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A COMPARISON OF THE STRUGGLES FOR INDEPENDENCE OF THE UNITED STATES AND LITHUANIA

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Two countries, one in the Old World, the other in the New, one having attained independence 200 years ago, the other having had to strive for independence repeatedly over those same two hundred years, twice meeting with success—but failing at least four times. At first glance, Lithuania's struggle for independence might be thought to be entirely dissimilar from that of America. Besides anything else, the United States would seem at first glance to have been more fortunate in all of the circumstances of its struggle. But a closer look reveals many parallels to exist between America's struggle for independence two hundred years ago and that of Lithuania during the last five years. Indeed, Lithuania of late arguably has been more fortunate in some of the conditions of its struggle than was America two centuries ago.

Popular Support For Independence

Let us first take a look at the support for the struggles for independence that each country enjoyed within its borders. Clearly, the larger the percentage of support for independence among a population, the easier achieving that independence will be. In this category, the advantage, perhaps surprisingly, lies with Lithuania, whose population supported independence much more unitedly than did America's

The United States, at the time of the Revolutionary War, had an estimated 3.9 million inhabitants. Lithuania presently has over 3.7 million. Approximately one-third of the population in America supported the Revolution, one-third was strongly opposed, and one-third was indifferent. Indeed, the cause of American independence was resisted with arms in what amounted to civil war, which was especially pronounced in the middle Atlantic colonies.¹

Independence was, in contrast, overwhelmingly supported in Lithuania. This can be seen in the results of a number of elections and other votes. For instance, over 90 percent of Lithuanian voters supported independence in a February 9, 1991, referendum.²

Why the greater support for independence in Lithuania than in America? Firstly, Americans had many ties binding them to England, including ethnicity, law, and culture, having only then recently even begun to think of themselves as other or separate and distinct from their relatives in England. Whereas none of the above can be said for Lithuania. Lithuania's struggle can properly be termed one for ethnic, cultural, and linguistic, survival as a group. Their oppressors, the Russians, are Slavs whereas Lithuanians are Balts;

Lithuanians have a tradition of enlightened self-rule with respect for human rights, including democracy earlier in this century, whereas the same can certainly not be said of Russia or Russians. Since Russian or Soviet rule has striven to destroy the Lithuanians as a people (by banning for forty years even their written language in the last century, mass deportation, colonization, etc.), that more of their population supported independence than did that of America is not at all surprising.

Nature of Struggle

Although the stakes may be said to have been higher in Lithuania's case (its struggle for independence being also a struggle for survival as a people), in Lithuania's as well as America's case, the opposition was a superpower. Indeed, England was the mightiest power in the world at the time of the Revolutionary War. The United States won the war through a combination of, on the part of the British, a lack of political will, poor generalship, and the limited but crucial intervention of the French, and, on its own part, the sacrifices of its Patriots and the generalship, as well as the stewardship, as it were,

of General George Washington. Lithuania has, thankfully, not had to resort to arms in its most recent struggle for freedom, attaining its freedom through a political struggle.

Committees of Correspondence

The beginning of this most recent struggle in Lithuania was focused on Sajudis. Sajudis, meaning "the movement," was the first independent mass organization allowed in Lithuania since Soviet troops invaded the Republic of Independent Lithuania in 1940. (Of course, all "organizations" in Soviet-occupied Lithuania until 1988 or so had been rigidly controlled and, indeed, in most senses of the word, part of the ruling structure.) Sajudis, begun in June 1988, mushroomed into a force which eventually won overwhelming control of the Lithuanian legislature and declared the reestablishment of independence on March 11, 1990.

In America the drive toward independence was also begun by non-governmental organizations. Bearing in mind that the various colonies had no governmental ties with one or the other, their legislatures formed committees of correspondence to inform one another in regard to their resistance to British rule. The first was formed in Boston, Massachusetts, in 1772 and the practice spread to most of the other colonies within that year.³

Existing Political Structures

Lithuania in terms of communication and cohesiveness had a great advantage over the America of the mid-eighteenth century. America's people were spread from Maine to Georgia. There were few improved roads, almost no bridges. It is said George Washington had to make his way across five major rivers on his way from his home in Virginia to his inauguration as President in New York City. Additionally, the 13 colonies were completely dis-united: they had, as noted above, no confederation, no history of common action. Each colony had its individual history of development, and its ties of government were to England, not to its neighbors.

