

Defense and Ignorance

War, Secrecy, and the Possibility of Popular Sovereignty

ALEXANDER A. GUERRERO*

It is natural to equate electoral democracy with popular sovereignty—the idea, roughly, that “we the people” govern. The main thesis of this chapter is that in the context of military and defense policy, there is a deep tension between standard electoral democratic systems of government and popular sovereignty. More bluntly: electoral democracy is incompatible with popular sovereignty, at least in the arena of national defense and military policy. We the people do not govern, we do not control what the government does; we are like dog owners holding a mile-long leash.

The first Section of this chapter will aim to get clear on the idea of popular sovereignty—what would it be for there to be popular sovereignty? Is there a realistic and attractive ideal of popular sovereignty? Should we accept popular sovereignty as a necessary condition of political legitimacy?

The second Section of the chapter will present some general problems for electoral representative systems of government in terms of popular sovereignty.

The third Section of the chapter will identify some particular problems for popular sovereignty in the defense and military context. To preview, I will suggest that four distinct but interrelated factors generate particular difficulties in the military and defense context. First, *confidentiality*: strategic requirements of confidentiality and secrecy undermine meaningful political accountability. Second, *voter ignorance*: military and defense policy is technical and complicated to an extent that the average voter lacks the information and competence required to hold elected political officials meaningfully accountable for enacting responsive policy. Third, *voter psychology and electoral pathology*: military and defense policy

* Rutgers University, alex.guerrero@rutgers.edu.

is an area—like criminal justice policy—in which low information leads to easy psychological distortion due to voters’ fear, the difficulty of responding rationally to small-probability events, the conceptualization of “emergency” and “urgency,” and the salience effects of bad outcomes in the military and defense context. As a result of these factors, elected officials have dramatically and inappropriately circumscribed policy options, given the electoral repercussions of appearing “weak” on military or defense (such as appearing “soft” on crime) and given that many of the most significant costs of ineffective policy are borne by others—either people in other countries or future generations of Americans. Fourth, *money*: military and defense policy is a “high financial value” policy arena—there is a lot of money to be made by a relatively small number of individuals and corporations, making lobbying and electioneering for certain political outcomes a very high value proposition for those entities. These four factors work together and overlap in complex ways, which I will discuss in this third Section.

The fourth Section of the chapter considers what might be preferable to using elected officials to enact military and defense policy from a perspective of popular sovereignty, given the real-world strategic and practical constraints. I will consider, in particular, the use of what I call “lottocratic” institutions—either in an oversight role or in a policymaking role. These institutions have been used to reform election law and voting systems in Canada and other places, and they consist of lottery-selected individuals charged with making policy and/or with policy oversight, but only after hearing from and interacting with a wide group of relevant “experts.” I will consider some of the advantages and concerns about these institutions, and in particular whether they could lay claim to be institutions that would better achieve popular sovereignty than their electoral rivals.

I. THE IDEA OF POPULAR SOVEREIGNTY

Sovereignty has often been understood as referring to the property of having supreme authority within a territory or within a political community. *Popular sovereignty* is the idea that somehow the *people* (all of them together? most of them? many of them?) are the supreme authority within a territory. Popular sovereignty is often taken to be a prerequisite for political legitimacy—a necessary condition for a political system to be legitimate is that the people are the supreme authority. Putting more flesh on the bones of the idea of popular sovereignty has proven to be difficult, however.¹ What is required for the people to be the supreme authority? There are at least two dimensions that need clarification: the “people” part and the “supreme authority” part. Here are some candidate interpretations of the idea of popular sovereignty:

FULL CONSENT: Popular sovereignty is fully consensual government: all political institutions and political actors have political power only if and only because all of the people living under those institutions have voluntarily

1. For relevant discussion, see Christopher Morris, “The Very Idea of Popular Sovereignty: ‘We the People’ Reconsidered,” *Social Philosophy and Policy*, 17 (1) (Winter 2000): 1–26.

consented to the existence of those political institutions and the empowerment of those political actors.

Of course, as is familiar from the literature on consent as a requirement of political legitimacy, the problem with this account is not that it fails to capture something of the ideal of popular sovereignty—doubtlessly it does. The problem, rather, is that no actual political system can satisfy this requirement, at least not if it is interpreted literally, meaning that no actual political system can claim to satisfy the demands of popular sovereignty. Not everyone has consented to the existence of the political institutions. Not everyone has consented to the empowerment of those who have political power, even in a perfectly functioning, fully inclusive democratic system. Some have argued that tacit consent—a kind of actual consent—is sufficient for legitimacy, and that tacit consent can be inferred from the fact that those living under the system continue to live under it and have not left. For a host of familiar reasons²—exit is costly, exit may not be possible, and there may be no better extant systems—tacit consent accounts that rely on this inference are implausible. So one direction of failure stems from construing “the people” to mean literally “all of the people.”

A common weakening strategy is to require something like a *majority* of the people, rather than all of the people. So one might get something like this:

POPULAR DEMOCRACY: Popular sovereignty is popular democracy: political power is exercised and political action is taken only if and only because a majority of the people living under the political institution consent to or support that exercise of power and the taking of that action.

This is better, in that some systems might seem close to satisfying this demand. One question is what makes it permissible to weaken the requirement from *all* of the people to just *most* of the people. Let us set that aside. A more immediate question, given the operation of modern political institutions, is that POPULAR DEMOCRACY suggests a level of detailed monitoring of and involvement with political action that is completely absent in the modern political context. Every modern democracy uses some system of electoral political representation—where some individuals are politically empowered to make binding political decisions for the rest of us. We choose legislative representatives. We choose an executive. One way of viewing POPULAR DEMOCRACY as satisfied, even in the modern context, would be to read a vote for a political official as a tacit consent to or support of every action that official takes while in office. But that seems implausible, particularly given that elected representatives, elected executives, and appointed officials all have a great deal of leeway in terms of how they decide what they want to do once in office.³

2. Some pointed out by David Hume in his essay “Of the Original Contract” in 1748.

3. For relevant discussion, see Alexander A. Guerrero, “The Paradox of Voting and the Ethics of Political Representation,” *Philosophy and Public Affairs* 38(3) (2010): 272–306.

Is there another interpretation of popular sovereignty that might more plausibly be satisfied, at least in some instances, by modern democratic states? One candidate ideal of popular sovereignty is “the idea that the ends of a polity should be determined by the interests or desires of its members.”⁴ I will recast this ideal in terms of what I will call *responsiveness*.

RESPONSIVENESS: There is popular sovereignty in some political jurisdiction only if and only because there is responsive government in that political jurisdiction, government that generates responsive outcomes. Political outcomes are responsive to the extent that they track what the people living in the political jurisdiction believe, prefer, or value, so that if those beliefs, preferences, or values were different, the political outcomes would also be different, would be different in a similar direction, and would be different *because* the beliefs, preferences, and values were different.

Responsiveness is a multifaceted notion. And there are central complications to the basic idea. For example, the people living in a jurisdiction will not have uniform beliefs, preferences, or values—so there is a question of whether and how these are to be aggregated or measured in order to assess responsiveness. Even for a particular individual, beliefs, preferences, and values may tell in different directions. Is outcome *A* less responsive than outcome *B* because *A* tracks individuals’ expressed preferences, but not their core values, while *B* does the reverse? Beliefs, preferences, and values change over time. Which are the benchmarks against which responsiveness is to be assessed? And there are many epistemic issues involved in knowing what people believe, prefer, and value, and which relate to how political problems are framed. Additionally, for some issues—ones of which the people in the jurisdiction are largely unaware—the notion of responsiveness will have to be responsiveness to implicit beliefs or plausible extensions of individuals’ beliefs and values to cover issues and cases that might never have crossed their mind under those particular guises. For the purposes of this discussion, these complexities need not detain us here, although I will return to some of them below. Broadly speaking, the arguments do not turn on any particular understanding of responsiveness being the operative one, or upon any particular resolutions of these complexities.

It is worth noting that **RESPONSIVENESS** is a *tracking* conception of popular sovereignty. We might think that sovereignty should more immediately involve not just *tracking* of the people’s beliefs, preferences, and values, but also *control* via those beliefs, preferences, and values. That is closer to what the previous two conceptions require. And it is true that **RESPONSIVENESS** might be satisfied by, say, an omniscient, omnipotent, benevolent dictator, who simply decided that the right way to govern was to act so as to maximally satisfy **RESPONSIVENESS**. It might seem strange to see this as a way of instantiating popular sovereignty. One way of seeing why this isn’t so implausible, even in the case of the benevolent

4. See Morris, n. 1, p. 12.

dictator, is by noticing that there is a sense of control—counterfactual control—on which there would be control via the people’s beliefs, preferences, and values. If those attitudes of the people were different, then the policy results would be different as well.

Another way of seeing this conception is as a useful *heuristic* for when popular sovereignty is present. In the actual world, in which there are no omniscient, omnipotent, benevolent dictators, if we witness responsive government over time, that is usually an excellent reason to believe that the governmental system is such that the people really are (somehow) in control. In this sense, responsiveness isn’t constitutive of popular sovereignty, but it is excellent evidence of popular sovereignty.

This brings us to the general issue of why popular sovereignty is an important part of political morality. Why should we care that “we the people” are in control and that the political power is, in some sense, in our hands? There are many different arguments here, but two main routes to this conclusion are through the ideal of moral equality and the ideal of individual autonomy.

The ideal of moral equality suggests that although we are not all equally talented, attractive, strong, intelligent, kind, and so on, we are all, in some important sense, of equal moral standing or of equal moral importance. The implications of this for political institutions are controversial and contested: Does this require a literally equal say in all political decisions? Equal political power? Equal consideration or weighting of each of our interests? Equal treatment under the law? All of these? One route to popular sovereignty is through the suggestion that each of us should have equal political voice or equal political power—there should not be some people who are placed in unequal positions of power over the rest of us. Of course, many think that electoral political representation is compatible with popular sovereignty, so spelling out the precise notion of popular sovereignty required by ideals of equality may be controversial.

