It has become a truism to say that democracy is in crisis in the Western world, but the precise character of the crisis is, I think, usually misunderstood. I believe we should begin with the extraordinary discovery that Yascha Mounk and Roberto Stefan Foa have made, that in all the long-standing Western democracies there is a very precise correlation between the age of respondents in opinion polls and the degree of their commitment to democracy. About 75% of those born in the 1930s believe that it is "essential" to live in a democracy, but this falls steadily to little more than 25% of those born in the 1980s. And lest this be thought to be a relatively trivial question, the same is true of the answer which people give to the question of whether a military takeover would be legitimate: again, the older respondents are strongly opposed, and the younger ones far less so!

The response of some other political scientists to Mounk and Foa's findings was to say that democratic values are still flourishing, as "tolerance of minorities" has been steadily increasing over the same period.[1] But this goes to the heart of the matter. It is often casually assumed that tolerance of minorities is part of democratic politics, but it can also often be part of non-democratic politics, as the history of "enlightened despotism" in eighteenth-century Europe illustrates (a period in European history, incidentally, with marked resemblances to our own - a society of relatively liberal values and the rule of law, but no democratic control). Indeed, despotism of this kind is often defended precisely on the grounds that it does a better job of protecting minorities than full democratic government will do - the fear of the "tyranny of the majority". Entrenched rights and various kinds of strong constitutional orders are in effect

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[1] Amy C. Alexander and Christian Welzel, "The Myth of Deconsolidation: Rising Liberalism and the Populist Reaction", Journal of Democracy (online)

today's enlightened despotisms, since their whole point is to resist the kind of popular control which the revolutions of the late eighteenth century called for. And like the enlightened despotisms, they depend for their enlightenment on the personal character and beliefs of the rulers, though the rulers are now the judges in constitutional courts - hence the turmoil in the US over Supreme Court appointments.

There are a variety of reasons for this cultural shift away from democracy, and it is hard to say which are fundamental and which are to a degree epiphenomenal. At one level, it is the consequence of quite basic facts about the kinds of society we now live in. By the middle of the nineteenth century, and even more by the beginning of the twentieth, it was clear to the citizens of modern states that they needed the help of even the poorest of their fellow citizens in constructing the conditions of their common life. The help ranged from the manufacture of much of what they consumed, on a scale far beyond the localised production of the pre-industrial world, to - at its extreme - the creation of the great citizen armies of the twentieth century, which quite literally in many instances saved the lives of even the richest and most powerful members of those states, and in which the ruling class and the working class to a significant extent fought side by side. The recognition that these citizens had to be given a serious voice in what happened to their countries was not based on some vague humanitarian principle: it was based on a concrete understanding of what mass action on the part of the citizens had achieved and (it was thought) would continue to achieve. It is no coincidence, for example, that the great advances in democratic politics tended to take place after these wars of the citizen armies: in Britain all adult males finally achieved the vote only in 1918, at the same time as the suffrage began to be extended to women. Similarly, after 1945 the practical implications of democratic politics were worked out for the first time with the policies of the Attlee government. But the scale of the

transformation wrought by the mass armies of industrial workers induced something of the same response, independently of warfare: such a crucial population could not be kept in a form of subjection indefinitely. One can go from old movies of the Ford plant in Dearborn Michigan to movies of the armies in Europe in the Second World War and see exactly the same collective force, and how it had to be respected.

This sense of gratitude to one's fellow citizens was not felt as plainly in the defeated nations of Europe, for obvious reasons. Indeed, after both World Wars, and especially the First, the response of many in the defeated nations was likely to be suspicion of betrayal or resentment at feebleness rather than gratitude. But in Britain and the US, at least, it sustained during the post-war period a general sense of at least potential collaboration between the ruling class and the working class, manifested in such things as the acceptance of powerful unions and a reasonable balance between the rewards of labour and those of capital (the kind of thing traced in Thomas Piketty's book). The high-water mark of those years was the securing of the vote for the African-Americans of the South, though in retrospect that may also have been the final act. And in the defeated nations, above all Germany itself, after the Second World War the sheer scale of the work involved in rebuilding their shattered societies also brought home for many the necessity of relying on all their fellow citizens if they were to succeed in the rebuilding. This, more than anything else, sustained Piketty's trente glorieuses.

The central problem of Western societies now, however, and the septicaemia which has invaded the organs of the democracies, is that the concrete benefits which mass action used to deliver are no longer necessary. The history of the citizen army, again, is revealing. The last mass citizen army which Western societies (other than Israel, a very special and unrepresentative case) will ever have seen was the army which fought the Vietnam War, and far from feeling

gratitude to it, the American ruling class was terrified by its near mutinous response to a plainly unjust war - though this was exactly what the old theorists of citizen armies, from Machiavelli onwards, took to be their point. Never again will there be an American army of the old type, and instead we have a relatively small group of expert soldiers and a set of geeks playing deadly video games in a bunker in Iowa. A kind of windy rhetoric in American public discourse about the military mimics the genuine feelings people once had, but it cannot disguise for very long the transformation in what the military represents.

