

# Comment on Weiler's *The Transformation of Europe*

Henry G. Schermers†

## INTRODUCTION

Professor Weiler's article, *The Transformation of Europe*, makes two important contributions to legal and political scholarship: it helps us understand the direction in which the European Community has developed, and its analysis of the forces involved provides a basis for steering these developments into the future.

Finding no fundamental mistakes in Weiler's analysis, I wish to focus instead on the shades and nuances of Weiler's article. My Comment seeks to introduce additional factors that support and augment his theory, especially as it relates to the respective roles played by various political actors in the European integration process, paying special attention to the judiciary. Because the international society is so complex, it is virtually impossible for one author to analyze all the relevant factors, which allows me to add pertinent arguments to Professor Weiler's work.

### I. (1958-1973): LEGAL AND POLITICAL ACTORS IN THE FOUNDATIONAL PERIOD

Part I of Professor Weiler's article describes the development of the European Economic Community (EEC) during its "Foundational Period," from 1958 to the mid-1970's.<sup>1</sup> During this period, a dichotomy between the evolution of the European Community legal system and that of its political institutions began to emerge. On the one hand, the European Court of Justice pushed the judicial and legal structure in a supranational, federal direction. On the other hand, the political structure, which initially created and employed a unifying supranational treaty system, devolved in the direction of a loose confederation, leaving each State's sovereignty almost wholly intact. Weiler mentions the decline of Member States' political will, the influence of de Gaulle, and the reciprocal

---

† Professor of Law, Leiden University. Professor Schermers also serves as member of the European Commission on Human Rights.

1. Weiler, *The Transformation of Europe*, 100 YALE L.J. 2403, 2410-31 (1991).

relationship between judicial and political developments as substantive factors contributing to these two divergent trends.<sup>2</sup> Weiler proposes that the judiciary's movement in a federal direction would not have been politically possible if the States had not felt sufficiently protected by their retained powers in the political decisionmaking process.<sup>3</sup>

#### A. *The Impact of Cultural Differences*

Although I agree with Weiler's basic observation concerning the interrelationship of judicial and political developments, I believe he overlooks somewhat a more intangible factor in the integration process—the role played by the people of Europe. In his introduction Professor Weiler writes that the transformation of Europe has manifested itself through means ranging from the “trivial and ridiculous to the important and sublime,” labeling as “ridiculous” items such as a Eurovision song contest.<sup>4</sup> While at first sight this sort of activity may seem nonsensical, Europeans may actually place more importance on this type of symbolic exercise than one might think.

Europe is a heterogenous continent. The linguistic and cultural differences which divide the nationals of the European States are much greater than those which lie between the residents of the different states in North America. For example, when a Dutchman speaks of Italians he often feels ill at ease. Italians are shorter and darker; they speak a language completely incomprehensible to the Dutchman. In addition, they take siestas, drink wine, and often practice a different religion. Culturally, most Dutchmen—and probably most Danes, Germans, and Englishmen—feel closer to Americans and Canadians than to Spaniards, Italians, and Greeks.

This feeling of being different, this looking upon fellow Europeans as complete foreigners, affects the Common Market. For example, in the future it will be necessary to harmonize the public welfare systems of the Member States. Consequently, rich workers in Germany and the Netherlands will have to subsidize unemployment benefits for the poor in Greece and Portugal. At present I doubt whether the German and Dutch labor unions (let alone the workers themselves) would be willing to make such a sacrifice. A sufficient level of solidarity does not yet exist.

Before this can happen, all Europeans must get to know each other better. By socializing informally at events such as song festivals, soccer matches, and student exchanges, hopefully the Dutch citizen will learn to appreciate the culture of his Italian neighbor. Taken individually, each of these activities may seem trivial. When combined to form a careful long-term policy of international

---

2. *Id.* at notes 19-60 and accompanying text.

3. *Id.* at notes 48-59 and accompanying text.

4. *See id.* at 2403 & n.2.

social contacts, however, they become essential to the European integration process.

### B. *The Neglected Role of the National Bureaucracies*

Moving into the political realm, I want to add a factor to Weiler's balance of forces by looking to the impact of another actor in the integration process: the national civil servant. This addition is necessary, because without the support of the national bureaucracies, the European Community cannot achieve intergovernmental cooperation. In the modern state, bureaucrats play a role equally important to that of politicians and judges, particularly in highly specialized fields. Bureaucrats use their technical skills to define the national policy for their areas of expertise, which range from customs duties and antitrust policy to manure disposal. They know the intricacies of their subject areas and the national interests involved.

