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The Case for Sortition: Tackling the Limitations of Democracy in South Africa

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ABSTRACT
This article considers how the erosion of democracy in South Africa since 1994 might be addressed through sortition, the random selection of citizens to perform public tasks. Drawing upon the recent essay outlining the case Against Elections by David Van Reybrouck [(2016). *Against Elections: The Case for Democracy*. London: Bodley Head], which paints liberal democracy as facilitating rule by elites, it argues for the appointment of sortition panels to consider reform of the electoral system. Sortition in South Africa could draw upon streams of participatory democracy experienced during the struggle against apartheid, and lead towards a more deliberative democracy.

Introduction

In his critique of how liberal democracy has functioned in South Africa, Kenneth Good (2002) has argued that it has entrenched largely unaccountable rule by political and economic elites, and in so doing has reinforced alliances between a nascent black bourgeoisie with large-scale capital. Controlling elites, he argues, is at the heart of popular democracy – yet this has proved extremely hard to achieve within modern liberal capitalist polities. In short, liberal democracy has limited democracy for the masses. In response, he proposes the need for a more participatory democracy.

Good (2002, 191) looks back to Athens as having devised 'institutional arrangements which empowered worker-citizens and simultaneously restricted the power of elites of wealth, status and education'. He then goes on to argue that many such Athenian principles were characteristic of the participatory democracy pursued in popular struggles in South Africa during the latter years of apartheid. Most particularly, he cites the Congress of South African Trade Unions and the United Democratic Front as having embodied demands for popular self-determination, control of elites, collective leadership periodically elected and re-callable, leadership governed by mandates and the obligation to report back to membership, and the need for self-criticism of and by the leadership. Their vision of democracy, he insists, was intended to go far beyond the installation of 'mere majoritarian parliamentary rule' (Good 2002, 193). Further, their history, underpinned by key structural-organisational factors (notably the development of the largest and most organised working class on the African continent), points the way to a more democratic South Africa. Nowhere else in Africa, he argues, is there the same capacity for resistance to elite autocracy.

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Good's disillusionment with South African democracy is widely shared. Many would argue that the quality of democracy has deteriorated markedly since the heady days of the Mandela presidency (1994–1999) when the popular trust in the country's institutions and rulers was still high. During this period, parliament, acting as a Constituent Assembly, finalised a widely praised new constitution which confirmed South Africa not merely as a democracy, but as a constitutional state, that is one in which the constitution (and not parliament) was the ultimate sovereign. This was an interlude which made the overwhelming majority of South Africans feel proud. Since then, however, a sense that the quality of democracy has deteriorated has become widespread, various commentaries suggesting that authoritarian tendencies began to develop under the presidency of Thabo Mbeki (1999–2008) before the pace of decline developed into a gallop after Jacob Zuma succeeded him in 2009.[1]

Suffice it to say that Zuma's presidency has been characterised by perpetual scandals, extensive corruption, and political assaults by the ruling African National Congress (ANC) upon the independence of the public service and other public bodies, allowing the state to be 'captured' by external forces intent on looting public resources. Meanwhile, the ANC has become the site of vicious faction-fighting, with its popularity and prestige having suffered a rapid decline (Booysen 2015). Unsurprisingly, its electoral support has plummeted, as has popular enthusiasm for participating in elections (Schulz-Herzenberg 2014).[2] In contrast, popular protest has rocketed, with constant demonstrations by poorer citizens over poor 'service delivery' at local government level (TMG Digital 2016), while during 2016, the universities became sites of often vicious clashes between students and police, as the former demanded 'transformation' and free higher education. It is not for nothing that sociologist Karl Von Holdt (2013) has characterised South Africa as a 'violent democracy' – one in which many citizens view the use of violence as a legitimate form of expression. In short, democracy in South Africa is increasingly viewed as being 'at risk' (Southall 2014a) within a wider region where the promises of a post-independence, 1990s 'wave of democracy' have been largely confounded, and where, despite many elections, dictatorships have either survived (notably in Zimbabwe) or multi-party competition seems to have ushered in chronic political instability (as in Lesotho) rather than 'democratic consolidation' (Bogaards and Elischer 2016).

Various reasons are proffered as to why democracy in South Africa (and elsewhere within the wider region) has become so increasingly compromised. These include the authoritarian legacies of apartheid and colonialism (e.g. Good 2002); the persistence of numerous social characteristics (notably widespread illiteracy, low levels of education, pervasive poverty and massive inequality) which detract from a democratic political culture (Lane and Errson 1997); and the ambiguous legacies (simultaneously democratic and authoritarian) of the liberation movements which have moved into power (Southall 2013). There are also suggestions, broached more in the popular media than amongst academia, that somehow democracy is too advanced a system for African countries, where political loyalties are constructed around ethnicity or tribalism rather than any 'modern' political sentiments (this, of course, a mantra that goes far back to colonial times). However, perhaps the most widely espoused explanations for the democratic deficits which characterise the region are, first, the limitations of 'electoral democracy', which suggest that Western-style elections have been inappropriately imported into societies where they simply don't 'fit' (Adetula 2011; Uwizeyimane 2012); and second, that these

imported electoral systems have given rise to, or have entrenched, 'dominant parties' which have effectively imposed de facto one-party states. These are said to narrow democratic activity to the extent that some states, notably Zimbabwe, have become exemplars of 'electoral authoritarianism' (De Jager and Du Toit 2013).

