

Cambridge University Press

978-1-107-13014-2 - The Sleeping Sovereign: The Invention of Modern Democracy

Richard Tuck

Excerpt

[More information](#)

1

Jean Bodin

In his eighth *Letter from the Mountain*, written in 1764 in defence of his *Social Contract* and *Emile*, against attacks made on them in Geneva, Rousseau declared that ‘Up to the present the democratic Constitution has been poorly examined. All those who have spoken about it either did not know it, or took too little interest in it, or had an interest in presenting it in a false light. None of them have sufficiently distinguished the Sovereign from the Government’.¹ What he meant by this, he made clear both in the *Social Contract* and elsewhere in the *Letters from the Mountain*, was that the ancient democracies, in which the citizens gathered in an assembly on a regular basis to administer their societies and make judgements of policy about all matters of concern to them, were not an appropriate model for the kind of democracy he advocated. They had not distinguished between ‘government’ and ‘sovereignty’, and had treated both day-to-day policy questions and fundamental decisions about the organisation of their societies as falling within the scope of the democratic assembly.

¹ Michel Launay (ed.), *Oeuvres complètes* (Paris: Éditions du Seuil, 1971), vol. III, p. 465; for translation, see translation by Christopher Kelly and Judith Bush, in Christopher Kelly and Eve Grace (eds.), *Letter to Beaumont, Letters Written from the Mountain, and Related Writings* (Hanover, NH: University Press of New England, 2001), p. 257.

1

Cambridge University Press

978-1-107-13014-2 - The Sleeping Sovereign: The Invention of Modern Democracy

Richard Tuck

Excerpt

[More information](#)

THE SLEEPING SOVEREIGN

Against this view, Rousseau insisted that his democracy would be restricted to acts of sovereignty, affecting the fundamental legal structure, and that government – including even such things as decisions on going to war – would not ideally be democratic in character (his own preference was for aristocracy). In the *Social Contract* he described this kind of democracy as a ‘republic’, partly in order precisely to avoid the implication in the familiar notion of a democracy that it must have a democratic *government*. But in the *Letters from the Mountain* he was happy to apply the term *democracy* to his kind of republic, and in the ninth *Letter* he made clear (much clearer, in fact, than he had done in the *Social Contract* itself) that a distinction of this kind permitted the reappearance of democracy in the modern world, a world in which citizens simply could not give the time and attention to government that had been possible for their ancient predecessors. Even in a city the size of Geneva, he wrote, ancient politics could not be revived:

Ancient Peoples are no longer a model for modern ones; they are too alien to them in every respect. You above all, Genevans, keep your place, and do not go for the lofty objects that are presented to you in order to hide the abyss that is being dug in front of you. You are neither Romans, nor Spartans; you are not even Athenians. Leave aside these great names that do not suit you. You are Merchants, Artisans, Bourgeois, always occupied with their private interests, with their work, with their trafficking, with their gain; people for whom even liberty is only a means for acquiring without obstacle and for possessing in safety.

Cambridge University Press

978-1-107-13014-2 - The Sleeping Sovereign: The Invention of Modern Democracy

Richard Tuck

Excerpt

[More information](#)

JEAN BODIN

This situation demands maxims particular to you. Not being idle as ancient Peoples were, you cannot ceaselessly occupy yourselves with the Government as they did: but by that very fact that you can less constantly keep watch over it, it should be instituted in such a way that it might be easier for you to see its intrigues and provide for abuses. Every public effort that your interest demands ought to be made all the easier for you to fulfil since it is an effort that costs you and that you do not make willingly. For to wish to unburden yourselves of them completely is to wish to cease being free. 'It is necessary to choose,' says the beneficent Philosopher, 'and those who cannot bear work have only to seek rest in servitude'.²

In the *Letters* he was chiefly concerned with the inapplicability of ancient democratic government even to a small city such as Geneva, because modern commercial conditions meant that citizens, even if they could meet in an assembly, could not do so in the near-continuous session that ancient politics demanded. But in his *Considerations on the Government of Poland* (1772) he used the same distinction between *sovereign* and *government* to recommend a constitutional restructuring for a large modern state in which it was physically impossible for the citizens to meet

² Launay (ed.), *Oeuvres complètes*, vol. III, p. 483; *Letter to Beaumont, Letters Written from the Mountain, and Related Writings*, pp. 292–3. The 'beneficent Philosopher' is Stanislas Leszczyński, and the quotation is from his *La voix libre du citoyen, ou Observations sur le gouvernement de Pologne* (n.p., 1749) Part 1, p. 195.

