

## RADICAL LOTTOCRACY, RATIONALLY RANDOMIZING DECISION-MAKING IN DEMOCRACY

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### ABSTRACT

This article informs theoretical debates about democratic legitimacy from policy process analysis. Building upon new institutionalism approaches to organized anarchies, this work navigates through democracy's normative groundings. Positive political process analysis supports a normative non-instrumental defense of democracy. In this context radical lottocracy, i.e. collective decision making by sortition, is presented as a rational decision-making rule for democratically concerned individuals. A couple of institutions are proposed: Public Policy Lottery (PPL) and the Constitutional Check Lottery (CCL). This institutional arrangement is not only consistent with the democratic ideal, but represents a radical normative commitment to it. This also comes with practical advantages against rent-seeking dynamics. Taking the lottocratic program to a radical embodiment of political equality and collective decision making opens the door to many practical and normative issues for traditional democratic theory and constitutional political economy programs.

### 1. Introduction

The belief that everyone should be entitled to equal access to political power and equal consideration of their interests in the process of shaping policy outcomes is central to modern society. It is not only a matter of popular belief, democratic institutions are theorized as a covenant that free individuals with concerns for political equality would choose when facing institutional choices. Democratic theorists and political economists have formulated the principles, incentives and mechanisms that are in place within such institutions and argue that, in some way, democracy as we know it is the best alternative to manage collective action problems. For others, however, different electoral rules and processes fall short to the democratic ideal of political equality. The gap between such democratic inputs and the actual policy outcome opens the door for deviations and special interests.

This article argues the analytical and practical advantages of the lottocratic alternative over other democratic policy making processes to deal with these problems. By lottocracy I mean the use of sortation to come up with political decisions regarding collective action, for example drawing lots as a legitimate and binding democratic process. Adopting random mechanisms as democratic inputs in the policy process diminishes the opportunity for special interests to capture democratic processes and provides a more radical form of political equality.

While traditionally considered as a way of introducing sortition to select electoral, deliberative or legislative bodies, I take the lottocratic agenda one step further and argue for an institutional arrangement in which the selection of public policies and collective action takes place by lottery mechanisms. Can random mechanisms be justified as a constitutional choice for policymaking? I think the answer is positive from within a democratic perspective. This justification can be derived from two sources. First as an alternative to representative decision-making rules that would reduce the scope for corruption and capture, without severe practical costs. Second, this mechanism represents a radical embodiment of democratic equality consistent with the intrinsic normative requirements of democracy.

To detail the argument for lottocratic policymaking mechanisms I analyze garbage can models of organizational behavior and their implications to public policy theory, highlighting ambiguity, incrementalism and feedback issues. I nourish those approaches with political economy's contributions about *special interests* and *rent seeking*. Then I turn towards the underling normative concerns and the trade-offs between different

democratic arrangements. In a third part I formulate the lottocratic argument looking for a more justifiable constitutional choice of game rules between equally free and democratically concerned individuals. A couple of institutions are proposed: the Public Policy Lottery (PPL) and the Constitutional Check Lottery (CCL).

## 2. Democratic collective action

The case for a representative government rests on the idea that interests and preferences of equally worth citizens can be aggregated in some way to come up with a social choice about the production of collective goods. For some, representative political systems enhance societies to find out truth or objectively valid policies to deal with social issues. However, political economy has been very useful in showing that cycles in preferences are not the only problem that deludes the illusion of this approach to policy making in democracy. Rent seeking and special interests, along with bounded rationality and systemic constraints help to explain why democracy has fallen short to the expectations. Even if we avoid romantic visions of democracy, *i.e.* assessing “political processes directly in terms of external normative criteria [...] independently of the values/preferences of the individual citizens” (Brennan 2012, 351-52)” representative systems cannot be responsive enough and good governance remains a distant reality (Guerrero 2014, 136-41).

To understand the institutional constraints that shape policy making in democratic states we shall first analyze some organizational characteristics of plural democracies. The multiple stream (Kingdon 2011; Zahariadis 2003) and incrementalism (Lindblom 1959) frameworks are useful in recognizing some of this constraints, mainly because of ambiguity and path dependence. They point out the failure of rational models (Lasswell 1938) as well as the systemic features that help to understand public policy outcomes. Their account of political organizations and its implications for choice within them are heavily influenced by the work of Cohen, March and Olsen (M. D. Cohen, March, y Olsen 1972a) in organizational theory, which I will expose now.

