

## AGAINST ELECTIONS: THE LOTTOCRATIC ALTERNATIVE\*

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“...the appointment of magistrates by lot is thought to be democratic, and the election of them oligarchic...”  
-Aristotle<sup>1</sup>

“No one pretends that democracy is perfect or all-wise. Indeed, it has been said that democracy is the worst form of government except all those other forms that have been tried from time to time.”  
-Winston Churchill<sup>2</sup>

It is widely accepted that electoral representative democracy is better—along a number of different normative dimensions—than any other alternative lawmaking political arrangement. It is not typically seen as much of a competition: it is also widely accepted that the only legitimate alternative to electoral representative democracy is some form of direct democracy, but direct democracy—we are told—would lead to bad policy. This article makes the case that there is a legitimate alternative system—one that uses lotteries, not elections, to select political officials—that would be better than electoral representative democracy.

Part I diagnoses two significant failings of modern-day systems of electoral representative government: the failure of responsiveness and the failure of good governance. The argument offered suggests that these flaws run deep, so that even significant and politically unlikely reforms with respect to campaign finance and election law would make little difference. Although my distillation of the argument is novel, the basic themes will likely be familiar. I anticipate the initial response to the argument may be familiar as well: the Churchillian shrug.

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<sup>1</sup> *Politics* Book IV, Chapter IX.

<sup>2</sup> Speech in the House of Commons, *The Official Report, House of Commons* (1947), vol. 444.

Parts II, III, and IV of this article represent the beginning of an effort to move past that response, to think about alternative political systems that might avoid some of the problems with the electoral representative system without introducing new and worse problems. In the second and third parts of the article, I outline an alternative political system, the lottocratic system, and present some of the virtues of such a system. In the fourth part of the article, I consider some possible problems for the system. The overall aims of this article are to raise worries for electoral systems of government, to present the lottocratic system and to defend the view that this system might be a normatively attractive alternative, removing a significant hurdle to taking a non-electoral system of government seriously as a possible improvement to electoral democracy.

### **I. The Perils of Electoral Representation**

There are many ways of evaluating political systems. In this part, I will focus on two significant dimensions of normative evaluation, both of which concern the *outcomes* that a political system brings about. The two dimensions of evaluation of outcomes that I will focus on are what I will call *responsiveness* and *good governance*.

Responsiveness is a complicated, multifaceted concept. The basic idea is that political outcomes are responsive to the extent that they are tied to what the people living in the political jurisdiction actually believe, prefer, or value, so that if those beliefs, preferences, or values were different, the political outcomes would also be different, would be different in a similar direction, and would be different *because* the beliefs, preferences, and values were different. The importance of responsiveness derives from considerations of individual autonomy and self-government, although I will not trace out the details of that derivation here. There are many complications with this basic idea. The people living in a jurisdiction will not have uniform beliefs, preferences, or values—so there is a question of how these are to be aggregated or measured in order to assess responsiveness. Beliefs, preferences, and values may tell in different directions—is outcome *A* less responsive than outcome *B* because *A* tracks individuals' expressed preferences, but not their core values (to the extent that this distinction is viable), while *B* does the reverse? Beliefs, preferences, and values change over time—what is the benchmark against which responsiveness is to be assessed? And there are epistemic issues involved in knowing what people believe, prefer, and value. For the purposes of this discussion,

these complexities need not detain us. The arguments do not turn on any particular understanding of responsiveness.

The second concept I will focus on is *good governance*. Just as we can evaluate outcomes from the subjective point of view of those living in a political jurisdiction, described in terms of how responsive the outcomes are, we can also evaluate outcomes from a more objective vantage point—or at least a point of view that is not tied to the views and values of those living in the political jurisdiction. In addition to knowing whether outcomes are responsive, we might also want to know whether the outcomes are *good*. Just as with responsiveness, there are many complications here. Goodness might simply be a function of the actual interests of those living in the jurisdiction, rather than their interests as they take them to be, or it might be something that takes into account concerns that extend beyond the interests of those living in the jurisdiction. Goodness might be connected to average individual welfare, or how well off the worst off are, or some other index of welfare. It might be connected to some notion of autonomy, rather than—or in addition to—welfare, so that one outcome is better than another if it yields greater autonomy (for each individual, on average, etc.). Or goodness might be intrinsically connected to some objective ideal of justice, so that an outcome is good to the extent that it comports with justice. Again, the details need not detain us. The suggestion will be that on plausible views of good governance, electoral representative systems will fare poorly.

### **A. An Argument Against Electoral Representative Government**

The argument I offer runs counter to standard justifications for electoral representative government. One of the main justifications for systems of elected representatives is that because representatives are in power as a result of popular election, they will be concerned to do what is in the interests of the people, rather than just what is in their own narrow interest. Systems of elected representatives achieve *responsive* government via mechanisms of accountability: the law they create is responsive to the beliefs and preferences of those over whom they govern. Representatives may be responsive to their constituents' preferences in that representatives explicitly defer to their constituents (doing as their constituents prefer), or because they act as guardians of their constituents' interests (doing what the representative thinks is best for her constituents). In most situations, representatives will do a bit of both. People expect their

representatives to do more than just follow their lead, but representatives get too far ahead of their constituents at their own peril. People can be wrong about what is in their interests, or they can be confused about what policy will best achieve what they prefer. In such cases, a representative might work to convince his constituents of their error, or even depart from what they presently prefer in the hope that they will eventually come around to the representative's view. But the notion of responsiveness that is tied to election of representatives is, fundamentally, connected to whether constituents themselves believe that some course of action is in their interests.

A second main justification for systems of elected representatives is that such systems are *likely to bring about good outcomes*. As noted above, I won't opt for a particular conception of what makes an outcome a good outcome—fill in your favorite theory. Arguments are made on behalf of democratic representative systems using every theory of welfare, autonomy, or “goodness” more generally.<sup>3</sup> There are many reasons to think that systems of electoral representation will make decisions that bring about good outcomes. Representatives are solely devoted to the task of making law and policy. They have time to research, consult experts, consult constituents, deliberate, and debate. And in many places they have considerable staffs helping them. So they can come to have a more informed opinion about what needs to be done, which problems are most urgent. Representatives have to face re-election, and so they want to do things that make things actually better for their constituents. And representatives are in a position to make decisions holistically—weighing trade-offs, making compromises when necessary, balancing competing interests, and having a sense of relative priority and budget limitations. This allows for the views of individual citizens to be “refined and enlarged” (in Madison's phrase) in various ways. Because they are few in number, representatives can make decisions quickly and expediently in the event of urgent crises. Thus, there are many reasons to think that an electoral representative system will bring about good outcomes.

The suggestion in what follows is that for electoral representative systems, the virtues of responsiveness and good governance are only tied to what I will call *meaningful* accountability. Meaningful accountability is distinct from accountability simpliciter in that the former, but not the latter, is connected to *informed monitoring and evaluation* practices.

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<sup>3</sup> For discussion, see Thomas Christiano, The Rule of the Many: Fundamental Issues in Democratic Theory (1996) and Richard Arneson, “Defending the Purely Instrumental Account of Democratic Authority,” Journal of Political Philosophy 11, No. 1 (2003).

It is a commonplace that political accountability requires free, regular, competitive, and fair elections. Candidate A runs on a platform of doing X, Y, and Z, in opposition to (at least) some Candidate B, who runs on a platform that is (at least) somewhat different from A's. If A's platform is more popularly supported, she will likely win the election. After being elected, she will have many decisions to make while in office. These decisions will be monitored and evaluated by her constituents, perhaps aided in this by news media of various kinds, and the candidate will be held accountable for decisions made while in office when she next comes up for re-election. If elections are not free, regular, competitive, and fair, these accountability mechanisms will fail. Without elections of this sort, A might do whatever she likes once in office without fear of electoral punishment. She would be free to act in ways that go against the preferences of her constituents (undermining responsiveness) and she would be free to do whatever might be most personally beneficial to her or to those causes she cares about (possibly undermining good governance).

Even in advanced democracies, there are concerns about electoral systems being inadequately free, competitive, or fair. Complaints are made about financial barriers to running for office; electoral advantages that come with incumbency; systemic difficulties of mounting viable third-party candidates; the role that corporate money and inadequately-regulated television advertising play in determining who is elected; the hurdles erected to keep poor, marginalized, and unsophisticated citizens from successfully registering and voting; the intentional, competition-reducing gerrymandering of districts; and even inadequacies in the mechanics of casting and counting ballots. These are serious difficulties and they play a significant role in reducing the accountability of representatives to those over whom they govern. Even if some of these were addressed, however, problems of accountability would still arise (although the severity of the bad consequences might be lessened), for reasons that I will explain in a moment.

Meaningful accountability requires elections that are free, regular, competitive, and fair. But it also requires that ordinary citizens are capable of engaging in informed monitoring and evaluation of the decisions of their representatives. Even if citizens have the mental ability to monitor their representatives, this monitoring of representatives can be thwarted by ignorance about what one's representative is doing ("conduct ignorance"), about a particular political issue ("issue ignorance"), about whether what one's representative doing is a good thing in general ("broad evaluative ignorance") or whether what one's representative is doing will be good for

oneself (“narrow evaluative ignorance”). Each of these kinds of ignorance can undermine the ability of ordinary citizens to engage in meaningful monitoring and evaluation of the decisions of their representatives. Issue ignorance and conduct ignorance make monitoring difficult or impossible. If I don’t know what you are doing and have done, I can’t hold you accountable for it. And if I only know that you’ve have done A (rather, perhaps, than B or C), but I have no idea what A amounts to (I know nothing about the issue for which A is a candidate proposal), or how it differs from B or C, I might as well not even know that you’ve done A—my ability to hold you accountable is equally impoverished. The two kinds of evaluative ignorance straightforwardly make meaningful evaluation difficult or impossible.

We are now in a position to state the argument that electoral representative systems will fail to bring about responsive or good outcomes.<sup>4</sup> I will present that argument below, explaining and defending the steps in the argument along the way.

(P1) Systems of electoral representation tend to bring about outcomes that are *responsive* to the preferences of some constituency, C, with respect to some problem, P, only if C can hold their representative(s) meaningfully accountable with respect to P.

(P2) Systems of electoral representation tend to bring about *good outcomes* with respect to some problem, P, only if the political constituency, C, can hold their representative(s) meaningfully accountable with respect to P.

