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Who Acts? Community through Chance

Jonas LH Kunz
Bard College, jk9956@bard.edu

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WHO ACTS?

Community through Chance

Senior Project submitted to
The Division of Social Studies
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By

Jonas Kunz

Annandale-on-Hudson, New York

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My Mother

My Father

Abstract

In this paper I will argue that sortition - choosing representatives by chance - could be a way of conciliating the disenchanted democratic citizens with their government. Current democracies suffer under what has been termed the democratic fatigue syndrome. Low voter turnouts, decreasing citizen participation, high rates of distrust and a subsequent rise of nationalist movements. But underlying this fatigue seems to be a general systematic problem, which Robert J. Pranger, Hannah Arendt and Max Weber identify as the politics of interests. These politics rely on competition, coalitions and assertive creativity, - en grow - they rely on power and power play.

These politics of interests are closely related with the method of choosing representatives via elections. Elections congeal diversity of political interests and opinion into one campaign theme. Throughout the development of the republican tradition elections became a more popular mode of finding representatives, largely due to the rational hierarchy inherent in elections. This natural hierarchy also assumes a natural distinction between politician and voter and has in the long run caused the current problem of interest based politics and a disenchanted citizenry.

In the American context, the founding fathers did not envision a purely interest based polity. Rather the polity should be full of liberty, balancing private ambition with toleration and thereby creating community. Because, however, the federal government has increasingly become subject to elected officials, interests have obscured the public good of toleration. Today, the factious tendencies of the federal government seem stronger than ever, creating vicious groups of membership with us against them mindsets. The original idea of union in the American community has fallen silent.

Sortition, qua its characters of freedom and equality and its necessary plurality could work to recreate such community. I will attempt to relate sortition to Robert J. Pranger's ideas of liberty and Hannah Arendt's conception of the founding moment of the US Constitution.

Preface

With the publication of his book, *Against Elections - The Case for Democracy*, David Van Reybrouck, speaks to a certain aspect of traditional republican thinking that had been lost over the years, namely, the fact that elections are not the only method to delegate representatives. There is, in fact, another method to select state officials, which was celebrated in early republics. This method was appointment by lot. The process of which, we will call “sortition.”¹

In Ancient Athens, Ancient Rome, and in a number of medieval and Renaissance city states, some, or a significant amount, of the political administration was delegated to representatives chosen by lot. What might seem today like a strange way of choosing representatives appears to have been perfectly normal—at least in Ancient Athens during the Age of Demosthenes. Through sortition the average citizen was usually more involved in a deliberative fashion, since lot discriminatory than the method of election.

Exploring the use of lot in the political context has been a very surprising journey to me. Initially, I was under the impression that only a small circle of academics had given any thought to the use of lot in Ancient Greece. I have since learned that political scientists, like Bernard Manin, have minutely drawn out its history up to the present day;² that popular authors, like Reybrouck, have sold books on the topic outside academic circles; that academics and activists, like James Fishkin, have implemented deliberative, randomly chosen, citizen bodies;³ that institutions, like the European Union,

¹ David Van Reybrouck and Liz Waters, *Against Elections: The Case for Democracy* (London: Bodley Head, 2016), 15.

² Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge UP, 1997).

³ James S. Fishkin, *When the People Speak: Deliberative Democracy and Public Consultation* (Oxford [u.a.]: Oxford Univ. Press, 2011).

have made use of sortition in policy questions;⁴ and that countries like Canada have brought citizens and politicians together, who were randomly chosen, to work on a constitutional amendment.⁵

What I thought to be a niche intuition that I had gotten from my good friend, Luke Harrington, has turned out to be a serious political question today. Strange, neither he nor I had encountered it earlier in our respective studies of history and political science. Or maybe not strange, but rather indicative of the unorthodox approach of sortition: to choose representatives by lot, to choose representatives randomly, right out of the population.

Indeed, to choose representatives randomly seems counterintuitive to the political processes we are accustomed to. We see a politician, as “a person who is professionally involved in politics, especially as a holder of an elected office.”⁶ We may very well not want a body of randomly chosen citizen to make decisions on our behalf; we believe that would be unjustified. We cannot consent to the rule of someone who has been chosen at random in the same way as we consent to the power of politicians we elect. Furthermore, may we think that politicians in fact need to be professionals that deal with highly complicated policy questions on a daily basis. They are educated and talented in a way that the ordinary citizen is not, which is precisely the reason why they are distinguished and precisely the reason we vote for them.

This distinction Bernard Manin terms the *principle of distinction*.⁷ A principle inherent in the elective method that makes us choose a representative that is distinguished from us. The distinction between us and the person we chose to give our vote to depends very much on our act of choice. Whom do we deem worthy of our vote. We are free to choose whichever candidate we deem best, and

⁴ last modified September 18, 2012, accessed December 9, 2017, <http://www.europarl.europa.eu/document/activities/cont/201210/20121011ATT53444/20121011ATT53444EN.pdf>.

⁵ accessed December 8, 2017, <http://www.ppforum.ca/publications/deliberative-polling@-canada>.

⁶ accessed December 8, 2017, <https://en.oxforddictionaries.com/definition/politician>.

⁷ Manin, *The Principles*.

that is the politically our freedom. Sortition, however, does not allow us any such freedom of choice. We don't get to vote and we don't get to choose. Instead, sortition is based entirely on chance.

Why then, did the people of Ancient Athens use sortition? Or why has the idea of using sortition found recent revival? And of course also: why has the concept of sortition lost to the concept of elections over time?

The reason why the Ancients used sortition and the reason why it has resurfaced recently, is because it offers a different approach to representative democracy, than elections. In terms of specific policy questions, sortition has, somehow, allowed for a closer relationship between the policy question and the citizenry.

One interesting example in which a randomly selected body of citizens was convened was the Irish constitutional debate around gay rights. The Irish Constitutional Convention (ICC), born out of the economic crisis of 2008-09, comprised 100 members of which two-thirds were randomly⁸ chosen citizens. The other third were politicians.⁹ Together, they deliberated on the question whether gay rights should be amended into the constitution of Ireland. To answer this question the deliberative body was supplied with information. First, by hearing different "expert" opinions; second, by discussing those. As the Washington Post wrote: "Constitutional lawyers and child psychologists, who had provided briefing documents in advance, made brief presentations..." But not only „elites“ supplied information but also advocates were given a chance to present their opinion, "including a Catholic bishop, adult children of same-sex couples and a gay opponent of marriage equality."¹⁰ The ICC also considered a significant amount of questions presented via social media. "After a weekend of deliberation and debate, the members voted on the matter in secret, as was the ICC practice. A full 79 percent voted in favor of

⁸ Demographically fair representation was applied.

⁹ See *The Irish vote for marriage equality started at a constitutional convention*, David Farrell, Clodagh Harris and Jane Suiter, The Washington Post, June 5, 2015. (It should be noted that all three authors of this article were members of the academic and legal team that supported the work of the ICC, as indicated on the bottom of the article.)

¹⁰ Ibid.

recommending that marriage equality be put on the ballot.”¹¹ In late May 2015, Ireland introduced marriage equality into its constitution. Many interest groups claimed credit for that success, however, as the Washington Post wrote: “deliberation produced a real-world constitutional change, the first time that that has happened – showing this method really can matter.”¹²

What characterizes a deliberative body is that its members are chosen out of a specific population, for a specific task, for a specific time. The body is usually comprised of 200 to 400 people that are a “representative sample” of the population.¹³ The people chosen are asked to deliberate on a certain topic. Participants will receive balanced information in the form of written material and “expert presentations,” as it was done in Ireland. Ireland also shows that if the topic is of concern to the broader population, then some part of the deliberative process is often televised. Televising gives the population the opportunity to participate in the process by questioning and observing.

James S. Fishkin from the University of Stanford is the proponent and maybe the founder of the idea he trademarked, “deliberative polling.” He started the method of deliberative polling in the presidential elections of 1988, suggesting in an article in the *Atlantic* that a random body of citizens would better reflect what the general population thought about the different Democratic and Republican electoral candidates than conventional polling data. Instead of just obtaining individual opinions on each candidate with traditional polls, the new process enabled Fishkin to observe *how* public opinion manifests. As quoted by Reybrouck, Fishkin wrote: “These [traditional] polls model what the public is thinking when it is not thinking... A deliberative poll models what the public would think if it had a better chance to think about issues.”¹⁴ Fishkin proposed convening a random body of citizens to

¹¹ Ibid.

¹² Ibid.

¹³ Proponents of the idea, as well as specific events vary to the freedom of randomness often trying to account fairly for race, gender, geography and socio-economic variables in the representative samples. There are however also samples that are based on voluntary participation like in Ancient Athens.

¹⁴ Reybrouck and Waters, *Against Elections*, 108.

deliberate on each and every potential nominee. Such deliberation would subsequently be broadcast and the opinions be recorded.

Fishkin did not manage to create a deliberative poll in 1988, he did, however, in 1996, in Austin Texas, which was broadcast by PBS.¹⁵ The results were “striking” as Reybrouck writes: “The consultation process had made the citizens significantly more competent and more sophisticated in their political judgments as they had learned to adjust their opinion and had become more aware of the complexity of political decision-making.”¹⁶ Until today deliberative polls have been used in more than 24 countries, often dealing with controversial issues that have stalled in the ordinary political processes.¹⁷

In 2012, Lawrence Lessing and Roy L. Furman proposed that the Senate Judiciary Committee use a deliberative body on the topic of “Taking Back Our Democracy: Responding To Citizen United And The Rise of Super PACs.” The deliberative body would “produce a mature and stable view about the issues presented,” and “face the extraordinary lack of confidence that Americans have in their government.”¹⁸

In 2010, a deliberative poll was held in Michigan with 300 randomly chosen citizens, representative of Michigan’s demography, who deliberated on questions of unemployment, education and taxation.¹⁹ After deliberation, 45% voted for an increase in income tax, up from 27% percent prior to deliberation.²⁰ The preference to decrease business tax went from 40% to 67%, and the “making

¹⁵ Ibid.

¹⁶ Ibid., 111.

¹⁷ Ibid.

¹⁸ A Proposal to Convene a series of „Citizen Conventions“ for proposing amendments to the constitution, July 24, 2012, pp. 198-201.

¹⁹ Stanford, CDD. "Final Report: By the People - Hard Times, Hard Choices - Michigan Residents Deliberate." *CDD*. Center for Deliberative Democracy Stanford, 01 Jan. 2010. Web. 28 Apr. 2017.

²⁰ Ibid, p. 6

Michigan a greener economy” proposal from 55% to 67% approval rating.²¹ The factual based knowledge index overall increased 7.7%.²² This last increase by 7.7% is interesting. It shows that that actual knowledge barely increased, while all other data significantly shifted.²³ This may suggest that it is not so much the increase in information that causes people to change their mind, but rather the chance to deliberate itself.

Deliberative polls seem to have an educative effect on those participating. These polls allow for the creation of a space to think. At a time when the people have very little trust in their politicians, Deliberative Polls may prove effective in reinstating confidence in the political process and effective in bring people and politicians together.

This lack of confidence that, not only, Americans, but also many citizens of other western governments experience, is the reason Reybrouck cites for the resurfacing of lot, and the idea of deliberative democracy. What Laskin et al. called a lack of confidence; Reybrouck calls “the Democratic Fatigue syndrome.”²⁴ The idea, or rather the observation, is that the people find themselves increasingly alienated from their politicians. This is shown in decreasing voter turnouts, decreasing citizen participation, high rates of distrust, and a subsequent rise of nationalist movements.²⁵ Or as Reybrouck wrote:

...anyone who puts together low voter turnout, high voter turnover, declining party membership, governmental impotence, political paralysis, electoral fear of failure, lack of recruitment, compulsive self-promotion, chronic electoral fever, exhausting media stress, distrust, indifference and other persistent paroxysms sees the outlines of a syndrome

²¹ Ibid, p. 10

²² Ibid, p. 13

²³ As much as questions in a General Knowledge Index can do so.

²⁴ Reybrouck and Waters, *Against Elections*, 16

²⁵ The New York Times. "Europe's Rising Far Right: A Guide To The Most Prominent Parties". *Nytimes.com*. N.p., 2017. Web. 28 Apr. 2017.

emerging. Democratic Fatigue Syndrome is a disorder that has not yet been fully described but from which countless Western societies are nonetheless unmistakably suffering.²⁶

Based on the factors that Reybrouck lists, and as the meaning of fatigue suggests, the people have started to “opt out” of the political process. This lack of participation has led to distrust and a lack of confidence. Or, as Josine Blok wrote: “A major cause for the observed decline in commitment and trust, as many political analysts agree, is a lack of citizens’ active participation.”²⁷ She goes on to say: “According to one school of thought, however, this absence is not a failure of the system or a historical coincidence, but the corollary of the principle of representation underlying modern democracies (that is since the late eighteenth century).”²⁸ She explains that “in such a political system, citizens transfer their individual share in sovereignty to their representatives by the act of voting, and the resulting distance between representatives (who act) and represented (who vote) is an intentional, necessary feature of the system.”²⁹ The voting system has the effect of outsourcing the ability to act from the voter to the representative. The voter, then alienated from the ability to act politically, will feel alienated from the political process itself. The principle of distinction, therefore, not only has the effect of distinguishing between those that vote and those that are voted for, but also distinguishes between those that act and those that do not act. Today, one might say that this distinction disenchant the general citizen with the political process. In an inverted sense, we might be compelled to say that over time elections have shown their most deeply rooted characteristic: the principle of distinction³⁰ between elected and electors.

²⁶ Reybrouck and Waters, *Against Elections*, 16.

²⁷ Josine Blok, "Participatory Governance - the Case for Allotment," *etnofoor* 26, no. 2 (2014): 74.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ I take this wording from Bernard Manin who uses this characteristic – the principle of distinction – to explain the underlying principle of the method of elections and how it came about historically. “Another inegalitarian characteristic of representative government, however, was deliberately introduced after extensive discussion, namely that the representatives be socially superior to those who elect them.” Manin, *The Principles*, 94.

A proposed remedy to this alienation may be the method of lot, which does not make use of the principle of distinction. Today, a striking number of countries have a platform for deliberative democracy. Many of them have used it for a directly related government function, such as finding consensus regarding an amendment to the constitution.³¹ But the movement has gone even further, from simply advocating certain policies, to the suggestion by Terril G. Bouricius to replace the current legislative branch of the US government with six different bodies, all chosen by lot.³²

In the subsequent chapter, I compare the method of lot and the method of election. The case *par excellence* for the method of lot is classical Athens. After exploring how lot worked in Ancient Athens I follow its historical discussion in writings by Aristotle, Montesquieu, Rousseau, the Federalists, and the Anti-Federalists. These writings illustrate that the method of lot increasingly loses to the method of elections.

Rather than focusing on the results lot causes in deliberative bodies, I want to focus on the qualities it brings out in the citizen. I am thus not so much looking for outcome of better informed decisions, but the ability to make decisions itself. I will not deal in this paper with the question of how deliberative bodies were given information and what they were presented with, or whether the deliberative process is manipulative or informative, or both. Instead I will focus on the qualities associated with the politics of elections and sortition. Or, in other words, instead of focusing on recent works in political science, like discussing Bouricius' design mentioned above, I focus on the history of theory regarding the respective methods of lot and election for why the method of elections was preferred to the method of lot.

³¹ See the following articles:

McDonald, Henry. "Ireland becomes first country to legalise gay marriage by popular vote." *The Observer*. Guardian News and Media, 23 May 2015. Web. 30 Apr. 2017.

Landmore, Hélène. "Iceland Tried to Crowdfund a New Constitution. It Didn't Work." *Slate Magazine*. Slate, 31 July 2014. Web. 30 Apr. 2017.

³² Bouricius, Terril G. (2013) „Democracy Through Multi-Body Sortition: Athenian Lessons for the Modern Day,“ *Journal of Public Deliberation*: Vol. 9, Iss. 1, Article 11.

I will argue that the increasing preference for election as opposed to lot amplifies the principle of distinction between those that govern and those that are governed. The distinction between those that govern and those that are governed derives, not, out of a necessity to allocate certain administrative posts, but out of the elective method itself. This implies that political freedom to act is only given to those that are distinguished. Lot, on the contrary, makes no use of the principle of distinction, still, in modern republics there are only a certain number of political positions available. Hannah Arendt will take this problem up, however, not with reference to sortition. It will therefore be worthwhile to try sortition in Arendt's politics writings and see whether it would, as she accused elections, corrupt political freedom.