A second route to popular sovereignty as an ideal of political morality is through the ideal of individual autonomy, the suggestion that each of us has the ability to be autonomous, and the right to have that autonomy respected and protected. There are many debates about how exactly to understand autonomy in this context, but one way is to say that an individual is autonomous to the extent that she lives and acts in accordance with her beliefs and values, with ends that she sets for herself, rather than ends that are set for her by others. If we hold out autonomy as an ideal, then there is a question of how political and legal institutions are compatible with that ideal, as they may seem to constrain and limit how individuals may act, and to effectively set and curtail the ends that individuals can have and strive toward. So, a second route to popular sovereignty as an ideal of political morality is to suggest that there may be political and legal institutions that do less to threaten or undermine or impede individual autonomy; namely, those institutions in which it is plausible to say that *we* govern *ourselves*, rather than being governed by someone else. Of course, there are challenges to see how any actual political or legal institutions are compatible with this ideal, but we might think that at least those that can claim popular sovereignty will be better off in this regard than those that cannot.

Much more could be said about both equality and autonomy and the relationship between those aspects of political morality and requirements of popular sovereignty, but it is at least plausible that popular sovereignty as RESPONSIVENESS might be an attractive way of understanding what popular sovereignty requires in terms of respecting demands of both equality and autonomy.

It is worth noting that one way to achieve RESPONSIVENESS might be to implement popular or direct democracy or to operate only via full consent. Whether or not this is the case will depend on the resolution of some of the above complexities regarding how to best understand responsiveness. But, importantly, responsiveness as defined is institutionally neutral—many different institutional structures might achieve responsive government.⁵ Additionally, we can think of responsiveness—and responsive governments—as coming in degrees, so that there might be perfectly responsive governments, somewhat responsive governments, and so on. This is plausible as an interpretation of the ideal of popular sovereignty, with that ideal more closely achieved the closer a political system is to achieving perfect responsiveness. Whether or not it captures some historical or canonical ideal of popular sovereignty, I will assume that responsiveness is an important normative ideal for political systems—at least as sketched at this very general level; obviously, there would be certain ways of filling in the details that might make it unattractive.

It is also worth stressing that responsiveness would be controversial as the *only* normative ideal for political systems, since it might be that people's beliefs, preferences, and values are terribly mistaken or heinous, or that some natural (and even egalitarian) way of aggregating those beliefs, preferences, and values generates terrible and heinous results.

Throughout the rest of the chapter, I will take RESPONSIVENESS to be an important dimension of popular sovereignty, so that systems or policy outcomes that fail to achieve or exhibit RESPONSIVENESS thereby fail along at least one significant normative dimension, a dimension that is intimately related to, if not constitutive of, popular sovereignty.

II. GENERAL PROBLEMS FOR ELECTORAL REPRESENTATIVE DEMOCRACY

In this Section, I consider a general problem for representative, electoral democratic systems of government on the grounds that they do poorly from a perspective of responsiveness, at least when dealing with certain classes of political problems. The framing is often in terms of legislative representatives, but many of the same points apply—or apply with even more force—in the case of elected executives and the political appointees of such executives.

5. For fuller discussion of the way in which social context can lead to different institutional recommendations, see Alexander A. Guerrero, "Political Functionalism and the Importance of Social Facts," in *Political Utopias* (ed. by Kevin Vallier and Michael Weber, 2017): 127–150.

The argument I offer in this Section goes against standard justifications for systems of electoral representative government. One of the main justifications for systems of democratically elected political representatives is that because representatives are in power as a result of popular election, they will be concerned to do what is in the interests of the people, rather than just what is in their own narrow interest. Systems of elected representatives achieve responsive government, the theory suggests, via mechanisms of accountability: the law they create is responsive to the beliefs and preferences of those over whom they govern. (There is also the view that voters try to elect candidates who are of a “good type”—who will act in their interests even in the absence of electoral sanction. As will become clear, I am skeptical of the viability of this strategy as a means of achieving responsive government.) Representatives may be responsive to their constituents’ preferences in that representatives explicitly defer to their constituents (doing as their constituents prefer), or because they act as guardians of their constituents’ interests (doing what the representative thinks is best for—and what she may hope will come to be seen as best by—her constituents).⁶ In most situations, representatives will do some of both. People expect their representatives to do more than just follow their lead, but the representatives get too far ahead of their constituents at their own electoral peril. Of course, people can be wrong about what is in their interests, or they can be confused about what policy will best achieve what they prefer. In such cases, a representative might work to convince his constituents of their error, or even depart from what they presently prefer in the hope that they will eventually come around to the representative’s own view of the issue. But the notion of responsiveness that is tied to popular election of representatives is, fundamentally, connected to whether constituents themselves believe that some course of action is in their interests.

The suggestion in what follows is that for electoral representative systems of government, responsiveness is tied to what I will call *meaningful* accountability. Responsiveness is tied to accountability—we expect electoral democratic systems of government to do relatively well by responsiveness *because* those systems have the particular mechanisms of accountability that they do. But responsiveness is tied only to *meaningful* accountability. Meaningful accountability is distinct from accountability simpliciter in that the former, but not the latter, is connected to *informed monitoring* and *evaluation* practices.⁷

Accountability through elections requires—at least—free, regular, competitive, and fair elections. Candidate A runs on a platform of doing X, Y, and Z, in opposition to some Candidate B, who runs on a platform that is at least somewhat different from A’s. If A’s platform is more popular, she will likely win the election. After being elected, she will have many decisions to make while in office. These decisions will be monitored and evaluated by her constituents and the candidate

6. For discussion of relevant complexities, see Guerrero, n. 3, pp. 272–306.

7. The argument here draws substantially on Alexander A. Guerrero, “Against Elections: The Lottocratic Alternative,” *Philosophy and Public Affairs* 42 (2014):135–78.

will be held accountable for decisions made while in office when she next comes up for re-election.

If elections are not free, regular, competitive, and fair, these mechanisms of accountability will fail. Without elections of this sort, Representative A might do whatever she likes once in office without fear of electoral punishment. She would be free to act in ways that are contrary to the preferences and beliefs of her constituents. And she would be free to do whatever might be most personally beneficial to her or to the causes she cares about.

Even in well-established electoral democracies, there are familiar concerns about electoral systems on the grounds that they are not adequately free, competitive, or fair. In the United States, for example, there are financial barriers to running for office, significant electoral advantages that come with incumbency and legislative rules that favor seniority, and systemic difficulties (stemming from the use of single-member districts and first-past-the-post voting rules) that undermine the viability of third-party candidates. Corporate money and inadequately regulated television advertising play an outsized role in determining who is elected. There are hurdles in place to keep poor, marginalized, and unsophisticated citizens from successfully registering and voting. There is intentional, competition-reducing bipartisan gerrymandering of districts. And, as *Bush v. Gore* in 2000 made particularly evident, there are even inadequacies in the mechanics of casting and counting ballots.

These are serious difficulties, certainly, and they play a significant role in reducing the accountability of representatives to those over whom they govern. But even if some of these were addressed, serious problems of accountability would still arise, or so I will argue.

The central problem for systems of electoral accountability in the modern political context is deep and pervasive political ignorance. Meaningful accountability requires elections that are free, regular, competitive, and fair. But it also requires that citizens know enough about who the candidates are, what they have done, what they are likely to do, and whether what they are likely to do is a good or a bad thing—from their perspective, or more generally. Even if citizens have the mental capability to monitor their representatives, this monitoring of representatives can be thwarted by ignorance: (1) ignorance about *what one's representative is doing* (“conduct ignorance”), and (2) ignorance about a *particular political issue* (“issue ignorance”). Of course, ignorance admits of degrees: one might know something about what one's representative is doing while still remaining largely ignorant of what she is doing. And one can know something about, say, global warming (or health insurance pricing, or the regulation of financial instruments, or whatever), while still remaining largely ignorant of the details of those issues and the various policy alternatives relevant to dealing with them. In addition to conduct ignorance and issue ignorance, there is a related, third kind of ignorance that also poses a threat to accountability. Even if one knows what one's representative is doing with respect to some issue, one may have no idea (or even belief about) whether what one's representative doing is a good thing in general or whether what she is doing will be good for oneself. We can call these two kinds of ignorance “broad evaluative ignorance” and “narrow evaluative ignorance,” respectively.

Conduct ignorance, issue ignorance, broad evaluative ignorance, and narrow evaluative ignorance all can thwart accountability. The way in which these kinds of ignorance can thwart accountability is straightforward: each kind of ignorance can undermine the ability of ordinary citizens to engage in meaningful *monitoring* and *evaluation* of the decisions of their representatives. If I don't know what you've done, I can't hold you accountable for it. If I don't know anything about the issues or how to evaluate what you have done, I can't hold you accountable for voting yes, rather than no, or vice versa.

One of the main themes of political science research over the past 50 years is the remarkable extent of our ignorance across almost every politically relevant domain. Ilya Somin notes that “[t]he sheer depth of most individual voters’ ignorance is shocking to many observers not familiar with the research.”⁸ Larry Bartels says, “[t]he political ignorance of the American voter is one of the best-documented features of contemporary politics.”⁹ John Ferejohn writes that “[n]othing strikes the student of public opinion and democracy more forcefully than the paucity of information most people possess about politics.” He continues, “[d]ecades of behavioral research have shown that most people know little about their elected officeholders, less about their opponents, and virtually nothing about the public issues that occupy officials from Washington to city hall.”¹⁰

This ignorance is both well-documented and unsurprising. As many have noted, it is not rational for individual voters to expend time and energy in becoming well informed about politics, given how unlikely it is that any vote will be decisive.¹¹ These claims about ignorance are general; they do not concern military or national security policy in particular. I will focus on specific issues in those domains in the next Section.

Here I want to stress one further fact relating to ignorance that is relevant in this context. Modern policymaking in general, and national security policy and military strategy in particular, has become incredibly technical and complex. This is important because although we might be generally ignorant, there may be some issues about which people are not ignorant, at least in a broad sense. So, for example, if there is a terrorist attack in a country, people in that country may not be ignorant of that fact. Or if there is a widespread famine in a country, people may not be ignorant of that fact. Or if a decision has been made to go to war with a particular country, people may not be ignorant of that fact. The difficulty comes in knowing more than these bare facts: What ought to be done? Is this a good idea?

8. Ilya Somin, *Democracy and Political Ignorance* (2013), 17.

9. Larry Bartels, “Uninformed Votes: Information Effects in Presidential Elections,” *American Journal of Political Science* 40(1) (1996): 194–230.

10. John Ferejohn, “Information and the Electoral Process,” in *Information and Democratic Processes* (ed. John Ferejohn and James Kuklinski, 1990), 3.

