

Instituting a Democratic Sortition in America

by

T.L. Hulsey

of

THE ABBEVILLE INSTITUTE

Democracy in America has failed. In spite of the lack of any reference to “democracy” in both the American Constitution and its Declaration of Independence, the United States has institutionalized the democratic principle to become its world exemplar, which according to some intellectuals is henceforth to be the sole pattern for all governments on earth. Francis Fukuyama, a neoconservative until his ideas were actually adopted by the George W. Bush administration, infamously proclaimed in 1993:

[L]iberal democracy may constitute the “end point of mankind’s ideological evolution” and the “final form of government,” and as such constitute[s] “the end of history.”¹

The “Disease”

The Founders’ omission of reference to “democracy” was deliberate, and their mistrust of it clear and prescient. The founding idea of the American Experiment is that our several states have united to form a republic of strictly limited federal powers, not a democracy. Without understanding this kernel idea, that the founders repudiated democracy and consciously labored to restrain it, there simply no possibility of understanding the meaning of America. The most concise statement of this idea comes from Madison’s Federalist 10:

Hence it is that democracies have ever been spectacles of turbulence and contention; have ever been found incompatible with personal security or the rights of property; and in general have been as short in their lives as they have been violent in their deaths.... A republic, by which I mean a government in which a scheme of representation takes place, opens a different prospect and promises the cure for which we are seeking.²

Madison's fears have been realized. Only in schoolbooks sanctioned by the current democratic regime is democracy depicted as an imperfect but scrappy, happy tumult where everyone gets his "piece of the pie," if not in the current give-and-take of "consensus" political bargaining, then in the next round of informed and free elections. Anarcho-capitalist Hans-Hermann Hoppe gives the more accurate description of democracy's current 'spectacle of turbulence and contention' in economic terms of time preference, where "low time preference" is the set of conditions favoring roundabout methods of production and civilizing influences that extend into the future, and "high time preference" is the set of conditions favoring immediate consumption and short-term gratifications:

Since 1918, practically all indicators of high or rising time preferences have exhibited a systematic upward tendency: as far as government is concerned, democratic republicanism produced communism (and with this public slavery and government sponsored mass murder even in peacetime), fascism, national socialism and, lastly and most enduringly, social democracy ('liberalism'). Compulsory military service has become almost universal, foreign and civil wars have increased in frequency and in brutality, and the process of political centralization has advanced further than ever. Internally, democratic republicanism has led to permanently rising taxes, debts, and public employment. It has led to the destruction of the gold standard, unparalleled paper-money inflation, and increased protectionism and migration controls. Even the most fundamental private law provisions have been perverted by an unabating flood of legislation and regulation. Simultaneously, as regards civil society, the institutions of marriage and family have been increasingly weakened, the number of children has declined, and the rates of divorce, illegitimacy, single parenthood, singledom, and abortion have increased. Rather than rising with rising incomes, savings rates have been stagnating or even falling. In comparison to the nineteenth century, the cognitive prowess of the political and intellectual elites and the quality of public education have declined. And the rates of crime, structural unemployment, welfare dependency, parasitism, negligence, recklessness, incivility, psychopathy, and hedonism have increased.³

In repudiation of Locke's justification of government as the defender of "life, liberty and estate,"⁴ – meaning of course "life, liberty and property" – democratic government has become the predator of property. Hoppe expresses this predatory tendency as democracy's accelerating replacement of private property with "public" property, which disposes of capital and other property according to high time preference schemes.⁵

A Rectification of Names⁶

Has the true culprit been named? Granted, America has seen the accelerating replacement of lower time preferences with higher time preferences, and private property with "public" property at least since 1918. But does democracy account for that development? Does "democracy" properly name this reality? According to Aristotle, in the *Politics*, book IV, section 9, it does not:

[T]he appointment of magistrates by lot is thought to be democratical [sic], and the election of them oligarchical.⁷

In this passage he respectively describes the Athenian selection of government officials by random lot as “democracy,” and the Spartan selection of officials by popular election as “oligarchy.” In other words, America is not properly a democracy because it does not select its officials by random lot, that is, by sortition. Is it possible then that true, sortitioned democracy is not only blameless for the decline, but can in fact provide Madison’s “remedy for the diseases most incident to republican [democratic] government”?⁸ Might it do so either as a replacement for his own ingenious “cure,” federalism, or as its rehabilitation, restoring that sole principle known so far to successfully limit the scope of democracy while preserving self-rule in a mass society?

The Possible “Cures”

Before turning to sortitioned democracy as a cure, let us advance more carefully from the first truth that we have established: That America has always chosen its leaders by the elective, oligarchical principle, and not by sortition, the democratic principle. It may well be that other alternatives exist for encouraging low time preferences and for reversing the replacement of private property with “public” property. Let us consider several of these alternative policy actions.