The same is true of industrial power. People in America and Britain now owe very little concretely to one another's efforts: what they consume either comes to a far greater extent than sixty years ago from overseas, or, if made in their own countries, it is made with minuscule workforces, and even then often by an immigrant population without the vote. 100,000 workers in their prewar heyday manned the old Ford lines at Dearborn; now there are 6,000. As robots take over yet more production, the numbers of people in productive employment are clearly going to fall even more.

The result of all this has been the creation of what Guy Standing has termed the "precariat" or what the pseudonymous blogger "Anne Amnesia" has more vividly and accurately termed the "unnecessariat". And one striking consequence of this shift has been a subtle change in political rhetoric. Many politicians on the Left now routinely describe themselves as having gone into politics to <u>help</u> their fellow citizens; thus Hillary Clinton said during the 2016 campaign that she was in the race "to make life better for children and families" (this was the same speech in which she said, equally revealingly, "when it comes to public service, I'm better at the service part than the public part"). Listening to this kind of politician one often feels that they think of the state as something like the armed wing of Oxfam. But charity is not a strong

enough principle to sustain genuine democracy; apart from anything else, as a long tradition from the ancient world to the eighteenth century recognised, the recipients of charity can come to hate their benefactors, since the acts of benevolence merely reveal ever more clearly the power differential between the people concerned. The modern dilemma faced particularly by politicians on the Left is that if they put themselves forward primarily as <u>representing</u> their electorate they feel a sense of guilt, since their electorate's interests may clash with those of other people whose interests they think ought also to be taken into account, and the politicians find themselves inevitably moving into a position of <u>rulership</u> in which they stand above the people they represent. This situation has not been helped by the widespread assumption that Burke was self-evidently right when he argued that electors choose people who will use their own judgement on political issues; though we should always remember that the mandation he was arguing against had been quite widespread in the borough constituencies of pre-1832 England, and that the response of his audience when he acted on the basis of his principles was to dismiss him at the next election.[2]

Another significant social change, again experienced across the Western world, has been the decline in the experience of upward social mobility on the part of large numbers of people. As John Goldthorpe in particular has emphasised, significant numbers moved from the working class into the "salariat" in what has been called the "Golden Age" of social mobility in the middle decades of the twentieth century. This was largely the result of structural changes in class patterns, with the creation of new kinds of white-collar jobs and the decline of old working-

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[2] One significant feature of this, often forgotten, is that Bristol had one of the most democratic franchises in the country.

class occupations. But it was a one-off event and has largely come to an end; men (especially)

are now more likely to be downwardly mobile than upwardly mobile.[3] This has had insidious

psychological effects. Middle-class people in the mid-twentieth century were quite likely to

have had working-class parents or siblings, and they would not find them culturally alien

(despite the novels of social dislocation which became fashionable in the 1950s such as John

Braine's Room at the Top). This is no longer true to anything like the same degree, and

something more like the pre-"Golden Age" class barriers have been recreated, with obvious

consequences for democratic politics.

These social changes may in the end be the most important reasons for the decline of

traditional democratic loyalties, but like all social changes they have been experienced also as

cultural or intellectual developments. This has worked itself out in a variety of ways, but what

all the ways have in common is that they reconcile people to the weakening of democratic

political forces, while never requiring them (until very recently) expressly to abjure the principle

of democracy. In particular, the moral force of majority decision-making, which had been so

central to the old mass democracies, has been systematically undermined, and the idea that

majorities are inherently tyrannical is now remarkably widespread. It is even an idea which is

frequently attributed to the founders of the American republic, despite the fact that (as I showed

in my book The Sleeping Sovereign) they were in reality much more concerned with resisting

the rule of a minority - since that was actually what they had experienced and what they wanted

to throw off. When they addressed the problems of majority rule, they almost invariably did so

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[3] See e.g. John Goldthorpe, "Social class mobility in modern Britain: changing structure,

constant process", Journal of the British Academy 4 (2016) pp 95-96.

in the full awareness that in the end political decisions had to be made by a majority of the population, and even the supermajorities which they built into their systems seem usually to have been seen as principally designed to eliminate what one might think of as "noise" - the fact that in any election a certain number of votes may have been cast frivolously and should not really be counted as part of the majority will of the society (to use the Rousseauian term).[4]

During the last sixty years or so there have been a whole series of different political theories all of which have served in various ways to diminish majoritarianism and the significance of the <u>vote</u> as a means of taking decisions. The first and most institutionally powerful is the defence of a body of entrenched rights which - in the extreme cases represented by the German constitution, but also some other Western European constitutions, and arguably now the Indian constitution - are immune to <u>any</u> kind of democratic alteration. In practice this is also very largely the case in the United States, given the tremendous difficulty now in amending the federal constitution, though this was not at all the original intention of the founders. Sometimes connected to this is the theory of "deliberative" democracy, in which the process of deliberation (what Rawls called "public reason") is seen as conferring authority on the final decision; the actual site of decision may still be a vote, but it can also be a judicial body - Rawls, for example, famously suggested no institutional correlate for his theory other than the Supreme Court.

