers to registering and to voting are almost peripheral to the real causes of low voter participation in the US[2] Curtis Gans, director of the Center for the Study of the American Electorate at American University, was widely considered to be the "go-to guy" for issues related to voter turnout in the US. In a press release accompanying his analysis of election turnout in the 2008 presidential election, he concluded that the participation problem is, at heart, not procedural but motivational. In that November 6, 2008, press release about the limits of "convenience voting" measures, Gans wrote: "It has always been abundantly clear that, after four decades of making it easier to vote and having turnout decline (among most groups) except for elections driven by fear and anger, the central issue governing turnout is not procedure but motivation" (Gans 2008).

A crucial question is whether higher participation among marginalized citizens, for example, would change the narrow assortment of candidates they get to choose from. In the vast majority of cases, candidates of both major parties are from the same income, class, etc., and there is little evidence that increased voter participation results in more representative legislatures. Voter participation rates, by themselves, tell us very little about the strength of a democracy. Authoritarian regimes often orchestrate elections with nearly 100 percent turnout.

Campaign Finance Reform

Campaign finance reform is another widely proposed remedy for our unrepresentative legislatures. In a nutshell, it takes resources to run winning campaigns,

and only certain sorts of people have ready access to the necessary money.[3] This restricted pool of potential "serious" candidates is thought to be a fundamental reason legislatures are so unlike the population they represent.

However, that crucial dynamic is generally overshadowed in the public's mind by the corrupting potential of the fact that politicians have a powerful incentive to cater to monied interests that can fund their campaigns. This corruption is well known in general terms, though the countless specific examples are essentially ignored or unknown by voters. A typical explanation of this by political scientists Bernard Manin, Adam Przeworski, and Susan C. Stokes, goes: "Because voters do not care about policies that have only a small impact on their welfare, politicians can sell policies to interest groups that inflict only a small cost on each individual voter but which concentrate benefits on the particular interest groups and spend on electioneering the resources contributed by interest groups in exchange for these policies" (Przeworski, Stokes, and Manin 1999). Voters may generally despise the influence of money in politics, but relatively few make an active effort to address it.

If the corruption of the campaign system is ever fixed, I expect people will look back at this time with amazement at how any population put up with this legalized bribery. There are limits on the size of contributions directly to candidates and political parties. However, since political advocacy is protected speech under the First Amendment, there is no limit to nominally independent spending (not coordinated with the campaign). While campaign finance reformers focus on the 2010 Supreme Court ruling *Citizens United v. Federal Election Commission*, that decision only expanded the problem by granting corporations and unions the same right to unlimited election-related spending that natural persons have. Even getting the court to reverse that one ruling would have no impact on election spending by *individuals*, such as the hundreds of millions spent by Elon Musk in 2024.

One reform that has received significant attention is public campaign financing (in exchange for swearing off large donations), to free politicians from going hat in hand to big money interests.

There are many variants, requiring candidates to raise a large number of small qualifying contributions (as in Maine)[4] or providing all adult citizens with "democracy vouchers" that they can give to candidates of their choice (as proposed by reformers such as Larry Lessig). These reforms still tend to favor candidates who have access to enough money or celebrity to be well known prior to launching a campaign. It could, however, reduce the importance of wealthy backers and theoretically allow for a somewhat wider range of candidacies. The hope that public financing would reduce politician corruption is plausible, and some international studies lend credence to the notion (Hummel et al. 2021). However, publicly financed candidates in the United States face the reality that their spending can be dwarfed by nominally "independent expenditures" by the wealthy

and special interests. Thus, public financing may allow more people to enter the political fray, but it cannot level the playing field.

While the hope of reducing corruption is worthwhile, it does not, by itself, lead to better representation. There is no evidence that public financing results in more representative chambers. An analysis was done of:

> public financing programs in Arizona, Connecticut, and Maine to causally identify the effect of legislators' funding status on how closely they represent constituent preferences. Using multiple identification strategies, we show that candidates who exclusively use public campaign financing are more extreme and less representative of their districts than non-publicly financed candidates.
>
> *(Kilborn and Vishwanath 2021)*

An international study found that public financing of political campaigns

> disproportionately aids radical-right parties. This is a counter-intuitive result, as public financing of elections has recently become an important issue for those on the political left as a method to restore power to the majority. Rather, it seems to aid not only those on the right, but those on the political fringe. Through a cross-national analysis of 328 lower-house elections in 20 advanced democracies, I demonstrate that public financing serves to significantly increase vote-share of the radical-right.
>
> *(Bichay 2020)*

Interestingly, however, the study also found that "these same effects are not shared by extreme-left parties. Due to important and unique characteristics of far-right parties, public campaign financing seems to have a disproportionate and exclusive effect on them". Most of these countries use some form of proportional representation voting method, so the relevance of this finding in the United States is unknown.

After the election, rather than corruptly rewarding big donors or, at the very least, preferentially taking their calls and input, legislators elected with public financing would presumably have more time to engage with ordinary constituents. Former US Senator Ernest Hollings, in a 2006 *Washington Post* opinion piece, estimated that nearly one-third of a Senator's time is spent fundraising (Hollings 2006). Since it is illegal to use government offices for fundraising, both major parties maintain offices with phones nearby and encourage members of Congress to spend approximately 30 hours per week fundraising, either "dialing for dollars" or traveling to fundraising events. Publicly financed legislators wouldn't have to spend a huge percentage of their time raising money for the next campaign.

But even public financing is no panacea when it comes to forming a legislature that is genuinely representative of the population. One might hope that more working-class people would become legislators if access to big money were removed as a prerequisite, but that, unfortunately, does not appear to be the case. Mitchell Kilborn studied this issue and writes,

> Using occupational data on state legislative candidates in public financing state Connecticut and two paired control states to execute a difference in difference analysis, I demonstrate that when public financing is available, fewer low SES [socio-economic status] candidates run for state legislative office, and those who do run are not more likely to win and are less likely to utilize public financing.
>
> *(Kilborn 2018)*

In Maine, which has led the nation on public campaign finance, over 80 percent of legislators ran using public financing. But National Conference of State Legislatures (NCSL) data showed that Maine's legislators are no more likely to have working-class occupations than legislators from similar New England states.

Although census data indicates that less than one-third of Maine's workforce is in higher-income occupations, NCSL data showed that around two-thirds of Maine's legislators who are below retirement age come from this class (there is no *previous* occupation information for legislators who are retired). Fixing the money problem alone might have some effect, but would not remedy the countless other biases that are ubiquitous in American legislative elections, such as gender and age distortions.[5] Public financing of election campaigns in Maine has shown no impact on gender bias. The state does not stand out in terms of the number of female politicians either, and males still predominate.

Approaching the same subject from another direction, the winners of State House races in my small state of Vermont often spend less than a thousand dollars. Money is simply not a substantial impediment to running a low-level winning campaign in Vermont. Yet, as I noted earlier, when I examined the housing status of my fellow Representatives, I found an almost total absence of renters. This probably reflects a built-in bias in regards to what type of people are willing to run for office in terms of such things as class, self-confidence, and employment situation (affording them the ability to take time off work for campaigning, for example). Making public campaign funds available would probably make no difference—taking time off from work in order to campaign would still be unaffordable for most people, even if they had the desire. No public campaign finance reform proposal includes stipends for living expenses during the campaign. Using campaign money for such "personal" purposes is expressly illegal under all such proposals.

Campaign finance reform may have a beneficial impact on corruption, but the evidence so far indicates it will not create more accurately representative legislatures.

Redistricting

An almost universally acknowledged flaw with the American electoral system is rampant gerrymandering—the redrawing of district boundaries for political advantage, and so-called "safe-seats". Although this has traditionally been a decennial practice tied to the census, in 2025 President Trump called for Texas to re-gerrymander its Congressional districts, prompting a state-by-state, tit-for-tat partisan gerrymandering spree using out-of-date census data.

As a legislator and city councilor I participated in drawing and redrawing district boundaries numerous times, and am well aware of how cleverly the party in control can stack the deck. The art of drawing favorable district lines has evolved from an art, when the term was first coined in Massachusetts in 1812, to a computerized science.

Sophisticated computer programs now allow layering all kinds of census, demographic, survey, and internet-mined metadata onto district maps in order to tailor districts to legislators' re-election interests. The legislators, in effect, get to pick their voters rather than the voters getting to pick their legislators. Gerrymandering is almost a uniquely American problem tied to the fact that the US mostly uses single-seat districts. Most modern elective governments use proportional representation with multiple seats per district, making district boundaries and gerrymandering non-issues.

Arizona reformers passed a constitutional amendment in 2000 to eliminate gerrymandering using an independent redistricting commission. With legislators removed from the process of drawing their own district lines, and with lofty goals and guidelines, the hope was that elections would be more competitive. However, the elections under the new districts were even less competitive than before, with incumbents from both parties winning every single State Senate race in which they ran. In a study published in 2018, researchers evaluated

> whether maps drawn by independent commissions are more electorally competitive than those produced by party-controlled legislatures … counter to expectations, we find that independent redistrictors produce virtually the same degree of insulation as plans devised in legislatures or by politician commissions. Overall, our results suggest caution in overhauling state redistricting institutions as a mechanism to increase electoral competition.
>
> *(Henderson, Hamel, and Goldzimer 2018)*

Because like-minded people tend to live near each other (what author Bill Bishop and others refer to as "the big sort"), if Arizona were to elevate having competitive races as the top priority, it would have to give up other priorities, such as compact districts that respect communities of interest, as well as risk a far less representative legislature. Other states have also pursued independent redistricting commissions since then, with Colorado amending its constitution in 2018 to establish a 12-member commission (four Democrats, four Republicans, and four unaffiliated) to approve redistricting plans.

As final evidence that gerrymandering is not the root of unrepresentative legislatures, one need look no further than the US Senate, whose district boundaries, state lines never change, and thus cannot be gerrymandered. Gerrymandering cannot explain the Senate's mal-representation. Competitive elections are seen as essential to voters' ability to hold legislators accountable. It turns out that, while gerrymandering to create non-competitive districts is a slimy process, it also is not the core reason that we have non-representative legislatures.

Reforming Primaries

Polarization between Democratic and Republican legislators has increased over recent decades. So-called "moderate Republicans" and "boll weevil Democrats" of the 1960s (when some Republican lawmakers were to the left of some Democrats, and some Democrats were to the right of some Republicans) are gone. One reason often cited for this trend is the party primary system of nomination.

Most Congressional districts are partisan safe-seats, with no meaningful contest in the general election. The party primary is therefore the key election, in which name recognition and campaign cash can be decisive. Yet, voter turnout in primaries is a fraction of the already low turnout of general elections. Since so few citizens vote in primary elections, incumbents often seek to placate the more extreme adherents within their party who are more likely to vote in primaries, in order to avoid a primary challenge. The influence of Tea-Party-Republicans, and more recently, Trump-Republicans, and Black-Lives-Matter-Democrats are often linked to this factor. Extremist wealthy campaign spenders, such as Elon Musk, can also simply threaten incumbents in safe districts with being "primaried" (used as a verb).

Some reformers have laid the blame for polarization on the primary nomination system, and have promoted "top-two" primaries, also called a "non-partisan open primary", as a remedy. This reform essentially eliminates party primaries and puts candidates from all parties into a first-round election, with the top-two plurality leaders advancing to the general election. Thus, there could be two candidates from the same party in that election, with no other party included. Alaska, California, Louisiana, Nebraska, and Washington State currently use

some variant of this system. Political scientists who carefully examined the impact on polarization of California's non-partisan redistricting commission combined with its top-two primary found that "California's electoral experiments did not bring their hoped-for effects. If anything, legislators strayed further from their district's average voter in 2012" (Kousser, Phillips, and Shor 2016)

Although the notion that primary voters are more extreme is widely assumed, studies have shown that this is not actually the case (Sides 2013). Another study concluded that for the top-two reform to work to mitigate polarization, voters would need both access to fine-grained knowledge about various candidates within each party and sufficient motivation to devote the needed time to deeply study candidate distinctions. There is no evidence that voters employed either of these needed elements (Ahler, Citrin, and Lenz. 2016).

Some states today, including my home state of Vermont, have a less extreme form of "open primary," in which registered voters, regardless of party loyalty, are allowed to vote in any single party primary A national study conducted by a team of political scientists, led by Eric McGhee, published in 2013 found that "the openness of a primary election has little, if any, effect on the extremity of the politicians it produces" (McGhee et al. 2014).

Proportional Representation

"Single-seat winner-take-all plurality voting" is a bit of a mouthful.[6] It is the voting method used in the United States, Canada, the UK, and a handful of other countries. It is very much the exception among developed countries around the world. This method of voting is prone to the "spoiler" problem if there are more than just two candidates in a race. Voting for a minor candidate, whom the voter prefers, may split the majority and inadvertently help elect a candidate with less than 50 percent of the vote, whom a majority of voters may agree is the worst choice. This dynamic discourages voters from considering minor candidates and discourages third-party candidacies. So, this generally results in domination by just two major parties within a jurisdiction. Polls show that most Americans are dissatisfied with the two major parties and would prefer more choice on the ballot, but the plurality voting rules, which generate the spoiler problem, make this problematic.

Voting reforms such as ranked-choice voting (instant runoffs), approval voting, Borda count, Condorcet, score voting, and other methods have been proposed to alleviate the spoiler problem, with ranked-choice voting reform actually making significant headway in a number of states. Such voting reforms may allow for more candidates on the ballot with less concern about the spoiler problem, but they fail to elect a more accurately representative chamber overall. Being all single-seat voting methods, under these reforms, minorities would still be under-represented in legislative bodies. The obvious response is to instead

institute some proportional representation voting method, which is what all but a handful of modern electoral democracies do.

First developed in the nineteenth century, proportional representation (PR) seeks to assure that the majority can elect a majority of a legislative chamber, but also that substantial minorities can elect a fair share of seats proportionate to their support. Under winner-take-all systems, everyone may have the right to a vote, but not the right to representation. The basic principle of PR is that the majority gets to decide, but everybody has a right to be represented at the table. This typically means having multiple parties in a legislature.

While PR allows for much more accurate *partisan* representation than the usual winner-take-all election rules used in the US, it isn't enough. All voting methods, including PR, provide voters with a relatively narrow partisan menu of choices and assume that voters choose candidates or parties based on either policy positions or fundamental *interests*, rather than, for example, technocratic competence. However, incumbent governments are often voted *out* of office for simple *competency* reasons, rather than policy direction. An economic downturn, high unemployment, crime, a spate of shark attacks, etc. (which may be outside the control of any ruling party), can result in a change of government, even if the majority of voters oppose the policies of the replacement coalition of parties. But even if voters did rely solely on their policy preferences in deciding how to vote, and voters had complete knowledge of party platforms and the candidates' records (which can never happen), this is still unworkable. Here's an example: A retired, pro-life, Hispanic, Gay, economic libertarian voter who also favors taxing the rich and gun rights has no ability to consistently "vote his interests", even if there are several parties to choose among. While Marxists may assert that class interests are the only *fundamental* interests, most voters have "false consciousness"—or simply disagree with that view, and make voting decisions on other bases.

A potential danger of pure PR, noted by supporters of winner-take-all election methods such as the American two-party system, is the risk of polarized pluralism, where otherwise centrist parties reach out to the political fringes for allies, leading to irreconcilable intolerance that can put electoral democracy itself at risk. Defenders of a two-party system used to point out that it encourages divergent interests to work out compromises *prior* to the nomination of candidates, in the hopes of cobbling together a voter coalition capable of winning the election. This is the basis of the "big tent" adage. This analysis, however, has become less and less valid in twenty-first-century America, with a roughly evenly divided polarized electorate.

Proportional representation typically leaves this coalition formation until *after* the election. This also shifts the deal-making into the hands of party insiders, rather than voters. Maurice Duverger describes this tendency: "By dispersing voters among numerous independent parties, PR prevents the citizens from

expressing a clear choice for a governmental team. It transfers the choice to the party leaders" (Duverger 2003, 78). PR may help elect a legislature that somewhat more reasonably reflects the diversity of policy preferences of the public, but which policies will actually be pursued and which jettisoned by the ruling coalition isn't known until the party leaders hash it out after the election.

While there may be more points of view represented in these negotiations than in winner-take-all election situations, it is a small set of elite party leaders and their sponsors who call the shots, rather than the mass of voters. As Benjamin Barber, the author of *Strong Democracy*, wrote: "PR may multiply the number of special-interest and one-issue political groups represented in the adversary system, but it can only fragment the citizenry and further impede efforts at public seeing" (Barber 2009, 206).

Proportional Representation and Women

In addition to electing politicians from more than just two political parties, PR can also elect far more women legislators. Nearly every advanced country using PR has a far higher percentage of female legislators than does the US. Some countries also have laws regulating the number and placement of female candidates on each party's list of nominees as a form of affirmative action. One such procedure is referred to as a "zipper list" that requires parties to alternate male and female candidates on their nomination lists.

Zahra' Langhi, the co-founder of Libyan Women's Platform for Peace-speaking, at a TEDx-Women Talk in 2012, spoke about the aftermath of the elections that followed the Libyan revolution, which had used this zipper rule to elect an unprecedented number of women legislators:

> Our society, shaped by a revolutionary mindset, became more polarized and has driven away from the ideals and the principles—freedom, dignity, social justice—that we first held. Intolerance, exclusion and revenge became the icons of the [aftermath] of the revolution. I am here today not at all to inspire you with our success story of the zipper list and the elections. I'm rather here today to confess that we as a nation took the wrong choice, made the wrong decision. We did not prioritize right. For elections did not bring peace and stability, and security in Libya. Did the "zipper list" and the alternation between female and male candidates bring peace and national reconciliation? No, it didn't. What is it, then? Why does our society continue to be polarized and dominated with selfish politics of dominance and exclusion, by both men and women?
>
> Maybe what was missing was not the women only, but the feminine values of compassion, mercy and inclusion. *Our society needs national dialogue and consensus-building more than it needed the elections, which only reinforced*

> *polarization and division*. Our society needs the qualitative representation of the feminine more than it needs the numerical, quantitative representation of the feminine.
>
> *(Langhi 2012, 5–20, emphasis added)*

More Choice is Not Enough

Even in a two-party system, most voters know very little about most of the candidates. In a PR system with more parties and candidates, voters may know proportionately less about the candidates. A group of researchers using more than sixty thousand elections in Brazil over 20 years as their database has also found that an increased number of candidates on a ballot, facilitated by PR, may actually suppress voter participation (Cunow et al. 2023). They suggest the burden of assessing a large number of candidates is simply too daunting for many voters. "Although conventional wisdom suggests that providing voters greater choice may enhance democracy, our analysis shows that there is an overlooked cost to providing voters more choice," Andrew Janusz said (quoted in Science X 2023).

It is not all that surprising that in a parliamentary system of government using a PR election system, it is sometimes difficult to negotiate a governing coalition. An extreme example of this occurred in Belgium in 2010–2011, when the political parties failed to agree on a governing coalition for 589 days. Though basic government functions were maintained by the bureaucracy, there was nobody steering the ship of state.

This electoral failure contributed to a growing interest in sortition in Belgium. A 2013 book by a prize-winning Belgian author, David Van Reybrouck, entitled *Against Elections*, makes the case for sortition (Van Reybrouck 2018). Van Reybrouck was invited to speak all over Europe and the world, including on *De Zevende Dag* (The Seventh Day), the flagship talk-show on Flemish public television, for a wide-ranging discussion about his book with former Belgian Prime Minister Jean-Luc Dehaene. The former prime minister endorsed the need for democratic innovation and urged the government to start exploring sortition. Van Reybrouck's efforts were an important factor in the subsequent mushrooming of hundreds of lottery-drawn citizens' assemblies across Europe.

While the gender and class make-up of legislatures in countries using PR may be more diverse than in the United States, legislators still constitute a separate "political class", and do not accurately mirror the diversity of the population. Perhaps as a result, even in countries using PR, politicians are often held in low esteem. As just one example: a study in Spain found that politicians were the least trusted professional group in society, with 70 percent of those interviewed saying they wouldn't want their children getting involved in politics (Spanish Foundation for Science and Technology 2012).

In an interview about his book, *Democracy Erodes from the Top: Leaders, Citizens, and the Challenge of Populism in Europe*, political scientist Larry Bartels (2024) argued that elite control is inevitable whether in a two-party system or a PR system.

> One thing I've worked on in my career is to estimate the impact of ordinary people's preferences on policy outcomes, both in the US and other places. The implication of that work is that ordinary people's views have very little impact on what their governments do. That was shown first in the United States, and people imagine that it has to do with particular features of the US, like our campaign finance system or the weakness of labor unions or our separation of powers. But then people began to do parallel studies in European countries that were supposed to be much more advanced democratic systems, like Sweden and Germany. They found much the same thing in those places, in spite of the fact that they have very different institutions and very different political cultures. That suggests to me that there are much more fundamental factors that limit the impact of ordinary citizens on the behavior of leaders in any political system.
>
> *(Bartels 2023)*

He concludes that the goal should be to "socialize" the elites to behave better, since they are in charge regardless of the electoral system. He does not consider the option of replacing the elected politicians with sortition, where everyday people directly make the decisions without a role for politicians.

I don't want to leave the impression that PR is worthless. It almost certainly would be an improvement over the current US winner-take-all election system. My point is that PR is not a worthy endpoint goal for democratic reform. Democracy reformers in Australia, which has used a form of proportional representation with ranked choice ballots for generations, are in fact among the leading advocates of sortition, in response to what they view as the inadequacy of proportional representation.[7] Though the institutionalizing of sortition bodies is already underway in many countries, as we will discuss below, full development and refinement of sortition as a tool for democracy will take more time. Therefore, interim reforms that may decrease the power of plutocrats, such as campaign finance reform and PR, may be worth pursuing as well.

Notes

1 Note that it is common for news stories to inflate these percentages by calculating voter turnout as a percentage of registered voters, discounting and ignoring citizens who aren't registered.

2 In their book, *Why Americans Still Don't Vote: And Why Politicians Want It That Way*, Frances Fox Piven and Richard Cloward consider factors causing voter demobilization and alienation.

> The much discussed and debated decline of party organization (at least in the Democratic party), the flood of special interest money pouring into campaigns, the growing presence of the K Street lobbyists, the gap between issues Americans say are important and national legislative agenda, the increasing complexity of policy initiatives riddled with pork barrel giveaways—all of these probably contribute to growing public cynicism. Perhaps the rise of neoliberalism as the current ideological orthodoxy also turns people away from electoral politics, if only because it argues the futility of government intervention in a world dominated by markets, especially international markets. In short, the political parties and their interest-group allies are constructing a political environment that is demobilizing the American electorate, lowered barriers notwithstanding. (Piven and Cloward 2000, 268)

3 The presidential campaign of Bernie Sanders was a rare exception to the general rule, by leveraging his novelty-derived celebrity status to draw a vast number of small contributions instead. It has been argued that Donald Trump used the same principle, using his own (distinctly different) celebrity status to leverage an estimated $5 billion in free media coverage (Open Secrets 2016).

4 I sponsored such reform when I was a legislator in Vermont, and served as the campaign treasurer for a candidate for Lieutenant Governor using the state's limited public financing law.

5 Data collected by the National Council of State Legislatures (NCSL) some years ago showed that 76 percent of state legislators were male and 72 percent were over 50 years old.

6 It is sometimes called "first past the post".

7 I had worked with FairVote: the Center for Voting and Democracy in the US to try and enact exactly the ranked voting methods used in Australia for generations. The fact that the dissatisfaction with the resulting political establishment had prompted Australian reformers to become leading advocates for sortition, was a factor in convincing me that PR was an insufficient reform.



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PART II

Foundations of Democracy



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5

HISTORICAL ROOTS

Ancient Greek Democracy

We learn in school about the ancient Athenian mass assembly—the *ecclesia.* However, the assembly was not the defining feature of ancient Greek democracy. Many non-democratic Greek city-states, such as Sparta, also had such assemblies. But, unlike democratic city-states, such as Athens (and there were many other democracies throughout Greece—it's just that Athens is the best known and well documented), Sparta's agenda was controlled by an elite. Sortition was sacrosanct to the Greek democrats. Athenian magistrates, the courts (*dikasterion*), legislative panels (*nomothetai*) that passed new laws, and the administrative Council of Five Hundred (*boule*), which set the agenda, were all selected from among everyday citizens using this random lot procedure.

The ultimate democratic system that Athens landed on following the reforms of 403 BCE, stripped lawmaking authority from the Assembly (which was deemed too easily manipulated by demagogues, and vested it in large randomly selected legislative panels known as *nomothetai*, which could spend more time, listen to an equal number of supporters and opponents of a proposed law, and then vote. This is often referred to by scholars as Athens's fourth century democracy, or "second democracy", to distinguish it from its earlier fifth century constitution. Historian Mogens Hansen designates it by the title of his authoritative book, *The Athenian Democracy in the Age of Demosthenes*. The workings of this reformed "second democracy" was essentially unknown to political writers like Rousseau, Montesquieu and Madison, since a papyrus copy of Aristotle's *Constitution of Athens* was only rediscovered in the late nineteenth century in Egypt (Hansen 1991).

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The political use of the lottery was central to democracy. Classics scholar Josiah Ober has noted recently discovered evidence about the centrality of the randomly selected council from another Greek democratic city-state not far from Athens.

> In terms of making a participatory Greek democracy work, the key institution was a popular deliberative council [as distinct from an assembly] chosen from the entire citizen body. The Greek recognition of the centrality of a popular council for democracy is underlined by a recently discovered inscription from Eretria. In ca. 340 B.C. the Eretrian democracy promulgated a decree offering rewards to a potential tyrant killer, that is, to anyone who took direct and violent action against those who sought to overthrow the existing democratic government. In a revealing passage, the decree orders all citizens to fight without waiting to receive orders if anyone tries to establish "some constitution other than a Council and a prutaneia (a subset of the Council) appointed by lot from all Eretrians.
>
> *(Ober, 2008, citing Knoepfler 2001, 2002; translation Teegarden 2007)*

A recent and far-reaching analysis by Dr. Daniela Cammack affirms this view, stating that "Our ancient sources [especially the surviving speeches of Athenian orators and Aristotle's Constitution of Athens] suggest that the most significant and distinctively democratic institution in Athens was the courts, where decisions were made by large panels of randomly selected ordinary citizens …" (Cammack 2013, iii).

Another thing we learn in school is that the Athenian form of democracy is dependent on having a relatively small society, and thus has little to offer as a model for a modern nation-state of millions. It is commonplace to make a fundamental distinction between direct democracy (with Classical Athens as the supposed archetype) and modern so-called "representative democracy". I contend that all democracies with more than a few hundred members, including Classical Athens, are in reality representative.

Athenian democracy was not based on the principle that all citizens could or should participate in a face-to-face manner in all decisions in the assembly. That would have been impossible in Classical Athens just as it is in large nations today. Some subset of "the people", selected by lot, stands in for, or represent the people as a whole.

Understanding that Athenian democracy was representative—but not electoral—leads us to an important insight. Most people today dismiss the Athenian system as inapplicable to modern nation-states (or even cities) due to the issue of scale. Some argue that "real" democracy is simply not possible at a

large scale, while others re-define *democracy* by applying the word to modern electoral systems instead.

In fact, the Athenians solved the problem of scale—the core problem that has stymied democratic theorists and practitioners for the last couple of hundred years. The Greeks had invented a system of government using sortition that worked at a scale larger than face-to-face, in which the citizens ruled through de facto representative institutions selected by lot. Indeed, it is readily adaptable to societies of millions, or hundreds of millions, and they named this system *democracy* (Bouricius 2013).

However, sortition is merely a tool. If all citizens participate as equals in the lottery, it is democratic. But if only a subset of wealthy families is allowed to participate in the lottery, it is aristocratic. Numerous medieval and Renaissance aristocratic Italian city-republics, such as Venice and Florence, combined sortition and election into a complex multi-level process. Sortition played a crucial role in overcoming factionalism and protecting against tyranny. There were many variations from city to city, and within any given city over time.

Sortition was also a means of avoiding corruption due to a concentration of power, assuring true equality of opportunity, and affirming the right of the citizenry to self-govern. The ancient Athenians, and many Renaissance Italian city-states, believed that equal opportunity to serve was a cornerstone of political equality. In addition to sortition, the Athenian approach to self-governance also mandated relatively short terms and rotation of office. This can be generalized as the principle of *rule and be ruled in turn*.

Roots of Elected Chambers and Juries

Elected legislatures of today derive from repurposed chambers convened by monarchs to allow consultation with the aristocracy of the kingdom. They were not purpose-designed for democracy, and are ill-suited for that purpose. While the *Magna Carta* at the beginning of the thirteenth century is often taught as being an important document in the history of "democracy", it is more accurately viewed as formalizing power sharing and beginning the transition from pure monarchy to oligarchy. Elections of representatives to parliament from the landed aristocracy were added near the end of the thirteenth century, in what came to be known as the "model parliament". As I will discuss in a later section, the American revolutionaries used this parliamentary chamber model in designing their own legislatures, with the expressed purpose of empowering what the Framers called the "natural aristocracy" of America, as opposed to the *hereditary* aristocracy of Britain.

The jury system we have today evolved from an early English system with roots coming from Viking and Norman occupations, rather than from Athenian democracy. Juries were originally select nobles whom the sheriff thought might know the facts of the case or the accused, and be trusted to look out for the king's interests. When the Church banned clergy from involvement in trials by ordeal in the thirteenth century, decisions of guilt or innocence devolved to the juries. In 1682, South Carolina became the first place in the Americas to institute lottery selection of jurors. By 1765, Sir William Blackstone, in his influential *Commentaries on the Laws of England*, which was re-published in the Americas before the Revolution, wrote that

> a competent number of sensible and upright jurymen, chosen by lot from among those of middle rank, will be found the best investigators of truth, and the surest guardians of public justice … [a lottery jury system] preserves in the hands of the people that share which they ought to have in the administration of public justice, and prevents the encroachments of the more powerful and wealthy citizens.
>
> *(Blackstone 1765)*

Juries were seen as a popular bulwark against the risk of abuse by elected government and appointed judges. This protection was subsequently expanded by Amendment 7 in the Bill of Rights.

Alexis de Tocqueville wrote glowingly of the democratic importance of the American jury system:

> [The] jury is before everything a political institution; one ought consider it as a mode of sovereignty of the people … It vests each citizen with a sort of magistracy; it makes all feel that they have duties toward society to fulfill and that they enter into its government. In forcing men to occupy themselves with something other than their own affairs, it combats individual selfishness, which is like the blight of societies … I think that the practical intelligence and good political sense of the Americans must principally be attributed to the long use that they have made of the jury in civil matters … Thus the jury, which is the most energetic means of making the people reign, is also the most efficacious means of teaching them to reign.
>
> *(de Tocqueville [1835] 2012, 261–264)*

A series of US Supreme Court rulings and the 1968 Federal Jury Selection and Service Act mandated that jury pools be "selected at random from a fair cross section of the community". The US jury selection system, however, is distorted by the common practice of *peremptory challenges*, in which the attorneys for

each side seek to assemble a jury that will be biased in favor of their side by questioning and then dismissing some of the randomly selected jurors.

A Republic Rather than a Democracy

Though the terms *democracy* and *republic* are often used interchangeably today, James Madison, like most political theorists preceding him, made a sharp distinction. Madison favored elite deliberation, within a competitive electoral framework, which he termed a republic, as distinct from a democracy. Most of the Framers of the Constitution, including Madison, disapproved of democracy, considering it a dangerous form of government that could endanger the "property rights" of the wealthy landowners and slaveholders.

The system of elections was not considered "democratic" by the Founders and Framers. Benjamin Rush, one of the signers of the Declaration of Independence, noted that while power may *derive* from the people, "they possess it only on the days of their elections. After this, it is the property of their rulers, nor can they exercise or resume it, unless it be abused" (as cited in Miller 2021, 92).

The Federalists, believed that democracy was dangerous. They used democratic-*sounding* words, but sought to preclude actual democracy. As Joshua Miller wrote in *The Rise and Fall of Democracy in Early America, 1630–1789*,

> The Federalists rendered the democratic vocabulary of popular sovereignty harmless by invoking a fictitious people who could never meet, never deliberate, never take action. The body politic became a ghost. Once the Federalists had conjured an imaginary 'people' who could not challenge the power of the national government, they became bold in declaring that the people had the right to decide, to act, and even to overthrow the government whenever they chose to do so.
>
> *(Miller 1991, 113)*

Consent of the Governed versus Self-Rule

Consider the two phrases: "rule with the consent of the governed", and "self-rule". These terms are frequently used interchangeably, as if they were two ways of saying the same thing. But, on closer examination, they are completely different concepts. There is a fundamental distinction between consenting to an elite who would govern the people and everyday people being empowered to govern themselves.

The Enlightenment notion of "consent" was not initially even based on elections at all. It was at best hypothetical, with theorists like Thomas Hobbes observing that the sovereign, who might be a hereditary monarch, could be deemed

to have tacit consent as long as the people didn't emigrate or rise up in rebellion. Other Enlightenment theorists, such as John Locke, based consent on "natural law" theory (which Thomas Jefferson enshrined in the Declaration of Independence). However, the Scottish philosopher David Hume in 1748 dismissed this concept of "tacit" consent, and Jeremy Bentham wrote his condemnation of natural rights as "rhetorical nonsense—nonsense on stilts" (Bentham [1796] 1843).

Some of the Framers asserted that a more democratic constitution could ironically increase the power of the wealthy (at the expense of the professional classes). One of the key authors of the Constitution, Gouverneur Morris, a delegate from Pennsylvania, argued that in a democracy, the rich could use their wealth to buy the votes of the poor, or whip up the people's passions, and make these instruments for oppressing them, against their own and society's best interests. Alex Keyssar observes in his *The Right to Vote: The Contested History of Democracy in the United States*, that the Framers "were performing an impressive feat of ideological alchemy: providing an ostensibly egalitarian defense of an overtly anti-egalitarian policy" (Keyssar 2000, 11).

Many of the Framers making this argument on one day also expressed a concern on another day that the lower classes, rather than doing the bidding of the rich, would indeed pursue their own interests, leading to a redistribution of wealth. The Framers of the Constitution, as neatly encapsulated by historian John Keane, "thought in terms of the tricky political problem of how to go beyond a polity run by a monarch and a rump parliament, by building a republican form of government that kept its source of sovereignty—'the people'—at arm's length from the levers of governmental power" (Keane 2009, 279).

Although the Constitution begins with the stirring words "We the people …", the vast majority of Americans were never consulted nor asked to consent. Madison expressed concerns about the risk of popular passions if the people ruled unfiltered by representatives. He wrote in *Federalist Paper No. 63* that the new republic should be governed with the "total exclusion of the people, in their collective capacity" (Madison 1788).

Does choosing among candidates in an election imply consent by the voter in the entire system that proffers the election? The Rasmussen Reports polling firm has regularly asked Americans if they feel the federal government "has the consent of the governed". In August of 2013, it reached an all-time low with just 17 percent agreeing. This means that most people who participated in elections did not feel that their mere voting granted consent (Rasmussen Poll 2014b). By 2018, despite the conflict between Democrats and Republicans through the Trump presidency, the percentage had climbed to 24 percent (Rasmussen Poll 2018).

There is also a distinction between giving consent to a specific government (or set of rulers) and consenting to an overarching framework of government that will establish the means of selecting and consenting to a series of future government authorities into the indefinite future. A people might consent to be governed by a specific beloved king, but that is not the same as consenting to be governed by all future royal heirs.

The Federalist Framers of the Constitution believed the new nation should be ruled by a "natural aristocracy," as Jefferson called it (Jefferson 1813). There was a common attitude (at least among many of the elite) that wisdom and civic virtue were associated with the ownership of property. Madison argued that a democracy would not produce leaders "who possess the most attractive merit and the most diffusive and established characters" (Madison 1787b). But the protection of property wealth seems to have always been at the back of his mind. He agreed that the Senate should be structured to protect the wealthy from the many.

In notes of the secret debates at the Constitutional Convention, Madison is quoted as expressing worry about the threat of land redistribution, saying:

> our government ought to secure the permanent interests of the country against innovation. Landholders ought to have a share in the government, to support these invaluable interests, and to balance and check the other. They ought to be so constituted as to protect the minority of the opulent against the majority.
>
> *(Yates 1787)*

While many Americans today cherish the Constitution as a virtually sacred, inerrant model for "democracy," the Founders and Framers of the Constitution did not hold this view at all. Thomas Jefferson believed the Constitution should sunset every 19 years. In an 1816 letter, he wrote:

> Some men look at constitutions with sanctimonious reverence and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment. I knew that age well; I belonged to it, and labored with it. It deserved well of its country. It was very like the present, but without the experience of the present; and 40 years of experience in government is worth a century of book-reading; and this they would say themselves, were they to rise from the dead.
>
> But I also know that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times. We might as well require a man to wear still the coat which fitted him when a boy …
>
> *(Jefferson 1816)*

George Washington, in 1787, wrote:

> I think the people (for it is with them to judge) can, as they will have the aid of experience on their side, decide with as much propriety on the alterations and amendments wch [sic] shall be found necessary, as ourselves; for I do not

> conceive that we are more inspired—have more wisdem [sic]—or possess more virtue than those who will come after us.
>
> *(Washington 1787)*

The Founders gave us explicit advice to periodically reconsider the choices they had made about how we should govern ourselves today.

The French Revolution and Elections

The elected leaders of the French Revolution, like their American counterparts, were inspired by the "natural rights" theory and consent. They also disdained democracy in favor of an elite-ruled republic. Some years into the Revolution, the president of the National Assembly, Boissy d'Anglas, gave a speech which summarized his elite vision for the republic.

> We should be governed by the best among us; the best are the most highly educated, and those with the greatest interest in upholding the laws; save for the rarest exceptions, you will only find such men among those who, by reason of their owning property are devoted to the land in which it is situated … If you were to grant unlimited political rights to men without property, and if they were ever to take their place in the legislative assembly, they would provoke disturbances, or cause them to be provoked, without fear of the consequences …
>
> *(quoted in McPhee 2001, 160)*

The aristocratic nature of elections was well understood. In his 1997 book *The Principles of Representative Government*, Bernard Manin coined the term *principle of distinction* to describe this fundamental characteristic of elections. It is the very essence of elections for people to want to vote for people who stand out as distinct, or who can project an air of self-confidence and "superiority". The highly influential Baron de Montesquieu in 1748, had written that elections were the appropriate tool for an aristocracy, while selection by lot was natural to democracy. This understanding—that elections were oligarchic and sortition democratic—was restated by Rousseau in *The Social Contract*, published in 1762. Bernard Manin argues this "distinction" sentiment won out in the eighteenth century, as the anti-democratic framers of both the American and French constitutions, who themselves had won elections, saw the election of politicians as more desirable than the democratic lot.[1]

Note

1 Like the comparable US documents, the language of the Declaration of the Rights of Man and Citizen and the rest of the revolutionary Constitution had a universal ring, but rights were circumscribed, with male property owners over the age of 25 being

deemed "active citizens," while the bulk of society was relegated to the status of "passive citizens," and could not vote, nor serve in office. This distinction, crafted by the political philosopher and republican, Emmanuel Joseph Sieyès, provided the justification for denying equal rights to the poor. The preponderance of wealthy elites among those elected helps explain the passage of the Le Chapelier Law of 1791, which banned guilds, and workers' associations (precursors to unions) and made labor strikes against the law.

6

REPRESENTATION

Delegate versus Trustee

Hanna Pitkin's 1967 book *The Concept of Representation* is a foundational book for many political scientists. A key point that she makes is that there are many different kinds of representation, with different functions and expectations. Representation typically involves some principal (whether an individual or group, or other thing), and an agent (the representative). Representation may be formal (with authorization and accountability), symbolic, descriptive (resemblance), or substantive (action taken). Electoral representation is primarily concerned with the formal and substantive aspects. The proper role of an elected politician has been a topic of debate for centuries, and that role remains ambiguous today.

One of the quandaries in the realm of electoral representation is whether a representative should act as a "delegate" who faithfully transmits the opinions and wishes of their constituents into the legislative body, or should serve more as a trustee, exercising independent judgment, free to vote as they think is best for the welfare of either the constituents, or the nation as a whole. After all, representatives might gain information and insights that their constituents do not have. In 1789, in France the representatives of the Third Estate (the commoners) were intended to be delegates, but they quickly took on a different role.

The person most commonly associated with this debate is Edmund Burke, a political theorist and member of the British Parliament. Born in Ireland in 1729, he moved to England and ended up representing various districts as an MP. He was seen as a friend of the American revolutionaries and Ireland, though a severe critic of the French revolutionaries. While he did not favor democracy, nor giving average citizens the vote, he was a stalwart advocate of a representative government among the well-to-do.

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Burke famously argued that "Your representative owes you, not his industry only, but his judgment; and he betrays instead of serving you if he sacrifices it to your opinion" (Burke 1774). What is the purpose of legislative debate if representatives are mere delegates, locked into their positions? Those attending the US Constitutional Convention were referred to as "delegates", but certainly did not see their role as merely transmitting the views of their respective state legislatures. As Madison argued, no "delegate" attending could confidently state what view his constituents might have today, or six or twelve months hence, nor what they would think if they possessed the information and insights the members in attendance might gain. Thus, he argued, even the dictates of the amendment process specified in the Articles of Confederation, or the wishes of the state legislators, should not restrict the Philadelphia Convention representatives: "We ought to consider what was right and necessary in itself" (quoted in Rosen 2001).

Unlike this Convention, which was seeking to craft something completely new, where members often had no preset opinions, it should be noted that modern legislative chambers rarely exhibit any meaningful give and take or deliberation. As political scientist John Dryzek stated in describing a modern legislative chamber, it is

> not a deliberative assembly in Burke's sense [but] rather a theatre of expression where politicians from different sides talk past each other in mostly ritual performance. Party politicians do not listen, do not reflect and do not change their minds.
>
> *(Dryzek 2016)*

As a 20-year lawmaker myself, I can confirm his description, with just the rare exception to the rule.

In no country are national legislators legally bound to keep their campaign promises, let alone directives from the electorate. Yet politicians who veer too far from their constituents' wishes presumably can face retaliation at the ballot box. While some legislators may fear retribution and act accordingly, with overwhelming re-election rates, there is little evidence that voters effectively punish "misbehaving" legislators except in the most extreme circumstances.

Modern American legislators generally seek to have it both ways, claiming one or the other motivation (exercising independent judgment or following constituents' wishes), depending on which is most useful in a particular context. When they agree with the polls of their constituents, they trumpet the fact that they are doing their constituents' bidding. But when they would prefer not to vote that way, whether for corrupt or principled reasons, they latch onto the wiggle room provided by the Burkean view. In many cases, politicians act neither according to the wishes nor the welfare of the people—neither as a delegate nor a true trustee.

A third possible role of representatives is that of a reliable representative of their party and its platform. This view is extremely unpopular in the US but commonplace in multi-party democracies. Indeed, in some modern democracies, using what is known as "party list" voting systems, voters do not even see the names of individual candidates on the ballot, but instead simply select a party preference. This is intended to move representation from the realm of personality to that of policy and party manifesto. An individual representative exercising independent judgment, or the wishes of constituents as revealed in a poll, under this system, could be seen as undermining its integrity. Many of the concepts that fit under the umbrella term "representative" are mutually exclusive, and politicians may pick the meaning that suits their needs at the moment.

We are accustomed to referring to the person elected from our district as "our representative", even if we voted against him or her. Indeed, this "representative" may be working in direct contradiction to everything we believe in. This is an almost Orwellian twisting of the meaning of the word. If this person does not in fact represent my views or interests, and I did not approve of this person's selection, it would be more accurate to say that I do not have an actual representative in the legislature. I am deemed to be "represented", or in the Enlightenment concept—giving consent to the government—even if the party I supported is in a minority in government, and I abhor all policies enacted by my government. Even if I despised all of the nominated candidates on the ballot and voted for the least terrible one, to limit harm, or didn't vote at all—I am still deemed to be "represented". By applying the title "representative", the system masks the fact that most people have in fact no representation in our legislative bodies.

These unrepresentative elected politicians are accepted as our "representatives" because those are the rules passed down from previous generations. By participating in an election, we are thought to be tacitly accepting the outcome and the designation of an unrepresentative winner as our representative. And if we *don't* participate in the election, we are also deemed to be tacitly accepting the election outcome—as the saying goes, "you have no right to complain if you didn't vote". So the focus turns to how we might improve the representativeness of our representatives through improving the election process—or replacing it. A key aspect of sortition is that it is not the individual members of the deliberative body who are individually "representatives". Each individual member has no specific constituency. It is the body *as a whole* that represents the population as a whole.

Merit versus Mirror

Another fundamental disagreement on representation is whether representatives should be like ordinary citizens or should be exceptional. In Plato's *Republic*, while criticizing democracy and proposing rule by philosopher kings, Plato

famously used the analogy of a ship's pilot. It was as foolish to use a lottery to pick one's rulers as to select the captain of a ship. He asserted that there was a set of specific skills and traits appropriate to each task that average citizens wouldn't possess. The debate about the merits of popular democracy versus rule by an elite political class (whether royalty or an elite political class of "guardians") has persisted for eons. The analogy of the expert ship captain steering the ship of state, coined by Plato, is still used.

Edmund Burke also believed that representatives should be men of superior wisdom and ability. Like many aristocrats of his time, he believed such men were to be found in the upper classes. It wasn't intellectual ability or knowledge he sought, but rather moral virtue, good judgment and reason, which he felt were derived from experience. Burke imagined that political questions had morally correct answers, which wise representatives could ascertain. While the people were suited for identifying oppression, Burke used a medical analogy to explain the role of the elite in government. The ordinary people "are the sufferers, to tell the symptoms of the complaint; but we know the exact seat of the disease, and how to apply the remedy" (quoted by Pitkin 1967, 184). The irony, of course, is the fact that a physician of that time would be likely to use bloodletting to drain bad humors, harming or even killing the patient. Such elevated, but faulty self-assessments of the abilities of political elites continue today.

But, ever since the Ancient Greek democracy, there has also been a very different view of representation. A leading orator and statesman of the French Revolution, the Count of Mirabeau, used a map analogy, rather than Adams's portrait analogy, in stressing the importance of a legislature mirroring the people. In 1789, he said:

> A representative body is to the nation what a chart is for the physical configuration of its soil: in all its parts, and as a whole, the representative body should at all times present a reduced picture of the people—their opinions, aspirations, and wishes, and that presentation should bear the relative proportion to the original precisely as a map brings before us mountains and dales, rivers and lakes, forests and plains, cities and towns. The finer should not be crushed out by the more massive substance, and the latter not be excluded; the value of each element is dependent upon its importance to the whole and for the whole.
>
> *(quoted by Hoag and Hallett 1926, 162)*

A few delegates to the Philadelphia Convention advocated for mirroring. James Wilson stated that the government ought to possess "the mind or sense of the people at large. The legislature ought to be the most exact transcript of the whole society. Representation is made necessary only because it is impossible for the people to act collectively" (Notes on the Debates in the Federal

Convention—June 6, 1787 [1787] 2006). But, Bernard Manin observed that the bulk of the Framers of the US Constitution, like Hamilton and Madison, did *not*, in fact, see representation "as an approximation of government by the people made technically necessary by the physical impossibility of gathering together the citizens of large states" (Manin 1997, 2). Manin points out that they believed that representatives ``should rank higher than their constituents in wealth, talent, and virtue" (Manin 1997, 94). Madison partially shared Burke's view, arguing that elected representatives (being the "natural aristocracy") would act as a filter, refining public opinion, and coming to superior decisions that the less-informed public might not.

During the ratification debates for the new Constitution, Federalists and Anti-Federalists alike saw the election process as naturally favoring men of wealth, especially from "large" districts, regardless of whether there were property requirements for being a representative or for voting. Federalists often favored both large electoral districts as well as property requirements specifically to make it more likely that the wealthy and successful would be elected. Many of those who opposed the proposed Constitution preferred keeping power at the individual state-level with the argument that average men, the "yeomanry", had a better chance of winning elections there.

While sortition itself was not debated during the Constitutional Convention, during the ratification debates, the Anti-Federalists did object to the oligarchic nature of large elective districts provided for in the Constitution (and by "large" they meant Congressional districts with just 30,000 residents). They feared that farmers, mechanics and small merchants could never get elected to the House of Representatives. Writing under the pseudonym "Brutus", a leading New York Anti-Federalist anticipated Manin's "principle of distinction" in writing in 1787:

> According to the common course of human affairs, the natural aristocracy of the country will be elected. Wealth always creates influence, and this is generally much increased by large family connections: this class in society will for ever have a great number of dependents; besides, they will always favour each other—it is their interest to combine—they will therefore constantly unite their efforts to procure men of their own rank to be elected.
>
> *(Brutus 1787)*

As the nation grew, additional seats were added to the House of Representatives. But in 1911, Congress fixed the size at the current 435 seats, regardless of population growth. As a result, Congressional districts have grown in population size and now must represent around 750,000 residents. This is one of the most extreme constituent-to-representative ratios among the world's national legislatures, and average citizens have effectively no chance of serving.

With near universal suffrage today, Americans seem to have embraced a more democratic vision of who should grant consent. But this does not necessarily apply to the issue of whether the actual rulers should be elite, even if not a class of propertied white men as intended by the Framers of the Constitution. Yet, the notion that the winners should earn their seats through "merit" is deeply ingrained. America is often referred to as a "meritocracy", even if we doubt the merit of those actually elected to Congress or appointed by the president. The very idea that we should be represented by merely "average" fellow citizens is subject to ridicule, akin to when US Senator Roman Hruska defended President Nixon's nomination of Harold Carswell to the US Supreme Court, saying, "Even if he is mediocre, there are a lot of mediocre judges and people and lawyers. They are entitled to a little representation, aren't they, and a little chance?" (Hruska quoted by Will Fassuliotis 2019). This is a key argument offered against sortition, and will be a focus of subsequent chapters.

In modern times, many people associate merit and education, and indeed, typically over 95% of the members of European parliaments and the US Congress have a college education, often from prestigious universities. However, Michael Sandel, in his book T*he Tyranny of Merit: What's Become of the Common Good?*, notes that practical wisdom and civic virtue are not developed in such institutions.

> And recent historical experience suggests little correlation between the capacity for political judgment, which involves moral character as well as insight, and the ability to score well on standardized tests and win admission to the elite universities. The notion that 'the best and the brightest' are better at governing than their less-credentialed fellow citizens is a myth born of meritocratic hubris.
> *(Sandel 2020, 99)*

Even if one accepted that it was desirable to select representatives who were better than the average citizen, is it safe to assume that elections actually select for "superior" citizens? Approval ratings of Congress commonly sink into single digits, and a poll conducted by Rasmussen Reports in April 2013 found that just five percent of likely voters believed that Congress and its staff could be described as the "best and brightest" (Rasmussen Poll 2013b).

