

Sortition: The Nuclear Option of the Right

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Annihilating political parties; liquidating politicians as a class; driving out lobbyists with a scourge from the temple of democracy – what’s not to like about [sortition](#)?

And yet there is almost nothing written about sortition by those on the Right – ‘Right’ in this wide context meaning anyone who truly wants limited government. Sortition has in recent years become a hot topic on the Left the world over, both among the online laity and the clerisy in academe. But from classical liberals, anarcho-capitalists, and libertarians one hears scarcely a peep. For example, for the entire history of LRC outside [my own discussion](#) of its use for [Federal offices](#), an Internet search finds just two marginal citations of the term: One in a book review, another in a tangential note.

Why? Why this reluctance to take up not even [five smooth stones](#), but one handy stick to club Leviathan into submission?

In the following I will explain why this has been so, why it should *not* be so, and lay the foundation of future classical liberal research on the topic of sortition.

In a word, the tainted significance of the term “democracy” explains the monopoly of research and practice on sortition by the Left. Sortition – in case you failed to click the first link in this article – is the selection of government representatives by random lot. This method was the original Athenian sense of democracy, as Aristotle noted in the *Politics*:

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

Professor Hoppe has categorically demolished the claims of democracy in its current usage with his 2001 masterpiece [Democracy: The God That Failed](#), but in it he says not a word about sortition. Why should he, when its current meaning is that of a mere tool for the greater pathology? But is that current meaning valid? Certainly we can accept Aristotle’s assessment that elections are “oligarchical.” But certainly it does not follow that the selection of government representatives by random lot entails the increasing “rates of crime, structural unemployment, welfare dependency, parasitism, negligence, recklessness, incivility, psychopathy, and hedonism” (pages 42-43) that Hoppe so rightly condemns in democracy in its current meaning.

The homeowners’ association (HOA) is the archetypical example of the radical enforcement of property rights cited by libertarians. Yet there is almost never a discussion of how decisions might be made within the HOA once it is established as an alternative to the state. As those who have lived under an autocratic HOA administration can tell you, a very “undemocratic” tyranny can sometimes prevail. For example, until the reforms enacted in 2011, [Texas HOAs could prohibit](#) the display of a mezuzah on your doorpost, and prevent the installation of solar panels on your own roof. So then, is a tyranny of this kind to be the endpoint of the ascendancy of property rights? And if not, is this archetypical HOA to be governed by elections – the very tool of both oligarchy and of democracy in its current pathology? It is childish to assume that some magical “spontaneous order” will govern

decision-making. So, can it be governed by some other mechanism? *Can it best be governed by sortition?*

Both Left and Right can agree that the current universal failure of political decision-making faces [Robert Michels'](#) dilemma:

- direct democracy for large nations is unworkable, and
- representative democracy by elections results in oligarchic subversion.

For this dilemma the Left advocates *more* democracy in its current pathology – a remedy that prescribes a disease of another kind. Every one of the current Leftist manifestations of sortition, both in its theoretical discussion and in its many remarkable realizations, stipulate the use of [stratification](#) to enforce “equal representation” in the citizens’ assemblies – or “juries,” as they are alternately designated – drawn from the random sample. Now, just as Left and Right can make common cause in the recognition of the dilemma of modern politics, both are faced with a serious and unavoidable hurdle in the use of sortition: The problem of randomization itself. I digress to provide a vivid illustration.

Kevin Mitnick, the world’s greatest computer hacker, in Chapter One of his [The Art of Intrusion](#) tells how Alex Mayfield and three hacker friends drained over a million dollars from Las Vegas slot machines in the 1990s by finding a flaw in the random number generator. The flaw was summarized by Alex: “If it’s truly random, they can’t set the odds.” That is, an audit *must* be performed to verify that payouts were not losing money for the house. The slot machine designers had to compromise randomness to perform the audits because a truly random process might very well deal a sequence of bank-busting payouts. This is exactly the dilemma of stratification in sortition: The benefits of large-sample randomization in destroying democratic politicking are compromised because the “[underpowered](#)” sample required for practical group discussion (typically around 100 members) must be audited for equality of representation. In other words, it must be *stratified*. Without it there is no guaranteed way to avoid a solution-busting sample of, say, 100 female public schoolteachers in one random draw, or 100 retired soldiers in another.

