

Socialist Statecraft: A Few Structural Signposts

By Clayton Cavanaugh

“No constitutional project can claim infallibility. It must prove itself in fire.”¹

I. Introduction

Liberal democracies, the de facto political structure for much of the last few centuries, are beginning to decline—not just in the United States but throughout the world.² As discontent sweeps through these nations, a Marxist might reiterate the inevitability of this system’s collapse: that despite capitalism’s attempts to suppress its internal contradictions, “the growth of capitalism will develop its inner contradictions, resulting inevitably, at some point, in its collapse.”³ When this occurs, and liberal democracies based on the capitalist mode of production can no longer support themselves, the people of the world will face a choice: either succumb to this collapse or develop beyond it to a new mode of production and sociopolitical organization which resolves the internal contradictions which led to collapse. New ordering principles, new constitutions, must be expounded in response. When those constitutions are handed the monumental task of resolving those contradictions which caused collapse, they will assuredly vary among societies and often fail, learn, try again, and fail in an iterative process towards the next phase in human society.

It would be a task beyond comprehension to expound what one of these constitutions would look like for what our present United States would look like.⁴ Any future development of American constitutional reform must be grounded in and a response to the historical development that led to that moment. Successful political reform requires study and understanding of existing conditions, for there is no one-size-fits-all reform and every country has its own distinct historical configurations of power and authority.⁵ But one may attempt to lay out “a few main signposts which indicate the general direction in which to look.”⁶ This paper

¹ Rosa Luxemburg, “Organizational Questions of the Russian Social Democracy: Leninism or Marxism? (1904) <https://www.marxists.org/archive/luxemburg/1904/questions-rsd/ch01.htm> [hereinafter Leninism or Marxism]

² Camila Vergara, *Systemic Corruption: Constitutional Ideas for an Anti-Oligarchic Republic* 1-10 (Princeton University Press 2020); Max Fisher, *How Democracy Is Under Threat Across the Globe*, N.Y. TIMES (Aug. 19, 2022), <https://www.nytimes.com/2022/08/19/world/democracy-threat.html>.

³ Rosa Luxemburg, *Reform or Revolution?* 9 (1899) [hereinafter RR].

⁴ “The socialist system of society should only be, and can only be, an historical product, born out of the school of its own experiences, born in the course of its realization” Rosa Luxemburg, *Reform or Revolution?* 70 (1899).

⁵ Dr Paul Hutchcroft, [Strong Patronage, Weak Parties—the Case for Electoral System Redesign in the Philippines](#) (page 3), Charter Change Issues Brief No. 2: Electoral System Reform and Design (Nov. 2019); Rosa Luxemburg, *The Russian Revolution* 69-70 (University of Michigan 1st ed. 1961)

⁶ Luxemburg, RR, *supra* note 3, at 69.

will briefly review some select points of socialist constitutional reforms and ground them in the cultural and historical conditions of the United States. By no means does this paper purport to outline all of the most important provisions, or even the most desirable ones. It seeks to answer for an “American” socialist constitution the three basic questions of democratic constitutional reform: (1) central-local relations and whether a country should use a unitary or federal structure (2) representational structure or whether a country wants a presidential, parliamentary, or hybrid system, and (3) electoral systems. This paper suggests that (1) a unitary government of plenary power, (2) organized into a pseudo-parliamentary structure, (3) elected by universal suffrage in a proportional representation system would satisfy some basic socialist structural requirements while refraining from offending the historical and cultural context of the North American region now organized as the United States of America.

II. Unitary Government of Plenary Power

A socialist government would necessarily be one of plenary power. Liberal constitutionalism is characterized by the concepts, principles, and practices of a legally limited government in the name of individual liberty.⁷ To socialists, the state is merely a machine for the oppression of one economic class over another, and a socialist country as opposed to a capitalist country rules as a dictatorship of the proletariat over the bourgeoisie.⁸ Therefore, in contrast to liberal constitutionalism, socialist constitutional theory’s institutional design seeks to organize rather than constrain power and pursues collective economic goals rather than liberal rights.⁹ The socialist nations that exist today are constitutionally “instrumentalist,” meaning that they are merely an instrument for the working class to (1) legalize its power and (2) project a program for social progress toward socialism.¹⁰

A government of plenary powers is a necessary component of a socialist state, and while the American historical tradition may struggle to accommodate it at first, there are more reasons to believe it would succeed than fail. First, governments of plenary powers are not alien to the American tradition—the many sovereign state governments possess plenary power, except as they are limited by state constitutions, born from the legal authority of popular sovereignty.¹¹ Far from being shunned, this conception of popular sovereignty and plenary power has been praised by American legal scholars since its conception. In addition, while the United States Constitution purports to create a federal government of limited powers, that has not been the historical experience—the commerce clause, for example, has been extended far beyond its textual limits to enact socially desirable legislation covering public health priorities as diverse as drug

⁷ Ngoc Son Bui, *Constitutional Change in the Contemporary Socialist World* 66 (2020).