### 2.1. A Garbage Can Model, New Institutionalism and Path Dependence

The garbage can model was presented through a computer simulation that intended to provide a behavioral theory of what they called “organized anarchies”. This organizations are characterized by three general properties. First, it is “difficult to impute a set of preferences to the decision situation that satisfies the standard consistency requirements for a theory of choice”, this means that they have *problematic preferences* and thus operate over “a variety of inconsistent and ill-defined preferences”. Second they use *unclear technology* so “processes are not fully understood by its members”. Third there is *fluid participation* of its members. This last one means a couple of things: (1) that time and effort devoted by its members varies from one decision to another and (2) that “audiences and decision makers for any particular kind of choice change capriciously” (M. D. Cohen, March, y Olsen 1972a, 1).

Within this framework, organized anarchies “[are] a collection of choices looking for problems, issues and feelings looking for decision situations ... solutions looking for issues to which they might be the answer, and decision makers looking for work”. As for the how choices take place, one:

can view a choice opportunity as a garbage can into which various kinds of problems and solutions are dumped by participants as they are generated. The mix of garbage in a single can depends on the mix of garbage available, on the labels attached to the alternative cans, on what garbage is currently being produced, and on the speed with which garbage is collected and removed from the scene. (M. D. Cohen, March, y Olsen 1972a, 2)

There are three different kind of choices that take place within such organizations. First the (1) *resolution type of choice*. This type relates to referring some choices that actually resolve problems after some period of working on them. Second type is the (2) *oversight variant where* a choice is “activated when problems are attached to other choices and if there is energy available to make the new choice quickly, it will be made without any attention to existing problems and with a minimum of time and energy”. Finally, the third type is a (3) *flight decision type* where “choices are associated with problems (unsuccessfully) for some time until a choice more attractive to the problems comes along. [...] The decision resolves no problems; they having now attached themselves to a new choice.” (M. D. Cohen, March, y Olsen 1972a, 8)

The most important implications of their model to my argument are related to the lack of market price systems and bargaining, which are “two common processes for decision making in the absence of consensus” (M. D. Cohen, March, y Olsen 1972a, 1) and the idea that “[t]he behavioural and normative implications of a decision process which appears to make choices in large part by *flight* or by *oversight* must be examined”. Particularly the fact that “an increase in the net energy load of the system generally increases [...] the uses of flight and oversight.” (M. D. Cohen, March, y Olsen 1972a, 9)

Even if the initial focus was on higher education organizations, garbage can choice processes are “conspicuous of public, educational and illegitimate organizations” (M. D. Cohen, March, y Olsen 1972a, 1), and so, the garbage can model and the research agenda of new institutionalism to study government was developed over the next years (Olsen 2001). Without rejecting individual agency and interest in explaining institutional change, new institutionalism represented “an attempt to supplement ideas of consequential action, exogenous preferences, garbage cans, and efficient histories with ideas of rule and identity-based action, institutional robustness and inefficient histories”(James G. March 1998, 969). New institutionalism recognizes that contrary to perfect rationality explanations “history is inefficient and follow a meandering path affected by multiple equilibria and endogenous transformations of interests and resources”(James G. March 1998, 954).

The implications of this for constitutional political economy and the idea of having more justifiable basic rules of the socioeconomic-political game are important. As Brennan and Buchanan (Brennan y Buchanan 2000) point out, modern economists who argue directly or indirectly that institutional change somehow evolve in the most efficient direction are not only flawed but cause great damage. This brings about the need for a “conscious investment of effort” and what they label a “civic religion”. This article seeks to advance such an important task, but I shall return to the constitutional political economy of the lottocratic arrangement in the final part of it. To end the first part of my argument I will summarize part of the legacy of the garbage can model and its implications within policy process and institutional theory.

## 2.2. Incrementalism, Multiple Streams and Special Interests

The first to incorporate the garbage model into policy analysis was John W. Kingdon in his famous *Agendas, Alternatives and Public Policies* (Kingdon 2011). As the name suggests, he used the garbage can approach to point out how influential actors came to set the agenda and to specify the alternatives from which a choice is to be made (Kingdon 2011, 3). Building upon Charles E. Lindblom (1959) critiques of comprehensive rational decision making approaches (Kingdon 2011, 77-79), he recognizes that decision makers do not begin the considerations of programs and issues afresh, instead they “make small, incremental adjustments” over what they were already doing.

However, some changes in the agenda as such appear to be non-incremental (Kingdon 2011, 80) and thus he reaches out for the garbage can model to explain them, claiming that what he had observed in his research “seems similar in many of its major contours to the essential logic of their model” (Kingdon 2011, 84), particularly when it comes to federal government, where people:

disagree about what they want government to accomplish, and are often obliged to act [...] before defining their preferences [...] don't know how to accomplish what they want to accomplish [...] [and] some people take on an importance that is not commensurate with their formal role, and others are impotent despite considerable powers on paper. (Kingdon 2011, 85)

Kingdon's theory for agenda change contemplates the existence of different process streams (problem recognition, policy proposals and politics) that are “coupled at critical junctures” (Kingdon, 2011, p. 87) and bring about non-incremental change. This work gave birth to what is known as the Multiple Stream Framework which has been extended to a lot more issues and levels of government (Sabatier y Weible 2014, 41).

