

# The German Question



# The German Question:

## *Nationalism and the Two Souls of Germany*

By

Antonio López - Pina

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## FOREWORD

MIGUEL ÁNGEL GARCÍA HERRERA

UNIVERSITY OF THE BASQUE COUNTRY

I met Prof. López-Pina in 1979, when he took up the chair of Political Law at the University of Valladolid. Since then, I have found myself in ever greater intellectual and ideological affinity with him, while he has granted me high intellectual esteem and affection. I thank him for his request to write this Foreword to *The German Question*.

Unfortunately, we cannot but emphasise the stark contrast between this intellectual initiative and the stupor engulfing us in the historical circumstances in which we are living. We rub our eyes in disbelief at the cruel outbreak of war, which we believed had been banished from the European soil, at the countless deaths, the desolation of refugees, the destruction of cities, the ravages of explosions, the still-present risks of a nuclear conflagration and the revival of an arms race. In the face of this immoral spectacle, we are reminded of the declamation *Shakespeare* put into the mouth of Mark Antony at Caesar's burial: "O judgement! thou art fled to brutish beasts, and men have lost their reason!" Obviously, this rhetorical exclamation is not intended to convey a non-discriminating universal attribution of responsibility: events have revealed the theoretical and military background and the immediate triggers that have led to the current conflagration. To borrow the title of a universal etching, the dreams of geopolitics produce monsters.

These are the premises upon which we delve into what *Zweig* called "stellar moments" as we find them in Professor López-Pina's book.

Every book is special, and on this occasion it is a question of highlighting its unique traits. I would dare select, by way of a preliminary comment, two distinctive aspects relating to the

aspiration that permeates the book and its subject matter. With regard to the first aspect, it should be stressed that it is more than what is expected of a book. There is a “vital élan”, a moral force that triggers a civic conscience which pervades the book: a conscience that arises from the dramatic tension created by the abrasion of intellectual conflict with those with whom he has had an intense personal relationship for decades. It is a confrontation that is coming into the open after years of moderate self-restraint, which López - Pina moves beyond by deciding to “break my prudent silence of a quarter of a century”. The book is the outcome of a patient elaboration of which precise traces can be found in his intellectual biography, ever since his lecture in 2003 at the Faculty of Law in Alicante, *International Order and the European Constitution. Europe's Place in the Struggle for Law*, to the developments in his books *La Inteligencia excéntrica* and *Lo que fue del Porvenir* and the numerous articles contained in the notes to the present book. And this opposition, at all events respectful in nature, generates an inspired metamorphosis, because arguments, appeals, proposals, calls, convocations and prognoses coexist with passion, yet are free of difficulty. The author is imbued with a civic-ethical conscience that turns the book into a tribune aiming to convince and mobilise.

Secondly, we must stress the importance of the title of the book, because it is a letter of introduction. Professor López-Pina's *The German Question* belongs to a noble lineage. This is not only because of its subject matter, but also because of the ambition that goes along with the title. To title a book *The German Question* is a declaration of intent, as it synthesises both a purpose and a result. It is an announcement of the spirit that has motivated the book's author: to select a significant topic and orchestrate a project at its service in which he combines background, a compilation of data and doctrines and a projection of results. It means taking up the challenge of interpreting a problem that has already arisen, but which nonetheless has a serious impact on the course of events. As a background to the meaning of the term “question”, we might recall Marx's writing in *The Jewish Question*, which highlights the limits of aiming for liberation from religion alone, because political emancipation by means of a state separated from society is not enough, because it only



entails a rift between the man and the citizen of an individual who survives in his greedy isolation. Reflecting on the *Jewish Question* leads to an embryonic proposal for the liberation of humanity. In other words, the *Jewish Question* in their society carries the germ of the question of human liberation.

In 1946, *Wilhelm Röpke* published a combative book entitled *The German Question*. If *Bismarck's* centralism and imperialism were historically responsible, the alternative was the federal model of territorial order. However, the system's key issue was not merely institutional organisation but Western economic reconstruction through the establishment of a free market society. In the wake of *Hayek*, the aim was to establish an economic federalism that would combine Germany's economic strength with its external dependence through trade in accordance with the laws of competition. As *Slobodian* argues, support for federalism was the political corollary of the anonymous discipline of trade and capital flows. But we cannot forget how he denounces the double manipulation of nationalism and the state by the dominant interests: nationalism is the *trompe l'oeil* that masks the justification of turning the state into spoils to be shared out. The German question was therefore resolved by immersion in the world economy and observance of the rules of competition. With respect to Germany, the state was to be liberated and the welfare of mankind was to be elevated.

More recently, *Michael A. Wilkinson*, in his book *Authoritarian Liberalism and the Transformation of Modern Europe*, takes up the German question from the perspective of the keys to post-war reconstruction: which sovereignty and which economy. After the initial integration, reunification and the influence achieved by EU enlargement have led to the rebirth of German hegemony on new terms because it lacks legal power: charismatic legitimacy is supplanted by technocracy, the absence of any alternative to EU membership is accompanied by an export economy and a vehement monetary and fiscal policy that poses once again the old German question, though without an encouraging future because the equality of states, solidarity and democracy are discarded.

The new book therefore continues an updated historical debate which has occupied a select group of thinkers and which is linked to a living speculation which expresses itself in new forms. López-Pina contributes to the debate from an innovative angle of reading due to his theoretical specialisation, his development and the aspiration which animates his work: the striving for a federal Europe.

