

Becoming Mayor to Abolish the Position of Mayor? Thinking the Line Between Reform and Revolution in a Communist Perspective

Sixtine van Outryve d'Ydewalle

"We took the social networks, we took the streets and we took the squares. However, we found that change was being blocked from above by the institutions. We couldn't allow this. So, we decided that the moment had arrived to take back the institutions and put them at the service of the common good. We decided to win back the city."

—Barcelona en Comú, "How to Win Back the City en Comú"¹

"In no case is this simply a return to an electoral strategy, only conducted on a municipal rather than a national level. Rather, it's an openness to the idea of occupying both the squares and the institutions—of exploring how best to generate power and exercise leverage to achieve social change."

—We Are Plan C, "Radical Municipalism and Directional Demands Cluster"²

I. Introduction

In the aftermath of the financial crisis, many movements have emerged across the world not only to criticize the state, capitalism, and their mutually reinforcing relationship, but also to create a space for direct democracy. Whether it is Occupy Wall Street, the 750 other Occupy events that followed around the world, the *Indignados* or 15M movement in Spain, the occupation of the Syntagma Square in Athens, or *Nuit Debout* in France, these calls for the physical occupation of public squares and parks have connected social movements and individuals from different horizons. While these

* I thank Daniel Markovits, Paul Kahn, Daniela Cammack, David Grewal, Olivier De Schutter, Hélène Landemore, Debbie Bookchin, David Goldman, Blair Taylor, James Herod, Catherine Mooney and Anne Mishkind for helpful discussions, comments and advice. I am deeply grateful to the members of the Communist movements in Portland (OR), Olympia and Seattle (WA), as well as to the members of Cooperation Jackson in Jackson (MS), for influencing the political and theoretical orientation of this paper by their committed praxis and by inspiring discussions. I owe them the expression "Becoming mayor to abolish the position of mayor". I also thank the participants of the workshop "Law, Politics and Theory" of the 8th Annual Doctoral Scholarship Conference at Yale Law School on November 9-10, 2018 for their careful reading and feedback. Lastly, I thank the Unbound Editorial Collective for their editorial support and for engaging and valuable comments. This article was written while being a recipient of a Fellowship of the Belgian American Educational Foundation.

¹ Barcelona en Comú, *How to win back the city en Comú. Guide to Building a Citizen Municipal Platform*, March 2016, <https://barcelonaencomu.cat/sites/default/files/win-the-city-guide.pdf>.

² We Are Plan C, *Radical Municipalism and Directional Demands Cluster*, <https://www.weareplanc.org/blog/radical-municipalism-demanding-the-future/>

spaces have given people a glimpse of how power could be exercised in a horizontal, non-hierarchical and inclusive way, the fundamental issue is that they had very little power to exercise.³ Although many endured for a relatively long period of time, these occupations of public spaces eventually vanished, as participants in these radical democratic experiments were eventually repressed by the state or recuperated by the very capitalist system they criticize, ran out of energy, or were unable to compensate for the lack of institutionalization of their project of social transformation.⁴ These events left them either empowered and confident in the potentialities of direct democracy experienced during this prefigurative political experiment, or bitterly frustrated by the absence of impact on the political, social and economic *status quo*, or sometimes paradoxically both.

The ephemeral character of this political use of public spaces is not confined to contemporary experiences of social movements. It falls within the long-lasting but forgotten history of popular assemblies created during revolutionary movements, identified by Hannah Arendt as “the lost treasure” of the revolutionary tradition in her book *On Revolution*. Indeed, whether it is the “municipal assemblies” during the American Revolution, the “*sociétés populaires*” during the French Revolution, the “revolutionary municipal councils” during the Russian Revolution of 1917, these “revolutionary societies,” discussed by Arendt as being at the origin of the revolutionary activity and as allowing people to participate in public affairs, all eventually vanished. This occurred because the revolutionaries were unable to develop sustainable institutions that would both embody the revolutionary spirit and that would allow the exercise of the freedom intended by the revolution. Such a freedom was exclusively the one of the peoples’ representatives to exercise, the citizens⁵ being limited to benefit from the

³ I believe that social movements organizing together to deliberate and decide on community affairs, however little institutional power they have according to the existing system, nevertheless exercise some power in the political sphere. Though occupying public space, as opposed to institutions, does not confer classical political power, people coming together both to protest against the current political and economic order and to experiment with new forms of collective decision-making (as I will explain below) certainly amounts to the exercise of some political power.

⁴ Blair Taylor, *From alterglobalization to Occupy Wall Street: Neoanarchism and the new spirit of the left*, 17 CITY: ANALYSIS OF URBAN TRENDS, CULTURE, THEORY, POLICY, ACTION 729 (2013).

⁵ I do not use the concept of citizenship under its legal understanding, where the legal status of a person granted by the state in which she is determines the political, civil, social, economic and cultural rights to which she has access. Indeed, such a legal understanding of citizenship would exclude, whether *de jure* or *de facto* undocumented and, to a certain extent, documented immigrants, as well as people deprived of effective access to their rights to political participation due to their race, class or gender, prisoners, homeless people, people with mental disabilities, people in psychiatric asylum, among others. Indeed, these are all individuals subjected to the authority of the polity, often under its most acute form, but who do not have an effective say, if any, in its government. Rather, the definition of citizen in my understanding consists in being a political subject who possesses the effective right to collectively deliberate and decide with other members of her community on the public affairs affecting her. The Communalist project would allow every individual to become a citizen in this sense, by creating the conditions of the collective exercise of self-government.

revolution's gained freedom in the private sphere. While contemporary social movements did not lead to any revolution, there is a similarity in goal (the establishment of public space to exercise public freedom in the spirit of *constitutio libertatis*), perspective (politics understood as popular self-government), organization (direct democracy and the rejection of representative democracy) and failure (their disappearance in favor of traditional party politics and their lack of success in institutionalizing public freedom).

Attempting to remedy both the lack of power and institutionalization of these movements of occupation of public space, many municipalist movements have arisen throughout the world. They have created municipalist platforms, run for municipal elections, were elected and are now trying to change the game of traditional representative democracy from the municipality. This paper primarily intends to capture the tensions and paradoxes generated by the adoption by these movements of the *reformist* strategy of winning the municipal elections in order to advance a *revolutionary* project, that is creating a Communalist society where the locus of self-government is the municipality and not the state, and where power is exercised by the assembled people directly, and not through its representatives.⁶ The Communalist project defends that in order to create lasting revolutionary change and avoid the centralization or the loss of power, movements should strive neither to seize state power, as championed by revolutionary socialists, nor to reject engaging with existing statist institutions, as defended by anarchists, but rather to organize the exercise of self-government through popular assemblies organized along the principles of direct democracy at the local level. My thesis is that "Communalist direct democracy" could be realized if Communalist movements would run candidates for municipal offices who, as soon as they are elected, would tie their office to the decisions of pre-existing popular assemblies through recallable, imperative and rotating mandates. However, since such a paradigm encompasses two contradictory logics, the one of a revolutionary project and the one of a reformist strategy, movements adopting it find themselves with a complicated relationship to the political and legal order, one that, to be understood, requires rethinking the line between reform and revolution.

In this paper, I will focus on the conditions of possibility of a Communalist movement choosing the electoral strategy to make the municipality the locus of self-government. Such a perspective is justified, as it translates the strategy of existing movements attempting to occupy municipal institutions to realize self-government at the local level.

⁶ In this paper, I will more often use the term "Communalism" rather than "municipalism" in discussing this project, as the former, referring to the Paris Commune of 1871, possesses a historical and political connotation of emancipation from the nation-state and from capitalism that the latter does not have. Moreover, while municipalism is a generic term adopted by various social movements focusing on social and political change at the municipal level, Communalism refers to a specific version of municipalism, that of libertarian municipalism, municipalism aiming at the abolition of the state. Communalism consists in fact in the political philosophy of social ecology, an interdisciplinary perspective on the relation of humans to other humans and to the natural world initiated by Murray Bookchin (see among others, MURRAY BOOKCHIN, *THE ECOLOGY OF FREEDOM: THE EMERGENCE AND DISSOLUTION OF HIERARCHY* (AK Press, 1982, 2005)). I will not further extend on the nuances of this conceptual distinction, and both terms will be denoting the same political vision and be used interchangeably in this paper.

Moreover, since institutions can only be built and sustained by people, a Communalist society could only exist if there are movements dedicated to build it. These movements cannot be legislated into existence. Rather, they emerge into a specific historical moment, out of concrete material conditions, facing particular struggles, and developing a certain kind of experience and knowledge. The role of Communalist theory is therefore not only to develop strategies to realize the Communalist project and to show how this model could theoretically work, but also to identify existing tendencies within society that could lead to the realization of this political project, and help them develop by adapting the theory to their own particularities. In this paper, I develop how and why Communalist movements could occupy and transform municipal institutions to make the municipality a locus of self-government, and how to think of this strategy in the broader dichotomy between reform and revolution. By doing so, I hope to clarify this specific strategy within the broader set of strategies for social change, and thereby support social movements adopting it.

I want to clarify at the outset that the focus of this paper is therefore not to provide a fully-fledged normative justification of Communalist direct democracy as a replacement for representative democracy in the framework of the nation-state, nor to discuss its modalities, its feasibility or its desirability and answer the many important questions the Communalist paradigm raises, and should raise. In Arendt's conception, revolution occurs with the formation of a new polity that liberates people from previous oppression; under this definition, the Communalist project is revolutionary. It is no small task to bring this approach into dialogue with other bodies of political theory and with the political action of contemporary social movements, as well as to advocate for its desirability. While not shying away from these questions, it is one that largely transcends the scope of this paper. Indeed, that task is directly proportional to the magnitude of the burden of proof resting on any normative account of a political system, whether alternative or not.

This paper will be structured in five parts. I will first develop the concept of self-government by tracing how it has been instantiated, and departed from, by the revolutionaries throughout the history of modern revolutions. In the same part, I will also present the central problem the Communalist project is concerned with—that the paradigm of representative government, which structures our modern polity, inevitably leads to the centralization of power and the creation of a ruling class—and the proposed solution—that of making the municipality the locus of direct self-government through popular assemblies (II). I will then argue that the reformist strategy of revolutionizing the political order through the means of the election requires a re-thinking of the dichotomy between reform and revolution in light of the particularities of this strategy (III). In Part IV, I will frame and justify such a strategy—occupying and transforming municipal institutions by changing the form of exercise of public power towards direct democracy (IV). In Part V, I will formulate and classify several objections to this strategy, and address in greater depth the main objection within the scope of this paper (V). Finally, in Part VI, I will argue that Communalist movements adopting a reformist strategy would have a peculiar relation to the legal order, one that cannot be captured through traditional

⁷ HANNAH ARENDT, *ON REVOLUTION* (Penguin Books, 1963).

frameworks. I will then propose a new concept, *institutional disobedience*, to fill this gap in our understanding of how these movements relate to the legal order (VI).

II. The Municipality as the Locus of Direct Self-Government

This section deals with the question of how to preserve the revolutionary spirit of self-government once the revolution has come to term, a question dealt with by Arendt about modern revolutions and that remains central for Communalism. First, I present Arendt's account of how movements at the origin of various revolutionary activities throughout modern history struggled with this question, by succeeding in creating radical forms of self-government, but failing to institutionalize these spaces of exercise of public freedom. Indeed, these forms of self-government instead ended up disappearing in favor of a representative form of government, in which power is concentrated in the hands of a few elected representatives (1). Second, I develop the political theory of Communalism that proposes to answer this question by institutionalizing public freedom through the direct exercise of public power by popular assemblies, in the perspective of already building these non-hierarchical institutions and having them ready to channel the movement in times of revolutionary activity (2).

A. From the "Lost Treasure" of Revolutions to the Concentration of Power in Elective Representative Democracy

In *On Revolution*, Hannah Arendt focused on the councils' tradition during revolutionary moments, and more precisely on the question of *how to preserve the revolutionary spirit once the revolution has come to term*.⁸ She explains how most revolutionary movements seeking to bring freedom to the people failed to achieve *constitutio libertatis*, that is to develop sustainable institutions that would both embody the revolutionary spirit and allow for the popular exercise of the newly-gained freedom.⁹ Contrary to the freshly enshrined constitutional principle according to which all power belongs to the people, revolutionaries ended up creating a space to exercise this new freedom that was reserved for the peoples' representatives, to the exclusion of the people themselves.¹⁰ The distinction between ruler and ruled, supposedly abolished by the revolution, was in fact constitutionalized, thereby making the task of government "the privilege of the few," preventing citizens from participating in the government and

⁸ *Id.* at 365.

⁹ In *On Revolution*, Arendt distinguishes between liberation and freedom. While the purpose of the revolution is the foundation and the constitution of freedom (*constitutio libertatis*), that of the mere rebellion only amounts to a struggle for liberation, without the institutionalization of the newly acquired freedom (at 142).

¹⁰ *Id.* at 235. In the case of the American revolution, "the people" only included white Americans, at the exclusion, and thanks to the colonial exploitation of, the African people put in slavery, as well as the native Americans. Moreover, in most modern revolutions up to the 20th century, women were not considered as part of the people who could be represented, being deprived of the right to vote.

excluding them from the public sphere.¹¹ Elevating professional politics as the only way to participate to the government of the *polis* rests on two main conceptions. First, it is built upon the idea that individuals do not care about public affairs, and would rather delegate this role to people for whom they vote periodically in order to be able to enjoy private happiness. This conception of individual happiness and freedom as pertaining exclusively to the private sphere finds its roots in the fundamental dichotomy between public and private spheres.¹² On the one hand, what pertains to the public interest and is the locus of public freedom rests exclusively in the hands of the government and, on the other, what touches upon the space of private freedom and welfare should be protected from government's intervention.¹³ This dichotomy rejects the understanding of public freedom as "the citizen's right of access to the public realm, in his share in public power—to be 'a participator in the government of affairs'."¹⁴ Second, the idea of professionalizing politics also rests on an elitist conception of the people as a mass unable to think and incapable of governing itself.¹⁵ As a consequence, citizens should be left only with the opportunity to vote for representatives in charge of defining and defending individual interests and welfare. This, however, precludes the exercise of people's opinions and actions, as these cannot be represented.¹⁶ Arendt's conclusion then is therefore still valid in our contemporary representative democracies: "the relationship between a ruling elite and the people, between the few, who among themselves constitute a public space, and the many, who spend their lives outside it and in the obscurity, has remained unchanged."¹⁷

However, according to Arendt, this centralization and indivisibility of power in the hands of the governing bodies could have been avoided by incorporating in the Constitution spaces for the deployment of public freedom and direct participation of the

¹¹ *Id.* at 237.

¹² This is not to say that private happiness is should not also be protected, but to emphasize the importance of public happiness stemming from political participation, and thereby question the protection of private happiness as the most important public good to preserve, even when it happens at the expense of public happiness.

¹³ *Id.* at 269. This opposition between the form of ancient freedom—emphasizing the active participation in power at the expense of the enjoyment of individual rights—and modern freedom—insisting on the pursuit of private interests to the detriment of participation in public power can be traced back to Benjamin Constant in "De La Liberté Des Anciens Comparée à Celle Des Modernes". Roberto Unger criticizes this opposition as "a confession of practical and imaginative failure." I agree with him that holding this opposition as a fatality prevents us from imagining other forms of communal life based on the existing forms of social associations already present in our society, while at the same time reinforces the inevitability of the current political order: "Because the idealized communal republic cannot emerge from present political arrangement as the outcome of any plausible sequence of practical reforms and conceptual adjustments, it confirms the power of the established order in the act of pretending to deny it." (ROBERTO MANGABEIRA UNGER, *THE CRITICAL LEGAL STUDIES MOVEMENT. ANOTHER TIME, A GREATER TASK* 124-125 (Verso, 1986)).

¹⁴ *Id.* at 127.

¹⁵ BERNARD MANIN, *PRINCIPES DU GOUVERNEMENT REPRÉSENTATIF* 88 (Flammarion, 1996).

¹⁶ ARENDT, *supra* note 8, at 227 and 268-270.