It is widely argued that the erosion of democracy in South Africa is a consequence of its adoption of national list system of proportional representation (PR). Critics argues that in practice this deprives elected members of parliament (MPs) of any autonomy, makes them accountable to party bosses rather than the electorate (because parties have the right to remove MPs from parliament at will), and deprives voters of any direct link to elected representatives (De Vos 2017; Hoffman 2017). Given these perceived deficiencies, there are regular calls for a reform of the electoral system. However, radical critics like Good go further, putting forward the case for a more 'deliberative' or 'participatory' democracy which would go well beyond a simple change in electoral rules.

Good's analysis can be faulted for his romanticism and nostalgia, and while it is hard to disagree with his assertions that liberal democracy struggles to control capitalist elites, it remains important to recall that contemporary democracies continue to preserve important civil liberties, as well as allowing significant degrees of political choice. However, what is of most concern here is that he fails to provide concrete suggestions for rendering participatory democracy practical in post-apartheid conditions. It is well and good to call for a more participatory democracy – yet how is that demand to be carried through? What changes to the constitution would be required? Above all, his plea poses the classic question of how, in practice, participatory practices can be maintained *within* liberal democracy. After all, a standard justification for representative democracy is that Athenian style democracy is impracticable in large and complex industrial societies. How then, in practice, can democracy be made more participatory?

It is argued here that a partial answer may be provided by the introduction of sortition. The inspiration behind this has been provided by David van Reybrouck's influential treatise *Against Elections: The Case for Democracy*. In this, the author challenges many of the assumptions which have guided the construction of liberal democracies throughout the modern world, outlines how democracies have been hi-jacked by elites, and how the ills of democracy may be addressed through sortition.

The decline of democracy

The successful functioning of democracy, argues Van Reybrouck, requires both legitimacy (the trust and respect of its citizens) and efficiency (the capacity to implement decisions). Following the challenges made to democracy between the two world wars by fascism and communism, liberal democracy came into its own during the 1950s and 1960s. Participation in elections was high; political parties enjoyed extensive membership; and democracy seemed to 'work', in much of Europe delivering a welfare state. However, recent decades have seen the growth of 'democratic fatigue'. There is declining trust in democracy, less trust in political parties, little respect for politicians, fewer people are voting, and as the welfare state gets steadily whittled away, democracy seems to work more in favour of the few than the many. So even though democracy may be the 'least worst' political system, the esteem in which it is held is falling. Hence, today, we see the steady rise of populism, mainly of the right-wing varieties (Donald Trump, Brexit etc.) but not to the

exclusion of left-wing examples (Syriza in Greece) in the Americas and Europe. For all its faults, Van Reybrouck views the populist upsurge as a demand for increased popular representation in place of de facto domination of modern societies by privileged elites.

Van Reybrouck holds 'electoral-representative democracy' responsible for the declining prestige of democracy. There has been too much emphasis, he asserts, upon 'electoral fundamentalism', with the words 'elections' and 'democracy' having now become virtually synonymous. This demand is summed up in the term 'free and fair elections'. If democracy is not working, proclaim the electoral fundamentalists, then more and better elections are required to enhance popular participation. Similarly, elections are touted as the cure-all for conflict-ridden countries, with Western donors happily dishing them out to all and sundry, regardless of national histories, as if democracy is 'an export product, off the peg, in handy packaging, ready for dispatch' (Van Reybrouck 2016, 40).

The irony of all this is that, originally, elections were devised by elites to filter popular opinion. It was not merely that the right to vote was enjoyed by just a relatively small proportion of the population (overwhelmingly men with required property holdings or high-income levels), but that those elected tended to represent the most influential, most prestigious and most wealthy members of society (Van Reybrouck 2016, 87). It was only as a result of popular struggles for the franchise that elections that became credibly 'democratic', although even then, this failed to relinquish 'the fundamental, oligarchic distinction between governors and governed, between politicians and voters' (Van Reybrouck 2016, 104). Democracy remained far more 'government for the people' than 'government by the people'.

