

# *Theory Talks*

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## THEORY TALK #16

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### ROBERT HAYDEN ON CONSTITUTIONAL ANTHROPOLOGY, NATO UNDERMINING THE UN CONSENSUS AND NATIONALISM IN THE BALKANS

#### Theory Talks

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## ROBERT HAYDEN ON CONSTITUTIONAL ANTHROPOLOGY, NATO UNDERMINING THE UN CONSENSUS AND NATIONALISM IN THE BALKANS



**Robert M. Hayden is an anthropologist of law and politics, and has done extensive work on the reconstruction of states and nations in the former Yugoslavia, following extensive fieldwork there. In this Talk, Hayden explains what went wrong in Yugoslavia, why the NATO intervention there jeopardizes international law and elucidates the tension in Europe between stable 19th century borders governed by authoritarian rulers on one hand and letting go of those borders but gaining (a lot) of rather democratic nation-states on the other.**

**What is, according to you, the biggest challenge / principal debate in current IR? What is your position or response to this challenge / in this debate?**

First of all, anthropologists think about things differently than political scientists, amongst others because political scientists tend to think in formal models and variables, while one of the key concepts in anthropology is that of liminality, which refers to that which falls between clean categories. A 'liminal position' is a position in between clean category systems, and this position is extremely important because most cultural and political action takes place there. Political scientists hate it, because it blows away the logic of most of their formal models by questioning the integrity of those models – not of the categories per se (without clear categories, there's no liminal position), but rather of the importance of the category. Change and action take place on the limits of the system, so if we anthropologists study systems, we study intersecting systems.

Take, as an example, the political idea of 'Europe'. I'm in the Balkans right now, and a lot of political scientists ask themselves if they could be part of Europe. For me, this is a ridiculous question: how can the Balkans not be Europe! Then one needs to ask: what defines Europe? There's no clear geographical reason to delimitate Europe as a region, because there's no insurmountable borders between Europe and Asia. If Christianity is a common denominator, then Europe stretches out way beyond the Balkans to include Russia and parts of the Middle East. The Enlightenment maybe? Both National Socialism and State Socialism are very much products of the Enlightenment, and both reach way beyond what political scientists would comfortably refer to as 'Europe'.

But yet again, we can clearly refer to the Netherlands and France as Europe, so there are clear categories, which are necessary to be able to discuss the presumed 'liminality' of the Balkans – and the fact that political scientists doubt the 'European-ness' of the Balkans, indicates the recognition that things are going on at the margins of their models.

### **How did you arrive at where you currently are in IR?**

I hold a joint degree in anthropology and law – so to give some continuation to the last question: I very much recognize the value of the paradigmatic approaches social scientists work within, but I've also learnt that the most interesting knowledge comes from an interdisciplinary – eclectic, if you will – approach to issues. I focused on how conflicts get settled in different cultural settings, with field work in India.

Afterwards, in 1981, I went to the former Yugoslavia; the first ten years were fabulous, and then things became a little less fabulous; and most of what I know now, I've learnt then and there – or maybe I should say here and now, because I still live there, and I still learn.

### **What would it take for a student to become a specialist in IR?**

About IR I can't tell you too much, but I think it to be very valuable to be able to let go of formal, uni-disciplinary approaches to issues in world politics. In order to understand a legal problem, so I've learnt, one might well have to ask a whole different type of questions. And, most importantly, don't expect, never, to find 'clean' answers when asking questions about the real world. A clean answer can only be the theoretic response to a theoretic or hypothetical question.

### **You were in the former Yugoslavia when it fell apart. Can you help us understand what happened there?**

I would be happy to, especially because the most popular explanations circulating are those written by people who've never or hardly ever been to the Balkans, who don't speak one of its languages, and who analyze what happened from a predefined set of questions and answers – which is why, in the end, they won't tell you anything you didn't know before.

I can tell you that there were tensions beforehand, but nobody thought it was going to come apart until the summer of '89, when a set of constitutional questions arose. Normally, a constitution helps to make a country work and to control those who rein it; the proposals drafted in Yugoslavia all seemed directed at ensuring that there could not be a working state. From a legal perspective, this was inexplicable; but as an anthropologist, armed with different notions of concepts such as 'nation' and 'state' that underlay those proposals, I could make some sense out of it.

