Secrecy and Publicity in Votes and Debates

Public Voting and Political Modernization
Different Views from the Nineteenth Century and New Ideas to Modernize Voting Procedures

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INTRODUCTION: DEMOCRACY'S SECRETS

The public and secret components of modern elections are intertwined in their procedures in complex ways. The date and place of the election must be made known to all eligible voters. The polling places must be accessible to the public, too. The very act of voting itself on the part of the voters, however, requires precisely the opposite of publicness: Voting booths, sealed paper ballots, and suitable ballot boxes or specially secured voting machines serve to ensure that voting is indeed secret.

The secrecy of the vote has become an indispensable feature of modern liberal democracy. Its proponents defend the secret ballot with respect to its capacity to safeguard the political autonomy of the individual citizen. Thus, voting by secret ballot in parliamentary elections and political referenda is considered a central legal principle governing elections in modern mass democracies today. The secret ballot is far more than a marginal procedural rule. The political science and legal literature indicates that Western democracies' normative self-conception grants central importance to the secret ballot. Modern theorists of democracy strongly insist on the secrecy of the vote, and it has become one of the central standards in the international evaluation of elections.¹ To quote the nestor of modern democratic theory Robert A. Dahl, "Secrecy has become the general standard; a country in which it is widely violated would be judged as lacking free and fair elections" (Dahl 1998: 96).

¹ I thank Sandra Lustig for the translation of an earlier version of this chapter and Jon Elster, Antonia Geisler, Niels Hegewisch, Michael Hein, Bernard Manin, Tobias Müller, and Kerstin Pohl for helpful comments and suggestions.

The institutionalization of secret voting includes the secrecy of the vote has to have a compulsory or mandatory status. It should not be up to the individual voters themselves to keep their votes secret. In such a case, secrecy would not be fully guaranteed. Thus electoral authorities have to take care to create and safeguard secrecy. In the long history of ballot laws, the installation of electoral authorities in order to guarantee secrecy was always a crucial issue. The reason for this provision is obvious: The mandatory status of secrecy has the function of preventing citizens from “voting without a secret” openly if it is up to voters whether or not to use a voting booth. By employing ballot boxes, voting booths, or specially secured voting machines, electoral authorities try to ensure the anonymity of every individual vote.

Keeping the vote secret is a permanent challenge for electoral authorities. New technologies lead to new possibilities to violate the secrecy of the vote. During the Roosevelt era in the United States, some voters feared that the government would take fingerprints from the ballot papers. In the 1960s, there were rumors in some countries that cameras installed in voting booths would illegally take pictures of the voting procedure. And in our days, voting authorities have to deal with (the much more real) challenge that it is easy for any voter to document his or her activity in the voting booth digitally on a cell phone.

Part of the argument of this article is my claim that today mandatory secrecy of the vote has come under a dual form of attack. First, in the field of voting practices, the mandatory status of casting the vote in secrecy is undermined by the establishment of certain online voting practices. Second, in the field of political theory, some authors contend that secrecy leads to a further privatization of citizenship. New voting technologies have created a challenge to the secret vote on the practical level. The mandatory status of the secret vote has come under a silent form of attack over the last couple of years. This attack is a consequence of some new developments in the technology of voting procedures. In the last two decades, the introduction of online voting technologies has been under way in a number of liberal democracies. According to the enthusiastic supporters of this voting technology, citizens are supposed to use online technology to cast their votes in the future. However, this technological advancement undermines the mandatory status of secret voting. Online voting via home PCs or smartphones shifts the burden of ensuring the secrecy of the vote from the electoral authorities back to the individual citizen. It is up to individual citizens again whether they want to share the act of casting the vote with others or not. So, the far-reaching consequences of online voting for the normative self-understanding of modern voting procedures has been overlooked by democratic theorists: The widespread introduction of online voting in the twenty-first century seriously challenges the normative status of the secret ballot.

A second challenge for secret voting can be identified in the field of normative political theory. It seems that at least some authors in liberal western democracies have taken a less supportive and more critical stance regarding secret voting over the last couple of years. Among those critics are Jean-Paul Sartre (1976: 80), Albert O. Hirschman (1984: 112-14), Benjamin Barber (1984: 187-89), Claus Offe (1989: 767-69), Geoffrey Brennan and Philip Pettit (1991), and, more recently, J. M. Barbalet (2002) and Romain Bertrand, Jean-Louis Briquet, and Romain Bertrand, Jean-Louis Briquet, and Peter Pels (2006) in their introduction to a collection of essays about the history and practices of secret voting in modern democracies. Their criticism can be summarized in the suspicion that the secret ballot is an achievement of modern democracy with ambivalent consequences: Although they credit the secret ballot with securing the political autonomy of every individual citizen, they also blame it for being a source of fostering the privatization of politics and of supporting egocentric motives in political decision making. Both attacks have put the following two questions back on the agenda of political science: Do we really (still) need the secrecy of the vote in modern democracies? May there not be reasons to leave it open to individual citizens how to cast their votes, or even to prefer public voting?

In this chapter, I seek to connect some of these current debates with discussions about the same topic in the nineteenth century. In particular, I would like to focus on one aspect of this debate: the role of arguments concerned with the socioeconomic situation in a society. In addition to the current pros and cons on this issue, the old debates from the nineteenth century indeed present competing lines of arguments concerned with hypotheses about the socioeconomic contexts of voting procedures. With respect to the social contexts of voting procedures, there is a broad consensus among defenders of secret voting to refer to a model that can be labeled “the modernization model.” This model was formulated paradigmatically by Stein Rokkan in the 1960s and 1970s. Rokkan interpreted the breakthrough of the secret ballot within the sociological framework of modernization theory. He identified the secrecy of the vote as part of a progressive move toward political equality in the nineteenth century. As a consequence, the provision of secret voting serves as a key indicator for the measurement of the level of political modernization. This view has become dominant among most scholars on this issue, and they use Rokkan’s modernization model as a sociological underpinning for their normative arguments in favor of secret voting.

In contrast to this retrospective “modernization model,” some of the nineteenth-century critics of the secret vote had developed alternative sociological interpretations. Those interpretations are worth inspecting more closely, because in their view the modernization of society was to go with hand in hand with the public vote as the most appropriate mode of casting the vote. For them, the secret ballot was not an indicator of political modernization, but of a lack

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1 Among the group of modern critics, only Brennan and Pettit as well as Barbalet have gone as far as actually putting the secret ballot into question. The dominant reform option proposed by other critics of secret voting tries to strengthen deliberative institutions in modern democracies.
of modernization or of one-sided modernization. At a time when the further modernization of voting technologies tends to undermine the mandatory status of the secret ballot, I would like to take a closer look at those alternative sociological interpretations. In this chapter, I seek to answer two questions. First, what were the arguments and sociological claims of those advocates of public voting in the nineteenth century, and to what extent are their arguments convincing, knowing what we do today? And second, to what extent does the traditional dualistic debate between advocates of public and secret voting fit with the emergence of new voting technologies?

I would like to begin the main part of this chapter with a brief reminder of Stein Rokkan’s paradigmatic “modernization model” (2). The authors whom I selected from the debates in the nineteenth century offer contrasting alternatives to Rokkan’s view of the secret ballot as an indicator for political modernity. The discussion will focus mainly on the liberal economist and political philosopher John Stuart Mill (1806–73), Rudolf von Gneist (1816–93) – an outspoken German conservative critic of modern society – and Émile Durkheim (1858–1917), the French sociologist who was deeply concerned with the ambivalences of modernization processes. Admittedly, “modernity” obviously meant different things to them, and what modernity meant in the 1860s in England was different from what it meant in Germany in the 1890s or in France in the early twentieth century. But this is not the aspect of the topic I want to put my finger on in this article. I base my interest on the fact that all three of them had been very aware of the various changes in society and politics in the nineteenth century and that they explicitly connected these trends with the question of the most appropriate voting procedure for their times and for the future. Together with the fact that all three men reached the conclusion that public voting should be preferred, this connection makes them especially interesting for a critical investigation of their arguments. The authors will be discussed in the order of the complexity of their arguments, starting with Gneist, followed by Mill, and finally (and more extensively) by Durkheim.

