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# Democracy and Direct Legislation during the French Second Republic

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*This article analyzes how direct popular legislation was discussed in France from 1850 to 1852. It is during the Second Republic that the idea of directly involving the people in the law-making process becomes a concrete proposal. It is extensively debated by left republican thinkers such as Ledru-Rollin, Rittinghausen and Considerant to argue, against Proudhon and Blanc, that political representation is, in fact, not democratic. Instead, they claimed that real democracy would require a sharp distinction between legislation and administration and the consequent direct involvement of the people in lawmaking through their participation in local assemblies, tasked with both drafting and approving legislative proposals of general import. These competing understandings of democracy, as theorized through debates about popular legislation in the mid-nineteenth century, foreground some of the fundamental challenges of representative politics and question the role of knowledge and expertise in legitimizing democratic procedures in the age of mass politics.*

On April 23 [1851], you will have to nominate nine hundred citizens to represent you. You will exercise sovereignty on that day for the time it takes to drop a scrap of paper into a box. Once done, your sovereignty will go back to sleep until somebody comes to wake her up ... that is, unless it ends up strangled during its sleep; but let's be positive and not discuss such a distressing accident.<sup>1</sup>

These sarcastic words, written by French intellectual Victor Considerant, capture the spirit with which early socialist thinkers reacted to the crisis of the Second Republic in France. Distinguishing themselves from mainstream republican positions, they condemned the antidemocratic nature of the republic and claimed that democracy, to be “true,” had to rely on direct popular legislation. This assertion was based on a twin assumption: that a genuine exercise of popular sovereignty required procedures enabling all citizens to directly participate in the lawmaking process, and that the direct involvement of the people would necessarily result in better and more just laws. Even more radically, they believed that it would progressively abolish the need for legislation

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<sup>1</sup>Victor Considerant, *La solution ou le gouvernement direct du peuple* (Paris, 1851), 22.

and lead the country to a state of social harmony, where only technical administration would be required. For left republicans and socialists active during the French Second Republic, democracy meant both a set of procedures and a substantive end goal: procedures of popular sovereignty would inevitably lead to the ultimate goal of social harmony.

The aim of this article is to explore this understanding of democracy, developed during the brief period between the passing of the *Loi du 31 mai 1850* (Law of May 31), which abolished the recently introduced universal male suffrage, and the plebiscites of 1851–2, which disfigured the republic and made Louis Napoleon Bonaparte emperor of France. Unlike leftist republican thinkers like Louis Blanc, theorists of direct legislation did not focus on the idea of the general will; nor did they defend political representation and the unitary structure of the republic.<sup>2</sup> Instead, they attacked both ideas in the name of democracy, which to them meant the realization of social harmony through direct popular legislation at the local level. At the same time, they rejected the anarchist interpretation of the Second Republic championed by, among others, Pierre-Joseph Proudhon, who saw democracy as merely a political expedient to tame and manage economic conflict.<sup>3</sup> In contrast, theorists of direct legislation believed that democracy, when correctly institutionalized, could deliver class pacification and establish a socialist system. In other words, they defended the primacy of politics over the economy in the fight to establish social harmony. Theorists of democracy as direct legislation thus offered a distinctive way of thinking about the failures of the Second Republic and the promises of democratic politics.

This article begins by setting the stage in which these debates unfolded, introducing as its main characters Moritz Rittinghausen, Victor Considerant, Alexandre Auguste Ledru-Rollin, and their opponents Louis Blanc and Pierre-Joseph Proudhon. It then explores their understanding of democracy. First, it addresses their critique of representation as a remnant of feudal corporatism and as a negation of sovereignty. Second, the article reconstructs their vision of direct legislation by the people, emphasizing its procedural aspects. It highlights the importance they placed on deliberative processes and political and administrative decentralization at the local level. Third, it delves into what they believed was the substantive promise of direct legislation: the ultimate abolition of law and the establishment of a harmonious society, where class divisions would dissolve, and disputes could be resolved through common sense. Lastly, the article explores the political reactions provoked by these projects of direct legislation. They were not only heavily criticized by other socialist thinkers, who either favored representation or did not believe that popular legislation would deliver socialism. They were

<sup>2</sup>On the republican tradition in France see Annelien de Dijn, *Freedom: An Unruly History* (Cambridge, MA, 2020); Jeremy Jennings, *Revolution and the Republic: A History of Political Thought in France since the Eighteenth Century*, reprint edn (Oxford, 2013); Edward G. Berenson, Vincent Duclert and Christophe Prochasson, *The French Republic: History, Values, Debates* (New York, 2011); Pamela M. Pilbeam, *Republicanism in Nineteenth-Century France, 1814–1871* (Teddington, 1995); Pierre Rosanvallon, *La démocratie inachevée: Histoire de la souveraineté du peuple en France* (Paris, 2000).

<sup>3</sup>They also distinguished themselves from class-based interpretations of the Second Republic and democracy, such as those developed by Karl Marx, “The Class Struggles in France,” in *Karl Marx: Selected Writings*, 2nd edn, ed. David McLellan (Oxford, 2000), 313–25; and Marx, “The Eighteenth Brumaire of Louis Bonaparte,” in *ibid.*, 329–55.

also considered disproven by political events, and especially by the two direct popular votes that, in short succession, disfigured the republican constitution and crowned Louis Napoleon Bonaparte emperor of France. And yet the article demonstrates that, following a period of relative decline, the idea experienced a revival toward the end of the nineteenth century, extending well into the interwar years.

In reconstructing this lesser-known chapter of the history of democracy, the article aims to contribute to the revival of interest in the history of democratic thought, which has recently gained new life and urgency, particularly in anglophone literature.<sup>4</sup> Like many of these studies, the article approaches the history of democracy as the history of “an essentially contested concept,” whose meaning did not stabilize—if it ever did—until after the end of World War II, especially in Europe.<sup>5</sup> More specifically, recent scholarship on French political thought seeks to move beyond the relatively rigid distinction between a liberal, a republican and a socialist canon to explore how these traditions addressed the challenges posed by the rise of democratic ideals and practices, thus investigating how the latter were articulated, contested and redefined across ideological divides.<sup>6</sup> This article joins in this effort by focusing on a frequently overlooked episode in French history: the final years of the Second Republic. While scholars have helpfully and extensively explored its historical and political origins, as delineated in field-defining studies of the February Revolution, constituent debates and the violence that marked the republic’s brief existence, relatively little attention has been paid to its final years and the challenges they presented for democratic thought.<sup>7</sup>

<sup>4</sup>Just to mention a few examples: Joanna Innes and Mark Philp, eds., *Re-imagining Democracy in the Age of Revolutions: America, France, Britain, Ireland 1750–1850* (Oxford and New York, 2013); Innes and Philp, “Democracy from Book to Life: The Emergence of the Term in Active Political Debate, to 1848,” in Jussi Kurunmaki, Jeppe Nevers, and Henk te Velde, eds., *Democracy in Modern Europe: A Conceptual History* (New York and Oxford, 2018), 16–41.

<sup>5</sup>On “essentially contested concepts” see W. B. Gallie, “Essentially Contested Concepts,” *Proceedings of the Aristotelian Society* 56 (1955), 167–98. On thinking about democracy as a set of contested ideas and practices see J. Dunn, *Setting the People Free: The Story of Democracy* (Princeton, 2019), xii–xiii; Stephen W. Sawyer, *Demos Assembled: Democracy and the International Origins of the Modern State 1840–1880* (Chicago and London, 2018), esp. 4–6.

<sup>6</sup>On this point see Sawyer, *Demos Assembled*, esp. 4–5. As examples, beyond Sawyer, see Sudhir Hazareesingh, *From Subject to Citizen: The Second Empire and the Emergence of Modern French Democracy* (Princeton, 2014); Rosanvallon, *La démocratie inachevée*. More recently see Arthur Ghins, “Representative Democracy versus Government by Opinion,” *Journal of Politics* 84/3 (2022), 1623–37; Kevin Duong, “Universal Suffrage as Decolonization,” *American Political Science Review* 115/2 (2021), 412–28; Duong, *The Virtues of Violence: Democracy against Disintegration in Modern France* (Oxford and New York, 2020); Gianna Englert, *Democracy Tamed: French Liberalism and the Politics of Suffrage* (Oxford and New York, 2024); Salih Emre Gerçek, “The ‘Social Question’ as a Democratic Question: Louis Blanc’s Organization of Labor,” *Modern Intellectual History* 20/2 (2023), 388–416.