It should be clear why (P1) is true. In the absence of meaningful accountability, it would just be good fortune if the actions taken by representatives were responsive to the beliefs, preferences, and values of their constituents. Representatives would have no electoral incentive to act in a

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<sup>4</sup> The analysis focuses mostly on representative electoral systems like those in the United States, with rules generally similar to those in the United States with respect to campaign finance, districting, the number of representatives selected per district, the manner in which they are selected, the length of terms for which they serve, the rules governing corruption, and so on. Although the initial focus is on something like US electoral representative democracy, Section I.B. considers ways in which an electoral representative system might be altered so as to address some of the possibly parochial problems that arise in the United States. The suggestion there is that many problems would remain—or new, equally significant problems would arise—even with significant alteration to the basic United States model, but more would obviously need to be said to make that case in full.

responsive way, and they would have no electoral incentive to learn what their constituents wanted. It is true that an elected representative might try to enact responsive policy simply because she thinks it is the right thing to do. The problem is that, in the absence of meaningful accountability, it becomes electorally costly to act in certain ways—including, perhaps, *responsive* ways—because of the influence of certain powerful interests. More on this in a moment.

With respect to (P2), one might think that whether representatives will bring about good outcomes has more to do with their abilities, beliefs, and the nature of their full-time role, and less to do with whether they are accountable to their constituents. As discussed above, representatives have more time to research issues, deliberate, consult experts, assess big picture concerns, and they are selected (at least in part) because they seem skillful and competent—this is why they might be thought to bring about good outcomes while in office. Accountability might not seem relevant to any of these reasons; indeed, there is some concern that being too accountable—operating on too short of a leash—might actually impair the ability of representatives to bring about good, rather than just responsive, outcomes.

This might be so if it were not for the following fact: elected political positions for which the elected officials are not meaningfully accountable to their constituents will be used to advance the interests of the powerful (typically the financially powerful). Let us refer to this phenomenon as *capture*: an elected official is captured if he or she uses his or her position to advance the interests of the powerful, rather than to create policy that is responsive or good (when doing so would conflict with the interests of the powerful). The suggestion is that the absence of meaningful accountability leads to an increase in capture.

There are three mechanisms by which the absence of meaningful accountability leads to capture. The first concerns the relationship between accountability to constituents and the value of political offices. The second concerns electoral viability and what it takes to be a viable candidate. The third concerns what we might call directed positional shift.

Here is an underappreciated idea: political power is more valuable to powerful interests the more that it is untethered from constituent preferences and beliefs. If political officials are free to take a wider range of positions—and, in particular, are free to take positions that are contrary to the interests of the non-powerful—this makes the offices held by those officials more valuable, more worth controlling. Thus, as representatives become less accountable, it becomes

more worth the effort to control those representatives or to control who is elected. In particular, this may be considerably easier and cheaper than trying to alter the beliefs and preferences of the majority of people in a political jurisdiction through advertising and media manipulation—particularly if the interests of the powerful run contrary to the interests of most people in a jurisdiction.

There are two main ways in which powerful interests can respond to this increased value of political positions. The first is by influencing elections: determining who can be a viable candidate. The second is by influencing those elected: determining the political positions adopted and creating directed positional shifts. Both of these happen in familiar ways, and in addition to there being *more incentive* to take these steps in the absence of meaningful accountability, both are also *easier* to do in the absence of meaningful accountability.

If elections are badly structured (requiring significant financial backing, allowing significant corporate/individual donations, etc.), the powerful will control who can realistically run for office, in which case even meaningful accountability post-election will come too late. If elections are badly structured *and* there is no meaningful accountability, then representatives become little more than agents of the powerful.<sup>5</sup> Consider U.S. policy with respect to

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<sup>5</sup> There is a substantial amount of empirical work that suggests that capture is a significant problem. In a thoroughgoing, book-length treatment of the subject, Martin Gilens has demonstrated that US policy is mostly responsive to the preferences of only the highest income Americans, if there is a conflict between those preferences and the preferences of the working- and middle-classes. See Martin Gilens, *Affluence and Influence: Economic Inequality and Political Power in America* (2012). In *Winner-Take-All Politics: How Washington Made the Rich Richer—and Turned Its Back on the Middle Class* (2011), Jacob Hacker and Paul Pierson argue that the main source of the increase in income inequality over the last 30 years in the United States is the capture of American politics by the economic elite, and the ability of these elites to determine the policy outcomes they favor with respect to tax policy, corporate governance and law regulating corporations, environmental deregulation, among other policy areas. Colin Crouch makes a similar case with respect to UK politics in *Post-Democracy* (2004), in which he argues that the declining influence of workers' unions and the dominance of the corporate firm, and particularly the global corporate firm, has led to the effective capture of nominally democratic political institutions. Mark Blyth argues that the US was a social democracy (with broadly responsive political institutions) from the 1930s to the 1960s, but that loss of domestic political control of important financial institutions has made this an impossibility under the current political system. See “Domestic Institutions and the Possibility of Social Democracy,” *Comparative European Politics*, Vol. 3, No. 4 (2005), pp. 379-407. Lawrence Jacobs and Robert Shapiro argue that there was a decrease in political responsiveness over the last several decades of the Twentieth Century, and that this was the result of, among other things, an increase in the incumbency advantage (due in large part to an increase in the cost



agriculture, environmental protection, financial services regulation, tax policy, defense spending, and so on.

But even if the elections are not so badly structured, there will still be serious concerns about the influence of the powerful in who can be a viable candidate. First, powerful interests can control media presentation of candidates and their positions. This can make meaningful accountability more difficult through the increase in bad or irrelevant information. But this kind of control is also made easier when the issues are ones beyond the ken of most voters. If voters don't know much about candidates, their views, and whether these views are good or bad, it is easier to manipulate how individuals feel about the candidates. Second, if political positions are valuable, it becomes sensible to identify and groom 'controllable' candidates early on, making those who end up as viable candidates likely to be those whose interests or temperament are congenial to the interests of the powerful.

If those elected are already beholden to the powerful, the absence of meaningful accountability means that those beholden representatives will enact policy that is good for the powerful, even if that policy is not good more generally. But even if those elected are not beholden to the powerful when elected, once they are in office, the absence of meaningful accountability will lead to positional shifts in directions that benefit the powerful. In the absence of meaningful accountability, representatives will be able to do whatever they want. The worry is that in this "free zone," powerful interests will make it so that there is at least drift, if not outright directed movement, in the direction that those interests favor. This can happen by controlling benefits for people post-office, by influencing popular beliefs (including beliefs about representatives and their views) via corporate-owned media, and by affecting the quality of available information. Representatives operating in this free zone will have no electoral incentives to do the right thing if it goes against the interests of the powerful (ex hypothesi, their

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of running for office), and the proliferation of powerful, elite interest groups. See Politicians Don't Pander: Political Manipulation and the Loss of Democratic Responsiveness (2000).

What I offer in this part of the paper is a general explanation as to why elected political officials regularly both *do* and *are able to* act so readily on behalf of the economic elite, despite the existence of electoral representative institutions. This explanation is compatible with others, including some of those offered in the above work, such as the decline of organized labor as a political force, and the increased cost of mounting a successful political campaign. But, as I suggest in Section I.B., the explanation I offer appeals to features of electoral representative systems that are both more intrinsic to the electoral representative system and less historically contingent than those offered above.

constituents won't know the difference), and the powerful will provide significant incentives to do what is in their interests. Representatives will have little incentive to seek out high quality information regarding what would be best, and there will be plenty of easily available bad information that makes it seem that the best thing to do is to do what is in the interests of the powerful. Thus, even if representatives aren't in the pocket of the powerful when they step into office, there is likely to be substantial influence from the powerful to adopt positions congenial to their interests, and it is reasonable to expect the "acceptable" range of policy positions to shift accordingly, and in a direction that is no longer aligned with what would make for good policy (except in those instances in which the good aligns with the interests of the powerful).

We might imagine a well-intentioned class of people who want to run for office, get elected, and then do what is best for everyone or for the worst off. The problem is that if this class of people would act in ways that are contrary to the interests of the powerful, the powerful will use their resources to either buy off these people (if they have a price) or to crowd them out and replace them with others more congenial to their interests.

(P3) The presence of widespread issue, conduct, or evaluative ignorance within a constituency, C, with respect to some issue, P, undermines the ability of members of C to hold their representative(s) meaningfully accountable with respect to P.

In a sense, (P3) follows from the definition of meaningful accountability and the relevant discussion of meaningful accountability above. If people are ignorant about some issue, or about what their representative is doing with respect to that issue, or about whether what their representative is doing is good, they cannot monitor or evaluate what their representative is doing with respect to that issue.

Here, some might suggest that there are "work-arounds" so that even if one is ignorant with respect to some issue, one can still hold one's representative meaningfully accountable.<sup>6</sup> In

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<sup>6</sup> See, e.g., the papers in John Ferejohn and James Kuklinski, eds., Information and Democratic Processes (1990). Much of the work making the case for proxies involves theoretical arguments based on formal models that assume, among other things, that the signals are perfectly credible. See, e.g., Randall Calvert, "The Value of Biased Information: A Rational Choice Model of Political Advice," Journal of Politics, Vol. 47 (1985), pp. 530-55; Bernard Grofman and Barbara Norrander, "Efficient Use of Reference Group Cues in a Single Dimension," Public Choice, Vol. 64 (1990), pp. 213-17; and Arthur Lupia, "Busy Voters, Agenda Control, and the Power of

particular, there are strategies that rely on the use of proxies and signals to overcome issue, conduct, or evaluative ignorance. Most of these strategies amount to a kind of deference to the monitoring and evaluation done by some other individual or group. So, for example, membership in a particular political party, endorsement from activist organizations or media institutions, and contributions and public endorsements from particular individuals might all seem to help individuals overcome personal ignorance to hold their representatives meaningfully accountable with respect to particular political issues.

There are several potential problems with strategies of this sort. First, the proxies will generally either be too coarse-grained to help with accountability for particular issues or too fine-grained to save individuals any effort. Membership in a political party, for example, is a very imperfect signal with respect to any particular issue. A person might be a member of a party because it aligns with their views on A, B, and C, although they depart from the party with respect to D and E.

