

Reply to Paul Lucardie’s 2014 book

By Simon Threlkeld / September 19, 2017

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1. Introduction

In his 2014 [book](#) *Democratic Extremism in Theory and Practice: All Power to the People*, Dutch political scientist [Paul Lucardie](#) comments on my proposal for democratic lawmaking in my 1998 [article](#) “A Blueprint for Democratic Law-Making: Give Citizen Juries the Final Say” (“Blueprint”). He has a short section headed “Strong sortitionism: the citizen juries of Simon Threlkeld” (Lucardie 124), and also comments on my said article at 134, 136, 149-151 and 158.

This is my reply to Lucardie’s questions, objections and comments regarding Blueprint, and to his alleged category of “democratic extremism.” I also outline herein much of my position on citizen juries, including some details not published before.

Lucardie at the time of writing his book was not aware of the rest of my articles published in 1997 and 98 about how citizen juries (aka “minipublics”) can be used to make modern societies far more democratic than they are. His commentary on my minipublic proposals is for this reason rather limited. (For a definition of citizen juries and minipublics see for example any of [Threlkeld](#): August 12, 2016; April 18, 2016; Blueprint.)

Since the beginning of the 1980s it has seemed to me that citizen juries are a uniquely excellent basis for democratic reform, including with regard to juries deciding laws, and public officials being chosen by juries (rather than by politicians or by popular election). I long assumed the ideas that occurred to me must have been written up and published by others at some point in the 20th century, even though I was unable to find such writings, but apparently that was not the case. I published a series of short articles on citizen juries in 1997 and 1998, and a reply to some objections in early 1999.

I returned to publishing articles on citizen juries in 2015.

Lucardie's description of my proposal in Blueprint as "strong sortitionism" is reasonable and accurate.

The citizen-ruled Greek city-states of the 4th and 5th centuries B.C., especially Athens, are the great historical example of the citizen jury (or sortition) approach to democracy. The citizen jury idea has also long existed in the form of the trial jury.

Athenian democracy was very undemocratic in certain regards. For example, women were excluded from the citizen juries and the Assembly (*Ekklesia*). But we can extrapolate Athenian ideas into a more fully democratic context, just as we can for example do with "We the people" in the U.S. Constitution which [originally](#) was not inclusive of women, Afro-Americans, native peoples, and those who did not meet certain property qualifications.

We have lessons to learn from the citizen juries of Classical Athens, however the point is not to copy them, but rather to apply the basic idea of citizen juries in ways that can further democracy and freedom today.

I am interested in citizen juries as a method of informed democratic rule by the people, not merely as providers of advice to politicians or the general public, or as an informed version of opinion polls.

I understand democracy to be a rich and broad concept. In my view it includes informed rule by the people, the equality of citizens, level playing fields for decision-making (as opposed to decision-making tilted and skewed in favour of, for example, the self-interest of economic and political elites), having effective checks and balances on political and economic elites, separation of powers, freedom of speech, association and assembly, rule of law, the right to a fair trial, freedom from arbitrary search, seizure, arrest and detention, and other things. It is in this context that I say citizen juries can greatly advance democracy in modern societies.

Rule by the people is central to democracy. Such rule needs to be *informed* because only informed views provide a good basis for a decision. Poorly informed rule by the people is undemocratic, or at least undesirable and very problematic.

Citizen juries are well-suited for providing informed rule by the people (see [Threlkeld: August 9, 2016](#); [August 12, 2016](#); [April 18, 2016](#); [Blueprint](#)). They are also a very good basis for other aspects of democracy including the equality of citizens, the level playing fields needed for fair and democratic decision-making, having very effective checks and balances on concentrations of power and influence, and separation of powers (*ibid.*, and see Section 16.i through 16.v below).

Popular vote, both in the form of popular election and referenda, is not suitable for ensuring informed decisions. It is in general a method of poorly informed rule by the people, at least to the

extent it is a method of rule by the people at all, rather than for example rule by economic and political elites (ibid.).

Electoral democracy (rule by popularly elected politicians) is contrary to democratic ideas, including informed rule by the people, the equality of citizens, the need for fair and level playing fields in decision-making, and the need for effective checks and balances on political and economic elites. ([Threlkeld: August 12](#), 2016; [August 9](#), 2016; Blueprint; and see Section 16.i through 16.v below.)

Among the other terms for “citizen jury” and “minipublic” are “jury assembly,” “jury,” “minipublic,” “micropublic,” “minidemos,” “microdemos,” “minipopulace,” “citizens’ assembly,” “citizen assembly,” “citizen panel,” and “microcosm of the people.” I prefer to use “citizen jury,” “minipublic” and “jury.”

The citizen jury or minipublic approach to democracy can also be called for example the “sortition approach,” “sortition,” “sortitionist,” “jurycratic” and “lottocratic.” I prefer to call it the citizen jury or minipublic approach, but am not offended by the other terms just mentioned.

We can speak of specific kinds of citizen juries based on the role they serve, such as “legislative juries” that decide laws, “judicial selection juries” that select judges, “House of Representatives selection juries,” “school board selection juries,” “law reform juries” that may formulate and propose new laws, and so on. In Athens there were for example the *dikasteria* (jury courts), *nomothetai* (legislative juries), and the *Boule* (Council), all chosen from the citizens by lottery.

Citizen juries can also be described with regard to the jurisdiction or public they are drawn from. For example, a citizen jury for a city could be called a “minicity” or “minipolis,” a minipublic of the undergraduate student body at a university an “undergraduate jury” or “undergraduate minipublic,” a citizen jury of the U.S. public a “federal minipublic,” and so on.

2. Let juries choose public decision-makers

For the reasons I have given, it would be much better and far more democratic for a wide range of public officials to be chosen by jury, rather than by either politicians or popular election. I propose and argue for this in my first published article on citizen juries ([Threlkeld](#), Spring 1997).

Judges, regulatory boards and commissions, administrative tribunals, the boards of public broadcasters, the Canadian Senate and British House of Lords, school boards, and district attorneys are among the public officials that are in my view best chosen by jury, rather than by

either politicians or popular election. For the reasons I have given it would also be much better and far more democratic, in important regards, for the U.S. president, Congress, state governors and state legislatures to be chosen by jury rather than by popular election. A similar argument can be made concerning the legislative and executive branches in other countries. ([Threlkeld](#): August 12, 2016; August 9, 2016; October 14, 2015; September 16, 2015; September 9, 1998; Spring 1997.)

As Lucardie was only aware of Blueprint, he does not comment on my proposals for selecting a wide range of public officials by jury. Nor does he comment on the one example of this idea that is in Blueprint, namely the “jury commission.”

3. Making popular elections more democratic

Choosing politicians by popular election is an established tradition to which the public are perhaps rather attached, perhaps especially so for the most important politicians such as, in the U.S., the president, Senate, and state governors.¹ If the executive branch and some or all legislatures must be chosen by popular election, despite the serious flaws in that approach, then citizen juries can be used to make such elections far more democratic and fair than they are now.

The power to decide election rules needs to be handed over to informed rule by the people (through juries). This would be far more democratic and fair than politicians continuing to decide the rules they are elected under. ([Threlkeld](#): February 14, 2017; August 12, 2016; July 26, 2016; June 8, 2016.)

Citizen juries can also provide an excellent basis for putting campaign funding on a fair and democratic basis, as I have briefly proposed, arguing that this approach is far better than the vouchers approach, which is perhaps the best campaign funding proposal previously made ([Threlkeld August 12](#), 2016).

Another possibility is to combine selection by jury with selection by popular election. The first stage can be selection by jury and the second stage a popular election. For example, a large jury could be used to narrow the candidates for US president down to two or three, with the final choice of the remaining candidates being made by popular election (with the rules for that popular election being decided by jury). If there are more than two candidates running in the popular election, then something like ranked choice ballot needs to be used to avoid the unfair and undemocratic vote splitting caused by first-past-the-post.

The candidates selected by jury that proceed to the popular election could be given public funding for their election campaigns. The amount could be decided by the selection jury, based on the proportion of votes they received from the jurors. The candidates who proceed to the popular election could also be invited or required to participate in publicly run and funded

debates, overseen by a board chosen by jury. That board could be chosen by jury using a proportional representation voting method.

Another way to combine selection by jury with popular election is for all presidential candidates to be required to appear before a presidential selection jury which would not choose the president nor narrow down the choice of candidates for the general election, but rather recommend who the president should be. How well each candidate did in the voting of the selection jury could be included on the ballot in the general election (which would be by ranked choice ballot). The top placed candidates could also be given public funding for the election campaign, and invited to participate in televised debates run by said jury-chosen board.

4. Democratic lawmaking

Lucardie's account of my democratic lawmaking proposal in *Blueprint* is accurate so far as it goes (Lucardie 124), leaving aside certain speculations by him that don't follow from anything I say.

In *Blueprint* and elsewhere, I argue in favour of a citizen jury analog of the popular initiative and veto referendum, in regard to both their signature requirement and popular vote aspects. I briefly explain in these articles why a citizen jury approach to citizen lawmaking is far more democratic, informed, effective and fair than the popular initiative and veto referendum. ([Threlkeld](#): April 18, 2016; Winter 1998/99; December 16, 1998; *Blueprint*.)

I am, so far as I know, the first to propose and argue that citizen juries can provide a version of citizen lawmaking that is analogous to but far more democratic and much better than the popular initiative and veto referendum.