Nikolaos Zahariadis is one of the representatives of such approach. In *Ambiguity and choice in public policy* (Zahariadis 2003) he takes on the basic ideas of the garbage can model and Kingdon's streams to make a complete theory of public policy formation. He highlights the conditions of ambiguity, *i.e.* having different ways to think various phenomena, under which policy decisions are taken and stresses the importance of time sorting in the process (Zahariadis 2003, 3-4). The streams he puts forward are the construction of issues (problems), the pool of policies available (policy), and the contextual situations (politics). He argues that the

coupling of those streams opens “windows of opportunity” for political entrepreneurs to establish specific public policies. His aim is not to suggest that “choice is haphazard but rather to underscore the importance of context and politics”(Zahariadis 2003, 9).

Context matters, and we will probably be facing constraints related to some early decision that may have locked us over an inefficient path (Alchian 1959; North 1990, cap. 9). On the other side, politics will be most influenced by groups that are more able to face their collective action problems and conducted by legislatures and bureaucrats looking to advance their interest- either an egoistic or sociotropical conception of the right path to follow (Buchanan y Tullock 1999; Tullock 1993). This arguments share the same spirit of the new institutionalism of Cohen, March and Olsen.

I depicted a public policy process that is far away from what romantic ideas of democratic policy formation would expect. Far from being a process in which neutral and fully rational individuals come together to choose the most effective solution to social issues, the offspring's of the garbage can model present a picture where ambiguity, privileged actors and context determine the outcomes. Moreover, a history of inefficiency and multiple equilibria might constrain the possibility of choices in response to a lack of proper feedback mechanisms –due to the lack of market institutions within the coercive nature of state.

### 3. Democratic decision making

In this section I analyze the normative foundations of the main democratic justifications as they seek to inform the debate about democratic institutions and provide groundings for democratic edifications. In its more abstract form “[d]emocracy is best defined as a political system in which people have certain rights and obligations” (Plamenatz 1973, 39), however, this doesn't tell us much about the characteristics of such rights and obligations, nor their institutional meaning. After some initial considerations, I will side up with those who think that such rights and obligations “must be justified not on utilitarian<sup>1</sup> but on quite different grounds” (Plamenatz 1973, 39). This seems natural after debunking the “rational and democratically” guided policy making process in the first section. Some sort of egalitarian justification about political power is needed to arrive to a democratic shape of such rights and obligations. This justification is related to the idea of political equality, either through the institutionalization of direct or representative democracy, or in some cases, lottery mechanisms.

#### 3.1. II.I Instrumental and intrinsic justifications of democracy

When comparing democratic institutions with other forms of decision making in the organization of socio-economic and political life, two kinds of arguments have been pushed forward in its favour. Some argue that democracy is to be preferred because of its ability to produce better outcomes, this is as an *ends-oriented* or *instrumentalist* justification of democracy. Although not in an exclusive manner, some differences arise within them. One side thinks that by including all citizens in decision making “democracy is more likely than other forms of rule to protect and perhaps advance the interests of all members of society”. These are strategic arguments for the instrumental merits of democracy (Cristiano 2003, 7).

Richard Arneson is a paramount of such a view. He argues that “democratic procedures [...] should be evaluated according to the moral value of the outcomes they would be reasonably expected to produce”(Arneson 2003, 101). In his view the majority rule within a society where political power is universally spread (unlike monarchical or aristocratic rules of political participation) is a second best solution to avoid encroachment over individual rights (*Ibid*, p. 99). He argues that self-interested individuals, through majority rule, can in some way choose more lawmakers and governors that “have better than average moral competence”. This, along some sort of Constitutional constraint over them, can be expected to advance the interests of all members of the political community. This approach can be related to William Riker’s “economic” argument. After recognizing the impossibility of a social choice capable of embodying something as a “popular will”, he argues that liberal democracy (*i.e.* majority rule plus some kind of constitutional constraint) “almost guarantees some circulation of leadership so that great power is usually fleeting and no vested interest last forever” (Riker 2003, 191).

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<sup>1</sup> I consider all instrumentalist arguments to be consequentialist and thus utilitarian. This is perhaps not very refined as some argue for a distinction between them (Kaye 2014), but for the general argument this is not necessary.

The second type of instrumental justifications goes along the lines of what Christiano labels “epistemic considerations”. In a very Rousseauian way, David Estlund confers on majorities the capacity to get the right answers on the social questions. Through what he calls a “weak use” of the Condorcet Jury Theorem (voters are better than chance on getting a yes/no question correctly, and thus, majority rule renders the group’s decision virtually infallible) (Estlund 2003).

