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Allotted chambers as defenders of democracy

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1 | INTRODUCTION

In this paper, we identify a problem—the problem of which actors should serve as *defenders of democracy*—and propose a solution to that problem—the creation of randomly selected citizen bodies, or *allotted chambers* (hereafter ACs).[1] Having in place institutions that are tasked with democratic self-defense, is, we argue, a critically important pillar of democratic government, but its importance has often been neglected. This neglect is exacerbated by the evasive nature of the task that these democratic defense institutions are called to perform. Part of the problem is that the task of democratic self-defense is often mistakenly conceived as an ad hoc response to an occasional problem, rather than a routine task to which democracies should devote regular attention. Once the task of democratic self-defense is properly specified, the advantages of assigning this task to ACs, rather than courts or legislatures, become evident.

Section 2 of this paper explores the task of democratic self-defense in more detail. Section 3 offers reasons for questioning the assignment of this task to existing institutions within democracies, notably legislatures or courts. Section 4 lays out the contributions that *sortition*—the random assignment of public responsibilities—can make to democratic self-defense. In Section 5, we sketch a proposal for an AC that could be tasked with democratic self-defense. Such a body would avoid the problems identified in Section 3 with assigning this task to either legislatures or courts. We offer three versions of this proposal—a weak, a moderate, and a strong version—and provide a tentative endorsement for the moderate model. The paper concludes by noting that the current crisis facing democracy has both generated an opening for institutional innovation and increased awareness of the necessity for democratic self-defense. It is important, we argue, that democracies make the most of this opening; doing so, we add, requires a clear understanding of the problem and a well thought-out vision of the solution.

2 | THE TASK OF DEFENDING DEMOCRACY

Democracy today seems under threat. Never a perfect regime, democracy has now determinedly exposed its vulnerabilities. It has allowed the emergence in parliament or even in government of politicians who propagate an antidemocratic or illiberal vision of politics. These range from neo-Nazi extremists such as the Golden Dawn in Greece, through

populist nativists such as US President Donald Trump or Hungary's Victor Orban, to electoral authoritarians such as Turkey's President Erdogan. A common pattern seems to emerge where such politicians claim to embody the people in some unfiltered way, target vulnerable minorities, deny the existence of legitimate opposition, and seek to undermine institutions that check their ability to act. Often, they also manipulate elections and seek to deny their opponents any realistic opportunity to remove them from power. In short, they seek to undermine the foundations of liberal democracy, using any mechanisms that liberal democracy makes available to them (Müller, 2016b; Urbinati, 2019).

All of these have made many people recognize the importance of the task of democratic self-defense. Democratic institutions, it is argued, must be insulated against the damage that such parties and politicians can inflict upon them. This includes a concerted effort to prevent institutional retrogression, to protect vulnerable minorities from direct harm, and to block the proliferation of a culture of hate and authoritarianism. In other words, the aim of democratic self-defense is to uphold and strengthen the liberal and constitutional foundations of democratic government. In this context, liberal constitutionalism is assumed to be the condition that makes a well-functioning democracy possible. But although some consensus exists about *what* is to be defended—namely, liberal constitutional democracy—there is little agreement as yet about *how* best to go about defending it. How are we to prevent the rise of future Orbans, and what can we do about the Orbans we have? The task of democratic self-defense is considerably larger and more complicated than many people think.

For one thing, it is difficult to determine which parties constitute a threat to democracy, and when this threat is acute enough to require state action. For example, it may be easier to agree on measures against parties overtly seeking to undermine democracy (e.g., Golden Dawn in Greece, the National Democratic Party of Germany, the Justice and Development Party in Turkey), but less so against parties that challenge democratic norms in less extreme ways (e.g., the National Rally in France, the Sweden Democrats, the Polish Law and Justice Party, etc.). Moreover, the depth of the challenge a party apparently poses to democracy could change over time. (Could anyone have predicted the storming of the US Capitol by armed followers of Donald Trump?) In addition, populist acts that challenge the legitimacy of liberal democratic institutions can be performed even by parties that are indisputably not extremist or populist per se, and are perceived to be closer to the mainstream; authoritarian populism, in this sense, is not a political party's intrinsic identity but a sort of illegitimate "move" in the democratic game (Müller, 2016b). In other words, the nature of democracy's challenge today, perpetrated by parties that do not oppose democracy directly and claim to play by the book even as they simultaneously alter or interpret rules in a semiauthoritarian fashion, makes the task of identifying democratic threats and legitimizing initiatives against them highly contentious.

For another, a lot of the debate around how to deal with "dangerous" parties focuses upon direct action against them. Far too frequently, democratic self-defense is conflated with "militant democracy," the principle of preemptively blocking the realm of actions for democracy's challengers (Loewenstein, 1937). Preemptive action may include party bans, media control, or restrictions of political liberties. This approach has been heralded by many contemporary scholars (Müller, 2016a; Kirshner, 2014) but is also increasingly under attack (e.g., Invernizzi Accetti & Zuckerman, 2017; Malkopoulou & Norman, 2018).