However, the idea of "legislative juries" is an old idea that goes back to the Athenian legislative juries (*nomothetai*) of the fourth century B.C. Although I did not know about the Athenian legislative juries until years after *Blueprint* was published in 1998,ⁱⁱ they have striking similarities to the legislative juries I propose.ⁱⁱⁱ

In *Blueprint* (and elsewhere) I propose three types of juries for a democratic system of lawmaking: "legislative juries," "preliminary juries" (aka "qualifying juries"), and "procedures juries." Legislative juries decide if laws go into effect or not. Preliminary/qualifying juries decide which proposed laws go to a legislative jury for a final decision (that is, they decide which laws are "qualified"). Procedures juries decide what the procedures and arrangements for jury lawmaking are.

Where the popular initiative and veto referendum exist, they could be entirely replaced by citizen juries (with preliminary/qualifying juries replacing the petition requirement, and legislative juries

the popular vote). Alternatively, both versions of citizen lawmaking could be in place, with juries deciding on a case by case basis whether the final decision about qualified proposed laws (whether qualified by jury or petition) will be made by a legislative jury or by popular vote (see Threlkeld, April 18, 2016 for a brief discussion of this possibility).

To their credit, at least in my view, the political activists behind the introduction of the ballot initiative (aka the popular initiative) and veto referendum, did not propose these things for the purpose of offering advice to politicians, or for providing citizen legislation that politicians could veto or override. Instead they proposed the initiative and veto referendum to give citizens a final say in lawmaking that politicians could not ignore or veto. Unfortunately, the ballot initiative and veto referendum are, for the reasons I give in my articles on democratic lawmaking, a very flawed and inadequate way of doing this.

I do not propose doing away with the existing legislatures (though, as I mention above, they need to be chosen in a much more democratic way than is now the case). They can continue to play a useful role in legislation by working out proposed laws for the consideration of juries (and may continue to make other contributions to society such as [constituency work](#)). But the monopoly power politicians now have over lawmaking needs to end, because it is very much contrary to democracy and the public interest.

5. Deciding citizen jury procedures

In Blueprint and elsewhere, I propose that there be a standing commission overseen by one or more commissioners chosen by jury, that is tasked with designing the best possible procedures and arrangements for jury decision-making, and with improving on them over time. In Blueprint I call this a “jury commission.” ([Threlkeld](#): April 18, 2016; Winter 1998/99; December 16, 1998; Blueprint.)

The jury commission would have the power to convene “procedures juries” that would decide the procedures and arrangements for citizen jury decision-making, after hearing the advice and proposals of the jury commission, and of others such as public interest groups and political parties.

In this way the rules (the procedures and arrangements) for jury decision-making would be decided in a democratic, informed and fair way, independently from politicians, political parties and special interests (*ibid.*).

This approach can be used for deciding the procedures and arrangements for all citizen juries, including legislative juries, juries that choose judges and other public officials, juries that decide how public officials are chosen, law reform juries, and procedures juries themselves. (When a

procedures jury decides the procedures and arrangements for procedures juries it is best that it only do so with regard to future procedures juries, and not, or at least typically not, with regard to itself. Part of the reason for this is separation of powers and avoiding conflicts of interest. See Section 9 below regarding separation of powers.)

An independent facilitator, chosen by jury independently from the jury commission, can preside over the jury commission's appearances before procedures juries, in order to ensure the process works well and fairly, is seen to do so, and to ensure there is no undue influence or shenanigans by the jury commission.

Politicians must not be allowed to design the arrangements and procedures for citizen jury decision-making because of the conflict of interest they have, specifically their interest in keeping lawmaking and other decision-making powers in their own hands, and not letting power fall into the hands of the people. Leaving it to the politicians is also at odds with other basic democratic ideas, including rule by the people and the equality of citizens (see my articles cited above in this section, sections 2 and 3, and see Section 16 below).

The jury commission needs to be a standing commission that can continue to improve the design of jury decision-making over time, to spot any problems that show up in jury decision-making, and work out how to solve such problems. Others, independently from the jury commission, might also help work out and improve the design over time, such as interested academics and public interest groups.

In addition to procedures juries being convened from time to time by the jury commission, each year a jury (which we can call a "procedures preliminary jury") could meet and decide whether or not procedures juries will be convened that year to consider and possibly approve proposed changes to the procedures and arrangements for juries. This annual preliminary jury can hear from the jury commission and others before it decides.

In this way, an excellent democratic mechanism will be in place for monitoring and improving jury decision-making over time, and for correcting any design flaws and inadequacies that may appear. This is an essential part of ensuring well-designed jury decision-making.^{iv}

6. Deciding which public officials are chosen by jury

For the reasons I give in my articles cited above in Section 2, it is far more democratic and much better that many public decision-makers be chosen by jury rather than by politicians or by popular election. A separate question is who is to decide whether or not public decision-makers are chosen by jury. If legislative juries are given the final say in lawmaking, this will be one of the things they can decide. (Sometimes how decision-makers are chosen for office is entrenched

in a constitutional provision that is hard to change, as is the case with for example the Canadian Senate.^v My position on amending constitutional law is, in brief, that the power to amend constitutions that politicians now have needs to be transferred to juries.)

In any case, whether or not democratic lawmaking is instituted across the board in the way I propose in Blueprint and elsewhere, the power politicians have to decide how public decisionmakers are chosen needs to be transferred to citizen juries (for reasons that are perhaps apparent to those who have read the above and some of my articles cited therein).

This is necessary because it is the only way to base the decision on democratic principles, in particular, informed rule by the people, the equality of citizens, independence from politicians, political parties and special interests, and the idea that public offices belong to the people (rather than to politicians, parties and special interests).

It is essential that the decision be independent from politicians and political parties because of the conflicts of interest they have. Politicians and parties have an interest in keeping the selection of public officials in their own hands, and out of the hands of the people, and they have an interest in rules for popular elections that favour themselves and their party.

Leaving the decision to politicians is also contrary to other principles of democracy, including informed rule by the people, the equality of citizens (see for example Section 16.iii and 16.iv below regarding how rule by elected politicians is contrary to the equality of citizens), and the idea that public offices belong to the people.

All of the important public decision-making offices, such as legislative assemblies, president, state governors, regulatory commissions, judges, the boards of public broadcasters, mayors, city councils, school boards, police boards, government ombudsmen and privacy commissioners, and so on, need to be reviewed by jury to decide which of them will be chosen by jury (rather than by politicians or popular election). When new public offices are created, it needs to be decided by jury whether they will be chosen by jury.

It is also necessary (for the same reasons it is necessary for juries to decide which public offices are chosen by jury) that juries decide the details of how jury-chosen officials are chosen by jury. Among such details are the size of the juries that will be used, and the voting method that will be used (for example, voting in rounds with the candidate with the least votes being eliminated in each round until one candidate has a majority of the vote, or using a proportional representation method of selection).

Deciding how public officials are chosen is an important and fundamental area for informed rule by the people to be exercised, and for other democratic principles to be respected, including the

equality of citizens, and recusal of politicians and political parties when they have a conflict of interest.

I am, so far as I know, the first person to propose and argue that public officials be chosen by jury rather than by politicians or by popular election, that juries decide the rules for popular elections, that the public funding arrangements and amounts for popular elections be decided by jury, and that juries decide which public decision-makers are chosen by jury.

7. Will there be judicial review and other checks on problematic laws?

Lucardie: "... what would happen if citizen juries approved of inconsistent, unconstitutional or inhuman laws? Perhaps Threlkeld, writing in a North American context, assumes some form of judicial review by a Constitutional Court?" (124.)

Yes, I am in favour of judicial review, but I am (as mentioned above) opposed to judges being chosen by either politicians or popular election. Instead, for the reasons I give, judges ought to be chosen by jury ([Threlkeld](#): Spring 1997; August 9, 2016).

Judicial review (by judges chosen by jury) is a needed check and balance on legislation, regulations, the executive branch of government, the police and other things because there are rights and liberties that no one has the right to violate, and because democracy needs to be protected from those who would undermine and destroy it.

The details of how judges are chosen and how long their terms of office are needs to be decided by jury in the context of a well-designed jury decision-making process, because that is (as indicated above) the only way to do it that is informed and democratic, and which is independent from politicians, political parties and special interests.

Regarding Lucardie's concern about juries passing inconsistent laws, this is not a greater concern for laws passed by jury than laws passed by politicians. In my proposal, proposed laws that are inconsistent with each other go to the same legislative jury which will decide which one of them, if any, will be passed. When juries pass a new law, it would override or amend past laws in the same way that this happens when politicians pass a new law. In Classical Athens, the legislative jury process was understood as a trial between the new law being proposed and the law it would replace (which was presumably helpful for preventing inconsistent laws).

Rule by elected politicians can result in swings in ideology and partisan self-interest with each new election. The informed judgement of the people that juries bring to lawmaking is likely to be more consistent.

Conflicting laws, including those involving jurisdictional disputes between different levels of government/jurisdiction, can be dealt with by the judiciary in the same way they are now.

[Law reform commissions](#), with the commissioners chosen by jury, and with the amount of public funding decided by jury, could be established to provide advice about laws, including about the repeal and amendment of laws that may be “inconsistent, unconstitutional or inhuman.” It is undemocratic and inappropriate for the politicians who hold power to decide who the commissioners are and what the funding is, as was done for example with the [Law Commission of Canada](#), until Stephen Harper and the Conservatives came to power and shut it down. Why I say this is undemocratic and inappropriate can be extrapolated, easily I think, from what I say above, and from my above cited articles.

