

Public Reasons, Secret Ballots and a Robust Democracy: Views from Nineteenth Century Britain¹

Doan Papers University of Oxford / Sciences Po Paris

It is widely acknowledged that the secrecy of voting in general elections is an indispensable part of democratic procedure. For instance, the International Covenant on Civil and Political Rights calls for the secrecy of voting in article twenty-five, as do the consolidated EU treaties in article fourteen and the Inter-Parliamentary Council Declaration on Criteria for Free and Fair Elections, to name but a few of many sources establishing this norm. The level of secrecy during an election is used as an indicator to establish the correct running of electoral processes; along with measures against ballot stuffing and vote-buying, the secrecy of the vote is one of the aspects of an election that election monitors and watchdogs focus their attention on.

This essay examines historical reasons for why the vote ought or ought not be secret, relating these arguments to contemporary context². To begin with some conceptual clarification: I use 'secret vote' and 'secret ballot' interchangeably. When I use 'ballot' alone in the context of nineteenth century political discourse I also mean 'secret ballot', following the usage of that time. With these three terms I mean to cordon off a range of voting practices that share a commonality in that

¹ I would like to thank Tom Crook and Bruce Kinzer for sharing their knowledge and for helpful suggestions. Thanks are also due to Balliol College, Oxford, the Vreedefonds and the Stichting Fundatie van de Vrijvrouwe van Renswoude, from whom I received support during the writing of this paper.

² This essay is not a work of history. My view is that the historical debate on the secret ballot is on the whole richer and deeper than the contemporary debate. I thus think that reviving the arguments of the fiercest period of that debate, in one of the fiercest arenas, is a valuable lens through which to think of the ballot as it exists now, and the possibilities of alternative voting practices in other times and places. I did not get dusty researching the historical part. I rely fully on those more qualified in historical methodology and more pertinacious in their pursuit of historical fact. The histories of the ballot in Britain that I rely on most are: Tom Crook and Malcolm Crook's 'The Advent of the Secret Ballot in Britain and France, 1789-1914: From Public Assembly to Private Compartment', *History*, 92 (2007) pp. 449-471; Bruce Kinzer's *The Ballot Question in Nineteenth-Century English Politics* (New York, 1982); Charles Seymour's *Electoral Reform in England and Wales: the Development and Operation of the Parliamentary Franchise, 1832-1885*, (Yale, 1915) and Joseph H. Park's 'England's controversy over the Secret Ballot', *Political Science Quarterly*, 41:1 (1931) pp. 51-86. It feels particularly impossible for a non-specialist to work on this topic and this period without Kinzer's meticulous historical work.

information on *who* voted for *whom* is not ordinarily available³. The converse of a secret ballot is an 'open ballot' or a 'public ballot' (or vote). These terms I use to identify systems of voting where it is ordinarily possible to match voter to vote. Of course, as Malcolm Crook and Tom Crook point out⁴, there exist many different types of voting practice under these two umbrella terms. These different types of practice may well bear on the *level* of secrecy or publicity. There are also possibilities to use both open and secret votes in the same decision procedure, which may be advantageous in some circumstances⁵. I will not consider the nuances between such practices in any detail. I also delimit myself generally to democratic voting for legislative assembly representation. While I do discuss cases of limited suffrage – many of the historical arguments are entirely tied into this context – I take the paradigmatic case to be universal adult suffrage. I further delimit my historical exegesis to nineteenth century Britain. Many other contexts may be interesting to study, but the debate in Britain was particularly fierce, partly because uniquely in Britain the transition was from completely public to completely secure in one reform⁶.

There seems to be widespread agreement in the civil and political sphere that the secrecy of voting is a prerequisite for 'proper' parliamentary elections. Nevertheless, or perhaps because of this, there is little discussion or debate on *why* the secrecy of the vote is so essential. The secret ballot seems rather to be something that is assumed, obvious, settled. Within academia, as always, there are some exceptions. Most infamously in contemporary political theory, Geoffrey Brennan and Philip Pettit called for the vote to be 'unveiled' in an article in

³ I say 'ordinarily available' instead of 'available' as I mean to include in my consideration systems of voting – such as the one currently in operation for British parliamentary elections – where there exist a *possibility* to match voter to vote, so long as that possibility is small, protected, limited, etc., as well as those systems where it is at least in theory *impossible* to match voter to vote. The line to be drawn between secret ballots which retain such a possibility of scrutinizing votes for whatever reason and open or public votes is sure in theory to cause some difficulty at the boundary; in practice however, I think an open vote is rather easy to identify as such. For instance, I consider Brennan and Pettit's preferred voting practice, which sees voting taking place publically but in front of a limited audience and without a record being taken, to be public, while systems that see a secret vote preceded by a straw ballot or poll, the anonymised aggregate results of which are made public before the final vote, I consider to be private.

⁴ See Crook and Crook 2007, 2011. See also Buchstein 2000 and 2010.

⁵ See Vermeule 2010

⁶ See Crook and Crook 2011 p. 201

1990⁷. A century or so earlier, many of Brennan and Pettit's arguments were anticipated by John Stuart Mill – perhaps the most famous advocate of open voting. Daniel Sturgis has argued more recently that the vote should not be considered private, and thus should ordinarily be public⁸. Others like Bruce Ackerman and James Fishkin have conceded the need for secret voting, but point out that secret voting “sacrificed something important”⁹. Were these thinkers right to challenge the secrecy of the vote?

There was a time in the United Kingdom where the secret ballot was not limited to academia but was very much a live debate in the public sphere. In fact, one parliamentarian's speech on the secret ballot in 1839 opened with an apology for falling into repetition – many considered the debate to be saturated by the discourse of the preceding ten or fifteen years¹⁰. The secrecy of the vote was a heated topic of discussion among the politically engaged. Magazines and newspapers were full of opinion pieces on the topic, and some of the pamphlets written on the issue were printed and reprinted until their readership extended in the tens of thousands. The debate over the secret ballot was extremely active politically in the 1830s and the 1850s. Some doomsayers even predicted that the introduction of the secret ballot would lead to the end of the established church, the abolition of the House of Lords, and the end of the monarchy¹¹.

Such radical positions on the secret ballot are no longer popular. Indeed, not long after the introduction of the secret ballot in 1872, Edwin Goadby remarked that, “English political opponents never before invented so many dreadful things, to discover that not a single one of them was true, as in the case of the ballot”¹².

⁷ ‘Unveiling the Vote’, *British Journal of Political Science*, 20:3 (1990) pp. 311-333

⁸ ‘Is Voting a Private Matter?’ *Journal of Social Philosophy*, 36:1 (2005) pp. 18-30

⁹ Ackerman, Bruce and Fishkin, James S., ‘Deliberation Day’, *The Journal of Political Philosophy*: 10:2, 2002, p. 129

¹⁰ In a speech in favour of the secret ballot in 1839 George Grote, who had introduced similar measures five times previously, began with an apology for repeating himself. He defended this by saying that “it was not the introduction of novel arguments which political truth depended on for its success, but in having the proper arguments frequently brought forward and considered”. George Grote, *The Minor Writings of George Grote*, Alexander Bain ed., (1873) p. 36

¹¹ This was the common editorial position of *Forster's* magazine for instance. See Charles Seymour's *Electoral Reform in England and Wales* p. 480.

¹² Goadby and Asquith, 1888 p. 665

Still, I think that much on the subject can be learned from the discussions and disputes of nineteenth-century Britain. In fact, I have found that *all* of the contemporary contributions to the question of whether voting should be open or secret in were anticipated in some way by political actors in the nineteenth century. This paper then seeks to resuscitate the heights of this discourse and to see what can be learned about the secret ballot from the time when everyone knew what was at stake, and everyone had an opinion.

