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11 Elective and Aleatory Parliamentarism

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Introduction

With respect to politics, the use of the term ‘aleatory’ is a comparatively new invention. It reflects the growing body of academic literature on decision-making by random mechanism. The word ‘aleatory’ has its root in the Latin word *alea*, meaning a die or a gamble, and has long been used in social contexts such as music (in passages where Mozart allows for improvisation, or in works by John Cage and Stockhausen), in the philosophy of ‘aleatory materialism’ in the later writings of Louis Althusser or in literature and graphic arts. The Theory of Aleatory Democracy is focused on approaches that seek to apply that incautious moment of chance in a systematic and

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1 The two classics in the social sciences and political philosophy on this topic are Elster (1989) and Goodwin ([1994] 2005). In recent years several monographs and edited volumes have been published on different aspects of this topic, see Dowlen (2008), Buchstein (2009), Delannoi/Dowlen (2010), Boyle (2010), Stone (2011a and b), Vogt (2011), Brunold (2011), Vergne (2011) and Baron (2014).

2 Althusser’s reflections were written in 1986 and published nearly twenty years later, see Althusser (2005). In literature one can cite works of the Dada movement and certain passages in the poetry of Novalis. In the graphic arts one can find this term used to describe the paintings of Gerhard Richter, who distributes his colours utilising chance in works such as 4096 (1974) or 4900 (2007); crafty stock exchange speculators operate more or less successfully with ‘aleatory contracts’.
productive way as a procedural component of political decision-making in modern democracies.¹

I will begin with a brief characterisation of the ‘aleatory’ in the theory of aleatory democracy and bring to light five general arguments for the use of lotteries in decision-making processes. The emphasis of the following section is on lotteries as elements of reform agendas for modern elective parliaments. The main section of this chapter is devoted to the role of political lotteries as producers and consumers of political legitimacy. In this section I will propose a House of Lots as complementary institution to elected parliaments. The House of Lots is the core institution of aleatory parliamentarism (and is based on a lottery to select its members) in contrast to traditional elective parliamentarism. The political ratio of the House of Lots is, however, not to overcome democratic parliamentarism, but to function as a democratic-deliberative version of a pouvoir neutre (neutral power) for a well-defined and small group of cases in political decision-making. The ratio of aleatory parliamentarism is to strengthen the legitimacy of parliamentary democracy today.

The Theory of Aleatory Democracy: Reasons for Randomness

The understanding of the term chance (or randomness or Zufall)² by those employing aleatory approaches today is of a secular nature – that is, there are no divine attributes linked to their understanding of the process involved in making decisions. It would indeed be difficult to perceive the sequence of musical pieces on my iPod and generated by the randomiser as being directed by a divine power. When I speak of chance it implies the notion of unpredictability. We designate as Zufälligkeit or randomness those events to which we find ourselves unable to ascribe any causal factors. It is in this sense that a random decision is ‘neutral’ with respect to the object of the decision. In speaking of chance there is an unavoidable subjective component involved. To see something as random is intimately connected with the certain knowledge we bring to it. We know from our own experience that the parameters of any ascription of baselessness can change depending on our well of knowledge. But natural history theories and research on the ascription of causality do not necessarily always continue to narrow the sphere of ‘randomness’ but can also further expand it with respect to causality models, as certain physicists and biologists contend (for classic references see Monod 1970 and Gould 1989).

To what degree must the theory of aleatory democracy take a clear position on the determinism debate in philosophy and the natural sciences and take a side on the issue as to whether there is such a thing as ‘objective chance’ or ‘absolute chance’³? In the theory of aleatory democracy, it is more than sufficient to espouse an understanding of chance that is an operational one. From the standpoint of a radical determinism there can be no neutral decision-making process that gives recourse to chance for the very reason that there is no such thing as ‘chance’. This objection raised by determinism is less serious than it would appear at first glance, and it is not even necessary to argue against this position at the ontological level – even if I, as an amateur natural scientist, would very gladly do so – in order to reclaim the neutrality potential of decisions based on chance. This objection suffices as the occasion for underscoring the central importance of a consensus among those involved in answering the question of causality in a given decision-making situation. In other words: neutrality in this case does not mean ‘objective’ neutrality but rather a shared understanding of the social actors involved in a certain situation.