Beyond the somewhat dubious origins of elections as a device for inhibiting popular influence, there is the additional factor that elections have increasingly become a hollow exercise. Voters are now regarded by politicians, who are backed by a highly corporatised media, as consumers rather than citizens. Elections may indeed function to change governments, yet in the words of Colin Crouch (cited by Van Reybrouck 2016, 51), 'public debate is a tightly controlled spectacle, managed by teams of professionals expert in techniques of persuasion', considering only a small range of carefully selected issues. In this theatre of 'post-democracy', the mass of citizens play 'a passive, quiescent, even apathetic part', and behind the scenes, politics is shaped 'by interaction between elected governments and elites that overwhelmingly represent business interests'. In other words, elections function to provide elite domination with a democratic façade. In previous eras, elections undoubtedly provided a huge boost to democracy along with the steady expansion of the franchise – but (Van Reybrouck 2016, 57) after two centuries it is becoming clear that:

> wear and tear is starting to have an effect. Efficiency sputters, legitimacy creaks and everywhere dissatisfaction, suspicion and protest are on the rise. Hardly surprising then that people are beginning to wonder if it is possible to imagine some other form of democracy …

That other form of democracy is 'sortition'.

Sortition: the cure for democracy?

Sortition refers to the act of selecting an individual to a political position or the membership of a body, such as legislative assembly, by random selection. As Van Reybrouck

reminds us, sortition was fundamental to the working of Athenian democracy. Beyond the well-known fact that women, minors, foreigners and slaves were denied civic rights, Athenian democracy had three major characteristics. First, participation by citizens (of whatever class) was direct; second, important decisions were taken by crowds of citizens; and third, citizens were appointed to public positions by the drawing of lots. Moreover, persons selected occupied public office for only a year, and were then not eligible for re-election, the aim being to achieve maximum citizen participation and political equality. 'Sortition and rotation were right at the heart of the Athenian democratic system', although a commonsense pragmatism ensured that specialist functions pertaining notably to military leadership and public finance were determined by election (Van Reybrouck 2016, 61). The principle of equality in such positions was subordinated to those of security and public welfare, although this only applied for a small minority of positions.

The purpose of sortition was to prevent personal interests influencing the conduct of public affairs. Rapid but orderly turnover of officials allowed little scope for corruption and ensured that democracy rather than oligarchy prevailed. However, in practice, most of the work was done not by the monthly citizens' assemblies but by specific institutions such as the People's court, the Court of 500 and the magistracies. Rather than all the citizens participating in such bodies, those chosen to speak were drawn by lot, thereby rendering their functioning simultaneously representative and efficient. Accordingly, Athenian democracy was not 'direct democracy', as is often maintained, but 'a uniquely representative democracy, a non-electoral representative democracy' (Van Reybrouck 2016, 67).

A widespread critique of Athenian democracy is that it is manifestly impractical in more complex societies than Athens of the Fourth Century B.C. Van Reybrouck responds to such objections by reference to how sortition has featured in Western European history far more widely than is generally realised, notably with regard to the appointment of the (non-hereditary) Doges of Venice (to avoid conflict between noble families, 1268–1797), in the appointment of important organs of government in Florence (1328–1530) and in Aragon, where likewise it was used as one of the methods for selecting MP (1350–1715). Most of the states in which sortition was employed were geographically small and urbanised, and it was always used in combination with elections (to ensure competence in appointments). Nonetheless, it played an important role – usually in periods where such states were at their peak in terms of their prosperity and culture – in preventing internal conflicts and producing political stability. Unsurprisingly, therefore, the great philosophers of the Enlightenment, notably Montesquieu and Rousseau, recognised that sortition was more democratic than election, although maintaining that a combination of both methods was beneficial to society.

It was only subsequently, following the American and French Revolutions, that new elites pushed for a representative system which contained rather than enhanced any popular voice in government. As Van Reybrouck (2016, 99) observes, in the case of Belgium (whose constitution provided the blueprint for the electoral-representative model), 'The revolution had been the work of radicals, republicans and democrats but the constitution became a matter for aristocrats, clerics and moderate liberals.' Thereafter, with the expansion of the suffrage, elections became largely synonymous with democracy, obscuring their historical origins as a defence of oligarchy against the popular herd. It is thus unsurprising that 'The Democratic Fatigue Syndrome that is now appearing

everywhere is a perfectly understandable consequence of the beatification of the electoral-representative system' (Van Reybrouck 2016, 105).

In this context, people are beginning to imagine some other form of democracy, and are homing in on sortition as one of its key devices. Van Reybrouck links this to pleas for 'deliberative democracy', the insistence that political decisions should be the product of fair and reasonable discussion among citizens. He refers to a multiplicity of examples whereby deliberations among citizens (rather than fiats laid down by politicians or technocrats) have enabled them to participate meaningfully in political decision-making. These have ranged from decisions to pursue wind-generated power in Texas to participative discussions about pensions in Japan, about urban policy in China and careers in public service in Brazil, and to popular input into environmental, infrastructural and budgetary issues in numerous cities throughout the world. More specifically, Van Reybrouck tells us how sortition has been employed to effect democratic innovation in the Canadian provinces of British Columbia and Ontario and the Netherlands (to consider electoral reform), in Ireland (to consider constitutional reform) and in Iceland (to draw up a new constitution following the global financial crisis which so adversely affected that country after 2008).

