

Why I Am Not a Sortinista*

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Abstract: Over the past forty years, the idea of *sortition*—the selection of political officials by lot—has moved from the fringes of democratic theory to the forefront of conversations about real-world institutional reform. Witness, for example, the use of sortition in the electoral reform process in British Columbia and Ontario, as well as in the recent Irish Constitutional Conventions. Throughout most of this time period, the challenge for sortition advocates has been to establish the desirable process of random selection—to show that random selection, far from being an abdication of responsible decision-making, can actually enable critically important social values, including democratic values. This fight has not been completely won, to be sure, but at present most thoughtful observers of politics will concede the democratic credentials of sortition. The challenge for sortition advocates has thus shifted. It is no longer enough to make the democratic case for sortition; it is now necessary to consider the respective democratic contributions of sortition and other institutional devices, notably election. Some sortition advocates have shied away from this challenge, out of a conviction that sortition is the uniquely democratic selection mechanism. I call such advocates *sortinistas*, adapting (in an admittedly revisionist manner) a term employed in dialogues over sortition. In this paper, I shall critique the sortinista approach to democracy, focusing upon David van Reybrouck’s recent book *Against Elections*.

In 1970, Robert Dahl suggested that randomly-selected bodies of citizens might have a valuable role to play in a well-functioning democratic society (Dahl 1990). The suggestion may have seemed shocking at the time, although there was no good reason for it to be. *Sortition*—the practice of assigning public responsibilities by lot—had been an integral part of Athenian democracy in the fifth and fourth centuries BCE (Headlam 1933). And for anyone who had paid attention to the Athenian experience, there was a natural connection between sortition and democracy. Aristotle, for example, famously associated sortition with democracy and election

* Earlier versions of this paper were presented at the 2016 Annual Meeting of the American Political Science Association and at the workshop on “Representation, Bicameralism, and Sortition,” McGill University, Montreal, December 9, 2016. Comments welcome. DRAFT—please do not cite without permission. All rights reserved by the author.

with aristocracy (*Politics* IV.9). But this association did not persist into the modern era,¹ especially among political theorists. By the end of the eighteenth century, election, and not sortition, was the natural way to select political officials in free societies.² Dahl's *After the Revolution* represented the first serious break with this tradition in over two centuries of political thinking.³

In the 40+ years since the appearance of *After the Revolution*, however, there has been a serious revival of interest in the practice of sortition. In the words of a recent review essay, there has been a veritable “renaissance for random selection” in recent years (Stone 2012-2013). This renaissance has led academics in political theory and related fields (law, political science, economics, etc.) to rethink the advantages and disadvantages of random selection in politics on both a theoretical and a practical level.⁴ Moreover, this revival has explicitly reconnected sortition to democracy. Perhaps the Athenians had the right idea regarding the democratic credentials of sortition after all.

It is one thing, however, to say that sortition is a democratic procedure. It is quite another to say how and why. Any effort to answer these questions will, in turn, raise other questions as

¹ The only form of sortition to be found in most modern democracies over the last two centuries is the jury, as practiced particularly in the Anglo-American world. But there is no real continuity between Athens and the jury. The creators of the modern jury system seem not to have had the Athenian experience in mind (Dowlen 2008); rather, they simply seem to have recognized some of the same properties that attracted the Athenian democrats to the practice. In other words, they rediscovered a “good trick.” Moreover, apart from Alexis de Tocqueville (1969), political theorists over the past two hundred years have not tended to connect the jury closely with democracy.

² See Manin (1997) for an overview of this historical shift. Note that this shift was accompanied by a shift of even greater importance. At the same time that political theorists were starting to associate democracy with election, they were also moving from a largely negative to a largely positive image of democracy. In other words, early modern political theorists never liked democracy when it was associated with sortition, but embraced it as it became associated with election. Space prohibits any effort to disentangle this process here.

