

# The Blind Break, the Invisible Hand and the Wisdom of Crowds: On the political potential of sortition

## Prologue

In the aftermath of the Brexit referendum a number of commentators have questioned whether there might be a better way of consulting public opinion than the referendum, subject as it is both to rational ignorance (Downs, 1957) and manipulation by media and other elite influences. Mary Beard argued in *TLS* that:

handing us a referendum once every twenty years or so, largely depriving us of accurate information in a fog of slogans and rhetoric, and allowing us all, on both sides, to vent our various discontents and prejudices in a yes/no vote is not a way to reach a responsible decision. Nor is it a way to re-empower a disempowered electorate. That, as Athenian democrats would have seen, needs something much more radical. (Beard, 2016)

In the *Guardian*, David Van Reybrouck agreed that the plebiscite is probably the worst way of sampling public opinion and that we would be better off reverting to the classical-era Athenian practice of **sortition** – decision-making by large randomly-selected juries (Van Reybrouck, 2016). A similar article, published on *Open Democracy* two months before the referendum, claimed that a better mechanism than the referendum would be a public enquiry with the outcome determined by a large jury, appointed by sortition:

Public inquiries have, on the whole, a good track record – the Hutton Inquiry being praised for its balanced and open proceedings. The problem was the lack of democratic participation, as there was no jury to determine the outcome. How different the inquiry might have been if it had followed standard Anglo-Saxon judicial procedure – adversarial exchanges followed by a jury verdict. (Democracy, 2016)

The proposal was grounded in fourth-century Athenian practice, which arrogated lawmaking to newly-established law-courts (*nomothetai*). The case for a new law

was argued by the proposer, defence advocates were elected by the assembly, and the outcome was determined by randomly-selected juries ranging in size from 501-5,001. There is no evidence to suggest that the fourth-century reforms were viewed as an assault on democracy, in particular in the light of the equation of juries with 'radical' democracy:

There is a longstanding puzzle in studies of Athenian democracy. Why, towards the end of the fifth century BC, did the Athenians deliberately increase the political powers of their courts, at the direct expense of those of the assembly? . . . the evidence at our disposal suggests that they regarded their courts as *an even more democratic institution* than the assembly: more reliably on the side of the *dēmos* against the elite, and more crucial to the development and preservation of democracy in Athens. (Cammack, 2013b, pp. 132, emphasis in original)

The revival of interest in sortition is a product of the deliberative turn in democratic theory, and is often associated with experiments with deliberative polling, mini-publics and citizen juries. However, while one group of theorists is interested in the representative potential of statistical samples, another school focuses on sortition as a prophylactic against factionalism and corruption, and a third group is interested in the supposed advantages of 'collective wisdom'. This paper clarifies the distinctions between these three models and examines the entailments for the practical implementation of sortition.

## **Three theories on the political potential of sortition<sup>1</sup>**

### **1. The Blind Break**

According to Oliver Dowlen and Peter Stone, the leading theorists of this school, the primary function of sortition is to protect the political appointments process from

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<sup>1</sup> Whilst there is an extensive modern literature on sortition and *social* theory (Biondo, Pluchino, & Rapisarda, 2014; Boyle, 2010; de Coulanges, 1984; Elster, 1989; Ford & Goodwin, 2014; Gataker, 2008 (1627); Pluchino, Rapisarda, & Garofalo, 2010; Stone, 2011; Wilms, 1974), this is beyond the scope of this short paper.

partiality, factionalism and corruption.<sup>2</sup> This approach shares Jon Elster and Barbara Goodwin's interest in the lot as a vehicle for impartiality, equality and social justice (Elster, 1989; Goodwin, 2005),<sup>3</sup> as the 'blind break' (Dowlen, 2008) established by the 'lottery principle' (Stone, 2011) ensures that 'one can count on not being able to count on the outcome' (Elster, 1989, p. 67):

Because their outcomes are unpredictable, lotteries ensure that decisions are made without any reference to reasons. This includes bad reasons [partiality, factionalism, nepotism, corruption etc.]. And this is the primary virtue that lotteries have. Lotteries provide the *sanitizing effect* of a process independent of reasons. (Stone, 2011, pp. 35-6, emphasis in original).