The final sections of this chapter return to the implications of online voting and to the traditional dualism of the “secret” and the “public” vote. I will argue that online voting has the potential to establish a new type of voting, which must be categorized beyond the traditional conceptual dualism of “secret” and “public.” This third type is labeled the “observable vote” and can be characterized as a hybrid type (7 and 8). According to Stein Rokkan’s model, the modernization of society has caused the introduction of secret voting as the standard mode for democracies. In contrast to that, the modernization of voting procedures in our times is causing the introduction of observable voting as a mode that perforates central elements of secret voting. Whether mandatory secrecy of the vote will survive the technological innovations (and the cultural changes that go with them) of our times in the long run is an open question.

THE HISTORICAL SHIFT FROM PUBLIC TO SECRET VOTING: STEIN ROKKAN’S “MODERNIZATION MODEL”

The emphasis placed on the secrecy of casting the vote is mainly a phenomenon of the late nineteenth and the twentieth centuries. In the days when German philosophers such as Kant or Hegel discussed problems of electoral laws in their country, voting was held in public. Voting was also public in the United States and in England, be it by acclamation (vota voce), signing the voter’s name on a list of candidates, or casting the ballot for the public to see and/or to be read out loud. France is the main exception to this picture. Already during the revolution, most elections in France were secret. Voters were asked to cast paper ballots, produced by the candidates or their supporters. The Jacobins were strongly opposed to this practice; they called it “undemocratic” and forced voters in some districts of Paris to vote in public. In the nineteenth century, however, secret voting became the dominant voting practice in France.  

A new form of secret voting was practiced for the first time in 1856 in the colony of Victoria, Australia: not only the ballot boxes but also the paper ballots with the names of the candidates were printed by state authorities in order to avoid having voters walk to the polling places with colored voting tickets, which made it easy to identify their voting choice. In the following sixty-five years, the “Australian ballot,” as it was known then, became the law in almost all democracies: for example, in the German Reich in 1871, in England in 1872, in the Netherlands in 1887, in various U.S. states beginning in 1888, in Austria in 1907, in France in 1913, and in Prussia in 1919.  

Unlike today, the question of whether voting in public or in secret was to be preferred was a controversial and hotly debated issue in the nineteenth century. Looking back on those discussions from today’s perspective, it is remarkable to note how much the different opinions crossed ideological lines. There was confusion on this issue in all ideological camps. Take the defenders of public voting as an example. They included on the left the followers of the Jacobins, the English Chartists, Democrats from the northern U.S. states, and even a number of European social democrats. In the liberal camp, the most ardent and prominent supporter of public voting was John Stuart Mill. On the conservative side, the public vote was supported by Lord Russell and by Otto von Bismarck. Later, during the Weimar Republic in Germany, the fascist Carl Schmitt became one of the best-known critics of secret voting.  

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6 For Australia, see Wright (1986) and Bent (2006); for Prussia, see Buchstein (2001).

7 On Schmitt’s critique of secret voting, see Buchstein (2002).
It is not the privilege of modern political sociology to recognize that the terms of electoral laws reflect social conditions. Such relationships were underlined frequently even in the debates about public and secret balloting in the nineteenth century. For instance, as early as 1865, Georg Schäffle, a southwest German liberal defender of secret voting, declared in the first German-language overview of the debates on this topic: "Apparently, the stratification of the classes and parties are of the greatest interest for the political institution in question here" (Schäffle 1865: 387). Georg Meyer, a German liberal defender of public voting, considered the demands for secret voting an expression of the marked social inequalities at the beginning of the century: "The demand for secret balloting arises in particular where suffrage is very extensive, and where strong social inequalities also exist" (Meyer 1901: 557).

But it was definitely up to political sociology in the second half of the twentieth century to produce a reconstruction of the historical developments of electoral laws in modern democracies, which led to a coherent developmental model. According to this model, the institution of general, equal, and secret individual voting appears to be the logical end point of a directed process of political modernization. The most prominent representative of this modernization approach is doubtless Stein Rokkan. Rokkan considers the expansion of participation in the nineteenth century to be a process of threefold standardization and abstraction. He understands the complex process of the extension of participation, triggered by the institutionalization of political elections in the nineteenth century, as a process of a successive "standardization of electoral politics" (Rokkan 1961: 152). He identifies three moments of stabilization and abstraction in the establishment of political elections:

- First, the exclusive self-responsibility of voting decisions. This means their disengagement from social repercussions, for example sanctions or financial rewards. This disengagement becomes possible by outlawing corruption or introducing balloting. Rokkan calls this process an abstraction in the sense of a "privatization of electoral preferences" (Rokkan 1961: 139).
- The second element is the enfranchisement of all adult males, regardless of their station, their financial or educational positions or resources. Rokkan calls this element the "universality of access" (Rokkan 1961: 133).
- The third element is the equality of all electoral votes, regardless of any other social role of the voter. This means abolishing census suffrage and graded votes. In Rokkan's terminology, this abstraction consists of the "equality of influence" (Rokkan 1961: 133).

According to Rokkan, these three abstractions make up modern suffrage and thus the modern institutional solution to the creation of political legitimacy. It is easy to see that the three elements mentioned stand for the three maxims of election law of (1) free or secret, (2) universal, and (3) equal suffrage with which we are familiar from normative democratic theory and constitutional science.

Rokkan does not understand the development of modern suffrage as simultaneous or chaotic and more or less random process; rather, he reconstructs it as a sequence of steps. The institution of secret, universal, and equal voting marks not only the historical but also the logical terminus in a development seen from a point of view of modernization theory. As to the connection between the secrecy of the ballot and the extension of suffrage, Rokkan formulates the thesis of a logical and historical rule of prerogative. What follows is the introduction of the secret ballot before or at least coincident in time with the extension of suffrage. "In most countries of Western Europe... provisions for the secrecy of the vote either preceded or were developed pari passu with the extension of suffrage to the lower classes" (Rokkan 1961: 140). In Rokkan's view, universal suffrage and the secrecy of the ballot evolve into two sides of the same coin. At a particular point in the modernization of political systems, it is practically inevitable that secret balloting will prevail; namely when the lower classes, too, begin to enjoy the right to vote.

Rokkan was able to provide empirical proof for this thesis for most of the Western democracies he studied, for instance England, Sweden, Norway, and the Benelux countries. The model is also applicable to the democracies of the South Pacific Region, such as Australia and New Zealand. The data assembled recently by Adam Przeworski (Chapter 4 in this volume) also confirm that shifts from public to secret voting historically were more likely when the suffrage was extended to the lower classes. But some notable exceptions from Rokkan's temporal order of the two electoral principles exist, too, including a number of U.S. states as well as, in Europe, Denmark, Russia, Prussia, and Hungary. However, the following considerations in this essay are not concerned with testing the historical accuracy of Rokkan's model, but rather with examining how the concept of political modernization can be used in alternative ways with respect to evaluating voting procedures.

If we take a look at the controversies accompanying the reforms of electoral law in the nineteenth and early twentieth centuries, it is not only the aforementioned fact that opinions crossed ideological lines that is astonishing from today's point of view. Even more surprising is the fact that in some of the contributions, their authors saw practically the opposite connection concerning the link between "modernity" and the form of voting appropriate for it as compared with the dominant Rokkanian model of our days. Readers of

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6 All German and French quotations were translated by the author.
8 I base my argument especially on Rokkan (1961) and on scattered comments in Rokkan (1970), as well as the posthumous (1989) edition of his essays.
9 For Europe, see Bachstein (2000a: 187-95); for the United States, see Crowley (1993) and Ware (2000).
those texts come across lines of argument that strongly assert the existence of a necessary connection between societal modernization and public voting. In the following sections, three different alternatives to Rokkan’s model are presented and critically discussed.

THE "COMPENSATION MODEL": RUDOLF VON GNEIST AND THE SPECTERS OF MOB DEMOCRACY

The Prussian constitutional law expert Rudolf von Gneist (1816–95) presented a far more pessimistic assessment of the societal processes of modernization. To Gneist, a parliamentarian in the Prussian Landtag for the archconservative National Liberal Party, the tide of the times in the question of electoral law was evident; unfortunately, however, in his opinion, that tide was flowing in the entirely wrong direction.

