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## **Public Voting and Political Modernization: Different Views from the 19<sup>th</sup> Century**

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**[FIRST DRAFT]**

### **Summary**

This paper connects debates from the 19<sup>th</sup> century about the best way to cast votes with recent discussions about the topic. The paper starts with a brief reminder of Stein Rokkan’s paradigmatic interpretation of the introduction of the secret ballot within the context of modernization theory (1 and 2). The authors discussed in the following sections wrote at a time in the 19<sup>th</sup> century in which the political battles for the secret ballot were in full swing, and they all took sides against the secret ballot. They disagreed, however, on their arguments in favor of public voting. From today’s view, the considerations of Alexis de Tocqueville, Rudolf von Gneist and John Stuart Mill offer three competing alternatives to Stein Rokkan’s interpretation of secret balloting within the context of modernization theory (3-6).

Today, we face a new wave to modernize the mode to cast the vote. Nowadays online voting is presented as yet another means how elections are carried out. I will argue in the final sections of the paper that casting one’s vote from a home PC, cell phone or newly bought iPad has the potential to establish an additional paradigm to the traditional dualism of secret and public voting, which I call the “observable vote” (7 and 8).

### **1. Introduction: Democracy’s Secret**

In the procedures of modern elections, their public and secret components are intertwined in different ways. The date and place of the election must be made public 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. Modern democracy has its secrets in order to

safeguard the political autonomy of the individual citizen. This is a permanent challenge for electoral authorities because new technologies may lead to new possibilities to break the secrecy of the vote. In our days, for example, one has to make sure that voters do not document their vote with their cell phone in the voting booth.

Today, voting by secret ballot in parliamentary elections and political referenda is considered an indisputable legal principle governing elections in modern mass democracies. 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.<sup>1</sup>

Voting in secret today means that the secrecy of the vote has to have a compulsory or mandatory status. It is not up to the individual voter to keep his or her vote secret, instead electoral authorities take care to create and safeguard secrecy. The mandatory status of secrecy has the function of preventing citizens from “voluntarily” voting 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, state authorities try to ensure the anonymity of every individual vote. To quote 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).

Over the last couple of years, only a few authors in Western democracies, such as Jean-Paul Sartre (1976: 80), Albert O. Hirschman (1984: 112-114), Benjamin Barber (1984: 187-189), Claus Offe (1989: 767-769), Geoffrey Brennan and Philip Pettit (1991), and more recently J. M. Barbalet (2002), have taken a less supportive and enthusiastic stance regarding secret voting. Their line of critique can be summarized in the argument that the secret ballot is an ambivalent achievement to democracy: In addition to securing the political autonomy of every citizen, it fosters the privatization of politics, too.<sup>2</sup> However, among the group of

1 See for example: Dahl (1989: 221-223), Reeve/Wade (1992: 98), Katz (1997: 82ff), Elklit/Svensson (1997: 35), Compendium (2007), Keane (2009: 524-526).

2 For a more detailed discussion of these critiques, see Buchstein (2000a: 23-29).

modern critics, only Brennan and Pettit have gone as far as actually questioning the secret ballot. The dominant reform option proposed by the modern critics of secret voting lies in an expansion of deliberative institutions in modern democracies.

Whereas the secret vote dominates the normative discourse in modern democratic theory, mandatory secret voting has recently come under a new, but silent, form of attack. This new attack is a consequence of some developments in the technology of voting procedures. In the last ten years, experiments that aim to introduce online voting have been under way in a number of liberal democracies. According to the enthusiastic supporters of this voting technology, citizens are supposed to cast their votes in the future by using their home PCs, their cell phones or their newly bought iPads. This technological advancement seriously challenges the mandatory status of secret voting: online voting shifts the burden of ensuring the secrecy of the vote from the electoral authorities to the individual citizen.

I would like to begin this paper with a brief reminder of Stein Rokkan's paradigmatic interpretation of the introduction of the secret ballot within the context of modernization theory in the 1960s. This interpretation is still dominant today (2.). The authors whose arguments I would like to discuss in more detail made their statements a century before Rokkan. In the 19<sup>th</sup> century, suggestions as to the best mode of voting were a crucial topic for party politics and electoral campaigns. Controversies about this topic led to mass mobilizations and militant struggles. The authors discussed in this paper wrote at a time when the political battles for the secret ballot were in full swing, and they all took sides against the secret ballot in these debates. They disagreed, however, on some of their arguments. From today's view, their considerations offer alternatives – as a matter of fact: three competing alternatives – to Rokkan's interpretation of the secret ballot as an indicator for political modernity. In Alexis Tocqueville's understanding, voters who live in a society as modern and mobile as that of the United States of America in the first half of the 19<sup>th</sup> century do not have to reckon with negative repercussions from public voting (3.). Rudolf von Gneist – a German conservative critic of modernity – and Emile Durkheim each saw problems raised by the modernization of society that the political realm could deal with best by means of public voting (4. and 5.). To the liberal theorist John Stuart Mill, the modernization of society would be completed only when public voting, too, would make free and unfettered voting behavior possible (6). In the last sections of the paper, I take a closer look at the implications for the

mode of voting with respect to online voting as a new form of modernizing political decision making. In comparison to the debates of the 19<sup>th</sup> century, online voting is of special interest because it has the potential to establish an additional paradigm to the dualism of secret and public voting. This third type is called the “observable vote,” and is described as a hybrid which has characteristics both of the traditional public and the traditional secret vote (7 and 8).

