

A Justification for Political Random Selection Based on Democratic Equality

To date, nearly every argument that has been advanced in favour of randomly selecting legislators has centred on the instrumental benefits of doing so. Legislatures composed of randomly selected citizens, so these arguments go, are better at doing the things which we want legislatures to do. However, the most persuasive critics of randomly selected legislatures argue that they are objectionable because they are undemocratic. On the contrary, in this paper I shall argue that, on an equality-based theory of democracy's value, randomly selecting legislators is more democratic than electing them. In sections one and two I explain what political random selection is, and why it needs a non-instrumental defence. In section three I explain what an equality-based theory of democracy's value consists in, and four different ideas about what democratic equality requires. In section five, I consider arguments made in favour of election from the perspective of an equality-based theory specifically, showing that they fail to justify election as a method for selecting legislators against the method of randomly selecting them. In section five, I compare election and random selection in terms of the four different ideas about the requirements of democratic equality laid out in section three, and find that political random selection does a better job of living up to the democratic ideals made central in equality-based theories than does election.

1. What is Political Random Selection?

When I refer to political random selection in this paper, I mean to refer to vesting legislative power in bodies composed of randomly selected citizens, as opposed to in bodies composed of elected officials.

An exciting development in the history of democracy is the use of mini-publics for political decision-making. Mini-publics are assemblies composed of randomly selected citizens

convened for the purpose of arriving at a collective decision. Most prominently, mini-publics have been used in Ontario and British Columbia to arrive at proposals for electoral reform which were subsequently put to referenda,¹ and in Ireland, a mini-public has been convened to deliberate about the repeal of the country's constitutional ban on abortion, which was also subsequently put to a referendum.² Additionally, mini-publics have been employed in Belgium, Denmark, France, the Netherlands, Poland, and the US state of Oregon for various public purposes. These applications were precipitated by a great deal of positive attention that mini-publics have received from political scientists over the past thirty years, such as James Fishkin. Fishkin's deliberative opinion polls bring together a random and representative sample of citizens to deliberate about a particular policy issue, with informational input into the deliberation from experts on the topic, and culminating in a poll of the group's post-deliberation views on the topic.³

Much has already been said about the epistemic virtues of mini-public deliberation as a method of decision-making. In their ideal form, these bodies are cognitively diverse and genuinely deliberative, which are both important for quality group decision-making.⁴ These bodies can be maximally inclusive in that they resemble the whole public in miniature, and as a

¹ Warren, Mark E., and Hilary Pearse, eds. *Designing deliberative democracy: The British Columbia citizens' assembly*. Cambridge University Press, 2008. Rose, Jonathan; "The Ontario Citizens' Assembly on Electoral Reform." *Canadian Parliamentary Review* 30.3 (2007): 9-16.

² Farrell, David M., et al. "When Mini-Publics and Maxi-Publics Coincide: Ireland's National Debate on Abortion." *Representation* (2020): 1-19.

³ Fishkin, James S., and Robert C. Luskin. "Experimenting with a democratic ideal: Deliberative polling and public opinion." *Acta politica* 40.3 (2005): 284-298.

⁴ Landemore, H el ene. *Democratic reason: Politics, collective intelligence, and the rule of the many*. Princeton University Press, 2017. See chapter 4.

result of this these bodies can impartially aim at the whole public's interest.⁵ These bodies can be comparatively incorruptible, with their limited tenure and random selection making them very resistant to illegitimate influences on their decision-making.⁶ These epistemic virtues are particularly impressive when compared to those possessed by elected legislative bodies, which do not deliberate within the legislature and are not very cognitively diverse, do not tend to be very inclusive or impartial, and are comparatively far more susceptible to corruption and illegitimate influence.⁷

As a result of this, several proposals have been created for the replacement of elected legislatures with legislatures composed of randomly selected citizens.⁸ Several of these proposals, such as those proposed by Alexander Guerrero and Terrill Bouricius, do away with the generalist nature of elected legislatures and convene many mini-publics, some for setting the legislative agenda and other tasks, and some single-issue legislatures that deliberate and vote about one particular issue and then disband.⁹ These proposals also provide avenues for voluntary mass public participation through various means. When defending a legislative system based on the principle of political random selection in this paper, I have in mind the kind of legislative system proposed by Guerrero and Bouricius.

⁵ Fishkin, *supra* note 3.

⁶ Stone, Peter. *The luck of the draw: The role of lotteries in decision making*. Oxford University Press, 2011. Page 119-44.

⁷ Guerrero, Alexander A. "Against elections: The lottocratic alternative." *Philosophy & Public Affairs* 42.2 (2014): 135-178.

⁸ *Ibid*; Gastil, John, and Erik Olin Wright. *Legislature by lot: Transformative designs for deliberative governance*. Verso Books, 2019 (this book contains several such proposals); Bouricius, Terrill G. "Democracy through multi-body sortition: Athenian lessons for the modern day." *Journal of Public Deliberation* 9.1 (2013).

⁹ Guerrero, *supra* note 7; Bouricius, *supra* note 8.

At present, there is an unfortunate disconnect between advocates for political random selection and their detractors. Advocates for political random selection argue persuasively about the epistemic merits of this method of decision-making and the instrumental value that their preferred procedures have for producing good laws. The most compelling and vocal critics of political random selection argue that legislation by random citizens is undemocratic, and so legislative systems based on political random selection should be rejected for that reason whatever their epistemic virtues may be. Before these criticisms can be adequately addressed, as I shall show, we need a positive account of why political random selection is democratic. The aim of this paper is to provide one. I shall argue that on a conception of democracy's value grounded in the moral imperative to treat citizens as equals, political random selection is the best way for a legislature to realize democracy.

2. Why Political Random Selection Needs A Non-Instrumental Defence

Political random selection needs a non-instrumental defence for two independent reasons. First, because a purely instrumental account of democracy's value is not compelling and so advocates for political random selection should continue to avoid committing their arguments to such an account. Second and more centrally to this paper, because the most persuasive criticisms of political random selection argue that it is undemocratic, and as I shall show these criticisms cannot be answered without assigning some kind of non-instrumental value to democracy.

Democracy has a special normative significance. While there are many ways in which government structures can be normatively evaluated, the question of whether or not they are democratic stands apart from the rest as uniquely important. Many have noted the unique claim to legitimacy that democracy enjoys in modern political theory and popular discourse, and the ways in which even undemocratic regimes employ democratic language and criteria of

evaluation in making the case for their own legitimacy.¹⁰ Some theorists, such as Joseph Schumpeter, are inclined to reduce the significance of democracy to its correlation with prosperity and stability in the lives of the people who live under democratic governments - the propensity of democratic institutional forms to come along with and possibly bring about better living conditions for the poor, and civil liberties.¹¹ Giving a full and fair hearing to purely instrumental conceptions of democracy's value is beyond the scope of this paper - for now, I'll note only the fact that the idea of replacing democratic governance with some kind of utilitarian machine that maximized our welfare and protected our (non-political) rights is intuitively repugnant shows that we ought to be skeptical about the idea that democracy is merely instrumentally valuable to us.¹²

Presently, most advocates for political random selection are committed to a picture that centres on the instrumental benefits of political random selection over election. In *Democratic Reason*,¹³ Hélène Landemore claims to be committed only to two related positions on the value of democracy in her argument for political random selection: (1) if every democratic institutional arrangement consistently made substantively bad/wrong policy choices, then democracy could not be justified, and (2) that all else being equal, the better the policy output of a set of democratic legislative institutional arrangements the stronger the case for it. This position is compatible with a great variety of potential conceptions of the value of democracy.

¹⁰ Beitz, Charles R. *Political equality: An essay in democratic theory*. Princeton University Press, 1989. Page ix-xi; Rancière, Jacques. *Hatred of democracy*. Verso Trade, 2014. See the introduction, and chapter 1.; Shapiro, Ian. *The state of democratic theory*. Princeton University Press. Page 1-9.

¹¹ Schumpeter, Joseph A., 1883-1950. *Capitalism, Socialism, and Democracy*. New York :Harper & Row, 1962. See especially chapters 20-23.

¹² I plan to give the flaws with a purely instrumental account of democracy's value a far more detailed treatment in my dissertation.

¹³ Landemore, *supra* note 4.