¹⁷ *Id.* at 277.

people in public affairs, as was the case at the origin of the revolutionary activity.¹⁸ Indeed, in the first days of modern revolutions, such spaces spontaneously appeared whether in the form of town-hall meetings during the American Revolution, neighborhood sections, revolutionary municipal council and “*sociétés populaires*” during the French Revolution, the Paris Commune of 1871, *soviets* during the Russian Revolution of 1905 and 1917, the *Räterepublik* in Berlin and Munich after Germany’s defeat in the World War I, or workers’ councils during the Hungarian Revolution of 1956.¹⁹ During the French revolution, she relates that the forty-eight self-managed neighborhood sections of Paris forming the revolutionary municipal council coexisted with the more informal “*sociétés populaires*,” which were “assemblies where citizens could collectively manage the questions of public interest, along with the interest dearest to the country.”²⁰ When the Constituent Assembly wanted to abolish them on the grounds they were no longer needed at the end of the revolution, Robespierre first defended them as the very “foundations of freedom,” “the only places in the country where this freedom could actually show itself and be exercised by the citizens.”²¹ He soon changed his mind and abandoned these “*sociétés populaires*” in favor of the “great popular Society of the whole French people,” “one and indivisible.”²² In Arendt’s view, “the latter, alas, in contrast to the small popular societies of artisans or neighbours, could never be assembled in one place, since no “room would hold all”; it could exist only in the form of representation, in a Chamber of Deputies who assumedly held in their hands the centralized, indivisible power of the French nation.”²³

Similar reasoning animated the Founding Fathers in the United States. In the Federalist paper no. 14, James Madison writes: “The true distinction between a democracy and a republic . . . is, that in a democracy, the people meet and exercise the Government in person; in a republic, they assemble and administer it by their representatives and agents. A democracy consequently will be confined to a smaller spot. A republic may be extended over a large region.”²⁴ Committed to the project of the republic as the form of self-governing polity for white male Americans, American revolutionaries did not institutionalize the townships and the town-hall meetings at the original source of the revolutionary political activity by incorporating them in the Constitution after the revolution, which equated to their “death sentence” in a society in

¹⁸ I thank Daniel Markovits for pointing out the fact that constitutionalizing the mere existence public spaces for direct participation will not allow to avoid the problem of concentration of power in the hands of the few, though it might reduce it. Indeed, to prevent the capture of power by traditional representative bodies, democratic legitimacy should be vested first and foremost in institutions designed for the direct popular exercise of public power. As I will expose later, Communalism proposes such a model by considering local popular assemblies functioning on the mode of direct democracy as the main policy-making entities, thereby replacing organs of the representative government.

¹⁹ ARENDT, *supra* note 8, at 232-281.

²⁰ *Id.* at 239-240.

²¹ *Id.* at 240.

²² *Id.* at 241.

²³ *Id.*

²⁴ Madison, *Federalist No. 14, Objections to the proposed constitution from extent of territory answered*.

which the political sphere is organized on the basis of this precise text.²⁵ The revolutionaries therefore failed to see how the council system presented an “entirely new form of government, with a new public space for freedom” and which could have allowed for the direct participation of those considered as citizens in power.²⁶ Arendt deplored “the current ‘realism’, despair of the people’s political capacities . . . based solidly upon the conscious or unconscious determination to ignore the reality of the councils and to take for granted that there is not, and never has been, any alternative to the present system.”²⁷ With the birth of the modern nation-state and its unitary vision of the people died the potentiality of the municipality as a self-governed sovereign, and thereby the very possibility of a face-to-face and direct democracy.²⁸

In addition to this unitary vision of the people and of the scale of the polity, the choice of representative government after the revolutions punctuating the 18th and 19th century, was also conditioned upon the prevailing conception of the legitimacy of power. Shared by Grotius, Hobbes, Pufendorf and Locke,²⁹ this dominant representation consisted in the belief that, to be legitimate, any authority must come from the consent and the will of the ones over whom this authority is exercised³⁰—even if that did not include dominated groups over whom authority was exercised in its most acute form. Considered the best mechanism to translate the expression of individual will and consent, the system of elections has therefore been established as the privileged vehicle to confer political legitimacy on the governing bodies in the constitutions of modern nation-states. Many have criticized the system of elections for its aristocratic character, as compared to other modes of designation that have not been considered in the aftermath of these revolutions, such as rotation, imperative mandates, recallable positions or random selection.³¹ In his

²⁵ ARENDT, *supra* note 8, at 241.

²⁶ *Id.* at 249.

²⁷ *Id.* at 270-271.

²⁸ As stated in the introduction, I will not make the case for the feasibility, the modality and the desirability of direct democracy, which would, in a Communalist perspective, not be fully applied any time soon, if it ever will. I believe that leaving this theoretical question open—though I will punctually come back to it—does not undermine the thesis of this paper, which is that occupying municipal institutions could be the beginning for organizing self-government at the local level. It is however paramount for both Communalist theory and practice to confront it.

²⁹ “Men being, as has been said, by nature, all free, equal, and independent, no one can be put out of this estate, and subjected to the political power of another, without his own consent.” (LOCKE, SECOND TREATISE OF CIVIL GOVERNMENT, VIII, §§ 95, 99, in *Two Treatises of Government*).

³⁰ MANIN, *supra* note 16, at 113-115.

³¹ In this sense, Aristotle in his *Politics* would consider selection by lot as a more democratic system of allocation of office than election: “it is thought to be democratic for the offices to be assigned by lot, for them to be elected oligarchic” (ARISTOTLE, POLITICS, IV, 9, 1294 b 7-9), as did Montesquieu in *The Spirit of the Laws*: “the suffrage by lot is natural to democracy, as that by choice is to aristocracy.” (MONTESQUIEU, THE SPIRIT OF THE LAWS [1748], Book II, Ch. 2). Since it gives to all citizens a reasonable chance to occupy a public office, lot would guarantee the equality of the chances to take part to public affairs. Moreover, it rests on the conception that every political office concerning affairs of the *polis* could be exercised by non-expert individuals, and on the basis of rotating charges, allowing for people to govern and be governed successively, the last giving the legitimacy to the first (MANIN, *supra* note 16, at 49 and 110). Hélène Landemore

“pure theory of the aristocratic character of election,” Bernard Manin undertook to determine that the system of elections is intrinsically unequal, leading to the selection of a governing body that would inevitably be superior to its electors, or at least perceived as such.³² Indeed, during elections, individuals are elected for characteristics that *distinguish* them from other candidates. The essence of the process therefore determines the nature of its outcome, namely the election of individuals different from their electors and perceived as superior to them.³³ The assimilation of democracy to elective representative democracy³⁴ preserves the disguise of an aristocracy, placing those considered as “the best,” the *aristoi*, in charge of public affairs. At the root of such a conception of democracy lies the seemingly inevitable gap between the governing and the governed bodies.

The principle of the autonomy of decisions of the represented towards their electorates ratifies the difference between democracy understood as “representative government” and democracy understood as popular self-government. It prevents the practice of principles foundational to revolutionary councils: the imperative mandate—obliging delegates to follow closely the decisions taken by the popular assembly—the permanent revocability of delegates—ensuring their accountability to that assembly and the continuous rotation of charges—precluding the professionalization and personalization of power. Such principles are at the core of direct democracy councils, from the Paris Commune, during which members of the Council of the Communes were revocable at any time and had an imperative mandate, to today’s spokes council model used in the alterglobalization movement³⁵ and in various extra-legal neighborhood assemblies.³⁶

advocates for the use of random selection in her model of “Open Democracy”, which still considers popular rule as “the mediated but real exercise of power by ordinary citizens”, but which aims at making the exercise of power “constantly inclusive of and accessible—in other words open—to ordinary citizens” by privileging other forms of representation than elections (Hélène Landemore, *Deliberative Democracy as Open, Not (Just) Representative Democracy*, 146 *Daedalus* 51 (2017)). See also Hélène Landemore, *Deliberation, cognitive diversity, and democratic inclusiveness: an epistemic argument for the random selection of representatives*, SYNTHESE where she defends the idea that the random selection of representatives increases the quality of deliberations, advocating that the political legitimacy drawn from the theory of deliberation need not be necessarily associated with representative democracy.

³² MANIN, *supra* note 16, at 174.

³³ *Id.* at 174-191.

³⁴ DAVID VAN REYBROUCK, *CONTRE LES ÉLECTIONS* (Actes Sud, 2014).

³⁵ For an explanation of the core principle of this model, see DAVID GRAEBER, *DIRECT ACTION: AN ETHNOGRAPHY* (AK Press, 2009).

³⁶ The Seattle Neighborhood Action Coalitions, a Communalist movement created in Seattle after Trump’s election, works according to this model. They have regular meetings both at the neighborhood level, where everybody in the neighborhood is invited, and at the city level, called the delegates’ council, where each neighborhood council sends a delegate. The deliberations are filmed and made public to ensure accountability.

*B. The Institutionalization of Public Freedom in Popular Assemblies: the Communalist Project*³⁷

The lack of political participation of the many in public affairs and the gap between the governing and the governed bodies is therefore not a new problem. Attempts to create various institutions for the exercise of public freedom have been numerous throughout history and across places. Traditional solutions have been to seize the state's power through revolutionary movements, to create a new party supposedly closer to the people and to run for office at the national level,³⁸ to establish mechanisms of participatory and deliberative democracy that would complement, rather than challenge, representative democracy,³⁹ to advocate for rights fostering equality and political participation through impact litigation, lawyering or policy advocacy,⁴⁰ to organize popular mobilization to put pressure on the government (petitioning, protests and civil disobedience), or to reject the state's legitimacy by taking direct action and creating alternative and autonomous political spaces.⁴¹ Without entering into the merits and

³⁷ I draw an important part of my understanding of Communalism, Communalist strategies, and the obstacles movements aiming for self-determination face in their projects of social change from informal discussions I had with members of various North American movements organizing for self-determination (Olympia Assembly, Portland Assembly, Seattle Neighborhood Action Coalition, Demand Utopia, Cooperation Jackson and Symbiosis) and a Spanish municipalist movement (*Barcelona en Comú*) connected to the municipalist network *Fearless Cities*, as well as to people related to the *Institute for Social Ecology* (co-founded by Murray Bookchin) that I could meet and exchange with during their annual gathering, summer intensive and online classes. Although what I learned from my interactions with these movements and individuals is not (yet) the result of an empirical work, I am politically and intellectually indebted to them.

³⁸ Recent examples such as *Podemos* in Spain and *Syriza* in Greece have shown how even winning the national elections in a state constrained by the European Union austerity measures led these parties to be the manager of austerity, instead of being the party of the People as they were created for. Such phenomenon has been called the "Syriza trap" by Kali Akuno (Kali Akuno, '*Electoral pursuits have veered us away: Kali Akuno on Movement Lessons from Jackson*', BLACK ROSE, April 18, 2018, <http://blackrosefed.org/electoral-pursuits-have-veered-us-away-kali-akuno-on-movement-lessons-from-jackson/>).

³⁹ See among others Landemore, *Deliberative Democracy*, *supra* note 32; Landemore, *Deliberation, cognitive diversity, and democratic inclusiveness*, *supra* note 32; JAMES FISHKIN, *WHEN THE PEOPLE SPEAK* (Oxford University Press, 2009); GRAHAM SMITH, *DEMOCRATIC INNOVATIONS. DESIGNING INSTITUTIONS FOR CITIZENS' PARTICIPATION* (Cambridge University Press, 2009); John Ferejohn, *The Citizens' Assembly Model*, in *DESIGNING DELIBERATIVE DEMOCRACY, THE BRITISH COLUMBIA CITIZENS' ASSEMBLY* (eds. M. E. Warren and H. Pearce) 192 (Cambridge University Press, 2008); LOIC BLONDIAUX, *LE NOUVEL ESPRIT DE LA DEMOCRATIE. ACTUALITE DE LA DEMOCRATIE PARTICIPATIVE* (Seuil, 2008); YVES SINTOMER, *PETITE HISTOIRE DE L'EXPERIMENTATION DEMOCRATIQUE. TIRAGE AU SORT ET POLITIQUE D'ATHENES A NOS JOURS* (La Découverte, 2011).

⁴⁰ See Scott L. Cummings, *Law and Social Movements: Reimagining the Progressive Canon*, *WISCONSIN LAW REVIEW* 441 (2018).

⁴¹ Occupy Wall Street, the *Indignados*, and other neo-anarchist movements have opted for this solution. See among others, DAVID GRAEBER, *THE DEMOCRACY PROJECT. A HISTORY. A CRISIS. A MOVEMENT* (Penguin Books, 2013); RICHARD DAY, *GRAMSCI IS DEAD: ANARCHIST CURRENTS IN THE NEWEST SOCIAL MOVEMENTS* (Pluto Press, 2005). However, neo-anarchist

weaknesses of each of these strategies, which are dependent upon the normative premises one takes with regard to how society should be changed and organized, I will focus on presenting the theory called *Communalism*, or *libertarian municipalism* as formulated by Murray Bookchin.

i. Communalist Direct Democracy

In the tradition of the “lost treasure of revolution,” Communalism calls for autonomous directly democratic municipalities which, organized into confederations, would be in direct competition for the claim to political legitimacy with the nation-states, with the ultimate aim of abolishing it. Bookchin thereby rejects both the political unit of the nation-state and the model of representative democracy, which together constitute the paradigm around which our modern polity is structured.⁴² Indeed, to the model of *statecraft* “in which individuals have diminished influence in political affairs because of the limits of representational government,”⁴³ with “the state conceived as a highly professionalized system of governance,”⁴⁴ he opposes *politics* understood as “the civic arena and the institutions by which people democratically and directly manage their community affairs.”⁴⁵

movements did not succeed in institutionalizing direct democracy as new way of doing politics: “direct democracy was still primarily conceived as a tactic or set of practices rather than an alternative institutional order. The inability to move from direct action to social transformation was an important factor in movement decline” (Taylor, *supra* note 5, at 740). Another type of movement is the one of the ZAD (literally “zone to defend” in French) combining specific struggles and autonomous self-management. It started with the ZAD of Notre-Dames-Des-Landes where hundreds of people permanently live in self-management for several years on lands on which the French government wants to build an airport. They are periodically repressed and evicted by the state, but the movement continues as people come back after armed evictions and state repression. On a larger scale and with different ambitions, other self-determination movements like the Zapatista or the Kurds in Rojava have directly constructed a community outside of the state structure, denying any legitimacy to the state from which they departed (see *infra* note 72).

⁴² For various accounts on the legacy of the Peace of Westphalia which established the nation-state paradigm, see Leo Gross, *The Peace of Westphalia, 1648-1948*, 42 THE AMERICAN JOURNAL OF INTERNATIONAL LAW 20 (1948); Andreas Osiander, *Sovereignty, International Relations and the Westphalian Myth*, 55 INTERNATIONAL ORGANIZATION 251, (2001); STEPHEN D. KRASNER, *SOVEREIGNTY: ORGANIZED HYPOCRISY* (Princeton University Press, 1999).

⁴³ MURRAY BOOKCHIN, *THE NEXT REVOLUTION. POPULAR ASSEMBLIES AND THE PROMISE OF DIRECT DEMOCRACY* xviii (eds. Debbie Bookchin and Blair Taylor, Verso, 2015).

⁴⁴ MURRAY BOOKCHIN, *THE RISE OF URBANIZATION AND THE DECLINE OF CITIZENSHIP* 35 (Sierra Club Books, 1987).

⁴⁵ BOOKCHIN, *THE NEXT REVOLUTION*, *supra* note 45, at 11. Such understanding of politics presupposes an active engagement of citizens in the *polis* in the defense of their public freedom, justified by the Aristotelian premise that human beings are “political animals”. The Communalist project is therefore a normative one. Its fundamental premise is that human beings are political animals and that politics should be the everyday activity of all, rather than the profession of a few. This stands at odds with the widely accept premise underlying our current representative democracy: that individuals should retract into their private sphere and leave the task of managing

Communalism is therefore a political philosophy according to which the municipality⁴⁶ is the main political unit where communities directly manage their own affairs through popular assemblies functioning on the mode of face-to-face and direct democracy. More precisely, it “seeks to radically restructure cities’ governing institutions into popular democratic assemblies based on neighborhoods, towns, and villages. In these popular assemblies, citizens . . . deal with community affairs on a face-to-face basis, making policy decisions in a direct democracy.”⁴⁷ For issues that exceed the scope of the municipality, Communalism supposes that municipalities should organize on the confederalist model, sketched as follows: “a network of administrative councils whose members or delegates are elected from popular face-to-face democratic assemblies, in the various villages, towns, and even neighborhoods in large cities. The members of these confederal councils are strictly mandated, recallable, and responsible to the assemblies that choose them for the purposes of coordinating and administering the policies formulated by the assemblies themselves. Their function is thus a purely administrative and practical one, not a policy-making one like the function of representatives in republican systems of governments.”⁴⁸ Bookchin establishes a distinction between *policy-making*—the political decisions regarding the course of action a municipality should follow—formulated by the popular assembly gathering the residents of the municipality, and *administration* of these decisions—the coordination and execution of these decisions (both at the municipal and the confederal level)—carried out by delegates with recallable and imperative mandates, under close supervision of the popular assembly.⁴⁹

public affairs to a limited amount of people who will specialize in the art of governing, a class of rulers.

