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## Post-Lecture Discussion

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## Post-Lecture Discussion

SPEAKER: IGOR GRAZIN  
MODERATOR: JOHN B. ATTANASIO  
SPEECH: "THE INTERNATIONAL RECOGNITION OF NATIONAL RIGHTS: THE BALTIC STATES' CASE"  
DATE: MARCH 2, 1991

*Professor Attanasio:* In the conference, there has been a tremendous concern and tension, particularly when Hurst Hannum spoke, about the values of stability in the international community and the need to avoid chaos and armed conflict. Professor Grazin also spoke about the value of self-determination, however one defines it. Obviously, it is a controversial value, and vague at best.

To the extent that we approach secession, we really risk considerable chaos in the international community. There is going to be tremendous inertia against recognition of any kind of secession in international law.

The largest danger seems to be the queue of nations waiting to secede. If one permits Baltic secession, then two questions immediately come to mind. One is whether other groups in the Soviet Union will secede or declare substantial independence. Virtually all the Republics have gotten in line at some level. What do you do in their cases? This is a huge concern within the Soviet Union. Even Russia has gotten in line in terms of secession, and that is perhaps the most difficult problem of all. There is a joke that goes around in Moscow that eventually the map of the Soviet Union will be the Kremlin, and everything else will have seceded.

The second problem, as far as the international community would be concerned, would have to do with the cases like Quebec and Yugoslavia. Will they get into the queue if some sort of right to secession is granted in international law?

To the extent one grants a right at all, it has to be a narrow one. It has to be incredibly narrow, and that is the only way the Baltic states can stand any chance at all.

Professor Grazin's talk was an effort to narrow the argument, and, in some ways, he did so quite successfully. But one of the things he pointed out was this notion of a political difference, as opposed to a religious or ethnic difference. I find his distinction problematic for two reasons. One reason is that it is very difficult,

in my mind, to understand why a political difference should count for more than an ethnic or religious difference. The second reason is that there is really a problem of boundary. To some degree, one could define an ethnic difference or religious difference as a kind of political difference. And it is very difficult to separate political differences from ethnic or religious differences.

Another point is this notion of resistance. Suppose there is some kind of resistance taking place on the part of the group that wants to secede. Let me propose a test. The first part of the test would be territory: the ethnic group occupies the territory. The second part of the test would be armed aggression. The third part of the test would be resistance to that armed aggression; however, we have to define what constitutes adequate resistance. New resistance is inadequate, because just about any claim—as long as there is new resistance—would then allow secession. The resistance has to be along the lines of a chain, or a continuum, that begins at the point of the armed aggression, and continues until the point of secession. As an alternative test, there should either be resistance or an impossibility to engage in resistance because of human rights violations.

The next part of the test should be that other countries do not recognize the larger union, or, that the group has always tried to move toward some kind of self-government or some type of autonomy. That again relies on some kind of continuum, rather than saying that there is some new claim for autonomy or secession. The notion of resistance and movement toward self-government goes to the element of consent. Was there ever a social contract?

If we consider aggression alone, then I think you would have to redraw the entire map of the world. Aggression in itself is not going to make it. Professor Grazin talked about mistakes being made by the Soviet Union, and that should not count as part of the test. That would give strong disincentives on the part of the Soviet Union, or any other former aggressor or current aggressor, to give any autonomy rights to a group that wants to secede.

*Professor Grazin:* The chain of secession will violate, or change, the world. It goes without saying that it is dangerous. But what is more dangerous, to seek peaceful solutions to some of these problems, or to continue to use armed forces, tanks, and chemical weapons like those used against Georgia? (The same weapons Saddam Hussein was afraid to use against the United States.)

So, what is more dangerous? In some cases, the iron fist works. But I am not sure in the Soviet Union, particularly in Russia, that this will work. So, in every instance, we have the question of the price of self-determination, the price of independence. For the Soviet Union, the price of denying the right of self-determination in the long run will be much higher than allowing self-determination. I am absolutely sure that the day after the secession of the Baltic states, economic necessities will force the two sides to negotiate. But first, this old regime in the Soviet Union has to be destroyed. It needs a new start.