<sup>7</sup>Works on the February Revolution include Piero Craveri, *Genesi di una Costituzione: libertà e socialismo nel dibattito costituzionale del 1848 in Francia* (Naples, 1985); François Luchaire, *Naissance d’une constitution: 1848* (Paris, 2014); Pierre Rosanvallon et al., *Le siècle de l’avènement républicain* (Paris, 1993); Sawyer, *Demos Assembled*; Gerçek, “The ‘Social Question’ as a Democratic Question”; Samuel Hayat, *Quand la république était révolutionnaire: Citoyenneté et représentation en 1848* (Paris, 2014); John M. Merriman, *The Agony of the Republic: The Repression of the Left in Revolutionary France, 1848–1851*, 1st edn (New Haven, 1978); Mark Traugott, *The Insurgent Barricade* (Berkeley, 2010); Raymond Huard, *Le suffrage universel en France: 1848–1946* (Paris, 1991); Jennings, *Revolution and the Republic*. Of course, scholars have studied figures

As a result, theories of direct legislation have often been overlooked. This may be because the sources have never been translated and are scattered across pamphlets, newspaper articles and public speeches, or because they have been considered of little relevance to broader histories of democracy. At any rate, theories of direct legislation rarely figure in historical studies of democratic thought, especially in anglophone literature.<sup>8</sup> Similarly, they have been disregarded by scholars interested in early socialism, on the ground that most of their proponents were marginal figures in the movement and their theories were only peripherally relevant to the development of later socialist thought.<sup>9</sup> In what follows, I will analyze archival material to demonstrate that theories of direct legislation are indeed part and parcel of the history of democracy. Not only did they help shape the meaning and institutional features of democratic politics in the nineteenth century, but concurrently they offered a nuanced account of the relationship between direct and representative democracy, as well as between democracy and socialism.

In the former case, debates about direct legislation reveal the many complexities that structure the relationship between direct votes and representation. More often than not, and despite the arguments of some of their proponents, they emphasize their mutual imbrication, from both a theoretical and an institutional perspective. Examining the details of this debate demonstrates that elements of direct popular legislation, far from being solely associated with direct democracy, have been crucial in theorizing democratic politics as we know it. Some aspects, like the initiative and the referendum, have become part of the toolkit of representative democracy. Others, while

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active throughout the Second Republic, such as Jonathan Beecher, *Victor Considerant and the Rise and Fall of French Romantic Socialism* (Berkeley, 2001); Frank Edward Manuel, *Prophets of Paris* (Cambridge, MA, 1962), which cover the life trajectory of Considerant. More recently, work has been published on Louis Blanc: Sawyer, *Demos Assembled*, Ch. 6; Gerçek, “The ‘Social Question’ as a Democratic Question.” On Proudhon see Jonathan Beecher, *Writers and Revolution: Intellectuals and the French Revolution of 1848* (New York, 2021), Ch. 7. These works, however, do not specifically focus on the final years of the republic.

<sup>8</sup>Rosanvallon briefly (and uncharitably) touches on them; see Rosanvallon, *La démocratie inachevée*. Proietti explores Rittinghausen’s ideas in Fausto Proietti, *Moritz Rittinghausen: La legislazione diretta del popolo, o la vera democrazia. Testo e contesti* (Turin, 2018); Proietti, *L’invenzione della democrazia: Pensiero politico e istituzioni nella Seconda Repubblica francese* (Canterano, 2020). A. Chambost, “Socialist Visions of Direct Democracy,” in D. Moggach and G. Stedman Jones, eds., *The 1848 Revolutions and European Political Thought* (Cambridge, 2018), 94–119, briefly discusses the project for direct legislation, but mostly focusing on Proudhon’s criticisms. Aspects of these debates have also been briefly discussed by Spencer McKay, “Plebiscites, Referendums, and Ballot Initiatives as Institutions of Popular Sovereignty: Rousseau’s Influence on Competing Theories of Popular-Vote Processes,” *Review of Politics* 85/1 (2023), 23–47. See also Enzo Fimiani, *“L’unanimità più uno”: Plebisciti e potere, una storia europea (secoli XVIII–XX)* (Florence, 2017), Ch. 3; Marcel David, “Le ‘gouvernement directe du peuple’ selon les proscriés de la Seconde république,” in *La pensée démocratique: Actes du Colloque d’Aix en Provence* (Aix en Provence, 1995), 153–66; Vittore Collina, “Proposte Di Democrazia Diretta Nella Seconda Repubblica,” in *Ideologie del 1848 e Mutamento Sociale: V Giornata Luigi Firpo: Atti del Convegno Internazionale, 20 Marzo 1998* (Florence, 1999); F. Bracco, “Democrazia Diretta e Democrazia Rappresentativa nel Dibattito Tra Democratici e Socialisti in Francia 1850–1851,” *Annali della Facoltà di Scienze Politiche di Perugia* 4 (1982–3), 579–614.

<sup>9</sup>See, for example, Pamela Pilbeam, *French Socialists before Marx: Workers, Women and the Social Question in France* (Teddington, 2000); Gregory Claeys, “Non-Marxian Socialism 1815–1914,” in Gareth Stedman Jones and Gregory Claeys, eds., *The Cambridge History of Nineteenth-Century Political Thought* (Cambridge, 2011), 521–55.

eventually discarded, served as foils against which to theorize in favor of political representation. Reconstructing the context in which they emerged and the extent to which they garnered support adds nuance and complexity to our understanding of the history of democracy.

Further, the article explores how theorists of direct legislation negotiated the relation between democracy and socialism by coupling the procedural demands of popular sovereignty with the substantive results they believed would derive from it. Not unlike current theorists defending epistemic democracy and the wisdom of the crowd, they placed trust in popular legislation, believing that its procedural dimension would result in positive legislative and social outcomes. Examining the arguments used to support this view may illuminate the delusional nature of nineteenth-century socialist politics and show that some of the tensions defining its afterlife in the twentieth century have a long and distinctive history.

### The protagonists and their context

The Second Republic in France is a landmark moment in the history of Western democracy. As Rosanvallon makes clear, it is at this time that the idea of democracy gains widespread currency to indicate both a political regime and a form of society.<sup>10</sup> In the years leading up to the revolution of February 1848, it became progressively clear that the social and political grounds upon which the July Monarchy was based were shifting under its feet. The development of industry across the country had made the condition of the workers, the so-called social question, visible and urgent. At the same time, moderate, republican and socialist forces started pushing for electoral reform, with the short-term goal of extending the franchise in view of the final aim, universal male suffrage.<sup>11</sup> These forces gained traction throughout the 1840s, to finally find revolutionary expression in February 1848, when the streets of Paris revolted against the regime and a provisional government was established with the explicit aim of instituting a republic.

The promise of the new republic was to lift large parts of the population out of poverty by representing their interests in parliament. Indeed, it was commonly held that the living conditions of the working classes were dismal precisely because they did not have a voice in parliament. Access to political representation would have dramatically improved their situation: for social reform to be the end goal, political reform had to be the means to achieve it.<sup>12</sup> Universal suffrage would have expanded political rights

<sup>10</sup>Philip J. Costopoulos and Pierre Rosanvallon, "The History of the Word 'Democracy' in France," *Journal of Democracy* 6/4 (1995), 140–54. See also Innes and Philp, "Democracy from Book to Life." On this distinction in the history of democracy see also Sawyer, *Demos Assembled*, 4–5.

<sup>11</sup>Consider the subtitle of Ledru-Rollin's journal, *La réforme*: "La réforme électorale pour point de départ, et pour but le suffrage universel." On this see Luchaire, *Naissance d'une constitution*, 16.

<sup>12</sup>See Louis Blanc, *Questions d'aujourd'hui et de demain*, vol. 1 (Paris, 1882), 12–13. Marcel David, "Louis Blanc, la République et la souveraineté réelle du peuple," in Maurice Agulhon et al., *Louis Blanc, un socialiste en république* (Paris, 2005), 93–106, at 93. More generally on socialist hopes for the Second Republic see Pilbeam, *French Socialists before Marx*.

and, by doing so, brought about social justice. This was the twin promise of the republic: to be both social and democratic.<sup>13</sup> And yet this promise was soon disappointed, as evinced by three major issues that came to symbolize the crisis of the republic.

Universal male suffrage, instituted immediately after the proclamation of the republic and its most important symbol, turned out to be short-lived. The election to the constituent assembly of 23–4 April 1848 was the most widely participated-in ever held in Europe, with more than 9 million French men taking part in the voting procedures.<sup>14</sup> The first article of the new constitution claimed, “Sovereignty exists in the whole body of French citizens. It is inalienable and imprescriptible.”<sup>15</sup> The principle of popular sovereignty was thus solemnly proclaimed and put into law. However, this was not enough to guarantee its actual realization. Election after election, universal male suffrage returned conservative majorities in parliament, strengthening the tension between workers and the bourgeoisie, to the point of making the passing of the *Loi du 31 mai* possible. This law, voted by parliament in May 1850, dramatically reduced the franchise by reintroducing property (via residency) requirements for the exercise of the right to vote.<sup>16</sup>

The disenfranchisement of millions of voters abolished the hope that republicans and socialists had placed in the power of representative politics to address the social question.<sup>17</sup> By 1851, it had become clear that many of the aspirations motivating working-class support for the republic had been disappointed. While Louis Blanc and other workers’ representatives tried to make good on the promise to lift the lower classes out of poverty through their representative role, all they could secure was the organization of labor around the *ateliers nationaux* (national workshops), which were a lesser version of Blanc’s more radical proposal for social workshops, and the passing of the *Loi du travail* (Labor Law), which promised to guarantee work to all those who wanted it and offered minimum social security against ill health, but fell short of the proposed *droit au travail* (right to work), whose invocation played a major role in the revolutionary uprising.<sup>18</sup> Further, the Luxembourg Commission, an assembly of workers’ delegates, was established to discuss labor-related problems and propose solutions to parliament, but ended up mostly ignored by legislators, thus breeding the conviction

<sup>13</sup>Although radical socialists like Considerant, who was a member of the Constituent Assembly, wanted to include women too. See Luchaire, *Naissance d’une Constitution*, 43.

