What Sortition Can and Cannot Do

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Abstract: In recent years a number of writers have argued that sortition (the random selection of citizens for public office by lot) should augment the institutions of electoral democracy, but there is little agreement on the precise role that it should play. At one end of the spectrum James Fishkin (Fishkin, 2009) has argued that sortive bodies should be limited to an advisory or educative role; whereas radical democrats have argued that sortive bodies can do anything an elected chamber currently does (Callenbach & Phillips, 2008; O'Leary, 2006). In this paper I argue that sortition could only serve an aggregative judgment role and could therefore only ever be one element in a mixed constitution. Any attempt to extend its use beyond this aggregate judgment function undermines any claim that sortition may have to democratic legitimacy. My case is based on fundamental conceptual distinctions derived from (Griffiths & Wollheim, 1960; Pitkin, 1967).

Since the so-called 'deliberative turn' starting in the 1980s, the democracy agenda has been driven by deliberative theorists: 'almost all the work in democratic theory being done these days is of the deliberative/discursive kind, or responses to it' (Minch, 2009, p.1). The quotation is from a study of the contribution of Michael Oakeshott to the field of democratic theory. However Oakeshott is best known for advocating 'government by conversation', a practice that *ended* in the UK with the introduction of mass democracy after the 1867 Reform Act. This act enfranchised much of the male urban working class and transferred the effective locus of government from the deliberative forum of parliament to the democratic hustings.[2]

Bernard Manin also views the 1867 Reform Act as a key factor in the transition from 'parliamentary' to 'party' democracy (Manin, 1997) – any substantive deliberation that takes place in a party democracy tends to take place *in camera*, far removed from the public arena, either in secret cabinet committee or, more recently, amongst a tiny cabal of advisers in the party leader's snug. If it is the case that, historically speaking, the introduction of democracy has led to the demise of open parliamentary deliberation, then surely the very concept of 'deliberative democracy' is oxymoronic – a shotgun marriage rather than a union of souls?

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[2] Even before the second reform act it was doubtful whether a meaningful conversation could take place in an assembly as large as the House of Commons, leading Walter Bagehot to locate the effective source of power in the much smaller cabinet (Bagehot, 1963) – the size of which corresponds closely to the maximum size feasible for a deliberative group (Coote & Lenaghan, 1997).

Deliberative theorists have evolved two distinct approaches to bringing together the two reluctant partners in this marriage – but this involves a stark choice of whether to side with the bride (democracy) or the groom (deliberation). Opting for the pews on the groom's side of the church, Habermasians, Rawlsians and other 'discursive' theorists focus on the rules of debate – the search for the 'ideal speech situation' (Habermas, 1973); such theorists appear unconcerned whether or not those invited to the wedding feast are an accurate microcosm of society at large. For example Jon Elster's perspective on deliberative democracy as 'decision making by discussion among free and equal citizens' is predicated on a 'minimal' definition of democracy as 'any kind of effective and formalized control by citizens over leaders or policies' (Elster, 1998, p.1; p.98). Note that Elster is unconcerned as to *which* citizens get to deliberate and whether or not they accurately represent the views and interests of their peers. Similarly Joshua Cohen's view of deliberative democracy as 'free public reasoning among equals' focuses on the internal workings of the deliberative forum and ignores issues of representativity (Cohen, 1998, p.186). Despite acknowledging that for political power to be legitimate it must 'arise from the collective decisions of the equal members of a society who are governed by that power', his article fails to explain how this is possible in large modern states (Cohen, 1998, p.185). Habermas himself is accused of an 'extraordinary disregard for detail . . . the project seems clear from afar, but becomes fuzzier as one approaches' (Heath, 1995, p.146). Adam Przeworski appears equally nonchalant about which citizens get to deliberate: '"democratic political deliberation" occurs when a discussion leads to a decision by voting' (Przeworski, 1998, p.140); note that such a definition of 'democratic' political deliberation could be equally applicable to the internal decision procedure of a military junta or a meeting of Plato's guardians. Surely though, if a deliberative assembly is to be democratic in the usual sense of the word (rule of the people), then we 'need to know *who* deliberates, and we should be worried if most people are kept at the margins of political deliberation' (Gargarella, 1998, p. 274, my emphasis).

This lack of concern over which citizens participate in the discussion is because deliberative theorists focus on the 'forceless force of the better *argument*'[3] (Habermas, 1981, Vol.1, p.47) – deliberation is a discursive process and rationality doesn't require accurate representation any more than Burke's deliberative assembly of statesmen required that Manchester and other new conurbations should return MPs in proportion to their population. Deliberative theorists, like Burke, are 'concerned not with votes but with arguments' (Gargarella, 1998, p.264). Deliberative democracy can be seen as an attempt to return to what Hanna Pitkin describes as the age of objective interests (Pitkin, 1967, Ch. 8), immortalized by Burke's 1774 *Speech to the Electors of Bristol* in which he described parliament as a

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[3] 'Der zwanglose Zwang des besseren Arguments.'

'deliberative assembly of one nation, with one interest, that of the whole' (Burke, 1975, pp. 28-29). Burke's deliberative assembly was intent on discovering the 'laws of God and nature' (Pitkin, 1967, p.169); modern deliberative theorists have merely repackaged this quest for a secular age – the Mind of God has been replaced by the Principle of Reason, a direct descendant of Christian teleology (Gray, 2003).

Deliberative theorists are scornful of the shift from discursive rationality to social psychology that occurred at the time of Pitkin's next stage in the evolution of parliamentary institutions: 'liberalism and the representation of people with interests' (Pitkin, 1967, Ch. 9). As the ideal outcome of deliberation is rational consensus, discursive democrats are uncomfortable with majority voting, with its attendant risk of interest aggregation, horse trading and other grubby compromises, preferring instead the pursuit of normative ideals like justification rationality, common good orientation, respect and agreement, interactivity, constructive politics, sincerity and truthfulness (Baechtiger, Shikano, Pedrini, & Ryser, 2009).[4] There is an element of motherhood and apple pie involved here, Habermas himself acknowledging that 'rational discourses have an improbable character and are like islands in the ocean of everyday practice (Habermas, 1996, p. 323). Deliberative theorists are generally content for participants in the debate to be volunteers (certainly not conscripts) and are disposed to privilege those already active in civil society (Burnheim, 2006; Chapman & Lowndes, 2009; Elstub, 2008; Saward, 2010). Thus the pursuit of the deliberative ideal is at the expense of some of the tenets of (liberal) democracy, especially majority rule.