Arguments made for an increased role for political random selection almost universally take on these commitments, albeit not always so explicitly. Such arguments, such as the argument made by Guererro in “Against Elections”¹⁴ tend to take a very similar form: (1) they identify problems with electoral democracy which systemically lead to substantively bad decisions (2) they argue that decision making by a randomly selected body would possess features crucial for good decision making which an elected body lacks, or lack features that lead elected bodies to bad decision-making.¹⁵ Importantly these discussions are focused on comparing the output of differently constituted decision-making bodies - differences in process are explored for the sake of explaining differences in output.¹⁶

Taken together these instrumental arguments for political random selection are well made, and of course, are indispensable in the task of persuading people that political random selection at least deserves serious consideration as an alternative to election. In fact, the empirical picture showing the comparative merits of elected bodies and randomly selected bodies is so one-sided at present that these arguments can look a bit like shadowboxing. There is hardly

¹⁴ Guerrero, *supra* note 7.

¹⁵ For more examples, see Landemore, H el ene. "Deliberation, cognitive diversity, and democratic inclusiveness: an epistemic argument for the random selection of representatives." *Synthese* 190.7 (2013): 1209-1231.; Stone, Peter. "Sortition, voting, and democratic equality." *Critical review of international social and political philosophy* 19.3 (2016): 339-356; Gastil, *supra* note 8 chapters 3 & 8; Warren, Mark E., and John Gastil. "Can deliberative minipublics address the cognitive challenges of democratic citizenship?." *The Journal of Politics* 77.2 (2015): 562-574.

¹⁶ As an example, discussion of the procedural fairness of decision-making in a randomly selected body can be incorporated into the instrumental argument through the idea that fairer procedures produce better decisions. This is because fairer processes more effectively leverage the diversity of knowledge and reasoning skills of the participants.

a serious debate about this characterization of the epistemic qualities of these different types of legislatures at all.¹⁷

The far more serious and frequently invoked criticisms of political random selection take issue with its normative foundations, not its empirical ones. These criticisms, often articulated by the same political scientists extolling the epistemic virtues of randomly selected bodies,¹⁸ argue that the nature of the relationship which elected legislators have to their constituents is normatively important, and that because randomly selected legislators would stand in a different relation to their constituents, a randomly selected legislature would for that reason be undemocratic.

There are two main criticisms of this type. The first and most frequently invoked is that, whereas elected representatives are authorized by their constituents, randomly selected representatives are not. This is ordinarily accompanied by the related notion that elected representatives are accountable to their constituents in a way that randomly selected

¹⁷ As evidence of this claim, in *Democratic Authority*, which is one of, if not the, most empirically thorough works arguing for the value of collective decision making procedures related to and including political random selection, makes note of virtually no controversion on these points which is either rooted in empirical political science or responding specifically to the body of evidence which Landemore expounds in her book. Landemore, *Supra* note 4.

¹⁸ Gastil & Wright, *supra* note 8 page 3-46; He, Baogang. "Deliberative participatory budgeting: A case study of Zeguo Town in China." *Public Administration and Development* 39.3 (2019): 144-153; Buchstein, Hubertus. "Democracy and lottery: Revisited." *Constellations* 26.3 (2019): 361-377; MacKenzie, Michael K. "A general-purpose, randomly selected chamber." *Institutions for future generations* (2016): 282-298 (The MacKenzie article is a particularly egregious example, where most of the article is spent arguing for why we ought to have bodies composed of random citizens because of their excellent decision-making, and then in a single sentence on page 11 "From a democratic perspective it is essential to ensure that the elected chamber has the final say" a proper random-citizen legislature is dismissed. The authorization requirement is alluded to but hardly discussed); Delannoi, Gil, Oliver Dowlen, and Peter Stone. *The lottery as a democratic institution*. Policy Inst., University of Dublin, Trinity College Dublin, 2013; Dahl, Robert A. *After the revolution?: authority in a good society*. Yale University Press, 1990 (see chapter 4).

representatives are not.¹⁹ The idea seems to be that political representatives must be authorized by their constituents in order to successfully politically represent them - and the nature of democracy requires that all citizens either sit in the legislative body or be represented in it.²⁰ Those who go without either are not being treated as equal citizens, and this is unacceptable. Through the process of election, the constituency as a collective (and perhaps also each individual constituent) has positively authorized the elected representative to politically represent the constituency. Likewise, through the process of election, the incumbent representative is held accountable because the constituency might withhold that authorization if the candidate fails to persuade the constituency that they have done a good job as a political representative. Both authorization and accountability then rely on giving the constituency the opportunity to approve or reject their political representative through election, and so by replacing election with random selection we are left with political representatives who are unauthorized and unaccountable.

This objection has serious defects, as it relies on a distorted picture of what political representation consists in. Chief among these defects is that it will prove impossible to demonstrate that the process of election actually counts as an authorization to legislate on behalf of the people (given that so many do not vote, and so many more do not vote for the winning candidate) without loosening the requirements of what 'authorization' consists in to such a degree that randomly selected legislators will count as authorized as well.²¹ However, it is by far

¹⁹ Most examples of arguments of this type are made rather off-handedly (*Ibid*). For a more thoroughly developed account, see Dahl, Robert Alan. *After the revolution?: authority in a good society*. Yale University Press, 1990. Page 122-5. Pettit also develops an account of this criticism rather thoroughly in Pettit, Philip N. "Representation, responsive and indicative." *Constellations* 17 (2010): 426-34.

²⁰ Hannah Pitkin discusses this view extensively in *The Concept of Representation*, albeit not in the context of political random selection. Pitkin, Hanna F. *The Concept of Representation*. University of California Press, 1967.

²¹ I plan to give this objection a far more detailed treatment in my dissertation.

the most frequently recited argument against political random selection, and accounts that give only instrumental reasons to prefer political random selection lack the resources to adequately respond to it because this objection has no force whatsoever in a pure instrumentalist framework.

The second and more compelling criticism of this type was first made by Christina Lafont in “Deliberation, Participation, and Democratic Legitimacy”.²² She argues that replacing elected legislators with randomly selected ones is attempting to take a ‘shortcut’ to deliberative democracy, which renders the beliefs of (the vast majority of) the public irrelevant in the legislative process. Instead of basing legislative decisions on what the whole public thinks (vicariously through elected legislators, which on her view are essentially proxies for their constituents) we base legislative decisions on what the deliberating mini-public thinks. A mini-public is a subset of the public which is a representative sample of the public, composed of particular randomly selected persons. Advocates for political random selection don’t understand the substitution of the public for a mini-public to be a problem because, given that we should expect the randomly selected legislators to be a representative sample of the public, its members will have all the same qualities relevant to legislating as the whole public in the same proportions. But according to Lafont, the bare fact that the mini-public deliberates while the whole public does not makes the mini-public normatively deficient as representatives of the whole public. This deliberation changes them from ‘indicative representatives’ in Philip Pettit’s terms,²³ or ‘mirror representatives’ in Hannah Pitkin’s terms,²⁴ - those who’s status as representatives comes from their resemblance to what they represent - into experts. If their

²² Lafont, Cristina. "Deliberation, participation, and democratic legitimacy: Should deliberative mini-publics shape public policy?." *Journal of political philosophy* 23.1 (2015): 40-63.

²³ Philip Pettit, “Representation, Responsive and Indicative,” *Constellations* 17 (2010): 426-37.

²⁴ Pitkin, *supra* note 20. See especially chapter 4. Page 60.

legitimacy as legislators is tied to their resemblance to the whole public, after deliberating they potentially resemble the public far less (especially if the deliberation changes the decision the legislature arrives at from what they would have done absent the deliberation). As a result, the randomly selected legislators are not importantly different from policy experts, and it would be wrong to empower a randomly selected legislature that deliberates for the same reason that it would be wrong to empower policy experts to make law directly: in some normatively important way it would fail to treat people as equal citizens. Lafont says that laws are only legitimate if they are justified to the public, and by only asking a small portion of the public to deliberate we are unacceptably asking the rest to ‘blindly defer’ to expert judgement.²⁵ With elected representatives, ideally, representatives must vote in-step with their constituents or be removed, and so will only vote differently from their constituents if they can successfully persuade those constituents that their vote was correct afterwards. Randomly selecting representatives is an attempt to take a shortcut that removes the need to move the whole public’s opinion on issues and for that reason is unacceptable.

