UW Law School-The World

The axiom that the boundaries of the University are "the boundaries of the state" no longer applies. A world-class University necessarily is interested in the world and effective in addressing and solving world problems.

The three following articles describe recent activities by our faculty in Europe, Central and South America and the Far East. They demonstrate our interest in world problems and the recognition the world offers to our faculty.

Ibero American Studies

Kathleen Conklin '90

Through a variety of academic programs and outreach activities, the University of Wisconsin maintains considerable contact with Latin America. Much of the more intense and practical involvement is a result of the programs directed by UW Law School Professor Joseph R. Thome.

Thome moves between two worlds and academic communities. He is a full professor of law, teaching contracts, Latin American legal institutions and modernization in the Third World, and related courses, and also is the Director of the Latin-American and Iberian Studies Program in the College of Letters and Science. This program coordinates or supports activities with Latin America, Spain and Portugal, including BA and MA programs. He is one of the most articulate, if soft-spoken, commentators on the complex economic and legal issues facing what he calls the real third world countries.

One focus of Thome's legal studies is land reform. He is heavily involved in identifying the economic problems, legal obstacles and methods of modifying the legal structure with respect to land ownership.

Countries such as Colombia, Nicaragua, Bolivia and Chile have existing legal systems regarding land ownership. The problem is the distribution. Typically, ninety percent of the land is controlled by 5% of the population. Most of the rural population has little or no land whatsoever. Besides the oppression of workers which results from such a heavy land concentration, there is a troublesome concentration of economic and political power in the elite.

But the legal structure is itself an obstacle to this redistribution. Constitutions guarantees that a property owner may do anything with property. There is no obligation to produce. Eminent Domain laws are very cumbersome and require compensation based on market value and paid in cash. In addition, land usually can be acquired for public uses or when it is abandoned or very poorly used.

New land reform laws attempt to remedy this situation by establishing faster procedures and special tribunals. These laws also permit expropriation of land due to excess size alone. Compensation is based on tax appraisals and is payable over a period of 10-20 years, rather than in cash.

Thome has also been studying a relatively recent phenomenon in providing poor people with access to the legal system and public services. In the last ten years, Latin America has experienced a significant legal development. New types of legal services programs operate with communities of poor people rather than with individuals. For example, the squatters living in tin and cardboard shacks are able to acquire legal identity as a group, through the program. Once organized as a community, they can pursue enforcement of their legal rights to minimum wages, social security benefits and other entitlements. The goal is not so much to create laws but to access those already on the books and enforce them.

Often these groups have otherwise been ignored by the courts or administrative agencies. With the assistance of the legal services program, they have become better organized. Specific services provided by the program include paralegal training, basic management skills and information about how to use the press and existing legal systems. In the meantime, the program provides education and representation until the communities are empowered to act on their own.

Inter-American Legal Services Associ-

Joseph R. Thome

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ation (ILSA) is an umbrella group which helps the legal service groups, which in turn help the impoverished communities. ILSA is funded by the Inter-American Foundation, Canadian and European foundations and churches. Dutch foundations and churches also provide tremendous support.

Thome's research interest has centered on how the law can be used to promote social change from the bottom up. His study of the legal service programs operating in Latin America suggests equitable development can be brought about in more legal rather than revolutionary ways. Revolution, he suggests, becomes the preferred method only after years of repression, exploitation and perversion of the legal avenues to political power. Even then the outcome is an unhappy one since the revolution provides no experience in structuring an appropriate accessible government.

The goal of stable and mutually beneficial relationships with third world countries is admittedly an ideal one. But growing populations and technological integration make such relationships an absolute necessity. Thome gives two reasons for supporting the legal reform which would open markets and provide equitable distribution in Latin America. One, the people of those countries would have a personal stake in their economy, and society, thereby making it more productive and stable. And two, those countries would become better markets for US products.

Thome notes that US policy now reflects a tendency to support the traditional governments which represent the elite and their social and economic structure. Even if it is a repressive regime, we automatically support anything which appears to be an anti-Marxist government. In the interim, until the US stops attempting to solve disputes by sending troops, the propagation for social change must come from education.

