

**Commoning the city : social movements and the  
legal struggle for the right to housing in  
Barcelona**

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**David Hamou**

**Université Paris-Nanterre**

**Sophiapol**

## Introduction

In a context of rising neoliberalism on a global scale and of decline of representative democracy, new social movements are claiming the right to the city, the collective use of urban commons and the radical democratization of the public sphere. These collective mobilizations against precariousness thus question parliamentary delegation and professionalization of politics.

In Spain, new social movements emerged after the 2007 crisis, denouncing the precariousness of urban life, and particularly the housing crisis. When the speculative real estate bubble burst, hundreds of thousands of citizens were evicted from their homes, while remaining indebted. At the same time, the banking sector that fueled this bubble was rescued by the public authorities. In order to tackle this unprecedented mortgage crisis, citizens decided to self-organize at the margins of the market and the State. The self-organized social movement *Plataforma de Afectados por la Hipoteca* (Platform of People Affected by the Mortgage Crisis) has been fighting since 2009 for the right to housing and against evictions and over-indebtedness of families. Since its beginning, the platform has chosen to practice civil disobedience by “disobeying unjust laws” and physically stopping evictions. But the PAH is not only about protesting. Many legislative proposals and popular legislative initiatives have emerged from this movement at both national and local scale. By moving from protest to proposal, the social movement is becoming a real urban counter-power, capable of breaking into the political sphere and taking decisions that affect all inhabitants.

Beyond mere "participation", this irruption sketches a real overcoming of representative democracy at the local level and fits in the definition of the common as "the political principle of collective self-government" [Dardot and Laval, 2014]. By extracting lawmaking from the State monopoly, and by submitting the act of legislating to deliberation of citizens gathered in assemblies, social movements such as the PAH become a source of "co-creation of non-state legal norms" [Dardot and Laval, 2014]. This counter-hegemonic use of law aims to guarantee economic, social and cultural rights such as the right to housing within the framework of institutional spaces that are external and antagonistic to the State and to professionalized politics. This process challenges the conception of "urban common goods": far from only being resources or spaces extracted

from the market and the State, urban commons are practices of radical democratization of the public sphere. Urban commons are a political process involving the communalization of the city and urban life and rules.

## **I. From housing crisis to self-organization**

The outstanding strength of social self-organized movements such as the PAH can be explained by the magnitude of Spanish housing crisis. Since 2007, more than 500.000 families have been evicted from their homes. In order to understand the scope and the impacts of this crisis, it is necessary to analyze the Spanish financial-urban model implemented in the 1990's and 2000's. Indeed, in Barcelona neoliberal urban development is deeply linked with the financialization of housing and the violation of the right to housing.

### *The formation of a speculative real estate bubble in Spain*

In the 1990s and 2000s, the massive growth of the real estate construction sector led to the creation of a speculative bubble. When the bubble burst and since then, Spain has lived through an exceptional social emergency situation. Between 1997 and 2007, more than 6.6 million dwellings were built in Spain, same amount as the total number of dwellings built in France, Germany and Italy during the same period. While market boom artificially inflated housing prices, speculative financial transactions increased, which in turn fueled the bubble [Rodríguez, 2017].

This specific context has been supported and fed by the banking sector. Indeed, Spanish banks gave access to risky mortgage loans to poor households, claiming that "prices cannot fall". In a country where homeownership is the norm, both working-class and middle-classes accessed property through advantageous and attractive subprime mortgages. Variable rates, floor clauses, no *datio in solutum* (retroactive debt cancellation upon the handover of the mortgaged home), the conditions of these mortgage loans would later be denounced by social movements. One of the PAH's most emblematic slogans will then be: "It's not a crisis, it's a fraud".