8. What about the now existing legislative and executive branches of government?

Lucardie: “Threlkeld assumes a government that would propose and presumably execute the laws passed by the civil juries, but does not specify where this government comes from: elected directly by the people, like the Athenian *stratego*?” (124.)

I envisage the laws passed by legislative juries as having the same status as laws passed by popular initiative in such places as California. I think this is implied in Blueprint as I propose legislative juries as a better version of citizen lawmaking than the popular initiative.

My proposal for democratic lawmaking (in Blueprint and elsewhere) is that citizen juries step into the shoes of the popular initiative and the veto referendum. Citizen juries would make the decisions now made by both the signature requirement and popular vote aspects of those methods of decision-making.

I am, as mentioned above, not in favour of abolishing the existing legislatures and executive branches of government. As indicated above, my position on them is that they need to be chosen in a more democratic way (by jury, or at least on the basis of rules decided by jury), that the final say in lawmaking should be transferred to informed rule by the people (through juries), and also that many of the decision-makers now typically chosen by the executive branch need to be chosen by jury, including judges, regulatory commissions and the boards of public broadcasters, and that the only democratic and appropriate way to decide how public decision-makers are chosen is by jury (within of course the context of a jury decision-making process designed to be democratic, fair and informed).

9. Separation of powers in minipublic decision-making

Lucardie does not comment on the separation of powers approach that is central to the democratic lawmaking proposal I make in Blueprint, (and to everything else I have written about citizen juries).

In Athens, citizen jury decision-making was characterized by separation of powers (regarding separation of powers in Athens see Endnote iii, and [Terril Bouricias](#), April 30, 2013).

In Athens each legislative jury only decided one proposed law, and each jury court only decided one trial, after which the jurors disbanded back into the citizenry. A legislative jury did not serve for months or years hearing and deciding many proposed laws, nor did a jury court serve for months or years hearing and deciding many trials. Nor did legislative juries formulate the proposed law they heard, nor did jury courts choose their cases or lay charges for the case they heard. These separations of power and others are a basic characteristic of citizen juries in Athens.

Separation of powers is also a characteristic of trial juries. Each trial jury hears only one trial, and does not serve for years hearing many trials. The jurors do not decide what case they get, nor are they involved in earlier stages of the process such as deciding whether the police investigate and lay a charge in the matter that comes before them, or, in a civil case, offering opinions to the plaintiff or defendant about their pleadings before the plaintiff and defendant appear before them in the trial.

The citizen jury proposals I make accord with the separation of powers in the citizen jury tradition in both Athens and the trial jury.

In my proposal, each legislative jury only decides one proposed law (or which, if any, of a set of alternative proposed laws on the same topic will go into effect). A legislative jury does not formulate and does not choose the proposed law it will decide.

Each selection jury only chooses one public official, or, if proportional representation is used, only a small number of public officials (for example, a regulatory commission with nine members could be chosen by jury, three members at a time, on a proportional representation basis, with staggered terms for the three sets of three commissioners).

Short terms of service are part of the separation of powers for citizen juries. One reason for short terms is to help ensure that juries remain a representative cross-section of the citizens rather than becoming something like long time civil servants or politicians. Lucardie is aware of this concern: “The longer the terms they [jurors] serve, the more likely it is they will ‘go native’ as [Keith] Sutherland puts it ...” (136).

Another reason for short terms of service is the Classical Greek idea of the citizens ruling in turns. With short terms of service more citizens will be able to take their turn at ruling, and those who take a turn will soon disband back into the citizenry.

Lucardie appreciates the educational value of ruling in turns. Lucardie: “Each proposed law [in Threlkeld’s proposal] would require a new jury, so over the course of time large numbers of citizens would gain legislative experience.” (124. See also 135-136)

Proposed laws could come from a number of sources, such as experts, public interest groups, politicians, law reform commissions and law reform juries. Rather than trying to concentrate the formulation of legislative proposals into the same jury that will decide which laws go into effect, better to have a separation of powers between legislative juries that decide laws and those who propose them. One reason for this is that the best proposed laws may come from sources other than a jury, such as a public interest group, politician or law reform commission. Another is that by not being involved in formulating the proposed law it hears, a legislative jury is better able to give it a fresh and objective look.

I have never proposed and do not support a legislative jury in which the jurors serve for years (rather than days, weeks or months), decide on a great many proposed laws rather than just deciding on one (or on one set of conflicting/alternative proposed laws), and that also formulate and propose the laws they decide on.

10. Should jury service be mandatory or voluntary?

Lucardie: “Threlkeld did not make it clear whether jury service should be mandatory or voluntary, but given his emphasis on representivity, some element of compulsion would make sense.” (124.)

This is something for the jury commission to consider, monitor and make recommendations about, and for the procedures juries to decide.

It is, as Lucardie indicates, important for the sake of representivity that a high portion of the randomly selected serve. This is one reason why the jurors need to be paid, and paid reasonably well. Other steps also need to be taken to make people willing to serve, such as treating jurors courteously, funding daycare for jurors who are parents, funding pet care for those with pets, giving lots of advance notice before service on a jury starts (but of course no advance notice about which jury they will be on), and making it known that such service is interesting and educational, and will be something those who serve will remember for the rest of their lives.

Reasonably good pay (along with being treated well in other ways) may be a sufficient incentive for lower income people. For higher income people something similar to the existing requirements for service on trial juries may be needed. They could also be given the option of either serving or paying a fine or tax geared to income and wealth.

The voluntary/mandatory issue about serving on juries is analogous to the voluntary/mandatory issue about voting in popular elections and referenda. One important difference is that stratification (stratified random sampling) can be used to boost representivity in juries when service is voluntary, but not in elections and referenda when voting is voluntary.

11. Officials chosen by jury, and “law reform juries,” could refer proposed laws to juries for a final decision

In Blueprint, the jury commission is chosen by jury and can propose laws/rules (concerning the jury decision-making process) to juries that can accept them or reject them.

This idea of officials chosen by jury being able to refer matters to juries, with those juries being able to make a final and binding decision, can be generalized well beyond jury commissions. For example, administrative boards and regulatory commissions can be chosen by jury, and given the power to refer proposed laws within their area of expertise to legislative juries for a final decision.

I have proposed that the boards of public broadcasters (using the Canadian Broadcasting Corporation as the example) be chosen by jury and that they have the right to refer all matters concerning the broadcaster, such as the enabling legislation and the amount of public funding, to juries for a final decision ([Threlkeld](#), October 14, 2015).

Other examples of this possibility include the FEC (the U.S. Federal Elections Commission) being chosen by jury (rather than by the president and confirmed by the Senate) and being able to propose laws regarding elections, and also laws regarding the FEC’s enabling legislation and funding, to legislative juries for a final decision. Something similar could be done regarding other regulatory bodies, such as the FCC (the U.S. Federal Communications Commission).

Law reform commissions could (as mentioned above in Section 7) be established with the commissioners chosen by jury, and with the funding set by jury. Such law reform commissions could have an open mandate, with freedom to set their own agenda. There could also be law reform commissions with a specific legislative mandate set by jury, such as a mandate to consider, for example, intellectual property law, and to propose new intellectual property legislation, if they think it helpful or necessary to do so. Such law reform commissions could be called “democratic law reform commissions” or “democratically chosen and funded law reform

commissions” to distinguish them from what now exists. They could have the power to put their legislative proposals before a preliminary jury, which could vote to qualify them to go to a legislative jury for a final decision.

A democratic law reform commission could put forward two or three alternative legislative proposals on the same topic, with a preliminary jury deciding which of them to qualify, if any, and a legislative jury deciding which one of those qualified, if any, goes into effect.

Another possibility is to establish “law reform juries.” Like said law reform commissions, these could have an open mandate and be free to set their own agenda, or they could have a specific mandate (set by jury), and could be able to bring legislative proposals to a preliminary jury that could qualify them to go to a legislative jury for a final decision.

Law reform juries could be assisted by professional and technical staff such as trained facilitators and legislative drafters. Arrangements need to be in place to ensure that such assistants do not become backseat drivers trying to manipulate jury decisions.

Another option is for a jury to be able to provide grants to public interest groups to study a particular topic with a view to making a legislative proposal if one is needed.

Legislative juries can decide to implement the possibilities mentioned in this section, as well as other options that may contribute to an informed, democratic and effective system of jury lawmaking. The procedures commission and others can work out the details, and make recommendations about what is best to legislative juries and procedures juries.^{vi}

12. Lucardie’s alleged category of “democratic extremism”

Lucardie’s alleged category of “democratic extremism” should be rejected because it is a contradiction in terms.

Lucardie observes that: “Obviously, it is rather inconvenient if one wants to write about a phenomenon [democratic extremism] that by definition cannot exist [because it is a contradiction in terms].” (14.) Lucardie then tries to define “democratic extremism” in a way that is not a contradiction in terms, but he does not succeed.