*The German Question* by Prof. López-Pina is much more than an obliged intellectual engagement that is limited to German problems. That is because these problems are given a reasoned examination due to their connection with the process of European integration and, therefore, with the creation of a globalisation in which markets would be politically mediated. The book keeps alive the tradition in which the title reveals an avid desire to connect with universal problems.

A book worthy of its name contains a thesis and the consequent arsenal of arguments supporting the thesis. And it is this thesis which synthesises a proposal that assesses the reality, identifies the conflict and lays out a formula for the future.

In my opinion, the idea that inspires and encourages this intellectual scope is perfectly summarised in an austere sentence that contains the dilemma or crossroads in which we find ourselves: namely, the opposition “between *Volknationalism* and a nation-state of republican citizens with universalist principles” (pp. 92, 105), from which a further consequent choice is derived between an ethnic political community and a community under the rule of law on the basis of a shared constitution that does not need to be based on the common ethnic and cultural features of origin and can generate social cohesion. The subsequent question is obvious: Why are we faced with this choice and who defends the extremes of this dilemma? Why is this choice so important that it demands an unavoidable intellectual clarification? Why is Prof. López-Pina seeking to enlighten us on the implications of this choice?

What comes to mind is the story of Augustine of Hippo and his comment on the doomed attempt of the angel-child to get the ocean water into the little hole on the beach. I too am aware of the impossibility of encapsulating the theoretical density of the book

under discussion within the small receptacle of a few paragraphs. That is why we must be content with flying above such a vast surface, as we can do no more than convey a mere approximation that will not do sufficient justice to the elaborately woven arguments set out by Professor López-Pina.

The book is a triptych containing an adaptation of the theory of nationalism, “Nationalism has been and is becoming again in the 21st century, without a doubt, the most powerful and perhaps destructive force of our time”, because nationalism introduces us to the vertigo of a *Volk*, of a nation, of a people as an essential human unit to the detriment of the individual person. The consequent risk is the exaltation of the community's objectives as supreme and the need to make them a reality and remove any obstacles to their realisation, no matter what the means.

The second section, grounded in the most outstanding constitutionalist doctrine, reconstructs the constitutional framework of the Western legal order and shows the dynamics and evolution of the most significant concepts of constitutional law. The book finely relates the experiences of the leading countries of constitutionalism and outlines the progress achieved in the regulating of power and in the recognition of fundamental rights. The conflict that shakes societies and generates the emergence of new forms of development enriches the body of law in our culture by means of a doctrinal construction that provides the foundations for the birth of constitutional texts, such as the *Weimar* Constitution. This background is essential in order to understand the creation and evolution of a Constitution as unique as the Basic Law, a paradigm of the creation of the rule of law. And, above all, attention is paid to the turning point: the German reunification, wherein the *Deutsches Volk* comes to the fore. Lastly, as the Preamble of the reformed Basic Law states, “Conscious of their responsibility before God and man, inspired by the determination to promote world peace as an equal partner in a united Europe, the German people, in the exercise of their constituent power, have adopted this Basic Law (...) have achieved the unity and freedom of Germany in free self-determination”.

But this impetuous emergence must be tempered with the selected reflections of Prof. López-Pina's maestro, *Konrad Hesse*, the importance of whose legacy López-Pina acknowledges with respect to his principled perspective on the changes that have taken place. The German magistrate points out that the *acquis* of dogma dates from a bygone era, that the dependence of states calls into question key concepts such as sovereignty, and that state and community legal systems have become intertwined in a whole that leads to a pan-European constitutionalism.

The third section is an exposition and critique of the three significant judgments from the German Constitutional Court (*Bundesverfassungsgericht*): the *Maastricht* Judgment (12.10.1993), the Lisbon Judgment (30.6. 2009) and the *PSPP* Judgment (5.5.2020), rulings by the Constitutional Court that challenge legal systems and that raise to the highest level the tension between the EU Court of Justice and the German Constitutional Court. Against these rulings, Professor López-Pina shows unrestrained inquisitiveness and makes them the target of a battery of powerful legal criticisms.

The first Judgment contains the *obiter dicta* that can still be found in the reasoning underlying the subsequent judgments. Namely, the absence of a European people means that the Treaties cannot be a substitute for constitutional legitimacy, so it is the state's task to preserve the democratic capacity of the German people to decide on the material conditions of their existence. This thesis entails a careful and restrictive interpretation of the transferred European Community competences in order to prevent them from exceeding the authorisations granted; if this were to occur, the Community acts would not be applicable on German territory. For the sake of brevity, we note that this seed will spawn, in the *PSPP* Judgment, a ruling deeming "*ultra vires*" the European Central Bank's decision to purchase of public debt on the secondary markets and the consequent exclusion of the Bundesbank from the implementation of the programme.

But this case law needs to be understood. The undeniable intellectual influence of his colleagues and friends *Paul Kirchhof*, *Dieter Grimm*

and *Andreas Vosskuhle* rests on an assumption that needs to be made explicit: “it reveals an idea of his *deutsche Volksnation*”, what the doctrine calls his “prior understanding” (*Vorverständnis*). They have mythologised this idea by extrapolating it to the *Grundgesetz*, to constitutional law and to their thesis that “only a *Volksnation* can legitimise democracy in Europe”. The author of this book honestly acknowledges that this assumption is presently in the majority. It is also enlightening to see how deeply rooted this idea is in German culture. If we link the idea of the people with Romanticism, the author reveals, in a tour-de-force of cultural exegesis, that these are not the ravings of jurists. Rather, they express deep-roots that manifest themselves everywhere in cultural phenomena, signifying a spiritual substance that is ready to grow and resuscitate the dormant essences of the *Dionysian*, of a return to the past, of a giving one’s self over to the sacred and a re-connecting with philosophy, where such a nostalgic yearning has animated the epigones of two centuries of Romanticism.