Those who run the national bureaucracies in Europe often find it productive to travel to Brussels to discuss their specialties with equally competent foreign colleagues. In many cases they accept the notion that standardized European rules are needed, and they are willing to discuss them. They object, however, when independent civil servants of the European Commission<sup>5</sup> draft such rules without considering their input, as was often the case during the early days of the Community. National bureaucrats may rightly believe that they know their subjects better than do the Commission's bureaucrats, and they will certainly better understand those issues that affect their respective States' national interests. Moreover, national civil servants lose their status and prestige when the Community essentially takes over their work, and they understandably resist such a transfer of power.

Bureaucratic resistance generated during the Foundational Period also partly explains why, as Weiler notes, European legal systems moved powerfully ahead toward integration while political groups favored preserving State sovereignty. The reason is indeed apparent: the national bureaucracies became reluctant, making their respective governments hesitant as well. Significantly, this governmental reluctance originated in the executive branch.

Today the problem of bureaucratic resistance has been substantially alleviated by the addition of management committees. Management committees were introduced during the 1960's to assist in Community agricultural decision-making. The Council of Ministers constructed one management committee for each agricultural product, and national civil servants specializing in that field

---

5. The Commission was established by the EEC Treaty, art. 157. Treaty Establishing the European Economic Community, Mar. 25, 1957, 298 U.N.T.S. 11. The Commission makes policy proposals that are submitted to the Council of Ministers for approval. These "supranational bureaucrats" employ a total staff of over 10,000. For an overview of the political structure of the European Community, see generally T. HARTLEY, *THE FOUNDATIONS OF EUROPEAN COMMUNITY LAW: AN INTRODUCTION TO THE CONSTITUTIONAL AND ADMINISTRATIVE LAW OF THE EUROPEAN COMMUNITY* (1988).

joined to form each committee. Today the Commission often must consult management committees, and in some cases it cannot make a decision without their approval.

### C. *A Recalcitrant Executive Branch*

The Council of Ministers must adopt every important Community decision, and it is generally regarded as the most powerful political organ of the Community. The Community Treaty requires that it be composed of the responsible cabinet ministers from each of the Member States, hence the title.<sup>6</sup> The independence of the national executives allowed them to oppose integration even when their position was not supported by other branches of the government or the majority of the population. In the Netherlands, for example, all large political parties remained faithful to the idea of supranationalism and European integration, while the executive branch was considerably less enthusiastic. The government often defended its less supranational approach by falsely claiming that the other Member States forced it to accept this position. In other Member States as well, parliamentary majorities consistently supported a supranational approach against an approach which would leave the supreme powers with the national governments.

### D. *The Judiciary's Role as the Driving Force Behind European Integration*

In contrast to the executive branches of government, the national judiciaries have shown strong support for unity in the European Community. In Western Europe the judiciary is traditionally an important power of the state, and thus it is especially significant that the judiciaries of the Member States have so strongly advocated a supranational approach.<sup>7</sup> Without their support, the European Court of Justice could not have assumed such an important role in the Community. Because on many questions the Court of Justice acts only when and if the State courts ask for a preliminary ruling, its most fundamental decisions could not have been rendered without Member State courts' initiatives.<sup>8</sup> The State courts could have easily determined that such decisions were unnecessary or simply ignored Court of Justice rulings altogether, as the French Conseil d'Etat did for a considerable amount of time with respect to preliminary

---

6. Treaty establishing a Single Council and a Single Commission of the European Communities of 8 April 1965, Official Journal of the European Communities No. 152, 13 July 1967.

7. See generally R. LECOURT, *L'EUROPE DES JUGES* (1976).

8. The domestic courts issue the majority of rulings applying Community law. When faced with conflicting interpretations of Community law, the national courts defer to rulings issued by the European Court of Justice. If the national courts feel that a question of Community law is unsettled, they may ask the Court of Justice to issue a ruling. All questions referred to the Court of Justice must be answered; it has no power of certiorari. See EEC Treaty, art. 177.

rulings on the possible direct effect of Community directives.<sup>9</sup> The loyal and active cooperation of the State judiciaries constitutes one of the foundation stones of powerful legal integration.

