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The significance of borders : why representative government and the rule of law require Nation States

Baudet, T.H.P.

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Author: Baudet, Thierry Henri Philippe

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PART I

THE RISE OF BORDERS

National Sovereignty

What right have you, a foreigner, to come to me and tell me what I must do?

From: Ernest Hemingway, *For Whom the Bell Tolls* (1940)

INTRODUCTION

Borders define jurisdictions. To uphold borders is to claim jurisdiction; to claim the right to decide on the law. The nation state makes such a claim. It seeks jurisdiction over a particular territory. By implication, the nation state also acknowledges that other jurisdictions may apply beyond that territory. Borders work two-ways, and while they grant the nation state exclusive jurisdiction, they also limit the nation state's claims to the designated territory.

Supranationalism and multiculturalism undermine the idea of exclusive territorial jurisdiction. Supranationalism grants institutions the power to break through national borders and to overrule the nation state's territorial arrangements. In this way, borders become increasingly porous. Multiculturalism, meanwhile, not only delegitimizes the nation state's borders by weakening the collective identity of the people living behind them; it also encourages religious sub-groups to invoke rules from beyond the nation state's borders, thereby undermining the very idea of territorial jurisdiction. 'God's heart has no borders', to put it bluntly.¹

Supranationalism and multiculturalism are thus antithetical to national sovereignty and to the borders therein implied. Supranationalism dilutes sovereignty, and so brings about the gradual dismantling of borders from the outside; multiculturalism weakens nationality, thus delegitimizing their existence altogether from the inside.

The idea of political organization that fundamentally opposes supranationalism and multiculturalism – the idea of the nation state – has been declared 'outdated' and 'irrelevant' by an overwhelming number of commentators. Yet while supranationalism and multiculturalism have dominated politics and academia over the last several decades, their popularity is questionable and debates about national identity divide most European countries at present.

¹ Pierrette Hondagneu-Sotelo, *God's heart has no borders. How religious activists are working for immigrant rights* (Berkeley: University of California Press, 2008) 135: 'There is a spirit that transcends the border'.

Politicians playing the nationalist card have had indisputable electoral success: Le Pen and Sarkozy in France,² Fortuyn and Wilders in the Netherlands,³ Filip Dewinter and Bart de Wever in Flanders,⁴ Lech Kaczynski and his twin brother Jaroslaw Kaczynski in Poland,⁵ Klaus in the Czech Republic,⁶ Haider in Austria,⁷

² Jean-Marie Le Pen (*1928) founded the euro sceptic and patriotic (anti-immigration) *Front National* in 1972. The party increased its vote during every election from 1983 onwards till 2002, when Le Pen opposed Jacques Chirac in the presidential elections. At the elections of 2007, Nicolas Sarkozy (*1955) was able to steal the *Front National's* clothes by taking over much of its patriotic rhetoric, such as declaring that one is to love France or to leave it. In January 2011, Jean-Marie Le Pen's daughter Marine Le Pen took over the leadership of the party, continuing its emphasis on French national identity, while Sarkozy pursued a more pro-European line.

³ Pim Fortuyn (1948-2002) founded the LPF (List Pim Fortuyn) in 2001 and would have been a candidate in the national elections of May 15th, 2002, but Volkert van der Graaf, an environmental activist who feared that Fortuyn would threaten Dutch society because of his 'stigmatizing political views,' murdered him a few days before, on May 6th. Fortuyn's political agenda was one of national patriotism, stressing that the European Union should not take over national sovereignty, and calling for drastic changes in Dutch immigration policies. After his death, much of his agenda was adopted by Geert Wilders (*1963), a former prominent member of the liberal party, who, while posing as an outcast in the media, has scored significant successes in national and municipal elections. At the elections for the European parliament in June 2009, Wilders' party reached the same number of seats (5) as the largest party in the Netherlands, the Christian Democrats. In 2010, Wilders' party increased its influence by giving parliamentary support to a minority coalition of Liberals and Christian Democrats.

⁴ Filip Dewinter (*1962) became leader of the Flemish nationalist party *Vlaams Blok* in 1992 (currently renamed as *Vlaams Belang*). Under his leadership, the party grew until it was the biggest party in Flanders for a time. Yet, partly as a result of the *cordon sanitaire* of the other parties, it has not achieved governmental responsibility. The *Vlaams Belang* strongly opposes Muslim immigration to Belgium and to Europe in general, and is highly skeptical of the European Union. Bart de Wever (*1970) founded the *Nieuw-Vlaamse Alliantie* in 2004, and strongly emphasized Flemish identity. In the elections of 2010, the party won over 30% of the votes.

