

SUPRANATIONAL AND STATE PRINCIPLES
WITHIN THE EUROPEAN UNION

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European unification is a process that is already forty-five years old. Since the founding of the first European Community, nearly half a century has passed. This historic initiative was expected to give Europe a different institutional entity and an altered political dynamic. It was natural that the passage of half a century would mark the European Union's institutional coming-of-age. The difficult years of infancy and adolescence are now definitely a thing of the past, part of the history of the Old Continent. From our vantage point on the threshold of the 21st century, it is obvious that, despite all the delays that have occurred and the innate weaknesses that continue to overshadow it, the Union's institutional structure has matured. Its year of operation, its theoretical substance and the practices it has developed have combined to give its supranational principles a specific and normative content. Today, when we speak of the autonomy of European Union law and order, the supremacy of community law and the direct implementation of its rules in the policies of its member states, we are speaking a common language, unlike the situation in the early years of the Communities, when the difficulties of comprehension were enormous. There are still difficulties, of course, but today's difficulties are of an entirely different nature.

One might therefore have expected the law and order of the union to have preserved, with a certain arrogance, its independence, its autarky its "purity". The emergence and the entrenchment of supranational principles and their erosion of state authority have, despite the - frequently vigorous - resistance they met, created the

impression that the European Union and the national orders would forever remain in a relation of antagonism rather than, concurrency. This however militated against the quintessence of the European legal culture, the culture that is the ideological and political foundation and the common point of reference not only for its members but for the Union itself. Had we followed with more care the undercurrents of history, we should long ago have been asking ourselves how long this conflict could last. The dialectic of the historic process would sooner or later, and infallibly, have led to convergences. And these convergences would gradually have moderated the systematic and institutional purity not only of the State, as had occurred from the outset, or at any rate very early on, but indeed of the European Union itself.

The determinant step in this process was surely the subsumption of state principles into the institutional framework of the Union, accompanied by the transferral to the Union of fundamental state principles, principles that constitute the solid core and the very heart of the state. This process, which began to be discussed many years ago in science and in certain community organs, yielded its first fruits in the Treaty of Maastricht, a harvest that was redoubled in the Treaty of Amsterdam. The European Union now rests, although not as solidly as it might, on the social principle and on the principles of democracy and the rule of law. It is, in other words, tending to become democratic and social union under the rule of law. In the institutional domain, a subversive force has been inherent in the European Communities since their inception and the beginning of the process of European unification. In simple terms, these events overturned all the theoretical concepts and systematic categories which we had been accustomed to use in order to interpret the phenomenon of the state as it had existed until then and to explain the relation between the State and the international community. This was a reality that we either were slow to comprehend or, if we did, hesitant to accept. While this attitude is easily explained, it cannot be justified. And it cannot be justified because science does not admit of inertia and is unforgiving of placidity and uncritical adherence to tradition. Our antennae should always be tuned to receive the signals of the times, constantly alert to what the historic conjuncture may hold in store. In the current phase of the evolution of European unification, an active dialectical relation has

developed between State and Union, a relation, which has become a two-way debate. As I see it, the present state of affairs is this. The erosion of the State by the European Union will continue, but it will no longer take place without some exchange. The compensatory exchange in this process is the penetration of state principles into the Union's institutional structures. These are the conditions that determine the dialectical character of the relation between them. In this classical form of dialectic, the erosion of the State through the medium of supranational principles is the thesis, while the penetration of statal principles into the institutional structure of the Union is the antithesis.

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