Gneist was a vehement opponent of secret balloting in the conflicts about electoral laws in Prussia. Each of the twenty-five member states of the German Reich had its own electoral rules. As a consequence, the legal situation in Germany in those days with respect to electoral laws was nearly as complex and confusing as in the United States. However, one could say that a particular duality in the period from 1871 to 1918 made Germany stand out in comparison to the other Western political systems. On the national level of elections for the German Reichstag, secret voting already had been introduced in 1871. In the largest German state, the Kingdom of Prussia, elections to the Prussian Parliament, the Prussian Landtag, were held vi voce until the collapse of the German Reich at the end of World War I. So in Prussia, citizens cast secret ballots in Reichstag elections, but voted vi voce for the Landtag. The political battle that was fought in Prussia mainly by the working-class movement and the majority within the Social Democratic Party was to overcome this duality and introduce the laws of the Reich to the state of Prussia, too.10

According to Gneist (and Bismarck), the Reich had already moved in the wrong direction. Gneist was opposed to the secret ballot because it would downright educate citizens to act irresponsibly and provoke spontaneous mood swings in the political realm. In his 1894 book Die nationale Rechtsidee von den Ständen und das preußische Dreiklassenwahlrecht (The National Legal Concept of the Estates and the Prussian Three-Class Franchise System), he argued:

This explains the sudden changeover of party elections using secret balloting, as nobody needs to fear a feeling of moral responsibility or disapproval among his bourgeois neighbors if he pleases to cast his vote one way this time and another way the next, moved by the mood of the moment or changes in his interests. According to this idea, it is only the elected who is to be responsible. (Gneist 1894: 270)

10 For these battles, see Kühne (1994) and Anderson (2002).

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Secret balloting does nothing less than symbolize the dominance of an irresponsible society over the state’s agencies of order. In his 1879 book Der Reichsstaat und die Verwaltungsgerichte in Deutschland (The Constitutional State and the Administrative Courts in Germany), he sketches the following image:

Society casts off every personal responsibility for principles and values if voting is secret. Secret voting brings to light the domination of individualistic society over the state. When this principle of irresponsible sovereignty of the people is fully implemented, a state of affairs emerges in which literally nobody claims responsibility for the actions of the state. (Gneist 1879: 244)

The advantage of public voting, in contrast, was that it is the source of decisions based on responsibility for the whole.

The decisive point is and remains that only with public voting can a community of voters develop and express an awareness for the whole, and that no lesser influence of the community on the conflicting interests can take effect only where neighbors stand face to face before each other and state their opinions. Just as the individual’s character is shown in such a commitment, so is the character of the communities. (Gneist 1894: 270)

In a statement in the Prussian Chamber of Deputies, Gneist reminded his colleagues of the tradition of the early nineteenth-century Stein-Hardenberg reforms, coming down on the side of participation at the municipal level and responsiveness of representatives:

The feeling of such responsibility will admittedly not emerge before the population becomes accustomed to taking part in administering public affairs independently. And precisely this is not innate to mankind. This responsibility cannot be maintained in the long term if those who give us the mandate are not willing to take a part of it by committing themselves to it.11

In this discussion, however, Gneist’s criticism of secret balloting is of less interest than how he placed it in its societal context. In the book Die nationale Rechtsidee von den Ständen mentioned earlier, he considered the "general desire for secret balloting... to be an unmistakable sign of society flooding the state" (Gneist 1894: 269). As early as 1860, Germany was to him the "last refuge in Europe where the state’s voice is heard vis-à-vis the economy, where the character of the nation still provides support vis-à-vis the one-sided views of a society in transition" (quoted in Sheehan 1983: 104). In light of the gathering "reconfiguration" of society, he considered the transition from public to secret balloting to be following the trend of the times.

With his characteristic determination to resist these tendencies as much as possible, Gneist reminded the Prussian Deputies of the dangers of dissolution of the traditional form of society. His ideal was the corporative state, a political

system led by natural authorities and divided into clear hierarchies. He believed Prussia to be in a kind of transitional phase at the moment. Society was in danger of being transformed to one of individuals, of isolated and lonely people with equal rights. The longer the trend to individuals’ isolation in the big cities with their high-rises and anonymous social relationships continues, the more society would demand secret balloting.

The average opinion today emerges, of course, from the conditions of transition in which our society finds itself. This is not yet completed process, the old, fixed community associations are loosened, in part becoming merely common places of living. You will now find the same phenomenon everywhere in the first two generations of industrial society: namely, that the individual feels isolated in exercising his political rights, and that he grasps the natural tool of secret balloting in this feeling of isolation.  

According to Gneist, the expansion of the right to vote for the Reichstag had mobilized masses of voters from the lower strata of society who desired to dispose of the responsibility that came with the right to vote as easily as possible: “In addition, the common man exercising a newly-won political right will prefer to do so without responsibility rather than with responsibility” (ibid.). To Gneist, secret balloting was therefore a logical side effect of sociopolitical modernization. His resistance against secret balloting was part of his defense of the traditional feudal order, which he considered “more appropriate” to mankind than industrial mass society. Thus in a certain sense, Gneist already championed Stein Rokkan’s thesis of modernization—but, in contrast to Rokkan, he saw this diagnosis of society in a decidedly negative light. The public vote should be kept as an institution for a compensatory project. Gneist claimed that public voting would mobilize community spirit and would work against the atomizing effects of a looming mass society.

But one should not be fooled by the Gneist’s language: What he had in mind politically was to intimidate the economically dependent masses on the country by the reactionary agrarian elite in Prussia, of which he was part. 

THE “COMPLEMENTARY MODEL”: EMILE DURKHEIM AND THE CRITIQUE OF THE INDIVIDUALIZING POLITY

The French sociologist Emile Durkheim (1858-1917) advocated a variation of Gneist’s thesis. Like Gneist, he was decidedly critical of the secret ballot. Unlike Gneist, Durkheim’s critique of secret voting was not accompanied by an ideal of a society based on estates, and did not entail a blanket rejection of nineteenth-century modernization processes. Even though Durkheim may be characterized as a “basically conservative…mind” (Nisbet 1974: 134), his strategy for dealing with the challenge of mass democracy is substantially different from Gneist’s. Durkheim tried to develop a revised version of democracy, which was based on pluralist groups. 14 In his political writings, Durkheim made the case for an institutional reform agenda centered around “occupational groups” in order to catch up with social modernization.

Especially in his lectures on Physique des moeurs et du droit (“The Physics of Mores and Law”), which he gave first in Bordeaux between 1896 and 1900 and later again in Paris between 1902 and 1915 (they were published only posthumously, in 1950), Durkheim expressed reservations about the system of secret balloting in France at the beginning of the twentieth century. However, in contrast to Gneist, the force behind his assessment is not the ideal of the feudal society. To Durkheim, the transition from traditional to modern society definitely involves liberating elements as well. What piques his sociological interest is the pathologies inherent in these processes of modernization, such as suicide or crime. Durkheim derives the program of a moral sociology for modernity from the anomic or social pathologies of a complex society based on the division of labor. Even in his 1897 book Suicide, he had become convinced that the anomic might become consolidated and perpetuated, creating a permanent crisis of social integration, and for this reason had recommended the establishment of occupational groups as new entities for social integration.

For Durkheim, the act of casting the vote was understood as a contribution to the political collective. In one of his early publications, he stated: “At the time of voting the elector fulfills a function; he represents the entire nation” (Durkheim 1884: 90). Durkheim’s ‘function’ refers to a discussion about the normative status of voting rights, which had a tradition that dates back to the French Revolution of 1789 and the German revolution of 1848. In the debates about a reform of the French electoral law in August 1791, the two outspoken members of the National Assembly, Antoine Pierre Barnave and Jacques Guillaume Thouret, declared voting to be a “function” for the political community and proposed on that basis certain economic qualifications as a requirement for the right to vote. 15 Half a century later, the liberal Friedrich Daniel Bassermann used the same language of “Funktion” and “Amt” to describe the normative status of voting rights in the debates of the revolutionary German national Assembly. 16 Later on Georg Jellinek’s statement that voting was a “function of the state, which can never have the individual citizen as its foundation” (Jellinek 1892: 137) became the dominant interpretation among constitutional lawyers of the German Kaiserreich 17 and was adopted by Carl Schmitt in his fight against the Weimar Republic. 18

13 For Gneist’s political plans, see Anderson (2002: 247–50).
14 For a discussion of Durkheim’s democratic theory, see Richter (1960) and Müller (1993).
16 See Buchstein (1900a: 160–71).
Durkheim diagnosed in his lectures on *Physique des moeurs et du droit* a divergence between the developmental state of the division of labor, technical knowledge, and science on the one hand and social and political morality on the other. Not only are citizens’ moral and cognitive competencies unable to keep pace with these dynamics; they stagnate, or may even dwindle. However, Durkheim sees that opportunities for correcting the problem exist, and he assumes them to be found not least in the modes of institutionalizing political decision-making processes. He envisages a possible remedy in the institutionalization of occupational groups in the structures of political will formation. Durkheim has rightly been identified as a forerunner of modern pluralist theory (see Nisbet 1974: 138–44), although other aspects of his political thought, which are more akin to current concepts of deliberative democracy, have attracted less interest so far. The deliberative character of Durkheim’s reform agenda becomes clear upon closer inspection of the relation between secondary groups and individual political will formation, in particular in his critique of the individualizing mode of decision making.

