INTRODUCTION
My theme in these lectures is going to be a distinction which played a major role in the political theories of the seventeenth and eighteenth centuries, and which structured some of the distinctive institutions which emerged in those years - notably, as I shall argue in Lecture IV, the American Constitution. The distinction then began to fade, and now plays a relatively small part in modern constitutional thought (at least in the form it originally took), though I think it continues to make the best sense of those institutional structures, and in some ways of democratic politics in general. It is the distinction between sovereignty and government, a distinction usually expressed precisely in those terms, though (as we shall see) other vocabularies could be employed. We shall see as I develop my theme just what was involved in the distinction, and the discussion will take us into deep elements of the political thought of the period; but I would like at the beginning to make some general points about it.

The first thing to say is that the people who initially used it themselves stressed its novelty. Jean Bodin, who (as we shall see in Lecture I) was indeed the first person to use it in the modern sense, announced with his usual self-confidence that “a clear distinction between the state [the term he used here for sovereignty] and the government” was “a principle of politics [secret de police in French] which no one has hitherto observed”, and that “this distinction seems to me more than necessary to understand the state of each Republic, if one does not want to find oneself in a labyrinth of infinite errors”. When Jean-Jacques Rousseau revived it, he said the same, about democracy: “Up to the present the democratic Constitution has been poorly examined. All those who have spoken about it either did not know it, or took too little interest in it, or had an interest in presenting it in a false light. None of them have sufficiently distinguished
the Sovereign from the Government...”¹ (This is discussed fully in Lecture III). This might
surprise us: after all, we nowadays take for granted that the “government” of a state does not
define its fundamental character, and is only one among a number of institutions which control
the political life of a society, and we might suppose that this had always been the case. But this
modern common-sense view is in fact the product of the historical story I am about to tell, and
(as we shall see) both Bodin and Rousseau were right to stress the originality of their views.

To see why this was so, we should recognise first that in the form of the distinction in
which they were interested, it was one between two kinds or levels of legislation. In their
theories the “sovereign” was the author of texts, of written laws, as much as a “government”
might be. But there was a difference of scope, as the sovereign dealt with the fundamental or
general rules regulating the society’s political activity, while the government dealt with day-to-
day matters or more limited kinds of laws. We can see the nature of this institutional division
most clearly if we compare a society which displays it to one which does not. From antiquity
down to the eighteenth century all societies characteristically possessed sites of legislative
authority which dealt indifferently with matters of general constitutional significance and matters
of limited or local importance. The United Kingdom in a fine example of such an arrangement:
it still possesses a site of this kind, for there is no institutional or structural difference between
acts of Parliament which undeniably have a fundamental or constitutional character, such as the
Act of Settlement, the Act of Union, the Parliament Act, or the European Communities Act, and

¹ (Pléiade ed. III 837; Letter to Beaumont, Letters Written from the Mountain, and related
writings trans. Christopher Kelly and Judith Bush, ed. Christopher Kelly and Eve Grace
- say - an act prescribing the organisation of the London police force. In this respect (as one might expect on other grounds) the United Kingdom remains pre-modern in its political structures, if modernity is marked (as I think it is) by precisely the kind of theorising with which I am concerned.

It can be contrasted with societies in which there is an institutional division between constitutional and other kinds of legislation, and in which as a consequence it is possible to talk about the society as possessing a written constitution, in the sense of a segregated set of laws generated in some distinctive fashion, as in the United States. As has often been observed (most recently by John Gardner in a stimulating essay last year), Britain does have a written constitution, as much as anywhere does: the foundational Acts I just mentioned are, after all, written down, and the fact that there is a great deal unwritten which is part of constitutional practice would not distinguish Britain from the US or any other country with a written constitution. What Britain does not have is a separate legislator for specifically constitutional