Lafont’s criticism, at its centre, is about what democracy requires, and so a purely instrumental account of democracy’s value (where what, precisely, counts as democratic has little importance) cannot address it. Her characterization of the public as ‘blindly deferring’ to the randomly selected legislature is mistaken - that deference is based on the demonstration that, were it practicable for the whole public to have deliberated with each other in the manner that the deliberative mini-public has, it would have arrived at the same conclusion. Lafont explicitly grants for the sake of argument that it is indeed true that an ideally constituted mini-public does

²⁵ Lafont, *Supra* note 22. Page 48.

decide exactly as the whole public would have if they had deliberated.²⁶ So Lafont's criticism is really that whenever representatives vote differently on an issue than how the whole public would vote if the issue were put to a referendum, they have failed as representatives, and a randomly selected legislature is liable to do this often whereas an ideal elected legislature never would do so.²⁷ The only way to defeat Lafont's criticism is to defeat her contention that this is what democracy requires, and so a purely instrumental account has no resources to deal with this criticism because it places no value on a legislature being democratic as such.²⁸

No matter how compellingly the epistemic arguments for political random selection are made, they cannot answer these criticisms. These criticisms reject political random selection as undemocratic. It would be a mistake for advocates of political random selection to reject democratic theories which posit that democracy is valuable for its own sake in at least partial detachment from its consequences - and in the main advocates of political random selection thus far have avoided doing so.²⁹ But it is impossible for advocates of political random selection to remain agnostic about the nature and value of democracy if they wish to adequately respond to their most persuasive critics.

3. Equality-Based Theories

This paper will argue for the superiority of random selection to election on the basis of a conception of democracy's value grounded in the equality of persons. I've chosen this strategy for several reasons. First, both of the above criticisms of political random selection as

²⁶ *Ibid*, page 49.

²⁷ Except in cases where they could subsequently persuade the public that they acted correctly before their next opportunity to be ousted through election, as before discussed.

²⁸ I plan to give this objection a far more detailed treatment in my dissertation.

²⁹ See my early discussion of Landemore's weak instrumentalist commitments.

undemocratic import premises which are deeply rooted in the notion that the equality of persons imposes normative constraints on what kinds of institutions are acceptable. Second, because I find equality-based views the most compelling of the competing conceptions of democracy's value in the literature - however I shall only argue for this in a limited way in this paper. Third, because the case that political random selection is democratic is very easily made with views which ground democracy's value in claims about the equality of persons, however the principal figures arguing for this view do not seem to have realized this yet.

When I say an equality-based theory of democracy's value, I have in mind the sorts of proposals put forward by Thomas Christiano,³⁰ Niko Kolodny,³¹ Jaques Rancière,³² Charles Beitz,³³ and some other democratic theorists.³⁴ Equality-based theories, while quite diverse in many respects, share some central commitments and themes. Each is committed to these structural principles: (1) it is normatively required that citizens be (in some respect) treated equally by the state, and this puts constraints on what types of institutions and government conduct are normatively acceptable, and (2) these constraints require that states be governed democratically. The kinds of questions that are central in developing an account of the value of democracy based on the equality of persons are: in what sense ought citizens to be treated equally? Should they be treated equally in the process of decision making, or by the decisions

³⁰ Christiano, Thomas. *The rule of the many: Fundamental issues in democratic theory*. Routledge, 2018.

³¹ Kolodny, Niko. "Rule Over None I: What Justifies Democracy?." *Philosophy & Public Affairs* 42.3 (2014): 195-229.; Kolodny, Niko. "Rule over none II: social equality and the justification of democracy." *Philosophy & Public Affairs* 42.4 (2014): 287-336. Page 323.

³² Rancière, Jacques. *Hatred of democracy*. Verso Trade, 2014.

³³ Beitz, Charles R. *Political equality: An essay in democratic theory*. Princeton University Press, 1989.

³⁴ Many other democratic theories arguably fall into this camp, or have elements embedded into their democratic theories which commit them to some of the positions which I describe below. Of these, Robert Dahl and James Fishkin are particularly notable for the purposes of this paper.

that are made, or both? In the process of legislative decision-making, should citizens' interests, desires, or judgements be treated equally? Does democratic equality entitle citizens to have some other kind of equality between them maintained, such as equality of wealth, certain opportunities, social status, or symbolic affirmation of their personhood?

3a. Three ways equality could fail to require democracy

In order to succeed, equality-based theories must show why democracy is normatively superior to the alternatives, or required. There are three important ways in which equality-based theories are in danger of failing to demonstrate this, and this danger gives them the following three commitments.

First, equality-based theories need to be committed to an understanding of what equal treatment in the legislative process requires which gives citizens some kind of right to participate in that legislative process on equal terms. If they were not, equality would fail to require democracy. It cannot merely require that the output of the legislative process treat citizens' interests equally, because if it did aristocratic or monarchical institutional arrangements that give ordinary citizens no power in the legislative process can be justified so long as they secure some other kind of substantive equality between citizens. We can imagine, for example, a regime where a principled ascetic monarch crafted laws which ensured that citizens had equal rights and equal wealth. Whatever could be said in support of such a regime, it could not be said that it was democratic.

Secondly, as David Estlund argues, democratic theories based in equality need to be committed not only to equal influence in the political process for citizens, but also that citizens have a non-zero level of influence on the political process. Otherwise arbitrary procedures where citizens have no influence at all over the outcome, such as flipping a coin to make decisions,

cannot sensibly be rejected. After all, if no one has any influence over the outcome then everyone has equal influence over the outcome.³⁵

Third, democratic theories based in equality must explain why the value of equality is more than merely symbolic. If the value of equality is merely symbolic, it is difficult to see why equality should require democracy. By symbolic value, I mean the view that certain institutional arrangements are desirable or objectionable because their employment expresses some judgement or sentiment. Equality-based theories are in danger of claiming that certain institutional forms are insulting, demeaning or disparaging to certain citizens, or express negative judgements about certain citizens, without providing further reasons why these institutional forms are objectionable. The difficulty here is that, because signs and symbols are essentially flexible, it will be impossible to explain why democratic forms of government are the only non-insulting arrangements possible. What things count as badges of honour and equal citizenship are essentially social facts that do not have necessitated connections to democratic institutions, and historically have not always been connected to them in this way. This argument is developed in detail by Niko Kolodny in "Rule Over None I".³⁶

3b. Four plausible requirements of democratic equality

With all of this in mind, let's now examine some helpful insights from democratic theorists arguing for equality-based theories. My aim here is to introduce different conceptions of what democratic equality consists in and requires, in order to later (in section 6) demonstrate how political random selection does a better job answering to these requirements than election

³⁵ Estlund, David. *Democratic authority: A philosophical framework*. Princeton University Press, 2009. Page 66.

³⁶ Kolodny, Niko. "Rule Over None I: What Justifies Democracy?." *Philosophy & Public Affairs* 42.3 (2014): 195-229.

can. By democratic equality, I mean to refer to the institutionalized forms of equality that the equality of persons normatively requires, according to equality-based theories of democracy's value. Here I introduce four plausible requirements of democratic equality: **(1) the justification requirement:** democratic equality requires that the lawmaking procedure produce compelling justifications for the law that answer to each citizen's interests. **(2) The non-hierarchical requirement:** democratic equality requires that decisions be made in a non-hierarchical way that gives each citizen equal standing to contest the law & the authority of their rulers. **(3) The equal treatment of judgements requirement:** democratic equality requires that everyone's judgements about what the law ought to be are treated equally through the lawmaking procedure. **(4) The society of equals requirement:** democratic equality requires the compatibility of the legislative system with a society of equals. As you can see, these points are highly interrelated. Each of these four requirements on their own requires the process of legislating to be democratic, according to the theorists who posit them.

To begin, Jaques Rancière, in *Hatred of Democracy*, arrives at two insights pertinent to this discussion about democratic equality. First, the justification requirement described above. Democratic equality requires that rules and rulers be justified to those who are ruled. At first, this requirement might seem so elementary to democracy that its connection to equality is obscured. Rancière is illuminating on this point. For Rancière, the idea of providing a justification for a form of government, in the way in which political philosophers characteristically do, already presupposes a democratic element: that justifications must be based on reasons that are universal and not rooted in the advantages or cares particular to any class or person. This sort of universal justification has the same hold on everyone, and so in that regard, it treats them all equally. It isn't as though, for legitimacy, it would be enough to provide a justification that spoke to the

interests and judgement of some people, and to substitute naked force for justification to the rest. For Rancière, once we give up on the idea that might can be the justification for right, once we admit that the notion of political legitimacy and moral acceptability rely on universal ideas about justification in the face of which distinctions between persons are irrelevant, the seed of democracy has already been planted. While in fact, few regimes through history can sensibly be described as democracies, Rancière says that for the sake of stability all regimes contain this democratic element: the rulers justify themselves to the ruled.³⁷

The second important insight into the nature of democratic equality provided by Rancière corresponds to the non-hierarchical requirement described at the start of this section. Democratic equality requires decisions to be made in a distinctively non-hierarchical way. Rancière characterizes democracy as a system of government where *anyone* may rule. He rejects the idea that democracy is a system in which everyone rules, which he thinks is fanciful. Instead, the characteristic feature of democracy is that in a sphere of decision-making governed democratically, all authority is contestable and all inequality is questionable.³⁸ Power over others in this sphere does not come by some kind of right (in virtue of high birth, expertise, or property) but instead is a revokable privilege. In this ways, spheres of decision-making governed democratically are not hierarchical. For Rancière, these two understandings of what equality consist in undergird both why political authority ought to be democratic and what it means for political authority to be democratic.

