

A Renaissance for Random Selection?¹

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Anthony Barnett and Peter Carty, *The Athenian Option: Radical Reform for the House of Lords*, 2nd edition (Imprint Academic, 2008), 124 pp., £25.00, ISBN 1845401409 (cloth).

Oliver Dowlen, *The Political Potential of Sortition: A Study of the Random Selection of Citizens for Public Office* (Imprint Academic, 2008), viii + 264 pp., £30.00, ISBN 1845401379 (cloth).

Thomas Gataker, *The Nature and Use of Lotteries*, 2nd edition, edited by Conall Boyle (Imprint Academic, 2008), xxiv + 231 pp., £17.95, ISBN 1845401174 (pbk).

Barbara Goodwin, *Justice by Lottery*, 2nd edition (Imprint Academic, 2005), viii + 269 pp., £17.95, ISBN 1845400259 (pbk).

Political decision-making by lot dates back to antiquity. But even in its heyday under the Athenian democracy of the fifth and fourth centuries BCE, this practice received little explicit theoretical defense. This intellectual neglect no doubt contributed to the decline of the practice, and for centuries it survived at the edges of political consciousness in institutions like the Anglo-American jury. Over the past forty years, however, the theory of

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decision-making by lot has been explored as never before. This exploration has been matched by experimentation, as reformers incorporate random selection into political processes in new and innovative ways. Witness, for example, the randomly-selected Citizens' Assemblies in British Columbia and Ontario, convened (unsuccessfully) to revise their respective provincial electoral systems. Political lotteries have finally begun to receive the theoretical attention they deserve. The result may prove to be a revival—even a Renaissance—for random selection in the political world.

In 2008, Imprint Academic launched a new series of books that promises to contribute to this revival. The series, entitled “The Luck of the Draw: Sortition and Public Policy” and edited by Barbara Goodwin, promises to explore “the use of randomisation in education, politics and other areas of public policy.” The establishment of this series provides a propitious occasion for evaluating the state of play regarding the political theory of random selection. What, if any, political decisions should be made by lot? And why? This essay will examine four of the inaugural titles in the series in order to see what light they shed on these questions.²

To say that political lotteries have received little theoretical attention is not to say that the theoretical world has entirely neglected them. The first book to explore the uses to which lotteries could be put appeared in 1619, with a second edition following in 1627. Authored by Puritan theologian Thomas Gataker, *Of the Nature and Use of Lots* created a scandal through its defense of recreational gambling. Out of print for centuries, the book now appears in a new edition edited by Conall Boyle. (Boyle has modernized the title, and much of the text itself.)³

2 The fifth title in the series combines two works under a single cover. The first is a reprinting of Ernest Callenbach and Michael Phillips' *A Citizen Legislature* (first published in 1985), which proposes the selection of the U.S. House of Representatives by lot. The second is entitled *A People's Parliament*. Authored by Imprint Academic publisher Keith Sutherland, this book is a revised and expanded version of Sutherland's *The Party's Over* (published by Imprint Academic in 2004). It perceives in random selection a solution to the partisan abuses of British politics. I contributed an introduction to the new edition of *A Citizen Legislature*; for this reason, I shall not consider the fifth title in the series here.

3 I discuss Boyle's treatment of Gataker in a review of *The Nature and Use of Lotteries*, *History of Political Thought*, volume 34, number 1 (Spring 2013): 172-175.

Gataker distinguishes between three types of lotteries—extraordinary lotteries, serious lotteries, and gambling lotteries (p. 31). An extraordinary lottery is used to appeal for divine guidance, as when Joshua cast lots to determine who had wrongfully retained some of the spoils of Jericho (Joshua 7:11; see p. 161). A gambling lottery, obviously, is used for amusement or recreation. Most of Gataker's book is taken up by his discussion of these two types. Gataker condemns at great length the use of extraordinary lotteries without explicit divine sanction. He also defends, at equally great length, the use of gambling lotteries, at least in moderation. (Despite his Puritanism, Gataker apparently did not consider pleasure to be inherently offensive.) Unfortunately, this means Gataker spends only 44 pages (out of a 202-page book) discussing his third category, serious lotteries—lotteries used for important secular purposes, such as allocating goods or filling public offices.

It is understandable that Gataker would spend so much time on extraordinary and gambling lotteries; his seventeenth-century, militantly Protestant audience was no doubt deeply interested in both God's relationship to the laws of nature and the sinfulness of card games. But most modern readers will readily admit both the legitimacy of tossing dice for small wagers and the illegitimacy of tossing dice to discern God's will. Of Gataker's three types of lotteries, it is the serious lottery that is most relevant to contemporary social affairs, and yet Gataker's discussion of this type is quite brief.

