

Contents

1	Introduction	1
	References	5
Part I Theorising the Sovereignty Referendums		
2	Introduction to the Theory of Sovereignty Referendums	9
	References	14
3	Sovereignty Referendums in the System of Politics	17
3.1	Occurrence of Sovereignty Referendums in a Historical Context	17
3.1.1	Historical Overview: Practices Since the French Revolution	17
3.1.2	Role and Functions of the Referendums Securing the Sociological Legitimacy of a Change of Sovereignty	21
3.2	The Doctrine of Consent and Other Underpinning Principles of Sovereignty Referendums	26
3.3	Normative Deductions from Empirical Observations	32
3.3.1	For the Referendum	33
3.3.2	Against the Referendum	34
3.4	“Wanting It Both Ways”: A Synthesis	38
3.4.1	Referendums Should Not Be Used Hastily in the Initial Phase	39
3.4.2	The Vetoing Effect of Referendums	40
3.4.3	The Difficulty with Unilateral Referendums	42
	References	44
4	Sovereignty Referendums in the System of Law	49
4.1	Sovereignty Referendums in International and Constitutional Law	50

4.2 Exploring the Subject Matter of Sovereignty Referendums:	
The Material Approach	51
4.2.1 Sovereignty as the Subject Matter	51
4.2.2 Self-Determination in Modern International Law	54
4.3 Formal Approach to Sovereignty Referendums: Legal Base and Regulation of the Referendums	58
4.4 Classification of Sovereignty Referendums	62
References	67

Part II Sovereignty Referendums: A Legal Analysis

5 Sovereignty Referendums in International Law	71
5.1 General Framework	71
5.2 Subject Matter	72
5.2.1 Devolution and Secession	76
5.2.2 Reunification of Divided States	77
5.2.3 Unions and Federations of States	78
5.3 Legal Status of Sovereignty Referendums in Contemporary International Law	79
5.3.1 Legal Base: Hard Law and Soft Law	79
5.3.2 Sovereignty Referendums in International Treaties	81
5.3.3 Sovereignty Referendums in Customary Law	82
5.4 International Monitoring and Administration of Sovereignty Referendums	91
5.4.1 The Evolution of the Function of the UN in the Sovereignty Referendums: From First-Generation to Second-Generation Operations	95
5.4.2 Western Sahara	98
5.4.3 East Timor	101
5.4.4 South Sudan	105
5.4.5 Cyprus	111
5.4.6 Europe and the Independence Referendum of Montenegro	121
References	124
6 Sovereignty Referendums in Constitutional Law	127
6.1 Subject Matter	127
6.1.1 Agreement of the People on the Creation of the Political Unit	129
6.1.2 Agreement of the People on the Subject of Constituent Power	130
6.1.3 Synthesis	131
6.2 Legal Base: Sovereignty Referendums in Comparative Constitutional Law	134

Contents	xiii
6.2.1 Constituent Power and Legality	134
6.2.2 Unwritten Rules of Constitution and the Sovereignty Referendums	138
6.2.3 A General Overview on the Sovereignty Referendums in the Constitutions of the World	141
6.2.4 Sovereignty Referendums in France	148
6.2.5 Sovereignty Referendums in the United Kingdom	161
6.2.6 Canada and the Quebec Question	171
6.2.7 The USA and Its Overseas Territories	178
References	204
7 Sovereignty Referendums: Common Legal Problems	209
7.1 Administration of Sovereignty Referendums	209
7.1.1 In General	210
7.1.2 Important Aspects of Referendum Administration	212
7.1.3 Historical Evolution of Referendum Administration	219
7.2 Judicial Review of the Referendum	227
7.3 Qualified Majority (Quorum)	232
7.3.1 Quorum of Participation (Minimum Turnout)	232
7.3.2 Quorum of Approval	233
7.4 Voter Qualification	236
7.4.1 Resident Natives	237
7.4.2 Non-resident Natives	237
7.4.3 Non-native Residents	245
7.4.4 Non-native, Non-residents	251
7.5 Designation of the Voting Units	253
7.6 Formulation of the Ballot Question	255
References	266
8 Conclusion	269
References	276
Reports by International Organisations	277
Reports by National Institutions	281
The UN General Assembly Resolutions	283
The UN Security Council Resolutions	287
Table of Cases	289
Regularly Visited Web Sites	291
Index	293