There is plenty of anecdotal evidence, however, that elections tend to attract candidates with what psychologists term the "Dark Triad" of personality traits—narcissism, Machiavellianism, and psychopathy (Paulhus and Williams 2002). These and other psychological tendencies of politicians will be a major focus of later chapters.

Elections, as opposed to random selection, allow for the use of rational thought and good reasons in selecting rulers. But elections also allow for the

use of irrational bias and bad reasons—or corruption. It is this relief from bad reasons and corruption that is central to historical decisions to use sortition. This tension between being typical and being the best is generally glossed over today. But I would argue that elections fail to satisfy *either* vision (neither merit nor mirror) of who we should have representing us.

The Mirror—Descriptive Representation

Perhaps the most widely referenced work on representation is the previously mentioned book by Hanna Pitkin, *The Concept of Representation.* Representation can be symbolic, as a king "represents" the nation as a whole (or a flag represents a nation). A representative might be an authorized agent, such as a lawyer who speaks or acts on behalf of a client as an expert, as Burke favored.

Elections promote this authorized agent concept with Manin's principle of distinction. Representatives might instead be descriptively representative—as in Adams's simile of an "exact portrait"—or Mirabeau's of a map—describing the population in terms of gender, race, class, ideology, interests, and so on.

Jane Mansbridge, of the Kennedy School of Government at Harvard, and past president of the American Political Science Association, notes that

> When the U.S. Constitution was being debated in 1787–88, and the Federalists advanced their principle of distinction, the Anti-Federalists opposed that principle, arguing that representation required "likeness" and "resemblance" to constituents so that representatives could "possess their sentiments and feelings".
>
> *(Mansbridge 2009, 387)*

The New York state Anti-Federalist using the pen-name Brutus wrote: "The idea that naturally suggests itself to our minds, when we speak of representatives, is that they resemble those they represent; they should be a true picture of the people: possess the knowledge of their circumstances and their wants; sympathize in all their distresses, and be disposed to seek their true interests" (Storing and Dry 2008, 17). He also wrote:

> The very term, representative, implies, that the person or body chosen for this purpose, should resemble those who appoint them—a representation of the people of America, if it be a true one, must be like the people … In this assembly, the farmer, merchant, mecanick. and other various orders of people, ought to be represented according to their respective weight and numbers.
>
> *(Storing and Dry 2008, 379–380)*

Alexander Hamilton expressly challenged the notion that the legislature should come from all classes in *Federalist Paper No. 35*. He wrote:

> It is said to be necessary, that all classes of citizens should have some of their own number in the representative body, in order that their feelings and interests may be the better understood and attended to. But we have seen that this will never happen under any arrangement that leaves the votes of the people free. Where this is the case, the representative body, with too few exceptions to have any influence on the spirit of the government, will be composed of landholders, merchants, and men of the learned professions. But where is the danger that the interests and feelings of the different classes of citizens will not be understood or attended to by these three descriptions of men?
>
> *(Hamilton 1788)*

This assertion that the elite can be expected to fairly represent the interests of the lower classes could theoretically be true, but on the whole, has not been borne out by reality. Back in Chapter 2, I discussed the research of Martin Gilens that revealed Congressional "responsiveness to the affluent remains strong while responsiveness to the poor and middle class is completely absent" (Gilens 2012, 84).

Descriptive representation can have a direct impact on how well representatives perform in terms of knowing the true interests of their constituents and evaluating what action the represented population would take if they had all of the information possessed by the representative. It is natural to perceive and evaluate information in a way that is consistent with one's own prior biases, class, racial, and other interests. While specific representatives in specific cases may rise above this natural bias, it is undoubtedly the norm. Thus, the failure of descriptive representativeness is likely to result in failures of substantive policy representation as well.

Studies have also found that ethical beliefs vary according to wealth. For example, a 2023 study by University of Michigan researchers found that people in the top 5 percent income bracket are significantly more likely to accept societal income inequality as fair than are the lower 95 percent of income earners. One of the researchers, Alain Cohn, said, "In other words, wealthy individuals are more likely to consider unequal incomes as fair even if the inequality arises from chance" (Wadley 2023). The fact that elected representatives skew strongly toward the wealthy likely has an impact on what they perceive to be problems that need addressing, and the policies they consider.

As an example of how the lack of descriptive representation can distort the public agenda (deciding which issues need addressing), a series of studies by Michael Kraus and others at Yale found that Americans dramatically overestimate the progress made in racial economic equality since World War II. There

have clearly been improvements in statutory discrimination. However, in terms of wages for college-educated Black employees vs. college-educated white employees, high school-educated Black employees vs. high school-educated white employees, and accumulated assets (wealth), the gap between Black and white communities has actually increased today compared to 1945.

The wealth gap can be credited to such things as historic low levels of assets among Black citizens from "red-lining" policies, and other discrimination, that prevented them from getting mortgages, etc., such that even if no further discrimination occurred, wealth passed intergenerationally and compounded means the wealth gap has actually grown. This misperception of progress, having been made that is "wildly discrepant from reality", isn't evenly or randomly distributed among Americans. The researchers found that it is much greater among high-income Whites than for any other group. Thus, the significant overrepresentation of high-income Whites elected to legislatures exacerbates the distortion of agenda-setting and policy. The authors note:

> One implication of the present findings is that policy discussions about the detrimental effects of economic inequality, as well as potential ways to reduce it, are unlikely to contend with the racial economic gaps that are contributing to these overarching economic trends. That is, solutions for persistent racial economic inequality might never enter discussion if policymakers and the public believe these racial divides are already closing.
>
> *(Kraus, Rucker, and Richeson 2017)*

Representation can be any mixture of Pitkin's concepts, as well as being more or less substantive or accountable. But unlike the other concepts of representation, descriptive representation can only apply to the whole. While an individual representative may be an authorized agent, no individual representative can be descriptive of a diverse population. But it is a mistake to think simplistically of the Jewish representative representing Jewish perspectives, the Black representative representing Black perspectives, and the labor union representative representing workers. Citing various political theorists from the eighteenth to twenty-first centuries, political scientist Joel Parker, in his doctoral dissertation, points out that:

> An emphasis on resemblance does not hinge on the assumption that we can represent only those of our "own" group, but the opposite. Just as a nation is more than the sum of its citizens, a representative body is more than the sum of its members. Since we are all affected by the actions taken by political bodies en toto, we should think of the entire body making decisions that affect us as being representative. The representative body as a whole must stand for the nation as a whole.
>
> *(Parker 2011, 171)*

It is not sufficient for descriptive representation to be nominal. Depending on the goal of those making the selection, it is possible to assemble a group of token representatives that is superficially descriptive. For example, it is possible to carefully select a group of African American "representatives" who act in a manner diametrically opposed to the interests of the vast majority of African Americans. Hand-picked descriptive representatives offer no guarantee of comprehensive representation. But the use of scientific sampling can overcome this failing. Random selection will generate a body that is not only roughly similar in appearance, or other identifiable demographic measures, but also in terms of invisible characteristics such as perspectives, interests, values, class, and political beliefs. With sortition, the visible similarity is essentially a "double check" for the overall representativeness of the sample. It is necessary to move beyond seeing an individual delegate as one's representative, to seeing the representative body as a whole as being representative (or failing to be representative) of the community as a whole. This jury model of representation using sampling methods, or "representation by sample", was proposed as far back as 1913 by A. Lawrence Lowell in his book *Public Opinion and Popular Government* (Lowell 1913).

But many people reject descriptive representativeness as a good thing. The competing vision is of average people being ruled by the best among them. This was certainly Plato's and Madison's view. Henry J. Ford (no relation to the motor company tycoon), an ally of President Wilson and also a former president of the American Political Science Association, wrote in 1924 that the notion of a reflection or resemblance is as ridiculous in politics as in corporate governance:

> No one would regard it as a correct principle in the organization of a joint stock company that the management should be such as would fairly reflect such knowledge as the shareholders might have about the business the company is to carry on. The principle universally relied on there is a grant of power to men of special knowledge and capacity, subject to responsibility for results.
>
> *(Ford 1924, 148)*

As discussed earlier, the opposing preferences for representation by mirror, or by merit, were debated in both America and France at the time of their revolutions. But the overwhelming sentiment among the wealthy men who led both revolutions was that representatives should be elite men like themselves. This debate about typical vs. superior, or the related clash between representativeness and expertness, may actually be a false dichotomy. Being a mirror that adds diversity can make the deliberative body, as a whole, superior to a body made up of individually "superior" members, and a descriptively and genuinely representative body may bring forth kinds of expertise that a body of individual experts couldn't muster. I will examine this in great detail in subsequent chapters.

Representation by Sortition

The court jury is a useful analog for beginning to think about how randomly selected policy-making bodies might earn legitimacy. But there would need to be major differences in terms of selection methods, size, procedures, and functions. They should not hew too close to the current court jury model. Policy jurors must be free to ask questions and bring in experts of their own choosing, rather than being limited by exposure only to the information pre-selected by lawyers seeking to shape the jury decision. Sortition uniquely allows for the melding of deliberative and participatory democracy, so long as there are numerous allotted bodies at national, state and local levels. Some might be short-duration single-issue policy juries, while others might review executive performance, set agendas, deliberate to craft draft proposals, oversee the lottery process and mini-public procedures and staff, etc. Anyone who is willing could be able to participate directly in actual self-government at various times throughout their life.

Potential transition strategies to a sortition-based democracy will be addressed in a later chapter. However, the fact that the vast majority of citizens' assemblies convened in the past two decades have been single-issue focused is not coincidental. Institutionalizing sortition will likely begin in one policy domain at a time, rather than in a broad sweep. For example, a city is more likely to initially just move decisions like zoning regulations to sortition panels than replace the city council altogether. There are distinctly separate decision-making tasks of government that are typically all mixed together, that could (and should) be separated out. There is agenda-setting, adopting internal rules and procedures, crafting proposals, amending and narrowing to a final draft bill, advocacy for and against a bill, judging whether to adopt the bill, executing the new law, and evaluating the performance of the new law and of the executive.

In standard elective governments, a single set of legislators takes on all of these lawmaking tasks.[1] Having the same set of people handle all these functions is a very bad design for lawmaking. The mere act of crafting a bill and the act of advocating for or against the bill make those people unfit to then judge their own handiwork. Pride of authorship, information cascades, or groupthink warps their ability to judge the final product or to evaluate its performance. They become biased. When a law isn't working well, those who adopted that law are unable to fairly evaluate its performance, as they want to save face by asserting that their law is working well. Failing policies are continued for years after impartial people recognize they are a failure. Perhaps most egregious, the leaders of the controlling faction in a chamber write the rules and procedures for how business will be done, which promotes corruption and the concentration of power.

This design of a chamber that takes on all functions has been passed down from repurposed advisory chambers created to advise the monarchs in Europe. Elected legislatures were not designed for democratic nor competent lawmaking.

This all-function design would be even worse for a sortition-based democracy. Simply substituting lottery selection for election in filling such an all-functions legislative body would be a mistake. I've written a journal article on this topic, entitled "Why Hybrid Bicameralism is Not Right for Sortition" (Bouricius 2018). A sortition-based lawmaking process needs to be designed from the ground up. For example, the committee structure in elected chambers would be extremely problematic with sortition. The sample of members in a body as small as a committee would not be very representative. Also in elected chambers, the committee system means that most members do not study or understand most bills they eventually vote on. Instead, they rely on the opinions of the committee members from their particular party who serve on the committee of reference. This poor design is completely inapplicable in a non-partisan sortition system.

Different lawmaking functions should be taken on by different sortition bodies. One might be limited to deciding, after consultation with a variety of experts, what bills should be proposed to a large policy jury, or evaluating the effectiveness of an existing law. These are two decision-making steps that have a powerful subjective aspect and cannot be decided purely based on expertise. Referring to Plato's ship pilot analogy, an expert can be hired to pilot the ship, but the passengers should decide where the ship is going to go. For example, a society might decide that a goal of full employment for all who want to work should be pursued. No amount of expertise can establish definitively whether this is a good goal. The evaluation step simply examines whether this has been achieved and whether the unintended consequences are acceptable. Again, no expert can decide whether the cost of achieving this goal is acceptable to the people. Sortition can be beneficially incorporated into almost all phases of the lawmaking process.

A crucially important fact about sortition, which is often ignored by deliberative democracy sortition advocates, is that this tool can be used for a variety of tasks other than creating descriptively representative deliberative bodies. As Oliver Dowlen pointed out in his book *The Political Potential of Sortition: A Study of the Random Selection of Citizens for Public Office*, using its non-rational (not irrational) "blind break", sortition is also useful for its impartiality and anti-corruption characteristics (Dowlen 2008). The current jury system that selects only 12 jurors is too small a sample to have much probability of creating an accurately descriptive representation. But that is not the goal. Random selection in this case is seeking to select a panel of impartial citizens who are diverse and only roughly typical of the population. Indeed, it is common to have judges randomly assigned to particular cases to avoid corruption. Depending on the function, not all panels in a sortition-based democracy would necessarily need to achieve, or even seek, descriptive representation. The final decision-making policy juries, however, should be accurately representative in order to achieve the needed legitimacy.

When people first learn about sortition, some suggest there would need to be some minimum competency requirement, some education level, or at least the ability to read. For some functions, this may make sense, but the notion springs from conflating the individual mini-public members with individual politicians in an electoral system. Remember, the goal is to have the body *as a whole* represent the community *as a whole*, including its disabilities. For example, the inclusion of a person with Down's syndrome in the room (who perhaps needed to listen to audio versions rather than read background material) may spark empathy and insights among other members that lead to better legislation, because it anticipates and accommodates the needs of such people in society. In short, the inclusion of nominally "incompetent" members may increase the competency of the group. We will examine design considerations in a later chapter.

Modern Sortition

The modern resurrection of sortition took a major step in Canada, starting in the province of British Columbia. Sortition was used to form a deliberative body to consider making changes to their electoral system. Canada is one of the few modern democracies, along with the UK and the United States, that uses the archaic single-seat, winner-take-all election system (discussed previously). Recognizing that elected politicians had an inherent bias when it comes to fiddling with the election rules that got them elected, some far-sighted political leaders in British Columbia decided to establish an independent Citizens' Assembly to consider reforms and place a referendum proposal directly on the ballot. This Assembly of 160 members (80 men and 80 women), which met throughout 2004, was created using stratified random selection of one man and one woman from each district, with the addition of randomly selected male and female Aboriginal (First Nations) members.

In his speech at the opening ceremonies of the Citizens' Assembly, the Chair, Dr. Jack Blaney, stated

> Starting today, we have an incredible and unique opportunity, and an equally incredible and unique responsibility. To our knowledge, nowhere, at any time in a democracy, has a government asked non-elected citizens to undertake such a commitment, and then give those same citizens such potential power over an important public policy question.
>
> *(Blaney 2004a)*

In fact, far from being unique, this was the *standard* practice in the mature Athenian democracy, and it is only in modern electoral "democracies" that this is novel, and in subsequent essays Blaney specified that it was unprecedented in "modern democracies".

Following British Columbia's historic and precedent-setting adoption of sortition with its Citizens' Assembly, Ontario copied this procedure. Similar citizen assemblies, selected by lot, were also created in Australia, Belgium, and in Iceland in response to the financial crises. In the two decades that followed, nearly a thousand such citizens' assemblies have been impaneled around the world, though very few in the United States so far. These have nearly all been advisory bodies, rather than final decision-making bodies. However, they are demonstrating the validity of sortition as a democratic tool, hopefully encouraging further expansion and authority down the road. Details about some of these and other remarkable experiments in sortition-based democracy are discussed in a later chapter.

Note

1 Although it is common to have two chambers, such as a House and Senate, both of these bodies duplicate all of these tasks, with the exception that in a non-parliamentary presidential system such as the one in the US, the executive function has a separate branch of government.

7

NEURO-POLITICS

I now turn to some underlying traits of the human mind that make elections and mass-participation plebiscitary direct democracy untenable. This chapter will present many of the reasons that our brains are not well-suited for elections, and the next chapters will focus on why elected officials are not well-suited for policymaking. These factors disqualify elections as the basic tool of democracy, regardless of voting method or other election reforms. Some of these factors have only come to light since recent advancements in the science of psychology, but many of them have been recognized for eons.

It is also important to recognize that there is a distinction between being a political leader and a political representative. However, in electoral systems these two roles are generally intertwined. Evolutionary development of leadership and followership in small-scale societies in which humans and their proto-human ancestors have spent most of their existence creates a mismatch with the role and selection of leadership in modern large-scale societies (von Rueden and van Vugt 2015).

Rational Ignorance

We'll start by examining a serious problem, if not an "Achilles' Heel" of mass elections—ignorance. To be clear, I am not deriding the intelligence of ordinary people, simply acknowledging that we all know a lot about some things, but little or nothing about most other things. Elections may be appropriate in small settings where everybody knows everybody else personally, but they become problematic in large communities. Here I will focus on governmental elections,

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but much of the analysis that follows is also applicable to large organizations that seek to function democratically.

Most people would agree that for elections to work well, voters should have knowledge about their choices. This is true whether we are speaking about a referendum or electing public officials. I will focus on the election of representatives, as the most common election scenario. To make an informed decision, voters should know the policy proposals, performance record, and true character of the incumbent, as well as the opponents. This should not be based on passing impressions from 30-second TV spots or targeted social media ads designed to manipulate. Most Americans agree that voters go to the polls without being well-informed. The Rasmussen polling firm regularly asks voters whether they believe they are well-informed about policies and candidates before they vote, and also whether they believe other Americans are well-informed when they vote. Interestingly, although most voters believe they themselves are well-informed, only around 15 percent believe that American voters overall are well-informed. This has ranged between 9 percent and 21 percent in recent years (Rasmussen Poll 2019). So, do respondents tend to overestimate their own level of knowledge, while fairly assessing everybody else?

A hint might come from surveys that regularly indicate that a huge majority of people believe they are better than average automobile drivers. (Note that it is mathematically impossible for this to be correct.) It is likely that both I—the author—and you—the reader—of this book believe we are better informed about politics than most people. Yet, many of the people we think we know more than likely think they know more than us. It is natural to believe that our beliefs are true—that is what makes them beliefs. True intellectual humility is a rare commodity, but we should acknowledge that we may be the ones who are mistaken.

Hardly any voters are actually well-informed about all of the candidates, or even the "major" candidates. They may know a lot about one or two candidates in one or two races, but certainly not all of the offices up for election (in the US, we generally elect far more offices than in most other nations). In a party-based system of proportional representation, such detailed candidate information is not as important since the candidates are bound to support the party platform. But here as well, there is a dearth of actual knowledge among voters about party platforms, let alone the actual ramifications of a party's proposed policies, nor what coalition compromises will be struck following the election.

Since candidate-based elections also have policy implications, voters should know about the policy directions of the various candidates or parties. But more—they should have an understanding of the implications of those policies, rather than merely a superficial opinion (often derived from slogans or partisan tribal loyalty). Further, there are innumerable policy areas, such that no voter's individual knowledge can encompass very many of them.

In his book *The Phantom Public*, Walter Lippmann observed that

> The individual man does not have opinions on all public affairs. He does not know what is happening, why it is happening, what ought to happen … and there is not the least reason for thinking, as mystical Democrats have thought, that the compounding of individual ignorances in masses of people can produce a continuous directing force in public affairs.
>
> *(Lippmann [1925] 1993, 29)*

But this is not a condemnation of people's intelligence or competence. It is a recognition of the fact that humans have limited attention (what Jeremy Bentham called "active aptitude") and other things to do, combined with the reality that one person's vote in a mass election has almost no chance of actually changing an outcome (it would need to break or create a tie). However, if a small representative sample of citizens were presented with a policy choice, given resources, information, and time, and knew that their decision would be consequential, this dismissive story becomes very different.

With the de minimis impact of a single vote in a mass election (being essentially inconsequential), people have little rational incentive to exert much effort to become well-informed. Joseph Schumpeter believed that the typical citizen "drops down to a lower level of mental performance as soon as he enters the political field. He argues and analyzes in a way which he would readily recognize as infantile within the sphere of his real interests" (Schumpeter 1942, 262).

The larger the group, the less each individual feels obliged to pull his own weight. This is literally true in experiments measuring how hard individuals pull in a game of tug of war, comparing just a few on a side to a game with dozens on each side. As Schumpeter put it, voters in a mass election have "a reduced sense of responsibility, a lower level of energy of thought and greater sensitiveness to non-logical influence" (Schumpeter 1942, 257). The larger the group, the more likely each individual is to engage in informational free-riding. The reliance on social cues, or trusted "opinion leaders", rather than expending the necessary energy to make independent assessments, is natural and typical behavior for most participating voters in any mass election. In order to be a well-informed voter, it would take many, many days of serious research. The key observation is that most people are unwilling to expend a great deal of energy on an activity that is not intrinsically enjoyable when their effort results in no actual or perceived benefit.

The term *rational ignorance* was coined by economist Anthony Downs, an economist at the Brookings Institution, in his seminal work, *An Economic Theory of Democracy*, in 1957 (Downs [1957] 2003). He noted that since there is vanishingly little chance that one's single vote will actually make any difference in the outcome of a large-scale election (as noted above, a vote would need to

either break or make a tie for that vote to actually change the outcome), there is no rational grounds for investing any time or effort in becoming informed about candidates or issues. Economists are fond of doing cost/benefit analysis, assuming humans act rationally. Voting is an example of a collective action "public goods problem". The "marginal per capita return" on contributions to the public good is so tiny that there is essentially no reason to participate. In the realm of voting, economists expect a person to assess how much effort and time it would take to become well-informed about all of the candidates and issues in order to cast an informed vote. The person should also honestly assess the likelihood that their one vote will genuinely make a difference to the election outcome. A fair cost/benefit analysis would show that it is irrational to commit any effort in overcoming ignorance in this situation. The rational thing to do is to put in little or no effort to overcome your ignorance. The benefit (return) on the voter's investment of time is always essentially zero. Indeed, even taking the time to vote at all (even without spending time educating oneself) isn't rational from this perspective. Downs referred to the fact that anybody bothers to vote as "the paradox of voting". If people were rational, they wouldn't waste even that much time.

Single-issue voters may have accurate knowledge about how all of the candidates stand on their key issue, but this is hardly a counter to the ignorance at the base of electoral "democracy", since the elected officials will be dealing with hundreds of other issues as well. Within a multi-party proportional representation voting system, the ignorance question is more about knowledge of the various party manifestos (platforms) than of individual candidates. In a two-party winner-take-all system, such as in the US, information needs are reduced by usually having only two, or often only one, choice on the ballot.

Many voters believe that any Democrat is better than any Republican, or conversely, that any Republican is better than any Democrat, so any effort learning about the candidates is unnecessary. But voters with objectively identical interests often hold the opposite belief about the better party, and assert that their counterpart supporting the other party is the one who is ill-informed. Also, this party label shortcut disappears in the most consequential elections—primary elections within each party. These are the most consequential, because most electoral districts in the US, whether due to gerrymandering or cultural tradition, regularly elect candidates from a particular party, so that the general election is a mere formality.

If each person's single vote is but a drop in a large body of water, why do so many people vote anyway? It is rational to spend your limited time doing something that you enjoy, or has a probable payback, rather than becoming politically informed or voting. Although it is standard rhetoric for encouraging voter turnout to insist that "your vote matters", this is an article of faith rather than a mathematically true statement. Many non-voters (including some highly prestigious

economists) simply don't buy into that myth and choose to abstain. The rational thing to do is not to waste time with voting. And indeed, most Americans do not vote in most elections.[1]

However, many people enjoy or feel good about voting. Following campaigns and political news is akin to following a sports team. Being a voter or being a sports fan provides psychological satisfaction and partisan or team camaraderie, rather than exercising any significant power over the outcome of the election or the game. Voting can be thought of instead as an expressive act, or an act of group solidarity. Voting fulfills a felt duty of "doing one's part in a democracy" (or for one's self-identified sup-group). The analogy of feeling good about "doing one's part" by taking a few extra steps to put a plastic container in a recycling bin, rather than the trash, comes to mind.

The history of plastic "recycling" as a public relations distraction by oil companies and plastics manufacturers to avoid the risk of government regulation, and the fact that most plastics placed in such bins are never actually recycled, are unfamiliar to most people (Sullivan 2020). But even if voting has an expressive value for voters, as Hélène Landemore notes, you still do not have a compelling reason to vote in a genuinely informed manner. So, as Downs observed back in 1957, "A large percentage of citizens—including voters—do not become informed to any significant degree on the issues involved in elections, even if they believe the outcome to be important" (Downs [1957] 2003, 298).

Humans are not reliable at making rational cost/benefit analyses. An activity might "feel good" even if the utility is hard to calculate or express. This "feeling good" may itself be the only utility. In a 2016 paper titled "Voting to Tell Others", by behavioral economists from UC Berkeley, the University of Chicago and Harvard University, the researchers concluded that a major factor for why many people vote is because it is seen as normatively good and they wish to avoid feeling shamed or having the discomfort of telling a lie about having voted if asked whether they voted in the recent election (Della Vigna, et al. 2016). Voting can be considered an act of symbolic group solidarity, duty, or an expression of community interest, and as evidence confirming one's self-identity as a "responsible person", rather than as democratically instrumental.

This psychological aspect of voting was verified by social psychologist Christopher Bryan and his colleagues at Stanford University (Bryan et al. 2011) In several experiments, he sent surveys to people on the voter list and asked one randomly selected group whether they agreed that it was "important to vote", and asked the other group if it was "important to be a voter". He found that merely changing this wording had a significant impact on responses and actual turnout among the two groups of participants in the following election.

Among 133 young Californians surveyed, 82 percent of those who got the "vote" (task) version of the question actually voted in the 2008 presidential election, while 96 percent of those getting the "voter" (personal character) variant of

the question did. In a confirming replication experiment in New Jersey, 244 people were surveyed, and 79 percent of those receiving the question whether it was important to "vote" ended up voting in the governor's election, while 90 percent of those who were asked if it was important to be a "voter" actually voted. Being a voter is akin to being a responsible citizen, a valued character trait, whereas "voting" is merely a task, like folding the laundry.

But the fact remains that the overwhelming bulk of citizens who do participate by casting ballots do so without significant research into all the candidates and issues (which cannot be uncovered merely by watching the news or reading the newspaper, since they focus on the horse race aspect of the campaign). Deep down, they know that their one vote almost certainly won't make a difference, even if they publicly assert that "every vote counts". This also means that voters are guided by superficial understandings and unconscious biases, which they might have sought to verify or overcome if they knew their votes actually had any likelihood of being decisive.

Every election cycle, we hear news stories about how ill-informed voters (and non-voters) are. This constantly reinforces the view put forth by Lippmann (and many others since) that the "average man" is simply not competent in the realm of politics. On the other hand, it can be argued that it is those who devote energy to constantly staying abreast of the latest political news who are revealing a lack of genuine appreciation of the reality and basic mathematics of elections. Thus, non-voters who tell a pollster that they just don't think they know enough about the candidates to vote appear to have a more accurate understanding of the reality of the situation than most voters. As noted above, staying informed about policies and electoral politics is akin to staying informed about one's favorite sports team. It is a fine hobby, if one enjoys it, but it doesn't contribute to real democracy or self-government, any more than a fan who memorizes team statistics helps that team win.

Economist Bryan Caplan in *The Myth of the Rational Voter* has gone so far as to suggest the term "rational irrationality" to describe the dynamic where voters who have a world view or underlying set of biases that might lead to harmful policies, may gain some psychological pleasure from voting in accordance with their biases, even if the policies are in fact contrary to their demonstrably genuine interests (Caplan 2008). Since the risk of one's vote actually affecting the world is nearly non-existent, it makes rational sense to vote in a way that "feels good" and affirms one's ill-informed biases, or membership in a partisan tribe. This helps explain why many voters vote ideologically but objectively against their own interests. Caplan's argument suggests that people are more likely to spend the time to make an informed decision and act on it when they believe their one vote may realistically be decisive, such as in a small group, or when making a personal purchase (though even in this last circumstance, advertisers know rational analysis by a consumer can readily be circumvented).

On the other hand, Gerry Mackie, a University of California political theorist disputes the expressive theory of voting and proposes a "contributory theory of voting" (Mackie 2011). Rather than needing to alter the outcome for a vote to matter (or merely being expressive), a vote can contribute to a larger margin of victory or mandate (or reduce the margin if on the losing side), which may incrementally influence the boldness of the winner's policy actions. Voters activated by this view of an election may have a slight incentive to vote in order to plump up the side they prefer, though there is no evidence that this prompts voters to become well-informed.

There is another counter-argument, which a few academics have proffered, that deserves comment. As long as some voters are well-informed, the ill-informed voters will essentially cancel each other out. Most votes are essentially just random noise, from which the pure signal of the informed voters can emerge. This is only a valid analysis, however, if poorly-informed voters' choices are genuinely random. If there is any general bias in one direction or another, such as from exposure to TV advertisements or a history of party affiliation, the mathematics behind this assertion falls apart.

So, is it possible that rational ignorance is the underlying cause of a "bad rap" that average people get for political incompetence? Is it the structure of the political system, with its primary reliance on mass elections, that essentially promotes these low levels of political knowledge? Even Edmund Burke, who was not shy about saying how foolish the people could be, also noted that a reason for this was that they generally acted "without deliberation". Sortition provides the means to remedy this by giving a representative subset of everyday people both the opportunity and, by dramatically increasing the impact of a participant's vote, the incentive to overcome rational ignorance and actually deliberate.

Thinking Fast and Slow

Psychologist Daniel Kahneman, who, along with Amos Tversky, won the Nobel Memorial Prize in economics for their pioneering work on decision-making, provides a new lens with which to examine political decision-making by both voters and legislators. His life's work is summarized in his groundbreaking treatise *Thinking, Fast and Slow* (Kahneman 2011). He explains how evolution has left us with a mind that has two distinct systems for making decisions—the unconscious, automatic system that works in the background, and the conscious mind, which requires attention and effort. For ease, he refers to these two brain systems as "system one" and "system two". Of the many thousands of (mostly trivial) decisions we make throughout the day, the first system is in charge. We all rely on mental short-cuts or "rules of thumb", known as *heuristics*.

From an evolutionary survival standpoint, it is better if our brain and body react instantly and automatically to a rustle in the grass that may be a lion, rather

than take time to carefully examine all the evidence. It just isn't beneficial to devote our limited mental resources to giving time-consuming attention to most decisions. In fact, although our brain blocks awareness of it, many decisions that we believe (in retrospect) we made *intentionally* have been conclusively demonstrated to have actually been made through our unconscious "system one" mental process. If challenged, we then justify our unconsciously made decision with reasonable-sounding rationalizations. As Kahneman puts it, "the conclusion comes first, and the arguments follow" (Kahneman 2011, 45). Gut-level reactions or intuition about whether a stranger is a threat or trustworthy, for example, generally occur in a split second, below the conscious level. With effort, we may amend our initial decision by using system two thinking, but we often stick with and rationalize the instantaneous unconscious decisions, telling ourselves a sort of story that makes the decision seem thoughtful and intentional. I will be using Kahneman's shorthand, referring to *system one* and *system two* thinking.

Electoral politics is less about the conscious and rational mind and more about the unconscious and emotional mind than most people like to admit. The political class is well aware of candidates' and parties' need to "frame" issues and elicit emotional responses from voters, rather than rational cognition. George Lakoff's books *The Political Mind* and *Don't Think of an Elephant* brought the importance of such framing front and center (Lakoff 2009, 2014). But modern campaigns are taking an even more disturbing turn, learning from neuroscience research.

A raft of recent books has presented the research that shows the astonishing role that various cognitive biases and unconscious brain processes play in most decision-making.[2] The conscious mind spins plausible rationalizations that mask what are frequently emotionally-based decisions (anchored in system one thinking). We only *believe* that we understand our own decision-making, and believe that it is rational far more often than it actually is. A current theory within the field of evolutionary psychology even suggests that rational thought evolved in humans essentially as a means of formulating persuasive arguments and finding flaws in others' arguments, rather than as a means of private truth-finding (Mercier 2016). We more easily detect evidence and embrace arguments that can be used to bolster our current beliefs than those that might challenge our current beliefs.

Drew Westen is a clinical psychologist and political strategist. His book, *The Political Brain: The Role of Emotion in Deciding the Fate of the Nation*, gave concrete advice to Democrats on the importance of emotionally compelling stories and how to mold voters' attitudes toward candidates using what is sometimes called *neuro-marketing*. Westen's research team placed partisan voters into functional magnetic resonance imaging (fMRI) scanners to see which neural networks in voters' brains were activated when exposed to new political information—particularly information that contradicted the voters' prior beliefs.

Their research corroborated what many studies by political scientists and psychologists have suggested, that "people vote for the candidate who elicits the right feelings, not the candidate who presents the best arguments" (Westen 2007, 125). Westen also notes that

> It is true that 80 percent of the time we can predict voters' judgments about complex issues from passions that bear no logical relation to truth. And it is true that a big chunk of that 80 percent—typically over half of it, and sometimes virtually all of it—is partisan sentiment.
>
> *(Westen 2007, 115)*

It is the minds of the remaining 20 percent, who have "changeable minds", that his book is about shaping.

Matt Qvortrup, Chair of Applied Political Science at Coventry University, wrote in 2024,

> In the past decade, neuroscience has enabled us to identify the parts of the brain that get activated when you watch political adverts. What these results show is that most people are driven by fear and emotion rather than by rational argument in election campaigns … In practice, this means that voters are more susceptible to messages that stress the negative rather than the positive. Researchers found that negative images and statements … heightened activity in the dorsolateral prefrontal cortex, which is also associated with decision-making … Negative political advertising works, and we now have the fMRI scans to prove it. Politics is a bare-knuckle fight, and our brains reflect that. Evolution has conditioned us to be driven by fear when we are under threat. We want to survive above all.
>
> *(Qvortrup 2024)*

The implications of the psychological techniques Westen proposes will be discussed further in subsequent chapters, but suffice it to say here that his research shows "that successful campaigns compete in the marketplace of emotions and not primarily in the marketplace of ideas" (Westen 2007, 305). This shouldn't be surprising, based on commercial product marketing research. Westen discusses test-marketing political ads, and even "the use of cutting-edge technology designed to measure unconscious associations, so consultants can test how well an ad, slogan, or political appeal is working in ways people can't consciously report" (Westen 2007, 280).

James Fishkin, a Stanford University Professor of Communication, notes in his book *When the People Speak* that there is an important distinction between *persuasion* and *manipulation*. Deliberation embraces persuasion based on full disclosure of information and analysis. Manipulation, on the other hand, is a special kind of persuasion that refers to the intentional use of psychological techniques, *mis*information, or "strategically incomplete but misleading

information" to get people to change their minds as intended by the manipulator (Fishkin 2009, 4). Unlike legitimate persuasion, manipulation is done in ways that the target person would not accept if they rationally considered the issue in light of adequate, balanced information, and if using system two thinking.

Well-structured deliberation has the potential to overcome manipulation and a variety of natural cognitive biases, and to move from mere "public opinion" to a considered "public judgment". But deliberative persuasion requires a subject who is willing and able to spend the time and effort to absorb and consider the information being presented from alternative perspectives. Manipulative persuasion, on the other hand, can be quick and carried out without the permission or knowledge of the person being manipulated. Manipulation can, indeed generally *does*, happen at an unconscious or emotional level. While it is theoretically possible to garner votes through deliberative persuasion, manipulation is far more practical. Manipulation is the bread and butter of electoral politics. With a distracted audience, busy with all of the problems of work, home, and daily life, a deliberative process is simply out of reach in a mass electoral arrangement. Electoral politics is based on manipulation, not because candidates necessarily have sinister intent, but simply because it is the only realistic strategy for winning.

In Westen's view, prior to the 2008 elections, the Republican Party was way ahead of the Democrats in exploiting the possibilities of emotional manipulation of voters. However, one of the endorsements on the back cover of the 2008 paperback edition of his book is from then-Chairman of the Democratic National Committee Howard Dean, who states that "This book could easily be titled *The Next Step*". And indeed, the Obama 2008 campaign seemed to absorb Westen's advice with its emotionally appealing, though intentionally vague "hope and change" theme.[3] In June 2009, *Advertising Age* announced that the Obama/Biden campaign was unanimously selected as "marketer of the year" and the winner of the International Grand Prize at the International Advertising Festival, beating out stellar advertising campaigns that year by the likes of Burger King, Warner Bros, and many others. Staying at the cutting-edge of modern advertising techniques, in 2012 the Obama re-election campaign conducted a set of massive experiments using a variety of persuasion (manipulation) scripts on voters and potential donors. In subsequent rounds of canvassing, they used only the scripts that proved most successful during the experimental phase.

Unlike elections, citizens' assemblies facilitate and encourage participants to use system two thinking and to avoid manipulation. This potential will be examined more later on, but in the next few sections, I am going to go a bit deeper into political decision-making in an electoral environment.

Follow the Leader

It is widely assumed that partisan animosity is the result of deep policy disagreement. However, it is often the other way around. Partisan loyalty generates opposition to policies advocated by the other side as a signal of team loyalty.

Politicians have an incentive to fan such animosity for electoral purposes, rather than policy purposes. Voters generally recognize that most public policy topics are more complex than they have time to absorb, and so reasonably defer to favored politicians who claim to understand these things. A respected group of fifteen political scientists wrote in Science magazine in 2020, "Overall, the severity of political conflict has grown increasingly divorced from the magnitude of policy disagreement" (Finkel et al. 2020).

In studies conducted by Geoffrey Cohen, a professor of psychology formerly at Yale and later at Stanford, partisan voters were asked to evaluate a policy proposal in a news story. Some participants read a version of the story that suggested a policy (for example, either a very generous or a very stingy welfare proposal) was favored by prominent Democrats, while other participants read a version of the story that suggested it was favored by prominent Republicans. When asked to give their own opinion, the participants' evaluations of the policy closely mirrored the suggested preference of the party they generally agreed with, regardless of whether the policy would generally be deemed liberal or conservative (Klein 2021). Other recent research confirmed that many partisan voters will align with policy positions they believe a party leader has taken, independently of whether they self-identify as liberal or conservative (Edwards 2018). This research was able to take advantage of the fact that Donald Trump had taken antithetical liberal and conservative positions on many issues (such as both advocating heavily taxing hedge fund managers, but also advocating giving them tax breaks) so that survey respondents could be presented with either a liberal or conservative policy actually supported by President Trump, and asked what they thought.

In a fascinating study published in a 2019 issue of the highly respected *Science Advances*, Cornell researchers found that the formation of "partisan" divisions on policy may evolve through chance information cascades, rather than ideology or thoughtful deliberation. They divided 2,000 Democratic and Republican adherents into ten "parallel worlds" with both Democrats and Republicans in each world, and gave them an assortment of unfamiliar policies to grapple with, on which the Democratic and Republican parties did not already have identified positions, such as whether artificial intelligence (AI) should be used to identify online criminals. When participants' responses to the policy questions (indicating the partisan preference of each respondent) were shared within a given "world", partisans tended to coalesce on policy positions. But in one world, for example, the Democrats adopted a particular policy, while in another world, that policy was adopted by Republicans and opposed by Democrats. As the researchers observed, "Our results suggest that partisan alignments across substantively diverse issues do not necessarily reflect intrinsic preferences but may indicate instead the outcome of cascade dynamics that might have tipped

in a different direction due to chance variation in the positions taken by early movers (Macy et al. 2019). Tribal solidarity trumped ideology.

As in the classic chicken or egg dilemma, it is not always obvious whether partisan leaders, or their partisan followers (or chance information cascades, as suggested by the research just mentioned) are responsible for changes in partisan and policy preferences over time. Research by sociologist Aaron M. McCright notes a dramatic shift in attitudes about environmental protection by Republicans. It was Republican President Nixon who was responsible for the creation of the Environmental Protection Agency in 1970. Surveys since 1974 indicated broad agreement among liberal and conservative voters on environmental issues. As late as 1990, about 75 percent of both Democrats and Republicans believed the government was not spending enough on environmental protection. However, a sharp divide started forming around 1992. McCright argues that following the collapse of the Soviet Union and the end of the "red scare" in 1991, environmental zealotry—a "Green scare" appeared as a replacement (Michigan State University 2014). A number of politicians utilized this alleged threat to mobilize voters. Over the following two decades, a deep partisan divide has developed on environmental issues, especially related to energy and climate change. It seems likely that a reinforcing feedback loop between partisan voters and partisan political leaders was at play, but the initiation seems to have come from politicians, rather than the voters.

Research by Gabreil Lenz and others has confirmed that rather than voters having prior policy positions and then selecting candidates who agree with them on those policies, the relationship is more often the inverse (Lenz 2012). When voters learn of the policy positions (for example, support for public works, military spending, nuclear power, etc.) of candidates they already favor, they come to favor those policies as well. For most policies, though not for single-issue voters, when a voter learns that their preferred candidate has the opposite position from them, the voter is more likely to change their opinion about the policy than change which candidate they favor.

James Fishkin observes that modern technology "has made it possible for elites to shape opinion and then invoke those opinions in the name of democracy" (Fishkin 2009, 6). How often have you heard elected officials insist that "the people have spoken loud and clear" about whatever policy the candidate favors, simply based on the fact that the candidate won the last election? Even in the absence of overt attempts at manipulation, many political scientists and media experts who study public opinion formation believe much of what passes for "public opinion" can be traced to elites. John Zaller, author of *The Nature and Origin of Mass Opinion*, argues that elites induce the public to hold opinions they would not accept if they had the best available facts and analysis (Zaller 1992).

Whether it is by chance (information cascades), or changes in leadership, or vagaries of the rank and file, the policy preferences of major parties are highly mutable over time, as long as the parties remain opposed to one another on some issue or other. The agglomeration of policy positions held by Democrats as opposed to Republicans seems logical to us only because we are accustomed to them. But these policy positions are surprisingly malleable. They are capable of changing sides and trading roles, in tandem, without explanation or evidence of careful reasoning. The idea that the Republican Party favors "free trade" had been sacrosanct for generations. But, when the leader of the party, Donald Trump, decided to jettison that seemingly foundational policy and impose a variety of protectionist trade tariffs, amazingly few Republican politicians or voters made a peep of objection.

Partisan leaders have immense influence when it comes to framing public support for policies. A clear example is found in the partisan handling of the market-based approach to health care—the "individual mandate"—which required that Americans purchase health insurance or face a tax penalty. The idea was advanced originally by the conservative Heritage Foundation in 1989, as an alternative to the single-payer system, in which the government would insure all residents and pay for it with taxes. In 2006, the market-based individual-mandate system was enacted in Massachusetts and embraced by the state's Republican governor, Mitt Romney. Indeed, this sort of reform was known as "Romneycare" before it was repackaged and came to be known as "Obamacare" on a national level. In the fruitless hope of gaining some bipartisan (that is, Republican) support for an expansion of health-insurance coverage, President Obama rejected the progressives' single-payer proposals in favor of the "Romneycare" model. Most Democrats quickly followed. Ironically, Romney would become the Republican presidential nominee in 2012, promising to repeal the Patient Protection and Affordable Care Act (by then commonly known as "Obamacare"). Once the Democrats endorsed a private, market-based approach to health care, the Republicans turned strongly against it. As the political commentator Ezra Klein puts the point: "A policy that once enjoyed broad support within the Republican Party suddenly faced unified opposition" (Klein 2012). The ideological underpinnings and operational details of the reform became rapidly irrelevant. Team loyalty trumped substance.

If voters are so readily led or manipulated by their preferred partisan leaders, does this also doom the prospects of a citizen panel selected by democratic lottery? Actually, no—while electoral politics is grounded in "system one" thinking linked to tribal loyalty, research has indicated that when people are induced to take the time to earnestly engage in counter-arguments on a variety of issues—think for themselves using "system two" thinking (as in a citizens' assembly)—the influence of partisan leaders drops sharply (Tappin, Berinsky, and Rand

2023). For the vast majority of voters, elections are all about the "system one" mental process, relying on mental short-cuts, such as cues from leaders, rules of thumb, gut reactions, information that comes readily to mind and familiarity, rather than "system two" focused attention and genuine analysis. It is possible for people to switch systems, given sufficient time and motivation. Participating in a deliberative group, such as in the British Columbia Citizens' Assembly, can allow "system two" thinking to take over. But it is not possible to get most people to switch to "system two" in a mass election by simply exhorting them to learn about the issues and candidates.

Voter Decision-making

One might hope that informed, rational thought was in the driver's seat when it comes to deciding how to vote. This does not appear to be the case most of the time. Some may argue that rational ignorance is not as big an obstacle as I have made out, because many voters become *virtually* informed by offloading the time-consuming effort onto some trusted surrogate or organization. The voter might look at lists of endorsed candidates by the League of Conservation Voters, or the NRA, the Chamber of Commerce, their union, church leader, or simply Uncle Luke (who pays attention to politics). However, a recent study found that voters widely misinterpret candidate endorsements from special interest groups, frequently drawing the opposite understanding by incorrectly assuming an organization agrees with the voter's policy preferences, when in fact they are at odds. In other words, such off-boarding to surrogates has a high likelihood of failing for all but a few well-known special interests (Broockman, Kaufman, and Lenz 2024). Further, *this* decision to defer to some particular (hopefully) "better informed" person or organization is *itself* usually an emotionally-based and rarely a carefully considered choice that weighs all the other options. It is still based on rational ignorance, simply one step removed.

We all tend to suffer from what psychologists call *naïve realism*. This is the tendency to believe that we see the world objectively, and that those who disagree with us about policy or other matters must be uninformed, irrational, or biased. Undergirding and expanding on this predisposition is the *illusion of information adequacy*. Experiments have shown that "people tacitly assume that they have adequate information to understand a situation and make decisions accordingly. Yet, individuals often have no way of knowing what they don't know" (Gehlbach, Robinson, and Fletcher 2024). The researchers explained the dynamic this way:

> For example, many drivers have pulled up behind a first car at a stop sign only to get annoyed when that car fails to proceed when traffic lulls at the

> intersection. Drivers of these second cars may assume they possess ample information to justify honking. Yet, as soon as a mother pushing her stroller across the intersection emerges from beyond their field of vision, it becomes clear that they lacked crucial information which the first driver possessed.

While voters almost inevitably suffer from this cognitive bias, the learning phase of a citizens' assembly can readily overcome it.

But the problem of voter decision-making goes much deeper. Several studies suggest that the voter decision-making process has less to do with rational thought than many people presume. In 2005 Alex Todorov and colleagues at Princeton found that when they showed people photographs of candidates for US Congress or Governor (who participants were unfamiliar with), for less than one second each, and then asked them to rate the faces in terms of which one looked more "competent", the participants' flash assessments predicted the actual winners nearly seventy percent of the time, far more than the 50/50 expectation of chance alone (Todorov et al. 2005). This finding has been replicated many times. Two Swiss researchers on the faculty of Business and Economics at the University of Lausanne had two separate groups, one of Swiss adults and one of children, look at pairs of candidate photos, and pick which they thought looked more honest. To make sure the participants wouldn't have any knowledge of the candidates, they used candidates from another country. They used official candidate photographs from the French parliamentary elections. They further avoided using photos of "unwinnable" candidate faces (whether due to ethnic bias, ugliness, or whatever) by limiting their pool of candidates to races in which a challenger had defeated an incumbent, thus assuring that either face *could* win an election, since both *had* at some point. The choices by both the adults and the children matched the actual winner of each election contest over 70 percent of the time. This indicates that a superficial factor, which the French voters would probably deny played any part in their decision, may in fact have tipped the balance in the election process (Antonakis and Dalgas 2009).

The influence of candidate appearance on election outcomes may be pervasive. MIT researchers replicated the results using candidate photographs from Brazil and Mexico, while asking voters in the United States and India which candidates would make better elected officials (Lawson et al. 2010). Gabriel Lenz, a co-author of this study, reported that "We were a little shocked that people in the United States and India so easily predicted the outcomes of elections in Mexico and Brazil based only on brief exposure to the candidates' faces" (Massachusetts Institute of Technology 2010).

Recent research by Rodrigo Praino and Daniel Stockemer suggested that this candidate "attractiveness premium" is most impactful in single-seat winner-take-all elections, which are standard in the United States, and in low-information races where voters know relatively little about each candidate.

They also found that the effect is substantially neutralized in party list proportional representation elections, which de-emphasize the characteristics of individual candidates (Praino 2018). Other research, based on laboratory experiments as well as actual elections, showed that voters tend to favor candidates with lower voices, although, in a separate study, they found no evidence that people with lower voices are more effective as leaders (Florida Atlantic University 2018).

It is conceivable that voters are picking up on something about candidates from their face or voice that actually *does* make for better leaders. So, researchers checked this too. A 2018 study found that although voters are swayed by candidate appearance and perceptions of candidate personalities, these superficial impressions completely failed to predict whether these candidates would be effective if elected to office. The researchers asked 138 local politicians in the UK to rate their own personality, and also asked 755 of their colleagues to anonymously rate their performance in office. They also had 526 people look at photographs of the councilors and surmise about their personalities. Wyatt and Silvester then compared these personality profiles and ratings of appearance to the politicians' share of the vote in re-elections, as well as their evaluated performance. Candidates whose appearance was described as competent did better in the elections, but were not deemed by their colleagues to be any more effective in office (Worth 2018).

This certainly doesn't mean that *most* voters decide who to vote for based on split-second intuition based on appearance. Not surprisingly, further research has found such effects to be strongest among less informed voters who watch a lot of television. Some voters rely on party labels, or even a careful analysis of candidates' stands on certain issues. But enough voters, especially in close races, apparently use these quick gut reactions to swing the outcome one way or the other. Vast amounts of psychological research suggest that people then rationalize their selection with plausible "reasons" to help convince themselves that they voted responsibly.

It seems unlikely that our instant gut assessment of candidates' faces is a good method of choosing political leaders, and nobody publicly embraces that belief. But all the evidence indicates many voters *are* relying on such quick *system one* thinking, instead of laborious *system two* reasoning. The 2016 presidential campaign of Donald Trump is an interesting example. Most voters knew at least a bit about the person as a celebrity, and most had an instant gut reaction to him becoming a candidate—either drawn to what they perceived to be self-confident leadership willing to take on a corrupt establishment, or repulsed by what they felt was narcissistic bravado. The continued support for Trump by his "base" throughout his presidency and beyond, and/or the disdain by his opponents, may be attributable to what psychologists refer to as confirmation bias and the *Einstellung effect*, in which we can all be effectively blinded to, or misinterpret, new information, based on initial information and beliefs.

It also turns out that voters informing themselves by reading the newspaper, watching TV news, scanning the Internet, etc., to keep up on public issues, does *not* make these voters better able to evaluate candidates. A study by Brendan Nyhan of Dartmouth found that those with a favorable opinion about a particular political figure, and who also had more political knowledge (in that they followed the news, etc.), were more *immune* to factual corrections that contradicted their bias than were people who also had a favorable view of the person but were *less* "well-informed".

