

## The dynamics and objects of democratic agency

In his marvellous lecture, “Active and Passive Citizens”, Richard Tuck sounds a powerful warning about the atrophy of democratic agency, the trends in political thought and practice that have made this possible, and the importance of reviving – and perhaps extending – active citizenship. Like Tuck, it seems to me that political thought today is too often an apology for enlightened despotism, in which citizens are passive recipients of rights (benefits) secured for them by others, whereas, seen in historical perspective, *agency* is fundamental to democratic thought and practice.

While I agree with many of Tuck’s conclusions, I deny his premise, in common with Rousseau, that one cannot reasonably be subject to laws one has not made. On the contrary, there is no necessary injustice in such subjection. That said, it is often true – even generally true – that to deny the governed a share in lawmaking is to commit a grave injustice. But the need for government is fundamental. Democratic principle addresses the secondary question of who should govern. The involvement of the people – citizens, the governed – in governing is only justifiable to the extent that it meets the need for government. The challenge for Tuck (and for me) is to show how, why and when popular agency will deliver good government and why it should be treasured.

How is democratic agency exercised and by whom? Tuck sometimes talks about the agent as the voter, or the voters plural, or voters in the majority. These agents all matter but I think the decisive agent is the whole – the people, the citizenry, the political community. The questions that arise are about how majority and minority relate to the whole (and thus to one another) and how institutions relate to voters (and citizens). Tuck moves rather freely between the contexts of election, plebiscite and assembly. It is perhaps worth considering each somewhat separately. But one general point bears mention: majority vote is a technique a group uses, which it unanimously adopts, to settle *its* action. It is perfectly sensible to vote for X but to agree that *we* voted for Y.

In most contexts (this turns to some extent on the voting system), general elections are not a single decision but a series of decisions that yield representatives with authority in an assembly. The assembly *represents* the electorate (or, more accurately, the polity). So it acts for us in lawmaking; its acts are our acts. But is this not true for *all* institutions? The government acts for all, including in representing us as a single community in the international realm, and the courts give justice according to law in the name of the people or the Queen signifying the whole realm. Some scholars defend judicial review of legislation by asserting that courts are representative institutions and indeed may be more truly representative than assemblies because they are not beholden to majorities, and thus are able to act for the good of *all* members of the community. The argument is somewhat strategic, of course, but it is striking how inattentive it is to how assemblies work and to how judges act after appointment, when they are freed, by design, from popular agency. At most then, and maybe not even, courts are representative in the same way that a good king might be, which is not nothing – it is often better than foreign rule – but is not nearly enough.

The apology for enlightened despotism is that democratic agency – an assembly unchecked by court or treaty – is simply mob rule. That is, the opponents of democratic agency fear that (popular, electoral, parliamentary) politics is unreflective, centring on power and numbers and making no provision for reasons. This is a parody but Tuck may risk encouraging it by downplaying deliberation as he does. Yes, decision is vital, as is majority vote to this end, but voting *after* deliberation. Tuck should abjure Rousseau’s proposal that citizens should refrain from deliberating together before voting. Relatedly, one should be wary of plebiscite precisely because of limitations of deliberation, coherence, and responsibility to which it is subject. There are exceptions, when a plebiscite is carefully framed by an assembly, but they confirm the general superiority of the assembly over the plebiscite as the site of democratic agency. The dynamics of the assembly, and the space it creates

for political parties, encourages the people to understand the assembly as the community assembled to decide. Tuck is right that deliberation within the assembly often forms part of deliberation across the community at large, but the assembly is the sharp-edge and its authority would founder without its connection to intelligent, meaningful deliberation.

But deliberation about what? The object of government is the common good. The assembly, and the people more widely, should deliberate about the common good in legislating. Tuck laments the widespread enthusiasm for Burke's argument that elected representatives should exercise their own judgment. Burke may have lacked some nuance – voters have a share in authority and those they choose have responsibilities to them and to all, as well as to tell the truth – but his central point remains compelling, viz. the individual legislator joins an institution that chooses what should be done, for the common good, which is not centrally a matter of carrying out instructions.

The political community is able to exercise agency, to respond to the reasons for government by making reasonable choices about what should be done. The key move is to defend this capacity, not to deny that the object – the common good – is important. Tuck comes close to this denial, I think, in his reading of the following passage from Rousseau's *Letters from the Mountain*:

...above all come together. You are ruined without resource if you remain divided. And why would you be divided when such great common interests unite you? ... In a word, it is less a question of deliberation here than of concord; the choice of which course you will take is not the greatest question: Were it bad in itself, take it all together; by that alone it will become the best, and you will always do what needs to be done provided you do so in concert. (Letter IX, p. 306).

