A gradualist path towards sortition

by Deven Burks and Raphaël Kies

1. Introduction

Conventional wisdom holds that building democracy takes time. Deliberative democracy will likely prove no exception. To that end, this chapter will explore one possible path towards more deliberative institutions and decision-making in the form of Gastil and Wright's proposal for a Sortition Chamber. Our thesis is that deliberative innovations, notably a sortition chamber, require a gradualist approach to implementation. While other authors in this volume may take for granted that some form of sortition chamber will be institutionalized and focus instead on design questions, we probe the necessary conditions preceding institutionalization. To support this thesis, we shall make an argument comprising four main claims.

1.) Sortition is a promising deliberative innovation.

2.) A strong, unaccountable deliberative device like sortition may delegitimize citizen deliberation and future deliberative innovations, in particular a sortition chamber.

3.) A weaker deliberative device like citizens' consultation is effective though often blocked by a lack of institutional footing.

4.) Citizens' consultation, once proven to be effective and regular, opens one path towards enhanced deliberative innovations like the sortition chamber.

Claim 1.) will not be developed here beyond the point that a sortition chamber's "hybrid legitimacy" may allow it to overcome critiques addressed to one-shot, single-issue consultative or

empowered mini-publics which may lack institutional footing[1]. Such mini-publics face multiple challenges: significant social or political uptake, electoral accountability, capture by interests, political redundancy, representativeness, biases, frames[2]. If a sortition chamber prima facie meets or precludes these different critiques, it represents a striking contribution to democratic innovations beyond mini-publics.

That said, we must work out claims 2.), 3.) and 4.) in individual sections below. While examples in 3.) and 4.) will mainly be drawn from the European Union, we maintain that this argument is broadly applicable at local, regional national and transnational levels. We argue that, if institutionalizing consultative mini-publics is desirable and feasible at the EU level, it will be all the more so at other levels throughout the decision-making process' different stages.

2. Dangers of delegitimization

There are both principled and pragmatic reasons for advocating a gradualist approach. Introducing a sortition chamber without considerable public trust and institutional redesign is likely to undermine sortition's wider operationalization and to delegitimize citizen deliberation and further deliberative innovations. In general, citizens and decision-makers are ill-prepared to implement a sortition chamber outright.

To understand why, we must consider the institutional mechanisms for implementation. Most likely, institutional redesign would be decided through two channels: either public referendum or

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[1] We owe the expression "hybrid legitimacy" to Julien Talpin, "How Can Constitutional Reforms Be Deliberative? The Hybrid Legitimacies of Constitutional Deliberative Democracy" in Min Reuchamps and Jane Suiter (eds.), *Constitutional Deliberative Democracy in Europe* (Colchester, UK: ECPR, 2016), pp. 93-108. Whereas Talpin's hybrid concerns whether epistemic, common-sense, democratic and representative legitimacy can accrue in one constitutional setting, we only mean that the sortition chamber's blend of empowerment, continuity and embeddedness could secure several forms of legitimacy which other kinds of mini-publics lack by dint of design.

[2] For a synthetic account exploring these challenges, see John Parkinson, *Deliberating in the Real World: Problems of Legitimacy in Deliberative Democracy* (Oxford, UK: Oxford University Press, 2006).

legislation by institutional decision-makers. From the electoral reform, democratization and institutionalist literature, we take up three problems compounding a sortition chamber's implementation through these two channels: a.) resistance from citizens, b.) resistance from decision-makers, and c.) lack of empirical evidence on sortition chambers or continuous empowered embedded mini-publics.

a. Resistance from citizens

Citizen ignorance and status quo bias

As a sortition chamber reduces or limits the scope of legislative institutions, elected or otherwise, it represents a significant electoral reform of which different veto-players would need to be convinced. Indeed, the point should be made stronger: systemic change of this scope amplifies ordinary obstacles to electoral reform, and we lack cases suitable for direct comparison[3]. Regarding citizens and voters, one widespread view holds that, if the former have no structured preferences on an issue, risk-aversion leads them to preserve the status quo[4]. Status quo bias may be compounded when the vote bears on issues or institutions embedded in constitutions for which change requires a qualified majority.

While status quo bias does not tell the whole story of why voters vote as they do, it remains part of the explanatory toolkit. Writing on referendums, Alan Renwick contrasts the above view, the "anxiety-based voting model", with "issue-based" and "cue-based" voting models, which suppose

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[3] One imperfect comparison might be universal suffrage.
[4] For a succinct version, Matthew Mendelsohn and Andrew Parkin, "Introduction: Referendum Democracy" in Matthew Mendelsohn and Andrew Parkin (eds.), *Referendum Democracy: Citizens, Elites and Deliberation in Referendum Campaigns* (Basingstoke, UK: Palgrave), pp. 1–22.

a well-informed voter or one reliant on heuristic shortcuts[5]. Although all three models are generally present in voter behavior, "the prevalence of each of these forms of voting varies, most notably, in response to the saliency of the issue in the referendum question"[6]. Moreover, these forms rely on information the quality of which may vary depending on cue-givers, misinformation campaigns, media coverage, and campaign spending[7]. To this should be added Renwick's cautious assertion that "opinion during referendum campaigns tends to shift towards the status quo" and away from change[8]. The safest conclusion is that a sortition chamber is unlikely to emerge from a referendum when less ambitious changes, e.g. legislative term-limits, campaign funding and voting reform, citizens' consultation, could accomplish similar objectives with higher chances of success.