But there is an answer on both legal and doctrinal fronts. On the legal front, this would mean rejection of *action popularis*, which would allow for demanding, as an exercise of democratic rights, the maintenance of the decision-making capacity of the Lower house, and a questioning of the supremacy of EU law, thus excluding review thereof by the German Court. On the doctrinal front, “constitutional patriotism” is contrasted with nationalism by *Jürgen Habermas*. The principles of the rule of law and democracy would be opposed to those of collective identity, the citizens’ state of universalist principles to the notion of “the people” and its pre-political traits. Identity would be based on shared moral orientations and characteristics and on integration in a Union through political participation and public debate, within a shared context of understanding and comprehension. In other words, a firm commitment to a more integrated Europe in its federal political form.

Years ago *Jorge Manrique* wrote: “It is more important to have good sense in order to go through this journey without making mistakes”. And the serious events we are witnessing today warn us of the difficulty of this historic journey. For this reason, in order to avoid

mistakes and be able to go down the right path, it is good to have the guidance provided by the work of Professor López-Pina.

# CHAPTER 1

## NATIONALISM

Nationalism has been and is becoming again in the 21st century, without a doubt, the most powerful and perhaps destructive force of our time; hence it has a particular impact on one or other of the variety of identity-focused ideologies that I will discuss below. There have been and continue to be many types of nationalism and it is not my purpose to cover them all here. Regardless, no analysis of Europe can ignore the geopolitical problems that German nationalism has triggered on certain occasions, among the myriad of historical cases. It and its fatal consequences, in perspective, stand out not only with exceptional prominence but also with similarities between different historical periods. Both in Germany at the time of the founding of the *Reich* (*Versailles*, 1870) and during the First and Second World Wars, nationalist identification as the *Volksnation*<sup>1</sup> prompted, as an underlying element, a belligerent self-assertion against those whom, whether justified or not, whichever authorities happened to be in power, at a given time and a complicit Intelligentsia had defined as antagonists, if not enemies.

### GENERAL REMARKS ON NATIONALISM, BY WAY OF INTRODUCTION

In this connection, I will first discuss (a) the nature of nationalism; then (b) its origins and some historical manifestations; and finally, point to (c) resentment, along with the invention and organisation of

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<sup>1</sup> M. R. Lepsius defined the difference between *Ethnos* and *Demos*. Intellectually relying on Jürgen Habermas, he developed the opposition between *Volksnation* and *Staatsbürgernation* which he set out in the “*Historikerstreit* (Historians' Dispute), which he has since propagated in Germany and in his numerous publications in all languages. See p. 24 note 39.

consciousness, as an explanation. Secondly, 2. I will expound on the German question as a special case of nationalism.

## A) NATURE

The thinkers of nationalism imposed a series of ideas from the 18th and 19th centuries in Europe about the meaning of different peoples forming a nation. They relied on such ideas both to define the nation itself and to identify more or less antagonistic ones. Such ideas spread throughout Europe and, eventually, the rest of the world.

In reaction against the rationalism of the Enlightenment, Romanticism generated new feelings and ideas, particularly among the growing middle classes. Among the features of the movement were a new enthusiasm for emotions, an appreciation of nature in contrast to industrialisation (around 1750s), a passion for the democratic spirit of the French Revolution, and a celebration of both folk traditions and contemporary heroes. Romanticism arose as much in reaction to the Napoleonic wars as to the genius and influence of *Beethoven, Byron, Goethe, Schiller* and so on.

Romanticism was bound up with the rise of nationalism; hence, one of its central themes was the romantic sense of what makes, out of a *people*, a *nation*. The understanding of the national character was transformed through the celebration of the *Volksgeist* (popular spirit), a concept coined by *Georg Wilhelm Friedrich Hegel*<sup>2</sup> and *Johann Gottfried von Herder*<sup>3</sup>.

In the literary and philosophical movement *Sturm und Drang*<sup>4</sup>, which initiated Romanticism, *Herder* explored the idea that the German *people* were held together as a *nation* by a *Geist* (spirit) embodied, above all, through language and literature. As the press and literacy spread across vast territories, more and more ordinary people began to conceive of themselves as part of a vast “*Gemeinschaft*” (“community”) of fellow citizens. This idea became ever more

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<sup>2</sup> 1770-1831.

<sup>3</sup> 1744-1803.

<sup>4</sup> From the late 1760s to the early 1780s.



compelling as the 19th century progressed. In Italy, the Genoese patriot *Giuseppe Mazzini*<sup>5</sup> an ardent republican and founder of the secret society *Giovane Italia*, inspired crowds of people with his call to *vegliare l'anima de l'Italia*.

The fact is that linguistic and cultural diversities within a “community” would never do away with the tensions with the romantic-nationalist vision of “communities” united by language and culture. Such tensions were the general rule rather than the exception.

If the Western European states, in which the *herderist* ideology was developed, did not fit the mould of a mono-ethnic nation-state, it is hard to find instances of it - with the exception of present-day Poland and Hungary. Whether they know it or not, China and Indonesia have all sorts of ethnic groups. The countries in the Americas, including the United States, recognise the diversity of their origins. This does not mean, however, that there are no singularities: in Japan, 90% of its inhabitants identify themselves as Japanese. But the fact remains that their alphabet is derived from the Chinese language. Moreover, the second largest religious denomination, Buddhism, comes from India and ethnologists tend to speak of as many as fifteen Japanese languages. As a rule, people never live and will never live in mono-cultural, mono-religious or mono-linguistic nation-states<sup>6</sup>.