In *The Rule of The Many*, Christiano highlights another facet of democratic equality which we ought to consider: the equal judgements requirement described at the beginning of this

³⁷ Rancière, Jacques. *Hatred of democracy*. Verso Trade, 2014. Page 51-71.

³⁸ *Ibid.*

section. Democratic equality requires that everyone's judgements about what the law ought to be are treated equally by the lawmaking procedure. Christiano's positive view begins with the premise that justice requires the equal treatment of people's interests. He argues that there is a special category of interests we have in the collective properties or features of society, and these interests can only be served through collectively binding law. Then he argues that because people's interests deserve equal consideration, we all need equal resources to affect the outcomes of collective decision-making and that democratic procedures are the embodiment of this equality of resources. One of his most insightful contributions is his examination of the differences between treating citizens' interests and judgements equally - whereas equal treatment of people's interests through the process of legislating would require equal votes for each person, equal treatment of their judgements would mean equal attention for each distinctive position rather than proportionate attention based on the position's number of supporters.³⁹ Per Christiano, it is ultimately the equal treatment of people's interests that explains why procedural democratic equality is required. However, democratic procedures are required to take people's judgements seriously and in some respects treat them equally because of several important interests that people share which require their judgements to be treated equally in collective decision-making procedures. Such as: an interest in having the right judgements, an interest in recognition, and an interest in not being alienated from society in a way that might be caused by having basic disagreements with their government about what is just.

In many ways, Niko Kolodny's project in "Rule over none I" and "Rule over none II" is highly similar to Christiano's. He begins with a robust critique of every explanation of the value of democracy that he can find and then articulates an equality-based account that is centred on a

³⁹ *Ibid*, page 53-6.

fundamental interest citizens share. This interest necessitates some form of procedural democratic equality. Kolodny explains his project as an attempt to “explicate what relations of social equality are, in a way that shows them to be something that we, with reason, care about”⁴⁰, followed by an attempt to “explain why and in what sense democracy is a particularly important constituent of a society marked by such relations.”⁴¹ Kolodny articulates a position centred around this conception of democratic equality: democratic equality requires a legislative system that is compatible with and promotes a society where people relate to one another as social equals, rather than social superiors and inferiors. This is the society of equals requirement, described at the start of this section. Kolodny’s positive argument is that we all find ourselves with a basic interest in avoiding relations of social inequality, and that a democratic government is an indispensable component of a society without social inequality, which would be ideal.⁴² As a result, there is an “equality constraint” on what kinds of institutions are acceptable. Equal influence over political decisions is constitutive of relations of social equality. It is an important fact about human beings that being made a social inferior is something we regard as an important harm, and that this is not reducible to the material harms which often come with it. Much has been said by republican democratic theorists such as Phillip Pettit and Ian Shapiro in support of similar claims about how we loathe relations that allow others to exercise arbitrary power over ourselves even where those that wield it are not inclined to do so maliciously. For Kolodny all sorts of claims that philosophers make about objectionable treatment, plausibly including

⁴⁰ Kolodny, Niko. "Rule over none II: social equality and the justification of democracy." *Philosophy & Public Affairs* 42.4 (2014): 287-336. Page 288.

⁴¹ *Ibid.*

⁴² Kolodny, *supra* note 36. Page 226.

paternalism, wealth inequality, and republican domination, can be explained in terms of their consisting in or propensity to bring about relations of social inequality.

I hope that the foregoing is useful as an overview of the kinds of claims that equality-based theories tend to make. On a structural level, we can see in the above that legislative procedural equality is valuable because it is an integral component of a valuable social project, and while what exactly this valuable project is takes on a different character depending on the theorist expounding it, common between all of them is that this project is valuable because the equality of persons normatively requires it.

The four important ideas about democratic equality which I have drawn from this analysis are: **(1) the justification requirement:** democratic equality requires that the lawmaking procedure produce compelling justifications for the law that answer to each citizen's interests. **(2) The non-hierarchical requirement:** democratic equality requires that decisions be made in a non-hierarchical way that gives each equal standing to contest the law & the authority of their rulers. **(3) The equal treatment of judgements requirement:** democratic equality requires that everyone's judgements about what the law ought to be are treated equally through the lawmaking procedure. **(4) The society of equals requirement:** democratic equality requires, as far as is possible, the compatibility of the legislative system with a society of equals. I shall return to these insights about what democracy requires for equality-based theories later, to demonstrate that political random selection is more democratic than election.

The insights above demonstrate an important contrast between equality-based theories on the one hand, and instrumental accounts accounts on the other. Where instrumental accounts aim to show that democracy is a valuable means that characteristically or necessarily advances some aim essentially distinct and separate from democratic procedures themselves, equality theorists

posit a deeper connection between democracy and the equality of persons. For Rancière, a conception of justification that implicitly relies on a commitment to equal treatment is an indispensable component of any stable government, and is the seed of democracy. To make any decision procedure democratic simply is to force the process to treat participants equally. In this way, for Rancière, treating persons equally is the same thing as democracy.

For Christiano the equality of persons requires that no one's interests be given greater weight than another's, and that people be given equal resources to discover and advocate for these interests through deliberation. For Kolodny, the heart of equal treatment lies in the treatment of one in relation to another, and so the concern that motivates our commitment to democracy is maintaining social equality. These theorists, Rancière possibly accepted, arrive at their conclusions not by asserting the abstract value of equality, but rather by examining how democracy could be normatively required and rejecting other accounts for failing to require democracy. Hence the close connection that they have posited: equal treatment is democracy. Because equal persons require equal treatment, equal persons require democracy.

I find the positive picture here painted for democratic equality compelling. The case made by these theorists that equality is robustly connected to democracy is well made. As far as explaining the "extraordinary grip of democracy on the modern political imagination",⁴³ these theories are a success. To say nothing about the merits of accounts that centre on the instrumental benefits of democracy or the connection between democracy and liberty, clearly equality matters in a democracy. Given this, democratic theorists ought to care deeply about determining what the equality of persons requires of our institutions.

4. Why Justifications for Election Based on Democratic Equality Fail

⁴³ I've borrowed this expression from Beitz. Beitz, Charles R. *Political equality: An essay in democratic theory*. Princeton University Press, 1989. Page 217-18.

In this section, I address two arguments attempting to justify election from the perspective of an equality-based theory, the first by Thomas Christiano, and the second by Niko Kolodny, and by way of arguing against these justifications, demonstrate why justifications for election which employ an equality-based theory of democracy's value, are doomed to fail generally.

From the perspective of the equality-based theorists, election is an odd match for democracy, most especially when compared with political random selection. Fundamentally, an election is a contest to decide which citizens are most worthy to rule. Election distributes incredibly important powers over the law in an uneven way (to some citizens and not others) on the basis of a judgement about the merit of those citizens to wield said powers. A system like this treats some citizens as more deserving than others of power over the law, which is *prima facie* antithetical to equality-based theories. It is true that under an idealized elective democracy, the power to decide who shall wield these powers is distributed equally among all citizens, however, democracy, as conceived of by equality-based theories, is not the rule of those determined by the people to be the most worthy - rather it is the rule of the people themselves.

If the equality of persons is the justification for democracy and the basis for the distribution of political power, even where we have important reasons to prefer that the work of legislating be done by a body much smaller than the whole population, there are no appropriate reasons for some citizens to be treated preferentially to others in the selection process. A fair procedure for the distribution of a benefit or burden which ought not to be distributed equally ("lumpy" benefits or burdens, as they are called),⁴⁴ and where there are no appropriate criteria for determining who shall receive more, is random selection and not election. Random selection is

⁴⁴ Stone, *supra* note 6. Page 49-50.

used to distribute scarce organ transplants, conscription, and jury duty, for this same reason.⁴⁵ On an individual level, political random selection is a fair way of distributing power among equal citizens - and so election must either be either an unfair way of treating equal citizens or a fair way of treating unequal citizens.

