

*The debate on public ballot in the French Parliament (XIXth century) : Independence, accountability or morality?*¹

During the XIXth century, with few exceptions, most of the democratic Parliaments gave up the secret ballot practice or reduced its application. At the same time, public debate was admitted everywhere as a key principle². This evolution of parliamentary government was not only procedural. It also changed the way law makers dealt with political issues. Though, the switch from a ballot model to another didn't receive the deserved attention from scholars. Why did the secret ballot, which was based on an old tradition and respectable arguments, decline all over the world? Which reasoning, what rhetorical devices won the general opinion over?

This paper aims at clarifying this question, by analyzing the intentions of the political actors. It will be based essentially on ancient parliamentary reports. In that respect, the case of France is rather symbolic: Rousseau's conception of the "general will" was clashing with the lessons that could be learnt from the Revolution. Through various constitutional changes, several methods of votes were implemented and political actors repeatedly debated of the consequences of publicity.

Section I will present a short history of the methods of votes which have been used in French assemblies. Section II will focus on the decisive debates that took place in 1843 and 1845 in the French Chamber of Deputies and ratified the defeat of secret ballot. Section III will underline that secret vote was essentially rejected because its supporters were not able to confer it a positive and moral image. To conclude, I'll add a few words on the strategic use of public voting in the contemporary French Parliament.

I. A short history of public vote in the French Parliament

¹ Paper prepared for presentation at the Rationalité et sciences sociales Colloque "Scrutin secret et vote public, huis clos et débat ouvert" organised by Professor Jon Elster, Collège de France, Paris. June 3-4 2010.

² On the history of public debate and parliamentary reporting, see Navarre, 1909, Chouvet, 1962 and Coniez, 2008.

The French constitutional history offers many interesting lessons about public voting and public debate in parliamentary assemblies. As far as the method of votes is concerned, we can distinguish three main periods³.

1. From the beginning of the French Revolution to 1795, public vote, as well as public debate, was a general principle of the public law. On the 30th of May 1789, the deputies of the Third Estate, who didn't form yet the National Assembly, decided that voting shall occur by standing up or sitting down. Such system was simple and quick, but quite imprecise, especially in so a large assembly. Therefore, on July, 30th of 1789, deputies added that, in case of doubtful result and for the most important decisions, they would use the roll call vote, pronouncing themselves aloud, by yes or no, to the appeal of their name. Such a kind of vote was solemn and even dramatic; it emphasized the individual responsibility and the collective formation of the general will. What is more, at the end of March 1789, deputies accepted public debate. The huge galleries of the committee room, capable of receiving thousands of spectators, were opened to the public. Deputies who shyly suggested to limit or to regulate the presence of the public were not understood. Immediately, newspapers got used to publish parliamentary reporting and lists of voters. The publicity was complete. Its application was anarchical.

We know that those rules contributed to the toughening of the Revolution. Deputies discussed and voted under the direct pressure of galleries' spectators, that is to say the Parisian people, who approved or disapproved, shouting congratulations, insults or threats – but, according to certain testimonies of the time, the complete silence of spectators could be even more impressive!⁴ Lists of voters circulated in the whole country. Sometimes, the families of the representatives were harassed. In fact, the Parisian people, manipulated by the Jacobin party and some newspapers, have become the arbiter of the fight for the power, at first between the Assembly and the King, then between the various revolutionary factions.

2. After the coup of Thermidor, as a reaction, the National Convention strongly limited the publicity of the ballot: the standing vote was still the rule, but, in case of doubt, the nominal call was secret. The question was considered so important that secret ballot was registered on the article 65 of the Constitution of the year III (5 fructidor an III) and on the article 34 of the

³ For a general overview, see Eugène Pierre (1893-2002): 1170-1174.

⁴ Furet and Halevy: XXX.

Constitution of the year VIII (22 frimaire an VIII)... At the same time, public debate was significantly reduced: the number of spectators could not exceed half of that of deputies. Under the Consulate and the First Empire (1799-1814), the most powerful assembly, that is the Senate, even sat behind closed doors.

In 1814 began a new era: French parliamentary government was built little by little. The Charter of 1814 restored the public debate, not the public voting. According to the article 32 of the Rules of Procedures of the Chamber of Deputies, voting could occur by standing up or sitting down, but when the vote was tight or especially important – for example to approve an entire bill or send a message to the King -, deputies anonymously dropped a white or a black ball in a ballot box. Parliamentary reporting shows that secret ballot was frequently used.