2 This may be changing, in two ways. First, some jurists have begun to speculate that beneath the surface constitutional acts may be seen in a different light from ordinary ones; for example Lord Justice Laws suggested in Thoburn vs Sunderland City Council (2001 - the famous so-called “Metric Martyrs Case” dealing with the implications of the European Communities Act) that these constitutional acts are immune to implied repeal - that is, whereas acts of Parliament have normally been taken to repeal implicitly previous statutes or clauses of statutes with which they are in conflict, Laws argued that this doctrine might not apply to constitutional statutes, which could only be explicitly repealed or amended. This view has so far remained speculation and has not become a standard part of British jurisprudence. Second, it is increasingly the case that constitutionally significant acts have been passed (or are thought to need passage) against the background of a “consultative” referendum, something which (as I shall argue later) is moving the United Kingdom towards the default constitutional structure of a modern state.

measures, and in this respect, as I said, it is the same as all political associations used to be until the eighteenth century. It is a familiar piece of history that written constitutions did not appear until (arguably) 1789 when the current US Constitution was promulgated, to be followed rapidly by the French constitutions of the 1790s, and all the modern constitutional documents thereafter. And we tend to think that what was new was the idea of writing a constitution down.

But once we approach the question from the direction with which I am concerned, we can see that what was really new, and what needs explaining, was the idea not of writing fundamental laws - for legislators had always done that - but of handing the authority to write the laws to an institution which might put in only fleeting appearances and be largely forgotten during the actual political activity of a community. I expect, for example, that there will be no new amendment to the US Constitution in my lifetime (unless Larry Lessig can miraculously succeed in his campaign to use the amending procedure to overturn the Citizens United judgement). Put in this way - that the sovereign legislator has an institutional shape but is usually dormant - we can see the oddity of the idea, and why it proved so hard to imagine prior to the eighteenth century. I would say it was hard to imagine before the distinction whose history I will be tracing came to be generally understood, and that is the central point of what I will be doing in these lectures.

The authors with whom I shall be concerned all understood this sovereign to be a legislator, capable of authorising a determinate text (though not necessarily, of course, of authoring it - does Parliament as a whole write the law? Under any system the legislator or

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4 I exclude the Articles of Confederation on the grounds that they were - and were taken to be by the signatories - a treaty between states of a not unfamiliar kind.
legislature is unlikely to be the person or body that actually drafts the wording of a piece of legislation). In the sixteenth or seventeenth century the sovereign was likely to be a monarch, but as soon as this new idea emerged the possibility was also clearly seen that if a distinction could be drawn between a sovereign and a government, then democratic sovereignty might become a viable option for a modern state. And this is the second feature of my account which I want to stress. The old and obvious objection to democracy in the modern world had always been that the citizens of England or France could not gather in a single space like the citizens of Athens or even Rome, and that therefore modern states had to be ruled either by a monarch or by some kind of elective body. This was not merely a technical point: it was with an undoubted sense of relief that many writers made this point, for they thereby succeeded in justifying the exclusion from actual legislative power of all but an elite (often in the literal sense of the word). But the new response to this objection was that it rested on a misunderstanding. It was government which required the kind of face-to-face and frequent meetings which an ancient assembly allowed, and indeed there could not be democratic government in a modern state. But there could be democratic sovereignty, in the sense that the fundamental rules of the state could be presented to the citizens for their express approval, and decided by a vote. This duly happened for the first time in both the American and the French Revolutions - though, as we shall see, it had in effect been heralded for a century or more beforehand.

It was, I suspect, largely because it raised this possibility of justifying democracy that the distinction between sovereign and government was challenged by other writers: almost as soon as the new idea emerged in the pages of Bodin it was attacked, and by the beginning of the eighteenth century it was regarded as a piece of dangerous casuistry of little interest to any
realistic political analyst. Only when Rousseau revived it, and made it the centre of his defence of democratic politics, would it reemerge into mainstream political thought. In its place, as we shall see in Lecture II, had come a restatement in a new technical language of an older way of thinking about politics.