11. For discussion and critical argument, see Guerrero, n. 3, pp. 272–275.

How should we respond? Will this be good for me, for our country, for the world? Is this the right thing to do? We need answers to all of these questions in order to hold our elected officials—the ones making these decisions—meaningfully accountable. And answering those questions is exceedingly difficult.

Here is the basic argument that electoral representative systems will fail to bring about responsive outcomes in general.¹²

(P1) Systems of electoral representation tend to bring about outcomes that are *responsive* to the preferences of some constituency, *C*, with respect to some problem, *P*, only if *C* can hold their representative(s) meaningfully accountable with respect to *P*.

Here are some reasons to think that (P1) is true. We can begin with a question: Without meaningful accountability, why would the actions taken by representatives be responsive to the beliefs, preferences, and values of their constituents? Representatives would have no electoral incentive to act in a responsive way, and they would not even have an incentive to learn what their constituents wanted. It is true that an elected representative might try to enact responsive policy simply because she thinks it is the right thing to do. The problem is that, in the absence of meaningful accountability, it becomes electorally costly to act in certain ways—including, perhaps, responsive ways—because of the influence of certain powerful interests.

Here is the concern: elected political positions for which the elected officials are not meaningfully accountable to their constituents will be used to advance the interests of the powerful (typically the financially powerful). Let us refer to this phenomenon as *capture*: an elected official is captured if he or she uses his or her position to advance the interests of the powerful, rather than to create policy that is responsive or good (when doing so would conflict with the interests of the powerful). The suggestion is that the absence of meaningful accountability leads to an increase in capture.

Here is a plausible idea: political power is more valuable to powerful interests the more that it is untethered from the preferences and beliefs of the people. If political officials are free to take a wider range of positions—and, in particular, can take positions that are contrary to the interests of the general public—this makes the offices held by those officials more valuable. So, as representatives become less accountable, it becomes more worth the effort to control those representatives or to control who is elected. And this may be considerably easier and cheaper than trying to alter the beliefs and preferences of the majority of people in a political jurisdiction through advertising and media—particularly if the interests of the powerful are at odds with the interests of most people in a jurisdiction.

There are two main ways in which powerful interests can respond to this increased value of political positions. The first is by influencing elections: determining who can be a viable candidate. The second is by influencing those

12. A version of this argument appears, in modified form, in Guerrero (2014).

elected: determining the political positions adopted and creating directed positional shifts, particularly through lobbying. In addition to there being more incentive to take these steps in the absence of meaningful accountability, both are also easier to do in the absence of meaningful accountability. I'll say more about this in the context of national defense and military policy in the next section.

If elections are badly structured (requiring significant financial backing, allowing significant corporate/individual donations, etc.), the powerful will control who can realistically run for office, in which case even meaningful accountability post-election will come too late. If elections are badly structured *and* there is no meaningful accountability, then representatives become little more than agents of the powerful.¹³

But even if the elections are not so badly structured, there will still be serious concerns about the influence of the powerful in who can be a viable candidate. First, powerful interests can control media presentation of candidates and their positions. This can make meaningful accountability more difficult through the increase in bad or irrelevant information. And this kind of control is made easier when the issues are ones about which voters are ignorant. If voters know very little about candidates, their views, and whether these views are good or bad, it is easier to manipulate how individuals feel about the candidates. Second, if political positions are valuable, it becomes sensible to identify and groom “controllable” candidates early on, making those who end up as viable candidates likely to be those whose positions and interests are congenial to the interests of the powerful.

Even if those elected are not beholden to the powerful when elected, once they are in office, the absence of meaningful accountability will lead to positional shifts in directions that benefit the powerful. Indeed, lobbying may be much more significant than campaign spending in terms of influencing policymaking.¹⁴ This makes sense, given that in the absence of meaningful accountability, representatives will be able to do whatever they want. The worry is that in this “free zone,” powerful interests will make it so that there is at least drift, if not outright directed movement, in the direction that those interests favor. Representatives operating in this free zone will have no electoral incentives to do the right thing if it goes against the interests of the powerful (*ex hypothesi*, their constituents won't know the difference), and the powerful will provide significant incentives to do what is in their interests. Representatives will have little incentive to seek out high quality

13. Empirical work suggests that this is a significant problem. See Martin Gilens, *Affluence and Influence: Economic Inequality and Political Power in America* (2012); Jacob Hacker and Paul Pierson, In *Winner-Take-All Politics: How Washington Made the Rich Richer—and Turned Its Back on the Middle Class* (2011), Lawrence Jacobs and Robert Shapiro, *Politicians Don't Pander: Political Manipulation and the Loss of Democratic Responsiveness* (2000).

14. As noted by Ansolabehere et al., “[t]he behavior of interest groups speaks to the value of lobbying: organizations spend 10 times more on lobbying than they do on campaign contributions.” Stephen Ansolabehere, John M. de Figueiredo, and James M. Snyder Jr., “Why Is There So Little Money in U.S. Politics?,” *Journal of Economic Perspectives* 1(1) (2003): 105–30. They note that in 1997–1998, interest groups spent \$3 billion on lobbying, compared to \$300 million on PAC contributions.

information regarding what would be best, and there will be plenty of easily available bad information that makes it seem that the best thing to do is to do what is in the interests of the powerful. Thus, even if representatives aren't controlled by the powerful when elected, there is likely to be substantial influence from the powerful to adopt positions congenial to their interests, and it is reasonable to expect the "acceptable" range of policy positions to shift accordingly.

The next premise in the argument is this:

(P2) The presence of widespread issue, conduct, or evaluative ignorance within a constituency, *C*, with respect to some issue, *P*, undermines the ability of members of *C* to hold their representative(s) meaningfully accountable with respect to *P*.

(P2) is plausible given the definition of meaningful accountability and the discussion of meaningful accountability above. If people are ignorant about some issue, or about what their representative is doing with respect to that issue, or about whether what their representative is doing is good, they cannot monitor or evaluate what their representative is doing with respect to that issue.

It has been suggested that even if people are ignorant, they can still hold one's representative meaningfully accountable by using proxies, signals, and heuristics of various kinds to overcome issue, conduct, and evaluative ignorance.¹⁵ These strategies amount to deference to the monitoring and evaluation done by some other individual or group. For example, membership in a political party, endorsements from activist organizations or media institutions, and contributions and public endorsements from particular individuals might all seem to help individuals overcome personal ignorance to hold their representatives meaningfully accountable with respect to particular political issues.

But there are problems with strategies of this sort. First, the proxies may either be too coarse-grained to help with accountability for particular issues or too fine-grained to save individuals any effort. Membership in a political party, for example, is a very imperfect signal with respect to any particular issue. A person might be a member of a party because it aligns with their views on *A*, *B*, and *C*, although they departs from the party with respect to *D* and *E*. On the other hand, endorsement from an organization that focuses narrowly on a particular issue will provide information about that issue, but it will require considerable effort on the part of individuals to learn which organizations can be trusted to provide reliable assessments and what all of the issue-specific trusted organizations say about the candidates.

This highlights the second problem with the use of proxies: it can be difficult and time-consuming to determine which proxies are credible, particularly if one wants to find reliable but specific proxies for many different issues. This can take almost as much effort, and be as challenging, as doing the research oneself.

15. See, e.g., the papers in John Ferejohn and James Kuklinski, eds., *Information and Democratic Processes* (1990).

Finally, for some issues, there may not be good proxies or signals. There may be issues that are low profile or do not attract well-funded individuals or groups to do the necessary investigative work, and there may be issues for which powerful interests have a lot at stake, and do everything they can to shape the available information and to obscure the nature of their interests and efforts. And there may be issues, such as military policy, where there are organized and powerful interests on one side of an issue, but where those on the other side (for example, those who might be on the receiving end of our military equipment) might be disorganized or otherwise disempowered.

(P3) If a political problem is *information intensive*—(a) factually complex (requiring extensive knowledge of information in order to understand the problem) or (b) technical (requiring advanced education or experience to understand and evaluate possible solutions)—then there will typically be widespread issue, conduct, and/or evaluative ignorance with respect to that problem.

The general explanation of (P3) is the standard one about rational voter ignorance (it is rational to remain ignorant given how unlikely it is that one's vote will make a difference), combined with the difficulty of staying well informed, even if one had reason or desire to do so; and the possibility of significant but effective misinformation being produced by interested parties. It would be useful to have a metric to assess how information intensive a particular problem is, but I will not attempt to offer one here. It is plausible, however, that:

(P4) Many political problems in modern political societies are information intensive.

There will be a spectrum of how information intensive problems are. Even relatively straightforward problems may involve complex factual issues or require one to make complex assessments of the consequences of adopting some course of action. It is plausible that most political problems are information intensive, but (P4) reflects only the more modest view.

To complete the argument:



(P5) If a political problem is information intensive, then meaningful accountability with respect to that problem will be undermined. (Follows from (P3) and (P2).)

(P6) If a political problem is information intensive, then systems of electoral representation will not tend to bring about responsive outcomes with respect to that problem.

(C) Therefore, for many political problems, systems of electoral representation will not tend to bring about responsive outcomes with respect to those problems.

The above argument applies in a general way to electoral systems and political decisions. In the next Section, I will supplement this general argument concerning ignorance, complexity, and the lack of meaningful accountability with specific issues that arise in the context of military and national defense policy.

Of course, the above argument might be contested at various steps, and some of the premises might be bolstered or undermined by additional empirical research. The hope, however, is that the argument articulates a familiar set of concerns about electoral representative systems. These concerns are brought to the fore when one thinks about how little one knows about most of what one's elected officials do, how little real choice went into the election of one's representative (if one is in a district like most districts), how much deference to the goodwill of one's favored political party is required, how complex some issues are, how much of what one believes about various issues is a result of information provided by a few powerful media institutions, how much money powerful interests have at stake, and how hard it is to create rules to adequately police the influence of these powerful interests.

It is not much of a surprise that electoral systems have serious problems. As I note in Guerrero (2014), these three features are enough to cause trouble:



Principals and Agents: some small number of X's are chosen by a much larger number of Y's, and the X's are to act on behalf of, or for the sake of, the Y's.

Electoral Accountability: the mechanism that is to ensure or make likely that the X's act on behalf of the Y's is twofold: (a) initial election/selection by the Y's and (b) potential for re-election/selection by the Y's after some period of time.

Complexity and Opacity: whether the X's are or have (a) actually acted or (b) tried to act on behalf of the Y's is not obvious to the Y's in the short-term (the time between election cycles).