Both of these types of instrumental justifications are severely weakened by the positive analysis made on the first part of this article. However, Estlund’s argument calls for more than a mere aggregation procedure. In his view, deliberation is somehow needed to allow citizens to find out the correct answer. The same can be said about citizens having some level of rational calculation in Arneson’s account. This relates to a third strain of instrumentalist justification that talks about the promotion of morally relevant virtues in individuals through democracy and democratic participation (Mill 1977, vol. 19: Essays of Politics and Society Part II, cap. 2)

The instrumental “fostering of virtues” argument has in mind the citizens and not necessarily policy makers, and as such, it is not itself diminished by the positive analysis made at the beginning of this argument. Along the lines of the epistemic and fostering a certain type of citizen behavior arguments is the Hayekian argument that highlights the dynamic aspects of democracy as a “false beliefs” discovery procedure as superior to its political alternatives (Wohlgemuth 2002).

I am not sure whether or not this Austrian Public Choice proposal is more than a way to make the positive analysis more sophisticated. A focus “on knowledge creation and dissemination, entrepreneurial action, the role of institutions in stabilizing expectations, and much more” (Wohlgemuth 2002, 241) will indeed help to make more sense of the policy process procedure depicted in the first part. Wohlgemuth’s account of the Hayekian value of democracy prescribes two democratic edifications should be erected to bring democracy to its best dynamics: direct democracy and interjurisdictional competition. These two institutions would generate the best learning practices and educated citizens (p. 242).

However, recent research shows that even direct democratic institutions (which could be expected to foster these virtues the most because of the proximity of citizens to actual outcomes) do not make for better citizens (Voigt y Blume 2015). The interjurisdictional competition may actually be valid, as it makes choice in politics more close to preference satisfaction in markets by enabling “citizens to choose between sets of political alternatives on their own responsibility” (Wohlgemuth 2002, 242). But I don’t consider the argument as a justification of democracy itself, as much as a support for institutional markets. Within interjurisdictional competition, individuals may choose a political organization that may or may not include majority rules (direct or through representation) nor deliberation processes, like clubs with unanimity or administrative delegation rules.

Quite different groundings for democratic institutions are to be found in arguments about its *intrinsic value*. This accounts have to do with that which justice requires when we speak about free and equal individuals who join in a political community. Joshua Cohen speaks of “reasonable pluralism” to capture differences among autonomous individuals with incompatible understandings of value, to “shape the conception of citizens as free and equal” (J. Cohen 2003, 18). He argues for both, procedural and substantive accounts of democratic legitimacy, where depriving some of the right to participate in collective decision making is to treat them as inferiors and subordinate them to others” (Cristiano 2003, 8).

This respect to an equal value of individuals has been developed by other authors. Thomas Christiano’s egalitarian case for democracy defends what he calls an “interest in recognition”, the idea that “each person has an interest in being taken seriously by others. When an individual’s views are ignored or not given any weight, this undermines his or her sense of self-respect, in which each has a deep interest” (Christiano 1996, 59,72). By arguing in favour of an *equal consideration of interests* he takes distance from Peter Singer’s justification of democracy based on an *equal consideration of judgment* that led to some sort of compromise as the source of democratic legitimacy (Cristiano 2003, 42)

Democracy is thus justified because it “gives individuals equal abilities to advance their concerns when decisions concerning the terms of association are made [...] each person is provided with an equally weighted vote in deciding the outcome of an election” (Cristiano 2003, 45). He rejects interpretations of “equal consideration of interests” as *equality in well-being* and states that “justice [...] requires that each person’s interests be given equal consideration. This equal consideration of interests implies that individuals be given equal resources [...] this implies roughly that each ought to have an equal vote and other resources for participating in collective decision-making procedure”. Furthermore, Christiano argues, “each member of an egalitarian society has interest in his or her equal public status being manifest to him- or herself and to

everyone" (Cristiano 2003, 53). This *manifestness* of the equal public status can "arise as a consequence of the implementation of equality of resources. I can see if I have an equal vote with others" (Cristiano 2003, 53).

To this point the argument for democratic legitimacy is more or less clear: while it is not that easy to justify democratic policy making by its actual outcomes, equal consideration of interests has a strong case for adopting an egalitarian conception of political authority, and thus remain within the domains of democratic rule. However, democratic theory of governance needs to find the institutional form that respects such principle the most.<sup>2</sup> I shall address that issue now.

### 3.2. II.II Forms of democratic legitimacy

All forms of democratic theory depart from the idea that there has to be a collective decision making regarding the production or allocation of some collective goods or properties which affect the political community as a whole. As David Bentham stresses, the democratic answer to how such goods are to be produced and allocated necessarily refers to a couple of things: *popular control*, as the source of political power; and *political equality*, as the distributional principle for such power. The complementarity or conflictive nature of such components does not matter as much as the fact that we haven't come up to an institutional exposition of them.

