Equality, Democracy, and the Right to Vote*

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Abstract: In recent years, democrats both inside and outside the academy have begun to reconsider the merits of the age-old practice of sortition, the random selection of political officials. Despite this fact, however, the comparative assessment of the merits of voting and sortition as methods of assigning public responsibilities remains in its infancy. This paper will advance this project by considering the respective contributions of voting and sortition to political equality. Random selection is the appropriate method for distributing a public good when all claimants have equal claims to that good and there is not enough of the good to go around. Because of this, both sortition and voting (under a universal franchise) both respect political equality in a sense. But while sortition allows a randomly-selected minority to exercise actual political responsibilities, voting allows the entire public to exercise a much more minimally valuable political capacity.

Key Words: Democracy, Equality, Sortition, Random Selection, Lottery, Voting, Justice

* Paper prepared for the 2014 General Conference of the European Consortium for Political Research (ECPR), University of Glasgow, September 3-6, 2014. All rights reserved. Comments welcome. DRAFT—please do not cite without permission. Work on this paper was supported by a grant from the Arts and Social Sciences Benefaction Fund at Trinity College Dublin.
In the *Politics*, Aristotle famously suggested that voting was the natural method of selecting public officials in an aristocracy, and that random selection was the natural method of selecting those officials in a democracy. In the modern era, the connection between *sortition*—the selection of public officials by lottery—and democracy was largely lost, both in theory and in practice (with the Anglo-American jury providing an honourable exception).

Few democrats today would accept a strong version of Aristotle’s claim—there is clearly something democratic about voting, after all.\(^1\) But the connection between sortition and democracy has recently been revived, both in theory\(^2\) and, to a limited extent, in practice.\(^3\)

The result has been a slew of proposals to revive the flagging democratic societies of the rest by incorporating a little random selection into the democratic mix.\(^4\)

Proponents of sortition have offered a variety of justifications for the practice. Some of these justifications focus upon the ability of sortition to promote *descriptive representation*, by creating microcosms of the general population—“minipopuluses,” if you will (e.g., Callenbach and Phillips 2008; Sutherland 2008). Other justifications focus on the way that sortition can deter domination and corruption, by preventing powerful special interests (both inside and outside the government) from suborning public officials into doing their bidding (e.g., Dowlen 2008; Stone 2011; Delannoi, Dowlen, and Stone 2013). But these defences of sortition have tended to treat the practice in isolation. The question under consideration becomes, might we have good reason to consider using sortition here. And yet institutional design is inherently a comparative process. The real question is not, should we use sortition, but, should we use sortition *instead of some other selection process*, such as

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3. Political scientists have conducted many experiments to date with randomly-selected “deliberative opinion polls” (Fishkin 1991, 1995, 2009), “citizen juries” (Crosby, Kelly, and Schaefer 1986), and “planning cells” (Dienel 1995). Most of these decision-making bodies have held advisory powers only. Some such bodies, however—notably the British Columbia Citizens’ Assembly on Electoral Reform—have enjoyed a sort of real proposal power (Warren and Pearse 2008).
4. Reform proposals making prominent use of sortition include Leib (2004); Barnett and Carty (2008); Callenbach and Phillips (2008); Sutherland (2008); Buchstein and Hein (2009); and Zakaras (2010).
voting. Answering this question requires a comparison of the respective merits of different selection processes. It requires what are the advantages and disadvantages of each of these processes, and why these advantages and disadvantages might suggest using a particular process for a particular purpose in a particular context. To date none of the proponents of sortition (or of voting, for that matter) have undertaken such a comparative assessment.

A comparative assessment of this sort is all the more important given the problematic relationship between democracy and voting on the one hand, and democracy and sortition on the other. Is there something particularly democratic about selection by lot, as Aristotle suggested? Or, contra Aristotle, is there something particularly democratic about voting? If they are both democratic, are they democratic in different ways? Or are they similar according to some criterion—a criterion by which they both rate as democratic—but with serious differences as well, differences that do not impair their democratic credentials? Answering these questions will not just enable political theorists to judge when sortition and voting each might prove worthwhile selection processes. They will also help establish how both processes might fit together in a well-functioning democratic polity.

