

Constituent Power: A History of What Exactly?

Esther Neuhann

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In her book *Constituent Power: A History* (2020), Lucia Rubinelli aims to provide a history of the “language” or, more precisely, the “words ‘constituent power’” (p.14). She narrates this impressive history along five historical key moments, from Emmanuel Joseph Sieyès to Hannah Arendt.

In the following, I will, first, comment on the methodology Rubinelli adopts throughout the book and, second, focus on the fifth historical moment “Arendt and the French Revolution” (Chapter 5). In this chapter, Rubinelli reconstructs Arendt’s critique of “sovereignty as a theoretical category and as a principle of political organization” (p.177) and her suggestion to replace it with ‘constituent power’. It is an original contribution of the book to show that Arendt’s argument is in line with the sense in which Sieyès originally put forward ‘constituent power’ – although Arendt herself framed it as a critique of Sieyès which, according to Rubinelli, is rooted in her inaccurate reading of Sieyès through Carl Schmitt.

Methodology

My methodological remarks are divided into three parts. The first two concern the entire book, whereas the third focusses on Chapter 5. However, it will become apparent that the first two points relate to the more substantial queries regarding Chapter 5.

(a) As I have mentioned, Rubinelli aims to provide a history of the “language” and, more concretely, the “words ‘constituent power’”. Such a history of the language of constituent power stands in contrast both to a history of the “idea” (p.16) and to a history of the *concept* of constituent power. However, Rubinelli only makes the delineation from the history of the idea of constituent power explicit. But can the book really be understood as a history of the words ‘constituent power’? At the very least, it also seems to be a history of the words ‘pouvoir constituant’ and ‘potere costituente’. Or, what exactly does Rubinelli mean by ‘words’?

(b) Relatedly, Rubinelli’s investigation is guided by her interest in the question of “what the distinct contribution” of “the notion of constituent power brings to the negotiation and systematization of the principle of popular power” (p.4). Two questions arise here: First, does the necessary relation between ‘constituent power’ and ‘the principle of popular power’ that is implied by this guiding interest (see also p.29) not point to a layer of a shared meaning, however thin, between the different usages of the words ‘constituent power’? And, in turn, does this thin layer of shared meaning not indicate that Rubinelli is actually not merely interested in a history of the words ‘constituent power’, but rather in a history of an encompassing idea or concept

of constituent power? Second, does Rubinelli consider her engagement with ‘the principle of popular power’, or simply ‘popular power’, in the book as an inquiry into the concept, idea, or into the *words* of ‘popular power’?

(c) In the Introduction, Rubinelli states that in her engagement with the *first two* historical moments she looks at the role that constituent power plays in “political history” and that she investigates its role in “political and legal philosophy” when engaging with the *last three historical moments* (p.27). As a side note: Since Rubinelli is not interested in providing an analysis of the *systematic* role that ‘constituent power’ plays with respect to other concepts in political and legal philosophy – like ‘democracy’, ‘popular power’ or ‘justice’ – it seems to me that, in analogy to the focus on political *history* in the first two chapters, the focus in the last three chapters is also on the *history* of political and legal philosophy. That being said, the chapter on Arendt – being one of the last three moments – is accordingly intended as an investigation into the meaning of the words ‘constituent power’ in Arendt’s political and legal philosophy.

Reading the Arendt-chapter with this in mind, I noticed the way that Rubinelli characterizes Arendt’s own method: Rubinelli writes that “[a]lthough constituent power plays a capital role in Arendt’s theory of politics, she never theorized its meaning and form systematically. This can be explained by the fact that constituent power was, for Arendt, a concrete experience, a practice, and not an idea to be theorized and elaborated upon” (p.193). This sounds to me as if Rubinelli was claiming that it would actually be wrong to analyze Arendt as providing a *philosophy* of constituent power. Relatedly, Arendt’s critique of sovereignty (which gives rise to her account of constituent power) can, according to Rubinelli, be understood as a critique of a particular kind of *philosophical* perspective: “To a large extent, Arendt’s antipathy towards sovereignty was motivated by its abstract and ideal character. Sovereignty was the result of the philosophers’ preference for solipsist speculation over concrete political action, which resulted in the substitution of political freedom with individual control over oneself and over the course of one’s action – the free will.” (p.192)

A number of different layers between philosophy and politics can thus be distinguished: i) Arendt’s philosophy (or other kind of theoretical engagement with) constituent power. How are we to understand what Arendt is doing?; ii) Arendt’s critique of philosophy; iii) the political circumstances of Arendt’s writing in their relation to Arendt’s theory of constituent power; iv) the political history Arendt is particularly interested in, namely the foundation of Rome and the French and American revolutions – again in relation to Arendt’s theory of constituent power; v) Rubinelli’s own authorial voice and how it relates differently to Arendt’s *theory* of constituent power than to, say, Sieyès’ usage of constituent power in the first chapter (as one of the two chapters in which Rubinelli looks at political history rather than political and legal philosophy). In Rubinelli’s view, how are these different layers supposed to be related exactly?