## II. (1973-1980): JURISDICTIONAL MUTATION IN THE COMMUNITY

### A. *The Absorption of Domestic Law*

Weiler illustrates the key role played by the Member State judiciaries in Part II of his article, which examines the expansion of Community jurisdiction during the second phase of its development, from 1973 to the mid-1980's.<sup>10</sup> Weiler defines one form of this "jurisdictional mutation" as "absorption," the process by which national policies in an area *outside* the realm of Community competence (i.e. education) are "absorbed," or overridden, when they conflict with Community law.<sup>11</sup> Although the process of absorption ultimately diluted the independence and power of the Member State judiciaries, through that process the State courts actually contributed significantly to the substance of Community law, as in the field of human rights. Without pressure from the German Constitutional Court (Bundesverfassungsgericht), the European Court of Justice might not have developed Community human rights protection adequately.

The absorption theory can be analyzed through a line of cases pertaining to human rights decided by the German Constitutional Court. The German constitution enumerates a number of fundamental human rights which must be respected by all German authorities. In *Solange I* the German Constitutional Court held that when Community law infringed on fundamental human rights guaranteed by the German constitution, German human rights would prevail. The court held that the German government would not enforce such EEC laws until the Community adequately protected fundamental human rights.<sup>12</sup> This ruling allowed the German Constitutional Court to review Community acts to determine their conformity with the fundamental rights guaranteed by the German constitution, and possibly to block their absorption into the national law.

---

9. See Judgment of Dec. 22, 1978, Conseil d'Etat, Fr., 1978 Recueil Sirey [D.P. III] 524, [1980] 1 Comm. Mkt. L.R. 543 (Minister of the Interior v. Cohn-Bendit). In this case the French Supreme Administrative Court, the Conseil d'Etat, held that Community directives, unlike regulations, do not have "direct effect" in domestic law. This ruling directly contravened a Court of Justice decision establishing that such directives may have direct effects. The Conseil d'Etat took a different stance, however, in another case, *Nicolo*, however, where it stated (in dicta) that international law could set aside more recent French legislation. See Judgment of Oct. 20, 1989, Conseil d'Etat, Fr., 1989 D.P. III 190.

10. See Weiler, *supra* note 1, at 2431-53.

11. See *id.* at 2438-41.

12. Judgment of May 29, 1974, Bundesverfassungsgericht, W. Ger., 37 Bundesverfassungsgericht [BVerfGE] 271, [1974] 2 Comm. Mkt. L.R. 540 (Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratsstelle für Getreide und Futtermittel) [*Solange I*].

The *Casagrande* case,<sup>13</sup> quoted by Weiler, indicates a domestic court trend in the opposite direction. In this case it was argued that because education is a domestic issue, Community decisions in the education field could not be effective in Germany. The German judiciary rejected this proposition and thus permitted absorption, which it had blocked in *Solange I*. None of the other Member State supreme courts followed the reasoning in *Solange I*, and twelve years later in *Solange II*<sup>14</sup> the German Constitutional Court found that the Community's own system of protecting fundamental human rights had matured to a level where it adequately protected the fundamental human rights guaranteed by the German constitution. The German Constitutional Court would no longer review Community acts, provided that the Community's own protection of human rights did not deteriorate. All European judiciaries now accept European Court of Justice decisions governing conflicts between Community law and Member State law. That acceptance constitutes the fundamental strength of the Community system.

### B. *Incorporation and the Question of Human Rights*

Professor Weiler's discussion of incorporation<sup>15</sup> as a form of jurisdictional expansion is not as persuasive as that of absorption. Weiler overstates the effects of this phenomenon, although it does raise significant issues. Incorporation encompasses the idea that all Community law becomes a part of the domestic law of the Member States, where it is applied and executed like any other statute. For most Member States, incorporation of international treaties is a normal phenomenon which causes no problems.<sup>16</sup> In some Member States, however, the process of harmonizing treaties and domestic law requires a separate, time-consuming legislative procedure. To prevent discrepancies and delays, the European Court of Justice ruled in *Van Gend & Loos* that the Community legal order is a different entity than international treaty law, thereby freeing it from the constraints such treaty law encounters in dualist systems.<sup>17</sup> On the basis of *Van Gend & Loos*, and regardless of a Member State's position on the incorporation of international law, Community law is directly and fully incorporated into every Member's domestic legal order.

---

13. Case 9/74, *Donato Casagrande v. Landeshauptstadt Munchen*, 1974 E.C.R. 773.

14. Judgment of Oct. 22, 1986, *Bunderverfassungsgericht, W. Ger.*, 73 BVerfGE 339, [1987] 3 Comm. Mkt. L. Rep. 225 (Re the Application of *Wunsche Handelsgesellschaft*) [*Solange II*].