Now about the test. There is one criteria that does not fit the Baltic case: the test of continuity of resistance. From 1952 until 1988, there has been no real resistance—small groups here, small groups there, but it was not a consistent resistance. I hope that you will focus on another criteria. During that same period, the United States and others recognized the governments as governments in exile.

*Participant:* Has there ever been any explanation given by the rest of the world, and especially by the United States, for not significantly addressing the problem of Soviet aggression in the Baltics thirty years ago, when there might have been more of a chance to counteract it?

*Professor Attanasio:* Other than nuclear war?

*Professor Grazin:* Exactly. I prefer international law, but there are things even more important than international law: power, strength, and national self-interest. In the beginning of the 1950s, a strong response by the United States and others could have meant World War III.

*Participant:* We are facing the construction of a phantom; namely, the danger of secession. What would be wrong, for example, with an empire like the Soviet Union disintegrating, provided it were done peacefully? Why shouldn't the fifteen Soviet Republics, or whatever states could form some economic unit, or even Quebec, establish their own statehood? I think a phantom is created by always pointing to the danger of the instability of world order. I think world order is much more destabilized by the growing number of movements of nations who try to get statehood on their own.

Now to your test. I would forcefully and completely disagree that there would have to be an armed aggression. It might very well be that a nation has been part of a state for a very long time and has no history of aggression; yet, international law would not have supported its secession. So what we had before was perfectly all right with respect to international law. What should be made of a nation's wish of self-determination which would lead into independence?

Another criteria to which I would not subscribe is adequate resistance. It could very well happen that, within any given nation, some group will develop into a recognized entity. That group could say it wants to exercise its right of secession. I suppose the underlying reasons for adding this criteria to your test is a response to what I have called this "phantom of danger," namely, the chain reaction of secession movements.

*Professor Attanasio:* If I can just react to that very quickly. First of all, I only propose the test as a minimum. That is, I do not propose this as an universal test. It seems to me the Baltics can be incorporated into this test, depending on how you define resistance.

With respect to the phantom, I lectured in Moscow for four-and-one-half months—actually, this time last year I was in Moscow—and I learned that government officials hardly view it as a phantom. It is an incredibly real problem for them. If the Baltics have some hope of seceding, they have to have some kind of a narrow argument. I think that is true as a practical matter.

*Professor Grazin:* I would question this vocabulary for the kind of political action I am talking about. Using this word to permit someone to secede means that your conception of the serenity is exactly the conception of serenity which Gorbachev presented as a legitimate one, which really does not allow secession at all.

Who is against the independence of the republics in Yugoslavia? Basically, it is the Russian military, the KGB, and the military in Yugoslavia. Yugoslavia is the first country in Eastern Europe where the armed forces have created a "normal" political party, which, in turn, argues that it should govern Yugoslavia. Accordingly, there is not just military aggression in Yugoslavia, but there is also a political component to that aggression.

You must take advantage of your opponent's mistakes. You see, Gorbachev is really loyal to the regime (he is a graduate of

Moscow University), but he has forgotten a little clause in Soviet law. The fact is that if less than fifty percent of the voters participate in a referendum, then the result is invalid. It is void. This law still exists, and I do not know how it happened. And very probably, in Lithuania alone, less than fifty percent of its people will come out to say "no" to Gorbachev's referendum. Gorbachev's referendum question is similar to the referendum on slavery in Kentucky, if I am not mistaken. The question was whether to expand slavery or not. But at the time of that referendum, the majority in Kentucky did not want slavery at all. So, whether you want Gorbachev's "new" Soviet Union or the old Soviet Union is Gorbachev's question, but no one else's.

*Professor Attanasio:* If I could react quickly, since my test has become an issue. First of all, I am hardly proposing it as a universal test. Most of the criticism assumes that it is being proposed as a universal test. All I am saying is it is a test that would allow secession. That is a wholly different matter.

The second point is that Abe Lincoln would disagree very much with your theory of secession as well. A civil war was fought in the United States, basically because the southern states of the Confederacy adhered to that theory. That is not to say they were necessarily wrong, but there was a substantial group of people who did disagree with it.

The third thing is that there is even a more powerful constitutional argument. Article 137, if I'm not mistaken, gave the republics the absolute right to enforce provisions of the Constitution through their republican legislators. That constitutional provision gave authority to the Republics. Unfortunately, that article was abrogated from the Constitution sometime ago, which neither Igor nor I can figure out.