Deliberative theorists in the opposing camp – who privilege democratic equality over discursive rationality –will be found on the bride's side of the church at the shotgun wedding, where the pews have been block-booked by the Center for Deliberative Democracy at Stanford University, in the front row of which is seated its director, Professor James Fishkin. The corporate lawyers arrived before the wedding and stamped the pews with the Center trademark: Deliberative Polling®. Fishkinians emphasise the 'descriptive' (statistical) representativity of the Deliberative Poll (DP) and go to great lengths to ensure that all those who are randomly selected actually turn up for the debate. In St. Luke's rendering of the parable of the wedding feast the host instructed his servants to 'Go out to the highways and country

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[4] The authors in fact describe pure (Habermasian) deliberative democracy, rooted in the 'logic of communicative action' as Type I deliberation; Type II deliberation 'incorporates alternative forms of communication (such as story-telling) and embraces self-interested behavior such as bargaining' (*ibid*., p. 3). But such accommodation with political *realpolitik* is viewed by many deliberative theorists as a regrettable corruption of the Habermasian ideal and would argue that if it's not possible to revert to eighteenth-century government by conversation then, as political theorists, that's not really their problem. The goal of this paper, however, is to reconcile deliberative ideals with the contingent empirical constraints of modern democracies and that will require significant compromise all round.

roads and urge people to come in, so that my house will be filled'; in a similar manner Professor Fishkin instructs his deliberative pollsters to ensure that the randomly-selected conscripts turn up for the debate by ensuring that they are well-compensated, that their child-minding needs are met and that their employers are willing to grant them the necessary leave. This is because just as a random sample selected for a public opinion poll has to be an accurate reflection of the demographics of the whole population, a deliberative assembly needs to be a 'portrait in miniature' of the whole electorate, especially if the assembly were to serve some kind of legislative function. Participation would ideally be mandatory, thereby obviating the need for stratified sampling (Stone, 2011, p. 176, n. 27). This is because a voluntary model would lead to an over-representation of political activists (Buchstein & Hein, 2010, p. 147). As Jon Elster acknowledges, 'those who know a great deal about a subject also tend to have an interest in it or to be moved by strong passions; otherwise they would not have bothered to become informed about it' (Elster, 1998, p.109), thus any reliance on volunteering will distort the descriptive accuracy of the sample.

However the flip side of Fishkin's concern for representativity is that the wedding feast is a meagre affair – more Oliver Twist's bowl of gruel than St. Matthew's fatted calf. Randomly-selected citizen deliberators will know very little about the subject under discussion and are unlikely to introduce innovations of their own. Thus the DP is structured around a well-balanced briefing followed by a joust between expert advocates (for and against the proposal under consideration). DP participants get to formulate their own questions for the experts, but their prime function is to determine the *outcome* (or, more usually, indicate a shift in preferences) via a secret ballot at the end of the debate. Active participation is restricted to conversations in small sub-groups, under the watchful eye of trained moderators, and the primary purpose of the small groups is to prepare questions for the experts in the plenary sessions. Fishkin's notion of deliberation is derived from the Latin root of the word (*libra*: weight), according to which the role of a de-*liber*-ator is to arrive at a decision by 'weighing up' competing arguments (Fishkin, 2009, p. 35). As such, his concept of deliberation is not dissimilar to the silent, inner deliberation (and secret voting) preferred by Jean-Jacques Rousseau, derived also from this Latinate meaning in which deliberation is associated with the *decision of a collective body*. Habermasian deliberation, by contrast, relies on the German notion of *'Deliberativstimme'* (deliberative voice), hence the emphasis on discourse and consultation in the German and English literature on deliberative democracy (Sintomer, 2010a, p. 36). It's important to recognize that we are dealing here with two distinct deliberative traditions, one (Anglo-German) emphasizing the importance of good discussion and the other (Latinate) the decision of a collective body (*ibid*, p. 47).

Given the tensions and contradictions described above, can deliberation possibly ameliorate any of the problems with representative democracy? The last few decades have witnessed a growing disaffection with electoral representation in Western democracies, accompanied by a dramatic fall in the membership of political parties. One of the reasons for this is that it's not clear how elected politicians can adequately represent the sheer diversity of modern multicultural societies. Elected politicians often appear very different from their constituents, in terms of ethnicity, education, occupation, wealth, gender etc. – and this has led to the perception of a tiny self-serving political elite, only concerned with pursuing its own interests. This has also led to epistemic concerns – if politicians are drawn from a narrow homogeneous group then they will lack the necessary cognitive and life-experience diversity to properly address all the issues that come up in everyday politics. Added to this, in the 'post-ideological' era competition for the 'centre ground' has led to a bland, managerial style in which it is increasingly difficult to establish clear policy differences between the major political parties. Given that in first-past-the-post systems votes for fringe parties are effectively wasted, an increasing number of citizens don't bother to vote at all. Political leaders have been likened to stage actors, manipulating the allegiances of a largely passive audience (Manin, 1997, p.218). As the outcome of parliamentary and congressional votes is largely pre-determined by party arithmetic, most elected politicians don't bother to attend the debates, thereby destroying the notion of the popular assembly as the deliberative chamber of the nation (in the UK parliament, the only serious deliberation takes place in the unelected House of Lords).

This disaffection with *representative* democracy has led to a revival of interest in one of the mechanisms of Athenian-style *direct* democracy,[5] selection to public office by random lot – a process described as 'sortition' (Barber, 1984; Barnett & Carty, 2008; Buchstein, 2009, 2010; Burnheim, 2006; Callenbach & Phillips, 2008; Carson & Martin, 1999; Coote & Lenaghan, 1997; Crosby, Kelly, & Schaefer, 1986; Dahl, 1970, 1989; Delannoi & Dowlen, 2010; Dowlen, 2008; Elster, 1989; Engelstad, 1988; Fishkin, 2009; Hansen, 2005; Lieb, 2004; McCormick, 2011; Mueller, Tollinson, & Willett, 1972; Mulgan, 1984; O'Leary, 2006; Schmidt, 2001; Sintomer, 2007, 2010b; Stone, 2011; Sutherland, 2008; Tridimas, forthcoming; Zakaras, 2010). The Athenians even developed a carved stone lottery machine called a *kleroterion*.

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[5] The present paper will not deal with the other aspect of Athenian democracy – the right of all (male) citizens to attend and vote at the assembly (*ecclesia*). There have been a number of recent calls for the incorporation of direct democracy into large modern states, usually by means of electronic technologies (telephone or internet voting). However, given the huge size of modern nation states, the problem of 'rational ignorance' (see below) is even more applicable than during the election of political representatives (Downs, 1957). Apart from in small countries with a long tradition of direct democracy, such as Switzerland, referendums on particular issues are frequently used as an opportunity for citizens to express their general approval or disapproval for the government, as opposed to providing a considered verdict on the specific topic of the plebiscite.