These three features generate problems in their own right. But they are combined with two more:

Significance: what the X's do has great significance in terms of regulating (or not) the powerful members of a society.

Open Influence: there are plausible norms that require restrictions on how much regulation of political speech and influence from one Y to another there can be, regardless of the relative power or resources of the individuals.

There are obviously ways in which things could be made better, in terms of regulating campaign finance, post-electoral employment, lobbying, media coverage of elections, and so on. The problem is that these solutions don't address the core problems stemming from complexity and opacity. Those are information asymmetry problems, and they are not easily cured.

III. POPULAR SOVEREIGNTY AND RESPONSIVENESS IN THE NATIONAL DEFENSE CONTEXT

The above concerns have been articulated about electoral systems of government in general, suggesting that, despite the common equation of electoral representative democratic government with popular sovereignty in the form of responsive government, this equation may often—or at least for a wide range of political problems—fail to hold. In this Section of the chapter, I will sharpen and narrow the focus to particular problems for responsiveness in the national defense and military context. I will suggest that four distinct but interrelated factors generate particular difficulties in this context.

A. Confidentiality

The above argument, and in particular (P3), suggested that *information intensive* political problems would lead to widespread issue, conduct, and/or evaluative ignorance with respect to that problem, that ignorance of those kinds undermines meaningful accountability, and that the absence of meaningful accountability undermines responsiveness. Problems of national security—whether dealing with the threat of domestic terrorist attacks, terrorist attacks abroad, cyberwarfare, or more conventional nation-state military threats—are undoubtedly information intensive, and so that general concern applies.

Even worse for responsiveness, however, is the fact that much of the detail of national defense policy is made in secret, shrouded from public view, for reasons of safety (of those charged with carrying out the policy) and tactical strategy (many tactics only work if hidden from view of those who pose a threat to national security).

It is plausible that much that is currently hidden from view could be made public with little or no adverse effect on safety or effectiveness. Of course, one of the difficulties I want to draw attention to is that it is hard or impossible for an ordinary citizen to know whether this is *actually* plausible or not. Why, for example, does the legal rationale offered by the Department of Justice as to the legal permissibility, under U.S. Constitutional law, of the executive summarily ordering the killing of a U.S. citizen abroad need to be confidential? Why do the details of the process by which one can come to be placed on (or removed from) a kill list need to be confidential? Why is it important that it be confidential whether we are using or would be willing to use certain “interrogation techniques” or to make use of “black sites” or “extraordinary rendition” programs? What is the objection to giving some rough quantification of the extent to which these are used (e.g., there are between 50 to 100 black sites in operation)? It is also plausible that, in general, the recent trend toward increased classification—some would say overclassification—could be reversed with little cost to safety and strategy.¹⁶ So, too,

16. See “Why Is That a Secret?” *New York Times* (Op-Ed), Aug. 24, 2011, available at: https://www.nytimes.com/2011/08/25/opinion/why-is-that-a-secret.html?_r=1 (noting a 40 percent increase in the number of documents classified from 2009 to 2010).

it would seem that there is plenty of room to reduce the invocations of executive privilege and to rein in use (misuse) of the Espionage Act.

But even leaving what we might call “excessive secrecy” to one side, there is surely some amount of appropriate or necessary secrecy. Additionally, whatever level of secrecy might have been required historically, there is reason to think that the rise of the computer and internet, and the corresponding digital storage and transfer of information, might require an overall higher appropriate level of secrecy. Globalization and interconnectedness present opportunities, but they also present risks. The possibility of a WikiLeaks kind of breach, involving the sheer magnitude of information that those breaches have involved, is unimaginable in the brick and mortar, pen and paper, low-tech world.

So, even in the best case, it seems that many political problems in the security and military policy context will be affected by a principle such as this:

(P-confidentiality) If a political problem, or some significant aspect of a political problem, must be addressed in a confidential manner, then there will typically be widespread issue, conduct, and/or evaluative ignorance with respect to that problem.

This premise can replace or supplement the above premise (P3), increasing the likelihood that meaningful accountability in the national defense context will be undermined.

Of course, it is hardly a new development that national defense and military policy must be conducted with significant levels of confidentiality imposed. One significant difference in the post 9/11 world (or perhaps even the post–World War II, Cold War-world), however, is that it is not just tactical strategy within a public conflict that is confidential; it is also the details of the conflicts, the nature of the threats and enemies, the broad tactics being employed to gather information about potential threats, the resources being invested, the technology being developed, and so on. There has always been—and arguably always must be—a black box, but the box is much bigger now.

B. Voter Ignorance

In the previous Section, I noted the general problem of voter ignorance. It is worth stressing its pervasiveness in particular in the context of national defense and military policy. One consequence of the widespread use of security classification and confidential policymaking is that voters are largely ignorant of the details of what is being done. One can find out some broad information about the size and scope of the relevant institutions. For example, while for the CIA “[n]either the number of employees nor the size of the Agency’s budget can, at present, be publicly disclosed,” one can learn that, in the 1998 fiscal year, the aggregate intelligence budget was almost \$27 billion.¹⁷ And one can learn that the Department of Defense budget for fiscal year 2011 was around \$740 billion (not counting

17. CIA website FAQ: <https://www.cia.gov/about-cia/faqs/index.html#employeenumbers>.

spending related to Veterans Affairs or veteran's benefits), that the Department of Homeland Security spending was around \$50 billion, and that FBI counterterrorism operations were around \$3 billion.¹⁸ And one could, if so inclined, learn a lot more about the details of the amount of money requested and spent on at least some of the various military programs—around \$11 billion on the F-35 Joint Strike Fighter, around \$5 billion on the Virginia class submarine, around \$3 billion on the V-22 Osprey program, and so on.¹⁹ And, of course, one could learn broader contextual facts, such as that during 2011 the United States spent more on its military budget than the next 13 countries combined.²⁰

The problem is that, despite this, it is impossible for an average citizen to be even minimally well informed about the size and nature of the threats that we face, how significant the threats are, what measures are needed to contain or eliminate these threats, or whether what we are currently doing is at all effective or necessary to address the threats that exist. Is the world more dangerous now than it was 10 years ago, or 20 years ago, or 50 years ago? Was the significant increase in defense spending from 2001 to 2010 and beyond²¹—even leaving aside the expenses associated with wars in Iraq and Afghanistan—a response to an increase in danger or required by an increase in the costs of prevention? Would we be just as safe if we spent half of what we spend? Is our military spending—in broad strokes, or in its details—more likely to increase or decrease our long-term national security?

Perhaps no one is in a position to give particularly well-informed answers to these questions, although there are certainly many people who claim to be experts on these topics, and there are people who have much more in the way of relevant information. The suggestion here is just that voter ignorance in the context of national defense and military policy is at least as bad as it is with respect to any other category of political problem.

C. Voter Psychology and Electoral Pathology

When a person doesn't have a lot of information about a political problem, it is easier to manipulate that person into believing something through a combination of misinformation and emotional manipulation. Additionally, there are some policy problems—such as criminal justice policy and national defense policy—that generate strong emotional reactions, claim to have a certain kind of urgent or emergency status, and have truly vivid and terrible worst-case outcomes. For these problems, emotional manipulation is both particularly easy and particularly effective.

18. See OMB Fiscal Year 2012 Budget—Historical Tables, Table 3.2.

19. See United States Department of Defense Fiscal Year 2012 Budget Request, available at: http://comptroller.defense.gov/defbudget/fy2012/FY2012_Weapons.pdf.

20. Brad Plumer, "America's Staggering Defense Budget, In Charts," *Washington Post*, January 7, 2013, available at: <http://www.washingtonpost.com/blogs/wonkblog/wp/2013/01/07/everything-chuck-hagel-needs-to-know-about-the-defense-budget-in-charts/>.

21. See <http://www.washingtonpost.com/blogs/wonkblog/wp/2012/08/28/defense-spending-in-the-u-s-in-four-charts/>.

One concern about these features of national defense problems is that the idea of responsiveness can become considerably more complicated—some of the complexities elided earlier might need resolution. In particular, there might well be contradictions in an individual's expressed or superficial beliefs, preferences, and values, and that person's deeper (unmanipulated) beliefs, preferences, and values. And there is the problem of how to understand responsiveness in the face of widespread ignorance. Consider the massive amount spent on national security and defense as compared to education. In 2015, of the roughly \$1.16 trillion federal discretionary spending, \$640 billion was on the military, with only \$72 billion spent on education, only \$38 billion on energy and the environment.²² There is no evidence that this distribution reflects responsive policy choices, rather than outcomes that have been successfully lobbied for by the corporate military industry (which will be discussed more below). The point, here, however is that the American public is remarkably ignorant regarding both the total amount that is spent on various parts of the budget, as well as relative amounts that are spent. For example, polls have shown that the average public estimate is that 28 percent of the federal budget is spent on foreign aid, when in fact the actual amount is significantly less than 1 percent of the budget. Perhaps most remarkable is how wrong most people are, with more than 20 percent of those venturing a guess estimating that the United States spends more than 40 percent of the federal budget on foreign aid (Figure 15.1).

Public Overestimates Share of Budget Going to Foreign Aid

Just your best guess, what percentage of the federal budget is spent on foreign aid?

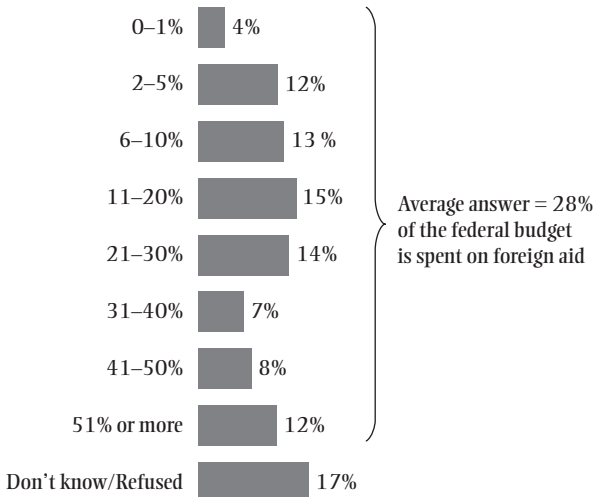


Figure 15.1 Public overestimates share of budget going to foreign aid.

SOURCE: Kaiser Family Foundation 2013 Survey of Americans on the U.S. Role in Global Health (conducted August 6–20, 2013).

