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## V

CYNTHIA FARRAR

### TAKING OUR CHANCES WITH THE ANCIENT ATHENIANS

#### *Prologue*

After some two thousand years of neglect or outright rejection by democratic governments and political theorists, sortition and its less exotic sibling rotation are staging a comeback. Theorists are explaining the intrinsic fairness of lotteries; institutional reformers are offering more or less utopian proposals to amend or supplement existing systems of government with randomly selected bodies; and field experimenters are organizing consultations with randomly-invited groups of citizens.<sup>1</sup>

<sup>1</sup> Theory: J. ELSTER, *Solomonic Judgments* (New York 1989); P. STONE, "The Logic of Random Selection", in *Political Theory* 37, 3 (2009), 375-97; ID., "Voting, Lotteries, and Justice," in *Polity* 40, 2 (April 2008), 246-53, B. GOODWIN, *Justice by Lottery* (Exeter 2005). More or less utopian proposals: E.J. LEIB, *Deliberative Democracy in America. A Proposal for a Popular Branch of Government* (University Park, PA 2004); J. BURNHEIM, *Is Democracy Possible?* (Sydney 2006); B.R. BARBER, *Strong Democracy. Participatory Politics for a New Age* (Berkeley 1984); E. CALLENBACH, M. PHILIPS, K. SUTHERLAND, *A Citizen Legislature/A People's Parliament* (Exeter 2008); A. BARNETT, P. CARTY, *The Athenian Option: Radical Reform for the House of Lords* (Exeter 2008); K. O'LEARY, *Saving Democracy. A Plan for Real Representation in America* (Stanford 2006); D.C. MUELLER, R.D. TOLLISON, T.D. WILLETT, "Representative Democracy via Random Selection", in *Public Choice* 12 (1972), 57-68; R.G. MULGAN, "Lot as a Democratic Device of Selection", in *Review of Politics*

All of these scholars and innovators appeal, in one way or another, more or less knowledgeably, to the practices of the ancient Athenians. Yet these analyses, blueprints, and experiments all misconceive or deliberately misapply the Athenian use of lot and rotation.

Consider, for example, my own article with James Fishkin, describing the roots of his experimental approach to democratic reform, the Deliberative Poll™. We refer to “selection of decision-makers by lot”.<sup>2</sup> Fishkin and I are both well aware that in Athens the primary decision-making body, the assembly, was not selected by lot. And we both recognize that the Athenians relied on self-selection, which the Deliberative Poll explicitly seeks to minimize or mitigate. Mogens Hansen, who arguably knows more about the detailed workings of Athenian democracy than anyone since Aristotle, has suggested the use of the lot for a purpose very different from its Athenian role: to recruit a mini-Assembly. Direct democracy on a modern scale could, he suggests, be achieved by random selection of citizen panels, convened electronically on a rotating basis from among all citizens, to vote on proposals from a parliamentary body.<sup>3</sup>

46 (1984), 539-60. Theory plus experiments: J.S. FISHKIN, *The Voice of the People: Public Opinion and Democracy* (New Haven 1995); J.S. FISHKIN, *When the People Speak. Deliberative Democracy and Public Consultation* (Oxford 2009). Experiments: CONGRESSIONAL MANAGEMENT FOUNDATION, “Online Town Hall Meetings: Exploring Democracy in the 21st Century” (2009), available at: [http://www.cmfweb.org/index.php?option=com\\_content&task=view&id=294](http://www.cmfweb.org/index.php?option=com_content&task=view&id=294); A. COOTE, J. LENAGHAN, *Citizens Juries: Theory into Practice* (London 1997); <http://www.citizensassembly.bc.ca/public>; *Designing Deliberative Democracy: the British Columbia Citizens Assembly*, ed. by M.E. WARREN, H. PEARSE (New York 2008).

<sup>2</sup> J.S. FISHKIN, C. FARRAR, “Deliberative Polling: From Experiment to Community Resource”, in *The Deliberative Democracy Handbook*, ed. by J. GASTIL, P. LEVINE (San Francisco 2005), 71.

<sup>3</sup> M.H. HANSEN, “Direct Democracy, Ancient and Modern”, in M.H. HANSEN, *The Tradition of Ancient Greek Democracy and its Importance for Modern Democracy* (Copenhagen 2005), 54-6. The example Hansen cites (proposed by Denmark’s Marcus Schmidt), selects a legislative assembly by lot from among all Danish citizens, to determine the order in which they perform this rotating and mandatory responsibility.

So it seems that even (or perhaps especially) those who are deeply familiar with Athenian institutions are picking and choosing elements — the lot and rotation — and applying them in ways not contemplated by the Athenians. For their part, the Athenians scavenged practices that were not distinctively democratic — including the lot and rotation, as well as tribes, and elections — and recycled them to create a radically different political structure. Lot and rotation do not in themselves contain an exportable essence of Athenian democracy. To determine whether and how these devices could be used to promote the kind of self-government we associate with the Athenians, it is essential to understand how casting lots and taking turns fitted into the distinctive nexus of political institutions they created. What were the Athenians trying to achieve with these institutional tools — and without them?

### *Democracy without drawing lots or taking turns*

In the *Politics*, Aristotle characterizes democracy as a system based on full enfranchisement: “the recognized principle of democratic justice is that all should count equally” (1318a 5-6). Freedom and membership are sufficient entitlement to participate in ruling. Democracy’s assertion of an equal chance of sovereign power for every free citizen echoes throughout Aristotle’s inventory of democratic institutions:<sup>4</sup>

- all free citizens rule over each, and each rules in turn over all
- officials are selected “by all out of all,” without a property qualification, or with a low one
- “all men sit in judgment,” or judges are “selected out of all”
- the assembly is “supreme over all causes,” or over the most important ones

<sup>4</sup> ARIST. *Pol* 6. 2.



How could a constitution that accorded sovereignty to ‘all’ citizens, whatever their personal, social or economic characteristics, possibly secure the wellbeing of the whole polity? A system based on full empowerment of large numbers of relatively-poor citizens could, in Aristotle’s judgment, flourish if it were “well regulated by laws and customs”, and the best such example was Athens.<sup>5</sup>

From the beginning of Athenian democracy, one objective of institutional reform was to create a fully inclusive filter for the exercise of power, and thereby to achieve unified and effective governance and to forestall factional strife, whether between families or parts of Attica or between the many and the few. As it evolved at Athens, democracy was designed not to privilege one set of interests (the poor, for example) over another, but to be fully and exclusively political.<sup>6</sup> That is, the Athenian democracy separated political identity and role from social status or wealth or the ability to provide armour or — more perplexingly from our point of view, and from the standpoint of contemporary critics — from education or talent or experience or personal character.<sup>7</sup> The Athenians explicitly affirmed and

<sup>5</sup> ARIST. *Pol.* 6.4. In this context, he cites approvingly Cleisthenes’ measures to “increase the power of the democracy at Athens” by creating “fresh tribes and brotherhoods” and turning private rites into public ones. He recommends that in general “every contrivance should be adopted which will mingle the citizens with one another and get rid of old connexions”. See also ARIST. *Ath.* 39.3, on the statesmanlike behavior of the Athenians after their defeat by the Spartans.

<sup>6</sup> ARIST. *Pol.* 6. 2: the “recognized principle of democratic justice” is that “all should count equally”; thus “the poor should have no more share in the government than the rich, and should not be the only rulers, but all should rule equally according to their numbers”. For a democratic perspective on the same point, see Athenagoras’ speech to the Syracusans, THUC. 6. 39. Although oligarchic theory and practice seek to exclude the poor (who of course could otherwise, at least in principle, outvote them), I know of only one reference to a polity that excluded the rich: THUC. 8. 21, which refers to an uprising of the people at Samos. The victorious *demos* excluded landowners from the government, and even forbade intermarriage.

<sup>7</sup> I discuss this point at greater length in C. FARRAR, “Power to the People”, in *Origins of Democracy in Ancient Greece*, ed. by K.A. RAAFLAUB, J. OBER, R.W. WALLACE (Berkeley 2007), 174-5. As Hansen noted during discussion at these

institutionalized the power of the political realm, of the sovereignty of citizens qua citizens. By doing so, they flouted traditional aristocratic or oligarchic claims of continuity between social, economic, or personal qualities and entitlement to power. The system they created did not empower economic or social or personal inequalities; neither, however, did it eliminate such inequalities. Rather, the Athenians sought to mobilize the potential of every citizen on behalf of the *polis* by, in Plato's scornful words, distributing "a kind of equality to equal and unequal alike".<sup>8</sup>

To create a fully democratic political filter for self-government by all citizens, the Athenians used institutional devices selectively in different contexts and for different purposes. All relied on a fundamental principle of equal freedom: the ability of every citizen to choose whether and how to participate in governance. In the cluster of practices most closely associated with the sovereign power of the *demos* in assembly, lot and rotation played no part. These institutional practices include the citizen assembly itself, which was a self-selected subset of the *demos* as a whole; the exercise of leadership; and selection by the assembly of individuals to play those administrative or

*Entretiens*, ARIST. *Pol.* 6. 2 confirms that sortition was used for posts in which no professional knowledge or experience was thought to be required. DEM. 24. 112, with M.H. HANSEN, *The Athenian Democracy in the Age of Demosthenes. Structure, Principles and Ideology* (Oxford 1991), 239, is the only source for appeal to inexperience as a valid excuse during the *euthuna*. But as I argue below, the lot is not to be understood as a default mechanism for relegating trivial tasks to *hoi polloi*. In a democratic context, the use of the lot ensured that only in a very few cases would any personal qualities be considered in selection for offices, and the Athenians used other filters, including self-selection, and the educational effects of political exposure in the Assembly and elsewhere, to promote competence in office. As Hansen observes, our sources do not speak of incompetent magistrates, and there are few instances of dismissal during office or condemnation during a *euthuna*. Note that I am here treating the 'democratic constitution' as one thing, though it of course evolved over time, as one would expect if, as I believe, the Athenians were alert to the implications of various ways of deploying different political methods.

<sup>8</sup> PLATO *Resp.* 8. 558; cf. ARIST. *Pol.* 6. 2.

executive roles for which a specific kind of experience or talent was deemed essential.

### Assembly

The Assembly was regarded as 'the people' of Athens, although only about 20% of the citizen body attended on any one occasion. The reduction (or increase) of the sovereign people to a manageable, appropriate, fiscally-sustainable size was not achieved through the use of the lot, or by rotating through the entire citizen body.<sup>9</sup> The size of the Pnyx limited the number of attendees to roughly the quorum required for some topics, and in the 4<sup>th</sup> century, with the building of a walled enclosure, actually prevented more than about 6000 from attending.<sup>10</sup> The make-up of the Assembly on any particular day depended on who got there first. And with the exception of pay (in the 4<sup>th</sup> century), a flat amount that obviously constituted more of an incentive for the less affluent, no attempt was made to achieve representativeness. Indeed, the make-up of the Assembly was filtered through individual decisions about the relevance of a particular agenda to a citizen's interests or experience. Agendas were determined by regular and very specific (constitutionally specified) requirements to address particular tasks at particular sessions, supplemented by proposals brought forward by the probouleutic Council at regular or special sessions.<sup>11</sup> Anyone who wished (*ho boulomenos*) could ascend the *bema* to propose or seek to amend a decree or to weigh in on a proposal. The sovereign exercise of power by a large self-selected sub-group that varied over time, and in ways related to the task at hand and to individual concerns and priorities,

<sup>9</sup> See ARIST. *Pol.* 4. 14 on the constitution of Telecles the Milesian, which rotated the members of the deliberating body.

<sup>10</sup> M.H. HANSEN, *op. cit.* (n. 7), 130-1.

<sup>11</sup> ARIST. *Ath.* 43. 3-6.



engaged a very large percentage of the people in listening to opposing arguments and weighing alternative courses of action. The actions of this shifting and formless body (unstructured by tribes, for example)<sup>12</sup> were influenced, but by no means controlled, by the lot-selected and rotating Council's agenda-setting and presiding functions.<sup>13</sup>

### Leadership

In the Athenian democracy, leaders — by which the Athenians meant individuals with sustained influence over the *demos* — were not identified through lot or rotation.<sup>14</sup> This seems an obvious point; these devices are often said to eviscerate the very possibility of leadership, because they give power to people regardless of their prominence or skill or experience, or indeed their performance in office. But leaders were also not identified in the way we would expect, i.e. through election.<sup>15</sup> Leadership was not a function of holding a particular office, nor was there an identifiable leadership class.<sup>16</sup> In the 5<sup>th</sup> century, those who

<sup>12</sup> Except that in 346/5 the Athenians passed a law stipulating that the tribes take turns sitting near the *bema*, to help maintain order. AESCHIN. 1. 33-4. See M.H. HANSEN, *op. cit.* (n. 7), 137-8 on the evidence regarding seating arrangements.

<sup>13</sup> For example, when he seeks to persuade the Athenians to reverse their previous decision to sail to Sicily, Nicias appeals to the President of the Assembly to put the question again, THUC 6. 14.

<sup>14</sup> Famously, in Pericles' Funeral Oration, THUC. 2. 37: "when it comes to esteem in public affairs, a man is preferred according to his reputation for something, not in rotation, but based on excellence". Translation as per A.W. GOMME, *A Historical Commentary on thucydides* (Oxford 1956), II, 108, with M.H. HANSEN, *op. cit.* (n. 7), 73. Contra the implication of M.H. HANSEN, *op. cit.* (n. 7), 236, Pericles is not here referring to selection for important offices (he makes no reference to offices, or election), but to leadership.

<sup>15</sup> On the role of financial officers, see M.H. HANSEN, *op. cit.* (n. 7), 270-1, and M.H. HANSEN, *The Athenian Ecclesia II* (Copenhagen 1989), 31, vs. J.W. HEADLAM, *Selection by Lot at Athens* (Cambridge 1891), 113-14.

<sup>16</sup> See ISOC. 12. 143f; J.W. HEADLAM, *op. cit.* (n. 16), 114-116; M.H. HANSEN, *op. cit.* (n. 7), 271; E.S. STAVELEY, *Greek and Roman Voting and Elections* (London 1972), 54.

sought to influence Assembly decisions were collectively referred to as *rhetores kai strategoi*.<sup>17</sup> Those who *prostateuein tou demou* or *epimeleisthai ton demosion* were often — when Athens was constantly at war — also those who commanded the military.<sup>18</sup> In the 4<sup>th</sup> century, this role was most often played by men with no official position, whether elected or allotted: the *rhetores*. At any given Assembly meeting, as many as several hundred individuals might take the initiative to come forward to speak, but only a dozen or so sought to lead the Assembly.<sup>19</sup>

The leaders of the people tended to come from the ranks of the well-bred and/or the well-heeled.<sup>20</sup> But aspirants to great and sustained influence had to compete for that standing by persuading the assembly day after day that they, not their rivals, offered the best advice. Success could be fleeting; rejection was always possible. No individual, whether general or orator, and whatever his social or economic standing, was entitled to influence, much less power.<sup>21</sup> The Assembly wielded its sovereign power by voting on specific proposals, not by voting for a particular person.<sup>22</sup> Headlam has argued that the use of lot and rotation for roles other than the Assembly was essential if the

<sup>17</sup> DEM. 18. 170; 24. 142; AESCHIN. 1. 28-32; 3. 55; LYS. 22. 2; DIN. 1. 71; 1. 100. See M.H. HANSEN, *op. cit.* (n. 7), 268-71, for the evolution of roles and terms.

<sup>18</sup> XEN. *Mem.* 2. 8. 4; 3. 7. 1; 3. 6, with J.W. HEADLAM, *op. cit.* (n. 16), 117.

<sup>19</sup> M.H. HANSEN, *op. cit.* (n. 7), 144; 172; 271, with J.W. HEADLAM, *op. cit.* (n. 16), 116; 173 re *prostates tou demou*.

<sup>20</sup> See J.K. DAVIES, *Athenian Propertied Families*, (Oxford 1971) with M.H. HANSEN, *op. cit.* (n. 7), 272-4.

<sup>21</sup> Glaucon, a member of a prominent family, was XEN. *Mem.* 3. 6 reports "attempting to *demegorein*, striving to *prostateuein* the polis", but was making a laughingstock of himself when he ascended the *bema*, because of his youth and ignorance. Socrates advises him that he is taking a big risk by speaking about matters he does not understand. If he wants to "win fame and admiration in the polis", and persuade the Athenians to listen to him, he must think through what he proposes to do. See J.W. HEADLAM, *op. cit.* (n. 16), 115.