3. Everything changed once again in 1845, on the initiative of liberal statesman Prosper Duvergier de Hauranne, who was strongly influenced by the thesis of Bentham. This year, the Rules of Procedure were changed. Henceforward, a secretary would note the name of the deputy during each vote, but only twenty deputies could still ask for a secret ballot. That rule enforced without any problem until 1852 and the fall of the Second Republic.

Under the Second Empire (1852-1870), paradoxical though it may seem, all the votes were public. Nevertheless, many reservations about public debates were expressed, especially until 1861 and the democratization of the regime. After 1870, the Third Republic Chambers restored the rules of procedures of 1845⁵. However, the rules' clause, born from the compromise of 1845, which allowed twenty deputies or senators to ask for a secret ballot, was abolished in 1884 for the National Assembly (when the two chambers joined to modify the Constitution or elect the President of the Republic) ; the same occurred in 1885 for the Chambers of Deputies and in 1887 for the Senate.

From then on, the ballots in the French Parliament would always be public. In 1915, the vote by show of hands merely replaced the standing vote, which only remained in case of doubt in the results, and the balls, whether white or black, were replaced by ballot papers, made with the national colors (white to vote for, blue to vote against, red to abstain)⁶. Indeed, during the two World Wars, it happened that the Chambers were in session for a so called “secret

⁵ Article 32 became became article 34.

⁶ Buinet (1967): 309.

committee”. In this case, the public couldn’t attend the debates and no report was published, in order not to give any information to the enemy. Nevertheless, even in that specific situation, the votes, as well as the voting declarations⁷, remained public.

II. The key debates of 1843 and 1845

To sum up, in 1845, without the constraint of any major political change and despite the outstanding and still quite recent experience of the Revolution, French Parliament definitely chose public voting. We will focus on that choice, that may seem strange. Why did public ballot finally win?

It was mainly the work of Prosper Duvergier de Hauranne⁸. The liberal politician, who wanted to make more democratic the Monarchy of July, was backed by Odilon Barrot and Alexis de Tocqueville –who didn’t take the floor, nevertheless -, but fought by other eminent members of chamber, as Charles Dupin and Alexandre Vivien. Indeed, all the political parties were divided, even if the Left was more inclined in favour of the public ballot and if the Right and François Guizot, who led the government in those days, were rather hostile to it. The most important debate took place in March 1843⁹. It lasted almost four hours, was bright and heated. All the arguments for and against public voting were exposed and confronted, as the actors were perfectly aware of what was at stake with publicity. We will resume the main thesis of each side.

1. For the partisans of secret ballot, the publicity meant the *de facto* institution of an imperative mandate and the violation of the principle of immunity of the representatives. According to them, the public vote would have exposed members of Parliament to several types of pressure or influence, ruining the representative government. Thus, the proposed

⁷ Witch were shorter than usual.

⁸ Prosper Duvergier de Hauranne (1798-1881) was not only a journalist and politician, but also one of the brightest liberal thinkers of the time. He first supported the Louis-Philippe I’s accession to the throne, but later denounced the authoritarianism of the regime and claimed for an enlargement of the electorate.

⁹ *Le Moniteur universel*, 1843, Séance du jeudi 22 mars, pp. 521-528.

measure would have been clearly unconstitutional¹⁰ and dangerous. According to them, the secret ballot was preventing deputies from four “potential tyrannies”.

First, the influence of local interests and local worthies. As the electoral system was based on tax qualification, local worthies took a decisive part in the election of deputies. If members of Parliament, or at least some of them, had to account for their votes, they would not be able any more to pronounce themselves in favor of the general interest, whereas they were obviously supposed to represent the whole nation.

Secondly, the influence of the political parties. In the debates, the public ballot was qualified as "the prison of the parties". Several orators reminded it has always been difficult for members of Parliament not to vote like their political friends. Therefore, the public ballot could strengthen the discipline of the group, to the detriment of individual talents. It could also lead to an artificial separation of the chamber into two hostile blocks. The "moderate opinions", that is to say centrist points of views, generally assure the stability of the social order; they would be definitely removed. As Alexandre Vivien said: "By dividing violently the chamber into two camps, you will create lively and burning contradictions, you will substitute a spirit of exclusion for a spirit of rapprochement ".

Thirdly, members of Parliaments were afraid of the influence of government. They reminded that the executive was almighty in such a centralized country as France, where ministers arbitrarily distribute places, decorations, local subsidies... We must add that many members of Parliament were also state employees at that time, and therefore directly depended on the Government.

