Plebiscites, Referendums, and Ballot Initiatives as Institutions of Popular Sovereignty: Rousseau's Influence on Competing Theories of Popular-Vote Processes

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Abstract: Popular-vote processes — such as plebiscites, referendums, and initiatives — are frequently understood as Rousseauian instruments of popular sovereignty. Yet, Rousseau did not theorize these devices himself. As a result, he has been claimed by proponents of competing theories of popular-vote processes. Theorists of sleeping sovereignty have claimed Rousseau's distinction between sovereignty and government in support of rare, constitutional referendums. Theorists of direct democracy invoke Rousseau's criticism of representation to demand frequent referendums. Plebiscitarianism casts Rousseau's general will as demanding the unification of the nation in one popularly legitimated leader through top-down plebiscites. Lastly, Condorcet's proposal for the "censure of the people" outlines how the sovereign could initiate popular votes itself in order to check the power of the government. I contend that Condorcet's account provides the most compelling link between Rousseau's account of popular sovereignty and the institutional design of popular-vote processes.

Introduction

Political theorists and empirical political scientists frequently associate popular-vote processes—plebiscites, referendums, and ballot initiatives—

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with Jean Jacques Rousseau's political thought. For instance, George Kateb contends that Rousseau is "the one who memorably associated political legitimacy with direct democracy."[1] In her book on referendums, Maija Setälä similarly argues that "Rousseauan reasoning has certainly played a role in the discussion and development of modern institutions of direct democracy."[2] Hélène Landemore suggests that contemporary advocates of direct democracy seek, "in Rousseauvian fashion, multiplying voting opportunities and referenda-like moments of final say by the whole people."[3] There are many other examples.[4] Despite widespread agreement that popular-vote processes are Rousseauian, there is surprisingly little agreement on what a Rousseauian theory of referendums and ballot initiatives entails.

Disagreements about Rousseau's relationship to popular-vote processes reflect broader debates about the nature of popular sovereignty. In this article, I trace the development of four competing interpretations of Rousseau's account of popular sovereignty and shed new light on the theoretical development that accompanied the emergence of popular-vote processes. The first account understands Rousseau largely as a representative democrat, owing to his distinction between sovereignty and government.[5] Richard Tuck and others have argued that Rousseau meant for the sovereign to make decisions on fundamental law and then "sleep" for extended periods. This suggests that popular-vote processes should be rare devices of constitutional ratification. The second account interprets Rousseau as a direct democrat, owing to his concerns about the corruption of representatives and his emphasis on the sovereign's exercise of legislative power. These concerns help explain how—through the work of Moritz Rittinghausen, Victor Considerant, and Karl Bürkli—Rousseau was recruited in support of

[1]George Kateb, "The Moral Distinctiveness of Representative Democracy," *Ethics* 91, no. 3 (April 1, 1981): 370.

[2]Maija Setälä, *Referendums and Democratic Government* (Basingstoke: Palgrave Macmillan, 1999), 157.

[3]Hélène Landemore, *Open Democracy: Reinventing Popular Rule for the Twenty-First Century* (Princeton: Princeton University Press, 2020), 54.

[4]David Altman, *Citizenship and Contemporary Direct Democracy* (Cambridge: Cambridge University Press, 2019), 12; Claudia Landwehr and Philipp Harms, "Preferences for Referenda: Intrinsic or Instrumental? Evidence from a Survey Experiment," *Political Studies* 68, no. 4 (2020): 875–94; Alexander H. Trechsel, "Reflexive Accountability and Direct Democracy," *West European Politics* 33, no. 5 (Sept. 2010): 1055; Jeremy Waldron, "*Political* Political Theory: An Inaugural Lecture," *Journal of Political Philosophy* 21, no. 1 (March 2013): 21; Adrian Vatter, "Consensus and Direct Democracy: Conceptual and Empirical Linkages," *European Journal of Political Research* 38, no. 2 (Oct. 2000): 175; Albert Weale, *The Will of the People: A Modern Myth* (Cambridge: Polity, 2018), 49.

[5]Joel I. Colón-Ríos, "Rousseau, Theorist of Constituent Power," *Oxford Journal of Legal Studies* 36, no. 4 (Dec. 2016): 896; Richard Tuck, *The Sleeping Sovereign: The Invention of Modern Democracy* (Cambridge: Cambridge University Press, 2016).

demands for a system of government in which all decisions are made by citizens themselves through either assemblies or popular-vote processes. The third account is the theory of plebiscitarianism, which emerged largely to justify Napoleon Bonaparte's use of plebiscites and which was developed by Carl Schmitt. The fourth account draws on the Marquis de Condorcet's proposal for the "censure of the people" and casts popular-vote processes as instruments of surveillance.[6] On this view, the sovereign is neither constantly active nor usually asleep. Instead, citizens can monitor their representatives and call forth the sovereign to decide, when necessary.

The sleeping sovereignty account seems at odds with Rousseau's description of how institutions like the imperative mandate might preserve sovereignty while the direct democratic account fails to maintain Rousseau's distinction between sovereignty and government. The plebiscitarian use of popular-vote processes rarely offers meaningful choice and risks making citizens complicit in the government's usurpation of sovereignty. Of these four accounts, I suggest that Condorcet's attempt to institutionalize popular sovereignty appears most compatible with Rousseau's writings. Condorcet's monitory account explicitly considers how popular-vote processes might provide regular opportunities for citizens to protect sovereignty by contesting the decisions of elected representatives. Not only does this view seem broadly compatible with Rousseau's theory of popular sovereignty and his institutional proposals, but many of its anticipated effects appear to be supported by empirical evidence. Such arrangements are also consistent with recent work in normative democratic theory that does not start from a Rousseauian vantage point. We should thus carefully reconsider what it means for popular-vote processes to be Rousseauian and whether Condorcetian insights into institutional design could make these devices more appealing than has often been supposed.

In what follows I briefly trace Rousseau's influence on the eighteenth- and nineteenth- century debates about popular sovereignty in America and France that led to the development of the contemporary idea of popular-vote processes. Next, I articulate a view of Rousseau as a theorist of sleeping sovereignty and its implications for the use of constitutional referendums. Third, I outline how direct democratic theories of popular-vote processes evolved from a theory of popular assemblies inspired by Rousseau's critique of representation. Fourth, I explore how Bonaparte marshaled Rousseau's idea of popular sovereignty to justify the use of plebiscites to legitimate a single representative. Fifth, I examine how Condorcet's proposal for the

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[6]Nadia Urbinati, *Representative Democracy: Principles and Genealogy* (Chicago: University of Chicago Press, 2006), 202; Anne-Cécile Mercier, "Le référendum d'initiative populaire: Un trait méconnu du génie de Condorcet," *Revue Française de Droit Constitutionnel* 55, no. 3 (2003): 483–512; Franck Alengry, "Le referendum ou essai limité du gouvernement direct dans Condorcet," *Revue d'Histoire Politique et Constitutionnelle* 3 (1939): 215–29.

censure of the people sought to balance popular sovereignty and representative government. I conclude that Condorcet's account is both the most faithful to Rousseau's account of popular sovereignty and the most fruitful for rethinking the use of popular-vote processes in contemporary democracies.

Institutionalizing Popular Sovereignty

Popular-vote processes are often understood to be Rousseauian by virtue of their capacity to allow citizens to ratify laws. The *Social Contract* contends that "any law that the populace has not ratified in person is null; it is not a law at all."[7] But Rousseau's specification that ratification is to happen "in person" seems important, given his insistence that the sovereign "can act only when the populace is assembled."[8] Popular-vote processes provide a way of symbolically assembling the entire population when it is impossible to gather to make decisions, although whether this is sufficient for popular-vote processes to serve as tools of popular sovereignty remains an open question.