On the other hand, endorsement from an organization that focuses narrowly on a particular issue will provide information about that issue, but it will require considerable effort on the part of individuals to learn which organizations can be trusted to provide reliable

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Information,” American Political Science Review, Vol. 86 (1992), pp. 390-404. Lupia later notes the limitations of this model-based work: “these arguments are of limited helpfulness when we attempt to understand voter decision making in circumstances where information providers are not perfectly credible and may, in fact, have an incentive to mislead voters.” Arthur Lupia, “Shortcuts Versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections,” American Political Science Review, Vol. 88, No. 1 (1994), pp. 63-76. In this paper, Lupia offers an instance of an actually effective proxy from an empirical study regarding ballot initiative voting on an insurance reform effort in California. The effective proxy was knowing which position the insurance industry favored. Building on this and other work, Lupia and Matthew McCubbins offer one of the few empirically-informed theories about when proxies are effective in representative delegation contexts. They identify two conditions, the *knowledge* condition (which requires knowing whether the action taken by the representative enhances or decreases the voter’s welfare) and the *incentive* condition (which requires that the representative and voter have some goals in common), which must both be satisfied for use of representatives as agents to be successful even in contexts in which there are proxies available. Arthur Lupia and Matthew McCubbins, The Democratic Dilemma: Can Citizens Learn What They Need To Know? (1998), pp. 11-12. Their defense of the knowledge condition can be seen as direct support for (P3), given the similarity between their knowledge condition and evaluative ignorance. Other recent work is also somewhat pessimistic about what can be accomplished by way of heuristics and signals. See James Kuklinski and Paul Quirk, “Reconsidering the Rational Public: Cognition, Heuristics, and Mass Opinion,” in Elements of Reason: Cognition, Choice, and the Bounds of Rationality (Arthur Lupia, Matthew McCubbins, Samuel Popkin, eds., 2000).

assessments and what all of the issue-specific trusted organizations say about the candidates. This brings to the fore the second problem with the use of proxies: it can be difficult and time-consuming to determine which proxies are credible, particularly if one wants to find reliable but specific proxies for many different issues. This can take almost as much effort, and be as intellectually challenging, as doing the research oneself.

Finally, for some issues, there may not be good proxies or signals. There may be issues that are low profile or do not attract well-funded individuals or groups to do the necessary investigative work, and there may be issues for which powerful interests have a lot at stake, and do everything they can to shape the available information and to obscure the nature of their interests and efforts. More could be said, but it is at least not obvious that there is a straightforward route to meaningful accountability in the face of individual ignorance.

(P4) If a political problem is information intensive—(a) factually complex (requiring extensive knowledge of information in order to understand the problem) or (b) technical (requiring advanced education or experience to understand and evaluate possible solutions)—then there will typically be widespread issue, conduct, and/or evaluative ignorance with respect to that problem.

The explanation of (P4) is the standard one about rational voter ignorance (it is rational to remain ignorant given how unlikely it is that one's vote will make a difference), combined with the sheer difficulty of keeping up on all of the relevant information and training, even if one had reason or desire to do so; and the possibility of significant but effective misinformation being produced by interested parties. It would be useful to have a precise metric to assess how information intensive a particular problem is, but I will not attempt to offer any such metric here. It is plausible, however, that:

(P5) Many political problems in modern political societies are information intensive.

Obviously, there will be a spectrum of how information intensive problems are. Even relatively straightforward problems may involve complex factual issues or require one to make complex assessments of the consequences of adopting some course of action. It is also possible to frame

issues to be more or less information intensive. We might ask: should we regulate the presence of harmful chemicals in drinking water? Or we might ask: which chemicals that are found in water should we monitor and regulate, and at what levels? (P5) suggests that, at bottom, many political problems are information intensive. It actually is plausible that *most* political problems are information intensive, but I will endorse only the more modest view.

To complete the argument:

(SC1/P6) If a political problem is information intensive, then meaningful accountability with respect to that problem will be undermined.

(SC2/P7) If a political problem is information intensive, then systems of electoral representation will not tend to bring about responsive outcomes with respect to that problem, nor will systems of electoral representation tend to bring about good outcomes with respect to that problem.

(C) Therefore, for many political problems, systems of electoral representation will not tend to bring about responsive or good outcomes with respect to those problems.

(SC1/P6) follows from (P3) and (P4). (SC2/P7) follows from (P1), (P2), and (SC1). And (C) follows from (P5) and (SC2/P7).

The above argument might be contested at various steps, and some of the premises might be bolstered or undermined by empirical research. The hope, however, is that the argument gives voice to a certain familiar set of concerns about representative systems. These concerns are brought to the fore when one thinks about how little one knows about most of what one's representative does, how little real choice went into the election of one's representative (if one is in a district like most districts), how much deference to the good will of one's favored political party is required, how complex some issues are, how much of what one believes about various issues is a result of information provided by a few powerful media institutions, how much money powerful interests have at stake, and how hard it is to create rules to adequately police the influence of these powerful interests.

It is important to note the scope of the conclusion: electoral representative systems will do poorly for *many* political problems, not *all* political problems. Indeed, there may be categories of political problems for which there is meaningful accountability, precisely because whether that problem is addressed or not, or what precisely is being done, is something of which the political constituency is aware. Consider, for example, Amartya Sen's empirically-informed argument that electoral democratic rights prevent famines.<sup>7</sup> It might be complicated to know exactly what to do to prevent famine, but it is not complicated for constituents to know that they are starving, and that famine is bad.<sup>8</sup> Similarly, it has been empirically demonstrated that democratic governments are unlikely to go to war with each other.<sup>9</sup> One might hypothesize a similar explanation for this phenomenon: going to war is a high salience event, and usually a very negative thing if it can be avoided. If one is dealing with another democratic state, there is good reason to think that a non-war alternative is available and desirable. Thus, it is worth stressing the possibility that for a significant subset of political problems, electoral representative democracy might well bring about responsive and good outcomes. The suggestion in the foregoing is just that there are many political problems for which this is not the case.

## B. The Difficulty of Improvement

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<sup>7</sup> See Amartya Sen, Development as Freedom (2001), pp.178-180; and The Idea of Justice (2009), pp. 342-345.

<sup>8</sup> Indeed, a similar explanation might be offered for electoral democracy's relative success at avoiding what David Estlund has called the "primary bads": famine, genocide, political collapse, epidemic, unjustified war. Democratic Authority (2008), p. 163. Of course, some might question whether democracies really do avoid these consistently (consider Samantha Power, A Problem From Hell (2002), on genocide), and others might question whether it is democracy that should get the credit. These are hard empirical questions, but the argument above would provide some explanation of why electoral democracy might do well, or at least not do poorly, with respect to high salience, clear evaluative-standing issues such as these.

<sup>9</sup> There is a large literature on this. See, e.g., Michael Doyle, "Kant, Liberal Legacies, and Foreign Affairs," Philosophy and Public Affairs, Vol. 12, No. 3 (Part I) and No. 4 (Part II) (1983); Zeev Maoz and Bruce Russett, "Normative and Structural Causes of Democratic Peace, 1946-1986," American Political Science Review, Vol. 87, No. 3 (1993). There have been considerable debates about the causal explanation, whether democracy is playing a central role, and, if so, *what* about democracy makes a difference. There has also been work complicating the picture, such as recent work which suggests that young democracies are actually more likely to go to war than established democratic or autocratic states. See Edward D. Mansfield and Jack Snyder, Electing to Fight: Why Emerging Democracies Go to War (2005).

It is not much of a surprise that the electoral representative system has serious problems. These four features are enough to cause trouble for the enterprise:

**PRINCIPALS AND AGENTS:** some small number of Xs are chosen by a much larger number of Ys, and the Xs are to act on behalf of, or for the sake of, the Ys.

**ELECTORAL ACCOUNTABILITY:** the mechanism that is to ensure or make likely that the Xs act on behalf of the Ys is twofold: (a) initial election/selection by the Ys and (b) potential for re-election/selection by the Ys after some period of time.

**COMPLEXITY:** many political problems are complex, technical, and information intensive in a way that renders it difficult for Ys to have informed beliefs and preferences about those problems, given their limited time and knowledge.

**OPACITY:** whether the Xs are or have (a) actually acted or (b) tried to act to the benefit of the Ys is not obvious to the Ys in the short-term (the time between election cycles).

These four features generate problems in their own right. But they are combined with three more contingent features:

**SIGNIFICANCE:** what the Xs do has great significance in terms of regulating (or not) the powerful members of a society.

**OPEN INFLUENCE:** there are plausible norms that require restrictions on how much regulation of political speech and influence from one Y to another there can be, regardless of the relative power or resources of the individuals.

**INEQUALITY:** there is massive inequality in terms of money and power amongst the Ys.

There are obviously ways in which the electoral system could be made better, in terms of regulating campaign finance, post-electoral employment, lobbying, media coverage of elections, and so on.<sup>10</sup> In particular, one might give up on OPEN INFLUENCE to a greater or lesser extent: limiting how much candidates can spend, requiring candidates to only use publicly provided campaign funds, and possibly curtailing how much private citizens and private media can spend and speak with respect to elections, issues, and lobbying and supporting candidates—both during and after elections.

One problem with this route is that one starts to run into core issues of political freedom and freedom of speech—threatening to erode basic democratic commitments. Still, there might be considerable distance between where we are, say, in the United States, and where we might go, compatible with core democratic values (we could reject the “money = speech” jurisprudence, for example). And some of the problems stemming from OPEN INFLUENCE would be lessened, certainly, if INEQUALITY were lessened.

