

# THE TERRITORIAL FOUNDATION OF POWER AND GLOBAL SPATIAL TRANSFORMATIONS

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## **Abstract**

The A. analyzes the relationship between territory and power through a theoretical perspective, retracing the most significant theories elaborated between the nineteenth and twentieth century by Italian and foreign doctrines. The investigation, therefore, aims at verifying how much power structures and, in particular, state power find their foundation in a primordial telluric link, which today seems to be called into question by the pervasive pace of a spatial revolution brought about by globalization. And if, on one hand, global power has eroded the consistency of statehood, sovereignty and territory; on the other hand, it has initiated a process of reformation of traditional state components including, undoubtedly, the territorial element.

## **Keywords**

Territory. Power. State. Sovereignty. Globalization. Territorial levels of government.

## **Summary**

1. Organization of power and territory: theoretical profiles. – 1.1. Territory as a constitutive element and *immanent* quality of the State (*Eigenschaftstheorie*). – 1.2. Territory as *res* and object of a (real) right in rem (*Eigentumstheorie*). – 1.3. Territory as an area of extension and limit of state power (*Kompetenztheorie*). – 2. Territory as criterion ordering state power between process federalizing and regionalization. – 3. Territorial power and spatial revolution: from the essence to the fading of borders. – 4. Global power, territory and levels of government.

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## 1. ORGANIZATION OF POWER AND TERRITORY: THEORETICAL PROFILES

The organization of power and its relationship with territory is a classic theme of constitutional law, and not only. It is a subject that can be investigated from different angles and, although traditional and widely explored by the best Italian and foreign doctrine, continues to arouse great interest due to the massive transformations, including spatial, produced by the global economic and technological processes that daily redesign the geopolitical coordinates of the world order.

The relationship between territory and power – although so complex on the conceptual level due to its difficult theoretical arrangement – belongs to and indeed is interpenetrated in the history of the world and of humanity, as known, is comprised of great struggles for the conquest of territory and territories (*Landnahme*)<sup>2</sup>. A history punctuated by processes constitutive of occupation and division of land, since, as *Giorgio Lombardi* said, “La strategia di ogni potere è una strategia di spazi”<sup>3</sup>.

It is, therefore, the historical dimension even before the abstract and artificial dimension of the right to reveal the close relationship between territory and power, under which “every fundamental ordering is a spatial ordering” and “is based, in its essence, on certain spatial boundaries, on certain measures and a certain division of the earth”<sup>4</sup>.

In this light, territory is a condition of the existence of power; it is a spatial form where man orients his senses, places, identifies and organizes the structures of common life<sup>5</sup>; it has an intimate anthropological essence<sup>6</sup>,

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<sup>2</sup> See SCHMITT, 2006, p. 3.

<sup>3</sup> See LOMBARDI, 1985, p. 48-49.

<sup>4</sup> SCHMITT, 2006, pp. 73-74.

<sup>5</sup> In geography, *Territory* is “a general term used to describe a portion of space occupied by a person, group, local economy or State”, JOHNSTON-DEREK-PRATT-WATTS, 2000, p. 824.

being man himself “an earthly being that treads the earth”<sup>7</sup>, bound to it by a symbiotic link that gives unity and identity to the group itself<sup>8</sup>. Anthropologists define this link “territorial imperative”<sup>9</sup> to understand the primordial instinct that drives men (as well as animals) to defend the territory by virtue of an exclusive feeling of possession.

The authoritative historian, Otto Brunner, in his most famous work, *Land und Herrschaft*, clearly highlights the relationship between territorium (*Land*) and power (*Herrschaft*), demonstrating how in every age it has represented an instrument of organization of space and power and has forged, starting from a certain historical moment, the modern political order<sup>10</sup>. It is not by chance, then, that the broad legal reflection on the concept of territory has linked power to this and has investigated its implications with respect to what we consider the most representative of the structures of power: the State<sup>11</sup>. The very concept of state calls to itself that of spatiality; the territory is consubstantial to the state power and is a prerequisite for its effectiveness and validity<sup>12</sup>, so that *by organizing power in the territory and through the territory, “It gives a duration that goes beyond the life of men and a finality that appears to the members of the group as an overcomer of their own individual interests and their limitation, (...) making them become participants in the perpetuity of the soil”*<sup>13</sup>.

<sup>6</sup> ORTINO, 1999, p. 33.

<sup>7</sup> See SCHMITT, 2006, 11.

<sup>8</sup> See IRTI, 2001, p. 23.

<sup>9</sup> ARDREY, 1967, p. 1, “A territory is an area of space which an animal guards as its exclusive possession and which it will defend against all members of its Kind. (...) and that man obeys the same law as does many another animal species”.

<sup>10</sup> See BRUNNER, 1983, p. XXIV; GIULIANO, 1954, p. 22.

<sup>11</sup> MANETTI, 1985, p. 1.

<sup>12</sup> See CERETI, 1957, p. 399; CRISAFULLI, 1970, p. 79.

<sup>13</sup> See CERETI, 1957, p. 399.

The sovereigns had already understood power as a reason for the expansion of their control on the territories and, subsequently, territorial widening continued to represent the measure of authority and, at the same time, the foundation of legitimacy of power and the State. The same sovereignty has constantly been redefined through the territory and has understood it as a space of exercise - as well as of dispute - of political power; as a space of rivalry; as a space of rights and law, as a space of ideological claims; as a space of decision-making and identity; as a space for trade, exchanges and accumulations of wealth<sup>14</sup>.

However, territory has not always had the same prominence in characterizing power. In city-states, for example, the basis of power was ethnic and related to the lineage or the people<sup>15</sup>. The polis was a city intended to welcome exciting people with the same cultural roots and gather people with the same origins and traditions. And if in Greece the territory identifies the polis in its dimension of static reality, “closed” and “distinct”<sup>16</sup>, not particularly prone to growth and development, but rather aimed at preserving the *ghenos* and *ethos*; in Rome, instead, the territorial space embodies the “public space”<sup>17</sup> in a completely specular perspective compared to the Greek one, because the territory becomes the “place” of and for the population, and no longer expresses only the space of a human gathering, but a much more complex and complete reality that includes and does not exclude; where open and dynamic relationships that transform *orbis* into *urbs* intertwine<sup>18</sup>.