Alternative modes of defending democracy may rely on practices other than identifying and excluding dangerous political actors. Instead, they may aim at *insulating democratic procedures from any type of abuse, regardless of its political characteristics.* This may involve enforcing strict criminal sanctions for political violence or restricting the scope of parliamentary immunity (Malkopoulou & Norman, 2018). Another possibility is to implement social and cultural policies, directed toward civil society and the public at large (Malkopoulou & Norman, 2018). Such mechanisms would aim at promoting democratic values—for example, by embedding antifascist principles in school curricula, training law enforcement officers in anti-discrimination practices, and raising public awareness on human rights issues. Strategies of this kind are aimed less at neutralizing extremist or antidemocratic parties than at preventing their emergence in the first place. This set of policies is far removed from the militant democratic recipe of rights restrictions, avoid controversial restrictions on basic rights and freedoms,[2] and should in fact alert us to the variety and incommensurability of the possible tasks associated with democratic self-defense.

Our aim in this paper is not to argue for or against any particular model of democratic self-defense. What we want is to draw attention to the contingency of all these possibilities. As a result, the defenders of democracy should have significant room for maneuver to introduce appropriate measures. A body tasked with defending liberal democratic principles is in our mind a type of legislative body, like an upper house, bound by a specific constitutional mandate: to identify relevant challenges to constitutional democracy (i.e., challenges to both the democratic institutions and the rights of citizens) and decide on measures that would counteract them. The type of measures required—whether they be restrictions based on existing laws, the drafting of new laws, broader policy reforms, or something else—would be up to the body itself, subject to the political limitations imposed upon it (e.g., by the constitution). We do not envisage that such a body should necessarily take over all functions of democratic self-defense from existing institutions, but that it work in coordination with legislatures and courts to fill in the gaps that these institutions may create.

Ultimately, our goal is to underline that the question of how to deal with antidemocratic parties is a *political* question. To illustrate this, consider how restrictions on authoritarian populist parties may be preferred more often by center-right parties, whereas center-left parties may be more likely to support measures that emphasize social and political inclusion as a policy of limiting the vulnerabilities that cause populist resentment. Choosing among repressive or inclusive measures is an ideologically loaded matter that must be contested by political agents. The choice of one or the other avenue of democratic self-defense is a matter of public policy and, as such, it requires political debate and the weighing of different ideological and strategic perspectives that predominate in a particular polity at a particular time. In other words, dealing with antidemocratic movements is inextricably a matter of political judgment. However, this contestation should not necessarily take place along party lines. It is crucial in our mind to exclude partisan criteria from the perspectives that should affect this type of decisions, lest the objective of defending democracy become corrupted or replaced by electoral objectives. We come back to this point later, when we compare the democratic self-defense potential of legislatures and ACs; for now, it is worth keeping in mind that filtering out partisanship does not require depoliticizing the question.

Before moving to the next section, it is worth pausing to consider what, in our mind, democratic self-defense is *not*. Democratic self-defense is not a synonym for emergency powers. Oftentimes the task of blocking an authoritarian government or party is conceived as a task to be performed only in crises or emergencies (Kirshner, 2014; Loewenstein, 1937, pp. 431–432; see also the militant constitutions of Germany and Turkey cited in Thiel, 2009 as well as the Venice Commission *Guidelines* cited in Müller, 2016a). Time and again such emergency judgments have led to a constitutional overreaching, up to and including coup d'états in the name of "security" or even "democracy." The same logic animates militant democratic measures because they authorize a situational repression of rights that are otherwise generously protected. Even when emergency powers are constitutionally granted, the precise actions they authorize are often unclear, and so they often raise important questions of legitimacy and concentration of power. As a result, efforts must be made to avoid them. Conversely, there is more to be gained by thinking of democratic self-defense as a regular regime of self-care. A continuous maintaining of a polity's democratic health is more reliable and legitimate than curing a potentially lethal infection in an exceptional manner.

3 | THE LOCUS OF DEMOCRATIC SELF-DEFENSE

Democracies, then, have good reason to take the task of democratic self-defense seriously. In doing so, they should regard it as a regular part of democratic self-maintenance, not an emergency measure born out of exceptional crisis situations. The question, then, becomes which institution(s) should be entrusted with this critically important task. In other words, which institution should serve as the principal *defender of democracy*?[3]

In some ways, of course, this question is a false one. As the previous section has shown, democratic self-defense is many-sided and complex, and there are many tasks (e.g., passing social policies that weaken popular discontent, charging violent extremists with criminal activity) that readily fall within the job descriptions of existing institutions (e.g.,

legislatures, courts). There need not be a single institution charged with doing everything. Besides, concentrating all these powers into one single institution may constitute a breach of the principle of separation of powers. Still, there are good reasons to charge one political institution with the *primary* execution of this task (and both to specify and to delimit its powers). The most important of these reasons is the need to avoid *free riding*. Democratic self-defense measures can prove costly, and not just in terms of material resources. Prosecutors, for example, who charge political parties with illegal activity, and media regulators charged with preventing hate speech by these parties, can predictably face pushback from those parties and their supporters or sympathizers. Take, for example, the vocal critique against Greek judges for not prosecuting Golden Dawn politicians earlier despite extensive reports of their involvement in criminal wrongdoings (Psarras, 2015, p. 11). Moreover, legislators, judges, and civil servants all have many responsibilities on their plate. When faced with the need to defend democracy, it is all too easy to find reasons not to pursue the matter, and leave this task to others.