⁴⁶ The use of the term municipality is a generic one, without any pre-established boundary. In this sense, municipality can cover a street, a neighborhood, a town, a village, or a city, the organizational system of these municipal entities being in any case confederalism. For example, the Communalist perspective does not prescribe any kind of indication in this regards as the definition of what constitutes a municipality depends on historical, geographical, climate, demographical, cultural, political, social, religious and economic conditions.

⁴⁷ BOOKCHIN, *THE NEXT REVOLUTION*, *supra* note 45, at 17-18.

⁴⁸ *Id.*, at 75.

⁴⁹ *Id.* at 75-77, 88-89. While the administration of political decisions made by the assemblies will be under the responsibility of delegates with recallable and imperative mandates, it is not the case of their technical execution. This last task should be left to people specializing in this technical work. This division of responsibilities can be illustrated through the example of how Communalist would organize the waste management system. The popular assembly would have to debate and decide, if needed on the basis of information provided by professionals, on the most important questions concerning waste management (for instance, who pays for this public service, how often rubbish is collected, what waste is recycled, how, by whom the compost resulting from the recycling process will be used, where the waste managing infrastructure will be located, etc.). The administration of these decisions (the days of the week waste is collected, the coordination between the different streets, the management of the vehicles) will be left to delegates empowered by the imperative mandate drafted by the assembly on the most important political questions. The concrete technical execution of waste management will be made by people who would specialized in the management waste collection, disposal or recycling, under the authority of the mandated delegates. Importantly, the people who will do the actual labor of collecting, recycling or disposing of waste, the workers, should be in charge of determining their working conditions

While similar propositions of direct democracy have also been formulated by political theorists like Benjamin Barber⁵⁰ or Cornelius Castoriadis,⁵¹ I will use Bookchin's formulation of direct democracy, that is of *Communist direct democracy*, as it is tied to the strategy he elaborates to create a Communist society and which is the object of the paper. Much is to be said about how such a Communist direct democracy could

through workers' councils (on this point, see *infra* note 125). However, it would be necessary to further articulate the relation of the people specialized in this task, the "experts", vis-à-vis the popular assembly, as well as the mechanism to ensure that the knowledge of experts do not give them a power that would constitute them as a class of professional rulers—the existence of which Communism wants to avoid –, but this goes beyond the scope of the paper. Suffice it to say here that the constant assembly and supervision of the people over the decisions they have made would render more difficult, and hopefully impossible, the use of the skills and knowledge, legitimately necessary to properly exercise the work required by any specialized task, with the aim to consolidate personal power. I thank Daniel Markovits for pointing out to me the risk run by Communist direct democracy to empower the bureaucracy rather than the people.

⁵⁰ BENJAMIN R. BARBER, *STRONG DEMOCRACY. PARTICIPATORY POLITICS FOR A NEW AGE* (University of California Press, 1984). The model of "strong democracy" proposed by Barber shares with Communist direct democracy a ruthless critique representation (at 145-146), a reliance on the power of deliberative neighborhood assemblies, and the premise of "politics as a way of life" (at 117-138). This model of strong democracy is defined by Barber as "a national system of neighborhood assemblies of from one to five thousand citizens; these would initially have only deliberative functions but would eventually have local legislative competences as well" (at 307). Though strong democracy can be seen as the theory of democracy that is the closest to Communist direct democracy, Barber considers that the institutions of strong democracy "should complement and be compatible with the primary representative institutions of large-scale modern societies", on the ground that "realistic strategies for change cannot be revolutionary if democracy is their object, and reform cannot await the razing of liberal society to the ground—even if that were desirable (which it obviously is not)" (at 164). Moreover, strong democracy does not aspire "to civic participation and self-government on all issues at all times in every phase of government, both national and local. Rather, it projects some participation some of the time on selected issues on both national and local levels of power" (at 267). These points on which strong democracy is based—compatibility with representative government, rejection of revolutionary strategy and limitation of popular self-government—creates a stark distinction between strong democracy and the direct democracy proposed by Communism, making the former incompatible, both theoretically and practically, with the latter.

⁵¹ Castoriadis' formulation of direct democracy goes as follows: "Direct democracy, so as to be nourished, needs to be truly direct at a certain level. It needs to be a democracy of a quasi-Athenian type at the base level, namely, there has to be a network of decentralized and self-governing communities. People should be educated in autonomy, self-judgment, and independence at the level or dimensions of a city between 20 and 50-at most 100-thousand inhabitants, the dimensions of a factory for productive self-management, or the dimensions of cooperatives of five to 10 villages. In these dimensions, people can form an *ecclesia* and decide on every issue that exclusively concerns them. In an *ecclesia*, some people, not representatives, could be charged with constantly revocable power to take part in higher dimensional units—districts, prefectures, regions, nations, continents, planet." (Cornelius Castoriadis, *The Problem of Democracy Today*, 3 DEMOCRACY & NATURE, THE INTERNATIONAL JOURNAL OF POLITICS AND ECOLOGY 18 (1997). See also CORNELIUS CASTORIADIS, *PHILOSOPHY, POLITICS, AUTONOMY. ESSAYS IN POLITICAL PHILOSOPHY* (Oxford University Press, 1991)).

function,⁵² how it differs from other theories of democracy—whether representative, participatory, deliberative, or “mainstream direct democracy”—which conception of deliberation and representation it uses, how to overcome the numerous objections this political project would raise regarding its desirability and feasibility, but this is not the purpose of this paper. I will simply state here what is entailed under Communalist direct democracy, without further dwelling on the normative justification and the conceptual clarification it asks for. I propose to define the direct democracy entailed by the Communalist project, that is of Communalist direct democracy, as *the direct exercise of every aspect of public power regarding the community as a whole by the continuously assembled people at the municipal level on a face-to-face basis and, when the people can no longer be physically assembled (for spatial, time or logistical reasons), the direct representation of the popular assembly’s decision by delegates endowed with recallable and imperative mandates.*

ii. Communalist Strategies

Communalists are well aware that the municipality—even if built around strong institutions of self-government engaging its citizens in public life—is not sufficiently strong to challenge the state, be it economically, militarily, or politically. The strategy of Communalism is therefore to intentionally create a situation of dual power between, on the one hand, the confederation of communes based on local self-government, and, on the other, the traditional nation-state, where the two would compete for political legitimacy. The purpose is to enlarge the municipality as a place where public freedom can be exercised and material needs can be met, up to a point that the state would be “hollowed out” of its legitimacy.⁵³

While this specific understanding of dual power deserves further theorization and critique, this paper focuses on one way to transform the commune into that fundamental self-governed political unit, where power is directly exercised by popular assemblies. Indeed, the Communalist project proposes two strategies to realize self-government at the level of the municipality: an *extra-institutional* and an *institutional* one. The *extra-institutional strategy* consists in creating radically new and alternative institutions by building extra-legal popular assemblies to manage communal affairs independently of the existing political system. As to the *institutional strategy*, it entails occupying existing legal municipal institutions through elections in order to radically transform them to exercise power through popular assemblies deciding on the mode of direct democracy.⁵⁴

⁵² Some of the main mechanisms of direct democracy will be explained in the section about the Communalist strategy, as this strategy aims to be prefigurative in terms of the procedures used to exercise public power.

⁵³ BOOKCHIN, THE RISE OF URBANIZATION, *supra* note 46, at 287.

⁵⁴ This transformative element is crucial to differentiate Communalist movements from other movement aiming at increasing citizens’ participation in the city government while not fundamentally challenging the municipal institutional structure, the paradigm of representative democracy and the power of the state. Indeed, “libertarian municipalism is not merely an effort simply to take over city councils to construct a more environmentally friendly city government. Such an approach, in effect, views the civic structures that exist now and essentially . . . takes them as they exist. Libertarian municipalism, by contrast, is an effort to transform and democratize city

Whether Communalists choose one way or the other, and how to concretely build such a movement is dependent upon, indeed defined by, the political, legal, social, economic, cultural, historical, religious, geographical circumstances it is embedded in. In this paper, I will focus only on the institutional form, by exploring if and how such a strategy could realize its revolutionary goal through reformist means. “Communist movements” will therefore be more specifically understood in this paper as those specific Communist movements which have chosen the strategy to occupy and transform municipal institutions to make the municipality a self-governed entity.

Whether Communalists take the path of the legal or extralegal strategy, they do so in order to ensure a “vital democratic public sphere.”⁵⁵ In this sense, Communalism constitutes not only a theoretical model of the organization of a polity, but also a practice in the current form of political organization. It starts with “an attempt to enlarge local freedom at the expense of state power. And it does this by example, by education, and by entering the public sphere (that is, into local elections or extralegal assemblies), where ideas can be raised among ordinary people that open the possibility of a lived practice. In short, libertarian municipalism involves a vibrant politics in the real world to change society and public consciousness alike.”⁵⁶

iii. Communist Experiments

Even if one agrees with the premises of the Communist project, ideal theories about the role of the municipality as the fundamental unit for a citizenry to give themselves their own norms would be worthless at best, pretentious at worse, without examples of urban social movements exercising their self-government by creating democratic ways to directly fulfill the needs of the community. Indeed, as Iris Young states: “This ideal cannot be implemented as such. Social change arises from politics, not philosophy. Ideals are crucial steps in emancipatory politics, however, because they dislodge our assumption that what is given is necessary. They offer standpoints from which to criticize the given, and inspiration for imagining alternatives.”⁵⁷

governments, to root them in popular assemblies, to knit them together along confederal lines, to appropriate a regional economy along confederal and municipal lines.” (Bookchin, *The Next Revolution*, *supra* note 45, at 93-94).

⁵⁵ BOOKCHIN, *THE NEXT REVOLUTION*, *supra* note 45, at 97.

⁵⁶ *Id.* at 100.

⁵⁷ IRIS MARION YOUNG, *JUSTICE AND THE POLITICS OF DIFFERENCE* 256 (Princeton University Press, 1990).

But Communalism does not only exist in the world of ideas. Though utopian⁵⁸ in its vision and relatively undetailed in the precise functioning of this political order should it ever become real,⁵⁹ the Communalist project has seen several of its features embodied in direct democracy experiences throughout history, whether it is the revolutionary councils praised by Arendt, or the Athenian agora, the town meetings of New England during the American Revolution⁶⁰, the Parisian neighborhood sections of 1793,⁶¹ the Paris Commune of 1871⁶² or the anarcho-syndicalists collectives of the Spanish Revolution in 1936.⁶³ Today, around the world, municipalist movements have emerged to try to change local institutions from mere decentralized statist structures to popular democratic assemblies,⁶⁴ whether by creating a municipalist platform to run for local elections,⁶⁵ by organizing alternative neighborhood assemblies to manage communal affairs,⁶⁶ by taking direct actions against the political elite and organizing new municipal elections,⁶⁷ by creating institutions allowing for economic self-determination,⁶⁸ or by federating grassroots urban social movements taking part in different struggles.⁶⁹ The most advanced Communalist experience is probably the revolution in Syrian Kurdistan, where the entire political, legal, social and economic order now rests on the model of *Democratic Confederalism* in the cantons of Rojava.⁷⁰

⁵⁸ I use the word utopia not in its classical pejorative and dismissive sense of a society that could never possibly be, for it lies too far from today's social and political order and does not take into account the existing state of things, but rather as a society that ought to be according to this normative vision, as well as an ideal against which existing Communalist movements could evaluate their practices with regards to their revolutionary goal and the conditions they are embedded in. In this sense, Communalists do not correspond to the dismissive definition of "utopian socialists" given by Marx to socialists who did not root their political project in an analysis of existing material conditions nor believed in revolutionary struggle, as "scientific socialists" do. Rather, Communalists are utopian in the sense that they propose a vision of the good society, one that rests on an analysis of the material conditions to be actualized, as well as on the necessity of revolutionary struggle to bring it into being. I thank David Goldman for helping me clarifying this point and presenting this alternative definition of utopia that transcends the classical Marxist dichotomy. Moreover, I agree with Theodor Adorno's vision of utopia in his debate with Ernst Bloch: "Whatever utopia is, whatever can be imagined as utopia, this is the transformation of the totality. And the imagination of such a transformation of the totality is basically very different in all the so-called utopian accomplishments—which, incidentally, are all really like you say: very modest, very narrow. It seems to me that what people have lost subjectively in regard to consciousness is very simply the capability to imagine the totality as something that could be completely different. That people are sworn to this world as it is and have this blocked consciousness vis-à-vis possibility, all this has a very deep cause . . . My thesis about this would be that all humans, deep down, whether they admit this or not, know that it would be possible or it could be different." (Ernst Bloch, *Something's Missing: A Discussion between Ernst Bloch and Theodor W. Adorno on the Contradictions of Utopian Longing* in *THE UTOPIAN FUNCTION OF ART AND LITERATURE* 3-4 (transl. Jack Zipes and Franck Meckleburg, The MIT Press, 1988 (1964)).

⁵⁹ Bookchin's formulation of Communalism does not aim at elaborating a fully-fledged theory or blueprint formula of what a society based on libertarian municipalism could or should look like and that would be valid in all times and places. Not only would a precise institutional sketching be against the libertarian ideal of understanding communities as autonomous self-governed entities defining their own rules, but it would also be impractical, as each municipality is defined by various historical, cultural, geographical, demographic, economic, social, political and religious

conditions. Indeed, Communalist praxis requires taking into account the particularities and specificities, of the community in question (BOOKCHIN, *THE RISE OF URBANIZATION*, *supra* note 46, at 252-253). Rather, one should understand Communalism as a vision for a society resting on several principles—self-government, direct and face-to-face democracy, non-hierarchy—that should be embodied in different ways according to every municipality’s history. Some could find this vision less credible for its lack of answers to important institutional issues, or even for the apparent paradox of vigorously advocating for a normative vision that eventually rests on democracy and self-rule. However, I believe that the idea of social movements advocating for self-governed communities organized in confederation, even if initially counter-majoritarian, is incommensurably less problematic than the global imposition of the principle nation-state sovereignty since the Peace of Westphalia in 1648 through colonial, dominative and economic, political, military and culturally violent means. What is more, this nation-state model also had to be tailored by each nation to their specific conditions.

⁶⁰ For a historical account of how town meetings worked in the early days of American democracy, see ALEXIS DE TOCQUEVILLE, *DE LA DÉMOCRATIE EN AMÉRIQUE*. For an account of contemporary town meetings, see FRANK BRYAN, *REAL DEMOCRACY. THE NEW ENGLAND TOWN MEETINGS AND HOW IT WORKS* (The University of Chicago Press, 2003). See also JANE J. MANSBRIDGE, *BEYOND ADVERSARIAL DEMOCRACY* (The University of Chicago Press, 1983). In her account of the necessity to distinguish between adversarial—combining representation, majority rule and one vote per citizen, assuming that citizens have conflicting interests—and unitary democracy—combining face-to-face assembly, consensus, assuming a single common interest—to address the crisis of democratic legitimacy, Jane Mansbridge further details the analysis of how town meetings function and how seeing them only through the scope of unitary democracy overlooks important problem posed by face-to-face democracy. Though Mansbridge does not explicitly advocate for the face-to-face assembly form of democracy, her in-depth study of a town-meeting’s functioning, combined with the necessity to adapt the form of democracy to the circumstances at hand, in order to guarantee the equal protection of interests, gives a framework to avoid falling into the romanticized vision of popular assemblies.

⁶¹ For more information on the 1793 neighborhood sections in Paris, see BOOKCHIN, *THE RISE OF URBANIZATION*, *supra* note 46, at 115-122; ALBERT SOBOUL, *THE SANS-CULOTTES. THE POPULAR MOVEMENT AND REVOLUTIONARY GOVERNMENT 1793-1794* (transl. Remy Inglis Hall, Princeton University Press, 1980).