With the Treaties of Westphalia, the geometry of political space changes<sup>19</sup>: the territorial element becomes the demiurgic moment of state power. It

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<sup>14</sup> MICHETTI, 2021, p. 113.

<sup>15</sup> VAN CAENEGEM, 2003, p. 52; MAZZIOTTI DI CELSO, 1985, pp. 65-66.

<sup>16</sup> CIOLLI, 2010, pp. 16-17.

<sup>17</sup> CIOLLI, 2010, pp. 18-19.

<sup>18</sup> CACCIARI, 2004.

<sup>19</sup> BRUNNER, 1983, p. 232.

redesigns the coordinates of the new geopolitical order of the Continent; it redefines the relationship between territory and States, which are now used to assert their imperium; the modern State thus takes shape through the dogma of territorial sovereignty. The idea of the authority welded to a territorial *limes* reflects, the sculpted, spatialized, confined and territorialized figuration of the state. And it is precisely in the transition from the feudal order to the modern state that a relationship between the state and its territory develops, that if empirical observation is a more immediate perception (only because the territory constitutes the geographical area bordering the State), on the contrary, it is not so conceptual in that the reconstruction of the juridical nature of the territorial foundation of state power has been the subject of complex doctrinal reflections within which at least three main doctrinal positions can be identified: i) the first considers the territory to be a constituent element of the State; ii) the second qualifies it as an object/asset of the State; iii) the third, connects the territory to the spatial scope of validity of the rules.

### 1.1. TERRITORY AS A CONSTITUTIVE ELEMENT AND IMMANENT QUALITY OF THE STATE (*EIGENSCHAFTSTHEORIE*)

The traditional manuals count ‘territory’ among the elements that are indefectible for the existence of the State and the best doctrine has constantly referred to the notion of statehood <sup>20</sup>, so much so that “ohne

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<sup>20</sup> In italian literature they support this thesis: ROMANO, 1902, p. 114; ID, 1908; ID., FIRENZE, 1951; ZANOBINI, 1949; GIANNINI, 1982; RANELLETTI, 1911, I, p. 109; ANZILLOTTI, 1912, p. 159; MORTATI, 1958, p. 73; CAVAGLIERI, 1904, p. 87.

Staatsgebiet keine Staat”<sup>21</sup>. In 1867 *Carl Victor von Fricker* was convinced of this idea and therefore had elaborated his doctrine on the territory of the State, believing that it was not “Object of property” of the State, but an element of it, or rather “a moment in (its) nature”, and as such not opposed to it as a ‘entity’<sup>22</sup>. In its refined reconstruction, territory - as an essential element of the State - expresses impenetrability and defines the space within which it exercises its general right to assert itself as a sovereign entity<sup>23</sup>. Territory is therefore not something *external* to the State, but one of its qualities<sup>24</sup>. This thesis will be taken up by *Georg Jellinek*, for whom the relationship between State and territory is conceivable only in terms of *imperium* (and not of *dominium*) and therefore can be classified as a relationship of a public nature, where the territory is the spatial base where the State expresses its lordship. For the jurist of Heidelberg, territory, in fact, constitutes the foundation of the exclusivity of state power<sup>25</sup>. This relationship of coessentiality or interpenetration between State and territory will also be the starting point of the reflection of *Santi Romano* who, in 1902, when considering the relationship between territory and State, will affirm - both lapidarily and effectively - that “the state has no territory”, but that “the state is a territory”<sup>26</sup>. The Sicilian jurist writes, in

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In German literature: GERBER, 1971; FRICKER, 1901; ID., 1867; HEILBORN, 1896; ZITELMANN, 1897; JELLINEK, 1905.

<sup>21</sup> HORN, 2016, p. 21; GRAF VITZTHUM, 2004, p. 166; VOGEL, 1987, p. 3394; JELLINEK, 1905, p. 12; MILLER, 2009, p. 437; BALDWIN, 1992; WILLOUGHBY, 1924, p. 64; LABAND, 1895, p. 190, otherwise KELSEN, 2000, p. 212.

<sup>22</sup> FRICKER, 1901, p. 107.

<sup>23</sup> FRICKER, 1901, pp. 60-61; ID., 1867, p.11; MAYER, 1905, § 1; JELLINEK, 1949, p. 12.

<sup>24</sup> FRICKER, 1901, p. 10; JELLINEK, 1900, p. 356; otherwise U. FORTI, 1906, p. 366.

<sup>25</sup> JELLINEK, 1949, pp. 14-17.

<sup>26</sup> ROMANO, 1902, pp. 117-118; ID., 1908, p. 663; ID., 1941, p. 160; ID., 1947, p. 181; BISCARETTI DI RUFFIA, 1992, p. 339; PALADIN, 1998; MORTATI, 1975; ORLANDO, 1905, p. 22; CARAVITA DI TORITTO, 1991, p. 1.

fact, that territory is much more than a constituent element: “it takes on the character of one of the material and essential elements from which the life of the entity results”<sup>27</sup>. Because of this, there would be a symbiotic relationship between the two, so much so that without the territory the State does not exist<sup>28</sup>. In its theoretical development the *Eigenschaftstheorie* is ideally attached to the *Drei Elemente Theorie*, for which the State, resulting from the combination of three constituent elements: territory, sovereignty and people<sup>29</sup>, is conceived as a territorial entity<sup>30</sup> and with a territorial identity<sup>31</sup>.

## 1.2. TERRITORY AS RES AND OBJECT OF A (REAL) RIGHT IN REM (EIGENTUMSTHEORIE).

Differently from the theory that sees in the territory an element constitutive of the State is the doctrine that qualifies it as the recipient of a right of which the territorial authority (State) would be the holder. In this theoretical key, the territory represents an object of the State, a *res* on which it exercises its *dominium* like the one that any owner exercises on his possessions<sup>32</sup>. Such an idea originates from the logic of the patrimonial order, in which the sovereignty is configured as an absolute right of private origin which belongs to the prince on his territories and of reflection on the people who live there. The reflection of *Karl von Gerber*, for whom “the state territory is the real object of the lordship of the

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<sup>27</sup> ROMANO, 1902, p. 123.

