

NATIONALISM AND THE RULE OF LAW

The relationship between nationalism and the rule of law has been largely neglected by scholars despite the fact that, separately, they have often captured public discourse and emerged as critical concepts for the social sciences. This book provides the first systematic account of this relationship. The book develops an analytical framework for understanding the interactions of nationalism and the rule of law by focusing on the domains of citizenship, transitional justice, and international justice, and engages these insights further in a detailed empirical analysis of three case studies from the former Yugoslavia. The author argues that although the tensions and contradictions between nationalism and the rule of law have become more apparent in the post-Cold War era, they can also be harnessed for productive purposes. In exploring the role of law in managing and transforming nationalism, the book emphasizes the deliberative character of legal processes and offers an original perspective on the power of international law to reshape public discourse, politics, and legal orders.

Iavor Rangelov is Global Security Research Fellow at the London School of Economics and Political Science and Co-Chair of the London Transitional Justice Network.





Nationalism and the Rule of Law

LESSONS FROM THE BALKANS AND BEYOND

Iavor Rangelov

London School of Economics and Political Science





CAMBRIDGE UNIVERSITY PRESS

32 Avenue of the Americas, New York, NY 10013-2473, USA

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning, and research at the highest international levels of excellence.

www.cambridge.org

Information on this title: www.cambridge.org/9781107012196

© Iavor Rangelov 2014

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2014

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication data

Rangelov, Iavor, 1977-

Nationalism and the rule of law: lessons from the Balkans and beyond / Iavor Rangelov, London School of Economics and Political Science.

pages cm

Includes bibliographical references and index.

ISBN 978-1-107-01219-6 (hardback)

Rule of law – Europe.
Transitional justice – Europe.
Nationalism –
Europe.
International criminal law – Europe
Yugoslav War, 1991–1995 – Law and legislation.
Transitional justice – Former Yugolsav republics.
Title.

KJC4426.R36 2013

342.08'3-dc23 2013018458

ISBN 978-1-107-01219-6 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party InternetWeb sites referred to in this publication and does not guarantee that any content on suchWeb sites is, or will remain, accurate or appropriate.



For my parents





CONTENTS

Acknowledgments	page ix
Introduction	1
PART I NATIONALISM AND THE RULE OF LAW	
1 Ethnic Citizenship	19
2 Transitional Justice	45
3 International Criminal Justice	69
PART II THREE CASES FROM THE FORMER YUGOSLAVIA	
4 The Making of a Liberal Democracy: Ethnic Citizenship in Slovenia	105
5 Contesting Atrocity and Identity: The War Crimes Debate and Transitional Justice in Croatia	135
6 Resistance, Pluralization, and International Justice in Serbia	164
Conclusion: Lessons from the Balkans and Beyond	189
Bibliography	197
Index	211

vii





ACKNOWLEDGMENTS

I am deeply grateful to a number of colleagues, friends, and institutions for making this book possible. Mary Kaldor first encouraged me to pursue doctoral studies at the London School of Economics and Political Science (LSE) nearly a decade ago and ever since, working with her on this and other projects has been a fascinating journey of intellectual exploration and discovery. Nataša Kandić generously shared her unique insight into the issues I was grappling with in the Balkans; in the end, our collaboration enabled me to become a participant in many of the processes in the region I was studying. Nicola Lacey encouraged me to engage with law and lawyers and gave me the reassurance and support I needed to cross disciplinary boundaries. I have accumulated enormous debts of gratitude to all of them in the course of writing this book and thank them warmly.

My research on the Balkans was shaped by countless conversations and interactions across the region, some of which have developed into great friendships. The Humanitarian Law Center in Belgrade and its dedicated staff provided a most hospitable base for conducting my field research in Serbia and extending it throughout the region. Jelka Zorn helped me secure key contacts and materials in Slovenia and spent long hours discussing my ideas in the cafés of Ljubljana. Tvrtko Jakovina was incredibly generous with his time and connections in Zagreb and enriched my research with his insightful reflections on the history of Yugoslavia. The Fellows of the Faculty Development in South East Europe Programme at the LSE were always available to meet with me and discuss the issues I had on my mind whenever they were in London or I was in the region. I am grateful to them and everyone



Acknowledgments

X

else in the Balkans who engaged with me formally and informally, and often repeatedly, in the course of conducting my research.

Many friends and colleagues provided critical feedback on different parts and versions of the material presented in the book. They are in no way responsible for any lapses in judgment or knowledge. For their advice and comments I am grateful to Amélie Barras, Steve Bell, Saša Drezgić, Mohanad Hage-Ali, David Held, Rob Howse, Milanka Šaponja-Hadžić, Gerry Simpson, Jelena Stevančević, Marika Theros, and Kristian Ulrichsen. At the LSE, I have benefited from endless discussions in the Nationalism seminars run by John Breuilly and John Hutchinson, and with colleagues in the departments of Government and International Development and the Centre for the Study of Global Governance. I would like to express my appreciation for the enthusiastic support of my editor, John Berger. The book owes a great deal to his faith in the project and expert guidance in seeing it through. Pippa Bore provided invaluable assistance at the final stages of producing the book, for which I thank her warmly.

I have been fortunate to present my ideas to diverse audiences over the years and these engagements shaped my evolving thinking and enriched my work immensely. I am grateful to the organizations and institutions that invited me to participate in conferences, seminars, and workshops: Association for the Study of Ethnicity and Nationalism at the LSE; Association for the Study of Nationalities at Columbia University; Cambridge University; European Policy Centre; Humanitarian Law Center, Belgrade; Institute for European Studies, FU Brussels; Instituto Affari Internazionali; International Studies Association; Inter-University Center, Dubrovnik; King's College London; Lund University; Minerva Center for Human Rights, Hebrew University; Osteuropa-Institut, FU Berlin; Oxford University; Renner Institute; Südosteuropa-Gesellschaft; University of Gothenburg; University of Ljubljana; University of Sarajevo; and University of Zagreb. My students at the LSE and the University of Sarajevo have often been my most stimulating and challenging critics over the years. I thank them for shaping the ideas in this book and I am sure they will recognize their influence.

I gratefully acknowledge the generous financial support for my doctoral studies provided by the Department of Government at the



Acknowledgments

хi

LSE and the Open Society Institute. My field research in Slovenia was funded by the Central Research Fund of the University of London. In Croatia and Serbia, field research conducted for a related project and funded by the Charles Stuart Mott Foundation was crucial for advancing my work on the book. I am also grateful to the research and training program European Foreign & Security Policy Studies, funded by Riksbankens Jubileumsfond, Compagnia di San Paolo, and VolkswagenStiftung, which supported my postdoctoral research and visiting fellowships at the European Policy Centre in Brussels, EU Institute for Security Studies in Paris, Institut Barcelona d'Estudis Internacionals, and T.M.C. Asser Instituut in The Hague.

I owe the greatest debt of all to my parents, Elena and Percho, to whom this book is dedicated.