Christiano puts forward a first element to take into account: majority rule. He claims majority rule is "genuinely egalitarian" as it gives everyone the chance to affect the outcome, and thus "each person's concerns are treated equally" (Cristiano 2003, 45). However there are at least two different paths to follow over this rule. The first one can be understood as a *universal and direct* participation, this means we should take into account the vote of the universe of enfranchised citizens to come up with a decision. This can be traced all the way back to Athenian democracy and the assembly of the people, where "some six thousand citizens came together into assembly thirty or forty times a year to make decisions about domestic and foreign policy" (Rosanallon 2008a, 195).

The reader may well argue that such an institutional alternative maybe attractive to small political communities, but not fitted for our complex modern societies. The amount of time required for such deliberation and voting process grows exponentially when we take into account the demographical and geographical characteristics of today (Dahl 2000, cap. 8). Historically, this institution was replaced with a second path: a *universal and indirect* participation mechanism. Representative government emerged as the dominant edification for modern democracy where citizens casted their votes not over the punctual issues, but over representatives trusted to transmit or interpret their preferences and interests. This path opens the door for a vast literature about which how institutions can or cannot bring about a good representation of such preferences and interests through different voting systems, as the First Past the Post (Blau 2004).

However there is another element for democratic decision making as old as democracy itself. It involves what can be considered to be a *selective and direct* mechanism, where by random selection, a group of citizens is trusted with the decision making. It still remains within the realms of democratic equal share of political power as everybody is eligible to be drawn out of the lottery. Even though it was considered more a judicial mechanism as the Athenian tribunal<sup>3</sup>, the lottery mechanism has been reformulated to fit modern democratic institutions. Claudio López Guerra (López-Guerra 2010) argues that lottery can be used to select an electoral body and still be acceptable for both intrinsic and instrumental approaches to democracy. The argument has been taken even further to argue for a lottery for erecting legislative or directive organs (Guerrero 2014), and has been defended on epistemic diversity groundings (Landemore 2013).

Democratic theorists have been busy providing a vast literature on how democratic rule can be justified. Even though the instrumental arguments fall short of their expectations given some positive analysis of policy making, egalitarian demands of distribution of political power and justice requirements for an equal consideration of interest are still strong. Before arguing for a compelling case for a democratic institutional choice within the tradition of constitutional political economy some broad contours of what this political equality actually looks like was needed. After a quick description now we have in front of us a set of choices

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<sup>2</sup> For a very interesting discussion about the instrumental/intrinsic dichotomy and the problems for any sort of democratic justification see (Kaye 2014).

<sup>3</sup> A universal and indirect mechanism of such judicial check on the democratic inputs can be found in the British High Court of Parliament.

that comprehend *universal* or *selective* forms of *direct* or *indirect* participation. In different political systems we actually find a mix of those forms, either across different areas, branches, or levels of government.

#### 4. CPE and the case for lottery

It is now time to tackle the question about the rationality of a constitutional choice that includes random allocation mechanisms. The main task now is to determine what decision making rule would be rationally expected from sophisticated and self-interested individuals that are informed by the discussion about public policy and democratic legitimacy presented so far. I will first frame the collective action dilemma for the provision of collective within the CPE literature. After a looking at the broad answer provided in *The Calculus of Consent* (Buchanan y Tullock 1999) I will argue that a random mechanism may be chosen over a majority rule mechanism and that it can be extended from electoral or legislative bodies to actual public policy outcomes through a Public Policy Lottery (PPL) and a Constitutional Check Lottery (CCL) which are *universal* and *direct* forms of participation.

##### 4.1. III.I Contractarianism and collective action

For democratic theorists the questions are already on the table. Collective decision makers have to “determine what actions do and do not constitute crimes [...] decide the rules that govern property [...] when contracts are free and fair [...] what contribution each person owes to collective enterprises [...] weather and in what cases the redistribution of income from some to others is legitimate [...]” and so on (Cristiano 2003, 4). Even for those who argue in favour of the concept of a restrained constitutional democracy, such chains on the democratic answers seem to be exogenously settled. The constitutional political economy program seeks to provide an analytical grounding for both, the scope of decisions (including the mechanisms to make them), as well as constitutional limits over them. It builds up on the idea that, in the end, such elements affect the interest of self-motivated individuals who accept such rules. As Buchanan and Tullock say it, we are concerned with “the problem of individual choice among collective decision-making rules”(1999).

Buchanan and Tullock put forward what they call a “costs approach” to an institutional choice in which a rational individual is willing to let go control over decisions that may or may not affect him for the sake of institutional optimality and the foreseen gains of such compromise. There are two components to calculate the costs that such an individual faces. On the one hand he has to deal with external costs; or more precisely, with reducing the “costs that private behaviour of other individuals [are] expected to impose on the individual decision-maker”(Buchanan y Tullock 1999, 51). Such external costs “may be said to be imposed on an individual when his net worth is reduced by the behaviour of another individual or group” (*Ibid*, p. 56).

