Applying Sortition in the EU: House of Lots or Random Votes?


The ‘digital constellation’ offers both opportunities and risks for democracy. While the information and communication technologies allow us to instantly communicate with each other enhancing the democratic dialogue, they prove to be a fertile ground for misinformation campaigns, hate speech and foreign cyberattacks. Although we are more frequently confronted with the risks, we haven’t seriously thought of taking advantage of the opportunities. If we use technology everyday to interact, trade, inform or misinform each other, why not use it to more directly participate in the democratic process? Has sortition something to offer? In the second part of the series ‘Sortition – a chance for the EU in the digital constellation?’, Konstantinos Tsakiliotis discusses two hypothetical applications of sortition within the EU: House of Lots or Random Votes?

In a globalized world, national states are unable to effectively address challenges that reach beyond their boundaries. Habermas requires supra- and international mechanisms to complementary serve this cause. He coined the term of post-national constellation to describe this situation.[1] Pernice suggests in continuation of Habermas’ thinking that states in the ‘post-national constellation’ face the risks and opportunities of ICT.[2] ICT take up physical and national boundaries providing immediacy making human relations denser while also cultivating a global public opinion. Alongside go cyberattacks that endanger trust in politics and economy, data
protection violations that curtail individual freedoms and "fake news" that lower the quality of public debate which is vital for a solid democratic process. The challenges in the "digital constellation" correspond with those in the post-national constellation: How can democracies take advantage of the chances by adequately addressing the risks while ensuring their legitimacy and efficiency? The EU project is a study case on democracy in the "post-national constellation". For its continuance reforms are needed that correspond with the opportunities and risks both of the "post-national" and "digital" constellation.

The EU Commission's online consultations

One example of the application of ICT within the EU are the Commissions' online consultations. Public consultations and thus online were first mentioned in the Commission's 2001 white paper on 'European Governance'. There, it reads, “democratic institutions and the representatives of the people, at both national and European levels, can and must try to connect Europe with its citizens”. The European Commission's First Vice-President Frans Timmermans said, "transparency and consultation are at the heart of our efforts to produce better regulation for better results".

Online consultations are defined as "interactive 'tell-us-what-you-think' on-line platforms where ordinary citizens, civic actors, experts, and politicians purposively assemble to provide input, deliberate, inform, and influence policy and decision making". On the 15th of May 2018 the EU Commission launched an online citizens' consultations asking what direction the EU should take. It will run until the Sibiu summit in May 2019. During last summer, more than 4.6 million EU citizens participated at an online public consultation organized by the EU Commission about the EU-wide summertime arrangements. Bearing in mind that 70 % of the replies (3.1 million) came from Germany (followed by France, 8.6 %) one would hardly consider these consultations representative for the whole EU.

Whereas in the present model of the online consultations everybody is allowed to submit any contribution, the participants of analogue consultations are usually randomly drawn: In 2007 and 2009 European Citizens' Consultations took place first as national conferences which were concluded by a European summit to discuss major challenges the EU faces. To these, sortition is a key element. But, do pre-election dialogues suffice to fill the democratic gap of the EU? And isn't the orderly conduct of online consultations disputable amidst cybersecurity and representativeness concerns? With regard hereto, two proposals will be introduced: an EU institution composed by randomly chosen citizens and the facilitation of the Commission's online public consultations via random sample voting as proposed by David Chaum.

A European 'House of Lots'?

