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Review

Nationalism and the Rule of Law: Lessons from the Balkans and Beyond

Iavor Rangelov. Cambridge: Cambridge University Press, 2014. 224pp.

Joseph L. Derdzinski*

The “classic” debate in contemporary comparative politics is over what matters more in shaping political behavior: culture or institutions. The clear answer is that both are important, it’s just that their relative import depends to a large degree on contextual, temporal factors. Iavor Rangelov seeks to straddle—or bridge?—the two theoretical orientations, demonstrating the iterative lives between institutions and society. Rangelov addresses the eternal (or, at least, for the past couple of decades) question: do institutions *really* matter in emerging democracies? Or, do other intrinsic factors determine democracy’s course? Privileging the rule of law, Rangelov, through three cases from the Balkans, pairs nationalism and institutions, and their impact on liberal governance. Rangelov’s unique combination and engaging cases combine to make *Nationalism and the Rule of Law* a solid contribution to the field.

Rangelov follows an approach comparable to other successful comparative works: a distillation of theory focusing on the rule of law, which is later tested by the cases of Slovenia, Croatia and Serbia. It culminates in implications for universal theoretical understandings.

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The first two chapters serve well in establishing his theoretical foundations. Chapter 1 occupies itself with nationalism, particularly its inclusionary (and, by definition, exclusionary) nature. In other words, he examines how states employ nationalism in developing citizenship laws that define the “core” nation, which then delineates who does not really belong to the nation. This concept of “ethnic citizenship” highlights the node of law and nationhood, which “can be aligned with particular nationalist projects and purposes, serving as a device for inclusion and exclusion” (22). Fascinating. However, fervent globalizing of norms and commerce increasingly call into question meanings of citizenry and the state. It is within this flux that Rangelov interjects the domestic and international mechanisms that seek to reconcile societal rifts in the wake of violence.

Chapter 2 addresses the fundamental question: “Can legal process be harnessed to manage and transform nationalism?” Exploring postwar France and (albeit briefly) Turkey’s official discourse in relation to the Armenians killed during World War I among his essential arguments is, “deliberative transitional justice” is initiated by a trial, but subsequently the process takes on a life of its own. Through the compact and focused discussion of Vichy France and the prosecutions over the ensuing decades, among his insights is that justice mechanisms can open up for public discussion unsettling continuities inherent in some dimensions of nationalism.

Focusing on international criminal justice, chapter 3’s ambition is to explain and illustrate the international community’s movement from “crimes against peace” to “crimes against humanity.” Providing the theoretical backdrop for the subsequent three cases, Rangelov examines the international dimensions of nationalism and the rule of law. Through a refinement of the wide (and continuously growing) range of post-Second World War histories, he is able to match well the demands for illustrating the development of international justice mechanisms and sensibilities with a well-appreciated eye toward being direct. He concludes:

If the rise of international justice embodies a constitutive tension between nationalism and the rule of law...the actual pursuit of international war crimes trials over the past decade has not been able to transcend or resolve that tension. Instead, the emergence of transnational discourse, regional politics and hybrid legal orders has provided new sites where the tension between nationalism and the rule

of law becomes expressed and negotiated by a multiplicity of actors...in order to advance diverse political projects and purposes.

(101)

Certainly, the Balkan experiences of the late twentieth century lend real weight to these conclusions, as his three subsequent cases on Slovenia, Croatia and Serbia demonstrate.

Ah, Slovenia. For those who have experienced Slovenia, including its political and economic trajectory in the years when other former republics were tearing themselves apart, one can't help but notice the relative prosperity and cosmopolitanism of this compact state bordering other central European states. Great evidence supports Slovenia's reputation as the only real "success" in state development in wake of the dissolution of the Socialist Federal Republic of Yugoslavia (SFRY), while giving slight to some of the less rapturous dimensions of state building. Lingering border disputes come most prominently to mind, but Slovenia's singular focus on attaining European Union and NATO membership helped resolve these issues. However, Rangelov's discussion of the sometimes-forgotten issue of the "erased" members of Slovene society serves to balance the positive picture toward some of the pitfalls facing even the most economically successful and internationally engaged states, especially states that emerge from a positively-charged nationalism.