I will argue that sortition does not disenchant the citizen from those that govern, but rather educates both on matters of the citizen as well as on matters of the public. Sortition has the effect of bringing the unexpected, individual knowledge base of the individual citizen to the public. This certainly begs the question what we expect from the individual citizen that has been drawn at random. Nothing but their opinion. Drawing on Arendt, the bodies of government where political opinion is produced, are those where lot should be applied.

In short, I hope that, however strange we might find the method of lot, we will also understand why the people of Ancient Athens thought its use worthwhile. And that that there may be reasons to consider institutionalizing popular government within the checks and balances of a federal republic, even if doing so only adds one more source of power to the political landscape; following Montesquieu's insight that the more sources of power a government has, the freer will be its citizens.

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Introduction

The modern nation state suffers under democratic fatigue. Characteristic of this fatigue is decreasing citizen participation, low voter turnouts and increasing frustration with the elected representatives and politics in general. People are reluctant to participate in elections, especially on a local level, and on a federal level do not think their votes count as much, which, in the case of United States, is not untrue, if one lives in a predominantly blue or red state. As has been shown in the preface, this political fatigue may be caused by a distinction between those that can act politically and those that cannot not. In representative democracies it are usually the representatives that act politically and the represented that do not, or only do so on election day.

Looking at the American political landscape there may be, however, another symptom at work, beside political fatigue. In fact, following the bi-partisan divide, neither side seems especially fatigued. Rather the struggle of these factions appears to be stronger and ever more demanding. Those that are politically active, seem to be more active then ever, handing out petitions, creating clear distinctions of membership, repeating their political views and interests on any and every occasion. Shootings become a place for the anti-gun lobby, crime a place for those that “support guns,” “our troops” are supported by either side. Social media is full of little two minute commercials on what views to hold on what and the political Op-Ed usually more in search of increasing membership to the authors political siding, than the expression of a puzzled, or unique personal opinion.

On the one hand, political science indicates a decline in citizen participation in politics overall. On the other hand, those that are active in politics, let them be citizens or politicians, seem more engaged then ever. This engagement, however follows clear lines of us vs. them, an antagonism that may have caused the less passionate to fatigue.

On face value it seems that only those that have a clear political interest, nowadays, are participating in politics and that these participants are adamant about their interest. But if it is only those that have a clear political interest that are politically active, that means in turn, that *all* politics, nowadays, seem to be based on interests.

The focus on political interests makes sense considering how in a representative democracy interest become political via elections. In order to win an election one needs votes. Any political interest, or any person with a political interest, therefore is in need of persuading others of the importance of this interest. Only if a majority of people support this interest, their representative will come into power, that is office. That means, that politically interests become stronger, the more people support them, or, to turn the phrase around, the more aggregate the political interest the stronger its power, which is why those people, that are active in politics, are so eager to expand membership to their cause.

The elective system demands that interests exist in a aggregate state. Aggregation means that these interests need to be homogenized to speak to as many people at once without speaking to them less then the opposing narrative of the opposition party. What is of political interest for some locality, also needs to be made politically interesting for another locality, so as to summon their votes. The need for a broad narrative to reach a broad spectrum of voters stands in contradiction to the specific political experience of the individual voter. To reach resonance in the political experience of most will lower the chances of reaching full resonance with any. Therefore the speech involved in politics of interests is usually not one of individual experience or diversity, but one of homogeneity and power-play.

Political speeches serve to reify allegiance by relying on predetermined symbols the members know by heart, while at the same time repeating membership by scapegoating those that are of the other team. There is no community of all. There are those that are politically active and those that are not active. And even those that are active shut themselves of into competitive and aggressive interest

groups. Such competitive mentality may be another reason why some have fatigued of the representative democratic process. The projection of difference in this competition is constructed through narratives of morality, through the rhetoric of winning and loosing, through strategy and allegiance of minority parties against other minority or majority parties. The minority is loosing to the interest of the majority, forcing everyone to live under that interest. In turn minority parties form allegiances to achieve majority, thereby dealing away with the locality of their interests so as to increase membership, which may, in the extreme, cause citizens even to vote against their own interest. Even worse it can cause them to vote against their own interests but falsify the effect of voting by replacing interests of different localities, allowing citizens to choose along the lines of policy that will not affect them.

But voting for someone who fights for one's interest, or voting for a party who's political vision one finds interesting is the way in which representative democracy operates. The citizens make their views known through voting, and the voting system homogenizes their views into aggregate, preferably majority positions. This is a dilemma because it has split the citizenry between those that are animated by the system of interests and those that are fatigued by it. It has split the in a sense the community that is supposed to be made of the people of the nation. Or, in other words, the elective system seems to speak to only those with clear political interests within party politics, and in turn gives them a voice, but those that have a more diverse political experience outside of this elective system are left out of the politics en gross.

One may respond that being left out by this system is their own fault, politics is about power, and all they have to do is organize to make themselves heard. But organizing to make themselves heard would immediately recreate the structure of elective politics and again silence the individual voice. The dilemma therefore seems to lie within the system of elections, which only gives voice to interests not

community. Which begs the question whether there is any other way of choosing representatives in the republican tradition, that could “represent” those that are left out by elections?

Sortition would be another way of choosing representatives that would give voice to the diverse and individual experience of the citizen. Sortition is the method of choosing representatives by lot, that is by chance. Not relying on the hierarchical structure of elections, sortition has no need to homogenize the individual political experience into an aggregate state of political interest. Rather, it allows the temporary elevation of the individual to a public persona, so as to allow this individual to try themselves as political being *and* so that the public may hear diverse and personal experiences of the citizens chosen and thereby experience community. Or, in other words: Introducing sortition besides elections would diversify political opinion and complicate the competition of political interests and in turn create something like tolerance for the diversity of the members of the American community.

Ancient Athens is the case par excellence to understand how sortition worked in an political environment.

While modern American government relies heavily on elections, the Athenian approach relied on a process of sortition. Randomly selected citizens would serve in a given public office, in an effort to represent the cities population on administrative or juristic tasks. Random selection was not influenced by skill, party alliance, public promise, or the consent of the voter. Instead, the only prerequisite was to be part of the community of citizens. And the selection for office was truly based on chance, which speaks to the trust the Athenians had in this community. Being chosen by chance allowed for the temporary elevation of the individual to a public persona, but the individual still was part of the community. From the perspective of a modern reader one may ask: How could this system operate? And how can this process of sortition be considered democratic?

The historical development of democracy in Ancient Athens complicates how sortition was considered democratic. Sortition was a way of allocating individuals to offices within a specific political institution— but it was the power of this institutional body that made sortition politically significant. Since the relationships between political bodies changed frequently, the power of sortition within the democracy did as well. Therefore it is in order to look at sortition in the time frame after the development of democracy.

In order to locate the beginning of democracy it is necessary to define what democracy is. One definition, following Josia Ober, is “demokratia is the celebration by the demos of a way of life centered on the freedom of the citizen and political equality.”³³ Ober understands democracy as deriving, not sufficiently but at least substantially, from the identity of a citizen as “demos,” and the subsequent will of this demos to be a politically active entity.³⁴ According to Ober the way the demos participated

³³ Ober, "I Besieged," in Princeton/Stanford Working, 10

³⁴ *Ibid.*, 6

politically was characterized by freedom and equality, in the sense that the citizen was equal in his potential of influencing policy, and free in the sense of having the power to do so.³⁵³⁶

A unified demos was first experienced by the political elite in the events of 508/7 B.C. and thus marks, for Ober, the beginning of Democracy. Ober argues, that expelling the Spartan King with 300 Warriors, and his Athenian Allies, was the first time in Greek history that "demos" acted unified on the conception of itself being an Athenian political force.³⁷ "It", the demos, then nullified the expulsion via ostracism of Cleisthenes and his followers, who became, or maybe already was, the elite advocate for democracy.³⁸ Therefore democracy was born out of the sudden emancipation of the demos, acting politically (expelling the foreigners and their allies) and thus gaining *krate* (power).

Daniela Cammack takes up the two intriguing aspects of this narrative, namely the demos, as being referred to as a single entity, ("it" in English) and - responding to what puzzled Ober -the absence of a leader figure in the uprising of the demos in 508/7 B.C.³⁹ She explains that throughout Ancient Greek texts the demos is referred to as either a singular collective agent, an independent political agent, or partial agents.⁴⁰ Cammack thus wonders what "demos" meant, if "it" acted in singular verb forms, if "it" had political agency, or if "it" often excluded the elite. She concludes that demos signified a corporation, in the sense of signifying an *Assembly* of lower class citizens. Democracy then simply meant that the Assembly received power, that is, - the *demos* received *krate*.⁴¹

³⁵ since only free, male Athenian had political power in Ancient Athens the third person male singular is appropriate.

³⁶ Ober, "I Besieged," in Princeton/Stanford Working, 10

³⁷ Ibid., 6

³⁸ Ibid., 4.

³⁹ Daniela Cammack, "The Dêmos in Dêmokratia," *Classical Quarterly*, 3. & Ober, *Mass and Elite*, 19.

⁴⁰ Ibid., 4

⁴¹ Cammack, "The Dêmos," 6

Daniela Cammack agrees with Ober that the events of 508/7 marked the beginning of democracy, not because of a sudden emancipation of the lower class under a collective identity, but because of a shift in power towards the Assembly. She writes:

Cleisthenes, were are told, 'took the demos into his hetaireia' (perhaps best translated 'fraternity') and 'drew the demos to his side', thus gaining the advantage over his rival Isagoras (a Athenian ally of Sparta). ... I would alter Ober's wording. What Herodotus tells us is not that it was *in* the Assembly that Cleisthenes allied himself to the *demos*, but simply that Cleisthenes allied himself to the demos, i.e. to the Assembly - and thence, by extension, to the common people at large.⁴²

The birth of democracy, therefore, simply describes the political center of gravity shifting from a small Council of elites towards the larger crowd in the Assembly. This shift may presuppose a democratic identity, or an emancipation of the demos. But it was not the sudden creation of identity that brought about democracy, but rather the literal transfer of making a decision concerning the Spartan invasion not with the elites, but with the demos. With the demos becoming at once both the source of power and the crowd of peers, another wording for democracy may have been simply that the community gained power.⁴³

This singular moment which describes the beginning of democracy also defines it, but it does not necessarily explain its duration.⁴⁴ For democracy to continue the demos would have to be involved in almost all decisions of Greek politics. This could only be done if the principles of the Assembly, which later became the principles of democracy, extended to all other political offices. In other words, the principles of democracy, as the celebration of equality and freedom, had to continue also in the administration of the state and remain with the community, the demos. Only one way of allocating political offices allowed for these principles to continue, and that was sortition.

⁴² Ibid., 17

⁴³ Compare Ober, *Mass and Elite*, 35.

⁴⁴ Compare Ober, "I Besieged," in *Princeton/Stanford Working*, 11.

Sortition allowed for the principles of the assembly, equality and freedom, to extend into different “institutions” that had a share in the administration of Ancient Athens. As sortition is central to understanding democracy, it is important to ask who specifically had access to these institutions and in what manner political business within these institutions was administered.⁴⁵ Or, more simply put, who decided what, when was it decided, and where?

In his essay, *On the Election by Lot*, James Wycliff Headlam notes how “...a Greek had no doubt what he meant by a democracy; it was a city in which the people gathered together at a definite place in one large visible Assembly governed the state.”⁴⁶ Contrary to how we perceive democracy today, as abstract and removed, in ancient Greece it was a tangible experience. Ten times a year meetings in the *Ekklesia* took place, including some 4000 to 8000 citizens. Citizens met in a central space of a town, situated on top of a hill, widely visible from the city down below and open to all those who were eligible. Likewise, the exercise of power was an actual experience. “The demos to an Athenian was a concrete thing which he had often seen and heard: it was the ἐκκλησία.”⁴⁷ This wording may be a little confusing, because Ἐκκλησία simply signified the positive political aspect of the demos, that in itself described a mass meeting.⁴⁸ Ἐκκλησία translates to those summoned from, or called out of, „typically following a formal call-out (*ekkaleô*, ‘call out’ or ‘summon’).”⁴⁹ Today we translate Ἐκκλησία to “church,” which is telling, for it helps us to understand the social significance of the meeting. Like going to church, going to the *Ekklesia* was a community - and therefore a political event.

⁴⁵ Since these institutions developed over time I will limit my scope of inquiry to the time of Aristotle and his exact contemporary Demosthenes (384-322). In order to understand how these institutions worked I will follow both the wording used by contemporaries to describe the political processes and the relationships of the institutions towards each other. This approach allows for both nominal and historic arguments respectively.

⁴⁶ James Wycliffe Headlam, *Election by Lot in Athens*, prince consort dissertation, 1890 ed., Cambridge Historical Essays iv (London: Cambridge UP, 1891), 29.

⁴⁷ *Ibid.*, 29.

⁴⁸ Cammack, "The Dêmos," 6

⁴⁹ Mogens Herman Hansen, *The Athenian Democracy in the Age of Demosthenes: Structure, Principles, and Ideology* (Norman: U of Oklahoma P, 1999), 129.

Becoming a citizen and appearing in public at the Ekklesia was a political process that affirmed as much positively as negatively who belonged to the Athenian community. Each male person over the age of twenty could sit in the Assembly if they were registered in their respective districts (*demes*), had completed their introduction to the military, and did not have a record of any criminal activity. The districts were combined into ten tribes (*prytany*), and in each district a father would introduce their son to citizenship by asking their fellow citizens of that district to vote on whether they believed that their son was a true Athenian.⁵⁰ The initiation of becoming a citizen, therefore, was in Ancient Athens already a political moment that involved the judgment of neighbors. The trust that Athenians exercised through sortition, therefore, was not blind. It occurred after a communal initiation, one in which a small scale, electoral process took place.

The prerequisites for becoming an Athenian citizen changed over time. The overall tendency, however, was to base citizenship on ancestry and social standing. Women, slaves, those who had been convicted of a crime, and those who refused military service, were all excluded from becoming true citizens. At one point, both parents of a given candidate needed to be Athenian citizens, a prerequisite which sought to keep the merchant elites from overpopulating the public arena. Thus, as Ober suggests, the citizenry had a strong identity.

Within this political space, sortition was a way to extend the principles of the assembly, equality and freedom, into different parts of government. Athenians used voting to measure the popularity of policy proposals or judicial decisions, not to allocate representatives. It was common procedure in the Council, as well as in the General Assembly or the Courts, to vote as a simple way of reaching a commonly supported decision.⁵¹ The people making a decision, however, had been allocated randomly by the method of sortition. The device used to randomly select citizens was called *Kleroterion*. The *Kleroterion* was a machine built of stone and wood, in which different colored marbles would randomly

⁵⁰Ibid., 129. & Ober, *Mass and Elite*, 69.

⁵¹ Ober, *Mass and Elite*, 71.

fall on a given citizens token. In order to participate, citizens had to meet varying age requirements. Participation in this roulette was voluntary, or in the Greek, - *ho boulemous*, all those wishing. This process took place in the *Ekklesia*, a form of demos in itself (following Cammack's insight from above). To leave political power to those wishing and randomly chosen stands testament to the trust Athenians must have had in their community. Community was build through this trust, rather than the common process of choosing representatives through voting.

By the Age of Demosthenes, specifically between 384-22 B.C., the institutional landscape of Athenian political life consisted of four distinct bodies: the Popular Assembly (*ekklesia*), the Magistracies (*archai*), the Council (*boule*), and the Courts (*dikasteria*).⁵² Except for the popular Assembly, all other institutions used randomly selected representatives either exclusively or alongside the method of elections.⁵³ The council, the courts, and the magistrate were randomly selected from a volunteering population. Only a few magistracies were allocated by elections, mostly for positions that demanded high expertise.⁵⁴ While the Assembly and Courts relied on large crowds, the Council and Magistrates actively used sortition to reflect the community.⁵⁵

The General Assembly in *Ekklesia* decided on questions of policy, publicity, and public administration.⁵⁶ It also evaluated the performance of all those that had received a particular task by the community. Usually orators would present the policy in question and the assembled citizens would subsequently vote, so that "the demos" made his will known.⁵⁷ This process of listening and deciding was expressed by the word *bouleuomai* and it signified not merely "thinking" but also always "coming to a

⁵² Hansen, *The Athenian*, 230.

⁵³ *Ibid.*, 230 and 248.