⁶² For more information on the Paris Commune, see among others DONNY GLUCKSTEIN, *THE PARIS COMMUNE. A REVOLUTION IN DEMOCRACY* (Haymarket Books, 2006); STEWART EDWARDS, *THE PARIS COMMUNE 1871* (Quadrangle Books, 1971); MITCHELL ABIDOR (ED.), *VOICES OF THE PARIS COMMUNE* (PM Press, 2015).

⁶³ BOOKCHIN, *THE NEXT REVOLUTION*, *supra* note 45, at 45-46 and 141-146. For more information on workers’ self-management during the Spanish revolution, see also SAM DOLGOFF (ED.), *THE ANARCHIST COLLECTIVES: WORKER’S SELF-MANAGEMENT IN SPAIN 1936-1939* (Black Rose Books, 1974); FRANK MINTZ, *ANARCHISM AND WORKERS’ SELF-MANAGEMENT IN REVOLUTIONARY SPAIN* (AK Press, 2013); KARL MARX AND V.I. LENIN, *THE CIVIL WAR IN FRANCE* (International Publishers, 1972).

⁶⁴ For an interesting overview of the rise of municipal movements, see the 6th issue of the journal *ROAR* in the Summer 2017 called “The City Rises”.

⁶⁵ Among many other municipalist movements, one can find *Barcelona en Comú*, a municipalist party that has been created with the purpose of winning the elections and transform municipal institutions in the spirit of the 15M/*Indignados* movement. It won the election of Barcelona in 2015 on the basis of a municipalist agenda that was designed by activists and inhabitants of several neighborhoods assemblies of Barcelona. The 15M movement also led to municipalist platforms

running for municipal elections in other cities in Spain, such as *Ahora Madrid* or *Zaragoza en Comú*. For a good overview of the rise of municipalist movements in Spain, see Vincente Rubio-Pueyo, *Municipalism in Spain. From Barcelona to Madrid, and Beyond*, ROSA LUXEMBURG STIFTUNG, (2017), <http://www.rosalux-nyc.org/municipalism-in-spain/>. Among the several municipalist platforms that have won municipal elections throughout the world, one can find the movement *Ciudad Futura* in Rosario (Argentina), the list *Autrement pour Saillans* in Saillans (France), the Rassemblement “Grenoble, une ville pour tous” in Grenoble (France). For other municipalist movements, see the map on <http://fearlesscities.com/>.

⁶⁶ In Latin America, the city of El Alto in Bolivia had neighborhood associations both providing local goods and mediating conflicts between residents (see DAVID HARVEY, *REBEL CITIES. FROM THE RIGHT TO THE CITY TO THE URBAN REVOLUTION* 140-153 (Verso, 2012); Raul Zibechi, *El Alto: A New World out of Difference*, <https://towardfreedom.org/archives/americas/el-alto-bolivia-a-new-world-out-of-differences/>; Benjamin Dangl, *El Alto: The City that Contains a Nation*, in *THE PRICE OF FIRE: RESOURCE WARS AND SOCIAL MOVEMENTS IN BOLIVIA* 137-155 (AK Press, 2007). In Argentina, many neighborhoods organized in councils to handle community affairs during the 2001 crisis (see MARINA SITRIN, *HORIZONTALISM: VOICES OF POPULAR POWER IN ARGENTINA* (AK Press, 2006)). In the United States, in the South, “People’s Assembly” have been created by grassroots movements to “address essential social issues”, allowing people “to exercise their agency, exert their power, and practice democracy” in Jackson, Mississippi (Kali Akuno, *People’s Assembly Overview: The Jackson People’s Assembly Model*, in *JACKSON RISING. THE STRUGGLE FOR ECONOMIC DEMOCRACY AND BLACK SELF-DETERMINATION IN JACKSON, MISSISSIPPI* 87 (eds. Kali Akuno and Ajamu Nangwaya, Daraja Press, 2017). See also, Makani Themba-Nixon, *The City as Liberated Zone: The Promise of Jackson’s People’s Assemblies*, in *JACKSON RISING*, 163-170). In the Pacific Northwest, several Communalist organizations were created in the aftermath of the Trump election and the ensuing resurgence of the right-wing (Olympia Assembly, Portland Assembly and the Seattle Neighborhood Action Coalitions). They explicitly tie their political activity to the Communalist project as theorized by Bookchin and aim at changing the social order to create a Communalist society. To reach this transformative goal, they start first by dealing with the main issues faced by the city (gentrification, housing, violence, economic and social injustice), by focusing on political education, and by having assemblies functioning on mechanisms of direct democracy. For more information on their activity, see <https://olyassembly.org/>, <https://portlandassembly.com/>, <https://www.neighborhoodaction.info/>.

⁶⁷ The city of Cherán in Mexico is one example of a municipality that has risen against the economic and corrupt political elite. For information on Cherán, see A. González Hernández and V.A. Zertuche Cobos, *Cherán. 5 years of self-government in an indigenous community in Mexico*, *OPEN DEMOCRACY*, 2 December 2016, <https://opendemocracy.net/alejandra-gonz-lez-hernandez-v-ctor-alfonzo-zertuche-cobos/cher-n-5-years-of-self-government-in-indi>.

⁶⁸ See for example Cooperation Jackson in Jackson Mississippi (USA) (AKUNO and NANGWAYA, *supra* note 68). Another representative example is the mechanism of participatory budgeting that have spread throughout the world but that originated in Porto Alegre (Brazil). There is also the concept of the “city of the commons”, such as in Napoli or Bologna (Italy), in which public utilities and services are considered as commons that should be managed communally.

⁶⁹ See the project of *Symbiosis Revolution* aiming at creating a confederation of community organizations <https://www.symbiosis-revolution.org/>. See also *The Right to the City Alliance*, a broad coalition of urban social movements in many cities in the United States calling for the right to the city: <https://righttothecity.org/about/mission-history/>. The English collective *We are Plan C* also proposes to federate municipalist movements for a radical municipalism: <https://www.weareplanc.org/>.

While it is true that a confederated municipalist movement is not—yet—sufficiently important to be able to compete for the state’s political legitimacy, Communalists do not wait to have the majority of the population on their side to start building the institutions of self-government. There are at least three reasons that justify both their political project and the attention that should be given to movements striving to actualize it. First, Communalist movements, whether they create extra-legal popular assemblies or enter local institutions, are attempting to empower people here and now and directly answer their needs that are left unmet by the neoliberal state under global capitalism through building institutions that are based on the principles of the project they want to build—non-hierarchy, direct democracy and mutual aid. They do so either by opposing unjust policies, and creating networks of solidarity and mutual aid when they are not in power, or by enacting social policies when they are. By taking the path of building the new world

⁷⁰ The model of *Democratic Confederalism* was developed and proposed to the Kurds by the leader of the Kurdish Workers’ Party Abdullah Öcalan, who took his inspiration from Bookchin’s Communalism (see ABDULLAH ÖCALAN, *DEMOCRATIC CONFEDERALISM* (Cologne International Initiative Edition, 2010); Damian Gerber & Shannon Brincat, *When Öcalan Met Bookchin: The Kurdish Freedom Movement and the Political Theory of Democratic Confederalism*, GEOPOLITICS (2018)). Taking advantage of the political vacuum in Syrian Kurdistan created by the Syrian civil war, the Kurdish Liberation movement used this opportunity to bring Democratic Confederalism into existence in Rojava. The political system of the cantons of Rojava, depending on the geographic area, rests on the model of popular assemblies organized at four different levels. Starting with the communal level, all the residents of the village or of a street in a city (generally 30 to 400 households), whatever their ethnicity, language or religion, are invited to the communal popular assemblies where local issues are decided upon. They elect two delegates (a female and a male) with recallable mandates for the second level, that of the Neighborhood or Villages People’s Council coordinating 7 to 30 communes. The same process happens at the third and fourth levels: this Neighborhood council elects delegates to the third level, the District People’s Council, which will itself elect delegates to the People’s Council of West Kurdistan. In addition to the general popular assemblies at the communal, neighborhood, district and confederal levels, there are separate Women’s Councils at every level, as well as different commissions at each level (Defense, Economics, Free Society, Justice, Political, Civil Society, Ideology, Women’s council, some of these commissions being doubled by women-only commissions collaborating with the general commissions). This allows the historically oppressed group of women to come together, discuss their issues and interests as a group and form a group consciousness. Moreover, next to the bottom-up structure, there is the top-down structure of the Democratic Autonomous Administration (including a Legislative Council, Executive Council and Municipal Councils), which is organized by the Social Contract of Rojava, and which allows the Democratic Federation of Northern Syria to have an international presence. This overall structure of Democratic Confederalism, the Kurdish adaptation of Communalism, answers to the specific context of the Rojava revolution, namely the emphasis on women’s liberation, the necessity to deliberate different policies in commissions at each level, and to present the features of a State for international relations. For more information on Rojava, see MICHAEL KNAPP ET AL., *REVOLUTION IN ROJAVA: DEMOCRATIC AUTONOMY AND WOMEN’S LIBERATION IN THE SYRIAN KURDISTAN* (Pluto Press, 2016). See also Carne Ross, *Power to the People: A Syrian Experiment in Democracy*, FINANCIAL TIMES, 23 October 2015, <https://www.ft.com/content/50102294-77fd-11e5-a95a-27d368e1ddf7>.

in the shell of the old,⁷¹ and not waiting for the revolutionary “Grand Soir” to create the society they envision, they accept the necessary long-term vision that any transformative vision of society should have. Moreover, since revolutionary process and goals cannot be separated, they do not dissociate between the principles grounding the means they use from the ones ruling their aspired ends: their movements are *prefigurative* in form (direct democracy) and in content (equality and non-hierarchy). The success of their project is therefore not only dependent on the hypothetical and necessarily advent of a Communalist society, but is also verified by each action of self-government a community makes to manage its affairs, which has a democratic value in and of itself. Second, direct democracy supposes people able to practice it, that is to meet, deliberate, decide and hold their delegates accountable. Cultivated as a passive, “sleeping sovereign,” awakened only at the time of the elections,⁷² citizens are not used to this activity. The political education for self-government takes time, and only by multiplying fora of collective decision-making will Communalism become possible. Third, while Arendt’s digging up of the lost treasure of the revolution proves that neighborhood assemblies have been the privileged form of revolutionary activity, building these institutions from the perspective of having them ready for the moment where a popular movement will be sufficiently strong might avoid the authoritarian politics into which countless revolutionary movements have fallen or of losing time and energy in the process of building a non-hierarchical one.⁷³

III. Thinking the Line between Reform and Revolution

Movements aiming at building a Communalist society through the institutional strategy of occupying and transforming municipal institutions to make the municipality the locus of self-government will face the *a priori* paradox of revolutionizing the political order through reformist means. In order to capture this paradox, it is important to first define what is understood under the concepts of reform and revolution. I adopt Rosa Luxemburg’s understanding of reform and revolution exposed in her 1899 pamphlet *Reform or Revolution* directed against the reformist strategy proposed to the German Social Democratic Party by Eduard Bernstein. Luxemburg differentiates the former from the latter by characterizing revolution as “the act of political creation,” as opposed to reform which is “the political expression of the life of a society that has already come into being.”⁷⁴ Whether political action is revolutionary rather than reformist does not depend on the duration or the quantity of the action at hand, but rather on its content,

⁷¹ The Symbiosis Research Collective, *How to Build a New World in the Shell of the Old*, THE ECOLOGIST, April 23, 2018, <https://theecologist.org/2018/apr/23/how-build-new-world-shell-old>.

⁷² RICHARD TUCK, *THE SLEEPING SOVEREIGN. THE INVENTION OF MODERN DEMOCRACY* (Cambridge University Press, 2016).

⁷³ This observation comes from discussions with people in the Seattle Neighborhood Action Coalitions and Olympia Assembly, drawing on their experience of having to balance between the channeling of the popular energy provoked by the Trump election and the designing of a democratic and horizontal structure.

⁷⁴ Rosa Luxemburg, *Reform or Revolution* in THE ESSENTIAL ROSA LUXEMBURG 89-90 (ed. Helen Scott, Haymarket, 2008).

which should demonstrate “the passage of a historic period from one given form of society to another.”⁷⁵ In other words, the difference between reform and revolution is not one of the form the act in question takes, but rather one of the paradigm under which that act is undertaken and the paradigm this act contributes to sustain or to create. If this political act is the “expression of the life” of the previous social order, incarnating the principles essential for that society to function, and aiming at maintaining the structure of power on which such society is based, that act can be deemed as reformist.

However, even if it is true that reforms are “carried on *only* in the framework of the social form created by the last revolution,”⁷⁶ this does not necessarily mean that *only reforms* can be carried out in such a framework. If an act is, in content, qualitatively different from the ones generated by the paradigm of the order in virtue of which it is undertaken, that is, that this act is one of “political creation,” such an act can be deemed revolutionary. However, for an act to be one of “political creation,” it needs to generate an entirely new system than the one in which it is executed, even if only *in potentia*. In this sense, the difference between reform and revolution is tied to whether the political act is part of a broader social transformation project aiming at changing the present system.⁷⁷ If one adopts a Gramscian perspective, “a ‘reformist’ politics can be identified as a strategy that in the name of incremental reforms participates in a ‘passive revolution’ from above and supports—willingly or unwillingly—the co-optation of oppositional social movements (or elements of them) by the ruling power bloc. A ‘revolutionary politics’ ... has to determine whether specific reforms help transform the existing power structures, contribute to an alternative network of social forces from below, and open up perspectives that go beyond the existing system.”⁷⁸

Insofar as having recourse to electoral politics is embedded in the “political creation” of a new order, and not “the political expression of the life of a society that has already come into being,” a Communalist electoral strategy would not fall within the “reformist trap.” Indeed, if their strategy enacts precisely the new order they want to create—that is by vesting popular assemblies deciding on the basis of direct democracy with the political authority legitimate within the current system—using the seemingly reformist vehicle that is the election does not make their project reformist. Indeed, Communalists aim at transforming the *logic of the exercise of power*: from its exclusive exercise by a class of professional rulers to the everyday exercise of politics by regular citizens, that is from one of representative democracy, to one of direct democracy. They aim at changing the *form of collective deliberation and decision-making*: from a Jacobin centralized assembly and government, to decentralized but confederated communal popular assemblies. They aim at altering the *model of sovereignty*: from state sovereignty—“the capacity of a public body . . . to act as the *final* and *indivisible* seat of authority with the jurisdiction to wield not only “monopoly over the means of violence” to recall Max Weber’s famous phrase, but also to distribute socio-economic justice and manage the economy” at the nation-state

⁷⁵ *Id.* at 90.

⁷⁶ *Id.*

⁷⁷ Jan Rehmann, *The Relevance of Gramsci’s Theory of Hegemony for Social Justice Movements*, in *PEDAGOGY OF THE POOR. BUILDING THE MOVEMENT TO END POVERTY* 114 (eds. Willie Baptist and Jan Rehmann, Teachers College Press, 2011).

⁷⁸ *Id.*

level, to popular sovereignty—"the idea that the people are subjects and objects of the law, or the makers as well as obeyers of the law"—at the communal level.⁷⁹ In other words, as long as the *content* of the Communalist strategy is to supplant that order by another one, the *form* it takes does not undermine its revolutionary orientation. As such, Communalist politics can be "revolutionary politics" since it aims at transforming the existing power structure and at creating an alternative system.

Because Luxemburg's understanding of revolution does not give much information as to precisely what substance an act of political creation should have to be considered as revolutionary, it is interesting to complement this understanding of the concept of revolution with Arendt's. According to her, a revolution occurs with the formation of a new polity that liberates people from previous oppression and establishes a freer order of things.⁸⁰ As developed earlier, representative democracies have not succeeded in creating a public sphere where public freedom could be exercised, but has allowed for its capture by a few, making the balance between autonomy and authority tipping in favor of the latter.⁸¹ Insofar as it could be considered that a freer society is one where public freedom is exercised by the many rather than by the few, that is, that political matters are decided by the people directly managing community affairs in popular assemblies, rather than by a class of professional politicians, the Communalist project is revolutionary under Arendt's definition.