Last but not least, according to its disparagers, public voting could increase the power of the factions, and even encourage the tyranny of a minority. In 1843, the memory of the Revolution was still very present, even if it maybe tended to become blurred. For instance, Alexandre Vivien reminded the example of Pierre Nogaret: the deputy, who had been the dean of the Chamber and who had died two years earlier, had been arrested in 1792 for having voted for General La Fayette. Charles Dupin added that his own father had undergone the same misadventure. Representatives of the Right were especially sensitive to the evocation of

¹⁰ The articles 43 and 44 of the Charter of 1830 had emphasized the personal inviolability of the deputies. Moreover, the principle of the representative mandate, which had been established for the first time by the Constitution of 1791 was still considered as an element of the public law.

the trial of Louis XVI: the 16th and 17th January 1793, members of the National Convention had voted in a loud voice, alternatively, during twenty-four hours, in a fearful atmosphere. As Vivien reckoned, the revolutionary era was certainly over, but who could say that a war or peace question would not be soon discussed by the Chamber, under the pressure of a patriotic and warmongering Parisian opinion? In such a case, secret ballot could help deputies to withstand popular passions. And actually, a war against the United Kingdom had just been avoided, despite the public opinion had mocked the pusillanimity of the government.

Nonetheless, the arguments of the supporters of secret ballot were not just negative. According to them, the secret vote was nothing less than "the refuge of the consciences ". They described it as a political caution that was particularly necessary to help the weak and pusillanimous representatives. Indeed, as Charles Dupin said: "in time of crisis, only a small number of people defy the danger. Others envy them, but do not want to expose themselves." In a nutshell, and to quote again Charles Dupin: "There is in the secret ballot a call to the conscience which generally prevails. The more accurate, the wiser, the more moderate opinion always overrides in the mind of the one who, free of any external influence, has just to make an introspection and to consult its duty "

[« Il y a dans le vote secret un appel à la conscience qui prévaut généralement. L'opinion la plus vraie, la plus sage, la plus modérée l'emporte toujours auprès de celui qui, libre de toute influence étrangère, n'a plus qu'à descendre en lui-même et à consulter son devoir »]

2. Of course, the partisans of the public ballot attempted to refute these arguments, by competing in eloquence.

Duvergier de Hauranne protested his unfailing attachment to the representative government. According to him, there was no question of introducing the imperative mandate: he only wanted deputies to do their duty by the voters. "If deputies have their rights, he said, voters have their ones, which are not less sacred. The right of the deputy is to vote as he wants to. The right of the voter is to know how his deputy votes, in order to renew or remove later his confidence, with full conscience of the facts. The voter who claims to impose on his deputy a vote against his opinion violates the law of the representative government. The deputy who is unfaithful to the voter, in order to be reelected, violates this law as well, and

also fails in the most elementary probity. Now, the public vote is the only way to prevent this.”

[“Si le député a son droit, les électeurs ont le leur, qui n’est pas moins sacré. Le droit du député est de voter comme il l’entend. Le droit de l’électeur est de savoir comment vote son député, afin de lui confirmer ou de lui retirer sa confiance, plus tard, en pleine connaissance de cause. L’électeur qui prétend imposer à son député de voter contre sa conscience viole la loi du gouvernement représentatif. Le député qui, pour être réélu, trompe l’électeur sur son vote viole également cette loi et manque, de plus, à la plus élémentaire probité. La publicité du vote est le seul moyen d’éviter cela ».]

Indeed, in the opinion of Duvergier de Hauranne, members of Parliament should not be elected because they are worthy or honest people, but because they have certain opinions and enact them. Citizens must be able to judge their behaviors and their votes. Public voting would guarantee the responsibility of the representatives, and therefore increase citizens’ trust in the representative system.

Furthermore, Duvergier de Hauranne attempted to refute a double analogy: with the vote in elections and with the vote in juries. First of all, in his opinion, the vote in parliamentary assemblies was utterly different from the vote emitted by the citizens during the elections, for the simple reason that citizens were not answerable at all. Duvergier de Hauranne demanded secret voting in elections, which would be allowed only in 1848 in France (and voting booths would be introduced only in 1913), but he refused it firmly in Parliament. In the same way, according to him, the vote of juries could not be compared with the vote of members of Parliament: secret vote of course aims at defending the jury, but the jury’s members are forced, at the risk of fine, to play their role; they account only to God and to their conscience. Representatives, on the contrary, are just the agents of enlightened citizens.