This paper will not attempt a full-scale comparative assessment of sortition and voting, much less consider other alternative processes for selecting officials (civil service examination, for example). Instead, it will take up the question of the democratic credentials of both sortition and voting. It will do so via an examination of the egalitarian nature of lotteries, an egalitarianism that is in marked contrast to that of voting. One can best judge just how democratic sortition can be, as compared to voting, by contrasting the kind of equality provided by each selection process.

The egalitarianism of the practice of election is relatively straightforward. It is twofold in nature. On the one hand, all citizens enjoy an equal right to vote. On the other hand, all citizens enjoy equal opportunity to stand for selection. Obviously, the word “all”
needs clarification in both cases. In most democracies, all adult citizens have the right to vote, although some qualify this right in some way (by disenfranchising prisoners and convicts, for example, as in much of the United States). And typically, the pool of candidates eligible to run for office is smaller than the pool of citizens eligible to vote for that office—a strict subset, in fact.

These differences between the right to vote and the right to run for office are of great practical importance, and must be taken into account by anyone concerned with institutional design. But for our purposes here there is a deeper theoretical difference underlying the two rights. The right to run for office provides an opportunity to obtain office—nothing more. Like many opportunities (like the opportunity to attend Harvard), it is formally available to large numbers of people, but in practice very few people can avail themselves of it. In part, this is because the equality of opportunity is very imperfectly realized, but this is only half the story. Even in an extremely egalitarian society, very few people will ever attend Harvard; there just aren’t enough spots at Harvard to go around. Similarly, very few people will ever serve in the U.S. House of Representatives; there can, after all, be only 435 at one time. The only way to change this would be to radically increase the number of political offices to go around, and there’s no way to do that without diminishing the value of the office in question.

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5 Should a polity require a citizen to be eligible for an office before she can run for it? Intuitively, the answer is yes, although there are arguments to the contrary. The Socialist Workers Party in the United States ran a number of college-age candidates for political office, prompting a number of legal disputes over the propriety of having such underage candidates on the ballot. The party had zero reason to expect its candidates to win, but by running youthful candidates, they hoped to increase their ability to attract college students and youths to their political program.

6 This is not a requirement of logic, of course. The population of voters and the population of candidates need have no relationship to each other. They could be completely disjoint, in principle, as in the practice of cross-voting. See Elster (2013) on this question.

7 Callenbach and Phillips (2008) envision replacing the House of Representatives with a randomly-selected “Representative House.” Each representative in this House would serve a 3-year term, with no possibility of reselection. They imagine that after a few years, there will be many former representatives around able to share their wisdom and government experience with their communities. The point is well-taken, but it must not be overstated; After 30 years in operation, the Representative House would have produced 4350 former representatives in a population of more than 300 million.
If everybody gets to go to Harvard, it just isn’t Harvard any more. And if everyone gets to be a senator, the office will certainly not carry anything like its current weight.

The right to vote, on the other hand, provides more than just opportunity. Citizens do not simply a chance at obtaining the right to vote. They have the right to vote. The right to vote provides voters directly with a certain type of good. The exact nature of this good is open to question. While in Aristotle’s day, it was taken for granted that political participation constituted an important part of a good life, nowadays the point is much more controversial. Moreover, in a liberal society, with an extensive division of labour, citizens have many other things to do aside from participate in politics. And so the logic of the division of labour seems to call for making politics a profession like any other, leaving citizens without political inclinations free to pursue other commitments (Constant 1988). All of this may be true, and yet the fact remains that if one is to regard the right to vote as having any special importance, one must provide an explanation why. And such an explanation will almost certainly have to offer an account of what makes voting valuable to citizens.

The same considerations apply even more strongly when sortition is considered. For in many respects sortition treats political office in a manner very much analogous to the way the voting treats the status of ordinary citizenship. To understand why, a brief discussion of the logic of random selection is in order. For fuller treatment of this topic, see Stone (2009a, 2009b, 2011).