Sortition and complex concepts

If the sortition chamber adequately meets criteria for democratic justification, it is because the chamber incorporates several complex tools and concepts: stratified random sampling, equal opportunity for selection, open agenda, cognitive diversity, deliberative public input, and legitimacy without electoral accountability. While it broadly shares these with other deliberative innovations, e.g. mini-publics, it puts certain to new, more sophisticated uses (wherefore its "hybrid legitimacy"). On one hand, equal opportunity for selection and strict term limits would lead to more independent and public-minded legislators. On the other, agenda-setting and decision-making power may stand free of voter authorization and electoral accountability. Accordingly, if we understand accountability as "being held to account by external actors", legitimacy obtains

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[5] Alan Renwick, "Referendums" in Kai Arzheimer, Jocelyn Evans and Michael S. Lewis-Beck (eds.), *The SAGE Handbook of Electoral Behaviour, Volume 1* (London, UK: SAGE Publications, 2017), pp. 433-458, especially 444-45.
[6] *Ibid.*, p. 445.
[7] *Ibid.*, pp. 445-8.
[8] Alan Renwick, "Referendums", p. 450. For the datasets and broader argument, see pp. 448-53.

independently of such accountability[9].

It is an open question whether voters (or decision-makers for that matter) would accept this battery of complex concepts when deciding whether to implement a sortition chamber. Certainly, the ideas informing certain concepts seem appealing in the current climate of political disillusionment and institutional dysfunction, but the concepts themselves and the uses to which they are put remain unfamiliar, even unsettling. All the more so when it is a question not of implementing groups with limited service-time or decision-making power but of fundamentally altering the lawmaking process. In short, citizens (or decision-makers) may be unsure whether a sortition chamber merits their support and whether they would later recognize the chamber as a legitimate source of laws[10].

b. Resistance from decision-makers

We have asserted that citizens and voters are unlikely to support a sortition chamber if less ambitious reforms are possible and the concepts underpinning sortition remain unfamiliar. These difficulties seem even more pronounced with decision-makers within public institutions. Clearly, implementing a sortition chamber would, referendum or no, require decision-makers' agreement as altering legislative institutions would often involve altering a constitution, for which a qualified majority is necessary. Faced with entrenched constitutions and uncertain public opinion, decision-

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[9] This leaves open two possibilities. First, a sortition chamber might enjoy other kinds of accountability in the form of "giving account internally or externally" or "being held to account by internal actors", e.g. formal or informal sanctions or censure. Second, it may be that conventional thinking on accountability simply does not apply to the sortition device. For an argument in this direction, see Campbell Wallace in this volume.

[10] For an initial examination of this question, see Pierre-Etienne Vandamme, Vincent Jacquet, Christoph Niessen, John Pitseys and Min Reuchamps in this volume. They find that citizens are more open or, at least, more neutral to the idea of a sortition or mixed chamber whereas decision-makers are strongly opposed. On citizen familiarity, see also Ned Crosby in this volume. Concerning the referendum on electoral reform formulated by the Ontario Citizens' Assembly, opinion polls collecting voters' reasons for supporting or opposing the reform suggest that they held neutral opinions on a sortition-selected body's being the source of the proposal. See Lawrence Leduc, "How and Why Electoral Reform Fails: Evaluating the Canadian Experience", paper presented at ECPR Joint Sessions Workshops, Lisbon, 2009.

makers may resist change absent several conditions: political will and self-interest, social learning and ideational change.

Political will and self-interest

A standard story of rules emerges from the literature: rules are stable because of institutional rigidity, procedural hurdles (e.g. qualified majorities), and decision-makers' strategic motivations. Hence, instances of electoral reform seldom occur. Yet this may not be the whole story as reform attempts are in fact quite common, particularly at sub-national or local levels[11]. Regardless, successful major reforms remain rare overall[12].

We draw attention to two ways of making sense of this rarity. First, from a rational choice perspective, whether decision-makers support an electoral reform follows from the parties' reflection on their own self-interest. Incumbents' self-interest determines whether they resist reforms or pursue strategic rule changes[13]. If self-interest alone is insufficient to undertake and implement reform and may require external pressure, e.g. social movements, voter initiative, judicial intervention, it remains necessary for reforms[14]. When popular support is the primary driver, decision-makers must sign on for reforms and may even co-opt them to further their self-interest. Indeed, major electoral reforms most often take the form of "elite majority imposition" or "elite-mass interaction" wherein decision-makers either retain control of the reform process and

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[11] See Shaun Bowler and Todd Donovan, *The Limits of Electoral Reform* (Oxford, UK: Oxford University Press, 2013, pp. 6-8).
[12] A conclusion shared by Alan Renwick, *The Politics of Electoral Reform: Changing the Rules of Democracy* (Cambridge, UK: Cambridge University Press, 2010, p. 10).
[13] Bowler and Donovan, *The Limits of Electoral Reform*, pp. 19-23. For a more general overview of rational choice theory as applied to institutions, see Peter A. Hall and Rosemary C.R. Taylor, "Political Science and the Three New Institutionalisms", *Political Studies* XLIV (1996): 936-957, especially pp. 942-946. Finally, see also Bouricius and Vandamme *et al*. in this volume for parallel considerations.
[14] Bowler and Donovan, *The Limits of Electoral Reform*, pp. 23-25. On the relation between social movements and sortition, see Donatella Della Porta and Andrea Felicetti in this volume.

pursue strictly strategic goals or lose control of the reform process to the public but retain an essential role in defining its final form[15].