Speaking very broadly, one can say that for at least three hundred years before Bodin, it had been quite common for even loyal monarchists to describe political institutions as created in some fashion by the people who were governed by them. But there was a pervasive vagueness in almost all the accounts of how “the people” created the institutions, and whether they were themselves part of the institutional structure. A common view is illustrated by the early sixteenth-century Spanish scholastic Francisco de Vitoria in his Relectio De Potestate Civili, who said “the material cause in which power of this kind resides is by natural, and divine law the respublica itself”, though the power “is principally in kings, to whom the respublica commits it as its agents” since “this power cannot be exercised by the multitude itself ... [and] it is therefore necessary that the exercise of the power [potestatis administratio] be conferred on some man or men who can administer it [curam gererent].” On this account, all political societies, of whatever constitutional structure, were brought into being by the populus or the respublica, but the populus or respublica did so precisely because it could not itself constitute a determinate locus of political authority; it lurked behind all determinate structures but was not itself one.

5 See the remarks of Pufendorf quoted below pp 000.

6 See the similar idea expressed by some conciliarists in 1444, quoted by Black p.17: “the power of the universal church is brought into activity through the existence of the general council. Such power exists in the dispersed church in the same way that the seed exists in the grass, or wine in the grape; but, in the general council, it exists in its formal and complete essence.” The grape is, in Aristotelian terms, the material cause of the wine.
This was of course a very difficult picture to make sense of, for if the “multitude” could not exercise power, how could it “commit” the power to a monarch? And writers like Vitoria were unwilling or unable to spell out just what kind of institutional process was involved.⁷

One natural way of expressing the thought, however, was that the institutions of power “represented” the people; this was the language used especially by the fifteenth-century conciliarists whom Antony Black has studied, but it was widespread in the late middle ages. Thus Pierre D’Ailly said that plenitudo potestatis in the universal church was in the church in the sense that an effect is in its cause, that is, the church brought the institutions into being; but it was in the council as the church’s representative, “ut res visa dicitur esse in speculo”.⁸ The most remarkable and modern-sounding of these conciliarists was John of Segovia, who analysed the pope as the church’s representative.

He ceases to be a private and is made a public person; he loses in a sense his isolated unity, and puts on [induit] the united people, so that he may be said to bear or represent

⁷ Suarez, writing in 1612, but apparently little interested in what Bodin had done, made very similar remarks in his De Legibus ac Deo Legislatore, saying that “men as individuals possess to a partial extent (so to speak) the faculty for establishing, or creating, a perfect community; and by virtue of the very fact that they establish it, the power in question does come to exist in this community as a whole. Nevertheless, natural law does not require either that the power should be exercised directly by the agency of the whole community, or that it should always continue to reside therein. On the contrary, it would be most difficult, from a practical point of view, to satisfy such requirements, for infinite confusion and trouble would result if laws were established by the vote of every person; and therefore, men straightway determine the said power by vesting it in one of the above-mentioned forms of government [i.e. the standard regimes, including democracy, rather inconsistently, given what Suarez had just said], since no other form can be conceived... (De Legibus Book III Chap IV.1, trans. p.383)

⁸ Dupin Gerson II pp950-951; Black, Council and Commune p.23
the person not of one but of many [gestare sive representare personam multorum]...

Whoever is made ruler or president of any people puts aside his private and takes on a public person, in that he must seek not, as before, what is useful to himself, but what is useful to all. He carries [gerit] two persons; he is a private person, and by legal fiction a public person.\(^9\)

The language of representation could accommodate both a rather vague sense that the people were embodied in their ruler, what we normally term “virtual” representation, and a more precise sense that they should collectively choose him - that is, that any legitimate civil society must contain something like an institutionalised means of choosing magistrates (“actual” representation). As a number of people have observed, virtual representation was discussed in late-medieval texts much more than actual representation, but there are exceptions - notably Nicholas of Cusa in his well-known *De Concordantia Catholica* (1433), who argued that all church rulers had to be elected in order to have legitimacy.\(^10\) Either way, the presupposition was that the people as a whole could not exercise political power or legislate, but had in some way to be represented. Looking back, it then became possible for writers like Sieyès and Constant to say that representation had been the great modern (that is, post-classical) invention.\(^11\)

\(^9\) Black, Monarchy and Community pp 25, 143, 148

\(^10\) Sigmund ed.