More recently another check has become fashionable, at least among political theorists, though it has not yet been given any concrete expression: this is the idea that a lottery, <u>sortition</u>, should be used in many instances where we would otherwise use voting. The advocates for this

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[4] See Melissa Schwartzberg

often use ancient Athens as their model, where sortition was used extensively in choosing

officials, though it was always alongside majority voting on other matters; they do not use Rome,

though Rome was much closer in character to our mass democracies, since at Rome sortition was

only used (as it is in our societies) to choose juries: otherwise everything was decided by

majority voting, though often of a complex kind. We still live, more or less, in political societies

of the Roman type, and the oldest of our institutions to use majority voting to make decisions,

the Catholic Church, traces its institutional origins straightforwardly back to its origins in Rome.[5]

Sortition is defended on the grounds that unlike majoritarianism it gives everyone an equal

chance to have their views implemented, and it is seen as democratic since equality must be the

fundamental principle of a democracy; Aristotle observed that election is an <u>aristocratic</u> principle

precisely on these grounds. A rather different idea, though with somewhat similar consequences,

is that we should take opinion polling more seriously as a basis for responsive legislation: our

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[5] The Pope is technically elected by the clergy of the city of Rome, though the clergy are

now Cardinals drawn from all round the world. Since 1179 there has usually (but not invariably)

been a supermajority requirement. An interesting contrast can be drawn with the choice of the

Pope of the Coptic Church, where a boy draws one of three names out of a chalice - a survival of

sortition in part of the old Hellenistic world. The geographical distribution of majority voting, or

indeed voting of any kind, deserves further study. It seems not to have been used in ancient

China; it does not figure in the Old Testament; and examples in ancient India which have been

described as "election" turn out on inspection to be cases of sortition. Sortition seems to be close

to universal in human societies, but majority voting is (on the global scale) an unusual

phenomenon, testimony perhaps to its psychological difficulty.

views can then be <u>represented</u> without any vote being necessary.

The most recent alternative to majoritarian democracy which has been suggested is more surprising: it is a return to <u>epistocracy</u>, the rule of a well-informed elite. In the modern West this has had an intermittent history,[6] and it has recently been defended by Jason Brennan, while in China it has been urged for some time by writers in the so-called "neo-Confucian" tradition. Because of the increasing power and influence of China, this may one day be the most formidable of these anti-democratic theories, but at the moment it probably has less traction in theoretical discussions at least in the West than the others.

The one flourishing tradition in current democratic theory which is committed to a form of majoritarianism is what is usually termed the "epistemic" theory, according to which the point of democracy is that it produces good answers to social and political questions. The model here (essentially) is the observation first made by Condorcet and later confirmed by Francis Galton, that the judgements of a large number of people about something (Condorcet's example was a jury, and Galton's was the weight of an ox at a country fair) tend to cluster around the correct answer, all other things being equal.[7] The "wisdom of crowds" was a fashionable doctrine until Brexit and the election of Trump, when many of its exponents fell oddly silent; but it always had problems, chief among them in the realm of democratic theory being that it seems to preclude new votes, even on relatively trivial topics. If the authority of the decision for the citizens is its <u>correctness</u>, rather than the fact that <u>they</u> made it, then the changing character of the electorate ought to make no difference and they would not be justified in overturning their predecessors'

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[6] e.g. Walter Lippmann

[7] Galton proposed following the median rather than the mean.

vote. Condorcet, indeed, seems to have believed something like this where bodies of rights are concerned. Only if the changes in the electorate constitute a new "question" to which a new "answer" should be given, would there be grounds to vote again, and there is no reason to think that this would often be the case, or, more relevantly, that we could determine whether it was the case or not. So even epistemic democracy, which seems on the face of it to endorse voting and majoritarianism, turns out not really to be in sympathy with the traditional ideas of democratic sovereignty and the freedom of citizens to make their own decisions, including their own mistakes.