⁵ Lech Kaczynski (1949-2010) was mayor of Warsaw between 2002 and 2005, and since then President of Poland until his death in a plane crash in April 2010. He was very skeptical of Poland entering into the Euro currency zone, and had vowed to guard 'Polish morals' from Brussels. He also defended Pope Benedict XVI after his Regensburg address, by stating that Muslims 'are a little too easily offended'.

⁶ Vaclav Klaus (*1941) was prime minister of the Czech Republic between 1992 and 1997, and has been president of the Czech Republic since 2003, being reelected in 2008. He is a euro sceptic who did not want to sign the European Lisbon Treaty in 2009. He also criticized the 'excessive openness' of the West to immigrants 'from other cultural environments'.

⁷ Jörg Haider (1950-2008) became a member of the FPÖ (Austrian Freedom Party) in 1970. He was a member of Parliament from 1979 till 1983, and became president of the party in 1986. From 1989 onwards, he was also elected as governor of Carinthia (which he remained, with an interruption between 1991 till 1995, until his death). Under the leadership of Haider, the FPÖ achieved a high score in the elections of 1994 (22,7 %), and another victory in 1999, leading to a government coalition with the Christian Democrats from 2000 onwards. In 2005, Haider co-founded a new political party, the *Bündnis Zukunft Österreich* (League for the Future of Austria). Haider was strongly opposed to multiculturalism and to non-Western immigration.

Berlusconi in Italy,⁸ Aznar in Spain,⁹ and so on. Also, in referenda on the Constitutional Treaty of the European Union, considerable numbers of voters expressed resistance towards granting supranational institutions powers that were formerly entrusted to national governments.¹⁰ The examples are legion. In June 2009, the French government banned the burqa. Later that same year, on November 29th, the Swiss voted against the right of Muslims to erect new minarets. In Sweden, Muslim leaders called the results of the elections of September 2010 a 'catastrophe' because of the gains of the Swedish Democrats, an anti-Islamic party. In April 2011, the nationalist 'True Finns' party won by a landslide success in Finland. And so on.

But what is in fact this 'nation state' that so many popular (or 'populist') politicians now profess to restore? To be sure, in an attempt to provide a sense of home to its inhabitants, whilst at the same time realizing political organization on a scale far exceeding the possible social circle of each individual inhabitant, the nation state consists of two in principle contradictory elements. The need to realize social cohesion on a national scale has brought nation states to defend and indeed actively foster a particular cultural heritage – often at the cost of regional identities – and the application of strict territorial sovereignty has made tremendous injustices possible.

At the same time, however, national sovereignty has also enabled peoples to govern themselves in accordance with their values and preferences. The nation state has made self-government possible. And it differs from supranationalism and multiculturalism on two points: firstly, on the effort to retain ultimate territorial jurisdiction instead of multilevel competencies such as supranational organizations bring to life; and secondly, on the emphasis on the need for a shared nationality within that framework of territorial jurisdiction, as is undermined

⁸ Silvio Berlusconi (*1936) founded his own political party in 1993, *Forza Italia*. He became prime minister in 1994, forming a coalition with the *Allianza Nazionale* (National Alliance) and the *Lega Nord* (Northern League), both nationalistic, eurosceptic parties. After losing the elections in 1996 to the pro-European Romano Prodi, Berlusconi won the elections again in 2001. In 2006, Berlusconi lost again to Prodi, but after the rapid fall of Prodi's administration, Berlusconi was restored to power after the elections of May 2008 until his step-back in 2011.

⁹ José María Aznar (*1953) was Spanish prime minister between 1996 and 2004, leading the *Partido Popular*. He is well known for his anti-multiculturalism and called his left-wing successor's 'Alliance of Civilizations' a stupid initiative, while also being highly skeptical of 'Moors' (i.e. Muslims) in Spain.

¹⁰ The referendum held in France on May 29th, 2005 resulted in a 'no' of 54.87%, while the main political parties and the main newspapers had been in favor. Three days later, 61.6% of the Dutch rejected the constitutional treaty, even though all major newspapers and journals had supported the treaty, and of the Dutch parliament, only 20 of the 150 members had been against it. Following these two referenda, the British decided not to hold the referendum that was scheduled for spring 2006. The Czech government cancelled their planned referendum as well, and the scheduled Danish, Portuguese, and Polish referenda were postponed. Sweden put ratification on hold. The only countries in which a referendum has actually led to a positive result have been Luxembourg, Spain and Ireland.

by multiculturalism. It is the purpose of the first part of this book to examine these points, the core points of the nation state, in more depth.