Another possible response would be to alter ELECTORAL ACCOUNTABILITY, giving up part (b), by moving to strict term limits, perhaps accompanied by public funding of campaigns, increased limitations on campaign finance and campaign spending, and limitations with respect to post-office sinecures, lobbying opportunities, and related forms of employment. In the best case scenario, direct financial influence would be lessened considerably. Of course, by introducing strict term limits, one fundamentally alters the representative-constituent relationship, since the only choice-point is the initial election. So, one has to think elections will be very good at selecting people who are constituted so as to enact good and responsive policy, since there are no future pressure points to ensure that this happens. I remain skeptical of this, particularly given that there might still be considerable worries about who can come to look like a viable candidate, given INEQUALITY and even some modified OPEN INFLUENCE. Indeed, one might worry that losing the accountability mechanism entirely (through term limits) while also retaining elections might lead to an even worse set of candidates and eventual political outcomes, at least while there is corporate-controlled media and INEQUALITY. As I will suggest, consideration of the value of term limits and the difficulty of policing financial influence in

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<sup>10</sup> One must also be realistic, however, about what can be achieved in that regard. See Samuel Issacharoff and Pamela Karlan, “The Hydraulics of Campaign Finance Reform,” Texas Law Review 1705 (1999), in which they make the compelling case that blocking one path of monetary influence will just lead the powerful to find other paths.



elections might even motivate random selection of representatives. The comparative advantage question is difficult, but there are reasons to suspect that elections, rather than giving us representatives who are better than random, actually give us representatives who are worse. A big part of this is INEQUALITY and OPEN INFLUENCE, but an equally significant part is that addressing INEQUALITY and OPEN INFLUENCE does nothing to address the problems stemming from COMPLEXITY and OPACITY.

Indeed, none of the above solutions address the problems stemming from COMPLEXITY and OPACITY. Those are information asymmetry problems and they are not easily cured. Additionally, efforts that limit OPEN INFLUENCE are likely to exacerbate some of the informational problems, as it will be difficult to police the lines of good and bad informational content.

There are ways in which COMPLEXITY and OPACITY might be addressed so as to improve the prospects for electoral democracy. One way is to limit the size of the jurisdiction, making it more likely that the Ys in that jurisdiction are informed about the relevant political problems (they are “close to home”, so to speak) and making it more likely that the Ys have knowledge of and familiarity with their representative Xs—they have interacted with them and know what they are doing. The romanticized ‘town hall’ democracy approximates this ideal, although at the limit it makes one question the need for representatives at all, if the Ys really are as well informed as the Xs.

A second way of addressing COMPLEXITY is to implement a jurisdiction-wide educational effort, so as to better inform the Ys. On an ambitious proposal, one might significantly improve public education throughout the K-12 system, perhaps including subsidized college-level and post-college education. On a less ambitious and correspondingly more realistic scale, one might have a brief period of time—such as “Deliberation Day”—during which the Ys would get together to engage in debate and discussion about significant political issues.<sup>11</sup>

The difficulty with these information-enhancing approaches is that even on the most ambitious approach, there will be a limit to how much individuals can do to keep informed about the wide variety of political issues and on what their representatives are doing, even if those individuals are generally well-educated. For one thing, addressing COMPLEXITY in these ways doesn’t address OPACITY: one might understand the technical details, in principle, but not know

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<sup>11</sup> Bruce Ackerman and James Fishkin, Deliberation Day (2005).

enough about what is actually being done. But, more to the point, there just are too many issues and each one is too complex. And individual voters continue to have too little incentive to stay personally informed, for the reasons discussed above. On the more modest approaches, although it would be good to have even somewhat more information in the hands (and minds) of voters, it will be too little to make much difference. Additionally, there are significant concerns about how that information would be provided, how the discussions would be structured, and which issues would be given even a few hours of concentrated attention. Given these realities, it is hard to see something like Deliberation Day as doing enough to make a significant difference.

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I have argued that for many political problems, systems that operate via electoral representation will not tend to bring about responsive or good outcomes with respect to those problems. In making this argument, I focused on issues that arise in a modern nation state that operates via such a system but with a variety of particular properties—influential corporate-controlled media, open political influence and robust free speech, substantial wealth and social capital inequality, large territorial and demographic scale—that needn't characterize every instance of electoral representative democracy. And, indeed, there are some contexts in which these properties might not obtain (some for better, some for worse).<sup>12</sup> In those contexts, an electoral representative system might fare better, although there would still be significant difficulties resulting from COMPLEXITY and OPACITY. Additionally, there is little hope of significant change with respect to these aspects of modern social and political life—or at least not change that would be welcomed.

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<sup>12</sup> This at least partly explains why there may be temporal variation in the extent to which electoral representative political systems are captured. For example, all of the political scientists mentioned above—Gilens, Crouch, Jacobs, Shapiro, Blyth, Hacker, and Pierson—suggest that things have become worse over the last 40 years in the United States. Gilens explicitly identifies the role of many of these factors in the increase in policy responsiveness to the preferences of the wealthiest Americans over the last several decades, noting that “the media environment through which citizens experience elections and learn about officeholders’ actions has changed dramatically... political campaigns have become vastly more expensive, and economic conditions have shifted as income and wealth have become increasingly concentrated at the top of the distribution.” Gilens, p. 193. There might well be other significant factors that vary over time, such as the quality of public education and political discourse, both of which affect the ignorance levels of a population. See, for example, Neil Postman’s Amusing Ourselves to Death: Public Discourse in the Age of Show Business (1985), for the argument that the rise of television and market pressures for news and education to be entertaining has led to a decline in the general level of ability to engage with complex views, texts, and arguments.

It is natural to both feel the force of the argument and these concerns, and to still agree with Churchill. One aim of this article is to suggest that this attitude of somewhat dissatisfied resignation to government by electoral representative democracy should be rejected. The next section introduces the lottocratic system and provides reasons to think that the lottocratic system would be better than electoral systems in terms of both responsiveness and good governance. In making this comparison, I will attempt to compare apples with apples—that is, I will try to envision how the lottocratic system might work superimposed on a modern nation state like the United States, with all of its attendant features: private media, open influence, substantial inequality, and large scale, in addition to COMPLEXITY and OPACITY.

## II. The Lottocratic Alternative

The system that I will describe in this section is unusual in that it employs selection of political officials by lottery, rather than by election. It is worth noting that there is some historical precedent for this kind of method, referred to also as “sortition”<sup>13</sup> (or “demarchy”<sup>14</sup>). For example, in ancient Athens, lottery-selection was used to select political actors in several of its major governmental institutions; both the *brevia* and the *scrutiny*, employed in late medieval and early renaissance Italy, incorporated selection by lot; and, more recently, Citizens’ Assemblies (in which citizens were chosen at random to serve on the assembly, and in which citizens heard from experts prior to coming up with their own proposals) in British Columbia and Ontario were used to reform election law.<sup>15</sup>

It is worth noting that there is a more ambitious and a more modest way of introducing lottocratic elements: one might have them supplement the existing legislative institutions, or one

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<sup>13</sup> I prefer “lottocracy” or “lottocratic” because the noun for the system is easier, because “sortition” has echoes of the unfortunate combination of “sordid” and “sedition,” and because the meaning of the word is more evident from the familiar ‘lot’ root.

<sup>14</sup> John Burnheim uses this term for the system he proposes in *Is Democracy Possible? The Alternative to Electoral Politics* (1985). His system is characterized not just by random selection of political officials, but also by the abolition of political bureaucracy, taxation, police, and private ownership of land.

<sup>15</sup> For relevant discussion, see Oliver Dowlen, *The political potential of sortition: A study of the random selection of citizens for public office* (2008); C.L.R. James, “Every Cook Can Govern: A Study of Democracy in Ancient Greece; Its Meaning for Today,” *Correspondence*, Vol. 2, No. 12 (1956).

might have them replace those institutions. They could be used just for a few select kinds of political problems, perhaps only after some general triggering conditions were satisfied (legislative stalemate through the normal political process, special call by referendum vote, etc.), or perhaps only if those problems satisfied certain criteria of being particularly complex or susceptible to capture. They could be used as part of the permanent political structure, or as ‘one-off’ institutions, perhaps used only to implement significant political reforms.<sup>16</sup> Additionally, they could be used just as an oversight mechanism, charged only with making recommendations regarding legislation, or with having some level of veto power over traditional legislative processes. I will discuss the possibility of a full legislative replacement, but as a kind of thought experiment—to get a test case for the advantages and disadvantages of lottocratic institutions in view—not because I think it is obviously the way to go.

The three distinctive features of the full lottocratic system as I envision it are:

- (1) that the legislative function is fulfilled by many different *single-issue* legislatures (each one focusing just on, for example, Agriculture or Health Care), rather than by a single, generalist legislature;
- (2) that the members of these single-issue legislatures are chosen by *lottery* from the relevant political jurisdiction; and
- (3) that the members of the single-issue legislatures hear from a variety of *experts* on the relevant topic at the beginning of each legislative session.

More concretely, imagine that each of these single-issue legislatures consists of 300 people, chosen via random lottery from the adult citizens of the jurisdiction. Each person chosen would serve for a three-year term. Terms would be staggered so that each year 100 new people are chosen, and 100 people finish their terms. All adult citizens in the political jurisdiction would be eligible to be selected. People would not be legally required to serve if selected, but the financial

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<sup>16</sup> Institutions of individuals selected at random have been used for constitutional reform, including recently with the Icelandic National Forum 2010. See <http://participedia.net/en/cases/icelandic-national-forum-2010>.

incentives would be considerable,<sup>17</sup> efforts would be made to accommodate family and work schedules (including providing relocation expenses and legal protections so that individuals or their families are not penalized professionally for serving), and the civic culture might need to be developed so that (unlike jury duty) serving is seen as one of the most significant civic duties and honors.<sup>18</sup> There should be some mechanism of removing people for bad behavior—failing to attend meetings, speaking out of turn, showing up intoxicated or otherwise incapable of participating fully—but this mechanism should be structured so as to protect those who simply are unlikable or who have divergent views.

Each single-issue lottery-selected legislature (“SILL”) would meet for two legislative sessions each calendar year, and the structure for each session would be something like this: agenda setting, learning phase with expert presentations, community consultation, deliberation/discussion, drafting, revising, and voting. Before discussing the stages, let me say a bit more about two aspects of the lottocratic system as I envision it: (1) the reasons to have single-issue legislative institutions and (2) how members of the SILLs should conceive of their roles.<sup>19</sup>

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<sup>17</sup> Pay could be a high significant sum for everyone or a scale that paid people some multiple of their regular income.

<sup>18</sup> If individuals are not required to serve, there may be a concern about disproportionality—skew—in terms of who actually ends up serving on these institutions. If that came to be a problem, one might alter the incentives for participation or make participation legally required. There are worries about legally-required participation. First, there would have to be exceptions, and one would worry about skew being reintroduced in terms of who can take advantage of those exceptions (as in the case of jury and military service). Second, the quality of participation may decrease if everyone—including the begrudging—is required to participate. Third, it might be objectionable to require individuals to participate in politics. This might be a matter of their personal values, for example, and it might seem inappropriate to force participation. On the other hand, we require quite much of people already, even if they might prefer not to be obligated in those ways. But it’s worth noting this choice point in the use of lotteries, just as there is a similar choice with respect to compulsory voting in electoral systems.