<sup>22</sup> The generals were only a partial exception (see Nicias' challenge to Cleon to assume Nicias' generalship to carry out his strategy in Pylos, which was approved by the Assembly). See J.W. HEADLAM, *op. cit.* (n. 16), 27.



people were to maintain their power.<sup>23</sup> His own argument about the limited role of the elected generals and financial officials suggests, however, that the Assembly ruled the leaders, whether or not they were selected by lot.<sup>24</sup> As Protagoras' account of the Athenian democracy illustrates,<sup>25</sup> the continuously exercised sovereignty of the assembly created a public filter for leadership, a way of at once mobilizing and constraining the role of knowledge, experience and character on behalf of the *polis* as a whole.<sup>26</sup>

### Elections

In addition to judging political persuasiveness, the assembly also identified needed talent, experience, or skill for particular roles. At specifically designated meetings, the Assembly elected military and some financial officials. Election — by contrast with the lot — was considered an 'aristocratic' procedure, one that would result in the selection of the 'best', which could refer to the traditional elite and/or to the most capable.<sup>27</sup> But when incorporated in a *politeia* in which all citizens were eligible to vote and to stand for office, and the term of office was limited, election could — as in Athens — be deployed for democratic ends.<sup>28</sup> According to the 5<sup>th</sup> century writer whose views earned him the nickname "Old Oligarch", the Athenians

<sup>23</sup> J.W. HEADLAM, *op. cit.* (n. 16), 39.

<sup>24</sup> J.W. HEADLAM, *op. cit.* (n. 16), 172-3. See ARIST, *Pol.* 3. 11 on the role of the people in an election.

<sup>25</sup> PLATO *Protag.* 320d-328d with C. FARRAR, *The Origins of Democratic Thinking* (Cambridge 1988), 77-98.

<sup>26</sup> See J. OBER, *Democracy and Knowledge. Innovation and learning in Classical Athens* (Princeton 2008), 156-65 on the effect of dispersed knowledge on the relationship between leaders and people in the assembly.

<sup>27</sup> ARIST. *Pol.* 2. 12; 4. 9; 6. 4; 6. 5; and see 3. 13 on the conjunction of good birth with excellence; ISOC. *Panath.* 12. 153-4, [XEN.] *Ath. Pol.* 1. 2; PLATO *Leges* 757; DEM. 59. 75. See discussion by B. MANIN, *The Principles of Representative Government* (Cambridge 1997), 27.

<sup>28</sup> ARIST. *Pol.* 6. 2

used election for those offices that “bring safety to the whole people if they are in the hands of the right people, and danger if they are not”.<sup>29</sup> The choice of the people was not in practice limited to individuals of a certain rank or experience or property. This filtering process sometimes worked in surprising ways. Xenophon describes an encounter between Socrates and one Nicomachides, an experienced military commander who complains of having failed to be elected general: “Isn’t it like the Athenians? They have chosen Antisthenes, who has never served in a hoplite regiment or distinguished himself in the cavalry and understands nothing but money-making”. Socrates points out that Antisthenes possesses other qualifications that the Athenians might reasonably value in a general.<sup>30</sup>

*Why draw lots and take turns?*

Athenian democracy relied upon a variety of institutions and practices, including: eligibility of all citizens, with no property requirement, to participate in the assembly and of those of a certain age to stand for office; majority rule; voting (primarily) on proposals not persons; leadership through persuading the Assembly; elections for offices requiring skill; brief terms of office. Together these principles and devices filtered out any extra-political entitlement to power and filtered in the motivations and behaviors likely to lead to unified and effective governance.

<sup>29</sup> [XEN.] *Ath. Pol.* 1. 3.

<sup>30</sup> XEN. *Mem.* 3. 1-2. See ARIST. *Pol.* 3. 11 on the consistency of democratic practices: it makes sense to give men who are not individually qualified by property or merit to hold certain offices the power to elect office-holders or to hold them to account. His argument about the wisdom of the crowd, and the ability of the person who uses the house to judge the builder, justifies reliance on both the lot and election, for different purposes. Compare the incoherence of claims by ancient critics of democracy and by modern democrats that the people are unqualified to play any substantive role, but they are qualified to elect.

What, then, was the added value of the lot and rotation to the Athenian democracy? These were not exclusively democratic devices. As an impersonal process, the lot is an inherently plausible and well-attested means to distribute a good or a burden among people with equal claims, and can be used to avert factional conflict within a restricted class, in which all individuals are to be treated equally.<sup>31</sup> Rotation, too, occurs in non-democratic contexts, as a mechanism to prevent entrenchment and distribute access to power fairly. These procedures are applied politically in a range of constitutional forms. Whether or not the 'hoplite' constitution attributed to Draco is authentic,<sup>32</sup> the author of the *Athenaion Politeia* regarded it as plausible that this constitution should include the selection of a Council and officials by lot, with rotation. The use of the lot to select Archons from among 100 men pre-selected by tribes, and from a restricted property class, is attributed to Solon, but by the time of the Persian Wars they were being elected; at that point the Athenians reverted (by this account) to selecting them by lot from among a group of 500 elected in the demes, still from the highest property class. (The historical validity of this account is hotly contested.<sup>33</sup>) The oligarchic "constitution for the future" developed by the 400 includes selection of a Council by lot.<sup>34</sup> My point here is less an historical than a conceptual one: the lot and rotation could plausibly be incorporated in a range of political systems. For Aristotle, rotation ("ruling and being ruled in turn") is a fundamental principle of

<sup>31</sup> There are many examples of the use of the lot to allocate goods or burdens fairly, including flute girls: ARIST. *Ath.* 50. 2; and military responsibilities: THUC. 6. 62. 1; 8. 30. 1

<sup>32</sup> ARIST. *Ath.* 4. 3 with M.H. HANSEN, *op. cit.* (n. 7), 50.

<sup>33</sup> ARIST. *Ath.* 8. 1 with 22. 5. See M.H. HANSEN, *op. cit.* (n. 7), 50: "whether one believes or disbelieves that the Athenians were using the lot as early as Solon really depends on one's conception of the original purpose of the lot".

<sup>34</sup> ARIST. *Ath.* 30. 2. See also HDT. 3. 83; PLATO *Leges* 763; 765. The lot was used in this way in Venice and Florence. See J. ELSTER, *op. cit.* (n. 1), 81-4.

good government that applies to rule by the few as well as the many.<sup>35</sup> In Plato's *Politicus*, the Visitor suggests a scenario in which "an annual lottery" selects rulers "either from among the wealthier citizens or the whole citizen body".<sup>36</sup>

Why, then, were the lot and rotation used in Athenian democracy, and used in just the way that they were? In prevailing accounts of Athenian democracy, the distinctive contributions of the lot and rotation, as devices used for some contexts and purposes but not others, remain obscure. Some scholars have portrayed the lot as simply an instrumental feature of a system committed to rotation. Lot can be seen as the fairest way to determine whose turn is next when an opportunity or responsibility is to be shared out among the entire citizenry, or as many as possible.<sup>37</sup> Others emphasize that the lottery is intended primarily to prevent the accumulation of experience or specialized excellence by any individual in any one role, because this would generate a governing elite and threaten the sovereignty of the assembly. In this case, too, rotation appears fundamental. With rotation required, election — according to Staveley — is beside the point or, in Manin's analysis, illogical, because the electors would not be permitted to choose anyone they wish, but only from among those without prior experience in that role.<sup>38</sup>

<sup>35</sup> ARIST. *Ath.* 7. 3; 14.

<sup>36</sup> PLATO *Polit.* 298e.

<sup>37</sup> J.W. HEADLAM, *op. cit.* (n. 16), 188 on ARIST. *Ath.* 4, which to him reveals the underlying point of rotation and the lot; and 187 with *Ath.* 54-6. E.S. STAVELEY, *op. cit.* (n. 16), 55; M.H. HANSEN, *op. cit.* (n. 7), 236 agrees that the fundamental principle is rotation, but does not treat service as mandatory. See PLATO *Prot.* 319d; PLATO *Theaet.* 173c-d; ISOC. 15. 38; DEM. 22. 36-7; 23.4, 24. 66; AESCHIN. 3. 233; 3. 220 with M.H. HANSEN, *op. cit.* (n. 7), 267 on expectations about participation. More recently, J. OBER, *op. cit.* (n. 26) has emphasized the role of rotation, along with broad participation, and the specification, structure and accountability of the administrative boards, in his analysis of the efficiency and effectiveness of Athenian democracy.

<sup>38</sup> Like Staveley, Headlam believes that the use of the lot and rotation for administrative roles was intended to protect the power of the assembly, by ensuring mediocrity elsewhere. The lot and rotation are, in his view, not simply



The interpretation of the Athenian use of lot and rotation in terms of a basic and conceptually coherent commitment to taking turns — in order to give everyone a chance or to ensure mediocrity among office-holders — simply does not account for the peculiarities of actual practice. Aristotle's *Athenaion Politeia* confirms that rotation was an independent principle: it applied to some elective offices as well.<sup>39</sup> If rotation is fundamental, to prevent entrenchment or fairly distribute power, why permit self-selection by any group, including members of the Assembly? Why not rotate an Assembly selected by lot? Or if short terms, rotation, and accountability are consistent with elections, why not elect all magistrates? The Assembly evidently felt it could control even elected (non-rotated) officials; why go to such lengths to ensure — as allegedly lot and rotation did — that those in some official roles would be nonentities? And why both lot and rotation for some roles, but only the lot for others? Why did they not rotate membership of the lot-selected juries? Or if the pure self-selection reflected in the Assembly is fundamental, then why not assimilate every group to that model? For example, if an agenda-setting and presiding body is required to structure the deliberations of the Assembly, why select such a Council by lot, with a ban on serving more than twice? Why not simply allow whoever wished to play a particular role to come forward, and select the required groups on a first-come basis, like the assembly? Or appoint volunteers, then rotate?

complementary or logically related but parts of a single process: the lot simply determines the order in which all citizens will take their turn. B. MANIN, *op. cit.* (n. 27), 31 argues that there was a conflict between the elective principle and rotation, because “the elective principle entails that citizens be free to choose”, including choosing to re-elect. However, the *Athenaion Politeia* states that the Athenians did rotate some elective offices; and also limited election by tribe. See ARIST. *Ath.* 54. 3; 56. 4; 62. 3.

<sup>39</sup> ARIST. *Ath.* 62. 3, with 54. 3; 56. 4. See P.J. RHODES, *A Commentary on the Aristotelian Athenaion Politeia* (Oxford 21993), 696, on the debate about interpreting 62. 3. See ARIST. *Pol.* 6. 2, where his point about limitations on re-selection, and brief tenure in office, are not couched in terms of a distinction between election and the lot.



The Athenians' selective use of the lot and rotation in combination with self-selection cannot be explained in terms of a purely negative or a uniform objective. If the aim was to enforce mediocrity and ineffectuality in all institutional roles other than the Assembly, rotation alone would have been sufficient, and self-selection is difficult to comprehend. If the objective was to distribute political authority among all citizens, mandatory participation would make more sense. Moreover, together the two claims make even less sense of Athenian practices than they do individually: what is the democratic point of engaging all citizens in roles that are by design powerless? Instead, an explanation should start by exploring the institutional roles of the bodies for which lot and rotation were used, by comparison with those — discussed above — for which they were not considered relevant, and then analyzing the distinctive contribution made by each of the two devices to the democratic functioning of these bodies. The interpretation that emerges from this investigation must also make sense of Athenian reliance on self-selection.

### *Institutionalizing democracy*

To function effectively, the democracy needed to designate groups that would be consistent over a period of time, to facilitate the work of the Assembly and hold it accountable to the laws (the Council, the juries), and to implement the Assembly's decisions (the boards of magistrates, and the Council). And it was for these institutions that the Athenians used lot (for all these roles) and rotation (for the probouleutic and administrative functions).<sup>40</sup> The specific application of these

<sup>40</sup> J.W. HEADLAM, *op. cit.* (n. 16), 90 suggests that the requirement of enforcing mediocrity among officials itself led to the proliferation of undemanding roles with very limited writs. Contra, J. OBER, *op. cit.* (n. 26), especially the example he discusses at length, 124-133. A rotating division of labor is key to Ober's account, too, but he documents the success of this system in building

devices depended on the group's role and size. They were very influential, even if they largely lacked decision-making authority. The extended role of (in the case of magistracies) a relatively small group of citizens was essential to the proper functioning of the *polis*, but it was also a potential hazard in a system that depended on equal power.<sup>41</sup> The risk was addressed in part through a system of scrutiny during and at the end of a magistrate's term of office, with a particular focus on rooting out corruption and treason, but with the opportunity to bring a charge for any offence whatever.<sup>42</sup> However, the selection process, rotation requirement (for magistracies) and resulting make-up of the boards served as the primary safeguard.

### *The democratic lot*

The principle embodied in the lot — having an equal chance to be selected,<sup>43</sup> whoever you might be, whatever your affiliations or qualifications or experience or views — applied to those democratic bodies or functions for which a strictly impersonal criterion was required.<sup>44</sup> Sortition is a procedure that, in

capacity in and among individuals to benefit the polis in ways that an exclusively assembly-with-elite-leaders-focused polity could not have achieved.

<sup>41</sup> See, for example: ARIST. *Ath.* 49. 3: "the *Boule* used to take decisions about the models and the robe, but this is now done by a dikasterion selected by lot, for it was felt that the *Boule* was swayed by personal feelings"; beginning in 410, members of the *Boule* were assigned to sit by lot (PHILOCH. Fr.140); all magistrates (but not the Assembly) were required to take oaths: so, for example, the Council, in LYS. 31. 1; XEN. *Mem.* 1. 1. 18. Once these bodies are selected, the individuals are identifiable, and subornable.

<sup>42</sup> M.H. HANSEN, *op. cit.* (n. 7), 220-224. Note that this opportunity to widen the scope was not much exploited.

<sup>43</sup> See discussion of this distinctive aspect of equality — not equality of opportunity in the meritocratic sense, nor equal result, but an equal chance of being selected for a thing — in B. MANIN, *op. cit.* (n. 27), 35-6. During these *Entretiens*, Mogens Hansen referred me to the explicit statement of this principle at DEM 39. 1.

<sup>44</sup> Then as now, the lot was regarded as an impartial means of allocating goods or burdens. So, for example, the Spartans used the lot to select the men

Manin's paraphrase of Rousseau, "allocates magistracies without the intervention of any particular will", i.e. a will that is partial, or tied to individual personalities or claims.<sup>45</sup> With this selection mechanism in place, no-one could argue a better claim to inclusion, and no-one could be excluded for any reason other than basic threshold criteria established through the initial screening, or *dokimasia*.<sup>46</sup> Moreover, no-one could secure inclusion purely by his own action (unlike, for example, deciding on the spur of the moment to attend the assembly).

The lot's impersonal and equal allocation of a chance to be chosen established the legitimacy of these administrative bodies. The Athenians inhibited corruption and prevented the appearance of corruption — corruption in the broad sense of a direct relationship between individual advantage and political office — by means of extraordinarily complex measures to ensure the transparency and impartiality of the selection process.<sup>47</sup> The group as a whole could be seen as a collection of citizens whose personal attributes pre-selection are irrelevant to their role, and who are expected to put whatever relevant attributes or insights or knowledge they possess — and what they acquire through service — to the use of the *polis*.

Juries Jurors were selected by lot from among citizens over thirty to create a large group (roughly the size of the Assembly) that (unlike the Assembly) would be consistent across the

who would go to Sphacteria. It was particularly useful in cases where the intervention of a personal will would have political consequences: so Kleisthenes created tribes from trittyes by lot, even though the objective of mixing groups from across Attica could have been achieved more effectively by deliberately (personally) assigning them. See J.M. MOORE, *Aristotle and Xenophon on Democracy and Oligarchy* (Berkeley 1975), 239; M.H. HANSEN, *op. cit.* (n. 7), 46-9.

<sup>45</sup> B. MANIN, *op. cit.* (n. 27), 77 with 74-76; J.-J. ROUSSEAU, *Du contrat social ou Principe du droit politique* (Amsterdam 1762), 4. 3.

<sup>46</sup> E.S. STAVELEY, *op. cit.* (n. 16), and following him J. ELSTER, *op. cit.* (n. 1), interpret the *dokimasia* as a substantive screening. The evidence is against them; see the discussion of the sources in M.H. HANSEN, *op. cit.* (n. 7), 218-9.

