TABLE 1
Crime in the Form of Legislations

Pre-Discussion Essay

Massacre of 1965-1966 in Indonesia

CHRIS MEGANANDA

The year of 1965 – 1966 is one of the darkest time of Indonesia history, in those year the government through its military power in the guise of "cleansing" the nation from the communism ideology perform what can be categorized as an genocide where hundreds of thousand communist sympathizer were murdered.

BACKGROUND

Some say this incident started when the first president of Indonesia Ir. Soekarno in 1959 issued a new governmental principle called NASAKOM which is an acronym for Nasionalisme (Nationalism), Agama (Religion), and Komunisme (Communism) and the pillar for the system was the military, the many religious leader, and the communist party, and for the purpose of enforcing the NASAKOM movement President Soekarno issued Dekrit Presiden Soekarno 5 July 1959 and Tap MPRS No. VIII/MPRS/1959 that introduced "demokrasi terpimpin" system. As the time goes the demokrasi terpimpin system and the NASAKOM principle does not produce a good result and some even considered it bad results, where the nation economy crumbles, inflation of currency occurs, and the general low quality of living in Indonesia. In truth there are many factors that allowed such an situation to occurs, alongside the flawed system and principle there are corruption problem among high – ranking officials, the illness of president Soekarno, international problem with the worldwide war against communism (Cold War) where there are concern from international party about Indonesia becoming a communist nation and the problem with Malaysia that begun with the attack on Indonesia embassy and the mockery of president Soekarno that leads to small scale war in Kalimantan where Indonesia lost because of low morale and lack of support from the citizen because the effect of war on the economy. These many problem leads to lessened support of president Soekarno from the citizen and the military and force Soekarno to seek support from the communist party (PKI, Partai Komunis Indonesia).

The culmination of problems that happened in Indonesia reached its peak in 1965 when there are news about the plan for coup de etat against President Soekarno, before continuing the writer would like to clarify that the fact to this day are still not clear about the incident and the writer tells the story according to many sources. The coup de etat was rumored to be carried by several military official which include 6 high – ranking general and several high ranking official which called themselves DEWAN JENDRAL that does not support Soekarno view on NASAKOM principle and wish to replace him, this rumor reached Soekarno and orders these military official to be apprehended but the unit that was send to do this task which is

cakrabirawa unit (some kind of Indonesia Secret Service) allegedly murdered and throw the bodies of these military official to a well (The facts are still not clear on who actually commits the murder) ,then the murder was blamed on the Communist party (PKI) because the connection of some member of cakrabirawa unit to the DEWAN REVOLUSI the opposition to the DEWAN JENDRAl that has connection to the Communist party, this incident was remembered in Indonesia history as G-30S/PKI.

The G-30S/PKI Incident leaves the nation without its military leaders, to fix this problem President Soekarno Issued SUPERSEMAR (Surat Perintah Sebelas Maret, Eleven March Directive) that gives Major General Soeharto the authority to do whatever it takes to restore order from the resulting chaos of G-30S/PKI. Soeharto as one of the first person whom blamed the murder of high ranking general and military official to PKI orders that every government official from the communist party to be striped from their office and detained along with every individual in Indonesia that support the communist party, to achieve this goal many torture procedure occurs, hundreds of thousand murder was commited by the military in the guise of “cleansing” the nation from communism and bringing back order, and none of the murder commited was brought to trial because it was their “job” to do so even though many person that was murder actually doesn’t have connection to the communist party. Thus it is in my opinion the nation commits act of genocide to its citizen in the guise of ideology and political interest.

ANALYSIS

This incident though started from in my opinion bad political choices, actually has many layers of causes, from the economic standpoint, the general resentment againt communism, propaganda, and many political interest of many included party thus cannot be blamed on just “bad” legislation because the choices that leads to these legislation where influenced by many parties (some even say CIA was included).