⁸ *Id.* at 76.

⁹ *Id.* at 66-67.

¹⁰ *Id.* at 76.

¹¹ Nina Neff, *Popular Sovereignty and the Doctrine of Plenary State Legislative Power*, 62 *William & Mary L. Rev.* 1 (2021).

labeling;¹² environmental protection;¹³ laws regulating child labor, the minimum wage, and conditions of employment;¹⁴ and laws aimed at remedying gender-motivated violence.¹⁵ Congress' supposedly limited, enumerated power under the commerce clause was upheld a federal quota on wheat grown on personal property by a single farmer primarily for personal consumption.¹⁶ This is not a new trend or a limited one—"from the start, the Framers found unenumerated federal powers."¹⁷ More than ever, specific *restrictions* on the powers of the modern American Congress are its limiting factor. It is clear that a government of plenary powers is not an alien or even functionally distinct concept to Americans, and that the cultural and historical background of the nation would support a nation of plenary power.

This plenary power must, in the end, belong to one indivisible republic,¹⁸ and that indivisible republic must be a unitary state.¹⁹ Socialist constitutional order is hostile to any manifestation of localism or federalism because it strives to unite all workers in a single cooperative unit, regardless of geographic, religious, or occupational differences.²⁰ Indeed, the socialist states which have persevered to the modern era have unitary structure.²¹ In a unitary state, all power belongs to the national government, which delegates that power to administrative subdivisions. Power delegated from national to subnational bodies in a unitary state (in a process called "devolution") may later be retrieved by the national body. In a federal system, by contrast, regional authorities enjoy constitutional status; their power is inherent rather than delegated. A unitary state does not exclude local self-government—in fact, in socialist states, the national state seeks to "wither away" as it secures the dictatorship of the proletariat, by increasingly devolving power to increasingly more local administrations until they eventually have even more self-control than they would under a federal republic.²²

The American social and political culture would have some trouble adapting to a unitary system, but a unitary system does not seem antithetical to the *core* values and norms of the people. Such a system is not particularly prone to collapse or discord, nor are such systems rare—a healthy majority of the world's sovereign states have a unitary system of government.²³ American civic life revolves heavily around state identity, but that is not a substantial obstacle to unitary government. As noted above, administrative sub-units of the unitary government, in this case states, could have exactly the same powers under a unitary scheme as they currently have

¹² Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §331(k) (1938)

¹³ Clean Water Act, 33 U.S.C. §1251 et seq. (1972)

¹⁴ Fair Labor Standards Act, 29 U.S.C. §§201–219 (1938)

¹⁵ United States v. Morrison, 529 U.S. 598 (2000)

¹⁶ Wickard v. Filburn, 317 U.S. 111 (1942)

¹⁷ Calvin H. Johnson, The Dubious Enumerated Power Doctrine, 104 Constitutional Commentary 25, 29 (2005).

¹⁸ V.I. Lenin, *State and Revolution* 46 (Martino Publishing 2001)

¹⁹ Id. (referencing an uncited text by Engels).

²⁰ Luxemburg, *Leninism or Marxism*, *supra* note 1.

²¹ Bui, *supra* note 7, at 80-81.

²² Lenin, *supra* note 18, at 60-62.

²³ Of the 193 member countries of the United Nations, 165 are unitary. The United Kingdom and France are two well-recognized examples.

under a federal scheme. States already rely heavily on the federal government, acting as mere administrative units. When given grant money by the federal government, the states are largely obligated to administer it as directed.²⁴ In 2019 alone, the federal government provided states \$750 billion in grants to fund public policies including “health care, transportation, income security, education, job training, social services, community development, and environmental protection.”²⁵ This accounted for one-third of all state funding, and more than half of state funding for healthcare and public assistance.²⁶ The reality is that the federal government already delegates and dictates a huge portion of what is usually considered state action. It would not fundamentally shift the American cultural, political, or social life to organize a government under a unitary state.