After indicating (top of 15) that he will consider advocates of “pure democracy” to be “democratic extremists” Lucardie says: “In a pure democracy all important decisions are taken by the people, either directly or indirectly. In all pure regimes [evidently including all “pure democracies”], ideological homogeneity has replaced pluralism and absolute power has replaced checks and balances. This definition of extremism ... will serve as a guideline in this book.” (See

13-15 and 154 regarding Lucardie's thoughts on "democratic extremism.") Lucardie's said statement of what he means by "democratic extremism" illustrates that it is a contradiction in terms, despite his claim that it is not. When we speak of "ideological homogeneity" that has replaced "pluralism," and of "absolute power" that has replaced "checks and balances," we are no longer speaking of democracy. These things are profoundly undemocratic, and although they may describe political extremism, (including for example the Soviet Union under Stalin and Germany under Hitler), they do not describe anything that can reasonably be called democracy. Freedom of thought, speech, religion and association, and the ideological diversity, open marketplace of ideas, and pluralism that go with these freedoms, are basic aspects of democracy. So too are checks and balances and the absence of absolute power, and other things contrary to the concept of political extremism used by Lucardie in the above quote.

In order to label "pure democracy" as "democratic extremism" Lucardie defines "pure democracy" in a way that cannot reasonably be regarded as falling within the ambit of what democracy is. By doing so he creates a contradiction in terms.

Here is an example of Lucardie using his said contradiction in terms definition of "democratic extremism." He tells us "the Spanish village of Marinaleda could qualify as an example of extreme assembly democracy ... Yet as far as the evidence is reliable, it also shows the dangers of democratic extremism: critics call it a totalitarian system dominated by a strong charismatic leader." (Lucardie 155-156.) Assuming the critics Lucardie mentions are correct, this village is not a democracy at all, but is rather something very different from a democracy, namely "a totalitarian system dominated by a strong charismatic leader."

The Spanish village of Marinaleda may purport to be democratic, but given that the facts Lucardie mentions are correct, it is in fact quite undemocratic. Rather than being an example of "democratic extremism" as Lucardie claims, it is instead an example of a lack of democracy.

The very facts Lucardie mentions about Marinaleda, are precisely what makes it an example of political extremism, and not a democracy.^{vii}

Democracy could be arbitrarily defined in some narrow way that does not include rule of law, freedom of speech, an independent judiciary, and various other aspects of democracy that are inconsistent with political extremism. But such a narrow definition of democracy would refer to something other than democracy, and there is no reason why it should be accepted.

Besides being nonsensical because it is a contradiction in terms, Lucardie's alleged category of "democratic extremism" is troubling because it is a pejorative. Pejoratives need to have a good justification if they are to be used, failing which they are in the nature of propaganda and name calling.

Supporters of democracy are well-advised to be wary of using or accepting pejorative terms that have the word “democracy” in them, because they can be used by opponents of democracy for anti-democracy propaganda. “Democratic extremism” is a malleable weaponized term that can easily be used to oppose democratic ideas and practices. For this reason it is counterproductive for supporters of democracy to use or accept it. Instead, we need to be clear that when something is an example of political extremism it is also an example of an undemocratic state of affairs, or of a state of affairs that is undemocratic in important regards.

13. Legislative juries and “democratic extremism”

Lucardie: “Very few sortitionists want to replace all elected bodies with randomly selected citizen assemblies. Perhaps the Canadian lawyer Simon Threlkeld ... might favour this variety of democratic extremism. I might do ... [him] an injustice here, however, as ... [his] ideas have not been elaborated in detail.” (158.)

Yes, Lucardie does me an injustice here. First of all, neither in “Blueprint” nor elsewhere do I in any way propose that “all elected bodies” be replaced with randomly selected citizen assemblies. In Blueprint, I *only* propose that the popular initiative and veto referendum be replaced with a jury analog, something which would leave elected legislatures, the elected executive, the judiciary, and regulatory commissions in place.

I do not, by the way, accept Lucardie’s conflating of “democratic extremism” with the replacement of all elected bodies with randomly selected citizen assemblies, nor do I accept that such a political system need be a form of political extremism. Neither do I make such a proposal.

Lucardie at the time of writing his book shared the widely held but mistaken view that popular election is the only democratic (or arguably democratic) method of electing public officials by vote.^{viii} It is not. For the reasons I give, it would actually be better and more democratic in important regards for many or all of the decision-makers now chosen by popular election (as well as many now chosen by politicians) to instead be elected by the vote of juries. (See Section 2 above, and the articles of mine cited therein.)

If we think of elected bodies as including those chosen by jury, then I am in favour of there being more elected bodies than there are now (not none or fewer), provided they are elected by jury, rather than by popular election, (and provided of course that the process of selection by jury is well-designed, preferably in the manner I mention above in Section 5).

The jury proposals I put forward in Blueprint and elsewhere are very much in accord with democratic ideas and constitutional democracy, and are very much inconsistent with the features

of political extremism. Among such democratic ideas running through my jury proposals are informed rule by the people (through juries), effective and democratic checks and balances that prevent lawmaking from being based on the self-interest of politicians, political parties and moneyed interests, an independent judiciary with the power of judicial review (and with judges chosen in a very democratic way, independently from politicians, political parties and special interests), putting legislative decisions and the selection of public officials on the basis of level playing fields (as opposed to skewed ones), and rule of law. The jurycratic reforms I propose are well-suited for fulfilling these democratic ideas, much more so than what we currently have.

14. Accountability

Lucardie: “Political representation requires accountability, according to several theorists.

Accountability can be provided by the process of election and (non) re-election but not by sortition, as Lotreps [aka jurors] need not worry about re-election ...” (136).

On [January 19](#), 1999 in *The Next City* I responded to the objection that jurors are not accountable (do not face re-election). I began by noting that referendum voters are also not accountable for how they vote, (nor are popular election voters), after which I say:

“Politicians should be accountable to the people so that they will carry out the people’s wishes. But a jury assembly can be relied on to carry out the people’s wishes by virtue of being an accurate cross section of the people. This is much better than mere accountability.

In addition, the real world accountability of politicians is largely undemocratic. Politicians are disproportionately accountable to the rich and powerful interests that are best able to finance election campaigns and generate effective publicity.”

Lucardie appreciates that citizen juries are well-suited for reflecting the wishes and needs of the people. He says: “If representatives are randomly selected – in a statistically adequate way – their opinions and needs will automatically reflect those of the people.” (9.) Hence, it is perhaps odd for Lucardie to be suggesting that lack of “accountability” is a valid criticism of citizen juries, and perhaps he does not think it is.

Accountability (facing re-election) comes too late, after the harm has been done. Nor does accountability (re-election) prevent further harm as even if “the rascals are voted out” there is no assurance their replacements will be an improvement, will pursue significantly different policies, or won’t be worse, regardless of what they may say during the election campaign.

Popular election voters are poorly informed, and therefore such accountability as they may provide is poorly informed. This is very problematic because only informed views are a good basis for a decision. (Regarding voters being poorly informed see [Threlkeld](#), August 12, 2016, and August 9, 2016.)

For a further listing of the problems with relying on the supposed accountability of politicians see Section 16 below (much of what I say there can be extrapolated to the concept of accountability).

What is called for in a democracy is bringing lawmaking into accord with the informed judgement of the people. Legislative juries are well-suited for this purpose due to their being an accurate cross-section of the people who are engaged to take the time to make an informed decision. The alleged accountability of popularly elected politicians (through facing subsequent elections) is very unsuitable and inadequate for this purpose.

[Lysander Spooner](#) in 1852:

“[Suffrage] can be exercised only periodically; and the tyranny must at least be borne until the time for suffrage comes. Besides, when the suffrage is exercised, it gives no guaranty for the repeal of existing laws that are oppressive, and no security against the enactment of new ones that are equally so. The second body of legislators are liable and likely to be just as tyrannical as the first. ... Even if a change for the better actually comes, it comes too late, because it comes only after more or less injustice has been irreparably done.”

“the right of suffrage can be exercised only periodically; and between the periods the legislators are wholly irresponsible.”

By “suffrage” Spooner of course means popular election or the right to vote in popular elections.

15. Popular vote massively wastes talent compared to what I propose

Lucardie: “Lotreps [aka jurors] lack the political experience and competence of elected and professional politicians. The talents of the latter are wasted when they cannot run for election. Instead they have to wait for a (relatively small) chance of being selected by lot. So, most political talents will presumably be forced to choose a different career.” (136.)

Popular election is a very effective way to filter out many excellent candidates for public office, and therefore to waste much of the talent that is potentially available. There are several ways in which it does this. 1) Popular elections are dominated by political parties, which means that with few exceptions public offices go to the nominees of political parties. However, it may well be

that the best choice for a public office is not a party nominee, perhaps not even a party member. Perhaps even someone who has a low opinion of all the main political parties and of party politics. 2) Those who cannot raise enough money for an effective political campaign usually have little chance of being elected, and those who are outspent by their opponents (or by super PACs and interest groups opposing them) are at a considerable disadvantage. However, it may well be that the best person for an office will not be someone able and willing to raise a lot of campaign funds. It might be someone who moneyed interests do not like because they believe she or he will always put the public good and everyday people ahead of moneyed interests and super rich campaign donors. It might be someone who is unwilling to make themselves beholden to the moneyed special interests that fund political campaigns, or who is just unwilling to do fundraising work or to spend a lot of their time in office raising funds, rather than doing their job. 3) Being a celebrity can be very helpful to getting elected, but it might well be that the best candidate is someone the vast majority of the public know little or nothing about. 4) Coverage by the mainstream media and the public's media choices can be very important in winning elections, but it may be that the best candidate is generally ignored or disparaged in much of the media, or in certain media silos that large parts of the population seldom venture out of.