Epistemic democrats have often called Rousseau in aid as an exponent of their view, and if it were true that the first and in many ways the greatest of modern democratic theorists was indeed an epistemic democrat that would be a significant support for their position. They base their use of him on a number of passages in the Social Contract, and in particular a well-known one in Book IV Chapter II:

> when a law is proposed in the Assembly of the People, what is asked of them is not precisely whether they approve the proposition or reject it; but whether or not it conforms to the general will which is their own: each in giving his vote states his opinion on that question, and from the counting of the voting is taken the declaration of the general will.

Bernard Grofman and Scott Feld, in a seminal article on this subject in 1988, said of this remark that "This passage in Rousseau is often misunderstood. It represents an understanding of the process of voting not as a means of combining divergent interests but rather as a process that searches for 'truth'", and their view has been quite widely shared; for example David Estlund

and Jeremy Waldron said that

> Grofman and Feld's central interpretive point seems indisputable. Rousseau conceived
> voters as giving their opinion on an independent matter of fact - the content of the general
> will - and held that the answer receiving a majority of votes under certain circumstances
> was guaranteed to be correct. This feature of Rousseau cries out for a Condorcetian
> interpretation.

But no one until the 1960s believed this about Rousseau, and Rousseau himself made pretty clear
in his <u>Letters from the Mountain</u> that it was not what he thought. At the end of this work, written
to the citizens of Geneva in defence of his <u>Social Contract</u>, he exclaimed

> 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).

All the passages in the <u>Social Contract</u> which seem to underpin the epistemic view can in fact be
read as arguing - like this passage - that the general will <u>constitutes</u> the general good, it does not
<u>detect</u> it. Any course of action which is genuinely supported by the population is <u>ipso facto</u> the
right course of action because, on Rousseau's account of democracy, that is what the "right

course of action" <u>means</u>. Rousseau's theory of democracy is in fact the closest to what I shall be saying in this lecture.

What is to be said in general about these anti-majoritarian or anti-democratic theories, and any others which might be suggested? The first point is a simple one, but it may be all one needs to say. It is that it is impossible to imagine in the circumstances of the modern world institutions embodying principles of this kind where the institutions are not themselves the creation of something like a popular vote. We can easily envisage that a written constitution might be drafted by an assembly randomly selected from the population, rather than elected, but we cannot imagine either that the assembly had not been authorised by some kind of vote, or that its draft would become law without some form of popular ratification. Sets of rights, sortition, and the rule of experts, cannot be fundamental: they can only be superstructural and located at the level of what used to be called "government" as distinct from "sovereignty".[8] Constitutions which seek to lock in a set of basic principles look on the face of it like exceptions to this. But it is not clear that they could be maintained in their present shape in the face of a determined and democratic move to refashion them. As in the case of referendums in Britain, such a move might be regarded as merely "consultative", but as in Britain it is likely that it would prove hard for state structures to disregard a clear expression of the popular will - and that is the key point, since it illustrates that in modern states we do not <u>really</u> believe in the irrelevance or illegitimacy of majoritarian democracy at a fundamental level. No one has seriously proposed an alternative.

However, the fundamental level is not all that matters, and in practice most important debate focuses on questions of "government". When the respondents to Mounck and Foa's

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[8] See my <u>The Sleeping Sovereign</u>

questionnaires said that they were not interested in democracy, they (probably) did not mean that they did not want democratic voting on constitutions; it is probable that they meant something like the constraining of majorities by bodies of rights - in other words, democracy limiting itself. It should be said that the obviousness of majoritarianism at a foundational level puts the burden of argument on its opponents even at the governmental level, since it is not immediately clear why, if it is necessary for fundamental decisions, it should not be used for <u>less</u> important matters. Nevertheless, the case for entrenched rights, deliberative democracy, and sortition, and perhaps even the case for epistocracy, have to be taken seriously.

What they all have in common might be described as a denial of the relevance of <u>agency</u> in political life. By "agency" I mean the idea that when I act politically, and in particular when I vote, I am actually <u>effecting</u> something. One of the reasons why this idea has been marginalised is that from the 1950s onwards political scientists took it for granted that an individual's vote, or any other contribution to a large-scale enterprise (including an army), is extremely unlikely to make any difference to the outcome. The classic illustration of this is the so-called "pivotal voter theory" according to which a rational agent would only vote for instrumental reasons if the chances of their being "pivotal"- that is, it is their vote which turns the election - wee reasonably high. In normal elections this condition is virtually never met, and the natural conclusion to draw is that, if they are acting rationally, voters must intend something else by voting than actually to bring about a desired outcome. The favourite candidate for their intention is that they are <u>expressing</u> themselves; what is striking about this explanation, however, is that it puts the act of voting into the same category as other kinds of self-expression such as carrying banners etc, and so downgrades the distinctive character of majoritarian democracy. The outcome of the vote on this account has a rather loose relationship to the actions of the voters: they go into their

voting booths and deliver their votes in secret, but they also (ideally) put up posters, march, and so on - and these are all equally "expressive" acts with the same lack of causal connection with the result of the ballot. Indeed the secret ballot may be seen as <u>less</u> expressive and worthwhile than other forms of political action.