According to the *Oxford English Dictionary*, the meanings of the word 'ballot' include both preference elections and random selection or 'allotment' (as used in ancient Athenian democracy), so why not refashion a deliberative legislature by an Athenian-style ballot (bronze dice in a stone box) rather than by the Westminster-style ballot (paper tokens in a metal box)? Could an allotted chamber (AC) be an alternative model for political representation, in which the legislature represents the demographic composition of society 'descriptively', in the same way that those selected randomly for a public opinion poll represent the wider population proportionately? And if so what would be the better working model for such a legislature – the full-blooded deliberation required by the Habermasian 'ideal speech situation' or the anaemic model of the Deliberative Poll?

This paper argues that the Fishkinian approach is (unfortunately) right – deliberation has to be limited to a tightly-constrained model in order not to contravene the equality of the majority of citizens who fail to be selected by lot. Preference elections in large states may do little to empower individual citizens, but at least everyone is equally impotent. Like Odysseus's choice of whether to navigate closer to Scylla or Charybdis, it's better to compromise the ideal speech situation than to put at risk the democratic ship of state. This is largely for conceptual reasons – 'descriptive' representation is an aggregate, statistical concept; whereas the 'active' functions of political representation can only be fulfilled by preference elections (partisan or plebiscitory). The Habermasian deliberative model, if applied to an allotted legislature, would *contravene democratic norms by mixing statistical and active functions in a single body*.[6] To understand this argument requires an unpicking of the hybrid concept of representation into its component elements.

Active - vs - Descriptive Representation

In a 1960 Aristotelian Society symposium 'How can one person represent another' A. Phillips Griffiths and Richard Wollheim described how there are in fact four distinct concepts of representation – 'descriptive', 'symbolic', 'ascriptive' and the 'representation of interests' (Griffiths & Wollheim, 1960; Stone, 2011). Griffiths defined these concepts as follows:

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[6] And there would also be practical objections – if members of a randomly-selected deliberative assembly were to have the powers to initiate and act as advocates for legislation they would become open to corruption by rich and powerful lobbyists, as assembly members would not be constrained by manifesto commitments, party ideology or the need to seek re-election. This problem would not apply if the assembly were designed along Fishkinian lines. The model also pre-supposes a strict separation between legislative and executive powers, with the latter personnel appointed on ability and past administrative experience (as opposed to being elected either directly or from within the legislature).

Descriptive Representation:

I am a descriptive representative of my generation – a sample, specimen, or analogue – when I am sufficiently like my fellows for someone to be reasonably safe in drawing conclusions about the other members of my generation from what they know about me. I cannot of course be made such a representative; I can only properly be thought to be one if I am in fact already like my contemporaries. For one thing to descriptively represent another it is both necessary and sufficient that it is similar in some respects to what it is supposed to represent. (Griffiths & Wollheim, 1960, p.188)

Symbolic Representation:

We might say that the monarch represents the majesty of the state even though we know that in himself he is not at all majestic but a rather silly little man. I shall call this sense – in which an individual is for some reason or for none chosen as a focus of attitudes thought appropriate to something other than himself – symbolic representation. (*ibid.,* p.189)

Ascriptive Representation:

A man's legal representative may be quite unlike him. He represents him in virtue of the fact that what he does or decides *commits* his client . . . as his accredited representative [he] commits him to something whatever the facts may be about what [his principal] is willing or is not willing to agree to. (*ibid.,* p.189, my emphasis). In Pitkin's words 'the "essential function" of ascriptive representation is that the consequences of A's action should fall on B'. (Pitkin, 1967, p.50)

Representation of Interests:

A member of Parliament, while not being [say] like a trade unionist, nor appointed by any trade union, may on some ground or other always concern himself with the interests of trades unions as against any other interests. The sense in which he would be a representative, not only or necessarily of some class or persons, but of some interests, I shall call representation of interests. (*ibid.,* pp.189-90)[7]

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[7] 'Interests' in this sense refer both to raw preferences and reflective judgment as to how such interests (including class-based and economic factors) are best served. According to a further distinction in (Pitkin, 1967, Ch. 7), the former are served by 'delegate'- and the 'latter' by trustee-style representation, but Pitkin's further distinction is not central to the topic of this paper. The relevant point is that 'interests' pertain to particular individuals and social groups (L: *interesse* – to be in between; to differ) and thus correspond (in aggregate) to Rousseau's 'will of all', whereas the hypothetical 'general will' (the common good) does not admit of such differentiation.

Griffiths rules out **symbolic** representation as of any relevance to democratic legislatures, although he acknowledges that the Labour Party might, for rhetorical reasons, have chosen [in 1960] to appeal to the icon of Kier Hardy as a symbol of the 'fine old traditions of the British working class movement etc.' (*ibid.,* p.189), and that right-wing parties might, for similar reasons, choose to appeal to the Union Jack as a symbolic representation of British sovereignty (*ibid.,* p.191). The tendency for voters in some countries to vote for wives/sons/cognates of deceased representatives is arguably an instance of symbolic representation. Although Indira Gandhi was no relative of Mahatma Gandhi, the name (acquired by marriage to Feroze Gandhi) certainly helped her gain and retain power (and pass on the mantle to her son Rajiv and then, in turn, to his Italian-born widow Sonia). Electoral nepotism in elections to the Irish Dáil is commonplace – 'The election of a close relative of a sitting or former TD may require a popular mandate, but it is almost as automatic in practice as the succession of a royal heir' (Martin, 2009).

Griffiths argues that democratic representation involves a combination of **ascriptive** representation and the **representation of interests**. The former is true as a matter of historical fact, at least in the case of the UK parliament, which had its origins in the requirement of medieval kings for the towns and counties of the realm to send knights and burgesses to meet with the king's council. Attendance was a 'chore and a duty, reluctantly performed' (Pitkin, 1967, p.3). However '[t]he authorities who thus called for the election of representatives usually insisted that they be invested with full powers (*plenipotentiarii*) – that is to say, that the electors should consider themselves *bound* by the decisions of the elected, whatever those decisions may be' (Manin, 1997, p.87, my emphasis). Thus electoral representation started out for the convenience of the executive:

> Once the delegates had given their consent to a particular measure or tax, the king, pope, or emperor could then turn to the people and say: 'You consented to have representatives speak on your behalf [not that they had any choice in the matter]; you must now obey what they have approved.' (Manin, 1997, pp. 87-88).