"We need to be educated. What we do is very influential," said Thome. As he sees it, he is primarily an educator about what underdevelopment is and what role the US plays in that underdevelopment. He is guardedly optimistic about the awareness and direction of law students.

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Of the students in his Latin American Legal Studies courses he admits

> Most are self-selected; they already have an interest in the issues confronting third world countries. But while law students in general seem to be getting brighter, better informed, there is also much less social concern than was evident in the student body in the '60's and '70's. More seem to be interested in individual careers and achievements. There is just a different focus.

Still there are students whose interest has that social aspect and are willing to sacrifice some self interest. Despite the trend toward individualization of interests, Thome predicts a role for the law student with a gestalt or universal vision. Because of technological capabilities and other advances, the law student must be capable of highly integrated work.

Part of the apparent student apathy may be due to not knowing the potential extent of influence in certain jobs. There are certainly positions available with human rights groups in this country, private foundations and educational organizations. The World Bank and other international agencies provide a somewhat greater scope of opportunity. In Latin America itself, there is work to be done through the Ford Foundation, Agency for International Development and the UN. But, Thome admits, these career opportunities are limited. While there has been some thought toward providing more legal internships in Latin America, money is an obstacle. An even greater consideration is the fact that Latin America already has a good population of lawyers. For students and lawyers wanting to bridge the two worlds and legal systems, there are probably better and more effective opportunities within the Unites States itself.

This country will also become more aware of the world situation by facilitating exchange of all types of students. Thome hopes more third world students will have the opportunity to study in this country. Students from Korea, Japan and Taiwan are coming in, but, he notes, they do not exactly represent underdeveloped countries. Scholarship programs may be needed to get students other than the elite. Contributions by businesses, which are already tax deductible and good public relations, should also be encouraged as supporting a certain vested interest in the world economy.

Although there is much which can be done through education, Thome emphasizes that we must not have any misconceptions about the scope, urgency and severity of the legal issues ahead.

The point is that laws themselves may create enforcement problems when there is no inherent economic incentive to follow them.

Most crucial is an understanding of the interaction of those legal problems. For example, because many of Brazil's people have no land to call their own, they move to the forests and clear them to live. The natural rain forest in Brazil is rapidly being destroyed. Meanwhile, hundreds of thousands of acres of privately owned land lie fallow and unproductive. With more equitable distribution of productive land, the pressure to destroy the rain forest would lessen. But it is not laws per se which can remedy the destruction of natural resources by a desperate people, those laws must be founded on sound economic principles.

The point is that laws themselves may create enforcement problems when there is no inherent economic incentive to follow them. This is further illustrated in what Thome calls the "Rambo mentality" of US involvement in Latin America. In Colombia, for example, current trade practices are destroying coffee prices, the only legitimate crop exported from that country. At the same time, the US is spending billions of dollars on obsolete military equipment to quell the drug cartels. In other words, we are using legal and economic power to eliminate the symptoms, not to destroy the cause of the pressure to engage in illicit drug trafficking.

Prof. Thome is convinced about one thing: "The real evil is in poverty, oppression and inequitable legal structures. Legal reform must address those fundamental issues. It is not enough to knock off the problem people."

[Editors Note: As confirmation of the Law Schools interest and influence in Latin America, two second-year students, Mary Pitassi and Ed Olson, were recently selected as Tinker Fellows and will spend time in Latin America. Mary will study labor relations and labor law under the Pinochet government. Ed will work with one of the community legal service programs mentioned in this article.]

The Beijing Conference on Legislation

Prof. William C. Whitford

I had the good fortune to attend a seminar on "Legislation" held on the campus of Peking University, March 14-16, 1990. The conference was co-sponsored by The Faculty of Law, Peking University, the Legal Bureau of the State Council, and the Ford Foundation. The conference was originally scheduled for June 1-3, 1989 but "postponed" for obvious reasons. It was then rescheduled. Participants at the conference included about 40 Chinese Nationals and 10 citizens of other countries. The Chinese participants included both academics from various law schools around the country and employees of the legal drafting departments of various state agencies, including the two most important agencies in this respect, the National People's Congress and the State Council. The foreign participants came from 5 different countries. Most of the foreign participants did not have special expertise in the Chinese legal system but were asked to draw on their experience in their own countries with parallel legal problems. Conference proceedings were in English and Chinese, with simultaneous translation of oral comments for the benefit of those who spoke only one of these languages. Papers prepared for the conference were also translated into both languages before the beginning of the conference.