According to Oliver Dowlen the function of the blind break is to introduce indeterminacy, as the lottery inputs (four squares on left of figure 1, below) and the outputs (single square on right) are separated by the two vertical lines.

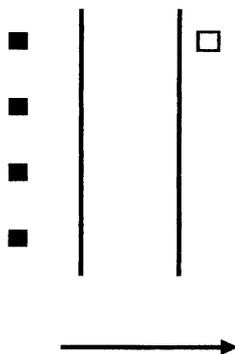


Figure 1: *The Blind Break*, from Dowlen (2008), p. 13

Both Dowlen's and Stone's focus is on protecting the political system from ex-ante partiality and corruption. Whilst it's certainly true that sortition distributes the

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<sup>2</sup> Stone's book *The Luck of the Draw: The role of lotteries in decision making* (Stone, 2011) is, unlike Dowlen's *Political Potential of Sortition*, primarily concerned with notions of impartiality in social (allocative) justice. Only one chapter is specifically devoted to the *political* potential of sortition, nevertheless that chapter is the target of my critique in the present paper.

<sup>3</sup> See also (Broome, 1984, p. 40; Williams, 1981).

relevant goods/responsibilities (political offices) in an equal-chance manner, in large modern states the differential between the 'winners' and the 'losers' of the lottery is so large that impartiality, rather than equality, is the relevant norm. This is in marked contrast with the *isonomia* (equal political right) of fifth- and fourth-century Athenians, where most citizens would have attained political office at least once in their lifetime, hence Aristotle's claim that *rotation* by lot – where all citizens take turns to rule and be ruled – was the principal characteristic of democratic equality (Arist., *Pol.*, 1317a: 40-1317b13). In large modern states, however, where rotation in office is impossible, political equality presupposes *representation* – the topic of the 'invisible hand' section of this paper.

Needless to say, sortition only protects the impartiality of the *selection* process – once the choice has been made, political officers chosen by lot will be just as subject to corrupting influences as those selected by any other process. Indeed the lack of party discipline or the need to secure re-election might suggest an *increased* risk of ex-post corruption, hence the Athenian institution of *euthynai* – the public prosecution that all magistrates (the majority of whom were selected by lot) had to undergo at the end of their term of service (Hansen, 1999, p. 392). Reliance on the law courts, however, is a sub-optimal approach to reducing corruption compared to structural constraints:

Having to think about re-election . . . is a form of accountability to the electorate without which the temptation to plunder the spoils of incumbency might be overwhelming. (Elster, 1989, p. 89)

Given the problem with ex-post corruption and the impossibility of rotation in large modern states, Blind Break theorists like Dowlen and Stone limit themselves to modest proposals for the lot-based appointment of supervisory, monitoring and advisory bodies.

## 2. The Invisible Hand

The priorities of the competing ‘invisible hand’<sup>4</sup> research school into the political potential of sortition are, however, very different.<sup>5</sup> The mathematics of proportional sampling demonstrates that if a sample is of a sufficient size then the ‘law of large numbers’ (LLN) will introduce a reliable stochastic relationship between the random sample and the target population. A sample of (say) 1,000 persons selected randomly from a population of several million would be likely to return an approximate 50/50 gender balance – if this were not the case, and gender balance was deemed to be a salient factor, then the sample size would need to be increased (or stratified sampling adopted).<sup>6</sup> If this is the case for gender, it can also be assumed that the distribution of age, occupational category, socio-economic status, party membership, newspaper subscriptions or *any* other factor associated with the political preferences of the target population would also be captured by a random sample of a sufficient size (Carson and Martin, 1999, p. 34). This outcome is ensured by the ‘invisible hand’ of the law of large numbers – a process known as ‘stochastic determinism’.