In the Canadian and Dutch cases, recruitment to the panels charged with discussing the pros and cons of electoral reform were selected in three steps. First, a large random sample of citizens was chosen from the electoral roll by the drawing of lots, and invitations sent to them to join, following which those interested could put their names forward for the next stage. Secondly, the final group was chosen by drawing lots, with attempts being made to achieve balanced distributions of age, sex and so on. So it was sortition, followed by self-selection, followed by sortition. Subsequently, consultation lasted between 9 and 12 months, during which time participants heard from experts, looked at the documentation, consulted with other citizens and then formulated concrete proposals for electoral reform.

In the Canadian provinces, these proposals were the subject of popular referenda. In British Columbia, 58% of voters voted in favour of reform – but failed to achieve the necessary threshold of 60%. In Ontario, they gained the support of only 37%. In Netherlands, the government simply decided not to accept the advice of its Citizens' Forum, on which it had lavished significant expense. As Van Reybrouck notes, democratic renewal can be a tortuous and frustrating process! Even so, he regards the experimentation in all three cases as having clearly demonstrated that ordinary citizens chosen at random are very capable of making highly rational, informed and nuanced proposals. The fact that it was thought necessary that these would have to be confirmed by referenda to enjoy legitimacy reflected the unfamiliarity of the process to most citizens. The outcome in both the Canadian cases indicated further that referenda are often blunt instruments,[3] for the outcomes seemed to indicate that the mass of citizens had not been following the intricacies of the discussions which had led to the proposals being put forward. Very often, too, innovative proposals may run into the hostility of established political interests, notably political parties and the media.

The experiments in Ireland and Iceland were more successful. In the former case, the proposals put forward by a Constitutional Convention (a majority chosen by drawing of lots, a minority composed of political delegations) resulted in passage of progressive legislation (allowing for gay marriage) following endorsement by a referendum. In Iceland, an

extensive consultative process eventually led to a new constitution being approved by a two-thirds majority in a referendum in 2012.

Van Reybrouck calls for sortition to be given a chance to remedy the crisis of democracy which is being experience in so many countries around the world. Sortition will never be a miracle cure, he argues, but it offers a politically neutral, fair and rational way of addressing political issues. It is less susceptible to corruption, and attention to the common good increases. It is time, therefore, to entrust legislative power not only to elected politicians, but to citizens chosen by lot as well.

Van Reybrouck has been hailed for analysing the ills of contemporary liberal democracy and compelling us to contemplate innovative remedies. Nonetheless, his manifesto has come in for extensive criticism. Inter alia, he is accused of idealising Athenian democracy, ignoring for instance how Athenian citizens backed an oppressive imperialism, as well taking ideas of politics coming out of the Enlightenment out of context (Van Reybrouck 2016). More crucially, his espousal of sortition has been pilloried as impractical. Notably, it has been argued that he has failed to explain how complex decisions of a globalised world would be taken under sortition, or as one critic has mischievously observed, whether a country governed by sortition would be able to deal with the bond markets (Van Reybrouck 2016). Likewise, it has been pointed out that his model still depends heavily upon the inputs of experts and officials to help citizens and that numerous people randomly chosen for sortition panels would not be able to afford the time or the economic cost of sitting upon them. Even so, despite the criticisms, there are those who argue that by highlighting sortition, Van Reybrouck is adding to the battery of institutional devices which might deepen democracy, notably if it was to be used to provide popular yet informed assessments of certain types of issue, with those relating to forms of representation and local controversies often being mentioned (Van Reybrouck 2016).

It is in the spirit of these last mentioned positive responses to Van Reybrouck's proposals that discussion will turn to the potential of sortition in South Africa, notably with regard to how it might contribute to making the country's elected representatives more accountable.

Limitations to electoral democracy in South Africa

The making of South African democracy has been extensively analysed. It is sufficient to note that it was the product of an extensive process of bargaining between the key actors involved. Although it was only recognised political parties and 'independent' homeland governments that were represented in formal bargaining arenas, such as the Convention for a Democratic South Africa, the key actors, notably the ANC and then still ruling National Party (NP), were representative of much wider coalitions. The ANC drew its strength from its close links with trade unions and the mass democratic movement (MDM), while the NP promoted itself as defending the interests of minority population groups and business. Ultimately, although a highly contested process was to end with the agreement around the interim constitution of 1993 (which paved the way for the first democratic election), this was a product not only of political dialogue but of robust confrontation between societal forces (the security forces and the MDM) that took place outside the formal arenas.