To those who predicted the disappearance of the “moderate opinions”, the partisans of the secret ballot answered that only the “indecisive opinions”, which change ceaselessly, would be affected. According to them, when someone decides to vote for another party or to change his opinion, he has to do it publicly. As Odilon Barrot said: “Nobody is forced to be a Representative ; the one who looks for this honor must wonder if he has the courage of every free man, to admit his convictions aloud and not to leave without motive the political flag

which he has freely and conscientiously adopted: if he does not meet these two conditions, the courage of his opinion, the loyalty to his political flag, he will not be able to enter this chamber: he would only bring weakness, uncertainty and anarchy.”

[« Personne n'est forcé d'être député ; que celui qui recherche cet honneur sonde son cœur et se demande s'il a le courage de tout homme libre, celui d'avouer hautement ses convictions et de ne pas déserter sans motif le drapeau politique qu'il a librement et consciencieusement adopté : s'il ne satisfait pas à ces deux conditions, le courage de son opinion, la fidélité au drapeau politique, qu'il n'entre pas dans cette chambre : il n'y apporterait que faiblesse, incertitude et anarchie ».]

Odilon Barrot also attacked the secret ballot underlining it was often an instrument of rancor and treason and could incite the government to use bribery to be sure of certain votes. He reminded some “strange” or unexpected votes that had occurred during the previous years and aroused suspicion beyond the public. He also emphasized that, sometimes, all the articles of a bill were adopted by public voting whereas the final vote on the text, taken with secret ballot, was negative.

Finally, overthrowing the main argument of their competitors, Duvergier de Hauranne and his friends insisted on the fact that only publicity could defend the deputies against factions. In their opinion, the secret ballot would have changed nothing to the Revolution: the passions were too strong to be stopped by a single rule of procedure. Furthermore, if institutions had to be organized according to times of disorder, which by definition are exceptional, the freedom could not be maintained. Therefore, the political assemblies should not resist violent minorities by hiding, but by opposing them in broad daylight – which may be easier said than done... “A hidden opinion is not really a free opinion” one deputy said, maybe with a touch of demagogy...

In fact, Duvergier de Hauranne constantly emphasized the moral virtue of publicity, which was supposed to develop a new generation of brave and honest men. In times of disorder, he declared, assemblies just needed “the energy of characters trained at the school of publicity and freedom”. For him, only the public responsibility could moralize politicians and give them enough steadfastness to resist the pressures that would apply to them.

III. The defeat of secret: a progress of morality?

Duvergier de Hauranne's proposition was repelled in a bare majority in 1843¹¹, but it was taken back two years later, and eventually adopted by the Chamber of Deputies on March 18th, 1845¹², thanks to a compromise: henceforth, a secretary would note the name of the deputy during the votes, but the balls and the ballot box would still be used – a nominal call would have too much reminded the Revolution of 1789 – and only 20 deputies could ask for a secret ballot. As mentioned earlier, this last provision, which was not used anymore, disappeared at the beginning of the Third Republic, in the Chamber of Deputies in 1885 and in the Senate in 1887, except of course for personal nominations, which are still secret. In both chambers, public voting was accepted almost without debate, with an overwhelming majority. Representatives that still were in favor of secret didn't really defend their opinion.

We may wonder what reasoning finally convinced the members of Parliament. Pragmatic reasons doubtlessly played a role. It was harder and harder to keep the votes secret: some deputies showed the ball they were using; afterwards, unofficial lists of voters were published by journalists or other members of Parliament. In fact, public debate was naturally leading to public voting. The two principles were linked for practical reasons. Deputies could not durably accept one and refuse the other.

What is more, public voting was already used in many countries which used a parliamentary system, like the United Kingdom, the United States of America, Belgium and Spain. Publicity was in vogue. On the contrary, secret was associated to authoritarian or obsolete regimes. French members of Parliament could not seem less brave than those living in conforming countries... The partisans of public voting did certainly play on the patriotism of their colleagues.

Nonetheless, we may say that the main reason of the public vote success was moral¹³. In speeches, the secret ballot was constantly associated to darkness, ignorance, rancor, plots

¹¹ Some deputies demanded a secret ballot. The result was 193 white balls and 201 black balls.