Cambridge University Press

978-1-107-13014-2 - The Sleeping Sovereign: The Invention of Modern Democracy

Richard Tuck

Excerpt

[More information](#)

THE SLEEPING SOVEREIGN

together.³ It is clear that in his eyes the distinction was absolutely essential if democratic politics were to be reintroduced to a world of large commercial states, and his early readers immediately saw its significance. When Turgot wrote to Hume in 1767 about Rousseau, he said of the *Social Contract* that ‘this book is in essence a precise distinction between the sovereign and the government; but that distinction reveals to us an extremely illuminating truth, and seems to me to have established for all time the idea of the inalienability of the people’s sovereignty under whatever government they find themselves’.⁴ Similarly, Pierre-Samuel du Pont de Nemours wrote in his copy of the first edition of the *Social Contract*, ‘It is in this excellent terminology [*nomenclature*], in the precise and accurate notion which Rousseau gives of the *Sovereign*, and in the distinction between it and *Government* that the principal merit of the book consists. This merit is very great and is a part of

³ For example, ‘One of the vices of the Polish constitution is that it fails to distinguish sufficiently clearly between legislation and administration, and that in the course of exercising legislative power, the Diet mixes in bits of administration, performing indifferently acts of sovereignty and acts of government, often even mixed acts in which its members are simultaneously magistrates and legislators’ (chapter 9). Launay (ed.), *Oeuvres complètes*, vol. III, p. 546; translation from Victor Gourevitch (ed.), *The Social Contract and Other Later Political Writings* (Cambridge University Press, 1997), p. 217.

⁴ ‘ce livre se réduit à la distinction précise du souverain et du gouvernement; mais cette distinction présente une vérité bien lumineuse, et qui me paraît fixer à jamais les idées sur l’inaliénabilité de la souveraineté du peuple dans quelque gouvernement que se soit’. *Oeuvres de Turgot et documents le concernant*, ed. Gustave Schelle (Paris: F.Alcan, 1913–23), vol. II, p. 660.

JEAN BODIN

the science of political economy which belongs to Jean-Jacques and only to him'.⁵

Two innovations were needed before a theory of this kind could be put forward, a theory that (as we shall see) corresponds to what has become the default constitutional structure of most modern states, in which a procedure such as a plebiscite is used to ratify fundamental constitutional legislation, whereas an elected assembly or set of assemblies legislate on less fundamental matters. Both are to be found in Rousseau. One was the idea that sovereignty and government can be distinguished, and that different kinds of legislation are appropriate to the different levels – this idea is going to be the principal subject of this book. The other is less obvious but still contributed importantly to the creation of a new way of thinking about democracy: it was that it is possible or even desirable to restrict democratic action to a final judgement about what should be binding on the society, and to exclude from democracy to a great extent the process of *collective deliberation*. That exclusion seems surprising to many modern theorists of democracy, for whom (following an idealised and in many ways unhistorical picture of an ancient assembly) the activity of citizens conferring and arguing about their collective decisions is central to the nature of democratic politics. But part of Rousseau's claim that modern states can be democratic was that the principal act of the democratic citizen is the *vote* and not the discussion; indeed, he strikingly

⁵ Jean A. Perkins, 'Rousseau jugé par Du Pont de Nemours', *Annales de la Société J.-J. Rousseau* 39 (1972), p. 186. I am indebted to Graham Clure for directing me to this work.

Cambridge University Press

978-1-107-13014-2 - The Sleeping Sovereign: The Invention of Modern Democracy

Richard Tuck

Excerpt

[More information](#)

THE SLEEPING SOVEREIGN

remarked in the *Social Contract* that the ideal democratic moment would be ‘if, when the people, being furnished with adequate information, held its deliberations, the citizens had no communication one with another’, and went on to say that it was the activity of communicating with one another that gave rise eventually to what he called ‘partial associations’ and the eventual corruption of the state.⁶ Like much in Rousseau, as we shall see, this looked back to Hobbes, who had famously denounced deliberative assemblies but was willing to concede that non-deliberative democracy could be a reasonable means of organising a state.⁷

The objection to ancient democracy in a modern state had always been presented as primarily logistical (so to speak), in that the citizens of a modern state could not physically gather together or could not find the time to do so. But implicit in this as an objection was the conviction that the gathering would be to discuss legislation. This was why the election of representatives (which had after all been part of

⁶ Book II, chapter 3. Launay (ed.), *Oeuvres complètes*, vol. II, p. 527; G. D. H. Cole (ed. and trans.), *The Social Contract and Discourses*, rev. by J. H. Brumfitt and John C. Hall (London: J. M. Dent, 1973), p. 185.