⁵⁴ Hansen, *The Athenian*, 225-244.

⁵⁵ Compare Ober, "I Besieged," in *Princeton/Stanford Working*, 10.

⁵⁶ Ober, *Mass and Elite*, 132-138.

⁵⁷ Hansen, *The Athenian*, 125-150.

decision that was within the institutions or groups power.”⁵⁸ It did not mean deliberating in the sense that all participants spoke or discussed, but rather *bouleuomai* meant “decision making,”⁵⁹ which makes sense given the large number of participants. On account of its size, the Assembly could not efficiently deal with the day-to-day task that came about in managing the state. Thus some administrative power was delegated to a Council of 400 citizens, and later after Solon it was 500 citizens, and 700 magistrates.⁶⁰ Six hundred out of these seven hundred magistrates and the whole Council were chosen by sortition.⁶¹ Thus, the process of sortition was a way of delegating administrative tasks. Most of the power around decision making, however, was centered in the general assembly.⁶²

The purpose of the Council was to provide structure to the General Assembly, without overbearing its political power.⁶³ The Council prepared the Agenda for the General Assembly and executed its decrees.⁶⁴ In preparing the agenda the Council had the ability to control what would become and not become a political issue for the demos. Historically, the function of the council rose out of the intra-elite competition in order to exert control over the decrees of the General Assembly by setting the agenda.⁶⁵ However, at the time of Demosthenes the Council was open to all citizens regardless of property qualification. Therefore it cannot be said that the elite controlled the agenda of the General Assembly.⁶⁶

⁵⁸ Daniela Cammack, "Not Talking but Thinking and Voting: Democratic Deliberation in Classical Athens," Yale University, January 16, 2017, 14.

⁵⁹ *Ibid.*, 6.

⁶⁰ "...the *Boulh* was almost entirely a business body. Its duty was not to discuss questions of policy, nor to decide on momentous matters; it had to dispose of the enormous mass of detailed business which was necessarily connected with the government of the state." Headlam, *Election by Lot in Athens*, 68.

⁶¹ Hansen, *The Athenian*, 230.

⁶² Ober, *Mass and Elite*, 21.

⁶³ Ober, *Mass and Elite*, 138-141.

⁶⁴ Headlam, *Election by Lot in Athens*, 57.

⁶⁵ Ober, *Mass and Elite*, 45.

⁶⁶ Manin, *The Principles*, 56.

Additionally, the vetting process which councilmen and magistrates underwent did not conserve elitism but rather raised awareness of their community. This vetting process, *dokimasia*, assessed whether a given candidate paid taxes and what their relationship was to their parents.⁶⁷ This examination was, however, a mere formality. It in no way indented to weed out incompetence, as might be assumed.⁶⁸ The requirement to pay taxes did not systematically exclude any volunteering candidate. Instead, it was a public event that made the potential candidate again aware of his community and those that vetted him for the special task of administration.

As the Councilmen presided over the General Assembly by executing probouleutic tasks, so did the magistrates preside over the courts.⁶⁹ The magistrates, like the councilors, had to meet the age requirement of 30 years old. Out of the 700 magistrates, 600 were chosen by the process of sortition. The other one hundred were chosen by vote.⁷⁰ Similar to the councilmen, all the magistrates were more administrators than rulers.⁷¹ They called meetings, prepared business, and presided over and put motions to vote. Thus they channeled the citizen's motion to the a decisive authority.

Like the councilmen the magistrates rarely decided but rather advised the citizenry. The vocabulary used to describe the political power of both councilors and magistrates speaks to this fact. The word commonly used for the "deliberative process" in the Council was "*bouleuô*, 'plan' or, as noted above, 'perform Council activity', and *probouleuô*, 'pre-plan'...", only rarely *bouleuomai*.⁷² Cammack considers the numerous mentions of "planing" as proof that the Council did in fact not decide on

⁶⁷ Also: All councilmen had to be at least 30 years old and no one could be councilor two years in a row. They also represented the 139 demes that comprised the city. See Hansen, *The Athenian*, 248.

⁶⁸ Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge UP, 1997), 12.

⁶⁹ Hansen, *The Athenian*, 229. & Ober, *Mass and Elite*, 132-141.

⁷⁰ Hansen, *The Athenian*, 227.

⁷¹ Aristotle, et al., *Aristotle: The Politics and the Constitution of Athens*, 2nd ed. (Cambridge: Cambridge UP, 1996), 113.

⁷² Cammack, "Not Talking," 16.

certain issues. The Council and Magistrates, rather devised plans to address these issues or anticipate them. The decisive power still lay with the Assembly.

It is worthwhile to spend some time on the question of finance and expertise, because it has been a point of contestation how popular government in Ancient Athens secured monetary administration.⁷³ Some posts concerning financial administration were filled by citizens of the higher rank of society through property qualifications and subsequent voting. Other posts could be created by the expert himself, if he persuaded the Assembly of its necessity and adequacy. Still, no law or decision could be made without the concurrence of the General Assembly, in which the matter had to be discussed.⁷⁴ Most financial questions therefore, were answered by the aid of orators in the General Assembly.

It was the role of the experts to be orators that took to advising the citizenry.⁷⁵ The orators were considered the political elite in certain respects. Manin describes how "...the practice (in Ancient Athens) was to speak of orators and generals (rhetoric kai strategoi) in the same breath."⁷⁶ Considering orators and generals as a natural duo suggests that they were considered to belong to the same group of "political leaders." However, as Manin further suggest, the fact that they were banned to the "outskirts" of the political process hints at the limits of their power. The orators inhabited roles that were merely advisory, speaking to the deep distrust the Athenians felt toward the elite.⁷⁷

Cases of distrust toward Councilmen, Orators or Magistrates were solved by the Courts and thereby again by the community. The Courts embodied the playing field on which this competition was

⁷³ Headlam, *Election by Lot in Athens*, 112.

⁷⁴ Hansen, *The Athenian*, 234.

⁷⁵ Headlam, *Election by Lot in Athens*, 114.

⁷⁶ Manin, *The Principles*, 14.

⁷⁷ Manin wrote: "The absence of experts or, at any rate, their restricted role was designed to safeguard the political power of ordinary citizens." *Ibid.*, 32.

executed.⁷⁸ Councilman, Orators and Magistrates all could be tried on appeal in the Courts, either while in office, or during the time they had to “render account”.⁷⁹ Certainly the Courts had some administrative powers, like witnessing contracts and auctions of public works, or trying complains by people selected for military duty, but most of all the courts dealt with political accusations against magistrates or councilors.⁸⁰ Access to the courts was limited to the more experienced citizens, who had sworn to judge justly. Like the magistrates jurors had to be at least 30 years old. Each year 6000 potential jurors were drawn from the general citizenry. These jurors were made to swear the Heliastic Oath which reads as follows: “I will cast my vote in consonance with the laws and with the decrees passed by the Assembly and by the Council, but, if there is no law, in consonance with my sense of what is most just, without favor or enmity. I will vote on the matters raised in the charge, and I will listen impartially to accusers and defenders alike.”⁸¹ Thus the courts upheld, in all cases possible, the laws and decrees of the Assembly and council. However, in cases of tort, the citizen was trusted to listen impartially to the arguments presented. As such, the courts were again an institution of the community.

The large number of jurors, as well as their random allocation to different courts, resulted in a certain level of anonymity which helped the jurors judge impartially.⁸² On a given day when the court was in session, from these 6000 a specific number was chosen by sortition. From those chosen the process of sortition placed jurors in specific courts. There are examples of panels of 1001, 1501, 2001, and 2501 jurors for political trials.⁸³ It was therefore difficult for any citizen to influence the jurors individually. The jurors could also not be influenced easily as a whole by those trained in rhetoric, because the citizen accused had to personally defend himself. There was no official prosecutor, cases

⁷⁸ Hansen, *The Athenian*, 179. Ober, *Mass and Elite*, 141-148.

⁷⁹ Manin, *The Principles*, 12, 13, 33.

⁸⁰ Private legal quarrels would usually be settled by arbitration.

⁸¹ Hansen, *The Athenian*, 182.

⁸² Ober, *Mass and Elite*, 225.

⁸³ Hansen, *The Athenian*, 178.

had to be brought and argued by ordinary citizens.⁸⁴ If fact, it was a punishable offense to have someone else argue on one's behalf.⁸⁵ These methods were effective- the juror was protected by anonymity while each defendant equally represented their own case.

Involving 6000 jurors between 175 and 225 times a year put a financial constraint on all jurors. The Courts sat usually for a whole day, which meant 9½ hours derived from the shortest day in the year judging up to 4 cases a day.⁸⁶ The Athenians resolved the financial constraint caused by the frequency of these judicial sessions by paying each juror 3 obols a day for his services, which was half of what one received by attending the General Assembly.⁸⁷ This may suggest that mainly the poor had an incentive to sit in Court, however, 3 obols was far below the average daily wage of a worker.⁸⁸ Therefore, Hansen suggests that mostly the elderly, those whose physical ability deprived them of executing hard labor, sat in court.⁸⁹ He invokes the image of sons and grandsons helping their family elder to court.⁹⁰

With the magistrate preparing the cases, all three entities, the jurors, the defendant and the magistrate, had no judicial expertise. As Hansen wrote: "Thus, a law-case at Athens was a play with three characters, all amateurs: the citizen who brought the charge, the magistrate who prepared the case and presided over the courts, and the jury who heard the case and gave judgement."⁹¹ This lack of professional involvement, guaranteed the rule of the demos in the courts, as opposed to the rule of some judicial elite. Therefore again, the community ruled itself also in questions of the law.

⁸⁴ Ibid., 196.

⁸⁵ Ibid., 180.

⁸⁶ Ibid.

⁸⁷ Ibid., 159.

⁸⁸ Ibid., 184.

⁸⁹ Ibid., 184

⁹⁰ Ibid. & Ober, Mass and Elite, 83.

⁹¹ Ibid., 180

All institutions that had decisive power in Ancient Athens were those that involved mass participation. Following the idea of “democracy,” all power remained with the demos. Because of this power Ober calls the demos free in a political context. But it is the aspect of equality, Ober mentions in his definition of democracy, that is more intriguing. Certainly some members of the demos became councilman or magistrates or jurors and others didn’t. How then were they considered equal to one another?

Sortition allowed the principles of equality to prevail even in events of distinction and that, as such, the demos “remained” politically free.⁹² The demos taken as a single entity, may suggest equality in the abstract, or equality in the assembly, but not equality of the individual. When some became Councilors and others did not how were they equal? Simply said: equality seems to cease when any form of distinction is present. However, if equality exists when equals are treated equal, and unequals unequal, then equality ceases to exist when unequals are treated equal. As Manin points out this can be easily understood in mathematical terms where we assume that $a/b=a/b$, and $a/B=a/B$, but not $a/B=a/b$.⁹³ Such an idea of equality always forces the arbitrator’s to adjust equality to unequals.⁹⁴

The Greeks solved this problem of “adjustment” by handing it to an agent that was qua definition impartial, namely *chance* and based whether one wanted to be judged by this agent on whether one wanted to participate in politics.⁹⁵ This form of equality (*Isegoria*) was based on voluntarism.⁹⁶ It was the individual that made itself equal, not the masses. The willingness to be treated as an equal, which was the willingness to speak up, or to put one’s name down for the draw, created equality. Sortition therefore was the random allocation of all those willing.

⁹² Manin, the Principles, 41.

⁹³ Ibid., 40.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ Ober, Mass and Elite, 79.

This form of equality was inspired by the General Assembly.⁹⁷ The procedure of speaking up in the General Assembly was a two stage process "of volunteering to be heard" and then "to be called upon." Holding 4000 to 8000 people, later even up to 20,000 and being situated on top of a hill made it acoustically a challenging to speak up.⁹⁸ Certainly not everybody spoke, but even those that did faced a large audience, and due to the winds from the valley below had to shout. Thus, even though everybody could technically access the podium and speak, mostly those that were skilled in public speech took the chance. When Manin points out that banning the elites to the outskirts of the political process showed a deep distrust the Athenian demos had toward them, this divide seemed to have been underlined by the physical implications of the setting of the General Assembly in the Ekklesia. Nevertheless, technically, every participant in the Assembly had a right to speak up, that is, go up to the podium and address the demos.⁹⁹ Whether one gained access depended on whether one was seen, that is called upon. One could argue that personal connections may have been the deciding factor, but the amount of people present makes that unlikely.¹⁰⁰ Rather, whether one was called upon or not may have felt like it was dependent on chance.¹⁰¹

Manin suggests that the two stage process "of volunteering to be heard" and then "to be called upon" was the same praxis that inspired the Athenians to use sortition in other political bodies.¹⁰² E.g. In order to become a court member or a councilman, one had to put one's name in a Kleroterion. Thus here again a twofold process of first voluntary participation and secondly random selection characterized the allotment of offices. The equal probability of being called on was reiterated by the

⁹⁷ Ibid.

⁹⁸ Cammack, "Not Talking," 8.

⁹⁹ Ibid.

¹⁰⁰ Josiah Ober, *Mass and Elite in Democratic Athens: Rhetoric, Ideology, and the Power of the People* (Princeton, N.J.: Princeton University Press, 1989), 56.

¹⁰¹ Manin, *The Principles*, 38.

¹⁰² Ibid., 40.

drawing of lots, because those wanting to attain public office, here again, first had to make a choice of putting their name up for the draw. Only secondly did they come under the concept of equality by having an equal chance to be drawn. The equality (*Isegoria*) in the General Assembly was thus reiterated in the allocation of offices by the method of sortition.

Sortition enabled the Greeks to transfer *Isegoria* - freedom and equality - they had found in the empowered demos to the other offices of the state. As Headlam wrote: "It remains however true that the prime reason for the maintenance of the lot was that, so long as offices were filled by it, the full supremacy of the Assembly over Council and administration was secured."¹⁰³ Since appointment by lot meant appointment by chance, no representative could justify challenging the supremacy of the General Assembly and thereby the community. The representative chosen by lot was not considered better or worse than his peers, but was in fact just one of them. Conversely, sortition was a way of delegating power that would not discriminate any other way than if the matter had to be discussed in the General Assembly.

Distinct offices did not so much elevate the individual but the community as a whole. Ober writes:

The symbolic value of ordinary citizens conducting all levels of state business must have been considerable. The awe that an Athenian might feel upon confronting a magistrate (...) would now be a function of the office itself, not of the private status of the officeholder. Awe would therefore be ascribed to the reflected grandeur of the state, which the magistrate in some sense symbolized. ¹⁰⁴

The grandeur of the state was immediately reflected in the grandeur of the community. This grandeur resulted not only from the diminishing mystique of public office, but also from the quantity of people involved and the subsequent knowledge of governing. Since offices could only be held one year in a row,

¹⁰³ Headlam, *Election by Lot in Athens*, 39.

¹⁰⁴ Ober, *Mass and Elite*, 80.

a majority of citizens would serve at least once over their lifetime.¹⁰⁵ This rotational principle must have had a considerable educational effect on the citizenry.

Elections did not suggest themselves to the Athenians. The process of elections would have created an unwanted distinction between those governing and not governing, as well as effectively invite less people into office. Instead, "...the rotation requirement [carried] no risk of thwarting the logic of lot."¹⁰⁶ However, the rotation requirement did thwart the logic of elections, because there was not good reason why someone who did well in office should not continue to do so, even beyond their one year service. Generally, to run a campaign for one year of service would not be cost efficient. Systematically speaking, therefore, the rotation requirement of Athenian democracy made elections undesirable.

Furthermore, the concept of *Isegoria* is not compatible with the method of elections. While elections rely on a variety of factors to decide the outcome of a campaign, be it merit or wealth, *Isegoria* allows the discriminating principle to be chance. Elections do not reiterate the possibility of equality within the population. Contrarily, they create distinction between candidate and voter. The hierarchical distinction between candidate and voter, however, would have risked the egalitarian legitimacy of the Athenian community. Returning to the introduction to this paper, Sortition in Ancient Athens offered a way of temporarily elevating the individual to a public persona. It allowed for this individual to try himself as political being *and* it allowed for the public to hear diverse and personal experiences of the citizens chosen.¹⁰⁷ This elevation was not much different than taking the floor in the Assembly, except for the fact, that sortition would allow this elevating to be transferred into smaller political bodies. The elevation resulting from *Isegoria* was both empowering (free) and egalitarian and therefore the principle of democracy.