## **2. From Public to Secret Voting: Stein Rokkan’s Model of Political Modernization**

The emphasis put on the secrecy of casting the vote is a comparatively new phenomenon of the late 19<sup>th</sup> and the 20<sup>th</sup> century. In the days when in Germany philosophers such as Kant or Hegel discussed problems of electoral laws in their country, voting was held in public. Voting was public also in the US and all over Europe (at least in those countries in which political elections were held at all), be it in the form of an acclamation (“*viva 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. And although secret balloting had historical precursors dating back to ancient Greece and Rome, public voting was the unequivocally dominant form of voting associated with democracy for centuries. Secret voting using ballot boxes and ballots printed by state authorities was practiced for the first time in 1856 in the colony of Victoria, Australia. In the following 65 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 states of the US beginning in 1888, in Austria in 1907, in France in 1913 and in Prussia in 1919.<sup>3</sup>

Unlike today, whether voting in public or in secret was to be preferred was a very controversial and hotly debated issue at the time. Looking back on the 19<sup>th</sup>-century discussions from today’s perspective, the way the different opinions crossed ideological lines is remarkable. The critics of secret balloting on the Left included the followers of the Jacobins, the English Chartists and Democrats from the Northern states of the US. On the conservative side, public voting was defended by Lord Russell and Otto von Bismarck; on the

3 For a general historical overview see: Buchstein (2000a). For Australia see: Wright (1980) and Brent (1996); for France see: Garrigou (1993, 2002); for the US see: Ware (2000); for England see: Kinzer (1982); for Prussia see: Buchstein (2001).

part of the national liberals, by Rudolf von Gneist and Heinrich von Sybel. Later, in the Weimar Republic, the fascist Carl Schmitt was one of the best-known critics of secret voting.<sup>4</sup> Before him, the most prominent supporter of public voting in the liberal camp had been John Stuart Mill.

The absoluteness with which secret balloting is attributed to modern democracy has been a more recent development. The sociology of elections of the 1960s, influenced by Anglo-American schools of thought, has provided the current view and its interpretation of democratic tenets of electoral law with its underpinnings in terms of modernization theory. Naturally, it is not the privilege of modern political sociology to recognize that the terms of electoral law reflect social conditions. Such relationships were underlined frequently even in the debates about public and secret balloting in the 19th century. For instance, as early as 1865, Georg Schäffle, a southwest German liberal proponent of secret balloting, 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”<sup>5</sup> (Schäffle 1865: 387). Following Schäffle, Georg Meyer, a liberal defender of public voting in Germany, 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 only more recent sociology of electoral law-making that analyzed the historical developments of electoral laws in Western Europe since the 19th century in a way that led to a model in which the institution of general, equal and, yes, secret individual voting appears as the logical end point of a directed process.

The most prominent representative of this modernization approach is doubtless Stein Rokkan.<sup>6</sup> Rokkan considers the expansion of participation in the 19th century to be a process

4 On Schmitt’s critique of secret voting, see: Buchstein (2002).

5 All German and French quotations are translated by the author.

6 On Rokkan’s significance for historical election research, see Steinbach (1983: 209-211, 1986) and Flora (2000: 33ff.). Rokkan’s model was an early influence on the modernization theory of systems theorist Niklas Luhmann (cf. Luhmann 1965: 148, 1969: 169).

of three-fold standardization and abstraction.<sup>7</sup> Rokkan understands the complex process of the extension of participation, triggered by the institutionalization of political elections in the 19<sup>th</sup> 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:

- Firstly 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).
- A third element is the equality of all electoral votes, regardless of any other social role of the voter. This means abolishing census suffrage or 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 that we are familiar with from normative democratic theory and constitutional science.

Rokkan he does not understand the development of modern suffrage as a simultaneous or chaotic and more or less random process, but he reconstructs it as a sequence of steps. The institution of secret, universal and equal voting does not only mark 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

<sup>7</sup> I base my argument especially on Rokkan (1961) and on scattered comments in Rokkan (1970 as well as the posthumous edition of his essays 1999).

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 has been able to give 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. But there are some major exceptions, too. Rokkan’s thesis about the temporal order of the two electoral principles does not hold in terms of historical fact for some countries in Europe and certainly not for the US. Notable exceptions include a number of states in the US as well as, in Europe, Denmark, Russia, Prussia and Hungary.<sup>8</sup> However, the following considerations in this paper are not about testing the historical accuracy of Rokkan’s model, but rather examine how the concept of political modernization can be used differently with respect to interpreting voting procedures.

If we take a look at the controversies accompanying the reforms of electoral law in the 19th and the early 20th centuries, it is not only the above-mentioned fact that opinions crossed ideological lines that is astonishing from today’s point of view. Even more surprising is the fact that some of the contributions of the day concerning the link between “modernity” and the form of voting appropriate for it saw practically the opposite connection, compared with current-day sociology of electoral law. Looking back into the history of political ideas, we come across lines of argument that conversely claim the existence of a link between public voting and societal modernization. This alternative view can be found in the works of authors from different countries and completely different political camps.