With the ANC and the coalition backing it having forced the NP on to the defensive, the constitution which resulted reflected far more what the former had battled for than what the latter had wanted. Nonetheless, the interim constitution was widely hailed as providing for a blend of majority government and protections for minorities and individuals against the abuse of power by those in authority. Most notably, South Africa was to become a constitutional democracy presided over by a Constitutional Court which was empowered to strike down legislation or official actions which it considered to be unconstitutional; the electoral system was to be based upon a system of list PR (to ensure minority representation in the central and provincial legislatures); there were clearly demarcated separations of power between the legislative, executive and judicial branches of government; there was to be a division of powers and functions between national, nine new provincial, and local governments; and so-called Chapter 9 institutions were established whose role was to be to promote democracy by variously, ensuring the independence from state interference of key processes (such as the running of elections), protecting and extending the rights of minorities, as well as demanding accountability from government and those in authority. Subsequently, these features were all to be incorporated into the final constitution. This was approved by the first democratic parliament (acting as a Constituent Assembly) in 1996.

The new constitution has in many ways served South Africa remarkably well. Above all, the high quality of the Constitutional Court has ensured that South Africa has remained a constitutional democracy. On numerous occasions, it has ruled upon the constitutionality of proposed (or existing) legislation, and on others, it curbed major abuses of power by the executive (notably the current president) by ruling them unconstitutional, and ordering remedial action. Similarly, during the term in office of Thuli Madonsela, the Office of the Public Protector (a Chapter Nine institution) used its formidable powers under the constitution to expose numerous instances of corruption by high state officials (including the president) and failures by public institutions to fulfil their mandate. These, and other ways in which the constitution has worked well, are major successes. Even so, as indicated above, there are cogent reasons for arguing that the quality of democracy in South Africa is declining. Above all, there is concern that the national legislature has failed miserably in its allotted task of reviewing the quality and sagacity of legislation, and of keeping the executive in check (Sibanda 2014).

A principal complaint is that the national list PR electoral system has inadvertently facilitated the rise of a largely unaccountable dominant party system (e.g. Nijzink and Piombo 2005; Ramphele 2013; Southall 2013, 2014b). To be sure, it is widely recognised that PR has ensured representation in parliament of an extraordinarily wide range of political opinion, and to that extent, it has fostered political inclusivity. However, the outcome has been the entrenchment of a ruling party in which power lies with party bosses rather than the party's individual MP.

The fundamental complaint is that individual MPs are disempowered by two major aspects in the system as it currently exists. First, even though the ANC and other parties have installed internal electoral processes whereby individuals are chosen for placement upon their national electoral lists, the *de facto* reality is that the (s)election process is heavily influenced by those in charge of their parties' machinery (at regional, provincial and national levels). Second, once elected to parliament, the rule of party bosses is reinforced by the constitutional provision which lays down that any MP who is expelled

from a political party loses his or her seat in parliament, and will be replaced by someone else selected by the party concerned. This means, in practice, that MPs are accountable to their party bosses rather than to the voters. Although parliament has sought to compensate for this by allocating MPs to artificial constituencies (so that an ANC MP, for instance, might be given notional responsibility for representing the interests of the voters in his or her home area), there is no constitutional onus upon them to do so, and in practice it would seem that the system is ramshackle: there is little cost to MPs who ignore the needs of the electorate in their notional constituencies so long as they keep in the good books of their party bosses.

The outcome is that the ANC has misused its dominance in parliament. It has used its majority to select officers of parliament, such as the Speaker, who have actively sought to minimise the efforts of opposition parties to render the executive accountable. ANC MPs have become little more than lobby fodder, their best efforts being made to ingratiate themselves with the party leadership. Furthermore, although there is much useful work done by parliament's standing committees, too often the ANC's political instinct is to protect rather than expose errant ministers, too many of whom treat those to whom they should report upon their stewardship with contempt. Most particularly, despite extensive evidence of abuse of power by President Zuma, the ANC has earned notoriety for attacking those who have provided evidence of his malfeasance, rather than demanding that he render himself accountable. Parliament has failed to perform its constitutional responsibility of holding the executive to account; it has allowed the ruling party to undermine the independence of the public service and many public institutions; and by failing to hold Jacob Zuma in check, it has allowed his patrons, the Gupta family, to 'capture' numerous key institutions and enterprises in pursuit of their material interests and at huge public expense (Booysen 2015; Hoffman 2016; Public Protector 2016; Southall 2013).