In his critique Durkheim points to the secret ballot in particular. He accuses it of not providing citizens with an incentive to engage in political thinking. In his view, election results represent “un recensement numérique de toutes les opinions individuelles” (Durkheim 1913: 125). He criticizes the French system of anonymous individual voting – which was implemented fully only in 1913 – that it is based on a body of voters. rapprochés seulement pour cette circonstance exceptionnelle, qui ne se connaissent pas, qui n’ont pas contribué à se former mutuellement leurs opinions et qui vont les uns derrière les autres déflèter devant l’urne. (Durkheim 1913: 127)

One cannot expect such a form of decision making to stimulate the citizens’ sociomoral resources. Confronted in such a situation with secret balloting, citizens have only certain vague opinions, at best about egoistic and particularistic goals. Thus one can only expect from them “particularisme individualiste” (Durkheim 1915: 126) and “incompétence radicale” (Durkheim 1915: 125). Citizens are put in a social context in which they block out questions of justice or of the long-term good in favor of “l’action irréfléchie, automatique, aveugle” (Durkheim 1915: 96).

Durkheim confronts this negative mechanism with the necessity of institutions of collective deliberation. These institutions of collective deliberation are “secondary associations” and provide the social basis for political preference formation:

22 “The discussions in the assemblies – they constitute the collective form of the deliberation in the sense of the German “Streitbogen” and “Anstempel” – the individual – have the goal to bring into the conscience of the people – even to force the people to come to grips with their emotions – which leads in this or that direction and which direct their actions.”

23 “But let us suppose that the casting of the vote were the result of a long, collective elaboration, its character would be quite different. For when men think in common, their reflections are part of the reflections of the whole community. The community acts upon them, weighs upon them with all its authority, restraining egoistic impulses and setting minds on a collective spirit.”

24 For the different conceptions of “deliberation” in the French, German, and Anglo-Saxon linguistic contexts, see Sönmez (2009: 219–23).
Durkheim argues for a moral rationalization of modernity, and he looked for adequate institutionalized fora of collective political discussion. And whereas Gneist insisted on the persistence of public voting, Durkheim focused his political suggestions on proposals that today are discussed in terms of “deliberative democracy.”

THE “REPUBLICAN MODEL”: JOHN STUART MILL AND POLITICAL VIRTUES IN A MODERN MASS DEMOCRACY

An even more optimistic perspective is to be found in the late works of John Stuart Mill (1806–73). As a young man in the 1830s, Mill had belonged together with James Mill, his father, George Grote and Jeremy Bentham to the “Philosophical Radicals” who actively engaged in the demonstrations in England for secret balloting and an expansion of suffrage. At that early time in his career as a public intellectual, Mill was convinced that the secret ballot would be introduced within a few years. In a letter to Tocqueville in early 1837, he assured him: “You will soon see the ballot a cabinet measure & then reform will have finally triumphed; the aristocratic principle will be completely annihilated.”

Some years before that letter, an incident in the French National Assembly had given the young John Stuart Mill the occasion to make up his mind about the best mode of voting in parliaments. When in the National Assembly the majority decided in a secret vote to reject a law to end licensing the press in 1839, Mill commented on that incident that all votes taken in parliaments had to be public. The members of the National Assembly were not the defenders of their own interests, and their votes were not their own private interests, and for this reason their votes should never be kept secret.

This is an argument that Mill later expanded to all members of the political community.

Mill’s prognosis in his letter to Tocqueville turned out to be absolutely wrong. The British government did not make the changes he and the ballot movement had fought for. The ballot question came up again from time to time in the 1840s and 1850s. But now, in the late 1850s, John Stuart Mill became a protagonist of public voting. He finally became so well known for his defense of public voting that he was quoted in the debates about secret voting all over Europe in the late nineteenth century. Most of his former fellow campaigners from the 1830s later branded him a traitor. “If James Mill could have anticipated that his son John Stuart would preach so abominable a heresy,” his former fellow campaigner Francis Place wrote in 1868, “he would have cracked his skull.”

John Stuart Mill disagreed with this judgment on his personal development. And indeed, many of Mill’s contemporary critics had misunderstood his former dedication to the cause of the secret ballot. One aspect of his activities had to do with political strategies. According to Bruce Kinzer’s interpretation of the ballot question in England, Mill had had mainly strategic reasons for his dedication to the movement in support of the secret ballot in the 1830s. Mill saw agitating for a change in electoral law – the secret ballot – as an opportunity to split the Whigs, who were then in government. After this opportunity had passed unused, he saw no more reason to propagate secret balloting. In an 1839 essay titled “Reorganization of the Reform Party,” he stated that it was impossible to form the desired reform coalition out of the middle classes and the working classes by means of electoral reform.

Some later critics of Mill did not take his defense of public voting seriously or called it “rather curious” (Thompson). In contrast to these views, I would like to present an interpretation of Mill’s support for public voting that places it in the contexts of both the republican and the deliberative traditions in political theory. Mill had a general preference for the public vote, whereas his defense of secret voting was based on contextual considerations. Although he did change his view on the appropriate mode of voting in a special situation, he stuck to his basic theoretical position on this issue. Thus, to fully understand his line of argument, it is important to keep an eye on the social developments in England, Mill’s interpretations of these developments, and the political consequences from his diagnosis.

The point in time when Mill explicitly turned against supporting the secret ballot in England cannot be ascertained precisely. His first clear rejection of secret balloting for general elections is to be found in an 1853 letter in which he wrote: “the ballot would now be a step backward instead of forward.” According to John M. Robson, pointers to Mill’s change of opinion between 1846 and 1851 are to be found even in the revisions he made for the third edition of his System of Logic in 1851 compared with the second edition of 1846 (first edition: 1843). Mill writes in his Autobiography, completed in 1873, that he and his companion Harriet Taylor had jointly made this shift and that regarding “hostility to the Ballot . . . she rather preceded me” (Mill 1873: 261). The question of Harriet Taylor’s influence on John Stuart Mill has

18 See Kinzer (1982: 49–51).
been hotly disputed among Mill scholars for a century. With respect to her role on the ballot question, the evidence does seem to support the comment quoted from his autobiography. For in the early 1850s, Mill wrote an essay “Thoughts on Parliamentary Reform,” in which criticism of secret balloting and a plea for public voting took up almost one-third of the text. The manuscript of the essay was completed in January 1854 (cf. Burns 1957: 288), but Mill held it back for several years before publishing it in February 1859. It immediately received a great response. In 1861, he published the book Considerations on Representative Government, in which he included the 1859 essay, unchanged, as a subchapter of its own. From then on, he openly agitated for keeping the public vote in Britain.

The starting point of John Stuart Mill’s line of argument in his essay on parliamentary reform (and in the chapter of the book) is his assumption about the non-subjectivist legal nature of the right to vote. On this point, Mill shared the view of French politicians during the French revolution who declared voting to be a “function” for the political community and of German constitutional theorists who used the terms “Funktion” and “Amt” for the normative status of voting.

According to Mill, the main problem with secret balloting was that it created disastrous psychological effects. It suggested to the voter that “suffrage is given to him for himself; for his particular use and benefit” (Mill 1861: 488). In contrast to this view, he considered the right to vote “morally, in the fullest force of the term, a trust” (488). Arguing against an individualist view, Mill states in the tradition of republicanism in political theory that the voter primarily has the obligation to take the common good into account before he casts his ballot: “In any political election . . . the voter is under an absolute moral obligation to consider the interest of the public, not his private advantage, and give his vote to the best of his judgment” (490). Voters have the duty to apply the same standard of judgment “exactly as he would be bound to do if he were the sole voter, and the election depended on him alone” (490).

In Mill’s view, it is the political community that had entrusted the individual citizen to participate in politics. On grounds, he polemically asks the followers of the “right” to vote, could they criticize if someone is “selling it” (489) or if he were to abuse the right by not exercising it in a conscientious manner? Mill switches to examples from the financial market to make his point. One would not expect that any individual would take the common good into account while thinking about making use of government bonds on the stock market; the same logic held for political voting if it is an individual “right.” Political communities rely on some degree of an orientation toward the common good by its citizens. Thus Mill insisted that the vote was not an “individual right” but a “public trust.” “There will never be honest or

self-restraining government unless each individual participant feels himself a trustee for all his fellow citizens and for posterity,” he wrote in a letter to the former editor of the Edinburgh Review George G. Lewis, and added: “Certainly no Athenian voter thought otherwise.”