IV. Framing the Strategy: Occupying and Transforming Municipal Institutions

The line demarcating reform and revolution is a thin one to cross, all the more easily when the conception of revolution depends only on the intentions of the people in power, and not on the form of sharing it. Throughout history, many movements have declared themselves revolutionary and have ended up changing the state apparatus, but only in favor of the interests of a different class. Indeed, by creating revolutionary parties to seize state power and institutionalize them as new legitimate state governments, while pretending that the state would ultimately wither away once the revolution will be over, past revolutionaries have not found a way to avoid the concentration of political power in the state apparatus. By making the exercise of power the task of the many, rather than that of a few, Communalists precisely aim to avoid the mistake of changing only *who*

⁷⁹ Seyla Benhabib, *Twilight of Sovereignty or the Emergence of Cosmopolitan Norms? Rethinking Citizenship in Volatile Times*, in *DIGNITY IN ADVERSITY: HUMAN RIGHTS IN TROUBLED TIMES* (Polity Press, 2011), at 97-98.

⁸⁰ ARENDT, *supra* note 8.

⁸¹ In this sense, I follow the analysis of Robert Paul Wolff in *In Defense of Anarchy* about the irreconcilability of authority and autonomy under representative democracy. However, I do not share his conclusion that the only solution is unanimous direct democracy, which is, as he rightly states, unachievable. Indeed, while he tries to reconcile authority and individual autonomy, which is the highest value for some anarchists, I rather take autonomy as collective autonomy, which could be achieved through Communalist direct democracy (ROBERT PAUL WOLFF, *IN DEFENSE OF ANARCHY* (University of California Press, 1970)).

exercises power, while leaving untouched *how* power is exercised.⁸² To understand how the revolutionary spirit of the popular exercise of public freedom could be preserved beyond the recurring vanishing of the revolutionary councils to the profit of the party that will have imposed its ideology as the one embodying the revolution, it is therefore important to now frame the Communalist strategy.

In contrast to the extra-institutional path which consists in creating radically new institutions outside of the existing system, the institutional strategy of the Communalist project consists in occupying existing municipal institutions in order to radically transform them. Such a transformation would consist in transferring the public power conferred by the elections from the hands of the elected officials into the ones of popular assemblies. In a nutshell, Bookchin proposes that Communalist movements run candidates for the municipal elections who, as soon as they are elected, will “use what real power their offices confer to legislate popular assemblies into existence”⁸³ and tie their office to the decisions of these assemblies through the device of imperative and recallable mandates. In this way, elected officials would not be the ones entitled to make decisions regarding public affairs. Instead, their role would be limited to the organization of popular assemblies which would meet, deliberate and decide at the majority on public policies.⁸⁴ Once a decision is reached, the assembly would define the content of the imperative mandate given to the elected official, whose action will be under close supervision of the assembly, whose departure from the mandate would be sanctioned by recall and who would in any case be replaced regularly according to the principle of rotation.

This official would no longer be a Burkean representative, in the sense of an elected official entrusted to use her agency and her reason to defend the preferences and interests of her constituency. In this conception of representation, generically defined by Hannah Pitkin as the act of making present that which is absent,⁸⁵ the disaggregated interests of the people are made present through the filter of one person, qualitatively different according to the aristocratic logic of the elections, unaccountable to them but at

⁸² It is paramount to stress here that, as libertarian socialists, Communalists also aim at preventing the contemporary ruling economic and political class from being in power and at allowing the working class to exercise self-government. Briefly, Communalism differs from classical Marxism in that the latter orients the revolutionary process towards the abolition of economic class exploitation, while the former anchors it in the abolition of all hierarchies, and not only the economic ones.

⁸³ BOOKCHIN, *THE NEXT REVOLUTION*, *supra* note 8, at 29-30.

⁸⁴ It is crucial to be attentive to the fact that these assemblies would remain powerless if the choice of the matters submitted to them would be left to the discretion of the “still-representative”. Indeed, due to the fact that Communalist movements operate within the election framework, the power of agenda-setting would initially remain in the hands of the elected official. In order to actually exercise the public power of the elected official, the assembly should have the capacity to set its own agenda and deliberate on all matters it deems essential for its political, social, cultural, and economic self-determination. This however will be limited by the legal competences of modern municipalities, to which I will come back in the section on objections.

⁸⁵ “Representation, taken generally, means the making present in some sense of something which is nevertheless not present literally or in fact” (HANNAH PITKIN, *THE CONCEPT OF REPRESENTATION* 8-9 (University of California Press, 1967)).

the time of her re-election, and submitted to a structure that forces the most genuinely committed and benevolent democrat to yield to interests other than the ones she is supposed to represent.⁸⁶ Rather, she would be a delegate, a spokesperson, bound to try to legally ratify the decisions as if it was her own, and, when she has to submit her decision to the deliberation with others, entrusted to “make present” the already deliberated and formed will of the assembly⁸⁷ in deliberation with other elected officials and to come back to her constituency with the result of this deliberation in order to be empowered with a new and more adapted imperative mandate.

This way of conceiving institutional power aims at shifting the task of exercising public power *from an individual to a collective*. In fact, such an understanding reconnects with the original meaning of democracy—the “rule by the people”—transformed under the paradigm of elective representative democracy into the “rule by some people.” To fully capture the stakes of the shift the Communalist project wants to operate, it is however first necessary to go beyond this consensual meaning of democracy in order to understand what the “people” denotes. In her account of the meaning of the *demos* in “*demokratia*,” Daniela Cammack proposes to understand the *demos* not as the entire citizenry, which would equate *demos* and *polis*, but rather as the assembly, “in the sense of a mass of people gathered together to pursue some joint purpose.”⁸⁸ However, this mass is not composed of all the members of the society. Beyond the obvious fact that the *demos* did not include slaves, women and foreigners, this word referred to a specific group within society, since it denotes “the singular collective agent formed by the common people meeting for political purposes, whether that involved listening to speeches, making decisions by majority vote, sending people into exile, or acting collectively in some other way,” at the exclusion of the political elite.⁸⁹ The political criterion to identify somebody as part of the *demos* or of the elite is “whether one influences political decisions as an individual or as part of a mass.” But the mass is not to be understood as a “pre-constitutional or disorderly multitude,” but as a politically instituted body, existing for a long period of time, allowing people to participate in

⁸⁶ To avoid the sterile moralistic critique of politicians as “all corrupted”, it is paramount to identify the problem as structural. The problem is not that only corrupted people who neglect the interests of their constituency are elected, but rather that the procedure through which we choose them, the elections, does not aim at allowing the people to form its will as a collective, and that the system in which we place them, the modern institutions of representative democracy, is not designed for them to be able to represent only these interests.

⁸⁷ In this paper, I do not tackle the process by which Communalist direct democracy can produce a general will through deliberation in popular assemblies. While handling dissent, deliberating and deciding with neighbors is not part of the skills that are taught nor practiced under representative government, Communalism rests on the fact that people can, and will, acquire these skills in time if they practice how to make decisions democratically. As a member of the Communalist movement *Olympia Assembly* in Olympia, WA, stated: “to have democratic assemblies, we need democratic people”. And this will only be possible through long-term political education to collective and horizontal decision-making.

⁸⁸ Daniela Cammack, *The Demos in Demokratia*, CLASSICAL QUARTERLY 1 and 13 (2019, forthcoming).

⁸⁹ *Id.* at 1 and 11.

“politics through a collective agent.”⁹⁰ Cammack’s core finding is that the establishment of *demokratia* as the political organization of Ancient Athens does not come from the creation of the assembly, because the assembly already existed before the political regime of *demokratia* without having power.⁹¹ Rather, it translates a reversal of the balance of power between those having political power as individuals, the leading men, and the mass, the “collective common people” in favor of the latter, but without suppressing the former.⁹² In this sense, “*dēmokratia* indicated not self-rule but the rule of the mass of ordinary voters over the political elite,” when the institution of the common people that is the assembly “became the supreme political body,” achieved *kratos* by having “the final decision-making power.”⁹³

While Communalism certainly seeks to achieve *demokratia* understood as the rule of the assembly—which would, this time, include the entire group of people subjected to its authority, without excluding anybody on the basis of race, gender, class, ethnicity, language, religion or any other exclusionary and oppressive criterion—it does not only aim at reversing the balance between the political elite and the assembly, tipping in favor of the former under the conditions of modern representative democracy. Rather it aims at suppressing the very existence of a ruling class, of a class of people who have political influence as individuals, and it aims to do so both in its means and its ends. It therefore attempts to create another revolution than the change in the balance of power that happened when the *demos* achieved *kratos*. By abolishing the political elite, it precisely wants to change the “basic structure of politics,” that did not change with the advent of *demokratia*, which is that “either a given citizen is personally politically significant, in which case she is a member of the political elite, or she is personally insignificant but can nonetheless exercise power as part of a collective agent, in which case she belongs to the common people.”⁹⁴ Without the existence of a class of people acting politically as singular individual, the *demos* could perfectly overlap with the *polis*, and popular assemblies would actualize self-rule.

Conceiving of the exercise of public power in these terms allows one to further understand the Communalist strategy in at least three regards. First, by running for individual offices in order to tie their institutional power to the assembly, Communalism does not aim at reforming how individual power is exercised: it wants to abolish it. It is because the only way of conquering institutional power is through winning individual offices that these movements would, as a first step, transform these roles. Framing the mandates of their delegates as recallable, imperative and under constant supervision of the people is not a mere reform, as it does not aim at sustaining the structure of power, and is certainly not the expression of the life of the society. It is to be contrasted with traditional solutions proposed by liberal democrats, which is to prevent the corruption of the rulers through legal measures, without putting into question the very idea that there should be rulers.

⁹⁰ *Id.* at 5 and 14.

⁹¹ *Id.* at 21.

⁹² *Id.* at 6.

⁹³ *Id.* at 20-21.

⁹⁴ *Id.* at 21.

Second, what made the rule of the assembly possible in Ancient Greece was that there was a pre-existing *demos* before the advent of *demokratia*. By contrast, Cammack notes that modern societies do not have an already instituted *demos*, in the sense of an assembly of people acting collectively in the political sphere.⁹⁵ It is precisely this task of construction of the institution that is the assembly that Communalists take on. However, it is crucial for Communalist movements to undertake this task of building the assembly *before* they choose to come into power.⁹⁶ While popular assemblies could be “legislated into existence” on a legal level, the work of building them could hardly be done by one, or even several individuals in power. Indeed, there is first the fundamental fact that it takes time to create a culture of self-government through assemblies and to educate people in collective deliberation and decision-making,⁹⁷ as well as to create the conditions allowing for everyone to participate meaningfully, by addressing how class, race and gender hierarchies could prevent such participation and thereby place the potential power of popular assemblies in the hands of those already at the right end of this hierarchy.⁹⁸ But more importantly, the only guarantee that the elected official on a Communalist platform will effectively tie her mandate to the will of the popular assembly is if this assembly already exists to design the program, that is, the conditions of its own

⁹⁵ *Id.*

⁹⁶ This is why the two strategies proposed by Bookchin are not mutually exclusive. Some movements might choose to create a culture of popular assemblies outside of any institution which, once sufficiently strong, could be the base of a Communalist movement occupying city hall. However, there is no, and should not be any, one-size-fits-all recipe as to how to create a self-governed municipality, and this should be left to social movements’ agency to deal with the material conditions they are embedded in and confronted with.

⁹⁷ In this sense, Bookchin sees the electoral activity as primary educational and urges taking the time to build the movement, rather than directly striving for running for the elections: “A libertarian municipalist movement, in particular, would not—and should not achieve sudden success and wide public accolades. The present period of political malaise at best and outright reaction at worst renders any sensational successes impossible. If such a libertarian municipalist movement runs candidates for municipal councils with demands for the institution of public assemblies, it will more likely lose electoral races today rather than win even slight successes. Depending upon the political climate at any given time or place, years may pass before it wins even the most modest success. In any very real sense, however, this protracted development is a desideratum. With rapid success, many naïve members of a municipal electorate expect rapid changes -which no minority, however substantial, can ever hope to achieve at once. For an unpredictable amount of time, electoral activity will primarily be an educational activity, an endeavor to enter the public sphere, however small and contained it may be on the local level, and to educate and interact with ever larger numbers of people.” (JANET BIEHL (ED.), *THE MURRAY BOOKCHIN READER* 191 (Black Rose Books, 1999)).

⁹⁸ Indeed, since individuals would come to assemblies as already determined by existing relations of power, these assemblies would only be non-hierarchical if several structural measures are taken. These measures should allow not only everybody to be present (by lifting the material constraints that concretely prevents people from participating, such as work, childcare, mobility, information), but also to participate meaningfully, effectively and equally. It could be done both by preventing visible or less visible forms of domination that can arise in assemblies and by leveling the differences in political education, ability to speak in public, access to and understanding of information.

power, and to hold her in check through constant supervision. Since it goes against the grain of the traditional way of doing politics, this way of arranging the exercise of power has to be intentional on the part of the movement, and not left only to the goodwill and the responsibility of the elected person.⁹⁹ Indeed, that would still be embedded in the paradigm of representative democracy, because it considers that some people are in charge of politics, while others are not. The assembly is therefore responsible for continuously checking their delegates, and the Communalist movement should be the one organizing and fostering the capacity of the assembly to ensure this constant check. As Gerardo Pisarello Prados, an elected official on the municipalist platforms *Barcelona en Comú*, states: “municipalist movement should have one foot inside the institution, but a thousand feet outside.”

Third, and as a consequence of this pre-existence of the assembly to the coming into power of the movement, the power given by individual offices to people should not be attached to the elected person, but to the movement. While using the electoral road forces the Communalist movements to submit to the personalist paradigm of the election, this strategy also provides an opportunity for the social movement to use the form of a party, even if it would be a municipalist party. Much is left to be said on how a municipalist party would differ from a traditional top-down party. I will simply state here the major principle that should animate a municipalist party: to function horizontally and take its directives from the popular assembly, rather than having a top-down hierarchical structure where the power resides in the central bureau of the party. In any case, the depersonalization of power entailed by this understanding of democracy would suppose to attach power not to individuals, but to the municipalist party, even if that could be the case only in the eyes of the movement, and not of positive law. This depersonalization of power would operate through the devices of recall and rotation of the people temporarily occupying institutional offices with people in the movement, the movement, or even preferably the assembly, being a “reservoir” of people that could act as spokesperson of the assembly. The said office should therefore only be seen as a recipient “channeling” the power of the popular assembly into the institutional system, and not as attached to the elected person for the time of the traditional election. As such, while it could be said that the movement occupies the institutions, it need not be the case of the individuals, and, indeed, should not. In this sense, the temporary delegate at the elected office could still be said to “represent” its constituency, but only in the restricted sense of “making present that which is absent”—that is the already formed will of the people through the popular assemblies.

This should avoid two pitfalls from haunting municipalist movements forming into parties.¹⁰⁰ First, it would preclude people in power from playing by the rules of the electoral games attached to the personalist conception of institutional offices. An elected candidate does not act in the political sphere for her reelection, as the principle of rotation in the movement would in any case not allow it (or, if it happens, it would not

⁹⁹ In this sense see Kamau Franklin, *The New Southern Strategy: The Politics of Self-determination in the South*, in JACKSON RISING, at 67-72.

¹⁰⁰ I formulate these last two observations being inspired by discussions I had, or witnessed, with members of municipalist movements (*Barcelona en Comú* and Cooperation Jackson) during international conferences about the difficulties their respective movement faced once some of their members passed the door of city hall.

do so according to the rules set up by the institutional system, but rather according to the internal rules of the municipalist party). By reducing her role to act as a “bridge” between city hall and the assembly, it would prevent her from the very possibility of using her time in office to create the conditions for her own re-election. Second, it could be a potential solution to the traditional discontent and disillusionment many social movements have suffered from when they succeeded in electing individuals inside the institution and when these individuals could not enact directly the policies the movement had run for. Indeed, since it will be the assembly taking the decision and facing the political constraints, this assembly will internalize the external constraints weighing on the power of the office in question, should these constraints materialize in political, economic, legal, social powerlessness. This however supposes a continuous, transparent and accurate shuttle between the assembly and the place where the delegate will defend the decisions of the assembly, in order for the assembly to be more precise in the mandate they give to that delegate.