<sup>19</sup> There have been a number of recent proposals to introduce the use of lottery selection in politics. Ethan Leib sets out a plan for a lottery-populated fourth branch of the US government, which would replace the initiative/referendum processes as a mechanism of popular political power, in Deliberative Democracy in America: A Proposal for a Popular Branch of Government (2004). Keith Sutherland offers a proposal for reforming the British Government, including having the House of Commons chosen by lot, in A People’s Parliament (2008). Anthony Barnett and Peter Carty argue for a reformed House of Lords that would be chosen by lot and would have a scrutinizing role (no ability to initiate legislation) vis-a-vis the House of Commons in The Athenian Option: Radical Reform for the House of Lords (1998). In Saving Democracy: A Plan

As noted above, rather than a multi-issue legislature that legislates over an entire range of policy issues, the SILL system would be set up so that there was no body that dealt with all policy issues, but that instead the policy issue-space were divided into some small number of policy-specific areas (Agriculture, Consumer Protection, Education, etc.), each with a distinct legislative institution devoted to creating law within that policy area. The specific division of policy areas need not detain us.

There are two main reasons to prefer single-issue focus. First, it allows for the possibility that, rather than having all legislation happen through these institutions, they would instead be used just for a particular set of problems—perhaps problems that were relatively technical (and for which we might expect the greatest accountability breakdown), or problems that fell into the “third rail” category (dangerous for politicians to touch). Second, it would allow for greater learning and engagement with the particular problems. This is important given the range of backgrounds that members would bring to the institutions, and given the fact that these individuals would be amateurs at the particular task of creating legislation. So, the single-issue focus is motivated by both epistemic and practical concerns.

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for Real Representation in America (2006), Kevin O’Leary proposes having lottery-selected local assemblies that would comprise a deliberative-polling network, and a People’s House, also selected by lottery, that would have a veto power on major legislation that passed the Senate or House of Representatives. John McCormick suggests the creation of a People’s Tribune, made up of 51 private citizens, selected by lottery, and limited to those who are not political or economic elites. This Tribune could initiate impeachment proceedings, call one national referendum, and veto up to one piece of congressional legislation, one executive order, and one Supreme Court decision. Machiavellian Democracy (2011). Hélène Landemore suggests that lottery selection of representatives would be better on epistemic grounds for reasons having to do with cognitive diversity, although she goes into little institutional detail. Democratic Reason: Politics, Collective Intelligence, and the Rule of the Many (2013).

These proposals range from brief, abstract thought experiments to detailed institutional recommendations for particular countries. Common themes emerge, however. All but Landemore are motivated by a concern about oligarchy, political capture by elites, and the diminishment in political power in the hands of ordinary people. Most stress reinvigoration of the political citizenry. Most are influenced by the deliberative democracy tradition. My proposal shares concerns about capture and elite domination, but is not motivated by the deliberative tradition, and is more concerned with the epistemic quality of political decisions than the above proposals (with the exception of Landemore). Additionally, my proposal alone contemplates giving full legislative power to a lottery-selected institution. This is crucial for addressing the problems with electoral democracy identified in Part I: if elected officials continue to play a significant role, this will diminish the anti-capture benefits of lottery selection. But these proposals are worth consideration and are useful for suggesting how other steps toward lottocracy might be taken.

There is a question of how the randomly chosen individuals should think of their roles. The lottocratic system is not a normal representative system, although there is a way in which some of its value comes from its representativeness. Members of the SILLs would be what Philip Pettit has called “indicative representatives.” As he puts the idea of indicative representation:

The essential difference between responsive and indicative representation is easily stated. In responsive representation, the fact that I am of a certain mind offers reason for expecting that my deputy will be of the same mind; after all, she will track what I think at the appropriate level. In indicative representation things are exactly the other way around. The fact that my proxy is of a certain mind offers reason for expecting that I will be of the same mind; that is what it means for her to serve as an indicator rather than a tracker.<sup>20</sup>

The thought behind the lottocratic system is that members of the SILLs will be—at least over a long enough run—broadly descriptively and proportionately representative of the political community, simply because they have been chosen at random. But they will not have in mind the idea that they are to represent some particular constituency. Rather, the fact that an individual member of a SILL comes to have certain views about an issue, after hearing from experts and engaging in consultation and deliberation, is a kind of evidence that members of the political community who share contextually salient characteristics with that individual would also come to have those views, had they gone through the same experience.<sup>21</sup>

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<sup>20</sup> Philip Pettit, “Representation, Responsive and Indicative,” Constellations 17 (2010), pp. 427-28.

<sup>21</sup> A similar idea motivates James Fishkin’s advocacy for “deliberative polling” of a random sample of the electorate. Those randomly chosen would be immersed in “the issues, with carefully balanced briefing materials, with intensive discussions in small groups, and with the chance to question competing experts and politicians.” (This is notably similar to the “Learning Phase” described more below.) They would then be polled, and the results of this poll would be broadcast to the general electorate (perhaps in addition to some of the previous discussion and deliberation), prior to political primaries or elections. As Fishkin puts it, a deliberative poll is not meant to describe or predict public opinion; rather, “[i]t has a recommending force: these are the conclusions people would come to, were they better informed on the issues and had the opportunity and motivation to examine those issues seriously.” The Voice of the People: Public Opinion and Democracy (1995), p. 162. Using “deliberative polls” of randomly selected individuals seems like an excellent idea, and it has met with some success already. My main worry is just that it is not enough, by itself, to overcome the substantial problems raised in Part I regarding electoral accountability and what will actually be done by elected officials once they

Let me now say something about the different stages. There are many questions about how to structure these stages or whether to have these stages or to combine them or add others. The point is not to provide a definitive structure, but to give some sense of what stages might be required and one way in which those stages might be organized.<sup>22</sup>

### **A. Agenda Setting**

Within each policy area, there are many things a SILL might do in a particular legislative session, from small-bore changes to existing law to introducing a significant legislative initiative. The SILLs will decide what to work on in the next session by a process of agenda setting, where a wide range of possible options are narrowed to a manageable few. This process should have some balance of input from those already involved with the issue (experts, stakeholders, activists) in addition to the general public, perhaps through some sophisticated deliberative-polling mechanism.<sup>23</sup> The members of the SILL will take this combination of in-person proposals and polling information and vote for those items to have on the agenda for the next legislative session. There could also be a process for merging two legislative sessions in the event that more time was required. The reason for the vote to set the agenda for the next legislative session is for there to be time to inform and involve experts and community members. Broad agenda proposals could be more or less precisely specified, and could be structured as

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are in office. A second worry is that there are too many issues, and the incentives for rational voter ignorance would remain, even in the face of many potentially useful deliberative polls regarding different issues.

<sup>22</sup> In an excellent paper, Terrill Bouricius, a former member of the Vermont House of Representatives, has offered a different template for how a lottery-selected political system might be implemented. On his proposal, there would be multiple lottery-selected bodies that each were responsible for a different part of the legislative task: setting the agenda, drafting initial bills, reviewing and editing those bills, voting yes or no on the bill, setting rules, and overseeing compliance with the rules. Terrill G. Bouricius, “Democracy Through Multi-Body Sortition: Athenian Lessons for the Modern Day,” *Journal of Public Deliberation*, Vol. 9, Issue 1 (2013). This proposal is definitely worth considering as an alternative to the one I propose. My main concerns are about the quality of the proposals that would get generated (he relies more on interested parties and “volunteers”), the possibility of capture and distortion, and keeping the epistemic quality at a high level throughout such an extended process, conducted by many different individuals. But it’s an interesting way of dividing up the components of legislative power, and worth considering further.

<sup>23</sup> See James Fishkin, *When the People Speak: Deliberative Democracy and Public Consultation* (2011).



“whether” propositions: whether to do X, whether to replace Y with Z, whether to eliminate W, and so on.

## **B. Expert Presentations**

For each item on the agenda, the SILL will hear from experts, providing general background and specific information relevant to the “whether” question. As an example, in the “Learning Phase” of the BC Citizens’ Assembly, experts made presentations about electoral systems and a textbook on electoral systems was assigned as background reading. Additionally, advanced graduate students in political science from nearby universities were trained to facilitate small group discussions.<sup>24</sup>

Obviously, there will need to be a process by which a person is allowed to speak to a SILL as an expert. This requires both a process to determine whether a person counts as an expert (the *qualification assessment* process) and a process to determine which qualified experts are given an opportunity to speak (the *expert selection* process). The point of expert presentations is to have lawmaking informed by the best available knowledge relevant to the policy area at issue. One of the comparative advantages of this system is that it blends the virtues of policy making by ordinary people with policymaking based on expertise. The hope is that by requiring experts to explain complex ideas to non-experts, this will allow for a kind of general comprehension, authorization, and endorsement of policy in technical areas that is not present if experts are simply empowered to decide directly, while at the same time having policy that is made through epistemically responsible procedures.

It is a well-known problem with what have been called epistocratic forms of government—rule by the knowers—that for many political questions, who counts as a knower, who is an expert, is precisely what is at issue. (There are other problems, such as Estlund’s “you might be right, but who made you boss” problem,<sup>25</sup> but given the smaller role that experts play in the system under discussion, this problem is less of a concern.) Here, because whether an individual is an expert or not does not bear on whether they have political power, the stakes

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<sup>24</sup> For details of the BC Citizens’ Assembly, from which the use of experts is borrowed, see R.B. Herath, Real Power to The People: A Novel Approach to Electoral Reform in British Columbia (2007) and Mark Warren and Hilary Pearce, eds., Designing Deliberative Democracy: The British Columbia Citizens’ Assembly (2008).

<sup>25</sup> David Estlund, Democratic Authority: A Philosophical Framework (2008), p. 41.

involved in determining whether someone counts as an expert are lessened. Still, the importance of the details of the qualification assessment should be clear. For many issues, it may be relatively uncontroversial whether someone counts as an expert. For other issues, it may be controversial whether there are experts or what the bases of expertise might be. Expertise might be recognized based on advanced degrees; years of professional experience; formal professional credentials from institutions with national or international accreditation; publication of research in independent, peer-reviewed journals; and so on. A different, but also important kind of expertise is the expertise that comes from experience, including occupational experience or lived experience, such as the experience of being a disabled person (particularly in the context of making policy that primarily affects disabled people).