<sup>28</sup> ROMANO, 1902, p. 117.

<sup>29</sup> ALESSI, 1960, 293, (6).

<sup>30</sup> BALLADORE PALLIERI, 1949, p. 220.

<sup>31</sup> GERBER, 1971, p. 144; WEBER, (1919), 1948, p. 48.

<sup>32</sup> LABAND, 1900, p. 287.

state”, and from this relationship derives a right of the state *to the territory*<sup>33</sup>. This approach will be reflected in the reflection of Italian publishing law with the evocative position of *Ugo Forti*, who considers the State a legal entity and as such capable of subjective rights<sup>34</sup>. In this context, territory is seen as a *prerequisite* of the State<sup>35</sup> and a relationship ensues according to which the State has a “right of territoriality”<sup>36</sup> to exclude from its territory any other state power. This leads to the assimilation of the relationship between the State and the territory to that which is, in private law, the relationship between the owner and his property. In both cases there would be the exclusive and total domain on a *res* or – to put it with the Forti – an “*eminent domain*”<sup>37</sup>.

Even the best internationalist doctrine reasons that there is “*domination*”, indeed “*domination in the strictest sense*”<sup>38</sup>, when there is a twofold and distinct subjective juridical situation in the relationship between territory and State. One defined as the subjective right of the State to dominate the territory, which is substantiated by the power to exclude the penetration and action of others in its own space circle; the other qualified as the right of the State to exercise its power in that sphere<sup>39</sup>. The space, usually defined as territory within which stability and normal and prevalent state activity are manifested, then becomes a precondition for territorial

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<sup>33</sup> See wider references MICHETTI, 2021, p. 14.

<sup>34</sup> FORTI, 1902, pp. 365-366; ID., 1906, p. 64. *Contra* ROMANO, 1908, p. 634; MIELE, 1931, p. 303; BONAUDI, 1931, pp. 53-54.

<sup>35</sup> FORTI, 1902, p. 367.

<sup>36</sup> FORTI, 1902, p. 375.

<sup>37</sup> This setting is denied by FRICKER, but not by LABAND, 1911, p. 165 ss., BONAUDI, 1931, pp. 57-59.

<sup>38</sup> DONATI, MCMXXIV, p. 59.

<sup>39</sup> DONATI, MCMXXIV, p. 65.

sovereignty, that is, the right of the State to fully enjoy its territory by excluding interference by other States<sup>40</sup>.

In configuring the territory as a *res* in the domain of the State, *Donato Donati*, while recognizing that States need a territory to exist, does not, however, consider it a constitutive element<sup>41</sup>. Rather, he qualifies the territory as an entity external to the State itself and the State exercises an international right of domination over it<sup>42</sup>. A right that attributes the State an exclusive power over the territory<sup>43</sup> as a more immediate and physiological environment in which to exercise of *imperium*<sup>44</sup> or “theater of the empire”<sup>45</sup>. German jurists very effectively coined the expression *Gebietshoheit*<sup>46</sup> to describe the relationship between territory and empire, between *Gebiet* and *Herrschaft*, to express exclusive and exclusive territorial power (*ius erga omnes*)<sup>47</sup>.

### 1.3. TERRITORY AS AN AREA OF EXTENSION AND LIMIT OF STATE POWER (KOMPETENZTHEORIE)

The refusal of any supposed anthropomorphic (or organic) conceptualization of the State induces the doctrine to reconsider the relationship between this and its territory. Above all because the State is no longer taken as a sociological or material category, but as a regulation

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<sup>40</sup> GIULIANO, 1954, pp. 22-23.

<sup>41</sup> DONATI, MCMXXXIV, p. 28; ALESSI, 1960, pp. 296-297.

<sup>42</sup> DONATI, MCMXXXIV, p. 60, p. 136 and p. 139.

<sup>43</sup> GIULIANO, 1954, p. 44; CITARELLA, 1994; DISTEFANO, 2006; GIOIA, 1999, p. 257; DE LA PRADELLE, 1977, p. 415.

<sup>44</sup> PERASSI, YEAR IV, 1912, p. 147.

<sup>45</sup> ZITELMANN, 1897.

<sup>46</sup> GRAF VITZTHUM, 2004, p. 166.

<sup>47</sup> GIULIANO, 1954, p. 44.

and, as a result, the territory reconfirms its function as the limit of the legal system, but denies it any other and any legal importance. The *Kompetenztheorie* defines the territory as the sphere of spatial competence of the state legal system. Starting from *Radnitzky* and, then, for all followers of the school of Vienna, first among others *Hans Kelsen*<sup>48</sup>, the territory is nothing but the definition of the scope of validity of state power and there is no need to rebuild the relationship between them in terms of “*ius in res*” or “*ius in personam*”<sup>49</sup>. Indeed, in the kelsenian reconstruction, the territory is free from any geographical-naturalistic connotation, “it is not a surface of the earth’s surface, but it is a three-dimensional space”<sup>50</sup>. It is assumed in purely normative terms and, therefore, it identifies as a sphere of spatial validity of the system of rules that – as we know – identifies with the legal system and this, in turn, with the State<sup>51</sup>. From this perspective, the territory becomes marginal compared to the definition of the state phenomenon<sup>52</sup>.

The kelsenian approach reduces the territory to an ordinary element of the State, to a purely normative space. And if in Kelsenian thought there is an intentional and predictable relativization of the territory with respect to the foundation of the State and the legal system (which rests all in its *Grundnorm*), *Carl Schmitt* considers it, instead, a source of normativity. In *Der Nomos der Erde* the “telluric link” between *Ordnung* and *Ortung* is clearly outlined<sup>53</sup>. Normativity and law are linked to the land: they are historically

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<sup>48</sup> RADNITZKY, 1906, p. 31 and p. 313; VERDROSS, 1927, XXXVII, p. 239; PERASSI, YEAR IV, 1912, p. 147.

<sup>49</sup> KELSEN, 2000, p. 222.

<sup>50</sup> KELSEN, 1994, pp. 71-72.

<sup>51</sup> CRISAFULLI, 1970, pp. 50-51.