According to Mill, this orientation enters the citizens’ focus only if and when the voting practices, too, make it evident that voting is not conceived as an individual right, but as a public trust, a public duty. Mill compares participating in an election with serving on a criminal jury: “His vote is not a thing in which he has an option; it has no more to do with his personal wishes than the verdict of a jurymen” (489). Mill argues that the long-term effect of secret voting is to conceal the elements of “trust” of his republican concept of political participation. The practices of secret voting suggest a subjectivist interpretation of the right to vote with the effect that voters follow only their own egoistic preferences when it comes to picking a candidate or a political party.

Mill constructs a certain connection between voting as a duty and a particular procedure of casting the vote: “the duty of voting, like any other public duty, should be performed under the eye and criticism of the public” (490). After all, since politics is about jointly seeking the common good, my fellow voters have a quasi-national right to know what I consider appropriate for our political community. Reciprocally, I have an interest as a voter to learn from my fellow citizens what they think about my voting decisions. My duty is to vote as best I can in the interest in the political community. Likewise, when it comes to casting the vote, my fellow citizens should feel and think: “[E]very one of whom has not only an interest in its performance, but a good title to consider himself wronged if it is performed otherwise than honestly and carefully” (490). Mill believed in the existence of deliberative and communicative types of political rationality. The general good does not stem from the aggregation of individual votes, but from political deliberations that transform political opinions. In Mill’s view, political institutions have the capacity to either prevent or facilitate citizens’ direct political communication. Isolated citizens would have an incentive to vote according to their personal interests and preferences. Only the presence of others would, in Mill’s view, allow the reconciliation of the tensions between individual interests and the public interest. The public sphere invites citizens not to discuss their conflicting personal interests, but to discuss their disagreements about what is good for their country. The orientation toward the public interest is, in Mill’s view, not a self-evident resource. As Nadia Urbini wrote, Mill considered it a “scarce and non-spontaneous good” that “must be formed and sustained artificially” (Urbini 2002: 113).

Mill believes in a particular psychological effect on the side of the individual voter, which will be created only by full public transparency. The more

[44] The following page numbers refer to the edition of Mill’s “Considerations” in his Collected Works by John Robson.

mechanism stems from “the sense of being answerable to the public,” produces “a thoughtful and deliberative character” (493), and thus overcomes pure self-interest or passions — with the only exception of a few “radically bad men” (493). Normally, however, the public eye weakens passions and strengthens reasonableness:

Even the bare fact of having to give an account of their conduct, is a powerful inducement to adhere to conduct of which at least some decent inducement can be given... Publicity is inappreciable even when it does no more than prevent that which can by no possibility be plausibly defended — than compel deliberation, and force every one to determine, before he acts, what he shall say if called to account for his actions. (493)

In Mill’s understanding of citizenship, each and every voter should be at least prepared to justify his vote in public in every single election. His ideal citizen is never alone. In his role as a citizen, a person acts always in the presence of other citizens, acts in the public realm. As a citizen he should always be aware that he acts “under the eyes of others” (493), of his fellow citizens. He treats the “eye” of the public “as a way of holding individuals responsible for their decisions” (Zakaras 2007: 211). Mill believed in (and accepted) the disciplinary power of being under the eye of the public. Public reason very often is less powerful than pure self-interest on one hand and emotions and passions on the other. In this psychological model, publicness provides the function of a kind of school of political mores.

In addition to his general defense of public voting, Mill in his “Considerations” was not ignorant of the arguments that were made in the support of the secret ballot. Voting in secret, he writes, is not always and generally unjustified. Thus, Mill adds a contextual argument for the secret ballot to his general or abstract plea for public voting. In Mill’s view, there may be — and, as a matter of fact, there are — situations in which the secret ballot could and should be defended. Those are cases in which the “mischievous power of the few over the Many is increasing” (490). In such cases of clear social dependence, the secret ballot should be understood as a protective institution and “may be the smaller evil” (490). Or, as he wrote four years later in a newspaper article, if voters are “in such a state of helpless dependence” — if each of them “has a tyrant with eyes so fiercely glaring on him” — in those circumstances the “powerful influences of terror” must be counteracted with the secret ballot (Mill 1865: 12:13).

But what is most important about Mill’s style of making his case is that he includes a contextual sociological diagnosis of his times in his general line of argument. So the burden of proof for his argument for public voting moves to the quality of his sociological diagnosis. And at this point Mill’s analysis of 1861 totally differs from the one in the 1830s. According to Mill, direct personal dependencies have disappeared in the course of England’s newer societal development. The social upheavals of the past and the current social changes are doing away with the main reasons that could have been put forward in favor of secret balloting. For example, direct external influence on voters via servitude, leasehold, and rent has been declining steadily for several decades in England, which leads him to a general sociological conclusion: “[In the more advanced states of modern Europe, and especially in this country, the power of coercing voters has declined and is declining” (491). In the past, the higher and richer classes of society were in complete possession of the government. In those days, the secret ballot would have been necessary, but was not adopted. Today, the social and political power structures are in a process of tremendous change that no longer makes the protective function of the ballot necessary:

The progress of circumstances has done and is doing more and more, in this respect, the work of the ballot. Both the political and the social state of the country, as they affect this question, have greatly changed, and are changing every day. The higher classes are not now the masters of the country. A person must be blind to all the signs of the times, who could think that the middle classes are subservient to the higher, or the working classes dependent on the higher and middle, as they were a quarter of a century ago. (491-92)

“A quarter of a century ago,” as Mill said — that was exactly when he had placed himself as a young man together with his father and George Grote at the head of the English Ballot movement. In 1861, in retrospect, Mill still considered his former commitment to the cause correct. However, the modernization of British society had made the former reform cause not only superfluous; it had made it wrong. According to Mill, England’s social structure had become so mobile and flexible that electoral policy could and should focus wholly on the positive effects of public voting. In making his argument, Mill is focusing on the opportunities for coercion:

Thirty years ago the main evil to be guarded against was that which the ballot would exclude — coercion by landlords, employers, and customers. At present, I conceive, a much greater source of evil is the selfishness, or the selfish partialities, of the voter himself. A base and mischievous vote is now, I am convinced, much oftener given from the voter’s personal interest, or class interest, or some mean feeling in his own mind, than from any fear of consequences at the hand of others; and to those influences the ballot would enable him to yield himself up, free from all sense of shame or responsibility. (491)

In years following the publication of his “Considerations,” Mill became known as an ardent defender of public voting in Great Britain. To keep the vote even became part of the platform on which he ran for the House of Commons in 1865. When Gladstone finally introduced it in the United Kingdom in 1872, Mill remained critical: “[The ballot] is now, to my great regret, going to be tried in the United Kingdom,” he wrote in a letter to one of his friends.36

Mill’s arguments can be summed up as follows: Public voting had always forced voters to justify their voting behavior. Thanks to modernization processes in England, these justifications were no longer addressed to a socially ruling class, but rather the public at large, to one’s fellow citizens in a modern political order. In such a social context, one may count on the positive psychological effects of voting in public.

If we put John Stuart Mill’s defense of the public vote in the context of his sociological analyses of English society of his times, the harsh critique of his fellow campaigner Francis Place – that his father, James Mill, “would have cracked his [son’s] skull”37 because of his new position – becomes less convincing. As a matter of fact, James Mill had explicitly excluded the United States from his demand for secret ballots in his original plea for it in the Westminster Review. For in America, it was not the traditional aristocratic “sinister interests” that dominated; rather, it was a country with higher social and regional mobility, and almost every voter was economically independent. “The Americans have little motive for the...use of it,” he wrote, referring to the use of the secret ballot in the United States, and explained to his readers: “This case and ours are in this respect diametrically opposite; they do not depend upon the ballot for independent voting, we cannot possibly obtain it by any other means” (Mill 1830: 27).