³ Occasionally, the idea had appeared in the popular press before Dahl. In 1960, for example, an editorial appeared in the magazine *The Rotarian* entitled “Pick Leaders out of a Hat?” The editorial, by syndicated columnist Sydney J. Harris, originally appeared in the *Chicago Daily News*. It explicitly advocated a revival of the Athenian practice. The responses to the editorial in the *Rotarian*, however, were not sympathetic. This is, to the best of my knowledge, the first endorsement of sortition to appear in the twentieth-century Anglophone world. See <https://equalitybylot.wordpress.com/2011/05/05/sydney-j-harris-i-would-like-to-see-american-officeholders-drawn-by-lot/>

⁴ See Stone (2016) for a review of the recent literature on sortition.

well. If sortition is indeed a democratic method for selecting political officials, does that mean that election *isn't*? Or are both methods democratic in different ways?⁵ It was natural to ignore such questions when elections were considered the only democratic game in town. But if democracy ought to make room for sortition, further questions—including questions regarding the democratic credentials of elections (as well as other democratic procedures, such as referenda)—are unavoidable.

Answering questions like these requires a story about what democracies are supposed to do, and how sortition (or elections, or some combination of the two) can help them to do it. It requires, in short, a theory of democracy, one fleshed out enough to articulate a set of democratic values and then link those values to a variety of institutional practices. This is a difficult task. It was difficult enough when election alone was regarded as the quintessential democratic practice. The introduction of other live methods for selecting democratic officials complicates matters immensely. But the good news is that the consideration of sortition alongside of election may enable some real progress in democratic theory. Perhaps once sortition receives its proper theoretical due, some seemingly intractable arguments regarding election (e.g., the virtues and limits of majority rule) may at last be resolved. Some problems, after all, become much easier once viewed from a new and unexpected angle.

Some sortition advocates, however, have shied away from a close comparative evaluation of sortition and election. They have done so out of a conviction that sortition is somehow uniquely democratic, to the point that it is to be preferred over election in almost every context. They often suggest sortition, not as a useful tool to mend certain ailments plaguing contemporary democracies, but as a panacea, an all-purpose tool for making democracy “real” for the first time

⁵ I take a preliminary stab at answering these questions in Stone (2016). For an alternative approach, see Malkopoulou (2015).

in two millennia. Such bold claims necessitate a heavy burden of proof, and burden that all-too-often cannot be met. An analysis of the sortinista case, shortcomings and all, can inform the project of developing a democratic theory that acknowledges the comparative merits of different democratic mechanisms.

This paper advances this project in a modest way, through an examination of David van Reybrouck's recent book, *Against Elections: The Case for Democracy* (2016). First published in Dutch in 2013, van Reybrouck's book advocates sortition as the cure for many of the ills currently plaguing the democracies of the world. The passion van Reybrouck (a journalist, not an academic, and author of a well-received book on the Congo) demonstrates in making the case for sortition is clear—clear enough, in my view, to count him as a militant sortinista. The democratic theory underlying that case, however, is not nearly so clear. In arguing for sortition, van Reybrouck makes many of the points put forth by other advocates of random selection in politics, both inside and outside of the academy. An examination of his book thus provides an excellent setting for figuring out whether, and to what extent, those points fit together into a coherent story about what democracy is, why it is valuable, and what institutions it requires.

Van Reybrouck argues that the democracies of the world increasingly suffer from what he calls “Democratic Fatigue Syndrome.” Like most syndromes, this “disorder...has not yet been fully described,” but it is characterized by

low voter turnout, high voter turnover, declining party membership, governmental impotence, political paralysis, electoral fear of failure, lack of recruitment [of new politicians], compulsive self-promotion, chronic electoral fever, exhausting media stress, distrust, indifference and other persisting paroxysms” (Van Reybrouck 2016; p. 16; all further citations will be to this source unless otherwise indicated).

As with other syndromes, it is not immediately clear that all of these symptoms have the same cause or set of causes, or that the cure for one will work for the others. Nevertheless, van Reybrouck goes on to argue that the syndrome involves a single distinct problem—election (as the title of the book suggests)—and a single distinct solution—sortition. Both his identification of the problem and his identification of the solution, we will see, are open to question.