<sup>52</sup> BONAUDI, 1931, 27.

<sup>53</sup> SCHMITT, 1950, p. 13;

and logically compelled to it, because “occupation of land” (*Landnahme*) is “primordial act establishing law” (*Ordnung*)<sup>54</sup>.

Although they are polar opposites in their conceptualizations, the two jurists capture different aspects of the concept of territory, which, in the end, seem to integrate and at the same time concur to describe its relationship with the State. And they provide a complete representation of the territory, keeping that concrete aspect of which the law also feeds. *Natalino Irti* in fact points out that “Law needs the ‘where’”<sup>55</sup>, reiterating the existence of the telluric bond between law and territory.

A further profile investigated and developed is that which considers the territory an element of identification of the state in very close correlation with the people. This is the idea of *Rudolf Smend* who considers the territory an element of material integration indispensable for the state community. As stated by the illustrious Author “*das Staatsgebiet ist vielmehr die grundlegenste sachliche Wesenskongretisierung des Staates an und für sich*”, considering the territory to be the essence of the State (*Wesen*), on which the existence (*Dasein*) and life (*Leben*)<sup>56</sup> itself depends. He recognizes that the territory represents an “integrative moment of the political community”<sup>57</sup> and becomes the product of the culture of values of a State and a people<sup>58</sup>.

In the Smendian sense, the territory rises from a mere geophysical factor to an overall political entity of values and life, and represents the Fatherland (*Vaterland or Heimat*)<sup>59</sup>. A concept no longer reducible to anything material, but much wider and more comprehensive that

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<sup>54</sup> SCHMITT, 1950, p. 23.

<sup>55</sup> IRTI, 2001, p. 3.

<sup>56</sup> SMEND, 1994, p. 119.

<sup>57</sup> SMEND, 1988, p. 108.

<sup>58</sup> SMEND, 1988, p. 109.

<sup>59</sup> SMEND, 1988, p. 109.

incorporates a spiritual and cultural dimension<sup>60</sup> so that *Smend* will say that “the State finds its fundamental concretization in its territory”<sup>61</sup>. The thought of *Hermann Heller* also goes in this same direction, who, like *Smend*, cannot fail to recognize to the territory that integrative vis which, in close connection with the people, is an identity and cultural element of a given political community<sup>62</sup>.

If, however, we go back to restricting the scope of reflection within the most limited legal and regulatory framework, the territory appears to be a defining criterion that concurs, together with others, to distinguish the State from any other system<sup>63</sup>. Moreover, it cannot be ignored that “conceptually one has a State when certain real presuppositions occur and these present themselves connected in a certain way”<sup>64</sup> and that the concept of territory is at least two-dimensional, combining both the material and the immaterial aspect<sup>65</sup>. It is, as *Vezio Crisafulli* states, certainly a factual presupposition of the State<sup>66</sup>, but it is also the environment or the limit of state order and power<sup>67</sup>. In this way the territory is the spatial sphere around which power is organized (and distributed), as well as representing, both from the point of view of national law and international law, the limit and guarantee of the sovereignty of States, an element, that is, “integral and specifying sovereignty”<sup>68</sup>.

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<sup>60</sup> BALLADORE PALLIERI, 1949, p. 222.

<sup>61</sup> SMEND, 1988, p. 110.

<sup>62</sup> HELLER, 1934, p. 139 ss.

<sup>63</sup> CRISAFULLI, 1970, p. 51.

<sup>64</sup> CRISAFULLI, 1985, p. 35.

<sup>65</sup> D’ALESSANDRO, 2007, p. 25.

<sup>66</sup> CRISAFULLI, 1970, p. 76; PALADIN, 1998, p. 105.

<sup>67</sup> See CRISAFULLI, 1970, pp. 78-80 and PALADIN, 1998, p. 111.

<sup>68</sup> CRISAFULLI, 1970, p. 80.

## 2. TERRITORY AS CRITERION ORDERING STATE POWER BETWEEN FEDERALIZING PROCESS AND REGIONALIZATION

The cultural and theoretical horizon previously outlined highlights how the combination of theories elaborated by the doctrines of the last century has analyzed the relationship between territory and (organization of) power with particular regard to state political form. Territory, in fact, as a constitutive element of the State, starts from a certain historical moment, which usually coincides with the birth of the modern State. The space of modernity takes shape through the representation of spatial boundaries outlined by geographical lines drawn around the insurgent territorial states, demonstrating, as the historian *Charles Maier* writes, that state space has crept into imperial space. The space of the state now “follows the rules defined by the *expression mathématique* of the seventeenth century, exemplified by the cartesian coordinates, the orbits of *Keplero* and later by the laws of *Newton*”<sup>69</sup>.

And if monarchical absolutism reacted to the territorial dispersion of power (typical of the medieval age) through a powerful work of recomposition<sup>70</sup> driven by a very strong unitary body both from the institutional and the territorial point of view<sup>71</sup>; the revolutionary laboratory at the turn of the seventeenth and eighteenth centuries revolved around the idea of (re) the form of power by precisely aiming the concentration of power and starting a process of rationalization before and constitutionalization after<sup>72</sup>. A process with different developments as

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<sup>69</sup> MAIER, 2019, p. 95.

<sup>70</sup> SCHIERA, 2004, p. 901.

<sup>71</sup> MATTEUCCI, 1997, p. 33; SCHMITT, 1984, pp. 69-70.

<sup>72</sup> FRIEDRICH, 1963, p. 8.

shown, for example, the experience of English constitutionalism compared to that of French and American<sup>73</sup>.

In fact, on the one hand, the overseas legal tradition had fully embodied the principle of *local government*<sup>74</sup>, experimenting, long before other countries of the continent, forms of recognition of political autonomy to exponential entities of territorial realities; on the other hand, the new state form, derived from revolutionary France<sup>75</sup>, had obeyed a strong centralizing impulse neutralizing, throughout the process of unification, autonomous territorial powers<sup>76</sup>. To the model of decentralized administration following the example of the British self-government and to the strongly centralized French-Napoleonic one, the Americans opposed the idea of the limitation of power through a combination of checks and balances, and only the approval of the American Constitution unquestionably marked the birth of a new political order – the federal state – based on the existence of several territorial communities each with its own specificities.