Homestead

The decade of the 1970s witnessed the formation of the Libertarian Party and a number of inventive homesteading experiments inspired by libertarian principles, by the writings of Ayn Rand, and by the lack of virgin homesteading venues free of state interference. Werner K. Stiefel, the CEO of the large Stiefel Laboratories, invested his own money to pursue Operation Atlantis,⁹ a floating island in the Caribbean, with an elaborate libertarian “master lease” as a kind of constitution binding its members. The island was destroyed by a hurricane in 1972, and Stiefel’s advancing age forced him to abandon several other plans that he had provided as alternatives. Michael Oliver also tried to create a libertarian-inspired island named the Republic of Minerva in the South Pacific.¹⁰ It was abandoned when its members were menaced by warriors of the Kingdom of Tonga in 1972. His second attempt on the island of Abaco in the Bahamas devolved into a Bahaman political party in 1973; and his third attempt on the island of Vanuatu in the South Pacific was destroyed by mercenaries of that nation in 1980. A clever attempt to essentially vote oneself a homestead was launched with Jason Sorens’ Free State Project in July 2001. His thought was that by having a critical mass of like-minded libertarians in a small state – 20,000 libertarians in the state of New Hampshire – the community would form a voting block to enact libertarian principles statewide. By February 3, 2016, that number of people had signed the statement of intent to migrate to New Hampshire. However, a judgment on its success must lie in the future: That number is about equal to the number that migrates to the state for other reasons, and of the pledged number, only 10% have actually migrated.¹¹

Empower insurance agencies

A considerable literature exists for advancing the role of private insurance agencies into the protection monopoly currently enjoyed by the state. Some of these possibilities have been imagined by Bruno Leoni, *Freedom and the Law* (D. Van Nostrand Co., 1961);

Murray Rothbard, *For a New Liberty* (Macmillan, 1973); David Friedman, *The Machinery of Freedom* (Harper and Row, 1973); and Hans-Hermann Hoppe and Brad Edmonds, *The Myth of National Defense* (Ludwig von Mises Institute, 2003). The difficulty lies in finding a practical way to expand that role in the current democratic landscape of heavy regulation of insurance agencies by states jealous of their monopoly of the protection racket. Hoppe acknowledges that the ultimate power to implement this expanded power of insurance agencies is the threat of secession.¹²

Institutionalize a concurrent majority

According to John C. Calhoun, legitimate constitutional government does not rest upon "the few, or the many."¹³ In view of the impossibility of political unanimity, every majority would be "the government of a part, over a part – the major over the minor portion." Legitimate constitutional government should rest upon two pillars: The "positive" power of "the numerical, or absolute majority" and the "negative" power of states having "veto, interposition, nullification, check, or balance of power." The absence of any state veto would corroborate the "concurrent majority" – "the united sense of all," and would more closely approach national unanimity. The ultimate power to enforce the principle rests upon secession.

Secede

Quite naturally for a nation founded on secession from Great Britain, the United States has had a great secessionist tradition, beginning not in the South, but in New England. We catalog a few, in order of the number of possible consequent states. Two states: The Hartford Secessionists,¹⁴ the Essex Junto,¹⁵ the abolitionist William Lloyd Garrison,¹⁶ the Confederate States of America; twelve states: George F. Kennan;¹⁷ at least fifty states: Kirkpatrick Sale;¹⁸ thousands of states: Thomas Jefferson;¹⁹ millions of states: Ludwig von Mises.²⁰

A top-down implementation of secession is quickly dismissed by Hoppe because he thinks that the presidents of democracies have no power to divest their monopoly powers.²¹ Hoppe does not consider the possibility of an implementation of his ideas where a top-down programme is in fact most likely to succeed: In an autocratic state in transition. There are in fact two spectacular examples of just such a case. The secession of 15 countries from Soviet Russia in 1991 was achieved not after a genial parliamentary debate, but on the dictates of one autocrat: Mikhail Gorbachev. Similarly, the transformation of the fishing village of Shenzhen, China into a capitalist powerhouse of 12 million people²² was realized by one autocrat, Deng Xiaoping,²³ beginning in 1980. It seems strange that Hoppe should recognize the propertied independence of action of kings but not benevolent tyrants. But instead of that approach, he recommends a "bottom-up" approach for secession in some unspecified small part of America or in some "increasing number of territorially disconnected free cities" within it.²⁴

The breakup of monolithic empires into more manageable seceded states would certainly be a benefit, however achieved. Yet without a revision in the way each state's leaders are chosen, every seceded state is damned by the following consideration: All would still be voting as oligarchic elective states still infected by Madison's and Hoppe's ills of democracy.

Revise voting methods

Oligarchic electoral choice using America's current plurality-rule method, as used by most democratic nations, delivers the least prospect of fair representative candidates, according to most scholars of the subject. According to Duverger's law, the method is especially unfair in its encouragement of a two-party political system²⁵ – a system of factions despised by virtually all of the Framers of the American Constitution. But after considering most alternative methods, the fact remains that Nobel Laureate Kenneth Arrow's Impossibility Theorem demonstrates that all ordinal methods are defective in that they can allow a least-favored candidate to win.²⁶ A suggestion to revise the primary system by Thomas Gangale is hardly a comprehensive remedy.²⁷

Limit voting to property holders

Certainly a significant factor in accelerating increasingly higher time preferences and the metastasis of "public" property has been the growing dispensation of the voting franchise upon those with no "skin in the game" – upon those with little property, who are more than willing to vote themselves the property of others.

Now since any bald suggestion of limiting the franchise to property holders is doomed from the start, some variation retaining a broad franchise while restricting the theft value of voting fares better. For example, anyone who chose to receive welfare payments could simultaneously lose the franchise for, say, five years following the receipt of the last government check. Or, the removal of force – that is, theft – from taxation for welfare could be achieved by distributing welfare payments only from a fund created by strictly voluntary contributions. The voluntary welfare fund would grow only if property were not plundered, and its success would provide a model for extending the principle of voluntary taxation to other parts of the government budget.

Such indirect implementations of the principle are obviously necessary. For currently, a strict and immediate weaning of the "public" property recipients from the voting rolls would mean that the entire electorate would be disenfranchised.