⁷ He said this clearly in *De Cive*, x.15: ‘if in a *Democracy* the *people* should choose to concentrate deliberations about war and peace and legislation in the hands of just one man or of a very small number of men, and were happy to appoint magistrates and public ministers, i.e. to have authority without executive power [*authoritate sine ministerio*], then it must be admitted that *Democracy* and *Monarchy* would be equal in this matter’. Richard Tuck and Michael Silverthorne (eds.), *On the Citizen* (Cambridge University Press, 1998), p. 125. For the Latin text see Howard Warrender (ed.), *De Cive: The Latin Version* (Oxford University Press, 1983), p. 179.

Cambridge University Press

978-1-107-13014-2 - The Sleeping Sovereign: The Invention of Modern Democracy

Richard Tuck

Excerpt

[More information](#)

JEAN BODIN

the basic structure of government in most Western states for 500 years or more) was not seen as the act of a democracy, for the deliberative and legislative activity of the society was restricted to those representatives.⁸ Once it was recognised

⁸ See for a full discussion of this, see Nadia Urbinati, *Representative Democracy: Principles and Genealogy* (Chicago University Press, 2006). As Gerald Stourzh first observed (I believe), the term *representative democracy* appeared for the first time in a letter of Alexander Hamilton commending the new constitution of New York State in 1777 (Gerald Stourzh, *Alexander Hamilton and the Idea of Representative Government* (Stanford: Stanford University Press, 1970), p. 49 and p. 223, n. 36; see also Pierre Rosanvallon, *Le peuple introuvable* (Paris: Gallimard, 1998), p. 11, n. 2). Hamilton's letter was not published until 1904 (in Henry Cabot Lodge's edition of *Hamilton's Works* (New York: G.P. Putnam's Sons, 1904), vol. ix, p. 72), so the first appearance in print seems to have been in the lexicographer Noah Webster's *Sketches of American Policy* (Hartford, CT, 1785), in the context (curiously) of a series of unacknowledged extracts from the *Social Contract* in the form of the standard eighteenth-century English translation of the work *A Treatise on the Social Compact; or The Principles of Politic Law* (London, 1764). After faithfully rehearsing Rousseau's views, Webster suddenly concluded that 'In large communities, the individuals are too numerous to assemble for the purpose of legislation; for which reason, the people appear by substitutes or agents; persons of their own choice. A representative democracy seems therefore to be the most perfect system of government that is practicable on earth' (p. 11). In French, the term first appears (as *démocratie représentative*) in Condorcet's *Lettres d'un bourgeois de New-Heaven [sic] à un citoyen de Virginie*, in Philip Mazzei's *Recherches Historiques et Politiques sur les États-Unis de l'Amérique Septentrionale* (Paris, 1788), vol. i, p. 361; presumably Condorcet picked it up from Webster rather than from Hamilton. A puzzle remains about the use of the term in an essay by Mazzei himself. His *Memorie della vita e delle peregrinazioni del fiorentino Filippo Mazzei* (published posthumously at Lugano in 1846, but written c.1813) includes *Frammenti di scritti pubblicati nelle gazzette al*

Cambridge University Press

978-1-107-13014-2 - The Sleeping Sovereign: The Invention of Modern Democracy

Richard Tuck

Excerpt

[More information](#)

THE SLEEPING SOVEREIGN

that the element of discussion in their activity could be slight or even non-existent, and once it was recognised that the important acts of democratic sovereignty were by their very nature infrequent, the way was open to recreate democracy in a modern setting and get the citizens as a whole to legislate as well as to elect. And as we shall see, the opportunity to do so was taken in the generation immediately after Rousseau, on both sides of the Atlantic.