In the reality of positive law, compound (decentralised) states, and more specifically federal and regional states, represent the best example of the close relationship between territory and power. In particular, in the Federation – defined as a “*union of States*” (*Staatenverbund*)<sup>77</sup> aimed at the realization of a *höhere Einheit*<sup>78</sup> – the relationship with the territory is to a point that coincides with the nature and the very essence of the federal State, where power is organised and distributed on a territorial basis to

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<sup>73</sup> D’ATENA, 2006, p. 60.

<sup>74</sup> About *local government* or *self government* v. NIGRO, 1980; COMBA, 1999, p. 30; CAMELLI, 1983, p. 58; DI GASPARE, 1988, p. 7; GROPPI, 2004, p. 125.

<sup>75</sup> FORREST, 1995, pp. 63-64; BERTOLINI, 1892, p. 128.

<sup>76</sup> D’ATENA, 2006, pp. 61-62.

<sup>77</sup> WHEARE, 1997, 39.

<sup>78</sup> NAVIASKY, 1920, p. 21 s.

protect diversity<sup>79</sup>. If you look at the historical process of formation of the federal states – at least those of more consolidated tradition – the territory and indeed the territories have had a characterizing role – if not decisive – in the organization of their own political form<sup>80</sup>.

And it is with the post-war Second World War Constitutions that the process of territorial devolution of power realizes a significant boost with consequent democratization of the system<sup>81</sup> that will lead to the construction of federal<sup>82</sup> and regional states<sup>83</sup>, as specifications of the federalist and regionalist principle. *Lord Acton* will say that federalism appears to be the most congenial and effective way of limiting sovereign power. It restrains and limits power, dividing it and assigning only certain specific rights to the government, and anchors and settles power within a framework of essential guarantees to freedom and to democracy itself<sup>84</sup>.

Similarly, the first theorist of federalism, *Johannes Althusius*<sup>85</sup>, will support the idea of building a state based on a federal association to be opposed to the model of unitary state on the basis of the conviction that “the more divided power is, the less dangerous it is”<sup>86</sup> and, as *Carl Joachim Friedrich* himself will point out, at the basis of the federalizing process there is the “the need for the concentration of political power in a single central authority to ensure individual freedoms and the full development of the democratic principle”<sup>87</sup>. Within the folds of the processes of federalization

<sup>79</sup> TORRE, 2019 *passim*.

<sup>80</sup> See *ex multis* DE VERGOTTINI, 1990, p. 831; REPOSO, 2000; LUCATELLO, 1967, p. 116.

<sup>81</sup> KELSEN, 2000, p. 317

<sup>82</sup> GAMBINO, 1998, p. 24.

<sup>83</sup> MATTEUCCI, 1997, p. 342.

<sup>84</sup> LORD ACTON, 1985, p. 65; ID., 1999, p. 258.

<sup>85</sup> ALTHUSIUS, 2009.

<sup>86</sup> D’ATENA, 2018, p. 63.

<sup>87</sup> GAMBINO, 1998, p. 41; D’ATENA, 2018, p. 65 s.; MALANDRINO, 1998, p. 17.

and regionalization the territory becomes “basis of political action” state<sup>88</sup>; center of gravity of interests otherwise identified; expression of centers of autonomous power and distribution criterion of power. So the pluralistic-decentralized State organizes its power through territory and territories and replaces the national State model – connected to a static and authoritarian power system – a dynamic, polycentric, plural order, focused on continuous and changing interaction processes.

### 3. TERRITORIAL POWER AND SPATIAL REVOLUTION: FROM THE ESSENCE TO THE FADING OF BORDERS

As can be seen from the above, in the course of history the power and the societies have been organized through the territory<sup>89</sup>, the concept of which evokes that of defined space and confined by boundaries and, consequently, even the state dimension has always been imagined defined and concluded within linear and fixed territorial points<sup>90</sup>. In ancient Greece, the *Orion* as the *Terminalia* of the Romans represented spatial boundaries, demarcations of property, land and territorial expansions<sup>91</sup>. And if in the age of empires the idea of border had not stuck because of the physiological unevenness of that reality corresponding in fact to “assemblages”<sup>92</sup>, human and territorial differences<sup>93</sup>, in the modern era, the existence of borders has instead now marked the perimeter of the state political order now as an element of limitation of the space of conquest

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<sup>88</sup> ELAZAR, 1995, p. 59.

<sup>89</sup> SCHMITT, 2008; LOMBARDI, 1985, p. 48; FERRARA, 2011.

<sup>90</sup> SCHMITT, 1991, 145; BRENNER- ELDEN, 2010, p. 140 ss. (165), ALLIÈS, 1980, p. 9; AGNEW, 1994, p. 53.

<sup>91</sup> FERRARA, 2011, pp. 184-185.

<sup>92</sup> SASSEN, 2008a, p. 39; MAIER, 2019, p. 51.

<sup>93</sup> FERRARESE, 2020, pp. 2-3.

and definition of jurisdictions, now as a divisive and defensive element<sup>94</sup>. Therefore, the surface of the world has been drawn across the borders, giving representation to its geopolitical form; the juridical-state spatiality and the unity of national territories have been organized. In fact, the States have anchored their legal sovereignty to the territory, exercising it – both internally and externally<sup>95</sup> - as the absolute power over politics and law, the economy and the market, and, “connected to a territory, (they are the) managers of this space, intervene and act as the dominant power for and of this space”<sup>96</sup>. On this space and its borders the State has had full control, which – from a certain moment – seemed to dissolve due to pressing and emerging powerful forces<sup>97</sup>, overlooking the dawn of a spatial revolution, to redefine the geography of territorial power<sup>98</sup> and its borders<sup>99</sup>. Certainly it is not today’s observation – nor that of the global advent – that captures in the borders, the trait of an ontological mutability. Indeed, the impermeable representation of *Grossraum* had begun to highlight its cracks as early as the beginning of the twentieth century with the overcoming of the *Monroe doctrine* (and the thesis of the two hemispheres), disrupting the spatialized reality of the *ius publicum europaeum*<sup>100</sup>.

