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**Boekbespreking van: The Constitution of Europe: "Do the New Clothes Have an Emperor?" and Other Essays on European Integration**

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a separate category, rather than as a sort of dealigning election. Consequently, we would distinguish between maintaining, deviating, dealigning and realigning elections. Additionally, it seems reasonable to add a mirror-image of critical elections (as a realigning election) to the category of dealigning elections. We could then distinguish between 'secular dealignment' and 'critical dealignment', and between 'secular realignment' and 'critical realignment'. Note that the definition of critical elections would not be affected by these adjustments.

Let me make some final remarks about electoral change. As many of the authors argue, only the future can tell whether changes indeed will be permanent. Although the book cannot give the answer, it does give an indication of what determines future changes. As Evans, Heath and Payne argue, future developments seem to depend more on party strategies than on secular trends in society. Arguably the main message throughout the book is that voters are responsive to changes within the parties. Hence, it seems that parties and not voters determine what will happen in the future. Whether this is a reassuring or alarming conclusion, you may decide for yourself.

Martin Rosema

J.H.H. Weiler, *The Constitution of Europe. "Do the New Clothes Have an Emperor?" and Other Essays on European Integration*. Cambridge 1999, ISBN 0521585678, Dfl. 58.30.

Joseph Weiler is one of the few authors who approaches the European order from a combined perspective of public law and political theory. Instead of studying European law, European policy, or the behaviour of actors within the European Union, he argues that the very framework within which policy and material law are being produced should be the object of debate. Not the organization of the European order, but its very foundations are questioned. This calls for a fundamental approach, one which is necessarily conducted at a highly abstract level. The question Weiler lays before us is daunting. He wonders what on earth it is we are doing, creating this thing now called the European Union. In other words, "What is the essence of the European order and what is (or should be) its purpose?"

Before discussing Weiler's attempt to answer this question, it is worth mentioning two things. First of all, do not read the whole book. The author does not expect you to. Besides, as the book is a collection of essays written over an extended period of fourteen years, it is not strange that the book lacks balance and coherence. Reading the whole book instead of the recommended parts is more likely to confuse than to enlighten. Weiler recommends chapters one, two and ten.

Second, one should be aware that the title of the book, *The Constitution of Europe*, can be misleading. The word 'constitution' is not used in the traditional, narrow sense, meaning a body of fundamental principles according to which a state is governed.

Besides human rights, none of the other characteristics of a (liberal) constitution, such as the separation of powers, are discussed. Instead, Weiler is compelled to raise the question whether it is legitimate to call the European order a state in the first place. The book, therefore, is about 'constituting' or 'founding' Europe.

As Weiler himself is well aware, even a descriptive analysis of the European order is controversial. The question, "What is this thing called Europe?", is not a neutral one and is often inextricably bound up with the question what Europe *should* be. Whereas many scholars, in particular those in the field of international law and international relations, claim that the European order still resembles an international legal order, Weiler argues that the Community has acquired important features of a (supranational) state. Following a public law perspective, he designates the European Court of Justice as the one steady driving force in founding the Community, and regards the treaties and the 'constitutional' jurisprudence as the sources of constitutional law.

In the second chapter, Weiler divides the creation of the supranational framework into three periods. The foundational epoch starts in 1958 and lasts until 1973. During these years, four doctrines were established. First, the Court founded the doctrine of direct effect, which means that clear and self-sufficient Community legal norms must be regarded as the law of the land. In other words, Community law is self-executing and operates directly on the people in their individual capacities. Second, the doctrine of supremacy was established, which means that national law yields for any conflicting Community norm. Third, the Court established that powers would be implied in favour of the Community when they were necessary to serve legitimate ends pursued by it. Fourth, Community norms were to be subject to some sort of human rights scrutiny by the Court.

The second period, from 1973 to the 1980s, is generally regarded as a stagnant epoch in European integration. Weiler, however, considers this period no less revolutionary than the first. In a series of cases, the Court established the doctrine that no sphere of material jurisdiction could be excluded from the competence of the Community. This equalled the erosion of the original understanding that the principle of enumeration would be strictly limited.

According to Weiler the third period of the creation of a supranational framework, heralded by the Maastricht Treaty, is characterized by a public reaction to the state-building on the European level. The augmentation of state-like powers in the two former periods provoked a debate about democracy and legitimacy. Weiler considers this public reaction a significant constitutional moment in itself. I would say that the public reaction is still only marginal, but agree that it would be good if there was more public debate.

