Chapter 1
Introduction

'In any case, I hate everything that merely instructs me without augmenting or directly invigorating my activity.' These words are from Goethe, and they may stand as a sincere ceterum censeo[1] at the beginning of our meditation on the value of history. For its intention is to show why instruction without invigoration, why knowledge not attended by action, why history as a costly superfluity and luxury, must, to use Goethe's word, be seriously hated by us – hated because we still lack even the things we need and the superfluous is the enemy of the necessary. We need history, certainly, but we need it for reasons different from those for which the idler in the garden of knowledge needs it, even though he may look nobly down on our rough and charmless needs and requirements. We need it, that is to say, for the sake of life and action, not so as to turn comfortably away from life and action, let alone for the purpose of extenuating the self-seeking life and the base and cowardly action. We want to serve history only to the extent that history serves life [. . .][2]—Friedrich Nietzsche (1844–1900)

Nothing in the world can keep man from feeling that he was born to be free. Never, no matter what happens, can he accept servitude, because he thinks.—Simone Weil (1909–1943)

Study the past to predict the future.—Confucius (551–570 BC)

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[1] But I am of the opinion.

[2] "Übrigens ist mir alles verhaßt, was mich bloß belehrt, ohne meine Tätigkeit zu vermehren oder unmittelbar zu beleben." Dies sind Worte Goethes, mit denen, als mit einem herzhaft ausgedrückten Ceterum censeo, unsere Betrachtung über den Wert und den Unwert der Historie beginnen mag. In derselben soll nämlich dargestellt werden, warum Belehrung ohne Belebung, warum Wissen, bei dem die Tätigkeit erschlafft, warum Historie als kostbarer Erkenntnis-Überfluss und Luxus uns ernstlich, nach Goethes Wort, verhaßt sein muss – deshalb, weil es uns noch am Notwendigsten fehlt, und weil das Überflüssige der Feind des Notwendigen ist. Gewiß, wir brauchen Historie, aber wir brauchen sie anders, als sie der verwöhnte Müßiggänger im Garten des Wissens braucht, mag derselbe auch vornehm auf unsere derben und anmutlosen Bedürfnisse und Nöte herabsehen. Das heißt, wir brauchen sie zum Leben und zur Tat, nicht zur bequemen Abkehr vom Leben und von der Tat, oder gar zur Beschönigung des selbstsüchtigen Lebens und der feigen und schlechten Tat. Nur soweit die Historie dem Leben dient, wollen wir ihr dienen. . .. (Nietzsche 2007, 57)

The terms "state" and "nation" continue to form part of our vocabulary, despite the fact that the world has changed dramatically since both words came into being. In the global age in which we live, being the citizen of a state is progressively losing its meaning, as we are increasingly becoming citizens of the world, in what Bertand Badie considers a fresh new start as far as History is concerned (Badie 2012, 47).

This seems even truer if we concentrate on the European Union, as it is clear that the expansion of the "Community Acquis" (*Acquis Communautaire*) has seriously and irrevocably reduced national sovereignty, a situation leading some to conclude that the old problems and dynamics of nationalism are increasingly immaterial and outmoded (Geary 2002, 2).

Notions of national identity, however, are far from extinct. As Smith (2004, 1) observes, the belief that the age of nations is behind us and that true units of cultural identity now consist of ones that are small, local and untainted by power, and/or vast and transnational, is not borne out by an examination of political realities. In many ways, the scope and impact of the national state has actually intensified as a result of its involvement in regulation of health and reproduction, mass education, culture, leisure, communications, the media, criminal justice, as well as its more traditional roles in the areas of taxation, legislation and law enforcement. In fact, in what has probably been a backlash against this trend towards supranational integration, many Europeans identify more and more with their "homelands", calling for regional pride, autonomy, and, at times, separation from the state.[3] In Belgium, the Flemish and the French-speaking community (Walloons), have achieved almost total separation; in the United Kingdom, the Scottish National Party pushes for independence; and in Spain, many Basques and Catalonians harbor fiercely regionalist sentiments, calling for a divorce from the Spanish state.[4]

One of the purposes of this work, then, is to clarify the role and relevance both terms, "nation" and "state", have in the world we live in today. As such, and to avoid what Geary (2002, 13) calls the "pseudoscience of ethnic nationalism", my objective is not to provide a series of theoretical disquisitions,[5] but rather, more modestly, to offer an empirical analysis of concrete historical realities that may reveal how our states and nations developed down to the present day.[6] In these

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[3] On the contrary, as Geary (2002, 3) points out, nationalism, ethnocentrism and racism—specters long thought exorcised from the European soul—have returned, their powers enhanced by a half-century of dormancy.

[4] Nevertheless, in international athletic competitions, for example, Spaniards still tend to feel a strong identification with their country and its symbols. On July 12, 2010, when Spain defeated Holland in the World Cup final, all Spaniards, including most Basques and Catalonians, coincided in their celebration of the Spanish national team's victory. At that time, Spain's national flag could be seen up and down the streets, waved without reservations, something that had practically not occurred since the death of dictator Francisco Franco (1975). Fortunately, as Geary (2002, 13) points out, if the "pseudoscience" of nationalism has destroyed Europe twice, and may do so yet again, Europe's peoples have always been far more fluid, complex and dynamic than the imaginings of modern nationalists.

[5] For an excellent theoretical approach to this issue, see Hobsbawm (2010).

