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PREFACE

For almost three-quarters of a century, the countries of Western Europe have abandoned national sovereignty as an ideal. Nation states are being dismantled – by supranationalism from above, by multiculturalism from below. Both supranationalism and multiculturalism undermine the territorial jurisdiction and the shared national culture of the nation state. Moreover, they partake of the same vision of the future. Their vision is one of a world beyond borders and beyond the distinction between ‘us’ and ‘them’ that these borders entail. Whether perceived to be causing wars, to be impractical, unnecessary or merely small-sided, borders, demarcating the end of one jurisdiction and the beginning of another, the end of one way of life and the beginning of another, are actively being annulled.

It is the purpose of this book to reconsider the significance of borders. The book argues that representative government and the rule of law can exist only within a nation state. And it suggests that, paradoxically as it may seem, the social and economic advantages that globalization brings about can only be realized through strong, sovereign nation states – however internationally orientated and open to newcomers they may be, and notwithstanding intensive cooperation with one another.

The dominant view in much of modern political and legal theory is that free trade, cooperation between states and internationalism require supranationalism, and that being open to newcomers should entail multiculturalism. This, I contend, is an inversion of reality. For supranationalism thwarts a state’s options for free cooperation and internationalism, and takes away the very foundations of classical international law, whilst multiculturalism encourages the Balkanization of sensibilities and the narrowing – rather than the widening – of minds and sympathies, eclipsing the perspective on the national whole.

From the facts of globalization, including mass-migration, multinational corporations, electronic communication and world spanning means of transportation, the conclusion has been drawn that ‘the idea of national culture makes little sense, and the project of cultural unification on which many past societies and all modern states have relied for their stability and cohesion is no longer viable today.’¹ Because we can easily *cross* borders, or because there are problems that *transcend* borders, we needn’t have them at all.

¹ Bikhu Parekh, *Rethinking Multiculturalism. Cultural Diversity and Political theory*. Second edition (London: Palgrave, Macmillan, 2006) 8.

But I argue precisely the opposite: because of these phenomena that transcend borders, there is in fact a need for strong nation states. Only in nation states can newcomers be welcomed and made part of the collective ‘we’ that is necessary for political representation and a shared rule of law. And it is only through nation states that international cooperation can effectively be brought about. For only when decisions are made by national representatives – who can also be held accountable for these decisions –, such international cooperation can be experienced as legitimate.

I call the open nationalism that I defend *multicultural nationalism* – as opposed to multiculturalism on the one hand, and an intolerant, closed nationalism on the other. The international cooperation on the basis of accountable nation states that I propose, I call *sovereign cosmopolitanism* – as opposed to supranationalism on the one hand, and again a closed, isolated nationalism on the other. Both *multicultural nationalism* and *sovereign cosmopolitanism* place the nation state at the heart of political order, while recognizing the demands of the modern, internationalized world.

Historically, the nation state arose out of the conflict between worldly and spiritual leadership – a conflict which, although present already in the early Middle Ages, became untenable in the time of the Reformation. As a result of the religious civil wars that followed in the 16th and 17th century, it became generally acknowledged that states should be sovereign in their internal affairs and that in order to ensure this, the most fundamental obligation of states should be respect for the territorial jurisdiction of other states – in other words: for their borders. The Medieval organization of politics, characterized by overlapping jurisdictions, thus gradually made way for centralized sovereignty.

To legitimize increased political power and overcome religious and ethnic tensions, the idea that those subjected to this developing sovereign should have the same political loyalty, the same allegiance, was self-consciously developed in this era as well. Thus Richelieu, for example, as early as 1617, had already laid down in an instruction to a minister that in matters of state, no French Catholic should prefer a Spaniard to a French Protestant.²

But the state under the *ancien régime* was not yet a nation state. Government was not representative of its people in the way that it is taken to be in nation states. And whatever rule of law was in place in the *ancien régime*, it was not a shared law, as groups and regions had their own sets of rights and duties, and different laws applied depending on personal status.