<sup>47</sup> ARIST. *Ath.* 64-66.

course of a year,<sup>48</sup> and whose make-up was determined in a strictly impersonal way. The refusal to permit the use of reasons of any kind beyond the logic of the process itself for the selection and allocation of jurors makes explicit the fact that no-one has any special claim to a place in the pool or on a jury, and thwarts corruption by anyone trying to influence the outcome of a trial.<sup>49</sup> Through this two-stage process, the Athenians were able to convene an identifiable pool of jurors while still reducing the potential for subversion. The selection of a judicial pool by lot may well have been largely a matter of administrative convenience, so that a suitably large body would already have been sworn in and given a ticket.<sup>50</sup> Given the size of the pool, and the re-shuffling of the group for any particular trial, rotation was not considered necessary to prevent the entrenchment of any particular set of interests or concerns. In the 4<sup>th</sup> century, groups of *nomothetai* selected from the jury pool as needed assumed the role of legal review and revision — a role that rivaled the sovereignty of and reflected the democratic values associated with the Assembly.<sup>51</sup> The selection of

<sup>48</sup> The permeability and hence the constraints on the juries fall between the magistrates and the Assembly. The size of the pool meant that the lot did not have a filtering effect; the group as a whole resembled in profile the attendees at any given year's assemblies, except that jurors had to be over the age of 30. (It is relevant here that the assembly did occasionally serve as a judicial body.) Like the assembly-goers, the jurors were not subject to *euthuna* nor held accountable for their votes, and it was open to them to decide whether to present themselves for service on any given day. The oath-taking and regular use of a secret ballot set them apart from the people in Assembly. Rather than simply ask for volunteers as needed, it was presumably more efficient to ensure that a large screened group, already sworn in, would be ready to be assigned to trials as needed. (See [XEN.] *Ath. Pol.* 3. 6 for the pressure of jury business.) Also, given the role of the *dikastai* as a check on the actions of the assembly and officials, and, in the 4<sup>th</sup> century, as the law-makers, there may have been value to being a designated group, with a certain sense of themselves as a whole, with a charge separate from the people in Assembly.

<sup>49</sup> See P. STONE, "The Logic of Random Selection", in *Political Theory* 37, 3 (2009), 375-97, to be discussed at greater length below.

<sup>50</sup> ARIST. *Ath.* 63.

<sup>51</sup> See the contributions of P. Pasquino and A. Lanni in this volume.



the annual juror pool of 6000 by lot meant that any citizen over thirty had an equal chance to serve on a panel, but no citizen was specially entitled or qualified to do so. Assignment by lot to a board of *nomothetai* from among the *dikastai* who showed up on a particular day likewise ensured equal access to this powerful body, and disrupted the possibility of an externally-manipulated, non-political connection to the matter at hand. Like members of the Assembly and jurors in other cases, the panel served as *nomothetai* for a single day. The *nomothetai* were therefore continually 'repopulated', like the Assembly, from among a very large group of citizens, and did not need to be rotated.

Council and Boards Sortition forged a connection between the actions of these relatively small groups of citizens and the concerns and preferences of their fellow citizens, without turning these bodies into agents or exemplars of identifiable traits or concerns. The selection process enforced:

1. Access for the many The lot (along with open participation in the sovereign assembly) made good on the promise of full eligibility for a broad range of official roles.<sup>52</sup> The poor, uneducated,

<sup>52</sup> ARIST. *Pol.* 6. 5; [XEN.] 1. 1-3. Only for a small number of positions and responsibilities was wealth considered relevant. On the continued existence of property-class requirements for some roles, see ARIST. *Ath.* 47. 1; 8. 1. The implication of 8.1 is that only in the case of the Treasurers was the law of Solon still in force; he is explicit about that in this instance, and silent in others that might be thought comparable. Nonetheless, *dokimasia* candidates were required to state their class, *Ath.* 7. 4. See AESCHIN. 3. 27, 30. The restriction of eligibility in some cases, and election in others is further confirmation of the Athenian ability to discriminate between appropriate contexts for making social/economic status relevant, and not, and to change this over time, and the growing impact of the lot: so, for example, re the treasurers of Athena, ARIST. *Ath.* 47. 1 says that by his day, "the man picked by lot holds office even if he is very poor". Contrast the case of liturgies, for which wealth was essential. [XEN.] 1. 13 observes that "the Athenian people realize it is the rich who pay, and the common people for whom such things are arranged and who serve in the triremes". The liturgists were chosen in various ways (M.H. HANSEN, *op. cit.* [n. 7], 111) — and rotated, though not in any formal way. They were not, for example, chosen by lot from within a limited class. The Athenians acknowledged that archonships often required significant outlays (ARIST. *Ath.* 47. 1; AESCHIN. 3. 27, 30), but these



and/or inexperienced, who might well not have the nerve to step to the *bema* to address the Assembly, would perhaps be more inclined to volunteer for a role shared with a small-to-medium-sized group of other citizens (10, on a Board; 50, on the *prytany* of the Council), none of whom, thanks to rotation (except the small number of recidivists on the Council), could lay claim to expertise in that role. In a *deme* assembly, where local hierarchies of kinship and status are most likely to make themselves felt, candidates for the Council come forward.<sup>53</sup> If election, or even a formal nomination were required, who would come forward? The usual suspects.<sup>54</sup> In the years before 487/6, when the tribal assemblies met to elect candidates to submit for the central lottery, who would be likely to put in their names?<sup>55</sup> Especially for the archonships, once the most illustrious offices in the *polis*, the traditional hierarchy of economic and social class would continue to hold sway.<sup>56</sup> Selection by lot was impartial; no-one else could

offices were not limited to the wealthy. And see ARIST. *Ath.* 56. 4: in the case of the Assistants to the board for the Great Dionysia, they were initially elected, and expected to cover their own costs; by Aristotle's day, they were chosen by lot, and received public funds to cover expenses.

<sup>53</sup> Selection in *demes* was phased out for other offices, but preserved for the *Boule*. ARIST. *Ath.* 62. 1: corruption in choice of officials in *demes* led to selection in tribes, for offices other than the *Boule* and the Guards.

<sup>54</sup> Compare the modern use of 'reservations' for particular demographic groups, used to overcome entrenched social hierarchies. India has created a system of reserving seats in some districts exclusively for women, so that women will come forward as candidates. (Note that they use the lot to decide which district will exclude men from the ballot.) E. DUFLO, "Why Political Reservations?" available at <http://econ-www.mit.edu/faculty/eduflo/papers>. Using the lot to select among candidates would be an alternative strategy — but it both violates the modern belief in meritocracy, and also might not be sufficient to break through the directly and indirectly coercive effects of traditional male dominance. See also the predominantly male turnout for the Deliberative Poll in China, below.

<sup>55</sup> ARIST. *Ath.* 21 suggests that it was the creation of new tribes and the requirement to use a *deme* name rather than a patronymic that prevented discrimination based on ancestry, e.g. discerning who was a newly confirmed citizen.

<sup>56</sup> In the Solonian tradition, as recounted by Aristotle, these offices were once limited to the top two property classes (*Ath.* 7, esp. 7. 4; 8. 1; 47. 1). Double sortition — first in the tribal assembly, then in the *ecclesia* (as distinct from a process in which candidates came to the assembly and were selected by lot by tribe), may have been a holdover from a Solonian tradition, ARIST. *Ath.* 8. 1, or perhaps just the most convenient way of handling the rotation of specific archonships across tribes (see ARIST. *Ath.* 55,1, with HDT. 6. 109-10). Or,

influence the luck of the draw, so anyone stood an equal chance of being chosen. This, together with pay, would presumably have the consequence that more of the less advantaged would be inclined to step forward.

2. Access for the few Even those whose inclinations and affiliations might be out of sympathy with the prevailing dispositions of the majority would be able to serve as a member of one of these boards. Isocrates (7. 22-23) argues that the impartiality of the lot poses a threat to the *demos*: men of an oligarchical disposition, too, could be chosen. The evidence of Lysias' speeches on *dokimasia* suggests that complicity in the overthrow of the constitution in 404/3 could in principle be grounds for rejection at this threshold review.<sup>57</sup> Yet anyone with views short of outright treason could hope to be selected to serve on, say, the Council, and to influence the actions of the *polis*.

3. Diversity (1) and (2) together meant that a body chosen by lot would be likely to be diverse, to a greater degree than formal mixing by (artificial) tribe and/or *demes* alone would ensure: diverse, that is, by economic and social class and life experience, not just by geography.

4. A rigorously political context for personal interests The lot served as a bulwark against various ways of corrupting the democracy. It hindered the development of 'constituency' relationships between magistrates and the general public. Individuals brought their particular attitudes, priorities, and experiences to the task at hand, but were not 'representing' a specific aspect of their identity. Moreover, they had to advance the business of the polis in cooperation with men very different from themselves. Individual characteristics and concerns would be expressed in the context of the wellbeing of the *polis* as a whole, not in relation to the power of the numerically or socially or economically superior. The Boards selected by lot therefore served as a useful counterpoint to the logic of the numerical superiority of the poor, and the potential for affiliation by personal characteristics

as E.S. STAVELEY, *op. cit.* (n. 16), 39 suggests "a method of ensuring that each tribe in fact put forward ten nominations for the final sortition and of preventing thereby any attempt to manipulate and regulate nominations at the tribal level".

<sup>57</sup> On *dokimasia* and political convictions, see M.H. HANSEN, *op. cit.* (n. 7), 218-9; 236-7, with LYS. 16. 25, 26, 31, all of which relate to 403/2.

and status, associated with the open weave of the assembly. A view with a 'majority' following among the people was not guaranteed a majority in the Council or on a Board; and (in part because of tribal selection and structuring), personal affiliations were unlikely to dominate the proceedings.

### *Democratic rotation*

What is the distinctive value of rotation, a ban on holding the same office more than once (or — rarely — twice) in a democracy? Rotation was not used to ensure that most or all citizens participated in government: individuals were permitted to stand for office every other year, so long as the position was not one he had held before, and the jurors were not rotated over time. If the aim of rotation were to facilitate the broadest possible participation in ruling, then the Athenians should have required that archons, for example, stand for no other office until every citizen has played some role or other.<sup>58</sup> Something like this scheme for taking turns would seem to be required by a narrow reading of Aristotle's well-known articulation, in the *Politics*, of what he calls a fundamental principle of liberty: "to be ruled by none, if possible, or, if this is impossible, to rule and be ruled in turn".<sup>59</sup> Yet for Aristotle, and in practice,

<sup>58</sup> As in Draco's constitution as described in ARIST. *Ath.* 4; see J.W. HEADLAM, *op. cit.* (n. 16), 188.

<sup>59</sup> ARIST. *Pol.* 6. 2: he goes on to say that "all should rule over each, and each in turn over all". As articulated here, this principle only makes sense as a general, not a specific, point: every Athenian can take a turn to rule in some way, whether as a member of the Assembly or in another role. Freedom rests in being ruled by people who will take their turn as the governed. See ARIST. *Pol.* 3. 4: "he who has never learned to obey cannot be a good commander"; "the good citizen should know how to govern like a freeman and how to obey like a freeman". The contrast is with one or some few men ruling over all, without yielding place to others and being governed in their turn. (This point is made explicitly in EUR. *Suppl.* 406-8.) He is not suggesting that all citizens must take their turn in a specific office. Most Athenians would never take 'their turn' as general, nor would they be considered (or consider themselves) capable of doing so. ARIST.

rotation is not a mechanism confined to democracies. Every constitution except rule by one man treats full citizens as relative equals in some respect or other: because they are equally free, or equally wealthy or well-bred or wise, depending on the system. If every citizen has a right to rule as well as an obligation to be ruled, and alternation contributes to good government — as Aristotle suggests in Book 3 of the *Politics* — then why did the Athenians use the mechanism selectively, for some roles but not others?

As practiced in Athens, rotation is not based on a claim of actual equality (Athenian democrats did not subscribe to this belief).<sup>60</sup> And the lot alone is sufficient to enforce the claim that no-one is specially qualified to hold a particular magistracy. Rather, the Athenians drew on the ability of rotation to forge reciprocity: according to Aristotle, in any constitutional system based on “the principle of equality and likeness, the citizens think that they ought to hold office by turns.” As a result of this regular displacement, “somebody else would look after his interest just as he, while in office, had looked after theirs”.<sup>61</sup> For the Athenians, this way of promoting active, ongoing continuity with the rest of the people was essential for the occupants of relatively small administrative boards that operate with the same membership for an entire year without regular interaction with or oversight by the Assembly.

*Pol.* 7. 14 argues that taking turns “governing and being governed” is a fundamental principle in any polity, because equals should be treated equally. See discussion in B. MANIN, *op. cit.* (n. 27), 28-9.

<sup>60</sup> e.g. THUC. 2. 37. 1. As Hansen emphasized to me at these *Entretiens*, it was critics of democracy who linked the lot to an alleged democratic belief in natural equality (ISOC. 7. 21-2; PLATO *Leges* 757b. Hansen also noted that ambition (*philotimia*) and competitiveness (*hamilla*) spurred political initiative (DEM. 10. 71; 20. 108; 18. 320); neither is consistent with a belief in natural equality.

<sup>61</sup> ARIST. *Pol.* 3. 6.



Council and Boards Rotation hinders smaller and relatively independent groups — whether elected or allotted — from acquiring an entrenched, function-specific profile, and thus prevents over time the kind of discontinuity with the people that the lot inhibits for most administrative positions in any given year. Rotation fosters a dynamic relationship with the broader citizen body by each individual, and by the Board as a whole over time. Despite being chosen by lot, with no regard for his abilities, a member of a Board can and is expected to develop competence in a particular role by the simple fact of performing its responsibilities week after week. However, the individual officeholder recognizes that although he now rules in this domain, he will be ruled by someone else before long.<sup>62</sup> The magistrate is therefore likely to remain alive to the way his actions affect the concerns of the ‘lay’ citizen he himself recently was and will be again, as well as to retain a sense of how this role connects with other determinants of the *polis*’ wellbeing. In addition to mitigating the isolating effects of specialization by individual magistrates during their term of office, rotation also ensures (in a way that lot alone cannot) that no particular office can come to be the domain of any one or a group of citizens, who could otherwise put themselves forward repeatedly for selection, by lot or vote, for the same position.

Differences of size and function help explain different applications of the principle. Among rotating offices, the Council exercises the most powerful role. One might therefore expect the principle of rotation to be applied rigorously to Council membership. But precisely because of its importance, the Athenians (who tolerated shortfalls on smaller boards) insisted on operating with a fully-manned Council — with the requisite numbers from each tribe to man each *prytany*. Because the Council is a relatively large body, with influence over the full range of issues affecting the *polis*, and (other than the non-rotating Generals)

<sup>62</sup> See B. MANIN, *op. cit.* (n. 27), 29-30.



the most closely engaged with the *demos* in Assembly, the Athenians could afford to abrogate the strict rotation principle, and permit individuals to serve twice. For smaller groups with narrower, more isolating functions, strict rotation applied.

### *The puzzle of self-selection*

The feature of Athenian democracy that confounds most scholarly analyses of selection for magistracies, and most modern interpretations and applications of the lot and rotation, is the Athenians' reliance on self-selection: *ho boulomenos*. If the motives for using the lot and rotation were as other scholars — or I — assert, why did the Athenians not instead (or also) make participation mandatory? If the Athenians proliferated magistracies and used lot and rotation to facilitate office-holding by all citizens in turn, whether as a principle of equal freedom or to prevent challenges to the Assembly or to disseminate knowledge and experience, why not just require participation? This difficulty led Headlam to bite the (logical) bullet and conclude that the Athenians drew lots from an inclusive list (as we now do for juries).<sup>63</sup> In doing so, he defied the evidence for voluntarism, evidence that has only increased with more recent epigraphical findings.<sup>64</sup> I have suggested that the aim of the

<sup>63</sup> J.W. HEADLAM, *op. cit.* (n. 16), 94; and his comments on the *Athenaion Poiteia* account of Draco's constitution, 188. As Headlam himself acknowledges, if this were so, then the practicalities of selecting the members by rotation in the *demes* would mean that the lot was not really required; rotation by, for example, seniority, would do. If rotation were the aim, a list could be kept of who had performed a particular magistracy and, as with the Arbitrators described by Aristotle (*Ath.* 53.5), individuals could be selected in the order they were enrolled on the list of Ephebes, and required to assume the designated role.