<sup>14</sup>The 1791 Constitution, although radically democratic, demanded a minimum of three days of work to qualify as a voter. The 1793 Constitution instituted universal male suffrage but was never applied. See Luchaire, *Naissance d’une Constitution*, 35. See also Malcolm Crook, *How the French Learned to Vote: A History of Electoral Practice in France*, 1st edn (Oxford, 2021); Alain Garrigou, *Le vote et la vertu: Comment les français sont devenus électeurs* (Paris, 1992). Maurice Agulhon, *The Republican Experiment, 1848–1852*, trans. Janet Lloyd (Cambridge, 1983).

<sup>15</sup>France Godechot and Jacques Godechot, *Les constitutions de la France depuis 1789* (Paris, 1970).

<sup>16</sup>See Paul Raphael, “La Loi du 31 mai 1850,” *Revue d’histoire moderne et contemporaine (1899–1914)* 13/3 (1909), 277–304; Raphael, “La loi du 31 mai 1850 (suite),” *Revue d’histoire moderne et contemporaine (1899–1914)* 14/1 (1910), 44–79; Raphaël, “La loi du 31 mai 1850 (suite et fin),” *Revue d’histoire moderne et contemporaine (1899–1914)* 14/3 (1910), 297–331.

<sup>17</sup>See Hayat, *Quand la république était révolutionnaire*.

<sup>18</sup>On Blanc’s original proposals for social workshops and how they mattered to his views of democracy see Gerçek, “The ‘Social Question’ as a Democratic Question.”

that the social question had failed to be addressed and unleashing violence on a scale that France had not seen in decades.<sup>19</sup>

Last, the constitutional structure of the republic turned out to be the source of dangerous tensions between state powers, especially between the legislative and the executive, breeding instability and conflict. According to the Constitution, the totality of the legislative power was delegated to a unitary assembly (Article 20), while the totality of the executive power was in the hands of a single person, the president (Article 43). Both powers were elected via direct universal suffrage; hence they enjoyed the same degree of democratic legitimacy, which put them in competition with each other and became the source of constant conflict, up until Louis Napoleon's coup in 1851 put an end to the tension by establishing the supremacy of the executive over the legislative.<sup>20</sup>

The consequences of the failures of the Second Republic were felt widely by the working classes and their leaders. A debate ensued, aimed at assessing whether, in fact, a republic could ever be compatible with the goals of the socialist movement. The question was discussed on the pages of socialist and republican publications, amongst which were *La démocratie pacifique*, *La voix du proscrit* and *La Presse*, as well as in pamphlets circulated within Paris and internationally. Its protagonists were renowned political figures, as well as early theorists of socialism. Amongst them, Moritz Rittinghausen stands out as the most radical antagonist of political representation and, with it, of the Second Republic. A Prussian-born journalist, Rittinghausen committed his life to advancing socialism, writing about it for the *Neue Rheinische Zeitung*, which he cofounded with Marx and Engels, and for *La démocratie pacifique*. Exiled from Germany, he was in Cologne in 1848, when he was elected to the Frankfurt Vorparlament and curated a rubric of political news from France for the *Westdeutsche Zeitung*. It is at this time that he started developing a theory of direct legislation, both as a response to the events unfolding in France and in relation to the unfair and archaic electoral practices of Rhineland and other German states.<sup>21</sup> After falling out with the leadership of the journal, and in order to avoid Prussia's antisocialist reaction, he escaped to Brussels, where he met his long-term collaborator, supporter and friend Victor Considerant. The latter played a major role in the publication of Rittinghausen's *La législation directe par le peuple, ou la véritable démocratie* (Direct Legislation by the People, or Real Democracy), which came out in 1851.<sup>22</sup>

The pamphlet was first published in three parts on the pages of *La démocratie pacifique*, edited by Considerant and the main outlet of Fourierist socialist politics at the

<sup>19</sup>Francois Bruand, "La Commission du Luxembourg en 1848: Dynamique d'un mouvement social et institutionnalisation des rapports sociaux," in Agulhon *et al.*, *Louis Blanc*, 107–32. See also Pilbeam, *French Socialists before Marx*, 156–63. More generally, on how the *ateliers nationaux* and the Luxembourg Commission fell short of Blanc's plan, see Gerçek, "The 'Social Question' as a Democratic Question," 408–14. On violence during the June days and beyond see Traugott, *The Insurgent Barricade*; Mark Traugott, *Armies of the Poor: Determinants of Working-Class Participation in the Parisian Insurrection of June 1848*, limited edn (Princeton, 1985). For a more general take of violence in nineteenth-century France see Duong, *The Virtues of Violence*.

<sup>20</sup>See M. Girard, *Problèmes politiques et constitutionnels du Second empire* (Paris, 1964).

<sup>21</sup>Proietti, *Moritz Rittinghausen*, 7–18.

<sup>22</sup>Moritz Rittinghausen, *La législation directe par le peuple et ses adversaires* (Paris, 1850). On Rittinghausen's life see Proietti, *Moritz Rittinghausen*.

time. In this series of articles, Rittinghausen claimed that socialism, to be realized, required democracy, but that democracy, to be “real,” had to directly involve the people in the lawmaking process. Rittinghausen’s proposal caused a stir amongst socialist thinkers and beyond.<sup>23</sup> It immediately became a talking point among the demo-socs, who discussed it in preparation for the 1852 presidential campaign; it was extensively covered by the conservative press; and it entered debates regarding the new municipal electoral law as well as those that followed Bonaparte’s proposal to revise the Constitution.<sup>24</sup> In intellectual circles, it found the enthusiastic support of communist groups inspired by Étienne Cabet and the Fourierist movement. The latter was led by Considerant, who, after serving in the republican parliament in 1848 and 1849, grew progressively disenchanted with political representation. From Brussels, where he was exiled following the uprising of 13 June 1849, he wrote a number of pamphlets elaborating on the territorial dimension of Rittinghausen’s proposal and supporting the idea that socialism, to be realized, demanded direct legislation.<sup>25</sup>

Rittinghausen’s project was also supported by most left republicans, with the notable exception of Louis Blanc, who alone advanced an unequivocal defense of political representation.<sup>26</sup> Elected to the provisional government in 1848, Blanc attempted to implement radical socialist proposals to no success, and eventually fled to London in exile. Engaging in a point-by-point critique of both Rittinghausen’s and Considerant’s proposals, he maintained that the fate of socialism and representation were indissolubly bound together. In the middle of this debate sat Alexandre Auguste Ledru-Rollin, an eminent left republican who, although not exactly a socialist, shared many of Considerant and Rittinghausen’s aspirations. He was a prominent member of the provisional government, minister of the interior and competitor of Bonaparte at the presidential elections of 1848. After taking part in the insurrection in June 1849, he went in exile to London. From there, he commented extensively on Rittinghausen’s proposal in the pages of *La voix du proscrit*, a newspaper he cofounded for French exiles in London. In these articles, as well as in subsequent pamphlets, he showcased admiration for Rittinghausen’s proposal but could not come to terms with its demand to abolish representatives altogether.<sup>27</sup> Last, direct legislation was criticized by anarchist thinker Pierre-Joseph Proudhon, a printer from Besançon who rose to fame thanks to the publication of inflammatory pamphlet *Qu’est-ce que la propriété?* (What Is Property?). He too was elected to the National Assembly and was one of the thirty deputies who refused to vote in favor of the Constitution in November 1848. Jailed in the prison of Sainte-Pélagie since 1849 for inciting hatred against the republic and its president, he

<sup>23</sup>See P. Duprat, “Théories démocratiques sur le gouvernement,” *La politique nouvelle*, 13 July 1851, 361–77. See also Proietti, *Moritz Rittinghausen*, 25–8.

<sup>24</sup>Proietti, *Moritz Rittinghausen*, 27.

<sup>25</sup>Beecher, *Victor Considerant and the Rise and Fall of French Romantic Socialism*. See also Pilbeam, *French Socialists before Marx*, 113–18; David W. Lovell, “Early French Socialism and Politics: The Case of Victor Considérant,” *History of Political Thought* 13/2 (1992), 257–79.

<sup>26</sup>David, “Louis Blanc, la République et la souveraineté réelle du peuple”; Leo A. Loubère and Louis Blanc, *Louis Blanc: His Life and His Contribution to the Rise of French Jacobin-Socialism* (London, 1980); Sawyer, *Demos Assembled*, Ch. 6.

<sup>27</sup>Alvin Rosenblatt Calman, *Ledru-Rollin and the Second French Republic* (New York, 1922); Hippolyte Castille, *Ledru-Rollin* (Paris, 1856).



wrote extensively on the differences that distinguish Rittinghausen's system of direct legislation from his own proposal for an anarchist federation. Anarchism, he claimed, was incompatible with direct legislation as theorized by Rittinghausen, but shared with it the firm condemnation of representative politics as realized by the institutional structure of the Second Republic.<sup>28</sup> All the protagonists of this debate had run for election and served, for varying amounts of time, as representatives of the people. And yet they were also the ones who, from exile or from prison, questioned the compatibility of representation with both socialism and democratic politics.

