



Sovereignty in Transition

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the 1990s, the number of people in the UK who are aged 65 and over has increased from 10.5 million to 13.5 million, and the number of people aged 75 and over has increased from 4.5 million to 6.5 million (Office for National Statistics 2000). The number of people aged 65 and over is projected to increase to 16.5 million by 2020, and the number of people aged 75 and over to 8.5 million (Office for National Statistics 2000).

There is a growing awareness of the need to address the needs of older people, and the need to ensure that they are able to live independently and actively in their own homes. The Department of Health (2000) has set out a strategy for older people, which includes a commitment to ensure that older people are able to live independently and actively in their own homes. This strategy is based on the following principles:

- Older people should be able to live independently and actively in their own homes.
- Older people should be able to participate in the community and social activities.
- Older people should be able to access the services and support they need.
- Older people should be able to live in a safe and secure environment.

The Department of Health (2000) has also set out a number of key objectives for the strategy, which include:

- To ensure that older people are able to live independently and actively in their own homes.
- To ensure that older people are able to participate in the community and social activities.
- To ensure that older people are able to access the services and support they need.
- To ensure that older people are able to live in a safe and secure environment.

The Department of Health (2000) has also set out a number of key actions for the strategy, which include:

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The Department of Health (2000) has also set out a number of key outcomes for the strategy, which include:

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The Department of Health (2000) has also set out a number of key messages for the strategy, which include:

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The Legacy of Sovereignty in Italian Constitutional Debate

MARTA CARTABIA

1. INTRODUCTION: THE 'POLYSEMIC' AND EVOLVING NATURE OF SOVEREIGNTY

AN OVERVIEW OF the Italian legal literature immediately reveals that the debate on sovereignty has continued uninterrupted at least since the foundation of the Republic in 1948. During the first years of the Republic, founded under the Constitution of 1948, the debate was particularly lively because it aimed at providing a critique of the constructions of sovereignty that were derived from the previous regime and tended towards a recovery of the democratic principles rooted in the liberal idea of the Sovereignty of the People. Later, the idea of sovereignty was set aside in legal and political studies because it sounded old-fashioned and exhausted from a theoretical point of view; the only exceptions were the studies concerning the relationship between the State and the European Communities, where a reference to sovereignty remained necessary in order to highlight the incremental reductions in State sovereignty caused by the growing powers of European institutions. In recent times, the *fin de siècle* studies, and the new wave of legal literature at the beginning of the present century, present an interesting revival of the debate about sovereignty, in connection both with the new developments in the European Union—linked to the perspective of enlargement and the constitutionalisation of the Treaties—and the globalisation of economics, information, communication and other activities that seem to reduce the importance and the powers of nation states to the point of questioning their survival.

In each phase of the Italian debate, sovereignty has been taken into consideration from different points of view, charged with different meanings and related to different provisions of the Italian Constitution.

At first, the debate was mainly focused on the provision of article 1 of the Constitution: 'Sovereignty belongs to the people, who exercise it in the

manner, and within the limits, laid down by the Constitution'. This principle of *popular* sovereignty marks a great divide between the republican and democratic era, on the one hand, and the previous totalitarian regime, on the other. The totalitarian regime had relied instead upon the sovereignty of the *State*, considered as a legal person, in order to justify the concentration of all power in the Government. In this period, the problem of sovereignty in Italy coincided with the problem of the absence of democratic legitimation of public powers within the State.

Later, attention turned to the international sphere and the discussion was centred instead on article 11 of the Constitution: 'The Republic [. . .] gives its consent to all the limitations of Sovereignty necessary to ensure peace and justice among the Nations, and fosters and promotes the international organisations oriented toward those purposes'. This is the constitutional provision which allowed Italy's entry into the European Community, and which continues to provide a constitutional ground for membership of the EU today. Because of its broad wording, article 11 was also considered as the legal basis for Italian membership of the United Nations and other relevant international organisations.¹

Occasionally, article 7 of the Constitution has also spurred scholars to reflect upon some aspects of state sovereignty, in so far as it affirms that the Italian Republic and the Catholic Church are to be considered as two independent and Sovereign legal orders. Although it may sound odd to a foreign observer, articles 7 and 11 of the Constitution are so similar in structure that the interpretation of one has often influenced the interpretation of the other, especially in the case law of the Italian Constitutional Court.²

So, even at a first glance, it seems that the notion of Sovereignty is so complex and disputed, yet still so important, that the discussion about it will probably be unending and, of course, this is not typically or uniquely Italian. After all, one of the most ancient and common ideas is that sover-

¹ It should be noticed that the original intent of the founding fathers of the Italian Constitution was primarily directed to alliance with the USA and with all the international organisations belonging to the occidental world, Nato in particular. European integration could hardly have been the main concern of the constituent assembly, because at that moment the European Communities were not yet born or even envisaged. The historical background of article 11 of the Italian Constitution was the division of the world into spheres of influence dominated by the USSR and the USA, and the Italian choice to follow the American pattern. The use of article 11 for the purposes of European integration emerged at least ten years later, after the signature of the treaty of Rome in 1957, and more precisely with the first decision of the Constitutional Court regarding the European Community of 1964, in the *Costa* case. See Constitutional Court dec. n 14 of 1964. On this subject see A Cassese, *Art. 11*, in G Branca (ed), *Commentario della costituzione*, vol. I, (Bologna-Roma, Zanichelli, 1975) 579 ss.

² See for example Constitutional Court decisions n 30 and 31 of 1971, n 169 of 1971, n 195 of 1972, 175 of 1973, n 18 of 1982, n 421 of 1993.

eignty has at least two different faces: the internal and the external. Even considered from a primitive, basic, elementary perspective—typically taught in all first year classes of constitutional law—sovereignty displays an ambivalent nature. When it refers to the internal affairs of the State it is linked to the problem of ultimate power. When it refers to the international context it is connected rather to the problem of the independence of the State, in order to prevent all other subjects from interfering with the State's internal political choices. Although, evidently, the present debate on sovereignty goes much further than that, it is still useful to recall the original dichotomy in the idea of sovereignty, because it provides evidence that sovereignty has been genetically marked by a 'polysemic' nature.

The debate is therefore fragmented. The idea of sovereignty appears as a puzzle that is almost impossible to assemble. Of course, this situation is due partly to the fact that the idea of sovereignty has evolved throughout history. Consequently, some of the historical problems involved in the debate on sovereignty have, over time, become obsolete and can safely be consigned to the past. This is certainly true, for example, of the idea of sovereignty as absolute power. Today every kind of power suffers limitations, in either the internal constitutional order or the international one, so that the problem of sovereignty is no longer a problem of the exercise of power without any constraints. Centuries ago, Benjamin Constant had already stated that 'La souveraineté n'existe que d'une manière limitée et relative'.³ Nowadays, it is simply inconceivable that sovereignty evokes one single almighty sovereign. As has been said, in the contemporary world *the Sovereign no longer exists*. Nevertheless we still have *acts of Sovereignty*.⁴ And this is not to deny, but rather to affirm, that sovereignty still deserves our interest and attention, especially in relation to the anticipated evolution of the European, international and global contexts.