Some years I ago I published a book in which I explored these issues. What I argued there was that there is an implicit assumption in this account of voting which needs to be brought out and scrutinised. The assumption is that the only situation in which I have an instrumental reason for voting is one where my vote is <u>necessary</u> to achieve the outcome I desire. In fact, it is also possible for me to have an instrumental reason if my vote is <u>sufficient</u>, though in that situation I have to have the further or "meta" desire that it should be I who is bringing about the result. This sounds subtle and complex, but it can be understood fairly easily through the example of a serial vote, in which one after another we step up to vote for one of two candidates or legislative measures. At some point there will be a majority for a candidate, and we can imagine that we stop counting the votes at that point (Roman elections were rather like this). The last voter's vote decided the election, and so (we can say) he certainly had an instrumental reason for casting his ballot. By the same token all the earlier voters who cast their ballots for the winning candidate can pride themselves on equally contributing to the outcome - each vote was decisive, conditional upon the other votes being cast. However, suppose that there were still a lot of voters in line waiting to vote when the ballot was stopped. Many of them <u>would have</u> voted for the winning candidate, so if the last voter had not bothered to turn up, the result would have been the same. His vote was not pivotal, in the sense of being necessary to secure the outcome, but it was sufficient. And if he wanted to be someone who actually made a difference to the result, he could do so by voting; though if he did <u>not</u> want to be that kind of

person he had no particular reason to vote, even though he wanted the outcome of the ballot. In other words, he could choose to be an agent and act in order to secure his goal, or he could choose merely to be a passive recipient of it.

Serial voting of the kind I have imagined is very rare in practice, but the underlying logic is the same in an ordinary vote like a British general election. Indeed, it can be quite vividly experienced in the British system. Many of us have watched the count in a constituency, and seen the paper ballots piling up for each candidate. At some point in the evening it can become clear that enough ballots for one of them have been counted to guarantee that that candidate has won. If my ballot is in that pile, I can feel just like the voter in the serial vote - my piece of paper is part of the sufficient set of ballots. If it has not yet been counted, I will not be able to feel quite like that; but if I have voted for a winning candidate the chance that my ballot is part of the sufficient or effective set in a two-person race must by definition be more than 50%. This is a vivid example, but the same reasoning applies even in an American-style election with voting machines: if there enough people who vote like me, I can think of myself as having a high probability of contributing effectively to an electoral outcome, and certainly a probability high enough to make it worth my while to vote, given my desire to play a real and effective part in the process.

This is the point which has been overlooked in the modern theory of voting. Implicit in the pivotal voter theory is the assumption that I will vote for the same sort of reason that I will hand over money in a market, that is, that without doing so I will not receive the good I am paying for. And indeed an analogy between an election and a market has been quite pervasive in

the modern literature, beginning with Anthony Downs.[9] But the analogy does not hold, since

there is no good reason in a market for me to hand over money if I am going to get the thing for

free, whereas there is a good reason for me to vote even if someone else will step up in my place

and secure the election of my candidate. The reason is this: it might be a matter of great

importance to me in a political context that I possess some degree of agency, whereas this is not

an essential feature of a market. The traditional account of democracy, found particularly in

Rousseau, was that democracy has a special authority because the voters are self-legislating and

are not merely receiving laws, however much the laws might be to their taste, from an alien

authority. In this respect the traditional account bears some resemblance to another modern

political theory, that of republicanism or "non-domination", in which the crucial issue is that my

fate should not be in the hands of another person, however benevolent and concerned with my

interests that person might be. (It may only be a partial resemblance, however, since on at least

some versions of republicanism a majority vote can also be thought to threaten my freedom).

But the market is not a domain of self-legislation, nor of legislation of any kind, and to treat

democratic politics as if they are like market relations is immediately to drain them of this kind

of agency.

Majoritarianism arises very naturally on an agentive view. On the one hand, if a vote

required unanimity, then clearly there would be very few times that any collective action could

actually be agreed upon. Each time it was, I would indeed have taken a full part in determining

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[9] Schumpeter might be thought to be an earlier example, but though he stressed the part

competition for office plays in democracy, he did not draw an analogy between voting and a

market in the way Downs did.

the result, but because there would be so few occasions on which we could do anything, my overall agency - my capacity to transform the world in some way - would not be very great. And on the other, if a minority regularly got its way, then by definition any particular member of the community would be likely to have less agency than if the decision was taken in accordance with the wishes of the majority. Supermajorities, on this account, are a matter of judgement: to require a supermajority is to render the proposed course of action less likely, but it does ensure that a larger group of people support the proposal. In general, however, there is a good reason to support a straight majority as a decision procedure, perhaps _especially_ on important matters: a population which thinks that the status quo is unduly privileged, and that a minority of the population can block urgent change, may come to feel a general hostility to their political institutions. The experience of America with regard to its constitutional constraints, such the difficulty in overturning the Citizens United judgement, is not reassuring.