Gataker rests his defense of serious lotteries upon Proverbs 18:18—"The lot causeth contentions to cease and parteth between the mighty" (pp. 62-63; see also p. 82). It is for this reason that Gataker also refers to ordinary lotteries as "divisory" lotteries (p. 31). But there are two problems with this argument. First, if lotteries are effective at resolving contentions—disputes over social resources or political office, for example—it must be because the contending parties regard the lottery as acceptable. But why should they do this? To invoke the lottery's ability to settle disputes is to beg this question.

Second, Gataker effectively asserts that serious lotteries are justified only to the extent that they resolve social conflict. But the resolution of social conflict seems neither necessary nor sufficient for justifying resort to a lottery. At other points in *The Nature and Use of Lotteries*, Gataker acknowledges this fact. At one point, Gataker claims, "It is usual for matters to be put to the lottery by mutual consent, so in this case their own act justly con-

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cludes either side” (p. 105). So far, so good; if people consent to a social lottery, then surely social conflict will be avoided. But he also recognizes that while “in private affairs no man is bound to stand by the result of any lottery which he never consented to,” the law may certainly enforce some lottery schemes without first obtaining consent (p. 103). And there are times when consent is simply not enough; imagine a person who obtains an even chance of winning a kidney transplant even though he is much healthier than anyone else in the draw. “In some cases,” Gataker acknowledges, “It could be a sin for a man to retain something won in a lottery. May a man with good conscience retain a thing which was his brother’s by right, which the iniquity of the lottery had, *for quietness sake*, yielded to another” (emphasis added; p. 104)? Quietness may follow from lottery use, but ultimately it is the factors that produce quietness—the factors that justify lottery use—that matter, and not the quietness itself.

Gataker’s book occasionally hints at better answer as to what might justify a serious lottery. In one section, for example, he opposes the selection of political officials by lot without regard to fitness. “But,” he continues, “where the various competitors are judged equally fit...then however the lottery falls, it cannot alight on an unfit competitor.” And if a lottery is used to select between these equally-fit competitors, then “By this means they may all be quieted and someone picked out and pitched upon without disgrace to any of his competitors or discontentment to his friends” (p. 68). To evoke the prevention of discontentment as a reason for using lotteries is once again to beg the question. But to invoke lack of disgrace is to suggest that selection by lot treats the contending parties in a certain way, a way that is more desirable than many alternatives. This treatment involves a kind of equality between the parties involved. This explains why Gataker writes, “Concerning those matters of business where a lottery may lawfully be used the general precaution is that lotteries are only to be used when things are indifference one way or another” (p. 66). If there is no “indifference” involved—if the parties to the lottery are not relevantly equal—then the lottery becomes a means of ascertaining the superior party. And this makes the lottery an extraordinary one; God is being asked to indicate the superior party, and “Expecting any such thing is to presume more than God has promised” (pp. 74–75).

Unfortunately, Gataker never develops these hints further than these passages suggest. As a result, his argument is primarily of historical interest. His defense of the political use of lotteries is at best useful to modern readers as a starting point, albeit one that has been superseded by contemporary work.

Barbara Goodwin's *Justice by Lottery*—first published in 1992 but now revised and expanded—is similar to Gataker's in ambition, though her purview is somewhat more constrained. She devotes little attention to two of Gataker's categories—extraordinary and gambling lotteries—and focuses on serious lotteries. This is precisely the type of lottery most likely to interest the modern reader, and so this limitation makes perfect sense. Goodwin focuses particularly upon allocative lotteries, in which the decision to be made randomly is the allocation of social benefits and burdens. Allocative lotteries represent a method of deciding, in the immortal words of Harold Lasswell, who gets what, when, and how. This is a central—Lasswell thought *the* central—problem of politics, and so Goodwin's project is of great importance.

Goodwin considers the allocation by lot of a vast array of social benefits and burdens—from higher education to work in interesting professions to military service to scarce medical resources to homes in good neighborhoods. These examples are generally interesting in their own right. But Goodwin offers them in the course of a defense of what she calls the “lottery principle,” which she defines as “the principle of random selection or allocation” (p. vi).⁴ While she never clarifies or elaborates upon this (somewhat sketchy) definition, she does begin the book with a utopian fable about a futuristic society named Aleatoria. This society, which has replaced the United Kingdom, employs a Total Social Lottery (TSL) to allocate virtually all socially significant goods and bads. The motto of this society is “choice for trivial matters, but the lot for weighty ones” (p. 18). I therefore take the lottery principle to state that lotteries are almost always demanded by justice as a method of allocation, at least for goods that cannot be allocated equally to all. This principle places no limits upon the pool of potential recipients. If any good becomes available for distribution, then justice de-

4 The biologist George C. Williams created the term “lottery principle” in 1975 to serve a different purpose. Goodwin's use of the term is completely unrelated to his.