One may add here that James Mill’s argument that voters in North America had no need to fear repercussions if their own political convictions were to become known was not without resonance in the United States and finally even became a source for a social-revolutionary program. During the Kentucky constitutional convention in 1890, for example, a controversy broke out about the question whether the open *viva voce* elections had been linked to cases of bribery and corruption in the state. If this accusation proved to be true, representative Charles Montgomery argued, then the solution was not the introduction of secret balloting, but the rethinking of the relationship between unfettered rights to property on the one hand and democracy on the other. According to Montgomery, in the preceding decades the conditions in the eastern part of the state had developed such that “only a small proportion of families own the wealth.”38 Montgomery feared that secret voting would also become an instrument for these rich people and that “corruption will continue in elections.”39 Instead of adapting democracy to the changed social structure, the social structure was to be adapted to the requirements of public voting in the interest of preserving the “Kentucky character” – in those days, the synonym for the figure of the intrepid Kentucky pioneer. The goal of constitutional reform,

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37 Quoted in Reeves (2007: 115).

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According to Montgomery, was to create social conditions in which the “public sentiment can be developed unrestricted.”40 In the state of New York, Benjamin Reece had used a similarly radical argument in the debate about the electoral law the year before. Instead of passing new laws about electoral procedure, which could be bypassed by buying off the people counting the ballots or by gaining control of the major newspapers, the reformers were to frame social conditions in such a manner that public voting could truly be free: “So long as millions of money can be secured by the protected industry through legislation by the voluntary surrender of a little ‘fat’ for campaign purposes, no system of ballot reform can ever be devised to prevent bribery” (Reece 1889: 38).

For a society in which the structures of traditional social conditions of dependence are already dissolved, James Mill, Charles Montgomery, and Benjamin Reece shared John Stuart Mill’s view that elections should be handled by means of public voting. They differed in their assessments of contemporary North American society. While James Mill considered American society to have already reached a stage in which public voting could be practiced without reservations, Montgomery and Reece called for further-reaching social changes so that the citizens could practice voting – the form of voting they believed to be best appropriate for democracy – without fearing social sanctions, be it by means of coercion, on which John Stuart Mill put the emphasis in his line of argument, or by means of bribery, which was the main concern of Montgomery and Reece.

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Government would be infinitely increased.”44 In contrast to France, he testified, “in America tyranny can only come from the majority.”45 But he also testified that “I never observed in America that the secret voting was either objected to on the one hand, or praised on the other, with any degree of warmth.”46 He attributed this observation to the fact that “while the government in America is often weak, there is no individual, or at least a very small number, whose favor is to be courted, or whose power is to be feared.”47

Tocqueville distinguishes in his statement two different sources of pressure on voters. One source comes from above: the government (like in France). The other source has no hierarchical advantage because it can be identified in the fellow citizens (like in the United States). For vertical as well as for horizontal pressure, secret voting serves for Tocqueville as a means to defend the political autonomy of citizens, and thus he preferred it both for France and the United States. However, when Tocqueville was asked explicitly in the Select Committee about the widespread practice in the United States of casting the votes in public, he gave an answer that was not so different from James Mill's view quoted earlier. According to Tocqueville, the public vote would lead to different outcomes in French elections. This would not occur in the United States: “So far as I can judge, I believe that in America there has been too little danger in a man making his vote public, to create any great desire to conceal it,”48 and thus secret voting in the United States was not as necessary as it was in France at that time.49

With respect to England, John Stuart Mill had come in the late 1830s to a similar conclusion. But let us have a closer and more critical look at Mill's different layers of arguments in favor of the public vote. At the core of his arguments we can find a republican understanding of political action and political institutions, none of them without serious theoretical flaws.50

47 This statement of Tocqueville fits with his “more innocent picture of conformity” (Jan Elster) in the United States, which he presents in his second volume of Democracy in America (see Elster 2009: 40–42).
48 For some of the critical arguments, see Buchstein (2000a: 624–55), Urbiniati (2002: 106–22), and Lever (2007).

For one thing, it is hard not to overlook the tensions between Mill's argument with respect to the “laundering” (Goodin) effects of publicity and his polemic against the despotism of custom and public opinion in his essay On Liberty (1859). Overlooking these tensions is difficult in particular because Mill worked on both books basically at the same time. On the one hand, he insisted that political liberty needed protection from social tyranny, and on the other, he obviously gave public opinion unlimited power over the voter's decision. And if Mill's diagnosis in On Liberty holds true that public opinion had become tyrannical in modern England, this would make an even stronger case for the protective function of the secret ballot. This kind of critique is not new.51 Mill was criticized by Henry Romilly in a book in 1865 that despite Mill's intentions, his insistence on the “responsibility to public opinion” is going to lead voters to simply vote for the most popular candidate.52 Mill took this criticism very seriously and distinguished in his response between two variants of influences of people's opinion. One is the negative influence of “brute force,” the other the “penalties of opinion” which more likely make the voter “more careful to act up to his sincere opinion” (Mill 1865: 1213). This reply indicates that Mill tended to reconcile the tensions between the two different effects of publicity by putting more emphasis on its productive effects and less emphasis on its repressive influences.

Nadia Urbiniati has pointed out that Mill has to state more clearly an additional argument that included a differentiation between indirect and direct harm.53 As Mill claimed in On Liberty regarding the harm principle, persons are free to act without interference as long as the consequences of their actions do not directly harm the actions of other persons.54 This is the freedom that must be protected. But when activities do harm other people, the freedom to carry them out is not justified. Mill spends many pages in this essay discussing which kinds of activities (like reading, speaking, smoking, or drinking) may have the potential to harm other people, and in which social circumstances. In this context, Mill also introduces the difference between direct and indirect harm to other people. Voting falls in the category of having the potential to indirectly harm other people's lives, because the person we voted for will be in charge of raising (or lowering) taxes or deciding for (or against) a particular social policy. To strengthen Mill's argument, one may argue that voting does not fall under the absolute protection of individual liberty because it is a mode of exercising political power that deserves public control.

In addition, Mill's assumptions about the beneficial effect of the public vote are based on a dubious elitist understanding of the processes of political communication; otherwise he could easily have made the analytical
distinction between voting in public and deliberating in public. Based on such an analytical distinction, Mill could readily have counted on the advantages of publicity for deliberations and the advantages of secrecy for making the final vote. But Mill confuses both components of the political decision-making process deliberately. In his view, the public vote was supposed to give a small group of educated citizens the best opportunity to have a positive influence on their fellow citizens. Mill emphasizes the role of brilliant orators and vivid political intellectuals in the formation of public opinion. But contrary to this expectation, Mill is unable to give a reason why the influence of such an elite must have the capacity to prevent the masses from ignoring their advice and playing a negative role in politics. Nadia Urbinati has rightly pointed out that Mill, in some of his expectations with regard to the public vote, can be seen as “a sort of Renaissance intellectual.” He believed, “like the ancients...that an opportunity to listen to different orators was good because it would allow voters to interact with, recognize, and hopefully choose the most virtuous one” (Urbinati 2002: 121, 122). These kinds of expectations make Mill seem more like a premodern political thinker and less like a modern one. But even if one takes Mill’s assumptions about the beneficial influences of the political elite for granted here, his argument is not fully convincing internally. By stressing the educational effects of public voting, Mill – as Urbinati points out – “virtually ignored” the problem of controlling informal types of pressure on citizens’ behavior, such as psychological manipulation and rhetorical power.35

A final objection to Mill’s justification of the public vote is that he never seriously discussed the risk of demagoguery in the public sphere and its influence on citizens and political culture. This flaw makes his arguments even less convincing in today’s era of multiple electronic mass communication media. Despite Mill’s claim that he was taking the developments of modern societies into account, the arguments about the psychological mechanism brought in favor of public voting presumed mostly stable political communities where citizens know each other closely and thus can monitor one another.

To sum up the objections against Mill’s case for the public vote: In his late writings, John Stuart Mill is probably the most prominent theorist of an alternative normative model to the Rokkanian understanding of political modernization in the modern history of political ideas. Nevertheless, his general arguments for the public vote are inconsistent (both from internal and external perspectives), and his contextual arguments for the public vote were not convincing in his day and are even less convincing today. But the following objection is probably the most damaging to Mill’s line of argument: Even though he explicitly claimed to contextualize voting procedures with sociological knowledge, one cannot overlook the fact that Mill argued not as a sociologist with empirical information about the power structure of the British society, but as a naive democratic theorist who was driven by a republican nostalgia for classical Athens. Karl Marx in his observations of British elections had a much better grasp of the social realities of the day and how voting in public served the interests of the ruling classes.34

There is an indication that John Stuart Mill himself was not always fully convinced by his own arguments in favor of public voting, at least subconsciously. Richard Reeves, in his biography of Mill, quotes what Mill told Harriet Taylor in 1854 about a dream he had one night: “I was disputing about the ballot with Calhoun, the American, of whom in some strange way I had become the brother – & when I said that the ballot was no longer necessary, he answered ‘it will be not necessary in heaven, but it will be always necessary on earth.’”35

MODERNIZING SOCIETY, MODERNIZING ELECTIONS: THE THREE ALTERNATIVES TO ROKKAN FROM THE NINETEENTH CENTURY

While Rudolf Gneist, Emile Durkheim, and John Stuart Mill all opposed secret balloting, their arguments were based on different assessments of modern society and on different ideas about the psychological mechanisms caused by publicness.

