

## Foreword

Within the framework of a controversial and reciprocal process of constitutionalization of international legal order and internationalization of constitutional law (Bryde 2008), one can easily see that two opposed phenomena are in progress: the erosion of sovereignty and the rising of different forms of nationalism.

Since long time and namely with reference to the international field, sovereignty has irretrievably developed from an exclusive monopoly of the State to a broadly shared practice, exercised by a plurality of actors in different places, not only at national but also at sub-national and trans-national level. If State is now considered as a “Global State” (Ricciardi 2013), it has even ceased to be conceptualized and represented as the entitled subject of the sovereignty (here referred as the power of the State to enact law and exercise security and protection on its own territory), but has been developed into a valuable and “measurable” entity in relation to its own capacity and resources (as for the case of the economic development) and also in relation to risks it can produce and for which an immunization must be done (Duffield 2002, Simpson 2004).

Aside of the different attempts to give again to sovereignty a central role in International legal order (for example, the rising of different forms of nationalism), two aspects are highlighted in this reconceptualization of sovereignty: the *humanitarian turn* of the International Community and the *rising and legitimacy of new actors* in the International legal order.

As the result of a long, dramatic and discussed journey, international politics have now reached the *humanitarian turn*, which has reconceptualised sovereignty as a form of responsibility for the State, and has turned into the broadly accepted concept of “Responsibility to Protect,” posing also problems with the notion of “humanitarian intervention.” Indeed, this new concept allows to keep together the ambiguous dilemmas

and effects stressing the exercise of the global governance; at the same time, a necessary containment of the sovereignty is derived and accepted.

Aside of this form of erosion of sovereignty, International legal order is assisting to the *advancement of other actors*, namely non-state actors and indigenous people. As with respect of non-state actors, they are increasingly involved into international decision-making processes, since they are considered as bearers of different public interests to be taken into account and developed into rules by international institutions (Higgins 1994). Although this participation is highly considered at the international level as a new form of “supranational” or “shareholder democracy” (Singer and Ron 2018), non-state actors are only formally accepted, but substantially are taken out of the deciding phase. As a consequence, there are forms of proposing participation in International legal order, as well as forms of theoretical deconstruction and rebuilding of international decision-making processes, in order to ensure the full participation.

As a matter of discussion, the two sides of erosion of sovereignty (the humanitarian turn and the advancement of new actors) are putting the international legal order under new lights, i.e. those of the modern thought of Global Constitutionalism. On one side, the traditional pillar of sovereignty is facing a new conceptualization of its limits, both on legal and political sides, and is leaving room to the progressive construction of a Global Community supported by fundamental values, considered as the pillars of a new form of Rule of Law. On the other side, there is an increasing demand for a new conceptualization of international politics, involving both more consideration of the principle of human dignity (Cançado Trindade 2013) and more participation in decision-making processes, for the purposes of commonly constitutionalizing the International Community.

These points can be considered the starting ones for discussing on this process of constitutionalization of International law. The following contributions are the final products of different study research by the

authors, by which different scholarly perspectives are exposed and put genuinely together:

*Andrea Morrone* analyzes the foundations and the role of political sovereignty and discusses the possibility of it being replaced, through technology, by economical or bios sovereignty;

*Damiano Canale* investigates the nature of border walls as compared to traditional state borders;

*Tomi Tuominen* discusses Neil Walker's contribution to constitutional pluralism and global constitutionalism in the light of philosophy, sociology and critical theory;

*Susanna Cafaro* highlights the role of democracy at the supranational level and analyzes the ways in which it can be conceived and implemented;

*Yadh Ben Achour* analyses the democratic form of government considering the five principles, which it is based on: dignity, freedom, equality, participation and rule of law;

*Massimo Fichera* contributes to the debate on transnational constitutionalism by focusing on its transformative character;

*Gustavo Gozzi* reinterprets the history of the rights of man, and of human rights thereafter then (starting from 1948), from a non-Eurocentric perspective.

## References

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