[6] Strayer (1972, 5–7) convincingly argues that instead of looking for theoretical definitions of the state, we ought to look for signs that show us that a state is coming into existence: a human

pages, readers will not find no ivory tower treatise, for as Nietzsche (2007, 57) observed in his early work *Untimely Meditations*, history is not a luxury, an activity reserved for erudite scholars, but rather a means to spur us to actively engage the era during which we are destined to live.

The history of the different western nation-states, however, one marked by diversity and particularities, but also by shared traits, is not easy to trace. As Gellner (2006, 6) has indicated, nations, like states, are not a universal necessity. Neither nations nor states exist at all times and under all circumstances. The idea of the state arose without a total dependence on the nation, while some nations, conversely, have emerged without the blessings of their respective states.[7] This is especially true of Europe's longest-standing nation-states, which boast centuries of history on their own. When we talk about today's "globalization", it is essential that we have, logically, an international idea of how and why our own particular national trajectories have converged.

One needs, therefore, to appreciate that, as westerners, the bedrock of our culture is the Roman Empire, defined by its audacious aspirations to universalism and coherent codification, later sustained thanks to the Papacy and medieval emperors who harked back to Rome for both inspiration and guidance. The Roman model was destroyed by Germanic invasions in the early fifth century and supplanted by a patchwork of ethnically and tribally based kingdoms across Europe whose diversity contrasted starkly with the Roman universalism which had preceded them. A central empire had given way to a whole set of nations, whose identities took firmer shape, and whose power was consolidated by the territorial monarchies of the late Middle Ages. These nations ultimately evolved into the powerful absolute monarchies of the sixteenth and seventeenth centuries. The nation-state model of political organization proliferated and flourished after the Peace of Westphalia in 1648, reaching its zenith in the second half of the nineteenth century during the golden age of colonialism. During the first half of the twentieth century, national competition and jockeying for power would drag the states of Europe into two massive wars, which left the West utterly dazed and devastated. This era saw the rise of a new western superpower, the United States, whose burgeoning might was due precisely to its successful forging of a "nation of states"—though it had paid a heavy price to establish its indivisibility in the form of its brutal Civil War. All of this helps us to understand why Europe, which found itself in ruins in 1945, had no

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community that endures in a certain space over time, and the formation of impersonal, relatively permanent political institutions that survive changes in leadership and other fluctuations. Institutions that allow for a certain degree of specialization in political affairs, increasing the efficiency of the political process and strengthening the group's sense of political identity, indicate that a turning point in state-building has been reached.

[7] It is more debatable, however, whether the normative idea of the nation in its modern sense did not presuppose the prior existence of the state. Nationalists hold that state and nation were destined for each other and that either without the other is incomplete. However, the reality is that before they could become intended for each other, each of them had to emerge, and their emergence was independent and contingent. This is what Geary (2002, 11–12) calls the "rhetoric of ethnic nationalism", that is, the demand for political autonomy for all persons belonging to a particular ethnic group, and the right of that people to govern its historic territory, usually defined in terms of early medieval kingdoms, regardless of who may now live in them.

choice but to unite, even if it was reluctantly. Europeans had no choice if they hoped to survive and continue to play an important role in the world.

A final remark on the mainspring of these pages: my reading of R.C. Van Caenegem's splendid historical introduction to Western constitutional history (Van Caenegem 2003), which I discovered the year it was published, during my time at Harvard Law School. This work made me realize and appreciate how important it is to offer a global view of constitutional and legal history to cultivate an understanding of our legal past. My conviction was reinforced after the implementation of the major European higher education reform measure known as the Bologna Plan (1999), and the drastic reduction that its new curriculum called for as regards class hours in the History of Law.

Detecting the need for an accessible, historical approach to Law for those aiming to undertake legal studies, I began an academic blog for my classes, which not only led to a notable improvement in my students' academic results, but also represented an opportunity for me to learn as well. To my surprise, the blog also happened to receive considerable media attention.[8] This interest gave me the idea of restructuring all these materials to offer the simplest possible global synthesis of the subject, from the very beginnings, all the way through European integration.

The result is intended as nothing more than an aid, an instrument to recover what in the Middle Ages was known as *lectio*, when classes—in Bologna and other European universities of the day—began by reading a text drawn from a book. This, however, was nothing more than the "pre-text" to initiate a debate between teachers and students in an effort to approach the subject in question as one open to discussion. The idea was to avoid offering a static view of science and knowledge, which only leads to their decay.

This undertaking is not devoid of a certain audacity and presumption, which is why, even if every chapter includes extensive bibliographical information for those who might be interested in deeper coverage of specific points, this book might not be considered strictly academic in nature. Rather, the work's style aims to provide first-year students with an accessible body of information, equipping them with concepts and knowledge that may very well prove crucial during their university studies and careers.

In this highly technical and specialized twenty-first century, it is more important than ever for students to possess the firmest grasp possible of their cultural background, Western Civilization, essential for them to be able to analyze and think critically about the world they are living in today. It is therefore, expressly, a work suitable for students and the public alike, an instrument to promote an understanding of and appreciation for our western identity in a global world.

In short, the ultimate aim of this book is to restore in the rising generations a taste and hunger for general culture that is, sadly, disappearing in our societies, drowned out by more "practical" technological and economic concerns. This work seeks to

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[8] As evidenced by the over 190,000 visits received in 3 years, not only from Spain but also from around the world, a noteworthy result for an academic blog.

allow them to understand the contemporary meaning of crucial realities such as Law, the State, Government and Politics. Finally, a secondary intention is to spur them to become active and engaged citizens who are culturally literate and aware of their historical backgrounds; informed citizens who, having enjoyed the thrilling experience of rediscovering the roots of our Western Civilization, stand ready to take part in its ongoing development.

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