Lithuania, on the other hand, was recognized to a limited extent as a governmental unit in the Soviet system. Although its legislature (the Supreme Council) was powerless and its Lithuanian Communist Party was only a sub-unit of the larger Soviet Union's CP, at least Lithuania had the shadows of structures of government and self-rule.

Lithuania, then, had "merely" to receive these existing structures for herself, to infuse them with independence. America, on the other hand, had absolutely no existing, cross-colony, structures. Everything had to be created from nothing. America was severely hampered by this—much has been written regarding the ineffectiveness of America's first constitution, the Articles of Confederation. The United States even had to build a capital city out of swampland, whereas Vilnius has been Lithuania's capital for centuries.

First Free Deliberative Bodies

The various colonies in America, having been settled at different times in dissimilar ways (e.g., Maryland was founded as a feudal estate with a view towards providing a refuge for Roman Catholics), had no pan-colonial institutions, which were needed to oppose Great Britain and to secure independence. The first governmental unit of resistance of the American Colonies as a group was the First Continental Congress in 1774 in Philadelphia. Twelve colonies (Georgia being the exception) participated with a total of fifty-six (56) delegates in attendance.⁴

Lithuania's first governmental unit of resistance was the relatively free election of pro-Lithuanian delegates to a parliamentary body of the Soviet Union. Notably, the number of the deputies elected was fifty-eight (58)—almost the same number as that of the American delegates to the First Continental Congress. The elections occurred in the spring of 1989 and were to the Supreme Soviet of the Soviet Union.⁵ Of these at least thirty-five (35) were supported by Sajudis,⁶ and all fifty-eight (58) of the delegates were reported to act in concert in support of Lithuania's goals.⁷ The contributions of these fifty-eight delegates to the cause of Lithuanian freedom was recognized later by the then newly-independent Lithuanian legislature which granted these delegates the right to participate in the work of the new Lithuanian legislature as non-voting members.⁸

Provisional Constitutions

Both Lithuania and the United States had constitutions or basic laws which preceded the present constitutions. In Lithuania this original constitution was called the Provisional Basic Law. A Sajudis supported majority having won elections to the Supreme Council, as Lithuania's legislature was called, Lithuania declared the restoration of its independence on 11 March 1990. The May 12, 1938, constitution was restored and immediately suspended.⁹ The legislature then drew up a document with which Lithuania governed itself for the next two and one-half years, called the Provisional Basic Law.¹⁰ The Basic Law did not provide for a true executive branch nor an independent judiciary.

The first "Basic Law" of the United States also did not provide for an executive or an independent judiciary. It was called the Articles of Confederation and was promulgated by the Second Continental Congress, which in November 1777 sent it out to the various state governments to be ratified. (The last state to ratify the Articles was Maryland in 1781). Basically,

the Federal government under the Articles was extremely weak, lacking the power to tax or to act directly upon individuals. It was entirely dependent upon the various state governments.¹¹

Constitutions

Neither America nor Lithuania were satisfied with their original constitutions. Thus, Lithuania on October 25, 1992, in a referendum ratified a constitution (with 83.5% of the electorate voting in favor) which provides for three distinct branches of government, a popularly elected president, and a mixed system of voting.¹² The party which had formerly been in the minority won a majority, and power was passed successfully.

The Articles of Confederation, on the other hand, were the supreme law in the United States for eight years when a government elected under the new Constitution took office in 1789, the Constitution having been written in 1787 and accepted by the requisite nine of the thirteen states by mid-1788.¹³ Thus, the U.S. Constitution took effect twelve years after America's Declaration of Independence (1776), whereas Lithuania's Constitution became effective about two and one-half years after Lithuania declared its independence restored.

The Making of the Constitutions

Much has been written of the genius of the American Constitution. And well it should be regarded as a magnificent achievement. It provided for a tripartite government with a diffusion of power, it limited the power granted to the government, thus freeing the individual from being overburdened with governmental compulsion. The Constitution did not propound revolutionary principles: the principles it was based upon had evolved over centuries by the English people; it was not revolutionary in that sense. Its revolutionary quality was that these principles and traditions were codified—which was unheard of at the time.¹⁴ Its success perhaps can best be measured by the fact that it has lasted for over two hundred years.

One of the reasons for the success of the U.S. Constitution was that its Framers were extremely well-educated and experienced in democratic government. They had the traditions of the Rights of Englishmen to uphold them as set forth in the Common Law, truly one of the profoundest achievements of mankind, which was a knowable and functional legal system generally protecting the individual. The role of the Common Law in the success of the Constitution cannot be over emphasized: it allowed the Framers to set out, for example, the entire procedure for obtaining warrants of search and arrest in just twenty-nine words. (Fourth Amendment: No warrants shall issue, but upon probable cause...)

