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REVIEW ESSAY

European Integration: Past, Present, and Future

L'EUROPE: GENÈSE D'UNE CIVILISATION. By Lucien Febvre.* Paris: Perrin, 1999. 425 pp.

THE CONSTITUTION OF EUROPE: "DO THE NEW CLOTHES HAVE AN EMPEROR?" AND OTHER ESSAYS ON EUROPEAN INTEGRATION. By J.H.H. Weiler.** Cambridge: Cambridge University Press, 1999. 364 pp.

Reviewed by *Martin A. Rogoff****

From its inception in the 1950s until the early 1990s, the European Union (EU) was largely the creation of politicians, jurists, and technical experts. Its effective sphere of operations was confined for the most part to economic matters. The Single European Act, which entered into force in 1987 and called for the completion of the economic integration project by 1992, marked the end of what might be termed the first, or economic, phase of European integration. With the entry into force of the Treaty on European Union (Treaty of Maastricht) in 1993, a second, or political, phase of European integration has begun. Due to the sensitive matters involved in this second phase of European integration—such as justice and home affairs, common foreign and security policy, and the creation of a common currency and a European Central Bank—the people of EU Member States are increasingly asking fundamental questions about the direction and character of the European integration project itself as well as

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seeking greater participation in EU affairs, at both the national and EU levels.¹

In addition to internal EU developments which have greatly enlarged the scope of EU activities and impacts, recent changes in the global and European political and economic contexts in which the EU operates are posing important challenges for the EU and its Member States and likewise have heightened interest and concern among the general European public for a clearer sense of where the European project is headed as well as for meaningful participation in EU affairs. Some of these challenges include: how to compete with the enormous economic power of the United States in a world moving increasingly toward free trade; how to define and protect European social and cultural values against erosion by pressures coming principally from the United States and from multinational corporations; how to define, protect, and promote European political interests in Europe itself and beyond; how to react to the changed strategic and political situation in Central and Eastern Europe in the wake of the collapse of the Soviet empire and the disintegration of Yugoslavia; and even how to restructure domestic politics in the new, non-bipolar world.²

It is important to bear in mind that during the first phase of European integration, from the late 1940s until about 1990, the political, economic, and moral climate in Western Europe was not typical of much of the traditional European experience.³ The

1. According to Weiler: "[I]t is Maastricht and its aftermath . . . [that have] had a transformative impact: public opinion in all Member States is no longer willing to accept the orthodoxies of European integration, in particular the seemingly overriding political imperative which demanded acceptance, come what may, of the dynamics of Union evolution." J.H.H. WEILER, *Introduction: "We Will Do, and Hearken," in THE CONSTITUTION OF EUROPE: "DO THE NEW CLOTHES HAVE AN EMPEROR?" AND OTHER ESSAYS ON EUROPEAN INTEGRATION* 3-4 (1999).

A recent example of the general interest in the ends and nature of European integration is the Europe-wide debate provoked by the comments of German Foreign Minister Joschka Fischer in May 2000 calling for the creation of a European federation with a directly elected president and parliament. See Roger Cohen, *Germany's Foreign Minister Urges European Federation*, N.Y. TIMES, May 15, 2000, at A6. See also Alain Griotteray, *Contre une Europe à l'allemande*, LE FIGARO (Paris), May 30, 2000, at 15; *Europe: le débat Fischer-Chevènement*, LE MONDE (Paris), June 21, 2000, at 1, available at LEXIS, Country & Region (excluding U.S.) Library, Monde File; Suzanne Daley, *French Leader, in Berlin, Urges a Fast Track to Unity in Europe*, N.Y. TIMES, June 28, 2000, at A10; *Da Chirac a Ciampi: la costruzione della nuova Europa, Il discorso del presidente italiano a Lipsia*, IL SOLE 24 ORE ONLINE, July 6, 2000, at http://www.ilsole24ore.it/_econt/ciampi_lipsia/ (last visited July 7, 2000) (on file with author).

2. E.g., Martin A. Rogoff, *Federalism in Italy and the Relevance of the American Experience*, 12 TUL. EUR. & CIV. L.F. 65, 65-66 (1997) (discussing the impact of the end of the Cold War on politics in Italy).