15. See Weiler, *supra* note 1, at 2441-42 & nn.106-09.

16. Countries such as Luxembourg and the Netherlands employ a monist system for the interpretation of treaties, whereby the treaty supersedes all provisions of domestic law. In countries employing some form of a dualist system, as in Germany and Italy, international treaties do not automatically override those domestic laws which are passed after the treaty is enacted. In these countries, special exceptions have been created for Community treaties.

17. Case 26/62, *N.V. Algemene Transport-en Expeditie Onderneming Van Gend & Loos v. Nederlandse Administratie der Belastingen* (Netherlands Inland Revenue Administration), 1963 E.C.R. 1 [*Van Gend & Loos*].

However, with respect to fundamental human rights, the situation is somewhat different. As Weiler notes, Community law does not contain a bill of rights, and it is unclear whether and to what extent the Community's powers are limited by national and international documents on human rights. However, this issue is not as serious as it may seem, because it concerns the application of human rights provisions only to the Community organization itself. The individual Member States are all bound by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),<sup>18</sup> a treaty which binds twenty-two of the European States. This convention created its own organs for supervision, the European Commission of Human Rights and the European Court of Human Rights. Individuals file complaints against their national governments with the Commission; the Court renders judgments. Citizens may initiate suits whenever they feel that their government has infringed any of their enumerated rights, although they must first exhaust all domestic remedies.

The ECHR has been incorporated into the domestic legal orders of most European States, which means that plaintiffs can invoke it before their national courts. In the United Kingdom and in the Scandinavian countries one cannot invoke the Convention (or any other treaty, except the Community treaties) in a domestic court. There, one must invoke parallel domestic rights—to the extent that they exist—before one may lodge a complaint with the European Commission of Human Rights. No national "Bill of Rights" is identical to the ECHR; therefore, the domestic courts themselves cannot supervise the application of the Convention. Consequently, plaintiffs file more complaints with the Commission. This system is generally regarded as inefficient and a handicap for the countries that employ it.<sup>19</sup> Recently, Norway,<sup>20</sup> Denmark,<sup>21</sup> and to a lesser extent the United Kingdom,<sup>22</sup> have seriously studied the possibility of incorporating the Convention as a whole into their domestic legal orders.

The European Community is not bound by the European Convention on Human Rights. This means that Community acts cannot be challenged before the organs created by the Convention. The gap thus created is not large in practice, as the Community judiciary will annul any Community act which infringes general principles of law, which normally include human rights.

---

18. European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 222 (entered into force, Sept. 3, 1953).

19. See generally A. DRZEMCZEWSKI, EUROPEAN HUMAN RIGHTS CONVENTION IN DOMESTIC LAW: A COMPARATIVE STUDY (1983). Professor Drzemczewski stresses the need for greater harmonization and uniform application of ECHR law. *Id.* at 330-41. He ultimately concludes that the solution to this problem lies with a system whereby the Court of Human Rights would issue preliminary rulings on questions referred to it by the domestic courts, "with the pre-condition of domestic incorporation of the Convention." *Id.* at 336.

20. *Id.* at 132-35.

21. See Gulman, *Denmark*, in THE EFFECT OF TREATIES IN DOMESTIC LAW 31-33 (1987).

22. See Higgins, *United Kingdom*, in THE EFFECT OF TREATIES IN DOMESTIC LAW, *supra* note 21, at 130; see also DRZEMCZEWSKI, *supra* note 19, at 186-87.

Nonetheless, a theoretical gap exists, which could be closed in either of two ways: (1) the Community could adhere to the European Convention; or (2) the Community could adopt its own "Bill of Rights." Adhering to the European Convention is the preferable solution. Although the alternative would ensure protection of human rights in the twelve Member States, it would not reach the other countries that are parties to the ECHR. Both for the sake of human rights and for the sake of Europe, it would be a pity if, in the area of human rights, the continent would thus be divided along the same lines as those drawn for economic purposes, creating special protections for a Europe of twelve Community Members and excluding the rest.

