

# Democracy and lottery: Revisited

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## 1 | INTRODUCTION: THE SURPRISING COMEBACK OF LOTTERIES AS MEANS FOR DEMOCRACY

In the Italian republic of Genoa the members of the city council were selected by random selection from the 12th century on. Over time, the gambling-crazed residents of the city began to bet on who would win a seat and called this a lottery. A few decades later, this developed into the numbers games that have remained popular to this day. From Italy the original Old Germanic word<sup>1</sup> slowly found its way to the Netherlands and later into the English vocabulary and (as a kind of reimportation with a different meaning) into German as well, to denote all sorts of games based on a random mechanism. It is, however, worth reminding political theorists that the word lottery has a political origin and that the recent comeback of lotteries as a means for democracy fits nicely into this etymology.

This complex etymology also reminds us to be open to a broad and many faceted understanding of the role of lotteries in politics. It seems that recently, however, the role of sortition<sup>2</sup> in politics has been narrowed to its instrumental function of selecting members of deliberative opinion polls' respective mini-publics.<sup>3</sup> As it is well known today, the selection of political offices by lottery—even though they were named *kleros* in those days—had a traditional place in ancient Greek democracies. In contrast to that tradition, modern democracies rely on elections as the main means of fill political positions. Over the last 20 years we can observe an impressive renaissance of the lottery as a democratic device. Taking inspiration from the early contributions of authors like Robert Dahl, Peter Dienel, and Ned Crosby in the 1970s,<sup>4</sup> a growing body of literature today highlights the benevolent impact of randomly selecting citizens for deliberative opinion polls' respective mini-publics<sup>5</sup> or even for selecting them for certain political offices.<sup>6</sup> Reform proposals that include lotteries have lost their marginal status, at least in the academic milieu of modern democrats, and have even become a centerpiece of many current political reform proposals. In particular, the format of mini-publics has become attractive to some authors as an alternative to pure electoral democracy; for them mini-publics and other bodies of selected by lot citizens are presented not only as supplements to existent electoral democracy but also as institutions that are supposed to substitute them.<sup>7</sup>

Ten years ago I started to propagate lotteries as a means to democratize modern democracies and to transfer the political competence to make binding political decisions to those chosen by lot.<sup>8</sup> Over the last 10 years has emerged an

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even more widely shared euphoria among quite a number of political scientists about the use of lotteries to promote democracy. However, such euphoria on the part of so many political scientists has made me suspicious and given reason to a set of concerns and questions: what is the political meaning of the surprising comeback of the lottery in the democratic toolkit today, more than 2,000 years after the fall of ancient democracies? Can one register its comeback in political theory and practice as a potential step forward in the project of democratizing democracy? Are mini-publics meant to be part of a serious attempt to move beyond traditional parliamentary democracy? Is the return of the lottery in this context any more than a desperate and helpless attempt to escape from the political realities at a time of growing social and political polarization in western democracies and of feelings that liberal democracy is in crisis? Is it meant as a response to this crisis or is it ignorant to it? Is the return of the lottery more than nostalgia for Athens's alleged radical *demokratia*? Or is it just the artificial product of the institutional turn in the academic discourse on deliberative democracy?

I will not be able to answer this cascade of critical questions in this article. Instead, I first reflect on the proper role of selected by lot bodies of citizens against the background of recent criticisms of mini-publics, of which the most prominent were put forward by Christina Lafont (section 2). In order to come to terms with her criticism and to discuss the appropriate use of lotteries in the context of the current wave of literature it may be helpful to revisit some of the basic arguments for decision-making by random mechanisms in modern democracy. Hence, I want to broaden the narrow view on lotteries in the context of mini-publics with a reminder of the five main and more general arguments that have been put forward to defend random mechanisms for decision-making. My list puts particular emphasis on the advantages of lotteries for making efficient and productive decisions and for avoiding corruption (section 3). Pointing out the broad and many faceted potential of lotteries in politics is also a reminder to us to revisit critically the current narrative of the pure democratic meaning of lotteries in ancient democracies (section 4). In the last sections of the article I defend the introduction of lotteries in modern democracies along the line of their potential capacity to produce efficient decisions and to make corruption more difficult (section 5) in two ways: with respect to the internal distribution of political positions in parliaments, using the European Parliament as an example (section 6), and to finding a solution for the dilemma that members of parliament (MPs) face when it comes to making decisions on their own payment and on electoral rules (section 7).

## 2 | EQUAL DEMOCRACY AND REASONABLE DEMOCRACY

Whereas mini-publics were initially used proposed in order to provide a space for discussions among citizens and for them to consult professional politicians, in a significant number of cases of duly elected or appointed authorities have announced in advance that they would follow the decision made by the randomly selected mini-public (Bächtiger, Dryzek, Mansbridge, & Warren, 2018, p. 16). I also argued strongly for the transfer of the competence to make binding political decisions to mini-publics (Buchstein, 2009, 2010). My considerations were based on the following empirical observation: members of selected by lot deliberative bodies develop a manifest problem of motivation if the relationship between the deliberative project and the final decision-making actually made remains weak, or if no such relationship can be easily recognized by those involved. "Why," Rainer Schmalz-Bruns rightly asked at the early phase of the invention of mini-publics, "should people contribute the considerable time and effort to a process at all if there is no guarantee that the results will be transformed directly into governance strategies for implementation?" (Schmalz-Bruns, 1995, p. 268). Accompanying research on participative projects following the model of Fishkin et al. also indicated how important it was for the members of deliberative bodies to consider the relevance of the results to decision-making to those in charge (Font & Blanco, 2007, pp. 579–581; Ryfe, 2002, pp. 366–368). In the light of these empirical findings, 10 years ago I saw that the possibilities of mini-publics boiled down to two options. One could either continue to work with mini-public experiments and projects that lacked any committed or binding decision-making status, thus turning them into some kind of measurement of civic education. Or one chooses to reinforce the political standing of mini-publics and integrate them into existing institutional arrangements with a clearly defined and binding

set of competencies. Along this line of argument, strengthening the political position of mini-publics would also provide incentives for citizens to participate in and enter considered deliberations.