The important thing to keep in mind is that such “reduction in net worth is not specifically recognized by the existing legal structure to be an expropriation of a defensible human or property right”, and thus the individual decision maker would be without recourse either to prevent the damage nor claiming compensation. As Buchanan and Tullock suggest, “it is the existence of such external costs that rationally explains the origin of either voluntarily organized, co-operative, contractual rearrangements or collective (governmental) activity”. This is why a utility maximizing individual may be willing to “support constitutional provisions that allow private decisions to be replaced by collective decisions” (*Ibid*)

This brings us to the second kind of cost taken into account: decision-making costs. It does not require much explanation to understand the fact than when more than one individual participates in collective decision making (and some kind of agreement is required) the time and effort which each individual will invest in discussing and reaching for consensus are going to grow as the number of decision makers expands. When decisions are made on an individual level, such costs are not present, or at least not in the way we are interested.

Now we have the whole picture of the incentives (costs) driving self-interested individuals faced with a choice about the rules of the social game. On the one side, given externalities that may not be captured by market transactions (or sanctions) within existing property rights, the decision-maker wants to submit some activities to the authority of a collective decision making body. This basically means that the collective is going to be able to restrict freedom of action or provide public goods which may impose costs on him. He will be interested in rules that require more people agreeing to the collective action, and therefore expect fewer decisions that “the individual expects to run contrary to his own desires”. He will look for more inclusive rules (in terms of the people needed to agree) of collective decision-making. On the other hand, he will look forward

exclusive rules (again, in terms of people required to agree) because of the increasing time and effort required to come up with such decisions.

The optimal institutional choice is going to be the one that minimizes such costs between the two extreme rules where nobody-but-one individual consent is required to undergo collective action, and everybody's consent is required. The answer is not straightforward as Buchanan and Tullock introduce distinctions between different kinds and levels of collective action. However, they argue, it can be expected that at least two different kind of rules may be adopted regarding the kind of decision being made. In one side, "those possible collective or public decisions which modify or restrict the structure of individual human or property rights [...] may impose very severe costs" (Buchanan y Tullock 1999, 58) on the individual. In such realm, unanimity rule (or not placing the decision on a collective sphere at all) seems to be an appropriate institutional choice because of the high costs that may be inflicted on him.

On the other side, he will support a shift of some activities to the collective sector. According to Buchanan and Tullock, such "collective activities may be defined broadly to include all of those most characteristically undertaken by government [...] [that if left to the] private organization will impose some interdependence cost on him, perhaps of significant amount" (*Ibid*, p. 59). For this kind of activities, the adoption of rules that become more distant from unanimity can more rationally expected. Now, what I want to argue is that, for all those decisions that under the *Calculus* provisions might be left to some simple majority rule, a random allocation rule to the "political exchange" may satisfy better the preferences of more sophisticated individuals<sup>4</sup>.

#### 4.2. Democratic rules, veto powers and the case for lottocracy

A very important implication for democratic theory that must be drawn out of Buchanan and Tullock's perspective is that "once the rule of unanimity is departed from, there seems to be nothing to distinguish sharply any one rule from any other [...] on a priori grounds there is nothing in the analysis that points to any uniqueness in the rule that requires a simple majority to be decisive" (*Ibid*, p. 65). They actually point out the fact that different kinds of rules most likely be adopted for different kinds of decision making processes. However, it is striking how current democratic institutions are mainly shaped by majority rules, from the election of representatives to the voting mechanisms of legislative, executive and judicial bodies. In this section I will present some of the advantages of the lottocratic alternative, this is, the use of sortation as a democratic mechanism. I will then suggest and defend the most radical embodiment of this institutional idea: a Public Policy Lottery.

Representativeness, *i.e.*, being responsive to the preferences of the individuals of a particular constituency, is thought to be achieved by democratic institutions (Barnard 2001). As Peter T. Leeson argues, when creating a constitution, sophisticated persons "may insist on including a provision that creates [...] the right to popularly depose existing agents of government and put new ones in place" (Lesson 2011, 306). But as Guerrero points out, this requires the ability of the constituency to hold their representatives *meaningfully accountable*. Two main issues arise: the impossibility of such "meaningful accountability" through electoral mechanisms is related to knowledge problems (Guerrero 2014, 140), furthermore, the logic of special interests groups and the capture of popularly elected agents cannot be stressed enough (Guerrero 2014, 142; Lesson 2011, 306).