One of the criticisms of electoral democracy is that the persons returned by voting (stereotypically rich, white, male lawyers and ‘policy wonks’) have little in common with ordinary voters and, as a result, suspicions are raised as to whether elected politicians may be legislating more in the interests of the ‘political class’ and/or affluent donors, than those of their constituents (Crouch, 2004; Gilens, 2012;

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<sup>4</sup> Although the metaphor ‘the invisible hand’ was coined by Adam Smith, it is used here in an entirely different sense from Smith’s *Theory of Moral Sentiments* and *Wealth of Nations* (or Mandeville’s (earlier) *Fable of the Bees: or, Private Vices, Public Benefits*).

<sup>5</sup> (Barnett & Carty, 2008; Becker, Szep, & Ritter, 1976; Bennett, 2012; Buchstein, 2009, 2010; Buchstein & Hein, 2010; Callenbach & Phillips, 2008; Carson & Martin, 1999; Chouard, 2012; Coote & Lenaghan, 1997; Crosby, Kelly, & Schaefer, 1986; Engelstad, 1988; Fishkin, 2009; Goodin, 2008; Gronlund, Bachtiger, & Setala, 2014; Guerrero, 2014a, 2014b; Hansen, 2005; Landemore, 2010; Levinson, 2010; Lieb, 2004; Lucardie, 2014; Mansbridge, 2010; Mueller, Tollinson, & Willett, 1972; Mulgan, 1984; O’Leary, 2006; Schmidt, 2001; Sintomer, 2007, 2010a, 2010b; Smith, 2009; Warren & Pearse, 2008; Zakaras, 2010)

<sup>6</sup> The arbitrary figures chosen here are for illustration purposes only, as this is a work in political theory, as opposed to the mathematics of proportional sampling.

Hacker & Pierson, 2011; Jacobs & Shapiro, 2000). This has led to calls for improved 'descriptive representation' to establish a legislature that would be (ideally) in John Adams' words 'an exact portrait, in miniature', of the whole nation (Adams, 1951), and random sampling is one (or possibly the only) way to achieve it (Guerrero, 2014a). The related criticism of mass democracy is the problem of 'rational ignorance' – voters are unlikely to invest the necessary effort into properly informing themselves on political issues as their single vote has negligible causal power (Downs, 1957). However the decisions of a randomly-selected microcosm – where each vote really *does* count – could well (given balanced information and advocacy) be better informed than the whole population, leading (it is assumed) to better epistemic outcomes (Fishkin, 2009).

Stochastic determinism was a hot topic among mathematicians, philosophers and sociologists in the nineteenth century – the period when the 'once unthinkable world of chance becomes subject to the laws of nature' (Hacking, 1983, p. 455). In 1825 the French department of justice started to compile and publish statistics for different categories of crime and rates of conviction, leading Adolphe Quetelet to draw the attention of the public to 'the terrifying exactness with which crimes reproduce themselves' (quoted in Hacking, 1983, p. 469). We know in advance 'how many men will bloody their hands with violent murders, how many will be counterfeiters, how many poisoners, just as one can enumerate in advance the births and deaths that will occur in a given year' (*ibid.*). Although actual crimes are committed by individual persons, 'society prepares the crimes and the guilty person is only the instrument.' (Quetelet, 1832, p. 346). Stochastic determinism only applies at the societal level, and tells us nothing about *which* individuals will be involved.<sup>7</sup> Similarly it would matter little which individuals are chosen by lot for political jury service as the LLN will ensure that a sample of a sufficient size will adequately 'describe' the target population.

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<sup>7</sup> The knowledge of which individuals were destined to commit each particular crime would have to await Philip K. Dick's sci-fi short story, *Minority Report* (and the resultant Hollywood movie starring Tom Cruise).

The term ‘the law of large numbers’ (LLN) was introduced by the French mathematician S.D. Poisson in 1835, and it plays a major role in his probability analysis of decisions by jury (Gelfand & Solomon, 1973). Poisson tried to model mathematically ‘how one could have stable probabilities of mass phenomena even when the probabilities for individuals are not constant’ (Hacking, 1983, p. 466). Poisson’s work led directly to Emile Durkheim’s notion of ‘social facts’: his landmark study of suicide proved that even this most quintessentially individual act was social in origin, as the suicide rates of a population – and more importantly, from the point of view of this paper, its constituent subgroups – are stochastically determined by the invisible hand of the law of large numbers (Durkheim, 1951 [1897]).<sup>8</sup>

According to most invisible hand theorists, sortition would make a good candidate for the design of a ‘descriptively’ representative legislative assembly, as the majority decision of a deliberative microcosm would act as a proxy for the informed decision of the larger political community:

A representative microcosm offers a picture of what everyone *would* think under good conditions [well-informed deliberation]. In theory if everyone deliberated, *the conclusions would not be much different*. So the microcosm offers a *proxy* for the much more ambitious scenario of what would happen if everyone discussed the issues and weighed competing arguments under similarly favourable conditions (Fishkin, 2009, p. 194, my emphasis).