In fact, the factual corrections tended to harden the erroneous beliefs of the "better informed" participants, as a sort of defense mechanism (Nyhan and Reifler 2010). Thus, even balanced presentations, depending on the messengers, may not lead to a common understanding of reality by voters, as each chooses which facts to accept and which to reject. Research has shown that political misperceptions, with motivated reasoning and psychological resistance to factual correction, are fundamental stumbling blocks for electoral systems (Flynn, Nyhan, and Reifler 2017).

The psychological failings of the electoral method of choosing political decision makers go far deeper and are far more troubling than how it affects voters. The psychological and other effects of the competitive election process on legislators and society as a whole are even more disturbing.

What sorts of people choose to run for office? And what sorts would never consider it? How does the competitive partisan environment affect legislators' ability to absorb information, deliberate, and make good decisions? How does the feeling of power they experience change their ethical judgments? I will examine these and many other problems in the next chapter.

Notes

1 In some US presidential elections, more than half of eligible people cast ballots.
2 In recent years a number of researchers in the new field of behavioral economics have come under suspicion for cooking their data, and engaging in statistical games, known as p-hacking, in order to write up research studies that are interesting enough to get published. While this has tainted the field, I have attempted to focus primarily on research that has been corroborated by subsequent replication studies.
3 Westen hoped Obama would use these techniques to advance progressive policies, but was dismayed at how Obama performed once in office. In 2011 he wrote in an opinion piece in *The New York Times,* "Like most Americans, at this point, I have no idea what Barack Obama—and by extension the party he leads—believes on virtually any issue" (http://www.commondreams.org/view/2011/08/07-5).

8

COMPETITIVE ELECTORALISM

Competition, Consensus, and Compromise

The "Western" electoral system, often called "liberal democracy," is a competitive system, which some political scientists refer to as *agonistic pluralism*—the public contest among politicians. Schumpeter essentially formalized the redefinition of "democracy," writing "the democratic method is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote" (Schumpeter 1942, 269). This agonistic view assumes participants come with pre-established conflicting or incompatible preferences, values, and interests and dismisses the possibility of finding near consensus on many issues. Agonistic theorists accept the inevitability of eventual winners and losers (hopefully through elections rather than violence). This leads to a majoritarian view of democracy, leaving the minority losers with only the hope of coming back to fight and win another day. Leading political philosophers such as Chantal Mouffe and Nadia Urbinati are associated with this view.

In recent decades, alternative theories of democracy have gained significant attention. The relatively newer interest in *deliberative democracy* is sometimes described as the seeking of consensus, or near consensus, through a process of giving and genuinely hearing conflicting arguments among political equals. Jürgen Habermas described this as a scenario in which the "unforced force of the better argument" persuades the others and wins out. However, this is an ideal—a goal to aim for—rather than something easily achieved in real-world situations. It should be noted, however, that the agonistic, or competitive notion of democracy advanced by other political scientists is likewise merely an ideal,

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only loosely associated with how things happen in the real world. Many sortition advocates self-identify as "deliberative democrats".

Grounded in deliberative democracy as an ideal, hundreds of citizens' assemblies of ordinary people have interrogated conflicting expert witnesses and ultimately reached a near consensus on controversial topics. The dramatically increased diversity within randomly selected groups (compared to elected groups), combined with carefully designed deliberation procedures and facilitation, allows such groups to make epistemically better decisions than factionalized elected bodies.

In an earlier chapter, I mentioned Mary Parker Follett's integrative deliberation, in search of win–win alternative resolutions. But there is another approach that can also go beyond the divide between consensus-seeking deliberation, as opposed to the agonistic majoritarian concepts of democracy. This is simply the notion of *compromise*. Rather than hoping that high-quality deliberation can uncover a best resolution, or simply letting the majority faction get its way, some have argued that democracy should fundamentally be based on compromise. Sometimes deliberation will discover integrative win–win solutions, and other times a majority faction can give in on its non-essential preferences to accommodate minorities.[1]

John Stuart Mill, one of the most important political theorists of the nineteenth century, advocated for compromise through proportional representation systems, arguing that the British (and American) winner-take-all voting methods promote the tyranny of the majority. In his view, democracy is not defined by majority rule, where the majority can routinely impose its will on everyone else. Democracy means "the government of the whole people by the whole people," including the minorities within it (Mill 1963–1991, 448). This requires the ability to compromise. For this to be possible, the representatives must act as trustees, able to learn from those with opposing views and even be able to change their own opinions, and strike compromises.

But partisan elections require telling voters what representatives believe and will do before they get elected, and before they enter debate to hear the other side. Pre-established party platforms and partisan campaign promises disable democratic deliberation and often stymie compromise. However, regardless of where one comes down on this agonistic versus common-good divide ("conflict is inevitable" or "we can seek common ground"), I will show that sortition is still a better tool than election.

I subscribe to the approach of Brazilian political theorist Gustavo H. Dalaqua. Rather than assuming that there is an uncrossable chasm between the dispassionate rationality of deliberative or epistemic democracy on one side, and the passion of pluralist agonistic democracy on the other—by embracing compromise as the essence of democracy, we can have our cake and eat it too. Dalaqua writes:

> A politics based on compromise unites the agonistic and deliberative strands of democracy, for it allows the extant antagonism in society to unfold in a

> discursive manner. It permits political groups to manifest their rival passions inside political institutions, but at the same time forces them to deliberate and reach provisory agreements (i.e., compromises).
>
> *(Dalaqua 2019, 602)*

On most issues, it is useful to explore pluralistic disagreements and then deliberate to seek integrative consensus. But if no win–win option is found, rather than quickly moving to a majority winner vote, a search for acceptable compromises should come next. This is not achievable when competitive partisan elections make defeating opponents the overriding priority, rather than the building of community. A lottery-selected body of non-politicians, who don't have a primary goal of exposing and defeating each other, makes this democratic ideal a possibility.

The remainder of this chapter will focus on the pathologies of the competitive system based on elections that is dominant today, and generally referred to as "representative democracy".

Tribalism

In his 1651 ground-breaking book of political philosophy, *Leviathan*, Thomas Hobbes asserted that without civil society—in what he termed a hypothetical "state of nature"—there would be "nothing but a war of all against all." But humans are naturally social—living in groups with at least a rudimentary civil society—so that his concept of "without civil society" is not, in fact, a "state of nature." A lot of disagreements between political philosophies, including our country's current political divisions, find their roots in different views of human nature. It is almost cliché to say that conservatives see people as naturally "selfish", while liberals see them as naturally "good". The Framers of the Constitution took the "conservative" view. If humans were like angels, there would be no need for government, Madison wrote in the *Federalist No. 51*. This is a false dichotomy, as clearly humans can naturally be either one or both at the same time. It depends on the specific situation and the broader environment, including institutional structures and culture.

Current research supports the notion that human nature within the family and tribe evolved along a cooperative and altruistic vein (Sussman and Cloninger 2014). Evolution has left humans with a ready ability, depending on circumstances, to cooperate and act altruistically toward members of their own "tribe". even while being horrifyingly brutal toward outsiders. While specific ethnic and other group animosities are learned, the *potential* for a sort of tribalism that can lead to war and the dehumanization of non-members is evolutionarily rooted (both biological and cultural). But external animosity is not inevitable nor universal. It is common to view cooperative altruism and violent competition as contradictory human natures. While it is easy to think of these behaviors as opposites, it is more appropriate to think of them as two sides of the same coin. It

would be difficult to imagine getting people to go to war, for example, if not for the ability of individuals to give selflessly, putting the needs of others ahead of their individual drive for self-preservation. The camaraderie of comrades on the battlefield is well known, as are the atrocities of war. The challenge is to foster such community spirit without the bloodshed or animosity.

Competitive elections utilize, and more troublingly, *exacerbate* the negative side of tribalism. Madison warned in *Federalist No. 10* about the dangers of factions, or parties, which "inflamed [men] with mutual animosity, and rendered them much more disposed to vex and oppress each other than to cooperate for their common good" (Madison 1787b). George Washington warned of "alternative despotism of one faction over another" (Keane 2009, 337).

Competitive electoralism has a deeply detrimental impact on how tribal instincts play out throughout society. In a journal article titled "Politics makes bastards of us all: Why moral judgment is politically situational", researchers reported that people of all political persuasions were more likely to engage in immoral judgments and behaviors when immersed in the partisan political realm (Hull, Warren, and Smith 2024). The driving force of elections gives politicians a powerful incentive to fan division and hatred, using tribalism to further their electoral ends of gaining power.

Electoral politics has a broadly corrosive effect on both civil society and governance. Party-based government has formalized and aggravated the negative impact, with Congress members ascribing evil motives to the actions of partisan opponents, while trading votes in order to serve favored special interests and lobbyists. In America today, at most two political parties (and sometimes just one) maintain control of all three branches, overcoming the nominal separation of powers Madison sought. When a party controls both Congress and the Presidency, for example, that party facilitates coordination and often seeks team loyalty, rather than a check and balance between the branches. This party-sponsored coordination among the branches maximizes the collective power of the party members. Meaningful checks and balances generally only exist within the current system when different parties control the different branches. But a common consequence of such "divided government" is partisan gridlock, with one extreme example being the 2011–2013 debt-ceiling and budget sequestration standoffs between the Republican-controlled House and the Democratic Senate and President. The steady erosion of Congressional authority and the development of what is often called "the imperial presidency", especially with regard to military and surveillance matters, also obviously weakens the principle of checks and balances.

The strategic imperative of a winner-take-all election, with its zero-sum game logic, generates an "us versus them" culture that goes beyond mere criticism to demonization of opponents. *Ad hominem* attacks on opponents, while distasteful, are commonplace. Voters generally say they dislike negative campaign

ads, but since they are often effective (sometimes simply by driving down voter turnout), politicians regularly resort to them. Ironically, many of the calls by politicians themselves for "more civility" and complaints about an opponent's "negative campaigning" are themselves calculated negative campaign tactics, intended to portray opponents in a negative light, since the implication is that the opponents are the ones who are being uncivil.

A democracy structured on an adversarial election process with winners and losers gives candidates a built-in incentive to promote and amplify these "us versus them" tribal dichotomies. Rather than allowing for a thoughtful exchange of ideas, leading to a common vision of a way forward, this type of "democracy" prompts citizens to revert to warring tribes bent on defeating the other party. This dynamic is not uniquely modern. In his famous treatise, *Politics*, Aristotle mentions that the city of Heraea replaced the election of magistrates with the selection by lot, specifically to overcome the partisan machinations and plotting induced by elections (Aristotle 2016, 130).

This us/them partisan divide, generated and/or exacerbated by elections, is not a characteristic of genuine democracy, but rather an existential threat that is undercutting democratic principles. In recent years, there has been a rash of political science journal articles examining what is termed "affective polarization"—characterized by even greater disdain for the "other" party than approval of one's favored party.

A study published by Yale researchers in 2020 showed how deeply this threat to democracy has permeated American society. "Our findings show that US voters, regardless of their party affiliation, are willing to forgive undemocratic behavior to achieve their partisan ends and policy goals", according to Professor Milan Svolik,

> We find that polarization raises the stakes of elections and, in turn, the price of prioritizing democratic principles over partisan interests. Voters' willingness to sacrifice democratic principles may not be desirable in terms of protecting democracy, but it has an intuitive political logic: They are trading off one political interest against another.
>
> *(Graham and Svolik 2020)*

The study found that only 3.5 percent of voters were willing to use their vote to punish a candidate from their preferred party for engaging in anti-democratic behavior.

This willingness to ignore or forgive anti-democratic behavior by those on your side of the partisan divide may have become glaringly obvious since 2016, but has existed forever. Sadly, we seem able to perceive and condemn this dynamic on the other side, but to either be completely blind to it or even approve of it on our own side. A team of researchers from Stanford University and MIT

published a study with 8,000 participants in 2022, examining depolarization strategies among partisans. They found that "while these depolarization interventions reliably reduced affective polarization, we do not find compelling evidence that these interventions reduced support for undemocratic candidates, support for partisan violence or prioritizing partisan ends over democratic means" (Voelkel, et al. 2020). It is widely proclaimed that democratic principles are fundamental. But many people's partisan priorities, as shaped by an electoral milieu, indicate those "principles" are merely instrumental and easily jettisoned—valuable if they help elect the genuinely "good" politicians we support. Contrary to the widespread assumption, elections and partisanship actually foment anti-democratic attitudes.

Professor Yphtach Lelkes, of the University of Pennsylvania, was quoted in a 2021 New York Times article stating that "affective polarization is the canary in the coal mine. That is, it tells us things are dysfunctional without causing the dysfunction. Affective polarization as an indicator of dysfunction rather than a cause doesn't diminish its importance" (Edsall 2021). I would argue that the cause of the dysfunction, which affective polarization reveals, is society's reliance on elections themselves.

I should note that this dynamic is most extreme in higher offices, such as federal elections, and may be weaker or nonexistent in more local elections. However, since the same party labels are used, and local voters are also national voters, the psychological effects filter down, even if the local candidates don't fan the flames. And it goes far beyond mere partisan suspicion and hatred. This casting of electoral opponents as "enemies" infects the rest of society. For many people, partisan loyalty, like religion, ethnicity, race and other classifications can be more about a personal identity than policy preferences. Research has shown that many people refrain from making friends or even living in the same neighborhoods with supporters of the "other" party. Any efforts to seek the common good seem unrealistic and naive in this combative atmosphere. Flipping the classic quote of nineteenth-century general Carl von Clausewitz, "politics is war by other means". Alternatively, partisan "lack of civility" can prompt non-partisans to wash their hands of the whole sorry mess and turn their attention to more appealing activities outside the political realm.

Of course, it isn't just politics where we see factions and forms of tribalism—team sports, hometown loyalties, etc., also stem from this instinctual propensity. As mentioned above, the other side of tribalism is the altruistic sharing and self-sacrifice it promotes within the tribe. A major advance made possible by civilization is the extension of that tribal boundary—ultimately, perhaps, to include all of humanity—the "human family," as proclaimed in the UN Universal Declaration of Human Rights (United Nations 1948). However, the propensity of elections to foment inter-group hatreds, which elections foster for compelling tactical campaign reasons, is counter-productive. They are harmful in relatively

homogeneous developed countries, but can be totally devastating when foisted on nations rife with ethnic and religious divisions. I should note, however, that within the political realm, it is not *only* elections that foster this tribalism. Any society divided into leaders and followers can give leaders this same incentive, in which leaders (even without any elections) find it beneficial for their own purposes to demonize opponents. My point is not that elections *uniquely* promote this tribalism, but that, unlike a sortitional democracy, electoral systems increase and thrive on it. The election panacea, favored by the United Nations Declaration of Human Rights and all "modern democracies", is the completely wrong approach to democratic governance, in both developed and developing nations.

Competitive Democracy

Within mainstream political science, it is understood that elections are not sufficient for creating "democracy". Since the beginning of the twenty-first century, many political scientists have written about *competitive authoritarianism* (Levitsky and Way 2002). Countries such as Hungary and Turkey (and dozens of others) have competitive elections, but the incumbent leader and party can abuse and distort institutions to further entrench their regime. Fears that the United States may also be heading down that path have grown in recent years. But here I want to dispute the notion that elections can *ever* produce real democracy.

Some sort of competition is inevitable in any political system, whether between orators in classical Athens or between policy options supported by different individuals or interests today. The optimal public policy can sometimes best be uncovered through the contestation of competing ideas. However, it is often hard to tell which conflicting ideas reflect genuine disagreements or interests, and which conflicting ideas are essentially manufactured by politicians in order to inflame and mobilize their base, or demonize opposing politicians.

The idealized version of the competitive model imagines the process of politicians competing to win votes, allowing "the people" to effectively control government and win the policies they prefer. While traditionally presented in high school civics classes, few political scientists subscribe to this myth of how our electoral system works. An electoral political system makes competition for power (rather than policy) its heart and soul. In a competitive electoral system, the people do not rule themselves, but are instead given the hypothetical opportunity to choose, through elections, which team of the "political class" (along with their sponsors) will get to rule them. Unlike a traditional oligarchy, whether based around family ties or class, competitive elections allow a steady circulation of oligarchs in and out of power.

The person most often credited with popularizing the elite competition view of democracy is Joseph Schumpeter. Schumpeter's 1942 book, *Capitalism, Socialism and Democracy*, has had a profound impact on the field of political

science—even today. Expanding on the concepts of the famous German sociologist, Max Weber, Schumpeter sought to describe how "democracy" actually did function, rather than how it was imagined, or how it ideally should work. He argued that "democracy is the rule of the politician". Schumpeter wrote, "democracy does not mean and cannot mean that the people actually rule in any obvious sense of the terms 'people' and 'rule'. Democracy means only that the people have the opportunity of accepting or refusing the men who are to rule them" (Schumpeter 1942, 284).

This is not the understanding of democracy that is presented in high school civics classes, nor in speeches by politicians at 4th of July events, but it is widely accepted among political scientists as unvarnished reality (though some dispute his unconditional "cannot mean" in the quote). The respected British professor of political theory John Dunn, for example, wrote "In no modern state do the people in fact rule, and … there is little reason to see in the history of any modern state over any period of time a reasonably straightforward intention to permit them to do anything of the kind" (Dunn 1996, 180–181).

Gabriel Almond and Sidney Verba, in their book, *The Civic Culture*, argued that too much participation can be detrimental to democracy (Almond and Verba. [1963] 2016). A constant flood of demands from divergent groups on a political system, especially a winner-take-all system, can fracture a society. They suggested political participation should be only "intermittent and potential". We are left with a shadow of democracy, in which the deliberative skills and participatory spirit have atrophied, or more accurately, never been developed or allowed to mature.

Joseph Schumpeter argued that modern representative democracy was essentially a system of competing teams of politicians, vying for power. The politicians cheer on the other members of their own party against the "enemy", even when they disagree on critical policy issues. Not unlike sports teams, allegiance to one team or another is not necessarily based on policy preferences. In many cases, parties do not so much exist to promote a platform, but rather platform planks exist to help get members of the party team elected.

Anthony Downs extended the Schumpeter concept one step further in a two-party, left/right environment. While it may not be literally true all the time, Downs wrote that electoral democracy can usefully be thought of as a system in which politicians

> never seek office as a means of carrying out particular policies; their only goal is to reap the rewards of holding office per se. They treat policies purely as a means to the attainment of their private ends, which they can reach only by being elected … Parties formulate policies in order to win elections, rather than win elections in order to formulate policies.
>
> *(Downs [1957] 2003, 28)*

A few individual politicians change their policy choices depending on which way they believe the wind is blowing (or the policy preferences of campaign donors), and where there is a sufficient base of votes that can be mobilized to turn out. However, the negative ramifications of being seen as a "flip-flopper" mean that these partisan shifts often occur behind the scenes or over a long enough time frame that most voters don't notice the change.

Party platforms and policies can even become mirror opposites over time. In 1971, the Republican president, Richard Nixon, imposed wage and price controls, a profoundly anti-free market policy, and unimaginable in the current Republican (or Democratic) Party. While most African Americans are likely to vote Democratic today, in the first half of the twentieth century it was the party of white supremacy, with some Democratic Party state rules expressly prohibiting the participation of Blacks in party primaries.

Downs's point that policies are tools created to engage in electoral battle, rather than being the goals for which elections are fought, was specific to winner-take-all two-party election systems like that in the US. It is possible that in multi-party systems with proportional representation that parties and candidates actually are engaged in electoral battle in order to implement preferred policies. The Green Parties in various European countries come to mind as parties that (at least initially) had a mission. But the steady mutation of various European socialist parties to social democratic goals, and then often ending in policies completely amenable to capitalism, suggests that winning elections indeed does have a higher priority than policy. Of course, prioritizing core policy demands versus electoral imperatives can lead to internecine battles within parties (as illustrated by the swings within the UK Labour Party with Tony Blair and Ed Miliband). When I served in office, I frequently heard fellow legislators explain why they couldn't vote for an amendment they actually liked, saying that they needed to stay in office in order to do good work. Even if true, this is a convenient rationalization for prioritizing winning elections over policy.

In all modern "representative democracies", the use of elections has propelled the development of political parties. Parties establish the framework for electoral choices by the voters, mobilize voters and organize governance (or opposition) once the election is over. In multi-party systems with proportional representation voting, it is often the party negotiations after the election where the trade-offs between power and policy are actually settled (without any voter involvement).

Most political scientists assert that parties are an inevitable element of electoral systems. In the US, political parties have a tiny vanguard of active members (candidates, party officials, fund-raisers and the like), while the mass of citizens have no formal partisan connection, at most exhibiting some level of party identification. Perhaps 60 to 70 percent of Americans have a more or less consistent partisan preference, but this allegiance has historically been shallow and not policy-based.

The rise of Donald Trump, fomenting both loyalty and hatred, almost certainly increased the feelings of partisanship. The growing view that supporters of the other party are "enemies of the country" rather than merely "opponents" is clearly dangerous. A trend that may accompany this trend, but was less noted by commentators, is increased disdain for politics of all sorts.

Testing Competitive Theories

A core concept of any democracy is the notion that the government should reflect, or be responsive to, the preferences or interests of the whole population, or at least the majority of the population. Scholars have proposed at least three basic theories for how our competitive system works.

The most optimistic version can be termed the *majoritarian electoral democracy* theory, and sees the political class constantly monitoring the preferences of voters, with political parties leaning toward the political median in order to win elections. Under this system, voters, or at least the voters in the middle of the spectrum (the so-called "median voter"), should have a powerful influence, if not absolute control, over policies adopted by the government.

Another common theory, called *pluralism* or *polyarchy*, holds that interest groups, either mass-based (e.g. unions, fundamentalist Christian organizations, the NRA and AARP) or professional and business-oriented interest groups (e.g. the Chamber of Commerce, American Medical Association, National Home-Builders Association and banking and investment companies), compete to shape government decisions.

A third theory argues that electoral competition in most democracies is little more than a charade, with (typically) wealthy elites pulling the strings of the dominant political parties. This *elite domination* theory is typified by such works as sociologist C. Wright Mills' influential 1956 book, *The Power Elite* (Mills [1956] 2000). Left-wing political observers, such as Noam Chomsky, have argued that an individual's ability to gain access to the levers of power—getting into the political class—is effectively determined by whether an individual has shown an ability and willingness to serve the interests of those with great wealth and power.

Expanding on the earlier research of Martin Gilens discussed in chapter 2, Gilens of Princeton and Benjamin Page of Northwestern University undertook a ground-breaking quantitative analysis comparing the validity of these basic theories of how our "democracy" actually works. Their paper, "Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens", for the first time presented a multivariate analysis comparing these common theories using a unique data set of 1,779 policy issues. The researchers compiled the results of numerous public opinion polls between 1981 and 2002 in which policy preferences and respondent income data were included. They also coded the expressed policy preferences of a large number of organized interest

groups—both mass-based and professional and business interests. Next, they examined whether the policy preferences of people in different income groups and of interest groups ended up being adopted by the government. Using the top ten percent of income earners (the affluent) as an available proxy for the likely preferences of the top one percent or genuinely wealthy elite, and the 50 percent income decile as a proxy for the median voter,[2] they made some important discoveries. On issues where the preferences of the wealthy and the middle group diverged in terms of preferences, there was a strong correlation between the policy preferences of the wealthiest ten percent and government action. But this was not the case for average Americans. They found no evidence for the majoritarian or "median voter" theory. Rather, they discovered that

> the preferences of the average American appear to have only a minuscule, near-zero, statistically non-significant impact upon public policy … Nor do organized interest groups substitute for direct citizen influence, by embodying citizens' will and ensuring that their wishes prevail in the fashion postulated by theories of Majoritarian Pluralism. … So existing interest groups do not serve effectively as transmission belts for the wishes of the populace as a whole … When a majority of citizens disagrees with economic elites and/or with organized interests, they generally lose.
>
> *(Gilens and Page 2014)*

The authors do offer several caveats, however. First, they observe that "this does not mean that ordinary citizens always lose out; they fairly often get policies they favor, but only because those policies happen also to be preferred by economically elite citizens who wield actual influence".

They acknowledge that it is conceivable (though they doubt it) that high-income citizens have a better grasp of the common good (as many eighteenth-century aristocrats quoted earlier in this book believed), while average citizens simply are mistaken about their own self-interests. They also note that their study could not examine the framing of the agenda—in other words, the policy questions deemed worthy of asking by the various polling firms—and whether this agenda was itself set by economic elites or interest groups. The vast array of "under the radar" policy issues considered (or ignored) by Congress, which are never subject to opinion surveys (and about which hardly any ordinary people are aware), suggests that their study almost certainly understates the dominance of elites and interest groups. And finally, they note that the public preferences revealed by the surveys were not the result of meaningful deliberation, but rather off-the-cuff opinions. Their research could not examine to what extent these preferences were shaped by the persuasion efforts of elites and interest groups, and whether those opinions would hold fast following serious deliberation. On many of the issues that were surveyed, it would be ridiculous to think that most

respondents had sufficient background knowledge to have any considered opinion at all. Democracy should not mean blind governmental responsiveness to off-the-cuff opinions.

This "scientific confirmation" of the assertion that ordinary citizens do not "rule," and do not even have a significant influence, let alone direct their rulers on policy matters, has been hyped by those on the left as proof that America is an oligarchy rather than a democracy. But this oversimplifies the implications of the paper. It has also been seriously critiqued by some other academics, both in terms of methodology and interpretation (Matthews 2016). Their study also doesn't empirically demonstrate whether domination by economic elites and business-oriented interest groups is common to *all* electoral governments, or just the American variant. After all, there are alternative electoral models (incorporating proportional representation, campaign finance regulation, media access, etc.) that are intended to avoid this elite domination of government and allow the people to rule.

To examine this question, two Swedish researchers undertook a massive study combining survey data on a wide range of issues from over two million respondents on implemented policies in 43 countries. They discovered several interesting things. Firstly, they found that the more affluent favor more economically conservative, but culturally liberal policies than the less wealthy, and that in both of these domains, elected governments appear more representative of the wealthy. However, elected governments repeatedly

> implemented policies beyond even what the most affluent quintile in our data wants. Thus, the discrepancy in responsiveness cannot be explained by unequal responsiveness to different groups of voters. Instead, it is possible that a systematic bias against certain types of policies is driven not from below, by citizens, but by the political establishment itself, a proposition that has been theorized but not systematically tested.
>
> *(Perrson and Sundell 2022, 2)*

The researchers propose that their study indicates that the notion of a differential in government responsiveness to different income groups masks a more significant political class (politician) domination.

> This leads us to question whether the story really is about unequal responsiveness, as most existing literature would have it, or about the general lack of responsiveness on behalf of the political system. The idea of unequal responsiveness implies that there is [a] causal effect of the attitude of the affluent [on] policy. But our results show that an alternative explanation is that some other factors cause policy to be more economically conservative and culturally liberal. While that in practice means that the affluent are better

> represented, it could be coincidental if the true causal mechanism is related to factors internal to the political system … The picture that emerges is one where parties have considerable leeway to pursue policies preferred by leadership and core activists, and sometimes do, even in the face of a hostile public opinion.
>
> *(Perrson and Sundell 2022, 28)*

It should be noted, however, that a constraint on their analysis arises from the lack of fine-grained detail in the available income data. They could only compare the policy preferences of the top fifth (quintile) of income earners with the rest of the population. But it is possible that this nominally "high-income" group is not that dissimilar from the bulk of the population, while the top 0.1 percent of income earners (for example) could have distinctly different policy preferences, but be essentially invisible in the data because of their rarity. If politicians were being uniquely responsive to the super-rich, it wouldn't be detectable in any study based on survey data.

The other limitation of all such studies is the relevance of off-the-cuff public opinion in terms of judging meaningful responsiveness and representation. Also, as noted above, there are a relatively limited number of "issues" that polling firms have chosen to include in their voter surveys. This generally, though not exclusively, reflects the agenda of "news-worthy" topics that political leaders have promoted. Competitive elections inevitably generate a simplified pseudo-politics for mass consumption. Keen observers are aware that much of what passes for "politics" is performance for the media. Murray Edelman formulated the concept of *symbolic politics* in the 1980s, which underpins most political communication. There are two political "realities"; there is the actual effect political actions have in the real world, and the theatrical packaging or symbolic impact in the electoral arena. According to Edelman, political players are compelled to produce a simplified make-believe political world using symbols and rituals to sway voters through the mass media.

Psychology of an Elected Representative

I now turn to examining the cognitive biases and psychology of being an elected representative. It is my contention that the sort of people who seek election, the sort of people who win election, and the psychological effects of wielding the power once elected, virtually guarantee that the group *as a whole* will be ill-suited for making public policy. In this section, I may seem to be castigating all elected politicians, so I need to be clear about one point. The studies I cite below should not be interpreted as a condemnation of *all* politicians. Among elected politicians are many wonderful, selfless, honest individuals. It is a matter of psychological tendencies and the final mix of people thrust into making public policy decisions.

Yes, the capacity of rationally ignorant voters, who are showered with propaganda, to carefully choose leaders is suspect. But we should be even more suspicious of the policy-making capacity of those who seek, and win, elections. Those who seek elected office generally have a different set of personality traits than the public in general—though there are, of course, exceptions. Few would dispute, at the very least, that they are more extroverted and self-confident (or over-confident).

Recent research at the University of Kent's School of Psychology found that people who exhibit social dominance are more confident in their decisions, yet perform no better than others at making those decisions. Traits such as extroversion, self-confidence, high-status, and social dominance are linked to a willingness to seek elective office. These traits also improve election prospects. But they are not associated with better decision-making ability (Belotelova and Martin 2025).

Researchers in the Economics Department at the University of Zurich in 2018 used functional magnetic resonance imaging (fMRI) to study differences between individuals who were more and those who were less willing to take on decision-making that would have an impact on others. They examined several common notions, such as whether these "leaders" were less risk averse, or simply enjoyed being in control. To their surprise, these factors were not predictive of who would take on such leadership roles. Instead, they found that "leaders" in this experimental scenario were those who were less concerned about certainty, while those in a follower mode were more concerned about being certain of the best decision when the welfare of others was at stake (University of Zurich 2018).

There is plenty of anecdotal evidence that suggests many who choose to lead are willing to "trust their gut." However, it seems likely that superior societal decision-making would come from individuals more concerned about making sure their decisions were optimal, rather than merely felt right. One would hope elections could at least weed out people with antisocial personality disorder or psychopathy. Some psychologists suggest that individuals with psychopathy (associated with a lack of conscience combined with manipulative charm) are actually *more* common among politicians (and corporate CEOs) than in the general population. Psychologists who study this estimate that about one percent of the general population are psychopaths (many of whom end up in prison), while approximately four percent of elected officials are. One study, published in the middle of Trump's first term, concluded that, by a large measure, there are more psychopaths in Washington, DC, than in any state of the union. The author of the study speculates that "psychopaths are attracted to the kinds of jobs Washington offers—jobs that reward raw ambition, a relentless single-mindedness and … the willingness to step over a few bodies along the way" (Robertson 2018).

Psychopathy is not the only psychological concern we should have about elected officials (though the successful election of Adolph Hitler gives pause). Research by Peter Belmi and others indicates that a willingness to engage in unethical Machiavellian manipulation is associated with both a higher class background and interest in pursuing power (Belmi and Laurin 2016). A team of UK and German researchers reported on a game theory lab experiment in 2020 with 308 people participating in mock candidate nomination and election phases. The experiment indicated that individuals who were more willing to lie at the nomination stage were also more likely to succeed in getting elected (Fehrler, Fischbacher, and Schneider 2020).

The researcher from the University of Bath's Department of Economics, Dr. Maik Schneider, explained:

> Our study highlights why it may not be too surprising to find candidates on the campaign trail who lie. This should concern us all given the low levels of trust in politics. There is a clear paradox here in terms of an electorate which says what's missing in politics is greater trust, yet results which indicate that candidates who lie more, somehow still have a higher chance of gaining office.
>
> *(University of Bath 2020)*

So, do elections elevate more Thomas Jeffersons and Nelson Mandelas, or Richard Nixons and Adolph Hitlers? A 2014 Rasmussen survey found that 78 percent of Americans believe politicians are less ethical than Americans in other professions (Rasmussen Poll 2014a). But it is not merely the pre-existing psychology of those who decide to seek office that is of concern. Scientific studies have indicated that power often corrupts. Lord Acton famously wrote that "Power tends to corrupt, and absolute power corrupts absolutely. Great men are almost always bad men". (This second sentence of his quotation somehow rarely gets included.)

In some cases, the mere winning of elections can alter an individual's character for the worse. As mentioned in chapter 1, Lord David Owen, a former UK Foreign Secretary, leader of the Social Democratic Party and trained MD, has proposed that the medical profession formally recognize a mental illness he calls the *hubris syndrome*, which some people in powerful positions succumb to. In his book, *The Hubris Syndrome: Bush, Blair and the Intoxication of Power*, he argues that this is a distinct and diagnosable mental condition, with dangerous policy implications. Among over a dozen symptoms, he includes excessive confidence, loss of contact with reality, impulsiveness, a disproportionate concern with image and presentation, a consequent type of incompetence in carrying out policy, etc. (Owen 2012). But mental states or character traits of politicians need not reach the level of a diagnosable syndrome to be a problem for society. What

about reasonably well-adjusted, yet self-centered or callous people who simply love the limelight?

Experiments in which participants were randomly assigned to powerful or non-powerful roles found that the mere possession of power over others, over time, leads to corrupting behavior. Even participants who tested high in inherent honesty prior to the experiment had a tendency to succumb to the corrupting tendency of power. One such study from the University of Lausanne in Switzerland found that there was a marked tendency for increased power as well as levels of testosterone to lead to corrupt behavior[3] (Bendahan et al. 2015). Other experiments have revealed that winning in one competition tends to promote cheating in subsequent competitions. In summarizing recent research on winning and cheating conducted by Israeli professors Amos Schurr and Ilana Ritov, University of California, Berkeley psychologist Dacher Keltner (who did not participate in this particular study) was quoted in a *Scientific American* article, observing that

> When we win in competition, in particular when we establish we are above others in rank, we will feel more powerful… And dozens of studies have found that the simple feeling of power makes people feel above the scrutiny of others and act in impulsive, self-gratifying and unethical ways. Feelings of power, whether it comes from wealth, a person's position in a hierarchical structure or in this case competition, can indeed lead to various abuses like lying and stealing.
>
> *(quoted in Cepelewicz 2016)*

The researchers found no such negative psychological effects when participants instead won through a lottery process.

It may sound like negative stereotyping, but social psychologists have repeatedly found that high-status, wealthy individuals (as most members of Congress are) are significantly more likely to engage in selfish or unethical behavior than are middle- and lower-class individuals. Numerous independent experiments conducted at the University of California, Berkeley, are instructive in this regard. Studies, by Paul Piff and others published in the *Proceedings of the National Academy of Sciences*, for example, found that upper-class drivers (easily identified by their luxury automobiles) were four times more likely than other drivers to cut off other vehicles at a busy four-way intersection, and three times less likely to stop for a pedestrian waiting to use a crosswalk. This result has been replicated in studies by other researchers.

In another study, participants in a waiting room were told they could have "one or two" pieces of candy from a jar identified as being for children. Upper-class subjects, on average, took twice as much candy as participants from lower classes. In yet another experiment, groups of subjects played a computerized

dice rolling game, in which the participant with the highest score would win a cash prize. The game was secretly rigged so that it was impossible to score above a 12, but upper-class individuals were significantly more likely to cheat and report scores that were impossible to achieve (Piff et al. 2012). Yet, an experiment conducted by University of Michigan professor Leigh Tost suggests that when participants are put in powerful roles and are reminded of the impact of their actions on the future well-being of others, they often behave more generously—a sort of noblesse oblige (Kosdrosky 2015). Of course, generosity may be exercised in a corrupt, unethical manner as well (such as through favoritism). So, while the overall tendency is clear, rather than corruption being an absolute side effect of power, the circumstances and context (longevity, visibility, magnitude, etc.) also matter.

Brian Klaas observes in his book *Corruptible: Who Gets Power and How It Changes Us* that some individuals are more easily corruptible than others. Some situations offer more opportunities and incentives for corruption than others, and some systems generate a culture of corruption, including elevating the more corruptible, while others do not. As Klaas summarizes his findings: "Corruptible people are drawn to power. They're often better at getting it. We, as humans, are drawn to following the wrong leaders for irrational reasons linked to our Stone Age brains. Bad systems make everything worse" (Klaas 2021, 148). Rather than being a check on corruption, due to the allure of power and voter rational ignorance and other factors, elections are more likely to elevate *more* corruptible people, who are then incentivized to resort to more corruption to maintain and concentrate power. Long "service" through regular re-election allows them to build their corruption skills and self-justifications, while improving their ability to hide their corruption from the public. The concentration of power in electoral systems grants elected politicians extraordinary opportunities to engage in corruption, often with dire consequences.

However, it is possible to mitigate this hubris effect by changing the way representatives or leaders are selected. In experiments, it has been shown that introducing random selection into the selection process can sometimes reduce the self-congratulatory hubris and unethical behavior. Researchers at German and Swiss universities found that procedures like those of the Renaissance Italian city republics, with alternating rounds of competition, combined with random selection to either generate a final pool of applicants or to make the ultimate selection, appear to reduce these negative psychological effects without hurting competence (Berger, et al. 2020).

Effect on Deliberation

Another negative aspect of leaving political decisions to elected politicians has to do with the psychological impact of deliberating within a competitive "us/

them" environment. It is generally assumed that hearing other people's perspectives on controversial issues can open participants to compromise and cooperation, and indeed this is sometimes the case. However, Professor Adam Galinsky has found that feelings of power make individuals less inclined and less able to consider others' perspectives (Galinsky et al. 2006). But more troubling—when "perspective sharing" occurs within a competitive framework where members may anticipate threats from opponents (as in a partisan legislature), it can actually have the *reverse* effect. As Galinsky states,

> When you're in a cold state, perspective taking can warm you to cooperation. But when you're in an inflamed state, thinking about the other person's mind changes perspective, taking from the glue that binds us together to the gasoline that worsens the competitive fire.
>
> *(quoted in Zaki 2012, 21)*

Galinsky's experiments showed that when negotiators in a competitive environment were prompted to think about the other person through perspective taking, they tended to focus on the possible ploys of the opponents, and were more likely to act unethically themselves.[4] Experimental psychology has also shown that people who feel powerful are more likely than others to rely on intuition ("system one" thinking in Kahneman's terminology), and less likely to engage in careful rational analysis. People with great power seem more prone to rely on their gut and *feel* the "correct" answer to problems.

A study of 700 US citizens published by University of Cambridge researchers in 2019 found that partisan extremists, whether Democrats or Republicans, tended to exhibit less cognitive flexibility than the general population. Three different assessment tools of psychological rigidity all showed the same dynamic, revealing greater rigidity of partisans (whether of the left or right) in processing non-political information as well. Thus, this cognitive infirmity runs deeper than mere confirmation bias regarding Parisian policies. The study couldn't show causation, so it is still an open question whether adopting firmer political beliefs makes people less cognitively flexible or if people who are less cognitively flexible tend to adopt more adamant political views (Zmigrod, Rentfrow, and Robbins 2020). But whether a cause or an effect, the result is that those who are extreme partisans and are motivated to run for office bring along a weakness when it comes to processing information.

Once a worldview or belief is deeply embraced, whether religious, political, or otherwise, evidence that undermines or would even disprove that belief (in the mind of an impartial observer) is often denied by the believer as being invalid evidence. Indeed, when faced with contrary evidence, true believers often strengthen their commitment to the questionable belief. Many psychological

studies over the past several decades have confirmed this dynamic (see, for example, Batson 1975).

It is astonishing how much mental gymnastics we are all able to perform in order to cling to preconceived worldviews when contrary evidence surfaces. Of course, each of us is unable to recognize this dynamic in ourselves—assuming this is a trait that only *others* exhibit. Political partisans, and especially elected officials, often fit this "true-believer" mold, where no amount of contrary evidence can shake their belief in various fundamental partisan canards. And, of course, with the Internet today, it is easy to seek out and *find* "information" that can shore up nonsensical beliefs. A randomly allotted legislative body would naturally include members who exhibit this same psychological propensity. However, the crucial difference is that in addition to being less prominent, their "false beliefs"' would be randomly distributed rather than fall along predefined partisan axes. So rather than settling into two or a few insurmountable ideological fortresses, the body as a whole could learn and abandon policies that have a preponderance of countervailing evidence, even while a few members persist in the kind of mental somersaults typical of partisan politicians.

Mindset of an Entire Elected Legislature

Just as voters rely on mental shortcuts, cues or heuristics in deciding how to vote, so too do legislators within an elected legislative body. First, I should note that members of Congress spend a small minority of their time working on policy and legislation. A study by the Congressional Management Foundation, based on self-reporting by members of Congress, suggests they are workaholics, but that most of their time is spent on media relations, fund-raising, constituency service and other campaign activities aimed at enhancing their re-election prospects, rather than committee work or lawmaking (Korte 2013).

On average, members of Congress reported spending 35 percent of their work time on policy and legislation, though it seems likely they would tend to overestimate rather than underestimate the amount of time devoted to their official tasks. While some members likely are genuine policy wonks who primarily work on policy, many others spend almost no time at all. It should also be noted that of that 35 percent, much of it is framed by partisan campaign priorities, which favors listening to special-interest lobbyists about policy wants and needs. One of the many benefits of sortition is that the representatives would not have campaign and fund-raising distractions, could devote their full attention to the task at hand, and would not have any incentive to seek out advice from special interests (indeed, it might make sense to sequester policy juries to avoid corruption).

Setting aside for the moment the tremendous amount of mental energy diverted to public relations, fund-raising and electioneering, even if legislators

gave full attention to their nominal job, the sheer number of bills (covering a vast array of topics) confronting legislators means that they can't learn much about each. Inevitably, they rely on lobbyists, campaign contributors, or other members of their party who serve on the committee to which each bill was referred, for guidance on how to vote. The fact that most legislators read very few of the bills they vote on (lay, people are often surprised by this fact) might not be so disturbing if the guidance they relied upon was policy-focused, balanced or impartial. This is almost never the case. Members of committees, especially conference committees charged with settling the differences between a House and Senate-passed version of a bill, frequently seize on the opportunities afforded by the fact that few other members will "check their work" to insert all kinds of special-interest favors into bills.

Kahneman's *system one thinking* also shapes the legislative agenda. Psychologists have long known that people tend to evaluate risks based on how readily examples of some danger come to mind ("availability"), rather than any fact-based or statistical analysis of some event's likelihood. The media act like an echo chamber, reverberating the novel danger, while ignoring common everyday dangers, which kill far more people. This has been called an "availability cascade". Thus, a rare shark attack, terrorist bomb, or plane crash trumps concerns about ongoing dangers with far greater impact and likelihood. This availability heuristic spills over into demands for government spending. Kahneman describes it this way:

> An availability cascade is a self-sustaining chain of events, which may start from media reports of a relatively minor event and lead up to public panic and large-scale government action … The cycle is sometimes sped along deliberately by 'availability entrepreneurs,' individuals or organizations who work to ensure a continuous flow of worrying news. The danger is increasingly exaggerated as the media compete for attention-grabbing headlines … The issue becomes politically important because it is on everyone's mind, and the response of the political system is guided by the intensity of public sentiment. The availability cascade has now reset priorities. Other risks, and other ways resources could be applied for the public good, all have faded into the background.
>
> *(Kahneman 2011, 142)*

While elected officials have the opportunity to use *system two thinking* to evaluate and rank dangers in a logical priority order, they have a countervailing electoral incentive to dismiss that approach. Elected officials could consult experts and come to understand that some media-fanned public concern is way overblown. But it is politically more expedient and shrewder to respond to the public's gut perception of danger than to actual danger. Politicians often find it beneficial for

their election campaigns to generate or accentuate these unrealistic public fears. Such whipped-up concerns also often have the advantage of having simplistic "solutions," unlike real problems that typically have exceedingly complex and hard-to-explain solutions, which is anathema for a politician's press conference.

Uncertainty Under Threat

Elections select for individuals who feel more certain about their views on societal problems and their solutions. Doubts or uncertainties on the part of candidates connote "weakness" and are not a good way for candidates to sell themselves to the electorate. This is also true of radio talk-show hosts, pundits, salesmen, and anyone who wants to be convincing. However, the reality of political decision-making is that there is always imperfect information, or uncertainty, even if the decision-makers have a psychological or partisan electoral reason to hide that reality.

Research is showing that in *some* situations, uncertainty and doubt can enhance open-mindedness and a willingness to examine alternative solutions to political problems. Political science professors Ingrid Haas and William Cunningham reported that "In situations where intolerance results from certainty, creating some doubt in the person's mind might reduce intolerance … Doubt should increase open-mindedness, making people more open to opposing opinions and less likely to minimize the opinions of others" (quoted in Smith 2013, Haas and Cunningham 2013). However, the researchers also found that in the situation most elected politicians find themselves in, this dynamic gets short-circuited. They found that feeling threatened completely changes this impulse toward openness. "Uncertainty may be useful for the political process when it results in increased deliberation and willingness to compromise; however, our work suggests that this may only happen when people are not also feeling threatened". Unlike a randomly selected jury, elected legislators inherently feel a certain amount of threat—from political opponents eager to seize on any opportunity to embarrass or impugn them in order to gain a partisan advantage in the next election (Haas and Cunningham 2013).

Another psychological trait that is exaggerated in groups placed in a competitive environment is the tendency (discussed in the case of individuals above) to anticipate the worst from the group's opponents. Group loyalty can inhibit or induce unethical behavior, with the presence of competition being the fulcrum (Hildreth, Gino, and Bazerman 2016).[5] Many experimenters have demonstrated this dynamic when participants are primed to identify with a group (such as students at a particular university) and are asked to play a game with members of a different group. The willingness to cheat is increased due to the anticipation of cheating by the other side. These expectations of dishonorable behavior are often confirmed simply because the opponents are also expecting the worst from

the first side. This reinforcing feedback loop on a national scale can lead to war, even when neither side wants it. In an electoral framework, the decision-makers are regularly being psychologically prompted to expect, and thus get, and deliver the worst. There are exceptions, to be sure, but suspicion is commonly elected politicians' default setting when dealing with members from an opposing party.

Elections are a zero-sum game for politicians—if you win, I lose. Within the confines of the legislative chamber, one might hope for a different kind of game (win–win for incumbents at least, with only future challengers losing). However, here political maneuvering often resembles the classic model in game theory called "the prisoners' dilemma". In the prisoners' dilemma (for those unfamiliar with the scenario), two bank robbers are arrested and put in separate interrogation rooms. Each is told that if he testifies against his partner, he will get off with a minimal sentence, but if he refuses, and his partner agrees to testify against him, he will go to prison for many years. Both robbers also believe that if they both refuse to testify against each other, the police have no other evidence, and will both go free. If the two players are isolated and don't know their partner's level of loyalty, they each have a powerful incentive to cut their losses and testify. Thus, even though both "players" would benefit from a common plan, the scenario almost inevitably leads to a less desirable outcome (from the perspective of both players) to avoid the worst scenario. Likewise, in a legislature, in an electoral context, a compromise that would benefit both players (and perhaps the public generally) is beyond their grasp, because the risk is too great that the other player will not go along, and is instead already planning to use the opportunity to harm the opponent.

Another standard "game" used by experimental psychologists is known as the "dictator game". One participant (the dictator) is allotted a sum of money, let's say ten dollars. The dictator then proposes to the other participant a plan for splitting the cash; for example, keeping six dollars and sharing four dollars, or an even split—five dollars each, or keeping it all. However, the other person has the power to accept or reject the proposal. If rejected, neither person gets any money. If the dictator proposes to give only one dollar, a purely rational participant would reason that the alternative (resulting from rejection) is zero, and accept the plan. But human psychology rarely works like that, and most players reject such splits in indignation as a matter of revenge. When participants view each other as competitors, revenge behavior is especially likely. Interestingly, this behavior doesn't occur when playing against a computer, where no moral "blame" applies, and participants generally accept any amount the computer randomly offers. As with the "prisoners' dilemma" above, elected legislators are in a competitive mindset and primed for revenge. Competition can foster revenge behavior, in which an individual is willing to "irrationally" reduce their own payment in order to punish an individual who takes, or is merely expected to take, unfair advantage. When it comes to making public policy through legislatures

selected by competitive elections, we can apply the quote of Brian Klaas above: "Bad systems make everything worse" (Klaas 2021).

Confirmation Bias—Cherry Picking

The tendency toward certainty and lack of openness to alternative interpretations of events, which is especially prevalent among elected politicians, builds on a psychological propensity that we all have—*confirmation bias*. This refers to the well-documented and powerful inclination people have to notice, and believe, casually observed evidence that tends to confirm their current beliefs, and to discount or completely ignore information that would tend to disprove their current beliefs. Accepting contradictory information risks creating the unpleasant feeling of what psychologists call "cognitive dissonance".

The claim is not that this always occurs—certainly, we are all aware of times we have heard new information that prompted us to change our opinion about some issue—but confirmation bias is far more common than we realize, simply because by its very nature we can't notice it when we are doing it. This tendency is thought to be exacerbated by what is sometimes called the "silo effect", where people tend to select news sources that corroborate pre-existing opinions (whether by their choice or by Internet algorithm). In the US, conservatives may prefer to get their news from Fox News and liberals from MS Now. But even impartial, neutral information is often interpreted differently depending on one's prior beliefs, associated with what is known as *cultural cognition*. For example, depending on the prior stance of you and your friends or political leaders on gun regulation, a mass shooting in an elementary school may reinforce a belief for one person in the need to restrict gun access, but also reinforce a belief of a different person in the need for more guns in schools in the hands of "good guys" to thwart such shootings.

Breaking down the information silos is widely advocated, but in a combative electoral environment, that may fail to reduce polarization. Indeed, once an individual has taken on a partisan identity, or come to identify more with one side than another, exposure to opposing points of view may actually intensify polarization—what is referred to as a "backfire" or "backlash" effect. A 2022 analysis by Philipp Lorenz-Spreen et al., which looked at many separate studies, found that "increased polarization was also linked to exposure to opposing viewpoints in one's social media feeds. In other words, being exposed to the words of political opponents did not bridge the political divide. Rather, it seemed to amplify it" (Lewandowsky, Oswald, Lorenz-Spreen, Hertwig 2022).

In competitive situations with winners and losers, as when officials selected through partisan elections "debate" each other, there is a strong tendency toward what psychologists call "motivated reasoning". Winning a debate requires seeking out convincing arguments for why your side is correct and the other side is

wrong. The participants are generally unaware of this distortion of their own thought process. In these partisan situations, winning feels more important than finding the truth, so even the most brilliant minds will direct their abilities to this imperative. Partisans frequently feel that their side winning is *ipso facto* synonymous with the truth winning. Rummaging through a vast amount of information and potential lines of reasoning to astutely come up with the most convincing case for your side may simply further bury the truth. As a result, smart people (as well as stupid people) make stupid decisions all the time.