Let us imagine that we were capable – by means of slow-motion film and extensive physical measurements – of precisely reconstructing the coin toss of person D and of gathering just why the coin in a certain instance turns up heads and not tails or vice versa; and let us further imagine that this knowledge could then be used to make prognostications about the future. What ensues from such cases as these – which, dependent on the lottery technique, are by all means

² For a more thorough discussion of the term and its definition see Buchstein (2010).
³ The German word Zufall was first employed by early fourteenth-century German mystics (such as Meister Eckhart) in the form of the loanword zwo-val. But this etymological information is not very helpful with respect to the notion’s intellectual history and philosophical conceptualisation. The semantic field involved here is covered by a variety of terms in other languages: in Latin with casus, sors, accidens or fortuna; in French and English with the words ‘accident’, ‘chance’ or ‘hasard/hazard’. As opposed to the Greek word τύχη and the Latin word contingens, there exists no single conceptual history of the idea of Zufall/chance but rather several parallel ones (see Vogt 2011).
⁴ For the debate among natural scientists and philosophers see the contributions in Eifler et al. (1995).
probable? We must reformulate the conditions for neutrality in the following way:

A decision based on chance fulfills the neutrality requirements when (I) at a certain point in time (T) the odds of winning for persons A, B and C are unforeseeable to an equal degree—in other words, when all participants are equally and effectively unable to predict the coin toss and when there exists a consensus among all those involved in the process that this is indeed the case.

There is a second intersubjective requirement. In any neutral decision based on chance it is necessary that (2) person D, who is delegated technical oversight of the lottery, must have no knowledge of the lottery’s causal nexus at the time of its being held because otherwise person D could then manipulate the process. On the other hand, if the external observer F realizes that the coin has a tendency to flip to one side or the other owing to its specific physical properties, then the requirements of neutrality have not been impaired in the least.

If a decision based on chance is artificially manufactured, then we can designate it a ‘lottery’. In everyday situations this takes the form of flipping a coin or drawing straws. In the long developmental history of lottery techniques, we furthermore find notched sticks, specially prepared stones, lottery slips and balls as well as special gadgets such as the kleroterion of ancient Athens, special lottery bags in Renaissance Florence, and today’s computer programs.

In comparison with other decision-making procedures, the lottery process has the advantage of a high degree of ‘procedural autonomy’—as Niklas Luhmann once termed the isolation of procedures from the structures of the surrounding world (see Luhmann [1969] 1983: 69–75, and, with respect to elections, Stollberg-Rilinger 2001: 15–9). Procedural autonomy is based on several preconditions: the group of participants must be clearly delineated, roles must be specifically assigned, and the process must be isolated from external influences during the course of the decision-making. For instance, the rotation process has a higher degree of procedural autonomy than the awarding of posts according to a person’s particular qualifications because it is stricter and manages to do without any personal interpretations that can be open to external influences (see Poundstone 2008). It is in a similar way that secret voting has greater procedural autonomy than open or public voting that may invite external influences such as the buying of votes or extortion (see Buchstein 2015). Even secret voting is susceptible to manipulation, for instance in the various methods of vote-counting including simple majority, relative majority, Condorcet’s rule, the D’Hondt method of seat allocation, etc. In the case of equally allocated preferences that lead to various electoral results, a wide gateway could thus be created for result-oriented external influences. In comparison to these methods, the lottery process is absolutely autonomous; neither good (or bad) reasons nor strong preferences or interests sway an impeccably executed lottery.

However, when can or should lotteries be sensibly employed in politics? It would be pointless and lead to an infinite regress if we were to employ lotteries for the decision-making process to employ lotteries. There is no escaping the fact that we must find good reasons for lotteries. Basically there are five general arguments being made for the utilisation of lotteries in politics (see Buchstein 2010: 437–41).

1. Decision Argument. In this case the recourse to a lottery is in order to finally arrive at a decision—for instance the toss of a coin in the wake of a deadlock in the vote count for a political office. The decision argument makes particular sense with respect to those decisions where the participants, like Buridan’s ass, find it impossible to arrive at a well-founded and substantiated decision. Jon Elster places in this category those cases of absolute ‘uncertainty’, complete ‘indifference’ and the ‘incommensurability’ of alternative decisions (see Elster 1989: 116–21). In just such cases it is an imperative of reason that chance decide the issue. Any further insistence on rationally founded decisions would be an irrational phenomenon testifying to a pathological ‘hyperrationality’ because one irrationally refuses to recognise the limits of rationality.

2. Equality Argument. According to this argument, lotteries are unequalled in guaranteeing the equality of all those participating in a decision-making process. In lotteries all the participants are absolutely equal in the sense that they are all subject to the same probability that the lot will fall to them (see Boyce 1994). In any equality argument there is the implicit assumption that all participants in the lottery have the same number of lots (were the number of lots to be unequal, then we would speak of a weighted lottery). The historical paradigm for the egalitarian use of lotteries in politics is the drawing of lots for offices in ancient Greek democracy.

3. Representativity Argument. A third argument deals with the specific representation effects of lotteries for political office. It is not concerned with small twelve-member juries, for instance, but rather finds its exclusive application to larger bodies. The voluntaristic var-
iant of this argument sees the virtue of lotteries for posts in larger political bodies (e.g., citizens’ assemblies) in its fair representation. The prototype for the voluntaristic notion of representation is a faithful reflection of a society’s heterogeneity (in the words of Hannah Pitkin’s distinction ‘mirror representation’ or ‘descriptive representation’, see Pitkin 1967). The deliberative variant of this argument is less concerned with an exact mirroring of society than an increase in the social heterogeneity of those political bodies that can be spawned by lotteries—the hope being that a larger number of various perspectives and experiences can be taken into consideration in the political advisory process (see Sintomer 2007).