CONCLUSION

In my opinion the only solution to avoid such an incident in the future is to avoid preferences to any kind of ideology (except the ideology that was stated in the constitution), such as in this case communism that was included in NASAKOM, because these preferences if there are any leads to social disparity, clash even among the nation citizen and breeds hatred, hatred that allows massacre of many communism sympathizer by their on brothers. Another solution is transparency of military action especially when concerning with the lives of the citizen and cultivation of an broad ideology which is based on the constitution so as the citizen has a firm belief in the government and willing to support the government in order to prevent another foreign ideology shatter our own ideology.

UUD Republik Indonesia Nomor 12 Tahun 2003, Pasal 60 Huruf G: How to Kill a Communist

Dino Rafiditya Pradana

Indonesian Communist Purge of 1965-1966, is undoubtly one of the darkest part in Indonesian history. 500,000 lifes was lost due to the manner of the anti-communists in Indonesia. It was started with a staged (failed) coup that made Indonesian Communist Party (Partai Komunis Indonesia/PKI) a scapegoat to forge the path for Soeharto's presidency which survived for almost 32 years. Soon after the staged (failed) coup, any members or anyone who is related to PKI is being massacreed all over Indonesia. The PKI itself got banned, up until today.
What makes the matters worse is not only that countless lifes were lost, but what happened after. After the incident, PKI was banned, and there are regulations made by the Soeharto's government to seal the PKI so that they won't rise anytime in the future. It is a very complex situation: Indonesia was under pressure on picking side on the cold war. The "West" was using the containment policy to banish communism in Asia. While Soekarno, Indonesian President at the time, was trying to balance the 3 main forces in Indonesian politics: the NASAKOM (Nasionalis Agama Komunis/Nationalist, Religion, Communism). The communism part wasn't the best interest for the "West".

So, Soeharto, backed up by the CIA (according to John Roosa's the Pretext for Mass Murder), plan a staged coup to banish communism from the Indonesian soil. The plan was carried out by the G-30-S movement. In the scenario, the PKI is a scapegoat that killed 6 of Armies generals masked as an attempted coup. But then the coup is considered as a failed one as Soeharto and his men come to end the coup. This incident made interesting points for Indonesian future. First, it launches Soeharto's name in the army, making him a high ranking officer, which in the end making him a president. Second, it crushes the PKI to abolish Soeharto's political enemy in the future. To keep sealing the PKI so that it won't rises anywhere in the future, Soeharto launched a propaganda, and made PKI a forbidden organization in Indonesia making PKI a taboo, a trait that still lives in today's Indonesia.

In 2003 (5 years after Soeharto's downfall) Indonesian government launched an election law for DPR (Dewan Perwakilan Rakyat/House of Representatives), DPRD (Dewan Perwakilan Rakyat Derah/Local House of Representatives), and DPD (Dewan Perwakilan Daerah/Local Council Representatives). In the law that called Undang-Undang Dasar Republik Indonesia Nomor 12 Tahun 2003, Pasal 60 Huruf g (Constitution of Republic of Indonesia Number 12, Year 2003, article 60, letter g),

this infamously unfamous words were uttered: “Calon anggota DPR, DPD, DPRD Provinsi, dan DPRD Kabupaten/Kota harus memenuhi syarat: g. bukan bekas anggota organisasi terlarang Partai Komunis Indonesia, termasuk organisasi massanya, atau bukan orang yang terlibat langsung ataupun tak langsung dalam G30S/PKI, atau organisasi terlarang lainnya;”

“The House of representatives, local house representatives, and local council representatives candidate are not a member of the forbidden organization, Partai Komunis Indonesia, including it’s mass organization, or not people who involved directly or indirectly in G30S/PKI, or other forbidden organization”.