## *Urban neoliberalism in Barcelona*

In the more specific context of Barcelona, the formation of the speculative real estate bubble goes hand in hand with the neoliberal urbanization model that has been transforming the city since the late 1980s. From the 1992 Olympic Games onwards, Barcelona became a "global city" [Sassen, 1991] competing at the international scale to attract capital flows. The "Modelo Barcelona" is based on "a capitalist reappropriation of the city, [...], the conversion of urban space into a theme park, the gentrification of historic centers [...], the tertiarization, [...], the spreading of increasing poverty that can no longer be hidden, control over an ever less public public space, etc." [Delgado, 2017]. The speculative housing bubble enabled the spread of this urban model and encouraged the "fixation" of financial flows in urban spaces, thus causing "accumulation by dispossession" [Harvey, 2018].

In 2008, the bursting of the speculative real estate bubble, the fall in prices, and the explosion of unemployment, left many families without necessary resources to pay back these risky loans. The social consequences of the Spanish crisis are disastrous: massive evictions of families by banks, household's over-indebtedness and the increase of a spiral of poverty. Between 2008 and 2012, more than 415,000 mortgage foreclosures and nearly 245,000 evictions were carried out<sup>1</sup> and more than 500,000 families lost their homes since 2007. While the country fell into a widespread housing crisis, the State rescued Spanish banks without asking for compensation. At the same time, citizens were accused of living beyond their means.

## **II. The legal struggle for the right to housing in Barcelona**

It is in this context and against neoliberal urban planning, that new social movements defending the right to housing emerged in Barcelona. Social movements such as the PAH

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<sup>1</sup> Observatori Desc (2013), *Emergencia habitacional en el estado español: la crisis de las ejecuciones hipotecarias y los desalojos desde una perspectiva de derechos humanos*. Available at <http://observatoridesc.org/ca/node/4302>

have intended to control gentrification through real estate regulation and the defense of social function of property, which is guaranteed by article 33 of the Spanish Constitution.

Since the creation in 2009 of The Platform for People Affected by the Mortgage (PAH) in Barcelona, this social movement has spread widely: there are now more than 250 PAH local platforms throughout the country. This self-organized non-partisan movement formed by citizens affected by the mortgage crisis denounces 'unfair' housing laws and fights against evictions and families over-indebtedness. PAH's basic requirements are to fully stop evictions, enable the *datio in solutum* and transform the housing seized by banks into a public stock of social rental housing. The movement is structured around three fundamental pillars: assemblies of collective advice, direct action and civil disobedience, and legislative proposals to guarantee the right to housing. The platform thus combines protest activities - outside the Law - with legal proposals - in favor of rights. It is this complementarity between extra-legal participation and counter-hegemonic use of law that allows social movements to become a real urban counter-power.

### *Claiming the right to the city in Barcelona*

These fights for the right to housing are part of a wider movement claiming the right to the city [Lefebvre, 1973]. The right to have a decent housing in the city is inseparable from the right to intervene in the urban configuration and the urbanization process. According to David Harvey, "The right to the city is far more than the individual liberty to access urban resources: it is a right to change ourselves by changing the city. It is, moreover, a common rather than an individual right since this transformation inevitably depends upon the exercise of a collective power to reshape the processes of urbanization. The freedom to make and remake our cities and ourselves is, I want to argue, one of the most precious yet most neglected of our human rights. " [Harvey, 2008].

Beyond the mere question of evictions, social movements such as the PAH promote the right to the city, the collective management of urban commons and the radical democratization of the local public sphere, thus forming part of a process of "communalization" of the city.

## *Civil disobedience*

Civil disobedience and direct action are at the heart of PAH's identity as a social movement. Since its creation in 2009, the PAH emerged with the objective of denouncing Spanish existing laws that they consider being the cause of the mortgage crisis. Moreover, the Platform claims the legitimacy of disobeying these "unfair laws". This legitimacy stems from the fact that existing institutional and legal channels do not allow to tackle social emergency and the violation of fundamental rights. Thus, when "there are no rights" and "in situations of institutional deadlock, protest and disobedience, far from being criminal acts, are legitimate and even necessary tools to force the government to respect its own legality and to establish more egalitarian and less violent legal frameworks" [Assens and Pisarello, 2011].