In short, the road to reform goes through decision-makers. To receive decision-makers' backing, sortition chamber proponents must show how sortition dovetails with self-interest. Wherefore one immediate obstacle: convincing decision-makers that eliminating or limiting their role in the decision-making process is conducive to their interests. Though inimical to decision-makers' short-term interests, a sortition chamber might appeal to their long-term interests if conditions such as "systemic threat" or "idealism" obtain[16]. Decision-makers may be motivated to avoid future electoral instability, reestablish their own legitimacy, make electoral changes better to meet democratic ideals or unload no-win decisions onto another party. However, background stability, normal politics and uncertainty over the fall-out from sortition may leave decision-makers unmoved[17]. We again suggest that less ambitious approaches may face lesser obstacles all while reaching similar goals. In contrast, pursuing more ambitious reforms could set back the underlying goal of making lawmaking more deliberative by provoking voter backlash or stonewalling from decision-makers.

Social learning and ideational change

The second way is cultural: whether decision-makers support an electoral reform follows from "cultural" conditions such as social learning, ideational change or diffusion, regional contagion, and electoral fashion. In a word, whether decision-makers back reform partially depends on whether innovations are "culturally" available to them such that they converge on a specific

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[15] Renwick, *The Politics of Electoral Reform*, pp. 11-16.
[16] *Ibid.*, pp. 12-13.
[17] *Ibid*, pp. 50-52. Renwick later emphasizes that exogenous factors also constrain outcomes, e.g. cognitive constraints and limited information (pp. 239-242). See also Crosby in this volume.

reform, e.g. sortition chamber, "through voluntary emulation or borrowing from other political systems, through interaction, through external actors imposing innovation, and through the entrepreneurship of expert networks"[18]. These may help isolate the drivers behind changes in information, objectives and values relevant to electoral reform as well as the processes and institutions framing them.

We shall only sketch how this impacts a sortition chamber's chances with decision-makers. When deciding whether to initiate or back a reform, decision-makers may look to what reforms organizations, states and policy actors are undertaking. If decision-makers are more likely to consider and adopt reforms being considered or implemented by other actors but a sortition chamber does not yet figure among those reforms (unlike other deliberative innovations), it is unlikely that decision-makers will consider the sortition chamber a viable reform path. For they cannot arrive at sortition either through borrowing from another political system or through developing the idea in interaction with other systems. Similarly, there are at present no significant actors, internal or external, imposing such changes on decision-makers, nor sufficiently prominent and cohesive sortition expert networks acting as middleman between sortition reform entrepreneurs and decision-makers[19]. All in all, barring such diffusion, a sortition chamber will meet with resistance from decision-makers in that "cognitive constraints" diminish its appropriateness as a legislative and electoral alternative[20].

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[18] Anthony R. Zito and Adriaan Schout "Learning theory reconsidered: EU integration theories and learning", *Journal of European Public Policy* 16:8 (2009), 1103-1123, p. 1108.

[19] For the importance of a well-designed, largely agreed upon sortition design to reform, see Crosby in this volume. Indeed, the diversity of approaches in this volume, e.g. bicameral, unicameral, multi-body, pure sortition, mixed sortition, one-shot, continuous, aggregative, deliberative, participatory, radical, is suggestive of the difficulties in forming a cohesive sortition expert network.

[20] For discussion of cognitive constraints, ideational change and diffusion, see also Renwick, *The Politics of Electoral Reform*, pp. 47-68, especially 59-60. We leave open whether this cultural approach to institutional reform owes more to historical or sociological approaches to institutions. See Hall and Taylor, "Political Science and the Three New Institutionalisms", pp. 937-942, 946-950.

c. Lack of empirical evidence on sortition chambers

The final difficulty concerns citizens and decision-makers alike: a lack of empirical evidence on the degree to which sortition succeeds as a democratic innovation. Though straightforward to imagine a sortition chamber overcoming institutional challenges and individual failings, it is also possible to imagine it falling short on those counts. In a word, until more evidence is available on a sortition chamber or a body sufficiently like it, i.e. a continuous empowered embedded mini-public, we cannot rule out different outcomes in terms of intrabody accountability, interbody accountability, citizen professionalization, and citizen visibility.