¹⁰⁵ Ibid., 95

¹⁰⁶ Manin, *The Principles*, 35.

¹⁰⁷ Ober, *Mass and Elite*, 76.

The use of sortition in Ancient Athens is indicative of the state of communal trust Athenians had in each other. Since the central principle of sortition is chance, no Athenian could consider himself better or worse than his peers by being appointed or denied office. In turn, since sortition chooses without any particular quality in mind, the Athenians must have had considerable trust in the members of their community. The process of sortition not only relies on this trust but also enables it. Certainly, rendering account and collegiality actively kept a given representative in constant connection to his community. More so, this chosen representative had to keep their private interests at bay. But it was, first of all, a trust in the community that led an individual to decide to involve himself in politics. This in itself made sortition possible, and led to the continuation of democracy.

In the development of modern representative government since Ancient Athens, sortition gave way to elections— despite or maybe even because of the democratic character of sortition itself. In Athens, sortition allowed for the demos to extend its reach into all offices under the principles of freedom and equality. In America today, sortition is at most still present in the jury system. By the time of the ratification debate between federalists and anti-federalists surrounding the American Constitution, the process of sortition finds not a single mention. Sortition was, however, part of the republican tradition. Aristotle, as a contemporary, wrote about the use of lot during his time. Montesquieu, who was interested in the necessary relations behind political conceptions, commented on the use of lot in democracies and the use of elections in aristocracies. Rousseau considered it worthwhile to discuss the properties of lot in relation to his conception of the social contract. And even Schmitt makes one last mention of sortition, before sortition leaves the ideas of republican thought. It is evident that somewhere in the republican tradition sortition was entirely replaced by elections.¹⁰⁸

Interestingly enough, the conception of sortition became increasingly limited as the republication tradition progressed toward the ratification debate. This is apparent in the writings of Gueffry and Schmitt, where the main quality that distinguished sortition from elections, namely the impartiality it held towards the qualities of representatives, served as the primary reason behind its inapplicability within a modern democracy. Their argument roughly suggested that, even though the people may be unfit to rule themselves, they were certainly fit enough to select their own rulers. The very fact that elections distinguished candidates from the populous, became, if only rhetorically, the main argument for the use of elections. It is intuitive, therefore, that the value of community was lost to

¹⁰⁸ The term ‘republican’ here is used in reference to the republic of America, which is reflected in the process of elections. This is contrary to the agenda of the ‘demos’ or a democracy, which would be reflected in the use of sortition. The technicalities of this, however, will not be discussed at length in this project.

the priority of private interests. This reasoning behind the use elections later becomes crystalized at the time of the ratification debate.

Additionally, as elections became favored over sortition, all those who thought about political representation focused on the qualities of the representative rather than the qualities of the citizen. Where as both Aristotle and Montesquieu centered their arguments around the creation of a virtuous body politic— by developing positive notions in teaching citizens and upholding community—the founding fathers focused on a negative contract between the represented and the representative. This may be another sign indicative of a movement away from community, and the quality of all, toward the representation of all and the the quality of few.

In order to understand the development that sortition underwent, it seems reasonable to start with a contemporary to Athenian Democracy and end with the ratification of the American Constitution. Starting with Aristotle and ending with the ratification has the advantage of paring political theory in both instances with actual constitutional practice.

Aristotle, a contemporary Demosthenes (384-322 B.C.), did not clearly express in his writings a preference to one method of choosing representatives over another. He writes that whatever form of appointing representatives is used is indicative (only) of the form of government to be achieved.¹⁰⁹ Sortition, for Aristotle, is linked to democracy, where as elections are linked to aristocracy and oligarchy.¹¹⁰ Aristotle continues by suggesting that the difference between aristocracy and oligarchy is one of excellence and wealth.¹¹¹ Elections within an aristocracy are based on excellence, while in an

¹⁰⁹ Aristotle, et al., Aristotle: The Politics, 95.

¹¹⁰ Ibid.

¹¹¹ Ibid.

oligarchy they are based on wealth.¹¹² Throughout his writings on this matter there is not, however, a clear preference expressed for one method over another.

Central to Aristotle's writings on politics is the question of how to *become* good, in the sense of *acting* good.¹¹³ Given his own context, this question may have been inspired by the rule of demos in Ancient Athens. The Athenian community (or the demos) was only as good as its randomly chosen representatives. Excellence therefore was not limited to a few, but a question for all. According to Aristotle, excellence is achieved through temperate living. The best society is based on "temperate living" i.e. a society of the middle class. Achieving this society is difficult. There is only one way to teach people to be excellent *without* making becoming excellent arduous, and that way is through law. However, in order to make good laws that teach people to live an *excellent* life from childhood on, one needs good legislatures.

In Aristotle's writing, the need for good legislatures to make good laws revealed a circular dilemma based on the causality between good legislators and good laws. In order to have good legislatures, that is a person that rules well, the legislature has to first be a good citizen, a person that is ruled well.¹¹⁴ However, a person can only be ruled well by good laws.¹¹⁵ This principle called *eleuthera* - ruling and being ruled in turn - exemplifies the causality dilemma: "which came first, the good ruler or the good law?" No clear starting point can be found in Aristotle's writing.

Assuming a relationship between merit and excellence one could hypothetically argue that Aristotle favored elections. In relation to the difference between sortition and elections, one could assume that in a political context the excellent citizen and the candidate of merit are not that different.

¹¹² Ibid.

¹¹³ Ibid., 1.

¹¹⁴ Ibid., 114.

¹¹⁵ Ibid.

In order to be a good legislature one had to be first a good citizen (*eleutheria*).¹¹⁶ In aristocracies, elections are based on merit.¹¹⁷ *Aristoi* means the best, maybe therefore also the best candidate. One could presume, since Aristotle bases aristocracy on excellence, that the elective process achieves finding the best citizens—but this assumption is *de facto* not *de juro*. It is therefore unclear which method of appointment Aristotle preferred in creating an excellent society.

In linking sortition with democracy and elections with aristocracy, Aristotle influenced many other considerations on representative government the republican tradition. For example, Montesquieu, like Aristotle, links the method of lot with democracy and the method of elections with aristocracy. He writes:

The suffrage by lot is natural to democracy; as that by choice is to aristocracy. The suffrage by lot is a method of electing that offends no one, but animates each citizen with the pleasing hope of serving his country. Yes, as this method is in itself defective, it has been the endeavor of the most eminent legislators to regulate and ament it.¹¹⁸¹¹⁹

Montesquieu mentions directly the two principles central to democracy, namely freedom and equality. Lot is natural to democracy because it does not cause any exterior distinction between citizens; rather, it equalizes the chance of each citizen to serve in office. In turn, this equality animates each citizen to serve. The defect of sortition lies in precisely the fact that it does not distinguish, in the sense that it does not give preference to a certain person for a certain position in office. Subsequently, Montesquieu mentions the laws implemented by Solon.¹²⁰ These laws ensured that military and financial offices were filled with those most adequate to do so, namely the trained and the rich. This disregard of

¹¹⁶ Ibid.

¹¹⁷ Ibid., 139.

¹¹⁸ As Manin points out the reader shall be reminded that these two forms, democracy and aristocracy, are the only possible forms of republican government in Montesquieu's thinking. Manin, *the Principles*, 71.

¹¹⁹ De Montesquieu, *The Spirit*, 12.

¹²⁰ De Montesquieu, *The Spirit*, 89.

professionals in specific offices can arguably be corrected by putting specific offices up for elections, or introducing certain prerequisites for candidacy.¹²¹

Nevertheless, Montesquieu assumes that generally people are not in a position to govern themselves. He writes that “As most citizens have sufficient ability to choose, though unqualified to be chosen, so the people, though capable of calling others to an account for their administration, are incapable of conducting the administration themselves.”¹²² The French for “choose” and “be chosen” is “élire” and “être élus” respectively. However, “élire” is not the word Montesquieu uses when he says that aristocracies use choice. Instead, he uses the noun “choix.” The corresponding noun to “élire” would be “élite” (like the English elite), and the corresponding verb to “choix” would be choisir (to choose). The ones chosen then, are the elite, as opposed to “choissant,” those choosing. This suggests that the elite therefore is created by the choosing.

Montesquieu suggests that the distinction between the elite and those choosing is not so much based on skill, or practicality. Instead, Montesquieu suggests that the elite are competitive whereas the people are passionate.¹²³ The English translation from the quote above reads as “incapable of conducting the administration themselves” and reads in the French as: “...(le peuple) n'est pas propre à gérer par lui-même.” “Propre a gérer” means something like “properly waging,” or “properly managing.” Including the people, the phrase could be translated as: “...the people are not proper to manage (or wage) themselves. Another translation, which would emphasize the “par lui-même” would read: “...the people are not proper for managing themselves.” The reason why the people are not proper for managing themselves is because they act passionately. The elite, or “those chosen”, do not so much act passionately as they act competitively. To act competitively is on the basis of interests. The reason why the people are not equipped to manage themselves is because they do not have interests, but

¹²¹ Manin, the Principles, 71.

¹²² De Montesquieu, the Spirit, 13.

¹²³ Ibid., 14.

rather passions.¹²⁴ It is a tremendous insight of Montesquieu to claim that the people act according to passion and the elite, or rather the aristocracy, act accord to their interests.¹²⁵ By linking political interests with aristocracy, Montesquieu subsequently links these interests with the method of elections.¹²⁶

The people being inadequate to manage themselves is not the only reason for elections.¹²⁷ Another reason for why aristocracy uses elections is based on the preexistence of an elite. Montesquieu writes,

They do not here [in an aristocracy] choose by lot, for this would be productive of inconveniences only. And indeed, in a government where the most mortifying distinctions are already established, though they were to be chosen by lot, still they would not cease to be odious; it is the nobleman they envy, and not the magistrate.¹²⁸

A magistrate chosen by sortition in an aristocracy would be an inconvenience to government. The noblemen is still superior and the distinction between nobles and citizens prevalent. Sortition could therefore not “equalize” this society, because the envy for nobility would still exist. In turn, the advantages sortition has in a democracy (of neither discriminating nor humiliating those that are not chosen) are still its disadvantages in an aristocracy.¹²⁹

The obvious distinction between the aristocracy and the people is not interrupted by the method of elections to allocate political office. Montesquieu seems to assume that elections will keep this distinction alive, without particularly mentioning any constraints on possible candidates. The absence of, e.g. property qualifications, is striking in this context, because it simply suggests that elections, qua

¹²⁴ The notion of being unable to conduct the administration themselves can be explained by the following quote: “Intriguing in a senate is dangerous; it is dangerous also in a body of nobles; but no so among the people, whose nature is to act through passion.” Ibid., 14.

¹²⁵ This insight hints at the dilemma first mentioned in the introduction of this project, namely between those that have political interests and those that do not. Chapter three will further explore this dilemma.

¹²⁶ The pairing of elections with interests and the people with passions or opinions will be one of the main arguments for the applicability of sortition in the conclusion.

¹²⁷ Compare Manin, the Principles, 134.

¹²⁸ De Montesquieu, the Spirit, 14.

¹²⁹ It would be interesting to observe this envious sentiment should sortition ever be implemented by a modern democracy.

definition, will keep the distinction between the elite and the people alive. This suggestion may have been inspired by the narrative of Xenophon who related that even though the Ancient Roman people of the lower classes had the chance and ability to elect one of their own into office, they never did so. Montesquieu takes this to mean that in most cases people from the lower classes are simply not fit for government, but that they are wise enough to realize their own incapability. He thus suggests that the capability to govern is mostly thought to be found within the upper classes, even by the votes of the lower classes. Basing elections on interests means that elections naturally keep these distinctions alive, and this is the reason why they are used in an aristocracy.

Following the thought of Aristotle and Montesquieu, Rousseau also pairs the method of sortition with democracy. Rousseau arrives at this conclusion from a different argument, however. He suggests that "...if we bear in mind that the election of rulers is a function of government, and not of Sovereignty, we shall see why the lot is the method more natural to democracy, in which the administration is better in proportion as the number of its acts is small."¹³⁰ Rousseau suggests that the method of appointing representatives is not a power deriving from sovereignty, but a power deriving from government. In his conception of the social contract government stands for administrative or executive power. Sovereignty, the power that remains with the people at all times, describes the exercise of the "general will."¹³¹ This general will constitutes law (Book II, 1) and under the law everybody is equal (Book II, 4). Now in a democracy, government is given to at least the majority of people, as the term suggests. In that sense the sovereign - that is the general will of the people - and the government - that is the administrative power of the general will - are confined in the same body, the people. It is, however, dangerous, if government and sovereignty are confined in the same body. Rousseau suggests that "...it is not good for him who makes the laws to execute them, nor for the body of the people to

¹³⁰ Jean-Jacques Rousseau and G. D. H Cole, *On the Social Contract* (New York: Dover Publications, 2003), 75.

¹³¹ "the constant will of all the members of the State is the general will; by virtue of it they are citizens and free." (Ibid.)

turn its attention away from general considerations to particular objects.”¹³² The danger Rousseau sees is that if those that make the laws also execute the laws, they are likely to discriminate against the generality of law. It is therefore best, as Rousseau states above, for a democracy to commit a few government acts as possible.

The reason why democracy should commit as few acts as possible derives from the fallibility of men.¹³³ As Rousseau writes, “if there were a people of Gods, it would govern itself democratically. Such perfect government is not suited for men.”¹³⁴ Only Gods would be able to act as sovereign and government at the same time because they would be able to distinguish their interests and thoughts as concerning the general views and particular views when acting as sovereign and government respectively. Acknowledging this, Manin concludes that “...this is beyond human capacity.”¹³⁵ Because the people cannot, at the same time, act generally and particularly, they also cannot embody legislative and administrative tasks at the same time. Acknowledging this limitation, Rousseau suggests, would naturally lead to a limitation on the role government plays.

In an aristocracy, the sovereign and the government are not confined in the same body. This is mainly because the aristocracy relies on majority voting. In an aristocracy, “...the prince chooses the prince, the government is preserved by itself, and voting is rightly ordered.”¹³⁶ The aristocracy as a form of government chooses itself. The *General Will* here finds expression by the counting of votes, which Rousseau adds “...is rightly ordered.” In this case, “rightly ordered” refers to the principle that the general will is found in the majority.¹³⁷ “The prince choses the prince,” assumes that a distinctive

¹³² Rousseau and Cole, *On the Social*, 45.

¹³³ Manin, *the Principles*, 75.

¹³⁴ *Ibid.*, 87.

¹³⁵ *Ibid.*, 75.

¹³⁶ Rousseau and Cole, *on the Social*, 75.

¹³⁷ “Apart from this primitive contract (the social compact), the vote of the majority always binds all the rest. This follows from the contract itself.” (Book IV, 2)

principle relating aristocratic membership is already established, and that this distinctive principle tells sovereignty apart from government.

The consent of voting is the only method to transfer power from the sovereign to the government and therefore the only form of legitimate government. However, this consent might very well be inspired by merit or talent. Rousseau suggests that...

Election by lot would have few disadvantages in a real democracy, in which, as equality would everywhere exist in morals and talents as well as in principles and fortunes, it would become almost a matter of indifference who was chosen. But I have already said that a real democracy is only an ideal.¹³⁸

A real democracy is, according to Rousseau, a society where morals and talents are distributed equally. It is a society where everyone's ability is equal to everybody else's. In that sense, in a real democracy choosing would not resemble a choice. Conversely, in a real society, talents and morals are not distributed equally. Since democracy cannot use the method of lot, it has to use the method of elections, in order to concentrate these talents in government. Would the result then be an aristocracy?

Rousseau distinguishes between three kinds of aristocracy, which he labels as natural, elective and hereditary. He suggests that "...the first is only for simple peoples; the third is the worst of all governments; the second is the best, and is aristocracy properly so called."¹³⁹ By natural aristocracy Rousseau means the natural increase of experience by age, a certain form of authority, that the first states - the family - were based on. Elective aristocracy explains itself and refers to the original sense of the word *aristoi*, the best. The method of elections then can identify this elective aristocracy. As Rousseau writes: "By this means (of choosing) uprightness, understanding, experience, and all other claims to pre-eminence and public esteem become so many further guarantees of wise government."¹⁴⁰ The effect: "In a word, it is the best and most natural arrangement that the wisest should govern the

¹³⁸ Rousseau and Cole, on the Social, 76.

¹³⁹ Ibid., 46.