However, researchers who have carefully reexamined and attempted to replicate earlier experiments that showed this backlash effect have called it into question for ordinary people—at least in certain situations (Guess and Coppock 2018). When representative samples of people were given evidence on such things as whether capital punishment deters crime or whether the minimum wage should be raised, rather than doubling down on prior beliefs (backlash), their beliefs tended to moderate in the direction of the newly presented evidence. This is hopeful for the prospects of citizens' assemblies. This may reflect the trust in the impartiality of the messenger. The researchers noted that "A reasonable objection to these findings is that while individuals may not exhibit backlash when reading relatively sterile descriptions of academic studies, they may do so when arguing about a particular proposition with an opponent … Perhaps in such antagonistic contexts, individuals become distrustful of counter-attitudinal arguments" (Guess and Coppock 2018, 1512–1513).

The backlash effect may be an artifact of the competitive partisan election environment. A 2023 research paper found that truthful fact-checking was more likely to backfire when the source was a political out-group member, and such fact-checking often left people with more entrenched beliefs in misinformation (Reinero et al 2023).

In a journal article titled "Identity Concerns Drive Belief: The Impact of Partisan Identity on the Belief and Dissemination of True and False News", other researchers have published evidence that, rather than standard confirmation bias, in the partisan political realm, belief in false information may be a matter of upholding group identity (Pereira, Harris, and Van Bavel 2023). It is gratifying to believe positive things about one's own political in-group members and negative things about political out-group members. Rejecting one's identity group's false beliefs is psychologically painful. Politicians seeking to drive voter turnout benefit from promoting partisan loyalty as a central element of personal identity. Electoral politics undercuts efforts to base public policies on facts. Removing deliberators from this partisan in-group/out-group environment by placing them together on the same team (a citizens' assembly), where they can come to know each other on an individual basis, can sidestep this dynamic. This adds credence to the notion that citizens' assemblies made up of everyday people, rather than

politicians or extreme partisans, using good process, could avoid many of the common political psychological pitfalls.

Politicians also have an additional distorting incentive, which often locks them into preconceived positions. They won their election by asserting a particular set of priorities and a view of reality. Any change, perhaps based on new information, leaves them open to embarrassing charges of selling out, hypocrisy, or flip-flopping. Bargaining and horse-trading with political opponents in an elected legislative body may be acceptable, but actually deliberating and coming to new understandings is not. Unelected citizens randomly selected don't have this dilemma. It is a bad idea to have those going into a deliberative situation having their conclusions firmly locked in place beforehand. This is a common scenario for bargaining, but genuine deliberation requires an openness to changing one's mind.

As discussed earlier, numerous studies have shown that people who follow the news and have clear political opinions on some matters are less able to absorb and use new information if it seems to contradict their current beliefs. In other words, the goblin of confirmation bias hobbles the "well-informed" more than the less informed, who remain more open to learning from a variety of sources when placed in a deliberative setting. Though now scientifically supported, keen observers have long noted that those who believe themselves to be well-informed are generally not. While serving as president, Thomas Jefferson wrote in private correspondence, "The man who never looks into a newspaper is better informed than he who reads them; inasmuch as he who knows nothing is nearer to truth than he whose mind is filled with falsehoods & errors" (Jefferson 1807).

Overconfidence and the Illusion of Knowledge

Another psychological tendency humans exhibit, which can harm good decision-making, is known as the *illusion of knowledge*. We all believe we understand and know more about the world around us than we actually do. Sometimes this non-understanding is hidden by superstition, but it often is simply glossed over. Our brain automatically "fills in gaps" in our knowledge with assumptions derived from past experiences, etc. There are interconnections between this cognitive bias and the *illusion of information adequacy*, discussed at the end of Chapter 7. Politicians are exceptionally likely to believe they know more about policy matters than they do. Such self-confidence is associated with a willingness to run, and the projection of that self-confidence is beneficial for winning elections. However, what psychologists call the *Dunning–Kruger effect* suggests these feelings of self-confidence are unreliable (Kruger and Dunning 1999). The Dunning–Kruger effect is a cognitive bias in which less competent

individuals often have a feeling of superiority due to their incompetence at evaluating their own level of competence—or colloquially—too stupid to recognize how stupid they are.

Further, this feeling of being well-informed (whether valid or mistaken) that is typical of elected politicians may exacerbate the tendency found in the research of Nyhan mentioned above (in Chapter 7 on "Voter Decisions"), of resistance to accepting new facts that contradict current beliefs. Random citizens selected for a policy jury are far less likely to assume they already know the answers, and are thus more open to learning facts from impartial expert presentations. Psychological scientist Philip Fernbach of the Leeds School of Business at the University of Colorado, Boulder and his co-authors were interested in exploring some of the factors that could contribute to political polarization and the illusion of knowledge. In their research, they found that having to explain a policy can make people with extreme positions moderate their views, as they come to appreciate that they only had the illusion of understanding the issue (Fernbach, Rogers, Fox and Sloman 2013). While applicable to average citizens, even if this effect occurs among elected officials, the electoral imperative that impels them to project self-confidence and certainty on policy matters appears to trigger defensiveness and short-circuit any beneficial mitigation that could accrue from coming to appreciate their true level of ignorance.

But even very bright individuals, with a solid ability to interpret scientific information, and an eagerness to use Kahneman's system two rational analysis, often fail to use these skills appropriately when steeped in a competitive, partisan (tribal) environment. Dan Kahan, a professor of psychology and law at Yale University, summarized research in an article in *Scientific American* entitled, "Why Smart People Are Vulnerable to Putting Tribe before Truth". He writes that in various studies, "proficient reasoners are revealed to be using their analytical skills to ferret out evidence that supports their group's position, while rationalizing dismissal of such evidence when it undermines their side's beliefs" (Kahan 2018). Kahan argues that, at least for an everyday US citizen, that:

> given what positions on climate change [for example] have now come to signify about one's group allegiances, adopting the "wrong" position in interactions with her peers could rupture bonds on which she depends heavily for emotional and material well-being. Under these pathological conditions, she will predictably use her reasoning not to discern the truth but to form and persist in beliefs characteristic of her group, a tendency known as "identity-protective cognition".
>
> *(Kahan 2018)*

Kahan's research suggests that a particular kind of scientific competence, however, *can* alleviate polarization. That is *scientific curiosity*—an enjoyable feeling

of awe from gaining a new perspective and understanding. Subjects who ranked high on scientific curiosity were more able to amend their prior opinions and beliefs.

Another psychological trait that researchers have found to be beneficial to absorbing new information and good decision-making is what Mark Leary, a professor of psychology and neuroscience at Duke University, refers to as *intellectual humility*—an awareness that one's beliefs may be wrong. Leary's studies have found no significant difference between liberals and conservatives in this regard, but it seems likely that the subset of individuals from across the political spectrum who are willing to run for office tilt toward *intellectual arrogance* rather than humility (Leary et al. 2017). Leary noted: "If you think about what's been wrong in Washington for a long time, it's a whole lot of people who are very intellectually arrogant about the positions they have, on both sides of the aisle" (quoted in Duke University 2017). Recognized good decision-making procedures that acknowledge the uncertainty of the world and the uncertainty about the impact of policy proposals are taboo for those who fight to win elections.

It would be possible, for example, to use the scientific method with test and control groups to determine which particular policy was in fact more effective at solving some societal problem. The policy tested could deal with the impact of various prison practices on recidivism, or education schemes on competency at graduation, or whatever. We would need to randomly assign some prisoners or schools to experimental groups and some to a control group. At the end of the experiment, we would have good information on which policy was actually better for achieving an agreed-upon goal. However, politicians seeking election are rewarded for asserting certainty about policy proposals without any scientific evaluation, often on ideological grounds.

Scholars often seek out "natural experiments" where different populations have been subjected to different policies (such as in different states), but without random assignment of subjects to experimental and control groups,[6] these experimental results need to be reported with a caveat. As all scientists know, "correlation does not prove causation." There are so many other variables that are different between states; these "natural experiments" are tricky to interpret. Naturally, politicians seize on studies that seem to support their predetermined policy preferences, while finding flaws and dismissing studies that contradict. This is because they are generally more concerned about making themselves look correct in the eyes of the voters than in determining the truth about some policy's effectiveness.

Average citizens, with appropriate technical support and no such distorting electoral imperatives, are far more capable of honestly evaluating policy experiments than are politicians. A recurring problem with elected policymakers, especially those serving multiple terms, is their unwillingness to acknowledge when a pet policy has clearly failed. Rotation, along with sortition, brings in people

with fresh perspectives. Lacking the pride of authorship, such policymakers are more able to recognize failure in current policies, rather than doubling down.

The reason certain individuals rise to leadership roles in partisan competitive legislatures often has more to do with certain (frequently problematic) personality traits or connections than policy ability. Only certain people seek leadership roles, often reflecting inflated self-confidence. Unlike elected chambers with rigorous internal hierarchies, lottery-selected bodies have an inherent equality. Since this equality can easily give way over time, regular rotation through sortition can maintain equality.

A study by Swiss and German researchers found that for an assigned task, an organization in which the leader was chosen by competence in previous performance, or by random selection, made no difference in the overall performance of the team. However, when the leader was chosen based on confidence, performance was worse than when a leader was randomly chosen. An overly confident leader tends to overweigh their own opinion, and be less willing to incorporate input from others. These researchers concluded: "Hence, when designing a procedure for leader selection in a situation in which social learning is important, declared random selection is a viable option, and overconfidence should be avoided" (Büchel et al. 2018).

Studies by University of Pennsylvania researchers found that "In egalitarian networks, where everyone has equal influence, we find a strong social-learning effect, which improves the quality of everyone's judgments. When people exchange ideas, everyone gets smarter. But this can all go haywire if there are opinion leaders in the group". An influential opinion leader can hijack the process, leading the entire group off course. While opinion leaders may be knowledgeable on some topics, these researchers found that when the conversation moved away from their expertise, they still remained just as influential. As a result, they ruined the group's judgment. "On average, opinion leaders were more likely to lead the group astray than to improve it" (quoted in University of Pennsylvania 2017).

In sum, over-confident people who believe (whether correctly or incorrectly) that they already know a lot about a policy matter at the start of a process are actually less competent at absorbing new information and making optimal decisions. Randomly selected people generally recognize that they must learn about the issue before drawing conclusions, and as a result are better able to absorb information in order to make better decisions.

Chapter Summation

The distorting cognitive biases discussed in this chapter are standard equipment that all humans may fall victim to. However, it is possible to ameliorate their effects when forming a deliberative body. Firstly, the selection process should not be one that favors people who are especially prone to these biases, nor a system

that will generate or exaggerate them. In addition to optimizing the selection process, systems can be put in place that are designed to help decision-makers avoid various cognitive biases. But elected officials have unusual traits, incentives, and competitive environments that make overcoming these cognitive shortcomings nearly impossible. The electoral imperative to project certainty and "leadership" reinforces the psychological biases.

Some people contend that elected officials are frequently sinister, pursuing goals in their personal or class interests, or serving some other behind-the-scenes powerful elite. The point of this chapter is that even if nearly all elected officials started out as honest, bright, and well-intentioned, the process of competing in elections and then being immersed in a competitive environment inevitably creates a body that, as a whole (though certainly not every member), is unfit for public policymaking. Rory Stewart, who was a UK Conservative Party MP who sought to become prime minister, and wrote about how being a politician is a soul-crushing and corrupting experience, tells a story of when he was first elected: The American politician, Mitt Romney, told him to get his thinking done now, because once in office that wouldn't be possible. The evidence from many hundreds of citizens' assemblies in recent years suggests that democracy using sortition can do better.

Notes

1 Note that I am using a particular meaning of the word "compromise" that is distinct from the common usage in competitive electoral situations, where it refers to a negotiated settlement that balances the relative power and threats each side can bring to bear.
2 Evidence suggests a strong correlation between the preferences of the merely affluent (top 10 percent) and those of the extremely wealthy, and also a strong correlation between the policy preferences of those of median income with the average voter.
3 Their study, published in *The Leadership Quarterly,* employed the "Dictator Game" (commonly used by psychologists), in which one participant is assigned the role of deciding how to distribute money from a common pot to himself and other participants The "dictator" can choose a default distribution plan, or a pro-social or anti-social (selfish) manner. The more "power" in terms of number of other participants ("followers") or options for possible ways to split the pot, strongly correlated with more anti-social or selfish decisions (Bendahan, et al. 2015).
4 This unethical proclivity wasn't even restricted to dealing with the opponent, but adversely influenced behavior in unrelated activities, such as lying to an experimenter about how well they performed on some other task having nothing to do with the negotiation.
5 Note that the secondary author of this paper, Francesca Gino, had her Harvard tenure revoked and was terminated in 2025 for falsifying data in some studies. There are no allegations of falsification in this particular study and it has not been withdrawn.
6 In some cases the "natural experiment" does indeed achieve random assignment due to unique circumstances.

9

PARTICIPATORY DEMOCRACY

In contrast to competitive democracy, two alternative notions now receive significant attention. Participatory democracy and deliberative democracy deal more with ideas about how democracy should be constituted than how governments commonly referred to as "democracies" function today. Both participatory and deliberative democracy were features of the democracy from the beginning.

Depending on design details, sortitional democracy can employ beneficial aspects of both. The participatory strain of democracy includes, but is not limited to, direct democracy, as in Athens and traditional New England town meetings. But this direct, participatory democracy is commonly dismissed as obviously impractical for communities with large populations. Such a system is generally deemed impossible on the scale of the modern nation-state. The advent of the Internet has prompted some to hope that the scale issue can now somehow be overcome. A leading participatory democracy advocate, Benjamin Barber, in his book *Strong Democracy*, rightly dismisses such "mindless plebiscitary democrats" as ignoring the lack of information and deliberation such instant votes entail (Barber 2009, 289). Democracy must be more than the mere aggregation of individual off-the-cuff preferences. Some reforms, such as *participatory budgeting*, allow some self-selected ordinary people from outside the electoral inner sanctum to make decisions on a few specific issues delegated to them by government officials. However, with thousands of public policy decisions being made at the national, state, regional and municipal level, referendums, voting online, or participatory budgeting can only scratch the surface. Some sort of division of labor and representation is essential.

Calls for popular participation also run up against the wall of average citizens' unwillingness to devote the necessary time. The famous quip often attributed to

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Oscar Wilde: "The trouble with socialism is that it takes up too many evenings", certainly applies to a pure notion of participatory democracy.

The practical limits of participatory democracy, simply in terms of people's free time, were elegantly set out by Robert Dahl, who is often called "Dean of American Political Science", in his slim 1970 book *After the Revolution?* (Dahl 1971).

Efforts at participatory democracy suffer from a "volunteer bias". Those who have a vested interest (especially a self-interest) in a given issue are more likely to make the time to participate and may not necessarily share the attitudes of the general population on that issue. A participatory system, when combined with apathy or alienation, simply leaves an unrepresentative few in charge. But Barber's vision of "politics in the participatory mode" does not suggest that all people participate in all decisions at all levels, but rather "frequently enough and in particular when basic policies are being decided and when significant power is being deployed" (Barber 2009, 151). He advocates a system where "all of the people can participate some of the time in some of the responsibilities of governing" (Barber 2009, 267).

Participatory democracy also suffers from the shortcoming that elections suffer from—*rational ignorance*. Indeed, many political theorists have argued that the complexity of modern society makes participatory democracy nonsensical. Aspects of participatory democracy have appeal. But the simplistic notion of allowing all those who choose to participate in making decisions for the vast majority who are busy doing other things is a very bad idea. Those who do participate will tend to be either poorly informed due to rational ignorance or unrepresentative due to self-selection bias. In either case, the decisions are likely to be epistemically poor.

Optimal Participation

Another major challenge for such efforts is citizen recruitment. Many people view participation as just a nuisance and have little motivation to get involved, preferring to watch television, hang out with friends, or pursue some hobby. Those who actually *do* participate in such civic engagement efforts generally report a lot of satisfaction and civic pride, though this may be because of the self-selection bias (people who like participating are more likely to participate). To overcome this self-selection bias, a sortition-based democracy might operate along the lines of the court "jury duty" model, where participation is semi-mandatory (with excuses) for at least the final decision-making bodies that serve short terms. Other sortition bodies, such as those that deliberate to draft proposals, set agendas, perform oversight functions, etc., which serve substantially longer terms with greater time burdens, could mitigate the unrepresentativeness of self-selection through stratified sampling, discussed later in this chapter.

A vast number of policy juries, each dealing with a particular bill at various levels of government, and other sortition bodies, would also mean that most people would serve in some public decision-making capacity at various points in their lives.

Some citizens would certainly have no interest in getting involved, though this might shift over time as the entire culture evolves under the influence of sortition. But there are many people who desperately want to participate in at least certain public policy decisions—especially those that are close to home, of crucial importance, or would significantly impact their life. Voting in elections provides an extremely minimalist (though still cherished by many) means of "having a say" (even if it can be shown mathematically that such "say" is effectively ineffectual). Those who really want to participate currently have the option to go further by engaging in election campaign volunteer work, donating to candidates, or attending rallies. While rallies and protests would certainly continue in a democracy governed primarily through sortition, the electoral option would be either diminished or wholly eliminated. It would be ideal to provide an alternative means of participation in a sortition democracy so that anyone who wished, even if they were not called onto a jury, could engage in meaningful participation on any issue they wished. This is not only for the psychological benefit of participants, but also to enhance the legitimacy of the system, and potentially (if well designed) to improve the quality of public decisions.

The problem is self-selection bias. Those who seek to participate will almost inevitably not be representative of the general population and will tend to harbor narrow self-interested motivations or other biases. Allowing participants to self-select would violate the goal of descriptive, accurate representation. Therefore, such self-selected participation should be focused on providing input to more fully representative juries. Most political participation in electoral systems today is limited to campaigning or activities that serve campaigns. Politicians have an interest in steering participation toward the parroting of slogans of their favored party on social media, and voter mobilization, akin to massing for a feudal war, rather than developing the skills of open-minded deliberation. Only a few citizens seek to provide input to elected officials and bureaucrats. Most of the really significant input comes in private meetings between lobbyists and elected officials or their staff. Such input is doubly problematic. Firstly, it allows relatively out-of-sight corruption through the route of campaign contributions, whether seen through the common lens of "you-scratch-my-back-and-I-scratch-your-back" where wealthy interests buy influence, or the alternative lens of politicians extorting money from wealthy interests with implied threats on legislation of concern. But secondly, information shared in private is not subject to fact-checking by other interests. A good jury-like process would assure that all

information, from the general public and lobbyists alike, would be subject to challenge and verification by jurors, their staff, and opposing sides.

In a sortition democracy, it would be appropriate to allow any resident who wished to join with others to form deliberative Interest Panels that might draft proposed legislation or prepare testimony for juries to consider. As I proposed in previous publications (see, for example, Bouricius 2013) and discuss later in this book, Interest Panels might be self-organized by like-minded people, or they might have members randomly assigned in order to promote broader diversity of opinion and provide for cross-fertilization of ideas. The notion is that anybody who wished could participate by generating ideas, arguments and input for the fully representative decision-making bodies. Since these Interest Panels would be providing input to other, more fully representative bodies, they would have a natural incentive to propose policy and arguments that could appeal to such a body, rather than preparing targeted proposals that could only appeal to their self-interest, or a narrow constituency. This can promote seeking win-win options, rather than maximizing the advantage of "winners" at the expense of "losers".

Many advocates of sortition view it as primarily a participatory reform because vast numbers of ordinary people are directly connected to the decision-making process. Depending on the scope and specific design of a sortitional democracy, this could even involve far more people than participate in current elections. This involvement avoids the harmful effects of self-selection bias and rational ignorance, since it is embedded in a learning and deliberative framework, rather than the ill-informed referendum model. This makes the participatory democracy through sortition completely unlike all other recent proposals for participatory democracy.

One effort blending participatory and deliberative approaches was launched in Oregon. The Oregon Citizens' Initiative Review process draws a randomly selected group of ordinary citizens to review initiative ballot questions, and the state publishes their findings or recommendations in the state voter guide. An analysis of survey data following the 2010 and 2012 referendums found modest increases in feelings of political efficacy, with only around half of voters even being aware that the report of the lottery-selected review body was included in the voter guide, and fewer having read it (Knobloch, Barthel, and Gastil. 2019). A similar proposal was put forward for a national system of deliberation by sortition and national referendum by former US Senator and presidential candidate Mike Gravel, in his book *Citizen Power: A Mandate for Change*, first written in 1971, and revised and updated in 2008 (Gravel [1971] 2008). This "Oregon model" was subsequently adopted and implemented by many cities in Switzerland. A severe limitation of such proposals is that the deliberative portion is only advisory and is readily swamped by paid advertising.

Participation and Lottery

When proposing lottery selection instead of either an election or mass-participation self-selection (as in a referendum), there are two common concerns. The first concern, that random selection could generate an unrepresentative group of people, is not a serious issue, as I will discuss next. The second concern, that some people will agree to serve while others decline, so that those who end up actually serving will be unrepresentative, is a serious issue, which I will address subsequently.

Fear that an unrepresentative group will just happen to be drawn by chance is a frequent worry when people first learn about sortition. What if a group sympathetic to neo-Nazis happens to be drawn by lot? A short digression into sampling mathematics is necessary to appreciate the imagined and actual risks of random sampling.

The highly developed techniques of scientific sampling derive from what is known as the *law of large numbers*. It is obvious that a very small random sample of the population may by chance be extremely unrepresentative of the general population (though unlikely as unrepresentative as most elected legislatures). For a jury of twelve, the chance that a particular segment of society that comprises 30 percent of the whole population will happen to get a majority of seats in a random sample is 4 percent. But as the size of the jury grows, the odds of this happening drop precipitously. If the random sample has one hundred members instead of 12, the chances of that 30 percent minority of the population getting a majority of seats drops to 1 chance in 110,684 (or 0.0009 percent). In other words, if a new jury of 100 were drawn every year, it would probably take many tens of thousands of years before even one jury had a majority of members from that 30 percent minority. If the jury had 250 members, the chances of that minority group getting a majority of seats drops to just 1 chance in 79,792,344,770. A crucially important fact is that the size of the random sample required to get a "very accurate" sample is barely impacted by the size of the target population. In other words, a sample of 500 is extremely likely to create a very accurate representation of a population of 30,000 or 300 million.

Non-participation and Democracy

So, a random sample of reasonable size will be quite representative of the population. But not all of those selected will agree to actually serve, such that the issue of self-selection bias resurfaces. If all segments of society were equally likely to decline, the random selection dynamic would still apply, and the representativeness would not be affected. However, it seems plausible that certain sorts of people would be less likely to agree to serve than other sorts of people, which could stymie the descriptive representation goal. For example, new mothers, or entrepreneurs launching a new business, or people with severe social

anxiety might decline even if there were extremely robust supports and accommodations. But it is also likely that people with limited education, or who feel discriminated against as part of a marginalized group, might decline. Depending on the issue being tackled, their absence could change the outcome of the panel's deliberation and destroy the legitimacy of the citizens' assembly.

Some theorists have called for quasi-mandatory service (akin to US jury duty) to avoid these concerns altogether. Others view "forced service" as a violation of freedom. It is also possible that those compelled to serve unwillingly may simply not pay attention or "do the work", leaving the demographic or character they are hoped to be representative of, effectively unrepresented, despite their nominal inclusion. Alternatively, it can be argued that the "forced" juror, who attends but ignores the deliberation, or the one who simply doesn't show up, is in fact accurately representing, by their very refusal, the refusal to participate in democracy typical of similar people in society. Regardless, such a body would still be dramatically more representative than any elected chamber.

The solution typically used by modern citizens' assemblies is the use of scientific, stratified sampling among the pool of people who are willing to serve. Stratified sampling sets quota requirements for a variety of demographic traits, assuring that the final sample will match the general population in terms of age, sex, income, race, education, etc. Even attitudinal characteristics can be matched using surveys.

Stratified Sampling

Since quasi-mandatory service (like jury duty) is not a legal option yet, how is representativeness and stratified sampling currently being done for citizens' assemblies in the real world? The standard approach has been to make an initial invitation by mail, phone or door knocking to a randomly selected list of people (or phone numbers, or addresses). In some instances (depending on the budget), follow-up contacts are made to encourage those initially contacted to step up, answering their questions and offering remedies to any impediments to serving. The random selection lottery process should be impartial and transparent, so that anyone who wishes can verify that it was done honestly.

From the pool of those who responded that they would be *willing* to serve, a second lottery is conducted, but using *stratified sampling*. Those who agree to serve provide various demographic and other details about themselves to allow the stratified sampling process to match the diversity of the target population (a municipality, a nation, or, in some cases, the entire world). Quotas are set according to the demographics of the population, according to age, education, sex, income, geographic location, etc., to make the final body as descriptively representative of the population as possible. It is even common to use polling data on the topic of the assembly to ensure the group's attitude matches the population

as well. For example, if the assembly is going to be examining a response to climate change, respondents are asked whether they think climate change is a big concern, somewhat of a concern, not much of a concern, or not a concern at all, so that the panel aligns with the population's attitude on the topic, and is not full of deeply concerned activists, for example. Various procedures have been used to make the final lottery selection, often using a computer to generate a large number of random groupings with different potential participants, with each grouping satisfying the stratified demographic quotas. The final public lottery (perhaps using lottery balls, multiple dice, or other visible random process) picks one of these possible mixes of willing participants as the final body.

Whether stratified sampling adequately compensates for decliners depends on whether those who decline have consistently different interests, attitudes and policy preferences than those within the same demographic groups who *do* agree to participate. In short, would the outcome of a deliberative process be substantially different if decliners could be induced, or legally compelled, to participate (as with jury duty), as compared to having substitutes from the same demographic categories? Clearly, one requirement is the need to eliminate every possible obstacle to service, such as preventing any loss of income, providing needed childcare, etc. Inducements need to be considered as well, such as generous payment or the honor of helping one's community, etc.

So, what are some reasons decliners decline? The research by Vincent Jacquet, interviewing decliners from real-world citizens' assemblies, is a starting point for helping to assess whether stratification can work to fill in where decliners leave holes (Jacquet 2017). Jacquet found that responses[1] could be lumped into six kinds of reasons. The more common reasons for declining were: scheduling conflicts; preference for spending time in the private sphere, especially with family and at work; and low expectations of the assembly's impact on the political system. The less common reasons were: feelings of low personal political competence; dislike of group situations; and alienation or distrust of politics generally.

A mature functioning sortition democracy in which participation generated clear public impact would mostly eliminate concerns related to lack of impact, and to some extent alienation from the political. With paid time off from jobs, childcare, etc., issues related to lack of time could also be ameliorated. Certain functions of a sortition democracy could easily be conducted with remote virtual participation to alleviate discomfort with group settings.

However, a fundamental factor this research *didn't* tackle was whether pay and other inducements would change decliners into participants. None of these three assemblies studied offered remuneration for participation (while many others have). This research also couldn't assess the crucial question of whether those who declined had significant similarities that would leave a certain segment of society out of the sortitional decision-making process, or if, on the contrary, non-participants were essentially *also* random, such that their lack of participation was statistically irrelevant.

But what if the non-participation is an intentional preference, rather than due to obstacles or social inequalities? A significant question is whether it is more oppressive to have quasi-mandatory service or accept that some kinds of people intentionally want to go unrepresented. When I was a politician knocking on doors, campaigning for re-election, I recall a resident who was a member of the Jehovah's Witnesses faith. Members of this denomination decline to vote or participate in any political process at all, as too worldly. The irony, of course, was having the shoe on the other foot—with polite disinterest in what each of us is "selling" to the other, when politicians and Jehovah's Witnesses proselytizers knock on each other's doors. I wouldn't join their religion, and they wouldn't join my politics. How should democracy handle representation when some people simply don't *want* to participate in any form of democracy?[2]

More on Sample Size

The accuracy of representation is also deeply impacted by sample size, as well as serving versus declining. Large samples increase the probability of accurate representativeness, but have the downsides of increased rational ignorance (as each member's input becomes less significant) and reduced ease of deliberation. The optimal size for a lawmaking body has long been debated. In *Federalist No. 10*, Madison noted that "however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that, however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude" (Madison 1787b). Active deliberation is enhanced by a smaller size, such that each member can communicate with all others. Most citizens' assemblies have tackled this by including chunks of time using random, rotating break-out groups of ten or fewer members at multiple tables, to allow face-to-face deliberation. It is my strong conviction that there is no such thing as an all-purpose optimal size for sortition bodies. It depends on the task. A mini-public that is crafting (but not authorized to adopt) a proposal might benefit from a smaller size to enhance active deliberation, while a final decision-making jury that is only going to hear pro and con arguments, and ask clarifying questions before voting, could be substantially larger, to enhance accuracy of representativeness. This is a focus of my multi-body sortition concept discussed in later chapters (Bouricius 2013).

Note

1 It is important to remember that self-reported "reasons", may not always reflect reality. Those interviewed could feel some need to give more respectable reasons than were actually underlying their refusal. It is also often true that people don't even *know* why they make some particular decision, and their brain generates a plausible story that they tell themselves and others.

2 While it is beyond the scope of this book, there is another issue of participation that is vitally important. The core principle underlying democracy is that the people should

control decisions that affect them (rather than allowing some elite to make those decisions). But what about decisions that will dramatically affect future generations, rather than those currently alive—or even other species? While it is impossible to directly include actual members of these groups in decision-making, some, such as those in the Japanese Future Design movement, have argued that such a mindset can be encouraged within participants, or that such interests should have designated representatives within the deliberative system who will specifically look out for them. Experiments with asking deliberators to take the role of an imaginary future generation advising the current generation have shown promise. Some researchers and theorists have suggested that "one must design social systems that activate a human trait called futurability, where people experience an increase in happiness because of deciding and acting toward foregoing current benefits to enrich future generations" (Saijo 2020). The climate change crisis, and rapid advances in AI have brought this issue front and center. It is important that ways of expanding virtual participation beyond the current generation of people be put on the agenda, so that a good democratic deliberative process can decide how these unique interests can be incorporated into future decision-making.

10

DELIBERATIVE DEMOCRACY

Deliberative democracy has a distinctly different justification than either competitive or participatory models. The term has roots in the writings of philosophers such as Jürgen Habermas and John Rawls. This model seeks to have members of society enter discussions as political equals, willing to present arguments that reasonable people might accept while remaining open to changing their views based on counter-arguments, where the "unforced force of the better argument" can ideally lead to consensus. In the ideal form, this deliberation would be spread broadly throughout society. The concept is dismissed by many as Utopian. While many sortition advocates use the term "deliberative democracy", they often have no familiarity with this Utopian term of art in philosophy, and are using the everyday meaning of the words—representative democracy by everyday people, using discussion rather than just voting.

Some philosophically oriented "deliberative democrats", such as Cristina Lafont, hold fast to the idealized broad society concept and roundly criticize empowered mini-publics as an unacceptable "shortcut" (Lafont 2020). She asks why citizens should "blindly defer" to deliberative juries that make decisions they may disagree with.

Eric Shoemaker notes that according to the logic of Lafont's argument, "it is not true that minipublics in particular ask citizens to blindly defer. On this description 'blind deference' is the condition citizens find themselves in whenever they do not get their way in their democracy" (Shoemaker 2024b). Indeed, it impugns the notion of majority rule itself. While Lafont believes sortition bodies

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that shape or decide public policies would be illegitimate due to this "blind deferral", James Fishkin, the inventor of deliberative polling, responds that:

> To accept the result from such an institution, should one exist, is not to follow others "blindly" but on the basis of articulated reasons which have been weighed against other articulated reasons in a process that represents everyone and in which you can see your viewpoints and interests represented. If such institutions were to become commonplace, I believe they would acquire empirical (psychological and sociological) legitimacy as people came to understand them by participating in them.
>
> *(Fishkin 2018, 196–197)*

The key feature of sortition that makes it a workable means of supporting *both* participatory and deliberative democracy, which is also epistemically superior, is that it does not ask *all* citizens to participate in deliberation *all* the time, but for focused periods of time—sequentially—in a manner that facilitates informed, deliberative, and representative decision-making. As I will discuss in later chapters, it is possible to institutionalize sortition in such a manner that huge numbers of short-duration panels are used, each dealing with distinct policy matters, thus allowing nearly all citizens to directly participate in "ruling" at various points in time. I agree with Barber's recommendation for a democracy where "all of the people can participate some of the time in some of the responsibilities of governing" (Barber 2009, 267).

Good Deliberation

Good deliberation is different from discussion, oratory, rhetoric, negotiation, persuasion, and debate. Effective deliberation is a challenging undertaking, which does not often arise spontaneously. According to deliberative democracy theorists, deliberative conversation is a cooperative venture seeking truth or the common good, rather than seeking to "win" or defeat an opponent. It is thus quite distinct from election-based debate.

Deliberation is not merely argumentation among people with different views. As Bernard Manin observed, it must be carefully structured. "Diversity of views is not a sufficient condition for deliberation because it may fail to bring opposing views into contact. It is the opposition of views and reasons that is necessary for deliberation, not just their diversity" (Manin 2005, 17). As a participant at the randomly selected 2009 *Australian Citizens' Parliament* said of preferences, "you've kind of just got your own, because you don't really get a chance to question your own points of view, it's only when you're confronted with another point of view that you can even deliberate [in your own mind]" (quoted in Felicetti, Gastil, Hartz-Karp, and Carson 2012, 18).

David Ryfe, a professor of media and journalism, wrote that "a good design of deliberative democracy should establish rules to maintain the theoretical aims, allow people to tell stories to make cultural meanings in addition to making cognitive sense, encourage leadership that facilitates deliberation, endeavor to relate the outcome of deliberation to the participants, and finally create environments to facilitate learning how to deliberate" (Ryfe 2005). The hundreds of citizens' assemblies convened in recent years around the world have generally embraced this goal, with procedures intended to promote it, and appear to have mostly achieved it.[1]

Ideally, deliberation should be broader than a simple two-sided pro and con argument. A problem with limiting debate to pro and con is that each side has a psychological incentive to hide from the decision-makers any information that is not beneficial to their side. As Elster points out, "If speakers on all sides of a question withhold relevant information, the quality of the debates and the decision can suffer" (Elster 2013, 70). Conversely, he notes, "Speakers who are genuinely motivated to reach a good decision rather than to have their proposal chosen should volunteer information even if it counts against the position they defend". It is this aggregation of widely distributed information that Ober largely credits for Athens's flourishing beyond non-democratic cities (Ober 2010). So, at some stage, deliberation should allow for the crafting of revised proposals that open the door to new, win–win alternatives.

A crucial element of useful deliberation is the marshaling of facts, rather than merely beliefs or opinions. Too much of what passes for deliberation consists of listing supposed, but unsubstantiated "facts" by opposing sides. While some facts are best gathered from a diverse range of individuals reporting their lived experiences, others must come from researchers, scientists and other "experts". Even those facts known by some participants may not spontaneously surface in a deliberation, simply due to shyness or other reasons. Frank Fischer of Rutgers University notes in his book, *Democracy and Expertise: Reorienting Policy Inquiry*, "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" (Fischer 2009, 110).

Of course, many "facts" will inevitably be in dispute, or be indefinite probabilities, or subject to revision based on new research. To the greatest extent possible, opposing sides on some policy matter should agree on a set of commonly accepted facts, much the way lawyers stipulate to agreed-upon facts in a court case. This can ameliorate competing experts simply arguing past each other when presenting to a mini-public. Again, professional staff for a mini-public should facilitate the development of agreed-upon facts among experts who disagree on some policy under consideration.

Note that this is very different from having mini-public members stipulate to a set of "facts" they all believe. The number of "facts" that nearly everybody (except experts who have tested them) believes to be true, but are in fact indisputably false, is legion. In an article titled, "Propaganda, Misinformation, and the Epistemic Value of Democracy", Étienne Brown observes that,

> In fact, while it is true that misperceptions are difficult to correct, we should not conclude that all kinds of democratic deliberation are powerless against misinformation. Instead, studies more moderately suggest that certain types of deliberation will more effectively favor the correction of false beliefs than others. When citizens are exposed to information from an individual they do not perceive as ideologically opposed to their worldview, they may engage in epistemic deference, that is, accept this person's speech as authoritative.
>
> *(Brown 2018, 14)*

At the end, however, once a final version of some proposal has been crafted, it does make sense to switch gears and limit deliberation to presentations for or against, with a jury weighing the arguments. As I mentioned earlier in this book, the final approve-or-reject decision should be made by a different group of people than those who crafted the final proposal. In brief, the mere act of crafting a proposal makes those participants unfit to then judge their own handiwork, whether due to pride of authorship, information cascades or groupthink. The next section will examine the *argumentative theory of reasoning*, which suggests why this recommended procedure is important.

Argumentative Theory of Reasoning

In order to design good deliberative and decision-making processes, it is important to understand cognitive biases and other characteristics of human reasoning. In 2011, Hugo Mercier and Dan Sperber published a paper with a startling but highly influential new theory of how reasoning evolved in humans, and how deliberation plays out in the real world (Mercier and Sperber 2011). I mentioned their theory briefly in Chapter 7, but it deserves deeper explication. Their approach is based on evolutionary psychology. They showed how real-world evidence undercut the "common sense" notion that reasoning evolved to allow the individual to find the truth or think through the best course of action in a given circumstance. They noted that the well-documented "confirmation bias", in which individuals have a powerful tendency to seek out and believe evidence that supports their existing beliefs and dismiss evidence that would tend to disprove those beliefs, suggests reasoning didn't evolve to work in that solo situation. If it did, confirmation bias wouldn't exist, and we would each quickly abandon old beliefs as soon as good evidence showed them to be in error. Countless experiments have shown human resistance to that logical rule

(Mercier 2016). As I pointed out previously, we can notice this in others, but are generally blind to this tendency in ourselves. Confirmation bias works potently *against* finding the truth or optimal solution.

In addition, once we have expressed an opinion, we develop a psychological investment in it and feel a prideful compulsion to defend it, even when the weight of mounting evidence is against it. One implication of this is that group members without prior opinions on a matter may be better suited for assessing the validity of conflicting arguments, unlike politicians or their partisan supporters, who come pre-positioned. This does not mean people never change their minds, but that changing a deep belief once adopted is more difficult than we admit to ourselves.

Mercier and Sperber suggest that human reasoning evolved as a social tool for ferreting out flaws in arguments presented by *others*, and also as a tool for building convincing arguments to present to others in favor of our own existing beliefs (which others can do a better job of evaluating than we can ourselves). In other words, reasoning works best as a *social process* in which people evaluate other people's conflicting arguments, rather than merely thinking things through within a single mind. We are much better at detecting fact-based or logical flaws in others' arguments than in our own. Indeed, we are horrible at recognizing our own cognitive biases. In this *social application,* reasoning *can* help find the truth or an optimal solution to a problem. Decision-making is generally superior at the group level than at the individual level.

This understanding of the dynamics of actual human reasoning and cognitive biases requires an update or modification of the philosophy-based theory of *deliberative democracy*. We should abandon the insistence that we have interlocutors who are willing to fundamentally change their minds in response to arguments superior to their own. That is a fool's errand. We need *other* open-minded observers to listen and assess the arguments. They are able to exercise "epistemic vigilance", a forensic function that is essentially the opposite of confirmation bias.

This principle was enshrined in the reconstituted Athenian democracy after 403 BCE, when the authority to adopt new laws was transferred from the mass Assembly (*ecclesia*) to randomly selected legislative panels (*nomothetai*). Around ten presenters—an equal number of opponents and advocates of the draft law—were selected to make their case in front of the random panel of as many as a thousand. The panel listened, weighed the arguments, and then voted. They did not engage in active debate among themselves.

This deliberative process is comparable to the invention of the *scientific method*, in which the key is to avoid the natural instinct of simply seeking evidence to confirm a belief, but rather to seek means of testing to *disprove* a hypothesis. The reason the invention of the scientific method was one of the greatest inventions in the history of the human race is that it counters our natural tendency to seek confirmation of our hypotheses. A good deliberative process

anticipates various cognitive biases, such as confirmation bias, and uses design features that overcome them. Taiwanese researcher, Kevin Chien-Chang Wu, argues that with specific, appropriate design details, "deliberative democracy is one of the best designs that could facilitate good public policy decision-making and bring about epistemic good based on Mercier and Sperber's theory of reasoning" (Wu 2011). This is particularly important at the final yes/no decision-making step.

In the open-ended "deliberative" process of crafting a proposal, having some presenters who are invested in a particular view, and thus *do* exhibit confirmation bias, can actually be a benefit to the group. Mercier and Landemore, in their article "Reasoning is for Arguing: Understanding the Successes and Failures of Deliberation", suggest that according to the *argumentative theory of reasoning,* this assures that different sides will marshal the strongest possible arguments, which others can then weigh (Mercier and Landemore 2012).

I had an eye-opening experience while serving on the Commerce Committee in the Vermont House of Representatives. Rather than following the usual procedure of taking testimony from one witness at a time, on one occasion, we had a panel of opposing lobbyists essentially conduct an organized argument in front of the committee for a bill on which none of us had prior stances. The lobbyists would call each other out, since they knew when an opponent was intentionally cherry-picking data or skirting an important issue, which none of us, less-informed committee members, could detect. When a question of fact was in contention, the committee could have our non-partisan staff from the Joint Fiscal Office check the research. We learned and comprehended more through that one brief deliberative session than we normally ever learned about any bill.

However, it is also essential to have presenters who are not under the influence of confirmation bias to bring forth a wider array of information, which neither side's advocates deemed useful to their side. This requirement is rarely achieved in partisan political debate. In electoral politics, the tendency is for one side to over-promise the benefits of a particular policy, while the other side warns of its devastating consequences, with neither side mentioning important information that is irrelevant to *their* goal of winning the argument but may be vital to making a wise decision.

My contention is that both active discussion by one group and listening and weighing by a separate group are vital to good public policy decision-making. Both should be employed in public policy decision-making—in the appropriate phase of the overall process. The first phase with active give-and-take can aggregate diffuse knowledge and seek out win–win possibilities. But this process doesn't facilitate forensic evaluation, is prone to groupthink, and can go off track due to deference to high-status or highly persuasive individuals who are locked into confirmation bias. Once a proposal is crafted, a separate jury needs to listen and weigh arguments before voting on final adoption.

Diversity

A key for bringing forth information and insights that might be ignored by confirmation-biased, motivated reasoners, and experts is to have broad diversity within the body that is crafting a proposal. Even if one were skeptical about the importance of having descriptively representative decision-making bodies, instead favoring a more skilled, or expert group—"wise and virtuous" as the Founders would say—diversity is still crucial. Group competence hinges on diversity, rather than a mere summing of individual participant competence.

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. 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, gave a TED talk discussing his research (Heffernan 2015). Heffernan described how Muir 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.

While not directly applicable to human societies, it serves as a metaphor about the danger and unintended consequences of seeking out the best. 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.

Even if we naively believed that the US Congress was made up of the best and brightest, the homogeneity of the members is not only unrepresentative but also a liability in terms of group competence when making decisions. Legal scholar Cass Sunstein, in his book *Why Societies Need Dissent* (Sunstein 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" (Surowiecki 2005, xvii).

Exactly what kind of diversity (e.g., cultural, age, cognitive style) is desirable depends on the task at hand. For certain tasks, both diversity and expertise may be irrelevant. For other tasks, a diversity of life experiences is highly relevant. Within the realm of public policymaking, seeking out any particular sort of diversity (or expertise) is futile, since it often cannot be known in advance what sort of diversity is important for a particular decision—leaving random selection as the optimal strategy.

Even a conservative such as Edmund Burke saw value in diversity within a legislature, with deliberators representing every relevant point of view. Awareness of the value of diversity dates back at least to Aristotle, who wrote that "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" (Aristotle [350 BCE] 2016, 76). Aristotle seems to foreshadow Wikipedia and "crowdsourcing".

At the time of the debates over the ratification of the United States Constitution, the issue of diversity was raised implicitly in many arguments of the Anti-Federalists. Melancton Smith, a prominent merchant and major landowner 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" (quoted in Storing and Dry 2008). Including members of racial, religious, and cultural minority groups in deliberation has the potential to increase understanding and sympathy. 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 are crucial.

Diversity does not merely refer to familiar demographic parameters such as race, class, and sex that exactly mirror the community. Political scientist Joel Parker put it this way:

> We don't need representatives to 'represent' directly any particular set of static interests. That interests may in fact be shaped by the representative process, and not simply reflected, is ultimately an argument for the importance of resemblance to representation. We need representatives to practice good judgment, perhaps more than we need them to hold precisely the same preferences, in the same combinations, as the rest of us. Interests should arise from, rather than drive, this collective good judgment.
>
> *(Parker 2011, 151)*

Theorists such as Hélène Landemore have stressed "cognitive diversity" or problem-solving styles as well (Landemore 2012b). 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. She contends that this can optimally be achieved through random selection of group members (Landemore 2012a). The ability of random selection to 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.

Diversity Can Trump Ability

The notion that diversity can trump even expertise contradicts the "common sense" assumption that groups of experts should outperform panels of non-experts. The "Delphi method", named for the ancient Greek 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 mixed results, sometimes accurate and sometimes far off the mark. By keeping the experts anonymous and isolated from each other, it was hoped they could avoid the groupthink dynamic that promotes agreement, regardless of whether the point of convergence is right or wrong. But confirmation bias among experts is still a problem. Also, the method is intended to predict what is likely to happen, not what we *want* to happen. Policy decisions are grounded in community values, which the method isn't intended to tackle. So, at best, it can only advise and inform decision-makers. The Delphi method also suffers from initial assumptions of who qualifies as an "expert". Relatively homogeneous experts often have gaping holes in their knowledge of matters outside their area of expertise that nevertheless are of key importance.

James Surowiecki explains this counter-intuitive reality:

> Bringing new members into the 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.
>
> *(Surowiecki 2005, 31)*

Professors of business and finance, Lu Hong and Scott E. Page, published a paper in 2004 offering a theorem that shows the inherent weakness of the approach to problem-solving that seeks to find a group of "best" problem-solvers, who maximize individual abilities, and who inevitably also are less diverse than a group of randomly selected problem-solvers. "Ultimately, the gain in individual abilities is more than offset by the functional [cognitive] diversity of a group of randomly selected people. It is in this sense that we might say diversity trumps ability" (Hong and Page 2004). In Page's subsequent book, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies*, he describes how he discovered this unexpected dynamic while running a computer model about problem-solving (Page 2008). He found that a group of random agents outperformed a group made up of the best individual performers in a problem-solving task. This didn't make intuitive sense to him, and he at first assumed he had made some coding error in writing the computer program. But there was no error. The result kept repeating in scenario after scenario. With deeper examination, the benefit of diversity in solving difficult problems became clear. He bluntly named this the "Diversity Trumps Ability Theorem".

There are, of course, limits to the benefits of diversity. To consistently outperform the group of "experts", the groups in Page's computer model couldn't be too small, and the members of the diverse group also had to be reasonably smart. "These conditions all made intuitive sense. A collection of third graders probably has little to add to the study of global warming" (Page 2008, 137). Although the attempt to create a mathematical proof, which relies on specific

conditions and assumptions, may be erroneous, and it might be an over-reach to apply this theorem to the real world—and indeed mathematicians have criticized the paper (Thompson 2014), there is real-world experience that supports their initially counter-intuitive conclusions. For this theorem to be applicable in the real world, there are many conditions that must be met. Two of the most challenging are the ability of the participants to effectively communicate with each other and to properly evaluate what they learn. This is where an understanding of group social dynamics and good process design comes in. The problem being tackled by the group can be difficult, but can't be so arcane that only specially trained experts can understand or evaluate potential solutions.

As I stated earlier, and bears repeating, "experts" are those who have experience solving old problems, and this experience may be helpful or act like blinders in dealing with new problems. Since future political challenges are inherently unpredictable, we can never know in advance which sort of problem-solving styles, or experts, might be most beneficial to have in a deliberative body. Diversity allows us to cover all the bases.

Even when diversity does not introduce new and more varied information to a group, research has shown that merely by reducing homogeneity, better decision-making is possible. Research by social psychologists such as Katherine Phillips of Northwestern University and others indicates that it is not simply a matter of diverse members (outsiders, if you will) bringing new information and perspectives to the deliberation. They have found that "even when out-group members do not bring minority viewpoints to the table, the mere presence of social category diversity in task groups can fundamentally change the behavior of the social majority and enhance group performance" (Phillips, Kim-Jun, and Shim 2012, 257).

MIT professor Evan Apfelbaum and a team of fellow researchers conducted studies with experimental markets in Singapore and replicated them in the United States, in which participants could earn money through virtual trading of stocks. Homogeneous groups were far more likely to overvalue stocks and develop market bubbles. In a paper published in November 2014 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 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" (Massachusetts Institute of Technology 2014). The paper notes that "the evidence may inform public discussion on ethnic diversity: it may be beneficial not only for providing variety in perspectives and skills, but also because diversity facilitates friction that enhances deliberation and upends conformity" (Levine et al. 2014).

Cognitive biases are not merely an attribute of individual humans. There are also many less-studied *collective cognitive biases*. In the paper on diversity vs. homogeneity and stock trading, the authors wrote: "Economists and psychologists have cataloged numerous individual cognitive biases. However, we suggest that biases may stem not only from the limits of individual cognition, but also from the social context in which decisions are embedded. Homogeneity (or diversity) is not a feature of individuals, but of a collective: a team, a community, or a market". The researchers in that study also note that "the presence of more than one ethnicity fosters greater scrutiny and more deliberate thinking, which can lead to better outcomes. Such friction, however, can cause conflict and complicate collective decisions. The challenge, then, is in establishing rules and institutions to address ethnic diversity and its effects. Without them, conflict can be destructive; with them, diversity can benefit the collective" (Levine et al. 2014). Whether these social cognitive biases and behaviors are innate or culturally created, they are pervasive and need to be anticipated in designing optimal deliberative procedures.

Mere diversity in the room is not enough. One design option that is being experimented with is the use of segmented deliberation spaces. It has been found that when only a few members of a marginalized minority are included, they may not be inclined to fully express concerns about a policy topic. Allowing identity groups to caucus separately may bring forth perspectives and information that the group would not otherwise benefit from. But there are also polarization risks from this procedure, and more research is needed. Among many cultures, if even 50 percent of those present are women, they might contribute less than ten percent of the speaking. In a group of all women, it turns out they have plenty to say, but cultural norms of deferral may trump this. It is beyond the scope of this book to examine the array of facilitation methods and group deliberation designs, but it is important to note that diversity alone is insufficient.

Groupthink

Irving Janis published the first in-depth articles on "groupthink" in the early 1970s, which included an analysis of decision-making dynamics during such events as the Kennedy administration's Bay of Pigs fiasco (Janis 1971). Janis noted that the term "groupthink" (with a tip of the hat to George Orwell and his neologisms in his novel *1984*, such as "goodthink" and "doublethink") refers to the "development of group norms that bolster morale at the expense of critical thinking". And arise when participants are

> motivated to avoid being too harsh in their judgments of their leaders, or their colleagues' ideas. They adopt a soft line of criticism, even in their own thinking. At their meetings, all the members are amiable and seek complete concurrence on every important issue, with no bickering or conflict to spoil the cozy, "we-feeling" atmosphere.
>
> *(Janis 1971, 43)*

This sounds worryingly like the cultural norm that could be generated within a citizens' assembly (depending on process and facilitation). The mere fact that the participants and facilitators feel good about the work that they have done cannot be taken at face value.

