

Constituent Power: A Symposium – Introduction

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Lucia Rubinelli's book *Constituent Power: A History* (Cambridge University Press 2020) is a major contribution to democratic thought, in both method and substance. Methodologically, the book refuses to treat its list of venerable authors – Sieyès, Schmitt, Böckenförde, Mortati and others – as so many defenders of an identical concept, surfacing throughout modern history in the guise of so many conceptions. Instead, Rubinelli gives a history of selected uses of the *term* „constituent power“.

In accounting for its respective uses, she uncovers an important common function they were to serve in the political struggles and theoretical debates of their day, and this is where the substantive contribution of the book comes in. According to Rubinelli, what gives those uses unity is their opposition to vocabularies of *sovereignty*. Her authors, Rubinelli argues, employ the notion of constituent power to denote popular empowerment, and at the same time to contrast it in its nature and limits to understandings of ‚national‘ and even ‚popular sovereignty‘. Both in her contextualist methodology and in her overarching confrontation of constituent power with sovereignty, she offers an important challenge to a European tradition of democratic thought in law and politics which tends to see popular sovereignty and constituent power as joined at the hip, reflecting the people's [ordinary as well as extra-ordinary authority for self-legislation](#). Not only have popular sovereignty and constituent power been defended as expressing the same core democratic intuition, intellectual historians have [likewise rejected constituent power when spurning substantive conceptions of popular sovereignty](#). Rubinelli follows her authors, from Emmanuel Sieyès to Hannah Arendt, into contrasting ideas of constituent power with imaginations of popular omnipotence or omnicompetence.

At a time when political actors and academic authors are starting to revert to the notion of constituent power in debates about organising and re-invigorating national [and transnational](#) democracy, it seems important to go back to its sources. While outside the Western world, constituent power still holds out the promise of self-determination in constitution-making, to liberal democracies it signals that they can go beyond incremental change in reacting to the crises of our age. Radical authors are invoking the language of constituent power to fight ‚constituent usurpation‘ by nation state executives, and protest movements draw on it to propagate large-scale institutional innovation, and [even democratic renewal beyond the realm of the juridical](#). Can constituent power be represented? Can its expression be organised by inclusive, predetermined procedures? Can citizens invoke the language of constituent power in an inclusive way, while holders of ‚constituted‘ offices can be meaningfully kept at bay? Can the idea of constituent power empower groups to break away from nation states or multinational federations? These are only some of the current questions that will profit from a discussion before the backdrop of a historical analysis of the uses and abuses of the term.

This Verfassungsblog symposium arises from the context of the Hamburg DFG-funded project „Reclaiming Constituent Power? Emerging Counter-Narratives of EU Constitutionalisation“ (319145390), which shares an interest in the subject matter of the book, the democratic reading of the fundamental lawmaking power of the people, as well as an interest in the authors identified as relevant. The comments are devoted to the successive chapters of the book, on Sieyès (Peter Niesen on chap. 1), on French *droit publique* and Carl Schmitt (Carlos Perez Crespo on chap. 2-3), on the post-WW II lawyers such as Mortati and Böckenförde (Markus Patberg on chap. 4), and on Hannah Arendt (Esther Lea Neuhann on chap. 5).