3. E.g., MARK MAZOWER, *DARK CONTINENT: EUROPE'S TWENTIETH CENTURY* (1998) (describing the appeal and success in Europe of non-democratic, authoritarian forces during a large part of the twentieth century).

unique set of circumstances prevailing during that period greatly facilitated European integration. Politically and strategically, post-war Europe was divided into two competing political and military blocs. This situation put strong pressure on the Western European states to cooperate in their self-defense, including close political and military cooperation with the United States, and to cooperate in other ways. Economically, Western Europe has experienced an unparalleled and uninterrupted period of growth and prosperity since 1945. More importantly, there have been no economic downturns sufficiently serious to place severe pressure on the democratic governments and the generally pro-European policies of Western European nations. Morally, the tragic results of Europe's second thirty-year war (1914-1945), especially the horrors of the Nazi period, have continued to exercise a strong humanizing and restraining influence on European politics.

Given the unique combination of circumstances which resulted in today's integrated Europe, one might well ask whether the movement toward further integration can be sustained, broadened, or deepened in the face of changes in the political, economic, and moral context that have already occurred, whose long-term effects are not yet known, and of other changes that are inevitable. Will the elimination of the threat from the East lessen Western Europe's need or desire to cooperate in strategic or political matters? What will result from inevitable future economic difficulties or crises, rendered perhaps more serious and unpredictable by increasingly global commercial, capital, and labor markets that subject states and particular groups within states to world-wide economic vicissitudes? Will the humanizing reaction to the events of the 1914-1945 period fade as those events become more and more distant memories to future generations of Europeans?

We must not forget, however, that developments in Europe over the past fifty years also have produced a new context, and have given rise among Europeans to new identifications, perspectives, and expectations, and also to entrenched political, economic, and cultural interests. One may question, however, the intensity and extent of these new conceptions and interests. Are they as visceral, widely-shared, and motivating as the national and statist sentiments and identifications that dominated Europe for 150 years prior to 1950? While not replacing national and statist sentiments and identifications entirely, have European identifications and interests served to create a parallel affinity pole, thereby at least sapping nationalism of its virulence and of its potential for promoting and justifying self-interested and destructive behavior?

As the European Union moves into the twenty-first century, the people of Europe and their leaders face a number of important choices—for example, choices associated with “broadening” and “deepening” the EU, with the structure of EU decision-making, with

cooperation in foreign and security policy, with the problems posed by immigration. In responding to these questions in general and to the multitudes of specific, concrete, practical issues they raise on a daily basis, what are the principles that should guide EU decision-makers, national political leaders, and citizens of Member States? What are the possibilities for innovative action in a given area, and what are limitations that EU and Member State decision-makers disregard at their peril? It is critical to sort out the important from the less important and the unimportant and to establish priorities among competing and complementary goals. To respond to all of these concerns, some degree of common understanding and acceptance of the long-term goals, possibilities, and limitations of the European project is essential as a guide to decision-making, planning, and establishing priorities. Moreover, as EU decisions and Member State decisions affecting the EU will increasingly be made on the basis of broad-based, democratic participation, it is important that individual Europeans share this ability to take the long-term, broader view with their leaders. In addition, for the European project to move forward successfully, meaningful discourse and debate concerning critical issues must occur at the European-wide level as well as within each Member State. For this to happen, Europeans must come to identify with the European whole as well as with their particular Member State.

It is in confronting these fundamental issues and attitudes that the European past may have much to teach, by providing a context for the understanding and evaluation of future courses of EU and Member State action, by providing a frame of reference for the formation and articulation of EU policies, and by allowing Europeans to determine or to appreciate the proper polity or polities within which discourse and debate should occur. To perform these functions, however, Europeans need to have an awareness and appreciation of the common European past. The study of European history, as such, must be part of the education of individual Europeans throughout the Union. It is these two themes, the historical past and education for the future, which come together in the recent publication of a series of lectures, entitled *Europe: Genèse d'une civilisation*, delivered by Lucien Febvre at the College de France in 1944-45, in the immediate aftermath of the liberation of Paris.

In his lectures, Febvre considers the conception of Europe as it developed and underwent change in meaning and significance over time. His purpose in addressing these questions is pedagogical—to provide a historical basis for the Europeans of his day, as they think about the reconstruction of Europe after the defeat of the German attempt at continental hegemony by the force of arms, to

understand the transpiring events.⁴ Febvre stresses that he is dealing with a question of what he calls “historical psychology”:⁵ “history is what happens in man’s head.”⁶ As for “Europe,” Febvre equates it with “European civilization,”⁷ which “is not a necessity of place . . . or of race.”⁸ European civilization, like history, is a psychological construct: “[it] is the product of human volition.”⁹ But “Europe” is not just an idea; it is also an organization. The organization supports and gives permanence to the idea, while the idea provides the rationale and justification for the organization. The two advance together, or as Febvre puts it:

Europe is two things: an organization and a civilization. Europe advances historically like a strong and skillful man in a dense crowd: with his two shoulders One! A push of organization. Two! A push of culture, etc. First, a minimum of organization is necessary to provide the fragile plant a first shelter. Then, in developing, it needs a larger shelter, which in turn creates needs, [and] gives rise to new enlargement Actions, reactions, alternating steps, progress on two parallel routes, on two juxtaposed planes, the political and the cultural.¹⁰

Febvre looks at the European past through a telescope, first training his vision on the distant past before approaching the present, and seeks to convey, with a broad brush, the macrocosm that Europe was and now is. Joseph Weiler, on the other hand, in his recently-published collection of essays entitled *The Constitution of Europe: “Do the New Clothes Have an Emperor?” and Other Essays on European Integration*, looks at Europe’s recent past through a microscope, first focusing on the detailed inner workings of the processes and institutions of European integration and then offering his assessment of it all. The first, or pre-Maastricht, phase of

4. LUCIEN FEBVRE, *L’EUROPE: GENÈSE D’UNE CIVILISATION* 87-88 (1999). One might compare the post-1945 period in Europe, marked by the defeat of the Axis Powers and the onset of the Cold War, with the 1990s, which were marked by the collapse of Soviet power and the end of the Cold War. “The end of the Cold War marks this century’s third grand transformation of the organizing structure and motivating spirit of global politics.” Zbigniew Brzezinski, *Selective Global Commitment*, FOREIGN AFF., Fall 1991, at 1, 1.

5. FEBVRE, *supra* note 4, at 39.

6. *Id.* at 41.

7. *Id.* at 87.

8. *Id.* at 83.

9. *Id.* at 83.

10. *Id.* at 96-97. Febvre’s characterization of the joint advance of the European idea and political organization of Europe is remarkably descriptive of the experience of the EU since its inception in the European Coal and Steel Community in 1953. Advances in organization led to the broadening of perspectives, often articulated by the European Court of Justice, which in turn led to further organizational advances. These advances were then incorporated in subsequent agreements, providing the basis for the further broadening of perspectives. *Id.*

European integration, was, according to Weiler, the creation of "the political class."

The population at large was hardly committed. But they were . . . favorably indifferent . . . There was no deep-rooted debate about the Schuman Plan, about the Treaty of Paris or even the Treaty of Rome—and this despite their many radical, constitution-like features. There was no deep-rooted debate about the constitutionalization process, that remarkable judicial dialogue, or multilogue, between the European Court and its national counterparts.¹¹

Maastricht and the subsequent debates it provoked changed all that. The European public is now "hearkening" to what has been done,¹² and "the current constitutional debate is not simply about explicating the theory and values underlining the existing constitutional order, but of redefining its meaning for a new generation and a new epoch."¹³

Febvre directs our attention to the long view and to the big questions; Weiler focuses our attention on the tangible accomplishments of European integration and challenges us to understand their significance for the present and future. Together, the points of view provided by Febvre and Weiler are complementary and provide an excellent context for thinking about exactly those questions and issues that confront European integration today.

I. PAST

According to Febvre, the term "Europe" was coined by the ancient Greeks. For them it was simply a geographical reference with no cultural, ethnic, or historical significance. Greek civilization, through the Hellenistic period, and later, Roman civilization were centered in the Mediterranean world, which included part of geographic Europe, but also parts of Africa, Asia Minor, and Asia itself. Europe arises with the collapse of the Roman Empire,¹⁴ which resulted in the separation of East and West and the Maghreb from the rest of the Roman world and in the admixture of the Germanic element with the Mediterranean.¹⁵ The Carolingian Empire is the first political organization of this new, European world.¹⁶ It differed from the Roman Empire in that it was a

11. WEILER, *supra* note 1, at 8.

12. *Id.*

13. *Id.* at 9. See also J.H.H. WEILER, *Fin-de-Siècle Europe: Do the New Clothes Have an Emperor?*, in *THE CONSTITUTION OF EUROPE: "DO THE NEW CLOTHES HAVE AN EMPEROR?" AND OTHER ESSAYS ON EUROPEAN INTEGRATION*, *supra* note 1, at 238, 256-59.

14. FEBVRE, *supra* note 4, at 88.

15. *Id.* at 98.

