

Sovereignty Referendums and Disintegration: Re-Allocating Constituent Power?

Workshop, University of Hamburg, 29 January 2021
Convenors: Peter Niesen & Markus Patberg

Sovereignty referendums, such as in the case of Brexit or sub-state independence movements (e.g. Catalonia) pose challenges to existing understandings of constituent power. Usually thought of as a constructive capacity, constituent power in these cases seems to drive the disintegration of national and supranational polities. At the same time, these processes appear to have the potential to effect changes in the allocation of constituent power, as they enable the self-assertion of political communities against a larger whole. In some cases, the two phenomena are linked in complex ways such as in a possible Scottish independence referendum in response to Brexit.

Existing theories of constituent power provide no answer as to whether the use of constituent power for the purpose of disintegration or for the re-allocation of constituent power can be brought under conditions of (democratic) legitimacy.

The workshop will bring together scholars from political theory and law to approach this topic from empirical and normative perspectives, focusing both on specific legal and political cases and systematic theoretical problems.

Questions to be addressed include: Under what conditions, if at all, are decisions to partially or entirely reverse European integration democratically legitimate? What principles should structure the post-Brexit relations between the UK and EU? Does Brexit have implications for the legitimate structuring of the relations between its sub-national demoi? Can devolutionary and independence campaigns effect changes in the ontology of constituent powers? Can emergence and shifts of constituent power(s) be brought under criteria of legitimacy? Is constituent power the relevant phenomenon when polities break apart, or do we need alternative basic concepts?

Programme (times according to CET)

Session 1: 10:00 – 11:15

Referendums in Federal States: Territorial Pluralism and the Challenge of Direct Democracy
Stephen Tierney, University of Edinburgh

Session 2: 11:45 – 13:15

Referendums and Constituent Power in European History 1789-1870
Lucia Rubinelli, University of Cambridge

Lost Sovereignty Referendums and the *Pouvoir Constituant Mixte*
Peter Niesen, University of Hamburg

Session 3: 14:00 – 16:15

Integration Referendums as an Expression of the Ritual Aspect of Constituent Power

Eoin Daly, NUI Galway

Constitutive and Constituted Power and the European Union

Leah Trueblood, University of Oxford

The Democratic Ambivalence of EU Disintegration: A Mapping of Costs and Benefits

Markus Patberg, University of Hamburg

This workshop is an event of the DFG-funded project “Reclaiming Constituent Power? Emerging Counter-Narratives of EU Constitutionalisation”.