Maximum sample sizes are constrained by the ‘rational ignorance’ principle (Downs, 1957) – if the group is so large that individual votes will have a negligible effect then members of an assembly constituted by lot will not be motivated to focus sufficiently on the legislative debate in order to make a well-informed decision. This sets up a tension between the need for a large enough sample to establish sufficiently fine-grained descriptive representation, but not so large as to

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<sup>8</sup> As this short talk is addressed to an audience in political, not statistical, theory the mathematics contained in the original paper has been excised.

exceed the rational ignorance threshold, leading to a typical compromise sample of several hundred persons. The decision threshold of the group could well be raised beyond a simple majority to compensate for any inaccuracy produced by a sample size below 1,000 – considered by many statisticians to be the minimum to ensure accurate descriptive representation (Garry, Stevenson, & Stone, 2015).

However Dowlen, Stone and other ‘blind break’ theorists argue that stochastic representation constitutes, at best, a ‘weak’ use of the lottery principle:

if lot is used *with the express purpose* of creating some idea of balance or proportion, then this constitutes a weak use because such a task does not require arationality. In these circumstances there is a contradiction between the arational, random lottery, and the idea of *ratio* expressed in the general notion of [proportion]. (Dowlen, 2008, p. 18, emphasis in original).

However, this is only true in the tautological sense that sortition has been *pre-defined* in terms of arationality. Dowlen’s book derives from his PhD, a work of political philosophy that draws on the historical evidence only in so far as it serves to illustrate his foundational thesis. His methodology is similar to that of Gaetano Mosca, whose sweeping theory – outlined in *The Ruling Class* (Mosca, 1939) – ‘subjects history to the test of his principles’ (Meisel, 1962, p. 62). Chapter 2 of Dowlen’s *Political Potential of Sortition* analyses Athenian democracy in terms of his ‘impartiality’ thesis (for Mosca it was the ‘ruling class’ thesis), but acknowledges that the source literature, while clear on *how* lot was used is almost entirely silent on *why* (p.32), leaving political theorists free to speculate in an unconstrained manner. Dowlen agrees with J.M. Headlam that the purpose of the lot – in particular the randomly-selected *boule* (Council of 500) was to protect the *ecclesia* (direct-democratic assembly) from domination by aristocratic or partisan forces (Headlam, 1891). This was because, although all major decisions – at least in the fifth century – were taken by the assembly, it was the council that prepared the agenda, so a ‘weak’ council selected by lot was necessary in order to protect the primacy of the sovereign assembly. Classical historians, for the most part, agree that the council was little more than a secretariat for the assembly (Manin, Urbinati, & Landemore, 2008; Rhodes, 1972).

But is there any evidence that the Athenians themselves viewed sortition as a procedure to protect the assembly from partisan forces? Aristotle described the lot in terms of democratic freedom and equality, secured by *rotation* – ruling and being ruled in turn:

The underlying principle of democracy is freedom, and it is customary to say that only in democracies do men have a share in freedom, for that is what every democracy makes its aim. There are two main aspects of freedom: 1) being ruled and ruling in turn, since everyone is equal according to number, not merit, and 2) to be able to live as one pleases. (Arist., *Pol.*, 1317a: 40-1317b13).