*Abraham Lincoln* against the secessionist states of the South, China against the independence of Tibet, France against the secessionists of the island of Corsica, the United Kingdom against the secessionists of Scotland, Spain against the independence of Catalonia have all made the same argument: the majority of the respective peoples of the South and of the American, Chinese, French, British and Spanish *people* oppose secession. The point is that there will never be a single answer to the question as to who constitutes “we”. In the period from the Napoleonic wars to the end of the 20th century, the dominant romantic-nationalist narrative was

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<sup>5</sup> 1805-1872.

<sup>6</sup> *Kwame Anthony Appiah, The Lies that bind. Rethinking Identity. Creed, Country, Colour, Class, Culture*, London: Profile Books, 2018.

never the only discourse at work in the debate.

The bibliography on this subject is vast. I will thus be guided by the documented essays of *Isaiah Berlin*<sup>7</sup>, *Kwame Anthony Appiah* and *Ivan Krastev*<sup>8</sup> on the subject.

The 18th century German philosopher and poet *Johann Gottfried von Herder*<sup>9</sup> created the concept of belonging to a “community”, a tradition, an ethno-cultural minority, a region, a country: in his view, being part of humanity entails the ability to feel at home somewhere, with one's own people. Each group has its own *Volksgeist* or *Nationalgeist* (popular spirit or national spirit), a set of customs, a way of life, a way of perceiving things and behaving. It attaches high value to this spirit because it considers it to be its own. Cultural life takes shape within the particular stream of tradition originating from a collective historical experience that is shared exclusively by the members belonging to the group. But beyond all this, however, in *Herder's* view, each human group should strive to realize what it holds within itself, which is usually part of tradition.

For *Herder*, this vital energy was embodied in the creations of the collective genius of a people: legends, heroic poetry, myths, laws, customs, songs, dances, religious and secular symbolism, temples, cathedrals, ritual acts. All these were forms of expression and communication created not by specific authors or identifiable groups, but by the collective, impersonal imagination and will of the entire “community”, acting at various levels of consciousness. He thus advocated a peaceful nationalism which, historically, has existed

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<sup>7</sup> *Isaiah Berlin, On Nationalism. Selected Texts* edited by Henry Hardy, Barcelona: Pàgina Indòmita, 2019. Text published in 1979; id., *The Roots of Romanticism* the A. W. Mellon Lectures in the Fine Arts, 1965, The National Gallery of Art, Washington, DC, Ed. By Henry Hardy, London: Pimlico, 1999.

<sup>8</sup> *Ivan Krastev, Is it Tomorrow yet?* London: Penguin Random House, 2020; *Ivan Krastev; Stephen Holmes, The Light that failed. A Reckoning*, London: Allen Lane, 2019; id., *After Europe*, Philadelphia, Pennsylvania: University of Pennsylvania Press, 2017; id., *Democracy Disrupted. The Politics of Global Protest*, Philadelphia, Pennsylvania: University of Pennsylvania Press, 2014.

<sup>9</sup> See note 3.

only as a romantic idea.

Nationalist protest sometimes takes the form of a nostalgic longing for earlier times, when men were virtuous, happy or free; or it takes the form of a dream of a utopian future golden age, or a restoration of simplicity, spontaneity, natural humanity, self-sufficient rural economy. A time when man, no longer dependent on the discretion, if not the arbitrariness, of others, will be able to regain his physical and moral plenitude. The result would presumably be the predominance of those eternal values that all can recognise when they look within. This is what *Rousseau*<sup>10</sup>, *Tolstoy*<sup>11</sup> and a good number of more or less peaceful anarchists, and this is still upheld by a minority of today's self-defined nationalists. Attempts of this kind could be found in the populist movements of the 19th century<sup>12</sup> which idealised the peasants, the poor, the *authentic* nation: a return of the *people*, an eschewing of false values, of *inauthentic* lives on the part of the oppressed, subjugated and subdued beings of whom *Ibsen*<sup>13</sup> or *Chekchov*<sup>14</sup> spoke, a world in which the human capacity for justice or creative work, enjoyment, curiosity, the search for truth and love or friendship had been aborted or frustrated.

Nationalism is linked to such a state of mind. *Rousseau*, for example, urged the Poles<sup>15</sup> to resist the Russian invasion by clinging to their institutions, their customs, their ways of life, their dress; the claims of a universal humanity were embodied in their rebellion.

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<sup>10</sup> Jean-Jacques Rousseau, 1712-1778, *Du Contrat social*, Paris: Garnier Frères, 1962.

<sup>11</sup> Lew Nikolajewitsch Graf, 1828-1910.

<sup>12</sup> Cfr. Alfonso Ortí, *Para analizar el Populismo: Movimiento, Ideología y Discurso populistas (El caso de Joaquín Costa: populismo agrario y populismo españolista imaginario)*, Revista Historia Social, n. 2, Autumn 1988, Instituto de Historia social, Centro de la UNED, Valencia.

<sup>13</sup> Henrik Ibsen, 1828-1906.

<sup>14</sup> Anton Chekchov, 1860-1904. Among other works, *Der Kirschgarten, Drei Schwestern*.

<sup>15</sup> *Considérations sur le Gouvernement de Pologne et sur sa réformation projetée en avril 1772*, dans J. J. Rousseau op. cit. note 10.