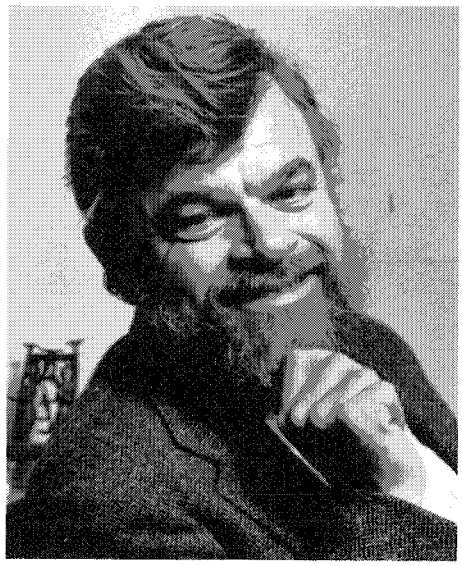
Legislation is a significant topic in any country but it is an especially revolutionary one in the Chinese context. Until the end of the cultural revolution China did not have what lawyers trained in western legal systems would regard as a professionalized legal system or even the rule of law. This was true throughout history, both before and after the Communist revolution. During this period the Chinese did not attempt to control the decisions of local bureaucrats and judges through the adoption of governing rules and the development of a profession specializing in the interpretation and application of these rules. Rather, they emphasized educating officials in the proper moral and/or political principles, so that these principles could guide the exercise of discretion in a satisfactory manner. Indeed, for a period beginning the "anti-rightest' campaign in 1959 and ending approximately with the end of the cultural revolution, lawyers or legal specialists tended to be vilified. The law schools were even closed for periods during the cultural revolution. And when open, they did not award their students law degrees and in the classes they taught emphasized political theory more than legal doctrine. Few judges were appointed because of their legal training; most judges got their jobs because of political loyalty. In these circumstances, it is not surprising that at the end of the cultural revolution the number of people with formal legal training in China was very limited.

Shortly after the end of the Cultural Revolution, which the Chinese date with the arrest of the Gang of Four in 1976, the Chinese Government and the Communist Party adopted a policy of legality and embarked on a program of legislation. This program has featured the adoption of general statutes by the National People's Congress and the adoption of regulations under these statutes by the State Council. Parallel agencies have been established at provincial levels of government. In recent years efforts have been to professionalize the judiciary. A high percentage of law school graduates are now being assigned to judicial positions.

This Conference marked the first time Chinese academics and important staff in the legal drafting departments have gotten together to discuss the program of legislation since the tumultuous events in Beijing of May and June, 1989. Although there have certainly been changes in China since then, the government has indicated its intent to continue the legislation program. Conference participants seemed particularly interested in any data that would suggest whether that was in fact the case. Since June, 1989, the pace of enactment of legislation and regulations by the National People's Congress (NPC) and the State Council has apparently declined slightly. Recent statistics reported at the Conference indicate that the output of the NPC has declined 15% and of the State Council 40%. While this decline concerned some conference participants, staff members of these two institutions insisted there had been no change in policy and that the decline in "output" was related to the complexity of the matters with which they are dealing and the like.

A wide range of topics were covered by the papers delivered at the conference. The greatest percentage of the papers, however, related to the need for more legislation to facilitate China's program of Economic Reform. Initiated at about the same time as the legislation program, the Economic Reform program involves both a de-emphasize on the role of central planning in the operation of state enterprises and the introduction into the economy of private enterprise, both domestically and foreign owned. This decentralization of economic decision-making has brought about the need for rules both to define the identity of different economic entities (e.g., a basic corporations code) and to guide their interaction (e.g., a contracts law based on market transactions, rules of unfair competition). There seems to be a general consensus that legislation is the best method to meet this need.

