**Sortition, Rotation and Mandate**

**Condition for Political Equality and Deliberative Reasoning**

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**Abstract**

The proposal to create a chamber selected by sortition would extend this democratic procedure into the legislative branch of government. However, there are good reasons to believe that, as currently conceived by John Gastil and Erik Olin Wright, the proposal will fail to realize sufficiently two fundamental democratic goods, namely political equality and deliberative reasoning. Through analysis of its historic and contemporary application, we argue that sortition needs to be combined with other institutional devices, in particular rotation of membership and limited mandate, in order to be democratically effective and to realize political equality and deliberative reasoning. We conclude with an alternative proposal for a responsive sortitionlegislature that we believe to be more realistic and utopian: one that increases substantially the number of members, makes more extensive use of internal sortition and rotation and recognizes the importance of establishing limited mandates.

**Keywords**: sortition, rotation, mandate, political equality, deliberative reasoning

The sortition legislature proposal (SLP) laid out by John Gastil and Erik Olin Wright as part of the Real Utopias Project is an ambitious defense of the idea of extending the use of sortition into the legislative branch of government and specifying how such a body would work in practice. We are sympathetic to the motivation for this enterprise: there is no question in our mind that sortition is a democratic method that ought to be more widely institutionalized within contemporary polities. However, reflection on the practice of antecedents of the SLP – in particular its historical use in Ancient Greece and more recent application in contemporary mini-publics – lead to a series of questions about the feasibility and desirability of the design of the SLP. Our critical analysis considers primarily the democratic functioning of the SLP where it replaces one of the elected chambers in an existing bicameral system, as suggested by Gastil and Wright. However, we distinguish also more general considerations that would hold if the SLP were situated in a democratic ecology that offered more favorable conditions for its operations.

Our central concerns with the current formulation of the SLP are two-fold. The first is that although sortition is introduced to promote political equality, there are good reasons to believe that substantive political equality will neither be realized nor adequately protected. The SLP is unlikely to defend its members against the exercise of social and economic power to the extent necessary for such a body to be democratically effective in the ways desired. The second is that there are good reasons to believe that, in its current formulation, the SLP will not be able to combine the range of functions expected, in particular the combination of agenda setting and scrutiny. If our claims are plausible, these weaknesses together undermine the feasibility and desirability of the SLP, both from a democratic standpoint and from the standpoint of a strategic concern with advancing the longer-term cause of participatory (or, more limitedly, deliberative) democracy.

Our contention is that the source of these problems lies in the failure to draw lessons from the ways in which sortition in selection is combined with other institutional devices in historical and contemporary practice. Institutions using sortition have generally had very specific functions and sortition as a mechanism for selecting members of the institution has typically been combined with sortition as a mechanism for allocating offices within the institution as well as rotation based on short periods of service. These design characteristics are absent from the SLP proposal and together, we argue, intensify the assembly’s weaknesses.

We end the essay with an outline of an alternative proposal for a responsive sortition legislature that increases the number of members and makes more extensive use of internal sortition and rotation. We argue that as a first step in the contemporary introduction of sortition to the legislative branch of government, this alternative proposal is both more realistic (from a democratic standpoint) and more utopian (from a strategic standpoint) in its ambition.

**Sortition and institutional design – historical and contemporary lessons**

In the history of democracy, at least prior to the rise of organized mass political parties in the late 19th and early 20th century, sortition was recognized as a more ‘democratic’ mechanism of selection of representatives than election. It is viewed thus both because it is seen as being less susceptible to the influence of economic and social power than electoral processes and because it enacts a commitment to political equality. In this section, we offer a brief reconstruction of the circumstances of sortition in two contexts – Athenian democracy[[1]](#footnote-1) and the contemporary practice of deliberative minipublics – in order both to explain the democratic reputation of sortition and the conditions of its use in these contexts.

**Athenian democracy**

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

The introduction of selection by sortition is best understood as a response to the experience, and continuing threats, of tyranny, oligarchy and civic strife posed by aristocratic pursuit of power. But it would be a mistake to focus solely on sortition alone. Sortition was complemented by other institutional reforms. First, Cleisthenes took the rural villages and city neighborhoods (both called *demes*) as the basic units of political organization and these were then re-arranged into ten tribes or *phylai*. This re-articulation of the tribes – and their use with respect to selection for the Council (fifty from each tribe), People’s Courts and Legislative Boards and for election to the office of *strategoi* (one from each tribe) – was designed to break up both existing aristocratic alliances and established patron/client relationships based on aristocratic kinship networks. Second, concentration of power in these sortition bodies was reduced by rapid rotation of membership and rotation of offices within those bodies. The five hundred members of the Council were selected by lot annually, with fifty citizens aged thirty or over from each of the ten *phylai*, where the number from each *deme* within each *phylai* was proportional to its population. But the use of sortition extended further into the operation of the Council, with 50 *bouletai* selected at a time to take on its main tasks for one tenth of the year, with one randomly selected each day to act as chairman. No one could serve more than twice on the Council meaning that there was widespread participation in this key institution amongst the citizenry – it is estimated that roughly one third of all citizens must have been a Council member during their lifetime. There was also widespread participation in the Courts. Six thousand citizens were selected by lot annually. While there were occasional plenary sessions, most of the work of the popular courts took place in smaller courts varying in size from 501 for lesser cases up to 1501 for the most serious. Not only were the jurors selected by lot from those willing to serve, but further those selected would then be divided by lot into the number of groups required for each operating courtroom, and then finally each group would be assigned by lot to a particular courtroom with checks to make sure that only assigned jurors entered the designated court. Courts sat for one day only. When the Legislative Boards were introduced, they operated in a similar fashion, also drawing from the pool of six thousand. Neither the Courts or the Boardswere deliberative in the modern sense – members heard arguments from both sides, but did not deliberate with each other before making a decision.