But, as always, there was a *quid pro quo*: as the power of Parliament grew (resulting from the need of the executive to have it's taxation requirements granted) MPs increasingly came to assert their own side of the bargain – if they were going to (ascriptively) bind their constituents with their assent to the crown's fiscal agenda then the crown would, in turn, have to respect the interests of their constituents. The growth of political parties resulting from the expansion of the franchise during the nineteenth century enabled constituents to enforce this bargain – if voters' ascriptive representatives

failed to protect their interests then they would be removed during the subsequent general election.[8] This leads Griffiths to conclude that there is 'some kind of conceptual connexion between ascriptive representation and the representation of interests' (Griffiths & Wollheim, 1960, p. 190), as they are the two sides of a Faustian pact.

Moving on to the case of **descriptive** representation, Griffiths opens his article by citing John Stuart Mill's plea for the presence of the working classes in parliament:

> On the question of strikes, for instance, it is doubtful if there is so much as one among the leading members of the House who is not firmly convinced that the reason of the matter is unqualifiedly on the side of the masters, and that the men's view of it is simply absurd. Those who have studied the question know well how far this is from being the case; and in how different, and how infinitely less superficial a manner the point would have to be argued, if the classes who strike were able to make themselves heard in Parliament' (Mill, 1991, pp. 246-247).

However, Griffiths, in his gloss on Mill's observation, observes that there is no *necessary* connection between descriptive and other forms of representation:

> Mill is not concerned to assert any necessary connexion: his arguments are designed to show a connexion which as a matter of fact [may] exist[s] between descriptive representation and the representation of interests, which gives a ground for choosing a certain kind of ascriptive representatives (Griffiths & Wollheim, 1960, p. 190).

Indeed, while working-class MPs might well reflect the interests of the working classes,[9] such a 'matter of fact' correlation between descriptive representation and the representation of interests will not be true in every case – 'we should not allow lunatics to be represented by lunatics'. It would seem therefore that 'the connexion between descriptive and ascriptive representation where it exists is mediated by the

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[8] Notwithstanding this sanction, Griffiths is adamant that ascriptive representation does *not* embody the 'consent' of the principals – constituents in the case of political representatives (Griffiths & Wollheim, 1960, p. 202). The best gloss that he can put on this 'consent' is that 'the normative consequence falling on the principal in the case of Parliamentary representation is that so far as he is represented he loses the right to complain when his own political judgment is ignored; a right he would have if he were not represented' (*ibid.,* p.204). This is in direct contrast to Bernard Manin's Lockean argument that the 'triumph of election' (over sortition) was on account of the natural right theory of consent (Manin, 1997, Ch. 2). For a detailed rejoinder to Manin's claim, along with an outline of Fishkin's competing notion of 'consent by proxy' see (Sutherland, 2011b).

[9] An alternative reading of this passage would be that Mill's concern was less with the *interests* of the working man and more with the general epistemic benefits (the 'reason of the matter') that would be derived from a working-class presence in parliament, although there is a clear overlap between the two perspectives (representation of interests presupposes the knowledge of what those interests are). I am grateful to Hélène Landemore for this point.

demand that ascriptive representation should be the representation of interests' (*ibid*.). This is because 'the representation of interests implies *action* on the part of the representative' (*ibid*, p.191, my emphasis): while lunatics are most accurately 'described' by other lunatics this doesn't mean that they will make the best advocates for their interests.

Hanna Pitkin offers a largely derivative perspective in her book *The Concept of Representation* (Pitkin, 1967), concluding that there are a variety of aspects to representation – aesthetic, symbolic, formalistic, descriptive and active – the last two being the most relevant to political representation. Pitkin, like Griffiths, concludes that political representation is primarily to do with the **active representation of interests** ('substantive acting for others', *ibid*., p.141), but nevertheless devotes a chapter of her book to **descriptive** representation. The latter involves 'standing for' and requires a degree of identity between the representative and her constituency, as evidenced by contemporary demands for all-women shortlists and positive discrimination for ethnic minorities. For someone to descriptively represent a target population, she would have to be 'like' them according to the pertinent similarity criteria (age, gender, occupation, ethnicity, etc.) Random selection (sortition) is the most accurate way of achieving descriptive representation (or, more accurately, the only way, given the combinatorial complexity of stratified sampling by even a modest number of criteria),[10] hence the choice of this method by the Stanford Center for Deliberative Democracy for its Deliberative Polling (DP) programme (Fishkin, 2009). An implicit assumption of the programme is that political preferences, attitudes, interests and ideologies are distributed in a similar fashion to demographic factors and that, given a large enough sample, the allotted microcosm will mirror the population in terms of all these qualities (the more fine-grained the factors deemed pertinent, the larger the sample base required). In a memorable passage, Callenbach and Phillips describe how the sheer variety of citizens in the US might be captured by a randomly-selected microcosm – or mini-public (Dahl, 1989) – which would contain, on average:

> About 50% women, 12% Blacks, 6% Latinos; 25% blue-collar workers; 10% unemployed persons; two doctors or dentists; one school administrator; two accountants; one real estate agent; eight teachers; one scientist; four bookkeepers; nine food service workers; one childcare worker; three carpenters; four farm laborers; three auto mechanics; one fire fighter; one

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[10] Advocates of 'stratified' sampling would impose quotas according to certain arbitrarily-privileged criteria, generally to protect the interests of gender and ethnic groups who would otherwise be under-represented (Mansbridge, 1999; Phillips, 1995). However such an approach could never generate the rich diversity enabled by sortition (see the passage from Callenbach and Phillips, below).

computer specialist [the original passage was written in 1985] and a Buddhist (Callenbach & Phillips, 2008, pp. 29-31).

The descriptively-sampled 'representative',[11] however, 'does not represent by *doing* anything at all; so it makes no sense to talk about his role or his duties and whether he has performed them' (Pitkin, 1967, p. 113, my emphasis). On the other hand, **active** representation, Pitkin's primary category for political representation, requires the representative to pursue the *interests* of her constituents, in a similar manner to a trustee or legal advocate.[12] There is no need for 'active' representatives to in any way mirror their constituents' identities, thereby justifying the continuing use of electoral representation in single-member constituencies. According to Pitkin, descriptive representation doesn't cover what the representatives *do*, while active representation is indifferent to *who* does it; although, as Griffiths observed, the two forms may well be contingently related, there is no inherent conceptual relationship).