8 For Europe see: Buchstein (2000a: 387-395); for the US see: Crowley (1993), Buchstein (2000b), and Ware (2000).

### 3. Alexis de Tocqueville and the Debate on Political Freedom in the US

Alexis de Tocqueville (1805-1859) had become known across Europe at a stroke with the publication of the first volume of his book on democracy in America in 1835. The committee on electoral law reform of the British House of Commons invited him to serve as an expert even that same year to provide first-hand insights about the practice of democracy in the US. As is generally known, Tocqueville had carried out a balanced evaluation of American democracy in the first volume of his book.<sup>9</sup> On the one hand, he claimed, democracy based on political equality harbors the risk of a tyranny of the majority against the civil rights and liberties of the minority. In America, on the other hand, local democracy, but also federalism and the judicial branch had positioned themselves as strong opposing forces that could safeguard the spirit of freedom.

When asked by the parliamentary committee whether he could relate any negative experiences with public voting or positive ones with secret balloting in the US in light of the impressions he had gained on his travels, Tocqueville responded for the record with the following overall assessment:

“I can only give a general notion of the secret voting in America and that notion is this: 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.”<sup>10</sup>

According to him, cases of corruption were rare, and public voting was a straightforward procedure. Tocqueville saw two reasons for this. For one thing, the American government was not strong enough for citizens to perceive it as a threat. “While the Government in America is weak there is no individual or at least a very small number whose favor is to be courted or whose power was to be feared” (ibid.). He pointed out a second factor: that US voters also had few repercussions from their fellow citizens to fear.

In other words, Tocqueville’s reasoning for his positive view of public voting in the US was clearly related to American statehood and social structure. He focused especially on

9 In his remarks on electoral law in this book, Tocqueville discusses the advantages of indirect elections and appropriate length of time between elections, but not the form of voting per se (see: Tocqueville 1835: 204-206).

10 Alexis de Tocqueville’s statement before the Select Committee on Bribery at Elections in the English House of Commons (In: Report of the Select Committee on Bribery at Elections, August 1835. Parliamentary Papers; London 1835, Vol. 8, 230-241, here: 238).

America's distinctive socio-structural characteristics. In light of the country's size and high social mobility, American voters had nothing to fear due to public voting, from which he concluded, "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" (ibid.). If we follow Tocqueville, the practice of public voting in the US at the time was an integral institution of American democracy.

Tocqueville's famous prediction in the first volume of his book from 1835 on America was that democracy would prevail in Europe as well. His concern about the perspectives of democracy in Europe is also well-known: Although democracy in the US had institutionalized home rule, thereby succeeding in creating a strong opposing force against political centralization and uncompromising majority rule, there was reason to fear that democracy in Europe, where the struggle for equality had not yet been fought and there was no tradition of home rule, would for the most part benefit the centralization of power. If equalization of property and education as well as equitable division of social positions of power could not be guaranteed, then there was reason to fear despotism of those who would claim centralized power. Against this background, it is a great pity that Tocqueville was not asked by the parliamentary committee to assess public voting in the context of the societal conditions in England or France which, after all, Tocqueville considered to be in the middle of a transition from a traditionally hierarchical society to a modern one.

Tocqueville was not alone with his view of the US. James Mill too had explicitly excluded the US from his demand for secret balloting in an influential plea for it in the *Westminster Review*. For in America, it was not the aristocratic "sinister interests" that dominated, but it was rather a country with lesser social differences, 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 US, and explained: "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).

The assumption that, in light of the existing societal conditions, voters in America had no need to fear repercussions if their own political convictions were to become known, led to

bizarre social-revolutionary constellations in the United States from time to time. During the Kentucky constitutional convention in 1890, an argument broke out about the question whether the open *viva voce* elections to date had been linked to cases of corruption. If this accusation proved to be true, representative Charles Montgomery argued, then the solution was not to introduce secret balloting, but to rethink the relationship of 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.”<sup>11</sup> Montgomery feared that public voting would be abused by these rich people. 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, according to Montgomery, was to create social conditions in which the “public sentiment can be developed unrestricted” (ibid.).

Benjamin Reece had used a similarly radical argument in the debate about electoral law in the state of New York 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 form 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,” Reece argued, “no system of ballot reform can ever be devised to prevent bribery” (Reece 1889: 38).

Tocqueville, James Mill, Charles Montgomery and Benjamin Reece shared the conviction that elections were to be handled by means of public voting in a society in which the structures of traditional social conditions of dependence were in the process of dissolution. They differed only in their assessments of contemporary American society. While Tocqueville and Mill considered it to have already reached a stage in which public voting could be practiced without reservations, Montgomery and Reece called for farther-reaching

11 Montgomery's statement (In: Official Report of the Debates and Proceedings of the Kentucky Constitutional Convention. Frankfort 1890, p. 2022).

social changes so that the citizens could practice the only form of voting appropriate for democracy – public voting – without fearing sanctions.