22. Office of Management and Budget.

One way of understanding responsiveness in this context, then, focuses more on people's underlying values and commitments, rather than just on relatively shallow or misinformed beliefs. For example, after giving these extraordinarily high, inaccurate assessments of how much of the federal budget goes to foreign aid, people often then say they think the amount we give should be half of their very high estimate—so, 15 percent of the federal budget, rather than (what they currently think it is) 30 percent. It seems misguided to infer from that that these people would be—from a normative point of view—willing to increase the current amount of foreign aid 15–20 times what it is now, which is what an increase to 15 percent would mean. Instead, these seem well-categorized as “phantom” opinions, which would not survive presentation of all of the relevant nonmoral information. As James Fishkin puts it, reporting on Philip Converse's groundbreaking work:

[S]ometimes the opinions reported in conventional polls do not exist. They are non-attitudes or phantom opinions because respondents almost never wish to say that they do not know. This phenomenon was originally discovered by Philip Converse. . . . There was a National Election Studies panel that was asked the same questions from 1956 to 1960. The questions included some low salience items such as the government's role in providing electric power. He noticed that some of the respondents offered answers that seemed to vary almost randomly over the course of the panel. . . . Converse concluded that there were not real opinions being reported but that a significant portion of the people were answering randomly.²³

If we are in a situation of dealing with either absent beliefs and preferences or phantom or shallow beliefs and preferences, it will be impossible or inappropriate to measure responsiveness simply in reference to what people currently believe or prefer. Instead, it seems we will need some other means of giving people a chance to form accurate beliefs and to have policy preferences that are in line with these more accurate beliefs, given their values.

There will also be complications stemming from beliefs and values that are not simply the product of misinformation, but which the person comes to adopt for bad reasons, as a result of rationally inappropriate manipulation, rather than through some other more epistemically commendable process. Consider the belief that it was necessary to force Japanese Americans into internment camps during World War II. It is plausible that this was the result of a combination of irrational fear and manipulation into thinking that Japanese Americans posed a threat, despite the lack of evidence to support this belief. Or consider the importance placed on whether a politician is “tough on crime”—where that often means pursuing incredibly punitive criminal justice policies with almost no thought to cost. It is possible that these reflect our true beliefs and values, but there is at least

23. James Fishkin, *When the People Speak* (2009), 123.

a worry that a kind of psychological manipulation and distortion takes place: in the latter example, through the electoral process itself.

It will likely not be apparent to an individual that there are these contradictions or ignorant or poorly grounded or poorly formed attitudes, and so individuals might act based on a contradictory attitude or on a poorly formed or poorly grounded attitude. Of course, it requires argument to establish that (1) some of an individual's particular beliefs, preferences, and values are "deeper" or "epistemically better" than others of that individual's beliefs, preferences, and values; and (2) that responsiveness should be responsiveness to the deeper and epistemically better attitudes rather than just whatever attitudes are expressed through votes, simple polls, or other actions. I will not provide those arguments here; I only want to note the concern that this is yet another way that responsiveness—or *real* responsiveness, as we might call it—might be undermined in the defense and military contexts.

An additional concern is that defense and military policy, like criminal justice policy, only easily moves in one direction—ratcheting up to provide more security, spending more money. There are two main reasons this might be the case. One, it is low political cost, electorally speaking, to do more, whereas it can be high cost to do less. This is so in part because emotion pushes in the direction of beefing up safety and security; the human cost is paid by others, and those others are either non-voters and even noncitizens (perhaps living in countries thousands of miles away) or politically disempowered citizens within the United States. This is particularly true given the post-draft military era we are now living in. The financial cost—and the corresponding opportunity cost—is paid by all of us, but that has considerably less emotional resonance, particularly in a low information context such as this one; it can be completely obscure what is enough, what is necessary, and what is wasteful, even given some fixed view about the proper level of risk.

A second possible reason for concern about voter psychology and electoral pathology with respect to defense and military policy involves the relevant institutional dynamics. Bill Stuntz makes this point regarding the criminal justice context:

A large part of the answer [to the one-way ratchet aspects of criminal law] involves not the politics of ideology and public opinion, but the politics of institutional design and incentives. Begin with the basic allocation of power over criminal law: legislators make it, prosecutors enforce it, and judges interpret it. In this system of separated powers, each branch is supposed to check the others. That does not happen. Instead, the story of American criminal law is a story of tacit cooperation between prosecutors and legislators, each of whom benefits from more and broader crimes, and growing marginalization of judges, who alone are likely to opt for narrower liability rules rather than broader ones. This dynamic does not arise out of any particular ideological stance, and does not depend on the partisan tilt of the relevant actors. Criminal law seems to expand as much, and as fast, under Democrats as under Republicans. Rather, it arises out of the incentives of the various

actors in the system. Prosecutors are better off when criminal law is broad than when it is narrow. Legislators are better off when prosecutors are better off. The potential for alliance is strong, and obvious. And given legislative supremacy—meaning legislatures control crime definition—and prosecutorial discretion, meaning prosecutors decide whom to charge, and for what—judges cannot separate these natural allies.²⁴

One can replace “prosecutors” with “the executive and military officials” and “broader crimes” with “broader military, detention, and surveillance powers and authorization.” The details here are different, of course, since it is even less clear that there is legislative supremacy in this realm, given the move away from formal declarations of war, the almost complete inefficacy of the War Powers Resolution (and its questionable constitutionality²⁵), and the president’s standing as Commander-in-Chief of the military.

The basic point, that about institutional collusion (or, less pejoratively, cooperation), is that, if true responsiveness is eroded (as suggested above), we can expect the direction of excess to be in the direction of more expenditures on military forces and national defense and greater expansion of executive power to take steps to protect us. Why? Basically, because of the issues of confidentiality and voter ignorance described above, the only electoral benefits that elected officials can obtain in this realm are (1) being seen as doing whatever is possible—overprotecting, if necessary—to prevent a high salience, public attack, or at least not being seen as having in any way impeded such prevention; (2) being seen as pushing for aggressive policy, which plays well for the emotion/manipulation reasons described above; and (3) doing what is financially beneficial to those special interests most active in this arena—defense contractors and those who produce and invent military and surveillance technology—a point we will turn to next. As a result, it behooves elected officials to allow for more spending and more power, or at least that is the suggestion.

There are, of course, some people who care a lot about the violation of civil liberties, the possibly excessive nature of the “military industrial complex,” and the devastation wrought upon distant peoples over the course of our recent military history. The suggestion is that those people have had a very uphill climb since 9/11. It is worth noting that although expense arguments have gained significant traction since the economic collapse of 2008, military spending has declined only slightly, particularly if one factors in the ends of the wars in Iraq and Afghanistan.

24. William J. Stuntz, “The Pathological Politics of Criminal Law,” *Michigan Law Review* 100 (2001): 505, 510.

25. See, e.g., Philip Bobbitt, “War Powers: An Essay on John Hart Ely’s *War and Responsibility: Constitutional Lessons of Vietnam and Its Aftermath*,” *Michigan Law Review* 92 (1994): 1364.

D. National Defense as Big Business

Above, I noted a number of reasons to think that this premise was true:

(P1) Systems of electoral representation tend to bring about outcomes that are *responsive* to the preferences of some constituency, *C*, with respect to some problem, *P*, only if *C* can hold their representative(s) meaningfully accountable with respect to *P*.

One reason to think this premise was true was the possibility of capture by special interests, and the suggestion that this possibility was more likely to be realized in the absence of meaningful accountability. Another factor that increases the likelihood of capture is, of course, the value to individuals of capturing the policymaking in a particular policy area.

Defense and military policy is a “high financial value” policy arena—there is an extraordinary amount of money to be made by a relatively small number of individuals and corporations, making lobbying and electioneering for certain political outcomes a very high value proposition for those entities. The sheer amount of money spent on military technology makes it an incredibly valuable area to influence. Additionally, the corporations that manufacture and develop military equipment receive a huge percentage of their revenue from defense contracts, meaning that those corporations can, and must, devote a huge percentage of their attention to lobbying and exerting political influence. It is not as if General Dynamics can sell its F-16 fighter jet to just anyone on the street. Boeing isn’t running commercials advertising its Apache attack helicopter during *The Voice*. To drive the point home, consider the percentage of revenue that the largest defense corporations get from government contracts. Lockheed Martin, the corporation with the largest total defense revenue (around \$44 billion in 2011), gets 94 percent of its revenue from defense contracts.²⁶ Boeing, the second largest corporation (around \$31 billion), gets 45 percent. General Dynamics is at 78 percent, Raytheon is at 93 percent, Northrop Grumman is at 81 percent, L-3 Communications is at 83 percent, SAIC is at 80 percent, and so on. Thus, it is no surprise that 3 of the 15 largest lobbying entities in terms of total lobbying expenditures in the entire United States over the last decade are Lockheed Martin, Boeing, and Northrop Grumman (behind, among others, such giant entities as the U.S. Chamber of Commerce, AARP, and the American Medical Association).²⁷

As a result, we should expect that in the defense and military policy context, if there is no meaningful accountability, then there will be an extremely significant level of capture. Arguably, the amount of money spent on lobbying by these defense corporations is simply evidence of that high level of capture.

Combining the discussion in the previous several sections, it is worth noting that these factors all work together. Confidentiality and voter ignorance work

26. See http://special.defensenews.com/top-100/charts/rank_2011.php.

27. See <http://www.opensecrets.org/lobby/top.php?indexType=s>.

to undermine meaningful accountability with respect to defense and military policy. The incredibly high value of being able to influence both the amount and the details of defense and military spending means that there will be overwhelming pressure exerted in one direction—to spend more, or, at least, to keep the spending levels extraordinarily high—with respect to defense and military spending. And the voter psychology and electoral pathology dimensions of military and defense policy means that it will be relatively easy for elected officials to sell more defense and military spending and engagement, when (for high salience reasons such as going to war) it becomes necessary to do so. Thus, it is no surprise when we learn that the United States spends more on its military budget than the next 13 countries combined, or that the United States is in the top-five of military expenditures per capita, along with countries that are either dictatorships or in extremely high conflict areas (or both): Saudi Arabia, Singapore, Israel, and Kuwait.²⁸

IV. RECLAIMING POPULAR SOVEREIGNTY THROUGH INSTITUTIONAL REFORM: THE LOTTOCRATIC ALTERNATIVE

I hope to have made a convincing case so far for the difficulty of responsiveness and meaningful popular sovereignty in the military and defense context. There are two natural but misguided responses that might be made at this point.