Rousseau certainly acknowledged the problem of assembling the sovereign in large nation-states. As he wrote in *Considerations on the Government of Poland*, "One of the greatest inconveniences of large States, the one which more than any other makes freedom hardest to preserve in them, is that the legislative power cannot show itself in them by itself, and can act only by deputation."[9] However, he seemed open to considering alternative methods of institutionalizing sovereign action. The *Social Contract* proposed a set of assemblies so that each town could assemble "in their turn."[10] Acknowledging the difficulty of assembling the entire nation, his *Plan for a Constitution for Corsica* proposes arrangements by which "the people is assembled only in parts and in which the depositaries of its power are often changed."[11] In his writings on Poland, federalism and delegation are considered as methods of solving the problems of large polities.[12] These proposals would come to life in France in the form of primary assemblies, which Joel Colón-Ríos describes as "precursors to the contemporary polling station"

[7]Jean-Jacques Rousseau, *On the Social Contract*, trans. Donald A. Cress (Indianapolis, IN: Hackett, 1988), 3.15 (198).

[8]Ibid., 3.12–13 (195–96).

[9]Jean-Jacques Rousseau, "Considerations on the Government of Poland and on Its Planned Reformation," in *The Collected Writings of Rousseau*, vol. 11, *The Plan for Perpetual Peace, On the Government of Poland, and Other Writings on History and Politics*, ed. Christopher Kelly (Hanover, NH: University Press of New England, 2005), 189.

[10]Rousseau, *Social Contract*, 3.13 (196).

[11]Jean-Jacques Rousseau, "Plan for a Constitution for Corsica," in *Collected Writings*, 11:128–29; Tuck, *Sleeping Sovereign*, 144–45.

[12]Rousseau, "Considerations," 183–84, 186–98.

where citizens could gather in their local areas to elect delegates and ratify constitutional proposals.[13]

Rousseau's willingness to allow the sovereign to delegate legislative power seems at odds with his claim that the sovereign "cannot be represented by anything but itself."[14] Indeed, he insists in the *Social Contract* that "the deputies of the people . . . neither are nor can be its representatives; they are merely its agents. They cannot conclude anything definitively."[15] While Rousseau thought that deputation has more evils than goods—in particular, delegates might be corrupted in ways that prevent them from acting on behalf of the sovereign—it is possible to "forestall this terrible evil of corruption."[16] First, Rousseau proposed short terms that "makes their seduction more costly and more difficult."[17] Second, he suggested the use of the imperative mandate, which would "subject the representatives to following their instructions exactly and to giving a strict account to their constituents of their conduct at the Diet."[18] Rousseau arguably saw such mandated delegates as "a form of direct decision by other means."[19]

Constitution making in the late eighteenth century was marked by disagreements about where sovereignty lay and how it should be exercised. For Rousseau, the sovereign is the collective entity that legislates, creating laws that are general in character. Sovereignty cannot be represented, but might be delegated. The government can be representative in character and is responsible for the execution of those laws, including applying them to particular cases. As Colón-Ríos has pointed out, Rousseauians saw primary assemblies and mandated delegates as the sovereign in action whereas Emmanuel Joseph Sieyès rejected the imperative mandate and allocated primary assemblies a smaller role in a more representative system.[20] It is in

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[13]Joel Colón-Ríos, "Constituent Power, Primary Assemblies, and the Imperative Mandate," in *Comparative Constitution Making*, ed. David Landau and Hanna Lerner (Northampton, MA: Edward Elgar, 2019), 93.

[14]Rousseau, *Social Contract*, 2.1 (153–54); Urbinati, *Representative Democracy*, 73; Geneviève Rousselière, "Can Popular Sovereignty Be Represented? Jacobinism from Radical Democracy to Populism," *American Journal of Political Science* 65 no. 3 (2021): 670–82.

[15]Rousseau, *Social Contract*, 3.15 (198).

[16]Rousseau, "Considerations," 189.

[17]Ibid.

[18]Ibid., 190. Despite Rousseau's apparent endorsement of the imperative mandate, Robin Douglass argues that he could not endorse such an arrangement as it would violate equality between citizens by giving some citizens greater legislative power than others. "Rousseau's Critique of Representative Sovereignty: Principled or Pragmatic?," *American Journal of Political Science* 57, no. 3 (July 2013): 735–47.

[19]Urbinati, *Representative Democracy*, 62–63; see also Louis Blanc, "Du gouvernement direct du peuple par lui-même," in *Questions d'aujourd'hui et de demain* (Paris: Dentu, 1873), 110.

[20]Colón-Ríos, "Constituent Power."

this context that American experiments with constitutional ratification would be combined with Rousseauian ideas and evolve into popular-vote processes. An early form of the referendum was invented in Massachusetts in 1779 as a mechanism of constitutional ratification. Here, citizens in each town gathered to vote on the clauses of the constitution. The voting records were sent to the convention to be tallied as each clause needed approval of two-thirds of all eligible voters in the state.[21] According to Jeffrey Lenowitz, each town meeting was able to consider amendments and so the substance of the reported votes varied considerably, making it "impossible to determine whether each provision obtained 2/3 approval."[22]

While Rousseau had not provided an account of popular-vote processes, Tuck argues that "something like a modern plebiscitary system was a natural extension of Rousseau's ideas."[23] In 1791, Jacques Pierre Brissot proposed that French constitutional proposals could be sent to local assemblies for amendments which would then be sent back to a constitutional convention prior to having citizens vote yes or no on a final proposal. By precluding amendments this proposal addressed one potential shortcoming of the Massachusetts method, although Brissot based ratification on two-thirds approval of provinces, rather than individual votes.[24] According to Tuck, the idea of a "simple head count of the population" might have first been advanced in France by Jérôme Pétion in 1789.[25] Although not adopted, it was proposed as a way of allowing citizens to vote yes or no to override the king's suspensive veto.[26] This may have been a response to Sieyès, who objected that the king's appeal to the people could not reveal the general will by aggregating the particular wills of subnational units.[27]

Condorcet's 1793 draft Girondin constitution included a proposal for the "censure of the people" that would allow citizens to propose legislation or contest decisions of their elected representatives. The 1793 Montagnard constitution altered Condorcet's proposals and was ratified through a popular vote that took place in primary assemblies that could discuss and propose amendments. The decision was taken by aggregating individual votes rather than the decisions of assemblies.[28] The 1795 constitution went through a similar process, although it was ratified by "an up or down vote

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[21]Jeffrey A. Lenowitz, "'A Trust That Cannot Be Delegated': The Invention of Ratification Referenda," *American Political Science Review* 109, no. 4 (Nov. 2015): 806.

[22]Ibid.

[23]*Sleeping Sovereign*, 144–45.

[24]Ibid., 150.

[25]Ibid., 153–55.

[26]Ibid., 151–56.

[27]Keith M. Baker, "Constitution," in *The French Revolution: Recent Debates and New Controversies*, ed. Gary Kates, 2nd ed. (New York: Routledge, 2006), 78–79.

[28]Melvin Allen Edelstein, *The French Revolution and the Birth of Electoral Democracy* (Burlington, VT: Ashgate, 2017), 294–302.

without discussion."[29] Bryan Garsten has described early plebiscites or refer-endums as events where "citizens assembled in meetings at set times and places in their cantons, waiting together through a long process of calling the rolls to register their votes in front of their peers."[30] And while written ballots had been used previously in France, Malcolm Crook argues that the revolution renewed interest in voting in assemblies and made the faults of this approach apparent.[31] Popular votes were detached from assemblies in 1800, when Bonaparte made an appeal to the people in order to exceed the constitutional limit on his term as consul.[32] In the plebiscite, voters signed their name in different columns of a register in order to indicate whether they were answering the question in the affirmative or the negative.[33]

The transition to contemporary popular-vote processes occurred gradually and unevenly throughout the nineteenth century, with ballot papers for French plebiscites adopted in 1851.[34] This is significant for three reasons. First, making explicit the expectation that individual votes of the entire elec-torate would be counted together even if the entire nation could not assemble seems to reaffirm the idea that popular sovereignty rested with the nation. Rousseau suggested that such an arrangement was superior to earlier prac-tices or proposals that aggregated the decisions of smaller assemblies that might hold corporate interests.[35] Second, it may have created incentives for regularization. While assemblies could previously choose their own methods for voting and debate amendments separately, the transition to ballot-box voting creates incentives to present each voter with an identical yes-or-no question. When left to assemblies, the results could not always be effectively aggregated if votes were taken on essentially different questions or decisions were taken unanimously and no count of voters was provided.[36]

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[29]Isser Woloch, "Lasting Political Structures," in *The Oxford Handbook of the French Revolution* (Oxford: Oxford University Press, 2015), 597.