III. Parliamentary-Plus Government Structure

One of the core, identifying features of modern constitutions is the method of selecting and removing the head of government and the relationship between the legislative and executive bodies of government.²⁷ It may be puzzling to discover, then, that Marxist political theory does not appear to directly require any particular structure of these kinds. One may upon review of these structures and Marxist thought, however, theorize the most appropriate structure. Based on Marxist theory’s rejection of the separation of powers one may infer the proper use of a unified *type* of parliamentary system.

A parliamentary system requires that the legislative and executive branches merge, in certain ways, into a single parliament.²⁸ In such a system, the legislature selects the chief executive and can similarly remove them.²⁹ Depending on certain factors, this often ultimately subordinates the executive to the legislature.³⁰

The Marxist constitutional theory rejects Montesquieu’s model of strict separation of powers.³¹ In order to accomplish the end goal of a socialist state—the eventual “withering away” of the state into a communist society—all the functional subdivisions of the state must work together.³² To be sure, that does not mean that there is no distribution of powers into different departments. The separation of responsibilities based on the executive, judicial, and legislative functions exists in some form in socialist countries as well as the capitalist ones. In the end, though, the principle of democratic centralism requires that these functions must all be

²⁴ Brian T. Yeh, Congressional Research Service, R44797, *The Federal Government’s Authority to Impose Conditions on Grant Funds* (2017).

²⁵ Congressional Research Service, R40638, *Federal Grants to State and Local Governments: A Historical Perspective on Contemporary Issues* (2019).

²⁶ *Id.*

²⁷ Thomas O. Sargentich, *The Presidential and Parliamentary Models of National Government*, 8 *American University International Law Review* 579, 579 (1993).

²⁸ Gonzalo V. Puig, *Parliamentary versus Presidential Government*, 74 *Australian Quarterly* 9, 9 (2002).

²⁹ Sargentich, *supra* note 27, at 579, 581.

³⁰ *Id.*

³¹ Bui, *supra* note 7, at 80-81.

³² *Id.*

subordinate to the representative body of the people.³³ As opposed to Americans separation of power, the subdivisions simply specialize in their tasks and divide their labors to accomplish cooperative goals rather than constrain power.³⁴

While the separation of powers seems a necessary component to the modern United States political order, there is reason to believe a future America may be comfortable ridding itself of the concept. In 1885, President Woodrow Wilson famously wrote that the United States government tended to be fundamentally ineffective because power is divided between two different and competing political branches—the legislative and executive.³⁵ A divided government in a system with a strong separation of powers encourages “stalemate whenever important and difficult issues are involved.”³⁶ Indeed, though there is some continuing disagreement on the matter, there is reason to believe that parliamentary democracy generally functions more efficiently than its presidential counterpart.³⁷

Further, the American public does not seem unduly attached to a formalist understanding of the separation of powers. Polling indicates that half of Americans cannot name the three branches of government as they exist in the United States.³⁸ A quarter of Americans can’t name a single branch.³⁹ This represents a trending decline among Americans.⁴⁰ Adoption of a parliamentary system certainly would not make American civic life an aberration on a global perspective—only 2 of the oldest 22 democracies operate on a presidential system.⁴¹ There does not appear to be a compelling historical or deeply rooted cultural reason that the American public would reject a parliamentary system in place of its presidential system.

However, it must be noted that the proposed socialist constitutional order is not a mere parliamentary system—a unique feature is that the judiciary would also be subordinate to the parliamentary legislature. Since the government is one of plenary power, the court would not be a necessary check on the legislature—there would be no way to challenge its power. There is reason to believe this would be agreeable to the public. The opinions of the modern American Supreme Court interpreting law are hardly intuitive—despite apparently interpreting a constitution of enumerated power and outlining principles that already exist, even lawyers who spend their lifetime specializing in understanding the law do not have a secure grasp on what it

³³ Id.

³⁴ Id.

³⁵ Thomas O. Sargentich, *The Presidential and Parliamentary Models of National Government*, 8 *American University International Law Review* 583 (1993).

³⁶ Id.