If candidates are chosen for public office by jury, these four filters are eliminated, opening up the field to many talented and capable candidates that popular election excludes or tilts the playing field against. (Selecting public officials by jury eliminates these filters and puts candidates on a level playing field, or at least on a far more level playing field than popular election. Making an effective appearance before a selection jury does not require a lot of money, nor does it require the backing of a political party, nor that one be a celebrity or favoured by the media. All of the candidates appear directly before the jurors on a basis of equality, and get a fair shot at being selected.) ([Threlkeld](#): August 12, 2016; August 9, 2016; September 15, 2015; September 9, 1998; Spring 1997.)

Choosing public officials by jury would put the selection on the basis of informed rule by the people, unlike the poorly informed voting characteristic of popular election. Informed selection of public officials, from an open field of candidates, will for obvious reasons tend to result in better and more talented public officials than popular election.

Once in office, popularly elected politicians can spend a lot of [time](#) seeking campaign funds for the next election instead of doing the job they were elected for. When this happens, whatever talent they may have is largely wasted. Selecting candidates by jury eliminates this problem (because no great sum of money is needed to appear before a selection jury for re-election).

Talent is only useful if it is directed in a constructive direction. When a very talented politician is devoted to serving partisan political interests and rich campaign donors rather than the public it is a very problematic waste of talent. Selection by jury eliminates this problem, or greatly reduces it by making political parties and large amounts of money unnecessary for winning public office.

Legislative juries would provide a further remedy for the wasted talent endemic to electoral democracy. Such juries would tend to channel the work of elected politicians (whether they are elected by popular vote or by jury) into proposing laws that have a real prospect of winning the informed support of juries, because those would be the only laws that would have a real prospect of going into effect. This would prevent politicians from wasting their talent on laws contrary to the informed views of the people, including laws that primarily serve the interests of politicians, political parties and special interests, and that violate the rights and interests of the people.

Legislative juries would also open up the talent pool for working out and proposing good laws beyond the political party that won the election. Opposition politicians and public interest groups with good legislative ideas would no longer be shut out of lawmaking with their lawmaking talents wasted, but instead would be able to get their proposed laws passed as long as they could win the informed support of a legislative jury. In addition, if jury-chosen regulatory commissions, administrative boards and law reform commissions are allowed to propose laws within their areas of expertise to legislative juries, that would bring a further set of talented and knowledgeable officials into the lawmaking process.

The ballot initiative and veto referendum waste potential legislative talent and good legislative ideas by filtering out public interest groups that do not have the money to pay for the necessary army of signature gatherers, nor the ability to field a sufficiently large and effective army of volunteer signature gatherers, and who do not in addition have the money for an effective popular vote campaign reaching out to the entire electorate and mobilizing large portions of it to vote for their proposal. A ballot initiative campaign can be especially demanding of money if it is opposed by moneyed interests that pour millions into the “no” side, or if the mainstream media opposes or ignores the proposed law. The legislative jury approach I propose greatly levels the playing field, opening up citizen lawmaking to talented public interest groups of modest means, and giving them a fair shot at getting their proposed law passed by the informed judgement of the people (through a legislative jury), regardless of whether rich interests oppose them and whether the media is interested, fair or sympathetic.

Because popular vote, both in the form of popular election and referenda, is poorly informed it is a great waster of the talent of the people. By contrast, the informed decision-making of juries enables the talent of the people to be brought to bear.

A question might occur to some readers about now: Would the transfer of the final say in lawmaking to citizen juries make running for a seat in a legislature more appealing or less appealing, to people with exceptional political talent who are interested in a political career?

Bernie Sanders is the [most popular](#) politician in office in the U.S. [He](#) has spent years in the Senate, and before that in the House of Representatives. He has long supported legislation in accord with what a [majority of Americans](#) are in favour of, but which a majority of Congress have been unwilling to vote for, and which is opposed by Wall Street and other corporate interests that fund election campaigns.

What would more likely result in Bernie Sanders' legislative agenda becoming the law of the land, the system we have now, or a system in which he could get his legislative proposals passed if they won the informed support of the public (through legislative juries)? The answer is obvious, it is the latter. Common sense and logic tell us that Bernie would likely have been even more interested in pursuing a full-time political career if he could get his legislative proposals passed on the basis of the informed judgement of the people (through legislative juries), rather than their being blocked by Congress and corporate lobbies.

More generally, legislative juries would tend to make a political career more appealing to politically talented people, with a public service commitment and a legislative agenda furthering the interests and well-being of the public. The reason is obvious. They would have an excellent chance of getting their proposed laws passed by legislative juries, rather than the current situation where proposed laws serving the interests of the public might well be stopped due to the self-interest of politicians, political parties and special interests.

Being in the Senate or the House of Representatives is an excellent place to be for anyone interested in a full-time political career. If proposed laws could be passed by the informed judgement of the people (through legislative juries) it would, for public spirited people interested in working for the best interests of the people and everyday citizens, make it an even better place to be.

The possibility of laws being passed by the informed judgement of the people (through legislative juries) would also be a great incentive for politically talented people interested in serving the best interests of the public, to pursue full-time political careers in addition to those in legislative assemblies. For example, to be a commissioner on a jury-chosen Law Reform Commission, or to be hired by such a commission, or by a public interest group such as the ACLU (American Civil Liberties Union), the Sierra Club or Public Citizen

However, for politically talented people with a legislative agenda harmful to the majority of citizens, legislative juries might be a deterrent to pursuing a political career, because such an agenda would very much tend to be blocked by such juries. A reduced number of such people in public office is another benefit legislative juries could bring.

For the combination of reasons I mention in this Section, what I propose is vastly better than what we have now, for making good use of political talent.

16. Why the final say in lawmaking needs to be transferred from politicians to legislative juries

16.i. Introduction

It is contrary to democratic principles for politicians to have the final say in lawmaking. Transferring the final say to citizen juries would put lawmaking on a democratic basis.

In Blueprint, the reason I give for transferring the final say from politicians to citizen juries is informed rule by the people. This is a good reason for doing so, as are the other reasons I briefly set out below.

16.ii. Informed rule by the people

In a democracy it is the people, not the politicians, who are or are supposed to be the rulers. The “self” in self-government is not the politicians and political parties, nor those who fund their election campaigns. It is the people. The U.S. Constitution begins “We the people,” not “we the politicians, political parties and campaign funders.”

Rule by the people is the central democratic idea, or one of them, and is the literal meaning of “democracy.” Given the need for decisions to be informed, it is more specifically *informed* rule by the people that democracy needs to be about.

Leaving lawmaking to elected politicians is contrary to informed rule by the people, and needs to be rejected for this reason.

By transferring the final say in lawmaking to citizen juries, lawmaking can be put on the highly democratic basis of informed rule by the people. Exactly what is called for in a democracy.

I can see no good reason why laws should be decided by elected politicians and political parties rather than by the informed judgment of the actual legitimate rulers: the people.

If lawmaking is to be designed in a democratic way, the most important objective, or one of them, is to put it on the basis of the highest and best democratic authority there is, namely the informed judgement of the people. Citizen juries are the only way this can be done.

[Lysander Spooner](#) in 1852: “The authority to judge what are the powers of the government, and what the liberties of the people, must necessarily be vested in one or the other of the parties themselves—the government, or the people; because there is no third party to whom it can be entrusted. If the authority be vested in the government, the government is absolute, and the people have no liberties except such as the government sees fit to indulge them with. If, on the other hand, that authority be vested in the people, then the people have all liberties, (as against the government,) except such as substantially the whole people (through a jury) choose to disclaim; and the government can exercise no power except such as substantially the whole people (through a jury) consent that it may exercise.”

Spooner is here talking about randomly sampled trial juries and their right to reject the application of the government’s laws to the cases they decide. Even though Spooner never discussed the possibility of legislative juries, what he here says about trial juries is very applicable to legislative juries. (See previous [link](#) for my thoughts on how Spooner’s views on trial juries relate to legislative juries.)

Either we give the final say in lawmaking to elected politicians and political parties, or we give it to the people. Only the latter option is democratic, and there is only one way for the people to have a final say that is informed, democratic and fair: citizen juries.^{ix}

16.iii. The equality of citizens

Women as half the population and equal citizens deserve an equal say in lawmaking. In electoral democracy they do not get it because women are always underrepresented in electoral democracy. For example, the U.S. Congress is about 80% male, and the U.S. president has always been male, as has the vice-president.

A method of lawmaking that gives women only a 20% say treats women as second-class citizens, is contrary to the basic democratic idea of the equality of citizens, and is accurately regarded as systemic discrimination against women. It is unfair to women, it is unjust, and it fails to give women their due.

All other portions of the public are also entitled to be treated as equal citizens, and as such to have a say in lawmaking proportionate to their number. Electoral democracy is very much contrary to this because large portions of the public are very much underrepresented among

elected politicians, such as all those below the top few percent in income and wealth, younger citizens, the roughly [41%](#) of Americans who are political independents, people of colour, and people who rent their homes (as opposed to home-owners and landlords).

By contrast, randomly sampled legislative juries embody the equality of citizens, with every citizen having the same equal right and chance to serve as any other, and with women, the various percentiles of the 99%, political independents, younger citizens and all other portions of the public being represented in proportion to their number. For this reason, legislative juries, unlike electoral democracy, put lawmaking on the basis of the equality of citizens.

There is no legitimate reason why women should not have the equal say in lawmaking that they deserve and that is their due. The same is true regarding all the other portions of the public deserving a say in lawmaking that is proportionate to their number. Leaving lawmaking to the politicians is contrary to this, and therefore needs to end. Instead, the final say in lawmaking needs to be transferred to citizen juries.