This paper wishes to revive the historical discussion surrounding the secret ballot in nineteenth century Britain for political theory. Quite aside from the fact that this was a fascinating period in British political history, I believe that many of the views expressed in this debate remain interesting and relevant contributions. In the first part, I give an account of the events and actors central to the secret ballot question in nineteenth century British politics. In the next part I examine ten typical or influential arguments in favour of the ballot and against it from the political discourse. This will include arguments of both political theorists and political actors, men such as Jeremy Bentham and John Stuart Mill who are famous still and those more obscured or forgotten in the public mind. Once the core arguments in favour and against are presented and standardized some will be recognized as peculiarly archaic or fanciful to the modern democratic mind-set. Some however will prove to be more serious and timeless considerations on this matter.

The Ballot and Parliamentary Reform

The secret ballot as a demand of political reform in the British context arose in the works of Jeremy Bentham in the late eighteenth and early nineteenth century. There is some evidence that there was an attempt to introduce secret voting in the Commons in 1710, but the Lords rejected the measure and no more came of it¹³. Prior to the Benthamite proposal for secret voting, references made

¹³ Goadby and Asquith reference an attempt “but obscurely hinted at” to introduce the secret ballot as a method of electing members of parliament in 1710. The Commons passed the bill, but

to the ballot in political discourse tended to use examples from antiquity, often in reference to Cicero's *De Legibus*, which advocated for an open vote as a measure to counter electoral fraud. Bentham supported the secret ballot in included the secret ballot in *Political Tactics* from 1791, and it also took central stage in his 1817 *Plan of Parliamentary Reform*. His reasoning was broadly utilitarian. He worked under the assumption was that open voting disturbs the degree to which a vote represents the actual will of the voter, and that the purpose of elections was to best ascertain the universal interest, which he took as the aggregate of individual interests. Bentham's arguments are important, and we will return to them, however, for the purposes of a political history of the ballot, Bentham's advocacy was important more for the support that he gathered around him.

The 'Philosophical Radicals' were a loose group of political thinkers in the nineteenth century – particularly the 20s, 30s and 40s – who were committed to 'radical' political reform. They were led (intellectually at least) by Bentham and his associate James Mill (the father of John Stuart Mill), and published their ideas in the magazine the *Westminster Review*, which was set up for that purpose in 1823. The Philosophic Radicals were a middle-class group, and David Ricardo, John Stuart Mill, John Austin and George Grote are among the more important thinkers associated with it. They were committed to reforming British parliamentary politics – particularly regarding issues of representation. The reforms advocated by the philosophical radicals included extending electoral suffrage and implementing the secret ballot, largely to counter intimidation and bribery, but there were also other important aspects. Another problem of the British electoral system in the early nineteenth century were the so called 'rotten' or 'pocket' boroughs. These constituencies for various reasons contained very few people (they generally had been populous in the past), and could thus elect parliamentary representatives far exceeding what was proportional. Often, wealthy landowners in such boroughs could dictate the results of the election, given the dependence that tenants had on them.

the Lords "unanimously rejected" it (1888, p. 656, they reference Cobbett's *Parliamentary History*, vol.6 p. 889).

The protest and advocacy of radicals in the United Kingdom, including Bentham and his disciples, joined with a chorus of other voices for parliamentary reform, notably from the Whig party, to cause a great stir in the early 1830s. It was on the back of this debate that the Whig party under the leadership of Charles Grey came into government in 1830 (the Tory government under Wellington having lost a vote of no confidence based on their opposition to parliamentary reform).

The first major reform of parliament in 1832 was passed in political conditions of a volatility not seen since. Eric Hobsbawm has noted the impact of the 1830 July revolution in Paris on the implementation of the reform act, and further that this is the only period where British political history ran parallel to developments on the continent in modern times¹⁴. The Act of 1832 changed the levels of representation of over 100 'rotten boroughs'. The fifty-six boroughs with the least significant, or entirely nominal populations were gotten rid of entirely, while the remainder had their representation cut to more proportional numbers. The Act also increased the levels of representation in a number of boroughs considered too populous for the current levels. Further, it implemented a lower £10 standard of property for qualifying for suffrage, thus almost doubling the franchise. This bill did not pass through the Houses easily; to finally force the Conservative majority of the House of Lords to assent to the bill, William IV threatened to flood the house with Whigs in order to reach the necessary majority.

By 1831 the subject of the ballot was "a theme of such daily discussion at every public gathering and in almost every newspaper, that all the arguments for and against it would be treated as nearly familiar"¹⁵. The ballot question was not, however, settled by the 1832 Act. As a matter of continuing reformist concern, philosophical radical and classicist George Grote, who entered the House of Commons for the city of London in 1832, took up the cause. He advocated for the secret ballot throughout his decade-long career in Parliament, including through

¹⁴ See Hobsbawm, 1964 *Age of Revolution: 1789-1848*, chapter six.

¹⁵ Joseph Park, 1931, p.53, paraphrasing the *Quarterly Review*, vol. 44, 1831

designing a working ballot 'machine' intended to demonstrate how elections could be efficient, cheap and secret¹⁶. Grote put forward a ballot bill almost every year he sat in the Commons; initially, support was rather low – 106 members voted with his motion in 1833. By 1839 however this number had more than doubled, to 216 votes in favour. Concurrently, petitions were being sent to parliament advocating for the ballot. These reached a highpoint in 1839, when 181,506 people signed a total of 365 petitions in favour of the reform¹⁷.

The momentum in parliament matched further political activism in the social sphere – notably in the form of the Chartist movement. The working-class Chartists petitioned for several of the demands of the middle-class philosophical radicals in their 1838 People's Charter. The Charter was originally signed by six parliamentarians and six members of the London Working Men's Association, and became the focus of reform calls from the working class for much of the 1840s. Six demands were made: 1) universal suffrage for all men over twenty-one; 2) the secret ballot; 3) the abolition of a property qualification for sitting in Parliament; 4) a salary for members of Parliament to enable those who could not otherwise afford to attend; 5) equally sized constituencies – continuing the type of reform the 1832 Act focussed on; and 6) annually elected parliaments.

The Chartist movement, while certainly vindicated in the long term, cannot be said to have been very successful in their immediate political context. In fact, it may be claimed that Chartism took some of the wind out of the sails of secret ballot reform. In the 1840s, political activists militating for the ballot became less prominent. Some, like George Grote, resigned themselves from the issue and took to other causes or activities¹⁸, notably activism against the protectionist measures of the Corn Laws. Joseph Park noted that part of the reason why the radicals eclipsed in Parliament was that they were thought to have "lost popular

¹⁶ Crook and Crook 2011 p. 233

¹⁷ Kinzer, 'The Un-Englishness of the Secret Ballot', *Albion* (1978)

¹⁸ Grote himself resigned from parliament in 1841 and devoted himself to writing his celebrated multi-volume *History of Greece*.

support to the “Ultra Radical” Chartists”¹⁹. It was no longer seemly for Whigs and Liberals in the House of Commons to associate with ‘radical’ ideas for fear of being associated with more comprehensive and far-reaching democratic reform. As Kinzer writes, “the volatility of the political environment after the passage of the 1832 Reform Act produced in some [Whigs] the conviction that further concessions to radical demands might produce an uncontrollable and highly dangerous political situation”²⁰.

Another reason Chartism may have decelerated the passing of secret voting reform was that from the start, some Chartists were in two-minds on the ballot. As early as June 1839 the Chartist paper *Northern Star* ran articles questioning whether the ballot should be demanded as a reform separate from universal suffrage. After all, they pointed out, with open voting the disenfranchised were at least able to identify who was ‘on their side’²¹. This Chartist argument figured in many similar guises at other points of the debate. The general idea – even when the proponent was not in favour of universal suffrage – was that those who were franchised had a duty to vote on behalf of all citizens, including the young and the disenfranchised, who could only hold them to account through the mechanisms of open, public voting.