### C. *Expansion of Implied Powers in the EEC*

Professor Weiler identifies expansion as the most radical form of jurisdictional mutation enlarging Community powers. Weiler describes expansion as the broad exercise of the implied powers of the Community, largely derived through Article 235 of the EEC Treaty, a European "necessary and proper clause." Article 235 grants powers to the Community whenever this is "necessary to attain one of its objectives."<sup>23</sup> I agree with Weiler's contention that Article 235 opened the door for the "expansion" of Community powers.<sup>24</sup>

#### 1. *The Erosion of Executive Resistance*

Weiler explains the lack of resistance to Community expansion by focusing on the Member States' "near total control" of the Community process: "[T]he EEC appeared more as an instrument in the hands of the governments rather than as a usurping power."<sup>25</sup> The executive branch of the national governments, usually the strongest opponent of Community expansion, began to offer less resistance. With the exception of Denmark, the parliaments of the various Member States favored a liberal reading of Article 235, and European academics commenting upon developments in the EEC typically supported expansion as well. Their encouraging comments may have stimulated activism in the Court. Therefore, once the Member State executives embraced the application of Article 235, little substantial resistance remained.

#### 2. *The Dangers of Overexpansion*

Weiler concludes his section on the evolution of Community jurisdiction by warning that such expansion does have natural limits. He could be read to suggest here that interest groups should be more fully incorporated into the

---

23. EEC Treaty, art. 235.

24. See Weiler, *supra* note 1, at nn.116-21 and accompanying text.

25. *Id.* at 2448.

political process.<sup>26</sup> The Economic and Social Committee was established to involve interest groups in the Community's decisionmaking process;<sup>27</sup> however, it never flourished, and its opinions receive little attention.

Even more significantly, Weiler warns that Member State judiciaries may diminish or even terminate their support if the Community aggressively expands into a field which they consider their domain.<sup>28</sup> This Comment has argued that the loyal support of the Member State judiciaries forms the backbone of the Community legal order and provides the driving force behind European integration. To date I see no weakening of this backbone in the development of the Community, yet I realize that under pressure even backbones may break. Although it seems highly unlikely, if the Member State judiciaries do reach critical breaking point and become hostile opponents of European integration, I believe that the process could break down entirely.

### III. 1992 AND BEYOND

Part III of Weiler's article explores more recent developments in the EEC and attempts to look beyond the celebrated 1992 deadline for economic integration. Since Part III concerns the future, it necessarily contains speculative submissions, which, of course, may or may not prove true.

#### A. *The Impact of the Single European Act*

Weiler correctly remarks that, on its face, the Single European Act (SEA)<sup>29</sup> largely fails to contribute substantially to the development of the common market.<sup>30</sup> Its goal of achieving a single market is not a radical one; the EEC Treaty, adopted over twenty years earlier, advocates this same idea. Overall, however, I believe he underestimates the potential effects of the SEA.

The SEA's greatest impact was in demonstrating the political will to achieve a unified market by the end of 1992, thereby stimulating formerly recalcitrant state administrations to cooperate. Also, various industries began to plan for the larger market and pressure their national governments to do likewise. The pressure exerted by industry has been and probably will be more effective in developing a single market than the actual adoption of the SEA, suggesting that developments depend largely on the political climate rather than the actual text of political documents. These more informal types of pressures seem to be more effective in persuading government officials to act. Although we cannot foresee

---

26. *Id.* at 2452-53.

27. EEC Treaty, arts. 193-198.

28. Weiler, *supra* note 1, at 2451-52.

29. Single European Act, Feb. 28, 1986 [hereinafter SEA].

30. Weiler, *supra* note 1, at nn. 134-39 and accompanying text.

the direction of future political developments, it seems likely that economic forces will continue to drive the Member States closer together.

### B. *Article 100a and an End to the Unanimity Requirement*

Integration has been accompanied by the abandonment of many of the political safeguards which Weiler asserts made expansion of Community powers possible. Article 18 of the SEA amends Article 100 of the EEC Treaty; the new Article 100a provides for weighted majority voting in the Council of Ministers, where unanimity was formerly required.<sup>31</sup> No Member State now possesses a veto power over the others.