Lysander Spooner writing about randomly sampled trial juries in 1850 (although he is writing about trial juries what he says also applies to legislative juries): “The trial by jury is a trial by ‘the country,’ [or in other words, a trial by the people] in contradistinction to a trial by the government. The jurors are drawn by lot from the mass of the people, for the very purpose of having all classes of minds and feelings, that prevail among the people at large, represented in the jury.” ([Illegality of the Trial of John W. Webster \(1850\).](#))

16.iv. Moneyed interests in electoral democracy

One of the most troubling things about electoral democracy is the considerable amount of money generally needed to run an effective popular election campaign.

[Mark Hanna](#), (McKinley’s presidential campaign manager in 1896 and 1900): “There are two things that are important in politics. The first is money and I can’t remember what the second one is.”

[Noam Chomsky](#): “Extensive political science research, notably the work of [Thomas Ferguson](#), has shown convincingly that elections are pretty much bought. For example, campaign spending alone is a remarkably good predictor of electoral success, and support of corporate power and private wealth is a virtual prerequisite even for participation in the political arena.”

[Al Gore](#): “American democracy has been hacked, ... The United States Congress is now incapable of passing laws without permission from the corporate lobbies and other special interests that control their campaign finances.”

[Jimmy Carter](#) on contemporary American electoral democracy: “an oligarchy with unlimited political bribery.”

[John Dewey](#) on politics in American electoral democracy: “the shadow cast on society by big business.”

Based on a [2014 study](#) he co-wrote, Princeton politics professor [Martin Gilens](#) says, “ordinary citizens have virtually no influence over what their government does in the United States. And economic elites and interest groups, especially those representing business, have a substantial degree of influence.”

It is exactly electoral democracy that has resulted in bought elections, “corporate lobbies and other special interests that control ... campaign finances,” “an oligarchy with unlimited political bribery,” American politics being the “shadow cast on society by big business” and “ordinary citizens having virtually no influence”. It is exactly electoral democracy that allows the disproportionate influence of moneyed interests on U.S. politics and lawmaking, and the capture of the U.S. political system by such interests.

Giving legislative juries the final say in lawmaking would end and prevent the disproportionate influence big business elites have on U.S. lawmaking. Those who serve on legislative juries owe their position entirely to random selection, with corporate lobbies and other special interests having zero influence on who serves, and zero influence on who will serve in the future. Instead of laws and lawmakers bought by big business elites we would instead have lawmaking based on the informed judgement of the people.

[Lysander Spooner](#) in 1852: “Legislators and judges are necessarily exposed to all the temptations of money, fame, and power, to induce them to disregard justice between parties, and sell the rights, and violate the liberties of the people. Jurors, on the other hand, are exposed to none of these temptations. They are not liable to bribery, for they are unknown to the parties until they come into the jury-box. They can rarely gain either fame, power, or money, by giving erroneous decisions. Their offices are temporary, and they know that when they shall have executed them, they must return to the people, to hold all their own rights in life subject to the liability of such judgments, by their successors, as they themselves have given an example for.” (Spooner is talking about randomly sampled trial juries, but his words also apply to legislative juries.)

Legislative juries would provide one of the most needed separations of powers in modern societies: the separation of lawmaking from moneyed elites.

Although the above quotes in this subsection focus on the U.S., the disproportionate influence of the wealthy on lawmaking in electoral democracy is by no means limited to the U.S.

Roslyn Fuller: The “ancient Athenians ... recognized that *any* electoral system [any system of popular election] would be dominated by the wealthiest members of society, because the wealthy were more likely to win elections. This was the case with their own residual elections and it still holds true today. In this chapter I will look at why this is true ...”^x

Electoral democracy creates a vicious feedback loop. Corporations and the super-rich are able to use their wealth to have a disproportionate influence on who is elected to office and on the policies they pursue once in office. This influence tends to result in policies that further the interests of corporations and the super-rich, giving them greater means (including a larger share of wealth and income) to further unravel democracy and push politics towards oligarchy and plutocracy. This makes electoral democracy very much at odds with the interests of the public. Far better that the final say in lawmaking is transferred to the informed rule by the people that legislative juries can provide.

16.v. Conflicts of interest in electoral democracy

A basic feature of fair and democratic decision-making is that those who decide do not have a conflict of interest. As politicians have pervasive conflicts of interest when it comes to lawmaking, they need to be recused and disqualified from deciding laws.

A well-designed system of lawmaking will do everything that can reasonably be done to ensure that laws are based on the public interest and the informed wishes of the people, not on the self-interest of politicians, political parties and special interests. Transferring the final say in lawmaking to legislative juries would put laws on the basis of the informed judgement of the people, creating a very effective and much needed firewall protecting laws from being based on the self-interest of politicians, political parties and special interests.

Politicians need money for their election campaigns and their party organizations. This gives them an interest in not offending, and in helping and doing favours for moneyed special interests and super-rich individuals that provide the funds they need. In the U.S. such moneyed interests include Wall Street and the big banks, the pharmaceutical corporations, the fossil fuels corporations, the insurance corporations, the armaments corporations and corporations providing paramilitary security and mercenaries, the major real estate investors and developers, the media

and communications corporations, private for-profit prisons, the chemicals corporations, agribusiness, automobile corporations, logging corporations and so on. All of these groupings of corporations have lobbies, and an interest in paying to prevent legislation that could reduce their profits, and for legislation likely to increase their profits. For this reason politicians need to be recused and disqualified from deciding laws that may affect such moneyed interests.

Even if a particular politician has not been put in a conflict of interest by corporations directly or indirectly funding them or their party, there can still well be a conflict of interest because corporations and super rich individuals could do so in the next election, or could fund the political opponents of those whose legislative agendas do not serve their interests, or do not do so to a degree they find sufficient.

Trade unions are also able to influence election results through campaign donations, but their available funds pale in comparison to those of the corporations and the super-rich, and such influence as they may have is arguably more democratic as union leaders are elected by their members, who include broad portions of the public that typically have middling incomes (such as nurses, government employees, factory workers, teachers, construction workers and so on). Still, this creates a significant and further conflict of interest for politicians, both those who receive union funds and those that unions oppose. (Those who unions spend money to defeat in elections can obviously have an interest in weakening and diminishing unions.)

The politicians who hold power have a strong interest in election rules that favour themselves and their party, and disadvantage their political opponents, such as rules setting out what the voting method is (for example first-past-the-post may better serve them than ranked choice ballot and proportional representation), campaign funding, media access during election campaigns, arrangements for televised debates between candidates, including who is allowed to be in such debates, electoral boundaries (such as rules allowing the party in power to gerrymander electoral boundaries, whether directly or through people they may appoint), voter registration arrangements (automatic or not automatic, same day voter registration or not, and so on), voter I.D. requirements (that can be used to reduce voting by certain parts of the population), [felony disenfranchisement](#) (in the U.S. [over 5.8 million U.S. citizens](#) are blocked from voting on this basis according to The Sentencing Project, a disproportionate number of them [African-American and Latino](#), and therefore likely Demoractic Party voters), the location and number of polling stations (which can be used to distort election outcomes), the early voting arrangements (which can be used to, for example, reduce the [black vote](#) and to reduce the votes of [low income](#) people), primaries (open, closed, same day voter registration or not, and so on), how parties and candidates qualify to be on the ballot (which can be used to make it hard for third parties and independent candidates to get on the ballot), disclosure regarding where funding for elections is

coming from (including spending by super PACs and such), and so on. Because politicians have a very strong self-interest regarding such rules, they should be recused and disqualified from deciding them, including from deciding them indirectly through people they may appoint.

As felony disenfranchisement disproportionately affects Afro-Americans and Latinos, politicians and political parties that have an interest in reducing the Afro-American and Latino vote also have an interest in keeping and expanding felony disenfranchisement, in high rates of felony convictions, and in ensuring that felons continue to be disproportionately Afro-American and Latino. As said in the previous paragraph, over 5.8 million U.S. citizens are blocked from voting by felony disenfranchisement. This can change election outcomes. For example, if felony disenfranchisement had not been in place in Florida in 2000, Al Gore would probably have won the [Florida vote](#) and become President.

Politicians have an interest in minimizing the transparency and accountability of government. The public's interest in transparent and accountable government is at odds with this, and is a further reason politicians need to be recused and disqualified from having the final say in lawmaking.

Politicians may have an interest in laws that allow the prosecution of whistleblowers, (such as CIA torture whistleblower [John Kiriakou](#), Edward Snowden and Chelsea Manning), and in not introducing laws that protect them. The public have an interest in protections for whistleblowers so that government misconduct, dishonesty and crimes see the light of day.

Politicians have an interest in shaping the media landscape to their own interest and that of their party, including media that tend to repeat and support their narratives, and do not robustly hold them to account. The public have a strong interest in media that tell the truth and robustly hold politicians and other concentrations of power to account, exposing them when they lie, deceive, abuse their power and act contrary to the public interest. Politicians therefore need to be recused and disqualified from all lawmaking pertaining to and affecting the media, such as laws regarding media concentration of ownership, media regulation, and the funding, mandate and organizational structure of public broadcasting.

Politicians can have an interest in doing deals with media corporations to get favourable or fair coverage from them, as British PMs David Cameron and Tony Blair may have done with media magnate [Rupert Murdoch](#). This is a further reason why there needs to be a firewall between politicians and laws that affect the media.