Euripides also explains the allotted bodies of Athenian democracy in terms of rotation, via the claim of Theseus – the mythical founder of the Athenian democracy – that ‘the people rules by turns through annual successions’ (Euripides, *The Suppliant Women*, vv. 406-407). The only other contemporary reference – Plato’s claim that ‘He on whom the lot falls is the ruler, and is dear to the gods’ – supports Fustel de Coulanges’s thesis on the *religious* origins of the lot (Plato, *The Laws*, III. 690 vi 759). Whilst the functional explanation favoured by Headlam and Dowlen is not incompatible with religious ideologies, it tells us nothing about how the lot was actually conceived in the ancient world. Likewise, as the Greeks had no notion of mathematical proportionality, it is unlikely that they used sortition as a form of statistical representation:<sup>9</sup> ‘the Council was not perceived as standing for the people. The *boule* was just a collegial magistracy’ (Manin, et al., 2008). The truth is we simply don’t know why the ancients used sortition for the appointment of political officers, so analytical and functionalist political theorists need to take heed of the warnings from their historically-oriented colleagues about the danger of anachronism in the interpretation of evidence from the past.

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<sup>9</sup> Accurate descriptive representation is less of a problem in small homogeneous *poleis* than in modern pluralistic and multicultural states.

Dowlen argues that descriptive representation could better be achieved by stratified sampling (2008, p. 23) and/or quotas to increase the ‘politics of presence’ of hitherto marginalised groups (Phillips, 1995). However if politics is, as Michael Oakeshott contends, simply a matter of attending to the ‘general arrangements’ of a group of people thrown together by choice or necessity, then which strata/quotas are relevant? Ann Phillips’s choice of gender, ethnicity and sexual-orientation categories is somewhat arbitrary, largely reflecting the social categories privileged by the ‘New Left’ to replace the urban proletariat as the group most in need of emancipation from oppression. The ‘invisible hand’ of the law of large numbers, by contrast, ensures a proportionate representation of *all* politically salient categories (given a large enough random sample), including *those that we are entirely ignorant of*. This is an entirely rational use of the lot (it’s the *ratio* that we’re interested in), hence my agreement with Dowlen that the two models are ‘contradictory’ (Dowlen, 2008, p. 18). The invisible hand is a very different – indeed polar opposite – use of sortition to the blind break.<sup>10</sup>

Dowlen’s insistence that stratified sampling, or ‘weighted’ lotteries, should be avoided at all costs on account of the introduction of the element of predictability is an indication of the difficulty of reconciling these two approaches to the political potential of sortition. Dowlen defines a weighted lottery as follows:

We can distinguish between a weighted lottery and an ordinary lottery by the fact that in a weighted lottery the pool is divided into groups rather than consisting of individuals or individual options. Likewise the result is interpreted in terms of its group identity rather than as an individual entity. (Dowlen, 2014, p. 11)

Sub-group predictability is, however, the *only* value of statistical sampling by random selection whereas, from the individualistic perspective of the blind break, it is anathema:

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<sup>10</sup> This is not to say that the two different functions will not be combined – a group selected by lot will be both statistically representative of the target population and, at the same time, chosen by an impartial mechanism.

Because the winner . . . is judged primarily by . . . group, and not by its status as an individual entity, the winner is not independent from the set to which it originally belonged. (Dowlen, 2008, p. 23)

That may be opposed by blind break theorists but it's the *raison d'être* for proponents of the invisible hand. Sortition, for the latter group of theorists, is a technique for establishing an automatic weighted lottery (as the decisions as to which groups should be represented, and in what proportion, are executed by the 'invisible hand' of the lottery process):

Were [the members of each subgroup] all alike, there would be no reason for preferring sortition over any other method of selecting from that subgroup (or at least no reason connected to descriptive representation. (Stone, 2011, p. 134)

Indeed, but the reason for using sortition is because we don't know which subgroup is relevant or the weighting of that subgroup within the population, hence the need for the invisible hand of the lottery process. This is particularly the case as 'stratification presupposes a finite, determinate, and above all *short* list of relevant features for distinguishing subgroups.' Random selection, by contrast 'can ensure descriptive representation in accordance with any characteristics one might name . . . even those not currently deemed important' (*ibid.*, p. 135). 'Sub-group' is, in this context, no more than a term of convenience, as what is of interest is really *politically-salient characteristics* – for example a 45-year old, female, churchgoing schoolteacher, married with two children, who subscribes to the Guardian newspaper and abstains from voting in elections could not be described as a member of a distinct sub-group but combines at least seven politically-salient characteristics (along with other qualities that we are entirely ignorant of).