At the same time it must be said that the meaning of sovereignty has continually evolved. Under the label of sovereignty a variety of very different things are described; in other words, it seems that sovereignty is a prism through which many different legal or political problems might be examined. Sovereignty raises issues of ultimate power, but also of the defence of territory; of military power, as well as of the government of money; of *kompetenz-kompetenz*, as well as of constituent power, and so on and so forth.

That the meaning of sovereignty is constantly shifting is clearly demonstrated in the case law of the Constitutional Court. At times, the Court uses

³ B Constant, *Cours de politique constitutionnelle*, (Paris, Guillaumin 1982) vol. I, 9.

⁴ See M Fioravanti, *Costituzione e popolo sovrano*, (Bologna, Il Mulino, 1998) 47 ss., especially 61, who stresses that from the historical point of view the age of constitutionalism has marked a shift from the idea of sovereignty as attributed to one sole subject—the Sovereign—to the idea of the distribution of sovereign powers among different institutions.

the concept in order to distinguish the state from regions and other territorial polities (for example, municipalities and provinces), which, while enjoying a certain degree of *autonomy* can never attain a sovereign character;⁵ at other times the Court uses the idea of (popular) sovereignty as equivalent to *democracy*⁶ and has characterised the right to vote in political elections and referendums as an expression of popular sovereignty, in the form of either representative or direct democracy. Sometimes sovereignty seems to denote *typical functions* of the State, which are represented by symbols such as money, the flag, the sword, and the gown.⁷ At other times the Court, working with the idea that state sovereignty is now shared among several constitutional bodies—including Parliament, the Judiciary, the Head of State, the Government, the Constitutional Court itself—infers that some *privileges* are to be awarded to all of these sovereign organs:⁸ eg Parliament's classical immunities, 'locus standi' before the Constitutional Court for conflicts of powers, the capacity for self-rule, and so on. In other cases, the Court stresses the territorial dimension of state sovereign powers, drawing a link between territory and sovereignty⁹—a link which is all the more significant in an age of globalisation.

The use of the word sovereignty in the case law of the Constitutional court surely reflects the diversity of views in the Italian legal debate. However, the Italian Constitutional Court does not seem to have fully elaborated its own doctrine of sovereignty, except in the case of article 11 of the Constitution as applied to the European Union. In all other cases, the use of the concept of sovereignty appears random. It plays the role of a cultural or rhetorical decoration rather than a true 'ratio decidendi'. For this reason I will consider closely only the constitutional case law as far as article 11 of the Constitution is concerned.¹⁰

However, before departing from the Constitutional Court's wider jurisprudence, we need to highlight one point. Since, to judge by the case law of the Constitutional Court, sovereignty appears to be a remarkably rich,

⁵ Among several examples are decisions n 245 of 1995, n 209 of 1994, 171 of 1989, n 35 of 1981, n 110 of 1970, n 49 of 1963. The Court has often denied sovereignty to the regions and in consequence has also denied that regions are vested with foreign powers and even that they are subjects in international relations. A recent interesting decision on this matter is n 106 of 2002, where the Court declared null and void a Regional act aimed at changing the denomination of the representative assembly of the region, in order to call it 'Regional Parliament'. The Court affirms that in Italy there is a single Parliament, which is the national one, and relies on the idea of popular sovereignty in order to deny this possibility for the Regions.

⁶ See, for instance, decisions n 68 of 1978, n 35 of 1981, n 79 of 1988, n 429 of 1995, n 49 of 1998.

⁷ See for the judicial function eg decision n 127 of 1977.

⁸ See eg decisions n 111 of 1963, n 15 of 1969, n 154 of 1985, n 9 of 1997, 417 of 1999.

⁹ See eg decisions n 509 of 1988, nn 122 and 233 of 1989.

¹⁰ See below sections 3 and 4.

polysemic or polymorphic term it might best be understood as a *relational idea*, one that cannot be grasped except in relation to other concepts. Sovereignty needs to be located within a context and its meaning changes when the context of reference changes.

For example, one aspect of Sovereignty is related to the idea of democracy, another aspect is addressed to European integration, another touches the international dimension, while yet another relates to the constitutional identity of the demos, and so on.

In this chapter, I will briefly outline the various meanings of sovereignty within the Italian debate. I will take into consideration the following themes:

- a) *Sovereignty and the people*: the debate on direct and representative democracy.
- b) *Sovereignty and legal norms*: the debate over the problem of the supremacy of international and European law.
- c) *Sovereignty and values*: the Italian version of the theory of constitutional identity.
- d) *Sovereignty and competences*: the theory of shared sovereignty in a multilevel system of government.
- e) *Sovereignty and globalisation*: the quest for the legitimation of power in the global context.

Of course, the evolving nature of sovereignty—like many other legal and political concepts—warrants the existence of several different theories. However, some of these theories seem to have lost all connection with the original meaning of sovereignty. For instance, when one speaks of the sovereignty of substantive constitutional values or fundamental rights, what connection remains with the historical concept of sovereignty à la Bodin, Hobbes, and so on?

In my view the idea of sovereignty, although transformed and adapted to the reality of contemporary political societies, can still play a role. It still has something of significance to say. Sovereignty's legacy—or remainder—is preserved in contemporary states, and will remain so. Thus, on the one hand we have to accept that, historically speaking, sovereignty has lost some of its original features, as is the case with other significant legal and political concepts such as democracy, constitution and so on. On the other hand, we should not allow the word 'sovereignty' to embrace any meaning whatsoever; otherwise it becomes merely a label to be applied indiscriminately. Even in the contemporary world sovereignty has to remain faithful to its original roots, alongside other basic concepts such as 'power', 'State', 'demos', and 'democracy'. In other words, the use of sovereignty in contemporary legal and political theory and practice is still fruitful provided that it is located within a context consisting of the aforementioned elements. By contrast, any other use (or misuse) of the word renders the idea of sovereignty completely barren.