16. *Id.* at 110.

continental—and not a maritime—power, that it was a rural empire—composed primarily of peasants as opposed to mariners and montagnards, and that it had a significant middle-class component.¹⁷ European self-consciousness arose and developed primarily in Europe's continuous confrontations with Asia. According to Febvre, "Europe made itself against Asia. [Europe] tested itself against Asia. It was in its confrontation with Asia that Europe made itself."¹⁸ The Crusades, a centuries-long enterprise in which representatives from throughout Europe participated, played a major unifying role, as did Europe's common Christian religion.¹⁹ Furthermore, beginning about the year 1000, Europe experienced a significant population growth, which led to increased economic activity involving, importantly, the clearing of land and expansion of agriculture, commercial intercourse, and the establishment of towns. According to Febvre, this led to Europe's becoming what he calls a "social reality" before it became a "political reality."²⁰

During the sixteenth century the term "Europe" entered common usage.²¹ The sixteenth century was the age of Reformation, which resulted in the rupture of the unity of Western Christendom. The idea of "Europe," glossed as it was to express the Greco-Roman concept of humanism, became substituted as a unifying idea, at least among the educated elite, for the former unifying idea of Christendom.²² At the end of the sixteenth and beginning of the seventeenth centuries, the term "Europe" came to express a "political" idea, that of the balance of power. According to Febvre, Europeans felt the need at that time to define "Europe" as a society of rival nations because of the contemporary threat of one monarch establishing a universal dominion over all of Europe.²³ In the Enlightenment of the eighteenth century, a new notion of Europe emerged, that of the Europe that transcended the rivalries among nations. As Rousseau wrote in his *Considérations sur le gouvernement de Pologne* in 1772, "[T]oday there are no longer Frenchmen, Germans, Spaniards, and even Englishmen, whatever one says; there are now only Europeans."²⁴ Febvre sees the

17. *Id.* at 112-14.

18. *Id.* at 129. See also J.M. ROBERTS, *A HISTORY OF EUROPE* (1996) (highlighting Europe's continuous confrontation with Asia). But see Jacques Santer, *Preface* to WIM BLOCKMANS, *A HISTORY OF POWER IN EUROPE: PEOPLES, MARKETS, STATES* (1997) (calling attention to the inclusivity of Europe and mentioning specifically Arab contributions).

19. FEBVRE, *supra* note 4, at 137-38.

20. *Id.* at 157. See also *id.* at 152-57.

21. *Id.* at 189.

22. *Id.* at 198-99. See also JOHN NEVILLE FIGGIS, *POLITICAL THOUGHT FROM GERSON TO GROTIUS: 1414-1625* (Harper Torchbooks 1960) (1907).

23. FEBVRE, *supra* note 4, at 214.

24. *Id.* at 229.

Enlightenment notion of Europe, developed as it was primarily in France, as a reaction to French setbacks in Europe and overseas.

It represented the desire of Frenchmen to continue their "dominant and glorious position," but now as cultural and moral leaders of a larger Europe.²⁵ It is in this context that he makes the following suggestive observation: "When France is in peril, she does not seek salvation by withdrawing into herself, but on the contrary in the organization of a Europe which can surround France, amplify her claims, protect her back, sustain and advance her ideas."²⁶

During the last quarter of the eighteenth century, Enlightenment Europe, the "Europe above rival nations," cedes primacy to "*la nation*." In Febvre's words: "[I]t was a shipwreck, the shipwreck of the vessel of European illusions against the reef of the nation There was in France around 1770 a European mystique. There was in France in 1793 a national mystique."²⁷ Why? According to Febvre, the cosmopolitan "Europe" of the Enlightenment had become associated with and supportive of the Europe of kings. "*La nation*" was a "revolutionary force,"²⁸ directed against the status quo of the *ancien régime* and embraced by patriots interested in political and social change. The idea of "nationality" emerges during the first part of the nineteenth century, first appearing in the sixth edition of Boiste's *Le dictionnaire de la langue française* in 1823. For Febvre, "nationality is the constitution of peoples who have not yet reached the stage of the nation."²⁹ Nationality is a "virtual" nation; it expresses the unity of a group of people who aspire to, but have not yet attained, their own state.³⁰ As is well known, the idea of "nationality" as a conceptual, organizing, and motivational principle, reached its apogee during the first half of the twentieth century, totally eclipsing notions of European unity. Febvre believes that the idea of nationality makes Europe impossible; it leads to a preoccupation with race and with the claims, memories, and disappointed ambitions of the past.³¹

Now that the idea of nationality, at least in its extreme forms and as the sole organizing principle for the organization of post-war Europe, has been discredited, what of the idea of "Europe"? Febvre calls upon his students to:

Remember the lessons from the *lycée* on French unity . . . and its authors . . . Louis XI, Henry IV, Richelieu, Louis XIV, . . . the Revolution Europe is an extension of the process which unified

25. *Id.* at 237-38.