Sortition must overcome additional difficulties as well. Among them are terminology, assumptions, range of application, scope of power, and point of application. The terminology of sortition is evolving, as in any new field of study, and frankly speaking, many academics want to carve their initials on the tree of knowledge by hatching terms that point to their own ingenuity. Thus we have citizens’ assemblies, juries, mini-publics, mini-populi, planning cells, consensus conferences, deliberative poll groups – all being slight variations to designate the stratified samples. Current literature, both lay and academic, assume that discussion excludes the commonplace judicial juries (deciding criminal guilt or innocence), in spite of the possible application of such discussion for informed juries; also assumed to be excluded are administrative juries (agency members permanently seated to implement policy) and executive juries (those used to empanel officers who formerly were elected) – although I have done so for [federal officers](#). It is overwhelmingly *legislative juries*, i.e., those only temporarily seated to decide a narrowly defined public policy issue, that are

assumed for discussion. Range of application varies from the tightly-leashed deliberative poll groups of [James Fishkin](#) to the expansive crowdsourcing of [Hélène Landemore](#). The scope of power in almost all studies nevertheless limits the juries to an advisory role, stripped of law-making force. Discussion and practice vary greatly on the question of when juries should be introduced. Should this occur prior to any deliberation (polling), at the beginning (agenda setting), at the middle (suggesting and deliberating upon any proposals, scientific or otherwise), or at the end (judging and approving expert proposals)?

However, it is stratification that is the kernel difficulty. [Stratification](#), the division of a sample into smaller subsamples or strata, is itself not a trivial element of statistical sampling, but its current usage in sortition suffers from insurmountable flaws – flaws which are stamped into it by its current usage to advance a Leftist agenda. It is the rectification of these flaws which reshape it as a tool for limiting government.

A few examples are briefly worth considering.

1. Irish Sortitions

The Irish government recently applied sortition in two deliberative sessions:

2015 Irish Constitutional Convention on “marriage equity”, comprised of 66 citizens and 33 politicians (4 from Northern Ireland);

2018 Irish Citizens’ Assembly primarily on abortion, comprised of 99 citizens, excluding politicians.

End-stage success of the second Irish sortition, using stratification, to lift the ban on all abortions, 2018:

- 99 jurists, some of whom dropped out and had to be replaced.
- 4 stratification categories: age, gender, social class [income?], and geography.
- Over 5 weekends [*sic*] they heard personal, medical, legal and ethical testimony.
- On May 25, 2018, the referendum to lift the ban on all abortions passed.

2. French Sortition

Middle-stage failure of the Macron’s French citizens’ climate assembly, 2019-2020:

- 150 jurists.
- Demographic stratifications, including one for location, which represented the entire overseas French commonwealth with 4 members.

The assembly failed because, as one randomly-chosen member stated, “The government said they wanted us to deliver solutions but then they just picked what they wanted.”

A member of the group Démocratie Ouverte, which helped organize the convention, said that the assembly was a government response (subversion?) of the “gilet jaune” protests. Nevertheless, another Climate Citizen Jury (“Klima-Bürgerinnenrat”) is planned, in this case for Austria.

3. British Sortition

Beginning-stage mixed success the UK Climate Assembly, 2019-2020:

Brett Hennig’s Sortition Foundation conducted the UK Climate Assembly. His foundation offers “selection and stratification services.” It applies stratification as follows:

SF postal mails 5000 households an invitation to register online or by phone in a citizens’ assembly. Then “stratified random selection is performed to match the latest UK census data, typically on four dimensions: age, location, gender and education level.”

- 110 jurists – to decide *how*, not *whether*, to attain net-zero greenhouse gas emissions by 2050.
- Hennig then, without detailing exactly how, matched jurists for 7 categories: “gender identity,” age, ethnicity, educational attainment, location, description of their residence as urban or rural, and level of concern about climate change.
- Hennig’s greatest difficulty: Taking account of those *lacking* motivated views. Hennig confesses to having “slightly over sampled” certain demographics to account for it.
- An additional category was added for income: “completely random selection would have skewed the responses toward people with higher incomes” – so Hennig skewed for what in his opinion were the “most deprived areas,” reserving 20% of the jury for them.
- Dr. Jonathan Mattingly (a Duke University professor of mathematics) asks: “Who’s determining which categories inform decision-making? [...] How do we know which factors account for clarity, empathy and decisiveness?” Whether your parents are immigrants may be a more important category.
- Regarding expertise, Geoff Bedford (a jury participant from Leeds, England) says: the jury relies upon “sound bites from the mainstream media.”