#### 4. Rudolf von Gneist and the Specters of Mob Democracy

The Prussian constitutional law expert Rudolf von Gneist (1816-1895) presented a far more pessimistic assessment of the societal processes of modernization. To Gneist, a parliamentarian in the Prussian *Landtag* for the arch-conservative ‘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. All 25 German member states of the Reich had their 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 US. However, one could say that a particular duality in the period of 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 *viva voce* until the collapse of the Kaiserreich at the end of World War I. So in Prussia, citizens cast their vote at the elections for the *Reichstag* by a secret ballot, whereas the same citizens voted *viva voce* for the *Landtag*. The political battle which was fought in Prussia mainly by the working class movement and the Social Democratic Party was to overcome this duality and introduce the laws of the Reich to the state of Prussia, too.<sup>12</sup>

According to Gneist, Bismarck and the Reich already had moved in the wrong direction. Gneist was opposed to the secret ballot because it would downright educate citizens to act irresponsibly and provoke spontaneous moods 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:

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

“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).

Secret balloting does nothing less than symbolizing the dominion of an irresponsible society of the state’s agencies of order. In his 1879 book “*Der Rechtsstaat 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 the lessened 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 19<sup>th</sup> 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 on a part of it by committing themselves to it.”<sup>13</sup>

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 above, 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 a 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. In this 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.”<sup>14</sup>

13 Rudolf von Gneist's statement (In: *Stenographische Berichte über die Verhandlungen des Abgeordnetenhauses des Preußischen Landtages*. Berlin 1883, 217).

14 Rudolf von Gneist's statement (In: *Stenographische Berichte über die Verhandlungen des Abgeordnetenhauses des Preußischen Landtages*. Berlin 1883, 217). Very similarly also Gneist (1879: 244pp. and 1894: 269pp.).

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. In a certain sense, Gneist was already championing Stein Rokkan’s thesis of modernization – but in contrast to Rokkan, he saw his diagnosis of society in a decidedly negative light and considered public electoral law to be a means of mobilizing community spirit to oppose the atomizing effects of looming mass society.

### **5. Emile Durkheim and the Critique of the Individualizing Polity.**

A variation of Gneist's theses can be found in the political sociology of the French sociologist Emile Durkheim (1858-1917).<sup>15</sup> In his lectures on “*Physique des moers et du droit*” (The Physics of Mores and Law), Durkheim expressed reservations to the system of secret balloting in France at the beginning of the 20<sup>th</sup> century. However, in contrast to Gneist, the force behind his assessment is not the ideal of the feudal society, and his considerations reveal no blanket rejection of the modernization processes of the 19th century. 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 anomies 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 anomies 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.

In his lectures on “*Physique des moers et du droit*,” 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 concerns himself in more depth with the

15 On the context of Durkheim’s political sociology see: Müller (1993).

consequences that modernization entails for the field of politics and the organization of the political system. He diagnoses that the stage of development of the division of labor and of technology and science on the one hand and the societal and political moral awareness on the other are drifting apart. The citizens' moral and cognitive competences were unable to keep up with this dynamic of development. They were stagnating and even threatening to vanish. However, Durkheim sees that opportunities for remedying the problem exist, and he assumes them to be found not least in the modes of institutionalizing political decision-making processes.

Durkheim criticizes secret balloting 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 1950: 125).<sup>16</sup> 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 that:

“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 défiler devant l’urne.” (Durkheim 1950: 127).<sup>17</sup>

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 1950: 126) and “incompétence radicale” (Durkheim 1950: 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 1950: 96).<sup>18</sup>

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:

16 “Nothing more than a quantitative addition of individual opinions”.

17 “.. have come together only for this particular occasion, who do not know each other, who have not contributed to a collective political opinion in the past, and who now one after the other go to the urn to cast the ballot.”

18 “unreflected, automatic, and blind action.”

“Les discussions des assemblées, forme collective de ce qu’est la délibération dans la vie de l’individu, ont précisément pour objet de tenir bien clairs, de forcer les esprits à prendre conscience des motifs qui les incitent dans tel ou tel sens, à se rendre compte de ce qu’ils font” (Durkheim 1950: 96).<sup>19</sup>

According to Durkheim, the territorial principle with its large voting districts can no longer be the basis for establishing the secondary associations which are necessary in modern, functionally differentiated society. Rather they are to be organized along the lines of professional groupings. Durkheim describes the advantages of public debate and public voting as follows:

"Mais supposons que de telles désignations se fassent à la suite d’une élaboration collective, le caractère en sera tout différent. Car quand les hommes pensent en commun, leur pensée est en partie l’oeuvre de la communauté. Celle-ci agit sur eux, pèse sur eux de toute son autorité, contient les velléités égoïstes, oriente les esprits dans un sens collectif.” (Durkheim 1950: 126).<sup>20</sup>

In the electoral assemblies, structured along vocational lines, voting is to be preceded by political discussions. Durkheim considers such processes to be institutions of collective self-enlightenment that can mobilize people against both the power of the state and the dissolution of society into total individualism.

Although Durkheim does not propose the introduction of public voting instead of the anonymous ballot, his critique of the secret vote as the political basis of a modern democracy is obvious. His alternative to the individual vote is the public debate in special political bodies. Institutionalized contexts for “délibération” are to substitute the silent and secret vote. Regardless of the differences of Durkheim’s understanding of “délibération” compared with

19 “The discussions in the assemblies – they constitute the collective form of the deliberation [i.S. of the German ‘überlegen’ and ‘abwägen’ - HB] of the individual – have the goal to bring into the conscience the motives – even to force the people to come to grips with their motives – which lead them in this or that direction and which direct their actions.”