2. SOVEREIGNTY AND THE PEOPLE

At the dawn of the constitutional era in Italy, the first problem to be confronted resided in the question: 'who is the Sovereign' within the state? (ie the problem of identifying the subject vested with Sovereignty within the sovereign state).¹¹

Once upon a time there was a King. At first, there could have been no doubt whatsoever that the King was the Sovereign. But the question—'who is the Sovereign?'—became both problematic and unavoidable during the age of the Constitutional monarchy, which in Italy lasted from the unification of 1861 until the constitutional crisis caused by the fascist regime.¹² For decades, this question had, in some way or another, been avoided. During the nineteenth century, in order to limit the King's position, but without going to the extreme of recognising the sovereignty of the people, the idea spread that the Sovereign could only be the state. State sovereignty was a generic and vague answer that disguised the paradox of two Sovereigns—the King and the Parliament—living together as roommates during the Constitutional monarchy. Sovereignty was attributed to an abstract entity—the State—and apparently neutralised.¹³ This thesis clearly presupposed the personification and anthropomorphic conception of the state which arrived in Italy from Germany during the nineteenth century,¹⁴ and which influenced political theory and practice up to and including the time of the fascist regime. However, during the fascist era the idea of state sovereignty was misinterpreted and misused in order to pave the way to the unprecedented concentration of powers in the Government that was typical of the age. The use of force, the violations of laws and rights, the abuse and centralisation of power in the hands of the *Duce*, and all other arbitrary use of power for which the totalitarian regime was notorious were ultimately grounded, from a theoretical point of view, in the idea of the sovereign state.¹⁵

¹¹ The problem had already been put in these terms by Palma, *Corso di diritto costituzionale*, (Firenze, 1883), 149: 'il problema è chi abbia titolo a sovraneggiare nello Stato sovrano'.

¹² That is to say, the period during which the Statuto Albertino was actually in force. For an overview of the historical evolution of the Italian Constitutional institution in English see V Onida, 'Historical Outline of Italian Constitutional Law', forthcoming in Alan (ed.) *International Encyclopedia of Laws*, (Brussels, Kluwer) ch. 1.

¹³ Contemporary literature generally agrees that this was exactly the purpose of the doctrine that considered the State as the only sovereign, whereas the king, the parliament, the people and all other institutions were to be characterised as 'arms' of the State body. See for example E Tosato, *Stato—Teoria generale e diritto costituzionale*, in *Enciclopedia del Diritto*, v. XLIII, (Milano, Giuffrè, 1990), 778.

¹⁴ Under the influence of Gerber, Laband, Jellinek, and other German authors, in Italy it was VE Orlando who elaborated the idea of the 'State as a legal person', and the connected doctrine that sovereignty was an attribute belonging exclusively to the state. See VE Orlando, *Diritto pubblico generale*, (Milano, Giuffrè, 1940).

¹⁵ For a synthesis of the evolution of the doctrines of Sovereignty in Italy during the XIX and XX Century see, in recent literature, TE Frosini, *Sovranità popolare e costituzionalismo*, (Milano, Giuffrè, 1997).

For this reason, when the Constitution was enacted, the idea of the *people's sovereignty* sounded like a direct contradiction to the idea of *State sovereignty*, and the question—'who is the Sovereign?'—became even more crucial. There was a tension between the people's sovereignty of article 1 of the Constitution and the traditional idea of state sovereignty, the latter having arrived in a republican age already corrupted by, and associated with, the idea of an unlimited and arbitrary power.¹⁶ At the same time, the new Sovereign—the people—needed the state and its organisation in order to operate as a coherent political entity. This was particularly evident in the external relations of the State; but also for internal politics the People needed to conduct public activities through the State and its institutions. That was the constitutional puzzle of the age: how to reconcile two historical enemies—the People's sovereignty, on which the new order was founded, as stated in article 1 of the Constitution, and the sovereignty of the State—without eliminating either of them.

Whereas some aspects of this debate have lost all interest for the present discussion, others are still pertinent. Some questions surrounding the construction of the provision: 'the sovereignty belongs to the people', that at first glance seem to belong to the past, have, on the contrary, gained new life, as we confront new political circumstances, such as the trends towards supernationalisation and globalisation.

Historically, the key to resolving the quandary was found in the second part of article 1: the people exercise their sovereignty in the manner, and within the limits, laid down by the Constitution. That is to say that sovereignty belongs to the people, but the people do not usually carry out directly the powers implied by sovereignty. On the contrary, the Sovereign—the people—usually needs the mediation of the state's institutions in order to exercise all its powers.¹⁷ For that reason the state's organs also share sovereignty, and can be said to *be* sovereign in their own right. By means of the distinction between State *qua* apparatus and State *qua* community,¹⁸ and with the aid of the idea of representative democracy,¹⁹ the result of this debate was the combination of state authority and popular sovereignty, so

¹⁶ During the fascist period some studies of sovereignty made the attempt to limit state powers, either by means of the doctrine of the self-limitation of the state or by relying on the corporatist structure of the state. But of course this attempt could not achieve the aim of limiting the arbitrary powers of the fascist regime, because limitations in order to be effective had to come from a subject other than the State. See eg E Crosa, 'Il Principio della Sovranità dello Stato nel diritto italiano' in 1933, *Archivio giuridico Serafini*, 1933, 145 ss, 168 ss.

¹⁷ That was the question implicit in the debate that had developed in the Constituent Assembly about the choice of wording in art. 1: whether the Sovereignty belongs (*appartiene*) to the people or derives (*emana*) from the people.

¹⁸ See among many others V Crisafulli, *La sovranità popolare nella Costituzione italiana*, in *Scritti giuridici in memoria di VE Orlando*, vol. I, (Padova, Cedam, 1957) 407 ss., in particular 416–8.

¹⁹ See, among many, V Crisafulli, *La sovranità popolare nella Costituzione italiana*, op. cit.; *Lezioni di diritto costituzionale*, vol. I, (Padova, Cedam, 1970), 80 ss.

that the former was now considered an instrument of the latter. On this reading, the Sovereign is the people, but usually it is up to representative institutions and other public bodies to exercise sovereign powers. Only in exceptional cases does the sovereign directly express itself, such as when it forms a constituent power or through acts of direct democracy.

This argument is still valid today. The problem, today, however, is to discover adequate instruments to guarantee the effective participation of the people—the sovereign—in political and institutional life, in addition to the right to vote in political elections. Representation requires new instruments in order that the political choices of State institutions can actually mirror the preferences of the people, considered as a plural body from which many voices can be heard.²⁰ During the 1950's, the main problem was giving room to political parties to express popular sovereignty;²¹ currently, representation and popular sovereignty demand that we go even further and take into account other subjects and instruments for an effective pluralist discursive democracy.

3. SOVEREIGNTY AND NORMS

In the decades following the 1950's, the attention of legal scholars was drawn to problems that seemed to have nothing in common with the interpretation of popular sovereignty. A new chapter in the book of Sovereignty was opened as a consequence of membership of the European Community and, in particular, by the doctrine of supremacy of the law of the European Community. Here we will focus our attention primarily on the case law of the Constitutional Court.