Election, van Reybrouck argues, is at the heart of our current woes. The exact link he wishes to draw between election and the problems of the status quo, however, is not always clear. Sometimes, he makes the link sound very direct. “Democratic Fatigue Syndrome,” he writes, “is caused not by representative democracy as such but by a specific variant of it: *electoral-representative democracy*, the democracy that produces a body of representatives through elections” (emphasis added; p. 38). And at another point he dismisses election in modern times as “what is in fact a bizarre, archaic ritual” that could never be mistaken for “a festival of democracy” (p. 55).⁶ At other times, he suggests that the cause of our ills is not elections *per se*, but the attitude we have come to hold regarding them. Van Reybrouck calls this attitude “electoral fundamentalism,” and suggests that “the fundamental cause of Democratic Fatigue Syndrome lies in the fact that we have all become electoral fundamentalists” (p. 39). The mistake we are making, he suggests, is that “we have reduced democracy to representative democracy and representative democracy to elections,” and as a result “a valuable system is now mired in deep difficulties” (p. 55).⁷ He offers the following definition of electoral fundamentalism:

Electoral fundamentalism is an unshakeable belief in the idea that democracy is inconceivable without elections and elections are a necessary and fundamental

⁶ This is a genuinely strange accusation for a proponent of sortition to hurl. Is drawing names out of a hat any less “bizarre” or “archaic?”

⁷ Van Reybrouck does not seem to have a problem with the first reduction—reducing democracy to representative democracy—and so it is unclear why he mentions it here.

precondition when speaking of democracy. Electoral fundamentalists refuse to regard elections as a means of taking part in democracy, seeing them instead as an end in themselves, as a holy doctrine with an intrinsic, inalienable value (p. 39).

The use of the word “holy” is not accidental here. Van Reybrouck really does seem to see people who associate democracy with election as the moral equivalent of ISIS—a horde of howling, drooling fanatics bent upon blindly imposing their ideology upon the world at all costs. Nowhere is this more apparent than in his discussion of democracy promotion throughout the developing world. Van Reybrouck makes this relatively innocuous (and generally ineffectual) effort on the part of western governments and NGOs sound positively Satanic:

If you look at the recommendations of Western donors, it’s as if democracy is a kind of export product, off the peg, in handy packaging, ready for dispatch. Democracy becomes an Ikea kit for “free and fair elections”, to be put together by the recipient, with or without the help of the instructions enclosed.

And if the resulting piece of furniture is lopsided, uncomfortable to sit on or falls apart? Then it’s the fault of the customer, the distant producer.

That elections can have all kinds of outcomes in states which are fragile, including violence, ethnic tensions, criminality and corruption, seems of secondary importance, and that elections do not automatically foster democracy but may instead prevent or destroy it is conveniently forgotten. We insist that in every country in the world people must traipse off to the polling station, no matter how much collateral damage may result. Our electoral fundamentalism really does take the form of a new, global evangelism. Elections are the sacraments of that new faith, a ritual regarded as a vital necessity in which the form is more important than the content (p. 40).

Elsewhere in the book, van Reybrouck bemoans the way in which elections lead politicians into outrageous, over-the-top public utterances solely in order to get attention. Physician, heal thyself.

It is difficult to know what to make of van Reybrouck's diagnosis of the disease from which contemporary democracies suffer. It is simply absurd to blame election for Democratic Fatigue Syndrome. After all, western democracies have been employing elections for over two hundred years, and yet Democratic Fatigue Syndrome is obviously supposed to be a recent phenomenon. It is no less absurd to blame not election, but Electoral Fundamentalism, for our current condition. Van Reybrouck provides us no reason to believe that our devotion to election is greater than it was at the dawn of the modern democratic age, nor does he give any evidence that people are less willing to consider alternative democratic mechanisms such as sortition than in the past.⁸ If anything, people have become *more* willing over the past two centuries to entertain alternatives to election; I seriously doubt, for example, that the Founding Fathers of the United States would ever have entertained the idea of employing initiatives and referenda, mechanisms that become commonplace in some states a century later. And as I noted at the start of the paper, interest in sortition has blossomed over the past half-century. Whatever the limitations of election as a procedure, there is little reason to take seriously Electoral Fundamentalism as a cause of our current condition.⁹