\(^11\) “This [representative] system is a discovery of the moderns... [T]he condition of the human race in antiquity did not allow for the introduction or establishment of an institution of this nature... Their social organization led them to desire an entirely different freedom from the one which this system grants to us.” Benjamin Constant, Political Writings ed. Biancamaaria Fontan (CUP 1988) p. 310 (The Liberty of the Ancients Compared with that of the Moderns,
There were instances in the middle ages, of course, of communities which were small enough to operate like ancient city states, particularly in Italy, and the theorists who focussed on those communities were able to envisage legislative power being vested in the popular assembly, and (correctly) to see this as close to the ideas of Aristotle. The most famous case of this is Marsiglio of Padua, with his theory of the people as *legislator humanus*, possessing what amounts to sovereign legislative power as well as choosing the *principatus* who acted purely as an administrator of the law. Marsiglio, accordingly, barely used the language of representation, and his closest follower (a century later), John of Segovia, made explicit that representation would break down if the people could physically congregate together.

If it occurs that the whole people assembles itself together, and asserts or desires something contrary to what the president himself says; then the people will deservedly prevail, since truth itself is preferred to fiction. For the truth is that this people is many persons; while the fiction is that the president himself, who in truth is a single person, is said to be many by representation. (p.27, 143)

Black has indeed claimed that Segovia anticipated Rousseau in his idealisation of the small democratic community, though Segovia (unlike Marsiglio, and Rousseau) seems to have believed that in the absence of such an assembly representation would have to be the means whereby political decisions are made. It is true that Marsiglio and Segovia did come closer to the ideas of the modern democrats with whom I am concerned than most earlier writers did. But neither of

1819). [check Sieyes]
them made the kind of distinction which the later theorists did between a fundamental and a less fundamental level of legislation or political decision-making. As far as Marsiglio was concerned, the legislator humanus monopolised legislation, and the principatus was merely a judge (though he put hereditary monarchs into the category of princeps, without acknowledging that they standardly possessed legislative powers). So his political theory, as he himself stressed, stayed very close to Aristotle’s, and was in a sense an idyll of an ancient or a modern Italian city state ruled by what would later be termed a democratic government - whereas Bodin (as we shall see) presented his new distinction between sovereign and government precisely as part of a critique of Aristotle and this kind of republican vision, and in the context of a discussion of (mostly) large states of a standard modern kind.

As we shall see in Lecture II, the opponents of Bodin and (later) Hobbes, in their enmity towards the possibility of democratic sovereignty in a modern state, reverted to something strikingly close in practice to the medieval theories of representation. What they, beginning with Grotius and Pufendorf, asserted was that (in the imagery of Grotius’s 1625 De Iure Belli ac Pacis) the “common subject of sovereignty” was a political community (what Grotius termed a coetus), just as the “common subject” of sight was the body, while the “proper subject” of sovereignty was the government, just as the “proper subject” of sight was the eye. The eye sees on behalf of the body, but the body does not itself see - so that the legislative activity which the

12 They were of course much less troubled by a theory of democracy as possible through a small governing assembly of the whole people, since few modern Europeans lived under such a system.