Pitkin acknowledges that the notion of 'substantive acting for others' involves the conflation of three distinct ideas:

> the idea of substitution or acting instead of, the idea of taking care of or acting in the interest of, and the idea of acting as a subordinate, on instructions, in accord with the wishes of another (*ibid*, p. 139).

This hybrid concept of substantive acting for others is orthogonal to Pitkin's trustee–delegate (mandate-independence) distinction, the only common denominator to all three factors (entirely absent from the concept of descriptive representation) being the notion of *action*.

A similar distinction, drawing on (Skinner, 2005), is made by the republican theorist Philip Pettit:

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[11] The word 'representative' (singular) is really a misnomer, as the representation only exists at the collective (aggregate) level.

[12] The use here of the word 'trustee' is orthogonal to Pitkin's additional 'trustee–delegate' distinction regarding the degree to which representatives are mandate-independent. A trustee or legal advocate may well privilege her own judgment over that of her principal, nevertheless is legally or contractually obliged to represent the interests of her principal rather than the interests of the whole (the latter being Burke's idealization of the role of the political representative). For liberal theorists like Pitkin the interests of the whole are constructed out of the aggregation of the votes of individual political representatives. Burke's ideal-typical politician would more accurately be described as statesman (in Plato's sense of a disinterested promoter of the public good) rather than representative. Synonyms that Pitkin lists for active representative include actor, agent, ambassador, attorney, commissioner, *delegate*, deputy, emissary, envoy, factor, guardian, lieutenant, proctor, procurator, proxy, steward, substitute, *trustee*, tutor and vicar (Pitkin, 1967, p. 119, my emphasis). Writers may differ over the degree to which a political representative is a 'mere delegate' or a 'free agent' (*ibid*., p 120), nevertheless there is no disputing the obligation of the representative to act for her principal.

There are two fundamentally contrasting varieties of representation, indicative and responsive. Indicative [descriptive] representers stand for the representees in the sense of typifying or epitomizing them . . .   Responsive representers *act for* or *speak for* the representees, playing the part of an agent in relation to a principal; how they act is responsive to how the representees would want them to act. (Pettit, 2010, p. 65)[13]

If Griffiths, Pitkin and Pettit are correct, and political representation requires both aspects – descriptive and active – (although their analyses privilege the latter),[14] then how is it possible to realize these two different aspects simultaneously in the design of political institutions? Descriptive representation is the easy part – James Fishkin's experiments in Deliberative Polling have provided a methodology to develop proportional opinion sampling into a full-blown method of descriptive representation. Fishkin's experiments have indicated that a randomly-selected assembly can decide the outcome of a debate on political issues in a rational manner when assisted by balanced teams of expert advocates. The quality of the resultant decision-making would appear to be no worse than decisions taken by elected representatives,[15] few of whom even attend parliamentary debates and then only generally vote along partisan lines. Thus the Deliberative Poll design would appear to be a paradigm example of *informed decision-making (or preference aggregation) by a descriptively representative body*. Fishkin's findings have been supported by a growing body of literature contrasting the 'wisdom of crowds' with the fallibility of so-called 'expert' political judgment. However the issue of the 'rightness' of the decision-making process is beyond the scope of this paper – my concerns here being primarily normative rather than epistemic. For the present purpose measuring the informed preferences of a statistically-representative sample is quite sufficient and is arguably a considerable improvement on the recording of uninformed preferences in an election.

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[13] Unfortunately Pettit, like many neo-Republicans of the 'Cambridge' school, is vague on how indicative (descriptive) representation might be achieved in practice. Although Pettit does from time to time mention sortition, the extra-electoral contestatory institutions he typically advocates 'function much more like the countermajoritarian ones typifying liberal constitutionalism – namely, upper legislative chambers and supreme courts' (McCormick, 2011, p. 155). To Pettit, and other neo-republicans, the principal problem with democracy is the tyranny of the majority, whereas to advocates of descriptive representation by sortition the problem is the tyranny of the ruling elite (*ibid.,* p.158).

[14] In a more recent (2004) paper, Pitkin concluded that her earlier book was too sanguine as to the ability of (active) representation to instantiate democracy: 'Like most people even today, I more or less [in 1967] equated democracy with representation, or at least with representative government. It seemed axiomatic that under modern conditions only representation can make democracy possible. That assumption is not false, but it is profoundly misleading . . . Representation has supplanted democracy instead of serving it.' (Pitkin, 2004, pp. 336, 339)

[15] Strictly speaking Fishkin's findings only indicate that post-deliberative preferences are seemingly more 'informed' and that deliberation is not afflicted by many of the problems that cause epistemic failure (polarization, group think etc.). It isn't at all clear how it would be possible to judge the epistemic 'rightness' of a deliberative poll – although (Tetlock, 2005) contains a few clues – whereas the consequences of the decisions of legislative bodies are open to comparative and retrospective scrutiny.

A Deliberative Polling (DP) assembly would normally consist of 2-300 members but if an allotted (legislative) chamber (AC) were designed along similar lines and given statutory (as opposed to advisory) powers, it might well be felt that the number should be even larger, as legislative chambers typically involve 5-600 members. And this is the nub of the problem – an AC is democratically representative only in *aggregate*, whereas the maximum effective size for group deliberation is as low as twenty-four or even twelve! (Coote & Lenaghan, 1997) Thus dividing the chamber into small working groups immediately fails in terms of representative equality, hence Fishkin's reliance on carefully-trained monitors for the small-group sessions to ensure that exchanges are not monopolized by garrulous or high-status individuals.

If, however the AC had statutory powers, scrutinizing the independence of the monitors would produce a problem of infinite regression, on the principle of *quis custodiet ipsos custodes?* (who will guard the guards themselves?) (Juvenal, *Satires*, VI, lines 347–8). Given that the role of the DP is to listen to the arguments of competing teams of expert advocates and then decide the outcome of the issue under debate by secret ballot it's not clear exactly what the role of small-group deliberation is (other than to formulate questions for the panels of experts at the plenary session). In the case of the court-room trial, active deliberation in the jury room is on account of the requirement to arrive at a consensual verdict; not so with the majority-vote requirement of the political jury. It should also be noted that proponents of the 'wisdom of crowds' warn of the dangers of 'groupthink' occasioned by the natural dominance of articulate, educated and other high-status individuals (Surowiecki, 2004). This is because 'the debates tend to be dominated by a small number of skilled and charismatic speakers' (Elster, 1998, p.109). Although the best way of overcoming this is to reduce the size of the group, small groups cease to be an accurate microcosm of the whole electorate and thus fail in terms of statistical representativity. However, Fishkin is adamant (personal communication) that the small-group sessions play an important role in ensuring informed decision making, perhaps on the basis of E.M. Forster's epithet – 'How can I know what I think till I [hear] what I say'. One suspects however that the small-group deliberations may well be a reaction to the dominance of the 'Ideal Speech Situation' model within the broader deliberative democracy community, which has criticized the DP for the comparatively low level of active deliberation (although Habermasian discursive democrats may in turn be criticized for their lack of concern for accurate descriptive representation). But if small-group sessions depend on impartial trained monitors and if this is deemed to be impossible (for Juvenal's reasons) in a legislative assembly with statutory powers then it may well be that the small-group aspect would need to be jettisoned.