What is notable about this widespread use of sortition is that it is primarily mobilized as a way to block the threats that are posed to *isonomia* (equality before the law) and *isegoria* (equality in the right to speak or participate) as key aspects of democratic rule. Sortition enacts and protects political equality in a society characterized by high levels of social and economic inequality. Cleisthenes’ use of territorial units fractured existing clientalist relationships, the use of territorial representation (in both electoral and sortitional contexts) entrenched relationships based on *deme* and *phylai* against aristocratic kinship-based networks, and the use of sortition in all roles not requiring specialist knowledge acted as a bulwark against concentrations of power and the effectiveness of bribery (especially in court judgments). Two further features are salient for our current reflections. First, the length of service was limited to a maximum of one year before rotation of membership and, in many cases, active service would be considerably less than this period – for example, as little as one day in each Court and Board. Second, the institutions that used sortition were primarily *responsive* rather than *initiating* institutions. Put a little too simply, the *Ekklesia* set the agenda and the *Boule,* the magistracies, and the *Diskateria,* and later the *Nomothetai*, exercised enabling, scrutiny, accountability, and implementation functions.

What can we draw from Athenian practice to inform the design of a sortition legislature? First, there is no direct historical equivalent to such a body. Arguably the closest family resemblance is to the People’s Courts or the later Legislative Boards, but this is a long way from the type of institution that Gastil and Wright are proposing, not least because of their size, rapid rotation and non-deliberative character.

The constant in its historical application is the way in which sortition was used to protect the polity from the exercise of power by economic and social factions. As Dowlen argues ‘the most significant and fundamental reason that lot is used in the selection of public offices, *is to inhibit the power that any individual or group of individuals might seek to exercise over that process of selection*’.[[2]](#footnote-2) While we agree with Dowlen’s insight, the focus on sortition as a selection mechanism alone overlooks the importance of rapid rotation, not just to inhibit sectional interests, but also, actively, to promote a form of political equality.

**Deliberative mini-publics**

While sortition has been used extensively in legal juries in countries such as the United States, United Kingdom and France, it has been considered rarely as a mechanism for selection for modern political institutions. Recent years, though, have witnessed increasing interest in the use of sortition in what have been termed ‘deliberative mini-publics’. Such mini-publics tend to share similar design characteristics: they are sponsored by a political authority, but organised by an independent agency that facilitates group discussions among a (near) random sample of citizens who take evidence from experts and interested parties.[[3]](#footnote-3) The recent wave of mini-publics can be traced back to the pioneering work of Peter Dienel in Germany and Ned Crosby in the US who, respectively, created and organized planning cells and citizens’ juries. The intervening decades have seen the emergence of other designs that incorporate forms of sortition, including deliberative polls, consensus conferences, citizens’ assemblies, reference panels and G1000s. Recently, there has been experimentation with the incorporation of elected politicians as members in the Irish Constitutional Convention and broader sets of social and political actors in G1000s in the Netherlands alongside randomly-selected citizens. Very few mini-publics, with the exception of cases such as the Citizens’ Initiative Review (CIR), are an institutionalized element of political systems: most are sponsored in an ad-hoc fashion and the adoption of their recommendations is far from systematic.

There are differences in the way that these institutions apply sortition. Most use stratification techniques to ensure the presence of particular social characteristics (e.g. gender, ethnicity, age). To a certain extent, this resonates with selection from the demes in ancient Athens. Larger mini-publics, such as deliberative polls, rely on simple random selection. Again, there are differences in the length of time that such bodies sit. G1000s are one day events; most of the others run over 2 to 4 days. The outlier here are citizens’ assemblies which have run over a number of weekends. For example, the British Columbia Citizens’ Assembly (BCCA) brought together 160 citizens and ran over a dozen weekends over a period of 11 months.