### Representation and its problems

Two elections took place in 1848, one for the composition of the constituent assembly and the other to choose the president of the republic. The expectations, for both votes, were extremely high, as it was the first time in European history that the working classes directly elected their representatives. And yet the progressives' hope was severely disappointed, as both votes returned conservative majorities, thus contradicting what until then was taken to be an axiom of socialist theorizing: that universal suffrage would yield pro-worker parliaments. Finding out why this turned out not to be the case became a major issue amongst republican intellectuals, but it was in May 1850, when the law reintroducing restrictions to the franchise was passed, that the question assumed absolute urgency: republicans of all denominations concluded that universal suffrage, applied to electoral politics, was not enough to realize popular sovereignty and bring about social harmony.

In elaborating their disappointment, they trod in the footsteps of a long tradition of thinkers who had engaged with the question of political representation.<sup>29</sup> Not only did their arguments respond to earlier discussions of the role and need for representation, made popular by thinkers like Guizot and Tocqueville, both of whom were widely read and discussed at the time, but they also systematically engaged in interpretive battles over the writings of Montesquieu and Rousseau, who were taken to be the ultimate authorities on the nature of the republic and its relationship to the democratic ideal. And while they agreed with Montesquieu that "it is a fundamental law of democracy that the people make their laws," they disagreed over whether Rousseau's critique of representation fell short of its own premises when it introduced the sovereignty–government distinction and made space for delegates in the executive

<sup>28</sup>Much has been written on Proudhon's life and politics, but especially relevant to this context are Anne-Sophie Chambost, "Proudhon et l'opposition socialiste à la Loi du 31 mai 1850: Face à la trahison des représentants," *Revue française d'histoire des idées politiques* 31 (2010), 81–107; Gilda Manganaro-Favaretto, "La représentation des intérêts et la représentation politique dans la pensée de P. J. Proudhon," in *Le concept de représentation dans la pensée politique* (Aix-en-Provence, 2015), 321–30. For his life and thought during the Second Republic see also Beecher, *Writers and Revolution*, Ch. 7.

<sup>29</sup>For historical overviews of such debates see Urbinati, *Representative Democracy*; Bernard Manin, *The Principles of Representative Government* (Cambridge, 1997). More recently, and for a conservative critique of the extension of the suffrage, see Englert, *Democracy Tamed*. But also Pierre Rosanvallon, *Le moment Guizot* (Paris, 1985).

function.<sup>30</sup> Similarly, the debates that led to the writing of the 1793 Constitution were taken to be authoritative on the impossibility of delegating sovereignty, but disagreement existed over whether Robespierre's defense of delegation amounted to a betrayal of popular sovereignty or to a plausible means for its realization.<sup>31</sup> These precedents were suddenly mobilized when Rittinghausen published his pamphlet, which kicked off a new episode in the long history of debates about the suitability of representation for democratic politics.

The argument of *La législation directe par le peuple, ou la véritable démocratie* is quite simple. According to Rittinghausen, "Direct legislation is the only form of government worthy of an enlightened nation, because through it alone the dogma of the sovereignty of the people becomes a truth."<sup>32</sup> Representation, as well as any type of delegation of the lawmaking power, was profoundly antidemocratic: it neither realized popular sovereignty nor resulted in good decisions capable of bringing about social harmony. Representation fell short of realizing popular sovereignty because, according to Rittinghausen, it is a "remnant of ancient feudalism."<sup>33</sup> It was the form of political organization most typical of corporatist societies, in which individuals were organized according to their social position and their interests represented by delegates entrusted with the task of conveying their mandates to the feudal lord. This system had, however, no reason to subsist in the nineteenth century, when corporations no longer existed, and the formal equality of men had been proclaimed. And yet representation was heralded as a universalist political regime by intellectuals and politicians, who could not see that it realized the sovereignty of one class only: the bourgeoisie. In Rittinghausen's words, representation in 1850 was "the corner stone, the permanent source of the reign of the bourgeoisie."<sup>34</sup> And this was because the bourgeoisie, while proclaiming the advent of the universal rights of man, was still very much acting as a corporation, in fact the most powerful corporation, within society. It was thus absurd for workers to believe in the bourgeois narrative according to which members of the upper classes could represent the interests of the entire people. This would amount to "wanting something to be represented by that which is diametrically opposed to it: the color black by the white, the general interest of a people by a particular interest that is opposed to it."<sup>35</sup>

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<sup>30</sup> However, they distanced themselves from Montesquieu's condemnation of democracy. See Alexandre-Auguste Ledru-Rollin, *Du gouvernement direct du peuple* (Paris, 1851), 3; Louis Blanc, *Plus de girondins* (Paris, 1851), 24–30; Blanc, *La république une et indivisible* (Paris, 1851), 26–30; Rittinghausen, *La législation directe par le peuple et ses adversaires*, 128–31. Ledru-Rollin considered Rousseau the most important democratic theorist, while Rittinghausen described him as a traitor of the democratic cause. On the role of Rousseau in these debates see McKay, "Plebiscites, Referendums, and Ballot Initiatives as Institutions of Popular Sovereignty."

<sup>31</sup> See Ledru-Rollin, *Du gouvernement direct du peuple*, 12–14; Alexandre-Auguste Ledru-Rollin, *Plus de président, plus de représentants* (Paris, 1851); Rittinghausen, *La législation directe par le peuple et ses adversaires*, 181–82.

<sup>32</sup> Rittinghausen, *La législation directe par le peuple et ses adversaires*, 10.

<sup>33</sup> *Ibid.*, 11.

<sup>34</sup> *Ibid.*, 10.

<sup>35</sup> *Ibid.*, 12.

Further, representation, as the expression of bourgeois sovereignty, could not deliver epistemically sound decisions, let alone establish social harmony. In Rittinghausen's view, representative politics is based on the fiction that representatives decide in the interest of the whole nation, but facts had shown that even the best-intentioned representatives are guided by beliefs and values that reflect their class positioning and, therefore, are fundamentally biased and incapable of reflecting the will of their constituents. Otherwise, how could the law restricting the franchise be explained, if not by reference to the fact that the interests of the representatives did in fact diverge from those of a vast part of the population and that, in the end, those interests won out? Considerant, building on his own experience as a member of the legislative assembly, reinforced Rittinghausen's critique by arguing that representative assemblies are *moulins à paroles creuses*, "empty word-mills," as evidenced by the fact that, given the developments of science and industry, "society should run on steam, and all its members should swim in abundance and enlightenment."<sup>36</sup> But that was not the case: social harmony had not been established and society had not witnessed any noticeable scientific or industrial progress. Instead, under the spell of universal suffrage, elections reestablished a form of slavery.

For Considerant and Rittinghausen, to enter into a representative relation is to willingly accept a master–slave dynamic, where "the people is ambushed into a trap: it is invited to step on it, it does, and once caught in the trap it is told that it has exercised its sovereignty and that all that is left to do is to obey to the sacred law that will be prepared on its behalf."<sup>37</sup> The only way out of this master–slave relationship, which was an insult to both popular sovereignty and plans for a harmonious society, was to establish real democracy, in which sovereignty, to be real, had to be exercised by the "real universal people in action."<sup>38</sup>

## Democracy

To let the real universal people act—to establish real democracy—was desirable and, in fact, necessary, for two reasons. First, procedurally, only real democracy would successfully establish popular sovereignty. Procedures would be put in place such that all those who are subject to the law have an active role in making it. Second, from an instrumental point of view, direct popular legislation would result in better, more enlightened, legislation which would eventually abolish class conflict and usher in an age of harmony. And it was this belief in social harmony as the goal to which all society ought to aspire that ultimately motivated Rittinghausen, Considerant and Ledru-Rollin's defense of democracy as direct legislation, making it a prime example not only of utopian socialism, but also of the type of romanticism that animated activists and thinkers during the Second Republic.<sup>39</sup>

<sup>36</sup>Victor Considerant, *Les quatre crédits, ou 60 milliards à 1 1/2 pour 100* (Paris, 1851), 139.

<sup>37</sup>Considerant, *La solution ou le gouvernement direct du peuple*, 21.

<sup>38</sup>Allyre Bureau, "Préface des éditeurs," in Rittinghausen, *La législation directe par le peuple, ou la véritable démocratie* (Paris, 1850), 5–6, at 6.

<sup>39</sup>On the romantic dimension of the Second Republic see Beecher, *Writers and Revolution*; Beecher, *Victor Considerant and the Rise and Fall of French Romantic Socialism*.

***The procedural argument: sovereignty***

Real democracy, according to Rittinghausen, had to renounce representation and embrace direct legislation instead. Only in this way would popular sovereignty be realized. This meant organizing France into sections of one thousand citizens each, which would work as deliberative assemblies. Each assembly would elect a president, in charge of chairing the sessions, moderating the discussion, and presiding over the final vote. The lawmaking process would run as follows: a section debates and then drafts either a legislative proposal or an amendment to an existing law. Once the process is finalized at the sectional level, the proposal is sent out to a purely administrative body, called a ministry, which summons all other assemblies and asks them to decide on the proposed law or amendment. This process will take place two times a week.