A widely favoured corrective to how and why parliament is failing in its duty is the passage of reforms to the electoral system which would see the introduction of constituencies. Given the manifest flaws of the Westminster-style first-past-the-post electoral system (notably its overrepresentation of winners and facilitation of the election of representatives who secure only a plurality of votes cast in single-member constituencies), the general preference of those calling for reform is the introduction of a mixed electoral system. This would somehow combine overall proportionality of representation with the election of MPs from (probably multi-member) constituencies.

Although such a reform would be welcome, there is no guarantee that it would work to restore the authority of parliament. Yes, notionally, individual MPs would now be directly accountable to their constituencies' electorates as well as to party bosses, and that would be an undoubted gain. However, whether this would result in a parliament that is less subordinate to the executive than at present is questionable (although certainly the implication of any introduction of constituency MPs is that, should they resign, this would trigger by-elections, rather than the party bosses simply drafting in their replacements). Meanwhile, it is worth recalling that a mixed electoral system, involving a mix of both PR councillors and those elected by constituents in local 'wards', has been introduced at local level to enhance the political accountability of local representatives. Whether this has improved local democracy or simply increased opportunities for local strife remains a moot point – especially in impoverished areas, where election to political office markedly increases access to state resources (Piper and Deacon 2009). Wider afield, the introduction

of a mixed-member system has worked indifferently in Lesotho (Weisfelder 2015); and while constituency MPs in countries as different as the UK (Vivyan and Wagner 2010) and Kenya (Douglas 2013) may be more responsive to their constituents than their counterparts in South Africa, the legislatures in which they sit remain stubbornly at the mercy of their executives.

It follows that the reform of the electoral system, involving the introduction of constituencies while continuing to allow for overall proportionality, would not in itself be a panacea for all of the democracy's shortcomings. Nonetheless, it is likely that it would somewhat weaken the power of party bosses and put in place a direct relationship between MPs and voters, and to that extent would offer a marked improvement upon the existing list system. In short, there is a strong case for referring the case for electoral reform to the processes of sortition rather than simply leaving it in the hands of the politicians who benefit from the present system.

Towards a more deliberative democracy in South Africa

Notwithstanding the limitations of South African democracy, the prospects of ANC dominance being eroded are growing. True, there are different scenarios. Even if the ANC fails to 'self-correct' and to overcome the noxious legacy of the Zuma presidency, it remains possible that it will win another substantial majority at the polls in 2019. Against this, the likelihood of the ANC losing its majority, of its having to enter a coalition with one or more opposition parties if it is to retain power, seems to be increasing – so long, at least, as the party remains under the sway of Jacob Zuma and the embedded corruption that he represents. Indeed, there is even growing confidence on opposition benches that the ANC might be beaten outright, and that – so long as the rules of liberal democracy continue to apply – one or more of its competitors (notably the Democratic Alliance) might step into its shoes as a successor government. In short, whatever the outcome of the next election, South African democracy is becoming more fluid, and more open.

Yet even were another party to take power, and even were it to be actively committed to rendering government more accountable, it would continue to face major challenges. These would include: avoiding the temptation to retain an electoral system which had elevated it to power; shunning the allure of 'strong' (ie authoritarian) government for curbing corruption, dissolving patronage networks and imposing order upon an unruly society; succumbing to a cosy partnership with big business in the name of 'economic reform'; and using strong-arm tactics to suppress popular protests. Fundamentally, however, the democratic credentials of South African governance would continue to be sullied by the flaws which undermine many contemporary liberal democracies. Most notably, by the time that factors such as non-registration of individuals qualified to vote and non-voting by many who are registered to vote are taken into account, even governments with a substantial majority will continue to be elected by only a minority of the eligible electorate (Schulz-Herzenberg 2014). Furthermore, many politicians will continue to ignore the wishes of the electorate during the intervals between elections; and those with money will continue to enjoy considerable more political clout than their less well-off fellow citizens. Accordingly, a government genuinely committed to greater accountability might usefully consider the potentiality of sortition for deepening South African democracy.

The initial difficulty would lie in convincing not only politicians but a sceptical public and media of sortition's value and practicability. Hitherto, when needing to appear accountable or to solicit popular opinion, the government has either appointed commissions (often headed by judges, and variously composed of representatives of interested parties, and/or 'experts') to examine contentious issues, and/or resorted to surveys. It would accordingly be necessary for those advocating sortition to explain why it might be either a valuable supplement to, or replacement of, such methods. Arguments might therefore refer, for instance, to the fact that commissions are heavily bound by the terms of reference given them by government (which may hugely limit the options they may consider and the extent of their investigative powers), and that their composition may predetermine the findings they come up with and the recommendations they proceed to make. Similarly, while surveys may provide valuable information regarding popular opinion, their findings encounter numerous hazards: the representativeness of their samples, the nature of the questions asked, and the fact that the answers elicited from respondents will only reflect popular opinion at the time the surveys were undertaken.