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mands that society throw every citizen's name into a hat and then identify the recipient by picking one out.

Stated this baldly, the lottery principle seems absurd. Even if it is appropriate to distribute, say, college admissions by lot, surely it makes sense to screen students first (based upon qualification or the like) when constituting the pool. Goodwin seems to recognize this absurdity, but her response to this recognition varies. Sometimes, she bites the bullet and accepts the more ludicrous consequences of the principle. Aleatoria, for example, employs military conscription in a manner unconstrained by age; its army thus contains "Lotsoldiers" in their 80s whose performance on the battlefield is often disastrous (p. 8). At other times, she embraces the legitimacy of some constraints upon the lottery principle. She admits that only "fanatics" would allocate scarce medical resources by lot, at least with a pool that includes both the sick and the healthy (p. 27). And yet in the end Goodwin seems to regard these concessions as dependent upon considerations exogenous to justice. Justice in its purest form, according to Goodwin, demands absolute equality of distribution. Every member of society should get the same amount of every social benefit and burden. This goal cannot be met whenever a good is both indivisible and scarce—and there will always be many such goods—and so a lottery giving every member of society an equal chance of receiving the good is the next best thing. Any deviation from this extreme egalitarianism—even for purposes such as group survival (p. 176)—requires trading off justice against other values.

Goodwin's defense of this extreme egalitarianism consists of two steps. The first is to defend two principles—the principle of absolute equality of distribution, and the lottery principle—as foundational to justice (ch. 3). The former is appropriate when goods can be divided easily; the latter is suitable for more "lumpy" scarce goods. This foundation establishes a presumption in favor of the two principles. The second is to condemn as unjust any deviation from these two principles that fails to rebut the presumption. And make no mistake—her standard for successful rebuttal is incredibly high. She concedes, for example, that justice might permit those more likely to benefit from medical treatment to receive such treatment in preference to those likely to die despite treatment. But she quickly takes back her concession in the following passage:

[I]t is perhaps hard to disagree...that a person who is sure to die in a few weeks should not be given a kidney transplant. But “innocent” and self-evident doctrines like this quickly lead us into trouble. What about the sixty-year-old man competing for the kidney with a twenty-year-old biker, who is actuarially likely to die in a road accident or to be maimed for life in the next few years? The cases where people should self-evidently not be treated as of equal worth shade quickly into highly debatable cases where the only just course of action is to treat them of equal worth. So perhaps, for the sake of justice, we...should instead make the stronger claim (pp. 176-177).

In other words, if there is ever any concrete situation in which we might reasonably have trouble distinguishing between people’s claims to goods, we ought to draw no distinctions whatsoever, and let absolute equality and the lottery principle reign. If the criminal justice system set the burden of proof this high, our prisons would literally be empty. I have trouble believing justice demands this.

Many of the examples of lottery use Goodwin considers are intriguing and well worth considering. These examples can easily be divorced from her lottery principle. One can believe, for example, not that kidney transplants ought to be allocated by lot, but that they ought to be allocated on the basis of need, with lotteries used to decide whenever need proves indeterminate. Goodwin’s book is best read for these thought-provoking examples, and not for her defense of the principle that she believes underlies them. It would be a mistake to allow the implausible extremes of her egalitarianism to overshadow these proposals. A just society may well make extensive use of lotteries even if it never considers adopting the TSL.

Goodwin’s lottery principle demands the allocation of all social goods by lot. Political office is one such good, and so Goodwin endorses *sortition*, the random selection of political officials.⁵ Oliver Dowlen also endorses this idea, but allocative justice is not central to his thinking. Dowlen’s book, *The Political Potential of Sortition*, has “the straightforward aim of identifying what benefits the random selection of political officers could bring to the politi-

5 The terminology employed in the literature varies. Many scholars use “sortition” as a synonym for random selection. Here, however, I shall confine my use of the term to the selection of *political officials* by lot.