The Varieties of Sortition

The victories by Miltiades over the Persian Darius at Marathon in 490 BCE, and by Themistocles over Xerxes at Salamis in 480 BCE ushered in the age of Pericles, three-quarters of a century of Athenian ascendancy throughout the Aegean, and its period of greatest flourishing. At about this same time, no later than 477 BCE, the Athenians institutionalized democracy based on klerostocracy (from κληρος, or lot) or sortition, that is, the random selection of government personnel by lot.²⁸ The practice was designed to defeat what the American Framers would come to designate as "factions," or the agglomeration of interests united in using the fiction of "society" to enrich themselves. This usage was likely a secular repurposing of the religious practice used to determine the will of the gods:

[Since] Fustel de Coulanges [was] the first to point out that, as the lot was religious in its origin, it must have been in some form or other a custom of very great antiquity.²⁹

Therefore, it seems likely that 477 BCE designated not the introduction of sortition, but the date of the invention of a remarkable piece of engineering to apply that practice to the selection of government personnel: The kleroterion (κληρωτήριον). The kleroterion was an upright slab of stone about the height and width of a man, pierced with deep slots something larger than modern USB ports. They were arranged in up to about 50 rows, with five or eleven slots in each row. On the day when juries or state officers were needed, citizens would show up. Each would collect a modest fee for his civic duty, and insert his pinakion (πινάκιον), a bronze strip about the size of a large thumb drive, into a slot. The pinakion was an ID unique to each citizen. The rows were filled so as to number considerably more than the number needed to be selected. A tube was strapped to the side of the stone, into which were dropped brass balls painted black and white. The number of white balls equaled the number to be selected; the rest were black, with the total number of balls equal to the number of pinakion-filled rows. A crank at the bottom let out just one ball at a time. If it was black, the first row of pinakia was dismissed; if white, that row was chosen to form an eleven-man jury when using an eleven-row kleroterion, or five officers when using a five-row kleroterion.³⁰

The Athenians were so convinced of the value of sortitioned democracy that they adopted it for every public office but one:

[T]he whole administration of the state was in the hands of men appointed by lot: the serious work of the law courts, of the execution of the laws, of police, of public finance, in short of every department (with the exception of actual commands in the army) was done by officials so chosen.³¹

Nor were they deluded in their confidence in this system: Athens declined not by any failure of sortition, but by its ultimate defeat in the Peloponnesian Wars (431–404 BC).

Modern writers and political scientists have flirted with the principle of sortition, for a variety of reasons. A humorous advocacy was put forth by H.L. Mencken in 1949:

I propose that the men who make our laws be chosen by chance and against their will, instead of by fraud and against the will of all the rest of us, as now.³²

The more serious political scientists fall into two general groups: Those who accept “sortive bodies” in some consultative capacity, and those who accept them to achieve a greater equality in representing the public at large.

Purely consultative sortition

Robert A. Dahl thinks that “sortive bodies,”³³ sometimes called “minipopuli,”³⁴ may perform some kind of advisory role in forming groups to talk about issues of the day. But since these groups have no power, it’s hard to see their value at all, even as substitutes for opinion polling. Indeed they appear more as a theoretical exercise than anything, since clearly Dahl has no real qualms with democracy in its current form: He scoffs at Madison’s fear of “majority tyranny” and denigrates the term “faction” as uselessly vague.³⁵ James S. Fishkin is of the same ilk, and equally muddled. In one work he accepts “sortive bodies” as legislative advisors or stand-ins for opinion polls,³⁶ but then elsewhere renders them useless because in his view they lack “technical expertise” in lawmaking.³⁷ Likewise, John Gastil and Erik Olin Wright shudder so much at the prospect

of uninformed “sortive bodies” falling prey to “legislative capture” by some staff of law-writing technocrats that they propose “advocacy coalitions” to keep them informed.³⁸

Halfway implementations, whether they restrict sortition to purely consultative bodies, or only gradually endow it with legislative powers, or allow it in only one of the two houses of Congress, are cures worse than the disease. They leave in place the debilitating oligarchic elective system and add sortition for no clear reason – a system that ignores the Athenian success in applying sortition across every public institution except the military.

Nevertheless, the one issue that gives pause to advocates of purely consultative sortition must be addressed: The presumed loss of “institutional memory” in a constantly rotating policy-making body of amateurs.

In the sense of the term “institutional memory” as a continuity of values, the oligarchic system can always be suspected of politically motivated change. From support of the Defense of Marriage Act in 1996, to its abandonment in the Equality Act in 2015, from its members’ universal perception of abortion as a category of murder to a category of human rights, it has made these and other revolutionary breaks, not as a reflection of a changing electorate, but in response to politically aggressive minorities. Raising this point is not to argue the ethical merits of the change; it is to illustrate that any change in long-held values, no matter how whimsical or revolutionary, is, for oligarchical election, politically suspect as vote pandering, while for democratic sortition is always the expression of the collective will of its randomly chosen members.