Although a number of other topics were mentioned, only occasionally was any mention made about legislation defining or regulating the Country's political structure (e.g., method of selection of local councils) or individual rights. And



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although a few foreigners tried to raise questions about the role of the Communist Party, both in the legislative process and in the government of economic enterprise in a period of economic reform, there was virtually no discussion of this topic. I have little doubt that the reluctance to discuss these subjects was a reaction to last year's crisis in Tian'anmen Square.

On the other hand, in the area of economic reform, as well as some other topics, discussion was robust and the disagreements many. Though there seemed to be nearly universal enthusiasm for continuing the program of economic reform, there were differences of opinion about how to proceed. I noted that both the comments about economic reform and the stated disagreements were often cast in general and tentative terms. For example, there were continual calls for enacting basic laws essential for establishing a legal basis for market transactions, such as laws defining what are legal entities and concerning their internal governance, or providing a legal basis of the trading of shares in enterprises. Calls were made for more laws to promote research and development or for the protection of consumers. A common criticism of such proposals was that they were too general, but the critic did not provide the specificity either. When more specific comments were made, they tended to be criticisms of somebody else's proposals. For example, it was pointed out that many enterprises did not have the money needed to pay judgments (or fines for violating environmental or consumer protection regulations), and that if enterprises were not required to continue to remain responsible for workers' social needs, even if the workers are redundant, there was no substitute social security system for them. Again, however, practical solutions to these problems were not proposed.

In general, it seemed to me that there were fewer suggestions for specific programs or legislative initiatives than I would expect to hear at a conference in the United States on a similar topic (though there were some). Perhaps this reluctance also was a reaction to the events of last year—the hypothesis being that specific suggestions were more likely to get one in trouble. It is possible, however, that at least in part this tendency reflected simply Chinese conventions about the appropriate level of abstraction at an academic conference, a convention that might well have been reinforced by the very general subject matter of the conference.

There were two papers delivered at the conference that provoked particularly lively discussion and are worthy of special mention. One paper dealt with the relation between law and morality, and the topic that produced the most animated disagreement was the extent to which the society should continue to rely on moral teachings as a method of social control. Some participants at the conference were more willing than others to use law as an almost exclusive means of social control, at least social control emanating from government. The second paper concerned the implementation of legislation. It was pointed out that because of ignorance of the law (by judges and administrators) as well as corruption in government, much of the legislation already enacted is not being applied fully. There was also reference to "some leaders" who expect their word to be followed, even if inconsistent with existing legislation. One reaction to this paper was to suggest that perhaps China was enacting legislation more quickly than the system for implementation of new laws could handle. This implicit suggestion, that the pace of legislation should be slowed, was one of the more specific suggestions during the entire conference, but it provoked considerable hostility from conference participants. Though there was agreement that implementation problems were widespread, the majority seemed unwilling to deal with them by slowing the pace of legislation, perhaps fearful that this would risk the policy of promoting legislation altogether.

It seemed to be the general consensus by all concerned that the conference was a great success. A number of participants commented that the discussion was more spirited and there were more conflicts of opinion than had been anticipated. I took such comments as suggesting that perhaps the Chinese participants were feeling more secure in expressing their personal opinions than they had felt in the

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first months after Tian'anmen Square. It was also clear that there was nearly universal enthusiasm among Conference participants for the program of legislation, with a full understanding that this represented a shift from traditional methods of social control in China to a more westernized system. Such a change has considerable significance for the role of lawyers and law schools in Chinese society, of course, so in some sense the program of legislation can be seen as in the self-interest of those attending the Conference. It can also be seen as a commitment to control of official discretion, and in that sense a commitment to reducing the power of present officeholders.

No comment on this Conference would be complete without noting two additional matters. First, my decision to attend the conference was not made without difficulty. I was aware, and made aware by numerous friends, of the feeling that China should be boycotted as a protest of violent ending of the Tian'anmen Square protests. I decided to attend because I felt that the people at Peking University Law School, the primary organizers, were not the people who should be boycotted, and my experience has convinced me that I was right. I think no purpose is served by avoiding contact with the very people who were the primary victims of the crackdown. Whether one should simply be a tourist in China at this time is a more difficult question. Tourism is down, and there is little doubt that it is taking an economic toll, perhaps an appropriate one.