Janis proposed several procedures to minimize the risk of groupthink. He proposed nondirective group leadership, encouragement of dissent (rather than mere toleration), and breaking discussion into separate sub-groups, to see if they all come to similar conclusions (Janis 1982). Thankfully, all of these have become fairly standard in citizens' assemblies, though some facilitators may elevate the search for consensus above the importance of dissent. Note that these desirable features are contrary to the fundamental character of political parties in electoral systems, which typically develop policy proposals with strong leaders and relatively like-minded partisans.

As mentioned previously, in pseudo-deliberative bodies, such as Congress, there is no interest whatsoever in adopting a good deliberative process. What passes for debate is actually performance and declaration of in-group solidarity in preparation for the next election, rather than an attempt to inform or learn from each other and find common ground. Disinterest in a good deliberative process is also typical in multi-party electoral systems. There is substantial *negotiation* between party leaders, centered around power. They negotiate over the formation of a coalition government, or on a particular policy—but this is almost never a deliberative process. Different countries, and different political parties within them, have a variety of internal processes, but these negotiations are not deliberative, and rarely, if ever, occur in the legislative chamber itself, among the "back benchers", or ostensible "representatives". The crafting of draft legislation is done within political parties, which gather people who think similarly, with a narrow diversity of opinion, forfeiting *collective intelligence*.

Although a good process can reduce the risk of groupthink, the search for consensus and community spirit in citizens' assemblies, as well as any inaccuracy of a stratified sample in creating a fully representative group, means that groupthink is always a risk. Miriam Solomon, of Temple University, challenges the view that rational deliberation in a group necessarily improves decisions. In an article based on research in a business context, "Groupthink versus The Wisdom of Crowds: The Social Epistemology of Deliberation and Dissent", she wrote: "Pressure to reach consensus can, in fact, lead to phenomena such as groupthink and to suppression of relevant data. Aggregation of individual decisions, rather than deliberation to a consensus, surprisingly, can produce better decisions than those of either group deliberation or individual expert judgment" (Solomon 2006, 26).

The Wisdom of Crowds

In a deliberative situation, bringing additional perspectives, information and analytical styles to the fore has the potential to enrich the deliberation and lead

to better-informed decisions. Diversity can be helpful in this active deliberation mode. On the other hand, when a group is seeking to find the correct answer to a question (in situations where a correct answer exists), many experiments have shown that avoiding active give-and-take deliberation— keeping participants isolated from the assessments of other participants—is key to getting an optimal collective assessment. Thus, paradoxically, active deliberation can be both helpful and harmful, depending upon the specific task and circumstances.

I will now take up this less intuitive storyline, about the benefits of *not* engaging in give-and-take deliberation. In certain scenarios, this is the key to uncovering the *wisdom of crowds*. To explain this, it is helpful to briefly consider the discovery made by Francis Galton in 1906, as so wonderfully described by James Surowiecki in his book *The Wisdom of Crowds* (Surowiecki 2005). Galton was a Victorian scientific polymath who was a pioneer in many fields, including statistics, psychology and eugenics. In the field of meteorology, he devised the first weather map. Galton believed some people were born brilliant and most were not. In one famous experiment, he sought to prove how badly the average person was at assessing matters they knew little about. He utilized the betting slips of a guess-the-weight-of-an-ox game at a fair, the annual West of England Fat Stock and Poultry Exhibition. Around 800 fair-goers, most of whom had no special knowledge, had guessed what the weight of an ox on display would be after slaughter and dressing. While some guesses were wildly high, and others were wildly low, he was amazed to discover that the average of all of the guesses was 1,197 pounds, while the actual weight turned out to be 1,198 pounds!

There are several possible explanations for this, such as that the poor guessers varied randomly on either side of the mark, tending to cancel each other out, allowing the few experienced, skilled butchers the chance to shine through. But the same general result shows up for guessing the number of jellybeans in a jar (a task nobody has practiced skill for), and countless other similar tests in which there is a correct answer. The average of the group is generally better than the guess of even the most skilled among that group. A key factor in such wisdom-of-crowds scenarios is independence of the guessers. If those guessing hear the guesses of other people, that (poor-quality) information tends to influence their own guess, and the average tends to fall further from the mark. People discount their own initial estimate in favor of what they come to believe is a more reasonable guess. In these sorts of situations, the wisdom of the crowd is best discovered when individuals do not consult or communicate with each other.

The tendency of participants to latch onto the assessments of others is one cause of "groupthink". There are multiple psychological reasons for this "herd" behavior. It can be uncomfortable to be at odds with the group. Psychologists have shown that most people (though not all) will adjust their assessments about such obvious factual questions as "which lines match" in a line-length matching game, and agree with the opinion stated by the rest of the group, even if the other

members of the group are unambiguously wrong (having been secretly prompted by the experimenters to make outlandish decisions), just to avoid going it alone (Plumridge 2020). Of course, people are also likely to cede independent judgment and go along with assessments expressed by high-status individuals, leaders of one's social/political/religious/ethnic group, or acknowledged experts.

Even setting all of these psychological factors aside, there are also fully rational reasons for going along with the group. People often fall back on the heuristic that the opinion that most people hold is more likely to be right. If you come across a crowd of people all looking up into the sky, aren't you likely to look up there too?

An experiment that demonstrates such informational cascades that can lead reasonable people to wrong conclusions is described in Cass Sunstein's important book, *Why Societies Need Dissent*. Imagine an urn filled with red and white balls in a specific ratio. The task is to guess whether there are more red or white balls. Each participant is allowed to withdraw one ball, examine it secretly, place it back in the urn, shake the urn to mix the balls up again, and declare their guess as to whether there are more red or white balls in the room full of other participants. It seems reasonable to assume that after enough people have done this, it will become obvious which color is more numerous.

But suppose that by chance the first two participants happen to draw red balls, even though there are more white balls in the urn. In this imagined scenario, the chances of this happening are less than 50/50 but still pretty good. Both participants have declared they think the urn contains more red than white. The third person secretly draws a white ball. Here is the crucial moment of an informational cascade. Remember, the participant doesn't simply declare what color ball he or she drew, but makes an educated guess about which color is more numerous overall. This person may well still make the guess that there were more red than white balls, since all the evidence so far indicates a two-to-one ratio. The fourth person may also happen to draw a white ball, but they have heard the three previous participants declare that they think the urn is mostly red balls. So, just like the third participant, it is reasonable for this person to guess that the urn has mostly red balls. As the number of people guessing red mounts, any participant drawing a white ball will tend to discount this one small piece of personal knowledge in favor of the obvious overwhelming number of red balls he or she assumes everybody else is drawing. As Sunstein writes, "people cease relying, at a certain point, on their private information or opinions. They decide instead on the basis of signals conveyed by others" (Sunstein 2003, 55).

Market bubbles and all kinds of other human foibles can be traced to this dynamic. In certain circumstances, each participant would do better by making an independent assessment—making a guess based solely on personal knowledge (the color of the ball drawn)—without the influence of other people's guesses. Surowiecki gives numerous examples in which independence of participant

assessments is essential for optimum group decision-making through the *wisdom of crowds*. In these situations, if participants discuss a topic among themselves, they may get pulled in one direction or another (perhaps by one participant's status, eloquence, or other irrelevant yet influential factor) and are likely to end up with a worse guess overall.

Polarization

There are other sorts of issues where discussion and active deliberation (including the sharing of perspectives, analytical styles, or private information known by only a few participants) are important for making good decisions. This is sometimes referred to as *collective intelligence* as distinct from the *wisdom of crowds* discussed above. When crafting a proposal or comparing a large number of options, such give-and-take procedures are essential. But Cass Sunstein and others have argued (and demonstrated) that active deliberation, with the give-and-take of information and arguments, in addition to the risk of groupthink, can instead lead to polarization. In some experiments, active deliberation has caused individuals who were originally closer to the entire group's mid-point on some issue to move further toward the extremes of one side or the other. In other words, rather than discussion causing participants to come to a center of common ground, groups can polarize into more extreme opposing factions. But this is not inevitable.

James Fishkin of Stanford University found in his deliberative polls that this polarization dynamic does *not* occur. Perhaps this is because of the specific facilitation and "balanced information" his technique employs. The concerns that group discussion by participants would either result in deference to high-status participants or polarization into conflicting camps, taking more extreme positions, appear to have remedies. Fishkin found that neither fear was realized in any of his numerous deliberative polls, and in the first Chinese citizens' assembly implementation there was a group movement away from the initial preferences of the higher status members. Fishkin credits this success to good design, with balanced presentations, moderated small group discussions, and secret "voting" in the exit poll.

The danger of polarization that Sunstein warned against may be the result of tribalism or promoted by poor process. Policy discussion, or what passes for "debate" in a group, may entail people lining up to give their reasons and arguments in favor or in opposition to some policy. The side with more adherents often ends up with more active speakers (and crowd applause or cheers), causing undecided people to swing in that direction due to a variety of psychological tendencies. Those who are already for or against some policy will tend to selectively believe speakers who echo their own views due to confirmation bias. In such scenarios, sub-group solidarity can indeed prompt polarization. A good

deliberative process would ensure that conflicting sides get an equal number of alternating speakers.

However, due to conflicting values or other deep beliefs, some issues may inevitably lead to polarized positions. So, voting is often required. In some cases, it may be appropriate for a mini-public crafting a proposal to report out competing policies for a final jury to judge. Likewise, even with the best possible process in place, active deliberation may result in a groupthink outcome that another mini-public (or the population as a whole) would soundly reject. This danger of groupthink is one reason why a mini-public that drafts a proposal, tapping into *collective intelligence*, should not pass final judgment on its members' own proposal. An independent mini-public, which does not engage in give-and-take deliberation but relies on the *wisdom of crowds*, with listening and weighing instead, needs to vote on final adoption.

Active or Independent Deliberation

I have been using the term "deliberation" to refer to the active give-and-take process. However, in English, the word "deliberation" also has a second meaning. Rather than requiring a give-and-take of arguments between people, deliberation can refer to an internal thought process, as in deliberating with oneself—an internal reflective process. Professor John Anthony Garry of Queen's University in Northern Ireland and his colleagues, in describing a theoretical sortition system named "randomocracy", refer to this as "imaginative deliberation" (Garry, Stevenson, and Stone 2015). But even if participants take no part in giving arguments, it is still essential that they be presented with competing views in order to develop *informed* preferences. As suggested by the argumentative theory of reasoning, it is our ability to detect flaws in other people's competing arguments where we as humans do best.

While active give-and-take deliberation within a diverse representative group has the potential for finding consensual win–win policies in the common interest, this is certainly not assured. There is a possibility of the group dividing into polarized factions, on one hand, and there is also a significant danger of succumbing to information cascades and groupthink on the other. A consensus may be the result of a problematic groupthink dynamic that results in a policy, which no other mini-public, or the community at large, would find desirable.

As I proposed above, a good approach to this problem is to use the "check and balance" of a sequential process. One mini-public employs active deliberation (using *collective intelligence*) for crafting proposals, and an independent jury (using the *wisdom of crowds* and preventing *groupthink*) judges the product of the first mini-public.

Note that the function of lottery selection is actually somewhat different for a proposal-drafting citizens' assembly than for a final adoption jury. The drafting

phase is best tackled by somewhat smaller bodies to allow all-to-all communication and to use *collective intelligence* through active deliberation, which particularly benefits from diversity. However, since this body is not making any final decision about adopting their proposal, diversity is key, and the accuracy of their representativeness is less crucial, so an approximation may suffice. This initial body will need to serve for a substantial term (e.g. numerous weekends, perhaps for months). But the final adoption body, using independent assessment of pro and con arguments, can be substantially larger, since they do not need to engage in all-to-all communication, but only listen. This larger second body may serve for a very short term, but must be accurately representative to earn legitimacy. So for the first body, lotteries enhance diversity, and for the second, representativeness, and for both, protection against self-selection special interest, and corruption.

Note

1 It is beyond the scope of this book to examine or evaluate the variety of facilitation procedures used in citizens' assemblies around the world, but clearly a process that precludes domination or manipulation by professional facilitators is essential. Alice Siu and James Fishkin at Stanford University have been experimenting with computer-aided facilitation. For example, a computer can keep track of how often and long each participant speaks, and provide the human facilitators with nudges when things stray from the ideal of balance and equality, freeing the facilitator from the distraction of meticulous time-keeping, etc.

PART III

Sortition



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11

THE SORTITION SOLUTION

First: Clearing Some Weeds

Before I dig into the potential benefits of sortition, I want to clear away a few assumptions, or "weeds", that may prompt some to prejudge or even dismiss the concept before considering the arguments. This book focuses on the many negative features of democracy based on elections. However, there are certain common functions of elective office, which are generally accepted as positive, that we would remove from lawmakers in a sortition democracy. Three functions that elected legislators are commonly expected to fulfill are political leadership, constituency service, and providing legislative expertise.

Leadership

I discussed leadership in some detail above in the section on executive elections in Chapter 2, but it warrants a cursory reexamination here in a legislative context. A sortition democracy would certainly still have many policy leaders with broad appeal seeking to gain public support for particular proposals—they simply wouldn't be elected officials. Within an elected legislature, partisan teams are akin to soldiers constantly preparing for battle against the enemy in an opposing political party. In that milieu, leadership like that of a general is valued and even necessary. But a sortition-based lawmaking process would have none of that. There, the goal would be problem-solving and the search for common ground. Outside policy leaders might be invited to give testimony, but would be prohibited from exercising leadership within a mini-public. Think of an outside leader seeking to steer a court jury's direction. That is appropriately deemed to

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be criminal. It is my contention that partisan political leadership would do far more harm than good in a sortition democracy.

Constituency Service

A major function that American legislators take on is constituency service—such as helping citizens wend their way through a confusing government bureaucracy to get services they are entitled to. A significant portion of congressional staff time is devoted to such constituent service. Rather than accepting this as a positive, we should recognize this as a failing of the government. An important point to recognize is that it is in the interests of legislators to preserve a faulty system that constantly feeds a stream of voters to them seeking help. Like the various patronage schemes of old, constituency service allows incumbents to curry favor with voters in hopes of receiving their votes down the road. Incumbent legislators actually have a built-in incentive to *not* fix systemic problems, in order to keep this source of voter help and reciprocation in place. An opportunity their election challengers can't match. An impartial system of ombudsmen combined with a steady improvement of systemic flaws would be a natural alternative in a sortition democracy.

Legislative Expertise

Many people assume that legislators exhibit a certain kind of expertise. After all, society has grown so complicated that surely our representatives must develop an appropriate level of expertise, at least in the policy area of their committee assignments. Elected politicians tend to become experts in the fields of negotiation, public relations, and campaigning, while leaving to lobbyists and their staff the task of mastering policy and bill-drafting expertise. In an article titled "Three Reasons Congress Is Broken", the author and former *Washington Post* journalist Robert Kaiser quotes Sen. Ted Kennedy from his 2009 memoir. Senator Ted Kennedy estimated that 95 percent of the drafting and negotiating in Congress is done by staff rather than legislators (Kaiser 2013). Legislators learn sufficient terminology and memorize enough key facts and budget numbers to seem well-informed, but only occasionally become bona fide experts on policy matters (and when they believe they have expertise, they generally suffer from the illusion of knowledge bias I discussed at the end of Chapter 8). When legislators (or their hired staff) bring in bona fide policy experts, they give inordinate attention to the public relations and fundraising implications, rather than the substance of policy.

If modern society is indeed so complicated that average citizens simply don't know enough to govern themselves, then elected legislators are even further from that level of adequacy. In short, professional politicians are frequently

ego-driven professional public relations people rather than policy experts. 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, fundraising, and public relations concerns. Thus, putting "average" citizens in the driver's seats enhances the likelihood that true and appropriate experts will be called upon as needed. This is a key point. When proposing the idea of allowing everyday citizens to make complex policy decisions, many people recoil with fear—imagining this would mean a loss of policy expertise. I contend that just the opposite effect would predominate. Politicians also have minimal actual policy expertise, but have the distorting incentive to seek out advice from like-minded partisans, special interest lobbyists (with large campaign donation potential), and media manipulation experts. Everyday citizens, on the other hand, would have an incentive to seek out advice from a range of genuine policy experts.

Using sortition for the crafting and review of legislation, and separately for final adoption, offers many benefits over election. The electoral problems below have been addressed in the foregoing chapters. But the inadequacy of elections does not automatically show that sortition would perform better on each point. While I addressed many of these problems in Chapter 4 (about election reforms), the summary below shows how sortition digs out and eliminates each problem at its root. As I mentioned in the Introduction in Chapter 1, the transition to sortition is unlikely to be sudden, and elections and sortition will likely exist side by side for a time. This will weaken the sortition solutions to various degrees during that transition. But this book is intended to be a "North Star" showing the direction democracy needs to go. So, the discussion below is about the impact of sortition at the end point, or when elections are merely a vestigial remnant. I will discuss ideas about how the transition to a sortition-based democracy might work in the final chapters of this book.

Benefits of Sortition-based Democracy

Okay, now that we've cleared away those weeds …

Representativeness

The ability of random selection or scientific sampling to generate a far more descriptively representative body than elections is self-evident, and confirmed by hundreds of actual sortition implementations. This representativeness may not be perfect, but will not be symbolic or token—but deep. In addition to mirroring the gender, race, age, income, and ethnic makeup of the community, the values, life experiences, class, religious beliefs or lack thereof, occupations, political philosophy, cognitive style and interests will also be a far better match

than in any elected legislative chamber. This result is dependent, however, on either extremely effective stratified sampling or the use of quasi-mandatory service (as with jury duty in many jurisdictions). The risk of self-selection bias in non-mandatory mini-publics, in terms of personality and cognitive style, means that more research still needs to be done on the effectiveness of stratified sampling. Unfortunately, such research using parallel mini-publics, where some are drawn using stratified sampling from those willing to serve, and the others have quasi-mandatory service, could only be conducted by a government with statutory authority to compel participation. Regardless, the accuracy of the representativeness would be dramatically greater than any elected body. Such a mini-public would be, as John Adams described an ideal legislature in 1776, "an exact portrait of the people at large. It should think, feel, reason and act like them" (Adams 1776). It should be noted, however (as I discussed in Chapter 6), that descriptive representativeness was not a goal of electoral systems. Elections were based on the aspiration (or fantasy) that elected politicians would be superior men, with civic virtue, who were authorized to rule on behalf of the people.[1]

Diversity

Diversity is a companion trait with representativeness, but not synonymous. I have stressed the tremendous value of diversity for policy drafting and filtering bodies previously. Sortition assures wide-ranging diversity in the deliberative process. Elections return individuals who, despite substantive political and philosophical differences, exhibit significant homogeneity in other attributes. In Chapter 10, I examined how the collective intelligence of a diverse group can be more beneficial than even a homogeneous group made up of experts. From the time of Aristotle to the most recent scholarly research, diversity has been shown to ramp up group creativity and problem-solving ability.

Campaign Finance and Lobbying

Obviously, an absence of campaigning eliminates the elitism filter and corruption problems associated with raising campaign funds. Under a sortition system, the flagrant corruption facilitated by campaign fundraising would vanish. Independent campaign spending by wealthy interests to sway undecided voters would also disappear. However, independent expenditures could theoretically still be made, but they would need to influence the public in general on topics where a jury is likely to be called. Jury tampering laws, and perhaps even sequestering of some mini-publics, would preclude targeted spending by special interests. Society-wide expenditures would be dramatically less efficient and less effective for wealthy interests than traditional campaign spending. In an electoral campaign situation, with voter rational ignorance, there are standard advertising

methods to turn enough ill-informed swing voters to affect the outcome. If applied in a sortition context, however, this sort of superficial persuasion would be easily negated once individuals were selected through a lottery. This is due to the intensive learning, presented with a broad range of information, as well as the focused attention fostered by being in a relatively small, randomly selected decision-making group.

It is helpful to use an analogy of a traditional court trial. Imagine if jurors and judges solicited and received contributions of money from the prosecutors and defense team in a trial, and had private meetings with them outside of the official court proceedings. That is the situation we have in our existing legislative process, where elected legislators serve effectively as judges and jurors, but on matters of policy rather than guilt or innocence. It might be decided that once a jury is called, such legislative juries should be sequestered as a defense against jury tampering (lobbying), as is often the case in criminal trials.

Gerrymandering

Obviously, all problems related to gerrymandering could not exist in a system based on sortition rather than election. Multi-member districts using proportional representation voting methods can reduce the effects of gerrymandering, but sortition eliminates it completely. With no elections, there are no district lines to be drawn, and gerrymandering cannot exist. The analogous challenge for sortition is the creation of a scientifically accurate and publicly transparent random selection procedure.

Participation

The term participatory democracy is often used to refer to a system in which all citizens can vote in numerous referendums. Sortition is not "participatory" in this sense. In order to overcome rational ignorance, it is essential that a relatively small number of citizens be deeply engaged in investigating and then deciding on *each* piece of legislation. Thus, sortition can be considered a form of representative democracy. However, compared to a traditional electoral "representative democracy", sortition can be structured so as to spread not only participation, but power, widely throughout the population—ruling and being ruled in turn.

The number of citizens participating depends on the details of how the system is designed. If Policy Juries meet for a relatively short duration, on a single bill, for example, the turnover would be very large. On the other hand, if a lottery-selected legislature simply replaced an elected legislature (a design that many people imagine when they first hear about sortition, but that I strongly

oppose for many different reasons), in terms of numbers and terms of office, the only increase would be due to the improbability of serving multiple terms.

Sortition democracy can also open the flood gates for citizen participation by allowing all who wish to, to work on designing draft legislation that can be delivered to randomly selected Review Panels to consider and possibly pass on to randomly selected Policy Juries to adopt. Since this "raw material" participation would be self-selected, and thus unrepresentative, it is essential that such efforts be targeted at coming up with drafts and arguments, rather than deciding— proposing rather than disposing. Such open participation would also be substantially more significant, in terms of developing a democratic culture, than the kind of mass participation available to citizens in an electoral representative system. In a competitive election, participation is largely confined to putting up campaign signs or giving campaign donations. The vast majority of citizen "participation" is merely voting, with a few people also engaging in campaign (marketing) tasks. Only the post-election letter writing or social media posts may have any meaningful civic thought involved.

A sortition system, especially if it exists at local, state, and national levels on an issue-by-issue basis, could involve orders of magnitude more citizens in meaningful democratic deliberation and decision-making. Such democratic participation spreads democratic skills and appreciation of the challenges of good decision-making—fostering the "civic virtue" that republican theorists hoped for.

Rational Ignorance

In actual practice, electoral systems provide an attenuated and stilted range of choices. But even if the options included genuinely good choices, an Achilles' heel of mass participation schemes, whether electing candidates or voting on referendums, is the inevitable fact that most voters will simply not be adequately informed about the choices the elites present. This then links to the ability of campaigns to influence voters based on factors totally unrelated to merit. It is not rational, nor even possible, that millions of people will devote the amount of time needed to adequately understand the ramifications of the options when their single vote is like a drop in the bucket. By reducing the number of decision makers on a particular issue to those who could fit in a single room, the evidence from hundreds of citizens' assemblies suggests that most of the participants will have sufficient motivation to devote the effort and focus necessary to learn facts and use Kahneman's *system two* "slow thinking". Manipulation of inevitably ill-informed voters in elections by those with access to wealth and with control of media has always been a problem, but has now become a precise scientific endeavor. The attention garnered by social media algorithms, disinformation, and AI-generated fakes has made this a topic of discussion. But in mass elections,

this problem of manipulation has always existed. It has never *not* existed, simply due to voter rational ignorance combined with determined partisans and special interests. Rather than tapping the *wisdom of crowds* or *collective intelligence* through deliberation, mass elections elicit the cliché herd-like "madness of crowds".

With sortition, there is still a danger that members of even a relatively small body might fall back on blindly following "leaders". from inside or outside the body, whether from partisan, ethnic, religious or other "tribes". Thus, while sortition offers the best chance for overcoming rational ignorance, cognitive biases, or default heuristics, which plague elections, the exercise of deliberative thought will depend on the structure, culture, and various supports that are provided.

One small practice that might have some value is having those who are randomly selected commit to some sort of juror oath, such as this:

> I agree to treat all those present with respect. I will listen with an open mind, and delay making any final decision on the matters under consideration until I have heard all of the evidence and arguments. I recognize that some things that I believed to be true may turn out to be wrong, and that other things that I did not accept may turn out to be valid. I commit to making a final decision that on balance I genuinely believe is in the best interests of all.

But even if we assume that most members of a randomly selected body will ignore the common good (or we assume that the very concept of a "common good" is a vain myth), and instead vote according to each member's selfish interests, at *worst* we arrive at the *ideal* outcome championed by adversarial competitive (electoral) democracy, which is finding the majority preference among competing interests.

Self-Selection Bias

A frequent problem with electoral democracy is self-selection bias among decision makers. The electoral nomination process is based on self-selection of those with inflated egos, partisan loyalty and a tendency toward overconfidence and a level of certainty, making them less open-minded and thus poor deliberators. Those who advise the elected legislators (lobbyists) are also self-selected, often based on how much money stands to be made or lost from some public policy decision. Through random selection, sortition can virtually eliminate this problem (or sharply reduce it, if stratified sampling is used). The dynamic is not eliminated completely simply due to the fact that certain people are also more likely to participate intently if selected, while meeker individuals may play a less active role. Good facilitation has been shown to successfully encourage input from shyer members. A system for professional advisory staff can also avoid

self-selection (self-interest) bias by presenters, with a professional civil service that structures balanced presentations to juries, rather than by reliance primarily on self-interest-motivated lobbyists, as in the existing electoral system.

Corruption

Sortition (combined with regular rotation in office) was historically employed in ancient Greece and the Italian city republics for centuries, from the medieval era through the Renaissance, as a defense against corruption and tyranny[2] (Dowlen 2008). It is worth thinking through exactly why sortition increases the ability to resist corruption using a small-scale example. Run-of-the-mill corruption, such as giving a bribe to a public official in order to get prompt action on some needed permit, is a sort of 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. The corrupt official's superior may also be taking a cut, and elected politicians may even be in on such corrupt deals. In many countries, such *penny-ante* corruption is standard practice. At this retail level, the briber, the official being bribed, and perhaps the supervisor, 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 instead participate in the ongoing corruption. The common perception of certain Mexican police taking bribes while nominally fighting drug cartels is an example.

But viewed from a distance, even bribers (when the potential bribers have no application pending), and 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 a briber or an ongoing official to engage in corruption. In other words, when facing a corrupt situation at a retail, one-on-one level, there is a compelling interest for each citizen to participate, if that is the local "norm". But when gathered in a collective capacity, these same average citizens have an overriding interest in ending such corruption. Random selection in this circumstance can solve what economists term a "collective action problem". This same anti-corruption potential of sortition can also be employed on a grand scale throughout a society.

Multi-Body Sortition

In Chapter 16, I will present one design for democratic control of a legislative process. While not a catchy name, I coined the term "multi-body sortition" in a 2013 paper I published (Bouricius 2013). For smaller municipal or regional implementations, some of the elements might be modified or eliminated, and the

size of the bodies would likely also be adjusted. The implementations embedding sortition as a permanent part of governments in East Belgium, the city of Paris, and elsewhere have incorporated some aspects of this multi-body sortition design. Chapter 16 will present an overview of the design concept.

There are a variety of distinct tasks involved in developing, assessing, adopting and implementing government policies. It is a mistake to have each of these separate tasks performed by the same group of people, or by the same procedures. Not only are different design characteristics appropriate for different tasks, but the performance of one task actually hobbles the ability of that group of people to perform certain other tasks.

In this design, the final decision-making body for new laws would always be a large Policy Jury, functioning much the way *nomothetai* did in Classical Athens. In my multi-body design they would be convened to hear pro-and-con presentations about a proposal coming from a separate sortition body (a Review Panel), and vote it up or down. These juries would each deal with a single proposal, meet for a relatively short duration, have quasi-mandatory service (like court juries), and be quite large (perhaps a thousand members for national Policy Juries). Most of the other bodies in the multi-body design (including Review Panels that craft final versions of bills to submit to the Policy Juries, Agenda Councils that decide what issues need new legislation, and Rules and Oversight Councils) would be selected using random stratified sampling. A large number of small Interest Panels would be open to any citizen who wanted to help develop proposals or arguments in response to the call from the Agenda Council. Each body would have terms of service, procedures, and size of membership suited to their particular task in the lawmaking process.

Notes

1 Ironically, we know that James Madison himself did not think elections would actually empower such superior men. They would be elite, but also very likely scoundrels. Madison's understanding of this likelihood was revealed in his 1787 essay entitled "Vices of the Political System of the United States" (Madison 1787a) that I quoted in Chapter 1.

2 Since only the upper-class families could participate in the lotteries, sortition was not used in these "republics" to achieve democracy, diversity, or representativeness.

12

OBJECTIONS TO SORTITION

This chapter will examine a variety of reasons why people may be skeptical or critical of the concept of sortition. While many concerns about sortition are merely off-the-cuff reactions that can be addressed through careful explanation, others are deep-felt or thought-through criticisms. This chapter won't address all objections (for example, from supporters of religious theocracy, etc.), but I will try to tackle the common ones I have encountered.

Randomness versus the Cherished Right to Vote

When sortition is presented to people for the first time, a common reaction is that randomness should not play a role in public policymaking. Even if it is carefully explained that the randomness in selecting decision-makers is applied in order to enhance both the representativeness *and* the *rationality* of the overall decision-making process, many people have a gut-level distaste for any abandonment of rationality in the *choosing* of decision-makers. As uniquely rational creatures (even if emotions are calling the shots below the surface), we give the employment of rationality pride of place. Why would one give up the potential for making the best possible choices for decision-makers, in favor of an arational, amoral, random process? One answer, of course, is that the ability to use rational and moral reasons for selecting decision-makers also inevitably opens the door to the use of manipulative, bullying, and immoral reasons as well (or preferentially).

A related, though distinct concern, is that the right to vote—the right of every citizen to play a role (even though minuscule) in the selection of policy makers—is felt to be a fundamental right, which much blood has been spilled

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in order to secure. Any reform that can be seen as giving up this cherished right will be suspect. A mathematical explanation of the inconsequential or *de minimis* power of a single vote in a mass election generally doesn't sweep aside this emotional homage, especially when it is thought of as a collective voice, rather than an individual act. Sortition advocates would be wise to promote sortition first and foremost as an alternative to politicians and elite power brokers, rather than as an alternative to voting. Sortition *enhances* the real political power of ordinary people, as a group, more effectively than voting, rather than taking that power away.

The underlying reason for this devotion to voting is the general assumption that elections are the *only* alternative to tyranny and dictatorship. Recognizing that there is a third option—actual democracy, through sortition, will take time. It might take years, or generations of positive experience with sortition as a partial, or smaller-scale endeavor, before voting could be abandoned completely. Elections and politicians must come to be understood as an inferior and oligarchic arrangement. For the foreseeable future, sortition is likely to be part of a hybrid system that maintains elections for certain functions, while embracing sortition for others. In the final chapter, I will examine transition strategies.

Apathy

The issue of political apathy occurs to many people upon hearing about sortition. If half the population won't even vote, how can you expect them to do even more by participating in citizens' assemblies? It is true that the uptake rate of citizens receiving a random invitation to join existing citizens' assemblies is quite low (thus the need to resort to stratified sampling to approach something like representativeness). It should be noted that this low rate of participation in currently existing sortition bodies is within an environment where the concept is strange and unfamiliar to most people, and nearly all existing mini-publics have no real power, playing only advisory roles.

One theory suggests apathy results from satisfaction with the status quo. Why spend time with politics if things are going along fine without your involvement? Indeed, studies have shown that anger over political corruption can prompt some people to vote when they might not vote otherwise. Other theories suggest apathy is the result of alienation and frustration. Anecdotal evidence indicates that such disaffection is the dominant factor. Of course, it is also possible non-voters are merely rationalizing their apathy by asserting a plausible cause—disdain for politicians who are all a bunch of crooks—for some other reason that they themselves may not even recognize.

However, a disdain for politicians and politics, and even a history of non-voting, does not necessarily mean an unwillingness to engage in political deliberation. One study conducted by a team of political scientists led by Michael

Neblo of Ohio State University found that apathetic Americans, including non-whites and young people—groups especially prone to political apathy—would willingly participate in political deliberation, given a meaningful opportunity. The authors of the study concluded that "If the political process could be rendered more rational and responsive in their eyes, then they would be more inclined to engage in it robustly" (quoted in University of Colorado at Boulder 2011).

Political apathy is also associated with the lower classes. The racial and class disparities in terms of apathy are largely an American phenomenon that is not matched in many other democracies. To some extent, this may reflect the lack of a European-style working-class-based political party in the US two-party system. The Democratic Party received most of the available labor union energy by default, while working-class voters (those who bother to vote) have increasingly voted Republican in recent years. But the causes of political apathy are more complex than the party system alone.

By "apathy", I do not mean simply "not voting". Voting is a minimalist measure of engagement. As can be demonstrated mathematically, a single vote, by itself, is a virtually inconsequential political act. I am speaking of a deeper political apathy. With no opportunity to participate in any meaningful democratic deliberation, there is no real point in investing effort in informing oneself. Political information just feels irrelevant and useless to most people.

In his book *Saving Democracy: A Plan for Real Representation in America*, Kevin O'Leary summarizes the views of numerous political scientists:

> Apathy is sometimes a consequence of a nation's political institutions and thus, instead of being an immutable quality, can be changed. Simply because we observe patterns of behavior does not mean they are inevitable. The apathy we see, particularly in the less educated and less affluent, for example, may, in fact, be consequences of political institutions or the lack thereof.
>
> *(O'Leary 2006, 216)*

Democratic engagement may be a self-reinforcing feedback loop that can lead to higher and higher levels of civic-mindedness, only if citizens engage in political participation that leads to consequences. If members of the public knew that their participation genuinely mattered, as in a policy jury, they would have an incentive to learn and act earnestly, as they generally do when serving on court juries. In other words, people overcome apathy when they need to. By creating intensive deliberative bodies, sortition creates decision-making institutions that make it rational for participants to climb out of ignorance.

Basic Competence

The American jury system allows us to gain certain insights into the issue of civic apathy, but also basic competence. It should be noted at the outset that the existing jury system is deficient compared to democratic sortition. Procedures such as peremptory challenges, which enable lawyers to shape a jury to their side's advantage, and the rules of evidence, etc., can manipulate a jury. While we are all aware of criminal cases in which we disagree with a given jury's decision, on the whole, juries are highly regarded by both the general public and judges. Juries ward off both apathy and incompetence.

According to Valerie Hans and Neil Vidmar, two of the nation's leading experts on the American jury system, hundreds of studies suggest that actual jury incompetence is rare (Hans and Vidmar 2013, 250). They note that bad decisions, which inevitably do occur, stem from factors unrelated to competence (Hans and Vidmar 2013, 129). A 2012 Rasmussen Reports public opinion survey found that 65 percent of Americans put more faith in a jury of their peers than in a judge, while just 21 percent have more faith in a judge, with the rest undecided (Rasmussen Poll 2012).

Likewise, several studies confirm that jurors themselves generally get a sense of satisfaction from serving, despite common grousing about the inconvenience of jury duty. One study of jurors' satisfaction, which covered six courts in the UK, concluded:

> Despite some particularly negative experiences, many jurors left the court for the last time with positive points to make about their time as a juror. Key among these were the positive learning experience it afforded, meeting new people and the feeling that their civic duty had been done. Nearly three-quarters of jurors said they would be happy or 'wouldn't mind' repeating their duty. Over 95 percent of respondents considered juries very important, essential, quite important, or necessary to our system of justice. Engagement in this important role played a part in generating a sense of satisfaction.
>
> "The sense of social solidarity that arose from participating in jury service was an important factor generating a sense of satisfaction for some jurors. Others found their service enhanced or helped to forge a sense of national identity or citizenship.
>
> *(Matthews, Hancock, and Briggs 2004)*

Even if juries are highly respected, and serving on a jury (or a citizens' assembly) prompts ordinary citizens to prevail over civic apathy, that does not necessarily mean that such participation is competent. Beyond mere apathy, the issue of basic competency is the cudgel that has been used to bash democracy for

millennia. From Greek anti-democrats such as Plato, through countless aristocratic political theorists around the world, to some modern political scientists, every form of democracy has been challenged on the issue of competency. While the notions that we may rely on hereditary nobility or property-owning maleness as indicators of competence have fallen into disfavor, the ignorance of ordinary voters still gives many people pause. Even the minimal task of casting a competent (informed) vote for a presumably more competent representative is questioned.

While many modern political theorists view electoral governance in a triumphalist way, as the pinnacle, or end point of human political maturity, there is often an underlying unease about popular competence. Many people actually favor a democratic veneer provided by elections that *masks* actual rule by a competent elite. While it is considered indiscreet to express this attitude, I suspect it is actually quite widespread. Many people who hold this belief haven't expressly admitted it to themselves. They also probably don't put *themselves* in the bucket with the incompetents they worry about. Among politicians, especially, it is much more judicious to maintain the pretense that voters are wise (especially if they elected you).

In Jason Brennan's book, *Against Democracy*, he proposes a "competence principle," according to which

> it is deemed presumptively unjust, and to violate a citizen's rights, to forcibly deprive a citizen of life, or property, or to significantly harm their life prospects, as a result of decision made by an incompetent deliberative body, or decisions made in an incompetent way or in bad faith.
>
> *(Brennan 2017, 157)*

He essentially argues that it is unjust to have others suffer because of the choices of politically incompetent individuals. He uses empirical data on voter ignorance to condemn electoral democracy. A solution he offers is to require a competency test to qualify as a voter, and perhaps some sort of "epistocratic council" with the power to veto unwise decisions. While his critique of electoral democracy is well supported by facts (indeed, *this* book presents a plethora of corroborating details), there is no empirical data to support his speculative hope that disqualifying some voters through a knowledge test would improve the competence of the remaining electorate, who would still suffer from rational ignorance about candidates and issues, partisan tribalism, and cognitive biases. He also, stunningly, gives no consideration to how the interests of these privileged "more competent" voters might differ from the interests of the general population.

His assertion of a "competence principle" may have merit, and indeed, the bulk of this book has impeached the competence of voters *as voters* (and also the competence of politicians as decision-makers). But this book has also lauded

citizens' competence *as citizens*, when convened in mini-publics with good process and appropriate supports. A key distinction needs to be made between the competence of the atomized single voter in a mass, partisan, competitive environment, contrasted with the competence of a diverse group, *as a group*, when incentivized to deliberate. A more effective solution to Brennan's "competence principle" would be giving a representative sample of citizens the time, resources and motivation to become well informed—and thus more competent than uninformed voters, whether able to pass Brennan's proposed test or not.

Education for Competency?

The attitude of Thomas Jefferson, that democracy's remedy for incompetent citizens must be education, is well known. Jefferson wrote in a letter to William Jarvis,

> I know of no safe depository of the ultimate powers of society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion with education.
>
> *(Jefferson 1820)*

But "civics education", which has been in steady decline since the 1960s in the US, is not what is needed. Critical thinking, problem-solving skills, and the skills to participate effectively in groups are key. Schools can and should teach these things, but too often do not. As Frank Fischer noted, "Americans are first and foremost socialized into the role of consumer, rather than citizen" (Fischer 2009, 59).

It would be foolhardy to blindly rely on hoped-for improvements in competence from education, or experience through democratic participation, or, as Barber expresses it, "faith not in what men are, but in what democracy makes them" (Barber 2009, 237). Theodore Roosevelt said, "the majority of the plain people will day in and day out make fewer mistakes in governing themselves than any smaller body of men will make in trying to govern them" (quoted in Barber 2009, 151). Of course, politicians, presumably Teddy included, are wont to "suck up" to the people with insincere praise. So we can't be certain if this was a genuine assessment.

But sortition-based democracy asks much more from citizens than the electoral system does, which simply asks them to accept or reject representatives as their would-be rulers. Many people might figure voters can handle that minimal task, but worry about giving these avowedly incompetent voters the more arduous task, and real power, of crafting and adopting legislation, as proposed in this book.

Are Random Groups Competent?

Are everyday people competent enough to understand policy implications, or do we actually need *superior* individuals—an elite—at the helm? As Hélène Landemore puts it: "The traditional aristocratic prejudice against democracy stemmed from the belief that the people were neither wise nor virtuous enough to rule. The contemporary version of the same belief is that the people are irrational, uninformed, and apathetic" (Landemore 2013, 31). Some sortition advocates sidestep the concern by suggesting some sort of minimal competency test, perhaps comparable to the test immigrant applicants for USA citizenship are required to pass. Alternatively, simply allowing citizens to remove themselves from the sortition pool, or, as in ancient Athens, requiring them to proactively add themselves to the pool by volunteering, might remove many of those with no capacity or willingness to serve the community in this manner.

Here is a fundamental point of this entire book: It is not the competence of individuals (whether selected by lottery or by election) *as individuals* that is key. It is the competence of the *group as a whole* that they constitute that matters. I argue that such one-by-one filtering approaches would do more harm than good by limiting diversity. Ordinary, diverse citizens within well-designed mini-publics are not only adequately competent *as a group* (not each as an individual), they are demonstrably *more* competent than relatively homogeneous groups of elites.

When examining mini-public competence, it is important that we not conflate the incompetence of some individual members of a group with the incompetence of the group as a whole. The sortition proposal seeks to have typical citizens act in groups, where the poor judgment of a few members with weak cognitive abilities will not (with proper institutional design) spoil the group decisions. Within deliberative groups, individuals who are significantly incompetent tend to be recognized as such by those working with them and are not persuasive. Thus, the real concern is not whether any incompetent individuals would be selected using a lottery system, but whether a ruinous quorum of a large group would be incompetent. The evidence from the study of court juries shows that this wouldn't be a problem for even a relatively small mini-public. But beyond this limited corrective notion of a group's competence or intelligence, the cognitive sciences recognize the existence of distributed intelligence within groups that can generate an emergent intelligence (referred to as *collective intelligence* in previous chapters) that surpasses the intelligence of the best individuals.

Two studies with 699 participants conducted by researchers from MIT and other universities, led by Prof. Thomas Malone, found that groups of people exhibit a sort of "group intelligence", which predicts their ability to successfully tackle a range of tasks. The interesting thing, as they reported in the October 1, 2010, issue of *Science* magazine, is that this group intelligence was not strongly correlated with either the average or maximum individual intelligence within

the group. Instead, much to their surprise, the researchers found that it was more correlated with "the average social sensitivity of group members, the equality in distribution of conversational turn-taking, and the proportion of females in the group". As one of the researchers concluded, "Having a bunch of smart people in a group doesn't necessarily make the group smart" (Woolley et al. 2010).

So, what if a group of average citizens had the relevant information, opportunity, and incentives to tackle complex policy questions? Could they do as well, or better than, politicians in Congress? The results of numerous studies conducted by the Program for Public Consultation, affiliated with the School of Public Policy at the University of Maryland, are promising. Unlike a traditional "off the top of the head" poll, for decades they have presented a representative sample of about two thousand Americans with information on challenging policy issues, such as the budget deficit challenge, but also give respondents key information and a wide range of arguments on the issue. Their goal is for respondents to have a deliberative experience like that of a policymaker. In one of these surveys, for example, through a combination of budget cuts, particularly to the defense department, and tax increases, such as income taxes on the wealthy and the estate tax on large estates, participants were able to dramatically reduce the deficit.[1] This consultative exercise did not involve deliberative discussions among participants (though they did engage in internal deliberation within their own minds), and there were no lobbyists present. The unanticipated consequences of their proposals were unknown, so this experiment was too simplistic to carry great weight. Yet, Steven Kull, director of PPC, observed that, "when given information and a chance to sort through their options, most Americans do a pretty good job of dealing with America's budget problems—better than most politicians" (Kull et al. 2011).

A more comprehensive experiment that included small group face-to-face deliberation was conducted in June 2010 with 3,500 participants at 57 sites across the US The project, called "The People Speak: Our Budget, Our Economy", funded by the MacArthur Foundation, was evaluated by researchers from Harvard and two California Universities. Organizers brought together a representative sample of Americans to evaluate a broad range of federal deficit reduction proposals. The groups' recommendations were strikingly similar to those produced by the PPC project mentioned above. The researchers reported that "Both liberals and conservatives appear to have moderated in their policy views regarding spending cuts and tax increases" (America Speaks 2011).

Professor James Fishkin has conducted many experiments with "deliberative polling", in which random samples of citizens engage in carefully structured deliberation on complex public policy issues. The insights he has gleaned about competence are worth noting. He points out that "Whether or not ordinary citizens appear competent may well depend on whether they have reason to pay attention, whether they think their voice will matter, how discussions and

interactions are conducted, and how any data about their views is collected" (Fishkin 2009, 68).

Fishkin concludes that "The picture that emerges from Deliberative Polling and indeed from other deliberative consultations is that the public is indeed capable of dealing with complex issues, once it believes its voice matters, once it believes there is reason to spend time and effort in public discussion, listening to alternative points of view" (Fishkin 2009, 119). After examining the dozens of citizen deliberative processes around the world, including citizen juries, citizen assemblies, planning cells, participatory budgeting, etc. Frank Fischer observes in *Democracy and Expertise* that "they have shown that citizens are capable of much more involvement in thinking about and assessing technical questions than is conventionally presumed" (Fischer 2009, 90). He goes on to cite multiple studies by various researchers who studied the Citizens' Assembly in British Columbia, showing that the "intellectual and deliberative capacities of the ordinary citizens to have been impressively high … Citizens not only made good, reasoned choices, but that they did at least as well as the experts on the topic" (Fischer 2009, 96–97).

Mobs

There is a worry about sortition that is related to the fear of incompetence, but somewhat distinct. Even if people act competently in jury settings, some people fear that ordinary people are easily provoked into mob thinking or behavior. Does this propensity make sortition dangerous? Thoughtless mob behavior is a stereotype that is common fare on comedy programs (it is a recurring motif in the *Simpsons* cartoons, for example). Mob behavior is known by psychologists as *deindividuation* (thinking and behaving as part of a group, rather than as an individual). Even before Scottish journalist Charles Mackay popularized the phrase "the madness of crowds" in his mid-nineteenth-century book *Extraordinary Popular Delusions and the Madness of Crowds*, distrust of people's herd behavior had been common (MacKay [1852] 2018).

One fear (frequently mentioned by the US Founders), which has echoed down the ages, is that the general public is prone to mob-like intemperate passions. This line of reasoning can lead to the conclusion that perhaps it is better if they are preoccupied by celebrity, pop culture, and current "Internet influencers", instead of governance. Mob psychology and conformity are real, as shown by scientific research and devastating historical examples (such as lynchings).

The fear that sortition would empower "the mob" is not grounded in a thoroughgoing definition of what a mob is, so it is tricky to refute. It is a visceral fear. Mob "madness" is typically driven by a sort of positive feedback loop from people observing the attitudes or behaviors of others. It is an exaggerated form of groupthink. Mob behavior is often a response to a leader of some sort, though

not always. While the word "mob" is pejorative, such deindividuation can also be neutral or praiseworthy. Examples include an emotionally powerful theater or concert performance, a religious sermon, a mass protest against some injustice, or a crowd rushing to the aid of victims of an earthquake. These all hinge on thinking fast (system one in Kahneman's terminology). But good policymaking requires more careful assessment, and thinking slow (system two) in order to avoid horrible mistakes.

Mob behavior is not inevitable. It is contingent on circumstances that can be promoted or guarded against. Many scholars, from Condorcet and his "Jury Theorem" of the eighteenth century, Francis Galton with his discovery of the uncanny accuracy of the average guess of the weight of an ox at a country fair in the early twentieth century, to vast amounts of current research by countless psychologists, have examined this. They have all found that protecting the independence of individual assessments is essential to avoid lopsided swings, which can occur when people become aware of the assessments of others. These and related issues were discussed in previous chapters, where I presented conditions necessary for good decision-making—separating active give-and-take deliberation (tapping *collective intelligence*) in the crafting of proposals, and independent internal deliberation (harnessing the *wisdom of crowds*) in the judging of those proposals.

What About Mobs and Elected Politicians?

It is important to recognize that elected representatives within a legislature can also be subject to the same deindividuation mob psychology as any other group of citizens (though often divided into separate partisan mobs). Even Schumpeter, who was quite pessimistic about the abilities of average citizens in terms of political reasoning, did not limit this assessment to public "mobs" in the classic sense.

> It must not be forgotten that the phenomena of crowd psychology are by no means confined to mobs rioting … Every parliament, every committee, every council of war composed of a dozen generals in their sixties, displays in however mild a form some of the features that stand out so glaringly in the case of the rabble, in particular a reduced sense of responsibility, a lower level of energy of thought and greater sensitiveness to non-logical influences.
>
> *(Schumpeter 1942, 257)*

Candidates, parties, and certain media outlets also have a vested interest in promoting mob behavior. Election campaigns and politicians frequently seek to foster mob mentality as a useful get-out-the-vote tool. But the obverse is also true—when the population is denied any meaningful policymaking role,

protests and mass mobilizations (mobs) are seen as a tactical necessity, in order to threaten or appeal to the designated decision-makers. Elections promote the madness of crowds both coming and going.

Politicians also have an interest in deceiving and misinforming voters, which can foment mob thinking if misinformation aids the election of the "right" candidate. Sometimes it is sufficient to degrade facts into "he-said-she-said" opinions. As Dartmouth Professor Russell Muirhead wrote:

> Those who crave office inevitably will find that certain facts get in the way. They wish for a world that embraces their ambitions and makes their distinctive claims persuasive, but the world always contains certain facts that are not accommodating. They may wish, for instance, for a world in which tax cuts increase government revenues, or for one where they are judged by their best intentions rather than their gaffes. When the facts do not comply, they face a standing incentive to contest and massage the facts in order to convert them into mere opinions—or eradicate them wholly.
>
> *(Muirhead 2010)*

Often it is enough for elites to provide selective anecdotes and information with high salience, rather than resort to outright lying, in order to create a false public understanding. The prevalence of the belief that Saddam Hussein was involved in the 9/11 attacks or that weapons of mass destruction were found in Iraq were commonly cited examples.

Indeed, the competitive partisan environment within the electoral environment increases the likelihood of mob thinking and behavior. If one's concern is mobs, then citizens' assemblies are probably the best antidote that exists. Unlike mobs in the street or politician "mobs" constantly in campaign mode, well-designed sortition bodies cultivate slow thinking, which is anathema to creating mobs. Slow thinking and deliberation with conflicting arguments may still lead to groupthink, but not the extreme form represented by "the madness of crowds", which is based on thinking fast.

In the next section, we will redirect our examination of competence from the common people to the elite politicians. Do elections return competent policy decision-makers?