13 Though Hobbes too uses the language of representation, as I also show in Lecture II he did so in a way which significantly differed from both his medieval predecessors and his contemporaries, and which linked him much more closely to Rousseau than to Pufendorf.
“proper” subject engaged in was quite different from the activity of the “common” subject. The common subject was not the sovereign legislator of the Bodin or Hobbes or Rousseau theory, but much closer to the vaguely-specified people or respublica of Vitoria. Fifty years later, and spurred on by the need to refute Hobbes, Pufendorf took this idea and gave it a more technically-precise formulation with his theory of the double contract: individuals in a state of nature formed a society by contracting with one another, and that society then determined its form of government. But before government was established, Pufendorf made clear, the society had a kind of provisional status, since by definition it could not rule itself or its members; he expressed this by describing it as based on an agreement by the citizens to discuss the conditions for their common existence, rather than to decide them. And when the society made the decision about its government, that need not have been - and in fact ought not to have been - a decision to be ruled democratically. Hobbes had rejected the Grotian version of this idea, insisting that the formation of a society by individuals was the formation of a government, and moreover (he argued in De Cive of 1642) necessarily a democratic government, and it was this in particular which seems to have alarmed Pufendorf. Both Grotius and Pufendorf were aware of the fact that their view was an alternative to the idea of a distinction between sovereign legislator and government, and both expressly attacked the distinction, Pufendorf describing it with disdain as something merely “with Subtilty enough [to] be disputed in the Schools”. So when Rousseau in the mid-eighteenth century turned against both Pufendorf and Grotius as the representatives of the ideology which underpinned the ancien régime, he naturally returned both to the Hobbesian picture, though purged (as he thought) of its dangerous inconsistencies, and to the distinction, which he used repeatedly in his works and upheld as the new key needed to understand democracy.
But the two views remained in contest with one another throughout the Revolutionary period. In the newly independent states of America the settlers quickly realised that they could give an appropriate institutional expression to the idea of democracy at the level of sovereignty but not government by the institution of a referendum on the articles of a written constitution, and the first such plebiscite in the world was duly held in Massachusetts in 1778 to ratify the state constitution, to be followed within the next two generations by almost all the states of the Union (though of course the Federal constitution was not to be ratified in this manner). The Girondins in France went down the same route, as I show in Lecture III, though apparently in ignorance of what Massachusetts had done twelve years earlier (as distinct from the Federal Constitutional Convention, which the Girondins studied closely). But just as the ideas of Bodin or Hobbes had been challenged from the point of view of older political theories in the seventeenth century, so too were the ideas of Rousseau, the Americans and the Girondins.

And once again the principal alternatives resembled pre-Bodinian ideas. Monarchism of the old kind was now dead, but its principal executioner, Jacobinism, was also in effect pre-Bodinian. It claimed to be in the vanguard of modern democracy, but it wished to have democratic government as well as democratic sovereignty, as if France could be ruled by an ancient citizen assembly or a medieval commune. As the Jacobins’ opponents tirelessly observed, this led inevitably in practice for obvious reasons to the rule of the Parisian mob and the marginalisation of the rest of France. But after the Terror (and the slaughter of so many of the Girondin leaders) the principal challenge to the Jacobins was voiced by the Abbé Sieyès, and though many recent scholars have linked Sieyès to the Rousseauian tradition, I argue in Lecture III that he was in fact what amounted to a critic of it. In its place, like Pufendorf, he wanted to
see a distinction between the site of legislation and the “nation”, and he asserted strenuously that representation must be the key feature of any modern state, including, ideally, even the authorisation of a constitution by representatives. Unlike Pufendorf, however, he believed in multiple sites of representation, and he became increasingly unwilling to use the language of sovereignty - “this word [sovereignty] only looms so large in our imagination because the spirit of the French, full of royal superstitions, felt under an obligation to endow it with all the heritage of pomp and absolute power which made the usurped sovereignties shine.”

The liberal anti-Jacobin constitutionalism of Sieyès became in many ways the default theory of the nineteenth century, even in America (as I argue in Lecture IV). And it has remained the most congenial approach to constitutional theory for many contemporaries. A particularly good example is the principal English constitutional theorist of our time, Martin Loughlin, who has argued (with express references to Grotius, Pufendorf and Sieyès) that we should think of sovereignty not as a power located in a specific site, but rather as an expression of the fact that there are no political constraints on what an independent community can do. Like Sieyès, he claims that “the people” is an entity which cannot act in its own right but can only act through representation, and that there can be multiple sites of representation. One such site, on this modern view, is public opinion; this is a thought which seems first to have emerged in the


15 And to Hobbes, interpreted as a believer in the representation of a state (rather than purely of individuals) by the sovereign. See below pp 000 for a discussion of this question.

16 Foundations of Public Law pp 232-233
immediate post-Revolutionary period in the writings of Fichte, and which (as we shall see in Lecture IV) made its way to the United States through the German legal theorist Francis Lieber, who came to have enormous influence in his adopted country. This is a particularly striking contrast to the ideas of Bodin, Hobbes or Rousseau (though Rousseau did allow a role for opinion in the formation and maintenance of a state), for the essence of their view was that the politics of a society had to be controllable from a single and specific site, so that it was clear what mechanism could be utilised in order to change the circumstances of the citizens’ collective existence. The vagueness and multifariousness of representation implied by the modern view, from their perspective, would hand power over to a set of institutions which claimed authority without ever having been clearly given it - this, after all, is exactly why Hobbes was so strenuously opposed to the notion of the common law, which he took to have allowed lawyers to exercise power over their fellow citizens in the name of a set of principles which they had themselves invented.