[30]Bryan Garsten, "From Popular Sovereignty to Civil Society in Post-Revolutionary France," in *Popular Sovereignty in Historical Perspective*, ed. Quentin Skinner and Richard Bourke (Cambridge: Cambridge University Press, 2016), 246.

[31]Malcolm Crook, *How the French Learned to Vote: A History of Electoral Practice in France* (Oxford: Oxford University Press, 2021), 123–34.

[32]Garsten, "From Popular Sovereignty," 250; Isser Woloch, "From Consulate to Empire: Impetus and Resistance," in *Dictatorship in History and Theory: Bonapartism, Caesarism, and Totalitarianism*, ed. P. R. Baehr and Melvin Richter (Cambridge: Cambridge University Press, 2004), 30–33.

[33]Crook, *How the French Learned*, 133.

[34]Kevin Duong, "What Was Universal Suffrage?," *Theory & Event* 23, no. 1 (2020): 29–65; Crook, *How the French Learned*, 135. Although registers continued to be used for French plebiscites, voting in electoral assemblies returned from 1802 until 1848 (*How the French Learned*, 109–10, 134–35).

[35]Rousseau, "Considerations," 197.

[36]Edelstein, *The French Revolution*, 294–302; Lenowitz, "'A Trust That Cannot Be Delegated,'" 806.

Third, it led to the emergence of the modern campaign.[37] Rather than having citizens deliberate about matters immediately prior to voting as part of an assembly, Rousseau seemed to prefer such informal deliberation.[38]

Tuck argues that the development of "plebiscitary sovereignty" and its institutionalization in terms of popular-vote processes were "defended in explicitly Rousseauian terms" even though "Rousseau himself had not considered" this possibility.[39] His writings on Corsica and Poland acknowledge that a popular assembly might not be possible in large polities despite the *Social Contract*'s emphasis on the sovereign assembling in person. Here, smaller primary assemblies or mandated delegates appear as alternative institutional arrangements. Popular-vote processes emerged in response to similar problems, although the diversity of these institutions raises questions about how effectively they might realize popular sovereignty. For instance, mandatory referendums are often embedded in the constitution and triggered automatically by proposals for constitutional amendment. Government-initiated ad hoc referendums, often referred to as plebsicites, are usually initiated by the legislative or executive branches and give political elites wide latitude to set the agenda and terms of the vote. A variety of popular-vote processes allow citizens to initiate popular votes, usually by petition. Abrogative referendums, closely related to the "optional" or "facultative" referendum, allow citizens to challenge bills or laws promulgated by their representatives. Direct initiatives, sometimes referred to as "popular initiatives," allow citizens to demand a vote on a legislative or constitutional proposal, often with little involvement from elected representatives. Lastly, indirect initiatives allow citizens to propose legislative or constitutional changes, although these provide legislatures with the opportunity to prevent a popular vote by adopting the proposals.

Rousseau's account of popular sovereignty has served as inspiration for the development of such popular-vote processes. However, there are a number of competing theories of popular-vote processes, each with its own understanding of his theory and distinct institutional implications. Helena Rosenblatt contends that Rousseau "disapproved of both popular legislative initiative and popular referendums."[40] Nadia Urbinati argues that Rousseau would disapprove of the abrogative referendum because it delays legislation and responds to existing law rather than creating new law.[41] The following

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[37]Crook, *How the French Learned*, 94–107.

[38]Guillaume Ansart, "Rousseau and Condorcet: Will, Reason and the Mathematics of Voting," *History of Political Thought* 41, no. 3 (Jan. 2020): 461.

[39]Tuck, *Sleeping Sovereign*, 143.

[40]Helena Rosenblatt, *Rousseau and Geneva: From the "First Discourse" to the "Social Contract," 1749–1762* (Cambridge: Cambridge University Press, 2006); see also Urbinati, *Representative Democracy*, 83.

[41]Urbinati, *Representative Democracy*, 257.

sections explore how these distinct devices reflect competing understandings of how popular sovereignty ought to be institutionalized.

Sleeping Sovereignty and the Constitutional Referendum

American and French debates around constitutional ratification largely envisioned popular votes as coexisting alongside representative government. According to Tuck, "Rousseau's key insight" is "that by dividing sovereignty and government one could reintroduce something like direct democracy into the modern world."[42] This makes it possible to interpret Rousseau as a theorist of "sleeping sovereignty," which has implications for understanding what role popular-vote processes ought to play. On this view, "Rousseau's argument against the use of representatives . . . was only one against representative sovereignty, not against representative government."[43] Given that Rousseauian accounts of popular-vote processes rest on the idea of popular sovereignty, this seems to have important implications for the kinds of issues that should be decided by popular vote.

Tuck argues that Rousseau envisioned a scenario in which "citizens could all be true legislators in fundamental matters but leave less fundamental ones to their agents."[44] The sovereign is rarely active and its power of legislation is understood to refer primarily to determining "the constitution of the state by sanctioning a body of laws."[45] An account of sleeping sovereignty is then consistent with an endorsement of a "constitutional plebiscite, in which the sovereign people can indeed act as a genuine legislator and then withdraw from the activity of government."[46] The original constitutional referendum in Massachusetts grounded the legitimacy of representative government by having the constitution explicitly ratified by the sovereign.[47]

Landemore suggests that this interpretation is consistent with "our modern understanding of referendums (outside Switzerland) as rare moments of popular sovereignty."[48] Even here, representatives are likely to play a key role in drafting the proposals to which the sovereign will answer yes or no.[49] On this view, the sovereign's "final decision power seems to refer exclusively to a vote in a plebiscite or referendum (the common institutional

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[42]Tuck, *Sleeping Sovereign*, 162.

[43]Douglass, "Rousseau's Critique," 737.

[44]Tuck, *Sleeping Sovereign*, 141.

[45]Rousseau, *Social Contract*, 3.13 (195); see also Rousselière, "Can Popular Sovereignty Be Represented?," 4; Judith N. Shklar, *Men and Citizens: A Study of Rousseau's Social Theory* (Cambridge: Cambridge University Press, 2009), 181.

[46]Tuck, *Sleeping Sovereign*, xi, 143–44.

[47]Lenowitz, "'A Trust That Cannot Be Delegated,'" 807.

[48]Landemore, *Open Democracy*, 59.

[49]Urbinati, *Representative Democracy*, 78–81.

translation of Rousseau's more abstract ideas)."[50] This limited role for popular-vote processes would thus seem consistent with Rousseau's claim that citizens "cannot ceaselessly occupy [themselves] with the Government."[51] Tuck's reading suggests that popular-vote processes would be infrequent, occurring perhaps only once every several decades.[52] These votes could take place at scheduled intervals, or perhaps in exceptional circumstances as determined by the government.[53]

Theorists of sleeping sovereignty suggest that Rousseau's distinction between government and sovereignty provides justification for rare constitutional referendums in a largely representative political system. However, the prospect of a Rousseauian "sleeping sovereign" has long been contested. For instance, Maximilien Robespierre initially endorsed a reading that allowed the sovereign to sleep but later changed his mind: "Read what Rousseau has written about representative government, and you will judge if the people can sleep in all impunity."[54] Rousseau recommended that "the more force a government has, the more frequently the sovereign ought to show itself."[55] Rousseau acknowledged the possible challenges of frequent assemblies but noted that the Romans assembled almost weekly before concluding that "arguing from the actual to the possible seems like good logic to me."[56] If, as Tuck proposes, we are to see popular-vote processes as "a natural extension of Rousseau's ideas,"[57] then it is necessary to consider how theories of direct legislation may have interpreted Rousseau's theory as an endorsement of "a daily plebiscite."[58]

Direct Legislation

Ian Budge argues that contemporary populists follow Rousseau in seeking to "exclude parties and other intermediary institutions from popular votes, seeing them as intrinsically bound up with the representative system—barriers to rather than facilitators of popular expressions of opinion."[59] The origins

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[50]Landemore, *Open Democracy*, 58.

[51]Jean-Jacques Rousseau, *Letters Written from the Mountain*, in *Collected Writings of Rousseau*, vol. 9, *Letter to Beaumont, Letters Written from the Mountain, and Related Writings*, ed. Christopher Kelly, Eve Grace, and Judith R. Bush (Hanover, NH: University Press of New England, 2001), 293.