Advocacy - vs - Judgment

The problem becomes even worse if members of the AC are also to be advocates for and against legislative bills. Although Pitkin only deals briefly with sortive bodies in her book, nevertheless the following passage outlines the general theoretical problem regarding the role of descriptive representation:

> If the contemplated action is voting, then presumably (but not obviously) it means that the [descriptively-mandated] representative must vote as a majority of his constituents 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 that way? To speak that way? And if not that way, then how? (Pitkin, 1967, pp. 144-145)

What Pitkin is saying here is that voting on binary issues (yea or nay) is a simple aggregative process[16] – it would be possible for example for a delegate-style representative to simply act as a token for the aggregate votes of her constituents (as is the standard practice at trade union conferences). However the delegate is entirely ignorant as to why each of 'her' members might choose to vote that way; as soon as the delegate rises to her feet to speak, she can only give a *particular* argument and immediately loses democratic legitimacy as only those in the target population sharing that particular perspective would be represented. Anything other than aggregate behaviour by a descriptively-representative chamber is in breach of its democratic legitimacy and that means that allotted members would be restricted to asking questions and voting.

As soon as a descriptively-representative member rises to her feet to speak – either to the whole assembly or to a sub-group – she becomes an (individual) advocate and thereby loses her (collective) democratic legitimacy. The reason for this is that the OMOV[17] principle of democracy requires that the members of an allotted chamber (AC) possess an equal influence in the secret ballot that determines the outcome of the debate. However, in the parlance of Austinian linguistic philosophy, the 'illocutionary force' of the speech acts of each individual will be anything but equal (Skinner, 2002). This is because allotted members, unlike elected politicians, have not been selected on the basis of their rhetorical or

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[16] It is frequently retorted that the legislative process differs from the trial procedure in that legislative issues are more complex and not subject to binary decisions. However this conflates the policy-making and legislative processes. The existing High Court of Parliament only has two lobbies (yea and nay) and an AC might well choose to reject a bill, recommending (effectively) to 'revise and resubmit'. For additional arguments as to how seemingly complex decisions can be resolved into a series of binaries see (Landemore, 2008).

[17] One [Person] One Vote.

information skills, so those members who happen to possess persuasive skills, or who are perceived to be of high status will influence the outcome of the debate in a manner that is incompatible with their descriptively-representative status. 'One [Person] One Vote' as a clearly-defined principle of democracy can easily be undermined by the unequal distribution of the persuasive powers to influence how the votes are cast. Nobody elected the members of a descriptively-representative assembly on the basis of their individual views or rhetorical abilities, so they cannot claim the mandate that comes via electoral success. Only if it were possible to equalize the time allotted to each speaker (including obliging shy and retiring members to match colleagues of a more Churchillian disposition) and to equalize the illocutionary force of each utterance would it be possible for members of an allotted chamber to actively participate in a debate leading to a statutory legislative outcome without contravening democratic norms. However, without a 'robust account of the "force" of language in social and political interaction' this is a serious challenge (Johnson, 1998, p.175).

The 'empirical turn' in deliberative democracy has led to positivistic attempts to monitor the equality of all participants by using metrics like the Discourse Quality Index (Steenbergen, Baechtiger, Sporndlie, & Steiner, 2003), but it's unclear how monitoring the frequency of participation and the number of words used by chosen 'disadvantaged' minority groups (generally women and ethnic minorities) can translate into substantive equality of illocutionary outcome (Baechtiger, et al., 2009, p. 5; Stromer-Galley, 2007). Whilst participants may be urged to respect all participants and defer to the better argument (rather than the most persuasive oratory), it is hard to establish any sort of discourse parity between a seasoned rhetorician and a member of a 'disadvantaged' group who does not habitually engage in idealized forms of deliberation (Sanders, 1997). And how is it possible to guard against the wolf in sheep's clothing – a partisan interest masquerading as an argument for the general good, as deliberators will be motivated to make utterances of a 'plays-well-with-others' nature (Mucciaroni & Quirk, 2010). 'The [deliberative] norm does not induce members to become impartial, only to appear to be so' (Elster, 1998, p.101). In sum, the difficulties involved in ensuring the sincerity and substantive (outcome) equality of the speech acts of individual members of a descriptively-representative legislature are so great as to undermine the original case for random selection.

Note that this observation is true *ex hypothesi*, as it depends on the aggregate nature of the *concept* of descriptive representation, rather than any empirical observations. Public opinion surveys based on probability sampling (Levy, 2008), are only valid in aggregate – pollsters ask the same question to a large number of respondents and then present the results using statistical tools. The individual response of one respondent might be of interest to a social anthropologist but is of no scientific significance and is of no value from a democratic perspective. The very fact that 'descriptive'

and 'statistical' representation are synonymous is a further indication that it is impossible for an individual member of an allotted parliament (unlike an individual MP) to claim the status of a 'descriptive representative' as the concept only applies in plural. When the (elected) Honourable Member for Bristol South stands up to speak she can legitimately expect to command the attention of the House, not so for a 'descriptive' representative. This is a knock-down argument in the 'analytical a priori' sense. As Galen Strawson put it: 'You can see that [an a priori argument] is true just lying on your couch. You don't have to get up off your couch and go outside and examine the way things are in the physical world. You don't have to do any science' (Strawson, 2003). An analytic a priori statement is tautologically true and requires no empirical verification (Ayer, 2002).[18] Any democratic theorist who advocates an active role for individual members of an allotted assembly would first need to refute this a priori argument regarding the *conceptual* status of descriptive representation.

