

Special Workshop 76:
Constitutional Amendments and Constituent Power: Theoretical Issues
29th World Congress of the International Association for Philosophy of Law
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Organiser(s)

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Abstract

Regarding codified and *rigid* constitutions, constitutional amendment powers (CAP) have great importance: with the requirement of aggravated legal procedures, they can produce transformative constitutional changes without revolutionary means. On the other hand, constituent power – defined as a «revolutionary» power to establish a new constitutional order – has been regarded as a «boundary» concept because it has both a political and a legal dimension. This field is a rich vein for philosophical inquiry, given that the study of CAP and constituent power can raise a lot of interesting questions from a theoretical perspective. Among other issues, we will discuss the following topics:

- The «nature» itself of constituent power and CAP, *i.e.*, the properties from which each concept is built, and the conceptual «boundaries» between them;
- The relation between constituent power and CAP. Is it possible to conceive the CAP as a form of «derived» or «delegated» constituent power? Does the constituent power provide a justificatory basis for the exercise of the CAP? Or are they completely independent?
- The «paradox» of constituent power. It is supposed that constituent power precedes all institutionalized forms, but it is also clear that its effective expression requires procedures, institutions, and representation. We will discuss the complexity of this puzzle in political scenarios where there are multiple and often overlapping groups with a potential claim to constituent power;
- Features and problems of the doctrines about the *material* limits on constitutional amendments. What is the material «identity» of the constitution? What does the «Basic structure doctrine» mean? What are the methodological problems in the «substitution of the Constitution» doctrine test? Can there be «*unconstitutional* constitutional» amendments? What are its foundations?

Keywords

Constitutional amendments, Constituent power, constitutional identity, unamendability, limits of amendment powers

Schedule - Special Workshop 76

July 9, 2019 - HS 13

	Speaker	Institution	Title of the presentation
<i>Session I: Constituent Power</i>			
8h30 – 9h00	Krzysztof J. Kaleta	University of Warsaw (Poland)	<i>Two kinds of discourse around constituent power</i>
9h00 – 9h30	Raf Geenens	Catholic University of Leuven (Belgium)	<i>Constituent power in (con-)federal settings: a puzzle without a solution?</i>
9h30 – 10h00	Miguel Nogueira de Brito	University of Lisbon (Portugal)	<i>A political Pangaea? The fall of political representation and the loss of constituent power</i>
10h00 – 10h30	Jorge Baquerizo Minuche	University of Girona (Spain)	<i>Towards a realistic concept of constituent power</i>
10h30 – 11h00	<i>Coffee Break</i>		
<i>Session II: Constitutional Amendments</i>			
11h00 – 11h30	Riccardo Guastini	University of Genoa (Italy)	<i>The multiple identities of constitutions</i>
11h30 – 12h00	Arnaud Le Pillouer	Paris Nanterre University (France)	<i>The meaning of the «Basic structure doctrine»</i>
12h00 – 12h30	Gonzalo Ramírez Cleves	Externado University (Colombia)	<i>Methodological problems in the substitution of the Constitution doctrine test in Colombia</i>
12h30 – 13h00	Ali Acar	Çankaya University (Turkey)	<i>Politics or Law: Theory and Practice of Unconstitutional Constitutional Amendments (with the focus on the Turkish case)</i>

