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

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CONCLUSION

Over several decades now, the dominant trend in politics and academia has been to defend supranationalism and multiculturalism. In the previous three chapters, I have attempted to sketch what this means in practice, by pointing out the powers of three supranational courts and three supranational organizations that have been installed over the past decades, as well as the extent to which multiculturalism has manifested itself in society and to what consequences this may lead.

In their several ways, supranational institutions take away from their member states elements of national sovereignty. As a result, member states can be bound by rules or decisions they never intended to or have never agreed upon, that may go against their interests or their preferences.

Not all of these decisions are of landmark importance. Nor are all supranational institutions necessarily powerful and wide-ranging. The WTO has a limited field of competence. The ECHR has few means of enforcing its dicta. But seen in their totality, each of them taking away perhaps only a small portion of the national power to decide in certain fields of policy, a web of supranational commitments has been spun up in the past decades, that, viewed in its entirety, now performs a significant part of all political and judicial decisions that have effect in European states.

All these organizations emerged fairly recently and their powers are still relatively limited. But if nothing changes, they will continue to expand their hold over their member states, and ultimately may come to dominate national law and overshadow national policies for years to come. Forming a network of decision making institutions, the supranationalism these organizations exercise poses problems of several kinds.

Firstly, it implies that national governments can be outvoted by majorities of other nations. Secondly, it implies that non-national judges are entrusted with decisions on matters of law and morals that national judges are not anymore. Thirdly, these supranational majorities and non-national judges are not, and cannot, be submitted to the kind of checks and balances that national parliaments and judges are, as long as no integrated political structure, i.e., a world state, exists.

While this supranationalism has increasingly become a reality, most Western states have embraced to a smaller or larger extent a policy of multiculturalism accompanying the influx of considerable numbers of immigrants from different cultural backgrounds since the 1960s and 70s. As a result, national cohesion and

the idea of a national identity has now become questionable in most of these countries. While proposals for legal pluralism are still limited, in practice there have already been set up informal sharia courts and other parallel systems of solving conflicts that pass by the national laws.

Moreover, there is a general tendency to applaud cultural diversity and to stress the equal value of separate communities within nation states. As a consequence, as will be discussed more in depth in chapter 8, it has now become questionable even whether ‘such a thing as *the* Dutch identity exists’¹ – or, for that matter, *the* Frenchman, *the* German, or *the* Dane.

My argument in this book is that these developments are, despite all their resonance of bringing people together and respecting others, ultimately incompatible with representative government and the rule of law.

It may be important to stress once again that although I have gone in some length to describe the actual functioning of the several supranational institutions and the policy of multiculturalism, my argument against supranationalism and multiculturalism is not dependent on any currently existing arrangements; the problems related to them are conceptual and apply to their very nature. I have attempted to present a flavor of the developments European countries have involved themselves with, and to point out the extent to which these organizations and courts may override national preferences, as well as the extent to which multiculturalism may – and does – dilute national cohesion.

It also seems worthwhile to stress one more time that the idea that borders should be effaced is to be distinguished from the idea that the nation state should enlarge its scope. Supranationalism and multiculturalism do *not* amount to the belief that, as economic interests span present borders, and national differences diminish, peoples of different national origins may over time recognize neighbors as members of their own tribe and join into new, more encompassing, i.e. *larger* nation states. This would mean a continuation of national sovereignty, but applied on a larger scale.

By contrast, supranationalism and multiculturalism are the philosophies of abolishing borders *altogether*, not of expanding them. Moving beyond borders means leaving the whole idea of a nation state behind in favor of a political system of overlapping loyalties and jurisdictions, of communities, double or even triple or quadruple passports, and ‘deep diversity’.

This confusion seems to bring together commentators of entirely different persuasion under the thesis that ‘the nation state is finished’. Take the example

¹ Princes Máxima, *Speech of 24 September 2007*, ‘(...) “de” Nederlandse identiteit? Nee, die heb ik niet gevonden’. Available online at http://archief.koninklijkhuis.nl/Actueel/Toespraken/Toesprakenarchief/2007/Toespraak_van_Prinses_Maxima_24_september_2007.

of Kenichi Ohmae and Henry Grunwald, who both subscribe to the view that 'the nation state will have to dissolve'.

Ohmae, a frequent writer for the *Wall Street Journal*, *Foreign Affairs*, and *The Economist*, and the author of such works as *The Borderless World* and *The End of the Nation State: The Rise of Regional Economies*, wrote in his 1993 essay, *The Rise of the Region State*:

The nation state has become an unnatural, even dysfunctional, unit for organizing human activity and managing economic endeavor in a borderless world.²

A borderless world. Indeed, that is the idea of supranational multiculturalism: not *enlarging* borders, but *removing* them. The late political commentator Henry Grunwald, in a January 2000 op-ed for *The Wall Street Journal* entitled *A World Without a Country?*, predicted that the 'nation state will undergo sharp limitations of its sovereignty' and that 'just as the old, petty principalities had to dissolve into the wider nation state, the nation state will have to dissolve into wider structures.'

These two ideas, though seemingly bearing much resemblance, are fundamentally different. The first is in line with the assault on borders, the second is simply a continuation of national sovereignty, but on a larger scale. Although we will come to speak of problems of scale, that is not the essential theme of the dispute.

Firstly, the dispute is about whether any form of national sovereignty should be maintained or pursued (as could be the case with a future 'United States of Europe'), or whether, as we have witnessed the results of multiculturalism and supranationalism, centralized decision-making and relatively harmonious sociological communities should be abandoned on the whole. To begin answering that question, we will now commence discussing representative government and the rule of law.

² Kenichi Ohmae, 'The Rise of the Region State', in: *Foreign Affairs*, vol. 17, no. 2 (Spring 1993) 79-85.

