Introduction to *A Citizen Legislature* by Ernest Callenbach and Michael Philips

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In 1997, I was a graduate student in the Political Science Department at the University of Rochester. Like most graduate students, I was always on the lookout for ways to earn a little extra money. For this reason, I became very excited when I learned of a new research project the department was conducting that summer. A wealthy benefactor had left the department a fairly large sum of money, to be spent investigating various proposals to amend the U.S. Constitution. Graduate students were invited to apply for that money. All you needed to get some was a decent idea to investigate—an idea regarding how our Constitution could be improved.

Anxious to steer a little of that money my way, I started brainstorming for a proposal. As a political theorist, I wanted a proposal that would raise some deep and interesting questions about democracy. Nothing so mundane as "Should senators serve for eight years, instead of six?" would do for me as a research question. From the dark recesses of my brain, I recalled an editorial I had once read suggesting that Congress should be selected randomly, by lot—just draw 435 people's names out of a hat, and call that a Congress. Well, *that* will raise some deep questions, I told myself, and it would certainly require constitutional amendment. Why not check it out?

I was never able to track down the editorial that put the idea in my head. But while trying to find other people who had discussed the idea, I discovered a little book by a pair of activists concerned with the state of American democracy. Ernest Callenbach

and Michael Philips had published *A Citizen Legislature* with Banyan Tree Books and Clear Glass Publishing in 1985. In that book, they proposed replacing the U.S. House of Representatives—elected through plurality rule ever two years—with a Representative House—to be selected randomly from the whole U.S. citizenry every three years, with staggered terms (like the U.S. Senate). They offered a number of arguments for why a randomly-selected House might provide the cure for a variety of ails afflicting the American political process.

My proposal was accepted, and I made the ideas raised in *A Citizen Legislature* the focus of my research for the project. These ideas turned into a conference paper, which later became a chapter of my dissertation. So captivated was I by the contribution that random selection might make to politics that I made the topic the focus of my dissertation.[1] A decade later, the topic continues to fascinate me, and it remains a central focus of my research.

I am thus delighted to see *A Citizen Legislature* back in print, and not simply for reasons of nostalgia. Callenbach and Philips were not the first to propose selecting members of Congress by lot.[2] But their book appeared at a most opportune time, and not just for me. Political theorists, philosophers, and social critics of all kinds had begun in the late 1960s and early 1970s to consider ways in which to free democracy from the stranglehold of political elites, and to encourage popular participation in decision-making.[3] By the 1980s, some of these critics had started to revisit the ancient Athenian practice of *sortition*, the selection of political officials by lot.[4] In the Athens of 5th and 4th century BCE, virtually all government officials were selected through the luck of the draw. This idea fits poorly with modern conceptions of representative government, which

treat government as a profession requiring specialized personnel (politicians and bureaucrats).[5] But these conceptions have not proved adequate at developing well-functioning democracies, and so it was natural that social critics both inside and outside academia would rediscover sortition, and begin inquiries as to what sort of contribution it might make today. *A Citizen Legislature* is thus an important milestone in the process in which people once again began to take seriously random selection seriously as an essential part of democracy. Anyone interested in exploring new forms of democratic decision-making would do well to read Callenbach and Philips' book.

Callenbach and Philips do more than simply help put random selection back on democratic theory's table. They also explore many of the reasons why democrats might embrace sortition here and now. And they do so in the context of a very specific and detailed proposal—the replacement of the House of Representatives by their Representative House. What sorts of advantages might such a move offer? Callenbach and Philips explore a number of them, as well as anticipate several potential objections to their proposal. Their primary focus, however, is on descriptive representation. This is the idea that if some group—racial, ethnic, political, etc.—comprises n% of the population, then n% of the legislature representing that population should also belong to that group. Congressional elections, notoriously, are marvelously good at electing wealthy white men, mostly lawyers, and not very good at electing anyone else. Numerous efforts have been made to ensure, for example, the election of more people of color to Congress, but none of these have made it possible for such underrepresented groups to achieve a presence in Congress in proportion to their numbers.