[52]Rousseau, *Social Contract*, 3.13 (195–96); see also Tuck, *Sleeping Sovereign*, 91, 135–36.

[53]Rousseau, *Social Contract*, 3.13 (195–96).

[54]Cited in Rousselière, "Can Popular Sovereignty Be Represented?," 7.

[55]Rousseau, *Social Contract*, 3.13 (196).

[56]Ibid., 3.12 (195).

[57]Tuck, *Sleeping Sovereign*, 145.

[58]Stephen Ellenburg, *Rousseau's Political Philosophy: An Interpretation from Within*, rev. ed. (Ithaca, NY: Cornell University Press, 1976), 160.

[59]Ian Budge, "Direct and Representative Democracy: Are They Necessarily Opposed?," *Representation* 42, no. 1 (2006): 2.

of this view lie in theories of direct legislation that drew on a "certain radical republican reading of Rousseau's *Contrat Social*."[60] Two of the earliest and most influential accounts were provided by Rittinghausen and Considerant, both of whom amplified Rousseau's concern that representative governments would try to usurp the sovereign's legislative power.[61] Theorists of direct legislation held a pessimistic view of representatives and were skeptical of institutional arrangements that purported to give the sovereign control over its representatives. As a result, the direct legislative solution to the problem of usurpation was to replace representative government, initially with primary assemblies and later with popular-vote processes.

Rousseau worried that all governments eventually begin to pursue private interests, rather than the general will, in a way that would "oppress the sovereign and break the social treaty."[62] This threat of usurpation involves either the government taking the sovereign power or executive power being exercised for the benefit of particular members of the government.[63] For Rittinghausen and Considerant, the only way to preserve sovereignty against usurpation by corrupt representatives was to abolish representative democracy. Rittinghausen declared that "the social-democratic republic consists of the removal of the representative system and the introduction of direct legislation by the people."[64] This meant that "there must be an end to any drafting of legal bills by a body designed solely for that purpose, which then presents its work to be voted on by the people."[65] Considerant contended that "if the people DELEGATES its sovereignty, it ABDICATES it,"[66] and such abdication would render citizens nothing more than "very humble subjects of said representatives."[67] The *Westminster Review* observed that Considerant "starts from one axiom: THE PEOPLE IS SOVEREIGN."[68] And while Rousseau was hesitant to grant citizens the power of legislative

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[60]Anne-Sophie Chambost, "Socialist Visions of Direct Democracy: The Mid-Century Crisis of Popular Sovereignty and the Constitutional Legacy of the Jacobins," in *The 1848 Revolutions and European Political Thought*, ed. Douglas Moggach and Gareth Stedman Jones (Cambridge: Cambridge University Press, 2018), 105. See also Jonathan Beecher, *Victor Considerant and the Rise and Fall of French Romantic Socialism* (Berkeley: University of California Press, 2001); Ian Bullock and Siân Reynolds, "Direct Legislation and Socialism: How British and French Socialists Viewed the Referendum in the 1890s," *History Workshop*, no. 24 (1987): 62–81.

[61]Pierre Rosanvallon, *La démocratie inachevée: Histoire de la souveraineté du peuple en France* (Paris: Gallimard, 2000), 172.

[62]Rousseau, *Social Contract*, 3.10 (192).

[63]Ibid., 3.10 (193).

[64]Cited in Karl Kautsky, *Karl Kautsky on Democracy and Republicanism* (Leiden: Brill, 2020), 93.

[65]Cited in ibid., 95.

[66]Cited in Bullock and Reynolds, "Direct Legislation," 64.

[67]Chambost, "Socialist Visions," 105.

[68]"The Latest Continental Theory of Legislation," *Westminster Review*, 1852, 146.

initiative, Considerant portrayed it as "the most precious prerogative of Sovereignty."[69]

While critics of direct legislation, like Louis Blanc, suggested that the imperative mandate could protect popular sovereignty against usurpation,[70] Rittinghausen dismissed this possibility. He acknowledged that the imperative mandate might have been valuable when society was organized around corporate classes, but he thought it was "impossible to conceive of a true democrat saying with Louis Blanc that democracy has, through the representative system, sought to give the people legislative servants."[71] He similarly criticized Alexandre Auguste Ledru-Rollin's proposal for pairing the imperative mandate with a veto referendum for trying to find a middle ground between "the principle of representation and that of direct legislation: he [Ledru-Rollin] forgets that one of these two principles excludes the other."[72]

Early accounts of direct legislation instead suggested that primary assemblies could replace elected legislatures. For instance, "the individuals of the nation will in each separate locality pass their votes concerning each bill; and *be virtually themselves the Parliament*, though not sitting together in the same place."[73] While Condorcet's proposal for primary assemblies had emphasized the interaction of representatives and citizens, Rittinghausen and Considerant opposed such a division of labor.[74] They similarly rejected Rousseau's distinction between sovereignty and government, eliminating the possibility that primary assemblies could allow the people to legislate and have laws administered by representatives or magistrates. Rittinghausen provides essentially no account of executive power and seems to imply that it would be largely unnecessary owing to the radical simplification of laws.[75] A clear example of this view is Bürkli's claim that "every one must again become a legislator, soldier, and judge. He must periodically and in his own person exercise the rights and practise the duties appertaining to those dignities. Here no division of labour, no substitution of another person, is possible, if we would not fall into servitude."[76] According to Pierre Rosanvallon, direct legislation and government were thus seen as a worthy "substitute" for elected legislatures.[77]

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[69]Ibid., 148.

[70]Louis Blanc, "Du mandat impératif," in *Questions d'aujourd'hui et de demain*, 347–66; Blanc, "Du gouvernement direct du peuple par lui-même."

[71]Moritz Rittinghausen, *Direct Legislation by the People*, trans. Alexander Harvey (Humboldt Library, 1897), 13, 41.

[72]Cited in Rosanvallon, *La démocratie inachevée*, 164–65. See also Chambost, "Socialist Visions," 106–7.

[73]"The Latest Continental Theory of Legislation," 143, emphasis added.

[74]Rosanvallon, *La démocratie inachevée*, 169.

[75]Rittinghausen, *Direct Legislation*.

[76]Karl Bürkli, *Direct Legislation by the People versus Representative Government* (London: Cherry & Fletcher, 1870), 11.

[77]Rosanvallon, *La démocratie inachevée*, 291.

The concept of "direct legislation" began to be reconceptualized as what we now know as "direct democracy" in the late nineteenth and early twentieth centuries. While its origins are difficult to pinpoint, the term "direct democracy" may make its first appearance in E. V. Raynolds's 1895 text "The Referendum and Other Forms of Direct Democracy in Switzerland."[78] The gradual transition from "direct legislation" to "direct democracy" appears to have followed a faster shift toward thinking about a mass democratic alternative to representative government. Karl Bürkli may be the first to argue that it is the referendum and ballot initiative—rather than primary assemblies— that are the "two essential elements" of direct legislation by the people.[79] Advocates of referendums and initiatives in the United States, such as Eltweed Pomeroy, also cited Rittinghausen and Considerant to support their contention that "representative government is a failure."[80] James Sullivan interpreted the Swiss experience with popular-vote processes as proof that "the parliamentary system [is] not essential to lawmaking."[81]

Rittinghausen and Considerant's invocation of Rousseau persisted among later advocates and critics of direct legislation. British socialist John Sketchley pointed to Rousseau when he rejected the authority of elections in 1879 and proclaimed that "the sovereignty of the people coupled with direct legislation by the people are the watchwords of the present day."[82] In its review of *Government in Switzerland*, the *Direct Legislation Review* stated that "not only does direct legislation fulfill Rousseau's dream of democracy by enabling every citizen to participate in making laws of the greatest import, but the Swiss cantonal governments, by reason of their size, enable an extraordinary number of citizens to take part in framing the measures which the whole people accept or reject."[83] Proposals for direct legislation made by German socialists in the late nineteenth century were dismissed as "unconscious Rousseauism."[84]

The association of Rousseau with a direct democratic conception of popular-vote processes persists today. Yet, to call Rousseau a direct democrat does not appear to do justice to his political thought. Jonathan Beecher argues

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[78]My search of the first ten years of the *Direct Legislation Record* (1894–1904) reveals only two usages and the term allegedly does not appear in French or German until 1932. See Pierre-Antoine Schorderet, "Élire, voter, signer: Pratiques de vote, luttes politiques et dynamiques d'institutionnalisation de la démocratie en Suisse au dix-neuvième siècle" (Thèse de doctorat, Paris 1, 2005), 8.