26. *Id.* at 238.

27. *Id.* at 255.

28. *Id.* at 246. See also EMMANUEL JOSEPH SIEYÈS, QU'EST-CE QUE LE TIERS ÉTAT? (Roberto Zapperi ed., Droz 1970) (1789).

29. FEBVRE, *supra* note 4, at 265.

30. *Id.*

31. *Id.* at 278.

a state like France Europe is the dream of a super-state, grouping, encompassing, uniting all the states of Europe Europe is the transposition onto a large scale of the process by which national unity occurred in many European states.³²

He clearly rejects, though, the notion that European unity be brought about by force, like German or Italian unity, but holds out the prospect of unity by way of "amity" and "free federation."³³ Although it would appear that the creation of a European state, of which the present nations would be provinces, is "in the logic of things" and "in the line of evolution,"³⁴ Febvre questions whether this is "a necessary step in the progress of humanity? Or should it be skipped as not useful and even dangerous?"³⁵ Would the creation of a European state simply elevate the problems associated with the concept of nationality to the global level, with a "nationalistic" Europe pursuing its interests in opposition to the other major political players at the world level? Febvre recoils from that conclusion and in its place recommends that "old felt values must be challenged, contested, eliminated, [and] replaced by others."³⁶

What emerges clearly from Febvre's lectures is that the notion of "Europe" has changed over time. Or as Febvre says:

Europe is a fluctuating name which for a long time hasn't known exactly on which realities to settle. Europe, an equilibrium of powers, an assessment of forces, a balance of rival states. Europe, an ideal homeland, the ideal homeland of the liberal elites of the eighteenth century. Europe, the enemy, the adversary of nations, especially the French nation, . . . the example and model of liberal countries But how to create this Europe? Which rests on no reality, which takes its reality from no precedent?³⁷

In effect, "Europe" represents less a definition and more an ever-changing political or cultural agenda.

The nineteenth century was the great age of European history writing. Niebuhr, Savigny, Ranke, Mommsen, and Treitschke in Germany; Guizot, Thiers, Louis Blanc, Quinet, and Michelet, in France; Macaulay, Arnold, Carlyle, Acton, and Maitland in Great Britain, are only a few of the names associated with the flowering of history writing during the period.³⁸ In most European countries,

32. *Id.* at 143, 145, 146.

33. *Id.* at 146.

34. *Id.* at 291.

35. *Id.* at 292.

36. *Id.* at 311.

37. *Id.* at 279.

38. See generally G. P. GOOCH, HISTORY AND HISTORIANS IN THE NINETEENTH CENTURY (2d ed. 1952). As Gooch points out, historical writing also should include certain works of historical novelists like Alessandro Manzoni's *I Promessi Sposi*, which "rested on a serious study of Lombardy in the seventeenth century." *Id.* at 401.

historical study accompanied the revival of national feeling³⁹ that occurred during the Napoleonic period and intensified during the course of that century. It had, consciously or not, a decidedly nationalistic political or cultural agenda. Nineteenth-century European history, as a rule, was nation-centered and emphasized the uniqueness of the national experience, the national racial heritage, or national cultural or spiritual achievements. Like the writing of history, the teaching of history in European countries, up through 1945 and still today for the most part, focuses on each country's particular national history, rather than on European history considered as a whole.⁴⁰

How do historians of today understand the European past? Are they concerned with Europe as a whole? Or are they still focused on national history? Efforts at the writing of Eurohistory have not as yet met with much success.⁴¹ At the outset, there is the question of which countries should be included in Europe. Should Europe be limited to EU Member States? If so, that roster has continued to expand since the original six members and further expansion, of a still to be determined extent, is presently under active consideration. As expansion occurs, different historical, religious, cultural, ethnic elements are added to the mix. If Europe is not limited to EU Member States, the inclusion of other states (Eastern European states, former parts of the Soviet Union, Turkey, Russia, even the United States)⁴² in Eurohistory partakes to some extent of a political agenda, namely, that the included state(s) ought to be embraced in the integrated Europe.

Norman Davies, who has recently written a massive (and highly original) history of Europe, believes that European integration requires "a sense of community" and a "spiritual home for those millions of Europeans whose multiple identities and multiple loyalties already transcend existing frontiers."⁴³ He quotes Benedict Anderson's observation that "[a]ll communities larger than the primordial villages of face-to-face contact (and perhaps even these) are imagined."⁴⁴ It goes without saying that historians will have a large role to play in the construction of any imagined European community that may emerge.