A randomly-selected Representative House, as Callenbach and Philips happily explain, would solve all problems of descriptive representation. If one takes a random sample of 435 people from the population of the United States, then any property possessed by some percentage of the former will also be possessed by approximately the same percentage of the latter. For example, consider that African Americans comprise approximately 12% of the U.S. population. On average, a Representative House would contain 52 African American legislators—12% of the total. And while random fluctuation might result in a few more or a few less African American legislators from term to term, the total number would almost never deviate very far from proportionality. [6] This is one of the properties of random sampling; Callenbach and Philips use the image of a chef sampling a pot of stew in order to get the point across (pp. 12-13).

But it is not simply racial and ethnic groups which will enjoy representation in the Representative House in proportion to their numbers in the general population. Women, a slight majority of the U.S. population, would normally constitute a slight majority of the Representative House. Geographic representation will not be sacrificed, even though congressional districts will be eliminated; as Callenbach and Phillips point out; if 5% of the U.S population lives in Rhode Island, then on average 5% of the Representative House would also hail from that state (p. 56). The partisan affiliation of the population would also be reflected in the House; this matters because the President, the Senate, and state and local officials will continue to be elected through voting. The dream of proportional representation in the classic sense—whereby parties achieve membership in the legislature in proportion to their supporters in the population—will be ensured in the Representative House, though possibly nowhere else.

More broadly, of course, the lot effectively implements proportionality within a legislature of *any* characteristic in the general population. No one recognizes these virtues of the lot more than Callenbach and Phillips themselves. They take pains to stress the variety of groups that would win representation within the Representative House in proportion to their numbers in the general population. In one memorable passage, they claim that this body would contain, on average, about 50% women; 12% Blacks; 6% Latinos; 25% blue-collar workers; 10% unemployed persons; two doctors or dentists; one school administrator; two accountants; one real estate agent; eight teachers; one scientist; four bookkeepers; nine food service workers; one childcare worker; three carpenters; four farm laborers; three auto mechanics; one fire fighter; one computer specialist; and a Buddhist (pp. 14-16).[7] If their proposal accomplished nothing else besides assembling in one room such a diversity of people, and getting them to speak to one another, they would have accomplished something rarely seen in the history of the United States.

Callenbach and Philips do an excellent job of presenting the idea of a Representative House—a House that will truly be "of the people"—as an inspiring piece of democratic reform. Their efforts to defend their proposal, however, have a number of shortcomings. At times, for example, they forget the central place of descriptive representation to their argument. Consider the following indictment they make of the current U.S. House:

> Our present legislatures certainly cannot be described in terms of a 'transcript of the whole society'; by that test they are hopelessly *un*representative. Women, to take the most striking disparity first, constitute 51% of the adult population but comprise only 4.8% of the present House of Representatives. Blacks, 12% of the

population, comprise only 4.5% of the House; Spanish-speaking persons, 6% of the population, are similarly underrepresented with 2.5% of the House. About half of the electorate, which does not vote, cannot readily be considered to be represented at all, and this group, of course, includes a vast mass of relatively disadvantaged people (something like a sixth of our population) who bear the brunt of our poverty and unemployment (p. 3).

Callenbach and Philips seem not to have noticed that they are using the term "representative" in two different ways. Our current Congress is unrepresentative because it contains women and racial minorities in small numbers *and* because it was chosen in elections from which many voters abstained. But what if every citizen voted in a congressional election, and the resulting Congress consisted entirely of rich white men. Would this Congress be "representative" to Callenbach and Philips? And it's a little difficult for them to complain about the lack of representation of those segments of society who do not vote; after all, with their Representative House, *nobody* would get to cast a vote for anyone in Congress.