Intrabody accountability

Intrabody accountability designates the possibility of a sortition chamber member's being held to account by the chamber, whether as informal sanctions by members or formal sanctions by the oversight committee. Although this possibility may follow simply from the fact of face-to-face interaction and could constrain discourse and deliberation in important ways, it is unclear how well this truly functions as an accountability mechanism. While a member's being held to account for her remarks and reasons depends on members' willingness to hold her to account, her being held to account for her individual votes would instead hinge on her voting record being made public within the chamber, which the authors preclude by use of secret ballot. In a word, more evidence is needed on how participants in such bodies behave towards one another before we consider intrabody accountability secure.

Interbody accountability

Interbody accountability concerns a sortition chamber's being held to account by its counterpart legislative body. Insofar as direct relations exist between the counterpart and the sortition chamber (e.g. reconciliation process, joint hearings, intra-legislative checks and balances), the counterpart may formally or informally demand reasons for the chamber's outcomes. Moreover, it may exercise an important check on the chamber's legislative output if its joint approval is required for a bill's passage[21].

Notably, this might also allow for transitive authorization and accountability through the democratically elected counterpart's direct authorization from and being held to account by the public such that the public exercises some indirect control over the sortition assembly through the counterpart. If accountability may be transitive, the sortition chamber will only be transitively accountable on the condition that the democratically elected counterpart is itself accountable, i.e. both gives account to the public and is held to account by the public. For some bodies, one may reasonably conclude that this is not the case, given falling turn-out (as in the European Parliament), high incumbency rates (as in the United States Congress), etc. Regardless, whether the counterpart would fruitfully exercise such accountability on its own behalf or that of the public remains an open question for which greater work on the relation between sortition chambers and their legislative counterparts is required.

Citizen professionalization

A significant level of professionalization and institutional know-how is required from chamber's members if they are to work effectively with actors in the decision-making system. Such professionalization and know-how might well increase assembly members' influence and avoid

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[21] For worries that it would not, see Bouricius and Vandamme *et al*. in this volume.

partisan contagion but could, by the same token, make members another set of out-of-touch professional politicians[22]. For the European Parliament example, an EU-level sortition chamber would need to learn the ins and outs of a decision-making process largely opaque to most citizens given a lack of EU civic education. EU sortition chamber members could well become part of or be perceived as the "Brussels bubble". To decide the question one way or another, evidence drawn from participant behavior in continuous empowered embedded mini-publics is vital.

Citizen visibility

To what degree would sortition chamber members' deliberation benefit from social uptake and play a role in public will-formation? Certainly, chamber may be guaranteed visibility through its share of the decision-making power and institutional linkage with well-known decision-makers. Similarly, the chamber's novelty may lead to increased attention from traditional and new media. On the other hand, visibility comes in degrees, and it is equally conceivable that members enjoy either too much or too little visibility. The former could expose lay citizens serving in the chamber to uncharitable treatment or confrontation with politicians or experts in the media, which may prove detrimental to members' performance. Conversely, the chamber may lack the strong personalities vital for generating social uptake as members are selected on the basis of neither personality nor rhetorical capacity, unlike their elected counterparts. Likewise, opaque institutional arrangements may hide what the chamber in fact does. In both cases, the media might choose to focus on members themselves or the institution's novelty rather than on disseminating arguments, reasons and conclusions from deliberation. Visibility can come at the cost of dissemination[23].

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[22] For concerns over professionalization and partisan contagion, see Tom Malleson, David Schecter, Bouricius, Crosby, and Vandamme *et al*. in this volume.

[23] Parkinson, *Deliberating in the Real World*, pp. 99-123. For broader questions of the sortition chamber's participatory shortcomings, see Yves Sintomer, Della Porta and Felicetti, and Malleson in this volume.

Taking the example of EU, one proposal to increase visibility of European Parliament members consists in democratic contestation and politicizing the EU agenda[24]. Yet, directly, an EU-level sortition chamber could not increase contestation and politicization in its own body, nor is it obvious that it would indirectly help its counterpart, the Parliament, to emphasize partisan lines and amplify interests. All in all, important empirical answer are needed before we can state with any certainty whether the public and media spheres would take up the sortition chamber's deliberation and whether such dissemination is net-positive for members and public.

Given the chamber's "black box" status, it is more reasonable to advocate as an initial step in deliberative innovations the institutionalization of consultative mini-publics at the national or transnational level. Should these mini-publics prove successful, there will likely emerge greater public and political will for further deliberative innovations, such as sortition chambers.

3. Effective consultation

In this section, we lay out the reasons why continuous embedded consultative mini-publics further citizen deliberation and how they can avoid the problems plaguing earlier consultative experiments. We begin by examining reasons for preferring such mini-publics before taking up the example of a project which we have recently submitted at the EU-level to institutionalize consultative mini-publics and then set out a design proposal for combining existing consultation procedures with decentralized mini-publics as effective tools for deliberation-making, legitimacy-seeking and capacity-building when properly integrated in the deliberative system[25].

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[24] Andreas Follesdal and Simon Hix, "Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik", *Journal of Common Market Studies* 44:3 (2006): 533-562.
[25] Nicole Curato and Marit Böker. 2016. "Linking Mini-Publics to the Deliberative System: A Research Agenda." *Policy Sciences* 49(2): 173–90.

a. Reasons for preferring consultative mini-publics

An important part of showing that there is good reason to promote continuous embedded consultative mini-publics consists in removing relevant reasons to doubt their efficacy or institutionalization. Two main reasons come to mind which we take up in turn: 1.) empowered mini-publics are preferable to consultative mini-publics; 2.) consultative mini-publics consistently fail in social uptake due to poor or critical media coverage.