Rittinghausen went into some detail as to how the decision-making process ought to be organized, insofar as he believed deliberation to be key to the success of the entire system, as it would result in better-quality legislation. Citizens assess a proposal by first discussing the principles that inspire it, vote on them, and then, as in a flowchart, debate and vote on all subsequent issues, which become progressively narrower and more practical.<sup>40</sup> This deliberative system, which starts from the general to arrive at the most minute aspects of policy design, would make agreement easier by foregrounding the principles that bind a community together. His understanding of democracy was thus predicated on the rejection of representation, and the institutionalization of legislative initiatives and referenda at the local level, which he believed would amount to a form of direct legislation. As Considerant noted in an enthusiastic commentary, when the people legislate directly, they obey only themselves, which means not to obey at all, but to do their will simply and straightforwardly.<sup>41</sup>

Considerant and Rittinghausen's plan intrigued Ledru-Rollin, who, however, felt that he could not follow them to their extreme conclusions. He judged these conclusions to be based on a mistaken assumption: that citizens can directly exercise the legislative, executive and administrative functions, and that, as a result, sovereignty need not be distinguished from government.<sup>42</sup> Instead, he tried to chart a middle ground in two influential pamphlets, both published in 1851: *Du gouvernement direct du peuple* (Direct Popular Government) and *Plus de présidents, plus de représentants* (No More Presidents, No More Representatives). The middle ground consisted in arguing against representation but in favor of a mix of direct legislation and delegation of the executive and administrative functions. According to Ledru-Rollin, Rittinghausen was right to claim that sovereignty could not be alienated, and that meant that "the sovereign, which cannot be but a collective being, can only be represented by itself."<sup>43</sup> However, he also believed that "what is needed is less a sovereignty constantly in action, and more a type of sovereignty that is permanently constituted, always present, that will never abdicate."<sup>44</sup> This meant reintroducing the distinction, extensively theorized

<sup>40</sup>Rittinghausen, *La législation directe par le peuple et ses adversaires*, 26–28.

<sup>41</sup>Considerant, *La solution ou le gouvernement direct du peuple*, 12.

<sup>42</sup>Ledru-Rollin, *Plus de président, plus de représentants*, 10.

<sup>43</sup>Ledru-Rollin, *Du gouvernement direct du peuple*, 6.

<sup>44</sup>Ledru-Rollin, *Plus de président, plus de représentants*, 8.

by Rousseau, between sovereignty and government, and admitting that to let the people legislate, execute, judge and administer all at once would mean to conflate “le droit et le fait,” laws and facts.<sup>45</sup>

To avoid this confusion, Ledru-Rollin devised a system in which the people would author the law by gathering in local assemblies and either initiating the legislative process through the institution of the initiative or voting in favor of or against legislation in referendum-like direct votes. Legislation, however, would be drafted not by the people themselves, as per Rittinghausen’s plan, but by a central assembly of delegates, elected on a yearly basis by the entire population. Delegates would draft laws, which were then submitted to electoral assemblies for approval. Further, delegates would have the power to draft decrees with immediate legal validity and oversee their execution. To Ledru-Rollin’s mind, this plan was consistent with direct legislation because the people would retain their sovereignty, while the merely executive and administrative functions—government—would be carried out by elected delegates. These would not encroach on the people’s legislative power because, unlike representatives, they would be “simple delegates, commissaries, not to say assistants, nominated exclusively to prepare the law, and leaving to the people the task of voting it.”<sup>46</sup>

Ledru-Rollin’s attempt to make the sovereignty–government distinction cohere with plans for direct legislation rested on two strategies. One was to distinguish between (illegitimate) representation and (legitimate) delegation. To do so, he enlisted Rousseau and Robespierre in his support. Very much like Robespierre half a century earlier, he claimed to be following the teachings of *The Social Contract*, where Rousseau argued that the people should elect deputies who, being only commissaries, do not encroach on the sovereign’s lawmaking power, but execute it.<sup>47</sup> Ledru-Rollin agreed with Robespierre that “the mandataries cannot be representatives,” and believed that the best way to secure that was to let the people vote on the laws themselves.<sup>48</sup> The second strategy was to distinguish between laws and decrees, whereby the first are the object of sovereignty, while the second pertain exclusively to the domain of execution and administration, and can thus be delegated. As demonstrated by the French Constitution of 1793, “despite what people say, it is a very easy distinction to keep.”<sup>49</sup> And the easiest way to do so was to assign the executive function to an assembly of delegates elected on a yearly basis and to a president, elected and recallable by the delegates’ assembly.<sup>50</sup>

This distinction between the sovereign legislative function and the delegation of the executive power was, to Ledru-Rollin’s mind, a necessary compromise to safeguard the need for “effective action.” In his opinion, the combination of citizens’ local assemblies, a centralized executive and an assembly of delegates would be the only way to make direct legislation work. Such a system, realizing direct legislation, “would become

<sup>45</sup> Ledru-Rollin, *Du gouvernement direct du peuple*, 7; 13.

<sup>46</sup> Ledru-Rollin, *Plus de président, plus de représentants*, 3.

<sup>47</sup> Ledru-Rollin, *Du gouvernement direct du peuple*, 8.

<sup>48</sup> Ledru-Rollin, *Plus de président, plus de représentants*, 6.

<sup>49</sup> Ledru-Rollin, *Du gouvernement direct du peuple*, 13.

<sup>50</sup> *Ibid.*, 12–13.

the modern cathedral, the living altar truly erected to the cult of fraternity.”<sup>51</sup> Yet not even enlisting Rousseau and Robespierre was enough to convince Rittinghausen and Considerant of his plans. Rittinghausen quipped that, were Ledru-Rollin’s project to be successful, “sovereignty would have the opposite fate of Saturn; it would be eaten alive by its daughter, delegation.”<sup>52</sup>

The three thinkers disagreed on whether sovereignty demanded that the people be constantly in action, or always present and controlling but acting only on occasion. However, they agreed that only when the people have a direct say in legislation is their sovereignty realized. The realization of real sovereignty thus required the redefinition of several key institutions of the Second Republic which, in the context of representative politics, were just fictions devised to give citizens the illusion of exercising sovereignty. Under a system of direct legislation, they would completely change their nature and, from being simple instruments of approximation, would become sovereignty’s truest expression.

The first such institution was majority rule. Theorists of direct legislation believed that a majority is legitimate only if it tracks exactly the will of the people. This entailed two requirements: that the entire voting population participate, and that it express its will on all relevant issues, separately. This is not the case during elections, when the will of the majority is always expressed on a bundle of issues. How could even the best-intentioned representatives know what the will of their electors is on each individual issue, if their vote expresses only bundled preferences? The answer is that there is no way for the will of the majority to be ascertained and translated into laws in a representative system: “elections yield a system of government and legislation that is entirely contrary to the will of the people.”<sup>53</sup> By contrast, in a system of direct legislation, majorities are constantly changing, because each decision is voted on separately and on its own terms. It follows that, “In a system of direct legislation, legislative issues are dealt with one at a time, and processed on a case-by-case basis; today I find myself having to accept the will of the majority, tomorrow I will contribute to imposing it by being myself part of that majority.”<sup>54</sup> Further, for popular sovereignty to be realized through direct legislation, it was necessary to reevaluate the very notion of law. From a practical perspective, it was evident that, unless France’s working population completely stopped working, they could not contribute to drafting and voting all laws that were normally the object of parliamentary activities. A redefinition of what counted as law was thus necessary. There was broad agreement on the need to simplify the legislative process: “liberty requires the simplification of all legislative wheels in a harmonious way ... once we apply this principle, law becomes the perfect expression of popular sovereignty.”<sup>55</sup> However, simplification meant different things to different theorists. Ledru-Rollin catalyzed the debate by suggesting that the people approve or reject the law, but that the law

<sup>51</sup> Ledru-Rollin, *Plus de président, plus de représentants*, 8.

<sup>52</sup> Considerant, *La solution ou le gouvernement direct du peuple*, 18.

<sup>53</sup> Rittinghausen, *La législation directe par le peuple et ses adversaires*, 73.

<sup>54</sup> *Ibid.*, 72.

<sup>55</sup> Charles Delescluze, “Le Comité centrale démocratique européen,” *La voix du proscrit: Organe de la République universelle*, 24 Feb. 1851, 250. Delescluze was a politician and radical democrat who supported Rittinghausen’s proposal and tried to popularize it through his publications on *La voix du proscrit*.

be drafted by a committee of mandataries, entrusted with the power to autonomously write and pass decrees. The logic of his system rested on the above-mentioned distinction between laws and decrees, according to which “the object of the law ... is always general; the law considers its subjects as a body, and actions as abstract, never a man as an individual, or an action in particular.”<sup>56</sup> Decrees, by contrast, apply the general principles of law to specific circumstances, thus executing it. The introduction of this distinction simplified the legislative process by limiting the direct involvement of the people and making space for technical knowledge and expertise in the law-drafting process.