<sup>64</sup> On the evidence for voluntarism, see M.H. HANSEN, *op. cit.* (n. 7), 233; 248-9. It is telling that the Athenians tolerated vacancies on Boards (other than the *Boule*), permitted two terms on the *Boule*, and preserved pay for the *Boule* into the 4<sup>th</sup> century, rather than mandate participation. See AR. *Ec.* 834 (and see 682), where Praxagora lays comic emphasis on the revolutionary requirement

lot was to make all functions that did not require expertise genuinely accessible to and reflective of the diversity of the entire citizenry, and to detach office-holding from any claim of entitlement based on personal qualities, social status or experience; and that the aim of rotation was to prevent specialized isolation and entrenchment by smaller, annually selected bodies with narrower administrative functions. Wouldn't these aims, too, be better achieved by requiring participation in administration?<sup>65</sup> Why create such an elaborately 'impersonal' process for selecting among those who self-select? Why not just ban the most personal of motivations, namely self-selection? Why not reserve the role of *ho boulomenos hois exestin* to speaking in the Assembly, and originating laws, decrees, and public prosecutions, and put service on the Council or a Board in the same category as military service or being an Arbitrator, which were compulsory?

The answer to this puzzle, I suggest, is that *ho boulomenos* was more fundamental to Athenian democratic citizenship than the lot or rotation. The Athenians' selective deployment of lot and rotation for the structuring of essential administrative and judicial functions can then be understood as making self-selection safe — and valuable — for the operations of a democratic *polis*. Not only are these practices consistent, but they are mutually reinforcing: self-selection, the lot, and rotation made collective self-government possible and effective.

According to Aristotle, "democracy is the form of government in which the free are rulers".<sup>66</sup> "All democrats", he says, affirm the principle that "a man should live as he likes".<sup>67</sup> *ho*

that 'all' citizens (*pantes astoi*) must present themselves for the drawing of lots: "yes, that's the way we do things now".

<sup>65</sup> *Ho boulomenos hois exestin*, as Hansen has demonstrated, is as much a formal feature of Athenian practice as the lot or rotation or artificial tribes, and arguably, as Hansen observes, "the real protagonist of the Athenian democracy". M.H. HANSEN, *op. cit.* (n. 7), 72 with 266-8.

<sup>66</sup> ARIST. *Pol.* 4. 4.

<sup>67</sup> ARIST. *Pol.* 6. 2. Note the absence of any specific reference to self-selection or initiative in this passage, where Aristotle lays out the distinguishing features of

*boulomenos* may look on the surface like a democratic arrogation of a privilege of the social and economic elite who, after all, could always do as they pleased. But self-selection by any citizen was in fact a quintessentially democratic challenge to that elite, whose power rested on authority defined in non-or-extra-political terms. Oligarchs do not see political freedom as a virtue;<sup>68</sup> freedom is the lowest common denominator, the only attribute that distinguishes citizen from slave, and it is a characteristic or status that the polis itself creates and enforces. The oligarchic or aristocratic claim to power, by contrast, is founded on "birth, wealth, and education".<sup>69</sup> Responding to the charge that he had not come before the people very often, Aeschines observes that "in oligarchies, it is not anyone who wishes that may speak but only those who have authority (*dynasteuein demegorei*); in democracies, anyone who wishes may speak, whenever he wishes".<sup>70</sup> This passage and others reveal that *ho boulomenos* is a pro-equal-freedom, anti-entitlement practice: any citizen may speak, with no justification other than believing he has something to offer, and no-one must speak, or indeed take political action of any kind.<sup>71</sup> Self-selection challenges the very idea of extra-political power.

Mandatory exercise of power, or even a responsibility to do so, is associated in the ancient sources not with promoting

democracy. However, he does identify 'freedom' as the essential democratic principle, upon which even the democratic claim to equality rests: all men are equally free. See also EUR. *Suppl.* 438: "Thus freedom speaks: who wishes to bring good counsel can become *lampros*; but one can also keep silence. What could be *isaiteron*?" ARIST. *Rhet.* 1. 8. 5; THEOPHR. *Char.* 28. 6; For the critical perspective, PLATO *Resp.* 557b-558c; 562b-564a; ARIST. *Pol.* 5. 9; 6. 4; [XEN.] 1. 2; 1. 6; 1. 8. See M.H. HANSEN, *op. cit.* (n. 7), 76 and ID., *Was Athens a Democracy? Popular Rule, Liberty and Equality in Ancient and Modern Political Thought* (Copenhagen 1989), 12 with R.G. MULGAN, *art. cit.* (n. 1), 18-20.

<sup>68</sup> See M.H. HANSEN, *op. cit.* (n. 7), 76, with [XEN.] 1. 8; THEOPHR. *Char.* 28. 6; ARIST. *Pol.* 6. 4.

<sup>69</sup> ARIST. *Pol.* 6. 2.

<sup>70</sup> AESCHIN. 3. 220 (*Ag. Ctes.*) with B. MANIN, *op. cit.* (n. 27), 16.

<sup>71</sup> See EUR. *Suppl.* 422-433.

popular participation, but rather with ensuring that those 'entitled' to govern take their turn. So, for example, in the constitution attributed to Draco by Aristotle<sup>72</sup> and the "constitution for the future" drafted by the regime of the 400<sup>73</sup>. In both cases, power was limited to men of hoplite property status. The 'Draconian' *Boule* was to be selected from those over 30, "and nobody could hold the same office twice until all those eligible had held it; then the allotment started again from the beginning". Anyone who did not attend was to be fined. In the "constitution for the future" drafted by the 400, too, the entire body of property-eligible citizens was to be divided into groups, each to serve as the *Boule* for a year, in turn.<sup>74</sup> In the supposed 'blending' of oligarchic and democratic elements in Plato's *Laws*, *ho boulomenos* is associated with the weakness of the less powerful, because it is combined with more stringent participation by the upper classes in a way that reinforces the elite's traditional power.<sup>75</sup> In his critique of Athens for detaching personal ability from political authority, Plato's Socrates invokes *ho boulomenos*: in a democracy, he scoffs, "you are not obliged to be in authority, however competent you may be, or to submit to authority, if you do not like it [...] and though you may have no right to hold office or sit on juries, you will do so all the same if the fancy takes you".<sup>76</sup>

<sup>72</sup> ARIST. *Ath.* 4. 14.

<sup>73</sup> ARIST. *Ath.* 30.

<sup>74</sup> Turns were determined by lot. This is an example of the use of the lot just to determine who goes first, when everyone must participate; so too is the selection of which *prytanis* will act as the Council's executive committee for the month, ARIST. *Ath.* 43. 2.

<sup>75</sup> PLATO *Leges* 756 with ARIST. *Pol.* 2. 6. The process of selecting the Council in Plato's *Laws* is compulsory, and absence is fined, during the first two phases, when nominations for the representatives from the highest and second highest classes are solicited. On the days when candidates for the 3<sup>rd</sup> and 4<sup>th</sup> classes are identified, the requirements are loosened for the two lower classes, presumably to make it easier for the elite to secure lower-class candidates they approve of. In the end, everyone must vote.

<sup>76</sup> PLATO *Resp.* 557e. Note the sarcastic reference to the principle of "ruling and being ruled" (*archein/archesthai*). Compare Plato's ideal city, in which



The principle of *ho boulomenos* permeated the Athenian democracy, as a protection against the assertion of traditional privilege or arbitrary and oppressive power. Yet *ho boulomenos*, as the *Laws* passage about the role of the upper classes suggests, posed risks to a democracy. The late 5<sup>th</sup> and 4<sup>th</sup> century sources, especially, recognized the threat to the *polis* of the unconstrained exercise of freedom, whether by the traditional elite, no longer entitled to a share of rule but now required to fight for it through persuasion or guile; or by the people, confusing freedom with license, or simply passively permitting the socially and economically powerful to hold sway. As Aristotle observes, “modern oligarchs,” unlike traditional ones, “are as covetous of gain as they are of honour”.<sup>77</sup> He declares that the primary danger of too free and open a political system arises from those with wealth and standing, because “the practical difficulty of inducing those to forbear who can, if they like encroach, is far greater, for the weaker are always asking for equality and justice, but the stronger care for none of these things”.<sup>78</sup>

In most administrative roles, these risks were mitigated by the use of the lot and rotation. When it came to serving on the Council or Boards, no-one was entitled to do so by extra-political status or power, no-one was forced, and everyone was free to step forward. Self-selection combined with the use of the lot protected the weak against the most dangerous ‘encroachers’. The lot made *ho boulomenos* a reality for all Athenian citizens,

competence is not determined either by conventional categories, nor by the *polis*, and those who are competent — the philosophers — must be forced to rule.

<sup>77</sup> ARIST. *Pol.* 6. 7; and see [XEN.] 1. 8 re the actions of the elite, who can be expected to pursue their own interests at the expense of the people. See the science fiction writer Arthur C. Clarke’s system, in which anyone who wants the job is automatically disqualified, and the lot is used to select from among the rest (cited in B. GOODWIN, *op. cit.* [n. 1], 159).

<sup>78</sup> ARIST. *Pol.* 6. 3. See C. FARRAR, *op. cit.* (n. 25) for the argument that this concern about untrammelled power — reflected in tragedy as well as philosophy — is in part a legacy of the power of the Athenian empire.

by giving everyone an equal and impartially-determined chance to serve. And the lot combined with rotation prevented *ho boulomenos* from turning into license or domination by any individual or group, either on the Council or a Board in a particular year, or over time.

Self-selection was not merely an expression of democratic freedom that — when structured by lot and rotation — was consistent with popular self-rule; *ho boulomenos* also filtered political participation in a fully democratic way. In deciding whether to step forward for office, each citizen judges for himself whether he wants the responsibility that comes with this freedom, and whether he is up to it, or could be.<sup>79</sup> The phrase *ton Athenaion ho boulomenos hois exestin* enjoins each citizen to reflect on what he has to offer the *polis*. The *dokimasia* will confirm eligibility in the formal sense; each citizen determines for himself his suitability for a particular role. Here, I suggest, rests the primary value of self-selection to democratic administration (as well as to the operation of the Assembly). The individual alone assesses his own eligibility to be in a pool of candidates, and he does so in the knowledge that he will be judged, during and after his term of office, by his fellow citizens. In his analysis of the use of sortition in Athens, Montesquieu observed that the selection by lot only from among those who presented themselves “implied both lot and choice”. He concluded that “people without ability must have been very reluctant to put their names forward for selection by lot”.<sup>80</sup> Other features of the process would have helped overcome this reluctance: experience in the Assembly, or in the courts; pay (in the 5<sup>th</sup> century

<sup>79</sup> See B. MANIN, *op. cit.* (n. 27), 13 on the fact that this self-scrutiny involves a prospective judgment, not the a posteriori assessment required by a *euthuna*, or in an election for an office without required rotation. Citizens eligible for jury service — as for magistracies — decided whether to put themselves forward for selection to the pool. As with the Assembly, however, they also chose whether or not to turn up on a particular day.

<sup>80</sup> MONTESQUIEU, *De l'esprit des lois*, 2. 2, with B. MANIN, *op. cit.* (n. 27), 71-2.

for all magistrates and for the *Boule* in the 4<sup>th</sup>)<sup>81</sup> and the impersonality of the lot itself, as well as the lure of exerting influence, or fulfilling an honorable civic duty. Not just anyone could stand in for his fellow citizens: only someone who passes a self-scrutiny and is willing to be judged on what he expects to be able to achieve.

For the smaller, enduring, and less permeable political boards, self-selection combined with the lot and rotation made effective democratic self-rule possible:

- self-selection filtered for capacity and interest based on purely internal, not external, criteria
- the lot ensured that office-holding was not, however, an act of sheer will, but the result of a strictly impersonal and political process, and enforced the principle of equal chance, which established a psychological relationship between the office-holder and other citizens; and
- rotation ensured that the interest in an office that motivates self-selection could not turn into entrenched influence, and that the lot, which excluded interested citizens from a particular role, could not (in all likelihood) exclude them forever.

Together, the three mechanisms ensured that each citizen could say of almost any office-holder: not “that person looks like me, or represents my interests”, but “that could be me!”. And no magistrate can justify thinking of himself as in office because of demonstrated capacity or a special claim. Anyone else with an interest in performing his role could have been doing so instead of him, and would be doing so very soon.

<sup>81</sup> The *Athenaion Politeia* (27. 4) observes that once Perikles arranged for jurors to be paid, *kleroumenon epimelos aei mallon ton tuchonton e ton epieikon anthropon*, i.e. some say that the quality of the courts declined, “since it was always just any random person rather than the more respectable (the better sort, but also by implication, given the contrast with wanting to be paid, the upper classes? See P.J. RHODES, *op. cit.* [n. 39], 342-3) who took care to ensure that their names were included in the ballot for places on the juries”. Note that one can’t actually take care to be selected, only to be included in the drawing.

The process as a whole (self-scrutiny, impersonal selection, recognition of drastically limited tenure and the prospect of being governed in a particular domain by others selected in the same way) created a pool of political equals who did not mirror the *demos*, but were actively continuous with them, and therefore connected personal concerns with political claims in a way that randomly selecting names from a list of citizens and requiring them to serve on one Board after another could not have achieved. The powerful political filter created by Athenian institutions, including lot and rotation — a system that has been criticized as leveling individual difference or as privileging the *polis* over the individual — <sup>82</sup> was in fact intended to be applied by free individuals, *hoi boulomenoi*, according to their own lights.

*Re-casting lot (and re-turning to rotation)*

The revival of these devices by modern reformers is not fueled by an ongoing tradition.<sup>83</sup> Inspiration may be at work; modern reformers do seem to covet what modern democracy lacks and the Athenians achieved: self-government. But the lot and rotation were not the basis of Athenian self-rule. What differentiates them from us most decisively is that in Athens the people made all the important decisions — and held the smaller executive and administrative subgroups accountable — through a body continuous with and continuously permeable by themselves at will (the Assembly), and through a comparably large group similarly self-nominated but selected by lot year on year (the *dikastai* and, in the 4<sup>th</sup> C, the *nomothetai*). In modern

<sup>82</sup> See e.g. S.T. HOLMES, "Aristippus in and out of Athens", in *American Political Science Review* 73 (1979), 112-28.

<sup>83</sup> See Hansen's introduction to this volume, and Murray's contribution; B. MANIN, *op. cit.* (n. 27) and O. DOWLEN, *The Political Potential of Sortition. A study of the random selection of citizens for public office* (Exeter 2008).



democracies, no group with this kind of relationship to the people makes decisions.<sup>84</sup> And this is not primarily a function of the size of the modern polity. When he framed the American representative system, Madison acknowledged that the Athenians, too, relied on representatives. The essential difference between the two systems of government was not, he argued, “the total exclusion of the representatives of the people from the administration” of the ancient city-state, but rather “the total exclusion of the people in their collective capacity” from the modern republic.<sup>85</sup>

Modern reformers are deploying sortition to constitute subgroups of the *demos* that can be plausibly regarded as ‘the people in their collective capacity’. A comparison between this modern application of the lot and the very different role of sortition in Athenian democracy reveals that the lot alone cannot establish active continuity between people and rulers.

### *Doing without reasons*

The most systematic and persuasive modern analysis of sortition has been offered recently by Peter Stone.<sup>86</sup> According to Stone, the lot is not simply a default mechanism, to be used

<sup>84</sup> On the hollowing out of the New England town meeting through diminution of town powers, see J.J. MANSBRIDGE, *Beyond Adversary Democracy* (Chicago 1980), chapter 11.

<sup>85</sup> J. MADISON, *The Federalist Papers* (1787), n° 63; with B. MANIN, *op. cit.* (n. 27), 2.