As well as the difficulties amongst the middle classes to take to the Chartist cause, and the wavering support of the Chartists, there were also more political reasons why the ballot as a legislative initiative became less popular in the 1840s. On the one hand, radicals in parliament were deflated by the reality of Whig support in their campaign for the ballot during the 1830s. They had hoped that the ballot would be a divisive issue amongst Whig parliamentarians, separating those Whigs from landed, aristocratic backgrounds who were protective of their privilege from those who were genuinely in favour of progress on social and political reform. This would result, they reasoned, in the Whig party splitting and their own radical cause being greatly boosted. It was however

¹⁹ Park, Joseph H., ‘England’s controversy over the Secret Ballot’, *Political Science Quarterly*, 41:1 (1931) p. 64

²⁰ Kinzer, 1978 p. 240

²¹ *Northern Star* article on 15th June 1839 – quoted on pp. 47-48 of Kinzer 1982

not the case that the ballot question would make Radicals of Whigs. The issue failed to divide the Whig party as early members of the philosophical radicals had hoped.

One reason for this failure seems to be the genuine mistrust with which many Whig reformers looked on secret voting. Consider this extract from a personal letter written in 1838 by Lord William Russell to his brother Lord John: “[T]he Ballot... would destroy the character of Englishmen... What pitiful figures we would cut, sneaking up to the ballot box looking with fear to the right and the left and dropping in our paper the contents of which we are afraid or ashamed to acknowledge”²². One theoretical contribution with a similar slant that certainly contributed to the decline of the ballot as a political issue amongst Whigs in this period was an important and widely read article by Rev. Sydney Smith in the *Edinburgh Review* in 1839. Smith argued that, “an abominable tyranny is exercised by the ballot in that it compels those persons to conceal their votes, who hate all concealment, and who glory in the cause they support”²³. The issue was the perceived injustice that the majority, who desired to express their political views publically and transparently through their vote, seemed to be dictated to under the secret ballot by a small, weak, and potentially corruptible minority. The effect of Smith’s article should not be underestimated. Gladstone for instance allied himself to its argument in a letter written almost thirty years later²⁴. Joseph Park has written that it was “well enough done that it seemed to be an effective blow to ballot”²⁵.

The 1840s were thus a period of decline for secret ballot agitation in the United Kingdom. Popular support for the measure generally dropped off, both due to the limelight being taken by the protest against the Corn Laws and also probably due to a general rise in the standard of living in these years. The Chartists were unable to mobilize on a level adequate to influence political change, and, though

²² Quoted in Kinzer 1978 p. 224

²³ ‘The Ballot’, quoted by Park, Joseph H., ‘England’s controversy over the Secret Ballot’, *Political Science Quarterly*, 41:1 (1931) p. 61

²⁴ Kinzer 1982, pp. 96-97

²⁵ J. Park 1931 p. 61

the ballot was one of the six points on the People's Charter, they were actually rather divided on the ballot issue almost from the start. Some of this division was due to personal animosities to the ballot for cultural reasons²⁶, but political reasons such as the argument presented in the *Northern Star* were also voiced.

In the early 1850s the ballot again became an active reform issue. The reason for this was largely down to the levels of corrupt practices in the 1852 general election. Bribery, intimidation, coercion and treating were commonplace, leading to a decision by Cobden to launch a new political campaign for ballot reform²⁷. By now, the question of the ballot in Parliament was being kept current by Francis Berkeley, who sat in the Commons as representative for Bristol. He was a rather weaker political figure than the likes of George Grote and the other radical parliamentarians who advocated for ballot reform in the 1830s. Kinzer writes that Berkeley "could justifiably be considered a political opportunist above all else"²⁸. Parliament was not persuaded by his arguments, and it was felt by some in the Commons that the annual ballot bill was a mere farce that Berkeley paraded forth to placate his constituents. It is not clear that it was wholly political opportunism though – Berkeley did also take an active part in the civil society agitation for the ballot in this period, chairing the Ballot Society until 1865. Either way, the old Whigs' and the new Liberals' support of the ballot reform failed to galvanize – perhaps they were too invested with the benefits that open voting brought²⁹. Instead of pushing through ballot reform, Parliament passed the largely fruitless 1854 Corrupt Practices Act to try to combat electoral fraud.

The renewed campaign for the secret ballot did receive a serious boost in the 1850s from an unexpected corner far away from the politics of London. In 1856 the states of Victoria and Tasmania in Australia passed bills implementing secret voting for general election in response to vote-buying and other miscellaneous forms of electoral fraud. Like would later be the case in the United Kingdom (and

²⁶ See, centrally, Kinzer 1978

²⁷ See Kinzer 1978b, p. 37

²⁸ Kinzer 1982, p. 51

²⁹ Kinzer makes this point; *ibid* p. 81-2

still is, for that matter), the ballots in Victoria had a system to ensure the 'principle of scrutiny' –to ensure that ballots could be checked by a judge in cases of suspected ballot-stuffing or other fraud. Crook and Crook have drawn attention to the fact that cases like Victoria and Tasmania were instrumental to eventual ballot reform in the United Kingdom as they gave real empirical circumstance with which to test theories of the pros and cons of voting by secret ballot³⁰. The Australian context in fact became so associated to the secret ballot system that secret voting in general elections soon became known as 'Australian voting'³¹.

One unexpected setback for advocates of the secret ballot was the surprising position that John Stuart Mill took on the issue. We will examine the arguments he made in his 'Thoughts on Parliamentary Reform' (TPR), later republished as chapter ten of *Considerations on Representative Democracy*, in detail below. Suffice to say here, the publication of TPR in 1858 (it was written around 1851³²) had a profound effect on the secret ballot debate in the United Kingdom. Suddenly, the most respected progressive political philosopher of the period articulated a comprehensive and reasoned argument against the ballot. Devastatingly, this was in spite of the fact that he had previously advocated *for* the ballot in the 1830s! As a contemporary wrote: "'Mr. Mill's eminence, sincerity and perspicacity... lent to the case of the opponents of the Ballot a dignity and weight, with which they were unable themselves to invest it"³³. J.S. Mill's opposition seemed to be a damning blow for secret ballot reform, and indeed were often referenced by Liberals as reasons why they could not support the ballot – for instance by Gladstone, who was about to be elected Prime Minister in a letter as late as 1868³⁴ (i.e. shortly before the ballot became part of the legislative agenda of his government).

³⁰ Crook and Crook 2011, pp. 199-237

³¹ Buchstein 2010

³² *Ibid*, p. 19

³³ Holyoake, George, *A New Defence of the Ballot in Consequence of Mr. Mill's Objections to it*, (London, 1868) p. 7

³⁴ Controversially, Gladstone wrote to George Holyoake's to thank him for his 'successful defence' of the secret ballot in *A New Defence of the Ballot* in a letter dated September 11th 1868, despite claiming he remained swayed by Sydney Smith and J.S. Mill. See Kinzer 1982, pp. 96-97. See further, Kinzer 1978c

The piece that Gladstone was responding to in this letter was by George Holyoake. The introduction to Holyoake's article – written as a response to J.S. Mill – included an admission that “the subject of the Ballot has been thought to be insipid – it has been felt to be growing obsolete”³⁵. Indeed, in the mid-to-late 1860s, the secret ballot reform seemed to be very far from political possibility indeed. Berkeley's ballot bills in the Commons had for years been dropping in support, to a low point in 1865. The Ballot Society that he chaired was disbanded in 1865. While the second reform bill of 1867 did change the context somewhat of the secret ballot issue³⁶ (remember that there were many arguments in the late 1830s that the secret ballot would be a requirement with universal or greatly extended suffrage), the general mood amongst ballot advocates was certainly not one of optimism – ballot reform seemed very far.