I am no student of Rousseau but it seems to this passage might be read simply to commend unity in decision even when one disagrees about the merits, for otherwise the polity will lack agency and be ungovernable. If Rousseau's point is that *whatever* the community chooses is for that reason alone the best choice that can be made, and/or is a justified choice, the point is wicked nonsense.

Why has democratic agency eroded? The answer, it seems to me, is that the economic and/or educated elite has largely lost confidence in the capacities of the people to rule *and* has lost interest in helping the people exercise self-rule. Tuck's lecture is very powerful in its opening discussion of the social conditions on which mass democracy was historically built, including shared military service, at least in the English-speaking world. What has changed is the slow loss of common life, mutual respect, and gratitude for burdens jointly carried. These social changes may be rationalised, or at least accompanied, by the thought that times have changed, that new horizons for social life have opened up, that an active citizenry has had its day, and/or that now is the time for global (or local) action, rather than for national, popular democratic action. One sees a related set of dispositions on the part of the new elite, viz. hubris, a sense of entitlement, failure to countenance reasonable disagreement, and fear of other citizens as dangerous or brutish. The engine for democratic agency – fellow feeling and recognition of shared common good – has thus run down.

As for how democratic agency has eroded, Tuck rightly notes the importance of constitutionally entrenched rights and the structures and strictures of EU membership. The trend in many Western states to outsource moral and political controversies to judges is important, premised as it is on doubts about democratic politics. But so too is integration in international (supra-national) institutions, and in the British context the two have often gone together with European integration enabling problematic rights adjudication. Making one's constitution a function of treaty, enforced by outsiders, is to alienate self-rule, especially if one also surrenders effective capacity to reverse course. This seems to be the plight of the Eurozone states, at least of those states who do not hold

the (fiscal) whip hand. Again, in addition to institutional arrangements, it is significant that elites increasingly share common feeling not with their fellow citizens but with elites elsewhere, as the curious spectacle of some North Americans mourning Brexit may suggest.

The UK may be relatively well-placed to revive, or maintain, democratic agency by virtue of the legislative freedom that parliamentary sovereignty makes possible, the agency the political system extended to the British people to decide whether to leave the EU, and the decision to leave. (I note, in passing, that parliamentary sovereignty was taken up from those who came before and is, as Hart says, a fundamental custom that grounds the legal order; that parliamentary sovereignty was not expressly chosen by citizens today does not make it any less apt a means for and form of democratic agency and insofar as Tuck suggests the contrary, per his criticism of Hart, he goes astray.) The decision to leave the EU was not taken lightly or implemented easily, but in the face of considerable elite resistance in the legal community, press, and Parliament, who sought to raise technical obstacles and demobilise (disarm, shame) citizen agency.

The atrophy of democratic agency, which I hope the UK is partly reversing, should be resisted. For it involves, as Tuck notes, the loss of a form of government that is capable of resolving political disagreement in a fair and stable way over time. (Note that the temptation for rulers may be to attempt to stabilise enlightened despotism by redoubling efforts to *demobilise* citizens.) It involves further the loss of information that is relevant to identifying the common good, as well as the political levers that might compel those who govern to attend to its full complexity, and the loss of dignity and self-respect, the opportunity for responsibility *and* solidarity, that democratic agency makes possible. It also bears mentioning that the new enlightened despotism might not be as enlightened as its apologists assume; it might instead simply be or become despotic.

What should be done about all this? The social and institutional conditions for democratic agency need to be recognised to be a good to cultivate. This requires considerable scepticism about international treaties that alienate continuing self-government and constitutional structures that reserve to judges authority over important moral and political controversies. It also requires much work to reduce the distance between elites and masses, to encourage fellow feeling between citizens, which is necessary if they (we) are jointly to act together for common good. Brexit was an important exercise of democratic agency and may perhaps chasten the political classes, forcing them to honour their commitments, and restoring a measure of agency by terminating the continuing application of the EU treaties, thus reviving effective legislative freedom.

What about the closing suggestion in Tuck's lecture to consider collapsing the distinction between resident and citizen? This is exactly back to front to my mind and may follow from Tuck's lack of focus on the people (singular) as the agent that exercises self-government. Whatever the merits of rival immigration policies, the distinction between citizen and alien – not in matters of basic legal entitlement but entitlement precisely to participate in governance, whether as elector or elected – is a distinction that matters and its atrophy is robbing democratic agency of motive force. The rise of enlightened despotism threatens to make us all passive citizens, which is to say foreigners in our own land. In turning this around, as Tuck's remarkable lecture so effectively encourages us to do, one should reserve to active citizens, to the people, authority to decide when and how far to invite non-citizens to become citizens.

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