
WILSON CENTER PAPERS

Summaries of key reports given at recent Wilson Center meetings

"The Role of Law and Lawyers In Japan and the United States."

Transcript of a discussion sponsored by the Wilson Center's East Asia Program, June 6, 1983.

Few Americans would deny that theirs is a "litigious society." U.S. law schools, for example, graduate 35,000 students every year; in all of Japan there are fewer than 15,000 practicing attorneys.

Such comparisons, however, can be misleading. Michael K. Young, who teaches law at Columbia University, notes that Japanese *undergraduate* law departments turn out 38,000 graduates yearly. Most take the entrance exam for the Legal Training and Research Institute, which educates all of Japan's lawyers. But only some 500 students are admitted; the rest find their way into government and corporate bureaucracies.

Counting all those involved in legal work, not just attorneys (e.g., tax experts, administrative law officials), yields a different Japanese-American comparison. Japan has 1,119 people per legal worker; the United States, 505 (For Great Britain, the number is 1,023.)

That is not to deny that there are vast differences between the Japanese and American conceptions of law.

Japan adopted Western-style law only after the 1867 Meiji Restoration, notes Isaac Shapiro, a New York attorney who has practiced in Tokyo. Japanese attitudes toward the law still reflect the older Confucian system, under which it was "the duty of the faithful commoner not to disturb the lord's peace by becoming involved in a lawsuit." An obstinate commoner who pursued his grievance in court might find himself dealt with as harshly by the judge as a guilty defendant.

Thus, while Americans see the law as "a set of neutral principles that serve as an arbiter of human affairs," Shapiro notes, the Japanese see it as a source of trouble. Indeed,

Western-style logic and analysis strike most Japanese as odd—one reason why they refer to Westerners as "dry," Shapiro says. More emotional and intuitive in matters of morals and mores, the Japanese think of themselves as "wet."

Koichiro Fujikura, who teaches law at the University of Tokyo, adds that the difference extends to legal education and practice: "Defining the issues," the first priority of American lawyers, "is the last thing Japanese do" because it "highlights the points of conflict." Similarly, the idea that the best way to arrive at the truth is to set two adversaries against one another is alien to the Japanese mind.

The Japanese, Fujikura writes, are at least as contentious as Americans. But preserving relationships is more important to them than winning a point. The Japanese have a "rather long ledger in mind in which every favor we dispense and every obligation we incur [is] entered."

Moreover, Tokyo has established a kind of no-fault insurance, administered by the government, whereby automatic (though modest) compensation for victims of car accidents, defective drugs, and the like is routinely awarded.

The chief lesson that an overburdened American judiciary can learn from Japan, the participants agree, is that it pays society to actively discourage lawsuits.

Some techniques: Japanese courts impose a stiff tax on plaintiffs. Court delays—even longer than in the United States—are not entirely accidental. In Japan, Young notes, many people "simply do not like lawsuits [and] a lot of those people . . . happen to be wearing judicial robes."

"Stalinism versus Bolshevism? A Reconsideration."

A paper by Robert C. Tucker, presented at a colloquium sponsored by the Wilson Center's Kennan Institute for Advanced Russian Studies, January 12, 1984.

Western scholars and dissident Soviet intellectuals have long debated whether Joseph Stalin's tyrannical 24-year rule was a culmination or corruption of the Bolshevik theory articulated by his predecessor, V.I. Lenin.

Stalin's sins were numerous. Upon consolidating his power in 1929, five years after Lenin's death, he embarked on a four-year-long forced collectivization of Soviet farms and, later, a decade-long series of bloody purges against dissenters within the Soviet Communist Party. Millions of Russians died.

Stalin himself claimed that his policies were a fulfillment of Lenin's Bolshevism, notes Tucker, a Princeton Soviet-studies specialist. Many Western writers agree with the dictator's claim—though they tend to view it as an indictment of communism, not a defense of Stalin.

On the other side of the issue, arguing that Stalin's policies were a perversion of Bolshevism, is a "motley collection" of Western academics and Soviet dissidents. Evidence for their point of view came from Nikita Khrushchev, who succeeded Stalin and revealed damaging details about Stalin's paranoia and the extent of the 1930s purges.

But Tucker objects to "either/or" terms. He sees Stalin as an example of "fringe Bolshevism," representing a hitherto unrecognized third strand of Bolshevism.

After Lenin died, Tucker notes,

two main factions took shape; and both claimed Lenin's legacy, with some justice.

The "Rights," led by Alexei Rykov, emphasized Lenin's belief that it would take a full generation to implement communism in Russia. They saw the traditional Russian peasant village, or *mir*, as the foundation for the gradual development of "agrarian-cooperative socialism."

The "Lefts" were eager to export Bolshevik revolution to other nations. They doubted that the Soviet peasantry would quickly embrace communism, and thus favored rapid industrialization. But "it never occurred to them," contends Tucker, to impose Stalin's brand of brutal forced collectivization.

Where does Stalin fit in? Unlike the Lefts and Rights, he flavored his Bolshevism with a strong dose of traditional Russian nationalism. He joined the Rights in emphasizing Russia's heritage. But Stalin adopted and enlarged upon the most brutal practices of tsarist rule (and wed them to Lenin's call for "revolution from above") at the expense of the Rights' treasured *mir*.

Like the Lefts, Stalin was outward looking. But his gaze, like that of the tsars before him, fell on the neighboring nations of Eastern Europe. The Lefts, by contrast, had hoped to export revolution to the advanced industrial nations—Great Britain, France, the United States.