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In this *anno Domini* when Eastern and Central Europe are so much in the news, one hears little about Yugoslavia. Part of the explanation for this curious fact is, no doubt, the great complexity of the situation in this heterogeneous country in which even the landscape is noted for its variety. You will easily understand my own sense of despair, then, in having learned that I have to encapsulate my report in a five-minute presentation. To make matters worse, my predecessors have lain so many Eastern-European problems bare that the boredom mentioned in connection with the third stage of the "velvet revolution" may at this point already have set in. I shall therefore limit myself to making only a few remarks about the Yugoslav political situation, a theme whose tedium factor is somewhat lower than that of my specialty—the legal system.

You will remember that Yugoslavia was the *enfant terrible* of world communism, infecting it with Titoist heresy in the fifties. For several ensuing decades it was the darling of the State Department, and also the darling of ordinary Eastern Europeans. As Eastern Europeans on this panel will readily attest, they were happy if they could obtain a permit from their government to travel to this half-way house to the West, or if they could purchase in their own countries Yugoslav consumer goods or other simulacra of things from the free West. All this has changed of late, or is in the process of changing. Most countries of the former Eastern Bloc have caught up with or overtaken Yugoslavia (to the extent that you can generalize about its constituent republics) in dismantling communist institutions, discarding communist practices, attracting foreign investors, and capturing the imagination of intellectuals and publicists in the West. What has happened to the land of Southern Slavs (for this is what Yugoslavia means) on its journey from Bolshevism to democracy?

From an array of interacting reasons two deserve to be singled out because they are either ignored or misunderstood in the United States. The first reason is that there was much less to rebel against in Yugoslavia than in other Eastern European countries when the turbulent year 1989 came

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around. The second is the maze of ethnic rivalries which created after Tito's death a sort of self-canceling Brownian motion and prevented concerted action in any direction.

Why was there less to rebel against than in the rest of Eastern Europe? In the fifties Yugoslav communists inaugurated a special brand of socialism along Proudhonian anarcho-syndicalist lines. Rigid central planning and even state ownership of industrial plants were abolished. Although the Party continued to pull the strings in the background, it retreated from many spheres of social life, and the totalitarian grip was greatly relaxed. After the boss of the secret police was ousted in the late sixties, an exuberant movement toward greater freedom was set in motion by pragmatic and relatively liberal communist leaders in almost all Yugoslav republics. For example, the Slovenian leadership seriously considered setting up a "socialist" stock-exchange. Even people, like myself, who refused to join the Party were entrusted with responsible positions in government, industry, and academic life. It is also worth mentioning that a system of judicial review of the constitutionality of statutes was created in this period for the purpose of resolving problems arising from considerable fragmentation of governmental power. (I remember the first President of the Constitutional Court telling me on one occasion that his court will be a cohesive force after Tito's death.)

In the early seventies Tito suddenly turned against champions of "socialism with the human face," but even after he placed the more dogmatic communists back in power, the country was still relatively relaxed, open to the West, and economically in better shape than the Comecon countries. Consider only that two constitutional amendments in the late eighties permitted individuals to own "means of production" such as industrial plants, business buildings, and productive capital of all sorts. Foreigners were permitted to invest not only in joint ventures, but also—if they were adventurous enough—to open up their own industrial plants.

All told, when the miraculous year 1989 ushered in the demise of orthodox communism in Eastern Europe, there was much less pressure in Yugoslavia than in the rest of Eastern Europe towards greater freedom. Economic reforms were conceived in a somewhat different context too. To "privatize" industry, for example, rang differently in a

system of state firms than in a setting of self-managing ideology and considerable self-managing practice. Nor should it be forgotten that the party, albeit far from loved, was much less discredited than in most Eastern European countries. Yugoslav communists were not installed in power by Soviet troops, but successfully led a guerilla army which liberated Yugoslavia from the Nazis. Small wonder, then, that the siren calls of both "glasnost" and "perestroika" were less alluring and less irresistible.

Better known but unfathomable to most Americans is the second reason that caused Yugoslavia to lose its leadership in the movement away from Bolshevism in Eastern Europe. It is the explosive rivalry among its constituent nations, an issue to which another panel will address itself later this morning. In the few minutes at my disposal I can do no more than propose a metaphor that might suggest to Americans the dimensions of this tragic problem. Imagine, then, in lieu of the land of Southern Slavs, the unlikely country of Northern Semites, comprising Lebanon, Israel, and Syria. Imagine further that this political unit was created by the Syrians, who dominate the armed forces and the governmental bureaucracy. The capital is in Damascus. Now ask yourself whether it is surprising that all sorts of conflicts would arise in this state, and that some ethnic groups would want dissolution of this rocky political marriage?