A similar attitude could be found among the Russian populists of the 19th century. And the same is true of the myriad of minorities or *peoples* who have been repressed to date, those ethnic groups who feel humiliated or oppressed, groups for whom nationalism mythically or actually amounts to living “with their heads held high” (*Ernst Bloch*), to regain a freedom they may never have had, to take revenge for the offence they have suffered as human beings.

*Isaiah Berlin* sees nationalism as the conviction that people belong to a particular human group, and that the way of life of the group differs from that of others; that the characteristics of the individuals in the group are shaped by the character of the group, and cannot be understood apart from it; that it is defined by shared territory, customs, laws, memories, beliefs, language, artistic and religious expression, social institutions and ways of life, to which some add historical legacy, lineage and racial characteristics. It is the conviction that these are the factors that endow *Gestalt* to human beings, their purposes and their values.

Secondly, for nationalism, the essential human unity is not the person but the *Volk*, the nation, the people. Thus, in order to be true to themselves, the family, the tribe, the province, the county, the “community” must be directed towards the good of the *Volk*, of the nation, of the people. What can be called its meaning is derived from the nature and purpose of the *Volk*, of the nation - irrespective of its social structure - or its form of government. The objectives of the “community” concerned are paramount. In the event of conflict with other values - whether ethnic, religious, moral, intellectual, particular or universal - the supreme values of the “community” must prevail.

In the end, nationalism has reached the position where, in the face of no matter what groups, the “community” to which one belongs has no alternative but to compel if the *Volk*, the nation itself, the people itself, have the right to become a political reality, this legitimises the removal, regardless of the means, of any obstacles on the path to its full realisation.

Accordingly, one spoke of the ideology and loyalty of the *Volk* as the bearer of national values, historical roots, national will and popular

will. It is the study and cataloguing of the enemy that begins in the pages of *Edmund Burke*<sup>16</sup> and reaches its climax in *Johann Gottlieb Fichte*<sup>17</sup> and his Romantic followers. As the 19th century progressed, this idea became increasingly predominant. In Italy, the Genoese patriot *Giuseppe Mazzini*, an ardent republican and founder of the secret society *Giovane Italia*, inspired multitudes. It reached a new threshold in the propagandistic writings of the two World Wars and, in the 20th century, in the anathemas directed against the Enlightenment by Romantic and fascist writers.

There are nationalists who set out to prove that a certain nation or ethnic group - say, the German Aryan race or, in a case closer to home, Catalonia - is superior to other peoples of inferior culture - the Spanish-speaking ones, specifically - and that, therefore, their objectives transcend the objectives of the other nations - Spain and France. In particular, *Fichte* thus speaks of the role in history that only “historical” nations play. European and American nationalisms have tended to be a powerful expression of this.

Similar rhetoric and language has historically been employed to identify the *authentic* interests of the individual with those of his religion, his race, his culture, his caste, his class, his party. However, none of these epicentres has proved to be as powerful, as capable of acting as a unifying or fractioning, segregating, destructive and dynamic force as the nation. More. When ethnicity, religion, class, language, culture join the nation, their invocation becomes an unstoppable force, the tragic case of the German Social-Democrats who, in 1914, ended up voting in the *Reichstag* to finance the war, or, today, of many radicalised French Muslims<sup>18</sup>, for example.

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<sup>16</sup> 1730-1788.

<sup>17</sup> 1762-1814.

<sup>18</sup> Cfr., *Jerôme Fourquet, L'archipel français*, Paris: Seuil, 2019; *É. Girard, L. Hausalter et H. Mathoux, «Charlie Hebdo», 5 Ans de capitulation, en 5 Actes. En cinq ans, l'esprit Charlie s'est peu à peu dissipé, au profit d'un politiquement correct d'inspiration anglo-saxonne, essentiellement porté par les organisations dites de gauche. Désolant*, Marianne/28 août au 3 septembre 2020; *Étienne Girard et Martine Gozlan., L'impossible Islam de*

State nationalism apodictically asserts a belief in the necessity of belonging to a nation; also, a belief in the organic relationship of all the elements that constitute such a nation; in the value of what is theirs simply because it is theirs; and, finally, in the supremacy of their claims when confronted by those who vie with them for authority and loyalty.

In most cases, whether directed outward or against external antagonists, nationalism is usually expansive and aggressive: “nationalism is war”, as *Mitterrand* said before the European Parliament.

## **B) ORIGINS AND HISTORICAL EXPRESSIONS**

According to *Berlin*<sup>19</sup>, in the West, “nationalism is created by the wounds inflicted by humiliating oppression”.

Louis XIV was responsible for the beginnings of German nationalism in the 1670s. In Germany, resistance to French hegemony developed from a mere breeding ground for nationalism into a social and political force.

In *Berlin*'s view, “sooner or later, violent reaction is unleashed with an uncontainable force that raises nationalist questions: Why should we be subjected to those who militarily occupy our territory, what right do they have...?”

Enlightened universalism was, in the 18th century, the doctrine of the most powerful country, France. It is not surprising that the rest of

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*France. Lutter contre l'Islamisme en s'appuyant sur les institutions musulmanes? Elle risque d'être une nouvelle coquille vide. Retour sur trente ans d'échecs*, Marianne / 1er au 7 janvier 2021; Marc Bassets, *Francia lanza la controvertida ley para combatir el Islam radical*, El País / 10 December 2020; Le Monde, *L'ennemie de la République c'est une idéologie qui s'appelle l'Islamisme radical*, 9 December 2020; Bernard Rougier, *L'Islamisme est une machine à détruire la République*, Marianne / 17 au 23 janvier 2020; Gilles Keppel, *La Fracture*, Paris: Gallimard, 2016; id., *La revanche de Dieu. Chrétiens, juifs et musulmans à la reconquête du monde*, Paris: Seuil, 1990.