⁸ At one point, van Reybrouck contends that "For almost three thousand years people have been experimenting with democracy" (p. 41). This is news to me; after the fall of Athenian democracy, there was very little democratic experimentation of any kind anywhere in the West. More importantly, before the rise of the western democracies two centuries ago, there had never been *any* attempt to institutionalize democracy on a scale larger than the city-state. And so it is rather misleading to suggest, as van Reybrouck does, that there is a whole panoply of non-electoral democratic experience that electoral fundamentalists are simply ignoring.

⁹ It is equally absurd to claim that any serious student of politics holds that "democracy is inconceivable without elections." Throughout the modern era, political scientists have been well aware of Athenian democracy and its dependence upon both direct democracy and sortition. But since the time of Madison, they have held that while democracy may be possible on a small scale without election, the size and scope of modern states makes election necessary as a democratic device. Van Reybrouck does nothing to prove they are wrong; as we will see, despite all the vitriol he directs at elections and their defenders, he does not seem to favor their complete elimination.

What makes all this over-the-top denigration of election particularly strange is the fact that van Reybrouck does not seem to be against any use of elections whatsoever. Admittedly, he is not consistent in this. On the one hand, he starts the book with the famous quote from Rousseau's *Social Contract* asserting that "The people of England deceive themselves when they fancy they are free; they are so, in fact, only during the election of Members of Parliament: for, as soon as a new one is elected, they are again in chains, and are nothing."¹⁰ But on the other hand, after page after page of hysterical, over-the-top denigration of elections and their fanatical proponents, van Reybrouck admits that "no one can deny that elections have worked pretty well over the past two centuries" (p. 41). Moreover, van Reybrouck clearly regards declining voter turnout and party membership as problems—a position hard to square with a complete distaste for elections (pp. 8, 9).

When he is not painting proponents of electoral democracy as dangerous fanatics, van Reybrouck espouses a much more modest and reasonable position—that electoral democracy depends upon certain background conditions to function well, and that while those conditions were in place for much of the past two centuries, changes in technology, society, and the economy have placed them under increasing strain. "What is often forgotten," he writes, "is that elections originated in a completely different context from that in which they have to function today" (p. 41).¹¹ After all, at the start of the modern democratic era, "there were as yet no

¹⁰ Suppose that England selected its members of parliament, not via election, but via lottery. Would that mean that the people of England would not be in chains while those members of parliament served? It is hard to say why that should be the case. Indeed, with a randomly-selected parliament, the English would not even be free on election day, at least if freedom is equated (as it is for Rousseau) with the power of choice. Rousseau's complaint here is not against election, but against representation of any kind. That is the reason why he argues that the legislative power cannot be delegated, but must always be retained by the people as a whole (*Social Contract*, II.1). Van Reybrouck's argument is typically directed, not at representation, but at elective representation. His use of Rousseau thus seems misplaced.

¹¹ Van Reybrouck presents no evidence that political observers have indeed forgotten this fact. And in fact, it would be hard to find anyone who would deny the scope of change that has occurred since electoral democracy was

political parties, no laws regarding universal franchise, no commercial mass media, let alone social media” (p. 41). Electoral democracy, in other words, has lost the “channeling” institutions that made it work as well as it did (pp. 51-52). With such differences in background conditions, it is hardly surprising that the democratic institutions governing the developed world appear to need a tune-up, if not a serious overhaul. “If the Founding Fathers in the United States and the heroes of the French Revolution,” he concludes, “had known in what context their method would be forced to function 250 years later, they would no doubt have prescribed a different model” (p. 55).