#### 1. *The Luxembourg Accord*

In my opinion, Weiler overestimates the importance of another act, the Luxembourg Accord,<sup>32</sup> as it relates to preserving a unanimity voting requirement. The Luxembourg Accord resulted from the 1965 Community crisis, during which France boycotted Council sessions. "Accord" is actually a misnomer, since such an accord never really existed, at least not with respect to official voting procedures. France proposed that when an issue before the Council of Ministers concerned the "vital interests" of a Member State, discussions should continue until unanimity was reached. The other Member States, however, rejected the vital interests exception to the majority voting rule.<sup>33</sup> Since no Member State wanted to risk another crisis, the Council adopted the practice of never taking a vote once a State declared that a particular issue concerned its so-called vital interests. New Member States supported the French position; and, thus, it became understood that, when the Community debated highly critical issues, decisionmaking should be by unanimity. This practice naturally encouraged cooperation among the States, but it did not eliminate the possibility that majority voting could take place, even when vital interests were at stake. Since the Member States never formally adopted a Luxembourg Accord, it would be impossible for a majority of the Member States to "repeal" it, as Weiler suggests.<sup>34</sup>

#### 2. *Exemptions to Article 100a*

---

31. The Council of Ministers shall adopt actions "which have as their object the establishment and functioning of the internal market" by a "qualified majority." EEC Treaty, art. 100a.

32. *Luxembourg Accord*, in 1966 BULLETIN OF THE EUROPEAN ECONOMIC COMMUNITY 8 (No. 3) (issued on Jan. 29, 1966), reprinted in SWEET & MAXWELL'S EUROPEAN COMMUNITY TREATIES 234-35 (1972).

33. *Id.*

34. Weiler, *supra* note 1, at 2459. Weiler does, however, state correctly that Article 100a has substantially weakened the practical effects of the Luxembourg Accord.

I also believe that the exemptions contained in Article 100a which allow Member States to deviate from majority voting procedures do not present the difficulties that Weiler anticipates. Article 100a (5) allows Member States to adopt national "safeguard" measures for noneconomic reasons, such as health and safety, articulated in Article 36 of the EEC Treaty.

Achieving larger markets is of such importance to the whole Community that the Member States will strive diligently to reach agreement on rules applicable to those markets. Therefore it is highly unlikely that the Council would adopt a directive against the wishes of the large Member States. It is the smaller countries, such as Denmark and Greece, which have used the unanimity rule to preclude further harmonization. The Common Market would not suffer great losses if the harmonized rules did not extend to these smaller States, but the objecting countries themselves would suffer. While it is true that recalcitrant nations could use, for example, different preservatives in foodstuffs, no other Community country would be permitted to import them, which would compel producers in small countries to restrict distribution to their home markets. This is not likely to be an attractive proposition.

### C. *The Problem of Noncompliance*

Professor Weiler's theory that the Member States' level of noncompliance with Community law will rise to compensate for increased Community powers also seems somewhat unfounded. I doubt whether a "strategy of Exit" according to which Member States selectively apply their Community obligations will emerge.<sup>35</sup>

Article 169 of the EEC Treaty allows the Commission to bring a Member State before the Court of Justice if it does not comply with Community law. Most Court decisions under Article 169 have held against Italy and Belgium, yet both of these States remain loyal to the Community. Their lack of obedience with Community law stems from their inability rather than their unwillingness to comply. Because of its complicated constitutional structure, the Italian government is often unable to consider necessary domestic measures before the EC deadlines expire. Belgium recently redivided powers between the regions and the central government, and it remains unclear which government retains responsibility for implementing Community law. The result may be that no action will be taken at all.

Still, perhaps some kind of sanction attached to Article 171,<sup>36</sup> such as a fine on the State concerned, would prompt the Member States to fulfill their obligations to execute Court judgments. In practice, a strong sanction already exists within those national legal orders, such as the Netherlands, that permit

---

35. See *id.* at nn.178-79 and accompanying text.

36. EEC Treaty, art. 171, requires Member States to comply with rulings issued by the European Court of Justice.

individuals to sue the government for damages in cases where the government has failed to execute Community obligations.

#### CONCLUSION

I share Weiler's opinion that the importance of 1992 is the fascinating mobilization of very wide sections of general public opinion behind the "new" Europe. It is indeed remarkable that, far more than all prior projects, 1992 has been accepted by the public as the date after which internal borders will disappear. Public confidence in the achievement is so great that it will be difficult for the national governments to maintain barriers after the end of 1992.

The culture of the market as a basis for a free Europe was obviously strongly stimulated by the collapse of the communist systems in Eastern Europe. More than ever before, the free market is now accepted as the true basis for a Western democracy.

Weiler is also correct in his conclusion that Europe should not try to become a superstate, but that it must develop into a Community where powers are shared among the local, the national, and the European levels. The vast majority of European public opinion shares this view. It may prove difficult, however, to find a proper division of competences, and in particular to find the authority for dividing the competences among the various political actors, all of whom vie for power. If subsequent evolution reflects at all the developments of the past, I predict that the European Court of Justice will play the key role.