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From Old Times to New Europe: The Polish Struggle for Democracy and Constitutionalism. Ashgate Publishing

Agata Fijalkowski

In this work the author analyses Poland's transition from a totalitarian communist to a fully democratic state, and the factors that influenced the manner in which this was achieved. Those factors arose from the country's history over the preceding 150 years, a period which saw profound and traumatic changes.

Western governments have learned, albeit slowly, that genuine democracy cannot be attained easily, and that countries with no tradition of rule of law governance rarely achieve it without experiencing social upheaval. In many cases, the previous, non-democratic regime has been able to suppress deep fractures within society which freedom allows to resurface, fractures which impede the achievement of tolerant, liberal government. Such fractures may include differences of race (as in much of post-colonial Africa where tribalism remains strong), and religion (as in the case of parts of former Yugoslavia). These issues have been widely studied and inform western policy towards countries such as Libya, which are only now emerging from totalitarianism into an uncertain future.

What makes Fijalkowski's book fascinating is that it chronicles a similar transition, but one undertaken by a very different society, a people with a proud tradition of national cohesion, a cohesion strong enough to sustain the goal of nationhood for long periods when Poland did not even exist as an independent, sovereign state. Poland's emergence as a genuinely free and democratic country demonstrates that, provided such national cohesion exists, even countries with very limited experience of participatory government can attain peaceful, liberal pluralism.

As an academic lawyer (Polish/American but based in the UK), Fijalkowski concentrates on the manner in which successive non-democratic governments prior to the fall of communism in

1989 influenced legal aspects of Polish life. Institutions such as the constitution and the Bar, and aspects such as the freedom of judges and other lawyers, freedom of speech etc., are studied and the adjustments needed to be made to those institutions and norms as a key part of developing an open, democratic system are explained.

Throughout the period of history considered, the country, like other states in Central and Eastern Europe, was governed first by external monarchical empires (Austro-Hungarian then Russian), then by a period of independence from 1918 to 1939, before being invaded in 1939 by fascist Germany in the west and the Soviet Union in the East. Since the end of World War II the country was part of the communist bloc where laws and legal institutions were warped in order to serve the needs of the party. Judges were appointed who could be relied on, especially in criminal trials, to do the party's bidding. The mismatch between values espoused in the law and the constitution on one hand, and the daily experience of ordinary Poles on the other, makes disturbing reading. The paranoia felt by the communist government towards those Poles who lived in areas previously occupied by Germany and who might therefore be tainted by fascism is an aspect insufficiently appreciated in the West.

As Fijalkowski remarks: "Achieving legal continuity between the communist and post-communist legal cultures is a formidable task". One obvious example of this difficulty arose from the simple fact that the senior judges and advocates had been brought up, and appointed, under the previous system. Another key legal issue that needed to be faced was how the law should deal, retroactively, with serious breaches of human rights which, although now criminal, had at the time of commission been carried out lawfully behalf of the state.

Fijalkowski's examination of these complex issues is masterly, and is the product of wide-ranging research in both Polish and Russian archives. Parallels are drawn to the similar experiences of other Central and Eastern European states such as Romania, Hungary and Czechoslovakia. For anyone interested in the way in which the most dramatic upheaval in Europe over the last 50 years impacted on the law, lawyers and legal theory, this book is essential reading.

Robert Lewis
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