With the knowledge of hindsight, we now know that this pessimism was unwarranted. Holyoake's confessional tone predates the *passing* of the Ballot Bill by only four years (it predates the 1868 general election that saw Gladstone's Liberal party to government by a couple of months). The man who was singlehandedly responsible for this surprising outcome was veteran reformer John Bright. Although it was true that the conditions in the late 1860s were much less charged than in the late 1830s – people were less afraid of parliamentary reform because the extension of the franchise had proceeded without systemic change to the fabric of the political and social order – it is almost certain that without Bright the ballot would have been much delayed. The u-turn of Gladstone on the issue of the ballot took place after John Bright was accepted into Gladstone's ministerial cabinet in 1868. Kinzer wrote that, “Gladstone permitted Bright to determine in every detail the course the government would pursue in this matter”³⁷. Why would Gladstone allow himself to be manipulated

³⁵ Holyoake 1868, p. 3

³⁶ The 1867 (second) reform act tried to get rid of remaining ‘pocket’ boroughs in which all or most tenants were under the patronage of a single family (who could thus effectively swing the election). This reform introduced the principle of rough equality of populations between different constituencies. The franchise doubled to about two million.

Gladstone would actually explain the revision of his views on the matter with reference to the changed circumstances after this reform bill. See Kinzer 1978, p. 252

³⁷ Kinzer 1982 pp. 113-4

in this way? He needed Bright as a symbol that his Liberal cabinet continued to take nonconformism seriously. There is even “circumstantial evidence” that John Bright had made ballot reform a *condition* of his commitment to cabinet office³⁸. Eighty years after Jeremy Bentham opened the book on the secret ballot question, and after two volatile periods of intense debate, it passed into law as an uninspired piece of political manoeuvring.

The long-awaited Ballot Act of 1872 did not pass entirely without consternation³⁹. Two elements of its passage through Parliament are interesting to note. Firstly, and as has been mentioned above, the mechanism of the secret ballot included a provision to ensure that the ‘principle of scrutiny’ was met; it was felt that without being able to ascertain, if necessary, the way a voter had voted, the secret ballot could in fact lead to new forms of corruption and electoral malpractice. After all, it was argued, how would one be able to check if an individual had voted more than once, or that officials had been engaged in ballot-box-stuffing? The system implemented in Victoria, Australia offered a solution. Ballots were to be numbered, and the lists corresponding voter to ballot number kept sealed after an election⁴⁰. Secondly, in the final debates over the bill there was strong resistance to the idea of penalising people who showed their ballot paper. An amendment to this effect had been introduced by Leatham, who argued that this was an essential aspect of ensuring that practices of bribery and intimidation would cease. Fawcett and Harcourt were particularly vocal opponents of this ‘forced secrecy’, arguing along very similar lines as Sydney Smith had done in 1839, even though in earlier debates it had seemed obvious that such a provision would be included in the text of the bill⁴¹. The 1872 Act thus did not contain a penal provision.

³⁸ In a letter to Gladstone on 27th November 1868, preceding his acceptance of a cabinet office, Bright wrote that “the corruption-bribery-compulsion & tumult of this [1867] General Election have probably never been exceeded... the machinery of our Elections requires review. The barbarous system of open nominations & open voting should be abolished”. Quoted in Kinzer 1982 p. 101

³⁹ For instance, the House of Lords was able to delay the legislation for six months, citing a lack of time to consider the bill’s effects.

⁴⁰ Crook and Crook 2011

⁴¹ Kinzer 1978, pp. 254-6

Historical Arguments Considered

Where the previous section gave an overview of the development of the secret ballot debate in the United Kingdom, this section examines in more detail some of the arguments made in this debate. The previous section was presented chronologically, while this section is more anachronistic in style. For instance, I present James Mill's argument for the ballot – which rests on an idea of the vote as a trust – next to his son John Stuart Mill's argument against the ballot from similar premises even though these arguments are from different periods. With some exceptions, I also draw on different sources to present core themes of argumentation; there is much overlap in the discussions over the secret ballot, so it is in a sense rather arbitrary whom I take as 'representative' of which argument. This section is also evaluative and analytic – one intention is to separate those arguments that depend so much on their political context so as to render them immaterial to the contemporary context in their historical form from those arguments that are more timeless in their reach.

In total, I assess ten historical arguments (or themes of argument⁴²) for or against the secret ballot. The first argument is the argument against voter intimidation. The second is the Benthamite argument from aggregate utility. The third argument resists the aristocratic influence that may come with open voting. The fourth is in contrast an argument in favour of the influence of property or status. The fifth is an argument from conservatism and social change. The sixth argument defends the moral salience of 'honest' voting. The seventh is the trust argument against the ballot. The eighth is the Chartist concern linking secret voting to universal suffrage. The ninth argument is based on the 'English' desire for openness and transparency. Finally, the tenth argument is the liberal argument that voting is a private right.

⁴² With 'themes of argument' I mean to include both those arguments that were presented as separate but associated claims under a unified heading and those arguments that were presented as a unitary argument but on examination can be seen to (potentially) consist of separate but thematically related claims.

1. The first line of reasoning in favour of the secret ballot was the most common and widely acknowledged argument. Its first premise is that it is bad for voters to be bullied and intimidated in a general election. Presumably this does not run generally on anything particular about the context (elections) but rather on a rejection of bullying and intimidation itself. Indeed, in the political discourse one commonly finds both proponents of and opponents to the secret ballot acknowledging that coercion and intimidation are serious electoral problems. The difference between the two is that the former hold that secret voting constitutes a solution to the problem, whereas the latter do not. The arguments in favour are obvious – one is able to bully and intimidate voters into voting for a particular candidate only (or at least much more effectively) if one can identify with any accuracy for whom that person voted⁴³.

There are two aspects of this argument that I want to draw attention to. First, the argument depends on there being in fact a threat of voter intimidation and coercion. Were there not to be, or were the threat to dissipate, then the argument would lose force. A small measure threat is in fact probably not enough to ground the argument; the threat has to be significant (in scope and harm) enough to counter any positive reasons for open voting. This is of course not the case where open and secret voting are considered to measure roughly equally on other values, though that was rarely considered to be the case in the nineteenth century. Second, the argument against voter intimidation is not directly concerned with the *outcome* of the election. It may be that all parties/candidates use equally malicious and coercive tactics against equally sized groups of equally coercible voters, thus rendering the effect of their bullying nil. The argument against voter intimidation cares not a jot – the concern is with intimidation and coercion against the voters as a form of violence, not as a form of untoward influence. Similarly, this reasoning still finds it troublesome when those coerced or intimidated vote in line with their ‘original’ or ‘true’ preferences, be those the same preferences as those the voter is coerced to vote for or other ones. It is no solace to a bullied and intimidated

⁴³ Amongst many similar sources, James Mill makes this argument in his very influential article ‘The Ballot’ *Westminster Review* XXIV: July 1830.

voter to know that the intimidation has not succeeded in changing the outcome of their vote, particularly when the threat of repercussions looms as a consequence of the publicity of defiance.