Politicians can also have an interest in undermining political opponents in all kinds of ways (in addition to those already indicated), such as when Margaret Thatcher pulled the rug out from under some of her political opponents by [abolishing the Greater London Council](#).

Politicians have an interest in concentrating and entrenching power, influence and patronage in their own hands, and in the hands of their party. This can be very much contrary to the public interest, and is a permanent danger to democracy and freedom.

Politicians can have an interest in mass surveillance on the public, and in not being held accountable for such a policy, such as the [NSA's mass surveillance program](#) in the U.S. It and things like it violate the privacy of the public, and pose a serious [danger](#) to democracy and freedom.

Politicians can have an interest in the [suppression](#) and criminalization of opposition to their policies and to those of the corporate interests that may fund their election campaigns. This is contrary to the public interest in democracy and freedom.

Because of the pervasive conflicts of interest politicians have in lawmaking, the final say about laws needs to be transferred out of their hands, both with regard to new laws that might be passed, and regarding the keeping, repeal and amendment of existing ones. Far better that citizen juries have the final say.

16.vi. The poorly informed electorate

Even if during the election campaign the politicians are honest and accurate about the laws they will pass if elected, no meaningful consent is given to those laws on election day because popular election voters are poorly informed. Only informed views provide a good and meaningful basis for consent. (Regarding poorly informed popular election voting see [Threlkeld](#), August 12, 2016, cited above.) Legislative juries solve this problem by putting lawmaking on the basis of informed rule by the people (through juries).

16.vii. Legislation is not the only basis on which people vote

In addition to being poorly informed, the public often vote for candidates for reasons other than their legislative agenda, such as whether the candidate seems “wooden” or “robotic,” comes across as “presidential,” seems likable, seems sincere, has a record of lying, believes in God, has a catchy but vague slogan like “Yes we can” and “Make America great again,” and so on. This is a further way laws in electoral democracies are not based on the consent of the people.

16.viii. Rule by unreliable middle-persons

In electoral democracy the people are reduced to reliance on middle-persons (politicians) in order to get the laws they want and to repeal the laws they don't want. But the middle-persons

may be unreliable and untrustworthy. Politicians often do not do what they said they would do in the election campaign, do what they said they would not, and do things they did not mention before election day. Instead of such a ridiculous arrangement, legislative juries can be used to put lawmaking firmly in the hands of the people.

Sometimes a citizen, or even the majority of the public, will find that on various topics *none* of the middle-persons (politicians) who have a chance of being elected reflect their views.

Legislative juries solve this problem by allowing laws to be passed by the informed judgement of the people, regardless of whether any of the politicians support those laws or not.

16.ix. Inaccurate representation of the vote

The results of popular elections do not necessarily reflect how the public voted. Trump won the presidency with about three million fewer votes than Hillary Clinton. In Canada's House of Commons, a majority of seats are often held by a party that got less than half the vote (as is the case now, and was also before the latest election). Roslyn Fuller provides a good account of just how endemic this kind of problem is in electoral democracy in her [2015 book](#) in Chapter 2, "The Myth of Representation." Randomly sampled legislative juries fix this problem (with regard to the final say in deciding laws).

16.x. Package deals

In electoral democracy citizens have to choose from among the package deals politicians offer, which can often put citizens in the undemocratic situation of having to vote against some of their own legislative preferences no matter who they vote for. It is like going to a grocery store to get a bag of potatoes and some milk, and being told you can only have them if you also buy a jar of pickled herring and a pair of shoelaces. Legislative juries correct this problem. Instead of having to choose between package deals, the people (through legislative juries) decide exactly which laws they will have and won't have.

16.xii. Unrepresentative voters

Those who vote in popular elections are not especially representative of the public. For example [younger citizens](#) and [poorer citizens](#) tend to be very much underrepresented among those who vote, adding a further layer of political inequality and lack of democracy to leaving lawmaking to elected politicians. Randomly sampled legislative juries fix this problem.

16.xi. The approval ratings of politicians

Donald Trump and Hillary Clinton both had [record low approval](#) ratings on election day. Trump continues to have a [record low](#) approval rating. Mitch McConnell, the Senate Majority Leader, has, according to a recent poll, a favourability rating of [19%](#). Paul Ryan (Speaker and Majority Party Leader of the House of Representatives) also has a very low [approval rating](#).

Even when the elected politicians who hold power have high approval ratings, it is necessary (for the reasons mentioned above in this section) that they do not have the final say in lawmaking. However, when politicians have very low approval ratings it adds a further dimension of absurdity and lack of democracy to their having the final say.

ⁱ Voter turnout in U.S. elections for local government is very low, and those who vote are unrepresentative, even in elections for [mayors](#) (the most prominent officials in local government). Because of the very low voter turnout the public may be more willing to switch to the more democratic option of selection by jury at the local level than at the federal level. (Of course, at this point very few have ever even heard of the option of selecting public officials by jury.)

ⁱⁱ I learned of Athens' fourth century BC legislative juries (*nomothetai*) only in late 2015 after Yoram Gat, the founder and editor of the *Equality by Lot* blog contacted me. Curiously, Plato and Aristotle who both wrote in the fourth century BC in Athens make no mention of the *nomothetai* (in their surviving writings), not even in Aristotle's *Constitution of Athens*, and they are sometimes not mentioned in modern histories of Classical Athens. I was of course well aware of Athens as the great historical example of citizen juries.

ⁱⁱⁱ In both Athens and my proposal, the legislative juries do not decide what proposed laws come before them, nor do they propose, develop or formulate proposed laws. Instead, the legislative juries only decide if the proposed laws that come before them will go into effect or not. Each legislative jury only decides one proposed law, and only serves for the time it takes to decide that law. (However, in my proposal there is the possibility of several alternative proposed laws on the same topic going to one legislative jury, which I am not aware of having been done in Athens.) The supporters and opponents of each proposed law get equal time to present their case to the jurors. The decisions of legislative juries are made by majority vote.

Another parallel is having procedures that aim to ensure the cases for and against the proposed law will be presented to the jurors in a very capable way, which is necessary to help the jurors make an informed and intelligent decision (see for example Blueprint for some of my suggestions on this). In Athens those responsible for presenting the case against a proposed law were not just anyone who chose to, but instead the Assembly (*Ekklesia*) chose five people to conduct the case against the proposed law (and in favour of the existing law it would replace). In Athens, those who proposed the new law were responsible for conducting the case in favour of it before the legislative jury. As the *Ekklesia* had to authorize proposed laws to go to a legislative jury, those proposing them were in effect vetted by the *Ekklesia*, presumably with incompetent proposers of laws usually screened out. On the Athenian lawmaking process in the 4th century B.C. see for example: Stockton, David, *The Classical Athenian Democracy* (Oxford, 1990), 80-82.

There are also differences. In my proposal in Blueprint there is a strong deliberative element, whereas with the Athenian legislative juries there is no formal deliberative element. In my proposal, legislative juries serve for longer

periods of time than the one-day hearings of Athens, and the hearings and deliberation continue until the jury is ready to make an informed decision (rather than having to end by a pre-determined time as in Athens).

(In this footnote and throughout this paper I am speaking of the *nomothetai* only with regard to their serving in trial-like fashion to decide whether a new proposed law goes into effect or not. The *nomothetai* also performed a different legislative function from time to time, which was to review the existing laws for conflicts and redundancies.)

^{iv} Among the matters for the jury commission to advise about and the procedures juries to decide are trade-offs between costs on the one hand, and on the other having larger juries with more thorough procedures. It is desirable for citizen juries to be fairly large because a larger random sample strongly tends to be a more accurate cross-section of the people. It is also of course desirable for citizen juries to make as informed a decision as is reasonably possible.

With regard to selecting some very important public officials such as the president of the United States, a large jury of 1,000 or more citizens might well be worth the cost. (See [Threlkeld](#), August 12, 2016 for my views on presidential selection juries in the U.S. context.)

However, “there is perhaps no need for the juries selecting the House of Representatives to be large. Even if each Representative is chosen by a jury of just 25 citizens, overall the 435 members of the House would be chosen by 10,875 jurors, large enough to be a very accurate cross-section of the American public. The same concept, of course, applies to state legislatures. ([Threlkeld](#), August 12, 2016.)

With regard to legislative juries, a proposed law could go to a fairly small legislative jury of say 100 citizens. This jury could have a super-majority requirement for their decision on whether the law will go into effect or not, perhaps with a majority of 65% required either way. The point of such a super majority is so that even though a jury of 100 is not large enough to be counted on for sample accuracy, nevertheless if 65% or more of them reach the same opinion on approving or rejecting the law, it may be that we can be fairly confident that even if it were possible for the entire public to be in that legislative jury, a majority would have voted the same way as the 65% or more did.

If the vote of the said 100 member legislative jury is closer than 65% to 35%, then the proposed law can go to a larger legislative jury of perhaps 500 to 1,500 citizens who will decide by majority vote whether the proposed law goes into effect or not. The jury of 100 can decide how large the jury that makes the final decision will be, based on how important they deem the legislative decision to be, with more important matters going to larger juries, and less important matters to smaller juries.

It is up to the jury commission and such others as may be interested (and available) to work out what arrangements are best, and for procedures juries to decide.

^v Here, in brief, and without anything like a full statement of my argument, is my position on constitutional amendments, using California and the U.S. Constitution as examples.