_Buchstein/Hein_ diagnosed the EU with a democratic deficit in 2008 when the Lisbon Treaty was rejected by the first Irish referendum. In the wake of a bitterly politicized financial crisis accompanied by an orchestra of troika-technocrats, behind closed doors intergovernmental talks, national parliaments confirming in a rush the "deals" of the executive with limited and unsubstantial deliberation one would say that this deficit deepened or at least became more evident. _Buchstein/Hein_ observe that whereas some lower the standards necessary to legitimate the EU and others call on deep reforms to render the EU into a role for supra- and transnational
democracies all policy proposals nevertheless adhere to the traditional institutional features of national states. They advocate instead for a second territorial transformation crucial for its future. The first one refers to the adaptation of former institutional systems – which suited the scale of a polis - to mass democracies according to the national state model: parliaments substituted the popular assemblies, separation of powers instead of a sovereign ecclesia and elections instead of representatives drawn by lot. Equally, the second transformation requires developing new institutional settings and according to Buchstein/Hein the reintroduction of lotteries is key to that. They inter alia advocate for the institution of lottery-based chamber in the EU as complementary to the elected European Parliament. The members shall be drawn by lot out of the whole EU population according to the principle of degressive proportionality. The participation shall be mandatory and compensated equally to the elected member of the EP. This chamber shall have no right to control the Commission and the Council of the EU but instead to make recommendations to the Parliament, the Commission and the Council as far as legislative issues within the jurisdiction of the Parliament are concerned. Further, it shall be authorized to initiate and veto legislation. Its construction is destined to exert a higher deliberative pressure on the European Council that shall nonetheless maintain its 'integrative and stabilizing advantages' of reaching unanimous consensus. Thus, it shall alleviate politics from polarization and inter-party-conflicts allowing for substantial deliberations. Buchstein/Hein see the main objections in the fact the randomly chosen members won’t be chosen for a second term. Reelection provides an incentive to represent the fellow citizens and maintain a good public image avoiding corruption allegations. They further address another rather temporary objection: The public is not familiar with lotteries in politics. It is highly probable that a chamber not composed by professional politicians as the one we are used to won’t be taken seriously in the beginning. Buchstein/Hein addressed this concern in 2009. However, sortition since then has gained momentum in form of randomly chosen citizens’ consultations.

Or Random Votes?

Without prejudging the probabilities of institutionalizing citizens’ assemblies in the near future another perhaps more pragmatic application will be further discussed, bearing in mind that such an approach may familiarize the public with sortition leading to the implementation of suggestions as the one described above. The EU Commission’s online consultations may prove a fertile field for experimentation with sortition and more precisely the random sample voting system.

The question remains: how to guarantee representativeness and therefore legitimacy of the impact exerted by the online consultations while also securing the running system adequately? Regarding the issue of representativeness, the study by the European Economic and Social Committee considers “random representative sampling as a modern, scientific method to ensure the representation of both ‘organised’ and ‘unorganised’ civil society”. Pernice introduced in the Public Hearing on the 25th of April 2018 at the AFCO (Committee for Constitutional Affairs) of the European Parliament the random sample voting system by Chaum as a reliable, cost-effective and secure means to facilitate the “digitization of political participation” Its spectrum of
implementation reaches from surveys over to votes and referenda. Chaum defines random sample voting as “the polling of a random subset of voters that is at least as secure against abuse as current elections”.[14]

Random sampled voters cast “vote codes” which correspond with their unique ballot serial number and their “vote choice” such as yes or no. These codes are printed on the paper ballots they receive via post. Vote codes that are voted are posted online that allows for verifying that votes are recorded as cast while ensuring that voters are unlinkable to their “vote choices”. The so called election authority – in our hypothetical scenario, the EU Commission – supervises the conduct of the election according to the protocol. It encrypts a random -reordering of the voters and the blockchain determines whereich positions in the re-ordered list are randomly chosen, meaning the actual voters. In the process involved are self-selected auditors who check if the encrypted data published by the election authority match with inter alia the results of public random data and posted vote codes. Another unique security characteristic is the “decoy ballot”. Decoy ballots are issued by the election authority and include votes that are not to be counted but nonetheless cannot be distinguished from the legit ones. The fact that these can be requested by anyone renders vote buying ineffective.

The Commission’s online consultations pose issues as for example with regard to the representativeness, the transparency and also the bindingness of the results. Is random sample voting the right solution? And what new issues may possibly arise via this application?

Read here the first part of the series ‘Sortition – a chance for the EU in the digital constellation?’ (https://www.hiig.de/en/what-if-politicians-werent-elected-but-rather-drawn-by-lot/)


[3] Art.5 Section 3 of the Lisbon Treaty reads “Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level…”


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