Some argued that concern against voter intimidation grounded only a limited secrecy of voting. Such reasoning can lead to one of two conclusions. First, one could for a system whereby, though the vote was generally open, voters could request that their vote not be recorded if they felt threatened or intimidated. Secondly, one could ground a general secrecy of voting, but not punish individuals for breaking the secrecy of their own vote – after all, if they chose to do so, then they must have been confident that they would not be subjected to untoward intimidation, or else be prepared for any intimidation that may follow. Both of these avenues are specious, and they both suffer from the same default. Where there is an option of publicity – either of a general or a special kind – then voters can be coerced to vote publically just as well as they can be coerced to vote for a particular candidate or party. Of course, while hardly ideal, it may be that on a balance of reasons, this compromise should be preferred over alternative.

2. Jeremy Bentham's concern with the secret ballot came about through his commitment to certain utilitarian principles. On his view, moral salience corresponded to the greatest utility (or happiness) for the greatest number. The greatest utility is not a compound or derivative of the experiences of the total number of citizens, it rather *is* the aggregate of those individual experiences⁴⁴. Democratic voting procedures present an opportunity to divine what in fact constitute the desires of the citizenry. It is thus attractive for the voting practices to correspond as best they can to those practices that ensure a faithful rendition of the desires/interests of the voters. Note that it is also desirable on the same logic to include as many individuals in the franchise as possible (assuming that there is a voting procedure that succeeds in aggregating preferences).

⁴⁴ See Bentham's *Plan of Parliamentary Reform* (1817) p. 61

The assumption of a utilitarian/Benthamite defence secret voting over open voting is clearly that an open voting procedure disrupts the accurate aggregation of individual preferences. James Mill makes this clear in his defence of secret voting in *The History of British India* where he argues that the public interest requires that voters are not under any “external” pressures when they make their vote⁴⁵. It would not be enough however to say that open voting corrupts the accurate expression of some voters’ preferences in a relatively unstructured, random manner, after all, it is the aggregate that is important, not the individually corrupted votes. It would presumably be far less problematic on this view for a small percentage of voting to be corrupted in a random manner, as the overall bias on the sum ‘universal interest’ would remain inconsequential. Rather, this kind of critique against open voting assumes that open voting creates factional biases that raise the profile of a specific (and perhaps predictable) set of preferences over other types of preferences.

3. The reasoning of the utilitarian argument against open voting can be shown to depend on assumptions about the type of bias that open voting may institute. Indeed, the Philosophical Radicals were not shy of being explicit in identifying the source of this bias – the wealthy, landed aristocracy. This can be seen from the choice of Bentham’s example; in *Political Tactics* he makes a point about the need for secrecy to counter biases of non-simultaneous voting. A show of hands, he writes, give opportunity for the “slave” to copy “the part taken by the master’s voice or hand”⁴⁶ – not the converse. Some of this group were very explicit about their intention for secret ballot reform to contribute to social change. Sir William Molesworth for instance said in a speech that the secret ballot would “be the grand means of overturning the unjust and undue influence of the Aristocracy”⁴⁷. The argument for the secret ballot against aristocratic influence thus focuses on correcting a specific bias that may be inherent in open voting.

⁴⁵ Reference from Kinzer, 1982 p. 8, who quotes pp. 451-2 of the 2nd 1920 edition (volume 3)

⁴⁶ *Political Tactics* p 107, quoted in Jon Elster 2013, p. 128

⁴⁷ Quoted in Hamburger, *Intellectuals in Politics*, 174n; my quote from Kinzer, 1982, p. 17

There are two different kinds of aristocratic influence that were deemed by critical reformers to be corrupting voting practice in the nineteenth century. The first sees nothing particular about the aristocracy as an aspect of a feudal system. The problem for the first type lies in the fact that the aristocracy is the wealthy class, and that wealth corresponds to power when it comes to influencing voters. This kind of reasoning is thus applicable beyond the social and political context of early and mid nineteenth century Britain. It holds weight in any social context where there is a significantly inegalitarian distribution of resources coupled with corresponding inequalities of interest. The second kind of influence that reformers found objectionable is more directly tied into aristocratic property relations. The problem was that because peasant farmers were dependant on their landlords – their security and income was tied into their ability to retain leave to till and work that land – landowners were able to coerce their tenants to vote for the candidate they supported. This type of argument would thus concede that in societies not structured in aristocratic ways the secret ballot would be unnecessary, as indeed James Mill did⁴⁸. George Grote argued like this in his speech to the Commons on June 2nd claiming that the members in the Commons could not be representative given that the aristocracy dictated who was to be elected: the “register of voters becomes nothing better than a register of men liable to electoral impressment – liable to be called on to do compulsory voting duty whenever it pleases their commander”. No actual threat needed even to be made in these cases; voting for the preferred candidate of ones patron could appear to be the only option in a climate of dependence. Indeed, paraphrasing D.C. Moore, Bruce Kinzer notes that in the mid nineteenth century “tenants generally voted with their landlord because the latter was recognized as the legitimate locus of political authority”⁴⁹.

4. The argument based on the positive influence of property takes almost the exact same premises of the argument against aristocratic influence to the opposite conclusion. Jon Wilson Croker, an anti-reformer who had retired his

⁴⁸ Hubertus Buchstein points out that James Mill had a ‘Tocquevillian’ view of the secret ballot in America, that is was not really required because the US did not have an aristocratic system. See, Buchstein 2010 p. 9. See also Crook and Crook 2011, pp. 214-215

⁴⁹ Kinzer 1978b p. 35

seat in parliament after the first reform Act of 1832, made a typical case against the ballot on these lines in an article published in Tory magazine the *Quarterly Review* in 1838. Croker argued that “the landlord... from his education, his opportunities, his larger views, as well as his larger stake, must be, in the great majority of cases, the best judge and the safest guide; and the influence of property in such circumstances is the influence of reason and experience, guiding the less enlightened to their common and inseparable advantage”⁵⁰.

The condescending tone of this argument is objectionable to contemporary sense, but there exists a more abstract core behind this idea that may be less odious. The argument runs on the thought that some individuals can, through whatever constellation of virtue and development, act as a political example to ‘guide’ those less sure of themselves toward better political choices. Allowing for a moment the assumption that there can be objectively ‘better’ and ‘worse’ political choices (and thus votes) – an assumption that is hugely controversial in contemporary political theory but was a generally acceptable idea in the nineteenth century – this argument may appear persuasive.

James Mill in his article ‘The Ballot’ noted that there are good aspects to the influence of property. However, James Mill also noted a flaw in basing an open voting system on this reasoning; he wrote: “We, the friends of the ballot, the plebeian, the democratical, the base, are fully persuaded, that there are two influences of property; one good, moral, beneficent; another bad, immoral, pregnant with the most baneful consequences”⁵¹. Wealth creates power, and this power can be used equally to promote good as to promote evil. Further, the power to promote the good does not depend on the open ballot, as the positive influence of those of status and wealth does not depend – indeed it can be said that it cannot depend – on their being able to force the hand (or vote) of those in their influence. The evil influences that James Mill speaks of do depend on this power. Thus, the contention is that the moral influences of property continue

⁵⁰ J.W. Croker ‘The Ballot’ p. 519, quoted in Kinzer, 1982, p. 22

⁵¹ James Mill, ‘The Ballot’ *Westminster Review* vol. XIII, 1830, p. 6

under the secret ballot, whereas the secret ballot prevents the immoral influences⁵².