*Participant:* As a citizen of Virginia, which is the home of Richmond, the capital of the Confederacy, I just wanted to make an observation about this historic fact, as you put it, about the Civil War. The United States tried confederation, and it didn't work. It was a confederation which the states created, and the reason that the Preamble of the U.S. Constitution begins with "We the people of the United States . . ." was precisely because the representatives of the Constitutional convention did not want the new government to be a creation of the states. They wanted to go directly to the people, and that is why they had ratifying conventions with

representatives elected directly by the people, instead of allowing the already existing state legislators to represent them.

I would point out that the Soviet Union is different. The Soviet Constitution is, in fact, a constitution of a federation, and the right to secession is included in the Constitution. I think the danger of secession is perhaps a slippery slope argument—if you allow one republic to secede, perhaps the others will too. But I think it is a little beside the point. The Baltics' right to secede is already part of the constitutional order. Perhaps there will be a new sort of confederation formed after the secession of the Baltics. It is a question of considerable importance, not just for the Soviet Union.

One of the alternatives to secession, historically one of the most common alternatives, has been obliteration. Nations which have been denied their nationhood, the Armenians for example, have eventually caused so much trouble for the dominant state that they faced extermination. This has been a continuing fact of world history. Whenever we are talking about the dangers of secession, there is also a great danger of extermination. It is a continuing problem, for instance, in many of the African states.

*Professor Grazin:* That is a counterargument designed to protect trapped minorities. What will happen, let's say, to the Russian minority in Lithuania, if Lithuania would secede? Again, it brings us back to the purely ethnic attitude. As a matter of fact, 75 percent of the Russians in Lithuania want to run away from the Soviet Union as quickly as possible. I was really surprised to see a queue behind the representation of Lithuania in Moscow, because lots of people wanted to move to Lithuania, hoping that perhaps Lithuania will secede first. So it is a political question as well.

*Participant:* The Baltic states have a right to self-determination—a right based in the Soviet law, if you want to use that one—and they have a right based in international law. The problem is the procedure. What is the procedure by which you realize the right to self-determination? Traditionally, there are two ways. If the other side does not want you to have self-determination, there is war. The other option is negotiation. I guess everybody agrees that war is not the solution in this case, and we are left with negotiation. I think the problem is how this process of negotiation toward the realization of the right to self-determination is to be carried out. That is what Gorbachev is saying. He is not saying they cannot

have self-determination. He is saying that you have to follow certain procedures.

This fact is helpful, if you accept that the Baltic states are subject to Soviet law. The next question would be whether the procedure that has been established is a valid procedure to apply. If one does not use the constitutional procedure, the other option is to think of some international procedure. Considering the right of self-determination on an international level, no procedure exists. There is no formal procedure to settle the question of self-determination; however, something informal is going on—informal in terms of evaluating the benefits and costs of resisting or allowing self-determination. For example, the cost for Gorbachev in resisting self-determination is probably increasing all the time. So, he too has an interest in finding a solution. The cost of a war would be traumatic for Moscow as well as for the Baltic states.

I would like us to think more in terms of how to influence the international procedures. The weakness of the international order is that it has yet to develop appropriate procedures. We can have our different feelings; we can have the test, but who cares when there is no audience to say this is right or this is wrong?

*Professor Grazin:* International law can provide assistance in cases where an aggressor admits to being an aggressor. If the aggressor denies it totally, however, international law ceases to exist. To get Gorbachev to start to discuss Soviet aggression in the Baltics is almost impossible. He never admits that anything is wrong, or that anything wrong has been done to the Baltic states, Georgia, or the Ukraine. To be involved in an international legal procedure, you must admit that both sides are subject to international law. That is absolutely and decisively denied today by Gorbachev.

*Professor Attanasio:* The test I am proposing is more of a form of negotiation in international law. It is something that would form a basis for negotiation. It would also alleviate the concerns that Gorbachev may have.