³⁷ Daniel Diermeier and Timothy J. Feddersen, *Cohesion in Legislatures and the Vote of Confidence Procedure*, 92 *American Political Science Review* 611 (1998)

³⁸ Adam Barnes, *Fewer than half of Americans can name all three branches of government, survey finds*, THE HILL (Sep. 13, 2022), <https://thehill.com/changing-america/enrichment/education/3640520-less-than-half-of-americans-can-name-all-three-branches-of-government-survey-finds/>

³⁹ Id.

⁴⁰ Id.

⁴¹ Robert A. Dahl, *How Democratic Is the American Constitution?* (2001).

says.⁴² The public, relieved of the duty of conceptualizing what their rights are by judicial supremacy, certainly has little concept of what the rights they enjoy actually are.⁴³ The national legislature already controls the vast majority of the Court’s jurisdiction and entirely controls its composition.⁴⁴ Congress could already change the rest of the federal court system to be unrecognizable or abolish it altogether.⁴⁵ The Court seized the power of judicial review for itself in the first place—that power did not necessarily inhere to the court.⁴⁶ Even with this power, the Court cannot enforce its own declarations. This is to say, the independent power of the Court in the American legal tradition is not inherently extensive and is already largely controlled by the legislature. The major complaints the public has with the Supreme Court is that it is not as subject to majoritarian pressure as the public would prefer.⁴⁷ Based on this existing history and cultural experience, it would not be an offensive development to ultimately subjugate the interpretation of the law to the people it binds.

IV. Socialist-Jeffersonian Democracy

The institution of a socialist democracy would be appropriate for the United States given its historical context. While some versions of socialist legal theory reject democratic principles, this tendency has been energetically rebuked by other socialist theorists such as Rosa Luxemburg.⁴⁸ The dictatorship of the proletariat is a necessary condition for a socialist country, and democracy is a necessary condition of the dictatorship. Often misunderstood due to the negative connotations of the word “dictatorship,” this principle in essence only describes in strong terms the political and economic domination of the working class through democratic principles.⁴⁹ Socialist constitutional identity does not seem to prescribe any particular *method* of elections, though it does by necessity require democracy. It is possible, however, to derive a potential structure that would be favorable to both socialist theory and the appropriate historical and cultural backdrop of the United States: Socialist-Jeffersonian Democracy.

A key feature of the socialist political structure is a rejection of top-down appointment power. “nothing could be more foreign to the spirit of the Commune than to supercede universal suffrage by hierarchical investiture,” that is, a top-down system of appointing officials in bourgeois systems, where high-up officials appoint many or all lower officials.⁵⁰

⁴² Tushnet, *Taking the Constitution Away from the Courts*, 10 (Princeton University Press, 1999)

⁴³ *Id.*

⁴⁴ U.S. Const. Art. III, § 1.

⁴⁵ U.S. Const. Art. III, § 1.

⁴⁶ *Marbury v. Madison*, 5 U.S. 137 (1803).

⁴⁷ *See Positive Views of Supreme Court Decline Sharply Following Abortion Ruling*, PEW RESEARCH, (Sep. 1, 2022), <https://www.pewresearch.org/politics/2022/09/01/positive-views-of-supreme-court-decline-sharply-following-abortion-ruling/>.

⁴⁸ Rosa Luxemburg, *The Russian Revolution* 63-67, 76-80 (University of Michigan 1st ed. 1961)

⁴⁹ Rosa Luxemburg, *The Russian Revolution* 77 (University of Michigan 1st ed. 1961) (“Yes, dictatorship! But this dictatorship consists in the manner of applying democracy, not in its elimination...”)

⁵⁰ Karl Marx, *The Paris Commune* (May 1971), in *The Civil War in France* (1871), <https://www.marxists.org/archive/marx/works/1871/civil-war-france/ch05.htm>.

The historical core of marxist political organization is the commune—”formed of the municipal councillors, chosen by universal suffrage in the various wards of the town, responsible and revocable at short terms.”⁵¹ The exact electoral system of this commune structure is not specified, though the participants in it (*universal suffrage*) are. Marx and Lenin valued the Paris Commune because their members functioned as true “parliamentarians” who “must themselves work, must themselves executive their own laws, must themselves verify their results in actual life, must themselves be directly responsible to their electorate.”⁵² In sum, the job of the Commune was to, at the highest level, carry out decisions made at the lowest level.⁵³ The problem with this system appears to be that it assumes a rather concentrated geographic area and a relatively small population—two characteristics the sprawling territory of the modern United States does not share with Paris.