5. Another opposing argument was more classically conservative in its slant. It held that voting by secret ballot would be a 'slippery slope' leading to unwanted social and political changes. For instance Argyll, a Liberal leader opposed to ballot reform, argued that it was "imperatively necessary to oppose that [ballot] Bill... as an obvious prelude to a change from household to universal suffrage"⁵³. Other examples of this kind of reasoning were more typical in Tory circles. *Fraser's* magazine for instance often printed articles arguing that secret voting would lead to the end of the monarchy and the established church. In one article for instance in 1837, one author emphasized that "there is little chance of democratic revolutions, while all measures, doctrines, and propositions, are openly discussed"⁵⁴. In another example of such reasoning in the House of Lords in 1872, the Earl of Shaftesbury claimed both that monarchy was incompatible with the secret ballot and that the ballot would lead to a more egalitarian distribution of property (a possibility, of course, that Shaftesbury abhorred). Take this extract:

If the Ballot should be established agitators would go round to every house in the country and persuade the people to vote for special candidates, by saying that if they got into Parliament not only that the taxes and rates should be reduced—that argument is legitimate enough—but hinting also, that by a little legislative arrangement there might be a better and a fairer distribution of all kinds of property. There are many in this class, and religious men to boot, who hold that some are too rich, and some are too poor; and, although they would shrink from any violent procedure, they would have no scruple to redress the balance by the weight of legislation. And yet they would never avow it by an open vote.⁵⁵

It is clear from this reasoning, from a conservative peer at the very end of the ballot debate, how arguments against the influence of property (arguments in

⁵² See, generally, *ibid* p. 6-9

⁵³ Letter from Argyll to Richmond dated June 23rd 1871, quoted in Kinzer 1982 p. 182

⁵⁴ 'The Poll or the Ballot', *Fraser's* September issue, 1837, quoted in J. Park 1931, p. 63

⁵⁵ Speech to the Lords, 10th of June 1872, available at:

<http://hansard.millbanksystems.com/lords/1872/jun/10/second-reading> (24.05.13)

theme three) use precisely the same premises to reach the opposite conclusion. Where the interest is with property, the argument favours open voting, where it is with the working class the argument favours secret voting; only the rhetoric is different. It is however a slightly different case for conservative arguments of this type against the established church and against the monarchy. Perhaps we ought to recall again the words of Asquith and Goadby that, “English political opponents never before invented so many dreadful things, to discover that not a single one of them was true, as in the case of the ballot”⁵⁶ – certainly with hindsight such fears seem hyperbolic. The argument in any case is not applicable to contemporary contexts, where the status quo is secret voting, and conservative arguments assuming change to be coupled with (the risk of) regress thus function in the abstract more in the opposite direction.

6. One argument that was broadly utilised amongst Whig and Tory opponents of the ballot during the debate in the 1830s was the idea that open or secret voting would lead to dishonesty and so corrupt those participating in elections. There are several different elements that need to be distinguished from each other. Firstly, there is the aspect of ‘dishonest’ voting that attaches itself to what the voter says when challenged over his vote. Secrecy served, on this account, as a mask that enables people to obscure their political allegiances in face of healthy discursive challenges. It is normal to want to know the vote of ones peers, and the reasons behind them, as their vote has effect beyond their person. When voting is done in open, there is an added incentive to vote in ways that are communally and socially acceptable. Secret voting would lead people to vote for their private interest at the cost of the interest of those around them, however still enable them to *claim* that they were invested in and supportive of more socially defined political goals. This argument assumes that it is preferable to vote for communal interests, thus anticipating the trust argument that J.S. Mill would popularise.

George Grote was among those on the radical side who developed arguments to counter the moral argument against the secret ballot claiming that it led to lying.

⁵⁶ Goadby and Asquith, 1888 p. 665

In response to the charge that the secret ballot would make Englishmen addicted to lying, Grote countered in a parliamentary debate in 1833 that the more pernicious moral guilt with regard to vote-buying is the making of the promise to vote contrary to one's opinion, not in the subsequent *breaking* of it: "what falsehood can be worse than a dishonest vote at the polls?"⁵⁷. It is assumed in this reasoning that voters do in fact have moral reasons to vote in particular ways, and that voting contrary to this prescription is a moral wrong akin to the moral wrong of dishonesty. What Grote was arguing though was that voters do not have a duty to vote in a specific way, but rather that voters ought to vote as they thought best, on their best judgement, for the public good. It is thus conceded that lying about one's vote is an undesirable form of dishonesty, but it is argued that the greater dishonesty is the initial promise to vote in any way contrary to one's judgement. Open voting induced such bargaining through enabling bribery between electors and candidates or their sponsors, thus inducing particularly poor voters to vote contrary to their inclination⁵⁸. This is also what James Mill meant when he wrote that in cases of bribery or voter intimidation "the oath is violated, the moral obligation is disregarded, a faithless, a prostitute, a pernicious vote is given"⁵⁹.

7. The seventh argument type I consider was the argument against secret voting through the idea of trust. This argument was made famous by J.S. Mill, but was not an original idea of his; nevertheless, I follow the majority in focussing on J.S. Mill's version of the trust argument⁶⁰. The trust argument originated in a context of partial franchise. Where not all adult citizens enjoy the right to vote, the trust argument says that those who *are* entitled, do not have the right to vote only for themselves and their political interest, but must also take into account the interest of those unable to vote. The consequence, opponents of the ballot

⁵⁷ George Grote, *Minor works*, 1873 p. 20, also in in J. Park 1931 p. 59

⁵⁸ James Mill, 'Constitutional Legislation', *Parliamentary Reform of 1826-27 and 1827-28*, quoted by Milgate and Stimson, 2009

⁵⁹ James Mill 'The Ballot' 1830 p. 11

⁶⁰ Brennan and Pettit's article 'Unveiling the Vote', (1990) is essentially a modern presentation of John Stuart Mill's arguments. For more critical contemporary accounts see Nadia Urbinati's *Mill on Democracy*, Chicago: 2002 and Annabel Lever's article 'Mill and the Secret Ballot: Beyond Coercion and Corruption', *Utilitas*, 19:3 (2007) pp. 354-378

argued, was that votes must be made openly in order to hold the franchised accountable to the disenfranchised.

This type of reasoning was popular in the 1830s, and J.S. Mill also accepted its force in *Considerations*⁶¹; as he wrote that his argument applied “still more obviously in the case of restricted suffrage”⁶². It was against this version of the trust argument that George Holyoake was responding in the early 1830s. Grote “emphasized the idea that open voting was not necessary for the performance of a trust, inasmuch as voters ought to be responsible neither to non-voters who were excluded from the franchise *presumably* because of their incapacity of forming any judgement on political subjects, nor to the wealthy who made illegitimate use of their power and station”⁶³. In short, if the disenfranchised were able successfully to pass judgement on the votes of the franchised, then they had the qualities necessary for them to exercise the franchise themselves. John Stuart Mill wrote that he had considered this argument “conclusive”, but is now convinced it is “specious” and “fallacious”⁶⁴, because the power to vote is a much more significant power than the power to challenge the votes of others, and it must not be assumed that those ready to take on the tasks of the latter are also ready to take on the tasks of the former⁶⁵.

Until now, the trust argument seems hopelessly archaic. It has relied on a limited franchise that modern liberal democratic sensibilities find indefensible – even unthinkable⁶⁶ - and certainly looks little like the arguments presented by Brennan and Pettit in their infamous essay. J.S. Mill did not however leave the trust argument in the form he inherited it from the 1830s discourse. His

⁶¹ As mentioned, the section of TPR later republished as chapter ten of *Considerations on Representative Democracy*. My page references are from *Considerations*, in the 2008 Oxford World Classics edition of *On Liberty and Other Essays* edited by John Gray.

⁶² J.S. Mill 2008, p. 355

⁶³ J. Park, 1931 p. 57

⁶⁴ J.S. Mill 2008, p. 359

⁶⁵ He is fairly direct about this: “The opinions and wishes of the poorest and rudest class of labourers may be very useful as one influence among others on the minds of the voters, as well as on those of the Legislature; and yet it may be highly mischievous to give them the preponderant influence, by admitting them, in their present state of morals and intelligence, to the full exercise of the suffrage”. *Ibid* p. 360

⁶⁶ Notice though that arguments denying prisoners the right to vote are often based on similar sorts of reasoning.

argument, he claimed, was applicable even in cases where the people “were fit for, and had obtained, universal suffrage”⁶⁷. How to recast this argument so fitted for the context of limited franchise to a context of universal franchise? John Stuart Mill had to show that voting for the public interest over the private interest was a generally applicable moral obligation⁶⁸.