Similarly with Yugoslavia. The country was created on the ruins of the old Austro-Hungarian monarchy as an extension of the old Kingdom of Serbia. To the disappointment of various ethnic groups incorporated into the new political unit, the Kingdom of Yugoslavia was ruled from Belgrade by the Serbs, of whom many came to identify the Yugoslav idea with that of Great Serbia. Sensitive to ethnic issues and drawing lessons from the carnage of the Second World War, Tito decided to set up a federal structure for communist Yugoslavia. But this was not the federal structure known to Americans, where the "neutral" District of Columbia is the geographical locus of power. Instead, the capital remained in Serbia, and Serbs continued (albeit to a lesser degree) to dominate the federal bureaucracy and the Army, notwithstanding serious attempts to establish a quota system for Croats, Slovenes, and others.

Naive communist dreams that the new Yugoslav society

would be free of nationalist passion were soon disciplined by reality, and what prevented these passions from surfacing with great force much earlier was mainly Tito's firm grip on power and his manipulative skills. To an extent, also, Yugoslavs realized that—with all their troubles—they were better off than other Eastern Europeans, and that their internal squabbles might bring about Soviet intervention. With Tito gone, the economic situation deteriorating, and the threat of Soviet intervention receding, no wonder that the nationality issues exploded into the open with great force. Unfortunately, old conflicts have gained a new political dimension. Wrapping themselves into the cause of Serbian nationalism, Serbian communists survived free elections while communists in other Republics were ousted. As a result, the division between communist and democratic regions has been added to old issues dividing the land.

In this tense and dangerous situation, with the threat of civil war hanging over the land, the immediate and vital question of whether to preserve the rocky marriage of diverse ethnic groups almost totally silenced talk about needed economic, political, and even spiritual renewal. And so it came to pass, you see, that Yugoslavia lost its position of experimenter and leader in seeking ways to replace the odious combination of red tape and red rule that characterizes Bolshevism.

Let me end by saying that Yugoslavia may soon make the news again, but for deeply disturbing reasons. What would probably be best for all Yugoslavs concerned would be to agree to a temporary separation in the form of a loose confederation of states. With desire for independence thus satisfied, and with economic realities pressing for larger integration, there would then be a chance at a genuinely fair federation—a new marriage. Unfortunately, I do not believe that Serbs would consent to such a separation—even if temporary—unless permitted to change borders and create a Great Serbia on the ruins of Yugoslavia. What is then most likely to occur is the newsworthy violence! Soon you might read about civil war over territory claimed by Serbia from seceding Republics, or about a bloody putsch of elite Army units carried out to preserve Yugoslavia. And because the Army is a stronghold of dogmatic communists and dominated by a single ethnic group, the prospect for this third

Yugoslavia to satisfy the aspirations of its many ethnic groups would not be much brighter than those of the preceding two. I end by voicing my ardent hope that my prediction is wrong.

QUESTIONS AND ANSWERS

BENNETT: Well, as you see, the law works only imperfectly. It works largely by hovering over the situation rather than by clamping down, and it works through the cooperation and goodwill of those subject to it. But in the end, even if imperfect, it really has quite marvelous results.

QUESTION: I would like to ask a question of the Soviet representative. What, if anything, is the prospect for direct election of the president as a part of the legal constitutional development in the Soviet Union?

LUSHIKOV: At the forthcoming congress of the peoples deputies, we intend to adopt a law on referendums. Only after adopting that law can the question of direct election of the leaders of the government be raised. But we are still critical of this idea. We have learned how to elect in our state; it would be good if we learned how to work like that.

QUESTION: When is it exactly that the people in the Soviet Union learned to elect government leaders?

LUSHIKOV: I simply wanted to acknowledge the breakthrough that has happened. We are carrying out one election campaign after another that has quite politized our society, but the implementation of economic reforms is lagging behind. That is the essence of our current problems.

QUESTION: I want to pick up on Judge Kozinski's point that the situation in Romania is indeed bleak. It strikes me that it is bleak for a reason that the panel has not yet touched upon, namely, the understanding of how markets, democracies, and governments work is relatively primitive in all of these countries, with certain notable exceptions. The reason is there has been such a paucity of publications and availability of literature on this subject for years. That is what is changing. Even in Romania, that is what is exciting. They are publishing works that were for forty years unavailable.