Furthermore, the legislators chosen by election must be different in some ways from the public as a whole. If this was not true, it would be difficult to make sense of the claim that legislators are selected on the basis of merit, which is the apparent purpose of selecting them by election as opposed to random selection or rotation. However, given the foregoing together with the fact that those elected have power over the law disproportionate to their share of the population, as an inevitable result of selection certain groups within society will have disproportionate power over the law. In this way, election gives the interests, perspectives, and capacity for judgement of some citizens more influence over the law than others, and treats them as more worthy of that influence. Weighting citizens unequally in these ways in the process of legislating again seems antithetical to the project of basing the justification for democracy on the equality of persons. I shall have more to say on all of these points towards the end of this paper.

Given the *prima facie* difficulties just reviewed, what arguments can we draw forth to explain why election is the right way to treat people equally in a democracy? Christiano and Kolodny both offer up justifications for election based on equal treatment, but neither of them are successful. The failures of these arguments are illustrative of why justifications for election rooted in equality-based theories of democracy's value will fail generally.

5a. Christiano's Justification for Election

⁴⁵ *Ibid*, see the above book generally for useful discussion of the appropriate uses of lotteries and the justification for such uses, particularly chapters 3-5.

Beginning with Christiano, I argue that he is able to successfully establish that the equality of persons requires equal influence for each citizen over the ends to be pursued through public policy, but his argument fails to establish that they must have an equal influence over who shall sit in the legislature, and thereby has failed to justify election.

To explain his argument for election I must first introduce some features of his ideal elective system. Per Christiano, justice requires the equal treatment of interests, some of our interests are deeply interdependent and so equal consideration of those interests requires equal political resources, and democratic decision-making is the embodiment of the equality of those resources.⁴⁶ In his idealized version of an elective democracy, through the process of electing their representatives citizens set the *ends* which the elected legislature ought to pursue, and the work of the legislators, once they are in office, is to deliberate with one another about the best *means* for the achievement of those ends and enact them. Elected legislators have a responsibility to respect the judgement of their constituents about the appropriate ends to pursue, and it would be a breach of their duty to their constituents to deliberate about these ends and change their mind about them if that affected the way they behaved in the legislature.⁴⁷ However, it is up to the elected representatives to find the best means through deliberation, negotiation, and compromise with other representatives, and if their judgement about the appropriate means is at odds with the conception that their constituents have then those constituents have no complaint against their representative.⁴⁸

Oddly, under Christiano's ideal system, both elections and elected representatives have a hybrid role. Elections serve both to funnel the most competent negotiators into the legislature,

⁴⁶ Christiano, *supra* note 30, page 59.

⁴⁷ *Ibid*, page 169-70.

⁴⁸ *Ibid*, page 170.

and as a process of public will formation for determining what political ends ought to be pursued.⁴⁹ During the election would-be representatives act as zealous advocates for one conception or another of what ends are worthy, and aid the citizens in the will formation process by giving them powerful arguments about what the right ends are and why they are worthy of attention from the incoming legislature.⁵⁰ But after the election, their job changes radically: they now concern themselves only with means and in fact, further discussion of ends in the legislature becomes a betrayal of their constituents.⁵¹

In a sense, Christiano's structure anticipates the worry that political equality is violated by having elected representatives count for far more in the legislative process than ordinary citizens. Everyone is entitled to an equal voice in the process of forming the ends that the government will pursue, and this is only done through the process of election. Legislators *qua* legislators have no role in that process at all, and they are duty-bound not to use their position of power in ways that undermine the equal voice of all citizens in the process of setting ends. In the ideal elective system, the process of electing members of the legislature is a super-referendum on all political issues, in the sense that it allows citizens to express all of their preferences and priorities through their decision about who shall sit in the legislature.

This proposal has problems, some of which are essentially practical and some of which are more closely related to the role of equality in Christiano's argument. Briefly on the practical side, saying that the metric for success in this system is the fidelity of elected representatives to the ends set by the public through a kind of plebiscite, and then insisting that the form this plebiscite take requires combining all political questions into one choice, and then having that

⁴⁹ *Ibid*, page 170-2.

⁵⁰ *Ibid*.

⁵¹ *Ibid*.

same plebiscite express a judgement about whom the most competent legislators to determine the means through which the public's ends should be pursued are, seems like a needless and wasteful consolidation. If a citizen prefers Party 1's policy on topic X, and another Party 2's policy on topic Y, a vote for a party will be a bad expression of their views on these topics and so it fails where separated plebiscites on those topics would succeed. Furthermore, if a citizen thinks Party 1 has better policies but Party 2 runs candidates who would be more skilled and faithful legislators, then regardless of which party they vote for the single plebiscite will fail to capture the views Christiano hopes to. There is no good reason to think that these individual distortions would be sanded down through the process of aggregation that Christiano proposes.⁵²

Even imagining that through a political scientist's masterstroke a single plebiscite could be designed which would capture and aggregate the policy preferences of each citizen (ends), and views of each citizen about who is best suited to choose the legal means for the realization of those ends, in a way that treated each citizen's input equally, there would be a further problem. Christiano has not explained why equality entitles citizens to have input in the process of determining who shall sit in the legislature. His process requires that citizens have equal input into the determination of ends - elected legislators are forbidden from deliberating about these ends once elected because that would destroy the political equality that exists between citizens

⁵² At least, Christiano makes no argument that preferences can be aggregated well by political parties in this way. Some, such as Schumpeter, have argued that political competition between parties is essential to democracy and valuable for instrumental reasons (Schumpeter, *supra* note 11). Urbinati, (Urbinati, Nadia. *Representative Democracy: Principles and Genealogy*. University of Chicago Press, 2006.), has a similar view to Christiano's and argues that parties, by encouraging the formation of political groups and identities and articulating different conceptions of the common good, are an essential component of the democratic process. Unlike Christiano her view does not depend on the idea that the voting system succeeds at aggregating the preferences of citizens on all issues in the way Christiano's view requires. In fact, there are good reasons to believe that this kind of aggregation is impossible. As William Riker argues in chapter 3 of *Liberalism Against Populism*, (Riker, William H. *Liberalism against populism*. San Francisco: WH Freeman, 1982.), even where the voting population's preferences among certain options can be aggregated in a way that treats each of them equally, restricting the options presented to them necessarily affects the outcome in an objectionable way which we should regard as relevant to Christiano's proposal.

and their representatives. But, by the same token, it is fine for the elected politicians to have a greater influence on the decision about the means than those who elect them - this is why they are expected to deliberate amongst themselves about the means. If this is the case the equality of persons cannot be the reason why citizens ought to have input into who shall sit in the legislature - all it requires is that citizens have an equal say in the plebiscite which sets the ends, and then the actual legislators could just as well be appointed by technocrats or a monarch. Though we have here been speaking about elected legislators the same argument applies to election for executive positions. Christiano would have to lean on an instrumental argument to show that the best way to discover the legislators most capable of realizing the public's ends is to have citizens identify them through a plebiscite. Without wishing to delve too deeply into the topic of what exactly political representation consists in here, because these legislators are only permitted to deliberate about means (to deliberate about ends would undermine political equality) they are not importantly different from the kinds of policy-making bureaucrats which real-world elected legislatures normally delegate regulative tasks to. Such bureaucrats do not need to be selected through a democratic process and are not political representatives of the public - we should think the same is true of Christiano's elected legislators.

Christiano's argument has successfully established that the equality of persons requires equal influence for each citizen over the ends to be pursued through public policy, but it has failed to establish that they must have an equal influence over who shall sit in the legislature, and thereby has failed to justify election. This is illustrative of a broader struggle that equality-based theories will have with justifying the institution of election: elected officials wield special powers over political processes that ordinary citizens do not, and without a special justification that cannot be provided for election, this is at odds with procedural equality. In order to demonstrate,

as Christiano wished to, that citizens have an equal influence over the law in an elective system, we need to minimize the role that elected representatives play in setting the ends pursued through public policy. Once we do that though, we're left without an explanation of why the power of citizens to decide who shall sit in the legislature is important for democratic equality - and this is of central importance under elective democracy. The role of an elected political representative cannot be reconciled with equal influence over the law for each citizen.