Why is sortition used in these institutions? First, sortition as selection mechanism is valued for its capacity to realize political equality understood as an equal probability of being invited to participate. Whether or not claims of ‘descriptive representation’ can be sustained (given the impact of self-selection and/or stratification), sortition generates a more diverse sample of participants than established mechanisms of engagement that tend to replicate differential participation rates and thus differentials of power across social groups. Second, the combination of sortition with facilitation and balanced information creates the condition for deliberation and considered judgement. For advocates such as James Fishkin, the significance of mini-publics is the way in which random selection combines with deliberation to generate a counterfactual will formation: ‘what the public would think, had it a better opportunity to consider the question at issue’.[[4]](#footnote-4) But arguably more important is the connection with Athenian practice: the mini-publics represent a ‘safe haven’[[5]](#footnote-5) in which citizens are politically equal and protected from economic and social power. Unlike their Athenian forebears however, mini-publics are sites of deliberation and not just public judgement.

How can the practice of deliberative mini-publics inform the design of the SLP? There has been an explosion of social scientific research, much of which provides evidence for the promise of mini-publics, in particular that citizens who participate are willing and able to come to sound judgments and recommendations on highly complex technical issues[[6]](#footnote-6) and that they are viewed as trusted institutions by the wider public.[[7]](#footnote-7)

The selection mechanism – sortition – is a critical factor in creating the circumstances for a deliberative politics: ensuring that a diversity of social perspectives are brought to bear. But sortition is only one amongst many design characteristics, not all of which will transfer so easily to a permanent legislative body. Mini-publics rely extensively on trained facilitation to ensure that interactions between the diverse participants, with very different capacities and experience, are free and fair. How suitable is such interventionist facilitation for a legislative body? Deliberative mini-publics have been generally also one-off affairs. There is thus de facto rotation of membership between mini-publics (as well as changes in sponsors and organizers). The longest period of participation has been around a dozen weekends in citizens’ assemblies in Canada, the Netherlands and Ireland. The Irish Assembly (and its mixed Constitutional Convention cousin) is a rare example where a single mini-public has dealt with more than one issue. Finally, previous mini-publics have been carefully crafted spaces in which citizens are protected from partisan interests. In this sense, there is a shared trajectory with the historical precedent of Athens. Interest groups, political parties and the media are kept at arms-length. The one-off nature of mini-publics, the variety of different sponsors and the independence of organizers and facilitators all help to protect these spaces. But arguably the fact that, to date, mini-publics have been relatively marginal political institutions has been their greatest protection. Were mini-publics to be used more extensively and to have more significant political import, it would be likely to generate ‘powerful incentives for interest groups and partisan elites to try to manipulate [these] deliberative forums’.[[8]](#footnote-8) Here we can draw parallels with legal juries where there are laws against jury-tampering and options such as sequestration, even if rarely used, available to protect juries against undue influence.

While the functioning of deliberative mini-publics offer some grounds for optimism for the practice of a sortition legislature, the implications of differences in structural function and design need to be given careful consideration. Drawing on the experience of mini-publics may be stretching the evidence base given that the SLP requires much more significant time contributions from participants and engagement across a range of issues, thus potentially exposing members to more systematic pressure from outside interests.

**Evaluating the sortition legislature proposal**

Our exploration of the circumstances of sortition in both historical Athens and its contemporary application in deliberative mini-publics suggests that the SLP has qualitatively different characteristics from previous sortition institutional forms. These differences generate (at least) two fundamental challenges for the proposal.[[9]](#footnote-9) The first relates to what is typically seen as the core purpose of sortition bodies, namely their capacity to enact political equality and thus the extent to which they protect from social and economic power and the inequalities that engenders. The second challenge relates to the range of functions that the sortition legislature aims to fulfil. Our particular concern is whether it can realize effectively an agenda-setting function alongside its other functions; and if so, at what cost. We believe that on both scores – political equality and agenda-setting – the SLP is found wanting, with the problems associated with agenda-setting heightening further the incapacity of the legislature to protect against economic and social power. Given the desire to see some form of sortition legislature instituted, we must be strategically alert to the risks to the future application of sortition, and more dramatically to the idea and practice of a more participatory democracy, if such an institutional restructuring performs badly.

**Enacting political equality and protection from economic and social power**

In terms of selection, the SLP represents an exemplary enactment of political equality that brings citizens into the center of formal and official political power. In so doing, it has the potential to alter citizens’ self-understanding of the meaning of citizenship, being a vivid example of Aristotle’s conception of ruling and being ruled in turn. However, even if, as Gastil and Wright hope, such sortition legislatures were to be instigated at different levels of governance within a polity, the numbers participating are relatively small, so the chance of any particular citizen being selected during their lifetime remains relatively slim. That said, one should not underestimate how transformative the political effects of such a change could be with citizens seeing their peers in positions of decision making power.

However, the sole focus on sortition in terms of selection in the SLP unhelpfully abstracts from its combination in historical and contemporary institutions with other mechanisms and processes, such as regular rotation of membership, the internal use of sortition and rotation for offices within the sortition body and trained facilitation. The application of these other mechanisms is absent – or in the case of facilitation mentioned only briefly – as such leaving the functioning of the assembly vulnerable to those who would aim to subvert it for their own ends.