4. Efficiency Argument. Another type of argument claims that a lottery has the potential to increase the efficiency of political institutions and processes (see Buchstein 2009: 300–3). The virtue of a lottery is that it is unerringly accurate and no further decision-making costs are borne; ‘deadlocks’ are alien to lotteries, and by extension too are elaborate and costly repetitions of a decision-making process. Another efficiency argument is that lotteries, as a rule, are a very economical process. Compared with most other political procedures, lotteries demand little expenditure of time and other resources. Deliberation and consensus-principle are procedures and procedural rules that stand at the opposite side of the efficiency scale in politics. Thus, in addition to majority-rule, lotteries may also be used when more deliberation is unlikely to lead to a consensual decision.

5. Productivity Argument. This is an extension of the cost-efficiency argument. In certain situations lotteries can be justified on the assumption that they will ultimately have productive effects. These are, as a rule, indirect effects, as in the case of spot checks. We know of such random sampling in tax audits, doping tests, hygiene and foodstuffs controls. The basic idea is the same in all cases: all those subject to the rules are left uncertain as to if and when a more thorough check will be undertaken, thus encouraging them to adhere to the regulations. This is the same logic employed by the productivity argument: lotteries serve to discourage corruption. The idea goes back at least as far as the ancient Greeks. Aristotle praised the effects of this technique when he wrote how the polis Heraea, owing to notorious cases of vote-buying, had replaced elections with lotteries (see Aristotle, Politics, 1303a17).

The five arguments are valid completely independent of one another. Yet, in the political history of ideas and also in recent justifi-

cations for the application of lotteries, they are frequently linked to one another, which is not terribly helpful in clarifying the very real good reasons for lotteries in certain institutional settings. This is especially true with respect to the debate about the reform of modern parliamentarism.

Lotteries on the Reform Agenda for Elective Parliamentarism Today

The core arguments for elective parliamentary democracy were formulated more than two hundred years ago. This was time when the organisational features of modern mass democracy (like political parties or interest groups) were not even in the horizon of the political fantasy of those who essentially contributed to the theory of modern parliamentarism and representative democracy. When we look back to the foundational years of this theory, it is important to keep in mind that parliamentarism and representative democracy were not presented as a pragmatic ersatz or substitute for direct democracy. Instead they were presented as a system sui generis. A system that is not only distinct from absolute monarchy and direct democracy but intrinsically better than both of them. Kari Palonen (2008, 2014) and Nadia Urbinati (2014: 206) have recently presented convincing arguments for this claim.

However, the difference between the Ersatz Doctrine and the Sui Generis Doctrine dates back to the American Revolution. According to Thomas Paine, who was among the most prominent advocates of the ersatz doctrine during the American Revolution, the ideal of democratic decision-making can be found in the assembly of all citizens. Only the fact that the new territorial circumstances and the large number of citizens in the United States after the revolution made it technically impossible to hold such assemblies. Modern political orders have had to switch to a system of delegation. Within Paine’s argument for political delegation, parliamentarians need short terms, imperative mandates and recall as necessary conditions to fulfil the will of their constituents.

In contrast to the advocates of political delegation the theorists of political representation defended elective parliamentarism as a political form sui generis. It was not seen as an institutional setting that simply compromises with the social fact of a larger political com-
munity but as a better form of political organisation. It even would have had its merits in small political communities like the Greek polis. In order to make this normative claim, the classical theorists of parliamentary democracy came up with four main arguments. Not all defenders of elective parliamentarism have put the same emphasis on all four arguments, but all subscribed to them at least to some degree (see Buchstein: 2013: 386–92).

The four arguments are: (1) According to the Elite Argument, such as that of Jeremy Bentham and John Stuart Mill, the electoral competition for parliamentary seats will favour the selection of the best men (and women too, as Mill argued). Thus elective parliamentarism produces a democratically legitimated political elite. (2) According to the Division of Labour Argument, such as that of Abbé Siéyès and Benjamin Constant, we have to accept the fact that the economic success of modern industrial societies is based on division of labour. Modern societies need trained specialists in various social fields. Politics has become one subsystem for professional specialists among others and there is no way back from the liberty of the modern to the liberty of the ancient. The parliament is the assembly of the professional specialists for the production of the common will. (3) According to the Deliberation Argument, such as that of Alexis de Tocqueville and John Stuart Mill, we should not let large assemblies of people make political decisions. In most cases those meetings are dominated by passions and demagogy and will lead to irrational political decisions. In contrast to that, the political discussion in the plenary meeting of a smaller parliament, or even more in a subcommittee, is characterised by the exchange of informed arguments. Participants listen to each other and learn from each other. Thus the deliberation in modern parliaments produces a rational political will. Finally, (4) according to the Minority Protection Argument, such as that of James Madison and Alexander Hamilton, in a modern state with extensive territory we will find representatives from very different social backgrounds, religious beliefs, political ideologies and regional interests in modern parliaments. This heterogeneity ensures the emergence of stable majorities making it less likely that minorities will be placed under pressure as they tend to be in an assembly of a small and homogenous political community. Thus modern parliamentarism should produce political decisions that favour tolerance and pluralism.