*Participant:* It is certainly important to emphasize both the criteria and the procedure. Who are the participants, and what are the relative values they employ? Political factors are very important, but the key is this sense of identity. With respect to the Baltic states, what will be the probable consequences for the Soviet Union? If the alternative is massive deprivation and a separation of

human rights from the Baltic people, there must be a certain degree of "Let my people go!" If every unit is based upon the people, in the long run, that result may be most likely to contribute to a stable world. Moreover, one would expect, as Professor Eide was talking about, a peaceful procedure of negotiation to exist. But on the other hand, look at how the decision to set forth self-determination is still done. Iceland is the only country to give standard recognition; other countries have not come forward. Why isn't there more support? And in that context, if we have a framework of analysis, other individual governments would be able to come forward and extend recognition.

And what would be the basis for that framework? In terms of enhancing the minimum world order, the group desiring self-determination will also contribute to the common interest of all parties involved, and also enhance an optimum world in the sense of creating conditions. The people involved in self-determination will be able to promote justice and peaceful attainment of human rights, instead of saying, "What is good for us is good for you, and we don't care about what might be the impact." For example, the Baltic states could make a very detailed and systematic analysis defending the position that what is good for its own people would also, in the long run, be good for the Soviet Union as a whole.

*Professor Grazin:* The solution will be to apply the principles of international law, whatever the price may be. In the long run, the whole of mankind will win. At the same time, I must say that it is really impractical. The Baltic states have also tried to explain their position to the world community. I quote the foreign minister of Russia, who negotiated with one of the western countries: "Don't forget that the heirs are those who pay the best for the doctor."

*Participant:* I would like to offer a somewhat different prospective on the notion of what is best for world public order. In the history of the post-war human rights movement, the most important indication of our betrayal of rights has been the misuse of power. It always will be, because rights involve power, the fight over power, and the redistribution of power. We have seen this in country after country. From Iraq's perspective, self-determination motivated its recent acquisition of Kuwait. But Iraq's action was not done with any consideration of what was best for world order. It was merely an application of force. Bangladesh was a clear case in which we had a state divided by an opposing state, which immedi-

ately used force. There was no support for this oppression. What if the Iraqi problem was solved through a contingent of Soviet and Western interests? We just do not know how all of this is going to flow. The Soviet Union, in turn, is itself losing part of what it views as its federal turf. Maybe the notion of power is not going to resolve this either. This is one area in which we could apply Professor Chen's theory of economic growth and economic aid.

*Participant:* If we could shift the focus that I think underlines this discussion so far, I would like to ask Professor Grazin what lesson the rest of the world should learn from a successful Baltic secession? Is your claim that because of the Baltics' unique status—and I emphasize the word unique—they are politically entitled to be independent? In so far as your argument is based on an, as yet, undefined concept of international law, it is disingenuous at best, and dangerous at worst? You cannot make such a suggestion without being able to define what this law is, especially without being able to come up with the universal test that you suggested you can do. Such an appeal to international law, and to larger rights of self-determination, has been taken seriously over the last forty years. The reality is that secession movements have caused millions of deaths. Consider Northern Ireland. Don't you have to choose between international law and an appeal to a unique political situation?

*Professor Grazin:* In terms of the lesson from successful aggression, let me quote the President of the United States: "The main lesson will be: Aggression will not stand." It doesn't matter how many thousands of people are killed. The 300,000 murdered Latvians, Lithuanians, Russians, Jews, and so on, who were the victims of Soviet power have not made the right to freedom weaker.

Now, about international law in this context: one thousand people were killed just because they tried to create a state on the wrong territory within the wrong borders. If those people lived in a different state, or at least in different republics, those one thousand women and children would still be alive. So I cannot say that it is automatically true that all types of secession have led to bloodshed. I would agree with you 100 percent, if, by our voting here in this room, we could prohibit secession. But the secession claims are independent of our will. We have to try to handle them

with international law. So, I really rely upon the real authority, the great authority of international law and human rights.

*Participant:* What, specifically, about your circumstances is to be considered unique? Suppose we say that Lithuania could secede, and suppose a minority voted against breaking away from the Soviet Union. Would the size of the minority in any way influence your decision as to justifying a secession?

*Professor Grazin:* The right to self-determination does not belong to particular ethnic groups. It belongs, I repeat it once again, to the nation: to Russians, Jews, Germans, and so on; all who live on Estonian territory. The majority will vote to decide. They have the right to decide their own destiny.

But now, a comment on the word "secession." It is not exactly correct, or appropriate, because an occupied territory cannot secede.