<sup>19</sup> See note 7.

Europe, including the United States, tried to emulate the brilliant French culture of the time.

Russian radical writer *Aleksandr Herzen*<sup>20</sup> believed that the Enlightenment idea of continuous progress for mankind was a fantasy, and protested against the new idolatries, the abstractions of social class, against the immolation of the present for the sake of an uncertain future that would supposedly lead to a happy Arcadia, the infallible Communist Party or the march of history.

The historically native nationalists, the Germans, combined wounded cultural pride and a historical-philosophical vision to heal the wounds and create an inner focal point of resistance. First, there emerged a small group of enlightened and discontented Francophobes. In the mid-19th century, Germans' and Italians' striving for political unity and self-government seemed to be moving towards realisation.

Then came Italy, Poland and Russia, followed by the Balkan and Baltic nationalities and Ireland, and from the debacle of the two World Wars to the present day<sup>21</sup>, the republics and dictatorships of Asia and Africa as well as the nationalist revolts of regional ethnic groups in Flanders, Corsica, Quebec, the Basque Country and Catalonia, Cyprus, Kurdistan, Chechnya even in Brittany and Scotland and who knows where else.

The fact is that nobody believed in universality more than the Marxists: *Lenin*, *Trotsky* and the revolutionaries of 1917 saw themselves as disciples of the Enlightenment, as it had been brought up to date by *Marx*. In favour of *Stalin* it should be said that, albeit at the cost of murdering forty million people, he kept Russian nationalism in check, thus preventing an ethnic Babel from erupting into anarchy. He certainly kept nationalism in check, but he did not put an end to it. So much so that when the Soviet Union was beset by crisis in 1989, oppressed nationalisms re-emerged.

For marxists and other radical socialists, national sentiment was a

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<sup>20</sup> 1812-1870.

<sup>21</sup> The essay by *Isaiah Berlin* was published in 1979.

kind of *false consciousness*<sup>22</sup>, an ideology generated by the economic domination of the bourgeoisie in alliance with the remnants of the aristocracy. Their control of the situation rested, in turn, on the exploitation of the labour power of the proletariat. In *marxian* terms, the class struggle would end with the death of capitalism; with it would disappear the ideology of national sentiment. Marxists left open the question as to whether national differences would survive; but, like ethnic and local characteristics, they would be superseded by the class solidarity of the workers of the world. Marxists believed that nationalism was an ephemeral product of the frustrations of the human yearning for self-determination. It was taken for granted that nationalism would disappear with its causes: these would be swept away by the irresistible advance of the Enlightenment - the victory of reason and material progress - the expression of the changes in the forces and relations of production. Sooner or later the full and universal realisation of human potentialities would be achieved. In the circles of the workers' movement and the socialist parties it was assumed that the demands of nationalism would tend to lose weight.

At the end of the First World War, around 1919, the principle of the right to national self-government seemed to have achieved universal acceptance. The Treaty of *Versailles* recognised the right to national independence and was thus thought to be an adequate response to the nationalities question. Nationalism was seen as a pathology of a wounded national consciousness in response to oppression, a response that would fade away once the oppression did. Liberals and socialists alike took it for granted that, as the wounds inflicted on nations were being healed, time and decolonisation would eventually do away with nationalism.

Cultural self-determination without a national state of one's own is precisely the problem now, and not only in Eastern Europe. Spain has Basques and Catalans; Britain has Scots and Northern Irish; Italy has Lombardy; France has Corsica; Canada has Quebecois, Belgium has Flemish; Israel has Palestinians, and so on.

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<sup>22</sup> Karl Marx, *Der achtzehnte Brumaire des Louis Bonaparte*, en *Marx. Engels Ausgewählte Schriften* Band I, Berlin: Dietz Verlag, 1960.



Such charged currents fuelled the tension that had been building up across Europe, but especially in the vulnerable, multiracial lands east of the Rhine. It is easy to trace how the process unfolded: from *Herder's* peaceful analogy between human society and a garden, in which all plant groups (nations) could peacefully coexist and, in fact, fertilise one another. Then come romantic images of history as a savage battlefield between different visions, temperaments, cultures and hidden creative forces. Then we arrive at the sinister racial doctrines of *Georg Friedrich Treitschke*<sup>23</sup>, *Richard Wagner*<sup>24</sup>, *Houston Stewart Chamberlain*<sup>25</sup>, the anti-Semitic and anti-Slavic Austrian nationalists of the Tyrol and Vienna during the reign of the last German emperor, *Eric Ludendorff*<sup>26</sup> and the defeated generals, *Pastor Adolf Stoecker*<sup>27</sup> in Potsdam and, finally, *Hitler*.

The breakup of the Soviet Union may well be the penultimate act of deconstruction of enlightenment ideals. As for Eastern Europe and the former Soviet Empire<sup>28</sup>, both appear today to be a huge open wound. After years of oppression and humiliation, it seems natural that there should be a sense of national pride, not excluding aggressive self-assertion - in Poland and Hungary, for example - on the part of the liberated nations and their leaders.