There are good reasons, then, for democracies to entrust primary responsibility for democratic self-defense to one specific institution. What sort of institution can most productively deal with this task? The free-riding argument suggests that existing institutions, such as courts or legislatures, are not well suited to this task. Both have many other responsibilities, and so the temptation to focus attention on more pressing matters will prove very hard to resist. Who has time to worry about democratic self-defense, after all, when the budget must be negotiated and passed before the fiscal year ends? Similar worries apply to courts, unless a democracy entrusted the task to one particular court (e.g., a constitutional court). But there are deeper reasons to question the wisdom of making either legislatures or courts the centerpiece of democratic self-defense. Put briefly, *while courts are too apolitical for the task at hand, legislatures face the opposite constraint: they are too political*.

To understand this, it is necessary to examine more carefully the nature of the task of defending democracy outlined in the previous section. Perhaps the most important part of this task is that it inevitably seems to encompass a wide variety of measures to which democracies can resort as a way to guard democracy against internal dangers. These may comprise short- and long-term actions that can be legal, political, cultural, and social—for example, boosting the legal framework that protects vulnerable minorities, adjusting electoral rules, introducing antifascist content in school curricula, or implementing long-haul socioeconomic policies. The menu of initiatives for safeguarding and protecting democracy must remain wide, as there is not one solution that fits all the cases. Many conditions play a role, not least the severity of the threat in question, the historical record of similar threats and responses to them, or the socio-economic context of each particular case. If we accept that *there is no specific and predefined content for the task of democratic self-defense* to be performed, we must recognize the importance of identifying the right institution that will select, define, and perform the content of this task.

It is this fact that explains why courts are not appropriate instruments of democratic self-defense. True, courts may prove capable, at least under the right circumstances, of enforcing the political rights of citizens against antidemocratic encroachments—by moving to stop legal or extralegal obstacles to universal suffrage or discrimination against minorities, for example. In countries with militant democratic constitutions, the decision to ban antidemocratic parties is usually made by constitutional courts. Such tasks are well within their mandate, which is to interpret the law in a manner consistent with the democratic system. But when action is needed to protect the system that exceeds this mandate, we cannot empower courts to do so.

The reason why courts are ill-advised to stray outside of the mandate they traditionally enjoy in liberal democratic theory is the peculiar nature of democratic self-defense. Such defense is a strongly *political* task. It cannot be confined to the implementation and interpretation of clearly specified laws. And this makes it seem like an inappropriate task for judges—or bureaucrats and civil servants, for that matter.[4] Indeed, courts have no flexibility to operate outside existing legislation (which, for many, is essentially the source of their institutional legitimacy). Their action cannot encompass the use of non-juridical instruments, such as introducing new laws, antifascist education, or social programs. They can, for example, not introduce compulsory training for police officers on how to identify and stop behavior that victimizes minority groups. Likewise, they cannot boost funding for degraded areas, where immigrants and nationals compete most directly for housing and jobs. Precisely because of its political nature, democratic self-defense requires some

sort of democratic credentials to count as legitimate. As they possess judicial—not legislative—power, courts do not enjoy (and do not have to enjoy) credibility as policymakers or legislators.[5]

At the same time, because the task of democratic self-defense may be compromised by ordinary partisan politics, it also seems inappropriate to assign the task to legislatures. (The same considerations apply to executives, but we will focus upon legislatures here.) The reason for this is that elected legislatures are generally composed of professional politicians, usually working together through parties. As such, they are major participants in the game of political competition. This makes it difficult to entrust them with any task that involves making and enforcing the rules of political competition. They inevitably face temptations to make and enforce these rules in self-serving ways—to stack the competition in their favor. We do not mean here that partisans are inherently self-serving, but that the expectation that they set aside their electoral interest and even act against it in purchase of a more collectivistic goal is too high and unrealistic. Take, for example, the decision to condition party funding or electoral eligibility on formally committing to democratic principles, or a decision to exclude a party from coalition talks, or even the decision to ban racist party-led events such as Golden Dawn's soup kitchens "only for Greeks." All and any of these decisions would affect the level playing field of political competition, and is therefore likely to involve electoral benefits for other parties.

Democratic self-defense will often require tasks of just this sort. The performance of democratic self-defense will influence the field upon which political actors such as parties compete. This is clearest in the case of party bans, which simply remove certain actors from the competition entirely, but less extreme measures can have similar effects. The temptation to fix the rules of the political game will always be there, and its potential consequences are dangerous enough to the political process even when nondangerous parties dominate the political process.[6] This is clearest in the case of militant democracy measures—party bans, prohibitions on parties' electoral participation, limitations on free speech for extremist parties, etc. To entrust such powers to elected legislatures is to provide elected officials with tools for hampering their political rivals as they see fit. It would be naïve to expect elected officials to navigate such an obvious conflict of interest consistently.

Things get even worse if a dangerous (antidemocratic, extremist) party somehow obtained a working legislative majority. Such parties routinely move to eliminate other agents in the political system capable of resisting their agenda—courts, legislatures, regulatory agencies, the media. They also move to tilt the political playing field to their advantage—ideally, enough to prevent them from ever losing another election again. This is a trademark move of authoritarian populist parties, which recognize no legitimate opposition (Müller, 2016b), and it has been employed to devastating effect in Poland, Hungary, Turkey, and other places unfortunate enough to see authoritarian populist forces take control of the political process.[7]

Nothing in what we say here should be construed as a general indictment against elected legislatures, which generally have very respectable democratic credentials. Our argument instead is that legislatures are poor agents to entrust with tasks regulating the sphere of political competition. This is because elected legislators have a direct stake in that sphere and how it is constructed; they therefore face strong temptations to warp the sphere in ways that benefit themselves. This is why, for example, gerrymandering occurs, and why the solution to gerrymandering so often seem to involve taking the drawing of legislative district lines out of the hands of legislatures.[8] This is not to say that legislatures will automatically abuse any authority to regulate political competition granted to them; it is simply to say that they have a standing temptation to abuse this authority, and that it would therefore be better to entrust as much of this authority as possible to agents lacking this temptation.