André Bächtiger et al. correctly state that in discussing the pros and cons of mini-publics “a great deal will rest on whether or not a mini-public makes binding decisions for the polity” (Bächtiger et al., 2018, p. 16). Christina Lafont addresses her recent critique of mini-publics explicitly at the authors who demand a formal status for mini-publics as binding decision-makers (Lafont, 2015, 2017, 2019). As a matter of fact, most advocates of mini-publics do not endorse such demands and mini-publics have so far rarely made binding decisions in political practice.<sup>9</sup> Nevertheless, her critical considerations are an important starting point for locating the proper place for mini-publics in modern democracies. To make her point, she distinguishes between two main strands of the normative arguments shared by the current proponents of mini-publics. Taken seriously, both positions must finally lead to a substitution of electoral democracy in the name of a better, deliberative democracy. The two justifications are based either in the name of full and equal democracy or on the idea of a reasonable democracy. In my brief discussion of Lafont’s objections to both of them, I call them the equal democracy position and the responsible democracy position.

The equal democracy position starts with the basic presupposition that every citizen has an equal chance of being given a political position.<sup>10</sup> One aspect of this presupposition concerns the fair distribution of chances for efficient political participation and is based on three assumptions. The first is the idea that the process of random selection functions like a kind of a search engine for political arguments and talents, as it includes people who would not be able or willing to run for office either because they fear rejection or because they consider their chances are too low (and they cannot blame random selection for this) within the pool of individuals whose political action is solicited. Second, one could argue that phenomena of political alienation and disenchantment with politicians might be diminished by the fact that the process of random selection grants more citizens insights into complex political issues. And third, it may be assumed that the decisions made by people who take office or receive a seat in a political body based on a random selection procedure are strongly binding because they are affected by the problems, life experiences, and value judgments of the participating citizens. The other aspect of the claim to equal democracy lies in the alleged *fair representation* that lotteries generate. The ideal on which this concept of representation lies has been critically called by Hanna Pitkin “mirror representation” (Pitkin, 1967, pp. 71–75). This justification of deliberative opinion polls has a serious flaw. After their deliberations the members of the selected by lot group of citizens are no longer simply mirroring the people. At this stage they are supposed to have new and more informed preferences. Hence, instead of truly mirroring the people they have become a kind of beautifying mirror of the citizenry. This change has to do with the connection constructed by theorists of selected by lot mini-publics to the theory of deliberative democracy and to their insistence that it provides a reasonable democracy.

The reasonable democracy position<sup>11</sup> puts its legitimating emphasis on the *considered deliberation* of the selected by lot citizens. Proponents of this view see a tension between considered deliberation and mass participation. In this legitimating conflict, they opt for the best quality deliberative procedures and the advantages of considered deliberation in small, face-to-face groups. Some of them even argue that these deliberations should be held behind a veil of secrecy as they fear that the glare of publicity would have harmful effects. The core of the responsible democracy position is an epistemic claim: its advocates argue that through the process of deliberation the participants will change their original preferences into better informed and morally better defensible preferences. Hence, the process of deliberation in mini-publics is understood as a kind of communicative filter system in order to produce a “laundering of preferences” (Goodin, 1986, p. 81). Or, put it in the words of one of the philosophical founding fathers of deliberative democracy, Jürgen Habermas; deliberations have “an epistemic dimension because they create room for arguments to exert their preference-changing force” (Habermas, 2018, p. 874). A democracy that works well is understood as a political system that “as a whole is filtered through deliberation” (Habermas, 2018, p. 877) and thus contributes to the rationalization of politics.<sup>12</sup>

With respect to mini-publics, however, certain normative problems arise in making the case for bypassing the general public in the name of their high deliberative qualities. Both Christina Lafont and Marit Böker have recently argued that mini-publics diminish rather than increase the legitimacy of democracy. Böker insists on the Kantian, Rawlsian, and

Habermasian principle that the legitimacy of political authority must “be based on argumentative justification through public reasoning to those subject to it” (Böker, 2017, p. 23) and reminds her reader that mini-publics are typically used as an instrument of government and thus fail the emancipatory potential of democracy. Whereas Böker’s critique includes a questionable evaluation of the empirical evidence of the emancipatory effects of mini-publics, Christina Lafont’s critique may sound less radical, but really aims at the heart of the responsible democracy position. Mini-publics lack any mechanism of accountability or direct authorization from the wider citizen body. The members of the selected by lot group undergo process of preference change so that their views are no longer representative of the broader public. In case of a conflict between the views of the broader public and the participants of a mini-public Lafont argues against the “blind deference” (2015, p. 57) of the former to the latter. Why should citizens blindly defer to decisions made by a randomly picked group of people partaking in a deliberative opinion poll even in such cases in which they strongly disagree with the result? Take, for example, hotly contested policy issues like abortion rights and gun control in the USA, new speed limit regulations for the autobahn in Germany, or Brexit in the UK. In a society characterized by growing political polarization along identity lines it has become more difficult to reach a consensus or a compromise on certain reasonable decisions within mini-publics (Karpowitz & Mendelberg, 2018; Mutz, 2006). Hence authorizing mini-publics to make binding decisions will probably lead to even stronger political estrangement and a growing political climate of suspicion and accusations of conspiracy than what is experienced in the current electoral system. Mini-publics that make unpopular political decisions have the potential to challenge even more thoroughly the perceived legitimacy of the political order than elected bodies. In my view, the growing political polarization in most democracies has made the introduction of mini-publics a less attractive reform option than it may have been 10 years ago.