It shows that even after the downfall of Soeharto, the influence of anti-communism manner is still lives in Indonesian lawmaker. It kills of the political right of the ex-PKI, eventhough let’s say, they aren’t even a communist anymore. It is against the general consensus of a democratic country in which everyone have the same political right. It discriminates some people due to their past. It is somehting that shouldn’t be alive in the modern age. Another thing is, it is even against the own Indonesian basic constitution, article 1 verse 3 that Indonesia is a lawful country, and also article 28 verse A through J, in which states that all Indonesian have the same right to express their freedom of thought and expression including political rights.

And also, this kind of verse is a ambiguous, as it mentions “not a member of the forbidden organization, Partai Komunis Indonesia, including it’s mass organization, or not people who involved directly or indirectly in G30S/PKI”, as it can be streched all around. What if one parents’ is directly involved with the staged G30S/PKI ? Aren’t their children is indirectly involved as they don’t stop their parents of doing so ? This kind of ambiguous verse is dangerous to democracy itself. Again, it kills of one’s right to do politics, and it was based on an allegedly false accusation to the PKI themselves. One obnoxious, unfamously infamous law made based on a false accusation (at least according to research done by the likes of John Roosa, or Ben Anderson).

The article 60 word g, is an unfair law that kills of people’s political right. It is a crime against humanity. It is a crime against the Indonesian law itself. It is a crime commited by a law of a country. A crime in which victims are those whose political right are injusticely butchered by law. Everyone should have a same political right nowadays, regardless of their political choices in the past.

Janessa Sit

Introduction

The quest for the certainty regarding what the law really is continues to perturb legal theorists, as it has done for years. I will submit in this essay that the best answer to this question is found in the common law process, which provides the most practical and accurate depiction of judicial behaviour and the legal process. To support my position, I will be relying on the following two cases: *Reardon Smith v Yngvar Hansen-Tangen* [1976] 1 WLR 989 [*Reardon*] and *Beswick v Beswick* [1967] 3 WLR 932 [*Beswick*]. I will use these cases to evaluate the three main legal theories and their place in the legal process: Legal positivism, legal realism and the common law tradition.

These models of legal theories can be laid across a scale, or a spectrum that measures malleability and rigidity. At one extreme end, positivists recognize the law as a hard and un-malleable structure, comprising on specifically laid out rules such as a sovereign (Austin) or a democratically voted legislature (Hart). To the end, laws are applied and judges are strict rule-appliers. That said, *Reardon* clearly exposes the flaws in the positivist system. Academically, legal positivist is appealing. However, when applied into the real world, the judgment in *Reardon* shows how the theory crumbles in the real-world. Thus, in the first part I will examine the limitations of the theory of positivism or stateism, and uncover its impracticality to real-life situations.

Moving off from one end of the spectrum, we naturally advance to the other end – legal realism. Legal institutions are artifice in the doctrine of legal realism. Judges are viewed as problem-solvers who are able to make law as and when the situation arises. The legal process on this end is highly malleable, and at the same time, messy. In continuing my analysis, in the second part I will examine the case of *Beswick* in order to expound of the untenability of a complete realist approach in a legal system. Instead, the common law approach, in lying somewhere on the middle between the two ends of positivism and realism, is ultimately the most realistic and idealistic explanation of our legal process and is one that helps achieve the aims of the law – both the regulation of society, as well as the attempt at the elusive goal of justice.

Fundamentally, it is my view that the common law can synthesise the strengths of both legal positivism and realism, while at the same time alleviate the issues of both approaches. Either approach, on its own, is too impracticable. Fuller's quest for "good order"[1] provides a good enunciation of this submission. Legal positivism might provide order simpliciter, but such order is not good because it does not address the needs of the citizens. The key function of the law is to achieve order in society. However, legal realism undermines this purpose. Both the "good"

[1] Lon L. Fuller "Positivism and Fidelity to Law" (1958) 71 Harv LR 630 at 644

and "order" components are essential in organizing society, and the common law fuses the relative stability of legal positivism with the flexibility of legal realism. The common law tradition thus best accounts for the legal processes that take place in practice precisely because it is the most practical, realistic and workable model for the legal process, as will be demonstrated in this paper.