This proposal was met with disapproval by Rittinghausen. The disagreement revolved around whether the 1793 Constitution, and the distinction it introduced between laws and decrees, could be considered a valuable system of direct legislation. For Ledru-Rollin that was the case, as it firmly distinguished between the sovereign lawmaking power and jurisdiction over governmental decrees and delegated the latter to experts without ever endangering the former.<sup>57</sup> Rittinghausen disagreed, on the ground that the distinction between sovereignty and government was not only false, but also a disingenuous means of reinstating representation or, even worse, the rule of experts, while paying lip service to direct legislation. The alternative proposed by Rittinghausen was to consider all forms of decision making part of sovereignty, and thus of legislation, but to streamline the legislative process in such a way as to start from general principles, which would then be progressively narrowed down to the more minute details. All this had to be submitted to the will of the people gathered in local assemblies.

The main implication of this debate was to reevaluate the desirability of constitutions and, with it, the hierarchy of norm. If all laws are made by the people, why should some count for more than others? In Considerant’s words, to recognize the special status of a constitution is to accept “the Sovereignty of the dead People over the living People.”<sup>58</sup> The only legitimate constitution would be “the existence, the thought, the will and the autonomy of the universal People.”<sup>59</sup> It followed that, for popular sovereignty to be realized, not only did the domain of law have to be streamlined and simplified, but also the very idea of a constitution and its corollary, the hierarchy of norms, had to be discarded. No expression of the will of the people could count for more than any other expression of the same will. To claim the opposite would mean to admit that one majority—the one that voted on the Constitution—had sovereignty over all subsequent possible majorities.

The affirmation of popular sovereignty through procedures of direct legislation entailed the reassessment of another key notion of French political thought: the unitary nature of the state. Since the French Revolution, and especially since the 1793 Constitution, the unitary nature of the republic had become an article of faith. Not only did Sieyès vehemently defend the unity of the nation, but also Robespierre and

<sup>56</sup> Ledru-Rollin, *Du gouvernement direct du peuple*, 13.

<sup>57</sup> Ledru-Rollin, *Plus de président, plus de représentants*, 7.

<sup>58</sup> Considerant, *La solution ou le gouvernement direct du peuple*, 13.

<sup>59</sup> *Ibid.*, 42.

Saint Just argued that the unity of the republic had to be enforced at all costs, as it alone guaranteed the inalienability of the people's sovereignty. Accordingly, the unity of the republic and, with it, of sovereignty had to reside in the unity of the lawmaking power. This idea was so engrained in French political consciousness that, in 1848, almost nobody dared to question it.<sup>60</sup> Yet plans for direct legislation demanded the territorial reorganization of the legislative power and its subdivision in local assemblies, which would be responsible for making the law. It was thus inevitable that the legislative function would lose its historically centralized character, but theorists of direct legislation argued that this was a positive development.

Indeed, they believed that the centralization of the lawmaking power did not guarantee unity, precisely because it alienated the entirety of sovereignty to those at the center, thus separating them from the rest of the population. Real unity, and hence sovereignty, demanded "association" instead.<sup>61</sup> This meant that legislation—the key object of sovereignty—would be distributed to local entities which, however, had no independent legislative power. Indeed, they could not pass valid law on their own—as they would in a federal system. Rather, they simply took part in lawmaking by contributing to the larger process, which was legitimate precisely because it resulted in just one law, valid across the nation. In other words, the result of legislation remained unitary, although the lawmaking process was not centralized. The promise of direct legislation was thus to realize popular sovereignty and, with it, to redefine the very meaning of majority rule, law and political unity. When applied to real democracy, its theorists claimed, these concepts stopped being fictions and became the true expression of popular sovereignty.

### *The instrumental argument: social harmony*

According to theorists of direct legislation, "real democracy" would not just realize the principle of popular sovereignty, by establishing procedures that allow citizens to have equal influence in the lawmaking process. The promise of direct legislation was that the same procedures realizing popular sovereignty would also deliver epistemically sound legislation and policy decisions. This, in turn, would progressively dissolve class conflict and, with it, the need for politics and law, ushering in an age of complete social harmony. In other words, theorists of direct legislation claimed that real democracy was desirable on two grounds: procedurally, because it would realize popular sovereignty, and substantively, because it would deliver social harmony.

Theorists of direct legislation defended the idea that popular lawmaking would produce better-quality legislation because what made for law's quality was not technical knowledge or expertise. This, on the contrary, was the result of social privilege and, as such, ended up mistaking the particular interest of those who produce political knowledge and expertise for the common good. To those who believed that knowledge could make for good laws, Rittinghausen retorted that they ought to "correct themselves! To make laws that are just and wise what is needed is common sense, this social common sense which is too often vitiated by an education full of mercantile prejudice and

<sup>60</sup>Pierre-Joseph Proudhon, *Du principe fédératif* (Paris, 1863).

<sup>61</sup>To be distinguished from federation, which Blanc accused them of trying to establish.



soaked in wealth.”<sup>62</sup> Granted that knowledge had little role to play in designing laws, the job was left to common sense or, as Rittinghausen called it, *bonne foi* (good faith). Good faith is a better source of legislation for several reasons. First, because, contrary to expertise, it cannot be captured by particular interests. Belonging to the mass of the people, it cannot but express the *idem sentire* of the vast majority of the population, whose decisions would be free from the prejudices typical of the educated class.<sup>63</sup> As Dupont, a fellow exile supporter of direct legislation, argued from the pages of *La voix du proscrit*, “peasants are not inferior beings, as some like to call them, and I am telling you, their simple reasoning is worth a hundred times more than the subtle intellect used to cover up lies with an appearance of truth.”<sup>64</sup>

Second, even assuming that knowledge could have a role to play in lawmaking, Rittinghausen argued that it is through direct legislation that a country makes the most of its talent. By involving every citizen in the process, all talents get a say in the legislative process, which is not the case when, in representative assemblies, “talent is curbed by the immense majority of mediocrities devout to the cult of everything that is small and mean.”<sup>65</sup> To which Ledru-Rollin added that the greatest advantage of direct legislation is that it pools together each “intelligence” in the nation, instead of that of a selected few. The result is neither the mere sum of all intelligences nor their average, but their exponential multiplication.<sup>66</sup> And these intelligences, he forcefully claimed, can only be found in the “power of the collectivity. Common sense and even genius are not outside the nation: rather, they emerge out of its lowest strata.”<sup>67</sup>

At this point, it should be noted that theorists of direct legislation did not believe that the will of the people is immune to errors. By contrast, errors are accounted for in their theories, but they argued that while, at times, majorities in direct legislation can be wrong, they are only wrong on one issue at a time. And any mistake can be corrected effectively and quickly, precisely because it is not tied to the political fate of any given individual or group. By contrast, when representative majorities go wrong, they “lose everything in just one go.”<sup>68</sup> In addition, Considerant believed that the epistemic advantage of direct legislation derived also from the fact that votes are on principles, ideas and policy proposals, not on individuals. To his mind, it is much easier to be misled by personalities, because of their charisma or their lack of honesty, than it is by ideas, values and principles, which when abstracted from electoral competition can be discussed with a good degree of epistemic clarity.<sup>69</sup>

The promise that direct legislation would deliver desirable outcomes was further strengthened by the idea that common sense, collective intelligence and the capacity to easily correct mistakes would soon make majority rule obsolete, progressively opening

<sup>62</sup>Rittinghausen, *La législation directe par le peuple et ses adversaires*, 34.

<sup>63</sup>Rittinghausen, *La législation directe par le peuple, ou la véritable démocratie*, 31.

<sup>64</sup>Dupont, “Plus de doctrinaires! Plus de dictateurs!”, *La voix du proscrit: Organe de la République universelle*, May 1851, 66.

<sup>65</sup>Rittinghausen, *La législation directe par le peuple et ses adversaires*, 34.

<sup>66</sup>Ledru-Rollin, *Du gouvernement direct du peuple*, 13.

<sup>67</sup>*Ibid.*, 10.

<sup>68</sup>Rittinghausen, *La législation directe par le peuple et ses adversaires*, 73.

<sup>69</sup>Considerant, *Les quatre crédits*, 154.

the way to unanimity and, in turn, to social harmony. Indeed, theorists of direct legislation believed that majority rule, by allowing the people to exercise real sovereignty, would be instrumental in transitioning society from a place of conflict and disagreement to one of unity and unanimity. As discussed above, theorists of direct legislation believed that when citizens take part in legislation, they slowly but steadily discover that they have much more in common than they initially thought. This realization, achieved thanks to their direct participation in deliberation and lawmaking, would eventually result, as Ledru-Rollin stated in one of his pamphlets, in the disappearance of the need for majority rule and the establishment of the rule of unanimity instead.<sup>70</sup> At this point, the transition to a socialist society, in which all classes are abolished and conflict disappears, will be achieved.

In this new society, “law will only be the regular and effective expression of popular sovereignty, and local administration, reduced to its natural limits, won’t be but execution of the principles decided by all.”<sup>71</sup> Progressively, this system of direct legislation will make legislation itself obsolete, as all causes of conflict will be eliminated.<sup>72</sup> In fact, once direct legislation is established, over time it will result in just “one perfect law. This law, in only one title and one article, will go like this: ALL LAWS ARE ABOLISHED.”<sup>73</sup> And social harmony will be established.