There are, of course, elected political officials who are expected to be "above politics," that is, nonpartisan. Many countries—for example, Germany, Ireland, Italy, Israel—rely on a figurehead President, elected either directly or indirectly, often by supermajorities and with a norm of choosing nonpartisan figures or nonactive politicians valued for their ability to credibly speak for the democratic order as a whole. These symbolic leaders usually have limited powers but play an important civic role. That role could conceivably be extended to include democratic defense. Such presidents could, for example, act directly by influencing coalition formation to disadvantage dubious parties or by verbally denouncing undemocratic behavior. Or they could be empowered to act indirectly, through a nominated assembly entrusted with powers of investigation, impeachment, and censure of public officials, as in the case of Taiwan's *Control*

Yuan (Caldwell, 2019). In either case, the actions of such a presumably 'neutral' institution would amount to a soft and preemptive type of intervention for the sake of democracy.

Despite the obvious benefit of having some such kind of control mechanism in place, we see several problems with such elected but politically neutral defenders of democracy. First and foremost, such institutions are easy to capture by majoritarian forces hostile to democracy. This does not even require antidemocrats themselves to ascend to such positions; it suffices to have their sympathizers or strategic partners in these roles, especially as new fringe parties often become kingmakers in an already polarized political arena.[9] Strategic objectives and party loyalties may divide rather than unite intentions to go after suspicious cases, or simply distract from the principal goal of defending democracy. Second, the nonpartisan nature of certain elected offices and their limited powers go hand in hand. Any effort to give, for example, a figurehead president real abilities to intervene in political battles would increase the interest political actors take in that office.

Given all this, how can the task of democratic self-defense—a task that is both necessarily political and beyond the normal realm of partisan politics—best be performed? Taking into account the limitations of, on one hand, courts and legislatures and, on the other, super-majoritarian heads of state as agents of democratic self-defense, it is worth exploring other options. A specially designed AC is, we will argue, one such option.

4 | ALLOTTED CHAMBERS AND DEMOCRATIC SELF-DEFENSE

Sortition—the random assignment of public responsibilities—has undergone a major revival of interest in the democratic world—a veritable renaissance, in fact, at both theoretical and practical levels (Stone, 2013). Proponents of sortition view randomly selected decision-making bodies, or ACs, as a crucial part of the cure for the ailing state of democracy in the world today. Numerous proposals have been made as to how ACs could be incorporated into modern democratic politics (e.g., Abizadeh, 2020; Barnett & Carty, 2008; Buchstein & Hein, 2009; Callenbach & Phillips, 2008; Guerrero, 2014; Leib, 2004; Sutherland, 2008; Zakaras, 2010). Some have gone so far as to imagine ACs either replacing election entirely (e.g., Bouricius, 2018a, 2018b; Hennig, 2017) or at least supplanting it as our primary democratic selection method (e.g., Landemore, 2020; Van Reybrouck, 2016). Moreover, these proposals have not remained confined to the realm of speculation, with several countries employing ACs to address controversial political problems. (For a review of recent experiments, see Farrell & Stone, 2020.)

In this section, we offer a proposal very much in line with this growing trend. We propose a chamber of randomly-selected citizens charged with overseeing a state's democratic self-defense. This AC would become the principle democratic defender. In what follows, we consider the potential advantages of such an AC over legislatures and courts, the primary alternative sites for democratic defense. We will demonstrate that a properly designed AC could avoid the primary disadvantages associated with these two alternatives.

4.1 | The benefits of ACs qua democratic defenders over legislatures

On the one hand, entrusting democratic self-defense to an AC *does not generate the risks posed by entrusting this task to an elected legislature*. ACs deny political parties, and other organized interests who may wish to stack the political deck, an opportunity to manipulate the political process for self-serving purposes. By entrusting such tasks to ACs, a democracy can take advantage of the *negative*[10] effect of sortition—its ability to select on the basis of *no* reasons (Stone, 2011). Due to this effect, ACs are guaranteed not to be filled on the basis of bad reasons. The partisan temptation to stack the political deck in favor of one party or interest is a quintessential example of a bad reason for selecting political actors.[11] This is the reason why Delannoi et al. (2013) favor entrusting ACs with tasks relating to the regulation of political competition—the drawing of legislative district lines, for example, or the creation and enforcement of legislative ethics or campaign finance rules. Even those theorists who are generally skeptical toward sortition

recognize the benefits of using randomly selected bodies in areas—such as choice of voting system—which influence the political landscape, as democratic self-defense measures do (Landa & Pevnick, 2020, p. 23).[12] There is thus a natural connection between tasks of this nature and ACs. Democratic self-defense will often necessitate the performance of such tasks. It is, for example, typical to introduce majoritarian elements or high thresholds in an electoral system in order to make it harder for radical parties to gain representation. Many other policy initiatives, related for instance to the design or amendment of party funding rules, also directly affect the terms of political competition.