The October 1992 Lithuanian Constitution was passed not in a separate Constitutional Convention as was the case in America, but by the Supreme Council (the legislature or parliament) of Lithuania. This October Constitution cannot be said, as yet, to have withstood the test of time. We can only hope that it will prove successful. But that it is as good as it is (and it is a fairly good constitution) is quite remarkable. For, although among its framers were many well-educated persons, none of them *had ever even lived in a democracy* (at least as an adult). Moreover, they had to overcome the effects of fifty years of Soviet enforced doublespeak that had at least tried to warp their conceptions of democracy, fair play, and the proper role of government. The framers of the Lithuanian Constitution, once communication with the West was re-established, were able to lean upon Western tradition and experience. To the extent that the Lithuanian Constitution succeeds as a document may well be based upon the amount of Western constitutional law and experience that the Lithuanian legislators were able to absorb over the two and one-half year period between restoration of independence and ratification of the Constitution. However, given the conditions of its framing, the Lithuanian Constitution may be as great an achievement as is the Constitution of the United States.

Even though the Lithuanian Framers appear to have absorbed principles of Western constitutional experience rather well, technically they had great difficulty in the actual writing of the constitution because of the lack of a Common Law base for their society (or, for that matter, any rational legal base). We have noted how the Common Law allowed the American Framers to describe entire procedures and guarantees as it were in shorthand. This was not available to the Lithuanians. That they recognized this handicap can be seen even in the "Lapinskas" constitutional variant, proposed April 21, 1992, where, in an attempt to create Common Law definitions and protections where none exist, it was proposed that super-majorities of the proposed constitution's legislature would enact legislation regarding exceptions to enumerated basic rights. (Viz., the "Lapinskas" variant had provisions such as, e.g., that one's residence was inviolable. Instances when it could be "violated," apparently by government as well as by private action, was subsequently to be codified by super-majority.)¹⁵ The cumbersome requirement of super-majorities and the politically volatile nature of the task lead one to believe it was fortunate that this constitutional variant was not the one ultimately ratified.

A Practical Example

A practical example of what can occur when there is no Common Law to inform and guide constitutional (and, for that matter, statute) interpretation is the strange case of P. Aleknavicius. Aleknavicius, formerly the pro-Soviet Communist party chief in Prienai, was found guilty on 17 December 1992 of having participated in the failed but bloody putsch of the January 13, 1991. According to the 18 December 1992 issue of *Lietuvos Aidas*, although the accused was sentenced to a minimum term of imprisonment, the Supreme Court of Lithuania nevertheless declined to order certain property of the defendant to be seized (confiscated) by the state, *citing the new Constitution's protection of private property*. Indeed,

based upon the article, the Court has apparently ruled that the applicable section of the new Lithuanian constitution (paragraph 23) has conferred an absolute protection upon private property, allowing only recompensed taking under the doctrine of eminent domain, as indeed the constitution's plain language appears to state.

Although the proposition is being put forth increasingly that American society has of late been ignoring to its peril the prohibition against unconstitutional takings as set forth in the fifth amendment (especially in regard to burdensome regulatory requirements), it is quite clear that private property rights cannot be absolute and are always subject to takings by the government upon the application of the Common Law concept of due process.

If indeed the Lithuanian Supreme Court has held that the Lithuanian constitution guarantees the inviolability of private property, this would mean that taxes could not be collected, nor customs laws enforced, search warrants executed, nor fines or penalties exacted. Additionally, since the new Lithuanian constitution fails to distinguish between restrictions placed on government and those placed upon the populace (a major failing), it would seem, then, that no damages could be collected even in civil suits.

The Supreme Court, however, probably meant only to forbid the seizure by government of property which was the fruit of criminal activity. Even such a more narrow interpretation, however, could act to hamper the prosecution of organized crime. Indeed, since contraband such as illegal narcotics, for example, can certainly be seized in any remotely rational legal system, it would appear that profits from illegal narcotics activity should also be able to be seized, even if "laundered," if the legislature adopts such a statute. The United States recognized the necessity of providing for such forfeitures with the "RICO" provisions of the Omnibus Crime Control Act. Nevertheless, the Lithuanian Supreme Court ruling (as reported) is problematic and unclear. However the case may be, were the Common Law (and its due process component in particular) operant in Lithuania, the meaning of particular clauses in the constitution would be much less vague.