There are, I think, two major reasons for the modern disinclination to accept the radical seventeenth- or eighteenth-century view that a sovereign people can act like a monarchical sovereign through the process of majority voting (apart from a fear about what such a process can give rise to - but there is no known political process which cannot threaten us, and the track record of majoritarianism is actually better than many people suppose). The first is the belief that majoritarianism has no special claim as a principle of political action, and that it does not

17 I owe this observation to Isaac Nakhimovsky

18 See for example what I say in Lecture IV about the fear of the American secessionists in 1861 to put their plans to a majority vote of their populations, even despite the limited nature of the electorate in their states.
necessarily correspond to the “will” of a people. It is merely one among many procedures all of which can issue in results which might be taken to represent the intentions of the community, and it cannot be invoked as the means of choosing among those procedures. The second is a concern that the relationship between states is in danger if we cannot stipulate that they possess an identity over time capable (for example) of being the bearer of the obligation to repay debts, and this identity cannot be expressed in terms of the constantly shifting results of democratic voting. On this account, it cannot be the case that a “people” is simply the set of nameable individuals whose views on a subject concur and form the majority, or even that it is simply the set of nameable individuals who either form the majority or who accept the majority view as determinative (i.e. including the minority who agree to be bound by the result of the vote). The members of that set change (in a large modern state) every minute or so as people die off and are replaced, so the “people” will have no stable existence. It has therefore to be a kind of imaginary construct, best understood as an entity represented by some set of institutions with a continuous existence.

None of these objections, I believe, carries as much weight as is often supposed; there are relatively straightforward responses to them which obviate the need to enter upon the unsatisfactory territory of a imagined people. I addressed the first objection in effect in my book Free Riding (Harvard University Press 2008); briefly, what I argued there was that from the point of view of an agent it makes sense to seek to be part of a majority for a particular course of action which he desires, as there is a high probability that (if there is indeed a majority for it) he will be

19 This is a view quite commonly attributed to Rousseau, though with very little textual support, as we shall see in Lecture III.
part of what I termed there an “efficacious set” - that is, a set sufficient (but not necessary) to bring about the result. If I care about being someone who contributes causally to an outcome, I have a reason to vote (if I think enough other people are going to do likewise) and to be part of the successful group, though it is true that were I to abstain the same result would probably be achieved - but without my agency. This is an example of what is known as “redundant causation” - I can cause something to happen even if, were I not to perform the relevant action, another person would take my place - which, though entirely familiar as a phenomenon, has proved remarkably resistant to philosophical analysis. Partly because it is so difficult to understand redundant causation in terms of the standard counterfactual analysis of causality, most modern theorists have simply ignored it and have supposed that the only instrumental reason I might have for voting is that I think I will be the pivotal voter. Since it is highly unlikely that any particular voter will be pivotal, they have then tended to rule out instrumental considerations entirely from voting and have concentrated instead on ideas such as the “expressive” character of the vote. Once we do this, it is indeed true that majoritarianism loses its distinctiveness, and there may well be more appropriate ways of arriving at political decisions; but if we continue to think in terms of agency then majoritarianism remains an obvious way of structuring politics. Something like this, I believe, was taken for granted by the early writers on majoritarianism.

Jeremy Waldron has sought to defend majoritarianism by stressing its connection to the principle of equality, and that is clearly correct: majoritarianism does treat each voter as strictly equivalent to every other, with no distinctions between them (for example) of intelligence or