Arguments that voting is a public trust, and that people should thus vote in the public interest rather than in their private interest run on the assumption that people are more selfish in private than in public. Whether and in what circumstances this is true is of course an empirical question that cannot be settled in theory. Nevertheless, the assumption does not seem alien or absurd. Surely a similar kind of reasoning supports the commonly held view that though votes in general elections ought to be secret, votes by representatives in a legislature ought ordinarily to be public⁶⁹. Voting publically makes voters, whatever their context, accountable to their peers, as people are able to challenge the public exercise of powers.

8. One important argument that arose in the late 1830s was voiced by the Chartists, for instance in the *Northern Article* quoted above (J.S. Mill also recalls this argument in *Considerations*). How could the disenfranchised and the oppressed identify their political allies but for the open vote? Until universal suffrage was established these critics held the secret ballot to be a defence of the franchised for hiding their allegiances. This argument looks a lot like the argument against the ballot from the idea of the franchise as a public trust that we considered in argument seven. However, it does not concede that voting *ought* to be limited to a select group of enfranchised, who are in turn empowered to make decisions on behalf of all others (as long as they are held accountable to those decisions). It merely says that, the interim injustice wherein certain groups

⁶⁷ J.S. Mill 2008, p. 361

⁶⁸ I do not explore this assumption here – indeed, it would require a complete ethical theory to make the case cogent. Still, it is clear that such other-regardingness is a bedrock orientation of most non-egoistic ethical theory.

⁶⁹ I say ‘commonly held’, but of course exceptions exist. Most legislatures have the option of voting in secret should they find it necessary. Montesquieu even thought the exact opposite – that voting for general elections should be public while voting in legislatures ought to be private.

are disenfranchised (women, the poor, the young, etc.) to the just moment where all adults are franchised can only be extended by the secret ballot – although after that moment it would serve as an important protection for poorer, weaker voters.

Some may think that the Chartist argument against secret voting is not relevant to contemporary theory. Ballot-sceptical Chartists argued on a conditional need for the secret ballot, priority being given first to universal (usually ‘manhood’ – few yet took up the cause of women’s rights) suffrage. This is similar then to the positive case for open voting made conditional on votes as a public trust held by the franchised for the disenfranchised. My view however is that if we examine this argument closely, it will be clear that they can provide reasons for open voting that are not contingent merely on the extend of suffrage – just as John Stuart Mill intended his argument to extend beyond the historical circumstance of limited suffrage. As with Mill, it needs to be shown how the grounds of the argument support claims broader than those presented.

The grounds are currently in the form: ‘the disenfranchised ought to know the political allegiance (expressed through voting) of the enfranchised in order to equip them to further the just cause’. Two questions must be asked of this argument in order to tease out the general applicability of its grounds. First, with what does the open vote equip the disenfranchised? Second, to what end (i.e. what is the just cause)? The answer to the first question is that open voting equips the disenfranchised with information to identify their political allies. The answer to the second, presumably, includes the extension of the franchise to the disenfranchised. But why stop here? Is the justice conceived purely procedural? Will injustice cease once the disenfranchised have won their right to vote? I propose that in any society where a group is oppressed for any reason whatsoever an argument can be made on similar lines. To take a current example, consider the debates over same-sex marriage in France. Some have politicised this issue to such an extent that parties look like they may campaign on platforms of revising the recent change in the law opening marriage to same-sex couples. Open voting would enable homosexuals and their allies to see in a

very tangible way who is for their cause and who against. The same applies to any other discriminated group.

9. The ninth argument I consider is the argument from freedom and transparency. Arguments of this stock were truly cross-ideological in the context of nineteenth century Britain. Although of course opponents of secret ballot reform made the argument rather frequently than supporters, it was a point of hesitation amongst even ardent reformers. Note for instance an article in the infamous radical periodical *Westminster Review* against the ballot, arguing that, “the liberty cherished by Englishmen must be of strong and vigorous growth and no sickly exotic creeping into corners and unable to bear the light”⁷⁰. George Holyoake was challenging precisely this hesitation when he wrote in 1868 that, “ardent advocates of the ballot... speak of it apologetically, as something they wish the people were strong enough to do without”⁷¹. Often, this argument was presented in terms of ‘Englishness’ or ‘manliness’ (i.e. we English are honest and free, we should support open voting), but there are versions that do not take on such a blatantly sexist, parochial tone⁷².

Sydney Smith was the author of the most famous argument of this type, in his article for the *Edinburgh Review* of 1839. He wrote that, “an abominable tyranny is exercised by the ballot in that it compels those persons to conceal their votes, who hate all concealment, and who glory in the cause they support”⁷³. Joseph Park also points out that this was the position of King William IV, who would not “yield to” or “sanction a practice which would, in his opinion, be... inconsistent with the manly spirit and the free avowal of opinion which distinguished the people of England”⁷⁴. Whether we agree that this lack of freedom is an ‘abominable tyranny’ or not, it has to be noted that the desire for transparency and openness is not strange – indeed in contemporary politics transparency and openness are often pursued as ends in themselves. Why should the majority of

⁷⁰ ‘Liberty and Light’ essay in *Westminster Review* XCI 1869 p. 388

⁷¹ Holyoake, 1868, p. 3

⁷² For an excellent account of arguments that the ballot was ‘Un-English’ see Bruce Kinzer, 1978

⁷³ Quoted in J. Park, 1931 p. 61

⁷⁴ *Ibid*, p. 56. Park sources Percy Fitzgerald, *The Life and Times of William IV*, vol. 1, p. 337

citizens, independent-minded and strong-willed enough to exercise their right to vote free from corruption or intimidation, be forced to vote in secret because of the weakness of mind, stature or position of a small minority?

One way to deal with this kind of argument is not to criminalise showing ones ballot to others before putting it in the ballot box. That way, it could be argued, the voter would be able to exercise their wish for transparency while the system of voting still protected the weak. One problem of this approach – which was in fact adopted by the British legislation – is that it still provides scope for bribery and vote buying. It may be argued that this cost is one worth making, as the actual scope left open by this lack of criminalisation may be no more than is already open through possibilities of postal or internet voting. Alternatively, one could think that demi-secrecy (or demi-publicity) has the flaws of both systems and the advantages of neither.

10. The last argument I consider is one in the nineteenth century that sounds most current to liberal ears. George Holyoake has been mentioned several times above in opposition of secret voting, and of arguments made in favour thereof by John Stuart Mill (remember that William Gladstone was answering his pamphlet when he wrote that he was convinced of J.S. Mill and Sydney Smith in September 1868). Holyoake's pamphlet repeated many arguments that were common currency in the pro-ballot debate. The title of his article however promised a 'new' defence, and the type of liberal reasoning that he used was indeed rather unusual. Holyoake wavered between casting his argument in terms of 'freedom' and 'right', but the crux of his argument remains the same. Crook and Crook summarise it succinctly when they writes that for Holyoake "voting was a private act by means of which an elector asserted his 'private interest in the state'"⁷⁵.

Holyoake insisted that, "A man votes, as he marries, not for his neighbours satisfaction, but for his own"⁷⁶. As such, his can be considered an early example

⁷⁵ Crook and Crook 2011, p. 223. They also note that his argument was not very popular, perhaps for the same reasons.