Together these four arguments are even today at the core of the justification for elective parliamentarism. However, in light of the development of modern mass democracies and the experiences with the practice of parliamentary systems, all four arguments have lost some of their convincing charm for today’s readers. Be it the recruitment of political elites, be it the problems with the internal division of labour and responsibility within parliaments, be it the loss of the deliberative spirit in parliamentary debates, or be it the emergence of new institutions in order to protect minorities more efficiently (like constitutional courts), none of the traditional four arguments seems today to be totally obsolete, but none of them seems to be able to carry the normative burden to counter the legitimation crisis of modern parliamentarism we are facing today. The notorious debate about the proper reform of modern parliamentary systems is a symptom of this dissatisfaction.

The introduction of lotteries has recently become part of these reform debates. In view of the general arguments for the productive function of lotteries mentioned in the section above, it will come as no surprise that those authors who enter a plea for lotteries in modern democracies highlight various and even disparate things and that there is much disagreement among them.

Some of those pleas are concerned with the allocation of scarce and narrowly defined goods, whereas others are primarily concerned with the awarding of offices. The pleas for lotteries can also not be principally ascribed to the radical-democratic camp in the tradition of direct democracy and Thomas Paine. Whereas certain arguments for lotteries aim at an increase in the input-legitimacy of political processes, others underscore output-legitimacy and bank on an increase of efficiency and productivity.

The list of current reform proposals that are banking on the integration of chance mechanisms per lottery into modern parliamentary systems is still growing, and some of these proposals are hardly lacking in imagination or originality. Recent examples are the proposal put forward by segments of the British Labour Party in 2011 that would have the parliamentary committee that monitors activities of the Secret Service consisting of individuals chosen by lot from the ranks of Parliament (Stone 2011a: 8). In the ecopolitical reform discussion in Germany there is the proposal of the German Advisory Council on Global Change to create a Future Chamber (Zukunfts- kammer) that would serve as a third pillar of parliamentary democracy.
and whose membership would consist of individuals chosen by lot from among the citizenry (WBGU 2011: 229–31).

In the US at the start of the 2008 and 2012 presidential elections there was a contest as to which US state should initiate the primary elections marathon for the presidential candidates (with the result that start of the pre-election campaigning is ever earlier and the US is held captive to a debilitating primary race). This coordination problem among the states could easily be rectified by having them first jointly determine the duration and dates of the primaries and then determining by lot the states that will host the primaries (Buchstein 2009: 423).

One could easily amplify all additional ideas currently circulating – election dates and voting precincts chosen by lot, the assignment of laws by means of weighted lotteries in parliament, the holding of voter-turnout lotteries, the selection by lot of participants in plebiscites, the sliding-scale mix of lottery and voting mechanisms in the filling of political offices (for an overview see Buchstein 2009: 397–422). But the presentation of such proposals with accompanying ‘good arguments’ regarding their desired effects must be balanced by the question as to their political feasibility. This not only in terms of the usual related (and tricky enough) question as to the implementation of democratic-political reform, since reform proposals that provide for lotteries are confronted with the additional difficulty that lotteries as an instrument of politics are viewed as arcane and even outlandish by many modern enlightened people. And is their scepticism not justified? Is not ‘reason’ and/or ‘interests’ the basic module of modern politics, whose scope should be optimised institutionally instead of being subject to blind chance? What is the legitimating power of aleatory politics in modern parliamentary democracies?

Political Lotteries as Producers and Consumers of Political Legitimacy

In order to answer these questions it may be helpful to shift the focus to empirical examples and empirical research on political lotteries in modern democracies. With respect to the findings of empirical research we can differentiate between two complementary analytical perspectives. From one perspective political lotteries are viewed as a potential producer of legitimacy and we may ask: In which cases does the use of political lotteries generate political legitimacy? From another perspective, political lotteries are viewed as consumers of legitimacy and we are confronted with the question: Under which (social or political) conditions do decisions made by lotteries find political support from citizens? These two sets of questions open a rich field of more detailed research that includes many varied areas of political science and the use of diverse methodologies. In the following, I will pick only a few issues from this rich research agenda and will pay particular attention to some recent practical examples and pilot projects.