According to van Reybrouck’s more modest formulation, then, the problem is that given existing social, political, and economic conditions, electoral democracy seems antiquated. Does this mean it needs to be entirely replaced? Van Reybrouck does seem to answer affirmatively in a number of spots. He compares election to the stage coach, the hot air balloon, and the snuffbox—all technologies of the eighteenth century that are not of much use today (pp. 55-56). He also calls election the “fossil fuel of politics:”

Whereas once they gave democracy a huge boost, much like the boost that oil gave the economy, it now...turns out they cause colossal problems of their own. If we don’t urgently reconsider the nature of our democratic fuel, a huge systemic crisis threatens. If we obstinately continue to hold on to the electoral process at a time of economic malaise, inflammatory media and rapidly changing culture, we will be almost willfully undermining the democratic process (p. 57).

But here as well, van Reybrouck’s language is systematically misleading. He gravely opines that “elections are primitive and a democracy that reduces itself to elections is in mortal decline. It is

introduced into the modern world. Van Reybrouck seems to be exaggerating his differences with the existing literature—perhaps out of a desire to make his own ideas seem more radical and innovative than they are.

indeed rather as if we were to limit air travel to the hot-air balloon, even though there are now high-tension cables, private planes, new climatic patterns, tornadoes and space stations” (pp. 55-56). The word “reduces” is critical here; van Reybrouck apparently wants to oppose, not any use of election, but the sole reliance upon election. This would be interesting if any serious political commentator was completely unwilling to countenance other democratic institutions alongside of elections. But van Reybrouck provides us with no examples of any such commentator, and I can think of none myself.¹²

A similar move takes place within van Reybrouck’s definition of electoral fundamentalism as well. Electoral fundamentalists, remember, believe that “democracy is *inconceivable* without elections and elections are a *necessary and fundamental precondition* when speaking of democracy” (my emphasis; p. 39). In other words, there is no reason for a proponent of elections (even an electoral fundamentalist!) to deny that electoral democracy works best when combined with a variety of other institutional practices, possibly including sortation. Technically, then, in order not to qualify as an electoral fundamentalist, one would have to believe that modern democracies can dispense with elections entirely. Needless to say, it is much more difficult to make the case for such a dispensation than it is to establish the plausibility of conjoining election with sortation. Van Reybrouck seems determined to run the two claims together.

Whatever the merits of election in the present period, van Reybrouck at least acknowledges that democratic societies have worked tolerably well in the past by relying upon

¹² The situation is rendered even more strange by his less-than-enthusiastic treatment of “neo-parliamentarian movements,” such as the Pirate Party (currently enjoying electoral success in Iceland, and more mixed results elsewhere), which “aimed to strengthen representative democracy by adding new forms of consultation” (p. 35) and sought “to open the door to allow more participation in politics by ordinary citizens” (p. 36). I would have thought that adding new forms of consultation and opening doors is exactly what van Reybrouck wants, but he nevertheless takes neo-parliamentarianism to task because it “assumes that the representation of the people in a formal consultative organ is inextricably bound up with elections” (p. 37). Van Reybrouck can only say this, I believe, because he sees electoral fundamentalists hiding under ever bed.

election. Does this mean that van Reybrouck recognizes election, alongside of sortition, as a democratic procedure? Hard to say. On the one hand, he seems to accept Rousseau's position, articulated in the second *Discourse*, that the rich and powerful have conned the people into regarding elections as democratic. On the other hand, he also admits that elections "once gave democracy a huge boost" (p. 57), that elections have "very often made democracy possible" (p. 41)—and even that "Elections were *once invented to make democracy possible*," even if "in these circumstances they would seem to be a definite hindrance" (my emphasis; p. 54). He also recognizes the importance of the fight for universal suffrage—an odd position to take if election were simply an anti-democratic, elitist sham (p. 48). In the end, he seems to want to stake out a position whereby elections are inherently antidemocratic, but somehow became a little bit democratic via the expansion of the suffrage. How this works is simply beyond me.