According to the most important doctrine of the twentieth century, the overtaking of international and supernatural law<sup>101</sup>, the unstoppable

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<sup>94</sup> FERRARESE, 2020, pp. 3, C.S. MAIER, 2019, p. 330.

<sup>95</sup> CRISAFULLI, 1970, p. 51 ss.

<sup>96</sup> LEFEBVRE, 1976, p. 205.

<sup>97</sup> KELSEN, 1978, 468; CARRINO, 2014.

<sup>98</sup> ORTINO, 1999, p. 11 S.; MANGIAMELI, 2020, p. 238.

<sup>99</sup> LOMBARDI, 1985, pp. 53- 56; BADIE, 1996, p. 123; BALDASSARRE, 2002, p. 12; GIDDENS, 1994, p. 71; IRTI, 2001, p. 121.

<sup>100</sup> SCHMITT, 1991, pp. 368-379; ID., (1995), 2015; ZOLO, 2008, p. XIII e XVII.

<sup>101</sup> KELSEN, 1978.

development of a free world economy<sup>102</sup> and the “all-pervasive” progress of technology would have exposed the state to the economy and the market<sup>103</sup>. Certainly this process was not sudden and rapid, but it manifested itself slowly starting from the industrial revolution and through powerful, important historical events, such as the two world wars. In particular, when technique allowed it to exceed the limit of space, understood in its physical sense, the authority of the State began to falter<sup>104</sup>. The vocation to create free economic spaces and post Fordist industrial development marked a new stage in the relationship between borders, space and territory<sup>105</sup> and generated alternative and unprecedented arenas of power, cutting and crossing the borders pulverized by the explosion of an a-space *nomos* and a post-territorial *nomos*<sup>106</sup>. And if the consistency of the borders seems to dissolve with the arrival of pervasive global forces, *a fortiori* the territorial sovereign state seems invested by a paroxysmal crisis of *latu sensu* legitimacy. Already *Santi Romano*, in his famous eulogy of 1910<sup>107</sup>, denounced the beginning of a gradual decomposition of the modern state. And while the causes of the crisis of the state were all internal to the state itself<sup>108</sup> today, statehood is challenged and disturbed by global systems of power built beyond the national territorial contexts and able to overwhelm every element of its constitution<sup>109</sup>. From here comes the perception – at times hastily, but

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<sup>102</sup> SCHMITT, 1991, p. 299.

<sup>103</sup> SCHMITT, 2005, p. 96; ID., 2006, pp. 99-100.

<sup>104</sup> GALIMBERTI, 2002; GIANNETTI, 1997; ROSENBERG, 1991; DOLZA, 2008; LANDES, 1978; CLARICH, 2017; MAZZUCATO, 2013; HEIDEGGER, 2017; PRIVITERA, 2004; KLEIN, 2020.

<sup>105</sup> SCHMITT, 2005, p. 96; FERRARESE, 2020, p. 5 ss.

<sup>106</sup> FERRARESE, 2020, p. 4.

<sup>107</sup> ROMANO, 1969, p. 5.

<sup>108</sup> LUCIANI, 1996, p. 124-125.

<sup>109</sup> CASSESE, 2016, p. 71 and p. 72; ID., 2006; ID., 2011.

completely understandably – of seeing the State undermined in its sovereignty both internally and externally. And if in the modern state sovereignty seems transfigured, until it no longer appears to have absolute power<sup>110</sup> that was in the pre-Enlightenment vision; in the post-modern society, it is confronted by global elites who are attacking the penetration of the State<sup>111</sup> through new forms of employment which the economy and technology use to take away from traditional regulatory capacity from the state<sup>112</sup> and its model of territorial domination<sup>113</sup>; in addition to its capacity for international and supranational negotiation. The presence of new and different actors<sup>114</sup>, disenchanted from territorially defined and confined spaces<sup>115</sup>, calls into question the role of the State that clearly appears as one of the many forms of organization of power. The global dimension seems to swallow up, therefore, the States and tear up their territorial roots, to the point of displacing the national space unit<sup>116</sup>, causing a substantial *disembedding*<sup>117</sup>.

With the pressure of the pressing process of economic-financial, political and military as well as cultural globalization, organizations that govern and intercept bundles of ultra-national interests flourish, which end up affecting “the primary container of power of the modern era, which is precisely the State”<sup>118</sup>. The *shock* of globalization - to use an expression of

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<sup>110</sup> DE VERGOTTINI, 2014, p. 2; CARRINO, 2014, p. 11.

<sup>111</sup> CRISAFULLI, 1970, p. 50.

<sup>112</sup> SCHMITT, 1991, p. 325.

<sup>113</sup> SCHMITT, 1991, p. 324 and p. 325.

<sup>114</sup> BOSIO, DELLAVALLE, 2016, p. 139.

<sup>115</sup> OSTERHAMMEL, PETERSON, 2005, p. 11.

<sup>116</sup> SCACCIA, 2019, p. 75.

<sup>117</sup> GIDDENS, 1994.

<sup>118</sup> AMATO MANGIAMELI, 2004, pp. 76-77; ALLEGRETTI, 2002, p. 16; SALDIN, 1995; PERNTHALE, 1998, p. 69; GUÉHENNO, 1995; OHMAE, 1996.

*Ulrich Beck* - causes a rift between territory and authority<sup>119</sup>; a gap between *Ordnung* and *Ortung*. As a result, the function of territory as an ordering element of power seems to be lacking<sup>120</sup>, and if once the domain was linked to the territorial and spatial conquest, today this connection seems loosened and perhaps severed<sup>121</sup>.

As it is often said, globalization is synonymous with de-territorialisation<sup>122</sup>, it puts the State in crisis and with it all the constitutive and organizational principles of the political order<sup>123</sup>. If this is how territory in the age of globalization becomes *a place-not place*, a space suspended between the virtual and the immaterial. *Bauman* would speak of *liquid territory*, without banks and borders, in which the same sovereignty finds its own measure, therefore, its own exclusivity and is destined to shatter on impact with the extra-territorial dimension of power<sup>124</sup>.