Another way of expressing this is that the focus on enacting political equality in selection is only one of three aspects of promoting political equality: selection to the body, the expression of power within the body, and the outcomes of the body. Protecting political equality in terms of outcomes requires both the first and second aspects to be enacted. Our argument is that the current proposal is reasonably strong on achieving political equality in the first aspect: citizens have a (near) equal probability to be selected to participate (even if probability is low). But it is weak in the substantive realization of that principle in the day-to-day workings of the assembly and thus the promotion of political equality through its outcomes is likely to be undermined.

Two aspects of the proposal are particularly concerning for how power is exercised in the legislative body. First, two options are envisaged for terms of office: either a two-year term with an option for renewal or a five-year term. In both instances, there would be rotation of membership, with part of the body being refreshed at intervals of one or two years, but with members being able to serve for either four or five years.[[10]](#footnote-10) Second, once selected, members would be allocated committee membership based on length of service and their preferences: ‘Current committee members who remain in the assembly could retain their most preferred committee assignments, then enter into a lottery with the rest of the selectees, each of whom would have ranked their preferenceslike students signing up for courses’.[[11]](#footnote-11) To our knowledge such long terms of continual service and the freedom of members to choose areas of work according to preference and length of service are unprecedented for a sortition body. In ancient Athens, where the Council, Courts and Boards selected members randomly by lot, there was relatively rapid rotation of tasks and offices. In the Council, which had the longest term of service of one year, members held the most significant posts for only one-tenth of the year before rotation and in the Courts and Boards citizens were randomly selected and rotated between cases. The longest time commitment in a single contemporary mini-public has been the twelve weekends of the Oregon Citizens’ Assembly that met over ten months. The Irish Citizens’ Assembly met over a longer period of time – sixteen months – but demanded one less weekend of service from participants. In some deliberative mini-publics, there are times when participants may break into self-selecting working groups, but they are carefully designed so that there is no concentration of power in the hands of a small cadre of members and facilitators ensure free and fair deliberation between participants.

This combination of length of service and choice of work areas based on that service has potentially serious negative effects on the capacity of the SLP to realize political equality in its day-to-day workings. We can see this in two ways. Internally, concentration of power and with it the capacity to strongly influence proceedings of the Assembly is likely to rest with a small number of members who hold significant offices within committees. There is brief mention in the SLP of possible experimentation with trained facilitators (or, more worryingly, current or former sortition legislators who would not necessarily have the relevant capacities), but it is not clear how this would be combined with the work of self-selected committees over long periods. If trained facilitators are not present or their role is reduced substantially compared to deliberative mini-publics, so the domination by more powerful and socially privileged members is likely to appear and, with it, group dynamics that are anathema to democratic functioning. In the current formulation of the SLP, the relationship between facilitation and emergent modes of leadership is underspecified and it is a reasonable concern that substantive equality between members will be diminished. Secondly, the relatively small number of members and their relatively long period of service expose the institution to the dangers of subversion by powerful interests beyond the chamber, including targeting by media outlets. This is likely to be exacerbated where particular individuals within the sortition legislature are able to concentrate power by holding onto positions on committees (including the position of chair). These individuals will inevitably become particular targets for external groups looking to influence the deliberation and decisions of those committees, not least since they are also likely to become power-brokers within it. Our contention is that members will become subject to diverse forms of the exercise of power by outside interests and yet have relatively little protection unless significant changes are made to the wider institutional ecology.

First, they will be vulnerable to traditional lobbying activities that transmit the inequalities of civil society to the formal political domain. Sortition is intended to guard against the negative impact of expressions of economic power and social influence, but once members of the SLP are selected, they are left exposed in the same way as elected parliamentarians – but without the level or kind of defenses that political parties at their best can offer (although without the kind of additional pressures that parties at their worst can also exacerbate). Second, if the SLP is part of a bicameral system as suggested by Gastil and Wright, it will be subject to pressures from the elected chamber, especially when there is disagreement between them. We are familiar with bicarmeral legislatures competing with, and employing strategies of de-legitimation towards one another. It would be naïve not to expect politically experienced politicians from the elected chamber to employ such strategies to embolden their standing and influence vis-à-vis the sortition chamber. It is not at all clear what resources the SLP will be able or willing to bring to bear to withstand such strategic action.[[12]](#footnote-12) Third, the small number of members, length of term, and specialization of roles not only mean that members will become susceptible targets for traditional lobbying and factionalism, but also for more insidious forms of influence, namely corruption and bribery. Some of the practices that Gastil and Wright suggest as defenses against corruption, such as ‘periods of private – or semi-private – discussion’ and the use of secret ballots[[13]](#footnote-13) can equally be vehicles for corrupt behavior by reducing mutual accountability within the assembly and the weak but real accountability generated by deliberative interventions and voting records being subject to publicity.