The first and most central figure of these civil disobedience practices are gatherings organized in front of threatened dwellings to prevent evictions. When all administrative steps to prevent an eviction have been undertaken in vain (negotiations with the concerned financial institution or public administration, application for social housing, recourse to various laws, etc.), PAH activists gather at the door of the threatened building on the planned day of eviction. Then, when the police and the judicial committee in charge of the eviction arrive, the activists attempt a final negotiation. In case of failure, they physically prevent police from accessing the apartment that is to be seized. Therefore, it is by "placing their body", as described by the philosopher Marina Garcès, that PAH members protect the threatened dwelling, protecting physically the right to adequate housing [Garcès, 2018]. On 3 November 2010, in the town of La Bisbal del Penedès, the "PAH succeeded in stopping a first eviction, the one of Lluís Martí [França, 2018]. It is at that moment that the PAH launches the "Stop Desahucios" ("Stop Evictions") campaign, which has since then stopped several thousand of evictions through civil disobedience.

The PAH also uses this kind of direct actions when members of the platform occupy, as a sign of protest, banks or public administrations. As a general rule, these actions aim to denounce the attitude of the institution or administration and pressure them in a specific case of violation of the right to housing. On the given day, a group of activists of the PAH enters the concerned bank in a festive atmosphere, shouts slogans, sings and covers the walls with placards.

However, these negotiations sometimes fail, and PAH does not always succeed in physically stopping evictions. This is why the platform has launched the campaign "Obra Social de la PAH" (Charity Work of the PAH), whose ironic name refers to the banks' charitable funds allocated to "social projects". This campaign aims, in the language of the PAH, to "recover" empty apartments belonging to the banking sector that the platform considers responsible for the crisis, in order to relocate families who may find themselves without a roof over their heads. Since its creation in September 2011, the " Obra Social de la PAH " campaign has re-housed more than 4000 people in apartments owned by banks or investment funds. Faced with the absence of a social housing stock to relocate families (Barcelona only has 1.5% of social housing, while on average large European cities have about 15-20%<sup>2</sup>), the PAH considers that empty housing belonging to financial and banking institutions that have been "saved" by public money is therefore legitimately "ours" and is then "public" housing. According to the members of the movement, this form of squatting should therefore not be illegal or criminalized. Thus, in April 2019, the "Obra Social de la PAH" launched a new campaign called " Living is not a crime", which denounced the " criminalization of poverty " faced by people who have no other choice than squatting<sup>3</sup>.

### *Legal proposals*

While civil disobedience is sometimes “necessary” and “legitimate”, social movements claiming the right to housing have also been able to combine this defensive attitude with specific proposals aimed at changing laws and guarantee fundamental rights. Citizens affected by the crisis are the ones who know best about housing challenges and about how to guarantee their rights. This is at the heart of the PAH: people affected by the housing crisis and similar problems gather to find specific and common solutions. Spaces of self-organization where citizens gather then become spaces of *institution*, spaces where new legal norms are created. It is in these spaces and through deliberation that the PAH

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<sup>2</sup> See the report of Housing Europe : Housing Europe (2012), “Logement social européen 2012, les rouages d’un secteur”. Available at [www.housingeurope.eu/file/37/download](http://www.housingeurope.eu/file/37/download)

<sup>3</sup> For more information about this campaign, see <https://pahbarcelona.org/es/2019/04/03/comunicado-campana-obra-social-vivir-no-es-delito/>

has been able to undertake many legislative changes and that the platform has become a recognized actor in the elaboration of the law. This "counter-hegemonic use of the law" [Sousa Santos, 2012] converts social movements into real popular counter-powers, involved in political decisions concerning collective life.