It is necessary to solve the issue of territory by resorting to two unexpectedly related sources: the Soviet Union and Thomas Jefferson. In the Soviet system, a Soviet (essentially a commune by another name) was elected by proportional representation to represent different levels of the government—one’s ward, one’s city, or the entire nation.⁵⁴ To compose the national parliament (The Central Executive Committee), thousands of delegates were selected by direct popular election from—those delegates would in turn elect a workably-sized Committee which would govern the state.⁵⁵ This sounds passingly similar to a core American tradition: Jeffersonian democracy. Jefferson, to ensure each person would stay engaged and active in government, proposed “organizing the state into a hierarchy of self-governing units.”⁵⁶ The centralized republic would be subdivided into smaller and smaller units, each with its own administration, its own executive, judicial, and legislative powers; and at the smallest level—the ward—each citizen was to be an active, engaged member.⁵⁷ This strikes a balance between local and national interests without threatening unified government: “the local Soviets create the central government, and not the central government the local Soviets. In spite of local autonomy, however, the decrees of the Central Executive Committee...are valid throughout all the country.”⁵⁸ These structures, of disparate ancestry, harmonize localism and unitary government in an organized and predictable way, minimizing the financial and administrative costs of continuous, direct elections while engaging the public and governing effectively. For example, a ward commune, elected by universal suffrage, elects a city commune, and then a state commune, and then a regional commune, and then a great national commune.

⁵¹ *Id.*

⁵² Lenin, *supra* note 18, at 46.

⁵³ Thomas Hummel, *The Paris Commune and Workers’ Democracy*, TEMPEST, (April 12, 2021), <https://www.tempestmag.org/2021/04/the-paris-commune-and-workers-democracy/>.

⁵⁴ John Reed, *The Structure of the Soviet State*, THE LIBERATOR, (Nov. 1918), <https://www.marxists.org/archive/reed/1918/state.htm>.

⁵⁵ *Id.*

⁵⁶ Charles M. Wiltse, *Jeffersonian Democracy: A Dual Tradition*, 28 Am. Pol. Sci. Rev. 838, 841 (1934).

⁵⁷ *Id.*

⁵⁸ Reed, *supra* note 54.

Due to the shared ideological harmony and roots in both socialist theory and American political traditions, it seems like this system of electing a national government would not offend the cultural history of the American people or the ultimate dictatorship of the proletariat. It completely avoids top-down appointment structures and creates accountability to a scrutinizing body at all times. It also minimizes the difficulties inherent to picking an actual electoral system—if each level of government is of manageable size in proportion to the last, the complexities of a proportional representation system are not required to make sense of a huge election cycle. Political parties, often a private, alienating force, are less effective than a system of local councils like this.⁵⁹ In this system, small elections of engaged citizens, one smaller commune to the next larger commune, would be able to effectively govern the large territory of the present United States.

V. Conclusion

There is far more to say, but in this paper, I have attempted to outline only a coherent set of core principles for a socialist state which may supplant the bourgeois liberal democracy that is now the United States of America. Public civic engagement of the kind encouraged by these tenets—one where civic engagement is encouraged by tiered electoral systems, one where the people are truly sovereign and can exercise any power unconstrained by the dead hands of buried framers, one where every function of government is wielded by accountable—also serves a larger purpose. It secures against despotism, ignorance, and counterrevolution against the dictatorship of the proletariat. Without popular participation in the democratic process, “[p]ublic life gradually falls asleep, a few dozen party leaders of inexhaustible energy and boundless experience direct and rule. Among them, in reality only a dozen outstanding heads do the leading and an elite of the working class is invited from time to time to meetings where they are to applaud the speeches of the leaders, and to approve proposed resolutions unanimously...a dictatorship, to be sure, not the dictatorship of the proletariat.”⁶⁰ As I stated at the beginning of this paper, it would be a task beyond comprehension to expound what constitutions of the future would look like. It is my sincere hope however, that the signposts in this paper may inform at least the next iteration of thought for what we do next.

⁵⁹ Camila Vergara, *Systemic Corruption: Constitutional Ideas for an Anti-Oligarchic Republic* 210 (Princeton University Press 2020).

⁶⁰ Rosa Luxemburg, *The Russian Revolution, the Problem of Dictatorship* 72 (University of Michigan 1st ed. 1961).