The strangest of these phenomena: the Jewish people, since their expulsion from Jerusalem by Emperor *Hadrian*<sup>29</sup>, devoid of any territorial basis, developed with Zionism the intense desire for a national renaissance similar to that of the Italians, Greeks and Irish.

The United States seems to be the only country in which the various ethnic groups - Italians, Poles, Jews, Latinos/Hispanics and so on - have preserved their original cultures, at least in part.

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<sup>23</sup> 1776-1842.

<sup>24</sup> 1813-1883.

<sup>25</sup> 1855-1927.

<sup>26</sup> 1865-1937.

<sup>27</sup> 1835-1909.

<sup>28</sup> Cf. *supra* Eastern European populisms vid. *Ivan Krastev* note 8.

<sup>29</sup> Imperial edict forbidding Jews to enter Jerusalem 132- 135 AD.

With the usual exceptions - *Helmut Schmidt*<sup>30</sup>, *Helmut Kohl*<sup>31</sup>, *Jürgen Habermas*<sup>32</sup>, *Konrad Hesse*<sup>33</sup>, *Christian Tomuschat*<sup>34</sup>, *Michael Stolleis*<sup>35</sup>, *Peter Häberle*<sup>36</sup>-, since the German Re - Unification (1989-1990), under the Chancellorships of *Gerhard Schröder*<sup>37</sup> and *Angela Merkel*<sup>38</sup> with the complicity of the *Bundesverfassungsgericht* and most of the *Staatsrechtslehrer*, Germany has embraced what I would personally call, the “*Volknationalism*”<sup>39</sup> in anticipation of “*America first*” of the demagogue President *Donald Trump*. While the Brexit referendum<sup>40</sup>, the US presidential election<sup>41</sup> and the election as Prime Minister of *Boris Johnson* (elected leader of the Tory Party and appointed Prime Minister)<sup>42</sup> has meant *United Kingdom and America first*, for Germany it gave rise to satisfaction with its current status and ample benefits within the European Union of the Lisbon Treaty and the consequent blocking of any significant reform<sup>43</sup>, let alone the re-founding of the European Union proposed<sup>44</sup> by French President *Emmanuel Macron* in a speech at the *Sorbonne*.

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<sup>30</sup> Chancellor from 1974 to 1982.

<sup>31</sup> Chancellor from 1982 to 1998.

<sup>32</sup> 1929-.

<sup>33</sup> 1919-2005

<sup>34</sup> 1936-.

<sup>35</sup> 1941-.

<sup>36</sup> 1934-.

<sup>37</sup> Chancellor from 1998 to 2005.

<sup>38</sup> Chancellor from 2005 to 2021.

<sup>39</sup> See supra note 1.

<sup>40</sup> June 2016.

<sup>41</sup> November 2016.

<sup>42</sup> 2019 to 2022

<sup>43</sup> Cfr. A. López-Pina, *Deutschland in, mit und für Europa. Ein europäischer Blick aus Spanien*, Vorgänge, Zeitschrift für Bürgerrechte und Gesellschaftspolitik, 220 Heft 4 Dezember 2017 (in Spanish, *El Lugar de Alemania en la Unión Europea*, Argumentos Socialistas, 2018); id., *Rosemarie Will. Eine Antwort auf die Deutsche Frage in welt- bürgerlicher Absicht*, in *Worüber reden wir eigentlich? Festgabe für Rosemarie Will*, M. Plöse, Th. Fritsche, M. Kuhn, S. Lüders Hrsg., Berlin: Humanistische Union, 2016.

<sup>44</sup> 26 September 2017.

### C) THE INVENTION AND ORGANISATION OF *FALSE CONSCIOUSNESS*<sup>45</sup> OF A “PEOPLE-COMMUNITY”, RESENTMENT AND XENOPHOBIA AS AN EXPLANATION

In order for nationalism to dominate a society, a section of its Intelligentsia must have a relatively articulate self-image, ideas or feelings as a *Volk*, nation or people by virtue of language, ethnicity, traditions: the invention of a nation or people is a creation, a historical weaving of a consciousness of nationhood with a common history, whether real, imaginary or a mixture of reality, falsification and fiction - as in the case of Catalonia<sup>46</sup>. The origin of these can be, and eventually has been, simply made up by a minority with a will to power and developed in a given society through politico-cultural organisations.

Regardless of its greater or lesser historical authenticity, the definition of a common enemy - whether an entity within the state, a foreign power at war or by reason of its occupation of the territory of the society concerned - that ignores or offends such a national image, causes resentment. Feelings of humiliation or oppression by a foreign power can reinforce the sense of nationhood. But only on condition that the idea of a society as a nation has been invented beforehand<sup>47</sup>.

From the mid-nineteenth century and throughout the first third of the twentieth century, “*peoples-communities*” that had never previously constituted themselves as states were mobilised by political movements that called for the political alignment they championed: they foregrounded their desire to become nation-states, to express their genuine or manipulated sense of what they had in common.

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<sup>45</sup> note 22.

<sup>46</sup> Javier Cercas, *La gran traición. For Catalan politicians, only those who are loyal to the homeland and vote for what should be voted for are Catalans. All others don't count*; id., *Everything was a lie*; id., *Catalan Phantasies* Fishman; id., *One only conversation*; id., *Empanada Fukuyama. It is not Catalonia as such that which seeks to break with Spain; rather, as the election results have shown, it is a minority*; id., *La telaraña*, El País Semanal 2018, 2019, 2020. Id., *La «Telaraña» catalana sigue extendiéndose y el Golpe continúa*, 29 February 2020.