Indeed, the PAH's legal proposal has taken the form both at the local and national level of Popular Legislative Initiatives (ILP). These initiatives aim to adopt laws guaranteeing the right to decent and adequate housing for all. Among the most urgent measures, these ILPs included enabling dation in payment (*datio in solutum*) for primary residences, stopping evictions and increasing public housing stock. In 2013, at the initiative of PAH, the Observatori DESC and other social movements, the Spanish Congress was seized and called upon to rule on a first ILP. While the law stipulates that half a million signatures are enough to submit an ILP, the PAH collected more than a million and a half signatures. Massive demonstrations were then organized in several Spanish cities in support of the proposed law. The consensus around the measures proposed by PAH was massive: in 2013, more than 90% of the population was in favor of establishing a moratorium on evictions and a law to enable retroactive *datio in solutum* for primary residences<sup>4</sup>. Despite the magnitude of the mobilization and popular support, the ruling Popular Party (rightwing) decided to block PAH's Popular Legislative Initiative, initiative that will not even be debated in the Spanish Parliament.

After this national setback, the PAH turned to the regional level. A new PAH Popular Legislative Initiative was then proposed to the Catalan Parliament in 2014. After an intense campaign, this ILP was finally unanimously adopted by the Catalan Parliament in July 2015. The law that resulted from this ILP is known as the "Law 24/2015". That was a major popular victory. After years of struggle, banks and financial entities considered by the PAH of being responsible for this crisis finally had to face up to their responsibilities. Indeed, the new law now prohibits evicting citizens in execution of mortgages and forces financial entities to offer social rental housing to families in a situation of residential vulnerability. If the property owners are "small" owners, public administrations are obliged to offer affected inhabitants a re-housing solution.

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<sup>4</sup> Salvador Martí i Puig, Robert González, Ricard Goma y Pedro Ibarra (eds.). Movimientos sociales y derecho a la ciudad. Creadoras de democracia radical. Icaria Editorial, Barcelona, 2018

In 2018, the PAH launched a new campaign at the municipal level: the "30% campaign". This motion was presented to Barcelona City Hall along with other collectives and social movements in order to allocate 30% of all new housing construction and full rehabilitation to social housing. Elaborated within social movements, in horizontal assemblies, this administrative standard was then negotiated with municipal groups. In December 2018, this measure aiming to increase local public social housing stock was finally adopted by the municipal council.

### III. **Commoning the city**

#### *Social movements and « instituent praxis »*

The intrusion of social movements in the development of urban legislation is a practice of "the common" as defined by Pierre Dardot and Christian Laval. Both authors consider the common as a "political principle of collective self-government" [Dardot and Laval, 2014]. While acknowledging the importance of Elinor Ostrom's work on common goods, they also show the limitations of such a perspective. Indeed, they refute what they call a "reification" of the common. By referring to "common goods", it is assumed that some goods are common as such, by definition. This keeps us trapped in the vision of the liberal economy, which defines the types of goods according to their intrinsic characteristics and considers the economic actors as being perfectly rational. On the contrary, according to a political vision of the common, the common can never be defined in advance as it always depends on the activity of humans, on a "pooling" activity which is a much more general principle of political and social reorganization. Thus, the common would above all be the "political principle of a co-obligation for all those engaged in the same activity" [Dardot and Laval, 2014].

The development of legal standards within PAH assemblies thus corresponds to a "co-production of law in and through common use" [Dardot and Laval, 2014]. The objective of these legal proposals is to remove from the State power the monopoly of the "right to

say the law" [Bourdieu, 1986] and to give back to the social sphere the capacity to legislate and the power to institute. It is within social movements themselves, far from the legal offices of the State, that organized citizens debate and propose laws to guarantee their fundamental rights. For instance, PAH members consider that their right to decent and adequate housing is violated by evictions without rehousing. However, far from preventing these evictions, the law allows them. Moreover, public authorities, far from stopping these evictions, are still executing them. It is then the PAH itself that has to promote legislative changes to guarantee the right to housing. This is why Law 24/2015, aimed at stopping evictions, was drafted by the PAH as a Popular Legislative Initiative. Social movements such as the PAH are therefore not only protesting, but also proposing, by coproducing "non-state legal norms".

