



HOKKAIDO UNIVERSITY

Title	GYAKUSETSU NO SOREN : KEIZAI TEITAI, GUNKAKU TO NIPPON NO ANZENHOSHO [THE SOVIET UNION IN PARADOX], Edited by Hiroshi Kimura, Tokyo : Ningen no Kagaku-sha, 1985,xiii, 349pp., ¥1,900 / JOSHIKI TOSHITE NO GENDAI SOBIETO-GAKU : KUNOSURU CHOTAIKOKU NO SOBIETO [CONTEMPORARY SOVIETOLOGY AS A MATTER OF COMMON KNOWLEDGE), By Hiroshi Kimura et al., Kyoto : PHP, 1985,324pp., ¥1,400 / GORUBACHOFU : WAKAKI SENRYAKU-KA (GORBACHEV), By Fumio Nishimura, Tokyo : Nihon Keizai Shinbun-sha, 1985,217pp., ¥1,000
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JŌSHIKI TOSHITE NO GENDAI SOBIETO-GAKU: KUNOSURU CHŌTAIKOKU NO SOBIETO [CONTEMPORARY SOVIETOLOGY AS A MATTER OF COMMON KNOWLEDGE]. By *Hiroshi Kimura et al.* Kyoto: PHP, 1985. 324pp. ¥1,400.

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Hiroshi Kimura, who is one of authors and supervised the editorial works of two out of the three books mentioned above, is not only a distinguished scholar but also a persuasive promoter for publishing books written by Japanese scholars, relating to the Soviet Union. This, coupled with his recent academic activities, is worthy of praise.

The Soviet Union in Paradox is concerned with a basic paradox in our understanding of the Soviet Union, namely, how would it be possible for the Soviet Union to expand its military forces while its economy remains stagnant, inefficient and in poor condition? The reader looking for a simple answer to the important question posed in the title may be disappointed. The authors stick rather close to their sources, leaving it to the reader to determine how far their analysis may affect the interpretation of the physical strength of the Soviet Union. In effect, what the authors have examined are problems of Soviet national security, the Soviet economy and Soviet trade relations with Japan. In each section, the related issues are introduced and examined lucidly, backed up with relevant data, and also arguments for and against, by Soviet specialists in the West. This book is a collection of three reports which were produced during the course of a three-year research project carried out by the private but politically influential Institute of Peace and National Security in Tokyo. The strength of the book is that it reveals also the viewpoints of three authors whose knowledge was gained through their personal experiences in the Soviet Union. Their views are therefore forceful and provocative, if sometimes questionable.

Contemporary Sovietology as a Matter of Common Knowledge is a fine collection of essays written by nineteen currently active scholars of Soviet studies in Japan. The chapters are divided into Soviet politics, culture, society, economics, technology, military, diplomacy and Gorbachev's present regime quite timely brought up to date. The book's virtue, although one can find it understandably tendentious, is its clarity and simplicity. This is largely attributable to the way the essays are edited. These essays were verbally reported over a twelve months period at seminars organized by the PHP Institute (an affiliate research institute of Matsushita Electric Co.). The PHP Institute has done, under the supervision of Hiroshi Kimura, an excellent job of rephrasing, at times, stilted essays, to make it more acceptable for the general reader. In general, the book adds to our understanding of the spectrum of the Soviet systems.

Within ten weeks after Gorbachev's death, the book, *Gorbachev* appeared in the Japanese bookstores. Fumio Nishimura who is a faithful Kremlin watcher and one of the leading Kremlinologists in Japan made an important point. The book is not a biography of

Gorbachev in a strict sense. True, the author provides a description of Gorbachev's educational and career background, but combines, in the absence of complete information on Gorbachev's background, in clear and accessible form history, statistics, and past Soviet domestic and foreign policies. He succeeds in depicting the Soviet system in an understandable way, without seeking to impose any particular viewpoint. This book is a useful antidote to the superficial picture we have of the Gorbachev regime and its antecedents popularly expressed in the Western media.

I must mention rather reluctantly that the books reviewed here are partly academic and partly educational. This is unavoidable, however, given the fact that the market for such books of this nature is rather limited in Japan. Still, they contain enough food for thought to justify keeping them one's bookshelf.

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SOBIETO KENPŌRIRON NO KENKYŪ [A STUDY OF SOVIET CONSTITUTIONAL THEORY]. By *Toshio Morishita*. Tokyo: Sōbun-sha, 1984. iii, 489+11pp. ¥7,500.

In Japan we can find a group of specialists of Soviet law who made a start on their academic career at the end of the 1960s and the beginning of the 1970s. They can be called "the third generation" of study of Soviet law in Japan.

The first generation, to which in fact only Ichiro Yamanouchi belongs, is characterized by special political conditions of study of its time (first oppressive in the militarist period, then liberation in the period of "the post-war reforms") and faithful introduction of the legal system and the legal theory of the Stalin era. The second generation was confronted by the criticism of Stalin at the 20th party Congress of the CPSU in its earlier stage of their academic career. Scholars of this generation are to a greater or less extent specialized in each field of Soviet law, i. e. Isamu Fujita in civil law and legal theory, Tsuneo Inako in constitutional law, Ken-ichi Nakayama in criminal law and so on. They variously interpreted the changes of the Soviet legal system and theory in the post-Stalin period, especially focusing on "continuity" or "discontinuity."

What is a characteristic common to the third generation?