4. Fishkin’s Deliberative Polling

Beginning-stage success of Fishkin’s “Deliberative Polling®”:

Fishkin’s approach, for which he has somehow secured a registered trademark, works by conducting a second poll after the original sample hears expert testimony; the second poll constitutes an “informed opinion poll,” improving on the original opinion poll. He has reported success in the following applications of his approach:

- Unification of Korea, South Korea (August 2011)
- London Power 2010: Countdown to New Politics, United Kingdom (January 2010)
- What to do with the Euro Cup stadium in Poznan?, Poland (November 2009)

- Europolis: A Deliberative Polity-Making Process, European Union (June 2009)
- Public Servants Careers Reform, Porto Alegre, Brazil (June 2009)
- Unemployment and Job Creation, Hungary (May-June 2008)
- Policies toward the Roma, Sofia, Bulgaria (2007).

Crowdsourced Sortitions

Middle-stage failure of H el ene Landemore’s two crowdsourced sortitions.

Landemore is a prolific contributor to sortition discussions. One of her well-known books is Re-Thinking Democracy in the 21st Century. Crowdsourcing is the practice of obtaining needed services, ideas, or content by soliciting contributions from a large group of people and especially from the online community rather than from traditional employees or suppliers. It draws random but highly motivated participants.

5. Icelandic Constitution

From 2010-2013, Iceland made a (poorly advertised) online appeal to rewrite the Icelandic constitution using crowdsourcing. This approach was rejected by the government. However, Alexander Hudson indicates that almost 10% of the proposals from the public generated a change in the draft text of the constitution.

6. Finnish Off-Road Traffic Laws

In 2013, Finland made an appeal to snowmobile users to rewrite the laws governing those vehicles, using Landemore’s crowdsourcing principles. After contention among users and government, the experiment was abandoned. However, there still exists the Finnish Avoin Ministeri  (Open Ministry), a web portal where citizens can debate public initiatives.

The Problems Surrounding Categories of Stratification

Every one of the seemingly innocuous demographic categories used in the examples above is suspect.

- **Age:** The young are more liberal and are highly motivated only issues fueled by social media; 16-24-year-olds spend approximately 3 hours a day on social media, according to ABC4 in Utah. Iain Davis claims that current sortition efforts are driven by powerful financial backers with pre-determined views. The young, and those who platform them, skew results: Almost all applications of sortition result in a Leftist outcome.

Had social media been around in the 1970s, it is easy to believe that not global warming, but global *cooling* would have been the “existential crisis” of the season, as articles by Newsweek, Time, Science & Mechanics and others demonstrate – in spite of the current mendacious failed attempt to “debunk” the printed facts.

- **Location:** Urban vs rural – urban voters are more liberal, e.g., as voting for the Irish abortion referendum shows. Any attempt to “compensate” in either direction constitutes a bias.

- **Gender:** Self-proclaimed gender “identity,” not biological identity, was used in Hennig’s UK Climate Assembly. How is “identifying” in that sense any different from “identifying” as young, or rich, or by any other category?
- **Education level:** Should jury membership be skewed to favor the uninformed?
- **Income:** Is this a circumlocution to diminish the better educated 1%? In effect, people with less competence in managing their own affairs are suddenly presumed to be adept in managing the public affairs of others.
- **Ethnicity:** Should someone blacker than another count double for Negro representation? Should someone with a multi-ethnic background get a vote for each ethnicity? And if “transgender” participants are not excluded, why should “transracial” participants like Rachel Dolezal, Jessica Krug, and Hilaria Baldwin be excluded?
- **Motivation:** Is not an indifferent person inherently willing to accept *any* outcome?

The Special Issue of Motivation

- Voter apathy is in fact a good thing: It is the indicator of political stability. High voter turnout likely means that political upheaval is underway, as witness the high turnouts in 1960 and 2016.
- Currently there is a self-selection bias among motivated participants, especially for example the issue of climate, that skews the juries toward a pre-determined result. Harvard Prof. Ariel Proccaccia addresses the issue of stratification bias, particularly that of motivation.
- Phil Parvin of Loughborough University: “Deliberative democracy is not a viable strategy for democratic reform. [... We live in] a world in which citizens face vast and entrenched obstacles to participating, in which many citizens possess little or no political knowledge or enthusiasm for contributing to democratic debates”. He recommends improving representation, not participation, including the use of minipublics for that purpose.

The Problem with Stratified Categories in General

A. Phillips Griffiths of the University of Warwick defines four concepts of representation:

- **DESCRIPTIVE:** Similarity between the representative and those represented; e.g., demographics.
- **SYMBOLIC:** Representative is the “focus of attitudes” of those represented, e.g., a monarch.
- **ASCRPTIVE:** Representative is unlike those represented, who are responsible nonetheless for the representative’s choices, e.g., Congressmen whose choices tax their constituents.
- **INTERESTED:** Representative is the voice of some faction, e.g., Congressmen who obey lobbyists.