The argument is derived from Pitkin's 'ordinary language' approach to philosophical issues: take, for example, the argument that a legislature should be a 'portrait in miniature' of the whole electorate. Although a (painted) portrait is composed of a number of individual brush strokes, the overall representation is based on the aggregation of the strokes – individual brush strokes hold no significance outside of the context of the full work. A representation of an image displayed on a digital computer screen is even more pertinent – the screen I am using to compose this paper contains 2,073,600 pixels, but no individual pixel contains any information that is of relevance to the document being represented – this would only be the case if the computer screen relied on holographic technology, where each unit contains a lower-resolution version of the full image. If individual 'descriptive representatives' were like holographic images then we would only need *one* of them to mirror the whole society; the fact that we need several hundred in order to ensure a reasonably accurate description indicates that the allotted representative in this analogy better resembles a regular computer pixel rather than a holographic film.

Advocates of deliberative democracy dismiss Austinian arguments on illocutionary imbalances, as *isegoria* (equal right of addressing the public assembly) only demands equal *access* to speech, not equal outcomes. Just as Burke was confident that the deliberative forum of the nation needed only one advocate for (say) the merchant interest, Habermasian deliberators would be content with a single advocate of a particular viewpoint, such is their faith in the power of rational discourse. Such assemblies

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[18] Ayer rejected this view after the onset of the linguistic turn in philosophy, but the distinction is valid whether approached from a logical positivist, Austinian or Wittgensteinian perspective as it pertains to the way we use words. I am grateful to John Burnheim for this point.

only require a few dozen deliberators, but would not be considered descriptively representative in any way that would be meaningful to anyone working in the public opinion industry.

To choose another ordinary-language example, when someone refers to themselves as 'only a statistic' this implies a denial of individuality, as the word 'statistic' (in the singular) properly refers to a number (usually a percentage), as opposed to an individual unit in the target population that the statistic is used to represent. 'Allotted representatives' is an example of the limited set of substantives that only exist in the plural sense so, in order to avoid confusion, it would be better to refer to 'allotted forum', 'allotted chamber', 'allotted assembly', 'allotted legislature' etc. as opposed to the traditional language of parliamentary or congressional representatives. That way there will be no further temptation to commit the error of reifying into existence the result of a conceptual confusion (the 'allotted representative'), through the mistaken belief that a change in the balloting method (from election to sortition) will produce a 'descriptive representative' that is on a par with an elected representative. Elections are for *individual* named candidates (or, in the case of some systems of proportional representation, place-holders on party lists), whereas sortition generates a *collective* representation that is a portrait in miniature of the whole society. This must cast serious doubts on some recent proposals for allotted assemblies where individual members perform an active function (Burnheim, 2006; Callenbach & Phillips, 2008; McCormick, 2011; O'Leary, 2006), as opposed to proposals that limit the role of the allotted assembly to a collective judgment or veto function (Barnett & Carty, 2008; Lieb, 2004; Schmidt, 2001; Sutherland, 2008; Zakaras, 2010). (Fishkin, 2009) would also fit into the latter category were he to propose that Deliberative Polling assemblies have more than a modest advisory or educative role.

The Ongoing Need for Election

The problem of the aggregate nature of descriptively-democratic legitimacy becomes even worse when one considers the possible role of an allotted chamber in formulating its own legislative agenda. Although the randomly-selected Athenian Council of 500 (*boule*) was the prime source of legislative innovation, the *boule* was not the prime law-making body – it was just a 'collegial magistracy' (secretariat for the legislative assembly) and emphatically not a representative institution (unnecessary, given the relatively small number of citizens) as it 'was not perceived as standing for the people' (Manin, Urbinati, & Landemore, 2008, p.2). Legislative proposals made by, or via, the *boule* were subject to ratification by the entire citizenry at the legislative assembly (*ecclesia*), before undergoing further deliberative scrutiny in randomly-selected *nomothetai* (legislative courts). In this sense

legislative proposals generated by a randomly-selected council had to overcome two *independent* democratic filters:

- The unconsidered assent of the entire demos in the assembly (where there was little opportunity for serious deliberative scrutiny), and

- The considered verdict of the allotted jury in the legislative court, comprised of jurors who were over thirty who had taken the dikastic oath (Hansen, 1990, pp. 222-226).

How might such a three-fold legislative process be replicated in a large-scale modern democracy, and would it fulfil the requirement for both forms of representation (descriptive and active)? A typical meeting of the Athenian assembly might have involved the presence of some 3-6,000 citizens, which is pretty much the upper limit for direct democracy. One of the reasons for the introduction of electoral representation was the dramatically-increased size of the modern nation state, one of the resultant problems being that the inherently elitist nature of the electoral process inevitably returns an assembly that no longer accurately reflects the full diversity of the population that is being represented. The problem of scales was the principal reason that the Anti-Federalist faction of the American founders failed to pursue the argument for descriptive representation (which they favoured) with more vigour – they thought that it was 'wildly impractical' in so large a union:

> Is it practicable for a country so large and so numerous … to elect a representation that will speak their sentiments, without their becoming so numerous as to be incapable of transacting public business? … [A] legislature, formed of representatives from the respective parts, would not only be too numerous to act with any care or decision, but would be composed of such heterogeneous and discordant principles, as would constantly be contending with each other (Brutus, 1981).

This is clearly true if representatives are required to 'speak their sentiments', as every speaker will have an individual perspective on a particular issue resulting in a 'confusion of voices' not heard since the time of the Tower of Babel. Not so if participation is restricted to the aggregate function of voting. Each participant in a proportionate opinion poll will have her own private reasons for answering a question in the positive or negative (or assigning a weighting to a preference) but the aggregation of the results will indicate overall preferences, irrespective of the individual factors that give rise to them. The mathematics of proportional opinion polls demonstrates that samples can be surprisingly small and still accurately reflect aggregate opinion. Needless to say the technology to enable large-scale statistical sampling was not available to the American founders.

A key problem in large-scale democracies is that the ability of individual votes to affect the final election outcome is so small that few of the electors who turn out to vote take the trouble to study the issues at stake and the proposals that political parties make to address them. The thinly-disguised secret of modern politics is that nobody reads the election manifesto and the votes cast are largely on the basis of what is in effect a political beauty contest. The public choice theorist Anthony Downs referred to this as the problem of 'rational ignorance' (Downs, 1957) – an elector in a mass democracy has no reason to study the issues in depth because her individual vote has little causal power. The power of the individual elector to change the outcome of elections is minimal as in modern democracies the extension of the suffrage cannot in the end empower individuals because once the democratic 'cake' has grown past a critical size each voter's slice becomes so small as to be causally irrelevant. This is because – unlike with other public goods such as street lighting – the efficacy of the vote suffers from diminishing returns as the franchise is extended. However, democratic mythology hides this fact so democracy is not believed to suffer from diminishing returns. When people see through the myth, and discover voting is causally irrelevant, apathy results (Graham, 2002), a result accurately predicted by (Hegel, 2010, §311).[19]