Politicians and Competence

It is universally recognized that good government requires competence. In the US Founders' vision, elections would help create an elite meritocracy in which the wise, virtuous, and *competent* would govern. Members of Congress are indeed elite—but not in the positive sense many of the Founders and Framers had hoped. Those who observe the regular occurrence of corruption and occasional

scandals emerging from national and state capitols have reason to doubt the efficacy of the Federalists' approach. As I noted in Chapter 6, most people disagree with the notion that the members of Congress are the "best and the brightest" our nation has to offer. While some individual members of Congress are certainly brilliant, it is debatable whether they, *as a group*, have above-average intelligence or competence. What's more, the character traits in which they rank higher than the average are predominantly ones that are not beneficial for society.

Competence consists of many distinct attributes. While some individuals may have high intelligence and a broad range of competencies, nobody is omnicompetent. A person or group that is competent with regard to A and B may be totally incompetent in dealing with C and D. The more homogeneous a group is, the more likely it will exhibit gross incompetence with regard to some important tasks. As presented in this book, the issue of group competence is far more complicated than many people imagine—it is not simply the sum of individual competencies. But to aid in examining the whole issue of competence, for the moment let's gloss over this reality and pretend for the sake of argument that there is some fundamental human characteristic called "general competence", which different people have to different degrees.

Politicians are widely mocked as incompetent, egotistical, manipulative, or spineless. Politicians are stereotyped not only in America but around the world to varying degrees. Stereotypes are often false, of course, and this could be simple jealousy—inferiors who enjoy bad-mouthing their betters. However, even if this stereotype is valid, pointing out the flaws of elected officials is fruitless if there isn't a better alternative. Was the aphorism that Winston Churchill referenced in his 1947 speech to parliament fundamentally correct—that electoral democracy is the worst form of government, except for all those other forms that have been tried from time to time?

What can we say about how well elections perform at selecting for competence and other attributes that might be desirable in our rulers? My twenty years of experience as a lawmaker convinced me that elected legislators don't stand out as more competent than average citizens. The selection process applies a powerful filtering process, but it is not one that selects for policy or deliberative competence.

The filtering process of partisan elections clearly selects legislators who are unlike the general population they are supposed to represent. First, elected politicians must be the sort of people who are willing to consider serving in such an office. Many people would not want to do this, whether because of shyness, time commitment, or countless other reasons. Second, they must be people who are willing to put themselves through the stressful process of running for office, which requires both a large amount of public exposure as well as thick enough skin to suffer through attacks. Candidates can be subjected to smears and false accusations. Third, to become an elected official, one must have a financial,

employment and family situation that allows one to devote the necessary time to running for office (let alone serving if elected). Fourth, people must have personal networks and/or party connections that make a campaign feasible. Fifth, in jurisdictions without public campaign financing, candidates must also have financial backers. Sixth, successful candidates tend to be people who are able and willing to do the sorts of things (sometimes unsavory) that are needed in order to win an election. These filters can apply to local, state and national offices. They are simply more powerful for higher offices. Relatively few people are willing or able to pass through all these layers of filtration, and those who do are not like most of the rest of the members of the community.

The election process imposes a strong bias favoring economically and culturally advantaged individuals with a magnified sense of self-importance. This sense of self-importance often crosses the line to narcissism. Research by Chin Wei Ong of Bangor University and others has found that "followers were initially attracted to narcissistic leaders' charisma and vision, and these factors were responsible for narcissists' initial rise as leaders. In other words, groups of people initially preferred the narcissist over others as their leader" (Bangor University 2015). However, they also found that narcissists did not perform well over time and were ineffective as leaders.

The common-sense view that narcissism is not conducive to constructive public policy deliberation feeds the notion that an eagerness to run for office should be a disqualification from serving. There are good reasons this quip resonates with many people. Putting people through the filter of elections before they are empowered to make decisions clearly distorts the nature of the legislative body, but not only by favoring egotists. The people I know, who I would most want to have making important decisions for society, are people who would never consider running for office, while many of the successful politicians I know are exactly the kind of people whom I wish were not in control. I don't want to paint every politician with this brush and overstate this point; some elected officials are, of course, humble, brilliant individuals with only the best of intentions. But as a general rule, tolerant, open-minded people, who are well-suited to the task of deliberation, are also the type of people unlikely to seek or win political office. Electoral politics tends to attract and reward "true believers", who are often intolerant and closed to others' new perspectives.

There is no compelling evidence that elections are effective at selecting individuals with competence at governing. The skills and personality required for winning elections are not the same, and are in fact often in conflict with those needed for competent governing. James Surowiecki in *The Wisdom of Crowds* points out that we shouldn't believe people are more expert simply because they confidently assert their competence. There is no evidence of a positive correlation between the level of confidence exhibited by elected officials and the actual level of competence. This is the *Dunning–Kruger effect* (mentioned at the end

of Chapter 8) in action. A feeling of certainty that one is right (a lack of humility and recognition that one might be wrong) is associated with "getting into politics" and deciding to run for office. This certainty and misplaced self-confidence probably also help with mobilizing supporters, money, and winning elections.

Surowiecki relays the story of a series of experiments with groups of military fliers who were given some logic problems to solve. Higher status pilots spoke more and more convincingly than navigators, even when the pilots were wrong and the navigators were right. But there is no correlation between confidence and competence. "In fact, as the military-flier studies suggest, people who imagine themselves as leaders will often overestimate their knowledge and project an air of confidence and expertise that is unjustified". What's more, others (in this case, navigators) tend to accept and defer to the self-defined experts.

There is also the fundamental matter of alignment of interests that may supersede the question of competence. The interests and policy preferences of those who win elections do not necessarily align with those of the population they are supposedly representing. We have already established that there is a huge class divergence between the elected elite and the average citizen. Of course, some individuals rise above their class interests and work for the common good. However, most people conveniently rationalize that policies that are in their interests are probably also good for the nation as a whole. It's just human nature. I don't see any convincing evidence that Congress as a whole acts constructively toward the interests of the average citizen (and polls show most citizens don't either). Some readers may disagree, but the burden is on them to find evidence of this, rather than to simply assert that Congress acts for the general good, merely because that's how representative democracy is supposed to work. If there is a divergence, competence in office may mean competence to effectively work *against* the interests of the people purportedly being represented. Frequently, candidates stress their effectiveness, or ability to "get things done", while neglecting to detail exactly what things they want to do. Is it better to have a representative who is competent at defeating the interests of a community, or a representative with uncertain competence who shares the interests of the community? Fortunately, with sortition we don't need to answer this conundrum, because the evidence from hundreds of citizens' assemblies indicates that lottery selection, combined with good process, can select competent bodies that genuinely represent the interests of the population.

Political Expertise

One concern some people express about sortition is the loss of *political expertise*, which elected politicians are assumed to possess. While people typically have only a very vague idea about what constitutes "political expertise", they presume it must exist.

A belief in political expertise dates back at least to Plato and his analogy of the ship pilot I brought up in Chapter 6. In arguing against democracy and the selection of political decision-makers by lot, Plato presented the analogy that it would be foolish to choose a ship pilot by lot, because expert pilots should be sought out. However, it is important to appreciate that the political expert is not necessarily suited to judging political decisions. In a virtual response to Plato's analogy of the ship pilot, Aristotle gives two counter-arguments in his *Politics*, writing of non-experts that first

> each individual will indeed be a worse judge than the experts, but collectively they will be better, or at any rate no worse. Secondly, there are tasks of which the actual doer will be neither the best nor the only judge, cases in which even those who do not possess the skill form an opinion on the finished product. An obvious example is house-building; the builder can certainly form an opinion on a house, but the user, the household-manager, will be an even better judge, So too the user of a rudder, the helmsman, is a better judge of it than the carpenters who made it; and it is the diner not the cook that pronounces upon the merits of a dinner.
>
> *(Aristotle [350 BCE] 1981)*

Most policy and law drafting expertise resides in professional staff, rather than the legislators themselves. As noted at the beginning of Chapter 11, Senator Edward Kennedy estimated that 95 percent of the drafting *and negotiating* in Congress is done by staff rather than legislators. A sortition democracy should also employ a professional staff. Most of the *political* expertise within Congressional offices[2] is actually oriented toward public relations, fund-raising and the campaign implications of policy, rather than focused on actual policy substance. Such pseudo-expertise can enhance re-election chances, but may be distinctly detrimental to good policymaking.

It is not necessarily the case that *political expertise* is even a meaningful concept, simply because political decisions inevitably range so widely. Since political judgment involves anticipating the effect of policies and world events on future outcomes, it is possible to assess the performance of political experts by comparing their past predictions with subsequent reality through hindsight. Philip Tetlock conducted an exhaustive study over twenty years of "expert" political forecasting, looking at the accuracy of 284 recognized political experts, and published his findings in his 2006 book, *Expert Political Judgment: How Good Is It? How Could We Know?* He had political experts make predictions about future events within their spheres of expertise, as well as give a confidence rating indicating how sure they felt about each prediction. As history passed over twenty years, he was able to compare these predictions with what really ended up happening. While a few experts did somewhat better than the guesses of

non-experts, his research showed that there is little to recommend the predictions of most experts over "dart-throwing chimps". Regardless of liberal or conservative leanings, professional background, or status—as a whole, political experts did not perform particularly well. He laments that the evidence shows: "there is something wrong with existing mechanisms for getting to the truth, both in the media-driven marketplace of ideas and in the top-secret world of intelligence analysis. Indeed, one of the more disconcerting results of this project has been the discovery of an inverse relationship between how well experts do on our scientific indicators of good judgment and how attractive these experts are to the media and other consumers of expertise" (Tetlock 2005, 217). Most alleged political expertise may simply be an illusion (promoted by those who claim to have it). If it does exist, the evidence indicates we are not good at recognizing it.

So if we can't count on elections to empower individuals with meaningful political expertise, or superior political judgment, do elections select for other desirable traits? Elections may (or may not) screen out people with extreme intellectual deficiencies, but experience proves that they do not screen out individuals with extreme ethical deficiencies (in fact, just the opposite).

Executive Function and Expertise

I discussed the role of the executive at the end of Chapter 2 (and briefly in a legislative context at the start of Chapter 11), but now want to expand that examination in a sortitional context. We should first make a distinction between the legislative functions of government—deciding "What goal should be pursued" and "what policy might best achieve that," and the executive function of government—competently administering the policy decisions of the legislature. In many electoral democracies, these functions are more or less intertwined. This is especially true in parliamentary systems where the governing party or party coalition in the legislature takes on the executive role as well.

In this chapter, I am primarily focusing on competence in the legislative realm, rather than the executive. However, I should say a bit about the problems of assuring the competency of an executive, and how sortition can play a useful role there as well. Electoral democracies are often undone by placing both policy and administrative roles onto a single individual. It is not possible to use elections to hold one person accountable for two separate attributes or functions. The American presidential election is a classic example. A voter may like the policy direction of candidate A, but find that person to be untrustworthy or incompetent, while candidate B is trustworthy and competent, but advocates horrible policies. Genuine democratic accountability requires that an executive serve an administrative role primarily, with policy matters handled by the legislative branch. While there may occasionally be an individual who seems to excel at both roles, whether we are speaking of Napoleon or the modern American

"imperial presidency", the merging of these functions opens the door for authoritarianism and is fundamentally undemocratic.

In ancient Athens, most executive functions were carried out by a large number of lottery-selected boards, with ten citizens each. These boards of magistrates were administrative rather than policymaking. The issue of competency was handled by having the members of these boards work together so they could watch each other, protecting Athens from any incompetent or corrupt member. The magistrates were also subject to a review and settling of accounts at the end of their service by randomly selected review panels. While there was a single individual who served as the nominal head of state in Athens, this position was basically ceremonial (receiving foreign dignitaries and the like). That individual was chosen by lot from among the Council of 500, but each *served only a single day* before being rotated out. Various democracies used a collective executive, rather than a single "ruler", in an attempt to defend against the danger of dictatorship. The initial Pennsylvania state constitution established a twelve-member Supreme Executive Council along with a president, and the early French Constitutions also established multi-person executive bodies (which were steadily winnowed down until Napoleon became the sole executive).

Policymaking is the essence of politics, and as Hélène Landemore of Yale University points out in her book *Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many*, that

> politics is unlike administration, precisely because, unlike for administrative tasks, when it comes to solving political problems, we cannot tell who the experts are. Administrative tasks are those tasks for which we can *a priori* determine whose knowledge and opinions matter. In politics, however … we do not have that luxury. Most of the time, because of the unpredictable and ever-changing nature of problems that the community will have to deal with, the relevant knowledge, perspective, or information are simply unknown.
>
> *(Landemore 2013, 13)*

A key to democracy is to avoid blending policymaking and administration. This was a basis for the council-manager municipal government reform proposals of the Progressive era in the US at the start of the twentieth century. This separation was seen as crucial for governmental competence and fighting the rampant corruption of party machines and their spoils system. Under these reforms, which were adopted by many cities, the position of mayor was eliminated or made largely ceremonial, with a city council elected using proportional representation, hiring a city manager to handle administration and carry out the policies adopted by the council. Many US cities still use a city manager, but no longer with a council elected by PR, let alone fully representative legislative bodies selected by lot.[3]

If there is a single chief executive (rather than a collective executive), it is essential that this person serve exclusively an administrative function, like a city manager. Unlike "political expertise" (which is likely illusory), "administrative expertise" is real and quantifiable. As with a city manager, it is appropriate for a representative body (in a sortition-based democracy, one selected by lot, rather than an elected city council) to essentially conduct an in-depth hiring process, rather than through a popular election that hinges on partisan tribalism, advertising or campaign techniques. A relatively small representative group can overcome the rational ignorance that sabotages all large election processes. They can spend the time to genuinely understand the past performance of the candidate and recruit a competent individual with genuine administrative expertise. This is far better than electing a chief administrator who is somebody who toots his or her own horn, and puts themselves forward due to narcissistic megalomania, as with so many politicians. Likewise, it would be desirable to use a jury model for evaluating an incumbent or firing a chief executive as well. Multi-body sortition principles suggest that each of these bodies should be separate. A review panel should not have the corrupting incentive to remove an incumbent just so those same people get to pick a replacement.

Notes

1 Individual members of Congress have unique interests, including employment by defense contractors within their district and campaign contributions, that conflict with these popular priorities. But even if most members didn't, Congressional practices, such as log-rolling, where members trade votes benefiting favored special interests, effectively block such solutions.
2 Here I am making a distinction between the staff hired to serve individual lawmakers, and staff such as the Congressional Budget Office, or similar professional agencies that also serve legislatures.
3 Cambridge, Massachusetts, is the only municipality in the US that has continuously used this system—Plan E under state law—since that Progressive era.

13

ACCOUNTABILITY AND LEGITIMACY

Accountability and Politicians

Accountability is another concern some people have about sortition. Accountability is the major selling point for elections, which are generally assumed to be an essential tool of representative democracy. Accountability refers to a *principal* holding an *agent* to account. In a representative system, the principal is the public (or perhaps a particular representative's constituency), and the agent is either an individual representative, the entire legislative branch, or the entire government. In this political context, I will focus on two sorts of accountability: corruption or ethics accountability on the one hand, and policy or representational accountability on the other.

Any system of representation, whether using election or lottery, needs corruption accountability procedures, which can detect, punish, and preferably *prevent* bribery and the like. Policy accountability is far more convoluted, however. This deals with misdirection of policy away from the interests of a constituency or the general population. It is generally presumed that democracy requires procedures for removing *even honest* public officials through periodic elections as a means of assuring policy accountability. For those offices filled by random selection, this accountability tool is entirely absent. Voters wouldn't be able to remove a representative, and there is no obvious way to hold an entire citizens' assembly to account for bad decisions. The belief is that without the punishment of threat of removal,[1] there is no accountability, and members of a randomly selected mini-public are free to run wild. As I will explain below, elections in the real world fail to provide meaningful accountability. After addressing the myth of accountability under an electoral system, I will examine the concept of accountability under sortition.

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Can Elections Actually Hold Politicians Accountable?

Jane Mansbridge of Harvard, who became president of the American Political Science Association in 2012 and authored the book *Beyond Adversary Democracy*, points out two approaches to accountability (Mansbridge 1983). The first is the "sanction" model of accountability, where the threat of retaliation at the ballot box keeps the politicians in line or holds them to account. This could *theoretically* have some effectiveness in countries with multi-party proportional representation, where voters have a choice of parties with somewhat similar platforms. Politicians might worry that failing their core constituency, or getting bad press, may prompt some voters to switch parties, and depending on countless other variables, could result in their losing an opportunity to be part of a governing coalition.

However, such sanctioning is all but nonexistent in the United States, with its plurality voting, two-party system. In the US, very few incumbents ever face viable challengers in their party primary. Indeed, a series of studies by FairVote: the Center for Voting and Democracy determined that in most election cycles, an incumbent member of Congress is more likely to die in office than be defeated in a primary. While voters holding their politicians to account in primaries almost never happen, big money interests and party insiders sometimes do extract loyalty through the threat of funding a primary challenger. As an example, in 2025 Elon Musk threatened some Republican members of Congress with the possibility of recruiting and pouring millions of dollars into a campaign to support a primary challenger if the incumbent veered from Musk's policy preferences.

In the overwhelming majority of *general* election contests (after the primary), incumbents are re-elected by landslide margins in safe-seat districts. As Todd Donovan and Shaun Bowler point out in their book *Reforming the Republic: Democratic Institutions for the New America*, echoing the trend in primaries, "Turnover in the House, as with the Supreme Court, is largely driven by incumbent deaths and retirements, rather than competitive elections" (Donovan and Bowler 2004, 46). The notion that nearly every incumbent has reliably served their constituents' true interests and behaved in fully ethical ways, and thus doesn't deserve any accountability punishment, is ludicrous.

To explain the re-election rate well above 90 percent, it is cliché among media pundits to assert that "while voters say they dislike Congress as a whole, they like their own representative". Polling indicates that this isn't true. In 2014 polls of likely voters, seventy-two percent said that most members of Congress should be defeated in the next election. But stunningly, only twenty-nine percent thought that their *own* member deserved re-election (Rasmussen Poll 2014c). In 2024 surveys, the percentage who thought their own representative should be re-elected only reached thirty-six percent (Rasmussen Poll 2024a). This disconnect between re-election rates and voter satisfaction with their own

representative can be harmonized by recognizing that although most voters think their own representative is bad, they think that the candidate from the other major party is *even worse*.

With only two major parties and the dearth of public awareness of their representative's behavior (due to rational ignorance), election sanctions are an astonishingly ineffective accountability tool. Mansbridge further points out that "the close races with little incumbency that are necessary to make the sanctions model work may also drive away the most public-spirited agents" (Mansbridge 2009, 23). The re-election of Representative Charles Rangel in 2010, with 80 percent of the vote, while under the cloud of confirmed serious ethics violations, showcased the non-efficacy of the elective sanction model of accountability for corruption. He went on to win re-election in 2012 and 2014, before retiring. In a polarized partisan environment, researchers have confirmed a common perception that voters readily forgive corruption and ethical failings among politicians within their partisan "tribe", and only care about accountability among politicians not in their tribe. This tendency may be less pronounced, but it still holds in jurisdictions using multi-party proportional representation.

Electoral accountability is an inherently retrospective tool. As I wrote in Chapter 2, it can be viewed as similar to driving while using only the rear-view mirror, since the only sanction that constituents can muster is removing the errant politician *after* the fact. But the *threat* of sanctions is forward-facing. However, the fact that elected representatives deal with a vast range of distinct issues makes this accountability tool incredibly problematic for their constituents to use as a means of guiding their representative's policy behavior. If my representative votes as I wish on some issues, but contrary to my wishes on other issues, 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 more issues? How can I use the election process to hold my representative to account? How can I use the blunt weapon of the threat of removal to guide my representative? In some extreme cases, independent or third-party candidates may surface, and "spoil" the re-election chances of the current representative in the case of plurality winner election rules. The incumbent has been punished, but this can result in even worse representation for the aggrieved constituents.

The second sort of accountability Mansbridge discusses is the selection of representatives who naturally, without external incentives, seek to represent the interests of constituents because they are congruous with their own. 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 represent. The fact that unaccountability is a widely discussed problem in modern electoral democracies is evidence that elected representatives do not accurately represent the population. Joel Parker puts it 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" (Parker 2011, 182–183).

Many electoral systems around the world have corruption-prone features that stymie accountability. These include campaign finance procedures and legislators enacting and enforcing ethics rules self-referentially. While such procedures could be changed to eliminate these particular avenues for corruption, there are more fundamental traits of electoral systems that make accountability by sanction unworkable.

Legislator accountability is generally about acts of commission, rather than acts of omission. Casting a bad vote or taking a bribe could theoretically make a politician subject to removal (though it is stunningly rare for such punishment to actually occur). However, as discussed in Chapter 3 in the section on setting the agenda, politicians often avoid certain issues altogether, and this act of omission can be far more consequential and harmful to society than the votes they take. The danger of climate change is a damning example. NASA scientists gave urgent warnings to Congressional committees in the 1980s that greenhouse gases were already affecting the climate and that by the first half of the twenty-first century, the impact would become devastating. The needed response of transitioning away from fossil fuels was deemed too harmful *electorally* for those politicians,[2] so it took decades for this vital issue to finally get onto the political agenda (when the magnitude of response needed had been multiplied). The fear of short-term electoral "accountability" from taking *any* action trumped the scientific evidence of global devastation.

Electoral accountability is premised on the assumption that the constituents know what their representatives have done. First, it must be noted that many of the most significant actions (and, as discussed above, inactions) politicians take are agreed to in secret, behind closed doors. It is the deals, rather than the roll call votes, that often matter most. But even just considering their voting records, hardly any constituents know how their representatives vote on any given issue. This means it is lobbyists who actually reward or punish a politician with money or publicity. Careful research has confirmed that voters are unlikely to make accurate assessments of representatives, even when resources and financial incentives are provided (Huber, Hill, and Lenz 2012). Gregory Huber, lead author of a study of four thousand citizens participating in a series of exercises assessing how people incorporate information in evaluating incumbent politicians, told a reporter, "Our results suggest severe limitations in humans' ability to accurately and impartially judge the performance of politicians. This is a worrisome finding for democratic accountability because it creates a breeding ground for politicians to manipulate their electorate" (Cambridge University Press 2012).

Professor Alexander Guerrero at the University of Pennsylvania has written about the problem of holding elected representatives accountable. After

discussing the various impediments to fair elections (money, voter registration hurdles, gerrymandering and the like), he observes:

> Even if these problems were addressed, they would succeed only in making elections fair. But meaningful accountability requires not just open and fair elections; it also requires that we are capable of engaging in informed monitoring and evaluation of the decisions of our representatives. And we are not capable of this. Not because we are stupid, but because we are ignorant: ignorant about what our representatives are doing, ignorant about the details of complex political issues, and ignorant about whether what our representative is doing is good for us or for the world.
>
> Our ignorance means that representatives can talk a good game, and maybe even try to do a few things that benefit the majority of us, but the basic information asymmetries at the heart of the representative system ensure that, for many issues—defense manufacturing and spending, policy that affects the insurance and pharmaceutical industries, agribusiness policy and regulation, energy policy, regulation of financial services and products—what we get is what the relevant business industries want. In the presence of widespread citizen ignorance and the absence of meaningful accountability, powerful interests will effectively capture representatives, ensuring that the only viable candidates—the only people who can get and stay in political power—are those who will act in ways that are congenial to the interests of the powerful.
>
> *(Guerrero 2015)*

Political scientists have shown that American voters generally can't accurately assign blame when things go wrong. The electoral retribution following the New Jersey shore shark attacks and the Great Depression, which I discussed in Chapter 2, are examples of this. Political scientists and party leaders know that a bad economy will tend to hurt the re-election prospects of an incumbent president, even if the fault lies with Congress, Wall Street, or beyond any politician's control. It's like punishing the cat for urine on the carpet left by the dog. The apocryphal assumption that elections are an effective and appropriate tool for guiding lawmakers prevents consideration of alternatives like sortition.

This problem is compounded by the fact that partisans often seek to intentionally misinform voters about factual matters. As Professor Russell Muirhead of Dartmouth College notes, electoral partisanship

> is embedded in a politics of power and domination. In practice, partisans are a part that seeks to rule the whole. Partisanship is thus a peaceful cousin to civil war: It is a legally sanctioned mode of acquiring power and preventing one's adversaries from doing the same. Often, one side wins because it has managed—by election, by manipulation of fact, by deception, by craft—to claim the levers of power.
>
> *(Muirhead 2010)*

In large-scale elections, voters must rely on second-hand information, since very few have significant first-hand knowledge of their representatives' actions (or, as discussed above, willful *in*actions). Voters either rely on partisan labels, some "single-issue" policy concern, or rudimentary assessments of a candidate's character (as presented through carefully designed propaganda techniques) in deciding how to vote. Gabriel Lenz, author of *Follow the Leader? How Voters Respond to Politicians' Policies and Performance*, examined a large number of voter surveys from the US, Great Britain, and the Netherlands from the 1940s to the present and found that policy considerations are simply not a major determinant for how most people select candidates. Lenz summed up his findings, saying, "Unfortunately for democracy, the results are not reassuring". Most voters can't match candidates with the policies they espouse. "It's not that voters are dumb or stupid", Lenz observes. "It's just that they have better things to do with their lives" (Lenz 2012). As I discussed in some detail in Chapter 7, the workaround of hoping that voters could offload the burden of becoming informed onto surrogates, such as special interest advocacy organizations and special interest lobbyists, who *do* pay attention and study legislators, has also been shown to be ineffective (Broockman, Kaufman, and Lenz 2024).

While most politicians' policy work is invisible to constituents, a handful of issues do garner substantial media coverage and may indeed cause legislators to worry about how voters will react. Most of these high-visibility issues are selected by politicians for their campaign value. Different parties seek to highlight different issues, and those that do rise to the top are often more symbolic than substantive. Politicians also seek to frame them so that, in typical polarized safe-district elections, both major party candidates can "deliver" by voting the way their base thinks they should. Occasionally, the reality on the ground forces an issue, which was not tailor-made, nor pre-selected by politicians for campaign purposes, into public awareness. But these represent a tiny fraction of legislators' workload.

Even if electoral accountability could work, it has a severe dark side. Harking back to Edmund Burke's independent agent vs. delegate dichotomy discussed in Chapter 6, in some cases the lack of accountability by election may actually free a representative to act in the true interests of the public, even if the polls don't favor the policy. To any extent that sanction accountability (the fear of losing the next election as a consequence of behavior) is effective, it would be a double-edged sword with both positive and negative consequences for the constituents and society at large. Politicians may pander or promote short-term policies that are popular (thus beneficial for re-election), yet they know will harm the public in the long run. Legislators often pass new laws in response to threats that are dominating the news, even when they know the legislation is costly and certain to be ineffective. A huge portion—trillions of dollars worth—of Congressional and Presidential actions following the 9/11 attacks probably fit this description. What's more, the representatives' "accountability" to the public pressure to "do something" generated increased opportunities to shoehorn in corrupt action, such as rewarding campaign donations from weapons manufacturers.

Accountability and Legitimacy Under Sortition

The concept of accountability for corruption can be applied at the level of the individual member of an elected or lottery-selected law-making body. But the very concept of representational (policy) accountability for an *individual* member (as it is applied to an individual *elected* representative[3]) is simply not applicable to a system of sortition. A mini-public *as a whole* is representative of the population *as a whole*. No individual member has any distinct constituency. It can be argued that the term "*a* representative" (the singular) isn't even an appropriate term for a member of a mini-public. Elected representatives who deviate from the interests of their constituents can theoretically risk removal. Under a sortition system of randomly selected mini-publics, since no member has a constituency to be accountable to, each member is expected to vote in whatever way he or she thinks best, based on the information presented. In terms of *policy* accountability, it is necessarily the body as a whole, rather than any individual member, that is the appropriate level for scrutiny.

Random selection maximizes the sort of "natural" or congruent accountability described by Mansbridge as the alternative to sanction-based accountability. This is because the members are a microcosm of the public. Using John Adams's maxim again: the mini-public is "in miniature an exact portrait of the people at large. It should think, feel, reason and act like them" (Adams 1776). If presented with a draft law, any statistically representative group, or 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.[4]

The political theorists Cristina Lafont and Nadia Urbinati have argued that a sortition body can either be genuinely like the population, mirroring their preferences in a populist way, or become well-informed, serving as a technocratic filter for the poor judgment of the less-informed public, but that these two concepts are "mutually incompatible". A sortition body cannot have the *same* preferences as the people, and also have *better* preferences. "Both claims cannot be simultaneously true. Lottocrats must choose between these technocratic and populist claims" (Lafont and Urbinati 2024, 163). Lafont deems decisive mini-publics as an illegitimate "shortcut" generating decisions to which the public is expected to "blindly defer".

This objection to the sortition "shortcut" is rather silly. The fully compatible goals are to have an accurately representative sample of the population, who share the same values and interests, and to have such representative groups become adequately informed so as to make the same decisions that the population as a whole would make *if* they could somehow all become well-informed, hear opposing perspectives and analysis, and deliberate, without distorting personal power agendas—representative *and* informed. Since it is impossible for all citizens to participate in deliberation on all policy matters, large communities must

use *some* sort of shortcut. The only question is which shortcut is most democratic and delivers the best results, with the least corruption.

Lafont argues that concordance between policy decisions and the uninformed preferences of the public is essential for mini-publics to have legitimacy. Tying representatives to the uninformed opinions of the general population, as described in polls,[5] as Lafont does, contradicts the independence and judgment that theorists from Edmund Burke onwards regarded as essential. Being accountable to uniformed public opinion is foolishness. As sortition researcher Pierre-Étienne Vandamme wrote about citizens' assemblies (CAs):

> it is worth pointing again to the classical trade-off between accountability and independence. It is often the independence of CAs from electoral promises and public pressure that is invoked to justify their epistemic added value. Yet, if they cannot deviate from public opinion without sanction, these epistemic benefits (including the possibility to leave room for the interests of foreigners and future generations) might be jeopardized.
>
> *(Vandamme 2023, 41–42)*

However, sortition bodies should give an account of their thinking. Another sortition researcher, Shao Ming Lee, notes, "In this way, they are not a 'shortcut' bypassing the public, rather, they at the very least attempt to explain their decisions and convince the public of their choices" (Lee 2024, 4).

Lafont excuses decisions made by *elected* representatives as being reasonable deference rather than "blind deference" merely because there is some hypothetical ability of a citizen to "control" the politician via the election process. The impossibility of this in reality has been a major theme of this book. Many scholars have also dismissed Lafont's "blind deference" argument, explaining why deference to laws passed by a mini-public would deserve more *trusted* deference (rather than blind). [6] Indeed, the resistance to corruption, partisan campaign or hidden agendas, and elite domination are all reasons decisions by mini-publics deserve greater deference than decisions of an elite set of representatives who sought power, and were able to pass through the expensive, elite electoral filtering process.

As a thought experiment, imagine two voters who had identical policy preferences. In this example, let's say they were pro-union, anti-immigrant (viewing it as a ploy by business owners to bring in low-wage workers to suppress wages). They were both pro-life (anti-abortion) and viewed climate change as a crucial issue requiring urgent action. There was no political party or candidate that agreed with them on all of these issues. Perhaps one of them had a parent who always stressed how much the union improved their life, and convinced that voter to vote for the pro-union party on the left. The other voter saw a frightening advertisement about dangerous immigrants and decided to vote for

the party on the right. Neither had taken the time to become well-informed. Even though their policy preferences and interests were identical, unpredictable circumstances prompted them to vote in opposite ways.

For most of the hundreds of public policy issues decided every week, voters have *no* preference, or only a sketchy one. If interrogated closely, both of these hypothetical voters might say that they recognize that their policy preferences are not deeply thought through and are unsure how their few identifiable policy preferences align with candidate platforms. Their considered preferences, once better informed, might evolve, or even flip. They might much prefer that people *like* them (without hidden agendas), were given the time, resources and motivation to really dig into each of these issues (and others that haven't occurred to them) in order to make a truly informed decision on each. "I don't want my off-the-top-of-the-head answer on some opinion poll to be controlling. That is not accountability". We should want our representatives to be willing to make the best, even if unpopular, decision.

To add an additional layer of policy accountability, we may want to add a double check in the case of close votes in a mini-public. If the majority threshold of a jury vote is less than the acceptable confidence level for the sample size, in order to provide accountability and assurance of representativeness, a second jury could be called (perhaps a larger one) to see if they come to the same conclusion. Another possible avenue for accountability is to have a system allowing a petition route to demand a second jury to confirm a decision. The signature threshold and details of how this might work are challenging, since people wouldn't want every policy decision "re-litigated". To prevent trivial or too frequent political court cases in ancient Athens, a plaintiff (accuser) who was bringing a political case to the large randomly selected court needed to win at least one-fifth of the vote of the jury, or they would have to pay a massive fine of 1,000 drachmas and a restriction on their rights.

Corruption Accountability

With less power (dealing with far fewer issues and no re-election longevity), sortition representatives would have less opportunity for corruption. The power that accrues to a politician who is a committee chair with lots of seniority and repeated re-election campaigns is a recipe for corruption. Such concentration of power maximizes both the push and pull of corruption. It prompts interests to seek to establish a corrupt relationship, and multiplies the power-holders' opportunities for corruption. However, although far less prone to corruption, a decision by a mini-public *could* still be the result of corruption.

The prevention of corruption was one of the primary purposes of the lottery system in classical Athens, as well as the Renaissance Italian city republics. Athens had a system for rendering of accounts, scrutinizing the performance and financial honesty of all of its randomly selected magistrates and councilors at the

conclusion of their service by randomly selected panels of inspectors. In a modern context, the same anti-bribery provisions that protect against jury tampering can be applied to sortition bodies. The threat of prosecution for wrongdoing should also remain. All mini-public members might also be told that an "undercover" person might pretend to try to bribe them, and if they report it, they would get a reward (and if not, they might be prosecuted).

It would be important to protect against pay-offs to former mini-public members in cash, job offers, or other perks from groups interested in the legislation the representative had worked on. Since policy accountability at the level of the individual member is inappropriate for a statistically representative body, the record of votes by individuals is also problematic. Jury-like secret balloting is probably desirable, so as to avoid corruption by after-the-fact special interest rewards. Likewise, while the release of transcripts of deliberation may be appropriate as an aspect of "giving account" (discussed below), the identity of the individual speakers should also be withheld to fend off corruption.

If, however, a sortition system is poorly designed (by replicating some of the corrupting aspects of existing elected legislatures), both policy accountability and corruption accountability could be hampered. Simply substituting selection by election with selection by lot is not enough. If a law-making body (selected by lot) dealt with a wide range of issues, and had a long term of office, it is likely that internal power hierarchies would develop, vote trading, and other untoward practices would arise.[7] The longer a given group is in power, the less they would be typical of, or be representative of, the population from which they had been drawn, and the more likely corruption would develop. This is one reason I advocate separating out the preparation process for proposals (where more extended experience is particularly helpful) from the final decision-making function, which ideally should be conducted by short-duration juries that deal with a single issue, in order to prevent vote trading and developing a sense of power and entitlement typical of elected legislators. Rotation, as practiced in Athens and many other jurisdictions, is a key component for avoiding all kinds of corruption and unrepresentativeness. Short-duration decision-making legislative juries also have the beneficial tendency to "regress to the mean". That is, while one random jury may be a bit less representative than average, any unrepresentative decisions would tend to be modified by subsequent random bodies. This process of reconsideration of past bad decisions is enhanced, compared to long-duration legislators (whether elected or allotted), simply because there is no pride of authorship causing representatives to cling to failed policies long after their merit has been disproved. With constant rotation and new mini-publics, sortition is a self-correcting system. A bad decision by one jury will likely be reversed by a subsequent jury. Unlike politicians who often double down on their previous (bad) decisions, each jury is fresh, without the politicians' motivation to save face by insisting that their earlier decision was right.

Accountability of the group as a whole is also improved by providing separate review and rule-making bodies. There is always a risk of corruption when a group with power defines its own rules—such as Congress setting its own election laws, ethics enforcement procedures, etc. The principle of separating powers, which has widely been recognized as a cornerstone for protection against undue concentration of power, leading to tyranny, should be applied to rule-making for legislative bodies as well. In a nutshell, the person or entity that defines the choices or decision-making process should not be the same as the one making the final decision.

In *Federalist No. 10*, Madison wrote: "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" (Madison 1787b).

This basic principle of separating tasks was noted by the seventeenth-century political philosopher and supporter of Cromwell, James Harrington. In his magnum opus describing a Utopian constitution, *Commonwealth of Oceana* (which also incorporated some sortition within its design), Harrington wrote:

> [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 you shall choose". If this be but once agreed upon, it is enough; for the divident, dividing unequally, loses, in regard that the other takes the better half. Wherefore she divides equally, and so both have right.
>
> *(Harrington [1656] 2003)*

Through the separation of tasks, the children provide accountability to each other. This anti-corruption accountability feature is one of the reasons undergirding my multi-body sortition design. Elections almost universally fail to provide actual accountability, while well-designed sortition has accountability built in by harmonizing the nature and diversity of the decision-makers with the nature and diversity of the population.

"Accountability" can also refer to decision-makers *giving an account*, in other words, explaining why the decision was made, and seeking to convince the populace. As Mansbridge explains, this was the original meaning, with the "sanction" model (arising from elections) now taking its place. In addition to the "giving account" body explaining the reasoning behind a decision, Mansbridge also discusses *peer accountability* between and among the members (Mansbridge 2019). The experience of countless court juries (for centuries) and around a thousand citizens' assemblies (in recent decades) has shown that members of such randomly selected bodies almost universally take their role seriously and have a feeling of accountability and responsibility.

This feeling of responsibility often extends beyond the group involved in the deliberation. Although each member may vote according to their own individual interest, the collective result reflects the community's interest. Interestingly, however, surveys of mini-public participants reveal that many members decide on their own to take a broader perspective about their interests. As one researcher noted:

> Indeed, if the French Citizens' Convention is any indication, where a substantial majority of 65% of the mini-public said they did not speak for themselves only, then it is not utopian to think of lottocratic citizen representation as genuinely representative. Norms can always develop amongst citizen representatives that they are not deliberating only on their own behalf. In any case, it seems rather strange that electing someone is seen as the only way in which decision-makers can be seen as actually representative. Another counter is that by virtue of being ordinary, citizens are representative even if they may not be aware of it or actively trying to represent a constituency.
>
> *(Lee 2024, 4–5)*

In summation, a sortitional democracy needs well-designed anti-corruption procedures, but has a huge head start over elective systems. This is due to multiple reasons. Frequent rotation prevents the accrual of power. The absence of campaign fundraising reduces opportunities for de facto bribery. Anti-jury-tampering laws can prevent secret lobbyist influence and assure a diversity of expert testimony. Allotted members are not typically involved due to motivations to seek personal power and status, as is typical of politicians. Independent mini-publics can adopt the anti-corruption procedures, in contrast to elected members adopting rules for themselves. Finally, the broad, diverse representativeness of juries results in the sort of natural or congruent accountability discussed by Mansbridge. This natural accountability results in citizens' assemblies often discovering far more common ground than elected politicians. This likely reflects their divergent motivations. Jurors seek to figure out what is the best policy, while politicians have powerful incentives to vilify and defeat opponents in preparation for the next election. The willingness and ability to work together to find common ground is a sort of accountability that a sortition body can provide that competitive politicians typically cannot. The imagined accountability from the sanction of losing re-election is pale in comparison.

Legitimacy

But can a democracy based on sortition, instead of election, have political legitimacy? Before examining that specific question, I want to briefly examine the underpinnings of the whole concept of *political legitimacy*. "Legitimacy"

is an ambiguous concept, revolving around whether the population gives deference to their government, willingly following its laws. For countless centuries, governmental legitimacy was primarily based on inheritance or divine authority. Only in brief moments of revolt or overthrow did the question of which ruler was legitimate even arise.

Max Weber, writing in the early twentieth century, proposed that legitimacy could derive from this sort of tradition, or from a legal-procedural foundation, or from charisma, centered in "the leader" (Weber [1922] 1978). Legitimacy that originates in a legal proceduralism, such as an election, can transition to charismatic legitimacy, and over time, to traditional legitimacy.[8] Some critics of Donald Trump, following his re-election to the presidency, saw his exceptional "only I can fix it" charisma—among his followers—as a potential path to authoritarianism. People can disagree about what is, or is not, legitimate. The rise of "strongman" legitimacy across the globe reflects the decline in legitimacy of the electoral system. Many who have turned to one-man rule (seeing it as the only alternative to a failing electoral system) might be supportive of sortition instead, if they knew about it.

The Enlightenment philosopher, Thomas Hobbes, advanced the concept of the *social contract* (Hobbes [1651] 1996). He argued that a ruler has legitimacy because of the tacit consent of those governed. As long as a population does not rise in revolt, the ruler is presumed to have legitimacy. Without central authority and laws, he believed that the *state of nature* would be a war of "every man against every man". In short, people consent to rulers—giving up some "rights"—to gain protection, because the alternative would be far worse.

John Locke sought to revise this notion by adding a moral aspect and seeking more explicit consent as a basis of legitimacy. I touched on this concept in Chapter 5, when discussing the history of the framing of the new American republic. As Thomas Jefferson enshrined in the Declaration of Independence, the view passed down to us today is that governments derive their *just* powers from the consent of the governed.

But David Hume, writing in 1742, rejected the entire idea of a social contract based on consent, since most people have no realistic means of rejecting the implied social contract. The notion that voting is "giving consent" is a fallacy. It is applied even when voting against the candidates who win. The reasoning goes that mere participation in the election implies consent with the rulers who end up winning. In countries with proportional representation, a majority of those who voted may disdain the coalition that ends up forming the government, typically formed through secret deal-making. In many elections, a majority of those who participate do so for the purpose of opposing a feared candidate, rather than to support (or consent to) some other candidate. This consent fallacy is akin to arguing that the prisoner has consented to his own execution by choosing the least painful means of execution offered. Those who don't cast ballots at all in elections are also often deemed by the establishment to be granting tacit consent

(satisfaction) through their *in*action. If we combine those who voted against the winning candidates and those who did not vote at all (even if we count those who voted for a winner they dislike that they consider a lesser of two evils, as having consented), in nearly all US elections, the majority in fact did *not* consent to the chosen rulers. Yet, Bernard Manin believed that the mythology of consent through elections effectively blocked any consideration of sortition at the founding of the American and French republics (Manin 2002).

Political theorists have proposed a variety of criteria for "just powers" of a government (as legitimacy is termed in the US Declaration of Independence). Some modern scholars have pinned legitimacy to legal, rational and procedural foundations. But the legitimacy of an existing government is generally taken for granted, simply because people are born into it, so it feels natural and inevitable within their social context. Thus, the legitimacy of monarchs or theocrats may nominally come from god, and an authoritarian may derive legitimacy from charismatic stardom, and a supposedly democratic ruling elite may point to elections as the basis for their legitimacy. However, legitimacy crises can emerge when regimes stop feeling "normal"—whether due to economic troubles, scandals, or cultural shifts.

Thomas Fossen has suggested that the whole notion of establishing a list of moral criteria that grant political legitimacy misses the point. He has advocated a "pragmatist" approach, examining how ordinary people make everyday judgments on how they will interact with a regime, which either affirms or rejects its legitimacy. We might argue about whether a system *deserves* legitimacy, but that does not determine whether it *has* legitimacy in the eyes of the population (Fossen 2021, 2022).

Politicians in many countries have embraced advisory citizens' assemblies as a useful tool for engaging citizens and shoring up their own legitimacy as rulers who consult the people. However, in the event of a movement toward empowered sortitional bodies as a replacement for elected decision-makers, they can be expected to close ranks in opposition. While direct popular enactment through initiative and referendum is possible, the "peeling strategy" I will discuss in the final chapter may be a useful transitional step.

However, it is not only establishment politicians who oppose empowered sortition bodies. Theorists, such as Lafont, insist that mini-publics lack legitimacy because the deliberation on any particular issue is largely confined to a sample, rather than spread widely through society, and seem to have a phantasmagoric misunderstanding of what public policy making actually is. On one given day, a citizen may have a vast number of government issues being decided on their behalf: municipal wastewater rates; deficits in road infrastructure funds; corporate accelerated depreciation, etc. Do most voters have preferences? Do they want to actively "have a say", or spend time engaging in deliberation on these issues? Will they know what their elected representatives have done? Will they successfully use the next election to hold their representatives to account if the voters' off-the-cuff preferences (if they exist) on this one particular day are not adopted?

Some contemporary scholars, like Margaret Levi, emphasize "trustworthy governance" as a source of legitimacy (Levi 2018). This includes not just effectiveness, but also fair procedures, honest administration, and genuine protection of citizen rights. When people view government as trustworthy, they're more likely to comply voluntarily with its directives. Among the competing theories of legitimacy is David Estlund's epistemic proceduralism. He uses the court jury as an example. The procedure, if conducted fairly, with agonistic opposing arguments and an impartial jury, etc., is a procedure that, though fallible, has a good chance of making "correct" decisions. Accepting its decisions (instead of resorting to vigilantism, for example) is morally legitimate, even though some decisions may be "wrong" either just in my opinion or as a matter of absolute fact (epistemically). Once we accept that the procedure is both fair and likely to make good decisions, we can accept all such decisions as legitimately made (Estlund 2008).

Lafont's spinoff on consent argues that concordance between government policy decisions and the uninformed public opinion about those policies is decisive. If a government frequently makes decisions that are different from how people would respond in a public opinion poll, she deems that government as lacking legitimacy. However, after just a moment of thought, hardly anyone would agree that a democracy should simply mirror the off-the-cuff opinions registered in opinion surveys. So, Lafont's "concordance" requirement would itself likely be rejected in an opinion survey. Political theorist Eric Shoemaker offers compelling arguments about the logical inconsistencies of Lafont's notion of democratic legitimacy (Shoemaker 2024b).

Habermasian deliberative democracy theorists like Lafont want citizens to widely engage in deliberation, rather than just in mini-publics (Lafont 2015). But this is impossible simply due to the scale and breadth of policy issues needing decisions. Democracy requires delegation in large societies. What's more, such mass deliberation is not desired by those same people, who have other things to do with their time. However, rather than referring decisions to "elites", as some theorists propose (Hibbing and Theiss-Morse 2002, 238), the option of referring to fellow citizens like themselves who take turns and study the facts can avoid the corruption and hidden agendas of egotist politicians, and the special interests they so often serve.

Ultimately, theories of legitimacy are less impactful than the simple fact of whether the population, by and large, accepts the authority of government. That may be under an electoral regime, sortition, under a king, a theocrat or fascist dictator. Perhaps legitimacy *should* be evaluated by some particular criteria, but in the real world, it is just a reflection of popular acceptance or rejection of the status quo based on feelings and understandings that most people never examine. This is why a referendum is widely accepted as the standard legitimacy-granting and removing procedure. These voters don't need to be "well informed", since the core question at hand is how they *feel* about the form of government.

It is commonly believed that legitimacy requires either longevity or such an act of authorization.[9]

When a government falls or loses legitimacy, how a new government, or form of government, can win legitimacy depends on the details of the situation. The transfer of authority from one system of government that is losing legitimacy to a new system is an under-studied question. Sortitional democracy doesn't have the advantage of long familiarity, and thus must earn democratic legitimacy through performance and trustworthy procedures viewed as fair. A necessary first step is for people to have some awareness of sortition—having seen it perform well in some prior circumstance. The court jury is the primary example, but a plethora of citizens' assemblies and non-governmental sortitional democracies seem necessary to pave the way to general legitimacy.

Notes

1 This is an ineffective "threat" in sortition, as it assumes the representative wants to maintain that role, which would often not be the case in a jury-like situation. If there is no threat, then removing the representative after the act of wrong-doing is also ineffective at guiding behavior.
2 A bill was introduced, S.2891—Global Climate Protection Act of 1986, requiring the president to set up a taskforce, but the bill never received any action or attention.
3 Some countries that vote for political parties rather than individual candidates may be seen to be holding an entire party to account through electoral removal. These representatives are more firmly locked into supporting their party line. But in the United States, accountability is expected to be achieved one candidate at a time.
4 Note that with an infinite number of variations of possible draft laws, it is not expected that different random groups would draft identical laws, This is one of the reasons I separate the drafting and approval of laws into separate bodies. While active deliberation by different random groups would develop different draft proposals, the tendency would be for each of them to have a reasonable chance of meeting with jury approval. This would not be the case with proposals developed by political parties or special interests.
5 It must be noted that opinion poll majorities can easily flip depending on the specific wording of a question, or the sequence of questions asked in the survey.
6 See Mansbridge (2020), Goodin (2020), Bächtiger and Goldberg (2020), and Shoemaker (2024a).
7 Vote trading can result in the passage of two unrelated laws, neither of which is actually favored by a majority of members.
8 The reverse is also true, that a leader who rises to power based on charisma, may establish a legal framework to gain procedural legitimacy.
9 Note that the United States Constitution was never ratified by the population in a referendum, but only by elite state conventions of white propertied men (overthrowing the Articles of Confederation illegitimately - contrary to the amendment process specified in the Articles of Confederation). Further, no subsequent generations have authorized the electoral basis of government When African Americans and women were brought into the relevant community, they were never asked if the voting system imposed by the well-to-do white men a century previously was still legitimate … So the "legitimacy" is simply being passed down, rather than earned or granted by living citizens.

14

THE RE-EMERGENCE OF SORTITION

Despite the glaring flaws of elections,[1] by the end of the eighteenth century, they came to be thought of as the only alternative to monarchy. Democratic sortition had virtually evaporated from both the public's and political theorists' consciousness. For nearly two centuries, hardly any published proposals for sortition appeared. A couple of exceptions include a humorous 1926 article by H. L. Mencken entitled "A Purge of Legislatures", and a serious essay by the Trinidadian anti-Stalinist Marxist, C. L. R. James in 1956, entitled "Every Cook Can Govern: A Study of Democracy in Ancient Greece; Its Meaning for Today" (James 1956).

In recent years, however, advocacy and real-world implementations of sortition have been mushrooming around the globe. In this chapter, I will look at a few of these. They range from unofficial advisory "deliberative polls" to formal public policy decision-making bodies. A number of sortition theorists started experimenting with real-world applications toward the end of the twentieth century. The modern reinvention of sortition can be traced to several parallel developments in Europe and North America.

German Professor Dr. Peter C. Dienel in 1972 developed what are called "Planning Cells" to better connect average citizens with government decision-making. A random sample of 25 people directly or indirectly affected by some policy issue is paid to study an issue and deliberate over a five to seven-day period. They are provided with background material, and then gathered to listen to presentations from experts and various competing advocates. The participants then break into small groups for discussion. At the end of the process, the planning cell adopts final policy recommendations. These Planning Cells are typically convened by governmental entities that are willing to adhere

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to the recommendations that come out of the process, and participants are generally very engaged and pleased with the deliberative process. First employed in the town of Schwelm, in the Ruhr District of Germany, Planning Cells have since been used more than a hundred times in Germany, Spain and even the United States.