<sup>47</sup> Vid, Kwame Anthony Appiah supra note 6

Today, the principles of national sovereignty and self-determination have been globalised. Both contributed decisively to the collapse of the empires and the outbreak of decolonisation.

Nationalism grew along with Romanticism; hence, one of its central themes was the romantic sense of what makes, out of a *Volk*, a people, a nation. The conception of the national character was transformed by the celebration of the *Volksgeist* (popular spirit). In the literary and philosophical movement *Sturm und Drang*<sup>48</sup>, which initiated Romanticism, *Herder* explored the idea that the German *Volk* (people) were held together as a nation by a *Geist* (spirit) embodied, above all, through language and literature. As the press and literacy began to spread across vast territories, more and more ordinary people began to think of themselves as sharing in the life of a vast “community” of compatriots. This idea became ever more compelling as the 19th century progressed.

As a rule, people never live and it certainly seems never will live in mono-ethnic, mono-cultural, mono-religious and mono-linguistic nation-states. The point is that there will never be a single answer to the question as to who constitutes “we”. Up to this point, *Appiah* has referred to the diversity of origins, race, language and religion. The fact is that populist projects, for those who are not considered by the nationalists of the day as belonging to their “us”, will always be oppressive and discriminatory. As noted by *Jan-Werner Mueller*<sup>49</sup>, national-populists claim to represent one hundred per cent of the people by discriminating against their opponents as non-authentic, traitors to the people, if not foreigners, as those who are not at all part of the *Volk*, *people* or *nation*. Inherently, all nationalism tends to deny diversity and pluralism. As a wave of far-right nationalism once again sweeps across Europe, it is becoming plain to see how fragile pluralism and democracy can be. Tolerant, pluralistic, self-questioning and cosmopolitan modernity - in the United States, China, Russia, Turkey, the United Kingdom, Austria, Hungary, Poland, India, the

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<sup>48</sup> See *supra* note 4.

<sup>49</sup> *Jan-Werner Müller, What is Populism?* London: Penguin Random House, 2017.

Philippines and elsewhere - is under siege.

The fact is that in the first third of the 19th century, in Germany, in addition to the arrogant French, there were the more or less enlightened, despotic rulers and social tyrants. The outburst of individual indignation against the norms and regulations of an oppressive and philistine society, the *Sturm und Drang*<sup>50</sup>, aimed to break down the walls and barriers of social life: the subservience and servility at the bottom, and the brutality, arbitrariness, arrogance and oppression at the top, as well as the falsehoods and hypocrisy that could be found in the various strata of society. What began to be called into question was the validity of any laws - the rules, supposedly imposed by God, nature or the prince - that conferred authority and demanded universal obedience. Freedom of expression, the freedom of artistic and literary creation, found its purest and strongest form in artists and writers, but it was present in all men, and was thus vindicated.

The most talented independent writers responded with growing rebelliousness to the undermining of their world, which had begun with the humiliation inflicted on their grandparents by the armies of Louis XIV. Such a perspective is one of the sources of the Romantic movement which, at least in Germany, extolled the collective will as well as the spiritual life of a *Volk*, in whose activity creative individuals endowed with "genius"<sup>51</sup> could participate. The conception of the political life of the *Volk* as an expression of the collective will is the essence of Romanticism, which, politically, gave birth to German nationalism.

For the nationalist response to emerge, a new vision of life is needed, one that can elicit the adhesion of either the wounded society or the classes or groups that have been displaced by political and social changes, a vision around which they can unit to "restore their community life" (*gemeinschaftlich*). Thus, both the Slavophile

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<sup>50</sup> See supra note 4.

<sup>51</sup> Cfr., Jochen Schmidt, *Die Geschichte des Genie – Gedankens in der deutschen Literatur, Philosophie und Politik (1750-1945)*, two volumes, 3rd edition, Heidelberg: Universitätsverlag Winter, 2004.

movements like the populist ones that emerged in Russia, as well as German nationalism, can only be understood if one takes account of the traumatic effect caused by the violent and rapid modernisation imposed on the Russians by Peter the Great or, on a smaller scale in Prussia, by Frederick the Great II. In the case of Germany, the occupation by a powerful foreign army, which had subverted the traditional ways of life, caused men, particularly the most sensitive and aware - artists, thinkers, writers, etc. - to lose their established position and to feel insecure and bewildered.

The West has generally satisfied this yearning for recognition, this desire for *Anerkennung* (Hegel). It is the lack of legitimately due or invented and organisationally claimed recognition, more than any other cause, that leads to nationalist excesses. Resentment has undoubtedly played a significant role in the development of nationalism, but it would not do justice to historical truth to make it solely responsible. *Ivan Krastev*<sup>52</sup> has documented the extent to which xenophobia has historically weighed heavily on national-racist attitudes and behaviour in Central and Eastern European societies, and how it is still evident today.

The American writer *Leon Wieseltier* has defined nationalism as the aspiration for “a perfect union of ethnicity, territory and state”. This was the case in the respective German and Italian nationalist movements of the 19th century. But, this was especially true with the collapse of the Austro-Hungarian Empire at the end of the First World War. So if the Hungarians wanted to govern themselves, this would mean the exclusion of Austrians, Czechs, Slovaks and Romanians.

The same instinct drove the nationalist-liberals in Italy and Germany. The creation of the nation itself brought about the distinction between *genuine* Germans and Italians and the excludable residents of another nationality or race - Jews, for example.

In the late 19th century, the new German and Italian nations adopted harsh policies to create a more homogeneous culture, and they

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<sup>52</sup> See *supra* note 8