It is true that human 'reasons' (such as a weighted lottery) will disrupt the outcome, but the sampling accuracy is the product of the LLN not the 'lottery principle'. The

absence of reasons is undoubtedly a *necessary* condition<sup>11</sup> for the ‘descriptive’ representation achieved by statistical sampling (in the same way that juror independence is a necessary condition for the Condorcet Jury Theorem) but is not sufficient in the absence of the LLN (ditto for the Condorcet theorem). Although lotteries have been in use since antiquity, statistical proportionality is a modern discovery, hence my claim that ‘descriptive’ representation is orthogonal to Stone’s ‘lottery principle’. In mathematical parlance the law of large numbers is a stochastic rather than a deterministic cause or reason, but it is, nevertheless, a ‘reason’.

### 3. Democratic Reason and the ‘Wisdom of Crowds’

The approach outlined in this section differs from the first two on account of its focus on *epistemic outcomes* (i.e. how to arrive at the ‘best’ decisions). A number of ‘deliberative’ and ‘epistemic’ democrats<sup>12</sup> have argued that the best way to optimize epistemic outcomes is by increasing the ‘cognitive diversity’ of a decision-making body (Estlund, 2008; Landemore, 2010, 2013; Page, 2007; Surowiecki, 2004; Tetlock, 2005), and sortition is certainly a way of increasing cognitive diversity. These theorists share the observation of the invisible hand school that the election mechanism generates a legislative assembly from a narrow subset of citizens (the ‘political class’), that fails to accurately ‘describe’ the target population, but their concern is with the impoverished cognitive resources available, not the lack of statistical representativity. The case for cognitive diversity is grounded in another passage from Aristotle’s *Politics*:

The many, of whom none is individually an excellent man, nevertheless can, when joined together, be better than those [the excellent few], not

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<sup>11</sup> This is why the Deliberative Polling methodology presupposes that (ideally) everyone included in the random sample should accept the invitation. In practice this is impossible, but organisers seek to maximise participation by going to great lengths to ensure that participants are adequately compensated for loss of earnings, child-care costs etc.

<sup>12</sup> Sortition is generally of marginal interest to deliberative democrats, as the emphasis is primarily on internal procedural issues (how to establish the ‘ideal speech situation’) rather than representativity. The ‘forceless force of the better *argument*’ is such that it matters little *who* gets to deliberate – Jon Elster is content with ‘citizens’ (Elster, 1998, pp. 1, 98) – so long as the group includes representatives of the previously-marginalised groups chosen by the sponsors of the deliberative forum.

as individuals but all together, just as potluck dinners can be better than those provided at one man's expense . . . this is why the many judge better in regard to musical works and those of the poets, for some judge a particular part, while all of them judge the whole. (Arist., *Pol*, 3.1281a42-b10)<sup>13</sup>

Aristotle's focus is on the *aggregate judgment* of the group, likening the multitude to a single person with superhuman capabilities. James Surowiecki's *The Wisdom of Crowds* opens with a modern-day example of Aristotle's argument, when visitors to a country fair were invited to enter a competition to estimate the weight of an ox. The mean of the group's (787) guesses was 1,197 pounds and the actual weight was 1,198 pounds. According to Surowiecki the reason for the remarkable accuracy of the estimates is a combination of the law of large numbers (LLN) and the cognitive diversity of the participants (coming from a variety of backgrounds and possessing diverse interests).

'Epistemic' democrats, including David Estlund, Hélène Landemore and Scott Page, focus more on the cognitive diversity of the individuals involved than the collectively-representative 'wisdom' generated by the LLN.<sup>14</sup> Landemore's monograph *Democratic Reason* (2013) is devoted to the application of cognitive diversity to political problem solving. One of the examples that she provides is a volunteer citizen watch group in a neighbourhood of New Haven which managed to resolve a problem of recurring muggings that had proved intractable to both city hall and the police department. The neighbourhood group came up with an effective solution, but the relevance of this example to sortition is not at all clear. The self-selected and highly-motivated participants had a strong personal interest in successfully resolving the problem (nobody wants to get mugged on their way

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<sup>13</sup> The interpretation of this passage is a subject of scholarly dispute (Cammack, 2013a; Waldron, 1995); Waldron's interpretation is in terms of the epistemic case for democracy, whereas Cammack focuses instead on collective virtue.