¹⁴⁰ Ibid., 47

many, when it is assured that they will govern for its profit, and not for their own.”¹⁴¹ However it is important that the aristocracy does not the choosing of its members, because if it would its members would want to secure their dominance and develop a hereditary aristocracy. Thus the choosing must stay with the sovereign that is the choice must lie with the citizen.

Rousseau preferred aristocracy because it does not create a conflict between the particular will and the general will. Further, employing the method of elections brings talents to light. Lot wouldn't create a conflict between the general will and the particular will in a democracy, but it wouldn't bring talents to light as efficiently as elections. However, elections are the wrong method for a democracy because it would mean the sovereign decided both the method of appointing officials (elections) and the officials. Where the later action depends on the former action, corruption of who would be eligible for office, Rousseau thinks, would be likely. We thus conclude that the problem of sortition is that it doesn't discriminate for talents. And the problem of democracy that it is incompatible with the method of elections.

What is interesting is that both Montesquieu and Rousseau saw the obvious defect of sortition that strikes us today, which is its indifference towards talent. Manin suggests that, despite this, “...both writers perceived that lot had *also* other properties or merits that at least made it an alternative worthy of serious consideration, and perhaps justified that one should seek to remedy the obvious defect with other institutions.”¹⁴² This is interesting because Montesquieu and Rousseau seem to be the last writers of the republican tradition that give lot any significant consideration.

Within decades the idea of lot disappeared, even though at the time lot was considered very much part of the republican tradition.¹⁴³ Although we can only hypothesize what happened, it is clear that in the American and French constitutions lot does not gain significant discussion among the

¹⁴¹ Ibid.

¹⁴² Manin, *on the Social*, 79.

¹⁴³ Ibid.

respective founders. As Manin writes:

It is certainly not surprising that the founders of representative government did not consider selecting rulers endowed with full freedom of action by drawing of lots from among the entire population. What is surprising is that the use of lot, even in combination with other institutions, did not receive any serious hearing at all.¹⁴⁴

The lack of a consideration of sortition occurred despite there being historical examples in its favor. For instance, the basic defect of lot could be addressed by allocating only certain offices to the general population and reserving others (like finance and military offices) for the established elite. This obvious remedy however did not keep lot from fading into obscurity.

Most writers of the republican tradition that have considered lot, even if only peripherally in their writings, considered its main aspect - that it does not distinguish - also as the reason for which it is inapplicable. The argument we find in Gueniffey and Schmitt is that lot would only be applicable if every citizen was the same, so that subsequently choosing some of them at random simply wouldn't resemble a choice.¹⁴⁵¹⁴⁶ This limited consideration falls short of all the other properties lot has, as pointed out in chapter one. Furthermore, this limited consideration seems to show a shift in thinking about political representation that focuses increasingly on the qualities of the representatives and decreasingly on the qualities of the citizens. As Aristotle and Montesquieu have thought about how to create a virtuous body politic - by developing positive notions in teaching the citizens - Rousseau already focuses on the negative contract, between represented and representative. He emphasized the need of separating sovereignty from government through the procedure of elections, so that elections endow the latter with the general will of the former. The citizen then not only shifts from being the subject of education to being the object of liberty, but also from being considered as a qualitative agent,

¹⁴⁴ Ibid., 80.

¹⁴⁵ Ibid., 80.

¹⁴⁶ If all citizens were the same in respect to properties concerning political office, the chosen body would not be distinguishable from the rest of the population.

to not bearing any quality, but the ability to consent to government.¹⁴⁷

This principle of consent carried through the Putney debates in Cromwell's England and formed the basis of authority in the legalist writers like Rousseau, Hobbes and Lock.¹⁴⁸ A century later we find this principle in the opening lines of the American Declaration of Independence:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. - That to secure these rights, Governments are instituted among Men, deriving their just powers from the *consent* of the governed.¹⁴⁹

Manin also notes that in August 1789 Thouret published a draft that said that "...all citizens have the right to concur, individually or through their representative, in the formation of the laws, and to submit only to those to which they have freely *consented*."¹⁵⁰

The connection between consent and government is explicitly stated by John Lock's *Second Treatise on Government*, when he writes that "...men being, as has been said, by Nature, all free, equal, and independent, no one may be taken from this Estate and subjected to the Political Power of another but by his own *consent*." Three pages later he continues, "And thus that, which actually *constitutes any Political Society*, is nothing but the consent of any number of Freeman capable of a majority to unite and incorporate themselves into such a Society. And this is that and that only which did, or could give *beginning* to any *lawful Government* in the World."¹⁵¹ Any dissent to the principle of consent is not possible, as any breach of the law established by the general will would be seen as a breach against society.¹⁵² With consent becoming the main focus of political legitimacy, the citizen can only reiterate either his

¹⁴⁷ Ibid., 83.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid., 84.

¹⁵⁰ Ibid.

¹⁵¹ J. Locke, *The Second Treatise of Government*, ch VIII, §§ 95, 99, in Locke, *Two Treatises of Government*, ed. P. Laslett (Cambridge; Cambridge University Press, 1960), pp. 330, 333 (original emphasis)

¹⁵² Lock, the *Second Treatise*, 330.

consent, or change the general will. These are the two powers he is endowed with. To reiterate consent is not a choice; and to change the general will is unfeasible for the individual.

As Manin notes, under this principle of consent elections are the logical choice of choosing representatives because choice actively conveys the consent of being governed.¹⁵³ Sortition cannot be perceived as an expression of consent through choice.¹⁵⁴ The democratic character of sortition therefore could not find continuation in government based on consent.

The ability to consent to government also went hand in hand with the notion of private property. As Rousseau noted, only those qualities of life that are affected by the social contract are subject to the general will, all other qualities remain untouched and have to remain untouched; they are freely at the discretion of the individual. Basing government on the consent of the voter in turn meant leaving a certain area of life— private property — at the discretion of the voter. The idea of privacy and consent appears to be mutually dependent.

As suggested above one can only hypothesize when and how the principle of consent was linked to elections, much in the same way as it has been hypothesized that sortition derived from the General Assembly. It seems that consent in this context relates to authority, thereby consent becomes the indicator of legitimacy of this authority. This legalist approach had a legalists base, which in the context of the development of the modern state, i.e. the French and the US constitutions, was the claim for equality under the law. The need to extend equality under law to all citizens went hand in hand with the need to manufacture consent for implementing this equality.

Max Weber writes about how equality finds its rational administration in bureaucracy.¹⁵⁵ Weber writes that:

¹⁵³ Manin, *the Principles*, 85.

¹⁵⁴ *Ibid.*

¹⁵⁵ Max Weber, Guenther Roth, and Claus Wittich, *Economy and Society: An Outline of Interpretive Sociology* (Berkeley: University of California Press, 1979), 987.

...bureaucracy inevitably accompanies modern mass democracy, in contrast to the democratic self-government of small homogenous units. This results from its characteristic principle: the abstract regularity of the exercise of authority, which is a result of the demand for 'equality before the law in the personal and functional sense - hence, of the horror of 'privilege,' and the principled rejections of doing business 'from case to case.'¹⁵⁶

The fear of not being treated equal causes government to administer this equality. The increase in the size of states that hold equality as a principle of legitimacy of government necessitates the abstraction of equality in the form of law. This abstract equality, as opposed to the kind of equality administered on a case to case basis by collegial bodies, causes the need for bureaucratic administration.

As any form of power also this bureaucratic administration has its performative agents that administer the equality of society.¹⁵⁷ However, given the abstract quality of these laws, the bureaucracy is in need of an elite.¹⁵⁸ This elite has to be skilled in juristic administration. To make society equal, government needs someone to achieve equality. But this person or group will no longer be equal to society, because society endows them with the power to make everyone equal.

The disparity between those that administer the law and those that experience the administration thereof, is a disparity of power, and as Weber further explains, in a rational society quickly also a disparity of class. "The growing complexity of administrative tasks and the sheer expansion of their scope increasingly results in the technical superiority of those who have had training and experience, and will thus inevitably favor the continuity of at least some of the functionaries."¹⁵⁹ The persons administering the law will on account of their rational skills make a distinctive class of educated individuals, not only because of special talents or luck but most of all leisure. When Aristotle talks about the necessity of providing enough income to create a leisured class of citizens that can spend their time administering the laws of the state, he hints at a universal principle of necessity. In a modern

¹⁵⁶ Weber, Roth, and Wittich, *Economy and Society*, 225.

¹⁵⁷ Weber, Roth, and Wittich, *Economy and Society*, 949.

¹⁵⁸ Weber, Roth, and Wittich, *Economy and Society*, 950.

¹⁵⁹ *Ibid.*

society this principle is still valid and is reified by those that have the means, both in terms of leisure and wealth, to gain an adequate education to fulfill administrative tasks.¹⁶⁰

In terms of the question of sortition or election, it is clear that the persons administering the law are usually not chosen by the population and therefore only peripherally important for the sake of this paper. They are not politicians per se, but rather public servants. However, their existence as a homogenized rational body demands also for elected or chosen representatives of the people to act in a rational and somewhat homogenized way.¹⁶¹ The elite, that is thus created by bureaucracy causes representative government to respond in two ways. The first, it needs to be rational itself, so that the representatives are able enough to respond to the rational action of bureaucracy. Therefore the bureaucratic elite is schooled in effectively administering social action. Weber writes that beside private enterprise, the bureaucratic apparatus is the most rational administrator of social action. Political interests thus have to find an equally rational form of representation so as to match the effectiveness of bureaucracy.¹⁶² This means that representatives have to be able individuals, that are part of a rational body with a political interests, that is a party.

The second necessary implication is that representative government is in need of the consent of the ‘masses’ to continue and amend this bureaucracy.¹⁶³ Generally speaking, any administration of domination needs justification.¹⁶⁴ Justification in the political context is legitimacy.¹⁶⁵ There are different forms of legitimacy for different authorities. The administrators, as well as the lawmakers, need to be made legitimate. The administration of equality needs to constantly manufacture consent to their role

¹⁶⁰ “The growing complexity of administrative tasks and the sheer expansion of their scope increasingly result in the technical superiority of those who have had training and experience, and will thus inevitably favor the continuity of at least some of the functionaries.” *Ibid.*, 1000.

¹⁶¹ Weber, Roth, and Wittich, *Economy and Society*, 281.

¹⁶² *Ibid.*, 954.

¹⁶³ *Ibid.*

¹⁶⁴ *Ibid.* & *Ibid.*, 946.

¹⁶⁵ *Ibid.*, 954.

of doing so. The lawmakers need to consent to amend this administration. According to Weber, the law legitimizes itself through rational authority. Those that administer equality therefore also are legitimate qua their rational necessity.¹⁶⁶ The lawmakers, however, legitimize themselves through charismatic authority, qua being elected.¹⁶⁷

Unfortunately, Weber does not specifically relate why elections are the only applicable method to legitimize charismatic authority. But the reasons can be derived from the structure such representation takes. According to Weber there are two forms of representation at work in modern democracies; instructed and free representation. The representative is free in the sense that he is free to vote on any issue however he sees fit. But, since he wants to be elected and reelected, and since he, for that purpose campaigns on certain interests, the representative is also to some extent instructed on representing both his promises he made to his voter base.¹⁶⁸ Arguably in modern politics both of these forms of representation are at work. However, Weber sees free representation as the primary characteristic of the appointment of representatives in parliament. As he writes:

Free representation in this sense is not uncommonly an unavoidable consequence of the incompleteness or absence of instructions, but in other cases it is the deliberate object of choice. In so far as this is true, the representative, by virtue of his election, exercises authority over the electors and is not merely their agent. The most prominent example of this type is modern parliamentary representation. It shares with legal authority the general tendency to impersonality, the obligation to conform to abstract norms, politic or ethical. This feature is most pronounced in the case of the parliaments, the representative bodies of the modern political organizations. Their function is not understandable apart from the voluntaristic intervention of the parties. It is the parties which present candidates and programs to the politically passive citizens. They also, by the process of compromise and balloting within parliament, create the norms which govern the administrative process.¹⁶⁹

Interestingly Weber links free representation immediately to the creation of parties, that present to the “passive citizen” their form of government. The need for parties derives to some extent out of the

¹⁶⁶ Ibid., 1000.

¹⁶⁷ Ibid., 242.

¹⁶⁸ Ibid., 293.

¹⁶⁹ Ibid., 294.

character of free representation in the context of bureaucracy.¹⁷⁰ Therefore the power between those voting and those voted for is likely to be inverted by the creation of a party program.

Parties, however, are necessary for candidates to rationally and effectively campaign. Candidates campaign to gain a mandate depend on the support structure of a party both to extend their campaign program, run a campaign, and financial support. Likewise does the party depend on its candidates in order to receive incumbency, which it will then use to fill government with its own members.¹⁷¹ Therefore, the legitimacy of free representation also immediately implies the creation of parties.

Sortition would be a way of mandating free representation. Since sortition does not rely on a campaign, the representative would be completely free in his votes. But since sortition does not rely on a campaign, it also does not rely on the rational structure of a party. However, since the rationality of social action, is necessary in the modern bureaucratic state, so is the campaign, so is the party and so are elections. Therefore it is the rationality of bureaucracy that makes sortition inapt.

To sum up so far: The legal approach to equality results in two major implications for the political playing field: in terms of equality, the equalization of every citizen creates necessarily a rational bureaucracy. In terms of representation, potential candidates need to form parties in order to be powerful enough and coordinated enough to both manage large scale campaigns and lobbies and effectively oppose the rational action of bureaucracy. The need for parties implies a third and a fourth aspect of modern democracies. The third, even though this is an aspect Weber not explicitly argues but rather seems to take for granted, is the use of elections. Weber writes, that with the development of bureaucracy, collegiality became in need on a single decision maker, e.g. a prime minister, or a president, that is generally, in need of hierarchy. This hierarchy was needed as much within a body of representatives as between the general population and the representative himself.¹⁷²

¹⁷⁰ Ibid., 987.

¹⁷¹ Ibid., 294.

¹⁷² Ibid., 993, 997.

However, in order to legitimize this hierarchy, representatives had to create an incentive for the general population to accept this hierarchy. The incentive was the representation of political interests, as Weber writes. “Where voting takes a course in accord with legitimate expectation they are legal parties. The existence of legal parties, because of the fact that their basis is fundamentally one of voluntary adherence, always means that the business of politics is the pursuit of *interests*.”¹⁷³ Were the candidate not campaigning on some form of political interest he would have no reason to receive any votes. This means in turn that necessarily all majority elected free representatives are elected on the basis of political interests. Therefore, modern representative governments tend to focus almost exclusively on the politics of interests.^{174,175}

The legal approach to equality necessitates bureaucracy. But it also necessitates the politics of interests. It is intuitive that political interests and equality are prone to collide. The interests of some are not the interests of all, and interests do not necessarily have to focus on making oneself more equal. Nevertheless, as Weber shows, both the administration of equality and political interests are mutually dependent in the modern representative democracy.^{176,177}

This contradiction and likewise mutual dependency of bureaucratic equality and political interests poses a challenge to those designing a constitution. In the operation of a government they will want to account for both, equality and the political interest, or in other words equality and personal freedom of ambition.¹⁷⁸ However the creation of political interests will in the long run only give a

¹⁷³ Ibid., 285.

¹⁷⁴ Ibid., 287.

¹⁷⁵ Compare Pranger, "The Decline," in Publius, 116.

¹⁷⁶ To repeat once more: In light of bureaucracy all other forms have to be equally rational in order to achieve any social change. This need for rationality implies both the creation of political parties and the necessity for a hierarchy between voter and representative, but also between representatives and parties. This hierarchy necessitates a focus on political interests in order to reach legitimacy. It is therefore the legal approach to equality that creates a focus on political interests. It is intuitive that equality and political interests will often collide

¹⁷⁷ Weber, Roth, and Wittich, *Economy and Society*, 991.

¹⁷⁸ Compare Pranger, "The Decline," in Publius, 95.

political position to those with interests, which in the extreme then only necessitates political freedom - that is action - for those interests.¹⁷⁹ Having the whole polity be run by political interests my turn all attention away from equality or freedom, because whatever is not presented as a political interest does not become a political issue.¹⁸⁰

Robert J. Pranger and Hannah Arendt writes on this dilemma in the context of the US-Constitution. They both identify the preponderance of political interests on the federal level as a corruption of that overarching government today.¹⁸¹ Rather, in the design of the founding fathers, political interests, or in their language “factions,” were supposed to remain largely on the local - or state level. The necessary relation between politics of interests and elections however, caused these interests to creep into almost all branches of the federal government.