20 “But if we assume that the casting of the vote would follow after a collective elaboration, things would look different. Because when people do think together, their reflections are part of the reflections of the whole community. The community influences them, they have to cope with the authority of the community, which tames their egoistic impulses and provides their reflections with a collective spirit”.

later concepts of deliberation by Jürgen Habermas or Jon Elster,<sup>21</sup> and regardless of how one might assess his proposal of a vocationally-centered modernization of democracy – the difference to Gneist's approach can be delineated distinctly. Gneist had advocated against modernity and for public voting as a means to combat it. Durkheim argues for a moral rationalization of modernity and looked for adequate institutionalized fora of collective political discussion.

### **6. Political Virtue and Modern Mass Democracy: John Stuart Mill**

An even more optimistic perspective is to be found in the late works of John Stuart Mill (1806-1873). Mill's considerations about the advantages of public voting are of interest not least due to the fact that in the 1830s, together with James Mill, his father, and Jeremy Bentham, as a young man he had belonged to the "Philosophical Radicals" who had actively engaged in the demonstrations in England for secret balloting and an expansion of suffrage.<sup>22</sup>

At that early time in his career as a public intellectual, Mill was convinced that the secret ballot would be introduced within a couple of years. In a letter to Tocqueville he assured him in early 1837: "you will soon see the ballot a cabinet measure & then reform will have finally triumphed; the aristocratic principle will be completely annihilated".<sup>23</sup> 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 1830, Mill commented on that incident that all votes which are taken in parliaments have to be in 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.<sup>24</sup> Mill later expanded this argument to all members of the political community.

21 For the different conceptions of "deliberation" in the French, German, and Anglo-Saxon linguistic context see: Sintomer (2009: 219-223).

22 For more about Mill's activities in the ballot movement of the 1830s, see: Thomas 1979 and Kinzer 1982.

23 Mill's letter to Tocqueville of January 7, 1837 (In: John Stuart Mill, Letters, Collected Works, Vol. 13. London, p. 317).

24 See: Urbinati (2002: 110).

Mill's prognosis in his letter to Tocqueville turned out to be 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, at the end of the 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 at the end of the 19<sup>th</sup> 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," the former fellow-campaigner Francis Place wrote in 1868, "he would have cracked his skull."<sup>25</sup>

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.<sup>26</sup>

Some later critics of Mill did not take his defense of public voting seriously or called it "rather curious" (Thompson).<sup>27</sup> In contrast to these views, I would like to present an interpretation of Mill's support for public voting which places it in the contexts of both the republican and the deliberative traditions in political theory.<sup>28</sup> Mill was a principled defender of the public vote, whereas his defense of secret voting was based on prudential 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

25 Quoted in Reeves 2007: 315.

26 See: Kinzer (1982: 49-51).

27 See: Ryan (1974: 212) and Thompson (1976: 98).

28 For this line of interpretation, see: Buchstein (2000a: 624-655) and Urbinati (2002: 106-122).

understand his line of argument, it is important to keep an eye on the social developments in England and on Mill's reaction to them.

The point in time when Mill explicitly turned against supporting the cause for 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."<sup>29</sup> 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).<sup>30</sup> 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 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 quoted comment from his autobiography. For in the early 1850s, Mill wrote his 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. Since then, 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 the chapter of the book) is his assumption about the non-subjectivist legal nature of the right to vote. According to Mill, the main problem with secret balloting was its disastrous psychological effect: it suggested to the voter that "suffrage is given to him for himself; for his particular use and benefit" (Mill 1861: 353).<sup>31</sup> In contrast to this view, he considered the right to vote "morally, in the fullest force of the term, a trust" (354). Arguing

29 Mill's letter to Monteaule of March 20, 1853 (In: John Stuart Mill, Letters, Collected Works, Vol. 14. London, p. 103).

30 See Robson (1971: 15-17).

31 The following page numbers refer to the 2008 edition of Mill's "*Considerations*" by John Gray.

against an individualistic 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.” (355). 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” (355.).

In Mill’s view, it is the political community which had entrusted the individual citizen to participate in politics. On which grounds, he polemically asks the followers of the “right” to vote, could they criticize if someone were to sell this “right” by being corruptible 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 C. Lewis, and added: “Certainly no Athenian voter thought otherwise.”<sup>32</sup>

But according to Mill, this orientation enters the focus of the citizens only if and when the voting practices, too, make it evident that voting was not conceived as an individual right, but as a public trust, a public duty. Mill compares participation in an election with the activity in 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” (354). 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

32 Mill’s letter to G. C. Lewis of March 20, 1859 (In: John Stuart Mill, Letters, Collected Works, Volume 15. London, p. 608).

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” (355). After all, since politics is about jointly seeking the common good, my fellow voters have a quasi-natural 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 as I can in the interest in the political community. Likewise, when it comes to casting the vote, my fellow citizens should feel and think: “every 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” (355). 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 which transform political opinions. In Mill’s view, political institutions have the capacity to either prevent or to 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 Urbinati wrote, Mill considered it a “scarce and non-spontaneous good” which “Must be formed und sustained artificially” (Urbinati 2002: 113).