<sup>14</sup> Deliberative democracy, of which epistemic democracy is a variant, is fundamentally a procedural programme, privileging fair-mindedness, dispassionate judgment and the rule of reason in the internal procedural rules of the deliberative forum, as opposed to relying on structural factors to ensure the proportionate representation of competing perspectives. Unanimity is the goal and majority decisions are generally considered second best.

home) and *only three* group members appear to have made an active contribution to the solution. There are better ways of generating cognitive diversity in problem solving, such as crowd-sourcing, e-petitions, knowledge/information markets (Landemore, 2013, pp. 173-184), and prize-winning competitions (the motivating factor leading to John Harrison's resolution of the longitude calculation problem).

Landemore (2013) argues the case for sortition as follows: permanent legislative assemblies have to deal with a wide variety of political problems, many of which are entirely unforeseeable. As such there is no way of knowing in advance what cognitive skills might be required, so a large assembly constituted by sortition would be the best way of establishing the diverse cognitive pool necessary to ensure the availability of the skills as and when they might be required. This approach, however, overlooks the fact that most people conscripted<sup>15</sup> at random would be unlikely to have the necessary knowledge, ability, motivation, self-confidence and rhetorical skills to make *any* innovative policy proposals, so the value of sortition for policy innovation is unclear.

The problem is not just limited to that of cognitive skills – according to James Madison 'a body of men are unfit to be both judges and parties [advocates] at the same time', as the judgment will be corrupted by the interests of the proposing party (*Federalist*, 10:8). The two functions (proposing and disposing) suggest a bicameral solution.<sup>16</sup> In addition to the manifesto commitments of successful political parties, the procedures suggested above (crowd-sourcing, e-petitions etc.) would be candidates for the proposal function. But the disposing (judgment) function is ideally suited to a large, descriptively-representative jury constituted by sortition, as ordinary citizens are perfectly capable of judging the merits of proposals offered to them. As Aristotle put it:

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<sup>15</sup> The word 'conscripted' is used to reflect the fact that accurate descriptive representativity would require that political jury service should be at least as mandatory as its judicial equivalent. Volunteers are likely to be more knowledgeable but would not therefore constitute a portrait 'in miniature' of the target population.

<sup>16</sup> A useful model here is James Harrington's example of two girls dividing a cake – one divides and the other chooses which slice to take (Harrington, 1992). At the time of publication (1656) it was automatically assumed that the chooser would select the larger slice, less likely in our own age where body image is a greater priority!

[T]he master of the house will be even a better judge than the builder, just as the pilot will judge better of a rudder than the carpenter, and the guest will judge better of a feast than the cook. (Arist., *Pol*, 3: XI)

## Entailments

One of the merits of sortition is that *all* the functions mentioned above – equal opportunities, protection from ex-ante corruption and factionalism, descriptive representation and accessing the ‘wisdom of crowds’ – apply, irrespective of the reasons for introducing the lottery. Some people advocate sortition in order to implement social justice by undermining rich and powerful elites, whereas others just want to make sure the trains run on time. But the first two approaches to the political potential of sortition – the blind break and the invisible hand – have very different entailments for those involved in the constitutional design of democracies. The former focuses on the disinterested choice of *persons*, whereas the concern of the latter is the *group* level of the sample. Descriptive representation is not the concern of blind break theorists, and most of their work (e.g. Dowlen 2014) focuses on the random selection of individual citizens to act as impartial monitors and facilitators for the scrutiny and oversight of existing election-based institutions. Their role is to guard against misconduct, so they are ‘tribunes’ and ‘citizen witnesses’, rather than *representatives* of the people.