What is lottocracy then? As stated before, the use of lottery mechanisms in politics is neither new nor entirely obsolete. They were part of the foundation of democratic institutions (Mulgan 1984), and there is still an important place for them in, for instance, judicial processes, (Rosanvallon 2008). Several theorists have insisted on the normative relation of democracy and lottery (Manin 2012), and have argued that the adoption of sortation in modern democracy has instrumental benefits that where expected from direct or deliberative democratic institutions (López-Guerra 2010; Landemore 2013).

With respect to the origins of sortition in ancient Greece, It has been argued that appointment by lot was a rational answer because the effort spent in choosing representatives was less than the benefit expected from their acting while on government. Tridimas argues that "since voting in elections requires that the citizen is informed about the issues involved in collective choice and the quality of the candidates for office, sortation

<sup>4</sup> This does not mean that such activities are rightly placed under governmental control. As a matter of clarification, I think that Buchanan's project has stronger groundings in its Nozickian view of PAE (Brennan 2012, 358), however such an interpretation requires an edification of institutions that goes through political liberty and not just political equality. The implications of this cannot be treated in this work where the main focus is in democratic public policy making. However, we should keep in mind that this systemic focus of PAE does not necessarily opens the door to a political obligation theory.

will be preferred when the expected marginal benefit from casting an informed vote is smaller than the marginal cost of being informed (Tridimas 2011). Normatively and “politically, the lot was an expression of the democrats’ belief that all citizens deserved an equal share in public honor and the rewards of office”(Mulgan 1984, 552)-

However, as we have already seen, this is only a minor part of the problem, even though citizens inform themselves, and make the "correct" decision among different political offers, there will still be the gap between that input and actual policy outcomes. I thus argue that sophisticated individuals could thus embrace instead a Public Policy Lottery (PPL) in which citizens propose public policies to be taken as collective action<sup>5</sup>, and a Constitutional Check Lottery (CCL). The idea of drawing lots as a democratic institution is taken here to its most radical expression: collective decision making directly through sortition.

Let us return to Guerrero and Leeson, capture by interest groups is related to the value attached to political positions, paradoxically the electoral mechanism which seems to be a rational institutional choice given the importance of political decisions exacerbates the problem. Interest groups will be more interested in helping their candidates to be elected, or having their proposals voted. Guerrero’s lottocratic alternative surely solves some of this problems. Capture cannot take place *ex ante*, and his mechanisms for decision making (such as the agenda setting, expert presentations and consultation/deliberation/drafting/voting (Guerrero 2014, 160-63)) reduce scope of manipulation.

Allan Lockard discusses how “how such a randomized decision mechanism can be expected to reduce the intensity of self-interested activity by rent-seeking factions within democracies” ( 2003, 435). He develops his argument along the lines of Buchanan and Tullock as he tackles the issue of rent seeking and the costs of “consensus”. He applies Tullock “efficient rent seeking” model and compares simple majority voting with proportional lottery decision mechanisms. He suggests that “institutional reforms that reduce the marginal return to rent-seeking expenditures should reduce rent seeking activities. One such reform would be the use of the lot in governmental decision making”(Lockard 2003, 441). By increasing the risk of the expected return into the calculations of rent-seekers, expected returns diminish and resources should be reallocated to productive activities. However, problems of constitutional self-enforcement and how different organizational capacity within the assembly may bias the outcomes are still present.

The lottocratic alternative provides no other influence mechanism that spreading a particular program to the population as a whole, since everybody’s input is equally valuable. Of course, it may be argued, this depends on whether participation in the lottery is equal. But this can be dealt either with compulsory participation or a realized self-interest of participating, even if it is only to be considered by interest groups while campaigning for their proposals.

Concerns for outcomes may lead individuals to favour lottery mechanisms for designating electoral or deliberative bodies (López-Guerra 2010). Indeed, it has been argued that random selection of representatives favours deliberation, cognitive diversity and democratic inclusiveness (Landemore 2013) But I have stated that our individuals facing institutional choices recognize each other as equal, and have democratic concerns from an intrinsic valuation. The lottocracy here proposed is a radical embodiment of political equality as a value in itself and not as a mean that can be sacrificed to produce a better outcome. And even if Guerrero’s alternative actually gives every individual an equal chance to belong to Single Issue Legislatures, it harms political equality in the sense of equality of authority when the ruler-subject relationship arises. It is normatively different to be, as an individual, part of a lottery that will result in some people deciding over others, than being part of a lottery where literally everyone’s interests are given the same consideration.

Regarding Christiano’s concern about the *manifestness* of political equality as an important part of democratic legitimacy, it is hard to conceive a more explicit way of acknowledging an equal consideration of citizens’ interests. Still, sophisticated individuals, as many democratic theorists, will argue that lottery, as any other democratic decision making mechanism, is not enough to safeguard the proper functioning of a society of equal and free individuals. Judicial bodies have to check decision making bodies, and rational individuals would agree on this institutional choice if they foresee possible encroachments by other groups (Weingast 1997). The introduction of randomness into this kind of bodies is not new, as lottery was used in ancient Greece to create juries to check upon assemblies and some legal systems still confer to juries the final word on trials.