It is plausible that these vulnerabilities may be reduced if legislators in both chambers as well as individuals and organizations seeking to influence them are subject to disciplinary scrutiny by a body such as the People’s Court on the Athenian model. No doubt, other changes – such as strengthening laws governing lobbying – could also act to reduce these vulnerabilities. However, what our analysis points to is a neglect in the SLP of sortition’s role in not only inhibiting the impact of powerful interests on selection, but also, in combination with other design features, in particular swift rotation and independent facilitation, on the practices of the legislative body. This is important in addressing not only the problems of external influence but also two internal problems of the concentration of power to which the current design of SLP gives rise.

The first, already mentioned, is that of particular individuals within the sortition legislature being able to concentrate power by holding onto positions on committees (including the position of chair). The second is that SLP members will be exposed to the impact of factions, alliances and party organization within the body. Gastil and Wright accept that in their formulation, ‘a place for traditional caucusing should remain’, or as an alternative ‘members could organize themselves into a larger number of more cohesive groups of like-minded legislators, who share common values and priorities’.[[14]](#footnote-14) Each of these – and especially their combination – threatens to move the legislature away from the deliberative ideal of autonomous agents swayed by the force of the better argument and towards a more structured partisanship that works across issue-areas. Our objection is not towards emergent political leadership within such a legislature, but rather with (a) organized inequality between members in terms of power concentrations and (b) the weakening of the independence of members through partisan structures that, especially when acting together, align political leadership not with leadership tied to deliberative qualities but with leadership tied to power and partisanship.

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

**Agenda-setting**

As far as we are aware, there is no historical or contemporary precedent for a single body, selected by sortition, that combines agenda-setting and scrutiny in a deliberative fashion in the way that the SLP intends. In Athenian democracy, a number of sortition bodies with very different and distinct political functions were employed around the central assembly. We can draw similar lessons from another contemporary field of participatory practice where the designers of participatory budgeting (PB) in Porto Alegre crafted different institutions for different aspects of agenda-setting, rule-making and decision making. They recognized that combining functions in the same body is likely to have perverse democratic results.[[15]](#footnote-15) Later PBs that failed to separate these functions have arguably been less effective democratically.[[16]](#footnote-16)

Gastil and Wright are enthusiastic about the capacity of deliberative mini-publics in making their argument for the SLP: ‘randomly selected bodies have shown an inclination to find common ground and recommend workable solutions to the policy problems placed on their agendas’.[[17]](#footnote-17) The final part of that sentence is indicative of the challenge the SLP faces: deliberative mini-publics work on ‘policy problems placed on their agendas’. They do not select these problems. Ensuring a safe space within which common ground and workable solutions emerge may well be undermined if mini-publics were a site for competition over agenda-setting. We have the same concern for the SLP – that agenda-setting and scrutiny may pull the institution in different directions – and suggest that the former function may well be detrimental to its democratic capacity.

Agenda-setting can be broken down into at least three separate functions: collation of ideas, filtering of ideas and management of the agenda once it has been agreed. Within traditional elected legislatures, these functions are undertaken or at least overseen principally by political parties. It is not at all clear how these functions would be realized in the SLP. If we consider collation of ideas, sortition legislators will not have knowledge of the full range of ideas: while a demographically diverse group is epistemically important for collective judgement, it does not equate to full knowledge of the range and dimensions of issues facing the legislature. Therefore, there will need to be processes through which members are exposed to different possibilities. How is this to be done? We can see a range of options, all potentially undesirable from a democratic perspective. One option draws on the practice of deliberative mini-publics, where facilitation and provision of balanced information and witnesses is overseen by an independent body supported by a stakeholder advisory group. Gastil and Wright suggest that experimentation with different kinds of facilitation may be necessary and that this is the role for an ‘Oversight Commission’[[18]](#footnote-18). But the idea is not developed further and they only focus on facilitation: helping ‘citizens work through their agenda, manage speaking time, and ensure respectful discourse’[[19]](#footnote-19). How balanced information is to be provided to sortition legislatures is not clear, especially in relation to problem definition and agenda-setting. The role of the Commission could be extended to manage the agenda-setting process, but at least two issues emerge. First, how are ideas to be selected to present to members? Whose ideas should be heard? Second, there is a danger that too much power will be concentrated in such an administrative body that gets to choose which issues are highlighted and in what order. The same would be true if the role were played by a more traditional government agency. Here, we contend that Gastil and Wright are too relaxed in their evaluation of the dangers of ‘technocratic capture’[[20]](#footnote-20). The autonomy of members is in real danger of being compromised as more responsibilities are passed to independent or administrative agencies.

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

A third option, again implicit within the SLP, is the introduction of party caucuses or some other forms of faction that could collate and filter ideas and manage the agenda-setting process. As we have already argued, this impacts on political equality and begins to replicate the very practices of elected legislatures that the application of sortition is introduced to ameliorate in the first place. The relative autonomy of the sortition legislature is lost, as is the deliberative difference that sortition bodies bring as countervailing powers. But without parties or organized factions, the different aspects of agenda-setting will be vulnerable targets of lobbying and other more nefarious activities by organised interests.