Griffiths claims that deliberative democracy depends on the latter two; SYMBOLIC is non-functional; and DESCRIPTIVE is *not an essential*. Stratifying on characteristics that are unrepresentative for decision-making is a senseless as grouping by left-handedness or by a passion for bowling. He dismissively says that “we should not allow lunatics to be represented by lunatics”.

- [Hanna Pitkin](#) of UC Berkeley says “[Is the descriptively-mandated representative] really literally to deliberate as if he were several hundred thousand people? To bargain that way? To speak that way? And if not that way, then how?”
- Both Pitkin and [Keith Sutherland](#) of the University of Exeter say that the representative “equality” promised by stratification vanishes the minute any person opens his mouth, since some will immediately be recognized as more articulate or more knowledgeable.
- Descriptive stratification is precluded by the “plurality and distinctness of individuals” [[John Rawls](#), *A Theory of Justice*]. [Dominique Leydet](#) of the Université du Québec à Montréal points out: “[P]olitical equality appears as a feature of institutions, not an attribute of individual citizens understood as agents”.
- The purpose of descriptive stratification seems to be legitimization (of a policy decision, and thereby, the government) through the promise of equal representation. But this promise cannot be separated from social justice preconceptions, which are completely subjective – “hollow incantations,” as Nobel laureate [Friedrich Hayek](#) put it. Descriptive stratification is only a deception to mask these subjective preconceptions. Legitimacy must be guaranteed by other means.

Alternative Stratifications

- **Stratify for function or skill.** [Terrill Bouricius](#) envisions “an interconnected network of minipublics, each with a specific legislative function and a specific topic or issue.” Thus there would be not be a monolithic allotted legislative body, but instead many, according to skill assignment: An Agenda Council, a Review Panel, a Policy Jury, a Rules Council, an Oversight Council.
- **Stratify for workable solutions.** E.g., if 37% of those polled indicate want to consider, say, only those climate proposals that result in zero job losses, should the jury have 37% committed to those proposals?
- **Stratify for posterity.** Two alternative models for political representation of future generations: [Andrew Dobson’s](#) restricted franchise model, in which some seats in legislative assemblies should be reserved for those who represent future generations (F-representatives). Dobson’s restriction of membership to environmentalists should be saluted for its honesty: It makes manifest the typically concealed Leftist bias. [Kristian Skagen Ekeli](#) proposes the sub-majority rule model, in which at least one-third of the legislators should be granted the power to delay legislation, and to require referendums.
- **Stratify for wisdom.** To do so means identifying “abiding communities.” Have each citizen pick 5 to 10 stratification categories that in his view have members who are repositories of wisdom (e.g., parochial clergy, patrol officers, members of the local Kiwanis or other club, etc.), assigning a percentage value to each category to total 100%. The top common categories become the defining stratifications. No citizens receiving an unearned government benefit can be allowed to participate: Its receipt demonstrates a) a willingness to vote themselves benefits at the expense of others, and b) an improvidence that is the opposite of wisdom.

The “architect of containment,” George F. Kennan, proposed a national [Council of State](#) along these lines, broadly selected from all 50 states.

- **Stratify for motivated participants.** H el ene Landemore says that the “verdict is still out” on the utility of crowdsourcing.
- [Heather Marsh](#), a former editor of WikiLeaks, maintains that stigmergy, relying on a form of crowdsourcing, is the only path between direct democracy and representative democracy. Stigmergy seeks to avoid the cumbersome transfer of policy information *between* citizens or their representatives by placing information *within* the society itself. Wikipedia is often cited as an example of successful stigmergy. Stated abstractly, this is to me a tenuous idea that only has concrete meaning as crowdfunding of particular policy issues.

The Promise of Alternative Stratifications for the Right

Sortition offers a solution to the dilemma of unworkable direct democracy and oligarchic representative democracy, as stated in the [Iron Law of Oligarchy](#). However, except in [special cases](#), sortition cannot be implemented without the use of stratification. Yet the familiar stratification by demographics – so neutral and proper when used by statisticians in other fields – is hopelessly biased when applied to politics. Furthermore, as sortition is currently applied by its enthusiasts in the prevailing zeitgeist, that bias is decidedly toward the Left.

The promise of sortition can be realized by the rejection of stratification by demographics. In this way sortition can become a valuable tool, not only as a counter to unlimited government but also as a decision-making mechanism for radical property rights societies.

Sortition is the proper tool of the Right.