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cal community” (p. 2). To accomplish this aim, Dowlen identifies the defining feature of a lottery—its “arationality,” or ability to make “a decision that is made neither by the human faculty of reason, nor by any other human faculty” (p. 12). He then examines a number of historical examples of sortition—examples from classical Athens, Renaissance Italy, 17th- and 18th-century England and America, and Revolutionary-era France. The purpose of this examination is to distinguish those examples where the arationality of lotteries made a positive contribution from those where this property accomplished little or nothing. In doing so, Dowlen hopes to draw lessons regarding the proper role of sortition in contemporary politics.

Dowlen believes that the historical record of sortition yields one particularly important conclusion. “The most significant and fundamental reason that lot is used in the selection of public officers,” he argues, “*is to inhibit the power that any individual or group of individuals might seek to exercise over that process of selection*” (Dowlen’s emphasis; p. 221). The arationality that all lotteries possess is ideally suited for this task. For if no human faculty can influence the selection process for a political official, then no political boss or strongman can take control of the political process by installing his minions in key positions. Granted, the lottery also precludes selection on the basis of merit, qualification, or popular approval, qualities considered highly desirable in the leaders of advanced technological societies. The lottery’s arationality keeps out both rational and irrational factors. But at times, this tradeoff might well be worthwhile. When it comes to selecting political leaders, one can do better than picking names out of the phonebook, but one can also do much worse.

There is much to be said for Dowlen’s case for sortition. The argument should be of particular importance to the cause of civic republicanism. Republicans, after all, have long admired sortition (both Machiavelli and Harrington were big fans), but without producing a clearly articulated defense of the practice. Dowlen has provided such a defense, relying upon assumptions that most civic republicans would readily accept. He presupposes, for example, that free societies are regularly threatened by the corrupt pursuit of personal or factional interest at the expense of the broader body politic. A well-functioning political system guards against this danger by keeping factions under control; once this is done, political office can be left to citizens educated to be impartial servants of the polity. While many of these

ideas are not explicitly spelled out in the book, I doubt that Dowlen would dispute any of them.

Dowlen may make an interesting case for sortition in theory,⁶ but his efforts to apply theory to historical practice are at times difficult to follow. He argues, for example, that the relationship between sortition and the democracy of classical Athens has been misunderstood. Sortition was not a “result” of Athens’ democratic revolution, he contends, but “a factor that contributed to its development.” Its contribution was to help prevent “*stasis* or internal fragmentation” in the newly developing democratic regime (p. 49). So far, so good. But what is the source of this potential fragmentation? To be sure, the average democrat might have feared the rise of a tyrant or oligarchy among the wealthy, and sortition would have been a very effective defense against this possibility. But while Dowlen recognizes this aristocratic threat (p. 51), he goes on to argue that sortition may have served the aristocracy’s needs as well. For

elections by the masses...might have resulted in the removal of loyal aristocrats—good public servants—from office. While lot would have operated against the power and influence of the older ruling caste in the longer term, in the short term it could also have been a means of retaining their participation. It would keep them in the political fold, and guarantee them equality of opportunity in exchange for compliance with the new system (p. 52).

It is unclear to me what aristocrats stood to gain from the use of sortition. True, they might have gotten lucky and gained political office by the luck of the draw, but with tens of thousands of eligible citizens, their prospects would have been pretty remote. It is difficult to believe that their prospects of winning elections would not have been substantially higher, in either the short or long run.

Dowlen further suggests that the lot possessed the ability to “moderate the excesses, or possible excesses, of the democrats themselves” (p. 60). But how could the lot have accomplished this? If some irrational passion were

6 I raise some questions regarding Dowlen’s theoretical conclusions in a review of *The Political Potential of Sortition*, *Philosophical Quarterly* 60 (2010): 664–666.

to grip a majority of the *demos*, then that same irrational passion would almost surely grip a majority of any large randomly-selected body. It might be that calm and rational deliberation—deliberation possible in a random subsample of the populace but not in the populace as a whole—could cool down these irrational passions. But then it would not be sortition responsible for curbing irrational excesses, but the reliance upon a smaller decision-making body.⁷ And yet Dowlen remains confident that sortition not only stabilized Athens, but contributed to its democracy. The randomly-selected Athenian jury, which enjoyed expanded powers after the restoration of democracy in 403 BCE, “can be understood as a lot-generated body defending democracy *from* the Assembly” (Dowlen’s emphasis; p. 54). Dowlen is clearly relying upon some understanding of democracy to make this argument work, but it is an understanding that unfortunately he never articulates clearly.