This capacity for self-institution of rights within social movements is to be compared to what Dardot and Laval call "instituent praxis". The instituent praxis "is both the activity that establishes a new system of rules and the activity that seeks to permanently relaunch this establishment in order to avoid the institution to be stuck in what is instituted" [Dardot and Laval, 2014]. This permanent and equal revision of the standards is perfectly applicable to the internal functioning of PAH. Social movements rules are constantly being debated and can always be modified. In addition, the "instituent praxis" also corresponds to the public legal norms and laws created by the PAH. The act of institution is a creation that doesn't end in the act of creation. It is not enough to pass a law, but it is also necessary to enforce it. Indeed, non-state counter-powers and social movements have to continue to be active once the law is promulgated. For example, after its approval by the Catalan Parliament, Law 24/2015 was suspended by the Constitutional Court seized by the Popular Party then in power in the Spanish Parliament. The PAH then decided to launch a campaign to "recover Law 24/2015". In February 2019, the social movement succeeded: the two articles of the law that had been suspended were reintroduced. But the very application of the law remains a struggle, and some PAH members that were evicted still denounce banks that refuse to offer them social housing, while this is stipulated by the law. The case of Law 24/2015 shows that common institutions, far from depoliticizing, permanently question laws enabling the intervention of citizens in its elaboration and application.

### *Against the commodification of the city*

This PAH-led process of "communalization" of urban law and administrative standards is therefore opposed to private urban management and urban neoliberalism [Brenner, 2004]. The logic of private appropriation and profitability applied to the city generates processes of enclosure of urban spaces [Chatterton, 2019; Blomley, 2008; Midnight Note Collective, 1990], whose most spectacular effects are the privatization of public space for the benefit of real estate operations, car traffic, shopping centers creation...etc. These processes of neoliberal urbanization transforms the city into a "place of consumption and consumption of the place"[Lefebvre, 1973]. As pointed out previously, in Barcelona, the financialization of housing is one of the central features of the commodification of the city. In the neoliberal era, housing is then no longer considered as right nor as a commodity, but as a financial asset embedded in globalized flows of capital [Rolnik, 2018]. This process threatens the social function of property and excludes vulnerable households from the global housing market.

Urban commons are able to curtail precariousness through non-commodified spaces and limit the influence of the entrepreneurial world on municipal politics. According to the PAH, one of the main objectives of the 30% motion was to "co-responsibilize" the private sector. Representatives of real estate developers publicly expressed their opposition to this measure and set up lobbying strategies to prevent its adoption. At the same time, social movements claimed the right of organized citizenry to decide the social use of new constructions. In a context where property seems to be defined as absolute (I build it, this belongs to me, I can sell it at any price), and in order to guarantee the social function of urban land ownership, the PAH claims the regulation of the real-estate sector.

### *Moving beyond representative democracy*

As a process of "communalization", urban commons are also opposed to State governmentality, considered as a public sphere without common. Understood as a hierarchical procedure aiming at isolating decision-making power within a professional sphere, state logic is not only confined to the administrative level of the nation-state. Urban municipal institutions can also become oligarchic instruments in the hands of a

political elite. There is then an inherent permanent tension between the state and the common within municipal institutions. While municipal institutions are the closest institutions to citizens' daily life [Subirats, 2016], political parties' logics and administrative structure limit municipal institutions transformative capacity [Hamou, 2019].

Representative democracy confines politics to a sphere of competence and expertise and the logic of delegation enshrines the monopolization of decision-making power by a minority. The irruption of social movements in lawmaking breaks with this centralized top-down mechanism and allows the revitalization of municipal institution. The above-mentioned "30%" PAH motion would certainly never had been adopted if it came from one of the political parties of the municipal council. However, refusing a measure directly promoted by citizens affected by the housing crisis results more difficult than refusing it to a political rival. This explains why the measure was finally adopted in the city council. This example shows that it is sometimes without political representatives, and against the very logic of representation, that legal norms can be changed.