[79]Bürkli, *Direct Legislation by the People*, 13–14.

[80]Cited in Thomas Goebel, *A Government by the People: Direct Democracy in America, 1890–1940* (Chapel Hill: University of North Carolina Press, 2002), 36.

[81]Cited in Thomas E. Cronin, *Direct Democracy: The Politics of Initiative, Referendum, and Recall* (Cambridge, MA: Harvard University Press, 1989), 48.

[82]Cited in Bullock and Reynolds, "Direct Legislation," 65.

[83]*Direct Legislation Record* 7, no. 3 (Sept. 1901): 55.

[84]Wilfried Nippel, *Ancient and Modern Democracy: Two Concepts of Liberty?* (New York: Cambridge University Press, 2015), 299.

that "there was little in Considerant's text of Rousseau's awareness of the difficulties inherent in any attempt to give substance to popular sovereignty."[85] On the contrary, those who called for the abolition of representation on Rousseauian grounds tended to portray problems of institutional design as "simple" and "easy."[86] Despite their concerns about corruption and usurpation, theorists of direct democracy and direct legislation provided models that were "especially ill-equipped to resist the impulse [of usurpation] because they include no institutional separation of the legislative and executive roles."[87] In contrast, Richard Whatmore argues that "Rousseau was as opposed to the people combining executive and legislative power as he was to the magistrates [doing so]."[88]

The direct democratic desire to abolish representative government and the distinction between executive and legislative powers seems clearly at odds with Rousseau's contention that "were there a people of gods, it would govern itself democratically. So perfect a government is not suited to men."[89] Colón-Ríos argues that Rousseau's distinction between sovereignty and government allowed him to endorse popular ratification as an act of sovereignty, while rejecting direct democracy as a form of government.[90] The direct democratic and sleeping sovereignty accounts both appear inspired by Rousseau but suggest very different approaches to the use of popular-vote processes as mechanisms of popular ratification. The plebiscitarian tradition would find a distinct use for such devices: legitimation of charismatic leaders.

Plebiscitarianism

For Rousseau, the general will reflects a conception of the common good and "sovereignty is merely the exercise of the general will."[91] Isser Woloch argues that this has led many interpreters to insist that "the (Rousseauist) vision of a unitary national will [undermines] the instinct toward pluralism and the possibility of legitimate, organized opposition."[92] Whereas advocates of direct legislation sought to preserve a unified sovereign against corrupt and

[85]Beecher, *Considerant and the Rise and Fall*, 286.

[86]Rosanvallon, *La démocratie inachevée*, 167–70.

[87]Bryan Garsten, "Representative Government and Popular Sovereignty," in *Political Representation*, ed. Ian Shapiro et al. (Cambridge: Cambridge University Press, 2010), 96.

[88]Richard Whatmore, "Rousseau and the *Représentants*: The Politics of the *Lettres écrites de la montagne*," *Modern Intellectual History* 3, no. 3 (Nov. 2006): 410.

[89]Rousseau, *Social Contract*, 3.4 (180).

[90]Colón-Ríos, "Rousseau, Theorist of Constituent Power," 888–91.

[91]Rousseau, *Social Contract*, 2.1 (153).

[92]Isser Woloch, "On the Latent Illiberalism of the French Revolution," ed. François Furet, Mona Ozouf, and Arthur Goldhammer, *American Historical Review* 95, no. 5 (1990): 1460; see also Urbinati, *Representative Democracy*, 68.

partial representatives, Caesarist and Bonapartist thinkers contended that a single leader could effectively represent the sovereign and developed an alternative theory of popular-vote processes: plebiscitarianism.

The plebiscitarian tradition arguably begins with the appointment of Bonaparte as consul for a ten-year period as limited by the French Constitution. Several of Bonaparte's collaborators and defenders drew on Rousseauian conceptions of popular sovereignty to argue that a plebiscite could be used to overcome the term limit imposed by the constitution.[93] In the wake of plebiscites in 1802 and 1804, one observer insisted that no other "nation has exercised so fully the right of sovereignty; never has it delegated more freely to a head of state the power to reign over it; never has a prince, in ascending the throne, rallied to him a suffrage that was more unanimous and more solemn."[94] Decades later, Émile Ollivier cited the *Social Contract* in "[pronouncing] that Rousseau's political philosophy proved the constitutional legitimacy of plebiscites."[95] Critics of plebiscitarianism similarly acknowledged Rousseau's influence.[96] According to Henrich Luden, while "Rousseau had demanded unity, indivisibility, inalienability of sovereignty, Bonaparte achieved it."[97]

The theory of plebiscitarianism was further developed by Carl Schmitt who, like advocates of direct legislation, was critical of parliamentarism. He argued that "institutions of direct democracy [are always] in a position superior to the so-called indirect democracy of the parliamentary state."[98] Schmitt saw homogeneity as the "ideal condition of a democracy, as Rousseau presupposes it."[99] While Schmitt eventually became skeptical of plebiscites, he initially cast them as tools that could be used to have the electorate legitimate leaders.[100]

[93]Woloch, "From Consulate to Empire," 30–33. Bonaparte had read Rousseau and seemed to emphasize the importance of the general will of the nation. See Alan Forrest, "Napoleon as Monarch: A Political Evolution," in *The Bee and the Eagle: Napoleonic France and the End of the Holy Roman Empire, 1806*, ed. Alan Forrest and Peter H. Wilson (London: Palgrave Macmillan, 2009), 112.

[94]Dubroca, cited in Philip Dwyer, "'Citizen Emperor': Political Ritual, Popular Sovereignty and the Coronation of Napoleon I," *History* 100, no. 339 (2015): 42.

[95]Neil Rogachevsky, "Are Plebiscites Constitutional? A Disputed Question in the Plebiscite Campaign of 1870," *French History* 27, no. 2 (June 2013): 255.

[96]Iain McDaniel, "Constantin Frantz and the Intellectual History of Bonapartism and Caesarism: A Reassessment," *Intellectual History Review* 28, no. 2 (April 2018): 329.

[97]Cited in Markus Josef Prutsch, *Caesarism in the Post-Revolutionary Age: Crisis, Populace and Leadership* (London: Bloomsbury Academic, 2020), 39.

[98]Carl Schmitt, *The Crisis of Parliamentary Democracy*, trans. Ellen Kennedy (Cambridge, MA: MIT Press, 1988), 60.

[99]Carl Schmitt, *Constitutional Theory*, ed. Jeffrey Seitzer (Durham, NC: Duke University Press, 2008), 248.

[100]Lucia Rubinelli, *Constituent Power: A History* (Cambridge: Cambridge University Press, 2020), 129–34.

He initially viewed plebiscites as tools of acclamation that allowed citizens to identify with their leader.[101]

A plebiscitary reading of Rousseau suggests that popular sovereignty could be institutionalized through government-initiated ad hoc referendums. Rousseau does grant the government an important role in convening the sovereign assembly and formulating proposals; however, a notable feature of ad hoc referendums is that governments maintain considerable latitude in choosing which issues ought to be put to a referendum and how they ought to be framed. Indeed, in the first modern plebiscite, Bonaparte did not approve of the question recommended by the Council of State and revised it.[102]

There are several challenges in reconciling plebiscitarianism with Rousseau's account of popular sovereignty. First, plebiscitarianism raises the problem of usurpation once again. François Guizot criticized the Bonapartist strategy of plebiscitary legitimation for transferring sovereignty to a single representative in a manner that was at odds with Rousseau's theory.[103] Second, Rousseau envisioned institutional checks and balances that could counterbalance attempts by the government to violate constitutional rules.[104] In contrast, plebiscites allow leaders to legitimate such violations by appealing to the people with minimal oversight. Third, Rousseau was aware of capacities for manipulation. He warned that leaders "never spare efforts, objections, difficulties, or promises to keep the citizens from having" the popular assemblies that serve to counterbalance the government's executive power.[105] While the two questions Rousseau required that the assembled sovereign vote on—whether to "preserve the current form of government" and whether to "leave its administration to those who are now in charge of it"—may appear plebiscitarian at first glance, the preservation of sovereignty against the threat of usurpation requires meaningful choice.[106] According to Dorina Verli, Rousseau required that citizens be able to answer no to these questions.[107] The extremely high approval rate of many plebiscites suggests that this is often not the case. Fourth, whereas Rousseau emphasized that the sovereign is made up of individuals and recommended counting individual votes,[108] Schmitt contends that acclamation "does not involve the counting of individual votes. Rather, it expresses the

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[101]Schmitt, *Crisis of Parliamentary Democracy*, 14; Schmitt, *Constitutional Theory*, 276.