The sense of the term “institutional memory” as professional legislative standards is a fiction. The current oligarchically elected Congress is already subservient not only to a staff of law-writing technocrats, but to lobbyists, partisan “think tanks” and opinion polls, administrative agencies, and media pressure. The legislator holding office by oligarchic election currently spends almost half his time fund raising,³⁹ leaving the “professional” work of cobbling up the law to staffers; in the remaining half he acquires “knowledge” for evaluating proposed bills not from time-consuming reading or deliberation, but from paid lobbyists whose political contributions promise to keep him in office; his long-term “vision thing”⁴⁰ is acquired from “think tanks” funded almost exclusively by usually wealthy donors with a definite political ax to grind or acquired from the latest opinion poll; the rambling, indecipherable bills – which they demand must first be passed “so that you can find out what’s in it”⁴¹ – allow for the often secret insertion of favors for constituents – and a critical tool for staying in office is “constituent services”; bills are written vaguely in the expectation that administrative agencies will “fill in the details,” a practice which not only reduces court challenges (following the principle of Chevron or Auer deference⁴²), but which disperses responsibility for any damage the laws may inflict; and “debates” in the sense of a lively exchange of facts and ideas no longer exist – instead, members line up to deliver televised soundbites, often to nearly empty chambers. *There* is the elected lawmakers’ vaunted “expertise.”

In contrast, a sortitioned legislature would take leading ideas not from politically sponsored “think tanks” run by tendentious intellectuals, not from opinion polls, and not from those who market “information” for a foregone political aim, but from disinterested scholars and experts. In the absence of political parties, the market would incentivize the

emergence and preponderance of organizations that provide concisely written legislative detail for objective policies.

In short, there is no current “institutional memory” either in abiding shared values or in law-writing conventions; only parliamentary form remains – a matter safely confided to powerless functionaries. In both senses of the term “institutional memory,” the current oligarchic elected legislators exacerbate and perpetuate the ills of democracy.

Egalitarian sortition

A second large group of political scientists writing about sortition are those who, dismayed that over 95% of the elective oligarchy of legislators are white males – and about half of them lawyers – seek equality in the form of proportional representation for women, for minorities currently based on race, and for unspecified protean “disadvantaged” factions. Hugo Bonin,⁴³ Ernest Callenbach, and Michael Phillips⁴⁴ are typical of this group. All of them embrace “diversity” while being curiously blind to the fact that diversity is the opposite of equality. They seek equality for the various factions that are assembled not for their diversity, but for their adherence to a prevailing ideology. What were the unequally represented factions of a century ago? They were the factions of class: Worker, bourgeois, and landlord. Clearly the factions are assembled according to political considerations, and not according to measurable benefits for the society as a whole. For how will those who are half black and half Latino be represented? Would they not be doubly represented? How many legislators will represent the Frisian immigrants? And how many will represent the left-handed Frisians with a limp?

All such schemes that embrace sortition from egalitarian motives fail because they are based on arbitrary groupings formed by the fashionable watchwords of the day.

Thoroughgoing sortition

There is a wisdom in crowds.⁴⁵ Indeed, the free market itself rests upon the superior *en masse* knowledge of individual buyers and sellers, and libertarian speculation in every field is nothing without the concept of rational spontaneous order of the many.⁴⁶ It is a pleasant irony that the ideas most likely to secure individual freedom and prosperity – ideas confident of Thomas Jefferson’s “natural aristocracy” – have nothing to do with a supercilious disdain for the “great unwashed.”

In 2014, Google launched Project Aristotle,⁴⁷ led by researcher Julia Rozovsky, tasked to develop the perfect team. For over a year Rozovsky studied over a hundred groups assembled according to various standards, looking for the ideal “group norms,” or “team culture.” The greatest contrast was between Team A, a star group of exceptionally smart and efficient professionals, and Team B, a group of capable but essentially random workers. She found that Team B was more willing to “take risks” and overall performed better. These advantages were expressed in a “collective I.Q.” greater than the sum of its parts because it encouraged the “psychological safety” of each member contributing to the group.

The high time preferences and expansion of “public” property at the expense of private property result from a special case of the “tragedy of the commons”⁴⁸ – the situation in which one common resource is shared among multiple independent and rational individuals each seeking to maximize his own gain. Each democratic legislator maximizes

his own gain at the expense of the “public” property commons only indirectly as a member of a political faction. Obviously there are cases where a legislator will take a bribe or commit a crime without reference to his political affiliation. But these are peccadillos in comparison to the systematic theft legitimized under the conjury of “the state,” advanced under the banner of a political faction. The former are ordinary crimes; the latter is the basis of the ills of oligarchically elected states – mislabeled “liberal democracies.” The effect of adopting sortive democracy as described below will be to remove this prospect of institutionalized theft by a political faction by destroying political parties altogether.

Ours is an age of envious egalitarianism. The temptation to pose as a victim of some inequality, no matter how spurious the claim and no matter how connatural the difference from other people, is sanctioned by the prevailing culture. Sortition does not confer legislative power upon anyone on the basis of any reasoned claim of “desert”; it dispenses altogether with the endless wrangling both over the “equally fair” or “ideal” candidate and his representative “rightness,” and over his “equally fair” or “reasoned” disposal of private property made public; it is in that respect “arational.”⁴⁹ Sortive democracy precludes leveling egalitarianism; it guarantees true diversity through its random selection of candidates.

The great obstacle to the guarantee of randomness is the formation of the initial pool from which all subsequent lots are drawn. As described below, the federal amendment is indifferent to claims of “inequality” in the initial pool, leaving the resolution of such endless and futile discussion to the states, who are their own arbiters of voting qualifications according to the Constitution. Whether Utah insists that its candidates convert to Mormonism or New York insists that theirs hold a degree in accounting is a matter of indifference to the positive sortive effect of the Amendment.