In contrast, the advocates of sortition would want to stress its virtues. First, the panels chosen to consider issues would not be appointed by the government or any other authority, but would be randomly selected and hence representative of the diversity of opinion and interests found within the chosen subject group (all citizens entitled to vote, residents of a community, or whatever). Second, in response to probably objections that sortition is not suited to consideration of complicated matters (such as, for instance, whether the country should build more nuclear power stations), advocates would stress that it is often such issues which are too often decided only by powerful elites, and that structured democratic input is required. By presenting panels composed of randomly selected ordinary citizens with extensive information, variant expert opinions and alternative choices, findings and recommendations would follow from informed debate and discussion. Third, sortition is highly democratic in that it empowers ordinary citizens, and acknowledges their dignity. Too often elected politicians claim that they know what ordinary citizens want or, more arrogantly, what is good for them. Similarly, it is widely assumed, especially by urban elites, that the poor – especially those from rural areas – are ignorant, and have no worthwhile views about key issues which may have huge bearing upon their fate. In contrast, sortition would give the poor voice and value to their opinions. Fourth, the recommendations made by any sortition panels could be put forward to parliament and public opinion for further debate – or even submitted to referenda.

Once the idea of sortition is accepted, then there will be a need to ensure its proper implementation. First, there will be a need to guarantee the appropriate composition of panels by random selection. In this regard, South Africa is fortunate in having a politically independent Statistical Agency now possessed of long experience in conducting national censuses and surveys. Devolving the responsibility of panel selection to Statistics South Africa (SSA) would therefore seem politically uncontroversial. Panel selection would appropriately allow for randomly selected citizens to decline to serve, and their replacement by ones who would agree to do so. However, if the government was reluctant to devolve the task to SSA, there is no shortage of survey experts within civil society and the universities capable of selecting a panel.

Second, presuming that national government (or donors) would bear the cost involved in appointing panels, it would be necessary to provide appropriate financial compensation (for expenses lost, inclusive of any earnings foregone by participation) or actual financial inducement (a matter of significant import in a country of massive unemployment). Admittedly, this might raise difficulties. Payment of different rates of compensation to different individuals might prove politically impossible. Yet imaginative solutions – such as scheduling panel sessions for evenings or defined blocs of time – allowing payment of uniform rates of compensation could go far in tackling practical difficulties.

Third, panels might need to be chaired by individuals with appropriate skills and recognised for their independence (rather like judges) and who would be required to be neutral regarding the issues under discussion. In turn, panels would need appropriate bureaucratic support for recording discussions and drawing up reports and recommendations.

Fourth, there would be a need for criteria regarding selection of presentations to panels by both 'experts' and interested parties. The former would be expected to explain complex issues to panellists with no previous understanding of their specialisms, and to argue the pros and cons of alternative policy options on offer. (It should be assumed that the panels themselves should have the right to call for expert presentations other than those handed down to them from above). Meanwhile, those with political or economic stakes in the matters under discussion would be liable to detailed questioning by the panels. Consideration would need to be given to whether panels should have powers of sub poena (to summon reluctant testimonies) and whether those making presentations would run the risk of prosecution for presenting serious mistruths.

Clearly implementation of sortition would not be without its controversies. Even so, there is nothing posed by the above dilemmas which would be beyond resolution. Accordingly, it is suggested here that, as a start, sortition might prove particularly valuable for consideration of the one issue that has so concerned much public opinion: that of electoral reform.

Electoral reform

Given continuing debate about the most appropriate way to elect South Africa's new national legislature after passage of the 1996 constitution, the ANC government conceded the appointment of an Electoral Task Team (ETT), chaired by Dr Frederick van Zyl Slabbert, to review the national list PR electoral system and to recommend any reforms in time for the next general election.

The Constitution (Section 4.1) laid down that any electoral system should be based on a national voters' role and a minimum voting age of 18 years, and should result 'in general, in proportional representation'. Informed by the results of a survey into popular attitudes about what ordinary people wanted from an electoral system, the majority of commissioners of the ETT argued for the adoption of 69 multi-member constituencies electing 300 MPs, who would be topped up by 100 MPs elected by national list PR. This recommendation was made to reflect the popularity of a system which provided for accurate representation of parties in parliament while accommodating a widespread demand not only for MPs to be accountable but also to represent geographic areas. In response, however, the ANC chose to follow the recommendations of a minority of commissioners who urged that there should be no change to the unvarnished national list PR system.

Although dressed up by the argument that smaller parties would be unlikely to win constituencies, the more likely reason was that the ANC at national level feared that the introduction of constituencies would be likely to weaken its control and to promote factionalism within its ranks (Southall 2010).