A similar model has been employed in Austria through what are called "Wisdom Councils". The Office of Future Related Issues (OFRI) in the State of Vorarlberg, Austria, has facilitated local governments in convening dozens of Wisdom Councils. These are randomly selected groups of 12 to 15 residents who tackle an issue of their choosing, using facilitation in an attempt to reach a consensus position. In some cases, issues are pre-selected by government officials, in which case they are referred to as "Creative Insight Councils".

In the United States, Ned Crosby, apparently unaware of this German invention, founded the Jefferson Center in 1974 to facilitate the development of a similar model he called a "Citizens Jury".[2] Pulling together a random sample of average citizens, various Citizens Juries, initially in Minnesota and in later decades across the country, tackled a variety of thorny issues such as health care reform, presidential elections, agricultural impacts on water quality, physician-assisted suicide, global climate change, etc. The goal was to see if a deliberative process in which participants heard all sides could uncover common ground and discover a sort of group wisdom. The juries were generally small (a dozen or more participants), but were often conducted multiple times to gauge the consistency of decisions. Both participants and organizers were happy with the process and outcomes. But these were essentially academic exercises demonstrating the validity of the deliberative model, rather than having an actual impact on public policy.

A few books began to appear with proposals for selecting at least some legislators by lot, including *Un-Vote for a New America* in 1976 (Becker, Szep, and Ritter 1976) and *A Citizen Legislature* by Ernest Callenbach and Michael Phillips in 1985 (Callenbach and Phillips 1985). The renowned political scientist Robert Dahl, in the conclusion of his important book, *Democracy and Its Critics*, proposed sortition to create a set of deliberative bodies (what he termed a "minipopulus"), each dealing with a defined issue area, as a possibility for a future democracy. In his proposal, a minipopulus would complement, rather than replace, conventional democratic institutions. Each minipopulus could be attended by "an advisory committee of scholars and specialists and by an administrative staff. It could hold hearings, commission research, and engage in debate and discussion" for perhaps a year before rendering a judgment (Dahl 1989, 340). By creating a microcosm of the full citizenry through sortition, as in the case of jury service, the participants suddenly have an interest in becoming informed and attentive because there is a substantial possibility that their vote, or their contribution to debate, will actually matter.

The Modern Revival of Sortition in British Columbia

The sortition model that has become the predominant design in the early twenty-first century is known as the *citizens' assembly.* It was launched in 2004 in British Columbia (BC) when the provincial government appointed Dr. Jack Blaney to chair and coordinate the creation of a representative body of non-politicians to examine and propose any needed reforms to the province's election system.[3] The creation of the British Columbia Citizens' Assembly was perhaps the most significant advance for the worldwide awareness of sortition as an alternative democratic tool. I agree with the chair of that Citizens' Assembly, who stated in a public address to municipality leaders in BC, "In the histories of democracies, this will not be a footnote. This will be something very, very important" (Blaney 2004b).

In 2002, the new Liberal government appointed a respected former legislator, Gordon Gibson, to propose a format and process for an assembly. Recognizing that politicians had an inherent conflict of interest when it came to evaluating election systems (naturally favoring those methods likely to favor their party), Gibson recommended setting up a body containing no politicians, and not appointed by any politicians. He proposed the innovative concept of using sortition. Average citizens would be paid to work (mostly on weekends) over a ten-month period on behalf of the entire citizenry. The Citizens' Assembly was authorized and financed by a unanimous vote of the legislature in 2003, to be convened early in 2004.

To assure a body that was "broadly representative of the adult population", it was decided to supplement the ancient Athenian lottery process by adding modern scientific stratified sampling. An equal number of men and women, stratified according to age, were randomly selected from the voter lists of each of the province's 79 districts. These people were invited to attend a local selection meeting where they could ask questions and learn more about the process. Out of 23,000 people invited, 1,700 expressed interest in participating, and a little under 1,000 attended the final selection meetings. Thus, unlike mandatory jury duty, there was a substantial self-selection element within the random selection process; 158 people (half male, half female) were selected by lot from this pool. One notable small minority, the Aboriginal (called "Native American" in the US), was unrepresented, so a special random drawing from among all the Aboriginal people who had attended any of the meetings was held to select one additional man and woman, making a total of 160 members. The Assembly had professional staff and was chaired by a former University president and experienced facilitator, Dr. Jack Blaney.

The citizens' assembly had three phases:

1) An education phase: Over six weekends from January through March, the members met in plenary sessions and small groups to learn all about the variety of election methods used around the world. Staff gathered a vast amount

of balanced and impartial information reviewed by a committee of academics and experts, and arranged presentations. The Assembly members not only attended meetings but ate many meals together and developed an esprit de corps based on respect and a common purpose.

2) A public hearings phase: In May and June, members of the Citizens' Assembly participated in 50 public hearings across the province. The hearings were two-way, with presentations for the public and input from British Columbian individuals and organizations. The Citizens' Assembly also received some 1,600 written submissions. At the time, I was working with FairVote promoting proportional representation, and I submitted one of those 1,600 documents.
3) A deliberation phase: From September through November, the Assembly used a variety of means to identify the most important values they wanted from an election system. The group quickly reached a consensus that some sort of proportional representation system would be superior to the plurality winner-take-all single-seat district system currently in place (the same as that widely used throughout the United States). The options were narrowed to two. In a secret vote, 123 members favored the single transferable vote (STV) method of PR used in Australia and Ireland, while 31 preferred the Mixed Member Proportional (MMP) form of PR used in Germany. In the final vote, the members agreed to recommend that the province adopt STV by a vote of 146 in favor and 7 against.

This proposal for a new election system, according to the legislative act creating the Citizens' Assembly, then went directly to the voters in a referendum, bypassing the provincial parliament (as provided for in the enabling legislation—again recognizing that the politicians had a conflict of interest). The reform recommendation was approved by 57.7 percent of the vote, following a campaign in which both supporters and opponents received equal government funding for voter education. Unfortunately, the parliament had imposed a supermajority 60 percent requirement, thus preventing the new system from taking effect. Ironically, that 57.7 percent was just larger than the 57.6 percent majority the Liberal Party, which had imposed the supermajority requirement, had received in the previous election, and substantially more than the 45.8 percent the Liberal Party received to win a majority of seats in the 2005 election.

Despite the fact that the product of their work did not pass into law, the competence, commitment of the participants in this sortition deliberative process were inspirational. As Jack Blaney noted in a public address near the end of the process, praising the work and civic-mindedness of this random selection of residents, 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 percent. 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 2004b). The members of the Citizens' Assembly were extremely positive about the experience. Many of those attending the final wrap-up clearly felt that this democratic experiment would not only have a profound impact on those who participated but on society as a whole.

The Spread of Modern Sortition

Following the momentous British Columbia Citizens' Assembly, a similar sortition assembly, also looking at election reform, was impaneled in Ontario in 2006. After extensive study and deliberation, this citizens' assembly recommended a Mixed Member Proportional system for the province. However, in the ensuing referendum, which was held in conjunction with the regular election, Assembly members complained of inadequate general voter education about the relatively complex reform proposal, and the plan was rejected by the voters in the 2007 referendum. While education and deliberation by average citizens in the Citizens' Assembly led to a decision in favor of a system of proportional representation for parliamentary elections, rational ignorance resulted, as usual, in an electorate that lacked an understanding of the pros and cons of what they were voting on. It appears that most voters simply followed the lead of politicians from their preferred political party. Only the NDP and Green Parties, which together garnered under 25 percent of the vote, formally endorsed the reform proposal in Ontario. In British Columbia, none of the political parties formally endorsed that proposal, so it may have lacked the partisan flavor of Ontario's referendum.

Also in 2006, a Netherlands' Citizens' Assembly (Burgerforum) was established by sortition to advise the parliament on election reform as well. 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. The proliferation of sortition had begun.

In 2009–2010, in response to the economic crisis of 2008, an Icelandic civic organization, with the eventual endorsement of the national government, sponsored a randomly selected forum to address constitutional revisions. An early step in the process involved the convening of a one-day National Forum of randomly selected citizens to discover "principal viewpoints and points of emphasis" of the public concerning the organization of the country's government and constitution. Roughly 20 percent of those randomly selected agreed to serve, and the sample was adjusted to ensure the age, gender, and residency makeup of the sample matched the general population's. Ultimately, a gathering of 950 citizens was convened in 2010.

In 2011–2012, an innovative and grand sortition implementation known as G1000 took place in Belgium in response to the partisan electoral stalemate in that country. Again, this was initiated outside of government. More than 700 randomly selected citizens attended a summit, and thousands more participated online and in other ways. The final report contained concrete proposals on issues such as employment policy and garnered substantial media attention, notice from politicians, and general interest in this deliberative model. Support for sortition within Belgium grew rapidly.

In Ireland, the government convened a Constitutional Convention, with 66 out of its 100 members chosen by lot, to discuss possible amendments. The Convention met periodically between December 2012 and March 2014. Like most of the other citizen assemblies, it was granted only an advisory role, with the government not bound to accept its recommendations. The government failed to respond to the Convention's recommendations by the proposed deadline, suggesting the government clearly saw the Convention as ancillary. But one particular item that emerged from the Constitutional Convention was the proposal to legalize same-sex marriage that was put to a national referendum in 2015—which passed by a wide margin (62 percent in favor). A deeply Catholic country, it seems unlikely such a proposal could have been enacted so soon if left to cautious politicians. The fact that this was the first time in the world that a country had adopted same-sex marriage through a referendum was widely reported. But what was less well known, though perhaps more fundamental, was that this marked the first time a national constitution had been amended based on recommendations of a Convention primarily drawn by lot.

In 2011, the Citizens Jury model of Ned Crosby was institutionalized in the state of Oregon, USA. The government adopted a law establishing a Citizens' Initiative Review Commission. Under this law, prior to each statewide referendum on a proposal initiated by petition, the Commission can appoint a Review Panel of between 18 and 24 people. The Commission uses random sampling methods, stratified according to various demographic factors, to assure representativeness, to select the members of each panel. Each Review Panel meets for five days, studies the ballot measure, hears from supporters and opponents, and issues a report of its findings, which is published in the voter guide that is made available to all voters. Such reports typically present a majority report and a minority report summarizing the reasons some participants were for and others against the proposal at the end of the deliberation. These reports are obviously just advisory, with the referendum voters having the final say. In the initial run in 2012, it appears that most voters did not read, or even know about, this guidance, but awareness has grown in subsequent referendums. This sortition model of deliberative advice leading up to a referendum was also used in the Valsamoggia region of Italy in dealing with a proposed amalgamation of five municipalities (Felicetti, Niemeyer, and Curato 2015).

Variants of the *citizens' assembly* and *citizens jury* were not the only sortition models that began to spread. A model similar to the German Planning Cells, called a "consensus conference", was developed in Denmark in the 1980s. It is used 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). The goal was to open the debate beyond just technology experts and politicians. These Danish consensus conferences invited a random sample of Danes with no particular technological background to read and hear presentations from a range of experts and issue findings to help guide government policy. The Danish Board of Technology invites 2,000 randomly selected residents to participate, and from those who step forward, the board selects a demographically representative group (in terms of age, gender, employment, and geographic residence) of between 14 and 16 participants. After a couple of educational preparatory weekend sessions, the participants engage in an intense four-day deliberation in which they ask questions of expert witnesses on different sides of the issue and draft a final report, which is provided to policymakers and members of parliament. This model has been replicated in Holland, England, France, Switzerland, Norway, Canada, Australia, Japan, Korea, and Israel.

Deliberative Polls

In 1987, another political scientist, James Fishkin of Stanford University, developed the concept of "deliberative polling". In summary, the deliberative opinion poll works like this: A statistically representative random sample of people is surveyed on some public policy question. The respondents are then given "carefully balanced" background materials to read before being gathered to listen to a series of presentations by competing experts. They develop questions for the experts in small group discussions to clarify their understanding, but do not directly debate among themselves. Finally, participants are surveyed again to see how their opinions change. As Fishkin contends that the changes in opinion reflect the changes and conclusions that the public in general would reach if people had the opportunity and motivation to become better informed and more engaged.

Participants are paid for their time and may need to travel and be put up in hotels, so this isn't cheap. Fishkin and colleagues have received funding from a variety of governmental and non-governmental organizations to conduct many such deliberative polls around the world. One high-visibility deliberative poll in Brussels in 2007 was billed as "Europe in One Room". A 362-member representative sample from all 27 EU countries gathered to deliberate on public policies such as European pensions and retirement. The product of this deliberation was informative but had no binding effect.

In China, in 2008, Fishkin and colleagues implemented an effectively binding deliberative poll to decide on infrastructure investments in Zeguo Township in Wenling City. Government officials are committed to funding the projects favored by a representative random sample of households. By sampling households, instead of adults, a male bias was introduced, as most households chose to have a male member participate. But this bias was nowhere near as extreme as that of the party and government. The goal was to avoid any appearance of corruption and gauge public support for 30 different projects, including bridges, roads, schools, sewage treatment plants, community gardens, etc. Party and government officials were pleasantly surprised by the results of the public deliberation. According to Fishkin and colleagues:

> Jiang Zhaohua, the Zeguo Town party secretary, expected neither the high ratings for sewage treatment and other environmental projects nor the low ratings for "image" or road projects … More generally, he was surprised at the difference between the local leadership's perception of what the people would want and what they actually wanted after deliberating.
>
> *(Fishkin, He, Luskin, and Siu 2010, 12)*

The use of democratic sortition within a non-democratic government system creates interesting discomfiture in terms of democratic ideals. As Jiang Zhaohua noted,

> Although I gave up some final decision-making power, we gain more power back because the process has increased the legitimacy for the choice of priority projects and created public transparency in the public policy decision-making process. Public policy is therefore more easily implemented.
>
> *(quoted in Fishkin, He, Luskin, and Siu 2010, 12–13)*

A number of other jurisdictions followed suit and invited Fishkin to conduct several additional deliberative polls in China. In 2017, the nation of Mongolia adopted a law requiring this method of in-person deliberative polling, using a large random sample of citizens, to review any proposed constitutional amendments. The second implementation took place in 2023.

The Mushrooming of Citizens' Assemblies

However, the citizens' assembly model of sortition, derived from the British Columbia implementation, has been implemented many hundreds of times around the world in the past couple of decades. By 2015, sortition implementations were becoming so commonplace in dozens of countries all around the world (though still almost completely unknown in the United States) that a case-by-case

recitation is happily now impossible. While some of the many hundreds of sortition panels were set up by civic organizations, a huge number were formally sponsored by local, regional, and national governments. Citizens' assemblies have tackled a wide range of topics: from neighborhood concerns to legalizing abortion in Ireland; from whether to locate a nuclear waste dump in Australia, to a huge number addressing climate change. I will highlight just a few examples.

The institutionalization of sortition within government is making progress around the world. Australia took some early strides. With impetus from the NewDemocracy Foundation, founded and financed by the industrialist Luca Belgiorno-Nettis (with support from a number of leading "elder statesmen"—retired government leaders from across the political spectrum, and academics, such as Lyn Carson), there is growing interest in sortition in Australia. In 2009, the NewDemocracy Foundation organized a nation-wide Citizens Parliament among a representative sample of 150 randomly selected residents, to deliberate on issues of democratic reform. In 2012, with the assistance of the NewDemocracy Foundation, the city council of Canada Bay (a suburb of Sydney) in New South Wales, established a 24-member Citizens' Policy Panel by sortition to essentially decide on the council budget ("What services should we deliver in the City of Canada Bay, and how should we pay for them?"). While nominally advisory, the city council had committed to following the recommendations prior to its commencement. Following the success of that initial use, in 2014 the city council established another Citizens' Policy Panel to deal with the issue of leasing policy for city-owned properties. Largely due to the work of the NewDemocracy Foundation the sortition model has been spreading across Australia with large cities like Melbourne employing it for major budget decisions, and in 2016 the state of South Australia used sortition to advise on whether to establish a nuclear waste dump (the State Premier had favored this as a revenue source, but the citizens' assembly rejected it).

In response to the "yellow vest" protests in France, which began in 2018, President Emmanuel Macron initiated the creation of the *Citizens' Convention for Climate*. Macron stated that "citizens have asked for more democracy because they do not simply want to be the people who respect laws: they now want to take part in developing laws themselves". In 2019 and 2020, 150 randomly selected citizens deliberated and adopted a long list of de-carbonization policy proposals. Although Prime Minister Edouard Philippe had committed to advancing all proposals without a filter, there did end up being some cherry-picking and watering down.

The Beginnings of Sortition Institutionalization

In 2019, with the help of the G1000 organizers and others, the small German-speaking eastern region of Belgium, Ostbelgien, institutionalized sortition, with

two sorts of lottery-selected bodies. The *Citizens' Council* is a twenty-four-member permanent body whose randomly selected members each serve for 18 months. This body serves as the *Agenda Council* in my multi-body sortition design. It can select issues the members believe need attention, and call into creation a short-duration, randomly selected *Citizens' Assembly* of around 50 members (akin to the *Review Panels* of my design) to deliberate and issue recommendations. While the government is required to respond to these recommendations, these sortition bodies do not have binding policy authority.

The Brussels region of Belgium also formally institutionalized an ongoing sortition process, though the design is problematic. Committees consisting of 15 members of the area parliament, combined with 45 randomly selected citizens, each tackle an issue chosen by the Bureau of the Parliament from among those topics proposed by a petition of at least a thousand residents. The parliamentarians and allotted members can deliberate together, but vote separately, with only the votes of the parliamentarians having legal force. Parliamentarians who abstain or vote against a proposal with majority citizen approval must explain their objection.

In France, which had a number of high-visibility sortition panels, the city of Paris also established a permanent sortition arm of government with 100 randomly selected citizens. Like the Ostbelgien model, the proposals generated are merely advisory to the elected city council, though the expressed hope is that this body can help hold those elected to account. Similar truncated multi-body sortition designs have since been institutionalized in other jurisdictions around Europe.

Going Forward

The spread of sortition and its partial or possibly complete supplanting of elections will be a lengthy historical process. A first step is to spread awareness of sortition as a democratic tool—a goal of this book. This must certainly be followed by small-scale or narrowly limited implementations so that people can become familiar with sortition and evaluate how it works. These steps are self-evident since nobody will demand a reform they have never heard of and have never seen in use.

There are many possible types of implementation, including both governmental (municipal, state, national, or international) and non-governmental scenarios. Here is a sample of possible roles for random selection that may have beneficial effects in and of themselves, as well as disseminating the model more widely.

➔ One-time projects (as with the BC Citizens' Assembly)
➔ Specific issue areas (e.g., zoning, healthcare)
➔ Advisory (to elected body or to voters in a referendum—as in Oregon)

- ➔ Budgets (as in Australian municipalities)
- ➔ An allotted chamber serving in conjunction with an elected chamber in a bicameral system (though I published a paper explaining why this would be a mistake) (Bouricius 2018)
- ➔ Oversight of legislature (such as ethics rules enforcement, or redistricting)
- ➔ Single-issue short-term juries that can accept or reject legislation
- ➔ Total replacement of an elected legislative branch
- ➔ Departmental Oversight (e.g., community police commission)
- ➔ Hiring and firing a chief executive (similar to the city manager concept, but selected by a jury rather than an elected city council)
- ➔ Rotation among a pool of qualified executives
- ➔ Rotation of Judges (e.g., from among a pool of qualified lawyers)
- ➔ Constitutional Convention (as in Ireland, or advocated by organizations like Assemble America)
- ➔ Non-governmental associations (e.g., unions, co-ops)
- ➔ Workplace/enterprise governance - German co-determination labor law—seats on board of directors
- ➔ Home associations—whether low-income public housing or high-income condo and home-owners' associations, or even prisons

Notes

1 From the earliest days of elected representative government, problems associated with elections have been readily apparent. In both England and the United States, candidates commonly passed out intoxicating spirits or meals to buy votes. Indeed, the disgust about the tumult and corruption of election campaigns prompted one anonymous subscriber to the English journal *The Political Register and Impartial Review of New Books* in 1768 to propose (presumably tongue in cheek) that elections for parliament be replaced by a lottery. Lottery tickets would be sold, with the winners getting seats in parliament. Five percent of proceeds would be set aside to buy "guzzle" for all the boroughs, with the remainder going to pay off the national debt; "by which scheme the noisy and expensive business of electioneering (which puts the whole kingdom in a ferment) will be over in two hours, many people have an opportunity of serving their country cheap, and much bribery and corruption prevented." ("Scheme of a Political Lottery, for the Peace of the Kingdom" 1768, 255–256)

2 This is variously spelled as "Citizen Jury", "Citizens' Jury", and "Citizens Jury", the last of which was trademarked by the Jefferson Center.

3 The circumstances that led to the creation of this landmark use of sortition are interesting. In 1996, although the BC Liberal Party won a plurality of the votes province-wide over their main rival the New Democratic Party (NDP), by 42 percent to 39 percent, with most of the remainder going to parties of the right. However, due to split-votes in a series of winner-take-all plurality multi-party contests in districts (ridings) throughout the province, the New Democratic Party (NDP) won more seats in the provincial legislature and formed the government. This "unfair" distortion of the "public will", generated by the specific characteristics of the electoral system,

prompted Liberal leader Gordon Campbell to pledge that the next time the Liberal Party gained power they would convene an assembly to examine the electoral system and propose reforms, if deemed appropriate. In the following election, in 2001, the Liberal Party won a majority (57.6 percent) of the popular votes, but as a result of the winner-take-all plurality election rules in each riding, won a wildly inflated 97.5 percent of the seats in the legislature (seventy-seven out of seventy-nine seats). Such wild swings in election outcomes from substantial, but still far more modest swings in voter preferences, are a risk in any winner-take-all single-seat election system. Rather than simply enjoying their extreme good fortune, the Liberal Party leader Campbell followed through on his commitment to convene a special assembly to study how to improve the election system

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OTHER USES OF SORTITION

Non-Governmental Sortition

Up to this point, I have focused primarily on sortition as it applies to governmental units, whether national, state, or municipal. However, there are many sorts of non-governmental associations that nominally operate (or seek to operate) democratically. These would-be democratic organizations include unions, consumer cooperatives, housing associations, credit unions, worker-owned businesses, and even global non-governmental organizations (NGOs). Even virtual associations such as internet platforms might seek to function democratically. There are also countless other organizations that do not currently seek to operate democratically, but perhaps should, including schools, charities, and even for-profit business firms. These would-be and could-be democratic associations have a pretty poor track record in terms of achieving equality, participation, and self-rule. Many of the failings that afflict nominal governmental democracies are also visited upon non-governmental democracies. Some problems, such as expensive election campaigns and gerrymandering, may not apply, but the more fundamental problems, such as rational ignorance and elite domination, are rampant.

Elections can work in very small organizations where members know most of the other members personally. Some small organizations may function using some variant of direct democracy. Think of the stereotypical worker-owned business that has frequent all-member collective meetings. These micro-democracies have their own problems. But the tougher issue is that neither elections nor direct democracy is scalable to huge organizations. Elections are the only familiar tool for representative selection in large organizations. The jury

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model of sortition never enters the minds of members as an alternative to consider. In this chapter, we will explore the advantages of sortition. Sortition can allow non-governmental associations to solve many of their democratic deficits. It is generally easier to make big reforms within private associations than within governments. But even some private associations may be chartered under state statutes that mandate the use of elections—so some legal research needs to be done before launching any specific reform effort. By experimenting with sortition in non-governmental associations, democratic reformers can amass a wealth of real-world experience that will also be useful for subsequent governmental reforms. Trial and error is an essential part of perfecting democratic procedures and design.

When is Sortition Appropriate?

It is important to note that sortition is not always the appropriate democratic tool. Dissatisfied members of an association have the classic choice of "voice or exit"—speak up or quit. Sortition is most useful for larger organizations with defined memberships, where exit by individuals would be a personal hardship. Governments meet this criterion, as do associations dealing with necessities like housing or employment. Simon Pek has argued that sortition might be a good tool for reviving democracy within labor unions (Pek 2019). While a person might technically be able to leave their union or job by quitting and looking for new employment, and a condominium owner might be able to leave a condo association by selling their unit and moving, the effort entailed makes this an impractical hardship. Exercising voice through some democratic process is fitting. In contrast, voluntary advocacy organizations with more porous membership boundaries (such as political parties or movement organizations seeking to make changes in society) do not satisfy this criterion. Members of such organizations have a wide range of commitment levels, with many members being peripheral. Members who disagree with the direction of their organization can easily quit. They can even help form a new organization more in keeping with their preferences. Such associations might prefer the principle that the more one contributes through personal effort to the project of the association, the more say one should get. Members who attend a lot of membership meetings and do lots of volunteer work get to have more say about how the organization is run. This is an alternative to the democratic principle of political equality.

The Iron Law of Oligarchy

All large membership organizations that seek to govern themselves democratically face the problem of how they can maintain member interest in matters of organizational governance year after year, and avoid elite or management

"capture"? The crux of the problem is the nearly exclusive reliance on elections as the tool for selecting governing bodies. The problems of apathy, self-selection bias, and rational ignorance plague both election-based systems, as well as open participation direct-democracy attempts at democracy.

Early in the twentieth century, German sociologist Robert Michels wrote a landmark analysis, *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy* (Michels 1915). He asserted that any organization, regardless of intent, will sooner or later develop an internal "ruling class". Even if these elite members share the goals of the general membership, they will also develop interests uniquely their own, which include preservation of their role as leaders. This governing elite may consist of paid staff or an elected board of directors. This is driven by the division of labor and specialization, along with the control over the flow of information to members, or control over the decision-making rules, combined with low participation rates and indifference among members.

This came to be known as the *iron law of oligarchy*. As Michels wrote, "the apathy of the masses and their need for guidance has its counterpart in the leaders' natural greed for power" (Michels 1915, 127). Oligarchy can arise by default, rather than usurpation by power-hungry managers or elected elite. The managers of the would-be democratic organization may simply feel the need to step in and fill the vacuum of decision-making created by uninterested members. Everyone may wish that the organization were more democratic. It is the design of the governance system that is at fault, rather than necessarily the moral flaws of the staff, board, or general members.

Michels identified a powerful tendency, but myself and others (Diefenbach 2018) argue it falls short of an "iron law". The tendency to oligarchy is shaped by institutional design and other factors. A key is to allow a division of labor but avoid specialization in the key domain of decision-making, through the use of regular rotation by means such as sortition.

The problem of rational ignorance is multiplied in the cases of non-governmental democracies, especially if a person is a member of more than one would-be democratic association—for example, a member of a food co-op, a union at one's workplace, a credit union, and a number of charitable associations each seeking the engagement and attention of the member. The small minority of members of an organization who are deeply engaged may bemoan the "apathy" of the other members, but no amount of cajoling or mobilization tactics will overcome the reality that members have a limited amount of time and attention they are willing to offer on an ongoing basis, year after year.

Avoiding Oligarchy with Sortition

In the eighteenth century, English philosopher Jeremy Bentham used the term *active aptitude* to describe the conscientious attention to duty that a

decision-maker needed to have (Elster 2013). He wasn't referring to some inherent character trait of people, but rather the results of various possible procedures and designs of legislative bodies. It is this active aptitude that citizens will generally fail to exhibit when acting as a rank-and-file member of a large "democratic" association. While the pejorative term "apathy" may be applied, "rational ignorance" is a more appropriate term. It just isn't reasonable to expect most people to devote the amount of effort needed to remain "up to speed" on the large number of issues that face every would-be democratic association, especially when their one vote as part of a mass is extremely unlikely to actually make any difference (especially when a slate is proposed that matches the number of seats to be elected).

Sortition can solve these problems. The solution that sortition offers is asking a subset of members to give full attention to the needs of their co-op for a relatively short period of time, with the understanding that another subset will take a turn subsequently, and then another, etc. Not all members can have active aptitude, but a group can for a limited duration. A large statistically representative sample might be needed on occasion (for very big decisions), but much smaller random samples may be sufficient for certain governance tasks. Unlike governmental mini-publics, which sometimes need to balance fundamentally incompatible societal interests, members of democratic associations generally have a common shared interest that permits a somewhat smaller sample to suffice. Also, members of a smallish board of directors are more akin to delegated agents, rather than constituting an accurately representative body. This concept is affirmed in the commonly used term "board of trustees".

However, I need to be clear that my idea is not to randomly select a small board. There are many obvious problems with such an approach. If the only concern were impartiality and protection from corrupt manipulation (such as for a court jury), random selection of a small sample might suffice—but democracy also requires some degree of representativeness. Such a small sample size, typical of a board, has a high risk of being unacceptably *un*representative of the membership. Statistical representativeness is tied to the law of large numbers. Another, perhaps more serious problem with selecting a small board by random selection, is the issue of commitment. A board would need to serve longer terms than a typical court jury—probably a year at an absolute minimum—and many members simply wouldn't have the necessary level of commitment, free time, or energy to give adequate attention. Further, a typical board of directors ideally would have an assortment of traits, some of which might be fairly rare in the pool of members. These desired traits would probably be included in a largish mini-public, but could easily be missing in a small board. There is a distinction between a mini-public that only made broad decisions about policy direction, as opposed to the ongoing detailed oversight of a business's finances, staff, etc., typically required of a board.

The better way to employ sortition, if a relatively small board is intended, is through a two-step process. A larger, more representative short-duration mini-public could be randomly selected to act as a sort of nominating or hiring committee to recruit and select a smaller board of directors, or, in lieu of a board of directors, adopt strategic plans while evaluating, as well as hiring and firing, a manager directly. My focus here is not whether a small board of directors or large member assemblies make policy, but rather how the general membership can exercise informed control of the organization. To maximize the willingness of ordinary members to participate in a mini-public, the jury should be of short duration (perhaps only a few meetings), and its members would be compensated in some manner (e.g., a discount, catered meals during meetings, or direct payments). Short-duration representative juries are an excellent way to ensure ultimate authority and regular oversight by the ordinary members as a whole. Very few members will keep on top of their co-op's issues week by week, year after year, but most members would be willing to focus on their co-op governance matters for a small amount of time (perhaps with some compensation), knowing other regular members will do likewise in turn.

Relying on pure volunteerism for this task is dangerous, since self-selection bias can allow unrepresentative special interests to dominate. However, one impetus toward oligarchy, which Michels discussed, was the control of information by the existing staff or board. It is entirely possible that a temporary mini-public could be artfully manipulated if it were dependent on such "oligarchs" for its information. For this reason, an effort to use sortition as a democratic tool also necessitates independent facilitation and staffing, not selected by the existing staff or board. The procedure for ensuring independence needs to be institutionalized at the outset, and not be an ad hoc effort at the time of each lottery drawing. There are many possible ways of managing this. Perhaps a separate oversight board made up of members from previous mini-publics would be charged with arranging facilitation for the next mini-public. If sortition became widespread, a cottage industry of experienced mini-public facilitators might grow (indeed *has* grown in many countries) who would be crowd-source-evaluated for such things as competence and impartiality, etc. Chosen facilitators would need to have free access (with appropriate confidentiality commitments) to all of the co-op's records and information, to assure the mini-public got fully informed. These facilitators would be evaluated by the staff and members of the mini-public, and file a report about problems and successes at the conclusion of the mini-public that the subsequent facilitator could use to make improvements.

To demonstrate another superiority of a sortition recruiting process for boards over elections, let's take a hypothetical example of a cooperative whose members all want to have a balanced board that reflects the diversity of the membership. They all want a board that also includes a member with a legal background, one with budget and bookkeeping experience, and one with lots of media skills.

Suppose plenty of candidates meeting these criteria decide to run for the board in an election. Because of the problem of voter coordination, regardless of whether a block plurality, ranked-choice preferential, or other voting method is used, it could easily turn out that the mix on the board that gets elected fails to meet most of these criteria that all of the members believe are important. The board may turn out to be all white males without any media or bookkeeping experience.

The way that some co-ops try to overcome this problem is by having a nomination committee select a favored "slate". For this to work, the election itself must be nominal or token, and it is the selection of the nominating committee that is the point of democratic challenge. With the jury model, a large representative nominating committee can be selected by lot. This randomly selected mini-public could interview potential board members and seek to come to a consensus about the best mix of people to form a balanced board. The election could be dispensed with or maintained merely pro forma or to give the membership a veto option. While most democratic associations have bylaws that mandate the use of elections, they rarely mandate the details for the process of nomination, leaving the door open for easy implementation of a sortition process. Once the system has proven itself, however, it is desirable to amend the bylaws to institutionalize the sortition procedure, because the iron law of oligarchy will always remain a threat with some current group in authority seeking to cement their power.

However, even if the board is democratically selected using a sortition recruitment body, there is another locus of "elite control". An executive director is generally hired and fired by the board. But the board is very part-time and gets most of its information from the executive director, developing a collegial "same-team" relationship. It is common for non-profits to actually have the executive director and staff manipulate the board and preserve oligarchic control. For this reason, it is better to have the executive director hired and fired not by the board, but by single-purpose lottery-selected review bodies that have no relationship with the executive director, but can interview supporters and detractors.

The lottery selection process itself must be completely transparent and public so that there is never any question within the membership whether the mini-public selection was honest or manipulated. In Classical Athens, a simple mechanical device was invented called a *kleroterion*, which used colored balls to randomly and publicly assign citizens to mini-publics tasked with making public decisions. It might be wise to display and honor this lottery drawing as the foundation of the organization's democracy with some sort of public celebratory event.

Public Oversight Role for Sortition

The anti-corruption potential for sortition suggests new sorts of public oversight mini-publics. There are situations where some activity has a significant

impact on the public, but where the public has no, or ineffective, input. Here I am discussing quasi-governmental functions, which are not currently handled by existing governments, but might be well-suited for sortition oversight. I will not present any fully formed proposals here, but merely suggest the sorts of things sortition could be used to address.

Some cities that have had serious problems with relationships between police departments and the community have appointed community oversight boards. Rather than having elected officials appoint a group of self-styled "community leaders", a community panel that is fully representative of the community could be drawn by lottery. The goal would not be to assemble leaders or experts, but rather to facilitate the expression of community priorities and values. Any such oversight body obviously needs its own staff and control of information flows independent of the politicians and the entity being monitored. The body would also need to have real power over the organization they were overseeing.

Some examples of possible uses will help. As technology advances, we are entering an age in which aerial drones and public video cameras, linked to facial recognition software and identity databases, could make policing much more effective, but also subject to abuse and loss of privacy.[1] If such technology is to be deployed, it makes sense to ensure that it remains permanently under democratic control of the populace and that no government officials or police department can abuse it. The jury model is a natural fit here. In ancient Athens, public officials were subject to review by an auditing jury, as a further protection against corruption. A constantly refreshed body of ordinary citizens supported by their own independent staff could prevent or punish abuse today as well.

We have barely begun to scratch the surface of all the places where sortition could improve public life.

Student Governments

A valuable avenue for advancing sortition-based democracy is within schools and colleges. Student government is supposed to be both a (very limited) venue for democratic governance and an educational model for how democracy functions. In reality, of course, it is recognized that student government elections are generally a deeply flawed popularity contest (not that unlike the "real world"). While not effectively teaching the idealized vision of democracy, these student elections ironically come closer to teaching its actual defective character.

Under the typical existing high school student government with an elected student council, a handful of kids may learn democratic skills such as parliamentary procedure, tools of persuasion, and debate. These few students are effectively groomed to become future elites, while most students (those not on the student council) learn that democracy is about being relatively passive voters and then leaving decisions to those who are "better" or more popular than they

are. As with so many pedagogical approaches, a common "lesson" can teach different students different things. A teacher with an authoritarian style may teach most of the students how to accept an authoritarian boss in a future job, while kids from more privileged circumstances may learn *from that same experience* how to act as an authoritarian boss themselves one day.

What if, instead of using elections, students were randomly selected to serve on a mini-public student council, with regular rotation, such that most or all students got a turn as policy-makers? In addition to teaching far more students about how to engage in democratic deliberation, this could open the door to this democratic process in other domains once they become adults. The selection could be a stratified sample to ensure an appropriate balance of classes, genders, etc. The executive officers could be selected by the student mini-public, rather than a mass popularity contest.

Of course, if the student government doesn't have any meaningful authority, many of the selected students may not take the task seriously. For democracy education to have any hope of working, the student government would have to be empowered to make some decisions that actually mattered to the students.

The discouraging impact of not having much real authority doesn't become apparent as an issue in traditionally elected student councils simply because the councils are self-selected candidates willing to run and participate in that largely symbolic and relatively powerless role if elected. Students may choose to run for student council for reasons of status, ego, resume-building, or similar motivations, even if it is a sham activity with no genuinely meaningful decision-making power. I haven't seen any statistics on this, but I suspect that a disproportionate share of elected governmental politicians were elected members of some student government in their youth.

It is beyond the scope of this book to propose what sorts of decisions high school students themselves would deem worthy of their time and effort, but I am confident they exist. A fundamental question, of course, is whether administrators, faculty, and communities would agree to cede any such authority to children. It would have to be decision domains that wouldn't put school finances, quality of student education, or safety at risk if poor decisions were made—because democracy can result in some bad decisions as well as good ones. It would need to go beyond choosing a school team mascot, however.

Starting in 2014, an organization called *Democracy in Practice* worked in multiple public schools in Bolivia to replace traditional student elections with voluntary lotteries. The lotteries were typically done in a way that ensured an even gender balance and a representation of different grade levels. Once formed, these student governments then employed a second round of sortition to determine individual roles, such as spokesperson and treasurer. The idea was to ensure that all students, regardless of popularity or charisma, had the same opportunity to enter student government and learn different roles as a way to develop civic

skills. If a selected student did not take the position seriously or did not do an adequate job, they could be removed by their peers. Lotteries were also used in these student governments to assign necessary tasks that no one wanted to do, and to distribute occasional prizes that incentivized attendance and punctuality.

While there are some who hold that they should elect the "most capable" to form student government, most students and staff at these Bolivian schools have embraced the lotteries, seeing them as fairer and more equitable—resulting in more representative student governments, which are also more participatory. Although this particular project has come to an end, the practice may start to catch on, as in 2017 it was named one of the one hundred most inspiring educational innovations globally by the Finnish organization HundrED, and featured by the renowned author Malcolm Gladwell in one of his podcasts. *Democracy in Practice* published free PDF guides and videos on their website (www.democracyinpractice.org), to help educators and students around the world bring sortition and other democratic innovations into their schools.

When we graduate to universities, young adults can be trusted to seriously take responsibility for a raft of decisions that significantly affect them while at the university. Jeffrey Kennedy and Simon Pek published an important paper examining the inadequacy and failings of most existing university student participation systems, and argued that sortition is a promising tool for addressing the democratic deficit and enhancing the "deliberative capacity" of universities (Kennedy and Pek 2022). They propose using advisory mini-publics as a starting point, and point to the use of sortition at Queen Mary University of London School of Law and Victoria University in Canada as recent examples. Further, they suggest that universities often serve as transmission platforms for spreading ideas throughout society. Students who experience genuine democracy with sortition would be more likely to make those democratic demands and changes in wider society as adults.

On the Internet

In addition to long-existing member associations that seek to govern themselves democratically, there is a new sort of association made possible by peer-to-peer creations on the internet. As an example, suppose some large internet entity, such as Uber or Facebook, were owned by its users in a cooperative, rather than owned by stock investors. The term "platform co-op" can be used to describe such organizations. Many platforms can be developed with minimal upfront capital. The paradigm by which the founders eventually get to cash in with a public stock offering is not the only way such internet firms could mature. A democratic co-op option is possible. But how could an organization with members who may be spread across the globe, most of whom have minimal or no direct knowledge or interaction with other members beyond that mediated through the

particular application, run the organization as a democracy? How could they hold elections in which members are well informed about issues and candidates (when even high-stakes governmental elections fail this standard)? Certainly, the internet could allow all members who wished to vote directly on policy in a sort of indirect–direct democracy, but the problem of rational ignorance would still dominate. Elections are only a responsible governance tool if the voters understand what they are voting on. Rather than throwing one's hands up and concluding that a global democracy of a business or other sort of association with many millions of members is just too impractical, we need to consider sortition.

Imagine a cooperatively-owned ride-sharing service. It might be owned by the drivers, or by the riders, or both. Let's take an example owned by the drivers. A feature of a lottery is that although for typical associations it is standard to give an equal probability for each member to be drawn in a governance lottery, it is also possible to tailor it to unique circumstances. We could assign drivers proportionate chances in the lottery based on how many hours per month they drive, for example. If a driver governing assembly is drawn, it could fairly reflect the interests of the drivers as a whole, including a balanced share of full-time and part-time drivers. These drivers might get a healthy salary to devote themselves to the issues of governance for a set period, in lieu of their regular driving time. But with regular rotation, these directors would know they were making decisions that would affect them once they returned to being drivers. There are numerous possible variations on this theme, in terms of what tasks mini-publics might be charged with, their terms of office, their size, etc. A worker-owned business might decide to use a stratified random sample to ensure each department gets an appropriate number of members (such as from the sales department, factory floor, human resources, etc.)

As I mentioned in Chapter 1, sortition could also play a vital role in oversight and regulation of such areas as artificial intelligence (AI) technologies and content moderation of social media. It is clear that control by either traditional government authorities or corporate profit-seeking interests can be extremely dangerous for such powerful technologies.

Sortition on a Global Scale

Whether democracy is achievable on a global scale is not immediately self-evident. Currently, politicians, autocrats, and various special interest experts negotiate global treaties and coordination protocols. In many cases, what is best for the politicians of nation-states is not what is best for the people of the world, or even best for the people of their particular countries. There is a range of challenges facing humanity on a global scale (climate change and artificial intelligence being two that are currently front and center), where democratic governance could make a fundamental difference. While enforcement procedures

are an obvious hurdle (not even the UN can enforce its resolutions), a crucial initial step is to devise a means of making global decisions with sufficient moral weight. This is where sortition is key.

In 2017, sortition scholars and activists on four continents crafted a proposal for how sortition could be used on a global scale to dramatically improve global decision-making on tough problems with global reach. The plan was prepared for a prize competition sponsored by a Swedish charity, the *Global Challenges Foundation*, seeking innovative ways to improve the world's fraught global situation. While the design did not win the competition (and the $5 million award), the effort did generate a design that really could make a difference in the world. I was one of those working on this effort. The team used the multi-body sortition design I had developed in 2013 (and discussed in this book) as its jumping-off place. The beginning of the abstract from that grant proposal nicely sums up the task:

> Global cooperation and coordination on crucial pan-global problems have been stymied by parochial interests—either by national governments and their politicians, or business enterprises with short-term imperatives. No decision-making process currently exists that carries sufficient moral legitimacy to compel global action. This proposal can solve that crucial problem and generate that global, moral authority. This can be accomplished by facilitating decision-making by the people of Earth themselves, rather than as bickering national, religious, corporate, ethnic, or other factions. The key question is this: "What would the people of the world choose to do in addressing various global problems if they could somehow all focus on one particular problem, learn all about it, hear a wide range of possible solutions, deliberate and decide what to do?" By using networks of statistically representative mini-publics, we can actually answer this fundamental question.[2]

In 2021, the first actual global sortition project was conducted to coincide with the global climate change conference, COP 26 (Conference of the Parties). This global assembly convened one hundred ordinary people from around the world to discuss and make recommendations on issues of global concern, beginning with climate change. The citizens' assembly was sponsored by a number of civic organizations, including Missions Publiques, as well as the Danish Board of Technology, the Scottish government, with support from the UN, and the Centre for Deliberative Democracy and Global Governance at the University of Canberra acting as its secretariat.

The sampling method failed to meet the genuinely random standard, with the pool of representative people being submitted by local civic organizations around the world. Random selection on a global scale would always be challenging,

with many governments having no central lists of residents, and many people living in makeshift shelters without addresses, etc. Even if the members were genuinely randomly selected, however, the sample size of one hundred was also inadequate to provide meaningful statistical representativeness. Thus, this first global assembly was largely symbolic. However, this was an initial step along a vital path.

In 2023, the Global Citizens Assembly Network (GloCAN) was founded. This consortium sought to learn from the experience of that first global assembly and do further research to lay the groundwork for future global democratic decision-making using sortition.

The goal of this chapter has been to prompt the reader to think of other possible circumstances in their own situations where sortition might be useful. There must be widespread every-day experience with sortition before it is likely to supplement or supplant elections at the governmental level.

Notes

1 There are already companies seeking to contract with municipalities to provide constant aerial drone video recording of entire cities, allowing police to review video to determine, for example, where each car that was near a crime incident came from, and where it went after the crime.

2 The remainder of the abstract summarizes the design:

> In a nutshell the concept is that initially one global problem selected by the UN General Assembly (perhaps from the UN 2030 Agenda for Sustainable Development) would be tackled. National and regional mini-publics, termed citizens' assemblies, would take place all over the world, where perhaps 400 people at each mini-public would convene to learn all about the issue, interrogate experts and examine proposals generated by a variety of volunteer Interest Panels for addressing the problem. Each mini-public would seek to narrow the wide range of proposals down to those they believed were most desirable, and generate questions needing to be answered before a final choice could be made. A few members from each of these national and regional mini-publics would be randomly selected to serve on either a Global Citizens' Assembly, or a Global Agenda Council, which would select the issue to be tackled in the next round. The Global Citizens' Assembly would again hear from experts and ultimately adopt a resolution carrying at least the weight of a UN resolution, except this would constitute the considered democratic judgment of the people of the world, rather than of politicians.
>
> Of course a global citizens' policy does not automatically carry the force of global law (legitimate coercion to compel compliance). As with UN resolutions, nation states can violate the new global policy. But this is an alternate approach, which has the possibility of exceeding the legitimacy of the undemocratic United Nations ("undemocratic" because it is based on one nation one vote regardless of population, not to mention the arbitrary veto power of the permanent members of the Security Council), which represents nation states rather than people. Whether the sovereignty of the people of the world can ultimately supersede the sovereignty of any individual jurisdiction remains an open question.

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SORTITION DESIGN FOR THE FUTURE

Dilemmas of Sortition Design

We should carefully consider human factors and design elements that contribute to, or hinder, good legislative decision-making, especially for randomly selected legislative bodies. We should not only be concerned with the legitimacy or fairness of decision-making, but also the quality of the outputs. Landemore makes an interesting argument in her book, *Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many*, that democratic group decisions have a greater probability of being "good" than the decisions of smaller oligarchic groups, even if both groups have the best of intentions.

However, democracy does not assure justice or "good" decisions. It may open the door to such decisions with optimal institutional design, but all it can promise is freedom from oppression by a powerful minority. An informed majority can still make "mistakes". A majority, or even a unanimous decision that causes the death of millions, might arise through a democratic process. The citizens of Athens democratically decided to launch wars of aggression. The use of the democratic process does not change the moral or ethical predisposition of the participants. Also, an intolerant, illiberal culture, which places inordinate weight on the opinions of certain individuals (whether political, religious, or otherwise), may not be able to benefit from the advantages of democratic design.

Setting aside definitions of morally or ethically bad decisions, we can focus on avoiding "bad" decisions that the makers of the decision themselves would agree were bad if they had had more information, understanding, or through after-the-fact hindsight. Being minimally "democratic" is desirable, but not sufficient for avoiding such bad decisions.

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Rather than focusing on design elements that are hoped to generate *good* decisions, many political theorists have deemed it more practical to focus on design elements intended to avoid *bad* decision-making. Madison's hope that a vast republic with institutional checks and balances could prevent any one faction from taking control to pursue their narrow self-interest was essentially a defensive concept (though the quick rise of national political parties that spanned the three branches of government effectively stymied his hope). Devising ways of preventing bad decision-making more than assuring good decision-making was also the approach of other theorists, such as Jeremy Bentham. The goal can be summarized by the title of one of Bentham's nineteenth-century works and that of modern theorist Jon Elster of Columbia University—*Securities Against Misrule*. How can we minimize the problematic proclivities of human psychology (such as confirmation bias, groupthink, and self-aggrandizement) and their tendency to poison good decision-making? What institutional design features and procedures minimize the likelihood of "bad" decisions, and maximize the likelihood of "good" ones? Cognitive biases are notoriously difficult to avoid, but recent research suggests that certain procedures and bias reduction training may indeed help (Sellier, Morewedge, and Scopelliti 2024). Such procedures and training are in fundamental conflict with politicians' power-seeking priorities, but could readily be deployed within mini-publics. We should examine ancient insights as well as modern discoveries of social psychology in order to avoid the pitfalls that have crippled so many democratic efforts over the centuries. What follows is a substantial, though not exhaustive, list of factors that need consideration. We will quickly discover that there are dilemmas where solving one design problem will make another problem worse. In short, no *single* design can be optimal across the board. A single body will necessitate inevitable trade-offs. However, as I summarized at the end of Chapter 11 and described in greater detail below, there is a design that can resolve these dilemmas and avoid trade-offs. I refer to it as the *multi-body sortition* model.

Five Dilemmas of Sortition Design

When people first imagine a sortition democracy, it is common to imagine a one-for-one replacement of an elected chamber, with one selected by lot. This would be a big mistake. All single-body sortition proposals face five dilemmas—five pairs of opposing objectives—which can't be reconciled with only one type of body.

1. There is a conflict between maximizing accurate and descriptive representativeness, versus maximizing interest and commitment among members of a deliberative body. In *Deliberative Democracy in America: A Proposal for a Popular Branch of Government*, Ethan Leib seeks to maximize descriptive representativeness and avoid the bias of "participatory distortion" by

insisting on mandatory service as in a jury or draft (Leib 2004). Some other theorists and advocates put more priority on assuring interest and motivation. Their designs tend more toward volunteerism, or a lottery of the willing. Accurate representativeness also requires a large sample—a group that is then too large to engage in active deliberation effectively.

2. There is a conflict between spreading participation widely, maximizing resistance to corruption on the one hand, through a large number of short terms of office, versus maximizing participants' expertise or familiarity with the issues under consideration through far fewer, longer terms. Longer terms increase expertise, but also increase the risk of corruption. Further, certain sorts of people would be willing to serve long terms, but others would consider it an unacceptable imposition and would be unwilling to "do the work".
3. There is a conflict between giving every citizen the right to speak (encouraging self-selection)—offering agenda items, information and arguments for the deliberative process, versus the danger that the self-selection of those most motivated to speak will promote domination by special interests and steer outcomes away from the common good. Those who seek to speak are not usually typical or representative of the general population.
4. There is a conflict between wanting a diverse body that engages in problem-solving through active deliberation, fostering *collective intelligence*, versus independent personal assessment and private deliberation that taps the *wisdom of crowds* and avoids information cascades, but which shuts out the sharing of private knowledge. There is persuasive research showing the value of cognitive diversity for problem-solving, but also the value of independent, private assessment of information (Page 2007; Landemore 2012a; Lorenz et al. 2011; Surowiecki 2005). Group deliberations can also suffer from deference to high-status members or group solidarity, leading either to groupthink or polarization (Sunstein 2003).
5. Lastly, there is a conflict between maximizing democratic power by allowing a deliberative body to set its own agenda, draft its own bills, and vote on them, versus avoiding the bundling of issues, with the resulting vote-swapping, as well as arbitrary decisions arising from the persuasive powers of a few unrepresentative charismatic members (Sutherland 2008). These five dilemmas are not exhaustive, but are crucial.