Being "erased" was akin to some Gogol-esque world where, despite the obvious physical evidence to the contrary, one's Slovene citizenship established during the SFRY period was no longer bureaucratically valid. While true that about 170,000 acquired citizenship within the parameters of the law established after independence, at least 30,000 permanent residents did not obtain citizenship (109). Almost overnight, the "erased" in effect became stateless, or aliens, therefore residing in Slovenia illegally. Due to the nature of being "erased," i.e., an individual or a family, pursuing citizenship was almost exclusively a solo pursuit, with obstacles hindering development of a more aggregated response that would more likely have attracted more attention to their cause. After a decade-long process of alienation and animosity, the "erased" could finally claim Slovene citizenship, with a delayed official policy. As Rangelov determines:

Slovenia offers a cautionary tale about the relationship between nationalism and the rule of law...At a time when struggles for democracy are back on the agenda and we may be witnessing the rise of another wave of political transformation and integration of states in the

global economic order, both temptations and dangers of the model of ethnic citizenship need to be fully appreciated as we think about the implications of the democratization and economic liberalization. (134)

With little sign that the global agenda of encouraging political and economic liberalization will abate soon, Rangelov's observations and assessment that even in the most promising of candidates, nationalism can—and likely will—manifest itself in ways that might serve to stall, or even undermine, the democratic project. As his two other cases make clear, an ethnically-charged neighborhood may serve to catalyze even further ethnic tensions.

With SFRY's dissolution in the summer of 1991, Croatia's more diverse (vis-à-vis Slovenia's) ethnicity, including large regions of ethnic Serbs, made it inevitably a more contentious region. Coupled with the unsolved legacies of the fascist Ustaša regime from the Second World War, Croatia rightfully becomes a model case for studying the relationship between the rule of law and nationalism for, done correctly, ideally the rule of law should serve blindly toward a cause of justice. However, as Rangelov demonstrates, Croatia was in many ways the opposite, increasing nationalist sentiment while undermining the development of the rule of law. Testing the notion of deliberative transitional justice that he developed in previous chapters, whereby the judicial process serves to spark public debate on the interplay of national identity and state legitimacy, Croatia ultimately serves to illustrate how the law can be harnessed as an instrument for pursuing wartime ambitions through judicial means, with the courts themselves promoting abuses that subsequently become a matter for later redress (136).

Arguably, Serbia presents Rangelov with the most interesting case to test his thesis on the role international justice plays in producing new sites where the tension between nationalism and the rule of law play themselves out. Serbia's major role in unsettling the socialist federation is well documented, but this really is not Rangelov's intent. Instead, by focusing on the post-conflict justice, he seeks to refine understanding of the unintended consequences of international peace and reconciliation efforts. He succeeds. Arguing that "the opposition to international justice in Serbia can be attributed to the persistence of nationalism...but also to a range of actors and networks determined to resist any meaningful form of dealing with the past as a matter of survival" (178). Though not exclusive to Serbia, this hardening of feelings against international

machinations does reflect some particular societal undercurrents that are particular to Serbia, especially a feeling that Serbia has historically been wronged by others.

Iavor Rangelov's *Nationalism and the Rule of Law* certainly contributes well to the narratives on post-conflict Balkan legal and political history, but on the power of the rule of law in liberalizing regimes as well. The concept that international judicial intervention helps to crack the status quo, leading to a plurality of avenues toward justice, is a strong contribution. There is certainly a strong narrative strain that undergirds the international judicial project: felonious actors and murderers can be held accountable, even if the immediate national context cannot support their prosecution. However, international efforts, in this case the International Criminal Tribunal for the Former Yugoslavia (ICTY) have rightfully been criticized for their plodding. Despite these criticisms, Rangelov's work can certainly be interpreted as a positive note for international justice in that their "spin-off" second-order consequences create the space and capacity for other, domestic, institutions to emerge. This is no small finding.

Nationalism, as Rangelov and others note, can be both a force for significant positive accomplishments, as well as a unifying principle used to negative effect. His accomplishment here is the study of the very specific institutional interplay between the rule of law and nationalism. It takes very little to make a connection to the more practical dimensions of Rangelov's work, especially as the international community continues to develop and promote judicial mechanisms, notably the ICTY, the ICC, and special courts to address criminal malfeasance in Africa and Asia. Nationalism—and conflict—will not disappear anytime soon. How political communities deal with nationalism, however, remains an essential choice. Certainly, developing judicial mechanisms, with the benefits and pitfalls, is among the first steps. Rangelov helps light that path a bit more brightly.