The story is well known and does not need to be retold in detail.²² I will simply highlight the main steps in the evolution of the Italian Constitutional Court's position.²³

²⁰ In recent years the Italian constitutional literature has shown renewed interest in the debate on representative democracy. See for example L. Ornaghi, G. Ferrara, V. Angiolini, A. Di Giovine, S. Sicardi, P. Ardant, in (1998); *Rivista di diritto costituzionale*, L. Carlassare (ed), *Democrazia, Rappresentanza, Responsabilità*, (Padova, Cedam, 2001); S. Merlini (a cura di) *Rappresentanza politica, gruppi parlamentari, partiti: il contesto europeo*, (Torino, Giappichelli, 2001); N. Zanon and F. Biondi (eds), *Percorsi e vicende attuali della rappresentanza politica*, (Milano, Giuffrè, 2001).

²¹ See G. Amato, 'La sovranità popolare nell'ordinamento italiano, in 1962, *Rivista Trimestrale di Diritto Pubblico*, 98 ss., in particular 101 ss.

²² I have summarised the steps of the evolution in the case law of the Italian Constitutional Court on this point in M. Cartabia and JHH Weiler, *L'Italia in Europa—profili istituzionali e costituzionali*, (Bologna, Il Mulino, 2000) 129 ss.

²³ It is impossible to cite the books and articles on this theme without omitting many important studies. Just to mention some basic references in legal literature, which deal with the subject from a comparative perspective, see *Diritto comunitario europeo e diritto nazionale*, edited by the Italian Constitutional Court, (Milano, Giuffrè, 1997); AM Slaughter, A. Stone Sweet, JHH Weiler (eds.), *The European Court & National Courts*, (Oxford, Hart Publishing, 1998).

From the outset, the Court identified the constitutional ground for the accession of Italy to the European Community in article 11 and its 'limitation of sovereignty' clause. But initially, article 11 was invoked only for the purpose of providing a constitutional basis for the ratification of the Treaties of Paris and Rome by means of an ordinary procedure, which in Italy consists of an ordinary law of Parliament, followed by a formal act of the President of the Republic (articles 80 and 87 Constitution). As regards the Treaties of the European Communities, a constitutional basis was necessary because the new European legal system affected the constitutional powers of the Italian institutions. Since the Parliament had decided to ratify the Treaties by means of an ordinary law, ie without any constitutional amendment, it was all the more imperative to root the law of ratification in a constitutional provision.

At the same time, a dispute arose between the Italian constitutional court and the Court of Justice of the European Communities concerning the problem of supremacy and the direct effect of community norms. It is well known that the war between these courts lasted from 1964 until 1984, when, with the *Granital* decision the Italian Court acceded to the claims of the European Court of Justice,²⁴ albeit through a completely different legal reasoning: the monist approach of the European Court has always been refused by the Italian Court, 'which, in contradistinction to the European Court, has construed a theory of supremacy and direct effect within a dualist context.

What is interesting for our purposes is that the hidden reason behind the 20 years' war between the two Courts involved the problem of sovereignty. Under the influence of Kelsen, the Italian Court implicitly followed the idea that sovereignty belongs to that order whose norms are at the top of the *Stufenbau*. According to this conception, recognition of the supremacy of Community norms implied giving up all state sovereignty, because national norms of every level and kind were to be subject to community norms. In this intellectual scheme there is no room for the question: 'who is, or who are the Sovereigns?' There are no actors, institutions, or subjects, but only normative provisions, and sovereignty is a matter of legal norms. If this idea of normative hierarchy is then coupled with a monist perspective, as it is in Kelsen's own work, there is no way out. If sovereignty is an attribute of norms, the higher law must be sovereign.

²⁴ Decision n 170 of 1984. The age of the conflicts between the Italian Constitutional Court and the European Court of Justice which had begun with *Costa v ENEL* (Decision n 14 of 1964) thus came to an end when the Italian Constitutional Court accepted that EC law must prevail over national law. Moreover—and that was the point—when the European legal norms have direct effect, every national judge—not only superior courts, but all lower judges too—must apply the European rules and if necessary disregard all conflicting national norms. The *Granital* decision is still the leading case on the relationship between the European legal system and the Italian one, although the Italian Court has partially corrected its position for cases involving regional laws. On this point see decision n 94 of 1995.

Hence the Italian Constitutional Court has always rejected the monist perspective and interpreted the supremacy of Community law within a dualist context. From this perspective, the supremacy of Community law is not a matter of situating European law at a higher level than national law. Supremacy is understood rather in terms of a distinction between different fields of competence. There is no doubt that European law prevails over national law; however, the reason for its supremacy is not that it is 'higher' than national law. Instead, European law enjoys supremacy because when it operates national law must 'withdraw' (the word used by the Italian Constitutional court) from the fields of competence occupied by the European Community and give the floor to European law. For this reason, it might be said that the Italian court, through its dualist construction, tries to disguise the loss of Italian normative sovereignty.

However, doubts arise from this normative perspective. Following the Italian Court's dualist approach, although the problem of sovereignty appears to be a problem of the supremacy of norms, it is actually treated as a problem of the division of competences or as a matter of jurisdiction. The Constitutional Court makes a great effort to avoid recognising the loss of normative sovereignty suffered by the Member States as a result of membership of the European Community, but it succeeds only in shifting the problem. In the Italian Court's approach, the problem of sovereignty turns out to be a problem of competences, so that the key to solving the riddle of Sovereignty is 'who decides the division of competence?' 'Who has the power of *kompetenz-kompetenz*?' But the Court does not answer these questions; it leaves them open. However, even if we leave aside these questions²⁵ for the moment, other objections to the normative perspective arise.

Does the loss of normative sovereignty involved in the principle of supremacy of European law genuinely entail the loss of state sovereignty? Can we really say that because it has accepted the supremacy of European norms Italy is no longer a sovereign state? Such an extreme position is unconvincing, because the perspective which looks only to normative hierarchy is but a partial one, quite inadequate to explain the complex relationship between the States and the European Union. It does not take into account the fact that Italy, as well as all other Member States, takes part in the decision-making processes of the European Community, so that every Member State is co-author of European norms.²⁶ Italy, and every other

²⁵ Regarding sovereignty as a matter of competences see below Section 5.

²⁶ It was particularly true under the regime of the Luxemburg compromise, when all decisions were taken with the unanimity rule. Nowadays that constitutional balance is partially lost because of the development of majority voting, as has been pointed out by JHH Weiler ('L'Unione e gli Stati membri: competenze e sovranità' in (2000) *Quaderni costituzionali*, 5 ss). However, even though the Member States have lost the veto power on many subjects, arguably European membership does not weaken states in any overall reckoning, as it still endows them with new capacities in many fields of action. See below Section 5.

member State, loses its autonomous power to enact its own norms in some fields of action, because these powers are conferred to European institutions; however, at the same time every Member State gains other powers within the context of the European Community. When we speak of norms, we should not forget that behind them there are institutions vested with normative powers. And sometimes if we look inside these institutions, consider who are their members, and pay attention to the procedural rules for their action, we notice that the losers are in certain respects also the winners.