To Gneist, public voting was a means from the good old days to combat the processes of atomization in modern societies; to Durkheim, it served to support moral reproduction of modernity, which was threatened by anomic and disintegration; to Mill, the modernization stemming from the industrialization of society was sweeping away all the traditional forms of oppression that had once provided reasons to oppose public voting. All three authors agreed that the role and significance of publicness were expanded in the course of the modernization of society. This included the sociological assumption that the development of citizens’ political consciousness was influenced less and less by direct societal connections. This meant that both irrational prejudices and rational arguments now had the space to take effect in equal measure. Publicness advanced to be a dangerous power, as it were, opposing the traditional authorities of social dependency that influenced citizens’ consciousness.

In their comments on the question of electoral law, Gneist, Mill, and Durkheim sought to do justice to this additional function of publicness and its potentially dangerous freedom to choose. Gneist examined the skeptical way of handling this diagnosis, while Mill and Durkheim focused on the optimistic one. Mill was firmly convinced of the positive effects of the increased significance of public debates, and Durkheim placed his hopes in them. Thus, it is not by accident that some current-day political theorists see the two of them as early protagonists of deliberative democracy.36 Gneist, on the other hand, feared that too much would be expected of citizens, who would then crawl under the protective screen of secrecy. Gneist used the term “isolation” for the

34 See Marx (1852).
individualizing element of this process. A person's position regarding the question of electoral law depended on how this individualization was described. If interpreted primarily in a negative way—in other words, as a process that expects too much of the voting citizens' political and moral capacities—then, Gneist feared, it would probably be impossible to prevent the introduction of secret balloting. Durkheim's rejoinder would be that democracy must follow suit and modernize itself so that the practice of public voting could continue. Mill goes yet a step further, considering individualization to be positive in the sense of an increase in autonomy that advances societal independence and the development of independent political judgment.

But the disagreement between Gneist, Durkheim, and Mill was not only about different normative conceptions of society and the political order. It also shows a deep disagreement concerning their basic assumptions about the psychological mechanisms that are at work when citizens act under the eye of the public. In his classic study The Structural Change of the Public Sphere (1962), Jürgen Habermas had tried to identify a certain normative core in the conflicting theories of publicness in the nineteenth century that come close to what he later named public deliberation.57 If we take the debate about public and secret voting as an integral part of the discussions about the public sphere in the nineteenth century, however, we can identify two additional models of the public at that time. In addition to the deliberative model I would like to call them the repressive and the dramaturgic models of publicness.

According to the repressive model of publicness, those who are in political power use publicness as an instrument of supervision and control. Repressive publicness does not require large meetings or debates among citizens. Those who are in power want anxious citizens to show them their personal votes either in person or by signing their names on the ballot sheet. This model of publicness relies on the psychological mechanisms of intimidation. Rudolf von Gneist obviously had this model in mind.

According to the dramaturgic model of publicness, publicness provides for a social space where citizens discover and express their common passions and their common feelings. The model counts on the psychological effects of a positive feeling of belonging to a political community. Thus, the presence of people, collective symbols, and rituals play an important role in staging election days. Durkheim (and, to some extent, Mill as well) based his deliberations on the mode of voting on this model of publicness.

According to the deliberative model of publicness, publicness can be understood as a forum in which rational arguments are exchanged among citizens. The debate is abstract, and the arguments are depersonalized. The debate can even be held via media such as newspapers or books. Participants in this kind of public learn from each other until their preferences are enlightened or "laundered" (Robert E. Goodin). This model counts on the psychological mechanism of publicness to open the minds of all participants for rational arguments and for concerns about the common good. To a large extent, John Stuart Mill (and later Jürgen Habermas) had this kind of model of the public in mind.

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58 "Modernizing elections" was the title of the official report of the British Electoral Commission (2002), which proposed online voting in the United Kingdom. For an overview of online voting worldwide, see E-Voting.CC (2009) and the contributions in Kersting/Baldersheim (2004) and Trechsel (2010).
59 For different aspects concerning the question of the security of online voting, see Buchstein (2008).
60 For the general pros and cons of online voting, see Buchstein (1997, 2004).
Postal voting has been practiced in the Federal Republic since 1956, but has been accepted by the Constitutional Court only as an exception to the rule (which requires voters to cast their votes in a room in which secrecy is officially supervised), and only under certain conditions.

The precarious exceptional status of the postal ballot is illuminated by a contrasting look at the voting practices of the former German Democratic Republic (GDR). Similar to the West German constitution, the East German constitution also provided for a secret ballot. However, votes in the GDR were mainly cast in public. This practice was justified by a particular theory of voting in a socialist state. According to this constitutional doctrine, the abandonment of polling booths by voters was in no case a violation of the universal principle of secrecy. Instead, the doctrine justified this practice with the argument that the secret ballot was an option for every citizen, but that he or she should not be forced to use it. Following this logic, it was up to individual voters to decide whether they believed they needed to claim this right. Between 1949 and 1989, more than 95 percent of East German voters “voluntarily” decided that there were no good reasons to cast their votes in secret. Cases of dictatorial misuse such as in the GDR have supplied reasons for a strict version of the secrecy provision in Western democracies. In this version, the optional claim to secrecy is seen as insufficient. Instead, secrecy is considered a mandatory lawful duty for every voter. You are free to tell anybody whom you voted for, but you are not free to prove this assertion. Only you will know whether what you said was true. The classical justification of the mandatory status of secrecy was formulated by Thomas Schelling (1980: 19): “The mandatory secret ballot is a scheme to deny the voter any means of proving which way he voted. Being stripped of his power to prove how he voted, he is stripped of his power to be intimidated.”

It is easy to see how hard it is for constitutional courts to accept even the postal vote. How can the state (or, if you will, the political community of fellow citizens) ensure that the postal voter is not at the “mercy” of curious glances at his vote (from family members, neighbors, or people who share their political or religious views)? They all may have had the possibility – given freely or under pressure – to observe the decision to the voter made. The highly controversial nature of the postal ballot can be seen by a brief glance at some European countries. Less than half of the current EU member states allow postal ballots, whereas other countries rule them out.

To look at an example from Germany again: On two occasions, the German Constitutional Court ruled to accept the postal vote as constitutional (1967, 1981) – but only as long as voters convincingly claim that they have no other alternative (due to an illness or a business trip outside the country) than to cast their votes by mail. Normatively, the postal vote was weighed between two basic suffrage principles – the “universality” and the “secrecy” of the vote. Thus, absentee ballots are granted only as an exception on important grounds that prevent citizens from going to the polling stations, such as sickness or work commitments. In practice, however, voters in Germany can send a postcard to the electoral office and receive their absentee ballots. As a consequence, the numbers of postal votes in Germany have risen steadily, from 4.9 percent in 1957 to 21.4 percent in 2009; in cities like Berlin, Hamburg, Frankfurt, and in Cologne in May 2010, even up to 35-40 percent. This increase has led some political scientists and constitutional lawyers to demand stricter enforcement of the postal ballot provisions.

Online voting universalizes the perforation of the mandatory status of secret voting. The exception (in the case of the postal vote) becomes the general norm. If voters use their home PCs, tablets, or smartphones to cast their votes, they are in the same situation as postal voters. There is no guarantee that they have in fact cast their votes in secrecy. Some may have been cast with the help or under the influence of family members, friends, foes, political or religious fellows, or persons with a particular interest in getting the vote. The secrecy of the vote is optional again. It is up to individual voters alone to shield their votes from observation by their family, the mafia, or potential brokers for votes. So whichever way we look at it, the universal introduction of online voting puts modern democracy at an all-too-familiar crossroads where we have to decide how much emphasis and rigidity we want to place on the secrecy of the vote.