These prior observations raise the question as to the definition of what a Communalist movement exactly is, how it relates to the party,¹⁰¹ the popular assembly and the elected officials. As the relation between these entities will depend on the specificity of each context and there is no blueprint formula that could or should fixate their relationship once and for all. I will only state here that the focus on the depersonalization of politics should not obscure the fact that it is not only that individuals should not be left with power, but also that the municipalist party should not be left in power, in order to avoid the centralization of power. Moreover, the “movement-party” in power should create receptive institutional structures to remain completely connected with, and challenged by, the grassroots social movements that brought it there, a movement that should be increased by the practice of popular assemblies.¹⁰²

¹⁰¹ The appellation “municipalist party” runs the risk of being recuperated by traditional political parties (it actually already is), branding citizens’ participation as one of the point of their program in order to increase their “democratic outlook”, and, thereby, their number of voters, while they actually do not aim at changing how power is exercised and by whom. One could also legitimately fear that such a party could be a hotbed for populism, where politicians could claim what “the real people” wants. If decisions are effectively taken by popular assemblies and delegates are forced to abide by it, populist tendencies, intrinsically tied with a personalist conception of politics, could be avoided.

¹⁰² In this sense, the Argentinian municipalist party *Ciudad Futura* sees institutional politics as a tool to protect, empower and support the values and practices of its extra-institutional work. According to councilor Juan Monteverde, “*For us the opportunity to change things isn’t in the successful legislative work of one councilor (or three, in our case), but in the back and forth between activity within city hall and the movements on the outside.*” (Kate Shea Baird, *How to Build a movement-party: Lessons from Rosario’s Future City*, OPEN DEMOCRACY, November 15, 2016, <https://www.opendemocracy.net/democraciabierta/kate-shea-baird/how-to-build-movement-party-lessons-from-rosario-s-future-city>).

V. *Facing Objections to the Communalist Strategy*

The thesis of this paper is that the Communalist project could be advanced, in some places, through the following general strategy: Communalist movements would run candidates for municipal offices who, as soon as they are elected, would tie their office to the decisions of pre-existing popular assemblies through recallable, imperative and, if possible, rotating mandates. As with any political theory proposing a normative account of how social change should happen, many objections can be addressed to this strategy. A caveat is in order here: I will only deal with objections that can be raised against the thesis of this paper, and not to the Communalist project as a whole, as this paper focuses only on the *strategy* of Communalism. Moreover, even among the numerous objections that can be formulated against the strategy (1), I will only deal with one of them (2).

A. *Formulating Several Objections*

I will divide the various potential objections against the Communalist strategy into four categories: 1) legal and institutional objections, 2) political objections, 3) socio-cultural and 4) operational objections. Rather than thoroughly answer them, I will point to paths of answers Communalists could take.

Among the *legal and institutional obstacles*, one could directly object to the pretension of the Communalist strategy to create a self-governed municipality where common affairs are handled through face-to-face popular assemblies by occupying and transforming municipal institutions that, in the framework of modern nation-state and global capitalism, these municipal institutions have very little legal, political and economic power to deal with matters that would allow the self-determination of these municipalities. Seeing the threat that this obstacle represents to the very existence of the Communalist strategy as a credible political strategy, it is this objection I will address at length in the next section, though only under its legal and political aspect.

Another objection consists in saying that the form of exercise of power Communalists aim at supplanting, representative democracy in favor of direct democracy, is a constitutionally enshrined principle. Indeed, in some countries, the constitution specifically stipulates that power should be exercised according to the forms established by or in virtue of the constitution, that is through elected representatives possessing agency with respect to their constituent, and not through popular assemblies being able to recall their delegates if they violate their imperative mandates.¹⁰³ This could make the

¹⁰³ In this sense, in a country like Belgium, the Belgian Constitution states that “All powers come from the Nation. They are exercised in the forms established by the Constitution” (art. 33). This article is considered as the one making referendum and citizens’ initiatives unconstitutional in Belgium. In all logic, the same reasoning would undoubtedly apply for proposition of exercising power through communal popular assemblies. Another kind of limit exists in the United States Constitution. Article IV-4 states that “The United States shall guarantee to every State in this Union a Republican Form of Government...” where a republican form of government is considered as one where representatives are elected by the people. However, since Communalists do precisely use the electoral strategy and the republican form of government, at least initially, this article should not preclude to tie elected offices to the decisions of popular assemblies.

strategy used by Communalist movements outright unconstitutional. While unconstitutionality would not limit a movement that aims at revolutionizing the political order, changing the locus of political legitimacy and abolishing the state, having their political activity condemned as unconstitutional by courts could be an important obstacle to the progressive consolidation of popular power.¹⁰⁴

A last important institutional obstacle that could be raised is that, while a Communalist movement could have its members elected to municipal offices, it would not be able to directly change its administration as it is not dependent upon the results of elections. As such, an administration used to both the form and the content the *status quo* takes in liberal representative democracies and that wishes to hinder the Communalist project from aiming at overthrowing it could present a potentially enormous obstacle for a Communalist movement. While Communalism entails re-thinking the distinction between policy-making (assigned to the popular assembly) and administration (assigned to delegates with recallable and imperative mandates under supervision of the assembly), this does not help to think how a Communalist movement in city hall could concretely transform the administration. Since all the members of this administration will not be selected according to a directly democratic process, nor come from the Communalist movements, the transitional period will inevitably give rise to many points of conflicts concerning the administration of public policies decided by the assembly, whether on the process by which to administration executes these decisions, or the outcomes of such execution. This should not preclude Communalists from adopting the electoral strategy, but only emphasize the importance of realizing an active work of transforming the administrative culture to be receptive to popular assemblies' decisions, a work that is part of a broader effort of political education of public consciousness to direct democracy.

When it comes to the *political objections*, these can be divided into objections concerning the potential internal contradictions this strategy could lead to and that could threaten its very integrity, and therefore, its viability—*internal political objections* –, and the ones which questions the viability of the strategy with regards to the external conditions—*external political objections*.

Among the *internal political objections*, there is the risk that both the Communalist movements, from the moment they form into a municipalist party, and the popular assembly, from the moment it starts to have power and take decisions, fall into bureaucratization, and create the class of professional politicians it precisely wants to abolish. The risk of bureaucratization is tied, though distinct in kind, to the more general risk of not abolishing hierarchies, and seeing new hierarchies arise. Whether it is the ones of charismatic leaders, of facilitators of the assembly, of people having privileged access to information making them more powerful or indispensable, or of people setting, explicitly or implicitly, the agenda, there is always risk that some people “influence political decisions as an individual” rather than as part of the masses, as was still the case in Ancient Greece. This risk is the one that any movement anchored in the idea that hierarchy is at the root of social problems is confronted with. Communalists therefore believe in the necessity of institutionalizing political power explicitly along non-

¹⁰⁴ While not concretely bringing solutions to this objection, I will nevertheless come back to it in the fifth section, by proposing a conceptual framework to think about the relation of Communalist movements to the legal order.

hierarchical lines in order to avoid having it returning informally, and creating informal dominations.¹⁰⁵ It is in the conviction that the principle of non-hierarchy can be institutionalized into egalitarian human organizations, perpetuated through continuous self-reflexivity and self-criticism, and be used as a normative compass against which any action should be assessed, that the Communalist project is rooted. Indeed, it is important to understand that the Communalist understanding of social relations as non-static, but rather dynamic and constantly evolving according to the principles social institutions are based on, prevents from making any claim that all hierarchies could be abolished once and for all.

Another objection that can be formulated to the Communalist strategy is the risk of co-optation of elected Communalists. In the absence of any legal mechanism but the one of popular pressure to enforce the application of recallable and imperative mandate, that decisions made by the assembly be genuinely defended by the “still-representative” is still dependent upon the will of particular individuals. These individuals could be tempted to use the power they are given to try to enact the changes that they see possible, and paternalistically dispense with the popular assembly’s decisions because that process would be cumbersome and inefficient, and they believe they know what is good for the general interest. This would however cut them from the movement that brought them into power. This is why strong accountability mechanisms internal to the movement in case of departure from the Communalist program is necessary to establish before any election.

Lastly, one could object to the Communalist strategy on the ground that a Communalist movement campaigning to transform city hall could work one time, but that they might not be re-elected because it has not sufficiently answered a community’s needs or because an oppositional power has organized against them. Since creating a confederation of self-governed municipalities to overthrow the state would indeed take more than four years, this could be problematic for the Communalist project’s feasibility. Moreover, that a Communalist movement might not been seen as sufficiently legitimate in the eyes of its constituency would also be an important obstacle to its desirability.

Among the *external political objections*, one could say that the self-governing capacity of municipalities through popular assemblies risk being instrumentalized by organized

¹⁰⁵ In this sense, Bookchin states: “A libertarian municipalist movement should function, not with the adherence of flippant and tentative members, but with people who have been schooled in the movement’s ideas, procedures, and activities. They should, in effect, demonstrate a serious commitment to their organization—an organization whose structure is laid out explicitly in a formal constitution and appropriate bylaws. Without a democratically formulated and approved institutional framework whose members and leaders can be held accountable, clearly articulated standards of responsibility cease to exist. Indeed, it is precisely when a membership is no longer responsible to its constitutional and regulatory provisions that authoritarianism develops and eventually leads to the movement’s immolation. Freedom from authoritarianism can best be assured only by the clear, concise, and detailed allocation of power, not by pretensions that power and leadership are forms of “rule” or by libertarian metaphors that conceal their reality. It has been precisely when an organization fails to articulate these regulatory details that the conditions emerge for its degeneration and decay.” (BOOKCHIN, *THE NEXT REVOLUTION*, *supra* note 45, at 27). For a critique of supposedly leaderless and horizontal movements ending up reproducing hierarchies because of the lack of structure, see Jo Freeman, *The Tyranny of Structurelessness*, 17 BERKELEY JOURNAL OF SOCIOLOGY 1972-73, at 151-165.

factions that do not aim at eliminating hierarchies—whether on the basis of race, class or gender, or any other oppressive criterion. Such instrumentalization could be done by the class that already has political and economic power, which could use these assemblies to sustain their privileges (or create new ones) thanks to their human, social, cultural and financial capital, and therefore drive away those who do not possess it. It is important to recall here that since political equality is only achievable through economic equality,¹⁰⁶ the Communalist strategy precisely aims at giving power to the people who are dispossessed of it in a capitalist society. It is therefore paramount for Communalism to articulate, both theoretically and practically, the Communalist strategy of occupying and transforming municipal institutions with reference to the wider revolutionary goal of establishing a libertarian socialist society, functioning along anti-authoritarian, non-hierarchical and directly democratic lines. As such, Communalist direct democracy is not simply a procedural account of democracy, a form without content, but rather a necessary condition for a non-hierarchical society. The articulation between establishing radical democratic institutions by giving all decision-making power to the assembly and thinking these decisions should be socialist policies undoubtedly deserves further theorization from a normative standpoint.¹⁰⁷ While this point concerns the instrumentalization of the Communalist strategy for material purposes, other types of hierarchies are haunting the Communalist project. Indeed, Communalist theory and practice should think how to prevent the rise of non-emancipatory communes from using the Communalist strategy of making the municipality a self-governed political entity to enact policies which violate fundamental rights and freedoms at the local level. While I really do not believe that human rights are only possible to realize in an international order composed of nation-states in a world of global capitalism and could only be secured by the state, but rather that they are intrinsically linked with popular self-government,¹⁰⁸ the shift from one paradigm to another is certainly not exempted from opportunities of exploitation and oppression of the most vulnerable groups. Such an exploitation needs to be prevented both for its own sake and for the very possibility of the emergence of a Communalist society that is by definition non-hierarchical and egalitarian.

¹⁰⁶ Castoriadis, *The Problem of Democracy Today*, *supra* note 53.

¹⁰⁷ However, skeptical readers might be encouraged to consider whether the democracy that is claimed to be embodied through the representative democracy paradigm has ever given an appropriate forum for the represented people to actively choose to organize the system of production, distribution and consumption along capitalist lines. That representative democracy is not neutral towards the economic sphere but rather encourages the *status quo* in favor of capitalism should also be normatively justified. I doubt that such a normative basis would be convincing with regards to any kind of commitment to equality.

¹⁰⁸ I rely on Seyla Benhabib's defense of the necessity of self-government for the realization of human rights: "self-government in a free public sphere and free civil society is essential to the concretization of the necessarily abstract norms of human rights..." (Seyla Benhabib, *The Future of Democratic Sovereignty and Transnational Law. On Legal Utopianism and Democratic Skepticism*, 3/12 STRAUS INSTITUTE WORKING 11 (2012)). She further states that "the right to self-government is the condition for the possibility of the realization of a democratic schedule of rights" (at 35).

A last external political objection towards the Communalist strategy comes from a realpolitik position: if a commune, or rather a confederation of communes, effectively starts to threaten the very existence of the state—which should be, following the strategy of dual power, the intended goal—the state (or the regional entity in federal states), potentially helped by other state entities if the threat becomes too real for them too, would militarily intervene to crush rebellious communes. That they might not have the monopoly over the legitimate use of violence anymore due to the shift in political legitimacy a strong confederation of communes could have achieved, will not matter much with regard to the fact that they have monopoly over the concrete means of violence. Consolidating the power of the municipalities, organized in confederations, so that it could be sufficiently strong to resist state repression, therefore conditions whether that moment of repression would be part of the long-lasting history of bloody crackdowns of revolutionary movements that decided not to take the state's power and its military apparatus (from the massacre of the Paris Communards by the French national army to the military victory of Franco over the Spanish anarchists), or, rather, the tipping point for a Communalist society.

The third set of objections is the *socio-cultural objections*. First, Communalists are susceptible to being impeded in their project of changing the conception of participation to public affairs, by the contemporary relationships individuals have to themselves, each other, to their community (or lack thereof) and to the rest of society, a relationship that is itself the product of capitalism, patriarchy, racism and colonialism. Understanding and addressing how class, race and gender prevent the access of dominated groups to political participation is therefore fundamental.¹⁰⁹

A more specific, and interconnected, objection consists in saying that the modern subject created by capitalism that is the *homo economicus*—this rational human being passive concerning public affairs and easily governable in exchange for being free in her private sphere¹¹⁰—will not likely spend her limited time in endless meetings about what society should do.¹¹¹ Indeed, by subordinating every aspect of her life to its instrumental reason, capitalism deters the modern subject from making politics her everyday activity.

¹⁰⁹ Without tackling this objection, I will simply re-state here that Communalist politics is not merely proposing a form for the *polis*, but also conditioning its content. The commitment of the Communalist project to non-hierarchy does not apply only to the sphere of decision-making, but also extends to all spheres of life. Communalists should therefore be dedicated to fighting these forms of domination through their municipalist politics.

¹¹⁰ MICHEL FOUCAULT, *NAISSANCE DE LA BIOPOLITIQUE. COURS AU COLLEGE DE FRANCE (1978-1979)* 258, 272-274 (Seuil/Gallimard, 2004).

¹¹¹ The current rate of participation in institutions similar to popular assemblies in New England town meetings attests to this tendency of individuals to remain in their private sphere at the expense of the rare public spaces that the political system still concedes to offer them. Indeed, Frank Bryan advances that town meetings attract 20.5 percent of registered voters on average (BRYAN, *supra* note 62, at 65). By contrast, the voters turnout to the US Presidential election in 2016 was 55.4 percent (<https://edition.cnn.com/2016/11/11/politics/popular-vote-turnout-2016/index.html>). However, the low rate of attendance at town meetings can also be attributed to the fact town meetings have in fact very little power over important questions that would allow for self-government. I will come back later to the problem of the limited competence of the municipality.

Under the individualist paradigm and the constant competition with others for money, prestige, leisure and consumption entailed by capitalism, she has a lot to lose by dedicating the time and energy left after her work (if she has a job) to politics, and not much to gain. Seen as a dispensable task that others are paid to fulfill, managing the community affairs by engaging in non-politician politics, which is the condition *sine qua non* of the Communalist strategy, might not be the task the modern subject would be incentivized to dedicate her time to. While this objection certainly points at the necessary cultural shift of citizens from a status as worker, consumer and voter to a “participator in public affairs,” it does not take into account the incredible amount of work some communities are already doing in order to survive in neoliberal capitalist modernity, as well as the energy social movements have consistently been able to channel for political or social struggles. Such work is inherently political. That it takes the form of collective deliberation and decision-making at the level of the municipality through popular assemblies is only dependent upon the capacity of a Communalist movement to prove that this strategy will meet the community’s needs and build towards their emancipation.