Political scientists have often been puzzled by the so-called "bandwagon effect", but on this account it is entirely rational (given, as I said, my desire to take part) to join a bandwagon which corresponds more or less to what I want; this is the natural origin of political parties, which so many modern political theorists treat with a kind of high-minded disdain.[10] Furthermore, if my vote is a means of doing things and not merely a way of expressing a preference, it makes sense to think about _bargaining_ with it, or forming coalitions with other voters who may want different things from me. Again, we must assume that I _want_ to be effective in some way, and do not _need_ to be; but with that caveat, I can think about different ways of being effective, and some of those ways may not simply be voting for what I want. If it

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[10] Nancy Rosenblum being an exception.

is possible for us to think of our vote as having an effect, it must be possible for us to think

strategically about it. So a stark contrast between getting what I want and failing to get it may be

misleading; there will almost always be new possibilities for me to get some of what I want if I

can ally in some way with enough of my fellow citizens. Any defeat is often likely to be

temporary and provisional, a feature of democratic politics of the utmost importance; it is the

temporary nature of any defeat which damps down the violent passions of the losers, since they

live to fight again another day. Compare the politics of abortion in the US and the UK.   The

passions unleashed by Brexit make the same point, since everyone recognises that in the end

there is going to be a near-permanent victory by one side or the other, and this is (I think) the

most powerful argument against a constitutional arrangement which is deeply entrenched.

One way of capturing what is implied in the agentive view is that it takes democracy to

be in effect a kind of civilised and domesticated version of a mob - and that should not alarm us.

Human beings when they gather together physically can effect great changes; it is not an

accident that the famous revolutionary moments are cases of mass action, such as the storming of

the Bastille or the Winter Palace. And even in our own time the major changes in world politics

have been signalled by people actually meeting in large numbers and physically taking action,

from the Paris streets in May 1968 through the Gdansk shipyard, the tearing down of the Berlin

Wall, and Tiananmen Square, to the Maidan and Tahrir Square. Beneath our placid democratic

procedures there is still this ancient fact. The great discovery of democracy was that people

could accept a simple head count as the basis for the transformation which they might otherwise

have effected through physical action and, potentially, violence. This should receive more

attention from the defenders of what is often called "liberal" democracy than it often does; most

clear cases of illiberal democracy in fact involve taking the vote away from minorities, either

formally, through denying them citizenship, or informally, through corruption of the voting process, and this is in a way testimony to the fact that majoritarianism, as long as it respects the clear condition that every one should always have the vote, is not as potentially illiberal as people often imagine.

However, all this being said, it could be argued that no one who is in the minority in a vote can feel a sense of agency at all in the result: in what way was it <u>their</u> decision, when they expressly said they wanted something else? So an agentive account cannot justify democratic politics to the minority. The standard answer to these questions from the classic democratic theorists who wanted something like the agentive view, Rousseau above all, was that by virtue of participating in the vote I had made the result my own. They expressed this through the stylised picture of a social contract in which we unanimously agreed to be bound by majority voting, and this initial agreement implied consent to the result which we voted against, once we knew how the majority of our fellow citizens voted. Something like this is also the obvious response to Richard Wollheim's old "paradox of voting". But it must be conceded that there is something unsatisfactory about this answer, at least if it is taken at face value. If some initial contract or convention to abide by a particular social decision procedure legitimates it, what is the fundamental difference between an agreement to follow the will of a majority which does not include me, and an agreement to follow the will of (say) a Hobbesian monarch? Why should the fact that it is a <u>vote</u> which is the procedure be significant?

The Hobbesian alternative is particularly challenging, given that Hobbes himself believed that the agreement to form a civil society was <u>eo ipso</u> an agreement to create a democracy, but that the primal democracy could convert itself into a monarchy with the same underlying legitimacy. A more modern version of the same challenge is represented by Hart's <u>The Concept</u>

of Law, with its argument that the fundamental rules of recognition which render political decisions legitimate are conventions rather than express collective decisions. On these kinds of view, it is impossible for every citizen to possess the kind of agency which the early democratic theorists wanted: all that many of us (if Hart was right, all of us) can have is a tacit acceptance of political procedures in which we take no real part. The outvoted minority, on this account, is not fundamentally different from the set of non-participants in the election: both groups simply accept the legitimacy of a result they did not bring about. If this is true, of course, it is no surprise that people who think they will be outvoted might choose not to take part in the vote, since their relationship to the outcome would be the same in either case.

