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

Richard Tuck

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The Sleeping Sovereign

Richard Tuck traces the history of the distinction between sovereignty and government and its relevance to the development of democratic thought. Tuck shows that this was a central issue in the political debates of the seventeenth and eighteenth centuries, and provides a new interpretation of the political thought of Bodin, Hobbes and Rousseau. Integrating legal theory and the history of political thought, he also provides one of the first modern histories of the constitutional referendum, and shows the importance of the United States in the history of the referendum. The book derives from the John Robert Seeley Lectures delivered by Richard Tuck at the University of Cambridge in 2012, and will appeal to students and scholars of the history of ideas, political theory and political philosophy.

RICHARD TUCK is Frank G. Thomson Professor of Government at Harvard University. He is the author of *Natural Rights Theories* (Cambridge University Press, 1979), *Hobbes* (1989), *Philosophy and Government 1572–1651* (Cambridge University Press, 1993), *The Rights of War and Peace: Political Thought and the International Order from Grotius to Kant* (1999) and *Free Riding* (2008). He is also the editor of standard editions of Hobbes and Grotius.

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PREFACE

This book is an expanded version of the Seeley Lectures, which I delivered to the University of Cambridge in May 2012. I would like to thank John Robertson and the History faculty of the university, as well as Richard Fisher and Cambridge University Press, for the invitation to give the lectures, and for their continued help and advice over their publication. Though I have added a significant amount of material, I have chosen to retain the structure that I used originally, namely four chapters on, respectively, ‘Jean Bodin’, ‘Grotius, Hobbes and Pufendorf’, ‘The eighteenth century’ and ‘America’; but I have added a conclusion in which I have briefly developed some of the general implications of what I am saying.

The title of the book refers to a long passage in Thomas Hobbes’s *De Cive* of 1642, in which Hobbes worked systematically through an extensive analogy between a democratic sovereign and a sleeping monarch, a passage I discuss in detail in the second chapter. Remarkably, it is one of the first full accounts of how we might think about democracies to be found in the literature of political theory after the disappearance of the ancient republics, despite the fact that Hobbes was primarily interested in defending the sovereignty of the kings of England. In it, Hobbes argued that a sovereign democracy need not be involved at all in the ordinary business of government; it could simply determine who should rule on its behalf and how in general they should behave, and then

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retire into the shadows, just as a monarch might appoint a vizier to govern in his place before going to sleep. Government – the prime activity of the ancient democracies, with their constant meetings of citizens to decide all kinds of matters including court cases – need not in fact be the activity of a democracy at all.

This is a graphic image, typical of Hobbes's writings, but he himself did little with it other than offer it as a theoretical possibility to his readers. The person for whom an idea of this kind really mattered was Jean-Jacques Rousseau; indeed, I would argue that as a result of neglecting his use of the distinction we have seriously misunderstood the degree to which Rousseau accepted the practical exigencies of modern politics. Contrary to what many of his recent readers have thought, Rousseau believed that ancient democracy was not an appropriate model for modern societies, in which constant political participation by all the citizens is not feasible. However, he did think that modern societies can be democracies if they are what we might call the Hobbesian kind. We will have to accept that *governing* is not the same as *authorising* the actions of a government, but at the same time we must find some means of allowing the mass electorate of a modern state to pass fundamental legislation. Merely electing representatives was not (Rousseau thought) enough to count as the action of a democratic sovereign, and his successors' search for the appropriate means of institutionalising this fundamental legislative power is a large part of my theme.

So it is Rousseau's various discussions of the difference between 'sovereignty' and 'government' that form the

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centre-piece of this book and from which I look both backwards and forwards. In the first chapter I move from Rousseau back to the first appearance of a clear distinction between sovereignty and government, in the work of the sixteenth-century French theorist Jean Bodin, and in the second chapter I discuss Hobbes's use of the distinction and the opposition it aroused among contemporaries. The third chapter deals expressly with Rousseau, and the men who (I argue) applied Rousseau's ideas in this area to practical constitution-making in the French Revolution via the idea of a constitutional plebiscite, in which the sovereign people can indeed act as a genuine legislator and then withdraw from the activity of government. As with Hobbes, there was strenuous opposition to this idea; unlike most modern writers on the subject, I treat the great constitutional theorist the Abbé Sieyès as an opponent of the way the distinction between sovereign and government was implemented in the Revolutionary constitutions, and the politicians associated with the Girondin party as the true heirs (in this respect) of Rousseau. The fourth chapter continues the theme of constitution-making, this time in the newly independent American republic, where (I argue) there came to be a similar reliance upon a plebiscitary model of popular sovereignty, at least at the state level; even at the federal level, I think, there was an attempt to structure the new constitution in a way that reflected the fundamental division between acts of sovereignty and acts of government. And, as I said, I have added a conclusion in which the implications of this story for modern constitutional thought are outlined.

In addition to giving the Seeley Lectures, I presented some of the material at Jena University, the Yale Law School

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Legal Theory Workshop, the Popular Sovereignty Workshop at Queen Mary University of London, and as a Safra Center Lecture at Harvard; for these invitations, and for their extremely helpful comments, I would like to thank Alexander Schmidt at Jena, Scott Shapiro at Yale, Richard Bourke and Quentin Skinner at Queen Mary and Larry Lessig at Harvard. Many other colleagues and students have read drafts or have attended these lectures and given me their thoughts; among them Bruce Ackerman, Duncan Bell, Seyla Benhabib, Ann Blair, Annabel Brett, Daniela Cammack, Graham Clure, Greg Conti, Alan Cromartie, Noah Dauber, John Dunn, Katrina Forrester, Ben Friedman, Bryan Garsten, Mark Goldie, Alex Gourevitch, Mark Hanin, Kinch Hoekstra, Duncan Kelly, Sungho Kimlee, Madhav Khosla, James Kloppenberg, Tsin Yen Koh, Melissa Lane, Adam Levovitz, Daniel Lee, Michael Lesley, Karuna Mantena, Michael Mencher, Isaac Nakhimovsky, David Runciman, Magnus Ryan, Paul Sagar, Sophie Smith, Mark Somos, Michael Sonenscher, Sophy Tuck, James Tully, Namita Wahi and Daniel Wikler. I am particularly indebted to Michael Lesley and Daniela Cammack for helping me with the proofs.

I would like to thank three people in particular for their extensive help and detailed advice. One is my colleague at Harvard, Eric Nelson, whose own work on eighteenth-century America turned out to run parallel in interesting ways to mine, and who read and commented on the final draft. Another is my former student, now an Associate Professor at the Yale Law School, David Grewal, who provided me with the fullest possible comments on the draft, and who has been a constant source of support and inspiration. But the third, alas, I can no longer thank in person. That is Istvan Hont, for many

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years a friend and a colleague at Cambridge, who always understood what I was thinking better than I did myself, and to whom I was talking about this material even in the last months of his life. He died on 29 March 2013, and this book is dedicated to his memory.