¹² *Le Moniteur universel*, 1845, séances du lundi 17 mars et du mardi 18 mars 1845, pp: 640-645 and 650-654. The new redaction of the Rules of Procedure was adopted in a large majority because Duvergier of Hauranne's political friends finally accepted the compromise that Charles Dupin had suggested.

¹³ This argument was also decisive in the debate on public debate in 1789. See Coniez (2008): 78-82.

and treasons. An orator established a telling analogy between the black ball and an anonymous letter... For these reasons, it's obvious that several deputies did not dare to defend the secret ballot, even if they were convinced it was a better solution.

On the contrary, the supporters of public voting took advantage of their generous intentions. They claimed they represented common morality, transparency and sincerity. Insisting on the perfectibility of human nature, they developed a more progressive, more optimistic and finally more attractive anthropology than their competitors. They also seemed to be more confident in voter's wisdom, since they assured that public voting would increase the dignity of the Chamber, and therefore citizens' support to the regime. "Let's give our names to the country in exchange for its confidence" said an orator. Thus, the focus on publicity may reveal a certain guilty conscience of the deputies, who seemed to lack confidence in their own legitimacy and wanted to prevent any attack by showing off their representativeness. In a nutshell, the success of the public ballot in XIXth century was the one of morality – or at least of the appearances of morality.

This particular example shows that, in an open society, the secret is always on the defensive side. Whatever the conclusion of the debate between publicity and secret will be - if this debate can be ended - the latter is in practice disadvantaged, in Parliaments or everywhere else. Democratic societies seem to have a natural preference for publicity, even before any argument has been developed.

IV. The public ballot under the Vth Republic

As a conclusion, I will add a few words about how public ballot is used today in the French Parliament.

Nowadays, public votes are compulsory in both Chambers for every important issues. They can be organized on request of the government, the Speaker, a parliamentary commission or the chair of a parliamentary party grouping. For "ordinary public ballot", representatives use ballot papers in the Senate and electronic votes in the National Assembly (since 1959). For important texts, like financial bills or constitutional laws, as well as for confidence votes, members of Parliament move up to the tribune and drop a ballot in a box. In each case, names

of representatives are noted and later printed in the *Journal officiel*¹⁴. No one contests the public nature of the votes.

Nevertheless, French public ballot has two main features, which may exist in other democracies.

First, public ballot is often used as an instrument of filibustering. As public votes take more time than vote by show of hands, they are used by the opposition to delay the debate. In the Rules of Procedures of each house, there is no provision to prevent such strategic use of public ballot.

Secondly, public votes were not personal votes in the National Assembly until 1995 and they still are not in the Senate, despite a clear provision of the Constitution¹⁵. In the Upper House, every representative can receive an unlimited number of delegations of votes and pronounce himself for his colleagues. Generally, one member of each parliamentary grouping is allowed to vote for others, who have to warn him if they want to break the parliamentary discipline and make a dissident vote. Most of the senators whose names appear in the *Journal officiel* are in fact not present during the vote, and sometimes during the entire debate... Voters have no way to know it. This rule is frequently denounced as one cause, among many others, of parliamentary absenteeism: public vote is used to make absentees vote. It is used also to prevent the majority of those presents from overriding the political majority of the chamber. An evolution that the supporters of public vote on the XIXth century surely didn't plan.

¹⁴ Rules of Procedures of the National Assembly, articles 61 to 69. Rules of the Procedures of the Senate. articles 51 to 62. See also Buinet (1967): 310-315.

¹⁵ Article 27 of the Constitution of 1958 establishes that "the vote of the Representatives is personal".

References

Buinet, C (1967). *Les règlements des assemblées parlementaires en France depuis 1871*. Paris: Thèse présentée en vue du doctorat d'État.

Chouvet, M (1962). *La publicité des débats*. Paris: thèse de doctorat.

Coniez, H (2008). *Écrire la démocratie. De la publicité des débats parlementaires*. Paris: L'Harmattan.

Furet, F, Halévy, R (1989). *Orateurs de la Révolution française, Tome I: Les Constituants*. Paris: Gallimard, Bibliothèque de La Pléiade.

Le Moniteur universel (1843, 1845).

Navarre, A (1909). *Histoire générale de la sténographie et de l'écriture à travers les âges*. Paris: Institut sténographique de France.

Pierre, E (1893-2002). *Traité de droit politique, électoral et parlementaire*. Paris: La Documentation française.

Prélot, M (1957-1958). *Droit parlementaire français*. Paris: Les cours de droit.