Constitutional courts can be regarded as agents that protect citizens’ interests through constraining democratic outcomes (Sutter 1997), Their principals might as well prefer not to delegate such important task,

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<sup>5</sup> The form of such policy proposals may be limited to adopt a general form that respects the liberty and equality of citizens.

given the low number of decisions and costs of exercising veto. The introduction of a CCL lottery to sanction the outcomes of the first one gives unanimity a second chance within the decision process. If an individual considers that the outcome of the PPL transgress the accorded rules, let's say such policy implies treating a minority inhumanely, or its against his own interest, for example it introduces some sort of rent-seeking regulation, he will have a second stage where veto powers are equally distributed. Unanimity as the ideal of political equality is thus restated as an institutional consideration.

The PPL and CCL may look as a form of one-man rule, where anybody can authorize collective action or veto it. However, sophisticated individuals may choose to frame them as to expect an under provision of public policy rather than an over provision of such. Again, there could be provisions against rent-seeking or actions that would violate the idea of political equality itself.

Lottery mechanisms are better to deal with capture by special interests and establish political equality to propose collective action policies and to veto them. I intended to build up this institutional choice from within an intrinsic appreciation of democracy: with political equality as the normative cornerstone and with the constitutional political economy approach as the construction site of this institutional edification. However, some may argue that the judicial component and this idea of a constitutional check on the pure democratic process represent a republican element that does not necessarily belong in this political building.

If some sort of republican check upon the PPL can be defended merely on the grounds of political equality exceeds the capacity of this argument. A positive answer would have to make sense of this second chance for unanimity institutionalized in the CCL from within the political equality benchmark. Here I propose what could be considered a constraint on democracy, not out of a normative concern for individual liberty or republicanism, but as a result using the cost approach as the analytical toolkit and its stress on unanimity.

As a final word about costs, the current democratic decision making processes (legislatures, bureaucracy, etc) need a lot more of resources than this periodic lottery mechanisms. This social cost not only accounts for those amounts of resources being sucked into the public sector, but also includes the opportunity costs of all those resources spent by rent seekers. As the expected return of their activity decreases due to risk introduced by sortition, rent-seekers may find more attractive to engage in productive activities to advance their wellbeing, increasing the production possibility frontier (Lockard 2003).

## 5. Conclusions

I used notions of new institutionalism and garbage can models of public policy to inform the normative debate about democratic legitimacy. I argued that sophisticated individuals informed by such considerations, facing a constitutional choice, may adopt lottery mechanisms to deal with those issues they wish to leave outside unanimity. This, in turn, reinforces political equality as the base of democratic legitimacy.

Cohen, March and Olsen, call out for the necessity of additional concepts "in a normative theory of organizations dealing with organized anarchy". Mainly a "normative theory of intelligent decision making ... in situations in which goals are unclear or unknown" and "a normative theory of attention ... (since) decisions concerning the allocation of attention are prime ones" (M. D. Cohen, March, y Olsen 1972, 2). This articles provides something of that sort, taking into account ambiguity and timing issues within public policy theory, and withholding political equality demands from democratic aspirations.

I have presented this lottocratic alternative, the use of sortiton to define public policy, as an institutional principle that would be attractive to sophisticated individuals facing institutional choices. There are still lots of questions. How the CCL is going to act as a Constitutional check and not only to sanction one individual preferences on collective action? Would that be something to avoid? What other institutional arrangements would be adopted and how could they be self-enforcing? How will this affect citizens' attitudes? Should the PPL input must require to be formulated in some general way that specifies who is going to provide the resources and who is to benefit from them? How is this going to be self-enforceable and avoid capture of the agents of those institutions?

I thought of democratic concerns for political equality as the normative guideline for these sophisticated individuals, and the introduction of the constitutional check was a natural consequence of using the costs approach to political organization. But the extent in which the unanimity rule and the idea of veto are entirely democratic is not evident. Maybe the CCL is better articulated from within a more robust normative groundwork, like republicanism or liberalism. In practice, it took the judicial review some time to catch up with

electoral legitimacy and it still struggles now a day. So it could be argued that the normative concern for democracy should be instead an articulation of democratic forces within mixed forms of government.

The incorporation of other non-democratic concerns could be made more explicitly. If strong republican institutions are chosen along the PPL and CCL we could avoid even more those costs related to the violation of another political principle in the name of political equality. Consider a conservative power as a veto player that, for example, could regard illegitimate the result of a lottery result that would infringe upon individual liberty. This article looks to motivate a debate over how these questions can be solved and to what extent some less radical forms of lottocracy could be incorporated as rational institutional choices for democratic public policy provision.

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