But there is a more difficult question raised by Callenbach and Philips' proposal. Just what are the members of a Representative House supposed to do? What constitutes a good job performance on the part of a randomly-selected member of Congress? Callenbach and Philips' answer is rather surprising. In response to the concern that an unelected and unaccountable Representative House might perform in a manner that is "frivolous, erratic, or irresponsible," the authors of *A Citizen Legislature* have the following to say:

We believe that this objection ignores the statistical significance of the random selection process. Representative House members do not have to be forced by external circumstances to represent constituents because, by the very statistics of their selection, they inevitably *do* represent their segment of the populace (p. 28).

The Representative House apparently doesn't have to do anything specific in order to do its job. It just has to exist, and somehow whatever it winds up doing will be right, precisely because it descriptively represents the people as a whole.

Callenbach and Philips are at times quite willing to follow this logic wherever it leads. They expect, for example, that "some small percentage" of the Representative House will "stay home—keep the salary that goes with their new position and just stay where they are, or possibly move to Hawaii and become beach bums" (p. 36).[8] "Representative House members who don't vote will *even in their non-voting* be truly representative of the public on the issues before the Congress" (my emphasis; p. 37). If a certain percentage of the American public would rather watch football then worry about the U.S. space program, then a similar percentage of the Representative House can be expected to do the same thing. And that, according Callenbach and Philips, is apparently a good thing. People who refuse to accept a certain degree of laziness, slackness, and apathy in the Representative House, they conclude, are "those whose moral values are too narrow to encompass that fact that the work ethic is not universal in contemporary American life" (p. 38).

It's hard not to take this particular passage as a *reduction ad absurdum* of the argument of *A Citizen Legislature*. Fortunately, Callenbach and Philips do not consistently embrace the idea that a Representative House has no specific

responsibilities—that it can just "be" and thereby do its job. They would exclude, for example, all of the "usual suspects" from the random draw—children, convicted felons, the mentally ill (p. 12). If their goal were purely to assemble a legislature that descriptively represents the American people, then these exclusions would make no sense. If 1% of the American public is insane, then a Representative House does not fully "look like America" unless 1% of its members are insane. Also, Callenbach and Philips are quite concerned to make sure that the Representative House has both training in political affairs and opportunities for thoughtful deliberation. Newly-selected members of their Representative House, for example, would undergo three months of "immersion training" in a "mini-university of politics" that would prepare them for their new jobs (pp. 23-24). Callenbach and Philips also argue for the superiority of their proposal over other radical proposed reforms—such as the proposal that citizens vote via computer in electronic referendums on policy matters—on the basis of the greater level of care that a Representative House would bring to political issues (p. 44).[9] In the end, it appears that Callenbach and Philips do indeed expect their Representative House to do more than just "be."

The point, which Callenbach and Philips recognize only to a limited degree, is that descriptive representation is desirable because—and only to the extent that—it contributes to the goal of good lawmaking. This means that ensuring the presence of people of all races and ethnicities in the Representative House is important, whereas ensuring the presence of people of all levels of mental health is not. This is because even a descriptively representative body of people must act in a certain way before anyone would dream of saying that they speak with the "voice of the people." A group of

ordinary citizens—even a randomly-selected group—has nothing to do with democratic lawmaking unless its task is clearly specified for them. And once this task is specified, it is possible to distinguish between ways that descriptive representation matters and ways that it does not.

This is not intended as a fatal indictment of *A Citizen Legislature*—far from it. Rather, it is merely reflects the fact that when Callenbach and Philips wrote this book twenty years ago, hardly anyone had seriously considered the idea of giving a randomly-selected group of citizens so much power. What would be the advantages of using such a group? What would be the disadvantages? What could such a group do well? What would it be poorly equipped to handle? What institutions would be needed to ensure that the group could perform well? Callenbach and Philips were among the first in modern times to try and offer answers to these questions, and if they occasionally got tangled up in theoretical knots, many of those knots remain urgently in need of untying today.