5b. Kolodny's Justification for Election

For Kolodny, democratic governance is an integral component of a society that does not have social inequality, both because it does not involve the creation of or entrenchment of a generalized social hierarchy where people relate to one another as inferiors and superiors, and because given that political authority is the final authority in a society, all other social hierarchy in the context of a democratic society is moderated by the fact that an egalitarian institution can limit and regulate it.⁵³ For Kolodny, we have a duty to avoid relations of social inequality. In his words

“insofar as we are to have ongoing social relations with other moral equals, we have reason to relate to them as social equals—that is, in a way that deliberately avoids whatever asymmetries in power, authority, and consideration would constitute relations of social superiority and inferiority, motivated by a concern to avoid these relations as such.”⁵⁴

Per Kolodny, in order for a government to be democratic in the way his view requires, two things must obtain. First, citizens need to have an equal opportunity to influence political decisions - if the opportunities were unequal then that would establish a social hierarchy between

⁵³ Kolodny, Niko. "Rule over none II: social equality and the justification of democracy." *Philosophy & Public Affairs* 42.4 (2014): 287-336. Page 303-7.

⁵⁴ *Ibid*, page 300.

citizens.⁵⁵ This obtains because, under a reasonably ideal elective system, every adult citizen has the right to run for office. Second, citizens must not be the social inferiors of their elected representatives. This obtains because, under a reasonably ideal elective system, political representatives and each of their constituents have an agent-principle relationship, and this can be a relationship between social equals. I argue that Kolodny fails to establish that either of these obtain under elective democracy.

Regarding the first condition: like Christiano, Kolodny's view seems to anticipate the criticism that the fact of unequal political influence between voters and their representatives undermines political equality. While it is true that under a reasonably idealized election-based democracy, people do have the opportunity to vote in elections, it is evidently untrue that people have an equal opportunity to achieve political office, in the sense of equal opportunity that Kolodny employs. In fact, under election the equal opportunity to influence political decisions is essentially impossible because even if voters were angels who ignored irrelevant and inappropriate considerations when casting their vote to decide which candidates to elect, voters would still make decisions on the basis of judgements about the merit of candidates. One might reasonably object at this point that with a conventional understanding of the meaning of equal opportunity, as long as our society is constituted such that people have the equal opportunity to achieve the kind of merit which is the basis of the voter's decisions about whom to elect, then all citizens do indeed have an equal opportunity to be elected. However, if this was all that political equal opportunity required, then we could, without any harm to democracy, apply broad restrictions on who is permitted to cast a vote. If we lived in an egalitarian society where everyone had the equal opportunity to become a tenured professor, and then restricted the voting

⁵⁵ *Ibid*, page 308-10.

franchise to tenured professors, it would still be the case that everyone had an equal opportunity to vote.⁵⁶ This is an absurd consequence. This problem stems from the fact that under an elective democracy, both elector and legislator are an office, and so that we allow citizens equal access to one office but unequal access to another (or at least, equality of a radically different kind) must mean that citizen's entitlements to access these offices are different, and if the basis of their entitlement to vote is their fundamental equality as persons than their fundamental equality as persons cannot at the same time explain their unequal access to political office.

Regarding the second condition: per Kolodny, elected legislators are not the social superiors of their constituents. His explanation is that the relationship of the citizenry to their representatives is one of delegation. This delegation does not create a social hierarchy with political representatives above their constituents because: representatives exercise powers that they acknowledge belong to "the principal" (that which they represent), these powers are exercised on behalf of the principal's interests, the representative exercises these powers under the direction of the principal's expressed will, the representative can be replaced if they displease the principal, and the principal chooses the representative's replacement.⁵⁷

I agree that, in a reasonably ideal elective democracy, as a representative relates to their principal, they can be a social equal. However, the principal of an elected representative is not any one of their constituents. I, as a constituent of my member of parliament, do not have the

⁵⁶ Here one might think to object that I am equivocating between the equal opportunity for enfranchisement and the equal opportunity to vote. I can see why this might immediately appear suspicious, however the distinction makes no difference here. If we object to this inference on the basis that, although in my hypothetical everyone would have an equal opportunity to become a tenured professor (by stipulation) it would not be the case that everyone had an equal opportunity to vote because in fact not everyone is a tenured professor, we might similarly object to the claim that even if everyone had an equal opportunity to earn a million dollars not everyone has the opportunity to spend that million dollars on a yacht because in fact not everyone has a million dollars. The conventional understanding of equal opportunity requires that equal opportunity to obtain some means is the same thing as equal opportunity to achieve some end which those means could be used to bring about.

⁵⁷ Kolodny, *supra* note 53, page 117-120.

power to remove my representative if her conduct displeases me (even at election time), nor does she act on my direction or always for the sake of my interests, nor does she exercise powers which she acknowledges belong to me (the power to vote in parliament doesn't belong to me!) Instead, the principal of a representative is their whole constituency. This should make an important difference to Kolodny, as in "Rule Over None I: What Justifies Democracy?" he rightly objects to the notion that citizens can be collectively in control of the government (a liberty-based account) in a way that we think should matter to individual citizens' liberty. In his words:

"I assume that the justification of democracy must rest on the interests or claims of individuals[...] it is obscure what individual interest is served by a collective's enjoying control. And, second, even assuming that some individual interest is served by a collective's enjoying control, it is not clear why the collective must be democratic."⁵⁸

If the justification for democracy must rest on the interests and claims of individuals and not collectives, how could we assert that an individual has equal status to their MP only because they are part of a collective which exercises control over that MP? While my representative relates to the collective of her constituency as an agent does to a principal, she does not relate to me in that way. She is exercising a kind of control over the laws which govern me that I cannot exercise, and enjoying a degree of power over political decision-making in my country far greater than my own.

This makes my member of parliament socially superior to me in Kolodny's sense - our relationship is characterized by an "asymmetr[y] in power, authority, and consideration [that constitutes] relations of social superiority and inferiority".⁵⁹ Surely no ordinary person living in

⁵⁸ Kolodny, *supra* note 36, page 209.

⁵⁹ *Ibid*, page 226.

an elective democracy today could reasonably claim that they have equal social standing to their president or prime minister, and this is not a contingent feature of our flawed elective democracies but an intrinsic element of elective representation. In elaboration on what social inequality consists in, Kolodny asks us to imagine a society administered by a class of ascetic warriors who deny themselves most of the comforts that the rest of us enjoy.⁶⁰ Per Kolodny, undeniably their power over us would make us their social inferiors, and because per my demonstration election makes no difference to these power relations for individuals, the same is true of our elected political representatives.

Again we see the general difficulty that equality-based theories will run into when attempting to justify election. Under elective democracy, citizens have two centrally important political rights: the right to vote, and the right to run for office. If citizens have an equal right to vote because they must have equal influence over the law, then justifying their unequal access to positions of power that confer greater influence over the law will prove impossible.

Throughout the history of political theory, until around the time of the American revolution, elections have been considered to be an aristocratic method of selection, rather than a democratic one. As Aristotle famously said, “[i]t is accepted as democratic when public offices are allocated by lot; and as oligarchic when they are filled by election.”⁶¹ Expressing the same sentiment in a far more modern context, when Rousseau advocated for the election of executive officers he referred to this as an aristocratic element of his form of government.⁶² The reason for this is that ideally constituted elections select office holders on the basis of merit, or in other words on the basis of their distinction from and superiority to ordinary citizens, rather than their

⁶⁰ Kolodny, *supra* note 53, page 294.

⁶¹ Aristotle, *Politics* 4.1294be.

⁶² Rousseau, Jean-Jaques. *The Social Contract*. Early Modern Texts, 2017. Page 35.

equivalence to them. The modern impulse in liberal political theory to re-conceptualize elected representatives as one and the same as “the people” and therefore their rule as the rule of “the people” represents a muting of our democratic ambitions. This is why equality-based theories fail to justify election: because elections do not treat citizens as equals.

6. Democratic Equality And Political Random Selection

In contrast to election, we can see that political random selection is the natural fit for equality-based theories. Let’s now reconsider the four plausible requirements of democratic equality which I had earlier mentioned, and compare political random selection to election in terms of the standards set by these ideas.