Christina Lafont has pointed out that the justification of authorizing mini-publics to make binding political decisions faces an additional theoretical problem (Lafont, 2019, p. 59). In nearly all cases favoring the introduction of mini-publics the two lines of argument mentioned above intermingle with each other in one way or the other. Most authors claim that they can have it both ways simultaneously: they praise the representativeness of the selected by lot mini-public and they add to it the rational potential of considered deliberation. However, as Lafont has pointed out, the mirror claim and the filter claim do not go together well. On the one hand, a mini-public can be understood metaphorically as a mirror only as long as no considered deliberation has occurred; and the filtered version of the original preferences differs from the original picture in many ways, which is exactly what deliberation among these participants is supposed to bring about. On the other hand, the proceedings of a mini-public can be understood truly as a filter, only in so far as it loses its mirror-like quality. By pointing to these two contradictory claims, Lafont concludes that the political idea of reforming modern democracies via the introduction of mini-publics to make binding decisions faces a logical dilemma that collapses the two approaches in different, one-sided directions. If one follows the responsible democracy claim, the concepts finally merge into an elite conception of democracy that demands “blind deference to experts” (Lafont, 2019, p. 56). If one follows the equal democracy claim the proposal has to resist the priority of decisions by more enlightened participants of mini-publics and “collapses into ... a version of blind deference to the majority” (Lafont, 2019, p. 62).

Christina Lafont’s critique of the idea of giving mini-publics the competence to make binding decisions at the centerpiece of a democratic reform agenda is well taken and convincing. In her conclusions she echoes the statement by André Bächtiger et al. that in the discussion about the pros and cons of mini-publics “a great deal will rest on whether a mini-public makes binding decisions for the polity” (Bächtiger et al., 2018, p. 16). Her recommendation is not to abandon the idea of selected by lot bodies of citizens altogether but to remove it from the sector of binding decision-making into a consultative role and into the sphere of participatory civic education, calling this move the politics of “deliberative activism.” According to her, the retreat of mini-publics behind the competence frontier is necessary, as their only legitimate role in a modern democracy is to “shape decision-making indirectly by inserting their recommendations into the citizenry’s public deliberations” (Lafont, 2015, p. 56). Following Lafont, there seems to be no way left to defend the implementation of mini-publics for the sake of producing binding political decisions. This implies that Christina Lafont has built her critique on all the relevant arguments making the case for mini-publics. However, there are additional and different arguments that she has not taken seriously enough in her considerations. To bring them back to our

attention, a brief reminder of the general arguments for lotteries in politics may reopen the case for mini-publics as well.

### 3 | THE FULL FUNCTIONAL PENTAGON

In her criticism of mini-publics Christina Lafont rightly claims that their legitimacy “very much depends on the kind of issues that should be up for consideration by mini-publics” (Lafont, 2019, p. 120). She observes that “unfortunately, defenders of the micro-deliberative strategy have not yet provided specific guidance for this question” (Lafont, 2019, p. 120). This statement can be rephrased more broadly as it affects other uses of the lottery as an instrument in modern democracies. So, before I offer the guidance that Christina Lafont has missed and move beyond the idea to connect the use of lotteries exclusively with the goals of equal democracy and responsible democracy, I want to revisit some of the basics of random decision-making in politics.

When can or should lotteries be sensibly employed in politics at all? It obviously would be pointless and lead only to an infinite regress were we to employ lotteries for the decision to employ lotteries. There is no escaping the fact that we must find good reasons for lotteries. Altogether there are five general arguments than can be made for using lotteries in politics.<sup>13</sup> I call this set the full functional pentagon for making decisions based on a random mechanism.

#### 3.1 | Decision argument

In this case we have recourse to a lottery to arrive at a final decision—for instance, tossing a coin in wake of a deadlock in counting votes for a political office. The decision argument makes particular sense with respect to decisions where the participants, like Buridan's ass, find it impossible to arrive at a well-founded and substantiated decision. Some time ago Jon Elster placed in this category (a) cases of absolute uncertainty, (b) cases of complete indifference, and (c) situations where alternative decisions are incommensurable (Elster, 1989, pp. 116–121). In such cases it is an imperative of reason that chance should determine the issue. Any further insistence on rationally founded decisions would be irrational, testifying to a pathological hyperrationality (in Elster's phrase) because one irrationally refuses to recognize the limits of rationality.

#### 3.2 | Equality argument

According to this argument, lotteries are unequalled in guaranteeing the equality of all those participants in a decision-making process. In lotteries all participants are absolutely equal in the sense that they are all subject to the *same probability* that the lot will fall to them (see Boyce, 1994). In any equality argument there is the implicit assumption that all participants in the lottery have an equal number of lots (were the number of lots to be unequal, then we would speak of a weighted lottery). The historical paradigm for the egalitarian use of lotteries in politics is the drawing of lots for offices in ancient Greek democracy.

#### 3.3 | Representativity argument

A third argument deals with the specific representational effects of lotteries for political office. It does not deal with small 12-member juries, for instance, but rather finds its exclusive application in larger bodies. The *voluntaristic variant* of this argument sees the virtue of lotteries for posts in larger political bodies (e.g. citizens' assemblies) in its ability to arrive at fair representation. The prototype for the voluntaristic notion of representation is a mirror, with it's a faithful reflection of a society's heterogeneity. The *deliberative variant* of this argument is less concerned with an exact mirroring of society than with an increase in the social heterogeneity of those political bodies that can be generated by lotteries—the hope being that a large number of various perspectives and experiences can be taken into consideration

in the political advisory process. This argument serves as the basis for both the equality and the responsible democracy position.

### 3.4 | Efficiency argument

Another argument claims that a lottery has the potential to increase the efficiency of political institutions and processes. The virtue of a lottery is that it is *unerringly accurate* and so there are no more decision-making costs to be borne. Deadlocks are alien to lotteries, and by extension so too are elaborate and costly repetitions of a decision-making process. Another argument at the level of efficiency is that the lottery, as a rule, is a very economical process. Compared with most other political procedures, lotteries demand little expenditure of time and other resources. Deliberation and consensus-principle are procedures and procedural rules that stand at the opposite side of the efficiency scale in politics. Thus, in addition to majority rule situations lotteries may also be used when no more deliberation seems to lead to a consensual decision.

### 3.5 | Anti-corruption argument

This may be read as an extension of the cost-efficiency argument, for in certain situations lotteries can be justified on the assumption that they will ultimately have *productive effects*, but it is much more specific. The effects are, as a rule, indirect, as in the case of spot checks. We also know of such random sampling in tax audits, doping tests, hygiene and foodstuff controls. The basic idea is the same in all cases—all those subject to the rules are left in a state of uncertainty as to whether and when a more thorough check will be undertaken, thus encouraging them to adhere to the regulations. Implemented in such a way, lotteries serve to discourage corruption.