To see what the difference might be, however, between a defeated minority and non-voters, let us consider first not an election of representatives, but a vote within a legislative assembly. The classic democratic theorists after all thought in these concrete terms; for Rousseau, the acts of the citizen body in Geneva took place in the annual meeting of all citizens in the cathedral, when the governing council was elected and laws ratified. The same was true of everything Hobbes said about democracies.. So their ideas will be clearest in this kind of setting. The process of voting within a legislative assembly, as the early theorists realised, is indeed best understood as in reality a two stage process, even if the two stages often (though not always) are run together. The first stage is the vote, and the second stage is the actual promulgation of the law. Since (on the classic theorists' view) everyone in the assembly was already committed to the authority of a majority vote, the second stage can be seen as unanimous: everyone who took part in the vote believes that the final decision is in this sense theirs, even if they had originally opposed it. (Condorcet used this fact as the basis for his calculation about when a law should be revisited, something picked up by Jefferson writing about the US constitution). But we would

say, I think, that the decision was theirs in a way that it was not the decision of the rest of the population outside the legislative assembly, despite the fact that this outside population might both concur with the result, and have a general commitment to the legitimacy of whatever the assembly (that is in practice its majority) were to decide. Suppose, for example, that the custom was that everyone in the assembly had to sign the law, once the majority vote had been taken: the law would come out over their signatures and only their signatures, clearly signifying that it was the action of that particular, determinate group.[11]

Exactly the same might be said, once again, about an actual, concrete mass of people altering their physical environment - a "mob" tearing down the gates of the Bastille. Even those in the mob who might to some degree have unwillingly gone along with its actions were still part of it, in a way that bystanders, however much they might on the other hand approve of what the mob was doing, were not. If members of the mob who thoroughly disapproved of its actions bailed out, they would turn themselves into bystanders; but if there were those who (in the words of Rousseau which I quoted earlier) thought that "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", then by virtue of staying with their comrades they were taking part in the action.

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[11] I have deliberately fashioned the example in this way to avoid the implication that it might be the assembly as a corporate body which validated the law. If the rule is simply that each person in the assembly declares that the result is what they will (to use the terminology of the classic theorists) for the law to be valid, then one does not need a strong theory of corporate identity, as Hobbes seems to have realised (though this, it must be acknowledged, is a contentious question).

These examples are vivid because they involve what one might call imaginatively

manageable numbers of people - crowds which can act together, whether in a legislative chamber

or at the gates of the Bastille. But the same principles apply, I believe, to the electorate of a large

nation. The key thought behind the eighteenth-century invention of the plebiscite in both the

United States and France was that citizens as a whole could function like a democratic assembly

- that the argument which had been used since large European states emerged in the early middle

ages, that democracy could not be practised in modern states since they were in general too large

for all the citizens to meet together, was not in fact true if one distinguished between

fundamental and less fundamental decisions. Fundamental laws could be voted on in the same

way and with the same frequency as representatives were sent to an assembly, and there was no

technical difficulty in including the whole population in a legislative moment. But if this is the

key thought, then one should correspondingly assume that the citizens in a plebiscite will behave

like the members of a parliament or other assembly - and in a parliament the authoritative

moment is not the debate but the vote. As a rule, many members do not speak; in the British

Parliament it is the fact that they go through the lobbies which is their essential act, and not their

contribution to the deliberation. Moreover, many representative assemblies have very little say

collectively in drafting the bills which are put in front of them. Though the bulk of the members

have some powers of amendment, essentially they often have to accept an agenda set by a small

group of their fellow representatives, or even (in the American system) by people completely

outside the assembly. We should not expect more of a plebiscite than we do of an assembly; in

each case the decisive moment is a vote, and most citizens behave much as the representatives in

an assembly do (with, perhaps, the added advantage that they are not whipped!).

Furthermore, the uniquely deliberative character of an assembly, which has always been

treated as its quintessential feature, can be greatly exaggerated; Rousseau for one believed that the decision of the citizen assembly would be best if "the citizens had no communication one with another" (SC II.3). In most states, from at least the seventeenth century onwards, discussions in an assembly have been only part of a much wider discussion, ranging from the technical arguments of academics and civil servants to the cruder arguments in the press and on the street. Members of an assembly stand in the same kind of relationship to these wider deliberations as do members of the general public, and their views seem to evolve in accordance with them just as those of the public do. I have never heard a debate in Parliament which was as profound or far-reaching as the debates outside it; what makes the Parliamentary debate special, and even today gives it an air of drama and urgency, is that the members possess a power to make a final determination of the matters in debate, and that power is their vote.