A transformation that places the political-spatial organization of the *Politico* in a framework which is no longer totally or exclusively territorial. The form of the *Politico* seems to us to have changed and the space within which it is articulated and exercised takes on other forms<sup>125</sup> so much so as to question whether, and to what extent, the power increasingly globalized and divested by spatial organizational logics, can imagine itself still shaped in the cocoon of territorial borders (and territorial sovereignty)<sup>126</sup>. And if the organization of power needs the territorial element. Or, to reverse the question, if the territory is still a criterion ordering power and if it

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<sup>119</sup> AMATO MANGIAMELI, 2004, p. 4; and pp. 65-72; BAUMAN, 2000, p. 79.

<sup>120</sup> DI MARTINO, 2010, p. 293; GROSSI, 2002, p. 156.

<sup>121</sup> BAUMAN, 2002, p. 220-221.

<sup>122</sup> GROSSI, 2002, p. 154; DE VERGOTTINI, 2006, p. 9.

<sup>123</sup> BALDASSARRE, 2002, pp. 63.

<sup>124</sup> BALDASSARE, 2002, pp. 64-65.

<sup>125</sup> GUARINO, 1992, p. 32.

<sup>126</sup> DE VERGOTTINI, 2006, p. 9.

(including the State) is able to react to the de-territorializing effect of globalization and, therefore, to global interference.

#### 4.GLOBAL POWER, TERRITORY AND LEVELS OF GOVERNMENT

The consequence of such pervasive and inevitable interactions between the various systems of power touches and conditions many aspects of the life of the national State and with it, it has been said, the constitutive features of territorial sovereignty<sup>127</sup> and its fundamental functions<sup>128</sup>. In fact, at a superficial and premature observation the territorial element would seem outdated and irrelevant to the organization of global power. Such a perception emerges from the observation that under the lever of the processes of globalization organized powers flourishing according to logic and a-territorial secularity, politically acephalous and unbound that, disconnected from any and all telluric ties, call into question the principle of territoriality.

The rather hasty snapshot that globalization projects is that of a system of powers transcending the territorial State, unable to intercept and contain global dynamics and, therefore, powerless in the presence of these. In his book, *Globalization and its Discontents*,<sup>129</sup> Joseph E. Stiglitz, with frank language analyzes the phenomenon of globalization, highlighting the limits and, substantially, the negative aspects resulting from the logic of global governance. The specificity of globalization would be to generate

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<sup>127</sup> MANGIAMELI, 2020, pp. 250-251.

<sup>128</sup> CARETTI, 2014, p. 13.

<sup>129</sup> STIGLITZ, 2002.

inequalities: the movement of capital that it produces, emancipated from the control of politics, widens the gap between strong and weak states<sup>130</sup>.

The imposition of choices beyond the national decision-making circuit more than ever alters the physiognomy of the State, exacerbates the tension between economic freedoms and rights of the person<sup>131</sup> and attacks prerogatives typical of constitutionalism, which – Includes above all – the protection of fundamental rights<sup>132</sup>.

Yet in the face of these assessments, which cast a bad light on the effects of globalization, one cannot – as Stiglitz says – “go back on it – it has begun, and must go forward”<sup>133</sup>; it is an irreversible and impossible phenomenon to hold within the narrow logic of political particularism, nor can it be removed by a blow from the horizon of globalization. The question, therefore, is not whether or not to abandon globalization, but *how* to manage it, because this is not *the* problem, so much as is the management of the powers that derive from it, which are crowded within communicating spaces waiting to find a point of balance and, in that, order. So only by a more careful analysis the global dimension appears for what it is, or better, for what it is not. It is not in fact a political-legal order tout court, it has neither autonomy nor strength, and its physiological finiteness and incompleteness incredibly redefine the essentiality of the territory, which also in this frame retains an undeniable and irreplaceable function ordering power. Moreover, if for a moment one reflects on the global order, one realizes that it, while transcending the national framework, rests its dimension on the state, intertwining and intersecting with it dynamics that, although properly global, link specific components

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<sup>130</sup> STIGLITZ, 2002, pp. 5-6; BAUMAN, 2014, pp.52-53.

<sup>131</sup> CARETTI, 2014, pp. 14-15; ALLEGRETTI, 2002, p. 133.

<sup>132</sup> ARANGIO-RUIZ, 1990, p. 1.

<sup>133</sup> STIGLITZ, 2002, p. 227.

of national States, such as the territory in the case of global cities<sup>134</sup>, which well explains how the economic flows, as well as those of information, of people, of labor force transit within the national territorial context and here are destined *to land*. Consequently, if the idea of overcoming the national state delimited and closed in its narrow geophysical and political boundaries has breached the thought, not only juridical, post-modern, this is not enough to remove it definitively from the scene.

Faced with the existence of a global power there is therefore a counter-power – the state – that, redefining, reorienting and reorganizing, is called to fight to preserve its fundamental functions and its role also within the world institutions themselves<sup>135</sup>. Moreover, *Stiglitz* himself identifies the State as the barrier to that power: the only institutional form and the only force likely to contain the negative effects of globalization and even redirect them towards collective wellness<sup>136</sup>. This power of the State derives first of all from its nature and from the origin of its *de facto* powers different from any other form of organization of power<sup>137</sup>. In it lies the foundation of every right and the legitimacy of the political action *tout court*.

Through this reformation, the State stands out against chaos and global (dis)order, devoid of a centre of gravity, as a braking force that restrains and contrasts the dissolution of the Politician. This force leads the State to move towards new political forms and to transform or reproduce spatiality within which to legitimize itself. It is evident, with this, that the classic conceptual architectures meet a metamorphosis. The State thus becomes an entity *à géométrie variable*<sup>138</sup>, the territorial

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<sup>134</sup> SASSEN, 2008b, pp. 3-21.

<sup>135</sup> STIGLITZ, 2003.

<sup>136</sup> STIGLITZ, 2011, p. 11 ss.

<sup>137</sup> STIGLITZ, 2011, p. 11.