The five arguments can claim validity completely independent of one another. Yet, in the political history of ideas and also in recent justifications of the application of lotteries, they are frequently linked to one another, which is not terribly helpful in clarifying the very real good reasons for lotteries in certain institutional settings. This is especially true with respect to the debate about the reform of modern parliamentarism. As mentioned in the second section of this article, in the current debate about the uses of lotteries for deliberative opinion polls the main emphasis is put on the equality and the representative arguments. In my attempt to revisit lottery and democracy, I choose a different way and build my case mainly on the efficiency and anti-corruption arguments.

## 4 | AN EXCURSUS: REVISITING THE DEMOCRATIC NARRATIVE OF SORTITION

Bringing the long tradition of the anti-corruption argument back to our attention, the project to revisit the lottery and democracy has to include revisiting the way that the uses of lotteries are presented in current literature in the history of political ideas. It would be worth going through all passages in which Plato, Aristotle, and other relevant classical authors have discussed the lottery in order to demonstrate that the famous interpretation by Bernard Manin and his followers like Jacques Ranci re vastly overstate the purely democratic meaning of the lottery in ancient Greece.<sup>14</sup> In the following I will offer at least a few hints to quarrel with the democratic narrative of sortition.<sup>15</sup>

From the perspective of those who considered sortition to be reasonable in ancient Greece, the decision to use it was based on pragmatic considerations, on experience, and on interests. This pragmatic stance was possible only against the background of an attitude characterized by Christian Meier as “awareness of ability” on the part of the world of the Greek polis (Meier, 1983, pp. 435–438) which triggered incremental changes in its political institutions. According to surviving ancient sources two functions above all were ascribed to the lottery in ancient democracies. In combination with rotation, and the strict rules of incompatibility between offices the lottery makes political orders

more efficient because it helps to avoid conflicts between citizens over access to office. And second, the lottery functions also as a palliative measure against corruption and as the generator of broadly distributed political power. Clear evidence of both functions of sortition can be found in numerous ancient sources.

To mention just a few; Plato in his saga of Atlantis described how the gods used lots to divide up the world in order to avoid “quarrel.”<sup>16</sup> A comparable example for avoiding conflict among magistrates is to be found in Aristotle’s ‘The Constitution of Athens,’ where the lot takes account of male weaknesses. Male magistrates, who are recruited by lottery, supervise the women who play the flute, the harp, or the lyre. In addition, they take care that the women will not be hired for more than two drachmae. In the event that more than one man “wishes to hire the same performer, they cast lots, and allocate her to the winner.”<sup>17</sup> So the lottery mechanism is supposed to halt arguments between old men about young women. The letter “Rhetoric to Alexander” from the late fourth century, which was also ascribed to Aristotle for a long time, but was probably by Anaximenes of Lampsacus, is a third source relevant here. In this fragment, lot and elections are both mentioned as being appropriate for appointing democratic officials, but the special quality of preventing conflict is also ascribed to the lot: “In democratic states legislation ought to provide for appointment by lot to the less important and the majority of the offices (for thus faction will be avoided)”<sup>18</sup> whereas the magistrates for more important offices are appointed by election.

There are also indications in Aristotle’s *Politics* of the usefulness of sortition for combating corruption. Aristotle reports the following about the polis Heraea: “Forms of government also change—sometimes even without revolution, owing to election contests, as at Heraea, where, instead of electing their magistrates, they took them by lot, because the electors were in the habit of choosing their own partisans.”<sup>19</sup> In “The Constitution of Athens,” where he describes the multi-stage lottery procedure for judges, there is a comment pointing in the same direction about the ticket inserter who is responsible for monitoring the technical aspects of the lottery:

*The man drawn is called the ticket-inserter, and inserts the tickets from the box into the columns over which is the same letter as on the box. This man is selected by lot to prevent malpractice if the same man should always make the draw.*<sup>20</sup>

Aristotle also mentions that, when drawing for the judges of the *dikastai* and allocating cases to juries by lot, this is “so that ... it may not be possible for anyone to arrange to have the jury he wishes.”<sup>21</sup> Aristotle was not the only one among his contemporaries who took such a sober view of the functional advantages of sortition. A similar comment by Demosthenes survives from roughly the same time in which he praises selecting judges by lot first and foremost as a provision against bribery attempts (see Hansen, 1999, p. 204).

So the lottery was not simply—as was suggested by opponents of democracy at the time like Plato and uncritically echoed by today’s proponents of the democratic narrative—celebrated as an incarnation of the Athenians’ concept of political equality. To be precise, the logical connection goes in the opposite direction. Lotteries took place in ancient Greece even before the advent of democracy. Political equality in democracy, however, created special circumstances in which the lot, whose historical roots were sacral and oligarchic, proved to be a successful and acknowledged tool for appointing officials in the democratic system. Hence lotteries per se are as weakly (or as strongly) democratic as elections. The lottery becomes a specifically democratic instrument of democracy only under two conditions. First, all participants in the lottery have the same number of lots: a weighted lottery in which some participants have a larger number of lots and others a smaller one would violate the rule of equality. The second condition is that the circle of those entitled to participate in lotteries for official positions encompasses, without exception, all members of the *demos*; if this is not the case, that is, if only a smaller part of the citizenry can participate in appointments for offices by lot, then the lottery is an instrument of aristocracies or oligarchies and can fulfill the functions of avoiding conflict, balancing power, and combating corruption just as well (or even better) than in a democracy. If we disconnect the use of the lot from the democratic narrative, we may even interpret an important purpose of sortition in democracies as fighting corruption and avoiding rivalry between candidates, which may lead to *stasis*, to civil war.



## 5 | ELECTIVE PARLIAMENTARISM AND SOME OF ITS LEGITIMACY PROBLEMS

Contrary to ancient democracies, modern democratic systems are organized as parliamentary democracies based on competition for political offices and elections. I call these systems elective parliamentary systems, in contrast to aleatory parliamentarism in which members are recruited via lotteries.

