3 The Supranational Regional Regime and Governance

The idea of the European Court of Justice operating as an ‘independent authority’, albeit on behalf of (and in concerto with, to use Charles de Gaulle’s phrase – see Nelsen and Stubb, 1994, Chapter 5) the supranational EC/EU system as a whole, brings us back to the notion of ‘sovereignty’ which Klaus-Dieter Borchardt (1994; 1995) and Josephine Shaw (1993; 1996) seem to have in mind. Their notion is similar to that to be gleaned from various other, less legally focused but still highly pertinent, writings, including those by Clive Archer and Fiona Butler (1992); Jamie Shea (1993); Neill Nugent (1991); and Monica den Boer (1994). Archer and Butler argue:

To understand the European Community, one must comprehend the position of the sovereign state in Europe. The sovereign state is [...] a European invention and its genesis can be dated back to the fourteenth century [Strayer, 1970, p. 57] with the touchstone of ‘constitutional self-containment’ [Manning, 1962, p. 166] having been well established by a number of states in Europe by the Peace of Westphalia in 1648. If it is true that ‘sovereignty [...] consists of being constitutionally apart, of not being contained, however loosely, within a wider constitutional scheme’ [James, 1986, p. 24], then [the] Peace of Westphalia, which ended the Thirty Years War, established [...] that there existed sovereign states in Europe that could not be contained within the Holy Roman Empire [...]. It ‘paved the way for a system of states to replace a hierarchical system under the leadership of the Pope and the Hapsburg family complex [...]’ [Holsti, 1991, p. 26].

(Archer and Butler, 1992, pp. 1–2)

For Archer and Butler (following James, 1986), nation-states are constitutional, or more precisely constitutionally discrete, geo-political entities, the emergence and persistence of which distils down to the concomitant emergence and resilience of nation-state sovereignty, something which in turn is rooted in their (in nation-states’) constitutional independence from any encompassing constitutional schemes. These schemes include imperial ones, exemplified by the Holy Roman empire of Charlemagne and his successors, and the German empire (962–1806) (Upsall, 1991a, p. 518), a constitutional scheme which was ‘formally abrogated’ on 6 August 1806, by Francis I of Austria – that is, Francis II of the Holy Roman empire (ibid., p. 421) – ‘at
French insistence', following 'Prussia's defeat at the hands of Napoleon at the Battle of Jena in 1806' (Perry, 1976, p. 3). Other examples of constitutional schemes of an imperial kind include the empire of Napoleon, whose Berlin Decree of 1806 initiated the so-called 'Continental System' (Grun, 1991, p. 376); and the Soviet empire, the formal end of which was signalled on 5 September 1991 when the Congress of the People's Deputies voted itself out of existence (Upsall, 1991b, p. 679; see also Ambrose, 1993, Chapters 16 and 17).  

Our argument is that in Europe, the cradle of the nation-state, most nation-states have embarked on a process of redistributing their 'independent authority' or sovereignty – as gained relatively recently by establishing their 'constitutional self-containment' (Manning, 1962, p. 16) – to a 'wider constitutional scheme' (James, 1986, p. 24). In Europe, nation-states are engaged in redistributing their sovereignty to a (in a constitutional and institutional sense) supranational scheme or system of governance, in the shape of the European Community and Union, which then resembles both federal systems of governance (as exemplified within the EU by Austria, Belgium and Germany) and imperial constitutional schemes of governance, as illustrated by the Holy Roman empire. Just as Europe invented the nation-state as a constitutionally discrete and sovereign geo-political entity, so several hundered years later Europe has invented the supranational system of governance based on a constitutional scheme which encompasses – and an accompanying set of institutions which share in, not to say siphon off, the sovereignty of – its member nation-states. Just as Europe led the way with the nation-state, it appears to be doing so with the supranational system of governance: with the supranational constitutional regime (see Borchardt, 1994; Alec Stone, 1994; and Shaw, 1996, Chapter 3).

For us, there is the strong possibility, in the light of supporting evidence, that supranational constitutional regimes (SCRs), like nation-states, will spread – will grow in terms of their number, their geo-political size and their economic and political importance – within the global system, especially following and to a not inconsiderable extent because of the end of the Cold War and therefore the advent of the new world order. Moreover, just as historical evidence indicates that imperial constitutional schemes exercised governance in ways which was not strictly confined within their own (constitutionally and otherwise drawn) geo-political boundaries, so post-Cold War evidence indicates that supranational systems of governance will participate in the process and problem of external governance, and indeed of global governance within the NWO. There is an external dimension to the supranational system of governance, which means that the internal governance of SCRs and the problem and process of external-global governance will sustain a mutually dependent, dialectical relationship (see Weigall and Stirk's 1992 discussion of a new pan-European order).