[102]Woloch, "From Consulate to Empire," 30–33.

[103]Melvin Richter, "II. Toward a Concept of Political Illegitimacy: Bonapartist Dictatorship and Democratic Legitimacy," *Political Theory* 10, no. 2 (May 1982): 199–200; Rousseau, *Social Contract*, 2.1 (153).

[104]David Lay Williams, "Modern Theorist of Tyranny? Lessons from Rousseau's System of Checks and Balances," *Polity* 37, no. 4 (Oct. 2005): 443–65.

[105]Rousseau, *Social Contract*, 3.14 (197).

[106]Ibid., 3.18 (203).

[107]Dorina Verli, "Reforming Democracy: Constitutional Crisis and Rousseau's Advice to Geneva," *Review of Politics* 80, no. 3 (2018): 436–37.

[108]Ansart, "Rousseau and Condorcet," 452.

united will of the acclamating group."[109] Lastly, Annelien de Dijn has recently argued that Rousseau's concept of patriotism was not antipluralist but instead reflected "a common commitment to particular institutions, rather than to a prepolitical cultural or ethnic identity."[110]

The sleeping sovereigntist, direct democratic, and plebiscitarian accounts all link popular sovereignty to popular-vote processes in ways that appear inconsistent with aspects of Rousseau's thought. It seems that a compelling Rousseauian theory of popular-vote processes would need to allow them to be used neither too often nor too rarely. It also suggests that they ought to be situated alongside representative institutions in a way that empowers the sovereign against the threat of usurpation. In the next section, I propose that the closest such account was initially developed by Condorcet.

The Condorcetian Logic of Citizen-Initiated Popular-vote Processes

A fourth account understands popular-vote processes as instruments that institutionalize the sovereign's capacity to check the government. Mads Qvortrup argues that "Rousseau proposed . . . that the most effective and legitimate check on power was the plebiscite . . . or referendum."[111] Francis Hamon similarly writes that "Rousseau and Condorcet . . . favoured more democratic forms of referendum, such as the Initiative or the people's veto."[112] While the implied institutional form is somewhat anachronistic, Rousseau and Condorcet did share concerns about sovereign control of representatives. While there is some debate about whether Condorcet's proposals are "an offshoot of Rousseau's doctrine" or "an independent project of democratic government,"[113] Condorcet has been understood—by his contemporaries as well as his chroniclers—as working out the institutional

[109]Lars Vinx, "Carl Schmitt on the Limits of Direct Democracy," *History of Political Thought* 42, no. 1 (August 2020): 167.

[110]Annelien de Dijn, "Rousseau and Republicanism," *Political Theory* 46, no. 1 (Feb. 2018): 73.

[111]Mads Qvortrup, *The Political Philosophy of Jean-Jacques Rousseau: The Impossibility of Reason* (Manchester: Manchester University Press, 2003), 62–65, 99.

[112]Francis Hamon, "The Financing of Referendum Campaigns in France," in *Financing Referendum Campaigns*, ed. Karin Gilland Lutz and Simon Hug (London: Palgrave Macmillan, 2010), 107.

[113]Nadia Urbinati, "Condorcet's Democratic Theory of Representative Government," *European Journal of Political Theory* 3, no. 1 (Jan. 2004): 58; see also David M. Estlund et al., "Democratic Theory and the Public Interest: Condorcet and Rousseau Revisited," *American Political Science Review* 83, no. 4 (1989): 1317–40; Bernard Grofman and Scott L. Feld, "Rousseau's General Will: A Condorcetian Perspective," *American Political Science Review* 82, no. 2 (June 1988): 567–76.

implications of Rousseau's theory of popular sovereignty.[114] I draw on both Condorcet's and Rousseau's political thought—noting distinctions where necessary—to argue that Condorcet's proposal for the "censure of the people" provides a Rousseauian precursor to the contemporary indirect initiative and abrogative referendum.

Condorcet sought to preserve popular sovereignty in large polities but, like Rousseau, was unenthusiastic about federalism as a solution.[115] Echoing Rousseau's concerns about the freedom of the English, Condorcet also agreed that popular sovereignty could not be reduced to periodic elections. Rousseau insisted that the sovereign needs to exercise its power to effectively constrain the government[116] and Condorcet agreed that "even in a representative constitution, it may be useful for there to be a direct exercise of this right [sovereignty], to remind the citizens of its existence and reality."[117] Condorcet introduces the "censure of the people":

> When a citizen believes it useful or necessary to invoke surveillance of the representatives of the people on their Constitutional, Legislative, or administrative acts, to provoke the reform of an existing law or the promulgation of a new law, he has the right to require his local assembly to convene on the next Sunday, to deliberate his proposition.[118]

A single citizen can formulate a proposal and collect fifty signatures "in order to prove, not that he is right, but that his request deserves the primary assembly's consideration."[119] The logic here echoes Rousseau's insistence that a remonstrance is not a decision but may be "a proposition that demands a decision."[120] Condorcet allows citizen proposals to gradually move from a single assembly, to assemblies in the district, to assemblies in the region, and ultimately the national representative assembly. If the representative assembly refuses to consider the proposal, then "every primary assembly in

[114]Tuck, *Sleeping Sovereign*, 160; David Williams, *Condorcet and Modernity* (Cambridge: Cambridge University Press, 2004), 273; Rosanvallon, *La démocratie inachevée*, 61.

[115]Jean-Antoine-Nicolas de Caritat Condorcet, "A Survey of the Principles underlying the Draft Constitution" (1793), in *Condorcet: Foundations of Social Choice and Political Theory*, ed. Iain McLean and Fiona Hewitt (Aldershot: Edward Elgar, 1994), 190–91.

[116]Rousseau, *Social Contract*, 3.13 (196); see also Robin Douglass, "Tuck, Rousseau and the Sovereignty of the People," *History of European Ideas* 42, no. 8 (Nov. 2016): 3; Jeffrey Lenowitz and Melissa Schwartzberg, "Insomnia and Other Constitutional Pathologies," *Modern Intellectual History* 16, no. 1 (April 2019): 301–3.

[117]Condorcet, "A Survey," 193.

[118]Condorcet, "Plan de Constitution (Constitution Girondine)" (1793), sec. VIII.i, https://mjp.univ-perp.fr/france/co1793pr.htm. My translation.

[119]Condorcet, "A Survey," 197.

[120]Rousseau, *Letters from the Mountain*, 264.

the Republic will be summoned to consider the same question."[121] The proposal is rejected if the primary assemblies agree with the representative assembly, but if the two disagree then "the [representative] assembly would seem to have lost the nation's trust and must be replaced."[122] The new representative assembly is then asked whether the proposal should be considered and its decision is similarly subject to review by the primary assemblies.

For Condorcet, popular sovereignty could be preserved if citizens were able to monitor their representatives and to ask the sovereign to take action to correct their representatives if necessary. The censure of the people's capacity to "invoke surveillance of the representatives of the people on their Constitutional, Legislative, or administrative acts" suggests that Condorcet is more willing than Rousseau to allow representatives to make fundamental law. Yet, the censure of the people ensures that laws adopted by representative legislators are only given "*conditional* obedience."[123] This provides one way of institutionalizing an idea put forward by Rousseau in the *Social Contract* that the "commands of the leaders" could pass for "manifestations of the general will, so long as the sovereign, who is free to oppose them, does not do so. In such a case, the consent of the people ought to be presumed on the basis of universal silence."[124]

In the *Letters Written from the Mountain*, Rousseau endorses a more limited oversight capacity for the sovereign than those embodied in the censure of the people. To mitigate the risk of usurpation, citizens of Geneva needed to be able to call forth the sovereign to judge if the government had transgressed existing law.[125] However, Rousseau thought that the government should have the capacity to deny remonstrances from citizens that sought to change the law. This power of legislative initiative ought to rest with the government as "it would be generally impossible for [the democratic constitution] to maintain itself if the Legislative Power could always be set in motion by each of those who compose it."[126] Yet Rousseau's concern appears more practical than principled.[127] Thus, while Condorcet's censure of the people does, in some sense, allow a single citizen to set the legislative power in motion, the citizen can only do this with the support of a majority of

[121]Condorcet, "A Survey," 197.