The House of Lots

The historical return of lotteries to the political agenda in modern democracies was via the legal system. In 1968 the modalities employed in choosing jury members in the US by degrees began to change (for the historical changes of the jury system in the US see Abramson 1994). Jury members were no longer named by political mandate holders but were chosen by lot from among all citizens who were registered to vote or had a driver’s license. This choosing of jury members by lot was largely established in the US on the merit of high-court decisions. The arguments at the time for lottery systems were: (1) Juries chosen by lot buttress the independence of courts and offer better protection against corruption. (2) The social diversity that is in all likelihood to be expected among those juries chosen by lot is important for creating favourable conditions for good deliberation and in reaching fair verdicts. (3) In the spirit of democratic equality, every citizen should have the same opportunity to participate in a jury. (4) Juries chosen by lot have positive repercussions on a country’s legal culture and they increase the social recognition of judicial verdicts.

The notion of juries chosen by lot was in the 1970s and 1980s transferred to political decision-making processes – whether as a programmatic agenda espoused by the American theorist of democracy Robert Dahl or carried out in practical experiments at the communal level in the US by Ned Crosby or in Germany through the ‘planning cell’ (Plannungszzelle) of Peter Dienel. In essence the arguments mustered for citizen juries are the same as those for choosing jury members by lot in court proceedings. In the past twenty years, under the heading of Deliberative Polling (James Fishkin), there has been a rapid expansion of these democratic experiments, and worldwide there
have been several hundred well-documented and variously designed projects along these lines. The large majority, however, were largely consultative (for overviews of the models and empirical findings see Gastil and Weiser 2010, and Dryzek and Henriks 2012).

Only some of these randomly composed bodies were put in a position in which they had at least some degree of decision-making power. And only some of them had been larger political bodies composed of more than a hundred citizens. In the scholarly research on the subject, the term ‘citizen assembly’ has been established as the name for this subgroup. In contrast to the small citizen jury, citizen assemblies are political bodies with a hundred or more citizens chosen by lot and who have been assigned clear political powers. In contrast, citizen juries have powers that are predominantly of an advisory nature. In the following, I use Barbara Goodwin’s invented and appropriate term House of Lots (Goodwin 1994: 194) for this kind of political body.

Electoral Law Reform in Canada and the Netherlands

Between 2004 and 2007 this type of political body was established in the Canadian provinces of British Columbia and Ontario, and in the Netherlands. In all three cases a House of Lots was commissioned with developing a proposal for a new electoral law in the province/country. Political scientists have closely followed and analysed this new kind of democratic polity-making (see Warren and Pearse 2008, and Fournier et al. 2011).

In all three cases there had been widespread dissatisfaction with the existing electoral law and the political actors in the respective parliaments had been unable to arrive at any agreement regarding reform. In all three cases this Gordian knot was finally severed by a senior politician who — in a kind of ‘political outsourcing’ — brought in the House of Lots to solve the dispute. In the two Canadian provinces this action was combined with the condition that the House of Lot’s reform proposal should be subsequently approved through plebiscites; in the Netherlands the coalition government at the time attached the stipulation that parliament would have final approval on the proposal.

Much to the surprise of many sceptical observers, in all three cases the Houses of Lots worked very well. Their participation rates were always very high and they invited various experts to explain the effects of various electoral systems. The level of discussion was exceedingly high among members with regard to normative principles and technical details; and in the end, after extensive debates with large majorities for joint proposals, they succeeded in putting forward detailed plans for reform. All three of these Houses of Lots were textbook examples of how deliberative democracy should work (on these particular aspects see Warren and Pearse 2008: 127–64, and Fournier et al. 2011: 79–93).

Yet in none of the three cases were the changes recommended by the Houses of Lots finally enacted. In both Canadian provinces the respective proposals were derailed by supermajority and double-majority quorums, and in the Netherlands a new governmental coalition came to power whose smaller parties had an interest in maintaining the electoral law that had been in place since 1917.

Are the citizen assemblies thus to be judged as failures? The answer to this question is a resounding ‘no’! In all three instances it was simply a case of the powers granted them by the other political actors were insufficient. Therefore the Canadian and Dutch Houses of Lots still offer a model that one might potentially emulate – for instance in the case of a serious reform of the electoral law for general elections in Germany after the constitutional failings of the actions of the Bundestag have been repeatedly criticised by the German constitutional court (for such a proposal see Hein and Buchstein 2012).