The core arguments for elective parliamentary democracy were formulated more than two hundred years ago. This was the time when the organizational features of modern mass democracy (like political parties or interest groups) were not anticipated by those who contributed to the theory of modern parliamentarism and representative democracy. When we look back to the foundational years of this theory, it is important to keep in mind that parliamentarism and representative democracy were not presented as a pragmatic substitute for direct democracy. Instead they were presented as a system *sui generis*, that would not only be distinct from absolute monarchy and direct democracy but *intrinsically better* than both (see Fraenkel, 1992; Kielmannsegg, 2013; Palonen, 2014; Urbinati, 2006). However, the difference between the *Ersatz* doctrine and the *sui-generis* doctrine dates back to the American Revolution. According to Thomas Paine, who was among the most prominent advocates of the *Ersatz* doctrine during the American Revolution, the ideal of democratic decision-making is found in the assembly of all citizens. Only because the new territorial circumstances and the large number of citizens in America after the revolution made it technically impossible to hold such assemblies did modern political orders have to switch to a system of delegation. In Paine's argument for political delegation, parliamentarians need short terms, imperative mandates and recall as necessary conditions to fulfill the will of their constituents.

In contrast to the advocates of political delegation, the theorists of political representation defended elective parliamentarism as a *sui generis* political form. It was not seen as an institutional setting to accommodate the social fact of a larger political community but as a better form of political organization. It even would have had merit in small political communities like the Greek polis. In order to make this normative claim, the classical theorists of parliamentary democracy came up with four main arguments. Not all defenders of elective parliamentarism have put the same emphasis on all four arguments; but all subscribed them at least to some degree. What are the four arguments?

### 5.1 | Elite argument

According to this argument (for example, by Jeremy Bentham and John Stuart Mill), electoral competition for parliamentary seats will favor the selection of the best men (and women too—as Mill argued). Thus, elective parliamentarism produces democratically legitimated political elites and counter-elites (like Alexandra Ocasio Cortez from Queens in the USA).

### 5.2 | Division of labor argument

According to this argument (for example, by Abbé Sieyès and Benjamin Constant) we have to accept the fact that the economic success of modern industrial societies is based on a high division of labor. Modern societies need trained specialists in various social fields. Politics has become one subsystem for professional specialists among others; there is no way back from the liberty of modern people to the liberty of the ancients. The parliament is the assembly of the professional specialists for the production of the common will.

### 5.3 | Deliberation argument

According to this argument (for example, by Alexis de Tocqueville and John Stuart Mill) we should not let large assemblies of people make political decisions. In most cases those meetings are dominated by passions and demagogy and will lead to irrational decisions. In contrast, political discussions in the plenary meeting of a small parliament, or even



more, in a subcommittee, is characterized by the exchange of informed arguments. Participants listen to each other and learn from each other. Thus, deliberations in modern parliaments produce a rational political will.

#### 5.4 | Minority protection argument

Finally, according to this argument (for example, by James Madison and Alexander Hamilton) in the modern nation-state we will find representatives from very different social backgrounds, religious beliefs, political ideologies, and regional interests in modern parliaments. This heterogeneity facilitates the emergence of stable majorities, which makes it more unlikely for minorities to be placed under pressure than in an assembly of a small and homogenous political community. Thus, modern parliamentarism should produce political decisions that favor tolerance and pluralism.

Put together, these four arguments are still at the core of the justification for elective parliamentarism to this today. However, in the light of the development of modern mass democracies and experience of the practice of parliamentary systems, all four arguments have lost some of their charm to convince today's readers. Be it the recruitment of political elites, be it problems with the internal division of labor and responsibility within parliaments, be it the loss of the deliberative spirit in parliamentary debates, or be it the emergence of new institutions in order to protect minorities more efficiently (like constitutional courts)—none of the traditional four lines of arguments seems today to be totally obsolete, but none seems able to carry the normative burden of countering the legitimation crisis of modern parliamentarism that we are facing today. The notorious debate about the proper reform of modern parliamentary systems is a symptom of this dissatisfaction and the introduction of the idea of mini-publics has recently become a prominent part of these reform debates.

Most of these reform proposals are presented in the name of a more authentic democracy and of more reasonable decision-making, as described above. Yet in some reform proposals that have attracted less attention, it has been suggested that a lottery may serve additional or totally different goals. A proposal forwarded by segments of the British Labour Party in 2011 suggested that the parliamentary committee in the House of Commons that monitors the activities of the Secret Service should be chosen by lot from the ranks of parliament and picked by the government. The reformers hoped to untangle the close connections within the Secret Service community in the UK. Another example has been raised in the USA. For decades there has been a contest as to which US state should initiate the primary election marathon for presidential candidates (with the result that start of the pre-election campaigning starts earlier every year and politics are held captive to a debilitating primary race). This coordination problem among the states could easily be solved by having them first jointly determining a timetable, including the duration and dates of the primaries, and then determining by lot which states host those primaries.

Both proposals are build on the productivity and anti-corruption lines of argument as mentioned in the third section of this article. These lines of consideration are worth following up because they allow the case to be made for two particular reform proposals that deal with some of the main legitimacy problems of modern parliamentary systems. The use of lotteries does not have to be narrowed down to the instrumental role of selecting the members of mini-publics. The lottery can have a place in the internal procedures of parliaments (section 6). And based on the anti-corruption argument for lotteries, even mini-publics that make binding political decisions can be justified in certain extraordinary cases of policy-making (section 7). Both suggestions for aleatory parliamentarism are intended to be in line with Christina Lafont's claim that any suggestion for introducing lotteries must "adopt a holistic perspective that accounts for the effects" (Lafont, 2019, p. 136) on the political system as a whole.

## 6 | INTERNAL ALEATORY PARLIAMENTARISM: ON SELECTING POLITICAL OFFICE IN THE EUROPEAN PARLIAMENT

The potential internal use of lotteries for proceedings within parliaments can be illustrated with respect to the European Parliament.<sup>22</sup> As in national parliaments, policy-making in the European Parliament takes place mainly in

committees. Due to the increasing political competence of the European Parliament, the committees have gained in importance as well and they have taken over most of the work of the plenary assembly (Mamadouh & Raunio, 2003). MPs are appointed to the respective committees depending on their specialization and the work of the representatives focuses on certain issue areas within the individual parties. Consequently, representatives strive to become members of the respective committees. Two consequences arise from this.