<sup>86</sup> P. STONE, *art. cit.* (n. 49), 375-397. As he and other scholars have observed, the underlying logic of the use of a lottery is the absence of any reason for discriminating between candidates for a good, or a burden (or an inability to ascertain a reason reliably). Thus, as Rousseau observed, “all things being equal, both in mores and talents as well as in maxims and fortune, the choice would become almost indifferent”. J.-J. ROUSSEAU, *Du contrat social* (1762), 4. 3., cited and discussed by B. MANIN, *op. cit.* (n. 27), 77. See also J.W. HEADLAM, *op. cit.* (n. 16), 121; J. ELSTER, *op. cit.* (n. 1), and R.G. MULGAN, *art. cit.* (n. 1), 54-8: “equality of desert is the main ethical assumption underlying the lot”.

when contenders are relevantly equal and there are no reasons to choose one rather than another. Sortition, on Stone's account, actively "sanitizes" the process of reasons, preventing the choice from being made on the basis of any reason whatever. Sortition thus has desirable incentive effects: it "prevents individuals from influencing the outcome [of the selection process] on the basis of reasons, whether good or bad".<sup>87</sup> To prevent, for example, stacking of a jury or bribing of jurors, a government might decide to use the lot, even though the regrettable consequence would be an inability to select jurors on the basis of competence or intelligence.<sup>88</sup> When individuals have equal claims or rights to a good (or equal responsibility for a burden) the use of the lot to insulate the process from bad reasons is not discretionary; it is required.<sup>89</sup>

In practice, using a selection process that actively sanitizes reasons has both negative and positive force. Negatively, random selection ensures that the make-up of the group has not been determined by externally-specified agendas or special interests. The deliberators are invited without regard for any personal characteristic or preference. Thus, for example, Fishkin's Deliberative Poll™, which randomly invites citizens (in the way one would for an opinion poll) and pays them to attend a one or two day deliberation.<sup>90</sup> Contrast — as Fishkin

<sup>87</sup> P. STONE, *art. cit.* (n. 49), 386.

<sup>88</sup> *Ibid.*, 381.

<sup>89</sup> *Ibid.*, 391, contra J. ELSTER, *op. cit.* (n. 1), 107-9.

<sup>90</sup> For a comprehensive account of the method and the applications, see now J.S. FISHKIN, *op. cit.* (n. 1). To this point, most Deliberative Polls have been advisory. However, in 2004, a Deliberative Poll was for the first time authorized by a government — in China. The township of Zeguo faced a markedly reduced budget for infrastructure projects, and decided to convene a randomly invited sample of the population to weigh the alternatives and set priorities. The government sought to "reduce any perception of corruption", and to provide a channel for the equal expression of all, not just the voices of the most privileged or vocal citizens. See J.S. FISHKIN, B. HE, A. SIU, "Public Consultation Through Deliberation in China: the First Chinese Deliberative Poll", in *The Search for Deliberative Democracy in China* ed. by E.J. LIEB and B. HE (New York 2006), and J.S. FISHKIN, B. HE, R.C. LUSKIN, A. SIU, "Deliberative Democracy in an

himself has done — random selection with the process of ideological mobilization that skewed the Congressional Town Hall meetings on health policy held in the United States in the summer of 2009.<sup>91</sup> In 2003, the government of the Canadian province of British Columbia randomly selected 160 people from a randomly selected pool of more than 15,000 to sit on a Citizens' Assembly to recommend the best possible electoral system for consideration by the full electorate. This daring move was precipitated by an election that gave the Liberal party the popular vote, but awarded a majority of legislative seats to the party with the second-highest tally. The Liberals vowed to convene a Citizens Assembly on electoral reform when next they came to power.<sup>92</sup> The primary purpose of using the lot to

Unlikely Place", in *British Journal of Political Science* (forthcoming) [available at [cdd.stanford.edu/research/papers/2006](http://cdd.stanford.edu/research/papers/2006)], and J.S. FISHKIN, *op. cit.* (n. 1), 106-111. While comparable in structure to the other DP's, this experiment was exceptional in two respects: Virtually everyone who was invited to attend came. Fishkin attributes this to China's political culture. Note the connection discussed earlier between self-selection and freedom. The self-selection that was (mistakenly) permitted occurred at the household level — with the result that the deliberating body was 70% male. This too attests to the absence of freedom to choose to participate or not, but here because of social not political dominance. Fishkin points out the ability of a deliberative democratic process to take place in the absence of 'party competition'. This feature confirms my suggestion, above, that the lot facilitates individual, not group or constituency-based filtering and representation. In addition to the Deliberative Poll (see the website of Fishkin's Center for Deliberative Democracy, <http://www.stanford.edu/cdd>), the most prominent instances of the use of the lot are Citizens Juries, A. COOTE, J. LENA-GHAN, *op. cit.* (n. 1) and consensus conferences and planning cells, C.M. HENDRIKS, "Consensus Conferences and Planning Cells: Lay Citizen Deliberations", in *The Deliberative Democracy Handbook*, ed. by J. GASTIL, P. LEVINE (San Francisco 2005), 80-110. Citizens' juries, consensus conferences, and (occasionally) Deliberative Polls use stratified random samples.

<sup>91</sup> See J.S. FISHKIN, "Town Halls by Invitation", in *New York Times* (August 15, 2009) [available at: <http://www.nytimes.com/2009/08/16/opinion/16fishkin.html>]; and CONGRESSIONAL MANAGEMENT FOUNDATION.

<sup>92</sup> A recently published book on the Assembly declares (misleadingly) that this was "the first time in the history of democracy that a body of randomly chosen citizens have been authorized to recommend a major change in a state's electoral system". M.E. WARREN, H. PEARSE, *op. cit.* (n. 1), 21. *Mutatis mutandis*, the *nomothetai* anticipated the Citizens Assembly by more than two thousand years.

select a panel was to insulate the process of developing an electoral reform proposal from any charge that it was designed to benefit the party in power. The government needed a method that would avoid any perception that it had stacked the panel with its partisans. Election was not a plausible alternative: not so much because the aim was to engage ordinary citizens, but because the electoral process itself was at issue. Random invitation bleached any reasons, and thus any possibility of external influence, out of the selection process.<sup>93</sup>

Positively, as Stone shows, the reason-sanitizing force of the lottery results in a subgroup of the citizenry that is 'descriptively representative': a cross-section of the population, untainted by any externally-specified considerations whatever. Current proposals and initiatives for empowering the public use the lot to select a subset of the people whose claim to legitimacy depends on being a representative cross-section.<sup>94</sup> They propose to "shrink the people" into a "*minipopulus*" of manageable size.<sup>95</sup>

<sup>93</sup> See the history of the Citizens Assembly at: <http://www.citizensassembly.bc.ca/public/inaction/history>. In July 2003, the staff of the Assembly initiated a month-long voter registration drive to alert the public that anyone who wished to be considered had to be enrolled on the provincial voters list. (Compare Athenians putting forward their names for the jury pool.) August 29, 2003, Harry Neufeld, Chief Electoral Officer of Elections BC, delivered to the Citizens' Assembly 15,800 randomly selected names from British Columbia's voters list. These names formed the pool of potential members for the member-selection process. In October, the first four members were selected: names were drawn at random at a public meeting in Fort St. John. One man and one woman were similarly chosen from each of the 79 provincial electoral districts.

<sup>94</sup> See Y. SINTOMER, *Le Pouvoir au Peuple: jurys citoyens, tirage au sort et démocratie participative* (Paris 2007), 103-4: the lot as used in the modern context is not designed to achieve collective self government but rather representation via a microcosm; and O. DOWLEN, *op. cit.* (n. 83), 231 on a-rational as distinct from 'representative' procedures.

<sup>95</sup> *Minipopulus* derives from R.A. DAHL: the term from *Democracy and its Critics* (New Haven 1989), 340; the idea from *After the Revolution? Authority in a Good Society* (New Haven 1970), 149. "Manageability" is in the eye of the beholder, and depends in part on whether decision-making occurs face to face or over the internet, and how much group deliberation is thought desirable; the *minipopulus* may number in the hundreds (Fishkin) or the tens of thousands (Schmidt). See the discussion of ways of assembling a microcosm, and the virtues and drawbacks of microcosmic deliberation in J.S. FISHKIN, *op. cit.* (n. 1), 54-60.



The underlying assumption is that the decisions of a group constituted in this way will be fair and be seen to be fair because all individual interests (not interest 'groups') are represented.<sup>96</sup> These individuals are representative precisely because they have been selected through an impartial process. Random selection is the only way to secure a group that is, in the words of John Adams, "in miniature an exact portrait of the people at large".<sup>97</sup> Since, as Stone argues, the characteristics that enter into the stipulation of representativeness are indefinitely large,<sup>98</sup> no explicitly balanced and careful recruitment strategy can succeed in achieving a fully representative sample. Randomness registers a huge potential number of variables, which could not in practice be specified in advance by someone seeking to assemble a 'representative' group by picking identifiable groups in their proportion to the population.<sup>99</sup> All such alternatives will

<sup>96</sup> See P. STONE, *art. cit.* (n. 49), 387-8; and L. CARSON, B. MARTIN, *Random Selection in Politics* (Westport 1999), 99-100.

<sup>97</sup> J. ADAMS, *Thoughts on Government* (1776), in *The Life and Works of John Adams*, ed. by C.F. ADAMS (Boston 1850-6), vol. IV, 195.

<sup>98</sup> P. STONE, *art. cit.* (n. 49), 387. Note that the anti-federalists never considered using the lot for this purpose; rather, they proposed to elect representatives from small districts, with brief tenure and term limits (i.e. rotation). O. DOWLEN, *op. cit.* (n. 83), 152-71 discusses piecemeal measures and unrealized proposals for the use of the lot in the colonial period, primarily to "establish Congress as impartial vis-à-vis the thirteen states". Note James Wilson's 1787 proposal that the president should be chosen by a randomly-selected subset of the Congress.

<sup>99</sup> The jury is of course the only modern institutional example of empowering a cross-section of the population. Jurors have been drawn from established lists, and required to serve. As recently as 1972, Britain imposed a property requirement for jury service. The use of random selection has resurfaced (it was introduced in several American colonies in the 17<sup>th</sup> century, and spread in the 18<sup>th</sup>: see O. DOWLEN, *op. cit.* [n. 83], 176-7). In 1968, the U.S. Congress enacted the Jury Selection and Service Act, which provides for a jury pool "selected at random from a fair cross-section of the community", and stipulates that voter lists be supplemented as needed to ensure representation of less active citizens. E.J. LEIB, *op. cit.* (n. 1), 109, with 92, n. 10 and L. CARSON, B. MARTIN, *op. cit.* (n. 96), 26-30. The relevance of the jury to other applications of the lot is limited by their constrained role (what Leib calls "other" and opposed to "self" government). But it may be possible to appeal to the use of the lottery in

necessarily reflect some externally specified understanding of what kinds of people or groups should be represented.

The potential benefits of using straightforward sortition to 'shrink' the populace for policy-making purposes become clearer by comparison with processes that select participants by specific identity group or organized interests. Though they too are attempting to short circuit the influence of entrenched power, these reformers balk at the idea of doing without reasons. A random process can produce apparently un-representative groups, as measured by salient categories (including, importantly, the already marginalized groups in society). Modern adapters of the lot often seek to achieve a formally representative group according to antecedently specified criteria, and therefore use (or propose) a stratified random sample. Even though stratified random sampling is fully impersonal, it may appear to be the result of careful (too careful?) selection. Some reformers whose objective is to promote a more inclusive and participatory form of democracy do not use sortition at all. In such cases (to take only the most prominent United States example, many of the deliberations organized by AmericaSpeaks; or the budgeting process pioneered by the city of Porto Alegre)<sup>100</sup> the assembled group may look representative by demographic or affiliation or ideological perspective, but organizers may have a difficult time overcoming the perception that

this context (as Leib does) to challenge resistance to the very idea of using a process that abdicates reasons for selection, and to make a case for the capacity of ordinary citizens.

<sup>100</sup> AmericaSpeaks (<http://www.americaspeaks.org> and C.J. LUKENSMEYER, J. GOLDMAN, S. BRIGHAM, "A Town Meeting for the Twenty First Century", in *The Deliberative Democracy Handbook*, ed. by J. GASTIL, P. LEVINE (San Francisco 2005), 154-63; and Porto Alegre: M. GRET, Y. SINTOMER, *Porto Alegre: l'espoir d'une autre démocratie* (Paris 2005). See also the account of Australia's mixing and matching of different approaches, including combinations of the AmericaSpeaks with the Citizens Juries and Deliberative Polling methods L. CARSON, J. HARTZ-KARP, "Adapting and Combining Deliberative Designs: Juries, Polls, and Forums", in *The Deliberative Democracy Handbook*, ed. by J. GASTIL, P. LEVINE (San Francisco 2005), 120-40.

external interests have influenced the selection. So one important question for moderns is whether genuinely equal access (via unstratified random sampling) or apparent representativeness is more important to the public's sense of the legitimacy of the process.

The fully random use of the lot for initiatives like Deliberative Polling and the Citizens Assembly creates a manageable subgroup that is a microcosm of the larger *demos*; what matters for the group's legitimacy is not primarily that every citizen had an equal chance of being chosen, nor that there is an active relationship to the people as a whole, but that the group has been selected without regard to any reasons whatever, and that it is (therefore) identical in every respect to the pool from which it is drawn. Creating a 'descriptively representative' subgroup of this kind requires selection from the relevant population as a whole. Statistical resemblance between a governing or administrative subgroup and the *demos*, that is, requires the inclusion of all members of the *demos* in the pool, and mandatory service by anyone who is randomly selected. The relationship between the full *demos* and the lot-selected policymaking body is therefore very different from the active continuity fostered by the Athenian system. Athenian self-government operated through self-selection. And self-selection, for the sovereign Assembly and for administrative and judicial subgroups, subverts the very idea of 'descriptive representation', and imports reasons. The Athenian use of sortition wields the sanitizing force described by Stone: no social or economic criterion, no claim of intelligence or experience is permitted to matter. Yet they combined this rigorously impersonal and a-rational filter with a highly personal and reason-laden one, self-selection.

### *Reasons of state*

In a variety of Athenian institutional contexts, self-selection enforced the very principle embodied in the lot: that no extra-political criteria would determine who wielded power.

Self-selection also ensured that 'political' reasons would enter the process, reasons applied by each individual for himself, within a system that promoted equal freedom and equal access. Each citizen had to decide whether he wished to and could effectively 'represent' the *polis*. The reasons he brought to bear on the decision (anticipated strength of character, nerve, ability to learn, potential fit between experience and these particular challenges) could not possibly be specified in advance as the basis for selection. This is true not only because the number of permutations and degrees of discrimination would be huge — as in the case of descriptive representation secured through an entirely impersonal process — but also because the criteria being deployed are imaginative projections of the self, not straightforward inferences from past behavior or objective evidence or even well-worked-out and highly specified variables. *Ho boulomenos* achieved something that no fully sanitized or externally-specified process could: free and equal access filtered by highly well-informed screening for the ability to perform the function well enough.

Reliance on static statistical resemblance rather than active continuity as the basis for the legitimacy of a subgroup creates a passive relationship to the *demos*, both in the selection and the governing process. As a cross-section, this subgroup by design lacks any filter; it mirrors the population as a whole.<sup>101</sup> Yet the question of the relationship between the subgroup and the broader public keeps surfacing in the modern context, just as it did for the Athenians when they created smaller and less permeable groups to carry out the work of the people. Having done away with reasons in the selection process, modern advocates of the lot invent other filters for promoting effective governance. These filters are externally imposed, and exacerbate

<sup>101</sup> As Sintomer points out, it is no accident that the principle of random selection irrupted into the modern world in the form of the opinion poll. Y. SINTOMER, *op. cit.* (n. 94), 103-7, 144-7 on the emergence and impact of the opinion poll.



the disjunction between the subgroup and the broader public (which the Athenian institutions mitigated). Without self-selection, rotation, and the frequency and permeability of decision-making groups, the lot does not foster a sense of active continuity with the public at large. The problematic modern relationship between a lot-selected subgroup and the people as a whole emerges clearly in both of the examples mentioned above: the *minipopulus* (represented here by the Deliberative Poll), and the agenda-setters (the British Columbia Citizens Assembly). I do not cite these examples because they are especially problematic — on the contrary, they appreciate and seek to address the need to connect the subgroup to the *demos*.<sup>102</sup>

*Minipopulus* The Deliberative Poll's "scientific random sample" generates a thought experiment: the results of the citizen deliberations are extrapolated to what the populace as a whole would think if it had a chance to deliberate. Self-selection, which enters after citizens are selected by lot, not (as in Athens) beforehand, is considered a problem; full participation of the invited cross-section would be ideal.<sup>103</sup> And indeed, if descriptive representation of all features (not just conventionally specified characteristics) is the objective, and extrapolation to

<sup>102</sup> Fishkin is acutely aware of this problem. See especially his thoughtful discussion in J.S. FISHKIN, *op. cit.* (n. 1), 83 and 95-9.