In the two decades since *A Citizen Legislature* first appeared, a number of scholars have followed in Callenbach and Philips' wake, taking up the idea that bodies of randomly-selected citizens might make a real contribution to modern politics.[10] Thus far, these proposals have led to few concrete changes in the way real-world decisions are made. But again, it is important to remember that the intellectual and political movement in support of random selection is still quite young. In a book entitled *Justice by Lottery*,[11] Barbara Goodwin imagines a futuristic utopian society in which lotteries may a central role at all levels of decision-making. This utopia's designers were heavily influenced by several books, including *A Citizen Legislature*. The utopia described by Goodwin may never come to exist, but if many of today's crises of democracy are ever to be solved,

random selection may well prove to be part of the solution. And if such a solution comes

to be, Callenbach and Philips will be among those honored for making it all possible.

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[1] "The Luck of the Draw: Revisiting the Lot as a Democratic Institution" (Ph.D. Dissertation, University of Rochester, 2000).

[2] A book published at the time of the U.S. Bicentennial proposed that half the U.S. House should be selected by lot, as well as half of any future constitutional convention. See Ted Becker, Paul Szep, and Dwight Ritter, *Un-Vote for a New America* (Boston: Allyn and Bacon, 1976).

[3] See, e.g., Peter Bachrach, *The Theory of Democratic Elitism* (Boston: Little, Brown & Company, 1967) and Carole Pateman, *Participation and Democratic Theory* (New York: Cambridge University Press, 1970).

[4] See, e.g., Benjamin Barber, *Strong Democracy* (Berkeley: University of California Press, 1984).

[5] Technically, random selection never left the world of politics altogether. Witness the modern jury, in which "twelve good men and true" decide the fate of one of their fellow citizens. But the jury has always fit uneasily beside theories of democracy which emphasize professionalism, and its supporters have long been on the defensive against those seeking a more "rational" criminal justice system.

[6] 95% of the time, the number of African-American members of the Representative House would be between 39 and 65. As of 2008, the largest number of African-American members in the House of Representatives at one time has been 40.

[7] These figures are almost twenty years old, and so are a bit out of date. A Representative House selected today would contain more Buddhists and more "computer specialists," for example.

[8] Callenbach and Philips never clearly state whether service in the Representative House will be mandatory for those whose names are randomly drawn. Given that they apparently are not prepared to compel representatives to do anything in order to collect their salaries, however, it is hard to imagine why anyone would decline to accept such a position.

[9] According to Callenbach and Philips, the "most crushing disadvantage" of electronic referendums "is that…the sample of the public obtained would be highly biased in the statistical sense. Those taking an active part in the process would be self-selected. To base the fate of the nation on such a sample would clearly be folly" (p. 44). This argument, unfortunately, works directly against their frank acceptance of a Representative House containing absent or apathetic members. If there's nothing wrong with only a self-selected fraction of the Representative House attending to political affairs, then what could be wrong with a self-selected fraction of the entire public doing the same?

[10] Prominent examples of this literature include John Burnheim, *Is Democracy Possible?* (Berkeley: University of California Press, 1985); Fredrik Engelstad, "The Assignment of Political Office by Lot" (*Social Science Information* 28 (1989): 23-50); James S. Fishkin, *Democracy and Deliberation: New Directions for Democratic Reform* (New Haven: Yale University Press, 1991; John Stewart, Elizabeth Kendall, and Anna Coote, *Citizen's Juries* (London: Institute for Public Policy Research, 1994); Lyn Carson and Brian Martin, *Random Selection in Politics* (New York: Praeger, 1999); Keith Sutherland, *The Party's Over: Blueprint for a Very English Revolution* (Charlottesville, VA: Imprint Academic, 2004); and Kevin O'Leary, *Saving Democracy: A Plan for Real Representation in America* (Stanford, CA: Stanford University Press, 2006).

[11] Chicago: University of Chicago Press, 1992; 2nd edition Charlottesville, VA: Imprint Academic, 2005.