First, it leads to a high degree of continuity of the personnel in the committees. On the one hand this results in an increase in the members' professional knowledge and experience—but on the other, it establishes power structures and fundamental policy decisions that are long-lasting. According to a series of surveys, the members of the European Parliament chose their committee affiliation mainly with respect to the following criteria: their personal political interest, their occupational qualifications, and the general political relevance of the issues dealt with in the committees, and much less so with respect to the relevance to their own voters of the issues dealt with in the committees.<sup>23</sup>

Second, this system of allocation of the committee memberships is particularly susceptible to the influence of lobbyists. In the political decision-making process at the level of the EU lobbyism often takes place in a grey zone between legitimate lobbyism and illegitimate political corruption. The influence of certain lobby groups is a matter of serious concern in public debates and has caused European citizens to lose confidence in their political representatives. However, lobbyism is a legitimate form of representing interests and should not be viewed negatively altogether. It provides special and technical knowledge as well as an estimation of the chances of implementing political decisions successfully. This kind of information can be of great value for good legislation. Thus, lobbying may serve to assist in the communication between society and politics. But despite these functional advantages, lobbyists first and foremost try to influence decision-makers to push through their particular political interests. To avoid being misunderstood, I want to point out that I do not want to repeat populist and anti-pluralist accusations against the interest group system in modern democracies. Rather, I would like to draw attention to the well-known fact that their influence varies among different groups and constituencies in society and the possibilities of their influencing politics through these channels are distributed very unevenly due to the different abilities of interest groups to cause conflicts.<sup>24</sup>

How can these inequalities on the level of European policy-making be diminished? Over the past couple of years, empirical research has indicated that lobbyism has become an eminent factor in the decision-making process of the European Parliament, even though in comparison, the Commission is faced with even higher pressure from lobbyists. It comes as no surprise that the degree of lobbyism has increased in parallel with the increase of the political power of the European Parliament, especially after the introduction of the co-decision procedure in the first pillar in 1993. Today, national interests (like the protection of domestic industries) and European interests (like consumer protection) play an almost equal role in influencing the policy options of the European Parliament. However, this contradicts the intended functional differentiation between the European institutions. Whereas the Council of the EU is supposed to represent the different national interests of its member states, the Commission and the Parliament are supposed to design politics according to the common good from a European perspective. Although the European Parliament has also campaigned for some common interests that are difficult to organize in lobby groups like those of consumers, the environment, or the protection of personal data in the past—the activities of special interest lobbyists and policy networks remain a serious factor in influencing the decision-making process of the European Parliament.

Previous attempts to limit the political influence of these policy networks have not been very successful. They are based on the idea of generating more transparency by increasing publicity and agreements on codes of ethics for MPs. Even though this process has just begun, an additional provision—based on an idea originally mentioned briefly in an article by Richard Thaler (1983)—could be introduced: the appointment of MPs to the committees via a lottery. Although this procedure would entail serious disadvantages due to the fact that the new members would not necessarily have as much knowledge and experience as previous ones, its positive aspects should be noted. The main advantage of a lottery is that established policy networks between lobbyists and MPs would be dissolved. In

addition, newly appointed committee members would be likely to take on different and new perspectives when debating political issues. And finally, such a mechanism would force politicians to strive to fulfill the model of a political representative who has a reservoir of general knowledge on different political issues and who is able to become familiar with a whole range of new issues.

Opponents to this proposal may argue that representatives selected via a lottery will need to become acquainted with so many new and unfamiliar topics that they will become extremely vulnerable to the external influence of lobby groups and other political actors. However, this objection is much weaker than it seems at first glance: MPs already rely on the knowledge and competence of their staff and it is part of the job of any MP to learn to choose among different policy options presented by experts within a comparably short period of time.

Hence, considering the committee structure of the European Parliament in detail, the lottery system may be implemented successfully in three areas. First, in terms of membership composition, the number and proportion of seats allocated to the parties in the committees should approximate the strength of the elected parties or parliamentary groups. The lot must thus be employed in order to distribute the seats among the members of the parties and groups. Furthermore, we would suggest that committee members should not be allowed to be reappointed in the subsequent legislative period. Second, the committees' chairpersons should be elected by lot. Currently, these influential offices are usually distributed according to a rule of seniority. Thus, it is not surprising that conservative attitudes and traditional perceptions of specific problems prevail in committee work. Third, the most far-reaching consequences could probably be achieved if the rapporteurs were drawn by lot as well. The rapporteurs present the final report on the legislation projects to their committee and—as empirical research on policy formation in the European Parliament indicates—they have immense influence on policy projects. Thus, it is not surprising that they are the ones who are the most exposed to lobbying (Mamadouh & Raunio, 2003: 344).

The last proposal on the office of the rapporteur in particular seems to be prone to counter-arguments against the employment of the lot, as the position necessitates a high degree of political expertise. However, a second look reveals that the lot may serve to increase the competence of the office holders because of the deficiencies of the current proceedings. Currently, the seats of rapporteurs and chairpersons are not distributed according to their policy qualifications but are awarded on the basis of the proportional representation of the parties. Karlheinz Neunreither in 2002 concluded in his empirical research that the main interest of parties in the European Parliament

*is not to make sure that the best qualified committee member becomes rapporteur ... but to get a fair share for themselves out of the total number of rapporteurships... The objective is always to get an agreed percentage for your own group. As one can imagine, the actual proposal for appointment will be influenced by many factors, including the one of justice—that is, to give a fair chance to all members, at least to the more active ones, to become a rapporteur.*

“Such systems,” Neunreither concludes, “do not maximise the expertise of the average rapporteur—quite the contrary” (Neunreither, 2002, p. 45). Hence, there are good reasons to expect the professional qualifications and political independence of the rapporteurs to improve with the introduction of the lot. If this position is awarded on short-term notice and based on chance, it will increase the probability that the concerned delegates will rely more on the politically neutral and well-equipped general management of the European Parliament than on well-established policy networks with their lobbyists.