[122]Ibid., 198. Such a measure was later put in place in some Swiss cantons. See Francis Ottiwell Adams and C. D. Cunningham, *The Swiss Confederation* (London: Macmillan, 1889), 81. Ethan Putterman depicts Rousseau as similarly envisioning a recall mechanism. See *Rousseau, Law and the Sovereignty of the People* (Cambridge: Cambridge University Press, 2010), 107.

[123]Condorcet, "A Survey," 192, emphasis added.

[124]Rousseau, *Social Contract*, 2.1 (154); see also 3.11 (194).

[125]Rousseau, *Letters from the Mountain*, 262–66; Verli, "Reforming Democracy."

[126]Rousseau, *Letters from the Mountain*, 285.

[127]See Verli, "Reforming Democracy," 428–35, for a full account of Rousseau's view of legislative initiative.

all voters in the primary assemblies and that of a majority of primary assemblies.[128] The censure of the people seems to avoid the concern that individual complaints could lead to constant activity by the sovereign.

Nevertheless, the censure of the people seems at odds with Rousseau's insistence that the sovereign should assemble on predetermined dates or be "convened by the magistrates appointed for that task and in accordance with the prescribed forms."[129] Although these assemblies are to be convened in accordance with laws adopted by the assembled people, the sovereign's capacity to protect itself against usurpation would seem to be undermined if the sovereign can only be called to assemble by the same magistrates who might usurp its legislative power. Ethan Putterman argues that "nowhere in the political program of the *Social Contract* does [Rousseau] allow the people to freely and regularly convene themselves. . . . All may recognize the need to pass new laws but the only body authorized to act upon this need on a regular basis is the government."[130] Rousseau himself was aware of how the sovereign might fail to exercise its power owing in part to problems in convening an assembly.[131]

One of Condorcet's innovations was to address the problem of waking the sovereign. Jeffrey Lenowitz and Melissa Schwartzberg argue that "the Rousseauian sovereign must be a very light sleeper, awakening to address issues of various types."[132] Robin Douglass similarly contends that "if the people only assemble when called to do so by the government—as is the case in most modern referendums—then the people are not really sovereign at all."[133] Putterman suggests that the sovereign can "self-convene" in an emergency, although he does not explain how it might do so.[134] The censure of the people provides a method by which the sovereign might gradually rouse itself. While Rousseau suggests that frequent sovereign assemblies are crucial for polities in crisis and become less necessary once a government can be entrusted to fulfill its functions,[135] such a mechanism appears important, even if rarely used, and reasonable, given the political context in which Condorcet was writing. The censure of the people appears

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[128]In section VIII of his constitutional draft, article 7 refers to the "majority of voters" (la majorité des votants), article 10 refers to the "majority of voters in the primary assemblies" (la majorité des votants dans les Assemblées primaires), article 22 refers to the "majority of votes in the primary assemblies" (la majorité des voix dans les Assemblées primaires). It is only article 13, pertaining to the decision to refer a question to the representative assembly, that refers to the "majority of primary assemblies" (la majorité des Assemblées primaires).

[129]Rousseau, *Social Contract*, 3.12 (196).

[130]Putterman, *Rousseau, Law*, 53.

[131]Rousseau, *Letters from the Mountain*, 273, 293–95.

[132]Lenowitz and Schwartzberg, "Insomnia," 303.

[133]Douglass, "Tuck, Rousseau," 4.

[134]Putterman, *Rousseau, Law*, 54, 162.

[135]Rousseau, *Letters from the Mountain*, 275–76.

to embody a vision of the sovereign that is neither asleep nor restless. It avoids the twin pitfalls that Rousseau identified: the first, a "restless, unoccupied, turbulent people" who wish to intervene in matters of state too frequently and the second, a population "always distracted, always deceived, always fixed on other objects."[136]

While the "censure of the people" has been described as a "referendum" or "plebiscite,"[137] it is not immediately obvious how Condorcet's complex arrangement of primary assemblies might be transformed into a contemporary popular-vote process. According to Condorcet, his critics objected that "a general will, formed by bringing together the wills of separate assemblies, does not really express the general will of all the citizens in all these different assemblies."[138] Recent commentators have similarly suggested that the system would aggregate assembly-level decisions, rather than individual votes process.[139] However, it seems that Condorcet primarily meant to aggregate individual votes in a manner akin to a popular-vote process.[140] He emphasized the importance of an "equal right to participate" and followed Rousseau in insisting that it "is not each individual assembly which has sovereign power, but the people taken as a whole."[141] This seems to anticipate the shift from assemblies to the ballot box, with Condorcet arguing that by having citizens answer yes or no to the same question, it is possible "for a general will to be formed from the separate wills of several isolated assemblies."[142]

Urbinati suggests that Condorcet preferred assembling in person "to shield citizens from unanimous plebiscitarianism, the despotic hegemony of the few, and the atomistic consequence implied within the transformation of sovereignty in the right to suffrage."[143] There are reasons to suspect that Condorcet might also have been open to voting without assemblies. He thought that once the questions were fixed as a binary choice, discussion in the primary assemblies was "superfluous: it is enough for all the members

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[136]Ibid., 293.

[137]Alengry, "Le referendum"; Mercier, "Le référendum d'initiative populaire"; Urbinati, *Representative Democracy*, 202.

[138]Condorcet, "A Survey," 193.

[139]Camila Vergara, *Systemic Corruption* (Princeton: Princeton University Press, 2020); Arthur Ghins, "Representative Democracy versus Government by Opinion," *Journal of Politics*, 84 no. 3 (2022): 1626; Hanspeter Kriesi and Dominique Wisler, "The Impact of Social Movements on Political Institutions: A Comparison of the Introduction of Direct Legislation in Switzerland and the United States," in *How Social Movements Matter*, ed. Marco Giugni, Doug McAdam, and Charles Tilly (Minneapolis: University of Minnesota Press, 1999), 43.

[140]Tuck, *Sleeping Sovereign*, 157.

[141]Condorcet, "A Survey," 195.

[142]Ibid., 194.

[143]Urbinati, "Condorcet's Democratic Theory," 67.

to have had the time to examine the questions quietly, or discuss them freely in private societies."[144] Relatedly, Condorcet's discussion of election in primary assemblies noted potential problems: "Voting aloud in primary assemblies only causes disorder and confusion. Besides, this method can be rejected purely on the grounds of the influence it gives those who vote first over those who follow them."[145] Rousseau and Condorcet agreed that debates immediately prior to voting would "interfere with the proper relationship between individual citizens and the city or nation."[146]

The censure of the people also shares clear affinities with citizen-initiated popular-vote processes. Condorcet's proposal suggests that popular-vote processes be initiated from the bottom up rather than top down in a way that addresses concerns about Rousseau's process for assembling the sovereign. Moreover, it is distinct from a view of sleeping sovereignty, which implies that the issues on which the sovereign must decide might be determined in advance by the magistrates. For Condorcet, citizens should have the capacity both to initiate a sovereign decision and to determine the content of the agenda in advance. The proposed institutional mechanism at the beginning of this process—signature gathering through petitions—has persisted in contemporary citizen-initiated popular-vote processes.

Condorcet saw the censure of the people as a way of allowing citizens to initiate legislation. His emphasis on interaction between citizens and elected legislatures would seem to recommend indirect over direct ballot initiatives because the indirect initiative allows citizens to collect signatures to put a bill to the legislature and, if the legislature does not adopt the bill, it goes to citizens for a popular vote. In contrast, the direct initiative allows citizens to bypass legislatures, putting measures directly to the people once a petition meets the relevant thresholds.