Advocates of the invisible hand approach, however, need to acknowledge that the descriptive representation that they champion applies *only* at the collective level, not the individuals selected:

For the power does not reside in the juryman, or counsellor, or member of the assembly, but in the court, and the council, and the assembly, of which the aforesaid individuals – counsellor, assemblyman, juryman – are only parts or members. (Arist., *Pol.*, 68: 1282a34-41.

Persons selected by lot are emphatically *not* the aleatory equivalent of elected representatives, selected by an alternative balloting method. ‘Descriptive representatives’ are among a rare category of substantives that exist in plural form only. This places severe constraints on the mandate of a sortition-based representative assembly and demonstrates the ongoing need for elections and/or

direct democratic initiatives to fulfill the need for ‘active’ political representation (the role of persons as opposed to groups). In this respect I’m in agreement with (Dowlen, 2014) that sortition should not be seen as an alternative to election. Unfavourable reviews in the *Guardian* and *Sunday Times* of David Van Reybrouk’s new book *Against Elections: The Case for Democracy* are largely a function of its polemical (and highly misleading) title (Van Reybrouck, 2016).

Epistemic and deliberative democrats seek to bridge the active/descriptive divide by combining sortition and small-group face-to-face deliberation. However they overlook the fact that small-group deliberation breaches the descriptive representation mandate on account of both the small numbers involved and the random (in the pejorative sense) biases introduced by imbalances in the speech acts of the participating individuals. Whilst that need not be a problem in a trial jury, where the task is an epistemic one – establishing the fact of the matter (beyond reasonable doubt) – political juries are required instead to indicate their informed preferences in a manner that ensures those preferences stochastically reflect those of the target population. This imposes severe constraints on the deliberative mandate – the derivation of the term deliberation from the Latin *liber* (weight) suggests that the role of a political jury should be one of ‘weighing’ competing arguments.<sup>17</sup> Indeed it is hard to see what ‘descriptive’ representatives could do other than register their preferences/beliefs via voting (all votes carrying exactly the same weight), as the differences in the ‘illocutionary force’ of the speech acts of individual members of such an assembly would destroy its aggregate representativity. As Hanna Pitkin puts it:

If the contemplated action is voting, then presumably (but not obviously) it means that the [descriptive] representative must vote as a majority of his constituents [i.e., those who resemble him] would. But any activities other than voting are less easy to deal with. Is he really literally to deliberate as if he were several hundred thousand people? To bargain

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<sup>17</sup> The competing derivation from the German *deliberativstimme* (deliberative voice) is the one privileged by Habermasian deliberative democrats, who have no intrinsic interest in sortition-based representative ‘minipublics’ (Sintomer, 2010a, p. 36).

that way? To speak that way? And if not that way, then how? (Pitkin, 1967, pp. 144-145)

Most of the invisible-hand proposals for lot-based deliberative assemblies overlook this constraint, thereby conflating the entirely different functions of active (individual) and descriptive (group) representation. They also rely too heavily on the ability of the blind break to select political officials impartially, thereby ignoring the increased vulnerability to ex-post corruption for political functions other than indicating preferences via voting in secret. Epistemic and deliberative democrats are more concerned with the quality of the decision outcome and the procedural norms governing face-to-face deliberation, representativity not figuring very highly in their priorities. Although small groups constituted by sortition participating in face-to-face deliberation would appear to bridge the gap between the individual and the collective, the LLN no longer applies, so it is hard to understand how the decision outcomes of such groups (which are likely to fluctuate wildly) could be said to represent the considered judgment of the whole citizen body.

## Conclusion

The two leading theories on the political potential of sortition – the blind break and the invisible hand – have very little in common. The former deals with the *indeterminate* selection of individual persons for political office whereas the latter deals with the statistical sampling of a target population in order to establish a descriptively-representative microcosm. The blind break is a negative mechanism (the elimination of causal links) whereas the invisible hand is positive (the distribution of qualities in the target population (stochastically) determining the distribution of those qualities in the microcosm).

<b>Blind Break</b>	<b>Invisible Hand</b>
<i>Indeterminate</i> selection of persons	Stochastically <i>determinate</i> microcosm
Negative – arational elimination of causal links	Positive – <i>ratio</i> of attributes between microcosm and target population

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