The natural implication of what I have called an "agentive" view of democracy is of course universal suffrage, and indeed this was what all the most obvious advocates of this kind of view were committed to. In the case of most of them, this meant that they were willing to push for female suffrage even when this was politically very difficult in their time; the most obvious example of this is Bentham, writing to the French in 1789 and urging that the new constitution should give the vote to women. Many of them wanted an even wider franchise; Bentham (again) proposed 14 as the age for voting. And most strikingly of all, they were in general unsympathetic to a strong distinction between citizen and resident alien. Bentham argued in his Plan of Parliamentary Reform that "aliens" as well as women should have the vote,[12] and Rousseau thought the same. When he described the ancient government of his native

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[12] p.128. Though in this work, unlike his suggested French constitution, he argued that

city in his unfinished <u>History of the Government of Geneva</u> (which in his Sixth <u>Letter from the Mountain</u> he described as the model for the <u>Social Contract</u>) he praised the fact that in the past new residents as well as those born in Geneva had been able to take part in the popular assembly. And this should not surprise us, given that the whole point of Rousseau's theory was that laws had no authority over anyone who had not in some sense made them themselves - in <u>The Social Contract</u> voluntary residence is the criterion of full citizenship, not (as it had been in Locke) that merely of a resident alien, and Rousseau applauded the way the early Romans had treated foreigners at Rome as citizens.

But the less they take something like the agentive view, the more likely it is for a democratic theorists to be willing to make distinctions between different kinds of resident in the same state. The most informative instance, from which I took the title of this lecture, is that of the Abbé Sieyès. Sieyès saw the state, in a very modern way, as a mechanism created to ensure that citizens enjoyed a set of what he termed "the rights of man and citizen" or (as he also called them) "natural and civil rights". In a draft list of these rights which he produced for the National Assembly in July 1789 he included such things as "liberty, property and security", freedom of expression, freedom to come and go from the state, and freedom to employ one's "strength, industry and capital" in whatever kind of work one might choose, unimpeded by any "individual or association". But he was not willing to include a right to participate in politics in this list of fundamental rights. He went on to say

Up to now we have dealt with the <u>natural and civil rights</u> of the citizens. It remains for us

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all voters had to be tax payers

to consider the <u>political</u> rights. The difference between the two kinds of rights lies in the fact that the natural and civil rights are those <u>for</u> the maintenance and development of which the society is formed: and the political rights are those <u>by</u> which the society forms itself. It is better, for the sake of linguistic clarity, to call the first <u>passive</u> rights, and the second <u>active</u> rights.

All the residents of a country [<u>pays</u>] ought to enjoy the rights of a <u>passive</u> citizen: they all have the right to the protection of their person, their property, their liberty, etc., but they do not all have the right to take an active part in the formation of public institutions [<u>pouvoirs</u>]; they are not <u>active</u> citizens...

His prime examples of passive citizens were foreigners, children, and women.

Sieyès has enjoyed a resurgence of interest in the last couple of decades or so, as his constitutional theories in general seem to fit the modern world rather well. His modern admirers, of course, would not endorse his rejection of universal suffrage, but the logic of Sieyès's position remains, and it has found expression in the kinds of democratic theory with which I began. Sieyès's passive citizens were always accorded both legal rights (other than the vote) and the right to participate in other ways in politics. They could petition, and do everything which the "active" citizen could do, other than <u>elect</u>. But under a system of sortition, or some other current "democratic" theories, this is no more than all of us would do: in effect much modern democratic theory has exactly reversed the nineteenth-century process, and instead of making passive citizens active, it has made active citizens passive!

One of the most interesting and politically important aspects of this is illustrated by the debate in most Western countries about immigration. Modern economies depend almost as

much as nineteenth-century ones on a labouring class without the vote, though the new

disenfranchised class are immigrants rather than poor native-born residents. From the point of

view I have been describing, as Rousseau and Bentham recognised, this is intolerable: they are

under laws they did not themselves make. But from the Sieyèsian point of view, there is no

acute problem, since their fundamental rights are secured, and the vote is a subsidiary matter.

The practical question to ask is then, what would an immigration policy look like if we

understood that all immigrants were like the Irish are currently vis-a-vis the UK, that is, could

vote as soon as they had established a normal residency in a constituency? How far do many

liberal approaches to immigration rest implicitly on a distinction between the immigrant and the

citizen? What would a policy of open borders plus immediate citizenship look like, and how

many people, and more relevantly how many companies employing immigrant labour, would in

fact support it? I am not sure that I myself have an answer to these questions, but they illustrate

the kinds of issue which is opened up, once we begin to think of politics as quintessentially a

domain of democratic action.