39. *Id.* at 397.

40. NORMAN DAVIES, EUROPE: A HISTORY 32-36 (1996).

41. *Id.* at 42-45.

42. For Febvre's views concerning the United States as a part of Europe, see generally FEBVRE, *supra* note 4, at 133.

43. DAVIES, *supra* note 40, at 45.

44. *Id.* at 44 (quoting BENEDICT R. O'G. ANDERSON, IMAGINED COMMUNITIES: REFLECTIONS ON THE ORIGIN AND SPREAD OF NATIONALISM (rev. ed. 1991)).

II. PRESENT

One of the great difficulties in thinking and talking about European integration is the competing descriptions of Europe which often frame the discussion. Some see the EU as an embryonic federal state, with a United States of Europe as the desired (or feared) goal. Others see the EU as the *Europe des États*, still a closely integrated body politic, but one in which Member States still retain essential elements of national sovereignty and national identity. In truth, however, the EU is simply what it is. It is a continually evolving (or, at times, devolving) economic, social, political, and cultural space. Trying to characterize it as a particular type of polity in quest of itself is vain and destructive to the reality and dynamic that is the European project, and leads discussion into fruitless, if not counter-productive, channels.

The Constitution of Europe provides a healthy antidote to much of the usual discourse. It foregoes conventional characterization and seeks to describe the reality of the EU, not by likening it to known and understood forms of political organization, but by viewing it without preconceived conceptions or categories. The book is divided into two parts: the essays and articles in the first part "explain the structure and process of the European polity and its constitutional dimensions as well as the dynamics of the emergent European constitutionalism."⁴⁵ The second part of the book "is about ends."⁴⁶ "It explores the values of European integration. It explores the debate about ideals, legitimacy, and democracy in the European Union."⁴⁷ As a whole, *The Constitution of Europe* provides a picture of what the EU really is and how it got that way, as well as an evaluation of what has been accomplished so far and a consideration of future developments. It is not merely a collection of previously published shorter pieces. The essays and articles complement each other to produce a whole that is far more than the sum of its parts. It is essential reading for anyone seeking to understand European integration and to think about its future.

The first essay in the book, *The Transformation of Europe*, originally published in 1991, is already well-known, and will not be discussed here.⁴⁸ But it is significant that in that essay Weiler echoes Febvre's concern that an integrated Europe might reproduce

45. WEILER, *supra* note 1, at 9.

46. *Id.* at 9.

47. *Id.*

48. For a review of Weiler's *The Constitution of Europe: "Do the New Clothes Have an Emperor?" and Other Essays on European Integration*, *supra* note 1, that focuses primarily on this essay, see Petros C. Mavroidis, *Lexcalibur: The House That Joe Built*, 38 COLUM. J. TRANSNAT'L L. 669 (2000) (book review).

the problem of nationalism on a greater scale. "It would be more than ironic," says Weiler,

[I]f a polity with its political process set up to counter the excesses of statism ended up coming round full circle and transforming itself into a (super)state. It would be equally ironic that an ethos that rejected the nationalism of the Member States gave birth to a new European nation and European nationalism.⁴⁹

Weiler fears that Maastricht's creation for the EU of the accoutrements of the national state, like EU citizenship or common foreign and defense policy, may lead to the transference of national sentiment to the European level. But, in his view, other aspects of EU institutional development represent other trends and possibilities. Advances in the sphere of EU competence do not inevitably entail commensurate losses in Member State sovereignty, for Weiler does not see EU-Member State relations as a zero-sum game. In an Afterward to the 1991 article, Weiler introduces the concept of "infranationalism," which he sees as a central feature of Community governance.⁵⁰ "Infranationalism . . . is based on the realization that increasingly large sectors of Community norm creation are done at a mesolevel of governance. The actors . . . are middle-range officials of the Community and the Member States in combination with a variety of private and semi-public bodies players."⁵¹ Weiler's infranationalism thus represents a new way of describing and conceiving important aspects of the structure and dynamics of EU-Member State relations that focuses on contemporary reality while forgoing conventional categorization.