One could object here that an AC could also become a place that replicates the partisan antagonism typical of legislative chambers. As modern political parties are not simply elite bodies, unlike their early counterparts, ACs would invariably contain members from various political parties, in rough proportion to the presence of those parties in the general population. Wouldn't this fact render ACs partisan agents in the same way as elected legislatures? We do not believe so, for two reasons.

First, an AC would give a proportionate voice to weakly partisan citizens and to independents, in addition to rabid partisans. The former two groups, needless to say, are massively underrepresented in elected bodies. This fact can be counted upon to moderate any partisanship. Like compulsory voting, sortition brings out the less committed and more moderate type of citizens.[13] This is advantageous for a body that claims suprapartisan credibility.

Second, and even more important, is the fact that ordinary party members can be counted upon to think and act quite differently from elected officials. The latter make careers out of politics. This gives them a much stronger incentive to ensure that their party wins at any cost than citizens who simply agree with the party's positions. Moreover, ordinary party members do not necessarily agree with the "party line" on all issues, and even when they do agree, they can be more prone to listen to other views and to compromise. This is one of the reasons that some authors (e.g., Fiorina et al., 2010) argue that the "red-blue" divide in the United States is overblown, with elite attitudes far more polarized than the views of ordinary citizens.[14] All these are consistent with the contemporary experience with sortition; it helps to explain, for example, why deliberative opinion polls in a deeply conservative state like Texas could strongly endorse the expansion of wind power (Fishkin, 2018, p. 113).

Of course, ACs will also predictably contain members of extremist parties as well, assuming those parties are large enough to be dangerous. Will not this prevent randomly-selected democratic defenders from doing their job? Not necessarily. First, such chambers would not require unanimity; extremist minorities can expect to be outvoted. Second, even supporters of extremist parties may prove more reasonable than party members, if placed in a deliberative context with ordinary citizens. Third, extremist party members would be expected to follow the rules of the AC, and could be sanctioned or even expelled for bad behavior (as occasionally happens with elected legislators). These factors can be counted upon to render the presence of extremist ordinary citizens in ACs less dangerous than the presence of extremist elected legislators in a parliament.

There is one additional limit to ACs' claims to independence that merits discussion. Landa and Pevnick (2020) argue that randomly selected citizens are especially vulnerable to external pressures for a variety of reasons, not least because they are not subject to accountability processes following their term in office. Hence, they are either tempted to use their office for future rewards or to succumb to the accumulated expertise of bureaucrats. These are indeed relevant concerns. But the authors fail to provide a convincing explanation about the absence of such pressures in such cases as the British Columbia Citizens' Assembly. We also do not see why introducing additional check mechanisms (e.g., against corruption of AC members) would not limit these risks.

Considering how crucial the supra-partisan nature of democratic defense is, one could simply retort that courts are better suited agents to take over this role. In what follows, we explain in detail why this is not the case.

4.2 | The benefits of ACs qua democratic defenders over courts

The main advantage of ACs vis-à-vis courts is that *an AC would possess democratic credentials that no judge or body of judges could match*. Compared to courts, ACs are political and quintessentially democratic agents, and can legitimately

perform political tasks. Democratic self-defense tasks require political judgment and democratic legitimacy, for example, when they concern the overhaul of school curricula, reform of police-officer training, budget reallocations in favor of groups at risk of being radicalized, new laws against racist violence, new mandates for public broadcasting agencies, and other policy initiatives that aim at reducing radicalization and the spread of political extremism.

Most observers recognize sortition as possessing a form of democratic legitimacy, just as elections do. The nature and strength of those credentials, however, are the subject of some dispute. Few observers, for example, would regard those credentials as sufficiently strong as to allow ACs to supplant legislatures entirely.[15] Nevertheless, it is possible to make two general claims about the democratic credentials of sortition that are broadly accepted.

First, random selection respects the value of *democratic equality* (Abizadeh, 2020; Guerrero, 2014; Stone, 2016; for counterarguments, see Landa & Pevnick, 2020; Owen & Smith, 2018; Umbers, 2018). Respecting this value means recognizing citizens as possessing an equal right to take part in political decision making, by carrying out some form of public responsibility. This right—a right grounded in democratic equality—is stronger than the right to run for political office in a competitive election. Rather, it is analogous to the right citizens have to vote—a right to a form of political power enjoyed equally by all citizens. The main difference between the right to vote and the right to political office filled via sortition is that the former, but not the latter, can be enjoyed by everyone. And when a large number of individuals all possess an equal right to something, but it is impossible to honor all those rights, then sortition is the selection method that uniquely respects the equality of citizen rights—that respects democratic equality.

Second, a large AC will reliably resemble the population as a whole along every dimension of possible political interest—race, gender, class, education levels, etc. The result is a high level of *descriptive representation* (Pitkin, 1967), with each segment of society appearing in the AC in rough proportion to its presence in the population as a whole.[16] Descriptive representation is not the same as "formal" or electoral representation (in Pitkin's terms) as it evades processes of authorization and accountability that are required for such a formal type of representation, but it gives the AC an ability to make a "representative claim" in a manner different, but no less legitimate, than that made by elected legislatures (Saward, 2010). For constructivists like Saward, this claim would then need to be accepted by the corresponding constituency, for example, through a referendum ratifying the AC's decision. But for others, it is sufficiently representative by virtue of being descriptive (Fishkin, 2018)—that is, of ensuring that all segments of society (and thus all interests and opinions) are included in the decision-making process. Descriptive representation thus gives ACs a form of democratic legitimacy that courts and even legislatures cannot enjoy (see also Abizadeh, 2020; Guerrero, 2014; Zakaras, 2010).