4. SOVEREIGNTY AND CONSTITUTIONAL VALUES

In order to temper the loss of normative sovereignty caused by the supremacy of Community norms, the Constitutional Court developed the 'Counter-limits' doctrine, which in turn gave rise to the theory of the sovereignty of values. In this respect we could say that Italy has adopted the doctrine of supremacy of European law on the condition of the respect of core constitutional values. So that in Italy European law enjoys *une primauté sous réserve*.

According to the counter-limits doctrine, while Community measures prevail over every kind of national norm, they are not allowed to infringe fundamental values protected by the Constitution, including constitutional fundamental rights. This special protection of fundamental rights and values is concerned with the defence of the last bulwark of national sovereignty. While membership of the European Union requires some limits to national sovereignty (article 11 of the Constitution), there should be some counter-limits, otherwise the *limitation* would turn into the *extinction* of national sovereignty. This is the reason why in the Constitutions of many of the Member States a provision can be found—eg article 11 of the Italian Constitution, article 23 of the German Constitution, article 88 of the French Constitution, article 28 of the Greek Constitution; article 10, para. 5 of the Swedish constitution,—that establishes some 'conditions' for European membership; in most cases these conditions consist in the respect for some basic values, including fundamental rights. As the Italian Constitutional Court stated in decision n 232 of 1989—the most relevant decision on this subject—the fundamental rights and other basic values of the Constitutional system can neither be modified, nor amended, nor even derogated from in a single case because they are vested with a crucial importance for the polity as a whole. They are considered as 'sacred', so that even when the Constitution is amended following the special procedure laid down in article 138 of the Constitution, the amendments are not allowed to affect one of these fundamental rights or principles. This is why the Italian Constitutional court cannot sacrifice the power to submit to

judicial review any measures—including the Community acts—that *prima facie* affect these rights and values.

The Constitutional Court does not specifically identify these definitive, mandatory and intangible Constitutional values. They are generically identified as those values which constitute a logical or historical pre-condition for democracy, such as freedom of speech, freedom of assembly, the principle of equality, free elections and, in general, all the 'fundamental rights'. These rights and principles are supposed to be rooted in article 2, containing the general clause for the protection of fundamental rights, and article 139 of the Constitution, stating that the republican form of the State cannot be amended. As absolute values, they cannot be questioned or affected, either by European norms, or by national powers, including the power of constitutional amendment. Similarly, relations with the Catholic Church, which might entail derogation of constitutional provisions, must conform to these fundamental values, or 'counter-limits'.²⁷

One more aspect of the question needs to be stressed in order to mark the distinction in the Counter-limits doctrine between the sovereignty of norms, and the Sovereignty of values. The Counter-limits doctrine does not imply that some constitutional provisions are untouchable. On the contrary, it is based on a distinction between normative provisions and values, ie, a distinction between the *essential contents*²⁸ of fundamental constitutional values—those that cannot be the object of constitutional amendment and must therefore be considered as inviolable—and the ways of expressing those values, which are subject to evolution (sometimes necessarily) in order to preserve the fundamental values. Sovereignty must refer to this hard core of values, rather than to some parts of the text of the Constitution. And the state retains its sovereignty in so far as it is able to claim that even Community law conforms to these essential values.

²⁷ See, in particular, the Constitutional Court decision n 1146 of 1988. I have discussed the case law of the Italian Constitutional Court on this point in *Principi inviolabili e integrazione europea* (Milano, Giuffrè 1995) 141 ss. A similar position was upheld by the German *Bundesverfassungsgericht* in some of its decisions on this matter, but recently it seems to have overruled the previous principles, starting with decision of 7 June 2000, concerning the *Bananenmarkt*. Actually, the German *Bundesverfassungsgericht* seemed to have already abandoned the counter-limits doctrine a long time ago, with the *Solange II* decision of 22 October 1986. However, considering the obscure language used in the subsequent *Maastricht Urteil*, of 12 October 1993 on this point, it is a common view that until the *Bananenmarkt* decision of 2000 the German Constitutional Court maintained a sort of 'sleeping' jurisdiction in relation to all measures that apply European law in violation of the hard core of fundamental rights protected by the German Constitution.

²⁸ The idea of the essential content of the fundamental values is clearly derived from the German constitutional tradition. The influence of German thought on the protection of fundamental rights in Italy on this point has been analysed by A Baldassarre, *Diritti della persona e valori costituzionali*, (Torino, Giappichelli, 1997), 91 ss. and by P Ridola, 'Libertà e diritti nello sviluppo storico del costituzionalismo', in P Ridola and R Nania (eds), *I diritti costituzionali*, (Torino, Giappichelli, 2001) vol. I, 47 ss.

The idea implicit in the Counter-limits doctrine is that fundamental rights and fundamental constitutional values reflect, to an extent, the identity, political culture and self-understanding of each society. Preserving these values, from this perspective, means preserving the identity of the polity, an identity rooted in the history and culture of the people and expressed in the foundation of the political and legal order within the Constitution. In Habermas's striking phrase, it is a new form of 'constitutional patriotism'²⁹ that breathes through the protection of the fundamental rights and the basic constitutional values. As with other types of patriotism, constitutional patriotism also has a dark side, and it always risks becoming nothing more than a rhetorical device.³⁰ Nevertheless, it is precisely because fundamental rights are to some extent perceived as protecting the identity of the *demos* that—generally speaking—the counter-limits doctrine has received a sympathetic hearing. Contemporary polities need a *demos*, and a *demos* needs a common identity, able to assemble the people and build a community. Fundamental constitutional rights constitute an acceptable basis for the collective identity of a *demos* founded on a community of values, replacing the old fashioned *demos* based on nationality, race, blood, or other factors.³¹

The idea of the sovereignty of values has found great favour among many scholars.³² Sovereignty belongs to those values shared by all of society, they argue. As a consequence, the Sovereign is no longer a person, or a single institution, or any other subject vested with political power. Sovereignty is not the characteristic of a subject, but it is rather the quality of some objective principles. This means that all public powers are tempered by fundamental values; none is absolute. In this context Sovereignty does not represent the untamed strength of political power, but rather it becomes one of its constraints. The theory of sovereignty of values has a clear 'moralising' purpose; and in this purpose lies its appeal.

But although appealing, the putative success of the doctrine is threatened by many shortcomings. The first concerns its vagueness: what are these values? What is their content? Are they rooted in national constitutional provisions or are they universal values shared at the international level? This theory originates, as we have already seen, from the idea of preserving

²⁹ See eg, J Habermas, in *Morale, diritto e politica*, (Torino, 1992) 105 ss.; *L'inclusione dell'altro*, (Milano, Feltrinelli, 1998) 318 ss.

³⁰ This idea has been recently criticised for its potential fetishisation of the nation state by JHH Weiler, 'Diritti umani, costituzionalismo e integrazione: iconografie e feticismo' (2002) *Quaderni costituzionali* n 3.

