Barry Frett

**Erasure in Slovenia**

I am a law student from the United States. In the USA, it would be difficult to be unaware of the disparate impacts of the law. Without a doubt, people of color disproportionately bear the burden of the state’s power to impose penalties. But when I first came to Slovenia, the two countries seemed like a stark contrast. My first research project at the Peace Institute was on police custody practices in Slovenia, and it was eye opening. I detected problems with Slovenian police practices, but these problems paled in comparison to the systematic abuses that are rampant back home. On a superficial level, Slovenia appeared to be a society with minor issues, to be sure, but an overall harmonious place when compared to the United States. Thus, I was surprised when I began to research erasure—an occurrence that many scholars refer to as one of the worst human rights abuses in contemporary Europe.

So what is erasure? Erasure occurred after Slovenia declared its independence from Yugoslavia in 1991. At that time, many people living in Slovenia were official citizens of other Yugoslav republics, or were permanent residents of Slovenia but not citizens. Slovenia needed to determine how the newly independent nation would treat these people that numbered approximately 200,000. Politicians in Slovenia decided upon a protocol that gave non-citizens a limited chance to apply for either permanent residence or citizenship in the new nation. Many people utilized this opportunity, but there were about 30,000 people who either did not utilize the process or whose applications were rejected because they were considered “dangerous.” Those with rejected applications, or those who failed to apply altogether, were subsequently “erased.” This meant that Slovenia nullified all of their permanent residence documents, which essentially turned a huge section of society, overnight, into quasi-stateless and powerless people.

The erasure process was replete with inequity. The most damning aspects include: (1) Slovenian authorities did not take steps to ensure adequate explanation and notification of the application process. As a result, people were erased without any actual notice. (2) Slovenian authorities did not notify people about the consequences of failing to utilize the application process. Many people had reasonable expectations that failing to use the process would not result in categorical erasure. (3) The decision to deny people citizenship or residence on the basis of perceived “danger” was an ad hoc standard that was susceptible to ethnic biases.

Although Slovenia has taken some steps to remedy erasure’s gross injustices, the progress has been frustratingly slow. As I did my research, I made the surprising realization that Slovenia’s experience with erasure displays many of the themes that I have encountered studying law and politics back home. Below, I will discuss overlaps between erasure and politics elsewhere, surprising findings, and finally, my main takeaway from the research.

First, Slovenia’s erasure story reaffirms the importance of an independent judiciary and its ability to resist oppressive, majoritarian pressures. Slovenia’s Constitutional Court was instrumental in declaring erasure illegitimate and illegal, and demanding an adequate remedy. The Court made these declarations in times when legislative processes alone may have been unable to combat erasure’s abuses. Slovenia’s erasure story also demonstrates how the principle of separation of powers, while instrumental in some regards, can also stymie progress. When the Court declared erasure to be a violation of fundamental rights, it lacked the power to enact specific remedies. Instead, this power laid with the legislature. Given that a comprehensive remedy for erasure is still forthcoming, it is fair to say that the legislative progress has been insufficient.

In a more direct safeguard against majoritarian tyranny, the Court also stepped in to block legislative referendums that could have further impeded erasure remedies. The Court justified this action by declaring it necessary to avoid “unconstitutional consequences.” I was initially surprised to find that the Court felt it necessary to limit referendums. Surely, I thought, if Slovenia voted, the majority would validate the importance of erasure remedies. However, this was not the case. Not because the majority of Slovenians supported perpetuating erasure, but because the majority of those *voting in the referendums* had conservative stances. The referendum outcomes were a classic case of tyranny of the *minority*. In one referendum on erasure, less than half of eligible voters participated, but the vast majority of the participants opposed erasure remedies. A similar electoral dynamic was responsible for the election of Donald Trump.

Another familiar theme is the slow pace of bureaucratic politics. Couple this with periodic transitions between conservative and liberal governments, and you have a recipe for little progress on progressive initiatives. In Slovenia, like elsewhere, conservative parties have been more hesitant to take a proactive stance towards righting historical injustices. I do not understand why empathy is an ideological wedge issue, but it seems to be true everywhere. That said, Slovenia’s liberals have also been far from enthusiastic in enacting erasure remedies, leading one researcher to ask, “With liberals like this, who needs conservatives?” The slow pace of reform, even from nominal liberals, strongly parallels politics in the United States.

What surprised me most about Slovenia’s history with erasure was the relatively hands-off approach of the European Union. As noted above, erasure is considered to be one of the worst human rights abuses in contemporary Europe. And yet, top-down pressure to address erasure has been underwhelming. Nor was Slovenia’s entry into the EU contingent upon addressing erasure’s abuses in a meaningful way. To be sure, Europe has not been completely silent: a 2012 decision by the European Court of Human Rights condemned erasure and declared Slovenia’s extant remedies insufficient to comply with human rights imperatives. However, EU involvement has been less than I would have predicted. While researching this topic, I encountered one author who speculated that the union’s lackluster involvement stems from two reasons: (1) erasure in Slovenia affects a small enough amount of people to not pose a threat to the overall stability of the country; and (2), relatedly, failing to meaningfully address erasure will not undermine Slovenia’s economic stability. This leads to the cynical conclusion that the EU’s stance on human rights is, to some degree, pretextual. At least, so long as a country’s human rights abuses do not rise to a level that threatens the stability of the continent, or the stability of the Euro, many will look the other way.

My main takeaway from erasure is a familiar problem: a lack of empathy. While many in Slovenia see erasure as a problem, many also see it as a problem that affects a distinct group of “others.” Thus, while a majority of Slovenia’s population may sincerely want to redress erasure’s abuses, erasure is not something the majority strongly identifies with. On the other hand, you have a conservative population that feels strongly about limiting erasure remedies. It is hard to pinpoint the origin of this conservative intransigence, but it likely has something to do with preserving Slovenia’s identity, albeit in a misguided manner. A passionate minority of people who oppose erasure remedies, coupled with an apathetic majority, is a recipe for achieving little meaningful reform. And this is exactly what has happened since Slovenia’s Constitutional Court declared erasure to be a violation of basic human rights.

The recent economic downturn and mandatory austerity measures have likely further stymied attempts to provide erasure remedies. With funds limited, it is harder to convince people that a small minority of the population deserves compensation for historical wrongs. But again, this is only true because of the empathy gap. If more people saw erasure as a problem that hurt Slovenia to its core, and not just a small minority of people who inhabit Slovenia, economic downturns would not preclude an erasure remedy.

Empathy gaps are not a new phenomenon, nor are they unique to Slovenia. The United States’ inexcusable failure to accept Middle Eastern refugees can be explained by nothing else. But because I was initially so impressed by Slovenia’s superficial appearance of harmony, it was frustrating to realize that an undercurrent of ethnic hostility is also present here.