***Beswick* from a Realist Perspective**

Beswick v Beswick [1968] AC 58 [*Beswick*] was a case in which the plaintiff, Peter, promised to transfer his business to his nephew John, the Defendant, if John gave him a £6.10 weekly allowance until Peter's death, upon which John would give £5 a week to Peter's widow. After Peter passed away, John failed to execute his side of the contract in withholding payment to Mrs. Beswick. Although under the law of privity, Mrs. Beswick was not able to sue John directly, she could do so in her capacity of the administratrix of Peter's estate. She was eventually granted specific performance as a remedy, since monetary remedies were inadequate.

In *Beswick,* the House of Lords rejected Lord Denning's view that if the contract conferred a benefit of a third party, that party could sue. This was despite that the Law Reform Committee in 1937[2] agreed with Lord Denning's view. They were uncomfortable with enacting change to the law of privity since that appeared to be Parliament's role. However, Lord Denning's view eventually came to fruition in the 1999 Contracts (Rights of Third Parties) Act [CRTPA].[3]

Backwards Reasoning vs the Rejection of Realism

The Lords[4] had already acknowledged that whether or not a third party could claim contractual rights when it benefitted him was not an issue that affected Mrs. Beswick, since she had an alternative route to sue as the administratrix of Peter's estate. In such a situation, they continued to debate this issue for academic reasons.

Legal realists, like Jerome Frank, would argue that the UKHL were using a process termed "backward reasoning" in achieve their ultimate decision. This would justify the realist view of the legal approach the Lords took. Esssentially, they had already concluded that Mrs. Beswick would have had her remedy, even before they began considering established legal principle. Frank states that the "most salient" feature of the judicial process is that the judges decide a case immediately after "an emotive experience in which principles and logic play a secondary part"[5]. Hence, the realist would argue that *Beswick* sums up the criticism of the common law, that "function of juristic logic and principles… describes the event which has already transpired".

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[2] [1968] AC 58 at 72

[3] 1999, c. 31

[4] [1968] AC 58 at 71

[5] Jerome Frank, Law and the Modern Mind, (New Jersey: Transaction Publishers, 1930) at 149

Truthfully, we do not know whether or not the outcome and decision would have remained the same, had Mrs. Beswick not been suing on her husband's behalf as an alternative route. Following from that idea, the legal realist would bring out that the entire legal process is a sham. However, upon closer inspection, we see flaws with this view. It is unfair to regard that the decision-making process was one aided by backward reasoning. Even through the judgment in *Beswick*, the Lords took care to carry out "the intention of Parliament… from the words of the Act"[6] (the Act here referring to s 56 of the Law of Property Act 1925 [*LPA*][7] that states "a person may take an immediate or other interest in land or other property… although he may not be named as a party to the conveyance…"). They also relied on other authorities. Through the Lords clearly pointing out the need to adhere to legislation, it is unfair to whole discredit that and claim they only intended to reason to support their already-decided decision.

If we look closer, it appears that in *Beswick*, the UKHL were essentially **rejecting** Lord Denning's view in overruling privity. Lord Denning, as a judge who makes strong pragmatic decisions, can be said to be the model of legal realism. The UKHL criticized Lord Denning's judgment in the court below, and suggested that in his overly-practical approach to the decision he made, he had disregarded the "view more common held in recent times".[8] It was even implied that Lord Denning had disregarded parliamentary intent. [9]

On the whole, the Lords seem to have been pushing for the idea that an overly practical approach would be unsustainable in the legal process in the long run; seeing as they were cautious towards how Lord Denning essentially circumvented all established authorities to uncover a new rule.

Therefore, if we take a step back, we realize that *Beswick* was also not advocating an entirely relist approach towards the decision-making process. