
Book Reviews

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1 Constitutional Referendums. The Theory and Practice of Republican Deliberation
by: Stephen Tierney
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Over the past decades, the interest in employing referendums as a means for enhancing democratic participation, deliberation and legitimacy has been augmented both in theory and in practice. The problems and the crisis of democratic representation as such have raised a fruitful dialogue regarding the need for a more direct participation of the people in the democratic policy making. In this framework, the theoretical discussion concerning the use of referendums as crucial means for revitalising democratic participation has blossomed along with their practical implementation in many democratic states that have not illustrated a long standing tradition in adopting institutions of direct democracy.

In this framework, a strong argumentation in favour and against their employment in the public decision making has been developed. On the one hand, their supporters underline that referendums can enhance political participation and expand the legitimating effect of political decision making. Thus, they argue, that referendums can be used as a remedy against the apathy and the crisis of the modern representative democracies and augment significantly the deliberation of the people in the political sphere. On the other hand, their opponents support that in fact referendums can be controlled by the elites or the existing political institutions of the representative democracy, their results can vary according to the questions posed, while they can be used in order to legitimise pre-existing political decisions or public policies. Lastly, the globalised effect of referendums cannot be underestimated and has been illustrated in many cases, e.g., the Cypriot referendum regarding the Annan Plan (2004) and the recent Greek referendum regarding the adoption of the III Memorandum (2015).

The present book offers a lengthy and in depth analysis which captures this growing debate, while it explores the democratic legitimacy of referendums and their crucial and decisive role in modern constitutional politics, especially in the era of globalisation. Via the presentation of several case examples and an interdisciplinary account of the main subjects that concern the modern political theory and practice regarding the enhancement of representative democracies with institutions of direct participation, the author provides an important analysis of the referendums mechanics and their current role or democratic politics.

Furthermore, the author offers in his book a very useful taxonomy of the four main referendum processes as they have recently developed in the international practice. First,

is mentioned the employment of referendums in the phase of the foundation of new states, either as a means of division and deconstruction of existing states, or as a means for constructing from scratch a new democratic polity. Secondly, the author refers to the use of referendums as a means for the introduction or amendment of Constitutions (e.g., the Turkey referendum of 2010). Third, the use of referendums in order to establish new models of sub state autonomy, especially regarding multinational states is analysed (e.g., the Scottish referendum 2015) and lastly, there are the referendums concerning the transfer of sovereign power from the European states to the European Union (the Polish European Union referendum, the upcoming UK EU referendum).

The main argument of the book and its great importance lies in the fact that the author actually defends the democratic character of referendums against those considering them as controlled by the political elites. Though, according to the author the democratic success of a referendum process depends in a large extent from the political framework in which they are taking place, if designed properly, the referendums can lead to the highest level of democratic participation and deliberation. Thus, for a referendum to work in a truly democratic fashion a lot of parameters should be served, namely the existence of a stable political society based in the freedom of expression and a free flowing political dialogue, the political institutions neutrality regarding the outcome of the referendum and the unbiased information of the public by the mass media and the press. Thus, according to the author, referendums if designed properly and are employed in the right democratic framework can produce the optimum democratic results regarding the enhancement of citizenship and citizen's democratic engagement and their democratic deliberation. What should be avoided is that the citizens could become the victims of the constant bargaining between polarised political parties instead of them becoming the subjects of a genuine political deliberation.

2 The Cosmopolitan Constitution

by: Alexander Somek

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What is a Cosmopolitan Constitution? A first reading of the term could lead to the conclusion that a Cosmopolitan Constitution is a global constitutional text, or a constitutional text that refers to a constitutional order beyond the state borders. Nevertheless, this is not the case regarding Alexander Somek's perception of a Cosmopolitan Constitution. As the author explains, modern constitutionalism as we currently know it has evolved in three distinct periods. The first, which has in its epicentre the American and French Revolution and which connects the introduction of a Constitution to the need to set constraints to the public power, to recognise the sovereignty of people and their liberty as guaranteed by the Constitution. In this period, the constitutional legitimisation of law making and political decision making lies with the people and their 'constituent power'. The second period is the one initiating after World War II when a different form of modern Constitution has emerged, one which is founded and based on the notion of human rights protection. During this period, the political legitimacy deriving from the constitutional text is based on the determination of

a given democratic polity in guaranteeing human rights protection. During this second phase, the determination of constitutional order in fulfilling its obligations regarding human rights protection is monitored by international organisations (UN) or international human rights courts (European Court of Human Rights).

This second period of constitutionalism, served as the fertile ground for the creation of what Somek refers to as a Cosmopolitan Constitution, developed according to the author, mostly in the European continent and it has three main characteristics. First, this type of Constitution is based on fundamental and universally acknowledged principles such as freedom, equality and social solidarity. Though, these principles are not new, during this phase are commonly accepted as the *aquis* of modern constitutionalism. Secondly, the Constitution guarantees implicitly or explicitly the principles of equality and non-discrimination on the basis of nationality. In this framework, it considers the presents of third countries individuals as regularity and guarantees their human rights protection. In this regard, it can be considered as 'post-national'. Thirdly, this kind of Constitution is developed via the co-existence of a national polity to international or supranational organisations, monitoring or implicated in its application as far as the human rights protection is concerned.

The question regarding Somek's perspective concerns the *locus* and the *subject* of a Cosmopolitan Constitution. According to Somek's account, the locus of the democratic polity remains the same. Thus, the state lies in the epicentre of the Cosmopolitan Constitution, but merely serves as an open window to the world, as a bridge between a given polity and the international legal order. In the same path, the subject of the Cosmopolitan Constitution does not refer to what we could consider as the citizen of the world, but as a citizen without a permanent homeland, a non-citizen that can rationally accept the constitutional authority of any given state as long as the fundamental rights and universal principles of freedom, equality and social solidarity are guaranteed. One can read in this analysis the form of a secondary citizenship that does not entail a political link between a citizen and a state, but a civic link between a non-citizen and a state accepting the obligation to guarantee his/her human rights regardless of his/her nationality.

In this framework, the Cosmopolitan Constitution develops according to the author a dual function. Firstly, it plays a political role. Thus, it conceives state authority as constrained by international human rights and universal principles protection. Moreover, it guarantees combating discrimination on the grounds of nationality and acts as the regulator of the interaction between the states and international or supranational organisations, such as the UN, the EU, the European Court of Justice or the European Court of Human Rights. Lastly, the second function of the Cosmopolitan Constitution, is the one that the author characterises as administrative (more of a regulatory one) which signifies the transformation of the state authority, and namely the political and legislative authority traditionally vested in the parliamentary, representative bodies. As the author analyses the state institution and the state institutions nowadays play a different decentralised role, strategically coordinating different levels and the national, international and supranational actors of political decision making (e.g., the IMF, EU, and European Central Bank). Under this second perspective, as the author shrewdly observes, not only the traditional constitutionalism erodes but also the constitutional subject, the people, lose their central role in democratic deliberation and decision making under the pressures posed by the global financial system and the globalised capitalist market.

Book Review

Reviewed by Maximiliano E. Korstanje

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Política y Hospitalidad: disquisiciones urgentes sobre la figura del Extranjero

by: Ana Paula Penchaszadeh

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by EUDEBA

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Doubtless, hospitality has been widely studied over the last decades from diverse perspectives. As Lynch et al. (2011) put it, the specialised literature has developed two clear waves of investigation. While some scholars see in hospitality a type of mechanism of control, others focus on its gift-exchange basis. Far from being resolved, this discussion leads to question the roots of hospitality in our contemporary society. Although, Jacques Derrida played a crucial role expanding the philosophical understanding of hospitality, even in the Anglo-World, he paid little attention to politics in the configuration of other. This is the main reason why Ana Paula Penchaszadeh presents her book: *Politics and Hospitality*.

In this project, she discusses not only the distance between guest and stranger but also the conceptual limitations of Derrida respecting to the influence of politics in the way the 'other' is imagined and subordinated to main Western matrix. Written in a polished way, this philosophical research is formed in six chapters, which range from the Maussian theory of gifts towards the meaning of democracy. Since the act of giving hospitality is based on tolerance of the 'other', which is marked as an alien, we must accept that there is something ethnocentric in the way the identity is forged. The success of nation-state was historically confined to its ability to monopolise the violence. Modern philosophy attempted to decipher the code of 'nation-hood' as inherently intertwined with a much elaborated ethnicity, homogenised and controlled according to the interests of elite. In this context, there is no much difference between Derrida and Nietzsche.

As the previous argument given, the legacy of Derrida as well as his critique to Western thought may be summarised in the three following points

- Any process of ethno-genesis which is aimed to the sentiment of 'us', needs a counter-process of differentiation, an 'outside' where the border determines who are in and out.
- Democracies, whatever the case may be, have their own limits and closures to 'others'.
- By means of 'strangers', nation-states develop the in-group rules.

At the time, we are in presence of others, we are constituted as us. The 'other' not only is disciplined, marked or regulated by host's rules it reminds that tolerance is given by the law of masters. In this respect, Penchaszadeh distinguishes the guest from alien (stranger). Whereas the former signals to the gaze of state, the latter one defies the status-quo. As a result of this, the societal order demonises aliens whenever they cannot be disciplined. Aliens represent a serious threat for politics, simply because they are beyond the rule of language. This begs a more than interesting question, is hospitality a subtle form of ethnocentrism or racial discrimination?

The first chapter (hospitality and gift) explores the legacy of Mauss and his theory of gift to place hospitality into the fields of social bondage. Rather, the second section discusses the limits posed by sovereignty to understand the 'otherness'. Within a certain territory, the legal jurisprudence issued by state establishes a guiding-rule for classifying selfhood from otherness. For that reason, it is almost impossible to imagine the modern hospitality ignoring the principle of sovereignty. The third chapter, to our end the best developed, refers to the deepness of death. Alluding to the metaphor of pregnancy, where the young mother who brings life, is uncertain respecting to the evolution of her embryo, hospitality regulates the tension between what is controllable and uncontrollable. The current conditions of democracy that today traces and jails thousand of migrants, simply because they are demonised as a threat for social order, is one of the topics widely developed in fourth and fifth chapters.

Last but not least, the efficacy of international right to protect 'refugees' or the role of international institutions to protect the future victims of genocides represents the epilogue of this trailblazing book. One of the main contributions of Penchaszadeh to this issue triggers a hot-debate along with the factors that shape hospitality. In sharp contrast to current literature, she argues convincingly that hospitality is determined by the combination of five items: language, gift-exchange, sovereignty, representation of death and democracy.

Whether Derrida over-emphasised on the tolerance as the borderlands of hospitality, Penchaszadeh understands that hospitality goes in the opposite direction than tolerance. Starting from the premise that the self is enrooted into a certain territory, citizens are constituted according to the figure of 'others', who are not citizens but are tolerated. By exercising their power, nation-states allude to tolerance to encourage the gift-exchange system. In fact, Derrida made a radical critique to post-modern society and its principle of property, which undermines the possibilities for peoples to embrace the 'unconditional hospitality'. This leads us to a second question, may hospitality be conceived beyond the politics?

As Penchaszadeh puts it, to respond these questions, we need to reformulate the place of hospitality in the late-capitalism. From the wealth of subjects, conjoined to the deepness of the debate proposed by this young Argentinean philosopher, results a high-quality book, which is amply suggested to historians, anthropologists, sociologists concerned by the role of hospitality in society. Likely, as Derrida, Penchaszadeh had an idealised image of democracy. However, this seems to be a deep-seated issue which may be continued in next approaches. As Korstanje, in earlier works, puts it, hospitality with 'strangers' equals the treatment humans received from Gods in the here-after. The modern ethnology collated evidence enough to demonstrate many ancient tribes thought natural disasters were a product of stranger mistreatments. Here one question surfaces, to what an extent secular societies may offer generalised hospitality? Korstanje explains that while secular societies, where religion is neglected, embrace 'restricted hospitality',

unconditional hospitality only was possible in ancient or traditional communities (Korstanje, 2008; Korstanje and Tarlow, 2012). This seems to be a hypothesis of work, which merits to be discussed.

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