My final point is simply to note the extreme generosity with which the Chinese hosted the foreign guests at the conference. English-speaking students at the Faculty of Law were particularly giving of their time, in translating for us and in guiding us to the many tourist sites in the Beijing area. A special thanks is due to Dean Wang Chenguang of the Peking University Law School, who organized the conference and saw to it that our every need was met.

Law in the Baltics

Prof. Zigurds L. Zile, Foley & Lardner-Bascom Professor of Law

[Adapted from remarks at the ABA National Institute—"Change in Eastern Europe and the Soviet Union: Implications and Opportunities for Western Business," New York, New York, April 5–6, 1990.]

Western businesses, we are told, are enthusiastically plunging into the transformative processes in the Soviet Union and the countries of Central and Eastern Europe. And we are, on various occasions, invited to celebrate what is described as new and exciting opportunities.

The general mood in the Western business circles, however, seems less festive than we are sometimes led to believe. Most of the enthusiasm belongs to the Americans, I'm afraid. It belongs to a people who intermittently suffer from the effects of combining measured pragmatism with an excess of rapture.

Pragmatism today urges sober assessment of the causes, the nature, and the probable course of the recent events in Europe and the Soviet Union. Pragmatism also urges close attention to careful design and development of relations, including economic relations, appropriate under the actual conditions. However, the ecstatic interest in the subject that, apparently, accompanies this pragmatic process is apt to distort the perceptions of what the actual conditions are.

It is a legal counselor's job to caution the business venturers to temper their enthusiasm with a keen appreciation of the risks as well as the potential rewards. And it is only natural for a legal counselor to give much weight to "the legal element" in this risk-reward assessment. Indeed, the lawyer is expected to locate and gauge the positive law footings and doctrinal beams thought essential for the support of commercial transactions.

But such firm legal underpinnings, often referred to, with comforting familiarity, as "the legal infrastructure," should not be assumed in the case of the Baltics—the subject area of my remarks.

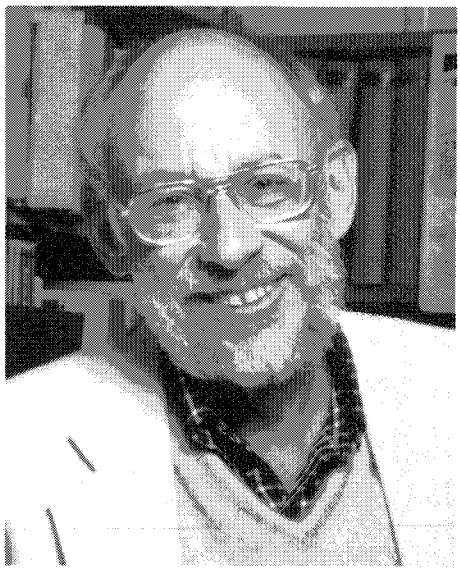
The relevant legal infrastructure in the Baltic states today can be likened to a multi-layered sand dune. A close examination may reveal different hues and a variegated texture but it's all sand, nonetheless. A set of three perspectives on the law in the Baltics, I believe, support the metaphor. I would like to take up each of them in turn.

First, the USSR regards the occupied Baltic states as constituent parts of the Soviet federal state. In Soviet view, they are among the fifteen union republics. The USSR Constitution of 1977 purports to define their status, their governmental structure and powers, and their external relations. The latter include relations with the federal government in Moscow as well as those with the other republics. The federal constitution contains a supremacy clause which provides that federal law prevails over conflicting republic law. The list of federal powers is comprehensive. The USSR has jurisdiction to ensure unity of legislative regulation throughout the country; to direct the national economy; and to conduct foreign trade and other foreign economic activities on the basis of state monopoly.

At the same time, the federal constitution refers to the union republics as "sovereign." It also grants to them the right to enter into relations with foreign states, conclude treaties, and join international organizations, under federal control, of course. And, finally, each union republic retains the right freely to secede from the USSR, according to procedures (being worked out at this very time) aimed at denying this right as a practical matter.