First, **the justification requirement**: democratic equality requires that the lawmaking procedure produce compelling justifications for the law that answer to each citizen’s interests. Here, an approximately ideally constituted elective democracy is a success. If elections were capable of disciplining politicians into producing compelling justifications for their decisions to their constituents on pain of removal from office (which perhaps they can be), then the process of legislation produces compelling justifications in terms of each citizens’ interests. Political random selection would do so as well, although by a more direct mechanism. While elected representatives are cajoled with institutional carrots and sticks into providing public justifications for their decisions, randomly selected representatives reason based on the public interest through the process of deliberation within the legislature. Each randomly selected representative has self-interested reasons to prefer some policies to others which correspond to the self-interested reasons of some fraction of the public, and the whole randomly selected legislature in aggregate has self-interested reasons which correspond to the self-interested reasons of the whole public,

because they are a representative sample of the whole public.⁶³ Furthermore, the process of deliberation requires citizens to give reasons that appeal not to their narrow private interest, but to the interests shared by the whole public.⁶⁴ The result of this deliberation is that the policies which are adopted will be supported by the reasons given through the deliberation, and those can easily be made available to the whole public by making these deliberations public in some way, perhaps by producing a report summarizing them. Furthermore, as before mentioned, the composition of the legislature and the process of its decision-making itself provides ordinary citizens with compelling reasons to believe that the decisions it arrives at are in the public interest, so long as bribery can be ruled out as an explanation for the decisions of the randomly selected legislators. Recently there has been abundant discussion by Philip Pettit among others of the problems associated with relying on monitoring to get powerful people (politicians, business leaders, high-level government bureaucrats) to behave properly as opposed to relying on selecting individuals who are intrinsically motivated to behave properly.⁶⁵ Political random selection is a powerful tool for selecting legislators who, as a group, are intrinsically motivated to serve the public interest, and this obviates the need for the complicated mechanisms employed (often unsuccessfully) to align the private interests of politicians with the interests of their constituents.

⁶³ Stone, *supra* note 6. Page 138-141.

⁶⁴ This is an important descriptive component of what deliberation is, but also an ideal which can be promoted by facilitators of deliberation through a variety of means. Landemore, *supra* note 4, see chapter 4 and 6; Goodin, Robert E., and Kai Spiekermann. *An epistemic theory of democracy*. "Discussion and Deliberation" Oxford University Press, 2018. Page 132-145; Carson, Lyn. "How to ensure deliberation within a sortition chamber", in *Legislature by lot: Transformative designs for deliberative governance*. Verso Books, 2019.

⁶⁵ Pettit, Philip. *Republicanism: a theory of freedom and government*. "Civilizing the Republic" Clarendon Press, 1997. Page 255, page 206-40. Mansbridge, Jane. "A contingency theory of accountability." in *The Oxford handbook of public accountability*. 2014; Bregman, Rutger. *Humankind: A hopeful history*. Bloomsbury Publishing, 2020. See chapter 13.

Second, **the non-hierarchical requirement:** democratic equality requires that decisions be made in a non-hierarchical way which gives each citizen equal standing to contest the law & the authority of their rulers. As we have seen, this is one area in which elections are doomed to fail. With an elected legislature, decisions are made in a way that does not give each citizen equal standing to contest the law. One might worry, at this point, that the real issue this principle has with election is not that representatives are being selected on the basis of merit, but rather that representatives are being selected at all. In order for decisions to be made non-hierarchically, how can any legislative system which involves political representation (including systems based on political random selection) make decisions non-hierarchically? In fact one might worry that this is an area where political random selection is worse: by substituting an equal vote in elections for an equal chance of sitting in the legislature, citizens have lost their equal standing to contest the authority of their rulers because, unlike elected representatives who must run for re-election, the authority of the randomly selected legislators is incontestable by ordinary citizens. However, this is a mistake that arises from conceiving of randomly selected legislators as rulers. First, the only reason why the authority of elected representatives appears contestable is because of their opportunity to run for re-election. If politicians made a habit of retiring after just one term of office, then they would be no more contestable in the above sense than randomly selected representatives.⁶⁶ Because we don't think politicians who plan to retire rather than run for re-election are deficient as representatives compared to those who do run for re-election, it would be silly to view this kind of contestability of legislators as foundational for democratic equality.

⁶⁶ It is true that depending on the exact institutional arrangements a randomly selected legislator may be eligible to be selected again, and may be eligible to be selected again to sit on the same body, however this is not relevant to the above comparison. It is hard to imagine that this re-appointment is anything but extremely unlikely, and further the randomly selected legislator's conduct doesn't affect their chance for re-appointment, so we should not think that it has any influence on their interests or incentives while legislating.

Second, and more importantly, the power of randomly selected legislators is so circumscribed that they are not rulers in the sense that we ought to be concerned with. When randomly selected and put into a single-issue legislature, they consider one issue,⁶⁷ and then disband. They have legislative power, but it is impossible to wield that power in a way that differentially affects the citizens and the body, for as soon as the body's members have altered the law they are no longer legislators. Notably, the feature of political random selection which is doing the work here is that those randomly selected sit in single-issue legislatures, and not the bare fact that they are randomly selected. Randomly selecting a dictator for life would pose a problem for democratic equality, and in fact, randomly selecting people to fill the exact same role as members of the Canadian parliament would pose a problem for democratic equality as well. However, it would be impracticable to combine a single-issue legislature structure with election, and even if it were possible the fact that we cannot expect a representative sample of the public to be selected by election would pose other problems for democratic equality.

So for randomly selected legislators, the problem of equal standing to contest the rulers in the legislature is solved by having no rulers in the legislature. As for equal standing to contest the law, each citizen has an equal chance of sitting in the legislature, which is more than can be said for an elective system. In comparison to some form of direct democracy, it is not at all obvious that an equal chance of affecting the outcome is any less good than an equal piece of the power to affect the outcome. It is true that when distributing a cake, the appropriate distributive principle is equal slices, whereas when distributing a kidney to equally worthy recipients,⁶⁸ the appropriate distributive principle is an equal chance. Distributing legislative power is more like

⁶⁷ That issue being either the agenda for the other single-issue legislatures, or the issue given to them by the agenda-setting assembly.

⁶⁸ Stone, *supra* note 6. Page 49-50.

distributing the kidney because there are important practical reasons to prefer a smaller legislature, but even putting those practical reasons aside distributing votes is unlike distributing cake because people value them for different reasons. A cake is pleasant to eat, whereas a vote is only valuable for the sake of bringing about one's desired outcome in the legislature. If we allowed everyone to vote on an issue, but instead of tallying the votes drew one vote out randomly and made our decision according to it, it is not obvious that the voters would be treated unfairly, unequally, or that they in any sense had different levels of power over the outcome (although of course there are strong epistemic reasons to prefer the tallying method).⁶⁹ For that same reason, we should not regard an equal chance to sit in the legislature as a deficient substitute for an equal vote in a referendum.

Third, **the equal treatment of judgements requirement:** democratic equality requires that everyone's judgements about what the law ought to be are treated equally through the lawmaking procedure. This is another area in which election, because of its foundational purposes and aims, falls short of the ideal. Elections select candidates on the basis of their merit as legislators. For my purposes here, what exactly merit consists in is unimportant. Elections are not meant to select mirror representatives, whose traits are near as possible an aggregation of the traits of their constituents.⁷⁰ Election would be a tool ill-suited to producing representatives of this kind in any case. Instead, elections are deployed to select those best suited to the task of legislating, and so legislators are selected on the basis of their difference from ordinary citizens rather than their similarities. A process that begins with the conception of some people as better suited to legislate than others, and then endows those people with powers over the law not

⁶⁹ I have in mind ideas like Condorcet's jury theorem. See: Goodin, Robert E., and Kai Spiekermann. *An epistemic theory of democracy*. Oxford University Press, 2018.

⁷⁰ Pitkin, *supra* note 20. See especially chapter 4. Page 60.

possessed by their fellow citizens on that basis, does not treat the judgements of all citizens about what the law ought to be equally. It may treat the judgement of all citizens on the question of who is best suited to be a legislator equally, but this is an essentially distinct question with far less relevance to democratic equality. By contrast, though political random selection does distribute greater powers to some citizens than others (the power to vote in the legislature), it does not distribute these powers on the basis of any criteria whatsoever. Every citizen is treated as equally worthy of wielding legislative powers as reflected in their equal chance to be vested with them. The judgement of each citizen is treated equally in the legislative process not only vicariously by the fact that each citizen is treated as equally worthy of wielding legislative power, but directly by the fact that, because the legislature constitutes a mini-public, we should expect that the aggregated public's perspectives, knowledge, style of reasoning, and any other constituent components of judgement that one might conceive of, are represented as well in the randomly selected body as it would be possible to represent them in a body of that size. To treat the judgement of all citizens as equal through the legislative process, we need mirror representation, and election can be counted on to avoid that outcome whereas political random selection is designed to produce it.