The reason for van Reybrouck's uncertainty regarding the democratic credentials of elections may, I believe, be traced to a simple source: he never offers a definition of democracy, or a clear account of just what makes a political system democratic.¹³ This is particularly odd, given the shrillness with which he denounces any system (especially the status quo elective democracies) he regards as insufficiently democratic. This fact makes it very hard to evaluate claims such as "elections do not automatically foster democracy but may instead prevent or destroy it" (p. 40). What does it mean to say that an election happened without fostering democracy? And how could an election "prevent or destroy" democracy? Such language seems to imply that democracy would somehow have happened if only the cursed elections had not intervened, but I have no idea how that could have happened. Such claims might have been

¹³ This failure of definition also leads van Reybrouck to make a number of truly shocking claims—for example, that "fascism and communism were originally attempts to make democracy more vital" (p. 31). Only if one stretches the meaning of the term "democracy" until it screams.

easier to interpret had van Reybrouck offered a clearly-articulated theory of democracy. (Either that, or he would have made fewer claims of this nature as a result.)

At one point, he does attempt to offer some sort of account of the features that characterize a well-functioning political system. He writes,

Democracy, aristocracy, oligarchy, dictatorship, despotism, totalitarianism, absolutism and anarchy: every political system has to achieve a balance between two fundamental criteria, efficiency and legitimacy. Efficiency is all about how quickly a government can find successful solutions to problems that arise, while legitimacy is about the degree to which people give their assent to the solution (p. 5).

There is a natural tradeoff, for van Reybrouck, between efficiency and legitimacy; the more quickly a government is able to act, the less it must seek popular consent for its decisions.¹⁴ “Democracy,” van Reybrouck continues, “is the least bad of all forms of government precisely because it attempts to find a healthy balance between legitimacy and efficiency, resulting in criticism sometimes of one side, sometimes of the other” (p. 6).¹⁵ Much of *Against Election* is taken up with the task of identifying the institutions suitable for balancing legitimacy and efficiency in the modern world.¹⁶

¹⁴ Of course, it is one thing for a government to decide quickly; it is quite another for it to decide quickly *and correctly*. This makes the tradeoff much less clear than van Reybrouck implies. Perhaps systems that seek popular consultation will prove more likely to identify the correct solution, via the “wisdom of crowds” or the like. But there is no denying that autocratic regimes (e.g., Singapore) are sometimes capable of achieving a high degree of correct decision-making despite their lack of legitimacy. And so if one considers, for each degree of legitimacy, the most well-constructed regime in terms of efficiency, perhaps one will find the tradeoff van Reybrouck identifies.

¹⁵ At their best, van Reybrouck admits that elections have “brought order to the laborious quest for a credible balance between the contrasting demands of efficiency and legitimacy” (p. 41). But this is not what is happening in contemporary democracies, which are failing at both legitimacy and efficiency, “a highly unusual situation” (p. 6). I think it’s a bit of an exaggeration to call this unusual; most governments throughout history have not scored particularly well on either dimension.

¹⁶ In the contemporary era, van Reybrouck contends, “populists” try to attain legitimacy without worrying about efficiency, whereas “technocrats” pursue the opposite agenda (p. 24). Since van Reybrouck contends that contemporary democracies are failing along both dimensions (see n. 15), it is unclear whether he regards either of these approaches as a step in the right direction, or believes instead that neither approach can succeed.

This all makes sense, but where does it leave us regarding democracy? It is not clear from the passage cited whether van Reybrouck means to *define* a democracy as a system that balances legitimacy against efficiency, or to characterize a democracy in terms of other features, and then claim that systems characterized by those features are particularly well-suited for performing this balancing act. From the remainder of the book, I'm guessing the latter. For while legitimacy and efficiency seem to serve van Reybrouck as design specifications for evaluating any political system, he uses a much different language when evaluating a system's democratic credentials (as will be demonstrated shortly). And so questions of legitimacy and efficiency seem to be orthogonal to questions of democracy for van Reybrouck.¹⁷

Van Reybrouck may not offer any clearly-formulated definition of democracy, but some understanding of the concept does shine through many of the things he says in *Against Elections*. He seems to equate democracy, reasonably enough, with the “will of the people.” When he writes, for example, that “the supporters of the American and French revolutions proposed elections as a way of getting to know ‘the will of the people’” he appears to endorse their aims if not their methods (p. 41). Later, he reiterates that the task today is to “Imagine having to develop a system...that would express the will of the people” (p. 55).