The 28th Amendment

- Each Congressional district existing at the time of this enactment must at the next biennial election submit to the President of the Senate the names of 300 citizens willing to serve as United States Representatives; and each state, at its next Senatorial election must submit the names of 100 citizens willing to serve as United States Senators. The qualifications and manner of providing each list of 300 Representative candidates and 100 Senatorial candidates are to be determined by the states respectively, with the exceptions that no particular political party affiliation shall be considered a qualification, and that all those qualified who present themselves for selection must have, methodologically, a statistically equal chance of selection.
- Within a week of the receipt of these names, the President of the Senate must choose entirely at random one name from among those 300 for service in each Congressional district, and choose entirely at random one name from among those 100 for service in the Senate. Within one week of the pronouncement by the President of the Senate of its random choice for each seat, the Supreme Court shall validate solely the randomness of each choice made by the President of the Senate and no other merit. For any district not so validated, the President of the Senate shall draw again from the 300 Representative names and 100 Senate names already in its possession until randomness is validated, or

until three attempts have been made, after which point a federal employee, chosen at random by the President of the Senate and without Supreme Court validation, and earning not more than one-twentieth the official salary of the United States President, shall while blindfolded draw one name from a basket containing the 300 names, or the 100 names, according to which seat's randomness is contested, and that choice shall assume office.

- Challenges to the randomness of the names as submitted by each state shall not be heard at the federal level, nor shall any such challenge impugn any name once received by the President of the Senate. Redress shall be found solely within the state so challenged.
- This method of Congressional and Senatorial election shall prevail after the first election, as prescribed above. The phrase "by the People" of Article I, Section 2 is hereby amended to read "randomly by the people"; and the phrase "by the people" of the 17th Amendment is hereby amended to read "randomly by the people".
- In those years when the election of Senatorial candidates shall coincide with the quadrennial election of the United States President, the unchosen remnant of Senatorial candidates, that is, 99 from each state holding a Senatorial election, shall form the Electors for those states. Those states not holding a Senatorial election at the quadrennial election shall nonetheless submit 100 names, as prescribed above, for the purpose of serving as Electors. They shall convene in each of the several states at a time and place appointed by the legislatures of those states, but no later than one week after the random selection of their one state Senator, as prescribed above. At that time they shall perform the duties of Electors set forth in this Constitution, as amended.
- Article II, Section 1, Clause 2 beginning "Each State shall appoint..." is hereby amended to read "No person holding an office of trust or profit under the United States, shall be appointed an Elector."
- Any national convention called for the passage of this Amendment shall limit its scope to this single Amendment. The applications of the several states for such a convention may be differently worded, but must be limited to the consideration of matters set forth above. Passage must be accomplished by January 1, 2020, after which time the amendment process must begin anew.

Objection 1. The Amendment will not provide more capable candidates than the current system, and certainly will not provide more democratically elected ones. Since the best candidates and the less capable candidates will have a "statistically equal chance of selection," the best will assume office only by pure luck. Admittedly, the current system does not provide a [philosopher king](#), but at least the victor has the approval of the majority of voters, who therefore have no cause to show unrest when political choices don't suit them. Since the will of the people would be expressed entirely as a matter of chance, the Amendment would constantly invite possibly violent discontent.

Objection 2. The Amendment does not dampen the presumed ill of democracy — it inflames its worst aspect. Every two years 435 x 300, or 130,500 candidates, would stand for national office — and that's not counting the [third of the Senate](#) that stands for office every two years. In the next federal election that would add 33 x 100, or 3,300 candidates — 133,800 in all!

Objection 3. The Amendment will effectively annihilate political parties, which are the only way that the public has of knowing the political outlook of candidates. Without the vetting and approval of the party system, there would be no way of knowing how an elected official will vote on matters of national importance. In Congress, with no party system to enforce fidelity to a published platform of ideas, there would be ceaseless wrangling and nothing would be accomplished. No national agenda would exist, since there would be no party to publish and organize one.

Objection 4. The Amendment will place the election of the President of the greatest nation on earth in the hands of $(33 \times 99) + (17 \times 100)$ or 4,967 randomly selected people without party affiliation, ignoring the will of the people. Nothing would prevent these Electors from choosing a completely unknown person, whose background and qualifications would lack not only the examination of the party system but also the scrutiny of public campaigning. Any President elected in this way would become the laughingstock of nations.

Objection 5. The Amendment would replace the current system of elections, however flawed, with a biennial carnival of chance. The character of those presenting themselves to this spectacle would be that of desperados with no necessary knowledge of law, statecraft, or economics.

Objection 6. Since there are [two ways to propose an Amendment](#) — a two-thirds vote of both houses of Congress or a call for a national convention by two-thirds of the state legislatures — and since Congress is unlikely to vote to destroy its method of access to power, the process of adopting the Amendment would produce an open national convention, exposing the nation to all of the ills of that untried process. The Amendment's clause to restrict the scope of any national convention to this single Amendment is effectively demanding the enactment of a critical part of its text merely on the basis of considering it.

On the contrary, the [Constitution](#) says not one word about democracy, not one word about political parties, and it leaves it to the states to determine the qualifications of its Electors and the details of elections not specifically enumerated in its text.

I answer that, a great mythology has been erected to exalt the power of each voter, when it should be self-evident that a single vote is meaningless in determining the outcome of a national election. A complementary mythology has been erected which supposes that there exists one person who is the best representative of his electorate in national elections. But any national election is a sampling of the desires of a mass of voters at some moment, influenced by unpredictable local and world events, by unforeseen turns in the economy, by rumors and fears, by some fashion of catchwords that passes for popular ideas. To assume that a single sampling at a single time in the capricious national popular mood best represents the voters is a far greater idolatry of chance than a method using a broad sampling, over a longer time, by the mediation of several indirect bodies of voters.