Symbolized by the American and French Revolutions (1776 and 1789 respectively), the idea of representative government and territorial equality before the law had been developed throughout the 18th century and became common in

² J.C.L. Simonde de Sismondi, *Histoire des Français*. Vol. XXII (Paris: Treuttel et Würtz, 1839) 388.

the 19th. Implied in the notion of representation is the idea that a collective body of people exists that can be represented not just in terms of separate classes or individual interests, but also as a whole. Democracies presuppose the existence of a *demos* in order that parliament be considered the legitimate forum of deliberation and of ultimate decision-making.

But the rule of law equally implies a *demos*. Not only should the judge that administers the law be recognized as an impartial authority by *both* parties to a conflict, and thus draw upon a shared idea of legitimacy. Even more importantly, the content of the law itself is mostly congealed culture. There can be no shared law without a shared sense of morality, without shared customs and shared manners. No matter how much effort the legislative assembly might put in formulating promulgated laws as clear as possible, precisely what should be understood by essential legal concepts such as 'equity', 'good faith', 'grave reasons' and so on, or how the weighing of conflicting constitutional rights should be conducted (e.g. the freedom of religion against the principle of non-discrimination), is always a matter of interpretation. The question of legitimate legal judgments thus becomes ultimately a question of social authority and that is precisely what lacks at the supranational level.

Moreover, as the courtroom is never more than an ultimate remedy, the 'rule of law' really implies that the individuals in a society generally have a shared, internalized idea of what the law is and that they live more or less according to it. Properly understood, the rule of law is only the tip of the iceberg of social cohesion.

The nation-building operations and national unification movements of the 19th century were undertaken with these considerations in view. The course of these events, while not entirely arbitrary, was not inevitable either: there was no historical inevitability that, for example, the Italian unification should have succeeded, or that the German should have failed until as late as 1871. While it is unlikely, for reasons of language and history, that Spain and France should have merged into one nation state, it was not a settled matter that the Basques, the Bretons or the Catalans should have been included in either. Nor should we consider these processes of national unification as forever fixed. Nations are, like every social phenomenon, always in flux, and it is well possible that in the future, different nation states with different borders will develop.

Nor is there any doubt that too strong an affirmation of national identity can have a dark side. The First and Second World Wars provide terrible examples of this. Though the political leaders at the time did not attempt to create nation states but rather multinational empires, nationalism proved an extraordinary way to channel and increase bellicose collective identity.

But we should not judge a virtue by its excesses – as recklessness is not the essence of courage.³ Moreover, the fading of national identity would not abolish the human need for a collective identity. Nor would it efface mankind's capacity to resort to violence on the basis of antagonisms drawn from such distinctions. Indeed, there is no reason to assume that the particular expression of collective identity through nationality should not have prevented or assuaged more conflicts than it has actually caused, or that other forms of collective identity, i.e. religious, tribal, or racial ones, have a better track record in this field. Moreover, there is no reason to assume that a deficiency of national identity would bring about consequences necessarily less dangerous or destructive than those of an over-affirmed, aggressive nationalism. The lack of internal cohesion may make the formation of government not only utterly difficult, as the case of Belgium illustrates, it may also cause a civil war, as the events in the former Yugoslavia in the 1990s – as well as those in America between 1861 and 1865 – have most bitterly shown.

Nationality, expressed as patriotism in its normal form, can degenerate into aggressive nationalism or imperialism if it is not sufficiently accommodated. German nationalism was born in 1806, the year that the French revolutionary army triumphantly marched underneath the Brandenburg Gate. The French, in turn, were humiliated by the German annexation of Alsace-Lorraine in 1871, and in the years following this defeat, the French third republic saw the rise of a violent and anti-Semitic nationalism that sought to 'purify' the nation and so restore its pride. There can be no doubt either, that the enormous reparations Germany had to pay after the First World War, while having lost a third of an entire generation of young men, contributed to the rise of an aggressive form of nationalism amongst the population in the 1920s and 30s. It is not unlikely that *respect* for national identities rather than the scorn they currently receive, could prevent (rather than, as is feared, incite) the pathological imperialisms that so terribly disfigured the 20th century.