Empowered mini-publics

If empowered mini-publics are more efficacious in terms of results, less frustrating for participants and better prepare citizens to support a sortition chamber, what reason do we then have for favoring a consultative mini-public? Before pursuing this question, it is important to note that mini-publics can be empowered in several ways: they may have decision-making or agenda-setting power. Naturally, showing why a mini-public should or should not have one of these powers appeals to starkly different considerations.

Regarding decision-making power, we begin by noting that, to date, no mini-public has been given ultimate decision-making power as it lacks familiar forms of public accountability, in the sense of being held to account by the public on whose behalf it would decide. Some mini-publics have experimented with intermediate forms of decision-making power, as with the citizens' assemblies on electoral reform in British Columbia and Ontario and those on constitutional reform in Ireland, Iceland and Luxembourg[26]. The Canadian citizens' assemblies were granted the power to choose

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[26] On the assemblies in Ireland, Iceland and Luxembourg, see respectively: Jane Suiter, David M. Farrell and Clodagh Harris, "The Irish Constitutional Convention: A Case of 'High Legitimacy'?" in Min Reuchamps and Jane Suiter (eds.), *Constitutional Deliberative Democracy in Europe* (Colchester, UK: ECPR, 2016), pp. 33-52; Eirikur Bergmann, "Participatory Constitutional Deliberation in the Wake of Crisis: The Case of Iceland" in Min Reuchamps and Jane Suiter (eds.), *Constitutional Deliberative Democracy in Europe* (Colchester, UK: ECPR, 2016), pp. 15-32; Raphael Kies, *Les consultations citoyennes et les réformes constitutionnelles*, report for the Chamber of Deputies, Luxembourg, 2015.

a new voting system which would then be put to public referendum. In part, this owed to organizers' recognition that the Assembly group "did not have the requisite authority to speak exclusively for the people"[27]. After the British Columbia referenda failed to reach the necessary threshold and the Ontario referendum was rejected by a majority, no similar experiments in intermediate decision-making power were reproduced for electoral reforms or other issues.

In the case of Ireland and Luxembourg, citizens were granted the power to elaborate proposals on pre-selected areas of constitutional reform which would then be discussed and voted upon by the parliament. In Iceland, constitutional reform was still more ambitious as it granted citizens the power to draft a new constitution combining electoral and participative procedures, subject to advisory referendum and parliamentary approval. While a majority of Iceland's citizens backed the 2012 referendum on the draft constitution, the decision on the bill for a new constitution was ultimately delegated to the following parliament and remains in limbo. The constitutional process in Luxembourg finds itself in a similar position after rejection of the 2015 referendum's three questions concerning specific constitutional reforms[28].

In contrast, Ireland's government seems to have taken the Constitutional Convention seriously as they answered the latter's initial reports in a timely fashion and two referenda took place in spring 2015 on questions raised by the convention, of which one (marriage equality) passed. Of the examples cited here, it qualifies as the most successful experience at the level of output[29]. Yet the lessons from these experiments show that intermediate decision-making power alone is no guarantee of efficacy nor are organizers and decision-makers ready to entrust the mini-public with

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[27] Lawrence Leduc, Heather Bastedo and Catherine Baquero, "The Quiet Referendum: Why Electoral Referendum Failed in Ontario", paper presented at Canadian Political Science Association annual meeting, Vancouver, 2008, p. 8.
[28] Patrick Dumont and Raphaël Kies, "Luxembourg", *European Journal of Political Research Political Data Yearbook* 55:1 (2016): 175–82.
[29] For more on the Irish Constitutional Convention, see Tom Arnold in this volume.

ultimate decision-making power. Further conditions must be met. Moreover, in none of these cases did the mini-public have the power to set the agenda. Instead, they were free to decide within a pre-defined set of parameters. Even intermediate decision-making power is deemed too much to pair with agenda-setting power.

Social uptake

Overall, social uptake was weak in the cases cited, not least in part due to poor or critical media coverage. In the British Columbia case, the public reported feeling uninformed on the subject[30]. Not only were they unsure of what they were voting for but many were surprised that a referendum was taking place to begin with. Though the referendum was nearly successful with 55% turnout, many voters relied on pre-conceived notions when deciding as they lacked the education which Assembly members had received. Likewise, in the Ontario case, "the Assembly's recommendations were also not widely discussed nor well understood by the public at large"[31].The Iceland case saw similar uptake problems due to the complexity of the process and to failures in organizing the elections to vote for members of the citizens' constituent assembly[32].