Reply to Objection 1. To admit a distinction between capable federal elective candidates and democratically elected ones is to admit the force of this Amendment. For what is meant by "capable" in such a system? There is the capability of a shipbuilder in

building ships, and the capability of the mason in constructing a house; but there is no capability whatsoever either required by law or insisted upon by voters, even when a clearly more professional choice is set before them. Presidents have been [drawn from the ranks of](#) soldiers, school teachers, ranchers, tailors, and peanut farmers; Senators have been elected from the ranks of veterinarians, musicians, sports figures, chemists, radio talk show hosts, firefighters, ski instructors, security guards, coroners, morticians, and tugboat captains; and the variety among Representatives is too prolific and spectacular to mention. But nowhere among this wild variety is there a record of anyone elected after campaigning as a philosopher-king; even if it were desirable, the current institution architectonically forbids it. It is clear that the sole “capability” of anyone elected under such a system is his capability of being elected, without insistence upon any objective merit of vocation or experience. The pretense of the current system in expressing “the will of the people” is founded purely upon elective capability, which proves that its “will of the people” is a tautologous ephemera more evanescent than the [fiction of “society.”](#) The “will of the people” of the current American democracy is nothing more than a talisman that levitates quite ordinary people to the heights of public office. It is becoming increasingly obvious to a restive populace that no one of real ability has a chance of winning the game, and that the pretense of fine-tuning employment, interest, and money — frenetically parsing each fluctuation — by a mass democratic regime for the benefit of its citizens is a Machiavellian sham.

Reply to Objection 2. How will the nation’s bakers manage all those loaves of bread? At any given time there must be millions upon millions of them for sale! But these millions of loaves are of no interest at all to the one man buying a few loaves from the local market: His interest is on the shelf before him, where he makes careful comparisons and buys exactly what he needs. This is exactly the level of focus encouraged by this Amendment, and by the Framers, who sought to limit the scope of democracy to the local level, where each town hall voter knew each candidate not by the cleverly posed advertisement but by the firmness of his handshake and the soundness of his character. Since the several states control the election process, there is nothing to stop them from dividing each 300-man district into smaller units of 100, 30, or 10 men, if that is more convenient. Indeed, such a subdivision would likely encourage greater familiarity with the candidates, and greater local participation.

Reply to Objection 3. A political party is nothing more than a longstanding [faction](#), despised by the Framers. Various longstanding factions offer their candidates for national office by a haphazard process based on a single criterion: Electability. Of course great abilities are claimed for each candidate, and are advertised with studied melodrama. But any virtues of an individual candidate must be subservient to the criterion of electability because every faction imagines that once in power their loftier goals can be realized, and that nothing can be accomplished while out of power. A political party can never tolerate a disinterested comparison of the abilities of the candidates, for the triumph of the superior candidate of the opposing party always undermines its vested interests as a party. Acrimonious politicking instead of sober deliberation is thus institutionalized by the party system.

To say that no national agenda would exist is to say that a large deliberative group in a republic cannot arrive at purposeful action without the myth-making, propaganda, and

caricaturing of the current longstanding factions. And if the term “national agenda” signifies a centrally-directed secular crusade at the expense of a public sluiced at every vein by taxation, then we concede to the objection: Yes, the annihilation of political parties would be a blessing devoutly to be wished.

Reply to Objection 4. The 4,967 people serving as Electors of the President will be drawn from those carefully selected at the local level, drawn from the pool of would-be Senators. It must be supposed that this number will more sober in their deliberations than a fickle electorate composed of a mass whose single vote is meaningless in itself. It should not be forgotten that the system of Electors is still currently the law of the land, and no novelty. The “will of the people” and “party system” are fictions previously disposed of.

Reply to Objection 5. As explained above, it is the current system which is best characterized as “a carnival of chance” and a kind of idolatry. Because candidates will be selected at the level best suited to the consideration of their character, i.e., at the local level, it is more likely that the Amendment will produce officials of wisdom, sobriety, and true merit, rather than media poseurs whose primary talent is the knack of electability. By inference the objection presents Richard Nixon, Jimmy Carter, George W. Bush, and Barack Obama as products of its system who supposedly are not the laughingstock of nations. Which system is more likely to thwart the wiles of “cunning, ambitious, and unprincipled men”?

Reply to Objection 6. The Eighteenth, ratified in 1919, as well as the Twentieth and all subsequent Amendments have stipulated seven year terms for their ratification. Clearly there is established precedent for an Amendment to define the terms of its adoption.

The practical tool with the best prospect of success of encouraging adoption of the Amendment is conditional campaigning. It overcomes the inertia of mobilizing a mass of citizens against a state possessed of the vast resources of its very subjects, by rewarding their inertia in a clever way. The demoralizing, yet perfectly reasonable complaint of “Why waste my time and money in support of this amendment?” is silenced: No one need invest or act until a critical mass, a like-minded quorum, is reached; and the enlistment of this conditional support is secured by an effort no greater than a few clicks of a mouse. For example, if a citizen gives reasoned assent to the Amendment, he need not deliver on his online pledge to give money to its promotion nor take any action until, say, 20,000 like-minded others in his city also pledge. The idea began with Malcolm Gladwell’s book *The Tipping Point*,⁵⁰ and was implemented by Andrew Mason in his experimental site ThePoint.com and in the company he founded, Groupon.com.