In summary, random selection provides a respectable democratic mechanism for ensuring that the people take part in decision making, without reliance upon elected politicians. It is a mechanism that is democratic (unlike courts), but nonpartisan (unlike elected legislatures). This combination renders it uniquely attractive when a democratic actor is needed who is above the ordinary to-and-fro of party politics. The task of democratic defense requires just such an actor.

5 | WEAK, MODEST, AND STRONG ACS

The previous section makes a case for ACs as possessing the correct sort of credentials needed for the vital task of democratic self-defense. Unlike courts, they are political agents, with serious democratic credentials. Unlike legislatures, they are nonpartisan agents, able to stand (more or less) above the normal political fray. But this section has said relatively little regarding how an AC would perform the task of democratic defense. In particular, we have said nothing regarding how this AC would fit into the political process as a whole. In this section, we address this question. We distinguish three possible roles ACs might play in this process—a *weak* role, a *moderate* role, and a *strong* role. The roles differ in terms of the power granted to the AC both to *initiate* democratic self-defense measures and to *implement* these measures with or without the approval of other bodies. We will compare the strengths and weaknesses of these three roles, and make a case for an AC playing the moderate role.

In all three cases, we presuppose an AC that is periodically (perhaps annually)[17] selected to conduct some form of democratic oversight. More specifically, we imagine an AC-as-democratic-defender becoming a *regular*, institutionalized part of the democratic process. A new AC (with a new random sample of citizens) would be summoned periodically, so as to provide regular opportunities for democratic self-defense. In principle, the AC could be summoned on an ad hoc basis when other actors (such as the legislature or the executive) saw the need for one, but that option reintroduces the opportunity for a self-serving or opportunistic use of that power. A regularly summoned AC, moreover, would become recognized as a regular feature on the political landscape, and thereby acquire greater political legitimacy.

We also presuppose that the AC is organized internally in such a way as to facilitate deliberation. This will necessitate, for example, a certain period of training for each AC member. It will also involve the combination of both plenary sessions, at which witnesses can be examined and votes taken, and small-group sessions, in which subsections of the AC can undertake detailed deliberation. This is in accordance with the usual way in which "democratic minipublics" have operated both in theory and in practice. Although some of these minipublics have not issued an official decision of any sort, we assume that a democratic defender AC would issue directives via (possibly qualified) majority rule. The question then becomes how the AC formulates proposals—that is, how much initiative it possesses—and how binding are its decisions.

ACs could play a *weak part* by proposing measures in defense of democracy that could be undertaken by other agents. An AC could be called upon to perform this task by a legislature, an executive, or an individual legislator. It could even be convened by a civil society organization in an unofficial capacity. For example, a citizen assembly could act as a 'civic' prosecutor and bring a case against the legality of a party or a political activity to the constitutional court. In the case of militant democracies, this means replacing governments and parties as plaintiffs that initiate party ban proceedings. It is noteworthy that we are not suggesting that ACs should replace the courts themselves and take it upon themselves to decide on whether to ban a party or not. Besides, in our scheme, ACs' range of options and possible decisions must be as wide as possible. The question of what should be done to defend democracy must be an open question and the answers to it reached through a process of deliberation. As a result, ACs should be able to recommend positive reforms such as social policy measures, new laws against racist crimes, or even a comprehensive overhaul of educational programs. It would still be left, however, to other agents to make any of these proposals a reality.

ACs could play a *moderate part* by ratifying the proposed measures enacted by another democratic agent. In doing so, they would shore up the democratic credentials of that agent. A legislature, for example, could decide that certain measures must be taken, subject to AC ratification; for example, they could decide to suspend state funding for parties that engage in hate speech; or they could ban the availability of public spaces for events that incite violence against vulnerable groups of society (immigrants, LGBT etc.). This raises, of course, the further question of who decides whether such ratification is necessary—that a piece of legislation or executive action requires said further ratification. One could simply leave this to the discretion of the legislature, whereby it would presumably make such referrals out of concern for the legitimacy of its own decisions. This may, however, prove a very weak defense. An alternative would be for an individual legislator, or even a member of civil society, to have the power to request/demand such referral. (The latter option would probably be too demanding, unless some restrictions were made on the ability to make such requests.) Or a judge could step in and judge some government measure as falling within the realm that requires AC ratification. Judges are often reluctant to adjudicate questions of a political nature. But if they were not required to rule on such questions themselves, but simply to judge that further scrutiny was required—especially scrutiny by a body with suitable democratic credentials—then perhaps this reluctance might be overcome. It would render the process of scrutinizing democratic self-defense measures much like a jury trial.