³¹ For this idea of *demos*, specifically applied to the European Union, see J Habermas, 'Perché l'Europa ha bisogno di una Costituzione' in G Bonacchi (ed.), *Una Costituzione senza Stato*, (Bologna, 2001) 156; *L'inclusione dell'altro*, (Milano, Feltrinelli, 1998) 167 ss., 218 ss.

³² See, for example, G Silvestri, 'La parabola della sovranità. Ascesa, declino e trasfigurazione di un concetto' in *Rivista di diritto costituzionale*, 1996, 3 ss., 55 ss.; L Ferrajoli, *La sovranità nel mondo moderno*, (Bari, 1997).

those values that constitute the national identity of a demos. This is the position of the constitutional case law on 'counter-limits', and the position that the doctrine takes as its point of departure. However, for some authors the background changes from the single country to a cosmopolitan context in which the values vested with sovereignty are universal rather than national.³³

From the case law of the Constitutional Court, there appears to be no doubt that the fundamental values are to be found within the national constitutional order and that they are an expression of the culture of a people.³⁴ The judicial version of the doctrine is that, through the activity of the state's institutions, and in particular the Constitutional Court, fundamental values express the voice of the state, or rather, the voice of a single demos.³⁵ In the theoretical version of the doctrine of the sovereignty of values, however, it is putatively universal values that are at stake. Distrust of the state leads to a more generic defence of certain universal values,³⁶ although it is almost impossible to identify what these are.

A few more words must be added in mitigation of the criticism of this doctrine. The overlap between universal and national expressions of fundamental rights is at least partly due to the very nature of fundamental values and fundamental rights. Fundamental rights are the expression of a culture, but they are also part of a universal heritage that belongs to each man and woman the world over and in all times. In fact, this universal dimension of the protection of fundamental rights is evident in all the international treaties, pacts and other instruments on human rights, which have multiplied since the Second World War, especially under the auspices of the United Nations.³⁷ Nobody doubts that the universal core of fundamental rights must be recognised in every man and woman, whereas a large band of fundamental rights beyond this core mirrors the identity of each polity. In other words, fundamental rights are in some way at a crossroads between universality and diversity, because they give expression to both natural demands and cultural choices. The latter occurs in particular when

³³ See, for example, G Silvestri, 'La parabola della sovranità. Ascesa, declino e trasfigurazione di un concetto' in (1996) *Rivista di diritto costituzionale*, 62 ss.

³⁴ For this idea of the link between the Constitution and the national culture see P Haerberle, *Verfassungslehre als Kulturwissenschaft* (Berlin, de Gruyter 1996) ch. 4.

³⁵ It should be noticed, however, that up to now it is a silent voice. The Counter-limits doctrine is a sort of nuclear weapon, which is good to have, and better not to use. Even the Constitutional Court deems that it is unlikely that an actual conflict between national and European fundamental rights will arise. See V Onida, 'Armonia tra diversi' e problemi aperti' *Quaderui Costituzionali* (2002) 549 ss.

³⁶ The foundational power of universal values and rights in the global system is also stressed by A Baldassarre, *Globalizzazione contro democrazia*, (Roma-Bari, Laterza) 2002, 50 ss.

³⁷ For an overview of the subject see A Cassese, *I diritti umani nel mondo contemporaneo* (Roma-Bari, 2000).

fundamental rights need to be balanced with other competing social values—such as authority and liberty, freedom of expression and protection of privacy, women's health and right to life of the unborn, and so on and so forth. The way of balancing these competing values depends on the basic choices of each society, and in this respect it reflects the culture of each society.

Yet the doctrine of the sovereignty of values can also be criticised from other perspectives. In particular, it is arguably an exercise in mystification to disconnect sovereignty from the exercise of power. How can values be sovereign by themselves? Do they exist on their own, or do they rather require the interpretation and application of political and judicial institutions, and, in the end, of society as a whole? Values live within the practice and activity of a subject, or rather, of a community of subjects.

A goal of the Counter-limits doctrine of the Constitutional Court is evidently to preserve a role for the Court itself within the process of European integration. At the heart of that doctrine is a question of jurisdiction. The Constitutional Court wants to be the ultimate '*Hüter der Verfassung*', even in the context of European integration.

But in the academic version of the theory of the sovereignty of (universal) values, who are the guardians of these values? The answer offered by scholars is unsatisfactorily vague on this point, in so far as they affirm that the Sovereign is in turn each subject, inside or outside the legal order, private or public, national or international, that better ensures the full respect for these universal values.

5. SOVEREIGNTY AND COMPETENCES

Although it is a classical topic of federalism,³⁹ in the broad sense of the word, the relationship between Sovereignty and the division of competences is not treated as a main concern for the Italian legal order. For instance, inside the national legal system the recent amendment to the Constitution⁴⁰ concerning the Regions' powers may have turned upside-down the criteria for the division of competence between the State and the Regions, yet no one in the legal debate has even mentioned the matter of Sovereignty.

From the perspective of European integration, too, few scholars have taken this matter into consideration. For example, the question of *kompetenz-kompetenz* has never been discussed in Italy to the degree that it has in

³⁹ See *The Federalist Papers* nos 42 and 45.

⁴⁰ Constitutional Law n 3 of 2001.

Germany.⁴⁰ Of course, everybody recognises that European institutions arrogate to themselves some of the powers that belong to national institutions. It is common knowledge that the European Court of Justice has supported this expansion and that revisions of the Treaties—Single European Act, Maastricht, Amsterdam—have considerably increased the powers of European institutions at the expense of national ones. However, common opinion on this point is that article 11 of the Constitution, concerning the limitation of sovereignty, implicitly foresees, and gives general consent to, the transfer of powers to the European Union. The self-evident meaning of the ‘limitation of powers’ is the sacrifice of the competences of national institutions in favour of supranational or international ones. Indeed, this is precisely the *raison d’être* of article 11 of the Constitution.

However, whereas in other European states—France, for example—a distinction has been made between *limitations* of Sovereignty and the complete *loss* of sovereignty, in Italy nobody has ever seriously held that in order not to violate the boundaries of the concept of the ‘limitations of Sovereignty’ some bars should exist to the transfer of powers to the European institutions. Nobody has argued that some kinds of power—in matters such as citizenship, immigration, defence, monetary policy, and criminal law, for instance—cannot be exercised at the supranational level in the name of State sovereignty. Nor has anybody put the problem in terms of the quantity of European competences. The Italian Constitutional Court has not yet been called to answer this kind of question; but the situation may occur, and in theory a conflict with the European Court of Justice cannot be excluded⁴¹ unless a definitive solution regarding the division of competences, the justiciability of the principle of subsidiarity and the question of *kompetenz-kompetenz* is found by the Laeken Convention on the Future of Europe, and accepted by the Member States in the future constitutional Treaties for Europe.