And furthermore, revolutions enjoy the most success, not when appealing to something entirely new, but when appealing to some previous, lost condition. We appeal to the restoration of an institution that announced a period of great flourishing in the West. We propose the restoration of the true Athenian democracy based in sortition.

¹ Fukuyama, Francis, *The End of History and the Last Man* (Free Press, January 31, 1992, ISBN 978-0029109755, 418 pages), page xi.

-
- ² Madison, James, “Federalist No. 10” (Federal Congress website, last updated October 14, 2018) <<https://www.congress.gov/resources/display/content/The+Federalist+Papers#TheFederalistPapers-10>> accessed October 15, 2018.
- ³ Hoppe, Hans-Hermann, *Democracy: The God That Failed* (Transaction Publishers, sixth printing, 2004, from Routledge first edition of August 1, 2001, ISBN 978-0765808684, 304 pages), pages 42-43.
- ⁴ Locke, John, *Second Treatise of Civil Government*, Chapter 7, Section 87 (The Constitution Society, published February 18, 2013, last updated April 10, 2018) <<https://www.constitution.org/jl/2ndtr07.htm>> accessed October 15, 2018.
- ⁵ Hoppe, page 17.
- ⁶ Flanagan, Frank M., *Confucius, the Analects and Western Education* (Continuum International Publishing Group, December 8, 2011, ISBN 978-0826499301, 224 pages), page 100.
- ⁷ Aristotle; Jowett, Benjamin, translator, *Politics of Aristotle* (Batoche Books, 1999, OCLC 229015989, 192 pages), page 93.
- ⁸ Madison, *Ibid.*
- ⁹ MacCallum, Spencer, “Werner K. Stiefel’s Pursuit of a Practicum of Freedom” (*LewRockwell.com*, published June 19, 2006) <<https://www.lewrockwell.com/2006/06/spencer-heath-macallum/werner-k-stiefels-pursuit-of-a-practicumoffreedom/>> accessed October 16, 2018.
- ¹⁰ Nestmann, Mark, “Want to ‘Rule’ Your Own Country? Here’s how.” (*LewRockwell.com*, published October 5, 2016) <<https://www.lewrockwell.com/2016/10/mark-nestmann/can-establish-sovereign-nation/>> accessed October 16, 2018.
- ¹¹ Ian, “Free State Project Officially Announces 20,000 Signers – 100% Reached” (*Free Keene*, published February 3, 2016) <<https://freekeene.com/2016/02/03/video-free-state-project-officially-announces-20000-signers-100-reached/>> accessed October 16, 2018.
- ¹² Hoppe, page 287.
- ¹³ Roesch, James Rutledge, “John C. Calhoun and ‘State’s Rights’” (Abbeville Institute, published August 25, 2015) <<https://www.abbevilleinstitute.org/review/john-c-calhoun-and-states-rights/>> accessed October 16, 2018. This subsection quotes are from John C. Calhoun’s *Disquisition on Government* and *Discourse on the Constitution and Government of the United States*.
- ¹⁴ DiLorenzo, Thomas J., “Yankee Confederates: New England Secession Movements Prior to the War Between the States,” in Gordon, David, *Secession, State, and Liberty* (Transaction Publishers, June 30, 1998, 978-0765809438, 344 pages), page 135-ff.
- ¹⁵ Brown, Charles, *The Northern Confederacy* (Princeton University Press, October, 1915, 130 pages) pages 7-10.
- ¹⁶ Garrison, William Lloyd, *The Liberator*, May, 1844.
- ¹⁷ Kennan, George F., *Around the Cragged Hill: A Personal and Political Philosophy* (W. W. Norton & Company, May 17, 1994, ISBN 978-0393311457, 272 pages) pages 149-150.
- ¹⁸ Sale, Kirkpatrick, *Human Scale Revisited: A New Look at the Classic Case for a Decentralist Future* (Chelsea Green Publishing, May 3, 2017, ISBN 978-1603587129, 408 pages). Though Sale does not give a specific number, he does present Vermont as a paradigm, one of the 50 states of the U.S..
- ¹⁹ Foley, John P., editor; *The Jeffersonian Cyclopedia: A Comprehensive Collection of the Views of Thomas Jefferson* (Wentworth Press from Funk & Wagnalls 1900 original, August 26, 2016, ISBN 978-1363478736, 1080 pages), page 216, referencing his “ward republics.”
- ²⁰ von Mises, Ludwig, *Liberalism* (Liberty Fund, October 1, 2005, ISBN 978-0865975866, 203 pages), pages 109-110. “If it were in any way possible to grant this right of self-determination to every individual person, it would have to be done.”
- ²¹ Hoppe, page 288.
- ²² Xinhua News Agency, “Shenzhen: A story of change” (*China Daily*, updated February 20, 2017) <http://www.chinadaily.com.cn/china/2017-02/20/content_28261033.htm> accessed October 16, 2018.
- ²³ Keyser, Catherine H., “Deng Xiaoping” (*Columbia University, Asia for Educators*, published 2009) <http://afe.easia.columbia.edu/special/china_1950_leaders.htm#deng> accessed October 16, 2018.