<sup>103</sup> E.J. LEIB, *op. cit.* (n. 1) proposes a 'popular branch' of the American legislature, randomly selected and rotated, and explicitly insists on mandatory participation, because even with the lot, and pay, self-selection will necessarily, in his view, result in domination by the better educated and more affluent. Exceptions to mandatory service include B.R. BARBER, *op. cit.* (n. 1), 291-3 for town offices (but note his suggestion that no citizen be permitted to serve again until all who wish to have done so) and J. BURNHEIM, *op. cit.* (n. 1), whose functional workgroups would be chosen by lot from among volunteers. He makes the case that this would ensure motivated, competent participants and, because of the proliferation of functional groups, would not greatly restrict the range of participation. See discussion in L. CARSON, B. MARTIN, *op. cit.* (n. 96), 102-14. H. ARENDT, *The Human Condition* (Chicago 1958) espouses self-selection, with a view to winnowing out the apathetic; differential passivity that privileges the already-motivated is evidently a problem that can be addressed institutionally, as per the Athenians. See also M.I. FINLEY, *Democracy Ancient and Modern* (London 1973).

the populace plausible, then random selection from the entire relevant pool is essential. Fishkin seeks to mitigate the problem introduced by self-selection by showing whether those who attend resemble the entire randomly-invited sample on standard demographic variables and selected attitudes.<sup>104</sup> But whether or not others, similarly chosen and comparably exposed to information and deliberations, would in fact make the same choices, the result will tend not to be perceived that way.<sup>105</sup> This consequence is compounded by selecting by lot first, and then only reluctantly allowing, or outright forbidding, self-selection.<sup>106</sup> Although town halls with mobilized participants present problems of legitimacy, so too do town halls that are perceived as closed (note the title given by the *New York Times*

<sup>104</sup> Fishkin's method enables him to determine (by comparing the attendees on various measures to the contacted individuals as a whole), whether the group that attends is 'representative' on key measures. See his discussion in J.S. FISHKIN, *op. cit.* (n. 1), 111-9. He then extrapolates the results to what the public as a whole would think if it had a chance to deliberate. However, the group that chooses to attend can not be said to be 'descriptively representative' in Stone's sense. It is important to emphasize (as Fishkin often observes) that opinion polls, too, involve self-selection: the decision whether to answer the phone, and to take the survey. (In recent years, polling has been complicated by the inability to access cell phones through standard random digit dialing.) Pollsters compensate by 'weighting' the results according to the proportions of various demographic features and attitudinal 'markers' in the population as a whole.

<sup>105</sup> The result may nonetheless be seen as more legitimate than decisions made by a dominant elite or special interests, and may also provide 'cover' for leaders who face popular mistrust of the political process. See, for example, the Deliberative Polls carried out by Fishkin in Athens (to nominate a candidate for office) and China. Detailed analyses available at <http://cdd.stanford.edu/polls/greece/> and <http://cdd.stanford.edu/polls/china/>.

<sup>106</sup> Even if one explicitly aimed to bring self-selection in by this means, note the very different valence and symbolism: once invited, by a process that gives everyone an equal chance, anyone who wishes to attend, can; in the ancient structure, the application of a political test, i.e. self-scrutiny, occurs first, but no-one is entitled to a place. The first feels exclusionary (see the response to Ségolène Royal's suggestion, cited below); the second combines personal initiative with impersonal selection. See B. GOODWIN, *op. cit.* (n. 1), 158-60, who describes self-selection as one of the "compromises" in modern proposals for the use of the lot.

to James Fishkin's column arguing for a meeting of constituents selected by lot: "Town Halls by Invitation"). In the 2006 Presidential election in France, Ségolène Royal, the socialist party candidate, responded to what she said was a popular demand for more accountability by elected officials, and proposed the creation of citizen juries selected by lot to play this role.<sup>107</sup> Her suggestion provoked the observation (from thinkers sympathetic to her aims) that such a process would be illegitimate because it relies on "un groupe réduit de participants plutôt que d'être ouverts à tous".<sup>108</sup>

As the Athenian experience confirms, whenever a group is relatively small in relation to the *demos*, and closed — even if it is not making decisions — it is essential to demonstrate both that it is continuous with and open over time to the people qua citizens (through a combination of self-selection, lot, and rotation) and that it is able to 'filter' in a way that connects personal concerns to political requirements. The vociferous objections to Ségolène Royal's idea included the charge of 'populism' (i.e. unfiltered or direct citizen decision-making).<sup>109</sup> To make their assembly-substitute more than just an opinion poll, to provide

<sup>107</sup> "Je pense qu'il faudra clarifier la façon dont les élus pourront rendre compte, à intervalles réguliers, a des jurys citoyens tirés au sort" in *Le Monde* (November 18, 2006), cited in Y. SINTOMER, *op. cit.* (n. 94), 7. The Athenians did of course use such an assessment procedure, regularly at the end of an allotted or elected official's term, and whenever a citizen challenged an official's performance, as citizens were invited to do at specified (and frequent) meetings of the assembly.

<sup>108</sup> Y. SINTOMER, *op. cit.* (n. 94), 10.

<sup>109</sup> *Ibid.* As I have argued above, in ancient Athens the (temporarily) closed but large group of jurors, selected by lot from among those who presented themselves, and allocated by lot to specific trials or hearings, was designed to be continuous with the people as a whole, but also to be protected from any influence (any reasons, as per Stone), that could taint the results of their deliberations, including *ad hoc* self-selection for a particular trial. Note that unlike the typical deliberative experiment today, including the citizen jury — and unlike the regular jury — the Athenian jury was large, and did not deliberate in small groups, but simply heard competing arguments, reviewed (or heard) relevant documentation, and voted by secret ballot.

a political filter that might plausibly lead to good judgments, the modern reformers add a strenuous and externally framed deliberative process. This is the 'deliberative' aspect of the 'deliberative opinion poll'. The gatherings of 100-500 people are given carefully balanced background materials. They meet in randomly-assigned and moderated small groups and develop question for experts and elected officials on panels designed to represent different stances on the issue under discussion.

These external filters increase the separation between the selected group and the people as a whole. In the very process of deliberating, the participants become — and are seen as — different from their fellow citizens.<sup>110</sup> Of course this was true on Athenian boards, as well, and it is a desirable and intended consequence of being given responsibility for a sustained period (a day, or a year) as collective problem-solvers. Athenian institutions, however, maintained active continuity between the smaller, longer-term groups and the *demos* as a whole over time, through: the ability to opt in, plus an impersonal selection process, and rotation. Whatever change in priorities, knowledge, or attitudes may occur comes from within each citizen and through the interaction among them, and in light of constant identification with those who might equally have occupied their place and will do so soon. Their actions can not be attributed to framing (however balanced) by experts or carefully selected stakeholders.<sup>111</sup>

<sup>110</sup> For Fishkin, opinion change and knowledge acquisition as a result of deliberating are signs that the deliberation was successful; the point is precisely not to be an opinion poll. J.S. FISHKIN, B. HE, A. SIU, *art. cit.* (n. 90), 3. See B.A. ACKERMAN, J.S. FISHKIN, *Deliberation Day* (New Haven 2004), 72: participants in Deliberative Polls become 'celebrities'. See also C. FARRAR, *art. cit.* (n. 7), 185-6.

<sup>111</sup> Compare the relationship among the *prytaneis* of the Council, aspiring Athenian leaders, and the Assembly, which relied for its promotion of thoughtful policy solely on dynamic engagement among the participants. The highly structured procedures for jury deliberations (including the *nomothetai*) may be a more appropriate comparison. However, even there, the Athenians relied on individual initiative, and the 'defenders' were selected by the people in assembly (and the juries did not deliberate).



Agenda-setters The Citizens Assembly's charge — determining whether to propose election reform, and if so, of what kind — was very different from that of the Athenian Council (it more closely resembles the writ of the *nomothetai*). But like the probouleutic Athenian Council, the 160 citizens of British Columbia did sit for nearly a year, and brought a proposal to the people rather than deciding it themselves. However, the Citizens Assembly performed a single extended deliberative task, and then went out of business. There was no question of rotation.

The Assembly was described as 'representative' of the people at large, but participation was not mandatory; the members were randomly selected from among the individuals in the randomly invited pool of 15,800 who showed up at the local selection meeting.<sup>112</sup> Descriptive representation was not achieved. Here too, the relationship between the lot-selected body and the people is problematic. The organizers of the Citizens Assembly recognized the need to make a connection. The Assembly deliberated, and actively sought out the views of the people, through public meetings and hearings, before presenting a proposal for consideration by the electorate. Their proposed reform came close to receiving the required 60% of the popular vote in a referendum. The proposal (a significant reform of the status quo) was presented again in 2009, and was defeated by a larger margin.<sup>113</sup> The Assembly consulted their

<sup>112</sup> See [http://www.citizensassembly.bc.ca/public/news/2003/12/dmaclachlan-3\\_0312082027-257](http://www.citizensassembly.bc.ca/public/news/2003/12/dmaclachlan-3_0312082027-257): "At the initial selection meeting for Vancouver-Kingsway, on Nov. 20, there were no male candidates in attendance. A woman from Kingsway was selected, but the vacancy remained for a man". Note that the Assembly selection process was stratified by geography, by sex, and by Aboriginal origin (two seats were dedicated to aboriginals).

<sup>113</sup> On the 2009 vote, which defeated the proposal by a larger margin, see K. CARTY, F. CUTLER, P. FOURNIER, "Who Killed BC-STV?", in *The Tyee online* [<http://thetyee.ca/Views/2009/07/08/WhoKilledSTV/>]: "Another key reason for the drop in support involves the role of the body that proposed BC-STV, the Citizens' Assembly on Electoral Reform. After the 2005 vote, we published an analysis showing voters who knew about the Citizens' Assembly and its deliberations were far more likely to vote in favour. Voters said yes if they knew the

peers but was not institutionally responsive to them. The *Boule* at Athens played a sifting role that made it possible for Assembly democracy to function. The important debates took place in the Assembly — and referenda, including the one in Canada, do not replicate this structure. The revision of a Council proposal or the ‘filling in’ of an open *probouleuma* by the Assembly was a common occurrence at Athens and did not cast aspersions on the probouleutic process.<sup>114</sup> In British Columbia, by contrast, the referendum was seen as a setback for the process, and a second vote was scheduled, to try to pull the public across the vote threshold.<sup>115</sup>

### *Bridging the distance*

Modern democratic republics deliberately established distance, and a strong filter, between the people and the rulers.<sup>116</sup> In recent times, governments have tended to oscillate between exercising independent leadership, for which they are held accountable only at elections, and regularly taking the pulse of

Citizens’ Assembly was made up of ordinary folks and not stacked with government-appointed elites. In 2009, the influence of the Citizens’ Assembly all but evaporated. Decisions were primarily determined by views on the substance of STV. Some may applaud this greater independence. Others will lament that voters were still not very well informed about STV — respondents scored an average 2.5 out of 6 questions correct on our ‘test’ — and were unable or unwilling to rely on the informed judgment of their fellow citizens in the Citizens’ Assembly, as they did in 2005”.

<sup>114</sup> M.H. HANSEN, *op. cit.* (n. 7), 140.

<sup>115</sup> Other processes for ‘sifting’ voter choices have been proposed and attempted — including Citizens Juries and Consensus Conferences, some designed primarily to inform voters of what a group who look like them statistically concluded when they had a chance to deliberate and learn, which voters do not have a chance to do. C. HENDRIKS, *art. cit.* (n. 90), 80-110. N. CROSBY, D. NETHERCUT, “Citizens Juries: Creating a Trustworthy Voice of the People” in *The Deliberative Democracy Handbook*, ed. by J. GASTIL, P. LEVINE (San Francisco 2005), 111-9.

<sup>116</sup> See the discussion of mirror vs. filter in the debates among the American Founders in J.S. FISHKIN, *op. cit.* (n. 1), 15-9.

the electorate through opinion polls and the media. Either there is a powerful external filter, or none at all. Absent in both cases is a process for filtering of decisions by the people themselves. The absence of active continuity between decision-makers and the *demos* is particularly acutely felt now, I suggest, for reasons that echo the Athenian circumstance: marked inequality, an entrenched elite, corruption (and/or perceived corruption) of the political process, polarization and fragmentation.<sup>117</sup> No wonder sortition is appealing: it seems to promise equal access to power, and an impersonal, transparent process for identifying decision-makers. But the question of continuity between people and rulers recurs with any sovereign (or even strongly advisory) subset.

What would it take to forge active continuity of the Athenian kind in a modern setting? Can the lot — even with self-selection and rotation — achieve legitimacy for a decision-making sub-group, legitimacy that for the Athenians depended on permeability? In what contexts might these mechanisms create a filter for effective decision-making that could be applied by the citizens themselves? Three seem worth exploring: local government, the media, and local/national processes for promoting substantive political accountability.

*Local government* At the local level, it may be possible to build recognition over time of the capacity of ordinary citizens, to give them authority to make decisions, and to motivate the process of self-selection and self-filtering that gives the process legitimacy. If the community is sufficiently small (the size of Athens,

<sup>117</sup> See e.g. B. GOODWIN, *op. cit.* (n. 1), 146, 159; O. DOWLEN, *op. cit.* (n. 83), 229; B.A. ACKERMAN, J.S. FISHKIN, *op. cit.* (n. 110), 189-90; C. FARRAR, *art. cit.* (n. 7), 186-9; Y. SINTOMER, *op. cit.* (n. 94). Current examples include gridlock in the New York State legislature; the revelations of unseemly (to say the least) expenditures by UK Members of Parliament; the growth in the number of Independents and the influence of the Libertarian movement in the U.S, as well as identity politics everywhere, and the widespread perception that governments are at the mercy of special interests. The growing and technologically increasingly sophisticated demand for transparency is a sign of popular mistrust. See for example the work of the Sunlight Foundation in the U.S.

say), decision-making could reside in an entirely permeable, self-selected Assembly. To replicate the breadth of participation and fluidity of the Athenian Assembly, it would make sense to begin experimentation in communities with a longstanding tradition of town meetings to decide such matters as the budget, and to make these meetings genuinely open by paying for participation (on the model of the modern jury), making them more frequent, and broadening their writ. A lot-selected and rotating Council could be given responsibility for drafting the non-routine element of the town assembly's agenda.<sup>118</sup>

In larger communities (in population or territory or both), entirely self-selected subgroups of a manageable (and therefore highly constrained) size might well not be regarded as actively continuous with the entire polity. The same would likely be true if the 'assembly' met less frequently. In these cases, the decision-making group would need to be treated more like Athenian boards, and be selected by lot from among those who present themselves. Self-selection would provoke self-scrutiny. The use of the lot would assure every person who comes forward that she stands an equal chance of being selected; neither his personal qualities nor another's influence can bar (or speed) his way. And rotation (and short terms) would be required to mitigate even the perception of entrenchment and insulation in this (temporarily) closed group, an even more significant threat when the group has decision-making authority. To foster perceived continuity with the community at large of any relatively small body selected by lot, the focus should be on the selection and rotation process ("that could be me", "I'm not entitled to the role", and "someone else I won't choose will replace me soon"). Active continuity with (and representation of) the people will not be achieved by real or apparent 'representativeness',

<sup>118</sup> For the Council, it might be necessary, in order to jumpstart broad participation, to start with a randomly selected group, to reach beyond the usual suspects and convey the message that they, too, are equipped to participate in a decision-making process.



whether secured through a random or stratified sample or by hand-picking a diverse group.

One danger of experimenting at too local a level is that such communities are often homogeneous by ethnicity, race, and/or wealth and also too small to have leverage over the issues most significant for their own futures, namely economic development, transportation, waste management, education.<sup>119</sup> The local experiments I have been engaged in, both in New Haven and around the country (with public television) cover an entire metropolitan area. They have been consultative, and the 'agenda-setters' have not been chosen by lot, but selected by the sponsors — often with input from a variety of stakeholders — to reflect the range of opinion on the issue from among the great and the good. The partnership with television offers an opportunity to achieve the kind of publicity associated with Athenian decision-making, and even to increase its reach, in order to bridge the greater modern divide between a policy-making (or even advisory) subgroup and the people as a whole.

### *Media*

The media can help make the connection between lot-selected groups — whether at the local or the national level — and the public at large, and engage the public in considering the relationship between individual concerns and political requirements.<sup>120</sup> The internet and mobile technologies have made *ho boulomenos* possible on an unprecedented scale. Unconstrained by traditional barriers of wealth or position, ordinary people are coming forward in droves to express themselves and to connect with others — but these technologies have more often than not accelerated affiliation by interest or background or comfort zone, not engagement as citizens. The creation of online 'panels' may be a useful way to create a

<sup>119</sup> See C. FARRAR, *art. cit.* (n. 7), 185.