According to Pranger the design of the Federal Government was precisely to check on political interests.¹⁸² Political interests would result locally and the Federal Government was supposed to check these interests. Thereby the federal government embodied both the support of local interests and the check on local interests. However, today, the locality of interests has corrupted the Federal Government.¹⁸³

According to Pranger the founders understood that private ambitions and the public good would collide in the long run.¹⁸⁴ They also understood that doing away with private ambitions would stall the whole endeavor of a free republic. Therefore the union had to accommodate for both, private ambitions and the check thereof, and it did so by separating local or state politics from national politics.

¹⁷⁹ Of course there are other freedoms, like the freedom to speech or the freedom to deviate, but as long as these freedoms are not related to any actual activity, they remain mere ideas.

¹⁸⁰ Compare Pranger, “The Decline,” in Publius, 101, 122.

¹⁸¹ *Ibid.*, 102.

¹⁸² *Ibid.*, 98.

¹⁸³ *Ibid.*, 103, 106.

¹⁸⁴ *Ibid.*, 101.

As Pranger writes: “national power would diffuse ambition, mitigate despotism, lend itself to cosmopolitan toleration and considerations of public good, whereas local power would bring into sharp focus narrow interest, factious ambition and power politics.” (Pranger, 97) On a state level private ambitions, or, in the language of this paper, politics of interests, would be found. On a federal level these ambitions should be checked in respect to the development of the public good.

Pranger identifies two liberties that would embody this antagonism. The liberty of preemption and the liberty to deviate. As he writes:

In a way, this would be anarchy secured against its own excesses, a safe liberty, a form of political economy somewhat like *laissez-faire*. Instead of defining the nation, it was believed that the nation would define itself spatially and temporally as it explored the full potentials of its main purpose. The “fullness” of liberty would be twofold, the liberty to preempt others or to compete with others, and the liberty to deviate through the practices of toleration for others. For preemptive liberty, there were two virtues, the one emphasizing self-interested competition or ambition, the other encouraging assertive creativity. In the case of the liberty to deviate, the main virtue was diversity or toleration.¹⁸⁵

On the one hand, the liberty to preempt is the freedom to personal ambition and creativity. It allowed for the realization of the individuals ambitions, that would, in a political sense, become the politics of interests. The liberty to deviate is the liberty to be of a different opinion, a liberty that the federal government would have to cherish in a culture of tolerance. These two liberties also informed two ways of politics. The liberty of preemption was interest based, therefore election based, and therefore created politics of competition. The liberty to deviate, deliberative, or forum based, therefore not competitive but rather amicable and in search of harmony. In the Federal Government interests were supposed to be represented in the House of Representatives through elections. And tolerance through appointment of collegial bodies, that is the Senate, the Presidency and the Courts. The Federal Government therefore was designed to account for both liberties.

The character of the politics of tolerance can be best understood by looking first at the

¹⁸⁵ Ibid., 113.

character of the politics of interests. The politics of interests are always dependent on getting something or demanding something.¹⁸⁶ They always include power-play. Resulting from the freedom to be ambitious and creative for the advancement of one's personal interests, let that be economical or social, the interest is soon made aggregate by the system of elections. Only aggregate interests find majority positions.¹⁸⁷ Therefore in a political context, this interest will soon be competitive and assertive.

At the basis of both self-interested competition and assertive creativity lies the goal to master another persons will.¹⁸⁸ This power-play in the context of elections and parties created the same party structures that Weber speaks of. As Pranger writes:

“The difficulty was that “the people” could be embodied at the national level, in the politics of competition, only in majority and minority coalition parties which, in effect, emphasized the preemptive claims of their members in public policy. Not only did fragmentation of national government result, but to manage these complicated demands organizational hierarchy was perfected at the national level.”¹⁸⁹

The problem was that the people could make themselves heard only via the method of elections which in turn demanded majority interests and excessive power play, as has been suggested in the introduction to this paper. But power play in the federal government is dangerous precisely because “When organized power comes to dominate the national center, the idea of the nation being the broadest forum for its citizenry is replaced by a believe that what organization cannot handle is not a national issue at all. Opens and breath are superseded by excessive strict and narrowness.”¹⁹⁰ Once the whole government is orientated towards interest politics, not other politics can be imagined. Instead the whole polity adapts to the culture of interest politics.

¹⁸⁶ Ibid., 103.

¹⁸⁷ Arendt, on Revolution, 85.

¹⁸⁸ Pranger, "The Decline," in Publius, 112.

¹⁸⁹ Ibid., 118.

¹⁹⁰ Ibid., 116.

This culture of interest politics is not only indicative of the competition between different representatives, but also of the relationship between voter and politician. As Pranger writes: “Those that are prominent are those doing the speaking, not those listening. And the so-called listeners or “audience” appreciate the fact: they turn on their television sets to appreciate or deprecate the speaker, not to hear him. He, or she, in turn, desires their appreciation of deprecation (votes will do or positive gestures to the pollster).”¹⁹¹ The politics of condemnation also extend to the space between the citizens, when politics, that are administered like war zones, clearly identify the enemy in the deviating voices. “There is an increasing tendency to pigeon-hole groups of persons who need drastic action taken against them, virtual enemies of the public good who turn out to be, on closer inspection, hated enemies of newer coalitions of minorities.”¹⁹² Therefore the speech involved in the politics of interests stands opposite to any speech exemplifying toleration.

The speech involved in interest politics is usually addressed to large audiences, there is no dialog and usually the conclusion of the speech is somewhat predictable by the membership of the speaker.¹⁹³ The “audience” listening, only collects cue’s for membership and affiliation, rarely however will be presented with a paradox contradicting expected political vocation. “Such listening is barely conscious in a great many instances, but rather filed through a gauntlet laid down by numerous personal and group variables that automatically filter out dissonant messages.”¹⁹⁴ It therefore is usually of little importance what the person speaking actually says, the focus rather lies on who is speaking.

The distinction between those that act, the politicians, and those that watch, the potential voter, develops therefore a mere necessity of administration to the inherent semiotics of politics. The voter becomes merely the viewer to the game, hoping to “win,” ready to cry out in anguish and despair at

¹⁹¹ Ibid., 121.

¹⁹² Ibid., 118.

¹⁹³ Ibid., 121.

¹⁹⁴ Ibid., 121.

any foul by the opponent, and happy to ignore the own teams foul play. The rhetoric of, but also against and around, Donald Trump takes this game to a unprecedented speed, and interest politics to their rational end.¹⁹⁵ The viewer remains entirely at the passive, “civic participation will always appear as subject to the speech and symbols developed by leaders, activists and influentials.”¹⁹⁶ No wonder, that the contemporary citizen feels disenchanting from democratic politics.

Opposite to the power driven interest politics the founding fathers had envisioned the public good of tolerance. This good, - tolerance, or national unity - is hard to imagine from a contemporary perspective, so much have the national services been domesticated. By domestication they have “(cleared) the way for private interest’s access to every nook and cranny of the national center, in the process blurring the concept of a focus for national unity to national interests.”¹⁹⁷ The ability to create a culture of tolerance became forgotten.

But the federalists envisioned the Union to build community. They left it open what this community would be like, leaving it to the people to create this culture. But they envisioned the “full” liberty.

Characteristic of the liberty of tolerance is the political process of speaking and listening. This form of speech stands in direct opposition to the semiotics of interests politics. The liberty of toleration has to be imagined in a realm of politics that is more than the simple search or the acquisition of power. “What needs to follow is a rethinking of political space in such a way that political listening is also broadened from only vertical orientation toward what is said in the spaces of power, to orientation toward horizontal interaction with one’s fellow citizens as well.”¹⁹⁸ Toleration is not assertive or in search of power, but rather amicable; the idea of listening to others, that express their views in a manner

¹⁹⁵ it is not the point of this paper to reflect on current political issues, but I cannot help myself from saying that Trump seems to be the rational telos of power politics, fueled by the system of elections.

¹⁹⁶ Ibid., 122.

¹⁹⁷ Ibid., 106.

¹⁹⁸ Ibid., 123.

that is free from power-play. The political space where such “listening” takes place Pranger calls a “forum.”¹⁹⁹ Instead of assertive persuasion, the speaker explains. Instead of pigeon-holing, the audience listens. Instead of hierarchy, the forum is collegial. There is no need for the great expedience of efficiency but rather there is need for thoroughness in speaking and listening. The speaker is held to rely, to the best of their ability, their political experience. And the audience is held to listen so as to the best of their ability understand this unique experience.²⁰⁰

Instead of an homogenized narrative of political identity, that is as much need as it is part of the elective power politics, the forum would hear personal statements from diverse viewpoints,. Hearing diverse viewpoints creates a space, in which citizen’s experience what it means to life with someone one disagrees with. Plurality of personal expression is the political good here that turns into public good by being heard and understood. The public good of hearing and understanding diverse viewpoints is tolerance.²⁰¹

Two characteristics of this forum stand out in comparison to interest based politics. One is the speech involved. Rather than being based on persuasion and competition, this speech would be based on diversity and amicability. The second characteristic in a public context would be the distance between those that are acting and those that are not. If the people would find themselves too far at a distant to those speaking, they could not identify with the personal views given. The distinction inherent through the psychological implications of elections would somehow have to be overcome in order to make the diversity of personal political testimonies count.

Sortition could meet both of these criteria. In terms of the implications of speech sortition could create a forum of peers with personal and unique political viewpoints. Whether sortition can create tolerance through will be discussed in chapter four. In terms of the psychological distance

¹⁹⁹ *Ibid.*, 111.

²⁰⁰ *Ibid.*, 120-121-

²⁰¹ *Ibid.*, 111.

sortition would not uphold the principle of distinction inherent in elections. Sortition therefore would overcome the psychological distance between citizen and representative. In order to understand how sortition overcomes this distinction, it is important to look at how elections create this distinction. In this context it is worthwhile to look at what the founding fathers imagined representative democracy would imply for both the voter and the representative on the federal level.

Indicative of the question of who gets to participate in office in an elective system was the ratification debate between federalists and anti-federalists. The contestation about the effects of the method of election referred to the House of Representatives. The constitution that found ratification one year later in 1789 states in Article I, Section 2: “The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numbers Branch if the State Legislature.” This bigger, and lower house of Congress was the only place in the US constitution at that time, which employed the method of election between the general citizen and the government. The other institution we now consider working under the method of election, namely the Presidency and the Senate, were originally appointed by the individual States.²⁰² There were three requirements to be elected Congressman. “No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.” (II,1) There was however another principle distinction the Anti-Federalist noted in the method election the way it was laid out in the constitution; namely the identification of the natural aristocracy by the method of election. The difference between the Federalist and the Anti-federalists was that the former considered elections necessary and sufficient while the latter considered them necessary but as proposed by the constitution, as *naturally* biased toward the “natural aristocracy.”²⁰³

²⁰² In case of the President in the procedure stated that “each state shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives (...): but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.” (II,1) We see that even though elections were used, the electors were not the general population but rather appointed officials by the individual State Governments. Likewise did the State Governments also appoint two Senators to the federal Congress, “chosen by the Legislature thereof, for six Years;” (I, 3). The House of Representatives was therefore the only institution that used the method of elections between citizen and representative.

²⁰³ The idea of natural aristocracy, as has been pointed out previously, resembles Rousseau’s idea of an “elected aristocracy.” The notion implied is that by virtue of elections the natural aristocracy is found “naturally.”

The debate did not evolve around the need for elections (also if this point was made rhetorically by both sides) but rather about the character of the persons elected.²⁰⁴ The anti-fed stressed the importance of a “like image” of the representatives to the represented, whereas the federalists rather insisted on the fact that the representatives shall be the most virtuous and talented.²⁰⁵ As Brutus wrote:²⁰⁶

...the very term representative, implies, that the person or body chosen for this purpose, should resemble those who appoint them - a representation of the people of America, if it be a true one, must be like the people... They are the sign - the people are the thing signified... It must then have been intended that those who are placed instead of the people, should possess their sentiments and feelings, and be governed by their interests, or in other words, should bear the strongest resemblance of those in whose room they are substituted. It is obvious that for an Assembly to be true likeness of the people of any country, they must be considerably numerous.²⁰⁷

Melancton Smith reiterates this idea in his speech at the New York ratification convention: “The idea that naturally suggests itself to our minds, when we speak of representatives, is it that they resemble those they represent; they should be a true picture of the people: possess the knowledge of their circumstances and their wants; sympathize in all their distresses, and be disposed to see their true interests.”²⁰⁸ In both instances the demand was for a representative body of government to resemble the people; to signify the thing signified.²⁰⁹ To be in their political properties (and by that term he means all things related to the political) a mirror image to their constituency.

²⁰⁴ Manin, *The Principles*, 119.

²⁰⁵ As Madison wrote in *Federalists 57*: “The aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society;”

²⁰⁶ The Federalist promoting the ratification of the American Constitution in 1788 were Alexander Hamilton, James Madison and John Jay. On the other side of the ratification debate where the Anti-Federalist, comprised of a number of authors among whom were Melancton Smith and John Dewitt. Both Parties published some letters anonymously; the Federalists would sign *Publius* whereas the Anti-Federalists would sign *Brutus*. In subsequent cases where authorship is unclear I will therefore refer to the respective pen names.

²⁰⁷ Brutus, *Essay*, No. 3.

²⁰⁸ As quoted by Manin, *The Principles*, 119., Melancton Smith, “Speech at the New York ratification convention” (June 20, 1788), *Storing*, VI, 12, 15.

²⁰⁹ Manin, *The Principles*, 111.

The idea of a like image played an important role in the configuration of the house as the Anti-Federalists imagined it.²¹⁰ They insisted that in order to resemble adequately the people, the House of Representatives would have to be more numerous than suggested. The provision in the constitution stating that “one representative for every thirty thousand citizens, but at least one representative per state”²¹¹ was insufficient.

The Federalist retorted that a large body of representatives would be impractical to the decision making process. Further Madison asserted that: “...it follows that if the proportion of fit characters (to the general population) be no less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.”²¹² Madison’s suggesting that fit representation increases quantitatively (and qualitatively) but not proportionally is striking because it suggest that he considered representation not so much as a comprehensive or a exhaustive task, but as a unique task. The representative does not so much embody those represented but is rather believed to be equipped with the right faculties to represent well.

The Anti-Federalist worried that if the ratio of representatives to represent was as small as the constitution suggested (and eventually ratified), the natural aristocracy of the country would be the ones governing. As Melancton Smith pointed out in a speech in June, 1788:

...I am convinced that this government is to constituted, that the representatives will generally be composed of the first class of the community, which I shall distinguish by the name of natural aristocracy of the country ... I shall be asked what is meant by the natural aristocracy - and told that no such distinction of classes of men exists among us. It is true that it is our singular felicity that we have no legal or hereditary

²¹⁰ Ibid.

²¹¹ „The actual Enumeration shall be made within three Years after the first Meeting of Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland sic, Virginia then, North Carolina five, South Carolina five, and Georgia three.” (Art. I, Sec. 2)

²¹² Federalist Paper, No. 10.

distinction of this kind; but still here are real differences. Every society naturally divides itself into classes. The author of nature has bestowed on some greater capacities than on others - birth, education, talents and wealth create distinctions among men as society, men of this class will command a superior degree of respect - and if the government is so constituted as to admit but a few to exercise the powers of it, it will, according to the natural course of things, be int their hands. ²¹³

Brutus noted:

According to the common course of human affairs, the natural aristocracy of the country will be elected. Wealth always creates influence, and this is generally much increased by large family connections... It is probable hat but few of the merchants, and those of the most opulent and ambitious, will have a representation of their body - few of them are characters sufficiently conspicuous to attract the notice of electors of the state in so limited a representation. ²¹⁴

The Anti-Federalists understood that “in the common course of human affairs” the “natural aristocracy” of the country would be elected. Of course, as Melancton points out, this term does not refer to a hereditary aristocracy. Rather he lists: “birth, education, talents and wealth” as the signifiers that makes one class more aristocratic than another. Brutus reiterates this focus on class when he says, “...wealth always creates influence, and this is generally much increased by large family connections.” The Anti-Federalists feared that the people would not find adequate representation and subsequently find themselves disenchanting from the government.