The first response is to give up on the ideal of responsiveness and popular sovereignty in this context, maintaining, perhaps, that these values need not be realized in every arena, or that perhaps we should be comfortable with heightened or even complete deference in this context. That is, anyway, the line that is often pushed on us. “We are the experts, just trust us, we have to do this to keep America safe; this new military technology or equipment is essential to our safety in a modern military environment.” And so on. This response has resulted in a situation in which our spending on military and defense policy is gravely out of line with our actual values and priorities, and in which much of our spending in no way makes us safer; indeed, much of it is likely to lead to needless militarization and destabilizing warmongering. At any rate, it seems worth paying close attention to whether we really think we should give up these values in this context, or whether, instead, we just see no practical way of realizing them, or, at least not any way that is better than electoral representative government and an elected president.

This brings us to the second natural response to the argument to this point: to suggest that electoral democracy of the sort found in the United States is the best that can be done with respect to popular sovereignty, even if we acknowledge it falls short of optimal levels of popular sovereignty in some (or most, or all) contexts.

28. See <http://www.sipri.org/research/armaments/milex>.

In this last Section, I want to briefly consider an alternative to electoral institutions as a way of achieving popular sovereignty with respect to military and defense policy. This Section introduces the idea of what I call “lottocratic” institutions,²⁹ and provides some reasons to think that the lottocratic government would be better than representative systems of government in terms of responsiveness, at least for some kinds of political problems, such as defense and military policy.

Before we launch into this somewhat more speculative exercise, it is worth noting that this is an area in which institutional innovation has already made some inroads. Consider, for example, the Defense Base Realignment and Closure Act of 1990, which provided “the basic framework for the transfer and disposal of military installations closed during the base realignment and closure (BRAC) process.”³⁰ This process was introduced in response to the difficulty of reducing, realigning, or closing unnecessary or outdated military facilities due to “pork barrel politics” in which members of Congress would fight against activity reductions in military facilities in their home districts or states.³¹ As some evidence of this political difficulty, it was noted that no significant military base had been closed since 1977, despite significant changes in military operations and technology in the intervening years. As a legislative assistant to then representative George E. Brown Jr. (a California Democrat) put it: “What representative up here, when confronted with two major bases closing in his or her district, wouldn’t fight it?”³²

In response to this, a process was created by which the secretary of defense would forward recommendations for realignments and closures to an “independent” nine-member panel appointed by the president, called the Base Realignment and Closure Commission (BRAC). This panel would then evaluate the recommended list of changes by taking testimony from interested parties and paying visits to affected bases. The BRAC could add bases to the list as well. Once fully evaluated by the BRAC, the list would be passed on to the president, who standardly approves the list but with the condition that the list could only be approved or disapproved in its entirety. The list is then given to Congress, with Congress enabled to enact a resolution of disapproval to the list if they do so within 45 days, but not to alter the list, and with no affirmative action required on the part of Congress.

The most recent BRAC round was in 2005. Here is an excerpt from the executive summary of that BRAC report, to give some sense of the scope of the

29. I discuss and defend these institutions at greater length in Guerrero (2014), n. 7, pp. 135–178.

30. Aaron Flynn, “Base Realignment and Closure (BRAC): Property Transfer and Disposal,” *Congressional Research Service Reports* (2005).

31. For commentary, see “Base-Closing Plan Survives Assaults by Some on Hill,” *Congressional Quarterly Press*, CQ Almanac 1989, 45th ed. Washington, D.C.: Congressional Quarterly), pp. 470–73. Available at: <http://library.cqpress.com/cqalmanac/document.php?id=cqal89-1139303>.

32. *Ibid.*

enterprise, and the way in which the BRAC self-conceives as an effort at instilling some popular accountability and even popular sovereignty into the process:

In accordance with the BRAC statute, three Commissioners were directly nominated by the President and six nominated by the President after consultation with majority or minority leaders of the House and Senate. By law, and by Commission policy, the Commission's process was open, transparent, apolitical, and fair. In addition to considering certified data provided by DoD, Commissioners sought input from communities and individuals affected by the DoD recommendations. Commissioners made 182 site visits to 173 separate installations. They conducted 20 regional hearings to obtain public input and 20 deliberative hearings for input on, or discussion of, policy issues. Commissioners were accessible to communities, citizens, and to their advocates without regard to party or agenda. Commissioners participated in hundreds of meetings with public officials and received well over 200,000 pieces of mail. All documents provided to the Commission were scanned into an "e-library" and made available through the internet. The Commission's web site registered over 25 million "hits." The 2005 BRAC Commission assessed closure and realignment recommendations of unprecedented scope and complexity while setting a new standard for accessibility to the American people and transparency of deliberations.³³

The BRAC is by no means perfect, and it is a highly technocratic body, with the nine-member panel typically composed entirely of former high-ranking military personnel and former politicians. Furthermore, it has proved incapable of continued survival in the face of some of the pressures described in Section III. It has now been over 10 years since the last BRAC, and the National Defense Authorization Act for Fiscal Year 2014 specifically prohibits authorization of future BRAC rounds. That said, it is noteworthy as an effort to move beyond normal electoral politics, and in particular as a way to circumvent some of the problems that stem from a breakdown in meaningful accountability and the overwhelming capture of defense and military policy. What I describe next can be seen as a similar kind of institutional design response to the problems identified above: confidentiality, voter ignorance, capture, and distortions due to voter psychology and electoral pathologies.

The kind of institution that I am interested in is unusual in that it employs selection of political officials by lottery, rather than by election. There is some historical precedent for this kind of method, referred to commonly as "sortition" (among other names). For example, in ancient Athens, three of the four major governmental institutions were populated by people chosen by lottery; both the *brevia* and the *scrutiny*, employed in late medieval and early Renaissance Italy, incorporated selection by lot; and, more recently, Citizens' Assemblies (in which citizens were chosen at random to serve on the assembly, and in which citizens heard from experts prior

33. Defense Base Closure and Realignment Commission, Final Report to the President (2005), Executive Summary, p. iv, available at: <http://www.brac.gov/finalreport.html>.

to coming up with their own proposals) in British Columbia and Ontario were used to reform election law.³⁴

The kind of institution that I want to propose as a possible improvement is an instance of what I call a “lottocratic” institution. The key features of the lottocratic institutions that I will suggest might work well in this context are the following:

- (1) Single Issue: the legislative institution focuses just on one policy area or sub-area. In this case, it could be National Defense, or there could be two such institutions, divided into, say, Domestic Defense and Global Military Policy, or there could be many such institutions that then together cover National Defense in a more elaborate network.
- (2) Lottery Selection: the members of each single-issue legislature are chosen by *lottery* from the relevant political jurisdiction.
- (3) Learning Phase: the members of the single-issue legislatures hear from a variety of *experts* and *stakeholders* on the relevant topic at the beginning of (and perhaps at various stages throughout) each decision-making session.
- (4) Community Engagement: the members of the single-issue legislature spend some time talking to, interacting with, and hearing from members of the public, including activists and stakeholders affected by proposed action.
- (5) Direct Enactment: the members of the single-issue legislature either (a) have the capacity to directly enact policy, or (b) have the capacity to enact policy if it is co-authorized by the executive branch or, in some cases, jointly with other single-issue legislatures.

More concretely, imagine that there is a network of single-issue, lottery-selected legislatures (SILLs), all focused on some aspect of National Defense, each of which consists of 300 people, chosen via random lottery from the adult citizens of the jurisdiction. One can imagine the details of the network in different ways. One version would have each SILL defined by regions—East Asia, Russia, sub-Saharan Africa, the Middle East, Latin America; or by subtopic—domestic terrorism, global terrorism, unstable states, nuclear weapons, cyberwarfare, base closings, military technology research and development, Army oversight, Air Force oversight, etc.; or by some combination of region and topic. And there could be metalevel SILLs that enabled some of these institutions to merge for discussion and policymaking when necessary, and that helped to collect input from all of the National Defense SILLs in order to determine budget allocations.

A bit more detail about the structure of the SILLs, at least on one possible way of developing the proposal in this context. Each person chosen would serve for a four-year term. Terms would be staggered so that each year 75 new people are

34. See, e.g., Oliver Dowlen, *The Political Potential of Sortition: A Study of the Random Selection of Citizens for Public Office* (2008); Mark Warren and Hilary Pearce, eds. *Designing Deliberative Democracy: The British Columbia Citizens' Assembly* (2008).

chosen, and 75 people finish their terms. All adult citizens in the political jurisdiction would be eligible to be randomly selected, provided that (post-selection) they passed a security background check such as those required for elected officials required to deal with confidential material. People would not be legally required to serve if selected, but the financial incentives would be considerable; efforts would be made to accommodate family and work schedules (including providing relocation expenses and legal protections so that individuals or their families are not penalized professionally for serving); and the civic culture could be developed so that (unlike jury duty) serving is seen as one of the most significant civic duties and honors.³⁵

In terms of decision-making, the SILLs could either be empowered to make decisions directly, or, perhaps more attractive in this context, to be in charge of vetting ideas and bringing proposals to the whole group with respect to specific areas. So, for example, the cyberwarfare SILL could hear from experts regarding the potential threats, concerns, and responses, and then develop a proposal that would then be brought to the whole group of, say, 20 SILLs, each of whom would developed expertise about some other area. This could be done as a way of assigning budget resources, or as a way of determining which areas should be prioritized. If full discussion with 6000 people was necessary but unwieldy, each of the 20 different 300-person issue-specific SILLs could choose 15 people who would represent the views of the specific SILL to the more general defense council SILL. Other structures and options are obviously possible as well. And there are questions about whether the SILLs should be given a role in making decisions directly, or whether instead they might just serve an oversight or advisory role, perhaps with the ability to veto the decisions of experts if they weren't convinced. And it could be that the SILLs need the agreement of the elected executive before doing anything, or before doing certain things (e.g., authorizing troops to go into combat, declaring war, intervening in a nation's internal conflict, etc.).