These constitutional forms, providing for all-pervasive central control and, at the same time, for putative republic autonomy, are responsible for much of the legal uncertainty today. The observed weakening of Moscow's grip has invited the republics to test whether the previously nominal self-rule might be transformable into a broad sphere of genuine independence.

Thus, Latvia—at the time still functioning as the Latvian Soviet Socialist Republic—amended the republic constitution on November 11, 1989. The amendments state, among many other things, that the Latvian Supreme Soviet, or Council, alone has jurisdiction to determine to what extent federal legislation will have an effect on Latvian territory. Moreover, in direct contradiction to the vertical structure of the USSR procuracy, another provision empowers the Latvian Supreme Council alone to appoint the Latvian republic procurator. The procuracy, of course, has the most complete oversight of the uniform application and execution of all laws.



Zigurds L. Zile

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Along the same lines, the Lithuanian Supreme Council announced, early in January, that the USSR Law on Constitutional Review was invalid on the territory of the Lithuanian Republic as of the day of its adoption.

With a regard to economic matters, for instance, Estonia suspended a portion of the Law on the USSR State Budget for 1990. The Estonian enactment essentially erased the distinction between federal and republic taxes and revenues. The Estonian law simply redefined both categories as entirely a republic concern.

There have been scores of other similar legislative challenges in the Baltics.

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The center, that is Moscow, has responded to the growing disarray in the country by a stream of its own legislative enactments and executive decrees which it expects to see applied throughout the realm. But revisions often follow before the implications of the original texts have been tested in practice or, for that matter, sufficiently understood. Since the federal criterion is constantly in flux, the validity of even compliant republic legislation is in doubt. Thus, even those who wish to play by Moscow's rules are poorly informed of what the rules are. Or, to put it in another way, even those who let Moscow's formal constitutional system define their legal universe are rewarded by most limited legal certainty.

Now, to the second perspective on the law in the Baltics. Moscow has directly contributed to the legal uncertainty in the Baltics by singling them out for special treatment within the federal order. I have in mind the USSR Law of November 27, 1989, on the economic independence of the Baltics.

This law has two objectives:

First, it is to serve as a piker's gesture towards the Estonians, Latvians and Lithuanians in view of their rising demands for restoration of independent statehood. It is a crumb, not even the proverbial half-loaf, tossed in their direction in the naive hopes that it will satisfy their craving for the whole.

The law's second objective is to serve as an economic demonstration project in the helter-skelter to rescue the Russian empire. It is a cynical attempt to exploit the remnants of initiative, workmanship and sense of individual responsibility—a tradition which the forty-five years of continuous Soviet occupation have not entirely eradicated. For instance, statistics show that labor productivity in the three Baltic states is far above the country's average. The three have the lowest percentages of persons living under the poverty line. Also, in the Baltics, the average output of goods and services of the recently permitted so-called cooperatives, or quasi-private enterprises, is more than three times the country's average.

The law on economic independence itself is a couple of pages of banalities whereby Moscow gives up none of its powers to meddle. After listing the ways in which economic life in the three occupied states remains subject to Moscow's diktat, the law surpasses itself by adding a catch-all Article 6: "It is established, [it states], that USSR legislative acts regulating economic relations are in effect on the territories of the indicated republics insofar as they do not hinder the republics' changeover to economic independence."

Confronted with layered legislation one wonders about the locus of authority regarding specific legal questions. In the Baltics (no less than in the USSR) today, there is no tradition to serve as a guide. The temper of the times, the slogans of political and economic restructuring, argue for discarding a flawed past. Indeed, the tenacious ways of the past are to be fought rather than consulted. Yet there is not even an intelligible vision of the political and economic order of the future to take the place of tradition's guidance.

In the Baltics, the federal government's faltering half-measures are regarded with disdain. Amidst the growing chaos the Balts have come to consider their economic independence unthinkable without political sovereignty. And this striving towards sovereign statehood suggests a third perspective on the legal infrastructure in the Baltics.