In his Afterward Weiler argues, recalling Febvre's "skillful man in a dense crowd image,"⁵² that "there is a nexus between the two spheres of politics and law where developments in one create a climate, act as a catalyst, help sustain developments, and moves in the other."⁵³ Weiler is concerned "that the current political processes of Community governance offer a much less hospitable environment for the continued development or even the sustaining of the constitutional architecture. A new transformation is called for."⁵⁴ And this new transformation involves largely the

49. J.H.H. WEILER, *The Transformation of Europe*, in *THE CONSTITUTION OF EUROPE: "DO THE NEW CLOTHES HAVE AN EMPEROR?" AND OTHER ESSAYS ON EUROPEAN INTEGRATION*, *supra* note 1, at 10, 94.

50. *Id.* at 98.

51. *Id.* See also J.H.H. WEILER, *The European Democracy and its Critics: Polity and System*, in *THE CONSTITUTION OF EUROPE: "DO THE NEW CLOTHES HAVE AN EMPEROR?" AND OTHER ESSAYS ON EUROPEAN INTEGRATION*, *supra* note 1, at 264, 276-78.

52. See *supra* text accompanying note 10.

53. WEILER, *supra* note 49, at 101.

54. *Id.*

reformulation of goals and values and their acceptance by the EU polity.

In the three essays that follow in Part I, the descriptive part of the book, Weiler deals with the protection of human rights in Europe, the external legal relations of non-unitary actors, and the European Court of Justice (ECJ). Each essay offers fresh insights and new perspectives. The essay on human rights, for example, considers the appropriate polity, Member State or EU, for the definition and enforcement of particular human rights. Consistent with his desire that the EU not replicate pre-War statism and nationalism at the supranational level, Weiler emphasizes what he calls "fundamental boundaries"—those between the EU and its Member States—and argues that certain fundamental rights definitions and decisions be left to the smaller polities.⁵⁵ His essay on the external legal relations of non-unitary actors compares the treaty law of the EU with that of a number of federal states, such as the United States, Canada, and Germany. Weiler concludes that the EU procedure known as "mixity," whereby both the EU and Member States are required to participate in the incurring of certain international obligations, is, in spite of its complexity and the practical difficulties to which it may lead, on the whole, desirable. "Mixity . . . expands the pluralistic posture of the Community's external relations."⁵⁶ Weiler continues:

In my view, mixed agreements, though not resulting in a further exclusive building of the *centre*, may—by virtue of their capacity to eliminate tensions and by constituting a growing network whereby Community and Member States gain in international strength simultaneously and become among themselves even further inextricably linked—be regarded as a contribution to a strengthening of the overall *framework* of European integration.⁵⁷

Mixity, although untidy both theoretically and operationally, thus contributes to the new, and unique, form of political organization that is the EU.

55. J.H.H. WEILER, *Fundamental Rights and Fundamental Boundaries: On the Conflict of Standards and Values in the Protection of Human Rights in the European Legal Space*, in THE CONSTITUTION OF EUROPE: "DO THE NEW CLOTHES HAVE AN EMPEROR?" AND OTHER ESSAYS ON EUROPEAN INTEGRATION, *supra* note 1, at 102, 102-07.

56. J.H.H. WEILER, *The External Legal Relations of Non-Unitary Actors: Mixity and the Federal Principle*, in THE CONSTITUTION OF EUROPE: "DO THE NEW CLOTHES HAVE AN EMPEROR?" AND OTHER ESSAYS ON EUROPEAN INTEGRATION, *supra* note 1, at 130, 186.

57. *Id.* at 187. See also Martin A. Rogoff, *The European Union, Germany, and the Länder: New Patterns of Political Relations in Europe*, 5 COLUM. J. EUR. L. 415 (1999) (describing a procedure for the participation of the German *Länder* in EU affairs with respect to matters falling within their sphere of competence under the German Constitution).

Another example of Weiler's fresh view of classical jurisprudential questions is his evaluation of the German Federal Constitutional Court's decision concerning the Maastricht Treaty.⁵⁸ From a strictly legal point of view, "the German decision is an egregious violation of the Treaty . . ."⁵⁹ But, he argues, this situation is not necessarily unhealthy.⁶⁰ He explains:

The German move is an insistence on a more polycentered view of constitutional adjudication and will eventually force a more even conversation between the European Court and its national constitutional counterparts There has been no constitutional convention in Europe. European constitutionalism must depend on a common-law type rationale, one which draws on and integrates the national constitutional orders. The constitutional discourse in Europe must be conceived as a conversation of many actors in a constitutional interpretative community, rather than a hierarchical structure with the ECJ at the top.⁶¹

He then goes on to suggest the creation of an EU Constitutional Council, comprised of members of the ECJ and national constitutional courts, which would have jurisdiction over issues of competence (including subsidiarity).⁶²