<sup>120</sup> See J.S. FISHKIN, *op. cit.* (n. 1), 146-50.

national assembly (assuming the digital divide is bridged) — though the Athenian example (and the logic of the internet) would suggest that anyone and everyone should be permitted to participate in the assembly (but with only one ‘avatar,’ and under one’s real name), with a ‘probouleutic’ role played by a much smaller group selected by lot and rotated. Building civic structure into the media, when all the incentives run to disaggregation and consumerism, will be at least as difficult as challenging entrenched power in political systems — and requires confronting, too, the illusion that the decentralized media can alone constrain unresponsive elites. Moreover, without regular opportunities to engage in responsible political engagement, individuals selected for these high-profile roles may become more rather than less cynical or alienated.<sup>121</sup>

### *Local/national accountability*

Holding policy-makers accountable is a familiar role for the public — and this may be a fruitful context for habituating citizens and rulers to the potential for real self-government. Ségolène Royal’s proposal reflects the appeal of this idea. Incorporating a highly publicized and entirely permeable system of local review into the extant national electoral process may be less controversial and more plausibly legitimate than convening independent boards of assessment by lot. Consider the proposal by James Fishkin and Bruce Ackerman to hold a Deliberation Day just before every U.S. presidential election.<sup>122</sup> The day is declared an official holiday, participants are paid, and

<sup>121</sup> To alter attitudes toward the governing potential of ordinary citizens, and to build a democratically responsible structure for engagement of the many voices on the internet, I have used online video to tell the story of a group of ordinary Americans (invited randomly, then auditioned) who confront each other as well as candidates and policymakers, and wrestle publicly with the difficult choices faced by the electorate. See <http://www.purplestates.tv>. Over the course of the 2008 election campaign, a majority of the Purple States citizen team did become more cynical and alienated.

<sup>122</sup> B.A. ACKERMAN, J.S. FISHKIN, *op. cit.* (n. 110).

anyone who wishes gathers at a local site (a school). They watch a televised debate, in which the candidates respond not to journalists but to questions refined through deliberation by an "assembly of 500 citizens" who have been randomly selected.<sup>123</sup> The 500 operate as a sort of 'probouleutic' body in the shape of a Deliberative Poll, and the full 'assembly' gets a chance to watch them interrogate the arguments of the political leaders.

The local, self-selected assemblies meet in randomly assigned small groups to discuss the issues, and to develop questions for local representatives of the candidates. Exit polls enable the country as a whole to learn what these local assemblies have concluded about the candidates. Deliberation Day is intended not just to enable participants to make more informed decisions on Election Day, and to communicate their deliberation-filtered views to others, but to reorient the electoral process to make it more responsive to a broad, informed, and constructively critical public. Deliberation Day can be seen as a two-stage probouleutic process, but it is focused on the performance of officials, not on the policies to be pursued by the country. It is as if an Athenian *euthuna* of a general ended inconclusively, and its results were posted publicly or conveyed to the assembly when it met to vote on candidates for the next Board. The potential longer-term benefit would arise through repetition of citizen gatherings on Deliberation Day (with rotation of the lot-selected 'probouleutic' group), and gradually for other purposes between election cycles as well. Habituation could move the representative democracy beyond an 'agency' model with a more active and informed constituency, to a collective sense that the people are at least indirectly influencing policy, that officials are 'standing in' for them and leaders are fully responsive and accountable.

<sup>123</sup> *Ibid.*, 24-5.

*Epilogue and prologue*

As the Athenians knew well, democratic self-government does not just happen by itself; “distributing a kind of equality to equal and unequal alike” goes against the grain, and not just among entrenched political elites. Groups assembled by lot and rotated are no substitute for other institutions of popular rule. Freedom to rule (or not to) is fundamental. But as ancient experience suggests, in appropriate contexts and combined with other practices (especially frequency and regularity of citizen decision-making, clout, and self-selection), lot and rotation are powerful devices for realizing equal political freedom and effective self-rule in the face of marked social and economic inequality.<sup>124</sup>

<sup>124</sup> In addition to the participants in these *Entretiens*, I should like to thank John Dunn, with whom I have discussed these issues over many years; Jim Fishkin, for encouraging and enabling me to grapple with the potential of his Deliberative Polling methodology in theory and on the ground; and Peter Stone, for more recent conversations. Doubtless each will disagree with some or all parts of my argument — but unlike my *Entretiens* colleagues, they have been given no opportunity to say so!



## DISCUSSION

*M. Hansen:* You ask the question why the Athenians did not make participation mandatory but preferred rotation and sortition among volunteering citizens (p. 190). The answer you suggest is that the Athenians found that *ho boulomenos* represents a more fundamental aspect of their democracy than participation by all citizens. I agree and would like to add a comment. The right to be *ho boulomenos* implies as its complement the right 'not' to be *ho boulomenos*. In spite of Perikles' remark in the Funeral Oration that the citizen who does not participate is considered useless and not one who prefers privacy (Thuc. 2.40.2), several sources show that it was legitimate and acceptable to stay out of politics. In the opening of his speech a defendant might tell the jurors as a *captatio benevolentiae* that he has never been in a court before (Plato *Ap.* 17*sqq.*; Lys. 19.55; Is. 1.1; Isoc. 15.38). And the preference for a private life is mentioned without any disapproval at, e.g., Lys. 19.18; Dem. 10.70-4, 18.303, 22.30.

*C. Farrar:* The texts you cite (and see also Isoc. 15.150) reflect one aspect of Athenian willingness to tolerate the consequences of *ho boulomenos*: playing no role in determining the fate of the *polis* (the *apragmon*). The other aspect is exploiting politics as an opportunity for personal (especially pecuniary) advantage (the *polupragmon*). Our sources are replete with portrayals of both types; the evidence is assembled by L.B. Carter, *The Quiet Athenian* (Oxford 1986) and by P. Demont, *La cité grecque archaïque et classique et l'idéal de tranquillité* (Paris 1990). Aristophanes' *Wealth* pits one extreme against the other (911-922).

*O. Murray:* Your paper is both fascinating and revolutionary. By bringing a new institutional element into the study of Athenian democracy, the principle of self-selection or *ho boulomenos*, you change our perception both of Athenian democracy and of its relation to modern democratic ideas. I would like to ask questions on each of these aspects.

My first question is, what sort of research is now needed in order to understand the strengths and weaknesses of the ancient principle of *ho boulomenos*? Should we follow up the voluntary nature of democratic participation, as for instance Lionel Carter attempted in his stimulating book, *The Quiet Athenian*, concentrating on the classes of citizens who refused or chose to participate and their reasons for these choices? Or should we rather emphasise the reasons for the apparently very high incidence of participation as compared to the modern experience, as Moses Finley did in his equally provocative book, *Democracy Ancient and Modern* (New Brunswick 1973)? It is clear that in order to follow up your insights we are going to have to abandon institutional history for the history of ancient mentalities.

*C. Farrar:* For a deeper understanding of the significance of the Athenian commitment to *ho boulomenos* I think we will indeed need to look again at practices and attitudes of passivity or engagement — especially, to the extent we can discern this given the nature of our sources, when behavior violated the stereotypes. For example, Aristophanes plays with the idea that no-one wanted to attend the Assembly until pay was instituted: now, “everyone tries to get in to get the money, and if kept out, they impugn the motives of those who did get paid.” *Ec.* 210. And as I note in the essay, in his critique of the regime proposed in Plato’s *Laws*, Aristotle observes that it is oligarchic, not democratic, because “the rich are compelled by law to attend the assembly and vote for magistrates or discharge other political duties, while the rest may do as they like”. And he adds, regarding the election of magistrates under Plato’s system,

“some of the lower classes, not being compelled, will not vote” (*Pol.* 2.6; see also 4.13).

It’s also important to explore the ways in which the Athenians simultaneously reinforced and restrained the implications of the freedom to participate (or not). I have tried to show here how the institutions of the lot and rotation made *ho boulomenos* a reality for every citizen while inhibiting the will to power, or to trespass on others (*pleonexia* is sometimes equated in our sources with *polupragmosune*). Elsewhere (“Gyges’ Ring: Reflections on the Boundaries of Democratic Citizenship”, in *Démocratie athénienne et culture*, éd. par M. Sakellariou [Athènes 1996]), I have explored the implications of the gap that democracy opened up between personal and political identity. By asserting that all Athenians were formally equal politically, without seeking to alter their personal and social inequality, the democracy required citizens to forge their own civic identity in the context of constant appraisal and definition by others. One risk was personal alienation from the demands of the political realm, the other over-identification with politics. In addition to institutional mechanisms designed to ensure that personal qualities and affiliations were neither ignored nor decisive politically, I suggest that the Athenians developed practices that re-constituted personal foundations for solidarity that did not rest on traditional social roles. In my article, I briefly discuss the reconstrual of the relationship between *erastes* and *eromenos*; the concepts of *charis*, *philia*, and the extension of credit; definitions of categories of property; and the provision of banquets (as discussed by P. Schmitt Pantel in her contribution to the same volume. Looking further at these and other ways of addressing the consequences of *ho boulomenos* might be one way forward.

O. Murray: My second question relates to the gap that you have opened up between the practices of ancient and modern democracies. Given the complexity of their differences what do you think are the core principles that might allow us to relate

the institutions of ancient democracy to those of modern democracy? I can think of two principles that seem to be shared by both: the first is the principle of *euthuna*, the idea that there must be institutional safeguards that subject the governing elite to periodic control by the people, and indeed restraint or even rejection. In this respect the safeguards of ostracism, *euthuna*, and the *nomos-psephisma* distinction share many common institutional functions with the electoral practices of western two-party systems; but these features are not usually thought of as central to the concept of democracy itself. The second principle is that of individual liberty in a political sense — combining political equality and the right to participate or not participate (the freedom *zen hos bouletai tis*, to live as one likes) even if it involves non-participation. But this raises the traditional question, in what senses are ideas of ancient and modern liberty truly identical? Is it liberty rather than democracy that we should be talking about? And once again, given the notorious problems in the concept of liberty, are we not confronted by the need to consider such questions from the point of view of the changing history of mentalities?

*C. Farrar:* The first shared principle does not, I think, help us discern a way of bridging the differences between ancient and modern democratic institutions. As you say, these safeguards are not central to the idea of democracy, though regular elections are of course central to the democratic self-image of modern liberal republics. In Athens, the *euthuna* does not seem to have been very consequential (see M.H. Hansen, *op. cit.* [n. 7], 224). The persistent threat of ostracism (in the 5<sup>th</sup> C.) and of *eisangeliai* or *graphai* (which seem to have displaced ostracism in the 4<sup>th</sup>) were part of an elaborate and thoroughgoing system (including rotation and sortition) for ensuring that the people were always (not just periodically) in control.

I am indeed suggesting that we need to look again at similarities between ancient and modern concepts of liberty — but



perhaps even more importantly, at the way they were realized in practice. In modern 'democracies', citizens are formally recognized as political equals (one person one vote, or one person several votes), and equally free. But they are not given the opportunity or enabled to develop the capacity to exercise that freedom or realize that equality. In modern political theory, we tend to posit a trade-off between freedom and equality: by advancing (social and economic) equality we reduce freedom. Athenian democratic practices suggest another possibility: a system that actively promotes 'political' equality and freedom through reliance on and facilitation of personal initiative by any citizen whatever. The efficacy of this system depended on making equal participation possible (by subverting entitlement through the lot and pay), giving all participants clout (through the primacy of the Assembly — and the role of the equally large pool of *nomothetai*), and the use of rotation to maintain the relationship between people and officials.

*M. Hansen:* In my opinion a main purpose of using the lot is to avoid corruption, rivalry between candidates and *stasis*. It is nowhere stated in our sources that the lot was used to counteract corruption, but it can be inferred from the detailed description of sortition of *dikastai* in Arist. *Ath.* 63-8 (Farrar p. 182 with n. 47). That sortition obviates *stasis* and rivalry between candidates is argued by Arist. *Pol.* 1303a15 and the author of the *Rhetorica ad Alexandrum* 1424a12ff. Contrariwise Isoc. 7.22-3 and *Dissoi Logoi* DK 90.7 argue that democratic sortition involves an increased risk of *stasis*.

*C. Farrar:* I agree with you if by corruption you mean pursuing one's own advancement (in terms of material benefit or political prominence or fulfilling or creating a personal obligation) by distorting the workings of the democratic process or its aim, the wellbeing of the *polis* as a whole. This would then include rivalry between candidates that simply pits partisans of one leader against their enemies. The passage you cite from

Aristotle's *Politics* notes that Heraea moved from choosing magistrates by election to selecting them by lot because "the electors were in the habit of choosing their own partisans". And in the case of juries, the Athenians sought to thwart any ability to profit (in the ways mentioned above) by being able to choose a particular trial assignment. But this is not a distinctively democratic application of the lot, nor does it explain why the lot was used in some democratic contexts but not others. If rivalry is the key, then why not select the generals by lot? Or simply rotate office-holders, without using sortition? I argue that the Athenians used the lot to give effect to equal and entirely impersonal access to selection for every magistracy except those few thought to require special skills. In a system that privileged the freedom of *ho boulomenos*, the lot was essential.

*M. Hansen:* A main purpose of rotation was probably to ensure that no citizen by filling the same magistracy continuously could build up a power position that might endanger the supreme powers of the Athenian people as embodied in the Assembly. There is no direct evidence that this was the purpose of rotation and sortition, but I believe it can be inferred from what we know about the selection and function of Athenian magistrates. According to Aristotle, the powers of magistrates in a democracy ought to be reduced to a minimum (*Pol.* 1317b28-31). That was in fact the effect of a number of regulations applied in Athens to the selection and function of magistrates: rotation was ensured by a short term of office (one year) combined with a ban on iteration (*Arist. Pol.* 1317b23-5; *Ath.* 62.3), and to have a high number of citizens serving as magistrates at the same time was ensured by the subdivision of tasks among a high number of magistracies (*Plato Plt.* 303a; *Ath.* 43-62), and by the common practice of having a magistracy filled by ten officials rather than being held by one person (*Theophr.* 26.1-2; *Arist. Ath.* 43-62). — Combining all these institutions with Aristotle's general principle, may

we infer that the institutions served the purpose of reducing the powers of magistrates in order to protect the powers of the Assembly and the people's court?

*C. Farrar:* The argument that rotation (and the sortition that determined whose turn it was to serve) was intended to preserve the power of the Assembly is maintained by J.W. Headlam — and I have addressed his claim in the paper, so will not repeat it here. However it is worth re-emphasizing the importance of focusing on the distinctive role of rotation (and the lot). Boards of ten and short terms applied to a non-rotated role as well: the generals. Indeed, rotation meant that no one person could deepen expertise through serving repeatedly in a single administrative role. But during the course of a year, the holders of a particular office would carry special weight in discussions about their area of experience and responsibility. Rotation played a positive (not a purely negative) role in a system that had to create smaller and enduring executive and probouleutic bodies but wished to maintain a connection between them and the public at large (not merely the Assembly).

*M. Hansen:* You state that “rotation was not used to ensure that most or all citizens participated in government” (p. 187). I have some reservations about this view. You are right that the ban on iteration prevented a citizen from serving twice on the same board but that there were dozens of other boards so that a fairly small section of the citizenry may have filled most or all posts. On the other hand, Plato emphasises that in a democracy the tasks incumbent on magistrates are split up in small chunks so that a high number of citizens have to serve as magistrates (*Plt.* 303a). And Aristotle states at *Pol.* 1332b26 that for a number of reasons ‘all’ citizens must participate in the rotation between rulers and ruled. The principal reason (the only one mentioned) is equality.