What was in fact happening, was a transformation from State Socialism to what I call 'State Chauvinism', a change reflected in the subsequent Yugoslavian constitutions. Reading the old State Socialist constitution, one could easily deduce that the working people were sovereign, excluding everyone else. Now these new, State Chauvinistic, proposals all talked about Serbs in

Serbia, Slovenes in Slovenia, and so forth, which is completely different. The most important issue here is that all these new States were not just populated by Serbs, Slovenes or Croats, but duly mixed ethnically while homogeneous economically. These new constitutions basically forgot about economic classes to stigmatize ethnic minorities as more than unwelcome: they were now seen as strangers unrightfully exploiting Serb property, and would have to be dealt with as such.

Now that's an extremely European construction – to be precise, 19th century German constitutionalism, and for that matter, from the 20th century: it's the standard European nation-state construction in which the government represents and belongs to an ethnically defined nation. This is one of the two big European political philosophies, the Hegelian romantic one, which says that humans are born as individuals into a society defined in terms of race, language, ethnics and nation. Funnily enough, it was also in Eastern Europe that Zionism has its roots, being Zionism another stream of thought that justifies the ownership of the state in the hands of one nation, and not in those of the entire citizenry. The other big European political philosophy from the 19th century parts from basically the same individual-but-born-into-society story but defines groups in economic terms, as classes, and that's of course Marx. And that's what we find in the former Yugoslav constitution.

This constitutional change in Yugoslavia is thus in fact a radical shift from one of these poles – and they are really opposites – to the other. If you go from thinking in classes, where classes fight other classes and nations don't matter, to thinking in national and ethnic categories, not only the picture changes radically but also the legitimacy of power. And the tensions we saw in Yugoslavia resemble so much other European tensions, between, for example, citizens of France and the French. Europe still consists of nations that are represented in states and who thus have difficulties accommodating the idea of minorities – whether they're gypsies, Moroccans, Sub-Saharan Africans or Croats.

Here we also touch on the big challenge for European integration: most Europeans probably feel first of all French, German, Spanish, Basque or whatever, but they also feel European. If this project is really to work, then these populations would have to submerge the individual national identity to the European identity.

If we go back to the Yugoslav case, just for comparison: these people have been living together for decades as Yugoslavs, while still identifying themselves as Croats, Serbs, Slovenians, etcetera. But once they got to vote, they voted in those last terms – in part because they never got to vote for Yugoslavia, only against it. The European Commission knows this and that's why they don't let Europeans vote – something confirmed by the Dutch, French and Irish rejection of the Constitution. A 'strong state' can hold people from different nations together, as long as it doesn't give those peoples the opportunity to vote out the rest. So at this point, 'Europe' is a project pushed by one percent of the population, while the rest can't vote. While I'm not into comparative political science, I've lived under State Socialism and the comparison between the former Yugoslavian Statism and the European one is dangerously accurate.

**In recent years, we've seen a paradigmatic change in the nature and philosophy of**

**UN/NATO interventions, moving from strictly military to all-encompassing 'humanitarian' operations. You've been there when they intervened in Kosovo. How do you think we should understand this change?**

In the first place, I challenge this position as strictly rhetoric. The interventions in Serbia and Kosovo didn't have anything to do with humanitarian issues. I was there when the Serbs ruled Kosovo, and it was nothing different from a brutal police-state, in that there's a government imposing its rule on a territory in which the majority of the population rejects that rule. That's never going to be pretty. But the problem is that the intervention in Kosovo against Serbia on part of NATO had nothing to do with humanitarianism aid to the construction of nation-states, but a lot with the expansion of NATO and its geopolitical interest in excluding Russia from the Balkans for the first time in two hundred years. That's what we've seen in the field, and we certainly haven't seen the construction of workable states.

In Bosnia, the intervention of international actors has basically prolonged the war for several years. What was going on there 1992-'93 was the separation and homogenization of mixed, heterogeneous territories. This was one of the last such processes in the European 20th century, it happened all over. But in Bosnia, it happened quite rapidly and briskly, as always accompanied by ethnic cleansing. Once that occurs, and you have homogenized territories, you can do a number of things – but creating a fake state, with no effective control over most of its territory, was never going to be successful. Half of the population, the Bosnian Serbs, didn't accept being ruled by Sarajevo, neither did Herzegovinian Croats. The Dayton solution, creating a State with various 'entities', only prolonged conflict by not recognizing what was happening. And those Serbs and Croats were willing to stay in their regions as long as Sarajevo wouldn't have any effective control over them – and what you've got is an de juris state which is de facto powerless.