Condorcet's account of popular sovereignty also appears consistent with the abrogative referendum which does not require that all laws be ratified by the sovereign, but gives citizens the right to demand popular ratification. Here, popular sovereignty is made compatible with conditional obedience to the government's decisions if the sovereign is ultimately capable of deciding on issues. In contrast to assemblies voting yes or no to ratify proposals before their passage, Condorcet wanted to empower them to work through a gradual process that could "[refer] back the laws and [oblige] the legislature to examine them thoroughly."[147] As Urbinati puts it: "what gives the sovereign an active political presence and security against the decision of the majority is not so much electoral authorization of lawmakers or direct

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[144]Condorcet, "A Survey," 194.
[145]Ibid., 221.
[146]Ansart, "Rousseau and Condorcet," 461.
[147]Condorcet, "A Survey," 196.

ratification of laws as *réclamation*, a right that operates over representatives' work and follows a rigorous and regulated course of judgment."[148] Camila Vergara contends that the existence of this right means that "representatives have a strong incentive to track the will emanating from primary assemblies."[149] The contemporary optional referendum similarly creates incentives for representatives to anticipate and respond to citizen demands in order to avoid proposing legislation that will be challenged by a referendum.[150]

Condorcet's constitutional draft was never adopted, but modified versions of some ideas survived in the Montagnard constitution which removed the provisions granting citizens power to initiate legislation. This may have reflected a competing reading of Rousseau, although Arthur Ghins argues that it was "politically motivated" as the Montagnards "preferred to have bills drafted by the Paris-based legislative body, which they had controlled since June 1793."[151] Perhaps the most consequential innovation of the Montagnard constitution—from the perspective of popular-vote processes—was to effectively separate the question of legislative ratification from the recall of representatives.[152]

Sharing the concerns that later motivated direct democrats, Condorcet sought to give the sovereign "a sufficient guarantee against any plans to usurp power."[153] He provided a clear picture of how institutions might be designed so that citizens could exercise control over their representatives at moments of their choosing. The frequency of participation would be determined largely by citizens themselves, avoiding the constant participation that Rousseau acknowledged was unlikely in contemporary societies. Condorcet's vision of popular sovereignty strikes a balance between direct democratic popular-vote processes that would replace representative institutions and a vision of sleeping sovereignty that provides a much thinner conception of the sovereign's role. In terms of popular-vote processes, the indirect initiative and the abrogative referendum appear to most clearly empower citizens to monitor and sanction their representatives in this way.

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[148]Urbinati, *Representative Democracy*, 213, emphasis original.

[149]Vergara, *Systemic Corruption*, 159.

[150]Alice el-Wakil, "The Deliberative Potential of Facultative Referendums: Procedure and Substance in Direct Democracy," *Democratic Theory* 4, no. 1 (June 2017): 59–78; Kris William Kobach, *The Referendum: Direct Democracy in Switzerland* (Aldershot: Dartmouth, 1993), 136–37; Alexander H. Trechsel and Hanspeter Kriesi, "Switzerland: The Referendum and Initiative as a Centrepiece of the Political System," in *The Referendum Experience in Europe*, ed. Michael Gallagher and Pier Vincenzo Uleri (London: Palgrave Macmillan, 1996), 185–208.

[151]Ghins, "Representative Democracy," 1627.

[152]Ibid.

[153]Condorcet, "A Survey," 200.

Conclusion

Rousseau's theory of popular sovereignty—particularly his claim that sovereignty cannot be represented—is frequently invoked to justify claims that "the only truly democratic way to make decisions on matters of public policy is by the full, direct, and unmediated participation of all citizens."[154] In contemporary democracies, this would seem to require popular-vote processes. However, divergent conceptions of how the sovereign might counter attempts by the government to usurp legislative power provide support for different accounts of what types of popular-vote processes should be used, with what frequency, and on what issues. The sleeping-sovereign view seems to imply that popular-vote processes should be for rare moments of constitutional ratification, such as referendums on constitutional conventions that are required by a number of US state constitutions.[155] The direct-democratic view clearly demands that virtually all decisions be taken by referendum, although it is less clear about specific institutional design. The plebiscitarian view suggests that popular votes should be government-initiated referendums, usually initiated by leaders seeking legitimacy. Lastly, the Condorcetian view suggests that the sovereign should choose for itself how often it intervenes to check government action through devices such as the indirect initiative and the abrogative referendum.

These four accounts emphasize different aspects of Rousseau's thought, although Condorcet's proposal appears to offer the most compelling connection between Rousseau's theory of popular sovereignty and contemporary popular-vote processes. A sleeping sovereigntist account appears to offer too few opportunities for the sovereign to exercise its power. The direct democratic view appears to demand too many opportunities for participation and fails to maintain the distinction between sovereignty and government. The plebiscitarian use of popular-vote processes seeks to minimize popular contestation and generate the appearance of consent for a leader who usurps sovereignty.

While Rousseau has clearly inspired competing theories of contemporary popular-vote processes, other theorists of the referendum and ballot initiative have disavowed his account of popular sovereignty. A. V. Dicey endorsed referendums as a check of Parliament even without "any increased enthusiasm for the principles preached by Rousseau."[156] The drafters of the Weimar

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[154]David Butler and Austin Ranney, *Referendums around the World: The Growing Use of Direct Democracy* (Washington, DC: AEI Press, 1994), 12.

[155]In practice, these recurring referendums tend to occur every nine to twenty years according to Gerald Benjamin, "The Mandatory Constitutional Convention Question Referendum: The New York Experience in National Context," *Albany Law Review* 65 (2002): 1018–19.

[156]Cited in Mads Qvortrup, "A. V. Dicey: The Referendum as the People's Veto," *History of Political Thought* 20, no. 3 (March 1999): 546.

constitution included provisions for popular-vote processes while dismissing Rousseau as a "guide for the modern world" and refusing the notion that these devices could express the unmediated will of the people.[157] Yet once Rousseau's influence is clarified, it becomes apparent that these objections respond primarily to direct-democratic or plebiscitary conceptions of popular-vote processes. Dicey's proposals for constitutional referendums seem broadly compatible with an account of sleeping sovereignty and the measures for popular-vote processes in the Weimar constitution share several similarities with Condorcet's constitutional draft.

Situating popular-vote processes in the Condorcetian tradition may also help to break a number of impasses in democratic theory. First, Condorcet's approach is largely compatible with systemic accounts that seek to move past the dichotomy of direct and representative democracy.[158] Second, Condorcet has recently been interpreted as a "plebian republican" who saw the censure of the people as a way of improving representation.[159] This makes it possible to reassess debates over the role of popular-vote processes in republican theory.[160] Lastly, a Condorcetian approach may provide resources for reconstructing the implicit logic of recent attempts to reform referendums and ballot initiatives to make them function effectively alongside representative institutions.[161]

[157]Peter Stirk, "Hugo Preuss, German Political Thought and the Weimar Constitution," *History of Political Thought* 23, no. 3 (2002): 503. See also Erich Kaufmann, "On the Problem of the People's Will," in *Weimar: A Jurisprudence of Crisis*, ed. Arthur J. Jacobson and Bernhard Schlink (Berkeley: University of California Press, 2000), 198–200.

[158]Urbinati, *Representative Democracy,* 61; Alice el-Wakil and Spencer McKay, "Disentangling Referendums and Direct Democracy: A Defence of the Systemic Approach to Popular Vote Processes," *Representation* 56, no. 4 (2020): 449–66.

[159]Vergara, *Systemic Corruption*, 45, 144.

[160]Eoin Daly, "A Republican Defence of the Constitutional Referendum," *Legal Studies* 35, no. 1 (March 2015): 30–54; Stephen Tierney, *Constitutional Referendums: The Theory and Practice of Republican Deliberation* (Oxford: Oxford University Press, 2012); Philip Pettit, "Democracy, National and International," *Monist* 89, no. 2 (April 2006): 304–7; Vergara, *Systemic Corruption*, 4.

[161]Center for Governmental Studies, *Democracy by Initiative: Shaping California's Fourth Branch of Government* (Los Angeles: Center for Governmental Studies, 2008), 3; Independent Commission on Referendums, "Report of the Independent Commission on Referendums" (London: University College London, 2018), 27.