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

We readily subscribe to the need within contemporary democratic societies for what we might term ‘counter-hegemonic agenda setting’. Elites get their issues on the agenda too easily and too often (this is one source of their power). But we are not convinced that the SLP can realize this counter-hegemonic role. Our suspicion is that it will be subject to pressures from powerful organized interests that it will be unable to manage democratically. Those who wish to retain an agenda-setting role for a sortition legislature are required to provide an account of how this role is to be facilitated and how leadership is to be enacted in order to drive agendas in a way that does not undermine political equality. We believe, consequently, that there are good reasons to remove agenda-setting from the sortition legislature, leaving it as more of a responsive body that engages primarily in scrutiny. It may be possible to conceive of a separate sortition agenda-setting assembly, perhaps one that is embedded in a wider order of sortition bodies that generate ideas for collation and ranking, although there is little successful historical or contemporary practice to draw on and our considerations of how it might function leave us with good reasons as to why it may be difficult to achieve. Certainly, it would be prudent to experiment with such a structure in lower risk environments in order to discern the relevant design issues that it would confront before inserting such a body at the apex of the formal democratic system.

**The design dilemma**

Our foray into historical and contemporary precedents suggests that for an assembly to inhibit the unjustified exercise of power by economic and social groups, selection by sortition is not enough. Our first proposition is that to counter such activities and realize political equality we need to combine sortition in selection with rapid rotation of membership, the use of sortition and rotation within the assembly for offices and/or a larger pool of members. While the application of sortition is often equated to the realization of political equality, we argue that for it to be realized over time in an assembly body, sortition needs to be combined with the principle of rotation. A second proposition follows. If such mechanisms are to be introduced, the body cannot fulfil agenda-setting and scrutiny functions simultaneously.

Our contention is that as it stands the SLP is neither realistic nor utopian. It is too ambitious for the former; not ambitious enough for the latter. Further, we contend that if we desire a more realistic outcome, then the functions of agenda-setting and scrutiny need to be separated in order that a democratic form of these functions can be better protected. If we desire a more utopian outcome in which the assembly plays an agenda-setting role, then the SLP needs to sit within a wholescale restructuring of the broader institutional ecology of the democratic system, which in the current formulation remains relatively untouched.

**A sketch of an alternative proposal – realistic and utopian**

For those interested in the use of sortition in contemporary politics, there is a strong tendency to focus attention on legislative bodies. While such bodies are clearly important sites for democratic reform, we believe that we need to consider a wider political canvas and to reflect on the variety of roles that sortition can play within other parts of the political system, including selection of offices in parties and executives, that would enhance the system’s democratic qualities. That said, in these final comments, we add to the emerging literature on potential designs of a sortition legislature. Our proposal has the following characteristics, drawing in particular on the practice of the People’s Courts and Legislative Boards in Ancient Athens and more recent experience of deliberative mini-publics: it would be *responsive*, draw on a *wider pool of members* and use *sortition and more rapid rotation* to assign members to work on particular legislative issues as they emerge. Our argument is that establishing such an assembly should be the first goal of those wishing to bring sortition into the legislative branch of government as we believe it has design characteristics that will leave it less vulnerable to external interference, more capable of fulfilling its legislative function effectively and more likely to be transformative in the way that citizens perceive their role in the political process. We find this more compelling than the SLP, even when considered under favorable conditions, and certainly more realistic than the full-scale system-change proposals offered by a number of sortition advocates.

By focusing on a responsive function for the assembly, we are not arguing that it is an elected chamber that must set the agenda, just that the agenda would be set outside the sortition legislature. In the first instance, it is likely that the body would be responsive to the agenda of the elected chamber and would thus play a role in overseeing and scrutinizing legislative and policy proposals from that chamber. There are other more or less participatory ways that the agenda might be set (for example through an initiative process), but that is not our primary concern here. Neither will we be concerned with the way in which another separate sortition body might be designed to play an agenda-setting role within the legislative institutional complex, although as we have already argued, there are reasons to believe this is a difficult design enterprise. In whichever way agendas are set, our contention is that this process should be separated from a sortition body that undertakes a scrutiny function in a deliberative fashion.