Occupation by Foreign Armies

Lithuania was invaded and annexed by the Soviet Union in World War II pursuant to the Soviet Union's pact with Germany. From that time to the present, it has been occupied by a foreign army. The relatively small number of British troops on American soil prior to the time of the War of Independence were not foreigners, per se, inasmuch as America was truly a part of the British Empire. (Indeed, as we have noted, there was no pan-American government, there being only the several governments of the colonies.)

Subsequent to the War of Independence which it won in 1783, eight years after the beginning of hostilities, much American territory near the Great Lakes was still occupied by the British. Indeed, a secret order to hold them indefinitely went out in 1784, and they were to be held for ten more years. Spain also held onto a military post at Natchez, which was within the territory of the U.S. according to the treaty, and also controlled trade on the Mississippi.¹⁶ This occupation hindered American expansion and trade; it also, by inciting Indian tribes, to some extent threatened the peace. But it certainly did not hinder the formation of a national government nor threaten American security in general.

The Soviet occupation of Lithuania, on the other hand, was utterly inimical to the Lithuanian nation. It threatened indeed to completely eradicate the Lithuanian people, language, and culture. It was bloodthirsty from start to finish: witness the events of January 13, 1991, when Soviet armed forces unsuccessfully attempted a coup d'etat against the restored Lithuanian republic, costing at least thirteen innocents their lives and inflicting injuries upon hundreds of others.¹⁷

In contrast, the English commander in America, General Sir William Howe, a member of the English parliament, was, along with his subordinate generals, of the opinion that the war could not be won by the English. The extent that Howe's sympathy for the American cause affected his prosecution of the war has been long debated.¹⁸ Additionally, a large minority in Parliament opposed the war and even Lord North (the "prime minister") was half-hearted.¹⁹

Unequivocally, then, the occupation of the United States was of an entirely different character than was that of Lithuania.

Conclusion

This brief comparison between the path of the United States to independence and that of Lithuania's restoration of independence has found a number of congruities between them. Both countries had "provisional basic laws" which were supplanted by constitutions. In both countries, the initial drive toward independence was begun by non-governmental bodies. Both had world powers as their opponents. And both continued to be occupied by the opponent subsequent to that opponent's having recognized each country's independence.

But essential differences were also found. Lithuania's struggle was one for linguistic, ethnic, and cultural survival, which may be the reason independence was more strongly supported in the Lithuanian example. Further, Lithuania had "merely" to take over the structures of power, whereas the U.S. had to create them *ab initio*. And while the U.S. Constitution is unarguably a magnificent achievement, in the Lithuanian case their constitution is so only conjecturally and in relative terms; time will tell regarding its worth in an absolute sense.

In dosing, let us express our hope that Lithuania's independence proves to be as successful as that of the United States has been.

Notes

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1 Carson, Clarence B. *The Beginning of the Republic*, American Textbook Committee, Alabama 1984, page 36; Churchill, Winston A. *A History of the English Speaking Peoples*, Dorset Pre», New York 1990 edition, vol. 3, pp. 202-3.

2 February 10, 1991, *Los Angeles Times*.

3 Carson, p. 163.

4 Carson, p. 9.

5 *Tiesa*, March 29, April 11, and 16 May 1989 (Vilnius, Lithuania).

6 Dr. Vytautas Bieliauskas, "Skverbiasi laisvės spinduliai," *Pasaulio Lietuvis* #6-7 (Chicago 1989), p. 5.

7 Algimantas Čekuolis, "Lėtai. bet į Priekį," *Gimtasis Kraštas* #23 (Vilnius 1989) p. 2.

8 Ethnic Communities Services (ECS), *Lithuanian Independence: The Re-establishment of the Rule of Law*, Document Ten. (Chicago 1990), (Resolution I-20 dated March 13, 1990).

9 ECS Document 4.

10 ECS pp. 135-163.

11 Carson, pp. 26-27.

12 *Lietuvos Aidas*, October 29, 1992, p. 4.

13 Carson, pp. 101-2, 122.

14 Churchill p. 256.

15 *Lietuvos Aidas*, May 1, 1992, proposed constitution paragraphs (74 and, e.g., 21).

16 Carson pp. 73-4; Churchill p. 345.

17 *The New York Times* January 14, 1991, p. 1.

18 Canon, p. 41.

19 Churchill, pp. 186 to 192.