In the end, Dowlen’s study combines both theory and practice. It both lays out an explanation of what lotteries can contribute to political decision-making and examines historical examples of lotteries making, or failing to make, this contribution. The explanation makes a lot of sense, and the historical examples are well worth studying. But there is certainly more to be said about the relationship between the theory and the practice of sortition. Dowlen recognizes that his study is not definitive, and concludes his book by calling for further study of sortition (p. 232). One can echo this call while recognizing Dowlen’s substantial contribution to the enterprise.

The last book considered here, Anthony Barnett and Peter Carty’s *The Athenian Option*, is the most focused of the books under consideration.⁸ Barnett and Carty seek to break no new theoretical ground. Instead, they wish to defend a specific policy proposal involving sortition, a proposal they offer as a solution to one of Britain’s most difficult constitutional problems—the reform of the House of Lords. Barnett and Carty would replace

7 Some Athenian offices filled by sortition had more stringent qualifications (such as a higher minimum age) than were needed to vote in the popular assembly. Again, if these offices moderated the excesses of the assembly, it was surely these qualifying factors, and not sortition, that produced this effect.

8 The book originally appeared as a pamphlet published by Demos, a think tank that advocates increased democratic participation. The Imprint Academic edition contains substantial new material.

the Lords with a new upper house composed of Peers in Parliament (PPs). This house would be selected by lot, with stratification employed to ensure proportionality with respect to gender and place of residence (p. 39).⁹

Changes in responsibility for the upper house would accompany the change in selection procedure. The new body of PPs would play no role in drafting legislation; this duty, the authors acknowledge, is best carried on by professional politicians and bureaucrats. Instead, the upper house would be empowered to 1) “reject legislation that undermines the principles of constitutional democracy;” 2) “return non-fiscal legislation that it believes will not achieve the objectives the government claims and to insist that the government reformulates either its aims or its legislation;” and 3) “insist that legislation be drafted in a way that citizens can understand” (p. 37). Such a body would not be intended as a rival to the House of Commons. As Barnett and Carty put it,

If an upper chamber were given or gained considerable new powers to legislate, or to delay financial legislation, or to prevent the passage of regular legislation, then it could act as a competitor to the House of Commons. Such an outcome is likely to be destructive. The American experience shows how competition between arms of the legislature can result in gridlock that then encourages covert and corrupt practices (p. 29).

Instead, the new upper house would be designed to “*strengthen* an elected House of Commons, to help it propose laws in clear and readable English, that are scrutinised to assess both this and whether they will achieve what they are intended to do” (Barnett and Carty’s emphasis; pp. 79–80). The demands of the PPs could save the lower house, both from its own

⁹ Randomly-selected PPs would serve for four years in the new upper house, during which time they would serve on various legislative committees. Each bill proposed by the House of Commons (which would remain unchanged) would require the selection of a new committee. Alternatively, a new randomly-selected committee could be selected from the entire population for each new bill, thus eliminating any need for an upper house (p. 45). Barnett and Carty are not wedded to either specific institutional formulation. Rather, they call for critically-informed “experimentation” using PPs in order to identify the best working arrangement (p. 38).

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mistakes and from the unreasonable demands of the executive.

Barnett and Carty display a keen grasp of the comparative advantages of amateur (randomly-selected) versus professional (elected) decision-making bodies. Their proposal seeks to exploit these comparative advantages so as to produce a new system of checks and balances. This new system is needed because the old system has gone so badly awry. It is hard not to sympathize with what they say. As an American, I am particularly intrigued by the idea of a body of ordinary citizens demanding that the laws of the land be readable. The health care reform bill enacted by the Obama administration is quite tortuously worded at times, laden with bureaucratic jargon and opaque references to other bills. Alternative bills considered at the same time were similarly very difficult to follow. (The ever-marginalized “single-payer” option was a partial exception.) While there is no excuse for the various lies put forth by the Right about “death panels” eager to euthanize grandparents at will, I cannot help but think that such lies would have gained less traction if these bills were easily understood by laypeople.

None of Britain’s political parties have taken up Barnett and Carty’s call for the “Athenian option.” There are no doubt many illegitimate reasons for this lack of interest, not least of which is the interest Labour, the Tories, and even the Liberals share in maintaining the supremacy of party government (which in effect means government by one party’s inner circle). But there are also legitimate reasons why this and other pro-lottery proposals remain out of the limelight. These include including modernity’s lack of experience with random selection as well as the undeveloped nature of the theory supporting it. But both of these facts, as I noted at the very start, are changing, and the theory and practice of selection by lot are now advancing in tandem like never before. The results thus far have been promising on both fronts. There is no reason to expect this progress to cease any time soon, particularly now that research concerned with lotteries has a natural place to call “home.”