Whatever process is used, experts will need to explain the basis of their expertise, describe their credentials (if relevant), and disclose any actual or possible conflicts of interest due to sources of funding or employment. A full defense of the lottocratic alternative will have to do more to specify the details of the qualification assessment process, and there are significant concerns about the possibility of expert capture (discussed in section IV. B. below).

Finally, it will also be important that if there are people who qualify as experts on each side of a question, then there should be substantial time for experts on each side to speak. For controversial issues, it is probably worth allowing more time for the expert presentation phase so as to allow ample time for experts to speak.

### **C. Consultation, Deliberation, Drafting, Voting**

After hearing from experts, SILL members will begin the process of developing and deciding upon legislative proposals, and possibly eventually enacting a proposal. The details of this process are obviously important, but they need not detain us. Here I will just highlight a few key elements of the system as I envision it. First, for many issues, this process should include consultation with non-members, either virtually (online) or through having the members return to the geographic area from which they came, and to hold town-hall style meetings, in which individual members or multi-member panels talk through the items on the agenda, talk about what the experts told them, and solicit questions and comments from those in attendance. There

are two main purposes to this: (1) to inform non-members about the issues and proposals under discussion, and (2) to gather information from members of the community.

Second, having heard from experts and engaged with non-members, the members of the SILL will convene for deliberation and discussion. It is worth stressing that, unlike some who embrace “deliberative democracy” (often accompanied by norms of consensus decision-making), I am not committed to group deliberation as normatively essential or distinctively important. Group deliberation might be important, for some issues, on epistemic grounds, but given that the empirical evidence about deliberative forums in terms of their epistemic virtues is mixed,<sup>26</sup> it might make sense to restrict or eliminate the kinds of group deliberation that takes place.

Third, after discussing various questions and proposals, the SILL members will work together to draft proposals. Some of this might be modeled by how drafting of legislation happens in other legislative bodies, with initial drafts or competing drafts written by different committees within the SILL. As with other legislatures, there might be drafting aides and consultants on hand who have expertise in drafting legislation, and who can help spot concerns of the formal, rather than substantive, variety. There could also be a period during which drafts are made public and comments are solicited from the broader community.

The main difference between this lottocratic system and the British Columbia Citizens’ Assembly is that the latter had no power to enact law. Instead, their proposal went to a province-wide referendum vote, which required super-majority support of the proposal for it to become law. One way to use the SILLs would be to have them in an advisory role, or a role in which they could propose but not enact legislation. My concern, and the reason that I think actual legislative power is crucial, is that sending proposals to a referendum vote just reintroduces many of the problems with electoral representation—rational voter ignorance and possible media distortion and influence by powerful interests, to name the most prominent two.

### **III. The Promise of Lottocracy**

Because no lottocratic system has existed, it is hard to do more than draw attention to some of the possible virtues of the lottocratic system and to note those features that are untested

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<sup>26</sup> See Cass Sunstein, Infotopia: How Many Minds Produce Knowledge (2006), particularly Chapters 2 and 3, for a survey and discussion of some of the epistemic concerns about group deliberation.

and whose virtues remain more speculative. I will begin this section by discussing some of the virtues of any system that uses lottery selection. I will then discuss the particular advantages—largely epistemic—that the lottocratic system can claim in virtue of its single-issue legislative chambers and use of experts.

There are certain obvious virtues of using lotteries, rather than elections, for the selection of political officials.<sup>27</sup> First, lotteries excel at preventing corruption or undue influence in the selection of representatives. One main reason to think that the SILL system would generate outcomes that are at least as responsive and good as a representative system is that capture would be considerably more difficult in the SILL system. SILL members are chosen at random and don't need to run for office, so there will be no way for powerful interests to influence who becomes a SILL member or to ensure that the only viable candidates are those whose interests are congenial to their own. Because there is no need to raise funds for re-election, it should be easier to monitor members of the SILL to ensure that they are not having contact with or receiving funds from powerful interests either during or after their service. (If this is possible with juries in high profile cases, it should be possible in the case of SILLs.) And since SILL membership rotates regularly, the cost of “buying off” particular SILL members would be higher, even if it could somehow be accomplished surreptitiously.<sup>28</sup> It would not be possible to capture politicians who were virtually unbeatable (from partisan districts with incumbency advantages) and count on them being an ally for 30 years.

There might be a worry, informed by the concerns about corporate influence over television advertising coming to dominate direct democratic institutions such as popular referenda, that in a world in which people were chosen at random to serve as political officials, the powerful interests will just shift their focus from capturing elected officials to influencing the views of the populace as a whole, so that any randomly selected individual would be likely to

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<sup>27</sup> For relevant discussion of some general merits of lottery selection of political officials, see Barbara Goodwin, Justice by Lottery (1992), pp. 96-99. For an insightful discussion of the merits of lotteries across a range of contexts, see Peter Stone, The Luck of The Draw: The Role of Lotteries in Decision Making (2011). This section can be seen as an expansion and elaboration of these discussions, and as an application of those considerations to the lottocratic system in particular.

<sup>28</sup> This cost can be made even higher if SILL members are paid a high yearly stipend (something in the neighborhood of \$500,000 or \$1 million US dollars each would still be within the neighborhood of the operating costs of the current US Congress), but risk forfeiting that if they are discovered to have taken money or other benefits from those seeking to influence them.

support the policy outcomes desired by the powerful interests. There are several things to say in response.

In a non-lottocratic political environment, the easiest and most cost-effective route of influence for powerful interests is to capture elected—but basically unaccountable—political representatives directly. The suggestion in the first part of the paper is that this is exactly what we see in many modern political contexts. This route is arguably the least expensive: no mass advertising or mass opinion influence necessary. And it is the most effective, in terms of being both reliable and fine-grained: one can see exactly how the supposedly captured official is behaving, and one can influence that person to do very particular things with respect to crafting and supporting (or not) particular legislation, rewarding them contingent on actual performance. The second easiest route of influence for powerful interests is for there to be a very particular issue up for direct democratic decision, so that the powerful interests can focus their attention on that one particular decision and spend what is necessary to affect mass opinion on that issue. The third and least efficient route of influence is to affect mass opinion so as to convince ordinary citizens to vote for a particular candidate, X, where X is then expected or hoped to help enact some desired legislation. This route lacks the fineness of grain of influencing referenda (although there is the corresponding breadth of scope benefit if a powerful interest has many different desired legislative objectives), while being just as expensive and possibly more expensive (given the possible financially powerful competing interests that will want to spend to elect X's rival), and there is the real possibility that X will be either unable or unwilling to actually bring about the desired legislative outcome.

Even this last method, however, has significant advantages over simply trying to affect mass opinion of the citizenry so that any randomly chosen citizen would be likely to create or vote for legislation in the way desired by the powerful interests. First, there is the “information retention” limitation. As discussed above, the average voter—or, in the lottocratic context, the average potentially lottery-selected individual—is not tracking the details of many political issues very closely. This makes it very difficult to affect their views on the details of various political issues prior to their random selection—not because they have countervailing views, but because they simply aren't paying any attention. Even if they do take note of some advertisement, it is unlikely to provide them very much in the way of detailed guidance—either through information or value-shaping—when it comes to actually creating and supporting

particular legislation. This problem can be largely bypassed in the context of electing a representative, since it is possible to get people to support one's desired candidate by changing people's views with respect to a candidate's character or likability. But this is harder to do with particular issues, particularly if those issues are complex and unsexy—insurance regulation, agribusiness policy, financial instrument regulation, trade policy, tax policy. Second, there is the “countervailing information” limitation. At least in the lottocratic system as I envision it, whatever views a person randomly chosen to serve on a SILL had with respect to some particular issue upon being selected, it is likely that being exposed to expert presentations and considerable discussion of that issue will come to affect those initial views. This is particularly probable if those initial views were not connected to central beliefs or values for that person, but were instead the product of mass advertising efforts. (In this way, the extended information session and discussion is likely to do much more than, say, the mailed informational booklets sent to potential referenda voters that are to allow voters to hear both sides of an issue.<sup>29</sup>) Of course, effective advertising can seep into us in difficult to detect ways, but these more amorphous messages run more squarely into the previous ‘lack of detail’ problem.<sup>30</sup>

A second reason to think that systems that use lottery selection will bring about better and more responsive outcomes is that lottery selection is likely to result in more descriptively representative officials than elections (particularly elections like those in the US, employing first-past-the-post voting rules and single-member districts). Because individuals are chosen at random from the jurisdiction, they are more likely to be an ideologically, demographically, and

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<sup>29</sup> There is the additional difficulty with these informational measures that they themselves end up being very complicated—difficult to comprehend by an individual voter trying to do his or her best, even if such an effort is made. In one not particularly unusual California referendum election, the informational materials for five related insurance measures ran well over 100 pages, and David Magleby's study of voting pamphlets in four states found that they required a reading comprehension level of a third-year college student. Direct Legislation: Voting on Ballot Propositions in the United States (1984), p. 74.