All in all, this analysis of existing empowered mini-publics suggests that their implementation and institutionalization is complex due to political resistance, citizens' skepticism, limited social uptake, poor or critical media coverage and organizational failures. The relative success of the Irish case, suggests that – in our historical phase of sortition ignorance – that mini-publics can only be effective:

a.) if politicians are included in the process;

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[30] Archon Fung, "British Columbia Citizens' Assembly on Electoral Reform", Participedia, 2009.
[31] Leduc *et al.*, "The Quiet Referendum", p. 1.
[32] Aleksi Eerola and Min Reuchamps, "Constitutional Modernisation and Deliberative Democracy: A Political Science Assessment of Four Cases", *Revue interdisciplinaire d'études juridiques* 77:2 (2016): 18.

b.) if citizens have an intermediate decision-making power on a pre-defined agenda;

c.) if the final decision rests with political representatives and/or sovereign citizens through referendum;

d.) if mini-publics are organized regularly on a broader range of topics, other than constitutional or electoral reform.

This last condition would institutionalize (or embed) mini-publics and help to overcome pitfalls which non-institutionalized (or dissociated) versions invariably face, in particular social and political uptake[33]. Put differently, no amount of empoweredness can overcome the lack of institutionalization. If these experiments remain sporadic affairs, we will unable to build the trust in mini-publics needed to introduce, with reasonable odds of success, a sortition chamber. In the next section, we take the EU as an example to show how institutionalizing citizens' mini-publics is feasible and desirable even in such a complex multi-lingual setting.

b. EU citizens' consultation

The example in question is a project which we have recently submitted at the EU level to institutionalize consultative mini-publics when the European Commission organizes public hearings on its initiatives. Over the past decade, the EU has organized several participative projects to expand citizens' participation in policy-making from voting to engaging with EU-level institutions and holding them to account[34]. The projects have taken different forms: deliberative consultation (European Citizens' Consultation), deliberative polling (Europolis) or petition

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[33] For an overview, see the discussion of insiders and outsiders, followers and challenges in Didier Caluwaerts and Min Reuchamps, "Generating Democratic Legitimacy through Deliberative Innovations: The Role of Embeddedness and Disruptiveness", *Representation* 52:1 (2016): 13-27.

[34] Mundo Yang, "Europe's New Communication Policy and the Introduction of Transnational Deliberative Citizens' Involvement Projects" in Raphael Kies and Patrizia Nanz (eds.), *Is Europe Listening to Us? Successes and Failures of EU Citizen Consultations* (London: Routledge, 2013) pp. 17-34.

systems (European Citizens' Initiative). They have taken place with different kinds of communication (virtual or face-to-face) at different geographical levels (national, cross-border or pan-European).

In recent analysis of such experiments, most authors have concluded that, though valuable from a civic perspective, these experiments did not fulfil their democratic ambition of informing and empowering a significant number of lay citizens on complex EU issues[35]. In short, we see similar conclusions at the national level: they make for intriguing civic experiments but fail to generate lasting social and political impact. In a recent presentation taken up by the European Economic and Social Committee, we suggested that a valuable place to break this experimental deadlock without transforming EU institutional settings is to introduce mini-publics within the context of the European Commission's public consultation website, previously known as "Your Voice in Europe[36]. Originally designed to allow stakeholders to contribute to Commission initiatives, it has since evolved to become a broadly used consultation tool for stakeholders and citizens[37]. This tool serves three purposes: 1.) allow the Commission to make use of external expertise and thus create better policies; 2.) ensure that EU actions are coherent and transparent; 3.) increase the EU's democratic legitimacy by giving citizens' greater voice in the decision-making process[38].

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[35] Raphael Kies and Patrizia Nanz (eds.), *Is Europe Listening to Us? Successes and Failures of EU Citizen Consultations* (London: Routledge, 2013); Espen Olsen and Hans Jörg Trenz, "From Citizens' Deliberation to Popular Will Formation? Generating Democratic Legitimacy in Transnational Deliberative Polling", *Political Studies* 62:1 (2014): 117–33.

[36] Raphael Kies, "The seven golden rules to promote EU citizens consultation", paper presented at Fourth International Conference on Legislation and Law Reform, World Bank, Washington, 17-18 November 2016; Elisa Lironi and Daniela Peta, "European Economic and Social Committee EU Public Consultations in the Digital Age: Enhancing the Role of the EESC and Civil Society Organizations", Report for the European Economic and Social Committee, 2017.

[37] Christine Quittkatt, "The European Commission's Online Consultations: A Success Story?", *Journal of Common Market Studies* 49:3 (2011): 653–74; European Commission, "Better Regulation Guidelines", Commission staff working document.(2016): 17.

[38] Christian Marxsen, "Open Stakeholder Consultations at the European Level – Voice of the Citizens?", *European Law Journal* 21:2 (2015): 261.

Unlike other EU deliberative experiments, this consultation comes with minimal standards aiming to ensure that consultation is clear, inclusive, transparent, long enough (at least 12 weeks) and, more importantly, that the commission provides feedback. The feedback requirement imposes three duties: a.) acknowledging receipt of contributions and publishing them; b.) publishing and displaying consultation results; c.) giving adequate feedback on how results were taken into consideration in the policy-making process[39].