The consequence will be, they will have no confidence in their legislature, suspect them of ambitious views, be jealous of every measure they adopt, and will not support the laws they pass.” If the people do not support the laws they are governed by they will not help the government to execute them. Brutus illustrates further: “Hence the government will be nerveless and inefficient, and no way will be left to render it otherwise, but by establishing an armed force to execute the laws at the point of the bayonet - - a government of all others the most to be dreaded. ²¹⁵

²¹³ quoted by Manin, the Principles, 113, Melancton Smith, speech of June 20, 1788, Storing, VI, 12, 16.

²¹⁴ Brutus, Essay, No. 3.

²¹⁵ Ibid.

The sensible realization that with such a ratio the voter would feel disenchanting from the representative, unfortunately fell through the cracks of the debate. Rather, the disagreement continued about the characteristics of this natural aristocracy. Brutus' dreadful narrative, could not distract from the fact, that the Anti-Federalists did not offer a sufficient explanation of what exactly they meant by natural aristocracy – in the sense of who exactly would fall under it – and how this natural aristocracy would come to be elected. Certainly Brutus speaks of the “common course of human affairs” and “large family connections,” but these notions were weak and not descriptive enough to actually discredit the Federalist provision of the constitution.²¹⁶

Referring to the inability of the Anti-Federalists to clearly define the link between elections as proposed by the constitution and the rise of the natural aristocracy, the Federalists rather easily retorted:

Why, then, are we told so often of an aristocracy? For my part, I hardly know the meaning of this word, as it is applied... But who are the aristocracy among us? Where do we find men elevated to a perpetual rank above their fellow-citizens, and possessing powers independent of them? The arguments of the gentlemen (the Anti-Federalists) only go to prove that there are men who are rich, men who are poor, some who are wise, and others who are not; that indeed every distinguished man is an aristocrat... This description, I presume to say is ridiculous. The image is a phantom. Does the new government render a rich more eligible than a poor one? No. It requires no such qualification.²¹⁷

This retort ridiculed the critique of the Anti-Federalists by forcing their argument to show that they had not sufficiently identified *what* constituted a natural aristocrat and *how* electors would prefer such aristocracy. As Madison wrote earlier: “...Who are to be the objects of popular choice? Every citizen

²¹⁶ Further should the Anti-Federalists not be understood as insisting that everybody be represented in Congress. Rather “They wished only that the main components of society be represented, with a special emphasis on the middling ranks (freeholders, independent artisans, and small tradesmen).” Manin, *The Principles*, 112.

²¹⁷ Hamilton, speech of June 21, 1788, in Elliot (ed.), *The Debates...*, Vol. II, p. 256 as quoted by Manin, *The Principles*, 199.

whose merit may recommend him to the esteem and confidence of his country.”²¹⁸ On the one hand, there was effectively no property clause in the constitution, or any other, except for concerning age (>25years) and state residence, that would prohibit a citizen from running for office. On the other hand was the openness to “every citizen whose merit may recommend him” may not have been as inclusive as it could be understood. The Federalists welcomed the tendency of the electoral process to favor natural aristocracy, not only on the basis of merit, but also on the basis of riches and property interests.

As Hamilton said in a speech:

Look through the rich and the poor of the community, the learned and the ignorant. Where does virtue predominate? The difference indeed consists, not in the quantity, but kind, of vices, which are incident to various classes; and here the advantage of character belongs to the wealthy. Their vices are probably more favorable to the prosperity of the state than those of the indigent, and partake less of moral depravity.²¹⁹

In some sense the federalists welcomed the tendency of the electoral process to favor the natural aristocracy. Among others, one reason for this preference might have been the Shays rebellion.²²⁰ Another reason might be the obvious one stated above, that the more wealthy part of the population was considered more virtuous than the general population. As Madison states: “Large districts are manifestly favorable to the election of persons of general respectability, and of probable attachment to the rights of property, over competitors depending on the personal solicitations practicable on the contracted theatre.”²²¹ Due to the size of the country the foundational project was to encompass, Madison thought it more likely that people of a *general* respectability would be chosen. A larger voting district made it more difficult to buy voters with favors or false promises – if that is the meaning of the

²¹⁸ Alexander Hamilton et al., *The Federalist Papers* (New York: Signet Classic, 2014), 57.

²¹⁹ *ibid.*

²²⁰ “(...) which broke out in Massachusetts in 1786, ... It contributed to the animus against “democracy” that was expressed in Philadelphia. The small farmers of the western part of the state had revolted against the policy favorable to the seaboard mercantile interests pursued by the legislature in Boston.” Manin, *the Principles*, 122, Footnote 72.

²²¹ As quoted by Manin, *the Principles*, 123, (Footnote 77: Records, Vol. III, p. 454).

‘personal solicitation’ on the ‘contracted theater’ – and so was favorable to candidates with the proper and true attachment to property rights.²²²

As Manin put it, both the federalists and anti-federalists recognized the tendency of the electoral system to favor “natural aristocracy.”²²³ As said before, it was unclear to some extent *who* would belong to this aristocracy, and especially *how* it would be discerned. Whether it was talent, merit or wealth, essentially natural aristocracy meant a certain level of superiority, which was valued even by the anti-federalists. It was understood that in the “common course of human affairs” the difference between representatives and represented would be upheld precisely by those voting, being naturally inclined to choose the most favorable representative.

This “natural tendency” differs from any legal prerequisite for representatives. Property qualifications were part of the debate. However, (here again) it was the size of the country and the difference in property by region that caused the debate on a requirement to stall. According to Manin the absence of a property clause created an elective system that in most cases would favor the natural aristocracy, which, however, in few cases could cause voters to vote for a representative from among themselves.²²⁴ The absence of a legal requirement like the property clause furthermore didn’t create an incentive for the voting classes to persuade the governing classes to get rid of their legal advantage and thus avoided conflict.²²⁵ In this sense the elective system, drawing on “natural aristocracy” informed by the size of the land, embodied a certain flexibility that made it possible, if unlikely, for the people to choose from amongst themselves a representative. The federalist and anti-federalists quite correctly designed and named the elective system as an aristocratic institution, not exclusively but overwhelmingly. An elective system that erred on the side of aristocracy and thus on the side of

²²² This remains only true if private interests remain private, that is, remain outside of majority driven polity.

²²³ Manin, *the Principles*, 124.

²²⁴ *Ibid.*, 126

²²⁵ *Ibid.*

distinction among the population.

In the same way that the Anti-Federalists couldn't clearly define how exactly the natural aristocracy was going to gradually take over government, the Federalists could not quite discern how they would guarantee their obvious preference of a propertied class in government. To that extent it was their mutual intuition on the effects of elections that caused the former to worry and the later to hope.

But was unfortunately missed during this debate was the question of agency. When Hamilton wrote: "But who are the aristocracy among us? Where do we find men elevated to a perpetual rank above their fellow-citizens, and possessing powers independent of them?" it is not the aristocrats that are to be found but the men that had political agency at the time. Namely Hamilton and all those involved in the debate. Hannah Arendt will speak to this fact when she identifies the founding moment - the moment of giving oneself a government - as the greatest moment of political freedom to act.²²⁶ She laments subsequently that the design of the constitution did not hold any opportunity for the general citizen to become politically active, meaning, no requisite for including townships in some way as a necessary part of government. Instead the federal government was designed as self-sufficient (checks and balances) and remote (Washington D.C.), making it unlikely for the general citizen to have any part in this government. As Arendt writes:

...the age old distinction between ruler and ruled which the Revolution had set out to abolish through the establishment of a republic has asserted itself again; once more, the people are not admitted to the public realm, once more business government has become the privilege of the few, who alone may 'exercise (their) virtuous dispositions. The realist is that the people must either sink into 'lethargy, the forerunner of death to the public liberty' or 'preserve the spirit of resistance' to whatever government they have elected, since the only power they remain is 'the reserve power of revolution'.²²⁷

²²⁶ Arendt, on Revolution, 222.

²²⁷ Ibid., 228.

Arendt's words precisely characterize the current state of politics. Transferring the freedom to act by the method of elections, the people are left with no agency themselves and therefore will either feel fatigue or resistance toward their government. That modern means of communication are able to animate the masses behind certain political interests, does not change the fact, that the “exercise (of) their virtuous dispositions,” only the few in power are able to try, for modern forms of animation rarely come about in virtuous dispositions.

The necessary distinction between voter and representative Manin tries to identify more clearly in the chapter of his book titled: *the aristocratic character of election: a pure theory*. He frames his question in the following way:

...We shall ask here whether there are certain elements *intrinsic* to the elective method with inegalitarian implications and leading to the elected being in some way superior to the electors. This way of framing the question is in line with the tradition of political philosophy. Aristotle, Montesquieu, and Rousseau all stated that elections were intrinsically aristocratic.²²⁸

This inquiry is purely theoretical. It is the attempt to rationally locate the principle of distinction in the elective process. Were this principle not prevalent, than all citizens, beside being equal in their ability to cast a vote for a representative, would also be equal in their ability to being chosen as a representative. Despite Manin's justification from above, one might object that choice will naturally always discriminate, that there is not need to go into a purely theoretical analyses to prove the obvious. But this misses the question, again, how exactly such choice is informed.

In order to see whether there are any *intrinsic* elements with inegalitarian implications in the elective system, one has to first imagine a *heuristic* image of the same.²²⁹ This image displays a system in which every individual can vote and can be voted for. There are, however, only a limited number of representative positions available. Therefore, only a limited number of people can actually attain office.

²²⁸ Manin, the Principles, 134.

²²⁹ Ibid.

The voters have to make a choice between those they vote for and those they don't. From the perspective of the voter they have to discriminate after some principle of personal preference.²³⁰ The preference is personal because there are no official or abstract criteria that determine choice in an election.²³¹ Different from a competitive examination (in maybe math or sports), the result in the elective method depends solely on the choice of individuals, after the old absolutist motto: "Sic volo, sic jubeo, stat pro ratione voluntas" ("Thus I wish, thus I ordain, my will takes the place of reason").²³²

Likewise from the perspective of the candidate, there are no official criteria - abstractly and announced in advance - that he may base his campaign on. Manin notes that "...candidates may try to guess what the voters will require. But even supposing that it were possible to constitute, on the basis of the votes, a general and abstract definition of the desired qualities, this is something that can only be known *ex post facto*."²³³ These considerations express the inegalitarian character of the method of elections that is likewise its freedom. They, however, do not show how the elective process chooses candidates that are considered superior to the one's choosing.

Superiority comes about in the moment of choice, as Manin points out: "If candidates are indistinguishable, voters will be indifferent, and thus unable to choose in the sense of preferring one to another. To be chosen, therefore, a candidate must display at least one characteristic that is positively

²³⁰ Ibid., 135.

²³¹ Ibid., 136.

²³². Manin also adds that different to sportive competitions – the elective process is often compared too – the outcome of election does not depend to the same extend of merit. As he writes: "This is not the place to enter into complex philosophical discussions to which the concept of meritocracy and equality of opportunity have given rise over the past twenty years. There seems, however, to be a consensus that a procedure is meritocratic and secures equality of opportunity if the inequalities it generates in distribution of a social good, are at least partly (some would say "wholly") the result of the actions and choices of those who desire that good. A procedure is not described as meritocratic if the inequalities of distribution it leads to derive exclusively from innate inequalities. A beauty context, for example, is surely not deemed meritocratic. On the other hand, an academic examination is meritocratic in that, even if the genetic lottery of talent (not to mention inequalities in social background), they are also, at least in part, the result of the candidates' efforts, choices, and actions. In this respect, it is instructive to compare the selection of rulers by election and their recruitment by competitive examination." Ibid., 137.

²³³ Ibid., 136, his emphasis.

valued by his fellow-citizens and that the other candidates do not possess, or not to the same extent.”²³⁴ In order to be distinguishable the candidate needs to have at least one quality the other candidates do not have. This one quality should be both positively valued and rare in the society, so that the candidate is both positively seen and unrivaled in respect to this quality. What is rare and also positively valued in terms of quality constitutes superiority: “...those who possess it are different and superior from those who do not.”²³⁵ This means as Manin asserts, that “...the distinction requirement inherent in a elective system is entirely structural.”²³⁶ The distinction, whatever it is based on, derives entirely from the elective moment. Superiority derives thus from the structure of the method of election.

To explain this phenomenon of superiority closer Manin draws on “advantages conferred by salience in attracting attention.”²³⁷ This term “salience” derives from cognitive psychology as describing a quality of particularity. It has been shown, as Manin writes, that “salient stimuli elicit strong evaluative judgments.”²³⁸ It is in line with psychological research that those candidates, who exhibit a particular and positively valued characteristic, will be accepted by the voter, that candidates with a no particular characteristic, will be ignored, and that candidates with a particular characteristic that is negatively valued, will be rejected.²³⁹ Thus also on a cognitive level, elections imply superiority, if only in as much as that superiority is constituted by saliency.²⁴⁰

²³⁴ Ibid., 139.

²³⁵ Ibid.

²³⁶ Ibid., 138.

²³⁷ Ibid., 142.

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ Another reasons Manin lists in how elections constitute superiority is the “cost of disseminating information,” making the argument we hear quite often of how the dependency on money in the campaigning phase is likely to influence policy in the governing phase. In this respect not the elective moment but the elective process as a whole constitutes not superiority, but rather a distinction between wealth and no wealth, or between being able to solicit donors and not being able to do so donors. Ibid.

That this distinctive principle informs political interests seems unlikely. Likewise, however, it also unlikely that representatives are chosen merely for their talents or aptitude in representing certain political interests. Rather, what is happening in the elective moment, is something like the creation of hierarchy that finds psychological justification in saliency, not in adequate representation. Even if this saliency does not create a distinct class of human beings that forever will be likely to govern, it does create psychological membership to those that do *not* govern.

The psychological distance between those governing and those not governing therefore seems to be informed solely on the moment of choice. Since this choice is not informed by political interests necessarily, the legitimacy between representative and voter, is not either. Therefore consent is not given to representation of interests, but rather to the moment of choice. Therefore the choice in elections, holds no other political agency, then subjugation. The distance between voter and politician therefore is also informed on a psychological level.

The distinction between those governing and those not governing is not merely a distinction based on necessity, but also a distinction based on psychology. The distinction is informed by having the opportunity to govern, and thus seeing oneself as a public political being, and not having any such opportunity, and thereby see oneself merely as a private individual. Hand in hand with the distinction between those that govern and those that do not, goes the disappointment or fatigue of the later in the former. Obviously, the only remedy to this distinction is giving all people the opportunity to govern.

The revolution meant to spread the possibility of having a share in government, or of imagining oneself governing, to *all*. But immediately after the creation of the constitution, "...the age old distinction between ruler and ruled which the Revolution had set out to abolish through the establishment of a republic (had) asserted itself again,"²⁴¹ The reason for the reestablishment of the distinction between representative and citizen was the failure of establishing a political body that would give the opportunity to participate in government to all citizens. Instead, today, the constitution only accounts for the representation of the interests and therefore only for political participation of few.

The reason not to include all may have resulted out of the wish to create a constitution that would be last. To create a constitution that would last resulted out of the fear that continuing the revolutionary spirit would necessarily overturn the constitution. But it was not necessarily the revolutionary spirit — in the sense of creating a new government — that needed to continue, but simply the opportunity of involving everyone in government. In that sense the opportunity of giving oneself a government becomes the opportunity of acting in government.²⁴²

What made the constitutional moment exhilarating was the experience of having a share in a beginning. This beginning was the of giving oneself government. The beautiful experience of the

²⁴¹ Arendt, *On Revolution*, 237.

²⁴² *Ibid.*

freedom of creating something good for all and that for eternity. Or in John Adams words: “to establish a government ... more agreeable to dignity of human nature, ... and to transmit such government down to their posterity with the means of securing and preserving it forever.”²⁴³ To found for all therefore was a feeling of purpose for all. A feeling rooted in the community and for the community.²⁴⁴ This purpose wanted to transpire community into the future.

Because they wanted their constitution to last, the founders of had a similar image of man as the Ancient Greeks. An image of man as fallibly that needed to be corrected.

Politically, the outstanding characteristic of the Christian era had been that this ancient view of world and man – of mortal men moving in an everlasting or potentially everlasting world – was reversed: men in possession of an everlasting life moved in an ever-changing world whose ultimate fate was death; and the outstanding characteristic of the modern age was that it turned once more to antiquity to find a precedent for its own new preoccupation with the future of the man-made world on earth.²⁴⁵

Like Aristotle the founders attempted to create a government that would make people good by transpiring the exhilarating feeling of creating a community through the Union into the future. This community would be ‘more agreeable to dignity of human nature’ and therefore would correct man to live in an everlasting Union.