The value that Rittinghausen, Considerant and Ledru-Rollin attached to “true democracy” was thus both procedural and instrumental at the same time: direct legislation, as the core of democracy, was to be valued because it involved all citizens in the lawmaking process, hence realizing popular sovereignty. And yet its desirability also rested on its capacity to bring about social harmony, thanks to the epistemic superiority of common sense and collective intelligence. Democracy, in their hands, was both a value in itself and an instrument to achieve a higher goal, the ultimate abolition of the very need for politics and the advent of socialism. As Considerant incisively put it, “by solving the *democratic* problem, the effective realization of popular sovereignty would open the way to the solution of the *social* problem.”<sup>74</sup>

## Reactions and their aftermath

The idea that democracy, to be real, had to entail direct popular legislation was met with interest, but also criticism in intellectual and political circles. Dismissed by left republicans as misleading, because of its rejection of representation and its associative nature, it was criticized by most socialists for mistakenly seeing in democracy, as opposed to economic change, the means to achieve a harmonious society. The most articulate versions of these two critiques came from Louis Blanc and Pierre-Joseph Proudhon. While

<sup>70</sup> Ledru-Rollin, *Du gouvernement direct du peuple*, 15–16.

<sup>71</sup> Charles Delescluze, “Gouvernement direct du peuple,” *La voix du proscrit: Organe de la République universelle*, 24 Feb. 1851, 250.

<sup>72</sup> This was, of course, a well-known theme amongst early socialists. See Henri de Saint-Simon, *Selected Writings on Science, Industry and Social Organisation*, ed. K. Taylor (London, 1975), esp. “From the Government of Men to the Administration of Things,” pp. 157–222.

<sup>73</sup> Considerant, *Les quatre crédits*, 160.

<sup>74</sup> Considerant, *La solution ou le gouvernement direct du peuple*, 47, original emphasis.

they both engaged with theories of direct legislation at great length, they rejected them with equally great force.

For Louis Blanc, the entire project of direct legislation was based on the faulty equation of sovereignty with legislation. To make laws is, for Blanc, a state function and hence its delegation to a representative assembly does not amount to a delegation of sovereignty, but to the simple delegation of a function, in the same way as a shop owner would delegate part of their job to employees.<sup>75</sup> He thus rejected the very promise at the heart of direct legislation, namely that by actively taking part in lawmaking the people would effectively become sovereign. He pressed this argument further by claiming, against Rittinghausen and Ledru-Rollin, that voting yes or no to a proposed law is not an exercise of sovereignty, and that it is not possible to see in the will of the majority the will of all. By contrast, he argued that sovereignty is, by definition, an absolute power. As such, it cannot be confused with the power of a given majority, however big and temporary, over any other group. It follows that

to call the direct government of the people by itself the direct government of the largest number, is to lie about what is right, is to put a relative in the stead of an absolute, and a part in the place of the totality, is to mutilate the sovereign, to call by its name what it is not, and in assigning the features of the universality to the majority, it is a consecration of tyranny.<sup>76</sup>

For Blanc, the only way forward was to give up all talk about sovereignty and accept that legislation had to be delegated. To him, the failures of the Second Republic were not failures of political representation, but demonstrated that it had not been correctly instituted and that, to be successful, it needed to be made accountable to the citizens. He thus proposed to establish mandataries that are temporary, revocable and responsible by making the recall a central institution of democratic representative politics. Further, he sharply distinguished politics from administration. While the former ought to be exclusively concerned with the common interest, the latter applied political decisions, general in character, to specific circumstances. It followed that politics required centralization, as decisions (including legislation) of general import had to be taken by a unitary body of recallable representatives, centrally directing the common interest of all parts of the nation. By contrast, administration could be decentralized, without causing any harm to the unity of the nation but preventing instead the illegitimate monopolization of political power by a centralized bureaucracy.<sup>77</sup> And it was precisely Rittinghausen's refusal to distinguish between politics and administration that led him to reject centralized representation and prefer instead dividing France in 37,000 small parliaments. To Blanc's mind, representation alone would prevent "the substitution of a

<sup>75</sup> Blanc, *Plus de girondins*, 38.

<sup>76</sup> Blanc, *La république une et indivisible*, 58.

<sup>77</sup> On this point see Gerçek, "The 'Social Question' as a Democratic Question," 397–401. Blanc, *Questions d'aujourd'hui et de demain*, 1: 285.

republic torn apart for the *republic one and indivisible*,” one in which the will of the people could effectively be represented in a centralized legislature, and efficiently realized by local administrative authorities.<sup>78</sup>

Representation also solved the epistemic problem which, in Blanc’s opinion, was raised by direct legislation. Contrary to Rittinghausen, Considerant and Ledru-Rollin, Blanc maintained that letting an unenlightened majority decide would inevitably result in conservative and wrong decisions. In Blanc’s words, “to ask the largest number to govern the smallest number is to ask ... that ignorance rules over enlightenment, that egoism rules over dedication, that routine rules over progress, that error rules over truth.”<sup>79</sup> It follows that legislation, like any other social function, should be organized according to the principle of the division of labor. The idea that this is the only correct way of organizing social life is encapsulated in the formula “from each according to their faculties.”<sup>80</sup> And given that faculties are not evenly distributed, not everybody should be involved in exercising the legislative function.<sup>81</sup> Citizens would instead find spaces of participation through the exercise of suffrage, the recall of their representatives and their involvement in the organization of labor.<sup>82</sup> Blanc’s criticism of direct legislation was thus aimed at undermining its twin promise: to realize popular sovereignty and guarantee good-quality legislation. Both, he claimed, were better secured by an understanding of democracy based on the principle of political representation.

Proudhon’s criticism of direct legislation started from a different assumption and arrived at opposite conclusions. To his mind, the biggest mistake was to believe that politics could create a harmonious society. Direct legislation, very much like monarchy or aristocracy, was just another form of government, acting in the name of the people and calling itself the people, but ultimately remaining the rule of man over man: it is “a conjure against the people.”<sup>83</sup> In a lengthy chapter of *Idée générale de la révolution au XIXe siècle* (General Idea of the Revolution in the 19th Century), titled ‘Du principe d’autorité’ (On the Principle of Authority), Proudhon argued that any theory of direct legislation amounted to the ultimate success of the governmental idea. This, for Proudhon, consists in “maintaining order in society notwithstanding ... conflicting interests. In other words, the aim of government is to compensate for the shortcomings of the economic order and of industrial harmony.”<sup>84</sup> It follows that government, by definition, can deal with the consequences of an unharmonious economic order, but cannot bring about what is needed: the unity of diverging interests. This can only

<sup>78</sup> Blanc, *La république une et indivisible*, 106, original emphasis.

<sup>79</sup> Blanc, *Plus de girondins*, 28.

<sup>80</sup> *Ibid.*, 92.

<sup>81</sup> *Ibid.*, 36.

<sup>82</sup> Or so Blanc believed until the first years of the republic. See Gerçek, “The ‘Social Question’ as a Democratic Question,” 414.

<sup>83</sup> Pierre-Joseph Proudhon, *Idée générale de la révolution au XIXe siècle, choix d’études sur la pratique révolutionnaire et industrielle* (Paris, 1851), 119. For a somewhat different interpretation of Proudhon’s critique see Chambost, “Proudhon et l’opposition socialiste à la Loi du 31 mai 1850.”

<sup>84</sup> Proudhon, *Idée générale de la révolution au XIXe siècle*, 178.

exist when the political order—the state—is abolished, and social harmony is established through industrial production. Failing to see this meant keeping the proletariat trapped in the “infernal circling back” between democracy and empire, which is made possible precisely by the mistaken assumption, dear to Rittinghausen and friends, that the problems of the proletariat could be addressed politically, when in fact the solution can only come from the “idea of economic organization.”<sup>85</sup>

Direct legislation, and its promise of popular sovereignty, were thus delusional. Rather than placing their hopes in popular lawmaking, theorists of direct legislation had to recognize that only anarchy—that is, the abolition of all forms of political authority—can liberate people from domination and create harmony. By putting hopes in any number of recipes for direct legislation, Rittinghausen as much as Ledru-Rollin was just restoring authority under a different guise. Proudhon thus “rejected with all [his] forces” theories of direct legislation and described them as “the most gigantic mistakes ever discussed in the whole pomp of politics and philosophy.”<sup>86</sup>

But direct legislation was not only misleading about the possibilities of popular sovereignty; it was also deluded about its epistemic potential. Proudhon had two major concerns regarding the trust placed in the people’s capacity to act as legislators. The first built on his earlier critique of majority rule, in which he claimed that “the majority like a prostitute gives itself to everyone.”<sup>87</sup> More specifically, he denied that majority voting could deliver anything akin to the will of the people. Instead, he feared it was just the sum of individual interests, which, when multiplied by the entire population, becomes impossible to aggregate in any sensible decision.<sup>88</sup> Second, he believed that deliberation would result in endless debates, like in parliament, but made worse by the fact that the number of legislators would be exponentially multiplied. In his words, Rittinghausen and his colleagues had to “be blind not to see that ... if the people discuss, they will commit many mistakes, while if they do not discuss, they will respond in any which way.”<sup>89</sup> As Chambost notes, Blanc and Proudhon offered different critiques of direct legislation, but agreed that nothing could prove “the qualitative infallibility of the quantitative majority.”<sup>90</sup>

Blanc and Proudhon’s reactions to proposals for direct legislation exemplify the central space occupied by such theories in French socialist publications throughout 1851. Whether arguing for or against it, the number of newspaper articles and pamphlets published on the topic shows just how lively the debate was. And yet it came to a sudden halt later that year, with Louis Napoleon Bonaparte’s *coup d’état* of 2 December 1851. Having served as president of the republic, and not being allowed to stay in office for more than one term, he unsuccessfully tried to change the Constitution and ultimately resorted to militarily occupying the assembly and calling a national

<sup>85</sup> *Ibid.*, 112.