Towards a Democratic-Deliberative Pouvoir Neutre

This positive assessment leads to a fundamental question as to the legitimising hierarchy in modern democracies: In the legitimising competition between an elected parliament, a plebiscite, and a House of Lots, which institution should have primacy? There can be no definitive answer given to this question. One speaks of the absolute primacy of an allegedly ‘authentic will of the people’ via plebiscites, but studies have shown that only in rare cases is such a will actually represented; electoral-law questions are in fact one of the areas in which only very few citizens have an informed political ‘will’ (see Farrell: 2001: 183–90; and Fournier et al. 2011: 15–7 and 134–6). I call this the deficit of will. The problem with parliamentary decisions on changes to the electoral law is that in such questions the political actors in parties and parliaments find themselves in conflict with their own power interests. Thus we are faced with a deficit of neutrality because of the exclusive self-reference of these topics for members of parliaments.
Alternatives to parliaments or referenda would be an externalisation of the decision to a court or a special independent commission. This strategy of externalisation, however, faces a dilemma. With respect to the courts, this strategy runs the risk of politicians being even more motivated to appoint their members according to their own political interests. If, on the other hand, the appointment process is more independent of current politics, their members run the risk of being too removed from the will and experience of citizens.

A House of Lots is an institutional alternative to courts and commissions. My suggestion is: in those cases in which there are indications of a deficit in will or neutrality, we should at least consider whether or not to switch from elective parliamentarism to aleatory parliamentarism and place the political decision-making process in the hands of such a House of Lots. In the institutional setting of modern democracies, such an institution serves as a democratic deliberative version of the classical pouvoir neutre (for an elaboration of this argument see Buchstein 2012).

Paying Politicians

Another matter whereby the information deficit and the deficit of neutrality have inspired the search for a new agency of legitimisation is concerning pay and perks for professional politicians. Modern democracies need political professionals (on these debates see Palonen 2012). And they need good and fair pay. What is considered good and fair pay for politicians? The members of parliament are not neutral in deciding their own salary; and even if they come up with a fair amount and a fair way to regulate their health plans and their pensions, a hermeneutic of suspicion always dominates the public debate. It would be naïve, on the other hand, to have a plebiscite on the issue of salaries for politicians. Such a procedure would be an invitation to populism and cheap resentments against the members of the political class. In this case we also face a deficit of neutrality (on the side of the politicians) and a deficit of an informed will (on the side of the citizens). A House of Lots may serve quite well as an institution functioning as a democratic and deliberative pouvoir neutre that may calm the notorious disputes and conflicts about the pay and perks for professional politicians and produce fair as well as legitimate decisions.

The work of citizens in the US state of Washington is a very instructive example in this respect. Since the 1970s in Washington there had been growing discontent over the payment of politicians and employees of the civil service. This instigated a long debate on reforms, which culminated in 1986 in a constitution-changing law. Both Democrats and Republicans in the two legislative houses agreed to a constitution-changing law establishing a Washington Citizens' Commission on Salaries for Elected Officials (WCCSEO) that would oversee and stipulate the salaries and allowances of all elected political officials in the legislative and executive branches as well as those of high-court judges (see WCCSEO 2007). Since 1987, politicians' pay and perks have been stipulated by this sixteen-person commission. The commission is in office for two years. Seven of its members are appointed by the state Senate and House of Representatives for one legislative period and they must have expertise in the sphere of management. The other nine members come from the nine congressional districts of Washington and are chosen by lot among all those citizens eligible to vote. There are two reasons for this mixed grouping. First, there was an unwillingness to forego the expertise of specialists in salary questions and hence the seven appointees; second, the nine laymen chosen by lot were to ensure that the body's decision-making process would not be dominated by the special interests of civil servants and the political class. The commission has been performing its work for the past twenty-five years, every two years newly stipulating the pay and perks for elected politicians and the civil servant corps.

The commission's activities can be regarded as successful. The salaries of officials in Washington state do not markedly diverge from those in other comparable states of the US and thus the state continues to attract competent personal to politics and the civil service. In addition, ever since the commission was instituted, the issue of pay and perks in Washington state would appear to have almost completely vanished from the agenda of populist rabble-rousing. The commission's fixing of salaries has ultimately acquired legitimacy due to the fact that the WCCSEO's sessions are public and that both the expert appointees and citizens chosen by lot are obliged to explain their decisions in the face of critical inquiry. The addition of randomly chosen citizens to the process of deciding on the salaries of professional politicians has produced and is still producing political legitimacy on this delicate issue.
It is of interest for political scientists and constitutional lawyers to take a closer look at those experiments. Questions of particular interest are: From a technical standpoint, how exactly should such lotteries be implemented? What problems result from certain technical devices (safeguards against manipulation, encompassing the basic population)? What are the rates of response among those chosen by lot and what class-specific phenomena can be observed? How to deal with citizens who do not want to participate in such political bodies? (Baron [2014] critically points to these questions). In addition to randomisation, what should be the role of quotas be? How is the work of these Houses of Lots perceived among the political public and what impact does this work have on the process of constitutional reforms? And finally, do any of the answers of these questions yield any clues for the establishment of a European House of Lots, complete with requisite powers, that Michael Hein and I proposed to be instituted in the EU political system? (more on the suggestion of a European House of Lots as a second parliamentary chamber in Hein and Buchstein 2009).