A wish to have as many politically active citizens as possible can also be inferred from the rules for membership of the Coun-

cil of Five Hundred. In the fifth century there may have been a ban on iteration for councillors as there was for all other magistrates selected by lot; but in the fourth century a citizen could be a Councillor twice in his lifetime (Arist. *Ath.* 62.3). The permission to serve twice was probably a reform introduced in the late fifth century and necessitated by the decline in the number of citizens during the Peloponnesian War. With a total of ca. 30,000 adult male citizens the result was that every second citizen above 30, i.e. something like a third of all citizens, sooner or later, were members of the Council, some of them twice (M.H. Hansen, *Demography and Democracy* [Herning 1985], 51). A board of, say, 200 citizens could without any difficulty have performed the tasks of the Council. Several of the smallest demes, each with one seat in the council, would then have had to alternate with another small *deme* in the *phyle*, a system already attested for a few of the small demes in the period of ten *phylai* (J. Traill, *The Political Organization of Attica* [Princeton 1975], 78) and unproblematic in principle since there is no evidence and no reason to assume that a councillor from a given *deme* was expected to represent the interests of his *deme* in the Council. Such a form of representation was unknown to the Athenians. A wish to have the highest possible number of citizens participating in politics and administration must have been one of the reasons for having as many as five hundred citizens serving at a time. Finally, the frequent re-use of dikastic *pinakia* indicates that there was a considerable rotation in the composition of the panel of 6,000 jurors who functioned as *dikastai* and *nomothetai* (M.H. Hansen, *op. cit.* [n. 7], 182).

C. Farrar: What I wish to argue is that freedom is more fundamental in determining the shape of Athenian institutions than a desire to promote participation. That is, once we accept the requirement of *ho boulomenos*, then yes, indeed they did try to encourage participation. Hence they had to relax the rules on iteration for the *Boule*, instituted pay for the Assembly, etc. The size of the *Boule* seems to me to be a function of its role:



it had to be plausibly representative of the people (not, I agree, a constituency relationship, but rather “that could be me”).

Aristotle’s generic definition of a citizen (in *Pol.* 3.1) is someone who “has the power to take part in the deliberative or judicial administration of the *polis*”. The passage you cite (7.14) about the necessity that citizens take their turn governing occurs in the context of a discussion of the best city, and more specifically on the question of whether some individuals should rule permanently. As for the passage in the *Politicus*, Plato is emphasizing that government by the masses can achieve nothing, whether for good or ill, because responsibilities are distributed in small chunks to lots of people (by contrast with other forms of government), not that power is divided ‘in order’ to distribute it to lots of people. And he makes no reference to rotation in this context.

*M. Hansen:* I still prefer a different interpretation of Thuc. 2.37.1 from that suggested by you (on page 173, note 14): “contrary to the implication of Hansen [...] Pericles is not here referring to selection for important offices (he makes no reference to offices, or election), but to leadership” We agree that in Athens leadership was exercised by a group of *rhetores kai strategoi* (p. 174) and that “the Assembly wielded its sovereign power by voting on specific proposals, not by voting for a particular person” p. 174). At Thuc. 2.37.1 the point at stake is the reason for preferring one person over another (ἐκαστος ... προτιμᾶται). Thus, the context must be election of leaders rather than preference for a specific policy. But since in the fifth century there was a considerable overlap between *rhetores* and *strategoi*, I agree with you, however, that Thucydides may have leadership in a broader sense in mind in which case the reference is not restricted to the election of *strategoi* and other officials.

*C. Farrar:* It is worth pointing out that there were very few elections in Athens. Voting primarily occurred when the

Assembly chose whether or not to support the proposal of an individual [or of the *Boule*, but that is not at issue here]. In this passage, Pericles goes on to say that if a man has any good to offer the *polis*, poverty will not cause him to remain in obscurity (*axiomatos aphanēia kekwlutai*). That is, the Athenian system ensures that the *polis* is able to discern and make use of the *arête* and *axiosis* of any citizen. Can this point really be confined to the generalship? I suggest that Pericles is here referring to the contrast between the democracy's commitment both to equality under the law of all citizens (the 'men' clause) and to the recognition of the excellence of some (the 'de' clause). *Axiosis* is indeed not secured by rotation (which covered virtually all offices). The democracy offered myriad opportunities for earning recognition — including not only votes on measures in the Assembly, but also, significantly, the election (by the *Boule*, according to A. Gomme, following F. Jacoby) to be the speaker at the *epitaphios*, of the man who *axioseis proēke* (Thuc. 2.34.6).

*M. Hansen:* You have no mention at all of any religious aspect of sortition. It has been argued by several scholars that by using the lot one left it to the Gods to decide who should run the community (e.g. Fustel de Coulanges, in *Nouvelle revue historique de droit français et étranger* 2 [1878] 613ff; G. Glotz in *DarSag* IV [1907] 1401-8; A. Andrewes in *CAH5* III.3 [1982], 386). In ancient Greece cleromancy, the lot-oracle, flourished in archaic, classical and Hellenistic times. The selection of priests was often done by lot (*IG* I, 35.3-8; *SEG* 12.80; Dem. 57.46ff); priests are the servants of the God: let him choose. But the only unambiguous evidence for the selection of priests by lot being seen as leaving the choice to the Gods is a passage in Plato's *Laws* (759b, cf. 741b); and in that very work Plato distinguishes between selection by lot of priests and election of magistrates and insists on the distinction between sortition and divine decision (757b). What is more, those lot-chosen priests were subject to *dokimasia* before entry into

office (759c) — hardly a compliment to divine omniscience. All in all, there is not a single good source that straightforwardly testifies to the selection of magistrates by lot as having a religious character. Thus, I tend to believe that religious motives can be ignored in a discussion of sortition of jurors and magistrates in Classical Athens (M.H. Hansen, *op. cit.* [n. 7], 50-1). I note too that P. Schmitt Pantel has no mention of sortition in her contribution about democracy and religion, but I note as well that the religious aspect of election by lot of magistrates has been restated and emphasised by, among others, Victor Bers and Paul Demont. Do you share the view that religious motives are irrelevant in an account of political lottery in Classical Athens?

*C. Farrar:* I agree that there is no good evidence that the Greeks used the lot to hand off decisions to the gods. And in any case this claim is irrelevant to my argument about the distinctively democratic use of the lot and rotation by the Athenians, which asks why they used one device or another, or both, for some political roles but not others. Were the gods thought to be incompetent at choosing generals?

*E. Robinson:* In your formulation, Athenian democracy did not privilege one group over another, but established an egalitarian political identity for citizens that ignored issues of wealth and social status. Such an ideal is indeed often put forward in our sources for Greek democracies, not only, for example, in Pericles' funeral oration (Thuc. 2.37), but also in Athenagoras' speech in Syracuse (Thuc. 6.39). But, as Pasquale Pasquino has emphasized in his paper, democracy was also sometimes characterized, especially by Aristotle (e.g., *Pol.* 1317b8-10), as rule of the *aporoï*, since the greater number of relatively poor citizens gave them a strong majority when voting in the assembly or the courts.

In my view, both descriptions are correct, and depend on one's perspective. Ancient *demokratia* did include everybody

and made use of citizens' talents regardless of their background and on the basis of equality. Nevertheless, much of the time the masses of the poor could and did outvote their richer fellow citizens. How do you see this issue, and how would a more Aristotelian take on the *aporoi* and *demokratia* affect your view of sortition and rotation in democracies?

*C. Farrar:* Aristotle gives us (as so often) more than one characterization of this issue. At the end of the chapter you cite, 6.2, he observes that the "recognized principle of democratic justice" is not that the poor should rule the rich, but that "all should count equally, for equality implies that the poor should have no more share in the government than the rich, and should not be the only rulers, but that all should rule equally according to their numbers" (6.2, and see also 4.4). Aristotle does not mention the Samian case noted by Thucydides (8.21), where the people entirely excluded the landowners from the government.

My view is that the poor could in principle outvote the rich in the assembly, or dominate the juries — though especially in the latter case, it was very difficult to plan to do so (because of the operation of the lot for specific cases). And as I suggest in my text, lot and rotation reinforced the idea of equal access and equal constraints. Whether a citizen was rich or poor, he was neither entitled to a magistracy nor prevented from putting himself forward for one. See also Euripides *Suppl.* 404: "Athens is free. The *demos* rule in turn (*en merei*). They do not give the greater share to the rich; the poor man has an equal share".

*Chr. Mann:* Meine Frage berührt weniger die rechtliche Ausgestaltung des Losverfahrens als die ungeschriebenen Regeln politischer Kommunikation. Die Akzeptanz, als politischer Funktionsträger Gruppeninteressen zu vertreten, scheint mir in der antiken und modernen Demokratie ganz unterschiedlich zu sein. Im klassischen Athen läßt sich nur in Ausnahmefällen



erkennen, daß Funktionsträger für Partikularinteressen eintraten; nach unseren Quellen erwartete der *demos* vielmehr, daß politische Vorschläge und Entscheidungen stets auf das Wohl aller Athener ausgerichtet waren. In modernen Demokratien dagegen ist es trotz kritischer Stimmen Usus, daß einzelne Parlamentarier sich für die Interessen einer bestimmten Region oder einer bestimmten Interessengruppe engagieren, etwa der Bauern, Autobauer etc. Besteht in der Moderne aus diesem Grund nicht das Risiko, daß die Zufälle des Losverfahrens eine Begünstigung bzw. Benachteiligung einzelner Gruppen mit sich bringen, oder führt das Losverfahren vielmehr dazu, daß die Erlosten sich stärker dem Gemeinwohl und nicht speziellen Gruppen verantwortlich fühlen?

*P. Schmitt Pantel:* Une des différences entre l'exercice de la démocratie à Athènes et aujourd'hui réside, dites-vous, dans l'absence actuelle d'institutions de *self-government*. Le tirage au sort au sein d'un groupe de citoyens pour discuter d'un projet particulier vous paraît être un bon moyen pour réintroduire le processus démocratique et lutter contre une certaine dépolitisation. Quelle aide, quel avantage, apporte exactement le tirage au sort dans ce processus? Ne peut-on penser que pour redonner un contenu à la citoyenneté la participation directe des groupes prenant en charge des problèmes politiques, sociaux, d'environnement particuliers est un moyen plus dynamique et plus simple? Votre usage du tirage au sort n'est-il pas lié à une situation qui est propre aux USA mais qui n'existe pas forcément dans d'autres démocraties modernes? Le modèle de l'autogestion appliqué à un échelon local représente, me semble-t-il, une alternative intéressante dans la perspective d'une éducation à la démocratie.

*A. Lanni:* I take it that the normative thesis from your paper is that modern attempts to recreate Athenian-style democracy on a smaller scale should abandon attempts at complete representativeness and instead embrace some measure of self-selec-

tion, just as the Athenians did. I wonder whether self-selection isn't much more problematic in the modern world given the prevalence of organized interest groups, whereas in Athens the absence of such interest groups and the cultural monopoly enjoyed by courts and legislatures made it much more likely that ordinary Athenians would participate.

*C. Farrar:* One implication of Eric's earlier question was that the *aporoï* might perhaps function as a group to wield collective power. Christian, Pauline, and Adriaan: your questions all seem to me to address some aspect of the argument that the modern situation differs from the ancient precisely in the way groups make their interests felt politically. My claim about the Athenians is that the lot and rotation helped forge a system in which citizens functioned as individuals, not groups. Athenian magistrates could not see themselves as entitled to a particular role because of some distinctive set of interests, nor did they represent a particular constituency or set of concerns, nor yet could they use their position to advance their own personal interests over time. They had to take account of the views of others, who had an equal chance of being chosen, and would replace them in a year's time.

As you point out, Christian, in the modern world elected representatives advance or defend the cause of particular interest-groups. (This may perhaps be more true outside the United States, because of the differences between parliamentary and presidential systems, as well as proportional representation vs. first-past-the-post for election to office.) The use of the lot, you suggest, might therefore harm specific interest groups. Or, to look at it more positively, perhaps lotteries might make the people as a whole, rather than special groups, feel more accountable and responsible for what happens to the commonwealth. I entirely agree, as I said above, that the Athenian system hindered the operation of interest-groups of any kind. And it is probably true to say that what I've called the active continuity between those who participate and those who don't, including

equal access and no entitlement, could foster greater identification with the decisions of the *polis*. However, this sense of collective responsibility depends upon the opportunity to actually make and carry out decisions (not just elect decision-makers), and on a regular basis.

Pauline, as you note, I think that the local level is probably the most promising arena for implementing something like the Athenian system. However, I don't share your view that we could rely just on self-selection, whether by locality or by interest in a particular issue. The use of the lot makes a commitment to equal access and collective self-government a reality. Without sortition, the risk is domination by a moneyed or educated elite, and/or by narrow interest groups that (in the absence, too, of rotation) develop specialized expertise and do not have to take into account other priorities or concerns.

I agree that I should have explored the relevant ways in which the U.S. and other democracies differ. However, the lot has proved appealing outside America, for example in the form of citizen juries and deliberative polls, in part (as Ségolène Royal's proposal suggests) to address problems of entrenchment and perceived lack of accountability to the broader public.

By contrast, Adriaan, you suggest that it is precisely the self-selection component of the Athenian system as I've presented it here that is problematic, because it will result in the continued dominance of organized interest groups. As I said in response to Pauline, I agree that self-selection without the lot, rotation, and regular opportunities to participate in decision-making would indeed privilege the better organized and the elite. And I am suggesting that we might try to instantiate a different notion of 'representativeness': not a cross-section at one moment in time, but a reflection of the diversity of the demos over time, based on actively opting in.

*M. Hansen:* Your study is focused on one aspect of modern direct democracy, *viz.* 'demarchy', the use of randomised panels in modern democracy compared with the Athenians' use of

sortition and rotation. There is no mention of the other aspect *viz.* to make an extensive use of the referendum and allow the whole of the people to decide many or even most important issues by direct vote. This line is taken by, e.g., I. Budge, *The New Challenge of Direct Democracy* (Oxford 1996) and, in a more modest form, by M. Gallagher, P.V. Uleri, *The Referendum Experience in Europe* (London 1996) and B.R. Barber, *Strong Democracy* (Berkeley 1984). Admittedly the ancient evidence plays a larger role in discussions of 'demarchy' than in debates about the modern use of referendum. But what is your reason for leaving out any discussion of the referendum model? Do you reject it as too utopian to deserve discussion?

*A. Lanni:* Your paper focuses on deliberative bodies. Another type of direct democracy involves aggregation, for example through *referenda* procedures. Some research has been done suggesting that deliberation may lead to distortion and suggesting that aggregation may be more reliable (e.g. C.R. Sunstein, "Deliberating Groups vs. Prediction Markets [or Hayek's Challenge to Habermas]", in *Episteme* 3.3 [2006], 192-213; C.R. Sunstein, R. Hastie, "Four Failures of Deliberating Groups", in *John M. Olin Law & Economics Working Paper*, 401 [2008], [available at <http://www.law.uchicago.edu/files/files/401.pdf>]). Can you elaborate on why you've chosen the deliberative route for your contemporary projects?

*C. Farrar:* I don't discuss the possibility of rule by referendum not because I think it is utopian, Mogens, but because I think this kind of direct democracy is undesirable. Even if individual voters had access to balanced information (and were required to review it before voting), even if the wealthy were penalized for not participating and the poor were paid to do so, or all were required to participate (in order to stymie attempts to mobilize specific interest groups), such a system would not achieve what the Athenian institutions created. Aggregating views through *referenda* may tap the people's



collective wisdom (or at any rate knowledge), as praised by Aristotle and more recently promoted by Cass Sunstein (see also his *Infotopia* [Oxford 2006]) and James Surowiecki (in *The Wisdom of Crowds* [New York 2004]). However, this process does nothing to promote a sense of citizenship, or connectedness to decision-making over time. The Athenian system rested on the opportunity for active engagement with a diverse group of other citizens, in relatively small groups; a role in implementing, not just enacting; and exposure to the views of individuals (not just policy wonks) with different perspectives, as they seek to take account of opposing views in an evolving forum, as in the Athenian assembly.

As you observe, Adriaan, raw aggregation of the prediction-markets variety explicitly claims to be superior to deliberation as a method of reaching informed conclusions. In the political context, Sunstein has indeed argued (on the basis of rigorous experimental studies) that deliberation leads to what he calls 'polarization', i.e. that the views of participants in a group become more extreme after deliberation than their individual opinions would have predicted. However, as Sunstein himself notes in *Republic.com 2.0* (Princeton 2007), this effect does not occur when groups are diverse, as for example in Deliberative Polling, which not only invites people randomly but then assigns them randomly to small group deliberations. An experimental study I carried out with colleagues, using data from Deliberative Polls, confirms the absence of group effects of the kind Sunstein describes (C. Farrar, D. Green, J. Green, D. Nickerson, S. Shewfelt, "Does Discussion Group Composition Affect Policy Preferences? Results from Three Randomized Experiments", in *Political Psychology* 30.4 [2009], 615-47. See also the discussion of polarization [including Sunstein's arguments] in J.S. Fishkin, *op. cit.* [n. 1], 2009, 85-7, 101-2, 131-3).