To their eyes it is obvious from the beginning that contemporary Soviet law by no means embodies the universal model of socialist law, but is a product of the special historical processes of the construction of socialism in the underdeveloped country surrounded by the more developed capitalist ones. So the focus of their scientific interest is to search for the reasons why contemporary Soviet law with various problems (sometimes negative in light of the original socialist ideas) has been shaped as such and by examining this question to construct the framework of analysis of the reality of the present day. Thus scholars of this generation started with comprehensive study of the history of Soviet law from each particular field. Their particular attention was paid to the period from the October Revolution to the great turning point at the end of the 1920s. This period was the time "when various visions and ideas were opposed to each other and the process of the serious practical choices among them were being made," the time "with unsolved problems conceiving various possibilities." The important thing is that the technical condition of study at this stage, particularly the possibility of access to primary

historical materials through microfilms, enabled scholars to a considerable degree to recreate such abundant shades of this time. Young specialists tried to discover in this period the historical “prototype” of Soviet law at each specialized field. Their intention was to extract a chain of issues (or a structure of problem) of universal character for the theory of socialist law and a specially historical logic which appeared in the process of formation of this “prototype.” Furthermore, they aimed to describe a picture of the whole history of Soviet law, —including the place of the present stage—in light of this “prototype.”

A Study of Soviet Constitutional Theory is one of the most prominent achievements of the third generation. Its author, Toshio Morishita, is a professor of Kobe University and studied at Harvard University in 1977–78 and at the Moscow State University in 1978–79.

It is an attempt to examine the principle of the construction of socialist constitution by analyzing the basic concepts of the constitution formulated by the Soviet constitutional theory of the early years, from the October Revolution to around 1936, the period known as the transitional period. The author did not choose the period of “victorious socialism,” for explaining the “principle” of the socialist constitution. There are two reasons for this choice, theoretical and historical. First, according to the socialist ideology the law should die out in the period of completed socialism and so the “socialist” law can become a subject of discussion only in the transitional period although this basic assumption of Marxism does not apply unconditionally today. Second, in the early years there was a certain tension between the law and the power and consequently the law had the *raison d’être* of its own. On the contrary, after the Stalin Constitution the law is only a technical means for convenience of the power and it is difficult to extract the independent legal world with the original logical construction.

As to the methodology, the author carries two main viewpoints of analysis throughout the whole work. The first is to grasp the process as the one “from the modern constitution to the Soviet one as its sublated form.” The legal structure of relevance of “the socialist constitution” to “the capitalist one” cannot be made clear by the traditional method which reduces the constitution as a legal form to the economic structure as the essence of the social system. It is necessary to ask a question: by what logic the concepts and the principles created by the modern constitutional theory would be sublated in the course of socialist transformation of the state and the society. Thus the problem of “the capitalist constitution and the socialist one” is regressed here in the aspect of the historical and logical development: process “from the modern constitution to the Soviet one as its sublated form.”

The second viewpoint is “the twofold character of the Soviet constitution as the constitution of the transitional period.” Since the state of the transitional period had the twofold character (the half-state in the course of dying out and the state of the dictatorship of the proletariat), the Soviet constitution of this period also involved the inherently contradictory character. On the one hand, it was “the modern constitution in the course of dying out” as a vestige of the bourgeois law (“the half-constitution” by the author). On the other hand, it was “the proletarian constitution” entrusted with a mission as an active instrument of the socialist construction.

With this methodological framework, the author examines the following problems of

the constitutional theory: the Soviet concepts of the constitution, the concepts of the fundamental rights, the principles of construction of the Soviet state apparatus (sovereignty, representation, federation, criticism of the separation of powers) and the judicature under the dictatorship of the proletariat.

I would like to introduce only one example of his analysis. In the field of concepts of the fundamental rights the twofold character of the Soviet constitution took the form of the theory of unnecessary of fundamental rights on the one hand and the "class rights" theory on the other. Properly finding the *raison d'être* of the ideology of human rights in the confrontation between the people as a whole (the people as a bearer of the power) and individual participants in the power, Reisner, a representative proponent of the first theory, denied the necessity of fundamental rights in the Soviet state on the ground of sublation of the above-mentioned confrontation by "the working mass." On the other hand, most of constitutional scholars regarded the freedom of exploitation hidden in a veil of universality and eternity rising above the classes as the essence of the modern concept of human rights. Thus, in place of "bourgeois rights" as an ideological instrument of the bourgeois rule they asserted "proletarian rights" as instrument of the rule of the proletariat. Such "class rights" theory not only limited subjects of rights to workers, but also demanded to exercise them "workerwise." The important thing is that neither of these theories was in the direction of respect for fundamental rights of citizens as individuals. They rather contributed to "dying out" of citizens' rights and after all of the constitution in an ironical sense.

In this work Morishita succeeds splendidly to analyze the complicated theoretical views by putting them in order in line with the Marxist approach, which the Soviet constitutional theory itself presupposed, but also by analyzing critically the ground of comprehensive historical materials. Although there remain some disputable points in details, the most important contribution of this book is that it is a stimulating broad discussion especially in the methodological aspects. It can be questioned, however, whether the viewpoint "from the modern constitution to the Soviet one as its sublated form" is sufficient to explain the process. The modern constitution has been transformed into the contemporary one since the beginning of the 20th century. The Soviet constitutional theory needs to be analyzed in comparison with the transformation theory of the modern constitution as well. The author's intention to explain "the principle" of the socialist constitution on the basis of the Soviet constitution as a product of the specific historical processes is also disputable. Previously, in another article, the author tried to sketch an outline of the logic and the system of socialist human rights by the method of modifying the theoretically abstracted concept of the socialist fundamental rights in light of historical experiences in the existing socialist countries. He argued there that it would be impossible to extract the general essence of the socialist fundamental rights only from the partial experiences in these countries. Now, in this book he shifted his position in the direction of considering the Soviet socialism as "the most typical, thorough one." Thus he leads us to a difficult problem: what is socialism and how to interpret the Soviet society?

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