**Political Lotteries as Consumers of Legitimacy**

Political lotteries are not only potential producers of political legitimacy, they are also consumers of political legitimacy. Under what conditions do lotteries for a political body like the House of Lots or for the allocation of a scarce resource find acceptance among citizens? In games of chance, the rate of approval for lotteries is high – for instance in Germany the gambling market (specifically the legal market in gambling) has a 1.3 percent share of the gross national product, which is nearly the same for the market in textiles. In southern European countries and in the US the numbers are even higher (see Beckert and Lutter 2007). But these numbers tell us nothing about the approval of lotteries in political decision-making.

As a means of decision-making, lotteries are competing with other methods to allocate goods and to fill political positions. Several alternatives to lotteries exist. So far there is no work in political science that gives a systematic overview of the procedural alternatives. The best starting points for such a General Theory of Political Procedures, which I hope to write, are still Elster (1989: 67–78) and Barry (1990: 84–93). For political positions the main alternatives are: elections, co-optation, auction, inheritance and rotation. For the distribution of goods the alternatives are: criteria-based distribution, auction, waiting lines and inheritance.

One empirical question that arises is: What is the compliance rate with decisions based on chance where the allocation not of political positions but of goods is concerned? Presently we cannot even begin to answer this question. The findings of economists, sociologists and psychologists on this subject are only fragmentary and often contradictory. We will never have general statements regarding the acceptance of lotteries in the allocation of goods, because those cases that have been and that should be investigated are far too divergent in nature – for example donor organs, Green Cards, hunting licenses, hazardous waste deposit sites, placements at university, job cuts, social housing, sperm and fertilised eggs, life-saving medical treatments. What is still necessary are larger and comparable research polls and even laboratory experiments on the acceptance of lotteries and procedural alternatives such as auctions and allocations based on merit or need (for classical studies about these experiments see Henningsen et al. 2004, and Bolton, Brandts and Ockenföld 2005).

**Deliberative Accountability**

With respect to the role of a House of Lots as a pouvoir neutre it is probably the most intriguing question, whether the members of such an assembly gathered by lottery will act responsibly and how they can be accountable for their decisions. Only if we have good reasons to expect serious political engagement and political responsibility from the members of such a House of Lots will their decisions be accepted as legitimate. For modern democratic legitimacy, accountability is of central relevance. And taken at face value, the democratic accountability of the House of Lots appears to be highly problematic.\(^6\)

Let us just imagine the following scenario: What happens if a citizen gets drawn as a member of the House of Lots – on an important issue like constitutional reform – and cashes in the salary for his or her participation but does not show up, is simply inactive or wants to get bribed? To some extent, this is a speculative question, but the empirical evidence we have so far from a number of pilot projects may help to answer the question. And a comparison with the real situation of accountability in parliamentary democracy today may give

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\(^6\) Dieter Grimm and Cristina Lafont have emphasised this point.
reason not to overstate the relevance of this question. Even if we take the concept of strict accountability respective to the unbroken linkage of accountability-relations (see Grimm 2009) as the normative yardstick to judge the legitimacy of modern parliamentarism, the result will be mixed at best.

In most European democracies the leading candidates running for parliament are on ‘party-lists’, which makes it nearly impossible for voters to get rid of certain politicians. In addition, for a number of important political offices and positions in modern democracies (e.g. the central bank, state-owned companies, boards of directors and supervisory boards for public institutions, political positions on the level of the EU) the linkage of accountability-relations have such a length or are so obscured that it is nearly impossible to detect them even if you are a professional political scientist. And it is at least worth mentioning that the argument about a deficit of accountability has not been made for members of parliament who tell voters in advance that their next term will be their last term.

The empirical evidence we have so far from more than one hundred pilot projects with lottery assemblies on the local level, with a number of deliberative polls, and with the Houses of Lots mentioned above also contributes to different reflections about the pure contractual understanding of political accountability. These empirical findings can be summarised in three findings (see Fishkin and Luskin 2005; Brown 2006; Warren and Pearse 2008; Gastil and Weiser 2010; Fournier et al. 2011; Dryzek and Hendriks 2012; and Baron 2014). First, the participation rate in these political bodies is high and stable. Second, the intensity of engagement and the cognitive level of the deliberations correlate with the real political power of such a political body (whether it is merely an ornamental institution to figure out what the citizens like or whether the decisions are supposed to have some real political influence). And third, the face-to-face discussions among lottery-chosen fellow citizens in the assembly have an encouraging effect for developing a sense of responsibility for the political community.

The empirical findings give reason to think differently about the concept of democratic accountability. Traditionally we think about accountability in the categories of a contractual understanding: we vote for a representative and in exchange the representative does her best for our good and for the political community. Thus it is not the initial authorisation, but the subsequent electoral form of accountability – the serial nature of elections – that gives us reason to expect the representative to act in accordance to our expectations. This model includes the idea that a representative who is acting for us but does not fulfill her duty can be made accountable to us not only through the courts (if she has broken the law) but we also will not vote for her again (if she has not fulfilled our political expectations) as a punishment. In the case of the House of Lots the possibility to go after members who have broken the law does not get lost. But in contrast to the contractualist understanding we do not have the option not to vote for her again as a punishment because the House members are chosen randomly.