In the Italian context, only a few traces of the debate concerning the link between sovereignty and competences can be found, and these traces have been left by the principle of subsidiarity which was introduced by the Maastricht Treaty. For many reasons, eg its flexibility; the potential extension of EU competences that it might provoke; its capacity to bring all matters of social life (even the most nationally sensitive ones such as defence, criminal law, health, education, and so on), into the process of

⁴⁰ The few notable exceptions in the Italian legal literature include, GU Rescigno, ‘Il tribunale costituzionale federale tedesco e i nodi costituzionali del processo di unificazione europea’, in (1994) *Giurisprudenza costituzionale*, 3115 ss., and E Cannizzaro, ‘Democrazia e sovranità nei rapporti tra Stati membri e Unione europea’ (2000) in *Diritto dell’Unione Europea*, 241 ss.

⁴¹ See V Onida, ‘Armonia tra diversi’ e problemi aperti’ above n 35.

European integration, and to do so in the name of a single open-ended test—the principle of subsidiarity was surrounded by a general climate of mistrust and suspicion at the time of the Maastricht Treaty. Indeed, it is worth remarking that at the very moment the principle of subsidiarity was introduced, even some strands of Italian opinion were moved to declare that state sovereignty demands a limit to the transfer of powers to supranational institutions, that it cannot permit new powers to be handed over to Europe without the state's consent, and, above all, that the competences of the national and the supranational level of government be clearly distinguished.⁴² Yet although many scholars predicted an age of confusion and uncertainty, nobody was seriously worried about the survival of the sovereign state. At present a more sympathetic attitude surrounds the principle of subsidiarity and nobody seriously questions its importance.

It is arguable that the reason that the transfer of powers to European institutions is not perceived as a loss of Sovereignty is that the assignment of competences and powers to the European Community is perceived merely as a different way of exercising state powers, not as a way of giving them up.⁴³ Because of the intergovernmental nature of the Council of the European Union, the political leaders of the Member States still control the European decision-making process, so that they do not feel that they have been excluded from the exercise of powers accorded to European institutions. On the contrary, some actions could never be exercised as such by each single state acting on its own, whereas they can be within the European Union. So the problem turns out to concern a rather different question, namely, the question of the structure, voting system and legitimation of European institutions, and not the question of the allocation of powers.

This line of reasoning is clearly expressed in the theory of Shared Sovereignty:⁴⁴ the basic idea is that within a supranational organisation sovereignty is not split into different parts, as has sometimes been claimed under the label of 'Divided Sovereignty' in relation to the federal States; rather, sovereignty is shared, because certain powers are exercised in common, by each state acting together with other states. In fact, the idea of shared sovereignty diverts attention from the question of the division of competences by stressing instead the problem of preserving a role for the

⁴² P Caretti, 'Il principio di sussidiarietà e i suoi riflessi sul piano dell'ordinamento comunitario e dell'ordinamento nazionale', in (1993), *Quaderni costituzionali* 7 ss.; G Strozzi, 'Alcuni interrogativi a proposito della delimitazione delle competenze dell'Unione europea' in (1994) *Rivista di diritto internazionale*, 136 ss.

⁴³ This is the thesis upheld by A Carrino, *Sovranità e costituzione nella crisi dello Stato moderno*, (Torino, Giappichelli, 1998).

⁴⁴ See E Cannizzaro, 'Esercizio di competenze e sovranità nell'esperienza giuridica dell'integrazione europea', in (1996) *Rivista di diritto costituzionale* 75 ss., who speaks of 'sovranità solidale'; see also A Carrino, *Sovranità e costituzione nella crisi dello Stato moderno*, above n 43, 188, who speaks of 'sovranità condivisa'.

various states within the structure of European institutions (and, we could add, within other international organisations). As we shall see in the next section, this is very similar to the result towards which we are led by the *Antisovereign* theory and by all other theories that stress the problem of the legitimation of supranational and international powers in a world of increasingly diffuse political authority.

The theory of shared sovereignty seems to rely on the regime of the veto power of each Member State inside the Council of the European Union. Recently, however, the unanimity principle has been incrementally set aside, and its place taken by majority voting in more and more fields of action within the European Community. Moreover, in view of the enlargement of the Union, the trend towards majority voting is expected to accelerate. In this new context, where the position of a single Member State is more and more likely to be sacrificed to the will of the majority, can we still speak of Shared Sovereignty? Or is it necessary to adapt this doctrine, or some of its features?

6. SOVEREIGNTY AND GLOBALISATION

In recent years, globalisation—consisting in new and impressionistic processes that are undermining the basic concepts of our state-centred legal, political and social culture—has revitalised the debate about sovereignty. Indeed, this debate is not ‘made in Italy’, nor is it ‘made in Europe’ but it affects all countries under the dominant influence of American legal and political thought. Nonetheless, the Italian legal literature also offers some examples of this new trend of study, focused on the effects of globalisation on the remainder of Sovereignty, and they deserve to be discussed.

At the forefront of this new wave of studies in Italy is the ‘antisovereign’ doctrine.⁴⁵ This original and insightful analysis of the processes of globalisation is based on the image of the antisovereign, which explicitly recalls the idea of the ‘antipope’, or the ‘antichrist’: a subject which purports to be the veritable antagonist of the Sovereign, that denies his authority, desires to take his place and role, and to this end operates following principles and methods in conflict with and in opposition to those of his enemy.

On this view the globalisation of markets and the economy is the main cause of the nation state’s crisis at the present time, a crisis due mainly to the fact that nation states and national constitutions are no longer able to manage and govern the economy because of the trend towards internationalisation and globalisation of commerce. The economy evades the reach or

⁴⁵ M Luciani, ‘L’antisovrano e la crisi delle costituzioni’ in (1996) *Rivista di diritto costituzionale*, 124 ss.

scope of national action and this proves profoundly challenging to the legitimacy and efficacy of the state.

'Antisovereign' are all those entities that control the economic decision-making processes; they contrast with the sovereign state in many respects. Whereas the Sovereign is a subject, the antisovereign is instead a diffuse power. The antisovereign's decisions purport to be a necessary consequence of economic rules, based on neutral, scientific and objective reasons, whereas the sovereign's decisions purport to be the fruits of political and discretionary power. The antisovereign's legitimation relies on the technical nature of its action and goal, namely, to ensure economic prosperity by means of the application of economic rules; it does not seek to be the expression of a people's will nor does it consider itself bound by the rules of the democratic process.⁴⁶ The antisovereign provokes the crisis of the nation state, because it takes over a great deal of the states' powers, directly or indirectly. Even those competences that remain in the states' hands are profoundly conditioned by the antisovereign. However, this doctrine argues, the state sovereign has not yet resigned, and the loss of power can and must be stemmed.⁴⁷

Before we turn our attention to the 'pars construens' of the 'Antisovrano' doctrine, where some proposals for preserving power in the hands of the national states are sketched out, a few more general remarks on the doctrine are in order. First, it is easy to observe that in the antisovereign analysis, economic relations are the main feature of the globalising process. The global market, the G7 or G8, the WTO, the IMF, the multinational companies, and so on, are the group of subjects of which the antisovereign consists. In fact the dichotomy Sovereign/antisovereign disguises a tension between economy and politics. And the problem at stake is how to preserve, or how to restore, the power of control over the economy to political institutions.