The history of EU constitutionalism, including the developments described in the first part of *The Constitution of Europe*, is not simply "history" but, as Weiler puts it, "an intellectual history and discourse of conceptualization and imagination."⁶³ As such, it bears importantly on the ends of European integration and its motivating ideals. Weiler considers ends and ideals in the perceptive and sobering essay *Fin-de-Siècle Europe: Do the New Clothes Have an Emperor?*, which first appeared in 1995. He concludes that the ideals that underlay the founding and subsequent development of an integrated Europe—peace, prosperity, and supranationalism—no longer retain their vitality. In fact, writes Weiler, the current crisis of ideals may be considerably more serious:

Especially, at the end of the century, the European Union can be seen as replicating, in reality or in the subjective perception of individuals and societies, some of these very same features [that marked the turn to fascism in Italy, France, and Germany at the beginning of the century]: [I]t has come to symbolize, unjustly perhaps, the epitome of bureaucratization and, likewise, the epitome of centralization

58. BVerfGE 89, 155 (F.R.G.), translated in 33 I.L.M. 388 (1994).

59. J.H.H. WEILER, *The Autonomy of the Community Legal Order: Through the Looking Glass*, in THE CONSTITUTION OF EUROPE: "DO THE NEW CLOTHES HAVE AN EMPEROR?" AND OTHER ESSAYS ON EUROPEAN INTEGRATION, *supra* note 1, at 286, 320.

60. *Id.* at 321.

61. *Id.* at 321-22.

62. *Id.* at 322.

63. J.H.H. WEILER, *Introduction: The Reformation of European Constitutionalism*, in THE CONSTITUTION OF EUROPE: "DO THE NEW CLOTHES HAVE AN EMPEROR?" AND OTHER ESSAYS ON EUROPEAN INTEGRATION, *supra* note 1, at 221, 223.

The single market, with its emphasis on competitiveness and the transnational movement of goods can be perceived as a latter-day thrust at the increased commodification of values . . . and depersonalization of, this time, the national market I am suggesting that the crisis of ends . . . might be [a] . . . connection to another worrisome past⁶⁴

But, Weiler concludes, "The Community is not doomed nor even fatally wounded. And its ability to rebound from crisis is part of its history Europe would, however, be better served if the current debate about its future addressed not only means but ends too."⁶⁵

In the last essay in *The Constitution of Europe*, entitled *To Be a European Citizen: Eros and Civilization*, Weiler considers the "challenging tensions between national consciousness and multicultural sensibility"⁶⁶ He envisions the "decoupling of nationality and citizenship," leading to "the possibility . . . of thinking of co-existing multiple *demos*."⁶⁷ Weiler states:

The national is Eros: [R]eaching back to the pre-modern, appealing to the heart with a grasp on our emotions, and evocative of the romantic vision of creative social organization as well as responding to our existential yearning for a meaning located in time and space. The nation, through its myths, provides a past and a future. And it is always a history and a destiny in a place, in a territory, a narrative that is fluid and fixed at the same time The supranational is civilization: [C]onfidently modernist, appealing to the rational within us and to Enlightenment neo-classical humanism, taming that Eros.⁶⁸

III. FUTURE

It is here, in defining the relationship between "national consciousness" and a European "multicultural sensibility" that Europe's past (its history), present (today's decisions and debates), and future (the education of its young) come together. European integration and the relationship between and among European peoples today raise new questions, evoke new concerns, give rise to new interests, and present new possibilities. The writing of history and the teaching of history must be done in full consciousness of the progress of European integration to date. Old divisions and contentions, while still an inefaceable part of the European past,

64. WEILER, *supra* note 13, at 260-61.

65. *Id.* at 262.

66. J.H.H. WEILER, *To Be a European Citizen: Eros and Civilization*, in THE CONSTITUTION OF EUROPE: "DO THE NEW CLOTHES HAVE AN EMPEROR?" AND OTHER ESSAYS ON EUROPEAN INTEGRATION, *supra* note 1, at 324, 324.

67. *Id.* at 344.

68. *Id.* at 347.

must be seen and presented in the light of the present consensus in favor of European integration, which is, after all, also a product of the European past. The future, as well as the past, as Febvre recognized, "is what happens in man's head."⁶⁹ For the European project to have a salutary future, historians and educators must create and present the images and symbols of Europe that are true to its past, responsive to the present, and evocative of a desirable, inspiring, and realistically attainable future.

69. See *supra* text accompanying note 6.