The general thought is that introducing these randomly selected citizens into some significant role in the making of defense and military policy would help generate more responsive policy, re-instilling some measure of popular sovereignty in these areas. The exact best way to do this will depend on a number of institutional, social, and political variables, and may depend on the specifics of the problems that are most significantly impairing responsiveness in a particular

35. If individuals are not required to serve, there may be a concern about disproportionality in terms of who actually ends up serving on these institutions. If that came to be a problem, one might alter the incentives for participation or make participation legally required. However, there are worries about legally required participation. First, there would have to be exceptions, and one would worry about skew being reintroduced in terms of who can take advantage of those exceptions (as in the case of military service). Second, the quality of participation may decrease if everyone is required to participate. Third, it might be objectionable to require individuals to participate in these SILLs even if they have "conscientious objections" to doing so. This might be a matter of their personal values, for example, and it might seem inappropriate to force participation. These are all reasons I prefer a system that doesn't require participation, but that makes it attractive.

political community. I don't want to attempt to set out a full case for any one particular way of using lottocratic institutions. I only want to bring them into view, so that we might consider their use, strengths, and weaknesses, particularly when thinking about alternatives such as the much more technocratic BRAC process. A full hearing is needed; here I will just present some of the more significant potential advantages and concerns of lottocratic institutions.

A few notes in advance of that. First, on the use of relatively narrow, single-issue focus, a main reason for this is that it would allow for greater learning and engagement with the particular problems. This is important given the range of backgrounds that members would bring to the institutions and concerns about decision-making competence. So, the single-issue focus is motivated by both epistemic and practical concerns.

Second, there is a question of how the randomly chosen individuals should think of their roles. Lottocratic institutions are different than electoral representative institutions, although there is a way in which some of their value comes from their representativeness. Members of the SILLs would be what Philip Pettit has called "indicative representatives." As he puts the idea of indicative representation:

The essential difference between responsive and indicative representation is easily stated. In responsive representation, the fact that I am of a certain mind offers reason for expecting that my deputy will be of the same mind; after all, she will track what I think at the appropriate level. In indicative representation things are exactly the other way around. The fact that my proxy is of a certain mind offers reason for expecting that I will be of the same mind; that is what it means for her to serve as an indicator rather than a tracker.³⁶

The thought behind lottocratic institutions is that members of the SILLs will be—at least over a long enough run—broadly descriptively and proportionately representative of the political community, simply because they have been chosen at random. But SILL members will not have in mind the idea that they are to represent some particular constituency; it is not that kind of representation. Rather, the fact that an individual member of a SILL comes to have certain views about an issue, after hearing from experts and engaging in consultation and deliberation, is a kind of evidence that members of the political community who share contextually relevant characteristics with that individual would also come to have those views, had they gone through the same experience.³⁷

36. Philip Pettit, "Representation, Responsive and Indicative," *Constellations* 17 (2010): 427–28.

37. A similar idea motivates James Fishkin's "deliberative polling." On this model, those randomly chosen would be immersed in "the issues, with carefully balanced briefing materials, with intensive discussions in small groups, and with the chance to question competing experts and politicians." (This is notably similar to the "Learning Phase" of lottocratic institutions.) They would then be polled, and the results of this poll would be broadcast to the general electorate (perhaps in addition to some of the previous discussion and deliberation), prior to political primaries or elections. As Fishkin puts it, a deliberative poll is not meant to describe or predict

With these two clarifications in place, let me suggest some of the main possible advantages of lottocratic institutions in the context of national defense and military policy.

1. POSSIBLE ADVANTAGE: COMBATting IGNORANCE WITHOUT GIVING UP ON POPULAR SOVEREIGNTY

One of the most significant problems raised regarding the making of responsive policy in the defense and military policy context was that “We the People” are massively ignorant about these topics—for both familiar reasons having to do with rational voter ignorance and issue complexity, but also for reasons having to do with confidentiality and secrecy. Lottocratic institutions offer a way of combatting this problem without moving to technocratic institutions or electoral institutions that will inevitably have high degrees of capture as a result of accountability deficiencies. Lottocratic institutions take ordinary citizens and provide them with a wide range of policy-relevant information and them empower them to make decisions directly. Let me say a few words more on how this might work.

Prior to making any decisions, members of the SILL will take part in a “learning phase” during which they get general information relevant to the topic as well as more specific information relating to specific issues. As an example, in the “Learning Phase” of the BC Citizens’ Assembly, experts made presentations about electoral systems, and a textbook on electoral systems was assigned as background reading. Additionally, advanced graduate students in political science from nearby universities were trained to facilitate small group discussions.³⁸

There will need to be a process by which a person is allowed to speak to a SILL as an expert. This requires both a process to determine whether a person counts as an expert (the *qualification assessment* process) and a process to determine which qualified experts are given an opportunity to speak (the *expert selection* process). The point of expert presentations is to have policymaking informed by the best available knowledge relevant to the policy area at issue. One of the comparative advantages of this system is that it blends the virtues of policymaking by ordinary people with policymaking based on expertise. The hope is that by requiring experts to explain complex ideas to nonexperts, this will allow for a kind of general

public opinion; rather, “[i]t has a recommending force: these are the conclusions people would come to, were they better informed on the issues and had the opportunity and motivation to examine those issues seriously.” *The Voice of the People: Public Opinion and Democracy* (1995), 162. Using “deliberative polls” of randomly selected individuals seems like an excellent idea, and it has met with some success already. My worry in this context is that they would not be enough to overcome the issues discussed in Section II, and it would be difficult to overcome confidentiality obstacles. There is also the concern that even if this led to an improvement in the quality of elected officials, those officials would still be able to pursue non-responsive policy in this context for the reasons discussed earlier.

38. For details of the BC Citizens’ Assembly, from which the use of experts is borrowed, see R.B. Herath, *Real Power to the People: A Novel Approach to Electoral Reform in British Columbia* (2007) and Mark Warren and Hilary Pearse, eds., *Designing Deliberative Democracy: The British Columbia Citizens’ Assembly* (2008).

comprehension, authorization, and endorsement of policy in technical and complex areas that is not present if experts are simply empowered to decide directly, while at the same time having policy that is made through epistemically responsible procedures.

It is a well-known problem with what have been called epistocratic forms of government—rule by the knowers—that for many political questions, who counts as a knower, who is an expert, is precisely what is at issue. Here, because whether an individual is an expert or not does not bear on whether that person has political power, the stakes involved in determining whether someone counts as an expert are lessened. Still, the importance of the details of the qualification assessment should be clear. For many issues, it may be relatively uncontroversial whether someone counts as an expert. For other issues, it may be controversial whether there are experts or what the bases of expertise might be. Expertise might be recognized based on advanced degrees; years of professional experience; formal professional credentials from institutions with national or international accreditation; publication of research in independent, peer-reviewed journals; and so on. A different, but also important kind of expertise is that which comes from experience, including occupational experience or lived experience, such as the experience of being a disabled person (particularly in the context of making policy that primarily affects disabled people).

Whatever process is used, experts will need to explain the basis of their expertise, describe their credentials (if relevant), and disclose any actual or possible conflicts of interest due to sources of funding or employment. A full defense of lottocratic institutions will have to do more to specify the details of the qualification assessment process, and there are significant concerns about the possibility of expert capture.³⁹

Finally, it will also be important that if there are people who qualify as experts on each side of a question, then there should be substantial time for experts on each side to speak. For controversial issues, it is probably worth allowing more time for the expert presentation phase so as to allow ample time for experts to speak.

In this context, it is entirely likely that military, foreign policy, and security professionals would be among the experts presenting information and making the case to the SILLs, but they wouldn't be the only ones, and they wouldn't (at least on some versions of the idea) be making decisions directly. In this way, some measure of responsiveness might be introduced, while doing so in a way that at least lessens the ignorance of the citizens involved in making these decisions.

2. POSSIBLE ADVANTAGE: MAKING CAPTURE MORE DIFFICULT

As discussed above, a breakdown in meaningful accountability of elected officials and the high financial value of military and defense policy leads to a significant

39. For extended discussion of these issues regarding reliance on experts and expert testimony, see Alexander A. Guerrero, "Living with Ignorance in a World of Experts," in *Perspectives on Ignorance from Moral and Social Philosophy* (Rik Peels ed., 2016): 156–185.

level of political capture in these contexts. In general, lotteries (at least if conducted fairly) excel at preventing corruption or undue influence in the selection of representatives. This is one of several reasons to think that capture would be considerably more difficult in the SILL system. SILL members are chosen at random and don't need to run for office, so there will be no way for powerful interests to influence who becomes a SILL member or to ensure that the only viable candidates are those whose interests are congenial to their own. Because there is no need for them to raise funds for re-election, it would be easier to monitor and restrict members of the SILL to ensure that they are not having contact with or receiving funds from powerful interests either during or after their service. At least, if this is possible with juries in high profile cases, it should be possible in the case of SILLs. And since SILL membership rotates regularly, the cost of "buying off" particular SILL members would be higher, even if it could somehow be accomplished.⁴⁰ It would not be possible to capture politicians who were virtually unbeatable (from partisan districts with incumbency advantages) and count on them being an ally for 30 or more years.

There might be a worry, informed by the concerns about corporate influence over television advertising coming to dominate direct democratic institutions such as popular referenda, that in a world in which people were chosen at random to serve as political officials, the powerful interests will just shift their focus from capturing elected officials to influencing the views of the populace as a whole. This would ensure that any randomly selected individual would be likely to support the policy outcomes desired by the powerful interests. There are several things to say in response.

In a non-lottocratic political environment, the easiest, most cost-effective route of influence for powerful interests is to capture elected—but basically unaccountable—political representatives directly. The suggestion above is that this is indeed what we see in most modern political contexts. This route is the least expensive: no mass advertising or mass opinion influence necessary. And it is the most effective, being both reliable and fine-grained: one can see exactly how the supposedly captured official is behaving, and one can influence that person to do very particular things with respect to crafting and supporting (or not) particular policy decisions, even down to very specific decisions regarding particular military equipment and defense contracts, rewarding the official contingent on actual performance. A much less efficient route of influence is to affect mass opinion so as to convince ordinary citizens to vote for a particular candidate, X, where X is then expected or hoped to help enact some desired legislation. This route is likely to be much more expensive, and there is the real possibility that X will be either unable or unwilling to actually bring about the desired policy outcome.

40. This cost can be made even higher if SILL members are paid a high yearly stipend (something in the neighborhood of \$500,000 or \$1 million U.S. dollars each would still be within the neighborhood of the operating costs of the current U.S. Congress), but risk forfeiting that if they are discovered to have taken money or other benefits from those seeking to influence them.