⁷⁶ Holyoake 1868, p. 8

of the economic/liberal reasoning that Jon Elster has characterised as the 'market' view of democracy⁷⁷. Two elements of this claim must be separated. Firstly, voting could be 'private'. A vote on this view is the expression of personal preferences that is legitimately private, and secret by derivation of this right to privacy. Holyoake writes that "The Ballot is not "secret voting" in the bad sense... for a venal [corrupt] object... [it] is secret suffrage in the legitimate sense of privacy and security"⁷⁸. It was exactly this kind of view that Daniel Sturgis was responding to in his recent paper – the idea that, "my vote is my business"⁷⁹. Secondly, a vote could be protected by secrecy. In this version, the vote expresses personal preferences that could be influenced unduly by publicity. Publicity is then not a right, but a kind of protection against manipulation. This second type of reasoning takes us close to the Benthamite case for secrecy considered in argument one.

I will not say much more about the preference/market view. Some, like Brennan and Pettit think that it is untenable for formal reasons. One critique that seems obvious is to say that voting in general election is a public matter as the *effects* of the vote are on the public. Voting is importantly distinct from marrying because when one chooses who to marry one (ideally) makes decisions over ones own life that do not have wide repercussions for others' freedoms. One may well be free to act selfishly in such circumstances (who marries for selfless reasons?). Political society in contrast is a coercive enterprise of collective control – my vote in part shapes your freedom, and vice versa. While it is necessarily the case that voting through general elections leaves people free to express their personal preferences, I think that a conception of democracy that is reliant on those preference being those similar to economic preferences is unattractive.

⁷⁷ Elster, Jon 'The Market and the Forum', in: Elster, Jon and Hylland, A. (eds.) *Foundations of Social Choice Theory*, Cambridge: 1986. Brennan and Pettit make a similar distinction calling it the 'preference view', see Brennan and Pettit, 1990.

⁷⁸ Holyoake 1868, p. 4

⁷⁹ Sturgis, Daniel, (2005) p. 19

Conclusion

Often, when thinking of the secret ballot question through reference to the nineteenth century, commentators cover Bentham in favour and J.S. Mill against, with little in between. This paper has argued that much was said in the fifty or so years between their contributions that is interesting and relevant for contemporary theory. The first half of the paper demonstrated this through reference to those events and political actors that were important in the context wherein the debate occurred. As well as Bentham, James Mill, George Grote, George Holyoake and, to some extent, the Chartists provided further ammunition for the case in favour of voting by secret ballot. Against, Sydney Smith has been the most important voice alongside John Stuart Mill. The second half of the paper considered ten of the most important themes of argument that raged in the nineteenth century. Many of these arguments proved to be relevant for contemporary theory, even arguments that seemed at first instance to be entirely contingent (such as Chartist concerns that universal suffrage should precede the secret ballot) or entirely archaic (such as Tory arguments for the influence of property, and arguments for the 'Englishness' and 'manliness' of open voting).

This has been, to use one of my favourite quotes of Judith Shklar, a "ramble through a moral minefield, not a march toward a destination"⁸⁰. I have not sought to add my opinion to the debate over whether or not the ballot ought to be secret. While it is true that I think that the case for the secret ballot has not yet been made in contemporary theory, I do think there is a non-contingent case to be made for it, based perhaps on a certain political misanthropy and pessimism, but seeking to buttress a robust democracy under threat. That case remains to be made, but I do hope that I have shown how the debates over the secret ballot in nineteenth century Britain are a resource that should not be ignored by those interested in this question.

⁸⁰ *Ordinary Vices*, 1984 p.6

Bibliography

Ackerman, Bruce and Fishkin, James S., 'Deliberation Day', *The Journal of Political Philosophy*: 10:2, 2002, pp. 129-152

Anonymous, 'Liberty and Light', in *Westminster Review* XCI, 1869

Bentham, Jeremy, 'Plan of Parliamentary Reform' in *The Works of Jeremy Bentham*, John Bowring (ed.), Edinburgh: (1838-1843), vol. 3,

Available at: <http://oll.libertyfund.org/title/1922/115261> (13/05/13)

Brennan, Geoffrey and Pettit, Philip, 'Unveiling the Vote', *British Journal of Political Science*, 20:3 (1990) pp. 311-333

Buchstein, Hubertus, *Öffentliche und geheime Stimmabgabe. Eine wahlrechtshistorische und ideengeschichtliche Studie*, Nomos: 2000

Buchstein, Hubertus, 'Public Voting and Political Modernization: Different Views from the 19th Century', Lecture at the *Collège de France*, June 3 2010. Forthcoming in a volume edited by Jon Elster.

Crook, Malcolm and Crook, Tom, 'The Advent of the Secret Ballot in Britain and France, 1789-1914: From Public Assembly to Private Compartment', *History*, 92 (2007) pp. 449-471

Crook, Malcolm and Crook, Tom, 'Reforming Voting Practices in a Global Age: The Making and Remaking of the Modern Secret Ballot in Britain, France and the United States, c.1600-c.1950', *Past & Present*, 212:1 (2011) pp. 199-237

Debate on the secret ballot in the House of Lords, 10th of June 1872, available at: <http://hansard.millbanksystems.com/lords/1872/jun/10/second-reading> (24.05.13)

Elster, Jon, *Securities Against Misrule: Juries, Assemblies, Elections*, Cambridge: 2013

Elster, Jon 'The Market and the Forum', in: Elster, Jon and Hylland, A. (eds.) *Foundations of Social Choice Theory*, Cambridge: 1986

Goadby, Edwin and Asquith, H. H., 'The Ballot in England', *Political Science Quarterly*, 3 (1888) pp. 654-681

Grote, George, *The Minor Writings of George Grote*, Alexander Bain ed., (1873)

Holyoake, George, *A New Defence of the Ballot in Consequence of Mr. Mill's Objections to it*, (London, 1868)

Kinzer, Bruce, 'The Un-Englishness of the Secret Ballot', *Albion* (1978)

Kinzer, Bruce, 'JS Mill and the Secret Ballot', *Historical Reflections*, 5:1 (1978b) pp. 19-39

Kinzer, Bruce, 'Gladstone, Holyoake and the Ballot', *The Victorian Studies Association Newsletter*, No. 21, March (1978c)

Kinzer, Bruce, *The Ballot Question in Nineteenth-Century English Politics* (New York, 1982);

Lever, Annabelle, 'Mill and the Secret Ballot: Beyond Coercion and Corruption', *Utilitas*, 19:3 (2007) pp. 354-378

Milgate, Murray and Stimson, Shannon, *After Adam Smith: A Century of Transformation in Politics and Political Economy*, Princeton: 2009

Mill, James, 'The Ballot' in: James Mill, Terence Ball (ed.), *Political Writings*, Cambridge: 1992 (1830)

Mill, John Stuart, 'Considerations on Representative Democracy'. In: *On Liberty and Other Essays*, John Gray (ed.), Oxford: 2008 (1859-1869)

Park, Joseph H., 'England's controversy over the Secret Ballot', *Political Science Quarterly*, 41:1 (1931) pp. 51-86.

Shklar, Judith, *Ordinary Vices*, Belknap Press, 1984

Seymour, Charles, *Electoral Reform in England and Wales: the Development and Operation of the Parliamentary Franchise, 1832-1885*, (Yale, 1915)

Sturgis, Daniel, 'Is Voting a Private Matter?' *Journal of Social Philosophy*, 36:1 (2005) pp. 18-30

Urbinati, Nadia, *Mill on Democracy*, Chicago: 2002

Vermeule, Adrian 'Open-Secret Voting'. Harvard Law and Economics Discussion Paper No. 674; Harvard Public Law Working Paper No. 10-37 (2010). Available at: SSRN: <http://ssrn.com/abstract=1646435>