Mill’s 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 – “under the eye” (355), as quoted above. Mill obviously believes in the disciplinary power of being under the eye of the public. Public reason very often is less powerful than pure self-interest on the 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. Mills believes in a particular psychological effect on the side of the individual voter, which will be created only by full public transparency. The mores mechanism stems from “the sense of being answerable to the public,” produces “a thoughtful

and deliberative character” (360) and thus overcomes pure self-interest or passions – with the only exception of a few “radically bad men” (360). But normally, 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” (360-361).

And even if it may be the case that both secrecy and publicity have the potential to foster hypocrisy – only publicity has the potential to disclose it, too.

In addition to his principled defense of public voting, Mill in his “*Considerations*” was not ignorant to the arguments which were made in the support of the secret ballot. Voting in secret, he writes, is not always and generally unjustified. Thus, Mill adds a prudential argument for the secret ballot to his principled defense of 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. In some situations, it is even imperative that individual voters cannot be made responsible for their decisions by all of their fellow citizens, but some of them may fall into the social category of an extremely “powerful individual” (356). In such cases of clear social dependence, the secret ballot should be understood as a protective institution and “may be the smaller evil” (356).

What is ingenious about Mill's argument in favor of public voting is that he includes a sociological diagnosis of his times into his line of argument. According to Mill, direct personal dependencies are disappearing in the course of England’s newer societal development. The social upheavals of the past and the current social changes do away with the main reasons that could have been put forward in favor of secret balloting. For example, the 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” (356). 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 the ballot was not adopted. Today, the social and political power structures are in a process of tremendous change which 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 as dependent on the higher and middle, as they were a quarter of a century ago” (358).

I do not wish to discuss here whether Mill’s statement about the British society of the 1860s is more accurate than the ones given by Marx or by Macaulay. “A quarter of a century before,” as Mill said – that was 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 not only had made the former reform cause superfluous – it would even be 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:

“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” (357).

In years following the publication of his “*Considerations*,” Mill became known as an ardent defender of public voting in Great Britain. To keep the *viva voce* even became part of the platform for which he ran for the House of Commons in 1865. When Gladstone finally introduced it in the UK in 1872, Mill remained critical: “[the ballot – H.B.] is now, to my

great regret, going to be tried in the United Kingdom,”<sup>33</sup> he wrote in a letter to one of his friends.

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 Great Britain, 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.

But Mill's arguments in favor of the public vote are not without theoretical flaws.<sup>34</sup> 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 the 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.<sup>35</sup> In his biography of Mill, Richard Reeves quotes a critical review by one of Mill's contemporaries, Henry Romily, who had already raised the same objection in 1865. He claimed that despite Mill's intentions, Mill's insistence on the “responsibility to public opinion” may lead voters to simply vote for the most popular candidate.<sup>36</sup> In his response, Mill distinguished 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.”<sup>37</sup> 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.

33 Mill's letter to Hazard of May 18, 1872 (In: John Stuart Mill, Letters, Collected Works, Volume 17. London, p. 1724).

34 For a more elaborate critique, see the discussions in: Buchstein (2000a: 624-655), Urbinati (2002: 106-122), and Lever (2007).

35 For a recent statement of this critique, see: Knight/Thompson (1997: 312-314).

36 See: Reeves (2007: 316).

37 Response from Mill to Romily, quoted in Reeves (2007: 317).

Nadia Urbinati has pointed out that Mill has to state more clearly an additional argument which included a differentiation between indirect and direct harm.<sup>38</sup> As Mill claimed in “*On Liberty*” and 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. This is the freedom that must be protected. But when activities do harm other people, the freedom to do so is not justified. Mill spends many pages in this essay discussing which kinds of activities (reading, speaking, smoking, drinking) may have the potential to harm other people 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 others peoples’ 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 which deserves public control.

In addition, Mill’s assumptions about the beneficial effect of the public vote are based on a doubtful elitist understanding of the processes of political communication. 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 despite Mill’s expectations, he 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 recently 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 pre-modern political thinker and less like a modern one.

38 See: Urbinati (2002: 111).

But even if one takes Mill's assumptions about the beneficial influences of the political elite for granted here, his arguments are 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.<sup>39</sup>

And finally, Mill never seriously discussed the risk of demagoguery in the public sphere and its influence on citizens and the political culture in general. This flaw makes his arguments even less convincing in today's era of multiple devices of electronic mass communication. 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 closely know each other and thus can supervise one another.

There is an indication that Mill himself at least subconsciously was not always fully convinced by his own arguments in favor of public voting. Richard Reeves in his biography of Mill quotes what Mill told Harriet Taylor in 1854 about a dream he had had: “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 be necessary on earth’.”<sup>40</sup>

To sum up my line of argument about the late John Stuart Mill: Mill is probably the most outspoken theorist of an alternative normative model to our Rokkanian understanding of political modernization. His arguments can be read as a modern version of republicanism in democratic theory, and his arguments challenge our principal normative preference for secret voting the most. Nevertheless, his principled arguments for the public vote are inconsistent (both from internal and external perspectives), and his prudential arguments for the public vote were not convincing in his day and are even less convincing today.

39 See: Urbinati (2002: 107).

40 Mill to Harriet Taylor in 1854, quoted in Reeves (2007: 317).

## **7. Modernizing Society, Modernizing Elections: Three Alternatives to Rokkan from the 19<sup>th</sup> Century**

Rudolf Gneist, Emile Durkheim and John Stuart Mill agreed in their opposition to secret balloting. But their arguments were based on very different assessments of modern society and on very different ideas about the psychological mechanism of publicity.