When the ancient Athenians had ‘no doubt what (they) meant by democracy’, as Headlam relates, he speaks, in the widest sense, about community. The Athenians had a clear idea of what the demos was doing in the *ekklesia* because they were part of it. Through sortition they had found a way to transpire the freedom and equality associated with being part of this community also into administrative positions of government. The citizen therefore, in Ancient Athens, found himself also in administrative government always among peers. When Ober writes that “...the symbolic value of ordinary citizens conducting all levels of state business must have been considerable,” he notes about

²⁴³ Arendt, *On Revolution*, 237, quoting John Adams in *Dissertation on Canon and Feudal Law*. (see endnote 20 in her text).

²⁴⁴ Man in the sense of “Mensch,” that is in the sense of humans.

²⁴⁵ Arendt, *On Revolution*, 222.

how "...the awe that an Athenian might feel upon confronting a magistrate (...) would now be a function of the office itself, not of the private status of the officeholder. Awe would therefore be ascribed to the reflected grandeur of the state, which the magistrate in some sense symbolized."²⁴⁶ But because being chosen by sortition was no different than being entrusted by the community, the awe the citizen must have felt for the grandeur of the state also always was the awe the citizen felt for his community. The community in Ancient Athens therefore extended in all aspects of the state and thereby recreated itself.

The founding fathers had a similar, if not extended idea for the role of Union. The role was not only to allow for, but also to build community. Contrary to "...those who associate genuine community with physical intimacy, the American national government would be designed to play as large — or larger — a role in community formation as it would in building the pyramidal structure of American government."²⁴⁷ The Union was thus not only a overarching form of government, but also, or maybe first of all, a Union.

This Union was supposed to be ruled by "full liberty."²⁴⁸ Full liberty was to be achieved by allowing for both the liberty of the individual to be ambitious and the liberty of the individual to deviate. The liberty of the individual to be ambitious was the liberty to fight for one's private interests. The liberty to deviate allowed for the creation of tolerance by hearing unique viewpoints. Together they would create the community built under and by the Union.

Elections, however, only gave space to the liberty to be ambitious. The liberty to deviate fell silent over time. Elections only gave space to aggregate views on political interests and therefore only gave space to the liberty to be ambitious and competitive, not to be tolerant. If sortition could have given space to the liberty to deviate, the founding fathers had not thought of it, or thought it inapt.

²⁴⁶ Ober, *Mass and Elite*, 80.

²⁴⁷ Pranger, Robert J. "The Decline of the American National Government." *Publius* 3, no. 2 (1973): 97-127.

²⁴⁸ *Ibid.*, 98.

Sortition could, however, have created the political form for the liberty to deviate. The political form for the liberty to deviate is a forum. The role of this forum would be similar to the original role of the Senate as a body of appointed individuals who would debate the public good of tolerance. Their individual voice could not define tolerance, but collegially they could.

Opinions are formed and tested in a process of exchange of opinion against opinion, their differences can be mediated only by passing them through the medium of a body of men, chosen for the purpose; these men, taken by themselves, are not wise, and yet their common purpose is wisdom – wisdom under the conditions of the fallibility and frailty of the human mind.”²⁴⁹

Sortition would have enabled ‘to pass opinions through the medium of a body of men’ by appointing a collegial body of peers. In such a position the individual could speak and listen to diverse opinions and therefore attest to the public good of tolerance. In turn, the public would witness these examples of listen and speaking and see or experience the liberty to deviate. As such a randomly chosen, and demographically representative body of citizen’s could debate the public good from the diverse perspectives of the individual and unique political experience. By adding sortition the full liberty of the Union may have been preserved.

The founding fathers had not implemented a randomly chosen body, which does not mean that they were unaware of the limit the constitution would impose on the individuals ability to act politically. Especially Jefferson was acutely aware that limit. He understood that he was part of a group that had the privilege of thinking about the implications of creating government, a privilege that subsequently could never be repeated without reforming the state.

... the reason Jefferson, throughout his long life, was carried away by such impracticalities was that he knew, however dimly, that the Revolution, while it had given freedom to the people, had failed to price a space where this freedom could be exercised. Only the representatives of the people, not the people themselves, had an opportunity to engage in those activities ‘expressing, discussing, and deciding’ which in a positive sense are the activities of freedom.²⁵⁰

²⁴⁹ Arendt, *On Revolution*, 219.

²⁵⁰ *Ibid.*, 227.

The freedom to express, discuss and especially to decide - so as to give the two previous acts any weight - would be attainable only to the few chosen for office. But since these offices related to the representation of political interests, the opinions in these discussions would rarely relate to the plurality of the political experience of the citizen. Rather, the opinions in elected bodies would serve the competitive character of interest politics.

It is not only, and perhaps not even primarily, because of the overwhelming power of the many that the voice of the few loses all strength and all plausibility under such circumstances (the elective structure of interest politics); public opinion, by virtue of its unanimity, provokes unanimous opposition and thus kills true opinions everywhere.²⁵¹

The diversity of public opinion can not be expressed in the context of competitive interest politics, because the whole structure aims at homogeneity instead of plurality. Public opinion can only be expressed in a body of peers that cherish such plurality.

Hannah Arendt and Robert J. Pranger had a similar understanding of the need for such a body of peers. Arendt identifies that both politics of interests and public opinion were part of the constitutional design.²⁵² Arendt also writes that the federal government was supposed to balance these characteristics. “The power of government was supposed to control the passion of social interests and to be controlled, in its turn, by *individual* reason.”²⁵³ And like Pranger Arendt sees the current preponderance of politics of interests or ambition as a corruption of the federal government. “But in this republic, as it presently turned out, there was no space reserved, no room left for the exercise of precisely those qualities which had been instrumental in building it.”²⁵⁴ Therefore the full liberty that Pranger identifies as a combination of the liberty of preemption and the liberty to deviate, Arendt

²⁵¹ Ibid., 228.

²⁵² Ibid., 229.

²⁵³ Ibid., 223. My emphasis.

²⁵⁴ Ibid., 234.

terms the institution of public freedom and public happiness.²⁵⁵ The corruption of the federal government took place precisely because it endowed the citizens with the power to vote, but not with the power to try themselves as political beings in the sense of ‘expressing, discussing and deciding.’

That the corruption of the government would derive from the people itself was historically unfamiliar.²⁵⁶ In the past the ruling class usually corrupted the privacy of the individual. Therefore the remedy was sought in the creation of private property, as the space the government would have no access to. However, with the development of an egalitarian government and the precondition of equality for all and the limited freedom to vote, private interests become the main threat to privacy.²⁵⁷ As Arendt writes in contrast to the historical conception of privacy. The private realm, becoming political through its transformation into interests, resulted in a majority driven government that was considered legitimate in corrupting the public realm of tolerance.

Like Pranger, Arendt sees the only solution against this overbearing in the public realm itself.²⁵⁸ She writes that “...the only remedies against the misuse of public power by private individuals lie in the public realm itself, in the light which exhibits each deed enacted within its boundaries, in the very visibility to which it exposes all those who enter it.”²⁵⁹ The individual being empowered not only to vote but also to ‘express, discuss and decide’ is forced to enter the public realm and thereby forced to try himself or herself as a public persona. Only through this motion can private interests be kept in check.

The ballot box does not allow for the opportunity to try oneself as a public persona.²⁶⁰ Even though the ballot box was not necessarily a secret institution, it was not a way of stepping into the public realm. Instead voting was just an extension of the private space. When the Ancient Greeks had

²⁵⁵ Ibid., 221.

²⁵⁶ Ibid., 255.

²⁵⁷ Ibid., 256.

²⁵⁸ Pranger, "The Decline," in *Publius*, 120.

²⁵⁹ Ibid.

²⁶⁰ Ibid.

so much of their administration conditioned on voting in public, giving account or being held accountable for one's political actions, this had the effect forcing the individual constantly into the public realm. And it was in this public realm, i.e. the *ekklesia*, the council, the magistrates or the courts, that private interests were discussed. The public space therefore also always became a space in which private interests were made public and therefore balanced by the community.

Jeffersons saw the fact of giving people the right to vote, but not a space to try themselves as political being as the 'mortal danger' to the republic.²⁶¹ Jefferson did not suggest sortition as a way of allowing for the opportunity of being and acting as citizens, even though again, this method seems to suggest itself. What Jefferson envisioned instead was a form of involving the citizen in the political realm by including wards. These wards, like the townships, acted as micro republics that would create the full liberty of the general republican government. Like in Athens, community was already existent in these townships. The advantage of including them "...would offer a better way to collect the voice of the people than the mechanics of representative government;"²⁶² And collecting these community voices would at the same time create a wider sense of community and therefore an incentive for the public good.

The wider range of participation would increase freedom both actively and passively for all. On the side of the citizen, it would allow for the opportunity "...to make everybody feel 'that he is a participator in the government of affairs, not merely at an election one day in the year, but every day;'"²⁶³ On the side of the government to increase the sources of power was to multiply power. And to multiply power following Montesquieu's insight, multiplies freedom.²⁶⁴

²⁶¹ Ibid., 267.

²⁶² Ibid., 258.

²⁶³ Ibid., 257.

²⁶⁴ Political liberty is to be found only in moderate governments; and even in these it is not always found. It is there only when there is no abuse of power. But constant experience shows us that every man invested with power is apt to abuse it... To prevent this abuse, it is necessary from the very nature of things that power should be a check to power. (XI, 4).

There are two intriguing parts phrases in Arendt's quote that relate to both sortition and Jefferson's and later Arendt's design of a different representative state. Namely, the difference between 'feeling' that one participated in government and 'participating in government every day'. Arendt uses both descriptions in the same phrase. The reason is, that in the space that related the elementary republics (wards & townships) to the general government, a pyramidal system would be implemented that allowed for both, 'feeling that one participated' and 'participating.'

In this pyramid structure each tier would collegially vote for a representative to the next higher tier.²⁶⁵ The first tier was created on the 'elementary' level through voluntary participation. It would allow all those to participate in government that felt themselves being called into public service. The second tier would be made up of all those voted representative of the first tier and so on. Elections decided who would advance to the next higher tier. Advancing was based on the trust of the voters from the tier below. Each representative had been endowed with the trust of his voters and therefore each tier made a body of peers. Until a group of individuals would come out on top and gain access to the federal government and participate in government.

Within this scheme all authority was based on trust. Arguably, authority was also limited to the space between two tiers. This system allowed for the participating of all those that wanted, in terms of 'expressing, discussing, and deciding,' and distributed "to every one exactly the functions (they were) competent to do,"²⁶⁶ meaning the members of each tier decided whether a candidate advanced to the next higher tier.

In this pyramidal system community would be built on each tier. This community would first be built by all those volunteering. But subsequently, on the higher tiers, community would be built on the trust of the voters, because each representative had been endowed with such trust. The representative

²⁶⁵ Arendt, p. 282

²⁶⁶ *Ibid.*, 257.

then again would build a body of peers and advance another individual on the basis of trust. All higher levels, therefore were build on trust, and on all levels the individual could realize itself as political being.

It is difficult not to agree with Arendt's conception of a different, more communal polity. She relates a design that is purely informed by the citizen's individual calling to politics and checked only by trust of his or her peers, that is the members of the community on each respective tier. This trust makes it challenging for parties to corrupt elections on the basis of some aggregate, misplaced personal interest. This trust also makes it difficult to corrupt the individual sense of self as political being, because this trust is reward for trustworthy political action. Each tier is a stage for the *eudaimon*.²⁶⁷ Therefore the need for trust creates a community of truly political citizens, or as Arendt relates the poet René Char saying:

‘If I survive, I know that I shall have to break with the aroma of these essential years, silently rejected (not repress) my treasure.’ The treasure, he thought, was that he had ‘found himself,’ that he no longer suspected himself of ‘insincerity,’ that he needed no mask and no make-believe to appear, that wherever he went he appeared as he was to others and to himself, that he could afford ‘to go naked’.²⁶⁸

A political community thus based on the trust of others upon one's personal political calling allows for the “full liberty” of the individual to realize itself as political being. This is not merely truly political, but also truly beautiful.

Nevertheless, it is the point of this paper to relate sortition to the political design of such a community. One apparent difference between Arendt's design and sortition is that with the later the representatives would not be chosen by the trust of their peers but by the impartial agent of chance. Sortition, however would not relate on a pyramid scheme, whereas Arendt's design arguably does. Even thought authority, positively in the sense of legitimacy, is only created from one tier to another, the

²⁶⁷ Ibid., 282.

²⁶⁸ Ibid., 285.

legislative ability of a higher tier would still be binding for all lower tiers and all those not involved in any tier. Likewise community is only build on each tier, not however between the highest tier and the general population. The voluntary aspect of the 'elementary' tier is also prevalent in sortition because participation in the lottery is based on voluntarism. The representative would therefore likewise be among his or her peers.

As has been said before sortition would offer unique and diverse testimony of the political experience in the United States, which would give both a voice to those chosen, and the example of listening to those among the chosen who are not speaking and to the general public who is watching. Sortition therefore could be a way of representing opinion, next to the method of elections that represents interests. Again following Montesquieu's insight of the multiplication of power, this addition is apt to realize the full liberty envisioned in the constitution. The community aspects of sortition would be the testimonies of those speaking and listening that would give an example *with the speech of the people* (as opposed to legal or interest based speech) of what it means to be a political being.

One might oppose that sortition would still only enable few. This depends on the amount of political bodies created using sortition. One could imagine a similar multi-body system as Arendt suggests, whilst her method could be criticized for silencing again the plurality of political experience by congealing through gradation.²⁶⁹

One might oppose that sortition would not embody the plurality of the political experience, but just the experience of those chosen. This is true and cannot be argued with. There are, however, ways of adjusting the system of choosing toward a demographically representative simple. The number of voices again would depend on the number of bodies chosen. Still only a number of voices would be heard, and adjusting demographically runs into the same limits as do theories of modern polling.

²⁶⁹ Since opinions need to congeal through the pyramid structure to those that are the most trustworthy, here again, the plurality of opinion might no necessarily find realization.

One might oppose that even though a diverse body of citizens would be chosen, those would not be the right citizens to create public opinion. This misunderstands the quality of both the general will and the vision of the Senate, namely that the general will is more than its parts, and namely that the individuals in the Senate are not wise, but rather that their common purpose is wisdom.²⁷⁰ There is ample data on the sensitivity of the decision reached by randomly chosen political bodies.²⁷¹ These decisions seem further not so much based on better information, but on the deliberation among peers.²⁷²

²⁷⁰ Compare Simone Weil and Simon Leys, *On the Abolition of All Political Parties* (New York: New York Review Books, 2014).

²⁷¹ Stanford, CDD. "Final Report: By the People - Hard Times, Hard Choices - Michigan Residents Deliberate." *CDD*. Center for Deliberative Democracy Stanford, 01 Jan. 2010. Web. 28 Apr. 2017.

²⁷² James S. Fishkin, *When the People Speak: Deliberative Democracy and Public Consultation* (Oxford [u.a.]: Oxford Univ. Press, 2011).

In the end, two related questions remain. Can a demographically representative sample be satisfactory? Can we abandon trust for the sake of abandoning a pyramid scheme of hierarchy?

These two questions are related because their outcome equally informs the trust of the public in government, and in turn their own understanding of what it means to be part of this American community. If demographic representation is not enough to create an identification with those speaking and those listening, the ability of sortition to create a forum for the public good diminishes. On the other hand, if the public does identify with the people speaking and listening and therefore start to see themselves, and feel, as political beings, community is created. The true abandoned for the sake of abandoning the pyramid scheme is found without such a scheme.

Sortition derived from the trust the Athenians had in their community. By having the courage to trust each other in a system based on chance, the Athenians were able to extend the principles of democracy, that is freedom and equality, into the administration of the state. This trust not only allowed for the the freedom of any citizen to become a public persona but also for a constant presence of community. But can community in turn, derive from the method of sortition? Or, in other words, can trust derive from the method of sortition?

We do not know.

There is a reason why Arendt has to turn to poetry to find a description of what a community based on trust feels like. We have no such community in our political world. But poetry is of the world and therefore suggests that such community is possible. Poetry means ‘to do,’ therefore, all we can do in finding out whether such community is possible through sortition, is trying it.²⁷³

²⁷³ Poetry derives from the Greek ποιέω, which means “to make.”

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