But if this is the case, there is surely a little pretense on display in his astonishment of the connection automatically drawn between election and democracy:

The words “elections” and “democracy” are nowadays synonymous for almost everyone.

We have become convinced that the only way to choose a representative through the

¹⁷ This sets up an obvious tension that van Reybrouck never acknowledges. If attaining democracy is one thing, and balancing legitimacy against efficiency is another, how ought one to choose when a conflict between them arises? What if the two tasks cannot be performed simultaneously? Van Reybrouck seems to think that this problem will never arise—he seems to take it for granted that a well-designed democracy will balance efficiency and legitimacy so well that no one could ever want anything else. But he produces no argument for this position, and his bland assumption that democracy is good sits uneasily next to his over-the-top denigration of contemporary democracies.

ballot box. After all, the Universal Declaration of Human Rights [UDHR] of 1948 states as much: “The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections...” That “shall be expressed” is symptomatic of our way of looking at the issue: to say democracy is to say elections. But is it not remarkable that such a general document—the most universal legal document in human history—defines so precisely how the will of the people must be expressed? Is it not bizarre that a concise text about basic rights (fewer than two thousand words in total) pays attention to the practical execution of one of them, as if legislation about public health were to include a recipe? It’s as if the people who compiled the declaration in 1948 had come to see the specific method as a basic right, as if the procedure was in itself sacred (pp. 38-39).

From this passage, it appears that van Reybrouck accepts the idea that democracy is about expressing the will of the people. Given this fact, it is odd that he is so shocked by the connection drawn in the UDHR between elections and democracy. What could be more natural, if you want to know the will of the people, than to *ask them what they think*? How else might one ascertain the will of the people? Consulting a Ouija board, perhaps?

One might think that van Reybrouck wishes to contrast electoral and direct democracy here. Perhaps the problem is not that the people are being asked to express their will, but that they are being asked to express their will regarding the selection of representatives, not regarding the making of policy. But van Reybrouck does not merely object here to the idea that “how the will of the people must be expressed” through elections; he also objects to the idea that “the only way to choose a representative through the ballot box.” And so van Reybrouck acts shocked at the idea that we should try and ascertain the will of the people, with regard to representatives, via

elections—as if there were obviously a million other ways in which to do it. Passages like these make plain just how difficult is the interpretive task set by *Against Elections*.

Can a theory of democracy be distilled from van Reybrouck’s polemic against elections? As far as I can tell, the theory would have to work something like this. The goal of democracy is to express the will of the people.¹⁸ But in a large-scale society, it makes sense for the people to delegate the task of decision-making to representatives. These representatives count as democratic because they have been selected by the people; it is the will of the people that these people make the laws.¹⁹ It is the representatives who should do it because of the problem of rational ignorance; many people have very poorly-formed opinions on a wide variety of topics, and a good number cannot be said to have meaningful opinions at all (i.e., any expressions of opinion from them on certain topic represents simple statistical noise). But the practice of representation does not guarantee that the popular will gets expressed. Representatives, after all, often possess both the motive and the opportunity to pursue some other aim instead, such as personal self-interest or the advancement of some special interest. This problem is mitigated when the right auxiliary conditions exist to hold representatives accountable and winnow out deviations from the public interest—political parties, a watchdog media, effective public interest groups, and so on. But as van Reybrouck rightly notes, these auxiliary conditions have been severely taxed by developments of the last fifty years. They currently seem unable to do their

¹⁸ This is what William Riker called “populism,” and his book *Liberalism against Populism* represents one long attempt to defeat the idea (Riker 1982). Needless to say, for van Reybrouck’s position to hold, Riker’s objections would have to be met. Space prohibits any effort to address these objections here, but for a general objection to Riker’s position see Mackie (2003).