Another objection that could be raised against the Communalist strategy is the modern belief that politics should be left to experts. Based on the Schumpeterian elitist view that laypeople are incapable of self-government due to the masses’ propensity to manipulation and to be influenced by their emotions,¹¹² this objection voices concern about giving power to popular assemblies composed of people who have never done politics. Beyond the fact that it is not true that people are not already doing politics, it also forgets that a fundamental component of the Communalist project is precisely an educational one. While centuries of representative democracy might have indeed not fostered people’s capacity for collective deliberation and decision-making as the mode of organizing society, this does not mean that this capacity could not be cultivated by a Communalist movement. It also forgets the fundamental distinction between policy-making and administration at the basis of Communalist direct democracy. What Communalists aim at is to transfer the policy-making activity—the political decisions about the course a society should take—from representatives to popular assemblies.¹¹³ The administration of these decisions—the gathering of the necessary information to take the decision, the coordination and the execution—can be assigned to delegates with recallable and imperative mandate.¹¹⁴ If one takes the decisions surrounding the construction of a road: “to design and construct a road is a strictly administrative responsibility. To debate and decide the need for a road, including the choice of its site and the suitability of its design, is a political process.”¹¹⁵ In order to allow the citizens to

¹¹² JOSEPH SCHUMPETER, *CAPITALISM, SOCIALISM AND DEMOCRACY* (Harper & Brothers, 1947).

¹¹³ The argument can also go against proponents of representative democracy, as the representative model does not guarantee either that elected people possess any expert knowledge. If they do, it is only a proof of the elitist character of the election and of the absence of socio-economic representativity of the people in power.

¹¹⁴ That these delegates do not turn into a bureaucracy using this knowledge to whom nobody else has access should be a point of crucial point of attention for Communalists, that can be addressed through a constant supervision of the delegates’ accountability by the assembly.

¹¹⁵ BOOKCHIN, *THE RISE OF URBANIZATION*, *supra* note 46, at 247. See also JANET BIEHL, *THE POLITICS OF SOCIAL ECOLOGY. LIBERTARIAN MUNICIPALISM* 106-107 (Black Rose Books

make decisions regarding policy, technical issues should be explained and made accessible to “ordinary citizens of reasonable competences.”¹¹⁶

A last set of objections could be qualified as the *operational objections*.¹¹⁷ This objection highlights the costly character of the mechanics of Communalist practice in terms of time, energy, human resources, etc. It emphasizes that representative democracy is in part justified in virtue of its efficiency in managing public affairs, and that a system relying on the de-professionalization of politics would be too costly to actually be feasible. Beyond the fact that this objection presupposes the acceptance of efficiency as a legitimate and prevalent criterion to evaluate political systems, it also does not allow to see that the choice of how a society is organized and how it wants to spend its resources (whether material or in terms of time or human energy) for its organization is a political choice, and not one that could only be automatically determined by the value of efficiency. However, one thing that Communalism does not contest, is that this way of doing politics takes an incredible amount of time, and that it will also take time to educate people to the practice of collectively deliberating, deciding and holding delegates in check through the popular assembly in a world where the individual is placed in a fundamental condition of heteronomy, that is of being bound to obey the law made by others. Without fully answering this objection, I will nevertheless highlight the three unquestioned assumptions on which it rests. It is these assumptions that the Communalist project precisely aims at transforming: 1) that the conditions of political modernity (the capitalist diktat that one must sell her labor force to live, linked to the current division of labor and the cultural law that “time is money”) is a natural fact that does not, could not and should not be changed; 2) that the flourishing of human beings does not, and should not, happen in the public sphere, but rather in the private sphere; 3) that a hierarchical mode of doing politics based on the existence of a class of professional rulers and that the dispossession of political agents of their capacity to have a say over their destiny, is not inherently oppressive, and should be fought against.

If Communalists want to actualize the transformative potential of this project in a pragmatic and strategic way, and to harness energy into creating a strong Communalist movement, these objections have to be faced and navigated carefully. However, there will be no definitive theoretical answers to these issues, only touchstones coming from both theory and practice, and that, in turn, can help social movements’ strategies and practices. In any case, Communalism supposes an experimentalist and pragmatist approach, seeing social change as a lasting progression towards revolutionizing the political order: “Communalists would see their program and practice as a process. Indeed, a transitional program in which each new demand provides the springboard for escalating demands that lead toward more radical and eventually revolutionary demands.”¹¹⁸

1998), who furthers this example by showing how the entire process would function through each body (see *supra* note 51).

¹¹⁶ BIEHL, *supra* note 117, at 107.

¹¹⁷ I thank Daniel Markovits for emphasizing to me the fact that, to be convincing, any account of a normative system has to make the case for both its desirability as well as its practical feasibility.

¹¹⁸ BOOKCHIN, *THE NEXT REVOLUTION*, *supra* note 45, at 29.

B. Addressing One of Them: the Legal Powerlessness of the Modern Municipality

One of the most important obstacles to the capacity of the municipality to become a locus of self-government, and thereby supplant the state as the main democratic unit, is the fact that modern cities are, legally, the very “creatures of the state” itself. Indeed, Gerald Frug explains how the contemporary powerlessness of cities is neither necessary, nor neutral, but is instead conditioned by the law and is, as such, a political choice.¹¹⁹ According to Frug, liberal political thought translated its hostility towards the political power of cities as intermediate entities between the individuals and the state. Since this power could potentially threaten the state’s interests, cities had to be made fully dependent on the centralized power.¹²⁰ That the state is both the source of legitimacy of any action of the municipality, insofar as the only power legally exercised by the municipality has to be delegated by the state, and that, in no case, are cities to be “general lawmaking bodies” or to be able “to exercise general governmental power”¹²¹ will stand in the way of those Communalists who have chosen the legal electoral strategy. The objection to the thesis that it could be possible to occupy and transform municipal institutions to make the municipality a self-governing polity functioning on the mode of Communalist direct democracy would go as follows:

Let us suppose a Communalist movement gathers enough support be able to win municipal elections, that it succeeds in attracting enough people to constitute somewhat legitimate popular assemblies to manage the community’s affairs in a non-hierarchical way and that their decisions are accurately defended and implemented by the delegates in city hall. Because of the contemporary legal powerlessness of cities,¹²² the matters on

¹¹⁹ Gerald Frug, *The City as a Legal Concept*, 93 HARV. L. REV. 1057 (1980), at 1061.

¹²⁰ *Id.* at 1059. In the U.S., “cities have only those powers delegated to them by state government”, and their exercise its strictly subject to state control (at 1062). Moreover, “firm state control of city decisionmaking is supplemented by federal restrictions on city power”, both through the interpretation of the Federal Constitution and through federal government policies (at 1063). In Belgium, the Constitution prescribes that communes are competent for all matters pertaining to “communal interest”, makes the organization of communal institutions dependent upon the will of the federal legislator, and allows the federated entities to act as “supervision authorities”, along with the federal state, to intervene in case of violation of the law or of their interpretation of the “general interest” (art. 162, Belgian Constitution).

¹²¹ *Id.* at 1065.

¹²² I will not deal here with how the economic disempowerment of the municipality—whether because of conditional state and federal financial aid, of constraints on city’s ability to borrow money or levy tax, or, when they can, of their dependence on “the willingness of taxpayers to locate or do business within city boundaries” (*id.* at 1064)—conditions its capacity for political self-determination, in order to focus only on the consequences of its legal disempowerment (even though the two are of course connected), and of its potential disobedience to such legal limitations. That the state or companies can threaten a city to take away capital in case it enacts policies that would go against their interests is an existential obstacle to the Communalist project, that needs to be confronted in both theory and practice. Indeed, when Seattle city council announced that it would pass a head tax of \$500 per year per worker on businesses making more than \$20 million yearly profit in order to fund public housing and to reduce the dramatic homelessness crisis in the city, Amazon’s threat of capital flight succeeded in first reducing it to \$275, and then to the

which popular assemblies will be legally able to decide—directly dependent upon the mandate of their delegate in city hall—will simply be too limited or marginal to make the intended change. Indeed, if Communalists claim to revolutionize the political order by making the commune the locus of direct self-government, the popular assembly should be able to decide how the economic life of the community functions,¹²³ who constitutes its demos, how to handle urbanistic questions, how it relates to the environment, how justice is done, how to defend the community from internal and external threats, how it relates to other communes, to the state, and so on and so forth. And almost none of these matters could be decided on legally by the municipal institutions under the current legal order. Insofar as popular assemblies should decide on all public affairs, they could potentially violate any law of the state. Tying city councilors' functions to the decisions of popular assemblies through imperative mandate will either frustrate the popular assemblies if the delegates violate their imperative mandates (by omission) by abiding by the law, or make the actions and decisions of the delegates in municipal institutions illegal in the eyes of the entities that are at the source of their very legitimacy. Since, as a first

ultimate abandon of the head tax (Alana Semuels, *How Amazon Helped Kill a Seattle Tax on Business*, THE ATLANTIC, June 13, 2018 <https://www.theatlantic.com/technology/archive/2018/06/how-amazon-helped-kill-a-seattle-tax-on-business/562736/>). I became aware of the important threat to municipalism that is capital flight thanks to Blair Taylor of the Institute for Social Ecology. One movement developing its strategy of social change as a solution to this problem is Cooperation Jackson. This movement precisely starts from the premise that economic self-determination is a precondition for political self-determination, and especially for black self-determination, in a context where Jackson's economy, and the South economy at large, has always rested on the disposability of the Black working class (AKUNO and NANGWAYA, *supra* note 68; Kali Akuno, *The Jackson-Kush Plan: The Struggle for Black Self-Determination and Economic Democracy* (2012), available at <https://fr.scribd.com/doc/218031046/The-Jackson-Kush-Plan>).

¹²³ Communalism rests on the idea that the economic sphere should be subordinated to the political sphere, at least for matters concerning the production, distribution, exchange and consumption of goods and services, which is captured by the idea of the municipalization of the economy. This supposes that a popular assembly should be able to decide on the social security and taxation system, the regime of private property, the regulation of commercial exchanges, the condition for forming and enforcing contract, and so on. For more information on that concept, see Janet Biehl, *Municipalization of the Economy*, <http://www.biehlonbookchin.com/municipalization-economy/>; Murray Bookchin, *Municipalization: Community Ownership of the Economy*; BOOKCHIN, THE RISE OF URBANIZATION, *supra* note 46; BIEHL, THE POLITICS OF SOCIAL ECOLOGY, Chapter 12, *supra* note 117. For an interesting account of how the municipalization of the economy proposed by Communalism could be articulated to workers' self-management in the workplace, see Howard Hawkins, *Community Control, Workers' Control, and the Cooperative Commonwealth*, 3 SOCIETY AND NATURE 55 (1993), at 63. Hawkins advances the idea of "a cooperative commonwealth." According to him "the most democratic structure for a cooperative commonwealth would be (1) workers' control of the everyday operations of workplaces with workers rotating among workplaces (until physical decentralization largely reunites production and consumption, workers and community, in eco-communities and bioregions that render workers' control as distinct from community control no longer a question), and (2) community control of the basic economic decisions concerning the structure of consumption, the allocation of production responsibilities, the distribution of surplus, the choice of technology, the scale of production and distribution, and harmonization with the environment." (at 65-66).

step, Communalists want to remain legally in power, this legal powerlessness of cities threatens either the raison d'être of the project, or its existence.

Several paths could be explored to navigate the contradiction of taking the most legally powerless political unit to aim at no less than revolutionizing the political order. I suggest two reasons for not considering the Communalist strategy as a dead end on the basis of this objection: because this strategy cultivates the political legitimacy of the municipality at the expense of its legal legitimacy (a); and because it aims at increasing its political power through confederation (b). None of these avenues will reconcile the theoretical and practical contradictions of the Communalist strategy revealed by this objection by offering an abstract synthesis, which would in any case not correspond to any reality. Despite the contemporary legal powerlessness of municipalities, I nevertheless hope to make the case for its political power, and therefore, for the relevance of using the municipality, confederated with each other, as the main site of political change.

i. Cultivating Political Legitimacy at the Expense of Legal Legitimacy

When Frug calls for a reconstruction of city power in order to overcome the contemporary powerlessness of cities and to realize public freedom “as popular participation in the exercise of power” and “as the ability of a group of people, working together, to control actively the basic societal decisions that affect their lives,”¹²⁴ he conceives this restructuring of power as ultimately taking the shape of legal, and perhaps even constitutional, reforms. Granting no legitimacy to the legal system insofar as it takes its source of legitimacy from the state, that is, the very entity they aim at abolishing, Communalists would not be satisfied with the legal route.

While the municipality might be one of the most powerless entities in strictly *legal* terms because of its lack of general lawmaking capacity and its institutional subordination to larger political entities, it need not be the case for its *political* power. Deducing political powerlessness out of legal powerlessness translates not only a reformist vision of social change, one that would be “the expression of the life of the present society”; but it also attests to an elitist vision of social change, one that could be triggered only by those who have a delimited power in virtue of the very system in question. Rather, Communalism starts from the potential political power of the municipality, as it is a political unit offering possibilities that no other can. Indeed, since it is the only one where the people can be physically assembled, the municipality allows for a way of doing politics that no other level of power could possibly realize since “no room would hold all”. That the people could, and should, be physically assembled to decide on its future, has been suppressed from the array of political options to realize self-government, as it is considered impossible under the conditions of political modernity. Because Communalism relies on this continuous presence of the people, both as a means and as an end, what could *politically* be achieved through Communalist direct democracy could go beyond what could be *legally* achieved. And what could be politically achieved is in fact another form of political legitimacy.

¹²⁴ Frug, *supra* note 121, at 1070, 1122 and 1149.

As stated earlier, since modern revolutions, the exercise of power is considered as legitimate insofar as it derives from the consent of those over whom that power is exercised, expressed through elections of representatives who will be the authors of the law.¹²⁵ While representative democracy within the framework of the nation-state relies on an understanding of consent as the periodic undeliberated and individual choice for representatives, to be selected among a narrow group of economic and political elite, who will be accountable to them only on the day of elections, the Communalist strategy proposes to think anew the notion of consent giving rise to political legitimacy. Since the scale of the municipality allows all its residents to meet, deliberate, decide and hold delegates accountable on a face-to-face basis, the Communalist strategy not only allows for the people to express their continuous consent thanks to the system of imperative and recallable mandate, but also to be the effective author of the laws.¹²⁶ While representative democracy requires that citizens be passive between the moments at which their consent will be asked and that they are never the *direct* authors of the law, Communalist direct democracy demands the opposite—that authorship of, and consent to, the rules that will govern a society should be actualized by a constant engagement of the people in the public sphere. Thanks to its capacity to create the conditions of authorship and present consent of all in public life, popular assemblies could receive increasing political legitimacy, safeguarding their *raison d'être*. Up to a point that the people would give more legitimacy to the rules they have collectively and directly given to themselves, because they are both their subjects and their objects,¹²⁷ rather than to those whose legitimacy stems from other laws made by unaccountable others—whether because of the lack of accountability of elected representatives, and/or because they are not there anymore.

Moreover, the political legitimacy of popular assembly also stems from the educational aspect of this democratic practice. The fact that power is directly exercised by the popular assembly and not by representatives allows for citizens to educate themselves to collective deliberation and decision-making throughout their continuous assembly. In this sense, Bookchin considers popular assemblies as a means to realize the Greek notion of *paideia*: that a community learns and eventually transforms itself by practicing democracy.¹²⁸ When a Communalist movement aims at occupying and

¹²⁵ MANIN, *supra* note 16, 113-115. Cfr *supra* I.1.

¹²⁶ In their article “The Original Theory of Constitutionalism”, David Grewal and Jedediah Purdy develop how popular sovereignty must combine both the idea of popular authorship and of present consent (David Singh Grewal and Jedediah Purdy, *The Original Theory of Constitutionalism*, 127 YALE L.J. 664, at 681-686). While they focus on the popular sovereignty of the act of fundamental lawmaking, Communalism would require popular authorship and present consent for both fundamental and ordinary law-making. I will not develop the articulation between fundamental lawmaking, policy/everyday law-making and administration, as it goes beyond the scope of this paper.

¹²⁷ This connects to Benhabib’s definition of popular sovereignty, that is “the idea that the people are subjects and objects of the law, or the makers as well as obeyers of the law” (Benhabib, *supra* note 81, at 97-98).