Alternatively, ACs could play a moderate part by deciding on and introducing measures subject to review by some other body. As above, these measures could again address issues of free speech or the use of state resources for antidemocratic parties. Perhaps, for example, these measures could be repealed by the legislature or court. The former is probably a more appropriate locus for such power than the latter. Legislatures enjoy democratic legitimacy, and

legislators, unlike judges, can be held accountable for unjustified refusal to honor AC decision making. It would probably be best if a legislative supermajority was required in order to overturn democratic self-defense measures on the part of the AC, so as not to make reversal too easy. But even if only a simple majority were required for reversal, this would not necessarily render the AC toothless. It may be harder to muster a majority to reverse a democratic self-defense measure than to prevent a majority from enacting such measures in the first place. If so, some of an AC's decisions could be counted upon to stick through simple inertia.

The *strongest part* an AC could play builds on the first. It would be to decide and introduce specific democratic self-defense measures. There should be no limit on the types of law and policies it could initiate, provided these are constitutional and justified as measures to defend democracy from threats posed by its internal enemies. Again, such a decision may seem quintessentially political, but given the democratic credentials of ACs, fewer questions would be raised by such a body taking over such decision-making power than a judge. This power could be held hand-in-hand with the power to evaluate specific measures. One could either employ one AC to decide on democratic self-defense measures, and another to judge and ratify specific measures, or employ the same AC for both tasks (cf. Bouricius, 2018, 2018ab).

ACs enjoy different strengths and weaknesses in each of the three different roles. An AC playing the weak role would be politically palatable, but in danger of being toothless. If other political actors could be counted upon to use the AC, they could probably be counted upon to enact democratic self-defense measures themselves. The free rider problem reemerges here. By contrast, an AC playing the strong role could definitely make a difference, but it may be hard to convince other political actors either to create such a body or to respect its decisions if it did. The AC is, after all, very much like the courts in being the "least dangerous branch" of government. It controls neither the purse nor the sword, nor does it claim the legal expertise and authority upon which judges rely. Its democratic credentials may not be sufficient to ensure that other agents—politicians, bureaucrats, and judges, who will remain part of the political process long after an AC has come and gone—respect its wishes. Alternatively, these agents might respect the decisions of a strong AC, but take other actions to ensure that the AC serves up decisions they like. The more powerful any political body becomes, the more incentives other actors have to ensure that it serves their interests (cf. Landa & Pevnick, 2020). In the end, such an AC might paradoxically be both too powerful and too powerless at the same time.

An AC playing the moderate role might potentially avoid both these pitfalls. On the one hand, it would not be dependent upon other actors to make a difference. On the other hand, it would not be so powerful as to raise questions of its legitimacy. Its role might be circumscribed enough not to generate worries of overreach on the part of other political actors—notably elected officials. At the same time, such officials might welcome such an AC as taking on a task they are ill-suited to perform. This logic would square with the existing experience with ACs; it is widely believed, for example, that many Irish politicians were happy to allow difficult issues (such as abortion and same-sex marriage) to be adjudicated by randomly-selected citizen bodies; by respecting the decisions of the latter, the former could protect themselves from political retaliation while still allowing for outstanding political questions to be resolved democratically. In performing democratic defense—for example, reviewing free speech restrictions or amending public broadcasting rules—an AC might conceivably play a similar welcome role for politicians not eager to take on extremist political actors.

An AC playing a moderate role would have one further advantage. Critics of ACs have pointed out that such bodies cannot take the place of deliberation within the wider society (e.g. Lafont, 2015). But a moderately strong democratic defender AC would necessarily involve other political agents, such as legislatures and courts, in its decisions. This would ensure that the actions of the AC, and the reasons it offers for its decisions, receive wider public scrutiny. Such wider scrutiny is important in democratic decision making generally, but it is ever so crucial when that decision making deals with democratic self-defense. At the end of the day, democratic self-defense is not democratic unless the people as a whole play a prominent role in it. The back-and-forth between ACs and the wider political process would help ensure that the people play such a role.

Regardless of the strength of the part an AC is charged to play as a democratic defender, that AC would be embedded in a democratic institutional context similar to that of contemporary democracies. This is necessitated by the

multiplicity of tasks involved in democratic defense, as well as the need in any institutional setting for reasonable checks and balances. This fact would leave little room for worry that the AC may spiral out of control—that the cure may be worse than the disease. As noted before, an AC charged with democratic self-defense would ideally be summoned automatically, on a regular basis. Each one would have a limited timeframe within which to act. This would certainly minimize the ability of any AC to act too wildly. Although the strongest form of AC would have considerable ability to act, its actions would still be constrained by the constitution, and thus subject to judicial review. (Although such an AC could reasonably play a role in the process of constitutional amendment, it should not be empowered to amend the constitution on its own.)[18] The AC thus provides a locus for a vitally important task—democratic self-defense—that is currently neglected, but without thereby overturning the rest of the democratic system.

6 | CONCLUSION

ACs can overcome some of the problems surrounding the question of who is better placed to defend democracy and how. Their unpredictability guarantees their independence and suprapartisanship that legislatures sometimes lack. And the democratic equality they respect, and the inclusion they provide, secure their quintessentially democratic character, as opposed to the technocratic character often attributed to courts. By way of conclusion, we offer one further reflection on their advantages when democratic self-defense is on the line. Suppose that the worst-case scenario occurs, and an authoritarian populist government takes power. Can an AC as democratic defender contribute anything in such a dire situation?

To be sure, autocratic governments cannot stand independent sources of authority, and so any such government will likely try and end the independence in which ACs trade. This might involve simple cheating; an authoritarian government may simply try to manipulate allotment procedures or buy off the AC's members. There is no guarantee against that, just as there is no guarantee against court stacking, ballot stuffing, gerrymandering, and manipulation of electoral rules. Defending democracy works best as a pre-emptive strategy, precisely to prevent autocrats from rising to levels of power that enable them to make such changes.