A lottery system for committee members, committee chairpersons, and rapporteurs would disturb long-term relationships between lobbyists and certain political representatives on the European level. Such a procedure probably would have two additional advantages. First, it would symbolize a higher degree of democracy than under today's rules within the house because it would reaffirm the political equality of MPs. And second, it might foster a process of further integration in European party structures because the lottery for committees would not take the national aspect of proportional representation into account.

## 7 | EXTERNAL ALEATORY PARLIAMENTARISM: THE HOUSE OF LOTS AS A *POUVOIR NEUTRE*

As mentioned above, mini-publics' respective deliberative opinion polls are presented as paradigmatic examples of the proper use of lotteries in modern democracies. In the rich literature on this topic three cases seem to have an outstanding status as positive examples for this innovative instrument. Between 2004 and 2007 such houses of lots—as I like to call them, following a suggestion by Barbara Goodwin (2005)—had been established in British Columbia, Ontario, and the Netherlands, respectively. In all three cases such a house of lots was commissioned to work up a proposal for a new electoral law in the state or country concerned. Political scientists have closely followed and analyzed this new kind of democratic polity-making (Fournier, van der Kolk, Carty, Blais, & Rose, 2011; Warren & Pearce, 2008a). In all three cases there had been widespread dissatisfaction with the existing electoral law and the political actors in their respective parliaments had been unable to arrive at any agreement to reform it. In all three cases this Gordian knot was finally severed by a senior politician who—in a kind of political outsourcing—brought in a house of lots to solve the dispute. In the two Canadian states this action was combined with the condition that the reform proposal of the house of lots has to be subsequently approved through a plebiscite; in the Netherlands the coalition government at the time attached the stipulation that parliament would have final say on the proposal.

Much to the surprise of many skeptical observers, in all three cases the mini-publics worked quite well.<sup>25</sup> Their participation rates were always very high and they invited various experts to explain the effects of various electoral systems. The level of discussion was exceedingly high among their members with regard to normative principles and technical details; and in the end, after extensive debates with large majorities for conjoint proposals, they succeeded in putting forward detailed plans for reform. All three of these houses of lots have become textbook examples of how deliberative democracy in the setting of mini-publics should work and have been praised for their democratic and inclusive qualities (Gutman & Thompson, 2018).

Yet in none of the three cases were the changes recommended by the houses of lots finally enacted. In both Canadian states the respective proposals were derailed by supermajority and double majority quorums, and in the Netherlands a new governmental coalition came to power whose smaller parties had an interest in maintaining the electoral law that had been in place since 1917. Are the citizen assemblies thus to be judged as failures? The answer to this question is no! In all three instances it was simply the case that the powers granted them by the other political actors were evidently insufficient. The Canadian and Dutch houses of lots may still offer a model that could be emulated—for instance, with respect to a reform of the electoral law for Federal elections in Germany after the legal actions of the Bundestag have been repeatedly rejected by the German Constitutional Court.

Keeping in mind the critique by Christina Lafont of the introduction of mini-publics for making binding political decisions, how can such a positive assessment be justified? The issue of making electoral laws leads to a fundamental question on the legitimizing hierarchy in modern democracies: in a legitimizing competition between an elected parliament, a plebiscite, and a house of lots, which institution should have primacy? No general answer can be given to this question. Let's start with the idea of the absolute primacy of an allegedly authentic will of the people via plebiscites. Empirical studies have shown that only in rare cases is such a will of the people actually represented. In particular electoral law questions are in fact one of the areas in which only very few citizens have informed political preferences.<sup>26</sup> I call this the *deficit of democratic will*. The problem with parliamentary decisions on changes to electoral law is that on such questions the political actors in parties and parliaments find themselves in conflict with their own power interests. Thus, we are faced with a *deficit of neutrality* because of MPs exclusive self-reference on these topics.

An alternative to parliaments or referenda would be to externalize the decision to a court or a special independent commission. Yet this strategy also faces a dilemma. Externalizing the decision to the courts runs the risk that politicians are even more motivated to appoint their members according to their own political interests. If, on the other hand, the appointment process is independent of current politics, their members run the risk of being too removed from the will and experiences of citizens.

Another issue where the information and neutrality deficits have inspired the search for a new agency of legitimization is payment for professional politicians. As Max Weber noted, modern democracies need political professionals who require good and fair pay. But what should be considered good and fair pay for politicians? MPs are not neutral in the matter of deciding their own salary; and even if they come up with a fair amount and a fair way to regulate their health plans and their pensions, suspicion easily enters the public debate. It would be naive, on the other hand, to have a plebiscite on the issue of salaries for politicians. This would be an invitation to populism and to cheap resentments of members of the political class. Hence, in this case we also face a deficit of neutrality (on the side of the politicians) and a deficit of informed preferences (on the side of the citizens). A house of lots may serve quite well as an institution functioning as a democratic and deliberative *pouvoir neutre* that may calm the notorious disputes and conflicts about the pay and perks for professional politicians and produce fair as well as legitimate decisions.

The work of citizens in the state of Washington may serve an instructive example in this respect. Ever since the 1970s in Washington State there had been growing discontent over the payment of politicians and civil service employees. This instigated a long debate on reforms, which culminated in 1986 in a constitution-changing law. Both Democrats and Republicans and the two legislative houses agreed to a law establishing a Washington Citizens' Commission on Salaries for Elected Officials, which would oversee and stipulate the salaries and allowances of all elected political officials in the legislative and executive branches as well as those of high court judges.<sup>27</sup> Ever since 1987, politicians' pay and perks have been stipulated by this 17-person commission. The commission is in office for two years; seven of its members are appointed by the state senate and house of representatives for one legislative period and they must have expertise in the sphere of management; the other 10 members come from the different congressional districts of Washington State and are chosen by lot among all those citizens eligible to vote. The reasons for this mixed grouping were two. On the one hand, there was an unwillingness to forego the expertise of specialists in salary questions and hence the seven appointees; on the other hand, the 10 laypeople chosen by lot were to ensure that the body's decision-making process would not be dominated by the special interests of civil servants and the political class. The commission has been performing its work for more than 30 years, every two years newly stipulating the pay and perks for elected politicians and the civil servant corps.