¹²⁸ See BOOKCHIN, THE RISE OF URBANIZATION, *supra* note 46, at 59 and ff; BOOKCHIN, THE NEXT REVOLUTION, *supra* note 45, at 49 and ff. For other similar accounts on the importance of participatory democracy of political education, see also BARBER, STRONG DEMOCRACY, *supra*

transforming the municipal institutions, it does not aim at transforming them legally, and enacting the shift operated in the political culture in the letter of the law,¹²⁹ but rather to transform the relation of the citizens to the political, that is, the very conditions of political legitimacy. As such, the “immediate goal of a libertarian municipalist agenda” is “to reopen a public sphere in flat opposition to statism, one that allows for maximum democracy in the literal sense of the term, and to create in embryonic form the institutions that can give power to a people generally. If this perspective can be initially achieved only by morally empowered assemblies on a limited scale, at least it will be a form of popular power that can, in time, expand locally and grow over wide regions.”¹³⁰

ii. Increasing Political Power Through Confederation

The political power of the municipality would not only stem from the legitimacy of popular assemblies, but also from the confederation of municipalities. Indeed, the confederation offers three avenues that could allow the municipality to compensate its legal powerlessness: 1) the confederation would be a vehicle for municipalities to share knowledge, experience and resources among each other; 2) the confederation could allow separate municipalities to engage in “collective bargaining” at the regional, national and international level to have more legal power; 3) the confederation would consolidate a dual power situation of the confederated municipalities against the state. As a reminder, a confederation is a generic entity, that can be formed by a few or many municipalities, on the basis of previous or new geographic delimitations, and that would link municipalities among themselves through delegates sent to confederal councils with imperative and recallable mandates from their municipal assemblies, and on a rotating basis.

First, to confederate dispersed municipalities can increase their power by providing a platform where they can share resources, successes, failures, challenges, skills, knowledge, etc. The modern nation-state does not provide any institutional forum for municipalities to exchange the experiences they live as a specific political entity, to

note 52, at 265 and ff; CAROLE PATEMAN, *PARTICIPATION AND DEMOCRATIC THEORY* (Cambridge University Press, 1970), at 47 and ff.

¹²⁹ Though this should not preclude obtaining legal reforms in the transitional process in order to increasing the power of municipalities. But the legal reforms should only be aimed at insofar as they can expand municipal self-government, with the ultimate purpose of changing the structure of power, and therefore, the entire legal order. I will develop this further in the section about the confederation.

¹³⁰ BOOKCHIN, *THE BOOKCHIN READER*, *supra* note 99, at 175. To illustrate that municipal assemblies can, despite their legal powerlessness, have an important moral authority on questions beyond their scope of competences, he uses the following example: “An interesting case in point is the nuclear freeze resolution that was adopted by more than a hundred town meetings in Vermont a decade ago. Not only did this resolution resonate throughout the entire United States, leading to ad hoc “town meetings” in regions of the country that had never seen them, it affected national policy on this issue and culminated in a demonstration of approximately a million people in New York City. Yet none of the town meetings had the “legal” authority to enforce a nuclear freeze, nor did the issue fall within the purview of a typical New England town meeting’s agenda.” (BOOKCHIN, *THE BOOKCHIN READER* 191, *supra* note 99—he wrote this text in 1987).

deliberate, let alone to make decisions.¹³¹ However, many modern municipalities face similar challenges, such as gentrification, homelessness, migration, segregation, privatization of public services, capital flight, inadequate financing, pollution, energy, food and water dependence, etc. Communalist municipalities will face another range of challenges, whether it is about how to entice people to participate in the everyday management of common affairs through assembly, or, how to cope with limited law-making capacity. While each municipality can develop separate practices to overcome these challenges according to its own conditions, and learn from it, sharing knowledge and experiences can lead to a “mutual learning ground”¹³² that will increase the outcomes of the learning process and, thereby, the capacity of a municipality to respond to problems. Such informal cross-border cooperation already exists.¹³³ It does not stem from any “superior” authorities, but rather “grows out of voluntary actions undertaken by individual cities and their citizens in response to common problems,” which attests to what Barber calls the “pragmatic, problem solving character” of cities.¹³⁴

Second, confederated municipalities could create a strategy of “collective bargaining” with entities that are politically more powerful, in order to obtain reforms that increase their institutional power.¹³⁵ While this strategy seems reformist as it would materialize in legal reforms, it would not be the “expression of the life of the old society.” Indeed, this strategy would use as a means the goals it strives for, that is the exercise of public power through confederated municipalities functioning on the mode of direct democracy, thereby taking the municipality as the main autonomous political entity.

Third, the confederation of municipalities is not only another entity that is instrumental to increasing the power of the municipality. Rather, the confederation is the very political form of self-government that the Communalist project proposes in order to supplant the state. This situation of tension between the two forces is considered as a necessity since “the two cannot coexist on the long term.”¹³⁶ Bookchin’s dialectical understanding of the relation between the state and the confederation makes the

¹³¹ While modern nation-state is compatible with federalism, where institutions are intentionally created for federated entities to meet and decide together as entities, this is not the case for municipalities (or at least not at a national level and on important political matters). Federalism, even if it tempers the national ideal, still follows the state logic of a structure of professionalized governance, and does not threaten the *raison d’être* of the state in the way that municipalities could.

¹³² Giuseppe Caccia, *From Citizen Platforms to Fearless Cities: Europe’s New Municipalism*, POLITICAL CRITIQUE, June 7, 2017, <https://www.opendemocracy.net/can-europe-make-it/beppe-caccia/european-network-of-rebel-cities>.

¹³³ For example, the municipalist summits “Fearless Cities” happen around the Western world and provide a forum for municipalist movements, whether in city hall or not, to exchange problems and solutions on the basis of a common municipalist paradigm (www.fearlesscities.com).

¹³⁴ BENJAMIN R. BARBER, *IF MAYORS RULED THE WORLD. DYSFUNCTIONAL NATIONS, RISING CITIES* 11 and 138-139 (Yale University Press, 2013).

¹³⁵ In this sense, see Giuseppe Caccia, *From Citizen Platforms to Fearless Cities*, *supra* note 130; Laura Roth and Bertie Russel, *Translocal Solidarity and the New Municipalism*, ROAR Magazine, Fall 2018, <https://roarmag.org/magazine/municipalist-movement-internationalism-solidarity/>.

¹³⁶ BOOKCHIN, *THE NEXT REVOLUTION*, *supra* note 45, at 78.

abolition of the former the goal of Communalism: “libertarian municipalism gains its life and its integrity precisely from the dialectical tension it proposes between the nation-state and the municipal confederation. Its “law of life,” to use an old Marxian term, consists precisely in its struggle with the state. The tension between municipal confederations and the state must be clear and uncompromising. Since these confederations would exist primarily in opposition to statecraft, they cannot be compromised by state, provincial, or national elections, much less achieved by these means. Libertarian municipalism is formed by its struggle with the state, strengthened by this struggle, indeed, defined by this struggle.”¹³⁷

Such a confederation is inherently different from other propositions of direct democracy proponents, such as the one of Barber to create a global parliament of mayors.¹³⁸ Despite the common ground of taking municipalities as the main democratic units and connecting them, such a proposition still amounts to classical representative politics. Indeed, even though he advocates for a “strong democracy in the city” through mechanisms like participatory budgeting and global civil society, his account nonetheless rests on the “unique role of mayor.”¹³⁹ In the global parliament of mayors, there would be “deliberative judges of global public goods, embodying the Burkean common spirit.”¹⁴⁰ The problem of concentration of power preventing popular self-government and preventing the political nature of individuals to develop will certainly not be resolved by substituting the elected municipal mayor with the national government, irrespective of whether she might be closer to the people, nor will it be resolved by creating a unique, global governing body at the world level, which is unlikely to avoid the pitfalls of burdensome bureaucratic organizations. Rather, self-government is best achieved by having autonomous municipalities organized in several confederations with recallable and imperative mandates.

VI. Relating the Communalist Strategy to the Legal Order: Institutional Disobedience

Since the Communalist strategy will take time before leading to a Communalist society with a new legal order, it is relevant to think of its relation to the current legal order. By deciding to run for the municipal elections under the paradigm they aim at escaping, in order to change municipal institutions according to the paradigm they aim at creating, Communalist movements present an ambiguous relationship to the law. On the one hand, municipalist movements somehow recognize the legal order’s legitimacy as they agree to play by the established rules to arrive in power, acknowledging the very mechanism that is both symbolically and effectively at the origin of their discontents with the established political order—the representation of the *demos* through elections. These movements are therefore not at a complete cut-off point either, as they use state-organized elections to come into power and will likely cooperate with other levels of power, at least initially. On the other hand, Communalists movements take this power

¹³⁷ *Id.* at 93-94.

¹³⁸ Barber, *If Mayors Ruled the World*, *supra* note 136.

¹³⁹ *Id.* at 303-319 and 350.

¹⁴⁰ *Id.* at 351.

with the ultimate goal of transforming both the existing political and legal order and changing the structure of power.

Therefore, their strategy supposes to assent to the legal legitimacy conferred by election law, at least initially, and uses it to create popular assemblies to allow for the direct participation of unelected citizens to power. However, by doing so, a “Communist municipality” would challenge the current form of exercise of power by making popular assemblies the author of decisions on public affairs, rather than elected representatives. Thinking of the peculiar relationship municipalist movements have to the legal order in their strategy of creating a new political paradigm therefore requires going beyond traditional frameworks. Insofar as the revolutionary purpose of Communist movements and their ambition to occupy city government does not qualify Communist movements as traditional social movements, the literature on law and social movements will not be helpful to capture their relationship to the law.¹⁴¹ Since their political action will entail the violations of laws, one could then think of the classical concept of civil disobedience in order to capture a Communist movement’s relationship to the law. However, this concept presents two limitations. First, disobedience is considered as pertaining to the field of criminal law, regulating the behavior of individuals, although they might act collectively. Even though disobedience to the law can be civil—in the case of disobedience to a law considered as unjust for political reasons—or “only” criminal—any other disobedience that the criminal system does not consider as political, whether justified or not¹⁴²—the relationship of the disobedient person is still captured through the lens of criminal law. Second, civil disobedience, whether it is the liberal—triggered by the violation of a right—or the republican—prompted by a democratic deficit—conception, is still seen as a mode of action that presupposes the acknowledgment of the legitimacy of the state, as it wishes, through the disobedient act, to contribute to the public debate on a given issue and provoke an action of the state on that precise issue.¹⁴³ Communist movements do not

¹⁴¹ Indeed, social movements are traditionally defined as “associations in civil society that mediate relations between government and citizenry”, whether it is by directing public opinion towards a certain issue, “supplementing[] electoral politics as a medium of democratic expression” (Siegel, *The Jurisgenerative Role of Social Movements in United States Constitutional Law*, at 2), litigating to gain the enforcement of certain rights or “as a means of political representation” (Cummings, *supra* note 41) or by influencing the development of constitutional law by its participation to constitutional culture (Reva Siegel, *Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the de Facto ERA*, 94 CAL. L. REV., 94 132).

¹⁴² In fact, the distinction between civil disobedience and “classical criminal” disobedience is dependent upon the judge’s conception of what is a “politically acceptable disobedience”. Judges may sometimes deny the political nature of the disobedience when adjudicating on the deed committed by the “criminal”, whether it is for conscious political reasons—to make an example out of a disobedient person and deter other people from adopting similar modes of action to protest against a law, or also to deny her the public forum she sought to have by using this strategy, and thereby undermining the political impact she intended –, or unconscious ones—when the disobedient act touches upon a norm that is so deeply entrenched in the liberal system of values that it is not even considered as political anymore, such as theft, material degradation, squatting, trespassing or the repression of fascist discourses by antifascists through means that can amount to violence in the eyes of the criminal code.

¹⁴³ Daniel Markovits, *Democratic Disobedience*, 114 YALE L.J. 1897 (2005).

attempt to remedy a democratic deficit by having recourse to civil disobedience in order to enhance the functioning of democratic institutions and to “trigger sovereign reengagements with the issues at hand,”¹⁴⁴ but rather to create a new sovereign. The framework of civil, or even “democratic,”¹⁴⁵ disobedience will therefore be of little use to understand the Communalist acts of political creation.

However, the concept of disobedience itself could still capture the stakes of such a relationship to the legal order. However, such a disobedience could be considered as an *institutional disobedience*, as it covers the violation of the laws of democracy, as posited by contemporary states. Indeed, they would not respect the constitutional way of exercising of power through a republican form of government, but rather condition the legitimacy of any act of self-government on the direct participation of people. Our current everyday life is conditioned upon a certain understanding of our relationship to the law and to political power: our behavior is therefore regulated by public law as much as it is by criminal law. In the same way as citizens *obey* the logic of representative democracy and therefore do not participate actively in the political sphere, communities who decide, thanks to the institutions created by the movement occupying the municipal power, to manage their own affairs, could be considered to *disobey* the laws of democracy. Thinking in term of institutional disobedience could fully capture the Communalist activity with regard to the traditional legal order. If the political activity of Communalist municipalities was to be understood only in a fragmented way, as sporadic or unrelated actions, this would miss the political dimension of the Communalists project, by focusing only on legalistic aspects. Indeed, it would obscure the coherent political Communalist strategy that aims at revolutionizing the political order by occupying and transforming municipal institutions.

However, since the term of disobedience presupposes a negative relationship to an existing order of things, it should not be misleading as to the positive nature of the Communalist project that is still one of political creation—the political creation of a new order. Such an act of political creation begs the question of the limit at which a people becomes sovereign once again after challenging the current order’s legitimacy. Contrary to other revolutionary moment in which the movement aiming at the revolutionary change might appear as more uncompromising towards existing structures of power, it is important to keep in mind that Communalist movements’ use of contemporary institutions aims not only at putting an end to the “life of the old society,” but also at creating the foundations of the new one.

VII. Conclusion

The word revolution evokes various political imaginaries. Popular uprisings, bloody street fighting, political intrigues, *coup d'état*, general strike ... Very rarely will the image of a municipalist party getting elected to city hall and tying their mandates to the decisions of popular assemblies correspond to what is commonly thought as a revolutionary

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

movement. This is however one of the strategies proposed by the political philosophy of Communalism in order to create a new political order.

This paper starts by tracing how revolutionary movements throughout modern history were animated by the project of self-government, but also how they have failed to perpetuate it. Indeed, they failed to institutionalize the popular exercise of this newly gained public freedom, leaving it to the exclusive benefit of the professional political class. Contemporary social movements that have revived the tradition of using public spaces to hold popular assemblies endured similar failures—that of not institutionalizing direct democracy and thereby leaving the structures of power untouched. Drawing on these pitfalls, the Communalist project proposes to exercise public power at the level of autonomous municipalities, networked into confederations, thereby departing both from the political unit of the nation-state in favor of the municipality, and the paradigm of representative democracy for the one of direct democracy.

In the second section, I turn to the concepts of reform and revolution, in order to understand how to reconcile the Communalist goal to revolutionize the political order through the reformist means that is the elections. Indeed, by deciding to run for municipal elections in order to transfer power to popular assemblies where the community would directly govern its own affairs, Communalists have chosen to not completely leave the framework of “the social form created by the last revolution,” that of representative democracy. However, insofar as both the means and ends of Communalist movements consist in the direct exercise of public power by the municipal popular assemblies through face-to-face deliberation and decision-making as well as recallable and imperative mandates, their praxis can be seen as an “act of political creation” and, therefore, revolutionary.

Third, I formulate what could be a generic Communalist strategy. While there is no one-size-fits-all strategy to make the municipality a locus of self-government, I focused on Communalist movements aiming at transforming municipal institutions’ functioning and purposes by winning the elections, with the ultimate goal to change the relation of the citizens to the political, and, ultimately, the structures of power. To succeed, such a strategy would require already constituting these popular assemblies, the *demos*, before thinking of seizing city hall power. This is a precondition to ensure that the elected delegates will not influence political decisions as individuals, but rather instead be the spokespeople of the assemblies.

I then turn to the objections that can be formulated against the thesis that self-government can be achieved by winning municipal elections and tying the won mandates to the decisions of popular assemblies. I formulate and classify several objections against this thesis. Among these objections, I address one of them, that of the limited legal power of the municipality in our modern nation-state. I propose two avenues of reflections to understand how to foster the political power of the municipality in order to compensate for its lack of legal power: to increase political legitimacy at the expense of legal legitimacy and to confederate municipalities to increase their power against the state.

I end by analyzing the paradoxes raised by the strategy of Communalist movements at the specific level of their relation to the legal order. Insofar as the result of their political activity will, at some point, violate the laws of democracy by granting legitimacy only to the decisions of the assemblies, while at the same time use their legitimacy granted by the elections to keep the work of organizing popular assemblies, their relation to the law could be understood as one of *institutional disobedience*.