But even when all routes to power for the opposition are closed and it is presumably "too late," ACs can offer a meaningful choice. Opposition parties may struggle to coordinate pressure for democratic reforms if they have been tainted by a bad past record (e.g., corruption scandals) or if they are perceived as being motivated by narrow partisan interest or if they have a hard time achieving cross-partisan collaboration. On the other hand, actions and initiatives by civil society may be too difficult to coordinate. In this case, ACs can claim the democratic legitimacy that either autocrats or their opponents are missing and lead a nonpartisan resistance.

In the realm of democratic self-defense, most of the tools available carry with them heavy costs. ACs, we believe, have a serious contribution to make to the democratic self-defense project, one that can help a democracy circumvent many of these costs.

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NOTES

[1] There are many terms currently in use for randomly selected decision-making bodies, including minipublics, citizen assemblies, citizens' juries, and deliberative opinion polls (Escobar and Elstub, 2017). We use "allotted chamber" to refer to any body of this type. This follows the common practice, for example, of the Equality by Lot Blog (https://equalitybylot.com/), where bodies of this sort are routinely discussed.

[2] For a thoughtful discussion of the methods states can employ to combat dangerous speech without restricting civil liberties; see Brettschneider (2016).

[3] We use the term "defender of democracy" to refer to any person or institution in a democracy charged with practicing democratic self-defence. Delannoi et al. (2013) use the term "guardian of the political system" to prescribe a similar, but more expansive, role for allotted chambers.

[4] For the same reasons, it is not a viable option to entrust democratic self-defence to a committee of experts. (For such a proposal, see Müller 2015.) The technocratic objection holds also for certain international institutions, such as the European Commission, or the European Court for Human Rights.

[5] Common law systems may differ in this respect. Supreme Court judges in the US system, for example, are selected through political procedures. Some would therefore view them as quasi-legislators.

[6] Similar limitations related to their partisan nature apply to the EU's executive bodies (European Council; Council of the EU) and its legislative branch (EU parliament), which have often been hailed as ideal agents for defending democracy in the EU member-states (see Merlingen et al., 2001; Sedelmeier, 2014).

[7] Hungary is also an example of how party bans can be abused for political gains, with the Fidesz government considering a party ban against Jobbik, not because of ideological disagreement but to prevent it from 'stealing' Fidesz voters (see Krekó, 2017, p. 3).

[8] The benefits of deferring electoral reform, re-districting and electoral system oversight to randomly selected citizen assemblies have long been acknowledged both in the literature on random selection and in practice; see, for example, Delannoi et al. (2013), Abizadeh (2020), and Landa and Pevnick (2020).

[9] Examples range from Hitler's appointment as chancellor by a pressurized President in 1933 to the reluctance of the European People's Party to expel Victor Orban's *Fidesz* from its ranks in 2019.

[10] On the negative and positive contributions sortition can make, see Farrell and Stone (2020).

[11] Cf. Abizadeh's argument that ACs can serve as impartial adjudicators of political conflict (Abizadeh, 2020).

[12] We should note here that our view diverges from that of Landa and Pevnick who argue that parties are disincentivized to influence decisions in policy areas such as voting system choice. For us, such policy areas create huge incentives for partisan manipulation, while for Landa and Pevnick they minimize such incentives because the effects of decisions in these areas on parties are unclear. However, we all agree that policy areas such as vote system choice or laws on political parties, that indirectly affect the power distribution between political parties, call for the consultation of randomly selected citizens.

[13] Because citizens who tend to abstain are weaker partisans, obliging everyone to vote (i.e., compulsory voting) is thought to yield more moderate election results and shrink the presence of extremist parties in formal political arenas (Malkopoulou, 2020).

[14] Both these facts help explain why American states are increasingly entrusting the redistricting process to independent bodies staffed through random draws from a pool of volunteers. These bodies are routinely stratified to ensure a balance of Democrats, Republicans, and independents, and are considered much less partisan than state legislatures.

[15] Exceptions include Henning (2017) and Bouricius (2018a, 2018b). For a sceptical take on these exceptions, see Farrell and Stone (2020).

[16] Complicating this statement is the possibility that people would decline randomly selected service at differential rates depending upon their status. This is readily observed with respect to the Anglo-American jury. Although jury service is nominally mandatory, certain categories of people (students, people with full-time jobs, well-educated professionals, etc.) can readily obtain exemption. This leads to such juries being disproportionately constituted of elderly people, with lower-than-average education levels, etc. For the representativeness feature of ACs to obtain, one solution is to make participation for all those selected mandatory (Malkopoulou, 2015). The alternative would be stratification, the mechanism routinely employed by public opinion pollsters. Stratification, however, would involve some citizens being selected with a higher probability than others. Either way, a generous system of remuneration for AC service should discourage efforts to avoid service.

[17] We do not propose any particular length of time this AC should sit. Perhaps this would be best left up to the AC itself, subject to some restriction. If the AC were called annually, for example, then no one AC could continue sitting once the next one had been called.

[18] There is definitely a case for ACs playing a role in the constitutional amendment process, as the Irish experience demonstrates, but this role is distinct from that of democratic defender.

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