At present, European national governments are still, in the last instance, sovereign in validating the treaties that bind them – and they could still withdraw from those treaties, or demand reforms. Nor has multiculturalism, exceptions aside, replaced formal equality before the law or the authority of national judges to administer national law. Sharia courts are still rare and not broadly desired by immigrant populations. This means that there still is a choice. Even though in past decades, much has been done to eliminate borders, the keys to the gates are still in national hands.

³ Cf. Alasdair MacIntyre, 'Is Patriotism a Virtue?', in: R. Beiner (ed.), *Theorizing Citizenship* (New York: State University of New York Press, 1995) 209-228.

This is not unimportant. Throughout Europe, politicians with a significantly nationalist agenda have had considerable – and increasing – electoral success in recent years. Indeed, the fact that European elites have taken step after step to dismantle the nation state does not mean that the native European populations are enthusiastic about that. ‘Populist’ politicians such as Berlusconi in Italy, Le Pen in France, Fortuyn and Wilders in the Netherlands, Klaus in the Czech Republic, Haider in Austria, Timo Soini in Finland, and many more, have all made affirmations of the national culture an important part of their political campaigns, and have consciously demonstrated pride in representing their respective nations. In referenda on the Constitutional Treaty of the European Union, large numbers have expressed disapproval of granting supranational institutions powers that were formerly entrusted to national governments. And on November 29th, 2009, the Swiss voted against the right of Muslim immigrants to manifest their religion in an ostentatious way by building minarets. It is not unlikely that holding such referenda in other European countries, would produce similar results.

If large percentages of native European populations do not wish their political sovereignty to be given away, and their national culture to disappear, should this not cause us to doubt the legitimacy and indeed the very rationale of supranationalism and multiculturalism? If the chances of success of a borderless world do not seem very high, would it not be wise to consider alternatives to the currently dominant trend?

This book is, like Gaul, divided into three parts. The first part seeks to analyze the nation state, both historically and analytically, and I will argue that its two primal characteristics are the shared loyalty of its population proceeding from their sense of social cohesion, and the capacity for centralized decision-making. In other words: nationality and sovereignty.

In the second part, I will show the extent to which we have left this reality behind and how, over the past decades, supranationalism and multiculturalism have constituted what could be called an ‘assault on borders’. It gives a flavor of the six supranational institutions that have been installed and explains how they infringe their member states’ own legal traditions and self-government. A distinction is made between supranational courts – the International Criminal Court, the European Court of Human Rights, and the International Court of Justice – on the one hand, and supranational organizations – the World Trade Organization, the United Nations Security Council, and the European Union – on the other. The second part also takes multiculturalism into consideration. I discuss its two elements separately: the tendency towards legal pluralism on the basis of cultural or religious backgrounds, and the applauding of the different cultures and loyalties within the state, rather than emphasizing the shared national identity.

Why supranationalism and multiculturalism are inimical to representative government and the rule of law forms the argument of part three. I will show that both representative government and the rule of law can exist only within a nation state – i.e. only when they are embedded in a sovereign framework with sufficient social cohesion. As it follows that supranational and multicultural developments are incompatible with two essential institutions of a free society, the final conclusion takes into consideration some practical alternatives to the current situation.

The main thesis of this book is that representative government and the rule of law require nation states. By dismantling national sovereignty, the countries of Western Europe are thus undermining those institutions. Supranationalism and multiculturalism are incompatible with representative government and the rule of law because they efface the sense of overarching loyalty and ultimate centralized sovereignty that are necessary preconditions for them. Without borders, there can be no ‘we’ – and ‘without a “we”, it won’t work.’⁴

⁴ Paul Scheffer, *Het land van aankomst* (Amsterdam: De Bezige Bij, 2007) 401.