<sup>138</sup> CASSESE, 2016, p. 34.

sovereignty itself remodels and becomes *interstitial*<sup>139</sup>, it is inserted, that is, in those spaces in which – even if its way of manifesting itself is no longer absolute – still require the presence of State and statehood. Of course this does not imply the renunciation of the State to exercise power, rather, that braking force projects it into a perspective of global re-localization (*Verortung*) through an integrated and segmented mode of operation, the result of disaggregations of functions which the national state has exercised for centuries according to the unitary criterion of sovereignty<sup>140</sup>. Therefore, even regulation, monetary and political sovereignty is revealed from time to time depending on the fields, skills and different places and circuits of power<sup>141</sup>, inevitably creating division and sharing, competition and interference of power and powers<sup>142</sup>. And, against this background, the territory remains *the* place where such processes can be contextualized, where the interaction among global, national and local dynamics is certainly carried out and realized<sup>143</sup>, and where the territorial State remains tenaciously present. Relations, even those that move within the directions of global space, still need *where*<sup>144</sup> and the territory remains a “reference model of the organization of political power”<sup>145</sup>. Therefore, the idea that globalization leads to a reduction in the territorial moment must certainly be reconsidered because, in addition to being a product of the States themselves, it has a strong vocation to localization; globalization stimulates a process of territorialization of power since global, mobile and a-spatialized capitalism needs to take root in individual territories. This generates the tendency of state systems to redistribute

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<sup>139</sup> MICHETTI, 2021, pp. 164-165.

<sup>140</sup> SCHIERA, 2013, p. 33(47).

<sup>141</sup> DE VERGOTTINI, 2006, pp. 12-13; ID., 2012, p. 93 s.

<sup>142</sup> CASSESE, 2016, pp. 44-45; MARTELL, 2011, p. 250.

<sup>143</sup> HOBBSAWM, 1988, pp. 4-5.

<sup>144</sup> IRTI, 2001, p. 75.

<sup>145</sup> DE VERGOTTINI, 2014, pp. 92-93.

authority, as much by opening themselves up (through processes of internationalization) as by bending down through processes of localization of power in favor of territories<sup>146</sup>. From here the obvious subsidiary vocation of the contemporary state<sup>147</sup>, which reacts to globalization (also) through the anchoring to the territorial dimension<sup>148</sup> as a space or also as an active element of the process of organizing global power. And if on one side the interferences produced from the globalization affect the consistency of the territory, constantly solicited in its geographic coordinates; on the other side, they urge us to seek in territoriality the foundation of the global order, in the conviction that power (including global power) cannot fail to have a territorial translation.

As an area of political action, territory is the holder of a function of control of not only national historical and social processes but also and especially international ones, so much so that – starting from *Westphalia* – It finds it both as a constituent element of the internal order, as a constituent element of the international one. *Mutatis mutandis* and also in the presence of the most articulated world arena territory does not lose this connotation, on the contrary it appears as a more capacious container than the one more enclosed within logical confines of the past, where more powers find dwelling, more processes and more subjects are linked by ultra-border relationships, in which different regulatory frameworks and forms of variable authority are formed<sup>149</sup>.

The image that emerges lets you see a system *inhabited* by different subjective pluralities that are placed in concentric centers to build, together from the minor to the major, a whole. This complex political geometry does not ignore the territorial dimension nor the institutions of more

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<sup>146</sup> MANGIAMELI, 2013, pp. 3-4.

<sup>147</sup> GALLO, 2019, p. 29 (88-89).

<sup>148</sup> BERTI, 2002, p. 388.

<sup>149</sup> SASSEN, 2008a, p. 524.

immediate territorial reference: the State and the Autonomies<sup>150</sup>. The State is the prime mover. In fact, de-territorializing and re-territorializing itself, it creates, transforms, maintains or even destroys the global ties that the territory inevitably synthesizes and collects. Territorial Autonomies also appear to be instruments of organization of global power. In a context that tends to root itself out from the territory, sub-levels of government are genuine custodians of identity bodies and as places of representation and participation closer to the citizen where competences and responsibilities are more easily identifiable<sup>151</sup>.

And what is often described as irremediable fragmentation or overcoming of the territory, in reality appears as a form of active dissolution of the territory: it resists and reappears, strategically assuming a new configuration symptom of its adaptive capacity<sup>152</sup>. What is now considered an acclaimed fact, the circumvention of the territory by globalization, is thus converted into a push for consideration as an element of global power<sup>153</sup>. In this light, we see the ability to contain a system that, although elastic, dynamic and functional<sup>154</sup>, cannot help but be governed through territorial reference<sup>155</sup>. Moreover, the dynamics underlying the so-called g-localization – and not only through the paradigm of global cities – suggest that such research is – rather than a condition – an imperative for global reality. A reality that, even if it disregards borders, sovereignty and territories, tends to achieve a cosmopolitan order that, quite simply, requires that “everyone must be somewhere”<sup>156</sup>. In this way, territory

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<sup>150</sup> PACE, 2002, p. 613-614; FERRARA, 1999, p. 809.

<sup>151</sup> MICHETTI, 2021, p. 195 ss.

<sup>152</sup> BADIE, 1996, p. 123.

<sup>153</sup> *Ibidem*.

<sup>154</sup> MURPHY-TOOZE, 1991.

<sup>155</sup> GUARINO, 2000, p. 254 ss.

<sup>156</sup> O'BRIEN, 1992; BADIE, 1996, pp. 163-166.

retains its capacity to ordain the spaces of power not only thanks to its ability to universalize, but also thanks to its partner – the State – which remains the sole safeguard of the principle of territoriality. And even in the most free and loose dynamics of the global market the State is, as an economic subject, the holder of power of negotiation and discipline to be asserted in relations with global powers<sup>157</sup>: it is *regulated*, but also *regulatory*<sup>158</sup>.

In this framework, the territorial state plays an irreplaceable role to build a “globalization with a human face” and fair<sup>159</sup>. We are certainly not faced with a simple process. However, considering the territory as an ordering element global power allows, precisely and also by virtue of its intimate anthropological essence, to preserve, even in a decomposed reality, fluid and without identity as the global one, the axiological value of each human person and his rights.

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<sup>157</sup> BADIE, 1996, p. 167.

<sup>158</sup> CASINI, 2018, p. 125; ID., 2014, p. 402.

<sup>159</sup> STIGLITZ, 2002, p. 250.

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