Imagine that a polity must distribute a certain type of good. Citizens within that polity may have rights to the good. Those rights establish claims to the good, claims that may be of varying strength. If a citizen has a right to such a good, then there exists a justice-based reason for providing that good to her. But it may be the case that there is not enough of the

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8 Admission to Harvard, or any other highly desirable school or job, is partially a positional good, in that much of its value stems from the fact that it is ranked higher than other schools/jobs (Hirsch 1976; Frank 1985).
9 Like many other goods, the right to vote might not be a good that citizens value very highly. A Christian Scientist probably wouldn’t value a right to advanced health care very much, but this right remains a good nonetheless.
10 For fuller treatment of this topic, see Stone (2009a, 2009b, 2011).
good to go around, not enough to satisfy all outstanding claims to the good. In that case, the polity must decide who gets the good and who does not.

In this situation, a polity must answer two critical questions. First, is it possible to satisfy claims in part, rather than in whole? In many cases, the answer is no. Half a kidney transplant is not worth very much. More specifically, dividing a good (like organ transplants) may eliminate its ability, *qua* good, to satisfy claims in the first place. Not all goods work like this of course; money remains money no matter how often it gets divided. But any attempt to allocate a scarce good on which claims have been made must consider whether the good is “lumpy” or not, such that dividing the good is an undesirable or impossible option.

Second, are there reasons for distributing the good a certain way that do not involve claims? Are there considerations of the public interest, for example, that might compete with the justice-based considerations that are associated with rights and claims? Consider, for example, a military officer who must send one member of his unit to perform an extremely dangerous mission. All of the unit members may have very good reasons to avoid this mission, which has a very high chance of killing whoever undertakes it. All of the members, in other words, have claims on the “good” of staying home. But there might be one member possessing skills that increase his chance of successfully completing the mission, even if those skills do not increase his chance of living to tell the tale. In that case, considerations of fairness or justice might count against sending this soldier, but the common good might dictate overriding these considerations. Sometimes, respecting rights may carry too high a cost.

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11 Still, it is questionable that money is the sort of good on which people can have claims that the polity is obliged to satisfy.

12 The example comes from Broome (1990-1991).
Assume, then, that a polity must distribute a scarce good, and that there does not exist enough good to satisfy all existing claims. Assume further that the good is lumpy, such that it cannot be divided amongst claimants, and that no other considerations (such as the public interest) compete with claims as sources of reasons for distributing the good. Then justice demands that the good be awarded to those with the strongest claims to the good, followed by those with the next-strongest claims, and so on. If at any point 1) there is a group of claimants with equally strong claims to the good, 2) nobody with stronger unsatisfied claims, and 3) fewer remaining units of the good than there are members of this group, then justice demands that a fair lottery be used to decide which members of this group are to receive the good.

To apply this logic in the case of sortition, several conditions must hold. For one thing, it must be the case that political office counts as some sort of good. Here the comparison of sortition with voting becomes important. Voting treats public office as a good to which agents can have radically disparate claims—unlike the right to vote, to which all citizens presumably have equal claims. Indeed, the entire point of holding elections is to ensure a measure of political competition. Candidates compete for office on the basis of their ability to attract votes, and that ability in turn generates a reason for selecting one candidate over another. Sortition, however, presupposes that all citizens have equal claims to political office. This equality of claims need not be grounded in any assumption of equal competence; not even the most ardent democrats endorse such a claim. Rather, it can be grounded in some

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13 I assume there are good reasons for not producing more of the good. Perhaps the good is impossible to produce in larger amounts. Perhaps it would be contrary to the public interest to sacrifice too many social resources for the sake of supplying this one good. Or perhaps there exists another good upon which people have claims, and producing more of the first good would impede or limit production of the second good.

14 I refer to this elsewhere as the *Just Lottery Rule* (Stone 2011).

15 Of course, individual voters might have very different reasons for voting for a particular candidate. See Manin (1997) on the way that elections allow each voter to decide the appropriate yardstick for judging candidates.