This difference does not mean that democratic accountability gets totally lost in the House of Lots. The empirical findings mentioned above can be connected to Mark E. Warren’s analytical distinction between different forms of political accountability and his interpretation of the self-understanding of the members of the Canadian citizen assemblies. According to Warren, the combination of initial constitution, deliberative structure, and mission produced in the case of the Canadian citizen assemblies a kind of citizen representative with weak accountability of members to individual constituents, but strong discursive accountability of members to the public, as well as strong institutional accountability for forming and delivering a publicly justifiable decision (Warren 2008: 65).

Discursive accountability means that the members of the House of Lots who were engaged in discussions with their co-members had been very keen on coming up with arguments that were recognised as relying on the public good. The empirical evidence indicates that fairness and public justifiability became the dominant concern for the members of the assemblies dealing with electoral law reform (see Warren and Pearse 2008: 127–44; Fournier et al. 2011: 65–71).

In their deliberative understanding of accountability the social and temporal dimensions of reference have been widened: the points of reference for accountability are not restricted to today’s voters or those of the next election, but to all citizens, including even those of future generations. There is more empirical research and more theoretical work to be done if one wants to put aside all concerns pointing to the problem of accountability in Houses of Lots. The House of Lots is probably stronger with respect to other normative facets of modern democracy (like its social diversity or its deliberative setting).
Conclusion

Political lotteries are procedures that can be producers as well as consumers of political legitimacy in modern democracies. In this chapter, I described the House of Lots as the core institution of aleatory parliamentarism in contrast to traditional elective parliamentarism. The political ratio of such a House of Lots is not to overcome democratic parliamentarism with its independent role of the proceduralist style of parliamentary deliberations (including parliamentary agenda setting and political time structures), but to allow more room for these elements in modern political assemblies. Aleatory parliaments are conceptualised not as alternative but as comple-mentary institutions to traditionally elected parliaments. They are supposed to function as a democratic-deliberative version of a pouvoir neutre for a well-defined and small group of cases in political decision-making. The ratio of aleatory parliamentarism is to strengthen the legitimacy of parliamentary democracy today.

To sum up: The introduction of the House of Lots is intended to unburden the elected members of parliaments from decisions on issues like their own payment, electoral-rules, or party financing. The members of parliament are not neutral on these issues. These issues are not appropriate for referenda either. A House of Lots that takes the role of a democratic-deliberative pouvoir neutre, is the best alternative political institution to deliberate and decide on these issues.

This proposal illustrates that the theory of aleatory democracy does not necessarily have to stand in opposition to political theories that justify electoral democracies and parliamentarism. It may even be quite the opposite: I argue in this chapter that aleatory parliamentarism should properly be understood to be complementary to elective parliamentarism; voting and drawing the lot are not adversarial political procedures per se, but they may be combined.

The basic intention to combine electoral and lottery-based procedures to fill political positions is not new at all. This combination has a long tradition that dates back to ancient democracies and Renaissance republics. It finally got lost during the emergence of mass democracy in the nineteenth century that was based on contractualist political thought (with its polemical stand against the arbitrariness of the political will by the absolute king) and on the exclusive reference to elections (see Buchstein 2009: 191–226). It looks as if the tides have started to turn in the beginning of the twenty-first century and that lotteries may be rediscovered as a rational instrument for democracy.

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12 Participation: A Complement or a Substitute to Parliamentary Democracy?

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Introduction: The Participatory Wave in International Law

Legal norms concerning participatory processes at different levels have been proliferating in law in general and in international law in particular over the past twenty years.\(^1\) Such efforts include normative standards ensuring participation in specific fields, for instance in environmental matters, in planning issues, in development programs and projects, in minority protection, in migrant integration efforts, for children, etc. The core idea in such efforts is that "the voice of those concerned shall be heard effectively". Legal rules and standards of this kind are found in international, European and domestic law. What is the theoretical framework of this participatory wave that largely takes place outside parliamentary politics? How is it to be reconciled with the idea of the primacy of the citizen as voter? What are the effects of this participatory turn on the empowerment potential of democracy and on our understanding of democracy and politics?

In legal theory and practice, participation is on the one hand understood as an individual human right, i.e. a claim vis-à-vis the state, of importance for the recognition and affirmation of individual agency. This right may be individual but is often exercised collectively, in particular through the interconnection of the right to establish and use associations and other collective participatory channels. On the other hand, participation (individually or collectively exercised) has also an instrumental side, i.e. as a channel of influencing the political, namely the legislative agenda and process.

\(^1\) This chapter focuses exclusively on the legal ramifications of participation and does not address problems of parliamentarism and democratic theory.