Second, we argue for a much wider pool of members of the sortition assembly. The 6,000 from which the People’s Courts and Legislative Boards were selected in Athens may be a good starting point, although the number could be higher. Our preference is that service is compulsory (with exemptions for pressing issues, as in legal juries) and legislators would be rewarded generously in recognition of the significance of their role. If compulsory service were not deemed acceptable, then the selection of the 6,000 would be stratified to ensure that those who accepted the invitation to participate were not biased towards particularly salient socio-demographic characteristics. The 6,000 would only meet as a body for training purposes: to be educated about their legislative role. Following Athenian practice, a pool of members would be randomly selected from this body, (again applying stratification criteria to ensure socio-demographic diversity) for participation in smaller issue-assemblies of between say 150 to 300, the number of which is coterminous with the various bills and policy documents that need to be dealt with. In the next step this pool would be further divided by lot according to the number of tasks. And then finally, the members would be assigned by lot to the particular issue. A formula would be needed to ascertain how long each separate assembly would need to meet, but the longest citizens’ assemblies that have worked on complex constitutional issues have required no more than 25 days in total which we can call a ‘session’. Those who serve in any given session would be ineligible for the next session when the pool would be selected from those of the 6000 not chosen for the preceding session. The 6,000 body would itself be rotated on a regular basis of one to two years.[[21]](#footnote-21)

Unlike the Athenian Courts and Boards, the smaller issue-based assemblies would be deliberative in character and last longer than one day. To this end, they would work in similar ways to existing deliberative mini-publics. A central administrative organization would need to be established, with independence from government. This would be a specialist body whose role it would be to appointment trained facilitators (by lot from a pool) for each session and an advisory board to oversee the development of balanced learning materials and the appointment of expert witnesses for each assembly that captured the range of viewpoints and interests that surround that particular issue. In designing such an administrative body, we can draw on the varied experience of the small number of autonomous public bodies that are charged with organizing public participation such as the Tuscany Participation Authority (Italy), the National Commission on Public Debate (France) and the Quebec Environmental Public Hearings Board (Canada)[[22]](#footnote-22). While there would remain a danger of capture by technocratic or social and economic interests, the capacity of such actors to unduly influence the scrutiny process would be diluted by the random allocation of sortition legislators – and facilitators – to particular legislative sessions.

The final question for us to deal with is that of the powers of the sortition legislature. There are a number of options. Let us assume initially that the sortition body is scrutinizing proposed legislation from the elected legislature. The weakest option would be delay – a mechanism for sending a piece of legislation back to the elected chamber for further consideration if it was not supported by the sortition legislature. But this would leave the balance of power very much with the elected body. An alternative would be for a requirement of a particular level of support from the sortition legislature for a bill to become law. It is possible to imagine a range of stipulations for how decision making might progress. A simple majority might be all that is needed for passage of legislation; or a requirement of a super-majority. For example, 60 percent support in the sortition body might be required for legislation to pass, whereas below 40 per cent would kill the bill. Anything in between would send the legislation back to the elected body for reconsideration. An ingenious alternative that would bring the wider public into the process might follow the practice at Leeds University Students Union in the UK, where if a proposal achieves 75 per cent support from the sortition body it is passed, less the 25 per cent it is rejected and between those thresholds the proposal is sent to a binding referendum. One could also easily imagine the sortition legislature being tied to a popular petition process that bypassed the elected chamber – a way of giving direct powers to the broader citizenry to propose new laws or suggest repeals of existing law[[23]](#footnote-23). A proposal would come for direct consideration by the sortition legislature and then be treated in the same way as a proposal emanating from the elected chamber. In these ways, the sortition legislature would play the role of reviewing, repealing and inspecting law not too dissimilar to the functions played by Athenian Legislative Boards.

We believe our formulation has a number of advantages. In particular, it would be protective and transformative. It is protective because the large number of members of the body and the random allocation to issue-assemblies combined with the limited duration of each session means that it is incredibly difficult for powerful economic and social forces to affect its practice. The Athenian concern to obstruct the bribery of juries by the wealthy provides a good analogy for the concerns of contemporary democracies with lobbying (and related activities) and we think their approach to dealing with the problem merits serious attention. Like its Athenian forebear, this model also has greater transformative power because the likelihood of citizens being called is dramatically increased compared to the SLP. This transformative power would be further amplified if the proposal was adopted for sub-national legislatures. Thus, citizens are more likely to experience the practice of ruling and being ruled in turn. The potential for a transformative effect on civic self-understanding is enhanced.

We believe that our proposal is potentially transformative in another sense. Counterintuitively perhaps, it is utopian in its strategic ambition of being simply a first step to more radical change in the democratic ecology through the application of sortition and associated mechanisms. Why so? In adopting a more prudent approach grounded in historical and contemporary democratic experience, our proposal lessens the risk of damage to the reputation of sortition and citizen participation in the legislative process and, as such, can be a stronger basis on which to develop the civic consciousness and political practices necessary for a more radical reshaping of democratic institutions with a strong sortition dimension.