16 Of course, one common complaint about elections is that the qualities necessary to run successful political campaigns correlate loosely with the qualities necessary to carry out the duties of political office. Indeed, the correlation may well become looser the higher the stakes of the election. The more victory depends upon money, for example, the less reason for believing that the best candidate will win. Space precludes a more thorough examination of this point here.
recognition that all citizens with a certain level of competence at officeholding should be considered equal partners in the process of political decision-making.¹⁷

In this regard, a sortition-based system seems to treat the right to hold office in a manner analogous to the way that a voting-based system treats the right to vote. In both cases, citizens enjoy, virtually without exception, a right on an equal basis. Indeed, it would not be too strong to say that voting-based systems have two types of political office, one occupied simultaneously by all citizens and another held by only a select view. The latter class includes all of the offices filled via voting, while the former is all about the office of voter, or citizen. This position is not a popular one in modern times. Many democrats feel uncomfortable talking about the duties of voters; such talk carries with it the suggestion that citizens may well fail at their duties by electing the “wrong” candidates. But there are three responses to this discomfort. First, there are many cases in which it makes perfect sense to speak of voters failing in their duties as citizens. Voters, for example, who elect legislators based solely on the basis of those candidates to deliver “pork” home to their districts are displaying a clear lack of concern for the broader public interest.¹⁸ Second, accepting this fact need not be anti-democratic. It in no way follows from the fact that voters can be irresponsible that a non-democratic alternative would work better. As I stressed before, judgments about political institutions must always be made comparatively. And third, if citizenship, and the right to vote that accompanies it, is not connected to obligations, it can prove very hard to say just why the right to vote should be so important in the first place.

¹⁷ Ancient Athens, on some account, had such an understanding of citizen equality (Mulgan 1984).
¹⁸ Indeed, one of the reasons why democracy has struggled to entrench itself in much of the world (e.g., in sub-Saharan Africa) is that political parties all-too-easily become vehicles whereby a dominant ethnic group or tribe uses the state to enrich itself at the expense of everyone else. Stabilizing democracy seems to require “lowering the stakes” of politics, such that losing an election does not mean the end of all benefits for a party and its followers. See North, Weingast, and Wallis (2012).
The democratic practice\textsuperscript{19} of sortition thus rests upon a foundation that is, in many respects, similar to the foundation upon which the right to vote rests. Both involve a very similar sort of democratic equality. This democratic equality grants all citizens meeting certain minimal criteria of competence and judgment equal claims to political office. But there is a key difference between sortition and the right to vote. The latter right can be enjoyed equally by all citizens. By contrast, the very decision to employ sortition rests upon a prior decision limiting the number of people who shall hold a particular public office. In other words, the office of citizen can be held by all people, but the office of (say) randomly-selected legislator can only be held by a few (just as with elected legislators). This difference rests upon a judgment that there shall only be a few legislators, but there can be an unlimited number of voters.\textsuperscript{20} In principle, this judgment can be reversed. In a direct democracy, for example, the entire citizenry acts as one big legislature. One can also imagine an “enfranchisement lottery,” in which only a small subset of the population gets to exercise the right to vote (López-Guerra 2011).\textsuperscript{21}

Sortition and the right to vote are therefore similar in that both rest on a similar conception of democratic equality. According to this conception, there exists a good (a form of political office) to which all citizens enjoy equally strong claims. This holds despite the (obvious) fact that all citizens do not enjoy equal levels of competence, intelligence, education, etc. Sortition and the right to vote differ in that the former practice makes available a limited amount of the good in question, whereas the latter makes available as

\textsuperscript{19} Obviously, neither sortition nor voting must be used in a democratic fashion. The right to vote can be restricted to a small aristocracy. The right to be included in the pool from which randomly-selected candidates are drawn can be similarly restricted.

\textsuperscript{20} The right to vote is thus awarded using an admission procedure, whereas the right to hold randomly-selected office is awarded using a selection procedure. On the distinction between admission and selection, see Hofstee (1990).