-
- ²⁴ Hoppe, page 291.
- ²⁵ Poundstone, William, *Gaming the Vote: Why Elections Aren't Fair (and What We Can Do About It)* (Hill and Wang, February 17, 2009, ISBN 978-0809048922, 352 pages), page 175.
- ²⁶ Ibid, page 20.
- ²⁷ Gangale, Thomas, *From the Primaries to the Polls: How to Repair America's Broken Presidential Nomination Process* (Praeger, December 30, 2007, ISBN 978-0313348358, 280 pages).
- ²⁸ Headlam, James Wycliffe, *Election by Lot at Athens* (Forgotten Books hardcover from 1891 original, ISBN 978-9333680820, 2016, 240 pages), page 79. Online at <<http://www.archive.org/stream/electionbylotata00headuoft#page/78>>.
- ²⁹ Ibid, page 81.
- ³⁰ Gaurier, Pierre and Masini, Patrice; "La machine qui tirait au sort les citoyens d'Athènes" (CNRS, Le journal d'Aix-Marseille Université, published May 5, 2017) <<https://lejournal.cnrs.fr/videos/la-machine-qui-tirait-au-sort-les-citoyens-dathenes>> accessed October 17, 2018. Click "Transcript" if the video will not launch.
- ³¹ Headlam, page 2.
- ³² Mencken, H.L., *A Mencken Chrestomathy: His Own Selection of His Choicest Writings* (Vintage, April 12, 1982, ISBN 978-0394752099, 627 pages), page 378.
- ³³ Dahl, Robert A., *After the Revolution?: Authority in a Good Society* (Yale University Press, Fastback Series, November 28, 1990, ISBN 978-0300049640, 168 pages), pages 122-123.
- ³⁴ Dahl, Robert A., *Democracy and Its Critics* (Yale University Press, July 24, 1991, ISBN 978-0300049381, 397 pages), page 340.
- ³⁵ Dahl, Robert A., *A Preface to Democratic Theory* (University of Chicago Press, April 15, 1963, ISBN 978-0226134260, 154 pages), page 30.
- ³⁶ Fishkin, James S., *Democracy When the People Are Thinking: Revitalizing Our Politics Through Public Deliberation* (Oxford University Press, July 5, 2018, ISBN 978-0198820291, 272 pages), page 53.
- ³⁷ Fishkin, James S., "Random Assemblies for Law-Making? Prospects and Limits," (University of Wisconsin, Madison, Seminar on Real Utopias, Spring Semester, 2018, page 6) <<https://ssc.wisc.edu/~wright/929-utopias-2018/wp-content/uploads/2018/01/Fishkin-PS-special-issue-on-Sortition.pdf>> accessed October 17, 2018.
- ³⁸ Gastil, John; Wright, Erik Olin; "Legislature by Lot" (International Observatory on Participatory Democracy [IOPD], Eighteenth Conference, Barcelona, 2018, page 13) <<https://www.oidp.net/docs/repo/doc336.pdf>> accessed October 17, 2018.
- ³⁹ O'Donnell, Norah, "Are members of Congress becoming telemarketers?" (*CBS 60 Minutes*, published April 24, 2016) <<https://www.cbsnews.com/news/60-minutes-are-members-of-congress-becoming-telemarketers/>> accessed October 17, 2018.
- ⁴⁰ Mack, Robert J., "The Republican 'Vision Thing'" (*The American Thinker*, published October 8, 2011) <https://www.americanthinker.com/articles/2011/10/the_republican_vision_thing.html> accessed October 17, 2018.
- ⁴¹ Capehart, Jonathan, "Pelosi defends her infamous health care remark" (*The Washington Post*, published June 20, 2012) <https://www.washingtonpost.com/blogs/post-partisan/post/pelosi-defends-her-infamous-health-care-remark/2012/06/20/gJQAqch6qV_blog.html?noredirect=on&utm_term=.bd554ec161d5> accessed October 17, 2018.
- ⁴² Daniel, Justin S., "Scrutinizing Deference to Administrative Agencies" (*The Regulatory Review*, published November 27, 2017) <<https://www.theregreview.org/2017/11/27/daniel-scrutinizing-deference/>> accessed October 17, 2018.
- ⁴³ Bonin, Hugo, *La démocratie hasardeuse: essai sur le tirage au sort en politique* (Éditions XYZ, format Kindle, 19 octobre 2017, ASIN B076K4KRD1, 2217 KB, 121 pages).
- ⁴⁴ Callenbach, Ernest; Phillips, Michael; *A Citizen Legislature* (Bookpeople, November 1, 1985, ISBN 978-0960432059, 90 pages). Online at <<https://people.well.com/user/mp/citleg.html>>.
- ⁴⁵ Surowiecki, James, *The Wisdom of Crowds* (Anchor, August 16, 2005, ISBN 978-0385721707, 336 pages).
- ⁴⁶ "Spontaneous order" (Mises Institute, Mises Wiki, last updated October 16, 2013) <https://wiki.mises.org/wiki/Spontaneous_order> accessed October 18, 2018.

⁴⁷ Duhigg, Charles, “What Google Learned From Its Quest to Build the Perfect Team” (*The New York Times Magazine*, published February 25, 2016) <<https://www.nytimes.com/2016/02/28/magazine/what-google-learned-from-its-quest-to-build-the-perfect-team.html>> accessed October 18, 2018.

⁴⁸ Hardin, Garrett, “The Tragedy of the Commons,” (*Science*, 162.3859, 1968), pages 1243-1248.

⁴⁹ Dowlen, Oliver, *The Political Potential of Sortition: A Study of the Random Selection of Citizens for Public Office* (Imprint Academic, Luck of the Draw: Sortition and Public Policy series, first edition, August 1, 2008, ISBN 978-1845401375, 264 pages).

⁵⁰ Gladwell, Malcolm, *The Tipping Point: How Little Things Can Make a Big Difference* (Back Bay Books, January 7, 2002, ISBN 978-0316346627, 301 pages).