Before diving into the solutions to these dilemmas, I am proposing below, I want to touch on a couple of other design considerations.

Motivation to Participate

Any proposed system that requires an increase in the amount of citizen participation, as this one does, must respond to the question of whether there would be

sufficient motivation among broad swaths of the population to participate. After all, only a minority of citizens is willing to vote in most American elections, and that requires relatively minimal time and effort. New England communities that still have town meetings also see only a fraction of their citizens attending. The competing uses for personal time in modern society, and the "unattractiveness" of politics to most people, raise serious questions about the viability of any such democratic undertaking, especially one centered on deliberation and broad participation (Warren 1996). Even in Classical Athens, democracy was an activity only of that (quite large) portion of the citizenry who chose to participate by volunteering for the lottery pool, or attending the *ecclesia*. The goal with this plan is to go one better than Athens and include the general population, rather than merely those who are eager to participate.

The (testable) assumption I make here is that most citizens would readily participate for a set period of time, with appropriate compensation, in a process in which they believed their input really mattered (unlike mass elections). This democratic process would bear almost no relationship to "politics" as we know it today. While there are high levels of satisfaction reported by participants in various deliberative processes, such as the British Columbia Citizens' Assembly, or the Danish Consensus Conferences (Fischer 2009), this may be misleading, since participants were randomly selected from among those who already responded that they were interested in being one of those "selected". Satisfaction with serving on a court jury is more indicative and suggests that sortition for policy making does have the potential to overcome the "rational ignorance" problem of mass elections. Just as jurors in court systems may complain about the nuisance of serving, they almost universally take the job seriously. Indeed, many jurors go away with a heightened sense of citizenship (Matthews, Hancock, and Briggs 2004). The multi-body system described below also seeks to accommodate varying levels of willingness to commit personal time to self-governance. The largest portion of participants would commit a very limited time—say, no more than a week (serving on a municipal-level Policy Jury). Those serving on a national-level Review Panel might serve a year or more.

Ongoing Design Revision

In a mature sortitional democracy, the group or organization that designs deliberative processes should also be democratically controlled. Otherwise, the designers may corruptly create a system that tilts policy outcomes in their preferred direction. Ideally, this meta-legislative design task would be undertaken, or at least overseen, by a separate mini-public created specifically for this function, rather than as an initial step of a policy deliberation. Isolated from any particular legislation, people who would be on opposite sides of a debate on a "policy issue" can agree on what procedures, rules and expert witness selection

process should be used by future mini-publics, which they won't be a part of. A randomly selected meta-legislative body could consult experts and use the latest research on group decision-making and cognitive biases to engineer an optimal decision-making process, without the electoral imperative that forecloses this possibility for an elected chamber. Therefore, the design I presented at the end of Chapter 11 and further explicated below in relation to the dilemmas discussed above, is only a starting point, which I expect to be improved over time.

Solving Dilemmas with Multi-Body Sortition

This proposal uses a variety of bodies, each with unique characteristics (such as selection method and term of office) that are optimized for the task each body handles, and to overcome the dilemmas discussed above. The proposal below is comprehensive—a sort of "reference design" such as that used by architects. In real-world applications, it is likely that certain bodies described might be used, and others not. For example, a city government might utilize the Rules Council, Review Panel and Policy Juries within one specific policy area, but keep the Interest Panel, Agenda Council, and Oversight Council functions within the existing city council.

Core Bodies

Agenda Council

An Agenda Council will be created periodically (or as a permanent body, with rotating members) to set the agenda for topics, policies, or laws deemed important to address in the coming period of time. This body might consist of 150 members. A serious problem with the current system of politicians setting the agenda is the priority of mobilizing voters by selecting hot-button issues that make it easy to vilify other politicians. Politicians also have a motivation to elevate issues that big-spending lobbyists want on the agenda, regardless of public benefit. It is also electorally inconvenient to raise issues that are highly complex, or don't have easy sound-bite policy options, unless the reality on the ground or crisis has forced this agenda item forward. A random sample of citizens has an interest and motivation to hear from a variety of opposing experts, and take a long-term view (rather than prioritize the next election cycle), and so is likely to generate an agenda more beneficial for society. The Agenda Council would issue a call for proposals on each of the agenda items selected.

It might be appropriate to also have an alternate petition route to add topics to the ensuing period's agenda. Of course, those petitioning couldn't determine the direction of policy, since the Review Panels and Policy Juries discussed next may conclude the best public policy is the opposite of what the petitioners hoped

for. Since petitioners are by definition self-selected, they raise topics, but do not determine outcomes.

Interest Panels

Good ideas for specific policies are spread throughout society, and this is a compelling reason to open the gates wide for draft proposals on the agenda topics. Self-selection at the level of the Interest Panel allows experts who would be unelectable (due to their appearance, lack of wealth, personality, or other traits) to contribute to governance. It also means that special interests and self-deluded incompetents could participate. While a panel of a dozen would be likely to identify and discount the ideas of "wackos", it is likely that some Interest Panels would put forth terrible legislative proposals. This is one reason why it is desirable to have a large number of Interest Panels, and why self-selected Interest Panels should not make ultimate decisions. This is real democratic participation, as opposed to partisan marketing, which is the focus of electoral participation. Some of them might deadlock or disintegrate due to quorum failures. In most cases, however, multiple Interest Panels would produce draft proposals for the next level allotted body—a Review Panel—to consider.

These Interest Panels could be structured in a variety of ways. Each panel would be small enough to facilitate active participation (perhaps a dozen members). A group of like-minded people could self-organize (perhaps with a common concern). Other panels could have randomly matched volunteers to create more diverse groups.

There would be as many panels as needed to allow anyone who wished to participate to do so. Interest Panels at the local level might meet in person on weekends or evenings, but, where Internet access is common throughout society, many would likely use online collaboration tools that allow members to communicate and work on proposals sequentially, rather than needing to coordinate meeting times. These panels would be generating raw material, rather than making any final policy decisions, so their lack of representativeness is not important. However, because they know that their work product will have to pass muster in front of subsequent representative bodies, they have an incentive to craft proposals that serve the common good, rather than just some special interest.

Review Panels

There would be a Separate Review Panel for each policy domain (for example, one for transportation, one for healthcare, etc.). The process of the Review Panel would be significantly different from that of an elected legislature.[1] The Review Panels fulfill the central function of traditional legislative committees, excluding agenda-setting and the initiation of legislation. They also have no role in the

final passage of legislation. They might operate using a process similar to that of the British Columbia Citizens' Assembly, with a learning phase, a deliberation phase, and a drafting phase. They would receive the raw inputs from the Interest Panels, compare, combine, reject and amend various draft proposals to prepare a final piece of legislation to pass on to a Policy Jury for final adoption or rejection.

A democratic lottery process similar to that used by citizens' assemblies today, likely using a two-round lottery would be appropriate. The first round would find people willing to put in the required time and effort. However, they would not be told which policy domain they would be addressing, to avoid selecting participants with a biased special interest. This would be followed by a stratified random sampling to constitute a roughly representative body. Because their workload would be substantial, a significant portion of the population would probably decline to serve if called, so stratified sampling would be necessary to approximate representativeness. However, since they also would not be making a *final* yes/no decision on legislation, their rough representativeness and small size (150 is too small to have an adequately high probability of accurate representativeness) facilitate active give-and-take deliberation. These bodies would benefit from great diversity, while also being mostly free of special-interest self-selection bias and corruption. Their task is to prepare a final piece of legislation for a Policy Jury to consider.

Each Review Panel would also have professional staff. For reference, in the United States, the various congressional committees have a total of around 6,000 staff. However, the individual elected members of Congress each have personal staff for such things as constituent outreach, district office staff, schedulers, speech writers, and others, which total another 12,500 or so. While none of these are officially campaign-related, most of them exist to enhance re-election prospects. Nearly all of these personal staff would not exist in a sortition system.

For a state or national design, these panels would be full-time, with overlapping terms of perhaps three years (to gain familiarity with the subject matter). For a municipal implementation, this would likely be part-time work, and it might be appropriate to have meetings on weekends or evenings so as not to interfere with normal employment. This body would be far more descriptively representative than the Interest Panels.

The Review Panel would perform traditional legislative activities: holding hearings, inviting and listening to expert witnesses, utilizing professional staff for research and drafting, and amending or combining elements from the proposals submitted by Interest Panels to produce a final bill. The procedures used by the Review Panel require careful design so as to maximize problem-solving potential and minimize both groupthink and internal polarization (Sunstein 2003).

These psychological tendencies are powerful, but can be minimized with good design (Manin 2005; Fishkin 2009). However, since the risk of bad results

from information cascades and groupthink, etc. cannot be completely eliminated, and the fact that the Review Panels are not fully representative of the population, these panels would not make final decisions about the adoption of the legislation they crafted.

Policy Juries

A key feature of this design is that we don't leave the final decisions on legislation to *Interest Panels* nor to *Review Panels*. Because of the risk of groupthink, pride of authorship, or simply inaccurate representativeness (due to smaller sample size and self-selection bias), final decisions are made by separate bodies, which I call *Policy Juries*. This separation of functions would also reduce the likelihood of extreme polarized majority positions coming out of the Review Panel, since members of both the Interest Panels and Review Panels would understand that their final products must be able to pass muster in front of a large, fully representative Policy Jury. Finding middle ground, or win–win options, and addressing the needs of minority perspectives might enhance their chances of ultimate adoption.

Each Policy Jury would vote on one piece of legislation, as the Legislative Panels (*nomothetai*) of Athens did. To avoid self-selection distortions, jury service should ideally be quasi-mandatory (though with reasonable hardship deferrals allowed). It is unlikely that early implementations of this multi-body design would have legal authority to mandate service, so substantial alternative means of encouraging participation would need to be employed. People have few, if any, comparable opportunities for civic engagement in politician-centered systems, so we can only speculate about potential participation rates. Short service durations (perhaps a week or two) combined with compensation and some symbolic status honors might achieve adequate participation, and thus descriptive representativeness. A state or national Policy Jury should probably have between 500 and 1,500 members to achieve a representative sample. A municipal Policy Jury would probably be significantly smaller, simply for financial reasons, and the fact that the issues would generally be significantly less consequential.

The essential task and the procedures of the Policy Jury are intrinsically different from those of the Interest Panels and Review Panels. Like the Athenian Legislative Panels (*nomothetai*) and People's Courts (*dikasteria*), a Policy Jury would listen to pro and con presentations on the proposed legislation, and without further debate, vote to adopt or reject the law by secret ballot. This procedure is intended to benefit from the *wisdom of crowds* described in James Surowiecki's book while avoiding the groupthink and polarization dynamics that can arise when participants engage in discussion and advocacy (Surowiecki 2003).

This procedure elevates the skill of *democratic listening*—an often neglected skill that is distinct and apart from debate. Some researchers and political theorists

note that it is unfortunately far more common to focus on the value of speaking, or "voice", than listening when examining democratic behaviors (Dobson 2012). When debating (or even conversing), as we hear another speaker, our mind often gets preoccupied with making a plan for our response or counter-arguments, not openly absorbing or seeking to understand others' perspectives. Debate is about winning—not learning. Narrowing the jurors' task to listening to presentations and voting (with the uncommon inducement of exercising actual decision-making authority) will also increase willingness to participate, especially among shy and socially awkward members of society, and thus the jury's descriptive representativeness. Because give-and-take deliberation among members is not involved, this entire stage might be conducted remotely using the internet.[2]

The secret ballot is important, as it helps avoid the social pressures and deference to high-status members of society that can interfere with a juror's ability to make their own independent assessment and vote as they think best. The secret vote also reduces the risk of corruption and vote buying. Jury tampering protections (including announced sting operations of pretend bribers) would still be appropriate, but potential corrupters are less tempted to try buying votes when there is no way of knowing if the votes were delivered.

Preparation of the pro-and-con presentations could be overseen by the members of the Review Panel who had been on opposite sides of the decision within that body. A Rules Council might be wise to also allow jurors to ask clarifying questions, and perhaps even seek out independent expert witnesses. The Policy Jury is the failsafe check that assures new laws would be deemed appropriate and desirable by an informed population. If a bill passes by a very small majority, it might be wise to automatically convene a second (perhaps larger) Policy Jury and require two passing votes to adopt the law.

Coordination Council

Because Review Panels would be siloed by policy domain, yet some issues would inevitably have implications outside their core domain (especially in terms of budget), a Coordination Council, similar to the Agenda Council, would propose modifications to harmonize passed policies. To avoid a concentration of power, the proposals of the Coordination Council would also need to pass muster in front of a Policy Jury.

Meta-Legislative Bodies

Rules Council

A lottery-selected body (with new members regularly rotated in) should be constantly monitoring how the system is functioning, to propose improvements.

Changes might have to do with the lottery process, the size or duration of bodies, the procedure for selecting expert witnesses, etc. These changes would also go to a Policy Jury to ensure proposed changes would not inappropriately increase the power of the Rules Council itself.

The reason that rules should be promulgated by a distinct sortition body is both practical and fundamental. It would be impractical to have each (often short-duration) body craft its own rules. Factors influencing procedures and rules can be as complicated and time-consuming as many bills themselves. But the fundamental reason for separation is somewhat similar to the thought experiment proposed by John Rawls in his book *A Theory of Justice* (Rawls 1999). He imagined an *Original Position* concept where justice is sought behind a "veil of ignorance", where the interlocutors do not yet know what position they will have in society (whether male or female, rich or poor, blind, or sighted, etc.). In this scenario, they would rationally seek a fair society because of this ignorance of how it would affect *them*. A sortition body that won't *itself* be adopting laws is best suited to decide on rules for other sortition bodies, as they avoid corrupt motivations. Within any group, alliances and factions can develop.

Once a majority faction becomes self-aware (as in every *elected* legislature), they have an incentive to make their work easier by, for example, limiting the speech of their "opponents", and adopting all sorts of other corrupt rule changes. Yet, these exact same people, if they were deciding on rules for some *other* sortition body, would agree on the importance of allowing the minorities to contribute their ideas to deliberation. It is the *having* of power to adopt laws that can corrupt—not merely whether the representatives are selected by election or lottery.

Oversight Council

While the Rules Council decides the rules and procedures, monitoring a large number of mini-publics would overtax this body. There would need to be at least one, but more likely, a large number of Oversight Councils, responsible for enforcing the rules. Take, for example, the question of who presents the pro and con arguments to the Policy Juries, and how they decide exactly what content to include, in order to give a "balanced" presentation? Even the relative charisma, eloquence, appearance or social status of different presenters may be significant. One possible approach the Rules Council might adopt is to have the same staff members present both pro and con arguments crafted by members of the Interest and Review Panels who fall on either side of the pro-con divide. However, this leaves the Policy Jury in danger of being steered by the administrative bureaucracy promoting its own interests—a common problem with elected bodies. Many state and national legislatures try to solve this problem by allowing each legislator to hire their own staff. However, this individualized staff often ends up

spending an inordinate amount of time on re-election concerns, such as public relations and constituent service, rather than policy.

Instead, for a sortition system, I propose the creation of Oversight Councils, chosen by lot, which deal exclusively with staff performance and fairness, rather than the policy issues themselves. In addition to evaluating the general competence of the staff, they would rule on complaints about biased or unfair presentations given by staff. They should also have the power to hire and fire staff serving the other sortition bodies.

At a state or national level, it might be appropriate to have several separate meta-legislative councils. I have described a Rules Council establishing rules and procedures for a good deliberative process, and an Oversight Council overseeing the staff of all of the sortition bodies. A full sortition system might also have one that monitors the performance of the executive in implementing the laws adopted by the Policy Juries. For a municipality, a single meta-legislative council seems appropriate, with the limited task of assuring that sortition-formed bodies have a good process and staff that provide balanced presentations—independent of any existing government or bureaucracy.

Keys to Good Design

At a bare minimum, democracy requires that agenda-setting and the final decisions are in the hands of genuinely representative bodies. However, replacing elected legislators with randomly selected representatives also opens the door for innovative and superior means of proposing and evaluating draft legislation. In traditional elected legislatures, the same set of elite elected officials is empowered to establish the agenda, prepare specific bills and amendments. They are also responsible for engaging in (or sidestepping) fact-finding, advocacy for or against bills, and finally judging legislation to adopt or reject it. These tasks should be divided among a variety of other groups of people. These groups should generally be randomly selected (or possibly self-selected in the case of Interest Panels) to optimize diversity and representativeness, while avoiding self-selection distortion and corruption. Interestingly, both the randomly selected Australian Citizens' Parliament and the Belgian G-1000, two of the earliest sortition implementations, provided an additional means for interested individuals who were not part of the randomly selected body to participate in a manner online, by providing proposals or assessments and "raw material" for the formal deliberators. This process of providing a come-one-come-all opportunity for interested citizens to feed into the decision-making process, but countering the resulting self-selection bias by then submitting proposals to the more descriptively representative body, is a model worthy of emulation.

While it seems inevitable that the use of sortition in the near term will be part of a hybrid system that also includes politicians, it is important to understand

that maintaining an electoral component is not essential, nor desirable, for democracy, and that it would be possible to have a democracy with no mass elections at all. In this chapter, I set forth a multi-body design of democracy that does not use elections. Societies have been on the beaten path, relying on elections for so long that such a sharp break in how we think about formulating a democracy is extremely challenging. I will examine some transition strategies in the next (final) chapter. But the design I set out here is intended to help people appreciate that elections should not be the default tool when setting up a democracy. We need to understand that a better way is possible before people will willingly abandon the familiar ways.

Notes

1 While the purview of each Review Panel is far wider than the single topic Interest Panels, it is far narrower than existing legislatures. This allows the members to develop a deeper understanding within a defined policy domain than is possible in an all-encompassing legislature. In traditional (elected) legislatures, it is typically only a small portion of the members—those who serve on a particular committee—who have any likelihood of fully understanding any given bill. Most elected legislators never read or understand the details of the bulk of the bills they vote on. They inevitably vote based on other considerations, such as vote swapping ("I'll vote for your highway earmark, if you vote for my education subsidy amendment"), or based on some heuristic—typically following the lead of their fellow party members who serve on a bill's committee of reference. Thus the homogeneity of the legislature as a whole is compounded by having only a small fraction of the full body even attempting to understand each bill. The Review Panel concept promotes having every member seek to understand every bill they recommend, and eliminates, or at least reduces, vote-swapping and partisan gamesmanship.

2 Since the jurors aren't engaging in all-to-all deliberation, it would be logistically feasible to create far larger juries—in the thousands—through the use of the Internet. Here we face one dilemma that requires an additional procedure to resolve. The larger the sample, the more statistically accurate the representation, but also the greater the risk of inattention and the resurfacing of rational ignorance ("my one vote won't matter"), or what Jeremy Bentham termed a lack of "active aptitude". One option is to hope that trial and error will eventually lead to finding the "sweet spot" that achieves adequate statistical representation but also motivates participants to overcome rational ignorance, and put in the effort needed to make a considered judgment.

17

A TRANSITION TO SORTITION DEMOCRACY

Many advocates of sortition reform view it as a means for increasing citizen participation or improving the quality of decisions by providing the elected lawmakers with better advice through better deliberative mechanisms. Indeed, some see it as a tool to shore up the flagging reputations of elected politicians. Others, including me, see it as the central democratic tool and seek to replace some or all elected decision-makers by using empowered mini-publics. This final chapter is devoted to discussing the strategies for replacing elections with sortition—in whole or in part.[1]

An idea that quickly comes to mind for many sortition advocates is to utilize the common bicameral legislative structure by having the members of one of the chambers selected by lot (Gastil and Wright 2019; Abizadeh 2016; Sutherland 2011; Barnett, and Carty 2008; Callenbach and Phillips 1985). The archaic House of Lords in the UK is particularly tempting as a vehicle for substituting a traditionally hereditary chamber with an allotted one. Some may hope this model might eventually lead to a fully sortition-based legislature—sort of a trial run or waystation to see if such a body can behave in a competent manner.

I think this is a mistake. As I discussed in Chapter 6, an all-purpose legislative chamber that deals with all issues and covers all law-making functions is a mismatch for sortition, whether in a unicameral or hybrid bicameral system. The all-purpose legislative chamber design would sabotage sortition's hoped-for benefits and delegitimize a sortition chamber. Many of the points I will cover in this chapter I discussed in a previously published work (Bouricius 2019).

Throughout this book, I have presented reasons why reliance on elected politicians is fundamentally undemocratic. But for many theorists a hybrid system incorporating both election and sortition is the final goal. John Gastil and Erik

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Wright argued that despite the host of problems with election-based representation, there are important beneficial aspects of an elected chamber that would be lost in an all-sortition system. I will argue that the purported benefits of maintaining elections are illusory. I will conclude by arguing that there are better ways to transition into a virtually all-sortition lawmaking system.

Purported Benefits of Maintaining an Elected Chamber

First, I will examine several commonly asserted benefits of maintaining an elected chamber alongside a sortition chamber. Citizens would be loath to forfeit an elected chamber for fear of losing at least five presumed benefits: the societal benefits of parties; the utility of having elected officials as authorized negotiators; the political leadership cultivated by electoral politics; and the political expertise provided by elected officials. In turn, I will cast doubt on the existence, or importance, of each.

Benefits of Parties

Without elections, it is suggested that parties would atrophy. The belief is that parties can (ideally) play an important role in educating the public about policy alternatives, and formulating public policies. However, others and I argue that US parties "have become little more than political labels behind which well-financed candidates organize their electoral bids" (Fischer 2009, 61). The role of parties would certainly change in an all-sortition system, but they would not necessarily disappear. Active political parties have organized across the globe, even under non-electoral regimes. Rather than contesting in elections, parties would aim to educate and organize the general public, from whom the mini-publics would be drawn. Political parties are not the only avenue for important social mobilization, with Black Lives Matter, Occupy Wall Street, or the Pro-Life movements in the US being examples.

But let's focus on the effects of eliminating the competitive electoral function of political parties in an all-sortition democracy. Anthoula Malkopoulou argues that voting in elections "offers a real and continuous relationship between government and citizens that, aided by the excitement of competition, produces a higher incentive to stay informed and form an opinion about general political issues" (Malkopoulou 2014, 250). She speculates that "sortition does away with the momentum of discursive interaction and contestation, which the experience of election provides" (Malkopoulou 2014, 247).

But what is this "discursive interaction" of partisan politics? Is it inherently beneficial for society? Like most news coverage, this engagement focuses on the tactics of the partisan contest itself, rather than the ideas that are presumed to underlie that contest. Not all electoral democracies have the level of partisan

animosity present in American politics, but the divisions within society into warring factions of us vs. them certainly have some negative consequences that would carry over into civil society and hence into a mini-public that existed within a partisan electoral environment.

We need to consider whether partisan antagonisms arise from incompatible interests, which political parties then express, or if political parties fan, or even manufacture, differences to frighten and mobilize constituencies to vote. Both occur, but as I discuss in the next section, elections are not the only—nor necessarily the best—way to manage incompatible interests. As I discussed in Chapter 7, researchers have found that people who are deeply engaged in partisan political issues and follow the news are also likely to have an elevated, yet false, sense of their own level of understanding of the issues (Nyhan and Reifler 2010). This short-circuits their ability to engage in meaningful give-and-take of deliberation.

Thus, even balanced presentations to a mini-public, in a partisan environment fueled by competitive elections, may not lead to a common understanding of reality by citizens, as each chooses which facts to accept and which to reject. Partisan loyalty trumps reality. This "discursive interaction and contestation" frequently consists of parroting talking points generated by partisan propagandists, and may have more in common with the insult-yelling of die-hard fans of sports teams than the republican virtues hoped for by some theorists. In sum, the vaunted "discursive interaction and contestation" in a party-based environment may make citizens less capable of learning and deliberating if selected to serve in a mini-public.

Authorized Negotiators

Some public policy choices pit incompatible interests against each other and will inevitably have winners and losers. Negotiated compromise between conflicting interests is widely seen as the better way of resolving such conflicts compared to simply counting heads. Parties and elected representatives are seen to have legitimacy as bargaining agents empowered to cut deals on behalf of conflicting interests, whereas randomly selected citizens, not being authorized agents for constituencies, do not.

Because negotiation is such a prevalent part of decision-making in elected chambers (and elsewhere), it is common to assume that negotiation is the appropriate way to resolve conflicting interests. However, negotiation is not the only, nor necessarily the best, alternative to deliberation.

As discussed in previous chapters, negotiation reflects relative power, and often involves threats as well as inducements. Should public decisions necessarily be a manifestation of relative power? Even when power is more equal, negotiation often devolves into horse trading on completely unrelated policy matters. Negotiation and bargaining among elected legislators can mean: you get that amendment, which benefits your group but hurts society as a whole,

and I get this other amendment, which benefits my group but hurts society as a whole. Indeed, legislators are especially motivated to negotiate deals when their sought-after policies cannot be justified as beneficial to society.

One alternative to both deliberation and negotiation (when incompatible interests clash) is arbitration with an impartial entity serving as a judge in pursuit of fairness or justice. This tool is "off the table" as an option in elected chambers, which evince relative power (rather than fairness). One can imagine a dispute resolution process in which each interest group on a particular issue offered their optimal compromise and a mini-public selected from among the possible compromises offered, using fairness, rather than power, as its standard. This process might deliver poor outcomes from time to time, but there is no reason to think results would be as bad as negotiated settlements within elected chambers today.

Cultivating Political Leaders

Gastil and Wright also assert that "elections create the possibility for political careers and the development of skillful politicians as political leaders" (Gastil and Wright 2019, 33). As I argued in Chapters 2 and 8 above, the assumption that this variety of political leaders is, on balance, a positive thing for a democracy is questionable.[2] Even setting aside the inherent danger of leaders moving to authoritarianism, it is not clear if leaders more often lead in a good or bad direction.

Even if we accept, for the sake of argument, that good leaders are beneficial, elections are a poor mechanism for selecting and promoting desirable ones. The skills, motivations, and traits needed to win elections, including public relations skills and extreme self-confidence, are not necessarily the optimal attributes for socially beneficial leaders. Elections tend to entice and advance ego-driven men (meaning males). In the book, *The Certainty Trap: Why We Need to Question Ourselves More—and How We Can Judge Others Less*, sociologist Ilana Redstone argues that certainty and democracy are fundamentally incompatible (Redstone 2024). It is cliché to suggest that the accrual of power also has a tendency to corrupt, even if the candidate isn't sociopathic at the outset. In Chapter 8, I discussed the psychology of elected representatives and subscribed to the assessment made by the former Foreign Secretary of the UK, David Owen. He wrote a book expressing his concerns about what he termed "hubris syndrome" that afflicts so many politicians in high office (Owen 2012). In terms of selecting political leaders, mass elections are better than violent seizure of power, but they are worse than almost all other plausible selection methods.

Political Expertise

Another argument for maintaining elections is the presumed political expertise of elected officials. I debunked this notion in Chapter 12, but a brief review would be useful here. I am not aware of any compelling evidence that elections are effective

at selecting individuals with competence at governing. James Surowiecki, in *The Wisdom of Crowds*, points out that we shouldn't believe people are more expert simply because they assert as much (Surowiecki 2005). As discussed in Chapter 8, a feeling of certainty that one is right just as often signals a lack of intellectual humility. Failure to recognize one's ignorance impedes deliberation and stunts the growth of actual expertise. Studies have found no significant difference between liberals and conservatives in this regard, but it seems likely that the subset of individuals from across the political spectrum who are willing to run for office tend toward harmful "intellectual arrogance" rather than beneficial humility (Leary, et al. 2017). Moreover, we should not conflate political (campaign) expertise and policy expertise. Most expertise resides in the professional staff and lobbyists (who draft nearly all bills), rather than in the politicians themselves (Nourse and Schacter 2002). One problem with electing representatives is that they have a distorted interest in consulting fundraising and campaign experts more than genuine policy experts and shaping policies accordingly.

By contrast, members of a sortition mini-public would presumably recognize the need to employ and consult genuine policy experts. Just as legislators hand off the details of drafting and negotiating legislation to staff, the sortition body might do the same—but without giving special consideration to lobbyists who want to tailor those details to their own purposes. Even assuming allotted citizens start out with cognitive biases comparable to those of elected representatives, it is far more feasible for a mini-public to require a well-designed deliberative architecture to dampen "the known cognitive biases of human beings" (Landemore 2013, 122), rather than exacerbate them. Citizen deliberators can also more feasibly be required to have training that minimizes psychological traps. Carey Morewedge and colleagues found that training can successfully reduce cognitive bias in both the immediate and long term (Morewedge et al. 2015). Overcoming cognitive biases, motivated reasoning, and automatic judgments creates a more competent decision-making body.

Benefits of Sortition are Lost with Continued Elections

Even if maintaining elections provides nothing beneficial, however, some might reason that the benefits of sortition, if added to elections, would ameliorate elections' harms and still result in a net improvement. Since eliminating elections is a daunting task, adding a sortition body in a hybrid bicameral system seems more achievable. The hope would be that adding a sortition element to elections could make at least marginal improvements. My concern is that the hoped-for beneficial effects of sortition in one chamber would be overwhelmed by negative bleed-through from the partisan loyalties and campaign effects of the elected chamber. In this next section, I will argue that if an elected chamber deals with the same bills as its sortition counterpart, this would not only sacrifice the potential

benefits of sortition, but further, it could cause the discrediting of sortition, making any advance, and even the continuation of any sortition problematic.

Agenda-Setting

Politicians who are constantly preparing for the next election seek out (or manufacture) those issues that they believe will help them in the next election. Important long-term issues (but with less public salience) are regularly ignored, and fail to make it onto the public agenda—until they become a crisis that cannot be ignored any longer.

In a hybrid system, the agenda-setting priorities of the elected chamber will still monopolize the news, public awareness, and—unless painstakingly shielded—the attention of members of the sortition chamber as well. Unlike the members of the allotted body, the politicians are skilled at getting attention and will do everything they can to get the spotlight. Also, a substantial portion of the sortition chamber's agenda will be automatically established by what bills the elected chamber chooses to send them. Indeed, a number of hybrid bicameral proposals imagine the elected chamber being the sole generator of legislation, with the sortition body being a review body, with authority to adopt or veto bills on offer from the elected politicians (Sutherland and Kovner 2020).

Even if the sortition chamber is empowered to initiate its own bills, the agenda will be warped by media and public attention shaped by partisan exigencies. In Chapter 3, I highlighted Murray Edelman's analysis that news coverage of issues selected by politicians, skilled in public relations, will dominate public attention and effectively shield from view important issues, which politicians would rather ignore (Edelman 1988, 14). Many crucial issues are simply too problematic for campaign purposes. If allowed, some sticky issues may be raised by the sortition chamber, but political gravity will constantly draw it back to the agenda favored by elected politicians eager to select issues they can use to vilify partisan opponents.

Rational Ignorance and Active Aptitude

When paired with an elected chamber, the members of the sortition chamber are more likely to succumb to rational ignorance and fail to attain active aptitude. When people face a daunting cognitive task and experience uncertainty, it is common for us to defer to those who project a demeanor of certainty and may also have higher status (Lee and Ofshe 1981). The sortition chamber would suffer a cognitive "social loafing" or "free-rider" problem. When another chamber dealing with the same pieces of legislation, full of articulate and often charismatic people who insist they have figured out the right answer, is pushing members of an allotted chamber to follow their lead, independent, slow and rational

thinking becomes far less likely. Within a partisan societal environment, where many members of a mini-public still support partisan politicians in regular elections, and a strong sense of team loyalty or tribalism is fomented, many members of an allotted chamber would adhere to their favored party leaders' platforms. Indeed, unless prohibited in some manner, the elected politicians would also seek to recruit members of the sortition chamber into a partisan caucus within the mini-public. Team loyalty has an emotional draw that regularly trumps independent rational analysis.

The sortition chamber in a hybrid bicameral system may not degenerate to a mere rubber stamp for the elected chamber's decisions, but the intended achievements of sortition will not be realized. This loss of active aptitude underlies a whole host of other losses of anticipated sortition benefits, including the tapping of diffuse knowledge and collective intelligence, as well as independent judgment and the wisdom of crowds.

Danger of Delegitimization

If we set aside the concerns raised above and assume that all of the negative consequences of maintaining an elected chamber could be dealt with through careful design, there are still other grave failings. If the sortition chamber is not a rubber stamp, what happens when the two chambers disagree about an important bill? In cases where both chambers are elected, they tend to have a nearly equal power relationship. But what would happen when one chamber is made up of people identified as "chosen leaders", and one is made up of a random assortment of ordinary people? We can get an inkling by looking at countries where one chamber is elected, and the other is not, such as the House of Lords in the UK or the Senate in Canada. In these cases, the bodies are not equal. The elected chamber is preeminent, even though the lesser body has the ostensibly prestigious title of "upper house".

What are some likely consequences of the sortition chamber rejecting a bill passed by the elected chamber? The two chambers would have a fundamentally different and conflicting basis for claiming legitimacy, which might be summarized as the "principle of distinction" (Manin 1997) in the case of an elected chamber, and what Aristotle termed "the principle of equality and likeness" (Aristotle [350 BCE] 2016), in the case of the sortition one. When in conflict with an allotted chamber, the members of the elected chamber would have a compelling strategic incentive to sidestep the details of the policy differences and instead seek to undermine the legitimacy of the sortition chamber itself. In contrast, the allotted members would not be protecting personal careers in politics, since they would shortly be "out of power" regardless. Unlike the allotted citizens, the elected members would tend to be highly practiced, articulate public speakers with exceptional public relations skills. Portraying themselves as champions for

their constituents, the elected leaders would likely play the "natural aristocracy" card (but by a less arrogant name, of course). It is easy to predict the themes they might use—dismissing the sortition chamber as "a random gaggle of dishwashers and hairdressers who are completely unaccountable to you, the people, because they never have to face you in an election".

Worse still, the natural hostility of politicians toward any sortition threat to their power in a hybrid system makes the evolution toward a sortition democracy along this bicameral path extremely unlikely. If they ever butt heads by disagreeing about some important bill, the professional politicians will demolish the allotted body of amateurs. If sortition begins in a hybrid system in which the chambers contend, it is more likely to die there than expand.

Other Ideas for Combining Sortition with Elections

A transition strategy, which occasionally occurs to people, is adding some randomly selected members to a body that is currently made up of elected members. Variants of this "mixed-member" idea are that voters could select "none of the above" on their ballot, or the ratio of non-voters in the population compared to voters could apportion the randomly selected seats. One proposal that occasionally surfaces is even to have a political party contend in the election that commits to appointing any seats won to random citizens, or have their party members in the legislature take direction from randomly selected mini-publics. All of these mixed-member chamber concepts are untenable. Having two classes of "members" in a chamber, one with no experience, often not a lot of self-confidence, and no agenda on the one hand; and the other class of members made up of self-confident professionals with partisan priorities, who would likely seek to recruit the allotted members into their partisan caucus, and who also have a career path, only exaggerates the problems of a hybrid bicameral system. The logic of their legitimacy is also starkly different and fundamentally incompatible in a mixed body.

Combining elected politicians and randomly selected citizens has been tried in at least a couple of jurisdictions. The first sortition constitutional convention in Ireland in 2012–2014[3] included 33 sitting legislators along with 66 randomly selected citizens. Some sortition advocates feel that the inclusion of politicians went a long way to relieving any concerns the political class might have about the competence of the lay members. A key factor was that they were primarily dealing with issues for which the political parties did not have pre-established platforms. Interestingly, in the second such citizens' assembly on the constitution,[4] called following the 2016 legislative elections, the politicians decided not to include any sitting legislators.

In 2019, the Parliaments of the Brussels–Capital Region of Belgium institutionalized Deliberative Committees in which 36 to 45 lay citizens selected by

lot sat alongside 12 to 15 Members of Parliament who served on the relevant legislative committees. Together, they deliberate and formulate recommendations on an issue that needs to be addressed by the Parliament.[5] Having two different classes of members, with different experiences, motivations, and interests, turned out to be quite problematic. Researchers who studied the various Deliberative Committees noted that "power asymmetries clearly remained despite the facilitation" (Simon and Vrydagh 2023). Many legislators simply didn't bother to attend, and others sought to exclude certain proposals from consideration or engaged in other backroom manipulations to advance their party's platform. In short, actual deliberation, as I have defined it in this book, was not of interest to many of the politicians. At the end of each deliberation, the politician members vote on the proposals separately from the allotted citizens, with only the politician's votes having any authority. Clearly, this is not the model that advocates of a hybrid election-sortition legislature have in mind, but the distinct style, interests, and motivations of the two classes of members make this design questionable at best.

Anthoula Malkopoulou notes that "lotteries may offer valuable improvement to current practices of democratic selection [election], but only if special measures are taken to compensate for the limitations they entail" (Malkopoulou 2014, 230). The special measures she proposes (limiting the role and power of mini-publics) are nearly the exact opposite of those I favor, but we agree that one must adjust the law-making design to fit the unique character of mini-publics. The Framers of the United States Constitution substantially copied the design and legislative form of the British House of Commons, since they were not making any fundamental change to the principles of an elected elite ruling over the populace. Even the Senate was largely modeled on the House of Lords, but substituting for its hereditary aristocracy, a "natural aristocracy" selected by the various state legislatures.[6] The sort of fundamental shift in the locus of power envisioned by a sortition democracy precludes such rubber-stamp replication of design.

A Better Beginning for Sortition

To avoid all these problems, I propose a system that allows elections to coexist with sortition (whether permanently, or during a transition to an all-sortition system), though not in a bicameral or mixed-member design.

The Peeling Transition Strategy

Most of the experience with modern-day sortition has been through citizens' assemblies that have had a single function and topic. Also, the vast majority of citizens' assemblies have been asked to deal with issues where the elected

politicians have not already staked out partisan positions, thus side-stepping the risk of "head-butting" I worried about in the section above. While recent citizens' assemblies have been exceptionally successful in terms of deliberation and policy (though significantly less successful in terms of seeing follow-through on their recommendations by elected decision-makers), that internal success is irrelevant to how well a full-charge sortition chamber might function.

In this book, I have presented the concept of a sortition democracy with an interconnected network of mini-publics, each with a specific legislative function or a specific topic or issue. In addition to being a more desirable end state, unlike a full-charge allotted chamber (which handles all functions and issues in the way a standard elected chamber does), the means of transition is built into the model itself. I refer to this as the "peeling strategy".

Peeling away issue areas one at a time from elected representatives and transferring those policy domains to allotted bodies allows communities to learn from the experience of recent experiments in terms of process. But, crucially, it also avoids the danger of an elected chamber and a newly established full-charge sortition chamber, as in a hybrid bi-cameral system, opposing each other head-to-head on a given bill, which could trigger the aforementioned sortition delegitimization.

The ultimate design using multiple single-issue and single-function mini-publics not only solves the dilemmas of sortition design discussed in Chapter 16. It is also pragmatic, and provides a step-by-step path for evolution to an all-sortition democracy. By peeling away one issue area or function at a time from the traditional elected legislature and entrusting it to a compound sortition process, it might be possible to transfer power to a sortition wing of government in a sequential process.

There are certain inviting issue areas where this might begin, such as issues in which elected legislators either have an obvious conflict of interest (election laws, as in the case of the British Columbia Citizens' Assembly, ethics oversight, etc.), or "hot potato" issue areas that elected officials are happy to be rid of because they are no-win topics from a politician's campaign perspective (such as the nuclear waste issue tackled by a mini-public in South Australia, or abortion in Ireland). Initially, bills with no substantial budget impacts are most appropriate, as coordinating conflicting budget requests is a higher-order challenge for a system based on separate mini-publics.

The goal is to institutionalize the transfer of an issue area on an ongoing basis. The authority of the sortition process must be decisive, rather than merely advisory. This must also be combined with verifiable independence, such that a mini-public is not subject to manipulation by the elected government through control of their staff or information flows. In the short term, this might be accomplished through facilitation by an impartial non-governmental organization, such as Australia's new Democracy Foundation or a university. Ultimately,

however, there must be a budget and staff not beholden to the elected politicians. For example, some institutions in certain jurisdictions are funded by a specific tax or other revenue stream that, once enacted, no longer needs annual appropriations. The staff and functioning of the sortition process should be overseen by a mini-public devoted to these tasks.

If the public appreciates the fruits of these mini-publics, governments could feel a growing pressure to try this model for other issues, especially following scandals that crop up among elected representatives. Imagine a scandal in which a developer was discovered to have bribed members of a city council for some favorable spot zoning to allow a profitable project. If the sortition option were well known, it is possible to imagine that all future zoning decisions would be removed from the city council and instead entrusted to a jury-like sortition process. Community groups might demand this reform, and the city council members might wish to be seen as permanently solving the problem of zoning bribes, while not having much interest in holding on to zoning authority in any event.

This approach allows for baby steps (likely at the municipal level first), with a gradual popular assessment that might grow more favorable with each process refinement along the way, cresting into a huge tsunami wave of reform. Creating an all-purpose sortition chamber paired with an elected chamber, dealing with all bills, would require a greater leap of faith all at once. With the peeling strategy, elections steadily become less and less significant. We can use the analogy of what happened to the monarchies of Europe. While many monarchs nominally still exist, they are virtually powerless today. I foresee a future in which elected chambers may still exist, but are reduced to passing resolutions naming post offices after local celebrities.

The key to the advance of a sortition-based democracy is the use of sortition in forming municipal charter review commissions and constitutional conventions. A randomly selected constituent assembly seems far more likely than an elected chamber to transfer powers from elected bodies to other sortition bodies. There have already been precedents that suggest this strategy has potential. When the legislature of British Columbia established the citizens' assembly, it set up a process that allowed the Assembly's recommendations to go directly to a referendum without further involvement of the elected legislators. Ireland and Iceland have incorporated random selection in recent constitutional review bodies, although in an advisory role, explicitly interposing the elected legislature between the mini-public and the opportunity for referendum on the mini-public's proposals. Neither of these is the precise model needed, but they hint at the possibility.

The Danger of an Elected Executive

This book has primarily focused on the law-making side of government. But we must also consider the effects of maintaining elections for the executive branch

of government. A severe weakening of sortition's benefits within the legislative branch could also occur if elections were maintained for the executive branch. There would be a severe risk of charismatic elected executives dominating a sortition legislature even more than they might an elected one. Elected politicians in a legislative chamber, with typically elevated egos and concerns about preserving their own power, might jealously seek to defend the prerogatives of the legislative branch and resist a would-be authoritarian executive. This, of course, is not assured, as legislators frequently decide it is strategically beneficial to align with strongman chief executives of their own party. Elected legislatures frequently give up powers to a chief executive (e.g., the unconstitutional de facto war-making powers of US presidents).

This risk would be even more pronounced with an allotted legislature. A popularly elected charismatic chief executive with a penchant for self-aggrandizement would have the opportunity to accentuate the "principle of distinction" to claim a popular mandate resulting from the election, while belittling the unelected and unimposing members of the randomly selected legislative branch. A group of randomly selected ordinary citizens lacks the personal investment and political capital necessary to defend the limited prerogatives of a body they will soon leave anyway.

Candidates for executive office have an overwhelming incentive to portray themselves as leaders, which encompasses policy advocacy. But if the chief executive leads on policy, this can short-circuit a deliberative sortition process by encouraging mini-public members to prejudge policy decisions—favoring those advocated by their preferred executive candidate. This can either promote tokenism through followership or, if resisted, put the mini-public in opposition to the executive, leading to delegitimization efforts.

Thus, an optimal sortition democracy should establish mini-publics charged with recruiting and hiring a chief executive, who would have an administrative rather than policymaking role (akin to the city manager function advanced by the early twentieth-century Progressive Movement). Rather than evaluating self-selected or party-nominated candidates, I would suggest a full-spectrum recruitment process to find a person fully willing to serve, but who would not proactively seek the position. I concur with the witticism of Douglas Adams that "those people who must want to rule people are, ipso facto, those least suited to do it" (Adams 1997, 201). On a regular basis, a new mini-public would be called to evaluate the executive's performance and have the power to remove him or her. To avoid the motivation to remove a good executive just to choose a particular person as a replacement, the mini-public with removal authority would not be the same one charged with hiring a replacement.

Other reforms to the executive would also be desirable. Some sortition advocates have proposed that the executive be multiple—for example, three individuals—with distinct areas of responsibility, but with significant decisions needing at least two of the three concurring (Zeitz, Coccoma, and Goodman 2024).

Multiple executives have been used historically. Some US states (Pennsylvania, Maine, North Carolina, New Hampshire, Virginia, Massachusetts, and Vermont) have had an executive council, with more or less power. In most cases, this body worked alongside a separately elected governor, but in Pennsylvania the executive council elected a president and vice president for one-year terms from among their own members. As mentioned above, Revolutionary France also established a five-member executive Directory, followed by a three-member executive Consulate (ending with a lone emperor, Napoleon). These multiple executive schemes were not a good fit for elections, but might work much better with sortition and an administrative, rather than policy (leadership) role.

Chapter Summary

In summary, the model of a single all-purpose legislative chamber is not a good fit for sortition lawmaking. A hybrid bicameral system, with one chamber elected and one selected by lot, is a poor design and a faulty transition strategy. The supposed benefits of retaining elections are illusory, but their harmful effects on a complementary sortition body would be all too real. Most crucially, if the two chambers disagreed on a law, the elected politicians would have the motive and skills to delegitimize the sortition chamber.

Instead, I contend that sortition works best when a system separates different legislative functions and assigns them to bodies optimally designed for each task, with different bodies formed for each issue. Though generally relying on sortition, this design would also broaden participation through self-selected Interest Panels open to any and all citizens for the purpose of drafting proposals and arguments as raw material for mini-publics to consider.

Peeling away issue areas and transferring them one at a time from elected to sortition bodies with final authority provides a plausible path toward institutional change. Election campaigns and politicians would simply no longer deal with those issue areas that had been removed from their purview. Since they would not be going head-to-head on the same issue, this would reduce the motivation for elected legislators to challenge the legitimacy of the sortition model. At some point along this path, it is likely that the elected politicians would fear sortition bodies were becoming a real threat to their power and status, and efforts to delegitimize them would be embraced as a strategy. It is impossible to predict the public attitude toward sortition at this future juncture, but it can be hoped that positive performance over time (and continued disdain for professional politicians as a class) might protect sortition from late efforts at delegitimization. Reformers might also phase in the transition to maintain the limited authority and status of those elected for years, recognizing that politicians are more concerned with protecting their individual power and status than the power and status of future politicians and the institution of elections itself. Current

politicians could even embrace the status of being the "last generation of powerful elected leaders".

In this evolutionary vision, politicians and their elected chambers may never fully disappear—but could recede to the periphery, just as the once powerful *Council of Areopagus* of pre-democratic Athens endured, but ended up with severely restricted responsibilities once democracy was ascendant. In a similar way, essentially ceremonial monarchs persist in many modern electoral regimes, but with few remaining legal powers. Being a fundamentally oligarchic tool, elections should not be championed as necessary or beneficial for democracy, which is often the case with those advocating hybrid bicameralism.

Conclusion

The key takeaway from this book is that democracy does not mean elections. Elections are actually a tool of oligarchy, and a barrier to achieving genuine democracy. However, the "right to vote" is a widely cherished thing. Even those who regularly neglect voting might object to losing the option of voting. While each individual's vote is effectively irrelevant, when an entire class of people are granted the vote, as in the case of the formerly enslaved or women, the vote might make a difference. The principle of distinction may end up resulting in the same sort of elites winning elections, but voting leaves open the possibility that ordinary citizens *could* win here and there. But more than that, the right to vote has great *symbolic* importance to many—attesting to their standing as formally equal members of society. So how can we expect people to freely give up the right to vote, even if we are replacing it with the equality of a lottery?

Changing attitudes toward voting will take time. Recognizing it as tokenism and a faulty tool for a democracy isn't something that we can expect immediately. I would not advocate that people refrain from voting in the current elections. There are greater and lesser evils in the world, and collective voter campaigns can matter, even if they can't deliver democracy or popular rule.

So, what realizations do people need to have to willingly give up elections and their right to vote? Seeing a successful and workable democratic alternative in the form of sortition in their associations and local governments is certainly instrumental. People can also come to appreciate that participation should be *informed*, rather than be "mob-like". People understand why we don't allow all to vote on the guilt or innocence of an accused person, without having been immersed in the carefully designed learning process of a trial. While the rules of evidence and specific court procedures may be faulty, simply "having an opinion" from having seen a post on social media is understood as insufficient for "having your say" in the verdict. Yet, mass elections, whether for candidates or a policy referendum, have no system for assuring that voters are even minimally informed. Such mass elections generally are more consequential in terms of their

reach than the trial of a single individual. The multi-body sortition design maintains the right of anyone who wishes to participate in public decision-making in the form of preparing arguments and draft proposals. But this participation requires that those participating "do the appropriate and necessary work".

The only way to allow for informed decision-making on the thousands of decisions that must be made in society is to delegate the task to subsets of the people. The only way to protect political equality is to have that subset regularly rotated. And, the only way to have those decisions reflect the interests and informed judgment of the population as a whole (rather than of an elite) is to have those subsets be randomly selected representative samples.

I have presented a possible strategy, but I don't have a firm idea of how the transition to a sortition democracy might occur. It might be through the step-by-step peeling strategy I present here. It also could be that grassroots efforts and civil society will set up separate parallel sortition institutions outside of the official government, which eventually come to be accepted as the only legitimate decision-making system. It is also conceivable that a sudden national crisis, akin to the Arab Spring of 2010 and 2011, if the concept of sortition were already widely understood, could lead to a wholesale replacement of elected politicians. This seems to me to be the least likely transition, simply because in times of crisis, the human proclivity for followership is exacerbated, seeking a charismatic leader who can save us from the crisis.

Orchestrating a transition is the hard part. I have only touched on my idea of how to proceed. This book is not fundamentally a strategy book. As I said in the introduction, my goal here is to point to sortition as the North Star of democracy, and to help others see what I see about what direction we should aim to travel.

Notes

1 I have published previous pieces covering many of the themes in this chapter. See Bouricius (2018) and Bouricius (2019).
2 I subscribe to the social construct analysis of political leadership advanced by Murray Edelman, that "belief in leadership is a catalyst of conformity and obedience". *Constructing the Political Spectacle* (Edelman 1988, 37). Narratives about the accomplishments of leaders should be treated with extreme skepticism, as explained by Philip M. Rosenzweig, (Rosenzweig 2008).
3 This one is best known for having initiated the process that ended with the amendment to the constitution legalizing same-sex marriage.
4 This one is best known for initiating the process that ended with amending the constitution to legalize abortion.
5 Interestingly, the Brussels model, like the East Belgium model, does incorporate some features similar to my multi-body sortition design. The Brussels design has a separate agenda body that is composed of twenty-five members drawn from previous lottery-selected Deliberative Committees.
6 US Senators were not directly elected until 1914 following the ratification of the 17th amendment, but even then remained essentially the same kind of elites.

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