The same analytical perspective is taken by the doctrine of 'web' or 'network sovereignty'—*la sovranità reticolare*.⁴⁸ Although this doctrine reaches different conclusions from those of the Antisovrano—and indeed is openly critical of the latter⁴⁹—the approach is similar. The starting point of the analysis is the 'decalage' between *global* markets and the *national* focus of the political process. Globalisation is seen mainly as a process involving economic activities, and the central issue is how to find new mechanisms for submitting global markets to some kind of deliberative political institutions.

⁴⁶ M Luciani, *ibid* 160 ss.

⁴⁷ M Luciani, *ibid* 171.

⁴⁸ C Pinelli, 'Cittadini, responsabilità politica, mercati globali' in *Studi in onore di L. Elia*, vol. II, (Milano, Giuffrè, 1999) 1257 ss.

⁴⁹ C Pinelli, *ibid* 1287 ss.

A more comprehensive vision of the globalising process is taken by Baldassarre in his recent book, *Globalisation versus democracy*.⁵⁰ The main causes of globalisation are identified as the Internet, the cybernetic system of communication and the new network information technologies more generally. At present, the main effects of this revolution in communications are evident in economic relations. However, the underlying idea of this book is that, since all human activities, whatever their objects and aims, can also be regarded as acts of communication,⁵¹ globalisation is dramatically upsetting our social and personal life, understood in all its aspects, including the political. The reason is that internet communication renders all human activities indifferent to space and time. When and where an action is taken does not matter, so that the actors in cybernetic communication are 'intangible' or 'virtual subjects' (*soggetti disincarnati*). This indifference to the human dimensions of life—this disembedding of social relations from fixed points of space and time—is also the reason for the crisis of the nation state. The *nomos* of the new global order is irreconcilable with the *nomos* of the international society that preceded it. The latter was based on the idea of national sovereign states acting in the international context as equals. However, globalisation has destroyed state sovereignty, because sovereignty needs a demos and a territory, whereas in the global context there is no demos, and territory, and boundaries, are irrelevant.⁵²

Even if these doctrines offer different analyses of the globalising process, they nevertheless raise a common question: what is the future of democracy in the global world? The explicit concern for the destiny of state sovereignty in the global context, as well as the attempt at preserving the supremacy of politics over the economy, both converge in a sole and ultimate commitment—the search for a new form of democracy in the global world.

As far as the 'antisovereign' doctrine is concerned, in order to preserve a central place for politics and for democracy, the proposal is to take international law—understood as a law *inter gentes*, rather than a *jus gentium*—as a point of departure. This means that the states would continue to play a major role in the international arena. The only way to preserve a primary role for politics and democracy is to recognise the states as necessary agents. The idea is that at the supranational, international and global level democracy can only be realised by states, which are to be considered as equals on the international stage, and which must therefore considerably strengthen democratic and parliamentary control of their foreign policy. This path to global democracy necessarily entails remedying the democratic deficit of international organisations such as the UN, IMF, WTO, G8, etc.⁵³

⁵⁰ A Baldassarre, *Globalizzazione contro democrazia*, (Bari-Roma, Laterza, 2002).

⁵¹ A Baldassarre, *ibid* 6 ss.

⁵² A Baldassarre, *ibid* 50 ss.

⁵³ above n 45 M Luciani, *L'antisovrano e la crisi delle costituzioni*, 182 ss.

The idea of increasing the democratic legitimation of international organisations as a way of preserving the basic principles of liberal democracy in the new world is also discussed by the other doctrines, but is considered inappropriate or simply unworkable. 'Network sovereignty' works from the idea that political institutions should play a role of co-ordination between actors in global society, keeping in mind that political accountability is at present directed to subjects that are in turn consumers, workers, members of cultural associations, users of public services, and so on. The activity of political institutions is not addressed to a 'generic' citizen or to an electoral body, but to subjects possessing different qualities and different statuses that need to be satisfied.⁵⁴

A more precise proposal comes from Baldassarre's book. He works from a critique both of the idea of democratic global government, which is simply impossible to conceive because there is no global demos, and of the revival of the role of sovereign states within international organisations. Too many obstacles hinder the revision of traditional organisations, such as the UN, and the transformation of their structures and procedures into genuine democratic ones. His proposal, on the contrary, is based on the idea that the subjects of the global world should be the 'regions of the world',⁵⁵ vast areas gathering all the countries belonging to a homogeneous cultural tradition: occidental, Muslim, oriental, and so on. These regions of the world, corresponding to each area of civilisation, are charged with a double task. First, to reach the highest possible level of integration internally, so that they can build up political institutions that are able to represent the whole regional area. The model could be European integration, or other forms of economic and political integration that developed in the second half of the 20th century. The second task is to take part in a type of indirect global governance, where the countries and the *demos* of the world are represented through 'regional institutions'.

7. SUMMARY

It is noticeable that in some way all the new doctrines of sovereignty in the 'global' world draw a clear ideational link between the original, historical problem of popular sovereignty and the present challenges of supranational integration, international relationships and the global network. Sovereignty has been awarded to the demos and this is not up for discussion; the only subject vested with sovereign powers is and must remain the demos. In this respect, the discussion of sovereignty in the twenty-first century does not

⁵⁴ Above n 48 C Pinelli, *Cittadini, responsabilità politica, mercati globali*, 1301 ss.

⁵⁵ Above n 50 A Baldassarre, *Globalizzazione contro democrazia*, 360 ss.

disregard the results of the debate from the early twentieth century regarding popular sovereignty.

However, whereas at the origin of the Republic the main question was how to reconcile democracy with the sovereignty of the state, and the solution was found in the distinction between direct and representative democracy, classical representative democracy is currently undergoing a deep crisis: it requires new institutions and procedures to be built in order to preserve democratic principles and the democratic Sovereign in the international, supranational and global arenas. One can agree or disagree with the aforementioned proposals, but surely it must be recognised that they all put the problem of sovereignty in a perspective that respects its minimum meaning and still seeks to connect it to discernible geopolitical trends. That is why I think that there is no way out: either we consider the problem of sovereignty in connection with the role of representative institutions, the idea of the *demos*, and the problem of the democratic legitimation of power; or sovereignty becomes meaningless and should be eradicated from the vocabulary of contemporary political and constitutional life.