<sup>30</sup> There is also the response that, at a certain point, if advertising (or whatever) makes it so that the views of the citizenry really do come to be in line with what the powerful interests want, it may just be that a *responsive* political system will be ‘captured’ in a certain sense, so that responsiveness and good governance may simply pull in different directions. This makes capture of this kind considerably different to evaluate, normatively speaking, than simple capture of basically unaccountable elected representatives. Of course, much could be said about the particular way in which views come to be changed and the way in which some means of persuasion and influence may be morally problematic, but there isn't space to engage those questions fully here.

socioeconomically representative sample of the people in the jurisdiction than those individuals who are capable of successfully running for office.<sup>31</sup> (Just as a point of comparison in the United States context, 44% of Congresspersons have a net worth of over \$1 million; 82% are male; 86% are white, and more than half are lawyers or bankers.<sup>32</sup>) Better descriptive representativeness doesn't ensure that SILLs will create responsive policy, but it does mean that the range of perspectives involved in making policy will be more similar to the range of perspectives of the polity as a whole, which makes responsive policy more likely. Additionally, SILLs are likely to include individuals with a greater range of life experiences and vocational skills than a representative system, which may improve the quality of the outcomes due to improvements in the cognitive diversity of the group.<sup>33</sup>

A third reason in favor of lottery selection, related to this last reason, is that those selected have not sought out political office. Some who favor lottery selection make a lot of this lack of political ambition, but it is a two-edged sword. On the one hand, political ambition can come with it aspirations for power over others, which may select for the kind of person one would rather not have in power. It can also select for easily corruptible individuals, willing to exchange principled decisions for personally beneficial ones. On the other hand, some who enter politics care about making things better and working on behalf of others. Lottery selection means that you lose out on both kinds of self-selection. I think this works in favor of lotteries,

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<sup>31</sup> In using random selection, particularly to achieve better descriptive representation, there is a question of whether to use “stratified sampling,” which “requires that the group be divided into distinct subgroups based upon the characteristics one wishes to see represented proportionately” and then “randomly selecting from each subgroup a number of officials sufficient to guarantee that subgroup’s proportionate presence in that body.” Stone (2011), p. 134. Stratified sampling ensures proportional representation along the subgroup dimensions, whereas a pure lottery might well lead to some groups being under- or over-represented (although over the long run, pure random selection will also generate proportionate outcomes). I favor the pure lottery, at least for most societies, simply because it is tendentious which subgroups should be counted, and there is a concern about reifying existing divisions. There might be divided societies for which stratified sampling (or over-sampling) would be appropriate, and there might be some especially significant uses of lottocratic institutions—perhaps constitutional reform—for which stratified-sampling may be appropriate.

<sup>32</sup> See Eric Petersen, “Representatives and Senators: Trends in Member Characteristics Since 1945,” CRS Report for Congress (2012) at: <http://www.fas.org/sgp/crs/misc/R42365.pdf>

<sup>33</sup> See Scott Page, The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies (2007).

given the reasons discussed in the previous section for thinking that the ‘good type’ of candidate gets pushed out. But it might be a closer call under better electoral circumstances.

A fourth reason to favor lottery selection is that elections lead elected officials to focus on those problems for which they can get or claim credit for addressing, and to ignore or put on the back burner those problems with a longer horizon or those solutions for which it is harder to get credit. This is related both to voter ignorance and to the perverse short-term incentives that elections provide. Perhaps the most urgent issue we face is climate change, and it is arguably a problem that demands political solutions in order to address what appears to be a complex collective action problem. But many of the worst effects of climate change won’t be realized for decades, and so elected politicians are unlikely to pay the short term political cost (due to unpopular taxes on fossil fuels, limits on vehicles, etc.), given that they won’t see the longer term political benefits. So, even if there are clear steps that need to be taken, many elected officials won’t take them. Individuals chosen at random, however, are not hamstrung by these kinds of incentives. If there is agreement on a viable solution (or at least on the need to address a problem), members of a SILL are well-placed to implement that solution.

A fifth reason to favor lottery selection is that the use of lotteries better respects fundamental ideals of equality and particularly political equality. Even in electoral systems in which each person gets one vote to elect their representative—and the ideal of equality thus plays some role—the election of some individuals to “rule” over others is less egalitarian than random selection.<sup>34</sup> One reason for this is that, although it may be true that all have an equal *say* in the electoral process, only a select few actually have political power, and (for reasons having to do with resources and the influence of the powerful) not everyone has anything close to an equal *chance* of having political power. Lottery-selection thus arguably better reflects egalitarian ideals, since anyone might wield political power, and everyone has an equal chance of doing so.<sup>35</sup> Additionally, although at a particular time, some will have more political power than

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<sup>34</sup> In this way, lottocratic institutions can be seen as another element of an expanded “egalitarian toolbox.” See Elizabeth Anderson, “Expanding the Egalitarian Toolbox: Equality and Bureaucracy,” Proceedings of the Aristotelian Society Supplementary Volume 82 (2008).

<sup>35</sup> Ben Saunders, in an insightful discussion of lottery voting (every member of the group votes, and one vote is picked at random to be decisive), argues that this method satisfies norms of political equality, and so an additional argument is needed in favor of majority rule. “Democracy, Political Equality, and Majority Rule,” Ethics, Vol. 121, No. 1 (2010). I agree with this conclusion, but Saunders actually understates the case, since representative democracy fails



others in the lottocratic system, this is less pronounced than in the electoral representative system (since the heightened power will be for a much shorter average duration), and it may not even be true when measured over lifetimes (depending on the numbers and the resultant likelihood of each person being chosen randomly at some point during her lifetime). In addition to better satisfying norms of equal chance of having political power, the lottocratic system also comes closer to satisfying a condition of equal actual political power than any other system that uses some subset of the population as political decisionmakers.<sup>36</sup> A final equality-related virtue of the lottocratic system is that the selection itself does not require a commitment to the idea that some are better able to rule than others. One might defend electoral representation on this front, arguing that elections are not about picking the *best* person, but are instead about picking *a* person (who will be ‘better’ simply in virtue of having the time to devote to the task of governing). The problem with this line of defense is that it maps poorly onto our actual electoral practices, in which things like intelligence, credentials, education, experience, and connections are all explicitly invoked as reasons to favor one candidate over another.

A side benefit of the egalitarianism reflected in lottery-selection is what we might call the “humility of the chosen.” As Barbara Goodwin puts the idea: “those allotted high office would comport themselves more humbly... no one could boast of his/her elevation or advancement as being personally merited.”<sup>37</sup> This might provide a reason to think that not only will lottocratic institutions be better from a perspective of political equality, but that this might also translate into better and more responsive outcomes, if those randomly selected feel some responsibility to demonstrate epistemic humility and to engage with the questions of what would be best and what people really care about.

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even to satisfy his condition of political equality: “Each group member must have an equal (chance of) influence over the group’s decisions.” The lottocratic system also does better by norms of political equality—at least those that focus on equal chance of having political power or influence or equal political power over time (assuming enough iterations of the random process). I see the lottocratic system as a more realistic way to implement the use of lotteries than lottery voting and one that is capable of addressing the concerns discussed in Part I.

<sup>36</sup> For a more extended discussion of the relationship between lottery selection and norms of political equality, see Alexander Guerrero, “Equality, Legitimacy, and Political Minorities” (manuscript available from author).

<sup>37</sup> Justice By Lottery, p. 99.

Leaving aside these general advantages for lottery-selection, there are additional reasons to think that that the outcomes of the lottocratic system—incorporating as it does both the use of experts and single-issue focus—would be better and more responsive than in electoral systems.

First, because SILLs focus on one issue at a time, it is less likely that non-responsive policy will result from inattention to a particular issue. With a generalist legislature, a few issues may draw all the attention with others left to the shadows, where policy can be created that is not responsive to the beliefs and values of the constituents without any attendant electoral consequences.

Second, the single-issue focus provides an opportunity for the randomly-selected members of the SILL to become acquainted with an issue that might otherwise be one about which citizens are ignorant or might have no views or preferences. As noted above, voters are broadly ignorant about political issues. And there are many issues—even ones on which individuals polled express preferences—for which citizens have merely “phantom opinions.”<sup>38</sup> The expert presentations combined with community consultation and discussion provides an extended period of time during which an ordinary citizen can become better informed about an issue. This is good for bringing about both better outcomes and more responsive outcomes (if we countenance as responsive those outcomes that would be preferred if people came to learn more about the issue).

Third, whatever the details of one’s favored account of what makes for a good outcome, it is plausible that good outcomes are outcomes that are compatible with, if not informed by and brought about because of, facts about the world. Policymaking undertaken in light of the best available information is likely to be better than policymaking undertaken in light of false or biased information. The SILL system, because of the epistemic benefits of its single-issue focus and expert consultation, is better positioned than the generalist representative system to create not just responsive, “uncaptured” policy, but good policy. SILL members can devote their attention to one issue, they can all become informed by experts on the issue (rather than just the few members of Congress who happen to be on the relevant committee), they don’t have to spend time fundraising and campaigning, and they can do what they think is best after hearing from experts and community members. They don’t have to limit what they do to what is

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<sup>38</sup> See Donald Kinder, “Opinion and Action in the Realm of Politics,” in The Handbook of Social Psychology, Vol. 2 (Daniel Gilbert et al eds., 1998); John Brehm, The Phantom Respondents: Political Surveys and Political Representation (1993).

currently (perhaps blindly) the preference of the median voter. This is crucial for any system that employs random selection, since, as I will discuss below, one of the main concerns about any such system is that the randomly selected members will not be competent to make good decisions.

Fourth, one of the main advantages of the lottocratic system is that it blends the virtues of policymaking by ordinary people with policymaking based on expertise—it has both democratic/populist and epistocratic appeal. By requiring experts to explain complex ideas to non-experts, this system might allow for comprehension, authorization, and endorsement of policy in technical areas that is not possible if experts are simply empowered to decide directly. This helps address one of the concerns of a lottery-selected legislature or any epistocratic political system: the issue of whether their decisions will be accepted by the citizenry at large. The hope is that if SILLs are seen as descriptively representative—and if those chosen are seen as indicative representatives—even those not selected to participate will see the decisions arrived at as the product of a well-designed process. And they might reason that although they don't have the same view on the issue, someone who is in important respects *like them* (from their neighborhood, profession, etc.) has come to that view after hearing from experts and talking with others, after having devoted time and thought to the problem—and that this provides a powerful reason for them to think that they *would* have that view if they had gone through the same process. This provides a basis for them to accept the ultimate decision, even if it differs from their initial view. And there is nothing to prevent non-members from following along and attending and participating in the community consultation events.

#### **IV. Concerns about Lottocracy**

In this final section, I will discuss several concerns about lottocratic institutions. Throughout, it is worth keeping in mind the extent to which the concerns remain regardless of the scope of the lottocratic system—regardless of whether the lottocratic institution is an engine of direct legislation or is only advisory or in a position to veto legislative decisions; regardless of whether the system works on all kinds of problems or only a limited few; and so on.

##### **A. Competence**

In discussions of the use of lottery selection, the most common worry is competence. Wouldn't entrusting political decision-making to a randomly selected body of citizens be a disaster, much worse than delegation to elected representatives? Maybe electoral politics has its problems, but at least those selected have to be at least somewhat intelligent, socially competent, hard-working—or so the thought goes.