judgement. But Waldron’s view in the form he has stated it is vulnerable, as has acknowledged, to the response that something like a fair lottery for participation in political decision-making would also fulfil the condition of equality among the citizens - every citizen would have an equal chance to play his part as a legislator. This has indeed been argued in recent years by some leading theorists of democracy, notably Bernard Manin, and Waldron’s own response is not particularly compelling. However, if one adds to Waldron’s argument the need for citizens to think of themselves as agents, bringing about (as far as possible) by their own actions the conditions of their common life, then the lottery ceases to be a plausible alternative, since only a very small subset of the group will actually contribute to the outcome. The distinctive feature of majoritarianism is that it is the only principle which offers both equality and agency. Viewing it in this light also allows one to tackle the surprisingly under-theorised question of supermajorities, as a supermajority requirement will bring more people into the position of being causally responsible for the outcome than will a plain majority requirement, but this will need to be balanced against the fact that supermajority requirements may be so hard to meet that the group can take no effective action (which generally rules out the most extreme version of a supermajority requirement, namely unanimity). (We shall see in Lecture IV that the distinction between majority and supermajority seems in fact to have been of curiously little interest to the eighteenth-century writers).

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21 His principal argument is that “majority-decision differs from the coin-tossing method in giving positive decisional weight to the fact that a given individual member of the group holds a certain view.” (p. 113)

22 It may be significant that Waldron accepts that a vote cast in a large group “may be said to carry no weight at all” (p.114), though he is troubled by the implications of this for majoritarianism
Some people have also been troubled by the fact that the population whose votes are counted is not - so to speak - a natural set: even after the democratic revolutions of the nineteenth century, culminating in the extension of the vote to women, it excludes many inhabitants of the state’s territory such as children or foreigners. (Sieyès made this point). If those inhabitants’ views are going to play any part in the political process, it can only be by representation. I agree that this is a problem, but it is an aspect of a very general problem for theories of democracy, namely the territoriality of a modern state. Hobbes, Rousseau and the other writers of this kind finessed the problem by presuming that the formation of a state is the association of individuals, who might then permit other individuals to join them, and in this way come to possess a defined territory - but there are many difficulties to this account, some pointed out by Locke when he stressed that land must already have been owned by the individuals when they entered civil society if their state was to acquire territorial rights. A modern version of these theories is of course found in Nozick’s *Anarchy, State and Utopia*, and we can see from his discussion the problems involved. But it is hard on any view of democratic politics to explain the significance of boundaries and the rights which the state possesses over anyone who steps across them; the merit of the kind of view I am outlining is that at least it makes it the default position that everyone within the boundaries should take part in the vote in order to render its outcome authoritative for everyone, and exclusion of any kind has to be carefully justified. (I would say, for instance, that the modern distinction between “residency” and “citizenship”, upon which Locke laid so much stress, is hard to justify on a non-representational account of the state, and its role has usually been (as it undoubtedly was in Locke) to privilege one group in the society over
On the second issue, the need to ascribe identity to a people in order to permit such things as foreign debt, it is not clear to me that one cannot get quite a lot of what one might want purely by supposing that every member of the voting group takes the outcome to reflect his individual will, however he may have voted (the conventional Hobbesian or Rousseauian view). If a community (for example) takes on a foreign debt through a majority vote in 2012, then the debt has in effect been agreed to by every member of the community that year, and it would not be unreasonable to suppose that those individuals are bound by the undertaking, just as they would be if they incurred a debt solely as individuals. There will not be a possible majority composed of people who had not as individuals been bound by the undertaking until half the voting population of 2012 is dead - which one can roughly calculate as around 42 years. The idea that a society should be free to revisit all its agreements, and potentially repudiate them, after they have been in force for forty-two years or so is not (at least as far as I am concerned) at all disturbing, and it is not obvious why one would want a more robust notion of national identity in order to meet these kinds of pragmatic objectives. As I have suggested, the modern stress on collective identity frequently looks like a means to counter mass politics, with all their disturbing social possibilities, rather than a genuine response to a major theoretical difficulty. The story I

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23 As is now generally understood, I think, the well-known distinction in Locke between “express” and “tacit” consent, with only the former implying citizenship, was primarily intended to justify the exclusion from public life of Catholics, who would not take the oath of allegiance in the form in which it was phrased in the late seventeenth century, which required them specifically to abjure the authority of the Pope.

24 E.g. the UK has an electorate of 45 million and a death rate in the adult population of about 540,000 p.a., so half the current electorate will be dead after approximately 42.5 years.
I am telling in these lectures may thus be of more than merely historical importance.