\textsuperscript{21} Lottery voting, otherwise known as the “random dictator” rule, may be viewed as an extreme form of enfranchisement lottery (Gibbard 1977; Amar 1984; Saunders 2010).
much of the good as is necessary. The question, then, becomes how this difference can or should be justified. This will be the next task of this paper.

In principle, one could imagine a democracy of the form described by Rousseau in the Social Contract, one in which all citizens not only make, but also implement, the laws of the state. It was this sort of democracy Rousseau had in mind when he wrote, “If there were a nation of gods, it would govern itself democratically. A government so perfect is not suited for men” (Rousseau 1968, 114). One can question just how perfect such a government would be, but few would defend such a system in any case, even for very small direct democracies. And in a polity of any size, there are few offices that one can imagine all citizens exercising directly apart from the office of voter. The question, though, is why. Why should all citizens not enjoy the good of political office? There are two possible answers to this question worth considering. These answers are not mutually exclusive, but it is only through evaluating them that one can understand what other commitments, besides a certain conception of democratic equality, a polity employing sortition might embrace.

Recall that justice demands the distribution of a good by lot under certain circumstances. These circumstances include the existence of a number of units of the good as well as a larger number of agents with equally strong claims to that good. But there are two other conditions that must be satisfied before distribution of the good by lot can be justified. First, the good must not be readily divisible; otherwise, the good should be divided so as to ensure every claimant an equal share. Second, there must be no significant social ends or values competing with considerations of distributive justice; otherwise, it might prove necessary to distribute the good in a way that sacrifices some measure of justice for the sake of one or more such ends, such as the general welfare. Both considerations seem, at first blush, relevant to the case of sortition. Applying them, however, may not be as straightforward as it appears at first glance.
The first consideration is sometimes easy to apply. There exist goods that are “purely lumpy,” such that any effort to divide them beyond a certain point completely obliterates their value. A kidney transplant provides a paradigmatic example of such a good. But other goods might not be so easy to classify. One can imagine a drug or other medical treatment (such as haemodialysis) that can perfectly treat a disease in proper doses, but provide limited but still meaningful assistance in smaller doses. If two people have equal claims to such a drug, but only a single dose of it can be obtained, should the two split the drug or employ a lottery to decide who gets the whole thing? The intuitive answer, I suggest, is that a lottery is an inferior option provided that a little, but not much, of the value associated with the good (in terms of its ability to satisfy claims) is lost during the division. Measuring the size of that loss, however, may prove impossible.

All of this is perfectly applicable to the case of sortition. If random allocation of a small number of political offices is defensible, it must prove superior to the equal allocation of a larger number of political offices. The latter could be obtained through either dividing up the responsibilities of existing offices, or by shortening the term length associated with each office, or through simple duplication. Why have 100 legislators when you can have 1000? But these solutions can have the effect of reducing the value of the good in question. Even simple duplication can do this; the more legislators there are, the less the value of being a legislator. This is because, among other things, political office provides the opportunity to influence the political process. This opportunity must surely constitute one of the primary reasons to value this good. But the more people there are working in a particular part of the political process, the less influence any one of them can have. This is why so many people fail to vote, or to obtain serious information about the candidates in elections in which they

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22 Should the terms of an office be shortened to the point that every citizen can reasonably expect to take her turn holding it, then random selection has effectively been supplanted by rotation. Rotation and random selection are often conflated, but they work in very different ways, even though they can complement each other under the right circumstances. See Stone (2011) on this point.
do vote. Indeed, in a large democracy, it is almost easier to explain why some people do not vote than to explain why some people do (Downs 1957).

This suggests that, to the extent that sortition is meant to allocate a valued good among citizens, in accordance with a conception of democratic equality, there is a tradeoff between making larger numbers of less-valued units available and making smaller numbers of more-valued units available. Arguably, past a point in either direction the tradeoff becomes trivial; fifteen minutes as a legislator is worth much less than Andy Warhol’s fifteen minutes of fame, and one surely need not the sole lawmaker of a nation to derive the full measure of benefits that serving in a legislature provides. But between these two extremes, there will surely be a large space within which the tradeoff is simply indeterminate.