Sovereignty, Constituent Power and Regular Politics

Rubinelli claims that from Arendt's body of work we can distill a common thread of the critique of sovereignty that leads to Arendt's alternative idea of constituent power. Rubinelli engages with Arendt's early writings from the 1930s, in which Arendt comments on "the ongoing international effort to find a homeland for the Jews" (p.177), and her books *The Origins of Totalitarianism* (1951), *The Human Condition* (1958), and *On Revolution* (1963).

Let me start by presenting the bare bones of Rubinelli's reconstruction of Arendt's critique of sovereignty and her consequent account of constituent power. What is at stake in Arendt's critique of sovereignty is the idea of the *sovereignty of the people* – not, say, the sovereignty of a monarch. However, Arendt's critique of the *sovereignty of the people* can be formulated as the critique of the fact that this concept articulates political authority after the French Revolution analogously to political authority in a monarchy. Arendt is particularly critical of the equation of 'people' with 'nation' in the idea of the *sovereignty of the people*. Arendt saw this concept of the *sovereignty of the people* – in which people equals nation – as key to understanding the "decline of the nation state" (p.180) in the totalitarian regimes of the first half of the 20th century. One important reason for this is that the "sovereignty of the nation" is seen as somewhat more absolute than the "sovereignty of the monarch". And this, in turn, is because: "the nation became both the *source* and the *recipient* of power" (p.181, emphasis added). This overlap between the source and the recipient of power seems central to understanding the problems of sovereignty and the difference between 'sovereignty' and 'constituent power' (see also p.199). I would like to invite Lucia Rubinelli to elaborate more on this.

If we accept Arendt's critique of sovereignty, in what sense can constituent power serve as an alternative (*On Revolution*)? Arendt's preference for constituent power over national sovereignty corresponds to her claim that the French Revolution failed because the people did not participate in constituting the new order, whereas the American Revolution was initially successful because the people actually exercised their constituent power. But what does it mean to say that the people exercised their constituent power, or more generally, what does it mean for the people to exercise their constituent power in any historical moment? Rubinelli distills three features from Arendt (p.194f.):

- (1) "[I]t [constituent power] can only be exercised when the founding act is immanent" (p.194). This means that when constituent power is exercised, the moment of founding is not understood in relation to the *prior* will of the nation (cf. p.196) or anything else that transcends the practice of founding itself.
- (2) The people, and not merely their representatives, must actually participate "[...] in the constitution-making process" (p.194).
- (3) The third feature explains how this second feature may be realized. According to Rubinelli, Arendt argues that "[p]eople, organized in local councils, should discuss, deliberate and eventually adopt the constitutional text drafted and proposed by a committee created ad hoc." (p.195) These are "practices of direct democracy rather than representation" (p.196).

The elaboration of what makes a process of founding successful – successful in the sense of having been determined by the constituent power of the people – is followed by a discussion about the question of how it is supposed to ‘live on’ in the “regular working of politics” (p.199). Rubinelli again describes three institutional elements of a political system in which constituent power ‘lives on’ according to Arendt (pp.200–203):

- (I) Such a political system must be a “federal regime, based upon decentralized governmental structures, which reduce the delegation of power to a minimum” (p.200). This shows Arendt’s preference for council democracy over representative democracy.
- (II) Relatedly, such a system must be opposed to “European parliamentarism” (p.202).
- (III) Such a system must also display “instruments to incorporate political change in the constitution without endangering its authority” (p.202). According to Rubinelli’s reconstruction of Arendt, an example for such an instrument is the American Supreme Court.

With regard to the question of how constituent power may ‘live on’ in a political system, Rubinelli concludes that: “the people’s constituent power could be kept alive not only through the people’s participation in councils [feature (I), E.N.] but also through processes of constitutional revision, enshrined in the Supreme Court’s work of augmenting the foundation [feature (III), E.N.]” (p.203) This conclusion leaves me a bit puzzled about the exact relationship between constituent power and the three institutional features of a constituted order in which constituent power lives on: In what sense is constituent power kept alive in councils (feature (I))? As Rubinelli states shortly after the passage quoted above, is this not more an exercise of popular power simpliciter (p.202, cf. p.205)? This leads me to a more general question: How do constituent power and popular power relate (cf. the third alternative narrative of the book, p.227f.)? Is constituent power a particular kind of popular power? More precisely, is constituent power popular power related to the founding or the change of constitutions, or does it also include, say, less formalistic and/or radical or direct democratic elements of participation in constituted democracies? Or should the idea of constituent power pave the way to getting rid of the distinction between extraordinary politics and ordinary policymaking altogether (cf. p.220 on Negri and Hardt)?

At this point, the methodological questions (a,b) I raised at the beginning of my comment resurface: Do we not need at least a pre-conception of the meaning of constituent power in order to write an intelligible history thereof? The pre-conception at work in this book seems to be that constituent power is in some specific sense related to popular power *or* is itself a specific kind of popular power. But would it then not make sense to include theories of this particular kind of popular power, even if they do not use the language of constituent power (e.g. *verfassungsgebende Gewalt*), and to exclude certain usages of the words ‘constituent power’ as off-topic (e.g. the ‘constituent power of a monarch’)?