The commission's activities have been regarded as successful. The salaries of officials in Washington State do not markedly diverge from those in comparable states of the USA and thus the state continues to attract competent personal to politics and the civil service. In addition, ever since the commission was instituted, the issue of pay and perks in Washington State appears to have almost completely vanished from the agenda of populist rabble-rousing. The Commission's fixing of salaries has ultimately acquired legitimacy due to the fact that its sessions are public and that both the expert appointees and citizens chosen by lot are obliged to explain their decisions to critical inquiry. The addition of randomly chosen citizens to the process of deciding on the salaries of professional politicians has produced and is still producing political legitimacy on this delicate issue.

Both with regard to changing electoral rules and determining the payment of politicians the selection of the members (or at least the majority of them) for the institution authorized to make the final decision by lot is a practical institutional device. The justification of the invention of a house of lots in these cases does not exclusively rest on the alleged democratic and representative qualities of the selection of participants for mini-publics, but to an even larger extent on arguments that emphasize the potential productive, efficient, and anti-corruption effects of lotteries. My general formula is: in all cases (and in only those cases) in which there are indications of a deficit in will or neutrality, as describes above, we should consider whether to switch from elective to aleatory parliamentarism and place the political decision-making process in the hands of a house of lots. In those—admittedly rare—cases the house of lots is the best institutional alternative to both courts and commissions because it is unlikely that its members have “hidden agendas or conflicts of interest” (Lafont, 2019, p. 113). In the institutional setting of modern democracies the house of lots in such cases serves—*pace* Benjamin Constant and Carl Schmitt—as a democratic, deliberative version of the classical *pouvoir neutre*.

## 8 | CONCLUSION

Mini-publics, deliberative opinion polls or houses of lots should not be conceptualized as alternatives, but as complementary institutions to traditional elected parliaments. But in finding their appropriate place in modern political systems we can do more than to celebrate their qualities to encourage participation, to enlighten the public, to consult politicians, or to serve as a means for civic education. In some cases they may also be authorized to make binding political decisions—in the well-defined and small group of cases in political decision-making in which they are supposed to serve as democratic and deliberative versions of a *pouvoir neutre*. The rationale of aleatory parliamentarism in these cases is not to weaken, but to strengthen the perceived legitimacy of parliamentary democracy today.

The proper theory of mini-publics does not necessarily have to stand in opposition to democratic theories that support electoral democracy and parliamentarism. It may even be quite the opposite: I argued in this article that some elements of aleatory parliamentarism should properly be understood to be complementary to elective parliamentarism: voting and drawing the lot are not adversarial political procedures per se. They can easily be combined—and they have been combined in most original ways in the past in some ancient democracies or renaissance city states. These insights into the broad and many faceted functions of sortition in politics may help us to make use of it beyond the narrow mental preoccupation with lotteries for mini-publics only.

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## NOTES

<sup>1</sup> Meaning fortune telling and fate in Old Germanic.

<sup>2</sup> In the following I use the terms lottery, sortition, and random mechanism interchangeable.

<sup>3</sup> I use the terms deliberative opinion poll and mini-publics interchangeably in this article.

<sup>4</sup> On these forerunners, see Sintomer (2007); Setälä and Smith (2018).

<sup>5</sup> The deliberative opinion poll is today mostly connected to the work of James Fishkin. See Fishkin (2009, 2018a, 2018b); Brown (2018); Florida (2018).

<sup>6</sup> See Carson and Martin (1999); Dowlen (2008); Delannoi and Dowlen (2010); Lopez-Rabatel & Sintomer (2018); van Reybrouck (2016); Sintomer (2018).

<sup>7</sup> See Barnett and Carty (2008); Callenbach and Phillips (2008); O'Leary (2006); Reybrouck (2016); Sutherland (2008).

<sup>8</sup> See Buchstein (2009, 2010).

<sup>9</sup> See Fishkin (2018a, p. 319); Niemeyer and Jennstal (2018, p. 331); Setälä and Smith (2018, p. 310).

<sup>10</sup> Proponents of this strand are Oliver Dowlen (2008) and recently, David van Reybrouck (2016).

<sup>11</sup> The most prominent proponent of this strand are James Fishkin (2009, 2018a) and Yves Sintomer (2018).

<sup>12</sup> For a critical discussion of this semantic move in the history of democratic theory see Jörke and Buchstein (2007).

<sup>13</sup> See Buchstein (2010, pp. 437–441, 2019); Elster (1989); Stone (2011).

<sup>14</sup> See Manin (1997) and Rancière (2006).

<sup>15</sup> For a more detailed critique of Manin and Rancière see Buchstein (2015a).

<sup>16</sup> Plato, *Critias*, 109b, in D. Lee (1977).

<sup>17</sup> Aristotle, *The Constitution of Athens*, section L, paragraph 2. In S. Everson (Ed.), *Politics and the constitution of Athens* (1996).

- <sup>18</sup> Anaximenes, "Rhetoric to Alexander" 1424a12–14 in W. D. Ross (Ed.), *The works of Aristotle* (1959).
- <sup>19</sup> Aristotle, *Politics*, 1303a15.
- <sup>20</sup> Aristotle, *The Constitution of Athens*, LXIV, 2.
- <sup>21</sup> Aristotle, *The Constitution of Athens*, LXIV, 2.
- <sup>22</sup> These ideas to reform the European Parliament were presented first in Hein and Buchstein (2009) and later developed further in Buchstein (2015b).
- <sup>23</sup> See Scully, Hix, and Farrell (2012).
- <sup>24</sup> See, as classical references for this point, Olson (1965) and Offe and Wiesenthal (1984).
- <sup>25</sup> See Warren and Pearse (2008a) and Setälä and Smith (2018).
- <sup>26</sup> See Fournier et al. (2011, pp. 15–17 and 134–136); Setälä and Smith (2018, pp. 303–305).
- <sup>27</sup> See the yearly reports by a Washington Citizens Commission on Salaries for Elected Officials. Retrieved from <https://salaries.wa.gov/about-us/how-and-why-commission-was-created>.

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