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 anomie and disintegration; to Mill, the modernization due to 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. That 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 freedoms 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.<sup>41</sup> 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 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

41 For Mill see Goodin (1992: 127pp.) and Urbinati (2007: 81pp.); for Durkheim see Schmalz-Bruns (1995: 58pp.) and Sintomer (2009).

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.

In recent years, discussions in the fields of sociology and social philosophy about appropriate ways to describe and assess the multi-faceted processes of individualization in (post-) modern societies have intensified. I will not go into these debates here in more depth, but would like to draw attention to possible consequences in the question of electoral law. If Gneist's pessimistic analysis continues to be valid, then in the future, we should not shake the foundations of secret balloting, and should decisively oppose the creeping erosion of the imperative of confidentiality as we are now experiencing with the expansion of voting by mail and plans for e-voting. If, on the other hand, Mill's optimistic diagnosis of modernization has been proven true one day in the future, then – in contrast to Stein Rokkan's teleological view – the last word may not yet have been spoken about the appropriate form of voting in modern democracies. It would not be the first time that procedures or institutions with the image of being outdated enjoyed a comeback on the reform agenda: one only needs to mention the surprising renaissance of lottery mechanisms<sup>42</sup> as a reform idea.

The disagreement between Gneist, Mill, Durkheim and the other authors mentioned above was not only about different normative conceptions of society and the political order, but also shows a deep disagreement concerning their basic assumptions about the psychological mechanisms at work when citizens act under the eye of the public. In his groundbreaking 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 19<sup>th</sup> century. In the debates about "public voting" in the 19<sup>th</sup> century, however, one can find at least three different models of the public at that time. I would like to name these models the *repressive*, the *dramaturgic*, and the *deliberative* model of publicness.

42 For a comeback of lotteries as instruments in modern democracies see: Dowlen (2008), Buchstein (2009, 2010).

According to the *repressive model of publicness*, publicness serves as a supervising instrument of those who are in political power. Repressive public does not require large meetings or debates among citizens. Those who are in power prefer that anxious citizens show them their personal vote either *viva voce* or by signing their names on the ballot sheet. Publicness is understood a control mechanism of those in power. 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 plays 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 de-personalized. 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” (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.

### **8. Modernizing Elections Again: The Public Vote, the Secret Vote, and the Observable Vote**

The secrecy of the vote in general elections, which was introduced beginning in the late 19<sup>th</sup> century, is under attack again today. This new challenge does not have its power base in doubts raised about its positive effects by a few academics like Brennan, Pettit or in some of my publications on this issue over the last couple of years. Instead, it has slowly been coming through the back door as a consequence of some attempts to further modernize our current mode of voting. The new attack has its base in technical changes of voting processes which their protagonists, for example the British Electoral Commission in 2002, have hailed

as an attempt at “modernizing elections”<sup>43</sup> via the introduction of online voting. In other countries too, the basic claim of these reformers is that they want to modernize elections.<sup>44</sup>

When I speak of an attack against the secret vote in this context, I do not mean the possibility of some famous/anonymous computer hackers from mainland China entering the main servers for online voting in the US or Taiwan and picking the next president; let us assume that the technology can be made safe.<sup>45</sup> But even then, online voting creates tremendous changes which make it different from both traditional public and secret voting and turn it into a new type of voting; I would like to call this type the “observable vote.”

The arguments put forward for the introduction of online-voting are well known: it is supposed to be cheap, easy, fast, correct and safe.<sup>46</sup> If one follows the logic of its most enthusiastic proponents, online voting is not more than a technically sophisticated variation of the traditional postal vote (here, postal voting means voting by “absentee ballot” by mail, not “advance voting at the post office,” as used in Scandinavian terminology). According to most defenders of online voting, citizens cast their votes in the privacy of their homes in both cases, and deliver them to the polling station afterwards by mail or by electronic mail. This analogy to the postal vote points to a crucial constitutional and normative problem of the new technique. Let us take the German case as an illustration of these problems to which I am most familiar with: postal voting has been practiced in the Federal Republic since 1956, but has been accepted by the Constitutional Courts 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 in the former German Democratic Republic (GDR).<sup>47</sup> Similar to the West German constitution, the East German constitution

43 “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).

44 For an overview see the contributions in: Kersting/ Baldersheim (2004) and Trechsel (2010).

45 For different aspects concerning the question of the safety of online voting, see: Buchstein (1997, 2008).

46 For the pro and cons of online voting, see: Buchstein (1997, 2004).

47 For voting practices in former GDR see Kloth (2000); for the official justification of these practices see: Autorenkollektiv (1973: 137).

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 of 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 make use of 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 per cent of East German voters “voluntarily” decided that there were no good reasons to cast the vote 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: “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.” (Schelling 1980: 19).