#### *From urban commons to urban commoning*

Beyond "participation", the lawmaking processes in social movements represent a real paradigm shift and an attempt to overcome representative democracy at the local level. Against the state and private control of resources and political decisions, popular use of law aims to communalize the city, i.e. to submit decisions concerning urban life citizens deliberation. These processes radicalize democracy at the local level. In this context, it seems indispensable to develop "common codes", defined as the norms and legal frameworks of urban commons, which allow to transform political decisions in commons decisions beyond the market and the State [Aparicio, Hamou and Méndez de Andrés, 2019].

Therefore, these practices redefine the conception of "urban commons". The theoretical-practical debate between "common goods" as resources and "common" as a political principle is reactivated in the urban environment. In an article on urban commons, Daniela Festa reflects on the application of the notion of Common Pool Resources [Ostrom, 1990]

to the urban environment [Festa, 2017]. According to Festa, the application of this concept at the urban scale is problematic for several reasons. First, while economic theory of commons focuses on rival goods, urban commons are generally non-rival. Second, the use of urban commons by a large number of users tends to produce an increase of their value [Rose, 1986]. Finally, whereas according to the theory of Common Pool Resources the community is defined, the community managing urban commons is not fixed: it is open and changes. For instance, communities in charge of urban infrastructures include many heterogeneous actors. This then makes its common and horizontal management problematic. It is therefore hard to apply the concept of Common Pool Resources to urban commons without problematizing it. Indeed, urban commons are "realities that are not predetermined but identified in relation to a group or a set of subjects that claim goods or life forms that are crucial to their own existence. [...] There is a root of resistance and conflict that characterizes the claim of urban commons : the desire to make "resources" available to a community when they are denied to access these resources because of other exclusive uses" [Festa, 2017 p. 287].

This problematic dimension appears in right to housing struggles in Barcelona: the demand for guaranteed access to housing is opposed to exclusive neoliberal uses of land ownership. However, as the PAH case study also shows, apart from being a community managing a resource, the common in the urban environment is also a political process. From "urban commons" to "urban commoning": the transition from a noun to an verb proposed by Linebaugh [Linebaugh, 2007] should be translated at the urban scale in order to emphasize the role of the pooling activity. While urban commons are generally defined as spaces of self-administration that are outside the state and the market (as can be the case, for example, of a community-garden), we suggest a definition of "urban commoning" as a radical democratization of the municipal public sphere. It is true that these two processes are linked: the spread of spaces directly managed by its users contributes to the reorganization of urban government. However, commoning as an instituent activity of democratization goes far beyond the development of these urban spaces.

The success of the PAH passing a law guaranteeing that 30% of all new housing construction will be dedicated to social housing is then a process of communalization. Through mobilization, future possible users of these housing units were the one who

decided the use given to these facilities, and not municipal political parties or property developers in charge of the construction of these units. Social use given to these dwellings is here linked to common decision-making processes. The 30% measure was about determining the future uses of the city but also about collective decision-making processes.

### *Becoming-common of the public*

Urban commoning challenges two models of the city: a top-down government and a neoliberal commodification of the city. Urban commoning aims to create a "non-state public sphere" accompanied by a process of communalization of the public sphere.

By intervening directly in the development of urban administrative standards, the PAH transforms public institutions rules and functioning. As this social movement became the source of legal norms guaranteeing the right to housing, citizens who co-produced those norms became actors of political decision-making processes. What public housing stock does the city need? What solution can be offered to a family threatened with eviction? What use should be made of vacant housing owned by banks and investment funds? These are decisions that social movements remove from the State and the market and hand over to ordinary citizens.

The instituent activity of social movements and the co-creation of non-state legal norms give rise to new public-common synergies, based on a re-articulation between the political and the social spheres. Rather than a superposition of two separate domains, it's all about subverting the public by the common and transforming public institutions into collectively and democratically governed institutions. The very institutionality of the public sphere is then transformed into a "common becoming of the public" [Mendez de Andes, 2015]. The enforcement of the right to the city by social movements such as the PAH enables the radicalization of local democracy and its switch towards a collective self-government. Urban commons are not only self-managed resources, they are rather a political alternative to the commodification of urban space and the statization of urban politics.

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