<sup>86</sup> *Ibid.*, 113.

<sup>87</sup> Pierre-Joseph Proudhon, *Carnets* (Paris, 2005), 693. Discussed in Chambost, “Socialist Visions of Direct Democracy,” 109.

<sup>88</sup> Chambost, “Socialist Visions of Direct Democracy,” 109.9.

<sup>89</sup> Proudhon, *Carnets*, 1280. Discussed in Chambost, “Socialist Visions of Direct Democracy,” 108.

<sup>90</sup> Chambost, “Socialist Visions of Direct Democracy,” 110.

plebiscite on 20–21 December 1851 to obtain popular approval for his coup.<sup>91</sup> The plebiscite, held with universal male suffrage, resulted in 92 percent of the vote in favor of Napoleon. The vote showcased that most French citizens, and especially the popular classes, supported Napoleon's regime. This result forced thinkers into questioning their beliefs about the emancipatory nature of direct legislation, as well as their assumptions about the political preferences of the working classes. And while Marx explained these events by finessing his theory of class politics, the protagonists of this article ended up questioning and ultimately abandoning their faith in direct popular legislation.<sup>92</sup>

Although the plebiscite did not amount to actual direct legislation, it relied on the idea that the people had to actively endorse the law for it to be valid.<sup>93</sup> The fact that this institution, so similar to those advocated by Rittinghausen, Considerant and Ledru-Rollin, ended up legitimizing a caesarist leader could not pass unnoticed. Ledru-Rollin and Considerant ceased to argue in favor of direct popular legislation. Rittinghausen continued to defend it alone. The fate of direct legislation seemed decided, the reputation of its theorists branded delusionally romantic and the idea of involving the people in legislation doomed to be forgotten.

## Conclusion

The year 1851 was eventful for theories of democracy as direct popular legislation. In a few months, they passed from being discussed on the pages of socialist publications across Europe to being dismissed as delusional utopias. However, their relevance and influence were to outlast their political failure. Ideas of direct legislation found new life at the turn of the nineteenth century and the twentieth when socialist activists, inspired by Rittinghausen, reinterpreted direct legislation as consistent with representation, making it an important demand of socialist parliamentary politics across the continent into the twentieth century.

After the failures of the Second Republic, many socialists started to believe that a pure system of direct legislation was not just unattainable, but also undesirable. Members of the Second International, however, appreciated the idea that the value of democracy rested on its capacity to both realize popular sovereignty, through procedures of direct popular participation in legislation, and deliver epistemically sound decisions, capable of realizing the goals of socialism, at least in the short run. Both, they believed, could be achieved via the referendum and the initiative. Direct legislation came to be seen not only as compatible with political representation, but also as its necessary corrective. Part of this turn was inspired by the new Swiss Federal Constitution (approved in 1874), which made provisions for direct participation in lawmaking through the initiative and the referendum, sparking debates about their

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<sup>91</sup>The question on the ballot read, "The French people wants to keep the authority of Louis Napoleon Bonaparte, and delegates to him the power needed to write a constitution on the basis of the proposals made in his proclamation of 2 December 1851." See Fimiani, *Lunanimità più uno*, 99. It is well known that the voting procedures were not exactly fair. See Frédéric Bluche, ed., *Le prince, le peuple et le droit: Autour des plébiscites de 1851 et 1852* (Paris, 2000).

<sup>92</sup>Marx, "The Eighteenth Brumaire of Louis Bonaparte."

<sup>93</sup>Fimiani, *Lunanimità più uno*, 99.

relationship to the democratic ideal.<sup>94</sup> As a result, 1851 and its proposals for direct legislation were brought back to the center of attention.<sup>95</sup> A case in point is the debate that took place during the congress of the International Working Men Association in Zurich in 1893. In this context, two admirers of Rittinghausen, the Swiss intellectual Karl Bürkli and the leader of the French Parti ouvrier socialiste révolutionnaire (Socialist Workers Revolutionary Party), Jean Allemane, successfully petitioned the congress to approve measures of direct popular legislation, in the form of the referendum and the initiative.<sup>96</sup> The result was that direct popular legislation became official policy of the Socialist International and, as such, was added to the electoral programs of all socialist parties across Europe.<sup>97</sup>

The decision caused a lively debate, whose most notable participant was Karl Kautsky, who wrote *Parliamentarism and Democracy* to address this very issue. In the book, he claimed that socialist support for direct legislation, in the 1890s as much as in 1851, showcased his colleagues' incapacity to see that direct votes only play into the hands of the bourgeoisie. He rejected Rittinghausen's belief that direct legislation could realize popular sovereignty and deliver social harmony, and warned instead that direct votes return conservative majorities, as proved by the Napoleonic plebiscites and various votes in Switzerland.<sup>98</sup> Ignoring Kautsky's worries, the International preferred to see in the referendum and the initiative tools to correct the blind spots of representative politics and advance socialist demands in parliament. The most glaring example of such an approach is the inclusion, mostly at the hands of the German SPD, of the referendum and the initiative in the Weimar Constitution of 1919. This instituted three types of direct vote: the *Volksentscheid*, a legislative referendum initiated upon request of one-third of the Reichstag and one-twentieth of eligible voters; the *Volksbegehren*, which amounted to a law of popular initiative; and the *Volksabstimmung*, a referendum initiated by the president (Article 73). Proving Kautsky's point, socialists initiated various *Volksentscheiden* and *Volksbegehren*, but to no avail.<sup>99</sup> More dramatically, the *Volksabstimmung* was used in August 1934 to unify the powers of the president and chancellor in the hands of Hitler.<sup>100</sup> And yet Weimar provisions for direct legislation

<sup>94</sup>Proietti, *Moritz Rittinghausen*, 70–76.

<sup>95</sup>See Karl Bürkli, "Direct Legislation by the People versus Representative Government," *Woodhull and Claflin's Weekly*, 2 Sept. 1871, n.p.; Émile Leverdays, *Les assemblées parlantes: Critique du gouvernement représentatif* (Paris, 2020).

<sup>96</sup>Karl Bürkli, *La législation directe par le peuple: Exposé des motifs de la proposition des organisations suisses au Congrès international ouvrier socialiste de 1893 à Zurich* (Zurich 1893). Jean Allemane, "À ceux qui doutent," *Le parti ouvrier*, 22 June 1893, n.p.; Allemane, "Comité central de propagande socialiste et antiboulangiste: Aux travailleurs," *Le parti ouvrier*, April 1888, n.p.

<sup>97</sup>R. C. K. Ensor, *Modern Socialism as Set Forth by Socialists in Their Speeches, Writings and Programmes* (London, 1910).

<sup>98</sup>Karl Kautsky, "Parliamentarism and Democracy," in *Karl Kautsky on Democracy and Republicanism*, ed. Ben Lewis (Leiden, 2020), 92–7.

<sup>99</sup>Hans Mommsen, *The Rise and Fall of Weimar Democracy* (Chapel Hill, 1996).

<sup>100</sup>F. Omland, "Germany Totally National Socialist—National Socialist Reichstag Elections and Plebiscites, 1933–1938: The Example of Schleswig-Holstein," in Ralph Jessen and Hedwig Richter, eds., *Voting for Hitler and Stalin: Elections under 20th Century Dictatorships* (Frankfurt am Main and New York, 2011), 254–75.

remain a testament to the hope that socialists had placed in the idea that, by combining direct lawmaking with representation, socialism could win the parliamentary battle.

In conclusion, since the collapse of the Second Republic, Rittinghausen's vision of democracy as direct legislation found new life in the Second International's support for the referendum and the initiative. As much as Rittinghausen, socialists at the turn of the century believed that democracy requires direct legislation because this is the only realization of popular sovereignty, even within a representative system. In doing so, they played a major role in including direct legislation within the history and the theory of representative government. Equally, they shared Rittinghausen's instrumental justification for direct legislation, as they too believed that the value of democracy rests, at least in part, on its capacity to deliver good decisions, which would eventually bring forward the goals of socialism. Members of the Second International, however, could not share Rittinghausen's argument for the abolition of the distinction between government and legislation, nor his commitment to submitting all legislative proposals to direct popular legislation. The referendum and the initiative would instead suffice. And yet, notwithstanding these differences, turn-of-the-century socialists had to face challenges similar to those tackled by Rittinghausen and his allies. When confronted with actual political conflict—because of Napoleon's plebiscites or the Nazi *Volksabstimmung*—it became clear just how hard it is to keep principled and instrumental justifications of democracy together. In all these cases, the workings of politics acted as a reminder that the road to social harmony, if at all possible, is hard, impervious and not necessarily made easier by popular participation. This, amongst other reasons, is why the lesson of 1851 should not be forgotten.

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