A similar indeterminacy is raised by the second consideration. There are obviously other values at stake in the distribution of political office aside from democratic equality. The political process, after all, does not exist for the sake of giving out offices; it exists in order to make and execute various kinds of political decisions. And so the design of that process must take into account the need to ensure that those decisions are made tolerably well, if not better. The design of that process, in turn, will require deciding both how the political decision-making process is to be divided up amongst various roles and how those roles are to be filled. And so the quality of decision-making will inevitably prove a crucial value involved in democratic institutional design.

But how should that design be carried out? A pure “epistocrat” would have both of those decisions made with an eye to ensuring the most rational political decision-making possible, i.e., political decision-making where the quality of decisions reached justifies the costs incurred while reaching them. Democratic equality in any form places constraints upon any such optimization process, at least at the second stage—the state involving the filling of political roles. (It is less clear that democratic equality constrains the first stage in any
meaningful way.) Electoral processes constrain such optimization by requiring that important offices be open to citizens under some form of equality of opportunity. (At a minimum, citizens cannot be barred from seeking office should they meet the criteria required to stand for election.) The conception of democratic equality underlying the practice of sortition places more demanding constraints upon the design of those institutions. At the limit, it eliminates the second stage of the optimization process; once an office is to be filled by sortition, all further scrutiny of candidates stops, and random selection takes its course.

And so if a certain conception of democratic equality indicates that all citizens have equal claims to serve in a particular office, then either all citizens should get the chance to fill it, or (if this cannot be done) a lottery should be used to fill it. But as noted before, a decision to employ a lottery under such circumstances only makes sense if the office is indeed in short supply. Why not extend the supply indefinitely? We have already seen one reason for not doing this—concern that dividing the good of political office will dilute its value. Considerations of decision-making quality provide a second reason against going the simple direct democracy route. To involve too many people in the making or implementing of a political decision will obviously impede the quality the decision itself. And so considerations of the public welfare place constraints upon the ability to expand the range of opportunities for public service.

Of course, this means that once again there is a tradeoff, but this time between considerations of justice (which, under the conception of democratic equality at stake here, dictate moves in the direction of direct democracy in an extreme form) and broader considerations of public welfare. To be sure, some sacrifices of the latter are reasonably in order to obtain some measure of the former. If this were not the case, the “epistocratic” solution would be the correct one, and one should simply select officials so as to maximize the quality of political decision-making. But there are limits to the kinds of sacrifices of
justice that could be justified in the name of the public interest, and there is no neat rule dictating just where those limits lie.

One further point on this subject is worth making. As I noted before, the design of political institutions requires both the creation of a set of roles and a process for assigning citizens to those roles. The tradeoff between justice and the public interest considered here concerns the second stage of this design process. But considerations of democratic equality could conceivably inform the first stage of the process as well. It is less clear, however, precisely how it would do this. Without some such specification of the demands of democratic equality in that area, it is hard to see why the “epistocratic” solution should not be the correct one at the earlier stage.

This paper has contrasted the conceptions of democratic equality underlying the practices of sortition and voting. In particular, it has tried to unpack the theoretical presuppositions that must underlie any judgment that random selection is an appropriate democratic method for distributing certain types of political office. I say “democratic” because there may be many possible justifications for employing sortition, but any justification resting upon a conception of democratic equality will, I suggest, have something like the structure suggested here underlying it. I would conclude by noting that the conceptions of democratic equality underlying voting and sortition are not meant as polar opposites. I do not suggest that a system should use only voting or only sortition. That would be contrary to the observation with which I started this paper—that the choice between voting and sortition requires careful assessment of their respective merits in a given context, and different contexts may yield different judgments as to the right institutional mechanism. But a more general democratic theory, if it is to offer any useful guidance on institutional design, will have to make plain just why different conceptions of democratic equality might be appropriate at different times, and how they fit together into a single coherent story.
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