In this context, the Estonian case may be of some paradigmatic relevance. Estonia, a member state of the EU since 2004, is considered the international “frontier state” for this new voting practice. Although it was not the first country to start pilot projects with this new technology, it introduced binding decisions via online voting at the local level in 2005. In 2007, Estonian voters also had the option to cast their votes online in national elections, and in 2009, they had the same opportunity for the European Parliament elections, and again for the local elections. Between 2005 and 2009, the share of votes cast online grew from 1.85 percent to 15.86 percent. The introduction of online voting has stirred remarkable debates in Estonia about the normative core of the right to vote in a modern democracy.

Wolfgang Drechsler and Uelle Madise have delivered a report on a fascinating turn in Estonian constitutional reflections about the status of “secrecy”

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61 See Koch (2000); for the official justification of these practices, see Autorenkollektiv (1973: 177).
62 See Kersting (2009).
63 See Jeske (2010: 93).
64 There are only few countries where the postal vote has become the general norm. The only case of which I am aware is the state of Oregon in the United States.
65 For online voting in Estonia and the empirical data, see Trechsl (2010) and Martens (2010).
in the concept of secret voting.\textsuperscript{66} Paragraph 60 of the post-Soviet Estonian constitution explicitly states that elections shall be free and that voting shall be secret. The supporters of the Estonian law that introduced online voting on the national scale used a teleological line of argument in order to get rid of the mandatory secrecy of the vote. They argued that constitutional rules should be understood through the problems they are supposed to solve. The principle of secrecy was said to protect the individual voter from any pressure against his or her will. In this teleological reformulation, secret voting has become a means for a basic right and is no longer a basic right in itself. As a consequence, they argued, online voting with its lack of a guarantee of secrecy must be seen as constitutional because voters who choose this technique have already decided beforehand that they no longer need this kind of shield to protect their privacy.

Some defenders of online voting in Estonia even went one step further to a neoliberal or stock market understanding of democracy. When counterfeiting the objection that casting one's vote from one's home PC or cell phone is not necessarily secret, and that this could make voting buying more easily possible, some defenders of the new law in the Estonian parliament went so far as to claim that, just as it is part of the new post-Soviet freedom to elect whomever one wants, so one also has the freedom to give away one's vote in exchange for other goods. After all, they argued, democracy in general is nothing but an exchange of votes for certain services provided by politicians.

Online voting makes the individual citizen responsible for defending the secrecy of his or her vote. In contrast to this voluntary approach, the principle of mandatory secrecy in the voting process is based on the idea of autocraticism. It is not the individual citizen, but an outside agent or authority legitimated by the citizens—normally the state—that is responsible for providing the necessary means to guarantee the secret ballot. Thus the mandatory status of the secret vote can be justified normatively as a mechanism of self-binding of autonomous citizens in order to avoid situations of external pressure.

Taking its characteristics together, online voting establishes a third type of voting that is conceptually different from both the traditional public and the traditional secret mode. It is a hybrid that can be labeled "observable voting." Observable voting and public voting have in common that more persons than the individual voters themselves may know exactly how they voted. Thus the observable vote may be seen as a variant of the public vote. But the two models differ in their publicness. In contrast to traditional public voting, observable voting shares with secret voting that voters may have the possibility to vote alone on their PCs or smartphones, permitting no one else to take a look at their vote. It is up to the voter alone whether he or she wants other people to share his political decision, even if the law forbids the publication of one's vōtum. A Facebook Citizen may share his or her vote with the people he or she trusts—family members, friends, members of their religious groups, or even the boss at work. Other citizens may criticize the disclosure of their votes as being a kind of political striptease and will insist on their political privacy; in such a case it is their own responsibility to guarantee the absolute secrecy of their votes.

The emergence of the hybrid form of the "observable vote" has conceptual consequences for analyzing voting procedures, too. Instead of the traditional dualism between public and secret voting, it is probably more accurate to place different modes of casting the vote on a conceptual continuum. The two ends of the continuum could be marked by pure secrecy and extreme publicness. The mandatory secret ballot can be marked at the pure secrecy end, followed next by optional secret ballot and the observable vote, followed by certain modes of voting in public (voting by acclamation, a show of hands, standing/sitting) and with roll-call votes with a written record at the public end of the continuum.

To summarize: The hybrid type is different from both public voting and secret voting. In comparison to secret voting as we practice it today, voters in a hybrid system have to find and defend their secrecy on their own, as already discussed at length. In comparison to the traditional understandings of public voting, one can discern another difference. In the justifications of public voting presented in this article, "publicness" was understood as a particular sphere in which citizens participated in political communication. The publicness was defended by Mill or Gneist not just as "open voting" but as a realm for an activity in which all other citizens took part and in which they were interested. The "public" realm was conceptualized as a social sphere for arguments, controversy, and passions. Not so with the observable vote. Here we have no notion of a "public realm" in any sense of a common agora. "Publicness" is not the general public of all interested citizens, and it is not supervision on the part of state authorities. The new "public realm" is a selective kind of publicness; it consists only of those people whom the voter wants to give the chance to observe his or her voting decision.

It may be helpful in this context to go back to an analytical distinction that was part of Alexis de Tocqueville's aforementioned statement of 1835 before the Select Committee. Tocqueville had distinguished between two sources of pressure on voters. One source comes from above: the government (like in contemporary France, as he argued). The other source are the fellow citizens (like in the United States). For both vertical as well as horizontal social pressure he had suggested the same remedy with respect to elections: making the vote secret. In addition to this distinction, the means of pressure can take different forms too. One group of cases includes acts of coercion in which voters are directly forced to vote in a particular way. Electoral coercion can be exercised by governmental actors as well as by powerful and violent fellow citizens: Under certain political and social circumstances, open voting is an invitation to electoral coercion. This second group of cases contains indirect forms of pressure through bribery and corruption. Electoral bribery and corruption

\textsuperscript{66} For the following, see Drechsler and Madise (2004: 102–04).
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CONCLUSIONS

The arguments in this article can be summarized with the following four conclusions.

First, Stein Rokkan's model of the historical emergence of secret voting in the nineteenth century has become the basis for both our historical and normative understandings of these processes; in this regard, modern democratic theorists are (nearly) all "Rokkanists." The works of nineteenth-century authors such as Gneist, Durkheim, and Mill provide material for three contrasting models. Despite their disagreements with one another, they agree on the basic hypothesis that political modernization and the public vote are supposed to go hand in hand.

Second, John Stuart Mill in his later years can be seen as the most outspoken advocate of a contrasting normative model to the Rokkanian understanding of political modernization. Mill's arguments challenge our principal normative preference for secret voting, the most, and they can be read as a modern version of republicanism in democratic theory. Mill advocates horizontal pressure on political preferences by fellow citizens. And in principle, he acknowledges that there may be vertical pressure, too, which would not be defendable. In his arguments for the public vote, he later ignores the social facts about vertical power in the British society of his time. His stand for the public vote was sociologically naïve and is even less convincing for today. Public voting in stratified societies such as Western capitalist societies only increases the impact of existing socioeconomic inequalities.

Third, one can find at least three different models of "publicness" in the nineteenth-century debates about public voting. I have labeled them the repressive, the dramaturgic, and the deliberative models of publicness.

Finally, we have to be aware that the secret ballot is under a new kind of attack today, namely the introduction of online voting as a means of electoral modernization. Online voting establishes a hybrid mode of voting labeled the "observable vote"—which is different from (and shares some of the characteristics of) both the traditional public and the traditional secret modes of voting. With online voting, the vote is not automatically public, but the secrecy of the vote has become optional. It is up to the individual voter to keep his or her vote from being observed by family members, the mafia, or other interested persons; optional secrecy of the vote is an invitation to coercion, bribery, and corruption in elections. With online voting, voters also have the possibility of easily making their votes known to others. As a consequence, the introduction of online voting puts citizens of modern democracies back at a familiar crossroads where we have to decide how much emphasis we want to place on the mandatory secrecy of the vote.

We should be as clear as possible on this issue: If we really want to avoid any of the negative consequences of voting without mandatory secrecy, in particular the opportunities for coercion it allows, we have to make sure that online voting does not make the observable vote the new standard for voting procedures in modern democracies.

Society is currently undergoing tremendous changes, just as it did in the nineteenth century. An important dimension of these changes can be seen in the technical possibilities for making all aspects of our personal and political lives public via the Internet and other media. There is empirical evidence that the majority of the Native Digital and Facebook Citizens is getting used to a life in which they want to share their secrets with others. It will be interesting to observe whether and how the mandatory secrecy of the vote as one of the classical normative standards for modern democracy will survive these technological and cultural changes in the long run.

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