Yet the Commission struggles to provide feedback to individual contributions within a reasonable time. A May 2017 report shows that the Commission provided participants feedback in roughly 65% of public consultations processed in 2016[40]. This delay owes to the high number of consultations to process (around 100 per year) and the chronic lack of human resources facing the EU. Likewise, lay citizens are almost absent from the consultative process, implying that the process is essentially dominated by civil society organizations, public authorities and research centers[41]. Significant citizen participation occurred either in the form of petitions or consultations conducted as online surveys in an essentially multiple-choice format[42]. In other words, significant citizen participation most often proved superficial and with little social uptake. Although the reasons for this are well known, i.e. topic complexity, lack of interest in EU affairs, the procedure's low visibility, there may be a way to reserve this trend.

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[39] European Commission, "Better Regulation Guidelines", p. 84.
[40] Elisa Lironi and Daniela Peta, "European Economic and Social Committee EU Public Consultations in the Digital Age".
[41] Romain Badouard, "Combining inclusion with impact on the decision? The Commission's online consultation on the European Citizens' Initiative" in Raphael Kies and Patrizia Nanz (eds.), *Is Europe Listening to Us? Successes and Failures of EU Citizen Consultations* (London: Routledge, 2013) pp. 153-172.
[42] Christian Marxsen, "Open Stakeholder Consultations at the European Level", p. 275.

c. Combining EU consultation with decentralized mini-publics

We contend that the strong imbalance in favor of organized groups can be tackled by introducing decentralized mini-publics (in the different member states) deliberating on select Commission initiatives. If correctly designed and implemented, this process would enable diverse voices to be heard (through socio-demographic and geographical representativeness) when new EU initiatives are elaborated and would therefore contribute to meeting the three objectives of EU public consultations, largely shared with other institutions: better policy, coherence and transparency, democratic legitimacy.

As we will argue in the last section, if such consultative practices are regularly repeated and adapted at the national level – for example, for select parliamentary and governmental initiatives – it would help familiarize citizens with mini-publics as an efficient consultative method and concepts which mini-publics share with a sortition chamber. Before returning to possible transitions towards a sortition chamber, we should first sketch how these mini-publics should be organized for efficient inclusion in the EU decision-making process and for increased information and participation among lay citizens. Specifically, we lay out initial proposals concerning: 1.) issue selection, 2.) citizen selection, 3.) mini-public set-up, and 4.) consultation outcomes.

Regarding issue selection, since it would make little sense to foresee consultation on all possible topics, we suggest that consultation be organized on a selection of topics concerning major initiatives, e.g. initiatives involving high costs, new legislation, and/or a large number of citizens. Similar to participative procedures like the Oregon Citizens' Review Initiative, a mixed commission – comprising political officials from the relevant decision-making bodies, organizers

and a sample of citizens – would select the topics to be discussed by the national mini-publics[43].

The example of the Irish Constitutional Convention – comprising one-third political representatives and two-thirds citizens – convincingly suggests that, against expectations, involving politicians in the consultative process is not only necessary to guarantee its success but also benefits participants and consultation outcomes[44].

Concerning citizen selection and mini-public set-up, we favor decentralized consultation involving a limited number of citizens, of which one good example is the European Citizens' Consultations[45]. In each territorial unit, mini-publics of 30 to 60 participants would be selected on the basis of representative socio-demographic criteria. To rationalize organizational and budgetary costs, the national Commission representation could host these mini-publics in the EU case. In other cases, one could appeal to decision-makers, foundations or wealthy individuals for funding[46].

To prepare for deliberation, the mini-public would receive a briefing from both the initiative's opponents and proponents both as well as neutral experts. Using these sources, their own values and third-party research, mini-public members would weigh the propositions' pros and cons by means of facilitation techniques enabling all viewpoints to be heard and points of consensus to be uncovered. Depending on the topic discussed, the session could run from one to several full days. Once deliberations are concluded, different viewpoints (pro and con), questions and recommendations for courses of action would be summarized in a national synthesis report to be

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[43] In the EU case, decision-makers would include the Commission, Parliament and Council. On the Oregon case, see John Gastil, Robert Richards and Katherine Knobloch, "Vicarious Deliberation: How the Oregon Citizens' Review Initiative Review Influence Deliberation in Mass Elections", *International Journal of Communication* 8:1 (2014): 62-89.
[44] Suiter *et al*., "The Irish Constitutional Convention".
[45] Raphaël Kies, Monique Leyenaar and Kees Niemöller, "European Citizens Consultation: A Large Consultation on a Vague Topic" in Raphael Kies and Patrizia Nanz (eds.), *Is Europe Listening to Us? Successes and Failures of EU Citizen Consultations* (London: Routledge, 2013): 59–78.
[46] The funding question is treated by Crosby in this volume.

made public and submitted to the Commission or legislature with the request to take an official, justified position.

Important efforts should be made throughout the process to make the consultation accessible and visible. This might include promoting public events and deepening collaboration with national institutions, civil society organizations, schools, and national public media and social media. Following the example of the Oregon Citizens' Review Initiative, mini-public participants could be invited on traditional media to debate the topic and inform the public about this innovative consultation method. This would likely have a positive impact on a population which increasingly identifies with opinions expressed by other "ordinary" citizens over and against "professional politicians" or "bureaucrats".