Even this, however, has significant advantages over trying to affect mass opinion of the citizenry so that any randomly chosen citizen would be likely to create policy in the way desired by the powerful interests. First, there is an “information retention” limitation. As discussed above, the average voter—or, in the lottocratic context, the average potentially lottery-selected individual—is not tracking the details of political issues closely. This makes it difficult to affect that individual’s views on the details of issues prior to that person’s random selection—people simply aren’t paying any attention. Even if someone does take note of an advertisement, it is unlikely to provide that person much in the way of detailed guidance when it comes to creating and supporting particular military or defense policy. Second, there is a “countervailing information” limitation. Whatever views a person randomly chosen to serve on a SILL had with respect to some particular issue upon being selected, it is likely that being exposed to expert presentations and considerable discussion of that issue will come to affect those initial views. Of course, effective advertising can seep into us in difficult to detect ways, but these more amorphous messages run more squarely into the previous “lack of detail” problem.

A different concern about lottocratic institutions regarding capture is that powerful interests might try to influence who is identified as a qualified expert and who is selected as an expert to speak. This is a concern. If there are nonpolitical hurdles to becoming an expert in a particular field (advanced degrees from nationally and internationally accredited educational institutions, peer-reviewed publication, and so on) and if there are disclosure requirements mandating that experts disclose sources of funding, employment, and so on, this concern might be lessened. Additionally, there can be institutional mechanisms that make capture of experts more challenging—such as having the expert identification and selection processes happen in part by the accredited community of experts nominating or certifying some individuals as candidate experts for the SILL process (in the way that, say, the American Bar Association gives ratings for proposed United States Supreme Court nominees). To achieve capture, then, would require not just buying off an individual, but an entire field.⁴¹

There is a worry about the politicization of expertise under a system that uses experts in this way, or in any way.⁴² This is a battle that is important for any political system, whether lottocratic, electoral democratic, or technocratic. It might seem particularly dire for the lottocratic system, since the experts will be interacting with nonprofessional politicians. But the problem is just as real for elected representatives, particularly given that it might be more difficult to monitor exactly who is providing information and where they are receiving research support, and

41. For relevant further discussion, see Guerrero (2016), n. 39, pp. 178–85.

42. See, for example, the numerous books that have argued that industry and politics distort scientific practice and dissemination of information to the nonexpert public: Robert Proctor, *Cancer Wars: How Politics Shapes What We Know and Don’t Know about Cancer* (1995); David Michaels, *Doubt Is Their Product: How Industry’s Assault on Science Threatens Your Health* (2008).

there is a greater concern about experts being used to provide “cover” for decisions so as to thwart efforts at accountability.

Ultimately, preventing capture entirely is a difficult endeavor in a context such as military and defense policy, where powerful corporations have so much at stake financially. Our focus should be on the comparative question, then, whether introducing some lottocratic institutions into the process would improve things with respect to capture, not whether it would make capture entirely impossible or nonexistent. The suggestion here is that lottocratic institutions would do better in this regard than electoral institutions given that elected officials act untethered by any meaningful accountability in these contexts, for the reasons discussed above.

3. POSSIBLE ADVANTAGE: IMPROVING RESPONSIVENESS AND POPULAR SOVEREIGNTY

Another reason to think that using lottocratic institutions might be an improvement over the current system is that lottery selection is likely to result in more descriptively representative officials than elections (particularly elections such as those in the United States, employing first-past-the-post voting rules and single-member districts). Because individuals are chosen at random from the jurisdiction, they are more likely to be an ideologically, demographically, and socioeconomically representative sample of the people in the jurisdiction than those individuals who are capable of successfully running for office. As a point of comparison in the United States context, 44 percent of congresspersons have a net worth of over \$1 million; 82 percent are male; 86 percent are white; and more than half are lawyers or bankers.⁴³

Better descriptive representativeness doesn't ensure that SILLs will create responsive policy, but it does mean that the range of perspectives involved in making policy will be more similar to the range of perspectives of the polity as a whole, which makes responsive policy more likely.

Additionally, because SILLs focus on relatively narrower policy areas, it is less likely that non-responsive policy will result from inattention to a particular issue. With a generalist elected legislature, a few issues may draw all the attention with others left to the shadows, where policy can be created that is not responsive to the beliefs and values of the constituents without any attendant electoral consequences. (We can see various routes to reducing capture as directly improving responsiveness in this way.)

4. POSSIBLE ADVANTAGE: AVOIDING ELECTORAL PATHOLOGY AND SHORT-TERM THINKING

Another reason to think lottocratic institutions might improve policymaking in the defense and military policy context is that elections lead elected officials to focus on those problems for which they can get or claim credit for addressing or for “doing something” in the short-term, and to ignore or put on the back-burner

43. See Eric Petersen, “Representatives and Senators: Trends in Member Characteristics Since 1945,” *CRS Report for Congress* (2012) at: <http://www.fas.org/sgp/crs/misc/R42365.pdf>.

those problems or potential solutions with a longer horizon or those solutions for which it is harder to get credit. This is related both to voter ignorance and to the perverse short-term incentives that elections provide. Since lottery-selected individuals do not have to worry about re-election or being able to claim credit, they can take a longer view and implement good ideas that might not bear fruit until 10 or 20 years later or even longer. They also don't have to worry about looking "soft" on national defense or military policy or worry about doing something—even if that something makes no sense—in response to high-salience events.

People discussing national security often stress the need for expedient decision-making in the event of emergencies. And there are definitely cases in which decisions must be made quickly, and any system that used lottocratic institutions would need to have some mechanism by which decisions could be made quickly. That said, perhaps there has been far too much focus on immediate "emergency situation" responses, responses that, in many cases, have proven to be either ineffective in addressing the problem or even counterproductive, making things worse. There is no guarantee that lottery-selected individuals wouldn't be subject to some of these same psychological pressures to do *something*, even if it wasn't obvious what ought to be done. But at least they wouldn't also have the electoral pressures bearing down on them.

As with any political institution, there are also possible concerns about lottocratic institutions. Let me briefly discuss one of these concerns and suggest some reasons to think it may be surmountable or addressable through institutional design. Throughout this discussion, it is worth noting that the severity of the concern may differ depending on the role that lottocratic institutions play—whether as an engine of direct policymaking, an advisory or supervisory institution with the power only to veto decisions, or as an institution that works in tandem with other (perhaps electoral) political institutions.

5. POSSIBLE CONCERN: SILL MEMBER COMPETENCE

When the use of lottery selection of citizens is suggested, the most common worry expressed is one about the competence of the randomly chosen citizens. There is a concern—felt more powerfully by some than by others—that entrusting significant policy decisions to a randomly selected body of citizens will be a disaster, much worse than delegation to elected representatives. Perhaps electoral politics has its problems, but at least those selected have to be at least somewhat intelligent, socially competent, hard-working—or so the thought goes. This concern might be amplified in the defense and military policy context, in which the decisions made are of very high—life and death—stakes.

There are different possible responses to this concern. The extent to which one is worried about citizen competence may well depend on one's life experiences. One kind of response is to present the many institutional solutions that might increase competence: creating incentives for the full range of citizens to participate (so that one doesn't get a skewed sample as with juries), setting reasonable minimum thresholds for the particular policymaking context (e.g., requiring a high school diploma or the equivalent, or even much more education for certain

technical domains), and improving public education so that the “worst off” from a competence perspective are relatively more competent.

If we have implemented improvements regarding incentives and set minimum thresholds, and the competence question remains, there are a few further possible responses. One can treat the question as a quality threshold question and argue that most citizens who might be selected actually would be competent. Or one can focus on the question as a comparative question, and attempt to highlight the incompetence of elected officials. Or one can argue that elected officials are perhaps more competent in some sense, but that this is outweighed or undermined by the ways in which they are biased as a result of being captured. All three strategies have promise, and they do not compete; indeed, the three together may be more plausible than any one in isolation. A full effort to develop these responses requires empirical investigation, but it is worth noting that it is not obvious, for example, that the average member of Congress is better able to understand technical policy issues.⁴⁴

There are two additional reasons that suggest that randomly chosen citizens might not fair as poorly from a competence perspective as might be thought. First, the randomly chosen members of SILLs are likely to include individuals with a greater range of life experiences and vocational skills than a representative system, which may improve the quality of the outcomes due to improvements in the cognitive diversity of the group.⁴⁵ In this way, we can see the representativeness of the SILLs as a counter to the competence worry. Second, a possible side benefit of the lottery selection is what we might call the “humility of the chosen.” As Barbara Goodwin puts the idea: “those allotted high office would comport themselves more humbly . . . no one could boast of his/her elevation or advancement as being personally merited.”⁴⁶ This might provide a reason to think that those randomly selected feel some responsibility to demonstrate epistemic humility, to pay more attention to the issue at hand (and to leave political posturing to the side), and to engage more fully with the questions of what would be best and what people really care about. In the comparative assessment with elected officials, all of these might suggest greater relative quality in terms of the competence of the randomly chosen citizens.

Finally, a salutary side effect of using lottocratic institutions is that it makes evident the need for excellent public education for all citizens, not just for the wealthy or politically connected members of the citizenry. It may be true that, presently, a United States public high school education does not prepare one to be a helpful and engaged citizen in matters of defense and military policy. But this is something that should itself be the object of reform, not a reason to reject a proposed reform to the political system.

44. Indeed, some recent empirical work suggests otherwise. See Dana Griffin, “Citizens, Representatives, and the Myth of the Decision-Making Divide,” *Political Behavior* 35 (2) (2013).

45. See Scott Page, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies* (2007).

46. Barbara Goodwin, *Justice by Lottery* (1992), p. 99.

There are also many more worries, of course. Worries about the legitimacy of lottocratic institutions, how they might come to be implemented (if they seemed like a good idea), how requirements of confidentiality would be enforced (although we might query whether it would need to be very different than the current system for congresspersons), whether they satisfy demands of political equality (given that not everyone is given an equal say in selecting the individuals chosen), and whether a political system could achieve adequate synchronic and diachronic policy coherence with institutions populated and empowered in this narrow and limited way.

V. CONCLUSION

In this chapter, I have raised a number of worries about standard electoral representative systems of government in terms of whether those systems can claim popular sovereignty, particularly in the realm of military and defense policy. I have suggested that an alternative kind of institution, lottocratic institutions, might do better in terms of enabling responsive policymaking. There is, of course, much more that could be said—both to defend representative systems and to raise concerns about lottocratic institutions. I leave both tasks for future work.