Arguably this is little worse than the decisions of the Athenian Assembly, which were often poorly considered and swayed by demagogues – this was the reason for the fourth-century innovation of the *nomothetai* (randomly-selected legislative courts). But, presupposing the need to reconcile large political states with democratic norms, is there any alternative to an element of ignorance (rational or otherwise) in the introduction of legislative proposals if, as argued in the previous section, the introduction of laws is an active function that cannot legitimately be undertaken by a descriptively-representative chamber?[20] It would appear that elections (or direct-democratic initiatives) are the only

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[19] This 'public-choice' analysis of electoral impotence is not without its critics, Richard Tuck claiming that the 'free-rider' argument does not apply to cases (for example majoritarian elections) where there is a specific threshold involved (Tuck, 2008). However this ignores the fact that in closely-contested elections the inevitable recounts eliminate the causal efficacy of the individual ballot slip, so there is no clear instance of the 'casting' vote (Graham, 2002). And even if one accepts Tuck's argument that voting *is* a rational act, innumerable studies have revealed that voters remain profoundly ignorant of the issues and policies involved when casting their votes. Tuck claims that the free-rider problem was only invented some fifty years ago and that its all-pervasive influence is down to the effective propaganda of free-market economists. But is this explanation plausible? – for example a swift check on Amazon.com reveals a low ranking for Anthony Downs's *Economic Theory of Democracy*. Whilst Tuck is no doubt right that the widespread belief that self-interest is the major causal explanation of human behaviour is an aspect of modernity, such views clearly pre-date public choice economics and their wide influence is better attributed to Hobbes, Darwin, Marx, Nietzsche and Freud. For further criticism of economic theories of democracy see (Mackie, 2003, 2011), but the economists appear unlikely to remove their tanks from the neatly-mown lawns of Harvard's government department any time soon.

[20] Rousseau's solution was to limit the right to propose new legislation to the executive branch, which would, in large states be constituted by some principle other than election. Rousseau viewed the executive as the active, 'physical' branch of the polity, reserving the requirement for democratic equality for the sovereign (moral) branch. Such a system was ideally suited to a small community like Geneva; sortition might well be the only way of enabling sovereign equality in a large state. The

legitimate mechanism for introducing legislative proposals: the victorious party or parties in the election would have the right to introduce manifesto bills for the considered judgment of the descriptively-representative sovereign assembly. Notwithstanding the elitist implications of election and the fact that voters are doing little more than expressing a raw preference or voting in a political beauty contest, election would appear to be the obvious democratic method for the initiation of legislation.[21]

However the victorious party or parties in the election (*hoi aristoi*) would still need to convince the allotted legislature through the force of their arguments, as voting rights in the legislative assembly would be restricted to the randomly-selected members (*hoi polloi*). It would no longer be possible for a victorious party to steamroller through a policy that was buried in an election manifesto that few had bothered to read or that was deliberately concealed before the election. But given it is the same electorate that is being balloted in two complementary ways (preference elections and sortition) one would anticipate that the party/parties that won the election would also have a reasonable probability of winning the parliamentary vote. The victorious political parties would need to ensure that their policies won both the electoral (unconsidered) vote and the considered verdict of the same population, sampled descriptively – populism checked by deliberative rationality.

The proposals contained in (Sutherland, 2008) are an attempt to provide a modern-day instantiation of these principles, in which the active (policy-initiating) element is election (either for parties or for referendum-ranked legislative proposals), supplemented by a descriptively-representative allotted chamber to fulfil the judgment function. Constitutions have to be viewed in the round and, needless to say such a proposal would raise substantial difficulties in other areas, which are beyond the scope of the present paper. I have sketched out answers to a number of these problems elsewhere, including the problem of the separation of judgment and interests (Sutherland, 2011b), fiscal and administrative stability (Sutherland, 2011a, section entitled 'The Separation of Powers') and how such a settlement might fulfil the requirements of the Natural Right theory of consent (Sutherland, 2011b).

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distinction between the active and descriptive aspects of the representative function is entirely compatible with *The Social Contract*; Rousseau's famous rejection of representative government was, in effect, a criticism of the merging of the two distinct functions (sovereign and executive) in the British parliament.

[21] It might be argued that the 2004 initiative by the government of British Columbia to empower a randomly-selected citizen assembly as a democratic alternative for constitution-making and reform provides an exception to this principle (Warren & Pearse, 2008). However, of the original stratified sample of 23,034 only 1,715 opted to be selected, 964 (4% of the original sample) came to the selection meeting and 158 were randomly selected, so there is no way to tell the degree to which the final assembly was an accurate microcosm of the whole population (arguably citizens with a proactive interest in political and constitutional issues would be more likely to volunteer their time). Additional criticisms have been made regarding the power of the full-time officials to influence the debate, in particular via the (questionable) impartiality of the selection process of expert advisors, as (unlike in most Deliberative Polls) there was no clear division between 'pros' and 'antis'.

Conclusion

In order to not to contravene democratic equality a randomly-selected legislative assembly has to be of a sufficient size to ensure statistical representativity (several hundred), and can only legitimately act in aggregate. As soon as the assembly is sub-divided, or as soon as any member assumes an active function – including policy proposal and advocacy – the assembly loses its democratic mandate. As such, sortition can only be one element in a mixed constitution, alongside preference elections or petition/plebiscites (for policy initiation) as well as other extra-democratic mechanisms to ensure executive competence, the preservation of long-term interests and balanced expert advocacy. Nevertheless sortition is an indispensible component of any system of government that seeks to call itself democratic.

Isaiah Berlin is best known for his argument that ethical and political norms are more often than not in conflict with each other – for example mercy and justice, law and liberty, democracy and freedom, and that 'where ultimate values are irreconcilable, *clear-cut solutions cannot, in principle be found* (Berlin, 1969, p.1, my emphasis). The two political values that have been considered in this paper are deliberation and democracy. The brute fact is that these two norms are mutually opposed and the best compromise is a somewhat diminished form of deliberation that does not attempt to overstep its democratic legitimacy.

Friedrich Hayek was even more alarmed by the creation of compound terms in political philosophy, arguing, for example, that 'social justice' was 'an empty phrase with no determinable content' that would inevitably lead to the eclipse of personal liberties. (Hayek, 1976, Ch. 12). The term 'deliberative democracy' would appear to be another such hybrid term. Each element in the compound is a valuable normative goal but the more you have of the one, the less you have of the other. 'Deliberative democracy' is a paradigm case of the need for hybrid political institutions to instantiate hybrid political concepts.

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