If such consultations can be implemented at the European level - that is characterized by the usage of different languages, high levels of complexity and strong resilience to reform - it should be that much easier to implement them at the national levels both from a legal and practical perspective. Indeed, a similar initiative has already been experimented in the New South Wales Parliament in Australia.[47] In the last concluding section we will argue that a broad, decentralized institutionalization of mini-publics is a necessary (but not sufficient) condition to lay the social and psychological foundations for implementing a sortition chamber.

4. Towards a sortition chamber

In this section, we contend that the institutionalization of consultative mini-publics is the logical, necessary next step before we can seriously consider introducing a sortition chamber. As an intermediary step to a sortition chamber, institutionalized consultative mini-publics' usefulness

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[47] Carolyn Hendriks, "Coupling Citizens and Elites in Deliberative Systems: The Role of Institutional Design", *European Journal of Political Research* 55:1 (2016): 43–60.

can be perceived at four levels at least: a.) testing potential behavioral changes in randomly selected participants within a future sortition chamber; b.) gaining citizens' trust and support; c.) gaining decision-makers' trust and support; d.) reinforcing citizens' links to a future sortition chamber and ability to hold the chamber to account indirectly.

a. Behavioral changes

With regards to randomly selected participants, introducing a sortition chamber presents, as mentioned in the "citizen professionalization" section, two opposed dangers the severity of which are difficult to gauge without empirical evidence. On one hand, a sortition chamber risks becoming a chamber of professionalized citizens, therefore losing its genuine link with the public. On the other hand, a longer stay in power, combined with a lack of political experience, could increase the risk of interest group influence and partisan contagion. In both cases, sortition chamber members would be assimilated to "other politicians", with no net-increase in democratic legitimacy and trust. This threat must be seriously weighed before introducing a sortition chamber. Institutionalizing consultative mini-publics would allow us to test, in real conditions, to what extent time spent in such mini-publics randomly selected lay citizens' behavior and autonomy. For instance, it would be particularly relevant to compare, over a limited timeframe (e.g. one year), a continuous mini-public (i.e. selected citizens participating in all consultations) with one-shot mini-publics (i.e. newly selected citizens for each consultation). This experimental approach would offer important lessons not just on whether lay citizens' behavior and autonomy are affected by long-term participation in these mini-publics, but also on how a sortition chamber should be designed to avoid these dangers.

b. Citizens' support

As far as citizens are concerned, institutionalized consultative mini-publics should increase their awareness of sortition's functioning and benefits for selecting participants. Supposing that such mini-publics were implemented regularly and successfully, the sortition process would increasingly be perceived as a valid method: 1.) to increase the political process' transparency and accessibility; 2.) to represent efficiently citizens' social and political views; 3.) to decrease political and economic organized interests' influence.

If these benefits prove successful in practice, chances are good that citizens' ignorance of and resistance to sortition would progressively decrease. To evaluate the public's readiness to support a sortition chamber, national and international surveys should start including, with standard questions related to perception and trust in democracy, items measuring knowledge and perception of institutionalized consultative mini-publics and sortition chambers.

c. Decision-makers' support

If these mini-publics are efficient and the public calls for increased sortition in political institutions, decision-makers would have little choice but to consider a sortition chamber as a necessary, inevitable reform. As renewed populism shows, with increasing appeal of authoritarian regimes and distrust in "classical representative institutions", it is no exaggeration to assert that the survival of the democratic system conceived at the end of 18th century is at risk.

The political class, which largely backs the institutional permanence of democratic values and practices, would have no option but to reform the existing system by including sortition-based political practices as one part of broader reforms: first, through institutionalized consultative mini-

publics and, then, a sortition chamber. From a self-interest perspective, their participation in the design of this reform would allow them to retain strong influence in the process and to ensure, at a very minimum, their survival.

d. Citizens' links and holding to account

Finally, from an institutional perspective, we maintain that institutionalized consultative mini-publics would inherently strengthen the "raison d'être" behind a sortition chamber by building lay citizens' feedback into the agenda and main legislative initiatives. Moreover, the presence of such mini-publics could also heighten the sortition chamber's interbody accountability. If one and the same mini-public were maintained from a legislative proposal's beginnings until its implementation, it could act as an agent verifying whether the decision agreed upon is correctly executed and whether sortition chamber members deliberate free of influence or threats, political or economic. This would arguably be the most efficient protective procedure as both owe their existence and legitimacy to sortition.

e. Conclusion

In sum, supposing that institutionalized consultative mini-publics were successfully implemented, it would contribute not only to laying the grounds for a sortition chamber, but also to reinforcing its mission of gathering lay citizens' opinions and the important task of maintaining indirect accountability to citizens. From an inter-institutional perspective, a sortition chamber might become the privileged link with lay citizens, i.e. those who are not involved in interest or partisan groups, whereas the elected chamber would continue representing organized interests and broader

ideologies through political parties. Thus, interest groups would find two distinct entry points for their demands.

From the process could emerge a new institutional equilibrium wherein citizens feel better represented (through institutionalized consultative mini-publics and a sortition chamber) and organized groups continue playing an important role in gathering different interests (through the elected chamber). Though a striking solution in theory, we now have to see through a gradual and prudential approach whether it hold up in practice. Only time will tell, for deliberative democracy as for all else.