**If the newly born states are, as you say, not workable, are we to expect more tensions?**

I don't know. There could be problems in Kosovo when the Serbian region of Pristine pressures for more political power. There's no way to curb them except by a police state, and there's no way Serbs would accept a police state, so that could lead to another round of ethnic cleansing. But Macedonia poses more of a challenge, because western Macedonia is effectively overwhelmingly Albanian. Albanians have no affinity whatsoever for the Macedonian government, and there's still the Albanian dream of a large, united Albania which encompasses all of the Kosovo, Macedonian and otherwise dispersed Albanians.

**You've called the NATO bombing of Serbia in 1999 a 'supreme international crime', because it went against the UN charter and did not count with the appropriate mandate below chapter VII – the Security Council would never reach unanimity over this issue. According to some Western Countries, the Security Council (who defines international law by interpreting the applicability of the UN Charter in individual countries) is an inhibition to timely response in situations such as Darfur; to others, the diversity of its members is a safeguard against rash military action. What's your position in this**

## discussion?

The interplay between the US and the UN here is very interesting: the US, the NATO, and 'the west' have to act when the UN is powerless. So one way to legitimize an intervention that does not count with a chapter VII mandate expressing consent of all members of the Security Council, is the 'humanitarian intervention' rhetoric. But ignoring the Security Council in such a way is, in my opinion, not particularly good for the image of the United Nations specifically and multilateral diplomacy more generally. The problem with a UN mission in Kosovo, from a NATO perspective, would have been that a UN mission has to respond to all of the Security Council members, including Russia. How do you get around this? You create, being the US, something different, like NATO intervention followed by a European mission. So we understand the logic of a NATO intervention, from a US perspective; but we also see an undermining of the whole post-world-war international legal order of the international political system that was based on action – or inaction – guided by decisions by a necessarily heterogeneous Security Council.

The Kosovo intervention certainly worked from a NATO perspective, in that it expanded NATO's influence and showed how utterly powerless Russia is to do absolutely anything at all about it. But it also established a situation in which the Kosovo Albanians could easily drive out most of the Kosovo Serbs, and to destabilize Macedonia. Was that good? I'm not quite sure.

It also established a precedent in US foreign policy: in 2003, when they wanted to invade Iraq and a lot of people (including the three UN Security Council members China, Russia and France) were opposing, the Bush administration simply thought: 'it worked well in 1999, so why not again? We'll just go at it alone.'

**Last question. You've written, about that same conflict, that the point from 1990 onwards in Yugoslavia was 'to implement an essentialist definition of the nation and its state in regions where the intermingled population formed living disproof of its validity: the brutal negation of social reality in order to reconstruct it.' Isn't this how European democracies got constructed, the goal of the US intervention in Afghanistan and Iraq, and the big problem in Africa?**

Even if I don't know too much about these countries, I would agree with you; there's been a great number of attempts by outsiders to create a workable Afghanistan, and thus far no one has succeeded. In the case of Iraq, the idea of, for example, Arend Lijphart that one can just walk in there and implement a 'consociational democracy' is one of the biggest political myths of all times. There simply isn't such a thing as an Iraqi nation. We know confederations don't work. I've read Lijphart's work quite carefully and there are just too many leaps of faith that in the end permit elites to think they can do whatever they want to do while more or less ignoring the people – which you can't sustain forever, because in the end the people will have to re-elect or remove those elites. Consociational models, in the end, depend on the elite's ability to ignore the population. In Bosnia, for example, there is no consociational democracy simply because there

isn't a 'Bosnian' elite; there's a Serb elite, a Croatian elite, and so one, who respond not so much to each other's action, but to the action of those they claim to represent.

**Robert Hayden is professor at the University of Pittsburgh and received his law degree (1978) and PhD in anthropology (1981) from the State University of New York at Buffalo. He is an anthropologist of law and politics, and has done extensive work on the reconstruction of states and nations in the former Yugoslavia, following extensive fieldwork there. He has also done fieldwork in India and among the Senecas of New York State, and has as well written on issues concerning the American legal system and its role in society. Professor Hayden also holds appointments on the faculty of the Law School and in the Graduate School of Public and International Affairs, and is Director of the Center for Russian and East European Studies.**

### ***Related links***

- [Haydens faculty profile at U Pittsburgh](#)
- Read Haydens ***Bosnia ten years after 'independence': the dictatorship of the protectariate under civicist self-management*** (2002) [here](#) (pdf)
- Read Haydens ***The "constitutional agreement" on Bosnia and Herzegovina*** (National Council for Soviet and East European Research, 1993) [here](#) (pdf)