The popular initiative can be used to decide constitutional laws in some of the states that have it, such as [California](#). If citizen juries step into the shoes of the popular initiative at the state level (which is what I propose, with qualifying juries stepping into the shoes of the signature requirement, and legislative juries into the shoes of the initiative’s popular vote), they would also be able to decide constitutional laws.

In regard to amending the U.S. Constitution, I propose that qualifying and legislative juries replace the role that politicians now play.

One possible approach (and the one I favour) is to translate Article V of the U.S. constitution into legislative juries. [Article V](#) provides two ways in which the Constitution can be amended. Only one of the two has ever been used to amend the Constitution since the 1787 Constitutional Convention. It says a constitutional amendment is enacted when two-thirds of the House and two-thirds of the Senate approve of the proposed Amendment, and then three-quarters of the states affirm it.

So, translating that (the method in Article V that has been used to amend the Constitution) into legislative juries, it would read something like this: "After two-thirds of a federal legislative jury randomly selected from the U.S. public, and two-thirds of a federal legislative jury with an equal number of jurors randomly selected from each state, approve the proposed amendment, it goes to the states, and it goes into effect if legislative juries in three-quarters of the states affirm the proposed amendment by majority vote."

The federal legislative jury randomly sampled from the American public is a legislative jury translation of the House of Representatives. The House of Representatives is chosen on a basis of [representation by population](#) (with each state represented by a number of seats corresponding to its population) and can be understood as standing for that principle. The legislative jury randomly sampled from an equal number of citizens in each state is a translation of the Senate, where there are an equal number of Senators from each state.

There would need to be at least one way for this process to get started. One possibility is that once every four years, a qualifying jury hears proposed constitutional amendments. Any constitutional amendment it qualifies by majority vote goes to a federal legislative jury chosen by random selection from the American public. If two-thirds of the jurors in that jury vote in favour of the amendment, then it goes to a federal legislative jury with an equal number of randomly selected jurors from each state. If two-thirds of the jurors on that jury approve the amendment, then a legislative jury is convened in each of the states, and if three-quarters of those legislative juries approve the amendment by majority vote, it goes into effect.

The reasons the power to amend the Constitution needs to be transferred to juries are similar to why the final say in regular lawmaking needs to be transferred to juries. It is, in brief, required by democratic ideas, including informed rule by the people, the equality of citizens, the need to protect lawmaking (including constitutional lawmaking) from being distorted by the self-interest of politicians, political parties and the special interests that fund election campaigns, and the idea that the Constitution belongs to the people rather than to politicians, parties and special interests. See also Section 16 herein, which is applicable to constitutional law as well as to regular legislation.

^{vi} Strictly speaking, a procedures jury is a form of legislative jury, assuming that it passes laws about the procedures and arrangements for jury decision-making. Procedures juries could also pass rules that have the status of regulations rather than laws.

^{vii} This footnote is for those who are curious to know more about Lucardie's category of "democratic extremism."

Lucardie points out that based on the views of various political theorists on political extremism, "democratic extremism" is a contradiction in terms. Lucardie: "according to advocates of the third approach, 'democratic extremism' must be a contradiction in terms" (14). The political theorists Lucardie mentions as examples of what he calls "the third approach" are Israeli political scientist Daphna Canetti-Nisim, British author John Tomlinson, Dutch political scientist Cass Mudde, American scholars Seymour M. Lipset and Earl Raab, and German political scientists Uwe Backes and Eckhard Jesse (13).

Lucardie: "none of the three most common approaches to [political] extremism [including what he calls the "third approach"] will serve our purpose, namely to understand democratic extremism." (14.) Apparently unable to find a

political theorist with a definition of “political extremism” that suits his purpose, Lucardie then tries to invent or derive his own definition of “political extremism” that will not result in “democratic extremism” (meaning of course “democratic political extremism”) being a contradiction in terms. He says that in “mixed regimes” (“mixtures of aristocracy, monarchy and democracy”) “competition between elites may result in checks and balances, pluralism of interests and values, tolerance and rule of law” (which Lucardie clearly considers to be inconsistent with political extremism). Regarding what mixed regimes are, he references the work of Alois Riklin and of said Uwe Backes (14-15).

Lucardie then indicates that he will in his book consider pure regimes to be examples of political extremism. Regarding “pure democracy” he says: “If critics try to replace a mixed regime with pure democracy, they will be considered democratic extremists, in this study.” (15.)

It would be absurd to say that a “pure democracy” is an example of political extremism if it has democratic features such as “checks and balances, pluralism of interests and values, tolerance and rule of law.” Instead Lucardie, as already quoted in this section (Section 12), claims that “In all pure regimes [evidently including all pure democracies], ideological homogeneity has replaced pluralism and absolute power has eliminated checks and balances.” (15.)

Lucardie’s description of “pure democracy” in this quote is a contradiction in terms. When “ideological homogeneity has replaced pluralism and absolute power has eliminated checks and balances” we no longer have democracy (whether a “pure” form of democracy or otherwise).

I have already pointed out in this section (Section 12) that Lucardie’s category of “democratic extremism” is a contradiction in terms (and therefore non-existent), and have given an example of him nonsensically applying his said contradiction in terms category.

Lucardie’s claim that a “pure democracy” is characterized “by ideological homogeneity [that] has replaced pluralism and absolute power [that] has eliminated checks and balances” is a mere assertion with no argument given for it (at least not in Chapter 2 of his book, of which pages 13-15 are a part). In any case, if a particular “pure democracy” is shown to be an example of “political extremism” then by definition it will not be a democracy (pure or otherwise). Contrary to what Lucardie says, democracy and political extremism are opposites.

What makes something an example of political extremism is exactly that it is undemocratic, or more precisely that it lacks the various features of democracy. Nazi Germany is an example of political extremism exactly because it lacks democratic features such as rule by the people, checks and balances, separation of powers, freedom of speech, association and assembly, freedom from arbitrary detention, search, seizure and arrest, the right to a fair trial, freedom from being enslaved, tortured, abused and murdered (regarding slavery, the Jews and other inmates of the camps were slaves forced to work for the Nazi regime and various businesses), and so on.

It is accurate and reasonable to think of political systems and political theorists as being on a spectrum with democracy at one end and political extremism on the other. It is exactly the lack of democratic features that puts a political system on the political extremism end, and the presence of democratic features that puts it on the democracy end. If we look at for example the United States, the democratic feature of freedom of speech (to the extent that it exists and is protected in the U.S.) moves it toward the democracy end. If Jimmy Carter’s description of the U.S. as “an oligarchy with unlimited political bribery” is correct, the lack of rule by the people implied in that description moves it toward the political extremism end.

Checks and balances and rule of law (things Lucardie mentions in the above quotes) are features of democracy and would therefore (if present) move a political system toward the democracy end of the spectrum, if absent then toward the political extremism end.

As Lucardie observes about his position after his above quoted description of “pure democracy” and “democratic extremism”: “Democracy and [political] extremism are not seen as opposites here.” (15.) Indeed not, not in a nonexistent “democratic extremism” alternative universe. However, in the actual universe things are different.

^{viii} Lucardie, discussing “classical democratic projects” (which for him includes my democratic lawmaking proposal): “Decisions have to be taken either directly, by the people in a popular assembly, or indirectly, by their representatives. In the latter case the representatives have to be selected either by [popular] elections or by sortition. Other selection procedures such as appointment by a committee or other authority are, by definition, not democratic.” (9.) Lucardie’s statement is untrue, because he was not aware of the very democratic possibility of public decision-makers being chosen by jury (by selection juries that might choose judges, presidents and many other public officials). Nor so far as I am aware have any other political scientists and theorists unfamiliar with my work considered this option. Lucardie of course makes no objection to the idea, as he, like many others, was not aware of it. (I would, by the way, not describe citizen juries as “representatives” as Lucardie has done, but would instead say they “are representative of the public.” However, I agree with Lucardie’s implicit description of citizen juries as a form of “representative democracy.”)

Lucardie continuing his discussion of “classical democratic projects” from the previous quote: “If representatives are elected by the people, they should [in classical democratic projects] be prevented from dominating their constituents; this can be done by giving them a binding mandate or recalling them if they do not follow the instructions from the people, or by circumventing them through popular initiative and referendum.” (9.) Part of my view on this is of course that the citizen jury proposal I have made for democratic lawmaking would be a very effective and democratic check on elected politicians “dominating their constituents,” far more so than popular initiative and referendum. A further part of my view on this is that selecting politicians by jury rather than popular election, or alternatively transferring decision-making about the rules that govern popular election from politicians to juries, would also be a very effective and democratic check on politicians “dominating their constituents.” Both my proposal for democratic lawmaking, and my two said proposals for the democratic selection of politicians, would also be a very effective and democratic check on moneyed elites dominating the said “constituents” through the influence that popular election gives such elites over who is elected and what policies they pursue in office (see Section 16.ii through 16.v and Threlkeld, August 12, 2016).

^{ix} For an explanation of why the popular initiative and veto referendum are a poorly informed, unfair and undemocratic method of citizen lawmaking, and why citizen juries can provide an informed, fair and democratic basis for citizen lawmaking, [see](#): *Blueprint*; Threlkeld, April 18, 2016; Threlkeld, December 23, 1998.

^x Fuller, Roslyn, *Beasts and Gods: How Democracy Lost its Meaning and Changed its Purpose*, (London, 2015) p. 89. The quote is from chapter 3 of her book, “Buying and Selling Elections” pp 89-121, which is worthwhile reading regarding the undemocratic nature of popular election due to the role of money.