It is easy to see how hard it is for constitutional courts to accept even the postal vote (absentee ballot by mail). 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 the voter made. The highly controversial nature of the postal ballot can be seen by a brief glance at some European countries. Only half of the current EU member states allow postal ballots, whereas other countries strongly rule it out.<sup>48</sup>

To look at the German example again: On two occasions, the German Constitutional Courts ruled to accept the postal vote as constitutional (1967, 1981) – but only as long as voters convincingly claim that they had no other alternative (due to an illness or a professional trip out of country) than to cast their votes by mail. Normatively, the postal vote was weighed

48 See: Kersting (2004).

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 which prevent citizens from going to the polling station, 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 per cent in 1957 to 21.4 per cent in 2009<sup>49</sup>; in cities like Berlin, Hamburg, Frankfurt and in Cologne in May 2010 even up to 35 to 40 per cent. This increase has led some political scientists and constitutional lawyers 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.<sup>50</sup> If voters use their home PCs, cell phones, Blackberries or iPads 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 family, mafia and potential dealer for votes. So whichever way we look at it, the universal introduction of online voting puts modern democracy at an all-too-familiar crossroad 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 by online voting on the local level in 2005. In 2007, Estonian voters in national elections also had the option to cast their votes online, 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

49 See: Jesse (2010: 93).

50 There are only few exceptions where the postal vote itself has become the general norm. The only case I know is the state of Oregon in the US.

percent to 15.86 percent.<sup>51</sup> 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” in the concept of secret voting.<sup>52</sup> 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 which 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 do not need this kind of shield for their privacy any more.

Some defenders of online voting in Estonia even went one step further to a neo-liberal or stock-market understanding of democracy. When countering the objection that casting one’s vote from one’s home PC or cell phone is not necessarily secret, and that this could make vote 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, 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. If John Stuart Mill could have anticipated that modern defenders of democracy would make such a consumerist normative claim, that would, to put the quote by Francis Place in a new context, “have cracked his skull.”

Online voting makes the individual citizen responsible for defending the secrecy of his or her vote. In contrast to this voluntarily approach, the principle of mandatory secrecy in the

51 For the current status of online voting in Estonia and the empirical data, see: Trechsel (2010) and Martens (2010).

52 For the following see: Drechsler/Madise (2004: 102-104).

voting process is based on the idea of auto-paternalism. 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. 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 or corruption.

Taking its characteristics together, online voting establishes a third mode of voting which is different from both the traditional public and the traditional secret mode. It is a hybrid which I would like to call “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 both models differ in their publicness. In contrast to traditional public voting, observable voting shares with the secret vote that voters have the possibility to vote alone on their PCs, permitting nobody else to take a look at their vote. It is only up to the voter whether he or she wants other people to share his political decision. A facebook-citizen may share it with as much people as possible; other citizens may criticize this as a political striptease and insist on their political privacy.

To sum up: The hybrid type has its differences both to public voting and secret voting. In comparison to secret voting as we practice it today, voters have to find and defend their secrecy on their own, as already discussed at length. In comparison to the traditional understandings of public voting, there is another difference. In most justifications of public voting, “publicness” was understood as a particular sphere in which citizens participated in political communications. It was defended by Mill or Gneist not just as “open voting,” but as an activity which all other citizens took part in, and were interested in. The “public” realm was a heroic one of 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 publicity, it consists only of those people whom the voter wants to give a chance to observe his or her voting decision.

## 9. Conclusions

Some of the arguments in this paper can be summarized with the following four conclusions.

1. Stein Rokkan's model of the historical emergence of secret voting in the context of political modernization of modern mass democracies has become the basis of both our historical and normative understandings of these processes. In this regard, modern democratic theorists are (nearly) all "Rokkanists." From a purely empirical point of view, however, Rokkan's model does not fit all historical cases of the last 150 years (exceptions in Europe are Denmark, Russia, Prussia and Hungary; and on the other side of the Atlantic, a number of states in the US do not fit Rokkan's model<sup>53</sup>). In this paper, I focused on another aspect of Rokkan's heritage. Authors such as Gneist, Durkheim and Mill present additional and differing normative contextualisations of secret voting. For them – in particular for John Stuart Mill – political modernization is supposed to go hand in hand with the introduction of the public vote.

2. The debates about public and secret voting in the 19<sup>th</sup> century are complex, and one can find very different kinds of arguments on both sides. With respect to the "public" in "public voting," one can find at least three different models of "publicness": I called these models the *repressive*, the *dramaturgic*, and the *deliberative* models of publicness.

3. The late John Stuart Mill is the most outspoken theorist of an alternative normative model to our Rokkanian understanding of political modernization. Mill can be read as a modern advocate of republicanism in democratic theory, and his arguments challenge our principal normative preference for secret voting the most. His principled arguments for the public vote, however, are contradictory (both from internal and external perspectives), and his prudential arguments for the public vote were not convincing in his day and are even less convincing today.

53 For Europe, see: Buchstein (2000a: 387-395); for the US, see: Buchstein (2000b).

4. Today, the secret ballot is under a new wave of attack. This time, the attack can be detected in the introduction of online voting as a means of electoral modernization. Online voting has established a hybrid mode of voting which is different from (and shares some of the characteristics of) both the traditional public and the traditional secret modes of voting. I called this new hybrid the “observable vote.” 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. At the same time, the voter has the possibility to make his or her vote known to other persons easily. 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.

Our current modern society is undergoing tremendous changes with respect to the technological possibilities to make all aspects of our personal and political life public via internet. There is empirical evidence that the majority of the generation of the Native Digitals is getting used to a life in which they want to share their secrets with others. It will be interesting to see whether and how the secrecy of the vote as one of the classical normative standards for modern democracy will survive these technological and cultural changes.

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