Despite the ANC's negative response, demands for electoral reform have not gone away. They feature regularly in the media, have been backed by various survey data, and are backed by insistent calls for the accountability of politicians and a more effective parliament. After five democratic general elections, there is therefore sound reason for politicians of whatever stripe to at least consider options for change anew. Indeed, the case for electoral reform is a remarkably appropriate issue for a first trial run of sortition in South Africa in that (i) the alarming decline of popular participation in elections indicates a widespread, and apparently growing, lack of trust or involvement in the established political system; (ii) it could be combined with repeat of the survey carried out by the ETT to assess any changes in popular attitudes; and (iii) there is no shortage of local experts capable of presenting the advantages and disadvantages of different electoral systems to the sortition panel. Electoral reform is also (iv) a relatively uncomplicated matter, capable of consideration by a panel over a relatively short period. Finally, (v) because recommendations made via sortition would have been put forward by a cross section of the population rather than selected 'experts', as was the case with the ETT, they would be less easily disregarded by politicians if they were deemed to be inconvenient to their interests.

Whether the ANC government would agree to the appointment of a sortition panel on electoral reform is another matter. If it did not, there is considerable scope for the selection of a panel by civil society to place the issue before both politicians and the public.

Conclusion

Van Reybrouck's plea for sortition to address the limitations of liberal democracy offers a constructive way forward. As he stresses, he is not offering it as an instant, guaranteed solution to liberal democracy's flaws, but as an instrument which could be used practicably, without any great financial and political cost, to give greater voice to ordinary citizens in a manner which results in informed and rational recommendations. While he would like sortition employed extensively, he is realistic about the difficulties of getting it adopted – very possibly in the face of outright opposition from established elites. He therefore implies the virtues of progressing cautiously and pragmatically, choosing appropriate political issues which might be addressed by sortition carefully. Yet he remains confident that innovative experimentation with sortition constitutes a valuable step to democratising democracy.

Ken Good is not alone in arguing for a more participatory democracy in South Africa. Few would argue that South African democracy has become characterised by elite rule, notwithstanding the prescriptions for accountability and public participation in legislative processes embodied in the constitution. Disillusion with liberal democracy is growing, distrust in politicians mounting, and popular participation in elections declining. Popular discontent with how politics is experienced by the mass of ordinary people on the ground, already expressed in astoundingly high levels of protest, pose the danger that the very idea of democracy will be delegitimised in favour of populist and authoritarian alternatives

which threaten fundamental political rights. A radical change in democratic political practice is required if democracy is to be saved from itself.

Experimentation with sortition offers one way of rendering political decisions more reflective of popular opinion and politicians more accountable. It is agreed here that sortition is likely to prove impractical in many situations, such as emergencies those which demand urgent attention. Yet it could add greatly to South African democracy's toolbox and could provide the means to arrive at solutions to many issues whose resolution properly requires popular legitimacy. The suggestion in these pages is that sortition could be employed to re-consider the question of electoral reform, although other advocates might well argue that perhaps the best starting point for it might be more modest, involving perhaps local issues such as controversial planning proposals (to balance public interest versus private profit) or proposed mining investments in local areas (to balance economic factors against environmental). Too often such matters are resolved only by elites; sortition would provide for popular involvement and greater transparency in decision-making.

Sortition would not be easily accepted by South Africa's elites, so the case for its adoption would have to be vigorously put by civil society. However, as Good has reminded us, South Africa already possesses a radical democratic tradition. This might provide fertile soil into which to plant the seeds of sortition to allow it to flourish and multiply. Sortition, avers J. M. Coetzee on the dust jacket of Van Reybrouck's essay, 'may well be an idea whose time has come'.

Too impractical and complicated for South Africa? The only way to find out is to give it a try.

Notes

1. There was a short interim Presidency of Kgalema Motlanthe following Thabo Mbeki's ejection by the ANC from the Presidency in September 2008 and Zuma's succession after the April 2009 general election.
2. The ANC's proportion of the popular vote declined from its peak of 69.7% in the general election of 2004 to 62.1% in 2014. This fell further to 53.3% in the local government elections of 2016, with the consequence that it lost control of three major 'metros' in Johannesburg, Tshwane (Pretoria) and Nelson Mandela Bay (Port Elizabeth). Meanwhile, the percentage turnout of the voting age population at general elections has declined from 86.0% in the 1994 general election to just 57.1% in 2014.
3. Referenda may live up to their purpose of deepening democracy. In California, for instance, referenda are a regular feature of political life, being held either because the state legislature refers questions to voters at election times, or 5% of voters petition for the repeal of particular laws. On the other hand, referenda can often be abused. Many would argue that the Brexit vote in mid-2016, on whether Britain should leave the European Union, was a case in point. The debate leading up to the referendum (which was called to resolve a festering division within the ruling Conservative party) was characterised by massive manipulation of information by elites, notably by those wanting to leave the EU. Some cite the campaign as illustrating the perils of a 'post-truth' society (Stirling 2016).

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