¹⁹ This raises the problem of constituencies. After all, the people as a whole do not elect the legislature as a whole. Rather, different sections of the people elect different sections of the legislature. There are many ways in which this can be done, of course, but the important point here is that it is not obvious whether any particular scheme of constituency should count better than any other in generating a legislature that might meaningfully be said to represent the people’s will. On the general subject of constituency, see Rehfeld (2005).

jobs effectively. And so there is a need for new measures to make sure that electoral democracy does its job effectively of assuring that the popular will gets done.

Randomly-selected citizen juries represent one possible means by which electoral democracy could be moved back on track. The idea is that a group of citizens, selected at random, offer an additional means of ascertaining the popular will. Such a group may not possess the experience or the expertise of elected representatives, but it would lack the motivation or the opportunity for deviating from the objective of representing the popular will. And so the hypothesis would be that a citizen jury working in conjunction with an elected legislature would under current conditions do a better job of making policy that reflects the will of the people than either decision-making body could do on its own.

This represents, at present, my best effort to identify the theory of democracy underling van Reybrouck's critique of the election-centered *status quo*. I think that it faithfully captures many of the intuitions held by those sympathetic to sortation. But I do not claim that is a viable theory of democracy. Rather, to me it represents an unstable effort to combine different possible elements of a theory of democracy that simply cannot be combined. They are in competition with one another, and not complementary to one another, as this particular case for sortition would seem to require. In particular, the argument that I have sketched seems to want the will of the people to enter the story in two separate ways. It is expressed when the people elect representatives to make the laws. And it is expressed when the people directly express their opinions on the laws themselves—through citizen juries, for example. The idea is that a set of elected representatives—who the people will should decide for them—must also try to respect the will of the people when it comes to those decisions themselves.

I cannot find any other way to capture this element of the van Reybrouck case for citizen juries—a case, I repeat, which I do believe captures an intuition shared by many proponents of sortition. If the will of the people can simply be expressed via the authorization of representatives, then no auxiliary bodies are needed to capture their will—their will is done so long as the chosen representatives make the laws. If they do make the laws, then they are doing what the people have chosen them to do. On the other hand, if the will of the people regarding the laws themselves is what really counts, then election does not in any way serve as an expression of the popular will. (Why that should be the case is beyond me.) A direct democracy is the obvious way to go. The demand that election be supplemented by anything else would seem to require some kind of combination of these two objectives. And without some such combination, there can be no case for introducing citizen juries (as opposed to direct democracy) at all.

The only viable theory, it would seem to me, that could possibly do justice to this kind of story will necessarily involve an epistemic component. There exists something like the public interest, and elected legislatures and citizen juries both represent alternative methods of trying to identify it. This would render the commitment to both election and random selection purely instrumental in nature—these happen to be two useful devices for ensuring that this vital public task is done. It is, perhaps, in the spirit of van Reybrouck’s desire to find the right balance between legitimacy and efficiency. But as with van Reybrouck’s balancing act, there does not seem to be anything obviously democratic about it. In what way is a balance between election and sortition particularly *democratic*? Does the democracy come through sortition? Election? Both? And if both, does it come in the same way from each or in different ways?

I must therefore end the paper where I began it—facing the problem of establishing the respective democratic credentials of election and sortition. Ever since Aristotle, it has been clear that there are serious differences between these mechanisms. These differences are large enough that it is difficult to see how they can be combined into a single workable theory. Van Reybrouck’s book is instructive, perhaps, less because it offers a solution to this problem (or a knockdown defense of sortition against election) than because it highlights just how many disparate elements people seem to believe must be part of the solution. Whether all of these elements can ultimately be combined remains to be seen.

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