Fourth, **the society of equals requirement:** democratic equality requires the compatibility of the legislative system with a society of equals. Elections, as I have argued in my critique of Kolodny's justification above, create a social hierarchy with the elected on top and the represented below. Much of what can be said in defence of political random selection as a legislative system that does not create or entrench a social hierarchy I have already said above. Randomly selected representatives are preferable to elected ones precisely because they have no special qualifications above ordinary citizens to be selected, and furthermore these

representatives can exercise no power over ordinary citizens on an ongoing basis (those selected would deliberate about and take action on one issue, and then disband). Randomly selected legislators cannot wield their power to advance the interests of legislators as a class because as soon as they have taken legislative action they cease to be legislators. Perhaps it is not right to say that random selection by itself prevents a social hierarchy from forming, but rather random selection's equal treatment of citizens in the distribution of power, combined with the quick rotation of randomly selected legislators into and out of office and the circumscribed nature of their power, that does the work. However, it is clear that random selection makes this arrangement possible whereas election precludes it.

Democratic equality requires at least that all citizens be equal in the legislative process. A system like election, which evaluates citizens on their merits, and empowers some citizens to make the law on the basis of merit, cannot treat all citizens as equals in the legislative process. When political random selection empowers a citizen, it does so on the basis of their equal citizenship only. For this reason, political random selection better realizes the democratic ideals emphasized by equality-based theories of democracy's value.

7. Conclusion

Democracy has a special significance to us. This paper has worked to answer the question of what our commitment to living under a democratic government consists in, and what that commitment should mean for the legislative institutions that we choose to build. But it is worth briefly dwelling on the long history of that commitment. As previously noted, today the notion of democratic governance is so intimately tied to political legitimacy that even the most brazenly despotic regimes in the world feel the need to justify themselves with democratic rhetoric and aesthetics. North Korea, a *de facto* totalitarian monarchy, styles itself as a “democratic people’s

republic”, formally maintains the apparatus of elections, and even has multiple political parties represented in its Supreme People’s Assembly.⁷¹ Countries like the People’s Republic of China, while often overtly critical of western electoral democracy, through propaganda argue that their system of government is a truer and more perfect form of democracy. According to the communist party line, China’s system of governance is democratic because it features deliberative bodies, and because the party’s decisions are based on a benevolent love and concern for the welfare of the people.⁷² To the extent that these claims are true, these are democratic elements of the authoritarian regime; equivalently, these justifications answer to concerns people have when they demand democracy. If that was not the case, the democratic facade would be pointless.

While the exclusive pride of place democracy enjoys in our political rhetoric appears to be a post-second-world-war phenomenon, the feelings in the people that make these appeals compelling are as old as organized society itself. There is plenty of evidence that neolithic societies were organized democratically rather than despotically in the main,⁷³ and there are many historical examples of democratic assemblies in the ancient world before Athens.⁷⁴ In many ways Athens is a poor example of democracy in the ancient world because of the high proportion of Athenian residents who were excluded from full citizenship. However, because of how comparatively well-documented public life in Athens was, looking to it we can get a sense

⁷¹ *Encyclopaedia Britannica*, “North Korea - Government & Society.” Chicago: Encyclopaedia Britannica, 2009. <https://www.britannica.com/place/North-Korea/Government-and-society> (accessed December 15, 2020).

⁷² Kim, Jo. “Exploring China's New Narrative on Democracy.” *The Diplomat*, Diplomat Media Inc, 6 Dec. 2019, thediplomat.com/2019/12/exploring-chinas-new-narrative-on-democracy/.

⁷³ Bregman, *supra* note 65. See chapters 3-5.

⁷⁴ Keane, John. *The life and death of democracy*. Simon and Schuster, 2009. Page 3-4, 56-7, and 101-126.

of how citizens living under ancient democratic structures, conceived of the virtues of their government. In fact, they conceived of democracy's virtues in very familiar ways. In *First Democracy*, Paul Woodruff argues that the Athenians saw seven types of reasons to prefer their government: its ability to promote harmony, the rule of law, general education, and freedom, and its organization around the principles of natural equality, citizen wisdom, and public reasoning.⁷⁵ The citizens of Athens became so attached to this form of government that after their city was subjugated by Alexander the Great, Athenian democracy was restored by rebels five times over the next few centuries before despotism stuck.⁷⁶

Even in the midst of the crushing feudalism of the medieval Holy Roman Empire we can see the hegemony of democratic values among the masses. In 1525, there was a mass revolt among peasants throughout the Holy Roman Empire known as the German Peasants' War.⁷⁷ The revolt was against the ridiculous injustices of the feudal system and catalyzed by the religious unrest created by Martin Luther and other protestant reformers (however Martin Luther was a staunch opponent of the revolting peasants, and the revolts took place in areas under the control of both Catholic and Protestant rulers).⁷⁸ What I find fascinating about this scantily coordinated mass uprising was the uniformity of the peasant's demands about the institutions that needed to be abolished, combined with their uncertainty about what they needed to be replaced with. Peasants flocked to the banners of the revolt to fight against feudal domination and to abolish serfdom, but it is clear from, for example, the twelve articles drafted by the leaders of the revolt

⁷⁵ Woodruff, Paul. *First democracy: The challenge of an ancient idea*. Oxford University Press, 2006. Page 15-17.

⁷⁶ Keane, *supra* note 74, page 76-7.

⁷⁷ Engels, Friedrich, and Vic Schneierson. *The peasant war in Germany*. Available at <https://www.marxists.org/archive/marx/works/download/pdf/peasant-war-germany.pdf>.

⁷⁸ *Ibid*, page 33-4.

in Swabia, that there was little understanding of how the injustices they were facing could be redressed. The twelve articles called for, among other things, court reform and administrative reform without any indication of what those reforms should consist in, and that bishops in the catholic church be chosen by popular election.⁷⁹ Similarly, when the peasant rebels captured the city of Müehlhausen, the peasant leaders had few ideas for structural change. The city guaranteed food for the poor, and instituted universal suffrage for the election of Müehlhausen's pre-existing senate, but even as who was allowed to participate in the political structures of Müehlhausen changed, the conditions which gave rise to the hierarchy which placed peasants on the bottom were left largely in tact by the short-lived peasant reforms.⁸⁰

My point here is that the ideals behind democracy and the feelings that give rise to them have been a ubiquitous element of human life and culture, even where an understanding of what it would really take to live up to those ideals and address those feelings has been far away, as was the case for the peasants of medieval Swabia, the lucky few male free citizens of Athens, and anyone who fails to see through a democratic mask worn by an authoritarian regime today.

It is possible that staunch defenders of free and fair elections today are likewise mistaken about what their ideals require. To an ordinary person, the differences between the demands of different democratic theorists are not obvious. A government where no citizen is ruled over by another? A government where the citizens collectively rule? A government where the citizens share equal control over the law? These ideas seem so essentially interconnected that they can look synonymous. When we attempt to clarify our conception of democracy's value, we're attempting to find a common explanation for the same frustration and disaffection felt by

⁷⁹ *Ibid*, page 91-4.

⁸⁰ *Ibid*, page 78-80.

peasants in feudal Germany, or Athenians in Antigonid Greece, or people living with authoritarian structures today. That feeling is a hatred of being regarded as and treated as lesser, born from the sensation of one's equal worth. It is a frustration with the contradiction between the truth about our moral equality and a world organized around morally indefensible hierarchies. Elective democracy has been better than many other historical regime types in satisfying our demands for democracy, but under elected governments, our frustration persists.

Since the birth of mass democracies during the enlightenment, it has been clear to reformers that we need more democracy than our elections can provide, although there has been little unity of vision in what democratic reform should consist in. Today, the criticisms of elective legislatures employed by advocates for political random selection, such as the susceptibility of elected officials to control by the powerful,⁸¹ are highly saturated in public discourse about democracy. However, the solution to the problem with elections, political random selection, sadly is not yet. If we are going to satisfy our desire for more democracy - if we're going to live up to our democratic ideals and fulfil our moral duty to treat each other as equals, we will do so through political random selection.

⁸¹ Guerrero, *supra* note 7; Landemore, *supra* note 4.