1. We recognize that there are other significant historical periods of the use of sortition – in particular the Renaissance republicanism of Italian cities such as Venice and Florence in the thirteenth and fourteenth centuries and under the Crown of Aragon. In these periods, sortition is primarily utilised for the selection of major and minor offices rather than assemblies, so will not concern us here beyond a recognition that sortition was introduced primarily as a defence against faction and unstable coalitions and thus has some resonances with Athenian practice. For a discussion of the historical circumstances of sortition, see for example, Morgens Herman Hansen, *The Athenian Democracy in the Age of Demosthenes* (Oxford, Blackwell, 1991), Oliver Dowlen *The Political Potential of Sortition* (Exeter, Imprint Academic, 2008) and Yves Sintomer, *From Radical to Deliberative Democracy? Random Selection in Politics from Athens to the Present* (manuscript, 2017), originally published as *Petite histoire de l'expérimentation démocratique. Tirage au sort et politique d'Athènes à nos jours*, (La Découverte, Serie ‘Poches’, Paris, 2011). Our reconstruction of the institutions of Athenian democracy that follows draws on these texts. [↑](#footnote-ref-1)
2. Dowlen *The Political Potential of Sortition*, p.228. [↑](#footnote-ref-2)
3. Graham Smith, Democratic Innovations: Designing Institutions for Citizen Participation (Cambridge, Cambridge University Press, 2009), pp.72-110; Kimmo Grönlund André Bächtiger Maija Setälä (eds), *Deliberative Mini-Publics: Involving Citizens in the Democratic Process* (Colchester, ECPR Press, 2014); Maija Setälä and Graham Smith, ‘Mini-publics and deliberative democracy’, in André Bächtiger, John Dryzek, Jane Mansbridge and Mark E. Warren (eds), *Oxford Handbook of Deliberative Democracy* (Oxford University Press, 2017). [↑](#footnote-ref-3)
4. James S. Fishkin, *The Voice of the People* (Durham, Duke University Press, 2007). In *From Radical to Deliberative Democracy?,* Yves Sintomer points out that the Greeks did not have access to ideas about probability sampling and thus the generation of random samples and the idea of counterfactual judgements was not part of their understanding of sortition bodies. [↑](#footnote-ref-4)
5. Simone Chambers, 'Behind Closed Doors: Publicity, Secrecy, and the Quality of Deliberation', *The Journal of Political Philosophy* 12 (2004): 289-410 [↑](#footnote-ref-5)
6. Setälä and Smith, ‘Mini-Publics and Deliberative Democracy’. [↑](#footnote-ref-6)
7. Mark Warren and John Gastil, John, ‘Can Deliberative Minipublics Address the Cognitive Challenges of Democratic Citizenship?’ *The Journal of Politics,* 77, 2 (2015): 582-574. [↑](#footnote-ref-7)
8. Michael A. Neblo, *Deliberative Democracy between Theory and Practice* (Cambridge: Cambridge University Press, 2015), p.181; see also Yanis Papadopoulos, ‘On the embeddedness of deliberative systems: Why elistist innovations matter more.’, in John Parkinson and Jane Mansbridge (eds.) *Deliberative systems* (Cambridge: Cambridge University Press, 2012), pp. 125-150. [↑](#footnote-ref-8)
9. In the analysis that follows we consider a simple legislative assembly and avoid discussion of the UK case in which government ministers are drawn from both legislative assemblies. This would add a further level of complexity to the analysis and is not covered in the SLP. [↑](#footnote-ref-9)
10. John Gastil and Erik Olin Wright, ‘Legislature by Lot’ (manuscript, 2017), p.17. [↑](#footnote-ref-10)
11. ibid, p.20. [↑](#footnote-ref-11)
12. We thank Terrill Bouricius for stressing this important point during the Real Utopias workshop. [↑](#footnote-ref-12)
13. ibid, p.23. [↑](#footnote-ref-13)
14. ibid, p.24. [↑](#footnote-ref-14)
15. Smith, Democratic Innovations, pp.30-71. [↑](#footnote-ref-15)
16. Ernesto Ganuza and Gianpaolo Baiocchi, ‘The Power of Ambiguity: How Participatory Budgeting Travels the Globe,’ *Journal of Public Deliberation*, 8, 2 (2012), Article 8; Yves Sintomer, Carsten Herzberg, Anja Röcke, and Giovanni Allegretti, ‘Transnational Models of Citizen Participation: The Case of Participatory Budgeting,’ *Journal of Public Deliberation*, 8, 2 (2012), Article 9. [↑](#footnote-ref-16)
17. Gastil and Wright, ‘Legislature by Lot’, p.7. [↑](#footnote-ref-17)
18. ibid, p.22 [↑](#footnote-ref-18)
19. ibid, p.22. [↑](#footnote-ref-19)
20. ibid, p.21. [↑](#footnote-ref-20)
21. Alexander Guerrero also takes an issue-based approach to his sortition proposal, but, similar to Gastil and Wright, argues for smaller bodies without rapid rotation. See Alexander A. Guerro, ‘Against Elections; The Lottocratic Alternative, *Philosophy & Public Affairs*, 42, 2 (2014): 135-178. [↑](#footnote-ref-21)
22. Laurence Bherer, Mario Gauthier, and ‘Autonomy for what? Comparing four autonomous public organizations dedicated to public participation’, paper presented at the ECPR Joint Sessions, Salamanca 2014. [↑](#footnote-ref-22)
23. The initiative process would need to be implemented in a different way to current practice where organized interests tend to dominate. [↑](#footnote-ref-23)