The debate about democracy and legitimacy is usually couched in the following terms. As things stand, the Council (a collectivity of ministers) can now pass legislation on a proposal of the Commission (a collectivity of non-elected civil servants), and this legislation is binding and enforceable even in the face of conflicting legislation passed by national parliaments, the traditional repository of democratic legitimacy. The

powers of the one branch of government that is directly elected, the European Parliament, are weak and misdirected. Weak because its legislative power is ultimately consultative in the face of a determined Council, and misdirected because the powers to dismiss the Commission are illusory and do not have the accompanying power to appoint. However, and this is one of the most interesting points raised in the book, Weiler claims that the 'democratic deficit' is not reduced by increasing the powers of the European Parliament. The deficit problem has nothing to do with the balance of powers, but with representation and identity. Even though the MEP's are directly elected and decisions are taken by majority rule, their decisions are de facto not democratic. People only accept the majoritarian principle of democracy within a polity to which they feel they belong. The definition of democracy is that the people rule: *demos kratein*. In representative democracies, the people rule *via* their representatives. However, it makes no sense to speak about the sovereignty of the people in the European context, simply because in reality there is no European people. There is no European *demos*, which means that there is nothing for the MEP's to represent. Consequently, it is irrational to try and 'improve' European democracy by increasing the powers of the European Parliament.

Thus, as Weiler aptly points out, from a political, but not legal, point of view the Community is in fact a confederation. Until the European people consider themselves *politisch aktionsfähig* (i.e. capable of taking political action), European democracy can not work or, more precisely, is simply non-existent. Inevitably, Weiler runs into what must be the most bewildering conclusion about the condition of the European order: the obtrusive fact that there is no European people to constitute the European political entity. There is, de facto, no political entity to substantiate the constitution of Europe. The question Weiler poses in the subtitle of his book, *Do the New Clothes Have an Emperor?*, is doomed to be answered in the negative.

In the last chapter of the book, Weiler makes an attempt to think of theoretical 'remedies' to this predicament. He discerns two possible ways out. The first is the unity vision. In reality, there is no European people. However, considering what is said about democracy, theoretically a European people ought to exist. Therefore, the *telos* of European integration should be exactly this: the creation of a people of Europe. The first step then should be to change the preamble of the European Treaty. Not the ever closer union of many peoples, but the creation of one people should be its objective. Weiler strongly objects to this vision, saying it is 'easy' to see its faults. Indeed, he hardly bothers to elaborate upon his political goal, which is the notion of a 'United States of Europe'. He makes some suggestive remarks about the excesses of nationalism, supposedly referring to nazi-Germany. However, it is misleading to equate the idea of sharing a common national identity with the degenerated form of nationalism that nazi-Germany exhibited.

Instead of the unity vision, Weiler advocates what he calls the community vision. According to this vision, the Union is, and should be, composed of citizens who do *not* share the same nationality and cultural background. Thus, European citizenship is

undone of its ethno-cultural component. The substance of European citizenship becomes not a commitment to a shared heritage or cultural tradition, but a commitment to the universal values of tolerance and humanity. The European order thereby acquires a 'civilizational dimension' and is designed to encourage tolerance and humanity. In this vision, "the supranational is civilization".

In my opinion, the community vision is dangerously naive. First of all, it is no use robbing citizenship of part of its meaning, i.e. its ethno-cultural component. The concept of citizenship becomes empty when it means whatever anyone wants it to mean. Second, one wonders whether, in realizing the community vision, the European order would become exactly what Weiler wishes to avoid. The suggested 'civilizing' force of the European order, intent on creating citizens according to the utopian image of tolerant and humane creatures, implies a moralizing state. It turns what should be social concern into a political issue. Contrary to what Weiler claims, a *demos* should be an organic entity, an entity which simply exists and cannot be created artificially. The European *demos* should arise naturally or not at all, instead of being consciously created according to a utopian vision.

It is by now apparent that *The Constitution of Europe* is written by a strongly opinionated author and is therefore bound to provoke. True to its essayistic set-up, the book is a sketchy composition of seminal ideas. The merit of this book lies in its interdisciplinary approach and in the questions asked. *The Constitution of Europe* ought to be considered as a prelude to a much-needed theoretical debate on the foundations of the European order.

Emma Cohen de Lara

David Boucher and Paul Kelly (eds.), *Social Justice from Hume to Walzer*, Routledge, London and New York 1998, ISBN 0415149983.

When I ordered this book I foolishly assumed that it would be a treatise of the concept of social justice. How did philosophers from Hume to Walzer define it? Which paradigmatic changes have taken place between the eighteenth and the twentieth centuries? What caused these changes? In short, everything I always wanted to know about social justice but never had the time to find out. Instead it turned out that I had bought myself a miscellaneous collection of essays on issues of social justice and social justice philosophers (from Hume to Walzer, granted, but without any rationale on whom to discuss and whom to leave out). In the introductory chapter the editors argue that this loose collection of articles will show the many faceted as well as the essentially contested character of social justice, which, in my mood of disappointment, I considered a rather lame excuse.

The essays in this volume all seem to have different aims and different audiences. The first chapter, "David Hume, contractarian" is written by David Gauthier. I can