Although in the *Letters* Rousseau claimed that no one had used the distinction between *sovereign* and *government* to interpret democratic constitutions, and while in the *Social Contract* he warned that his long discussion of the distinction in Book III ‘requires careful reading’ (with the implication that it was unfamiliar and difficult to follow), he must in fact have been well aware that he was not the first person to use it, and furthermore that

principio della rivoluzione americana da un cittadino di Virginia [‘citizen of Virginia’, a nom de plume Mazzei used in his American writings; see below p. 149]’. In these *frammenti* he praises *democrazia* (*voglio dire una democrazia rappresentativa*) as the only government under which one can enjoy liberty (vol. II, p. 287). The *frammenti* are principally an attack on the British constitution, something which in the *Memorie* Mazzei said he had been attacking in print and in conversation in 1776 (vol. I, p. 367), and which is criticised in various manuscripts among Mazzei’s surviving papers which seem to date from that year, though their status and indeed authorship is not at all clear (Philip Mazzei, *Selected Writings and Correspondence*, ed. Margherita Marchione [Prato: Edizioni del Palazzo, 1983], vol. I, pp. 98, 102, 106, 112). But no article in any journal of the period has turned up to correspond to what Mazzei recalled, nor do his papers include the *frammenti* that he reproduced in his *Memorie*.

JEAN BODIN

he was not even the first person to apply it to the question of democracy. His remark in Book III, chapter 1 that ‘government’ is ‘often wrongly confused with the Sovereign, whose minister it is’ indeed suggests that he recognised that sometimes it had *not* been wrongly confused. But (as we shall see later in this book) for more or less a century the distinction had been either disregarded or expressly repudiated by the principal European political theorists, so that it was not unreasonable for Rousseau to present his own extensive use of it as an innovation. And, I think, it was no accident that Rousseau revived it in the context of a defence of democracy, because as we shall also see it had been its association with democracy that had led to its repudiation in the first place.

The first person to insist on the importance of a distinction of this kind, as his contemporaries and successors well understood, had in fact been Jean Bodin, writing in the 1560s and 1570s. It is a central feature of his theory of sovereignty, something that should have puzzled Bodin’s modern readers more than it generally has done: for, as Rousseau’s use of the distinction illustrates, it seems to fit more naturally into a defence of modern democratic politics than into the kind of ‘absolutist’ theory commonly ascribed to Bodin. But as we shall see, though Bodin’s principal objective in formulating the distinction was not to defend democratic politics of a Rousseauian kind, he was more sympathetic to them than one might have expected, and furthermore his actual objective was much less ‘absolutist’ than we have been led to think. I shall argue that he was fundamentally more interested in defending the

Cambridge University Press

978-1-107-13014-2 - The Sleeping Sovereign: The Invention of Modern Democracy

Richard Tuck

Excerpt

[More information](#)

THE SLEEPING SOVEREIGN

independence and standing of the French parlements than in constructing a theory of absolute monarchical power.⁹

The distinction made its first appearance in chapter 6 of his *Methodus ad facilem historiarum cognitionem* of 1566, a long chapter devoted to the *status Rerumpublicarum*.¹⁰ Though this has, I think, not been observed before, the chapter is structured as a fairly methodical and radical critique of Aristotle's *Politics* Books III to VIII in which Bodin moved through the various arguments of Aristotle about the nature of states, systematically refuting them.¹¹ Towards the beginning

⁹ Bodin's use of the distinction is beginning to attract the attention of scholars after many years of neglect; see in particular Daniel Lee, 'Office is a thing borrowed: Jean Bodin on offices and seignorial government', *Political Theory* 41 (2013), pp. 409–40 and Kinch Hoekstra, 'Early modern absolutism and constitutionalism', *Cardozo Law Review* 34 (2012–13), pp. 1079–98.

¹⁰ There are important differences between the first and second editions of Bodin's *Methodus*, which have recently been clarified in Sara Miglietti's critical edition of the work: see Bodin, *Methodus ad facilem historiarum cognitionem*, trans. into Italian by Sara Miglietti (ed.), (Pisa: Edizioni della Normale, 2013). For convenience, I will give references to Miglietti's edition, to the first edition (Paris, 1566), to the second edition (Paris, 1572), and to the English translation by Beatrice Reynolds, *Method for the Easy Comprehension of History* (New York: Columbia University Press, 1945).

¹¹ One can see this particularly clearly if one compares the sequence of discussions in chapter 6 with Jacques Lefèvre d'Étaples's *In Politica Aristotelis Introductio* (1508, but regularly reprinted in the early sixteenth century), with which Bodin was no doubt extremely familiar. This was a précis of the *Politics*, which highlighted exactly the topics Bodin dealt with in chapter 6, in the order in which he dealt with them. Only the first part of the *Introductio*, on the household, and the last part, on education, were not used in Bodin's critique (though there is a brief discussion