It is hard to know how to respond to this concern. The extent to which one is worried about citizen competence may well depend on one's life experiences. One response is to present the many institutional solutions that might increase competence: (a) creating incentives for the full range of citizens to participate (so that one doesn't get a skewed sample as with juries), (b) setting reasonable minimum thresholds (e.g. requiring a high school diploma or the equivalent), and (c) improving public education so that the 'worst off' from a competence perspective are relatively more competent.

Let's assume that (a) and (b) have been implemented. (Of course, implementing (b) is controversial and would undercut some of the advantages of the system that stem from its descriptive representativeness.) If the competence question remains, there are a few further possible responses. One can treat the question as a quality threshold question and argue that most citizens actually would be competent. Or one can focus on the question as a comparative question, and attempt to highlight the incompetence of elected officials. Or one can argue that elected officials are perhaps more competent in some sense, but that this is outweighed or undermined by the ways in which they are biased. All three strategies have promise, and they do not compete; indeed, the three together may be more plausible than any one in isolation. A full effort to develop these responses requires empirical investigation, but it is worth noting that it is at least not obvious that the average member of Congress is better able to understand technical policy issues.<sup>39</sup>

Additionally, at least for some issues, the views of ordinary people currently play a significant role in determining what policy options are viable. So, in the comparative assessment of the electoral system versus the lottocratic system, this is a reason to prefer the SILL system. At least with the SILL system those ordinary views become somewhat better informed—or at

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<sup>39</sup> Indeed, some recent empirical work suggests otherwise. See Dana Griffin, "Citizens, Representatives, and the Myth of the Decision-Making Divide," *Political Behavior*, Vol. 35, No. 2 (2013).

least that is the hope. The lottocratic structure—and in particular the single-issue focus and use of experts—is designed to lessen the competence concern.

There are competence worries related to the use of experts. One worry in this vein is that laypeople will not be intelligent or educated enough to make good policy, even if they hear from experts—perhaps *especially* if they hear from experts. They might misunderstand what the experts have said or simply fail to get anything out of the expert presentations and subsequent discussions. A second worry is that people will defer to the experts too much, perhaps because they feel that they don't know very much. These are concerns, and are worth monitoring and empirically testing, to the extent possible. The results from the British Columbia Citizens' Assemblies were that the comprehension and integration of expert information was generally good.

Finally, as suggested by (c) above, one salutary side effect of the SILL system is that they make evident the need for excellent public education for all citizens, not just for the wealthy or politically connected members of the citizenry. It may be true that presently, a high school education does not prepare one to be a helpful and engaged citizen in matters of contemporary public policy. But this is something that should itself be the object of reform, not a reason to reject a proposed reform to the political system.

## **B. Capture**

There are many reasons to think that the lottocratic system would be better than electoral representative systems at avoiding problems of capture. There are, however, three SILL-specific capture concerns worth addressing.

First, it is true that because SILLs focus on single issues, this might, in theory, make it easier for powerful interests to focus their attention on the SILL most relevant to them. This concern seems misplaced, however, at least comparatively, since modern legislative process basically gives small committees responsibility for most detailed policymaking, and these committees are considerably easier to capture than a much larger, unelected SILL would be. Additionally, there are steps that could be taken to make capture of individual SILL members—whether through direct payment or provision of post-service sinecures—more difficult, including

monitoring of SILL members, conditioning a considerable stipend on not taking bribes, and even anonymous voting on proposals so as to undermine vote-buying.

A second concern is that the non-professional members of SILLs will fare poorly if they are required to interact with professional politicians to bring about policy changes. The worry is that politics is a skill, and if amateurs are “competing” with professionals at any point in the process, whatever gains they might have made will be lost. This is a worry related to those developed by those who write about bureaucracy and regulatory capture of administrative agencies. Ultimately, how large of a concern it might be will depend on the institutional design details regarding (a) the role that SILLs play in the full legislative process and (b) how SILL-created policy is enforced and overseen. One possibility to address the enforcement concern would be to employ SILL-style institutions to oversee regulatory enforcement of enacted legislation, rather than to have a politically sophisticated executive and executive administration in this role.

A third concern is that powerful interests might try to influence who is identified as a qualified expert and who is selected as an expert to speak. This is a real concern. If there are significant non-political hurdles to becoming an expert in a particular field (advanced degrees from nationally and internationally accredited educational institutions, peer-reviewed publication, and so on) and if there are strict disclosure requirements mandating that experts disclose sources of funding, employment, and so on, this concern might be lessened. Additionally, there can be institutional mechanisms that make capture of experts more challenging—such as having the expert identification and selection processes happen in part by the accredited community of experts nominating or certifying some individuals as candidate experts for the SILL process (in the way that, say, the American Bar Association gives ratings for proposed United States Supreme Court nominees). To achieve capture, then, would require not just buying off an individual, but an entire field.

There is a worry about the politicization of science and the university—something already underway—under a system that uses experts in this way, or in any way.<sup>40</sup> This is a battle

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<sup>40</sup> See, for example, the widely established connection between pharmaceutical industry funding for research and scientific research outcomes that favor the sponsor. Joel Lexchin et al., “Pharmaceutical industry sponsorship and research outcome and quality: systematic review,” *British Medical Journal*, Vol. 326 (2003), p. 1167. Or see the numerous books that have argued that industry and politics distort scientific practice and dissemination of information to the non-

that is important for any political system, whether lottocratic, electoral democratic, or technocratic. There is a hard question to face in the situation in which experts are mostly captured by powerful interests: would it be better to have SILL members hear from these captured experts, or from no experts at all? The details matter, but this situation might be one in which it would be better to eliminate the expert stage, or to cabin the use of SILLs to those policy areas in which there is a well-established and relatively well-defined body of uncaptured expertise (perhaps because there is no significant financial stake in that area), or to leave it to SILL members whether they choose to seek out expert opinion (making the financial incentive to capture experts less predictable and presumably correspondingly less powerful). The capture of supposed experts is a serious problem for any political community. It might seem particularly dire for the lottocratic system, since the experts will be interacting with non-professional politicians. But the problem is just as real for elected representatives, particularly given that (a) it might be more difficult to monitor exactly who is providing information and where they are receiving research support, (b) there is a greater concern about experts being used to provide “cover” for decisions so as to thwart efforts at accountability, and (c) there is little reason to think that well-intentioned elected representatives will be better at identifying captured expertise than randomly-chosen representatives would be, given that most elected representatives have no scientific or technical background.

### **C. Policy Coherence and Execution**

There are a number of practical issues about the lottocratic system, if used as a complete legislative replacement, that concern whether the system could achieve adequate synchronic and diachronic policy coherence. One concern is about issues that might straddle two or more of the defined legislative policy areas. Another concern has to do with taxation and budgeting—how will the budget for particular SILLs be set? Where will the funding come from? A third concern is a concern for any legislative institution—what ensures that the policy as enacted will actually be carried out and enforced? And how often should a particular issue be revisited? More could be said about these issues and others. But it is difficult and counterproductive to get into detailed

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expert public: Robert Proctor, *Cancer Wars: How politics shapes what we know and don't know about cancer* (1995); David Michaels, *Doubt Is Their Product: How Industry's Assault on Science Threatens Your Health* (2008); Chris Mooney, *The Republican War on Science* (2005).

discussion, since the nature of the problems turn on the details of the institutions under discussion, including the precise role of the SILLs. In general, these are practical, institutional design problems—ones that could be addressed in a way that is compatible with the heart of the lottocratic scheme. So, one possible fix could be to allow for two distinct policy area SILLs to merge to address a particular policy problem. SILLs could just be used in the more limited way suggested above, just to deal with a particular political problem (e.g. reforming health care). SILL-like institutions (perhaps composed of some “veterans” from previous SILL service<sup>41</sup>) could be designed that would address some of the more structural issues of overlap, budgeting, taxation, rulemaking, and enforcement oversight, perhaps comprised of a hybrid of lottery-selected and elected officials. There are many possibilities. What I want to suggest is that these concerns do not present *in principle* objections to the use of lottocratic institutions, or to the use of lotteries, experts, or single-issue policymaking institutions.

#### **D. Participation**

Moving from elections to lotteries would make for a significant shift in the way that citizens participate in political life. The extent of this shift would depend on whether lottery selection merely supplemented or fully replaced elections. On the one hand, ordinary citizens would have a chance—and an equal chance—of being selected to play a significant policymaking role. On the other hand, how significant a chance depends on the number of individuals needed to populate the SILLs and the number of people in the jurisdiction. In the large, nation-state context, the chance of being chosen at random would be small—at least for the national institutions—even over the course of a lifetime. And since there might be no electoral season to follow or participate in, nor votes to cast, there might seem to be considerably less space for ordinary citizens to play an active political role.

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<sup>41</sup> In general, it is worth noting that if there is a concern about the lack of experience of those individuals selected to serve on a SILL, one response is to create a “Veteran Pool” of people who have served on a SILL (perhaps including all those who have served, or just some randomly selected group of them, or just those who have been identified as having served particularly well), and to have ordinary SILLs composed of some combination of first-time people and veterans. There are concerns with this route; for one thing, some individuals would come to have even more power due to their initial random selection. But it might be worth considering if one is particularly concerned about the development of political skill and competence over time, or in relation to other “professionals.”



I think this worry can be overstated. First, political participation currently is limited, with many people not bothering to vote and many following elections in only superficial detail.<sup>42</sup> Second, the lottocratic system might be designed to encourage participation at many junctures, in addition to random selection. For example, during the Agenda Setting and Community Consultation phases, citizens would be encouraged to participate through discussion and polling. And interest groups and activists would play a significant role during these phases. Still, this is an issue that is worth considering, and may tell in favor of using SILLs at many levels and giving opportunities for extensive community consultation and feedback.

## V. Conclusion

I have raised a number of worries about standard electoral representative systems and suggested that an alternative, the lottocratic alternative, might do better along two important outcome-regarding dimensions: responsiveness and good governance. I have highlighted some of the main benefits and concerns about the lottocratic system, and offered some possible lines of response. As noted above, some of these concerns turn on the particular scope and design of the lottocratic institutions. The largely untested status of lottocratic institutions—and the corresponding uncertainty regarding the promise and perils of those institutions—suggests that a piecemeal, small steps, small-scale approach to introducing any such institutions would be wise. This also would provide an opportunity to study and to evaluate the strengths and weaknesses of these institutions.

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<sup>42</sup> See, e.g., Thomas Patterson, The Vanishing Voter (2002).