The Baltics do not seek secession. Instead, they insist on the removal of Soviet occupation, whereby their statehood, still recognized in international law, would be restored in fact. Taking the secession route within the framework of the USSR federal constitution is regarded as morally repugnant as well as objectionable from a legal point of view. That route would betray the collective memory of these nations and forfeit their claim of international legitimacy. Estonia, for instance, made this point on April 2.

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On March 11, the Supreme Council of Lithuania proclaimed "the restoration of the exercise of sovereign powers of the Lithuanian state, which were annulled by an alien power in 1940. From now on," the declaration continued, "Lithuania is once again an independent state."

On March 30, the Supreme Council of Estonia stated that it did "not recognize the legality of state authority of the USSR on the territory of Estonia." It further declared "a beginning of a period of transition" towards "restoration of the republic of Estonia."

Previous to these actions in Lithuania and Estonia, the Latvian Supreme Council had declared, on February 15, that: "It is necessary to do all to restore the state independence of Latvia and transform it into a free, independent Latvian state." The same declaration repudiated the 1940 Soviet decree that had forcibly brought Latvia into the Soviet Union.

Acute legal complications and uncertainties are bound to follow declaration of restored national independence in the face of Moscow's resistance. Dual power raises havoc with legal infrastructure.

An outright declaration of independence, as it happened in Lithuania, in principle, turns the law's clock back to mid-June of 1940; that is, to the date of the Soviet military invasion. As a result, the declaration would seem to invalidate the occupying power's subsequent acts. Indeed, the Lithuanian declaration states: "The February 16, 1918, Act of Independence of the Supreme Council of Lithua-

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nia and the May 15, 1920, Constituent Assembly Resolution on the restoration of a democratic Lithuanian state have never lost their legal force and are the constitutional foundation of the Lithuanian state. . . . [The] constitution of no other state has jurisdiction within it."

By the same reasoning, a declaration of independence would revive the laws of the independent republic which were in force at the time of the Soviet invasion and, simultaneously, void the legislation of the Soviet period. Invalidation of the subsequent expropriations, for instance, could unsettle all property rights. This, in turn, would cast a pall of uncertainty over both ongoing and contemplated commercial transactions which invariably concern property.

It has been suggested that much of the commercially relevant legal infrastructure might be found in the law which dates back to pre-revolutionary times. The formulation is, certainly, inapposite to the Baltic states; their respective legal orders were not lost in a revolution.

That aside, it is technically true that, upon a declaration restoring independence, the laws on business organizations and civil and commercial law, all in force in June of 1940, would come to life. However, they might not form a lasting set of legal tools for today's modern transnational commerce.

In fact, while the Baltic lawyers today take the restoration-of-independence scenario seriously, they do not, apparently, contemplate rebuilding their countries' economies with revived but, to some extent, obsolete legal mechanisms. Instead, they are searching for possible adaptable models from the more recent Western experience.

* * *

Let me conclude by noting that the Soviet rule has excelled mainly in tearing down existing institutions and ways of life. It has a sorry record of building anything viable in their stead. When put to test, the Soviet power inclines to respond by what it has been good at—repression.

It stands to reason that Moscow will expend much human energy and, possibly, considerable political capital to stall the independence process in the Baltic states. This resistance will only retard Moscow's fumbling effort to transform its economy. But if, as often asserted, the transformative process in the Soviet Union is irreversible, so is the independence process in the Baltic states.

In the meantime, some transnational commerce might be carried on despite the described softness of the legal infrastructure; despite the many present uncertainties regarding property titles, organizational forms and validity of promises.

The representatives of private and quasi-private entities in the Baltics, I surmise, will continue avidly to seek ways to enter into, preserve and expand relationships with Western partners. It is for the simple reason that their economic interest in such contacts is fortified by strong political considerations.

If this happens, any transaction will be like a new cell in the developing market organism. The parties to a transaction are likely to strive to promote and preserve their relationship in expectation that the developing market will yield further mutual advantage. The parties are not likely to exploit legal uncertainties and contradictions to undermine the relationship. Promises will be kept not for fear of a sanction external to the incipient market, but for the value of the continuing relationship.

Interference by an embattled empire's armed force rather than the shifting sands of law is, in my estimation, the main threat to the opportunities for Western business in the Baltics.

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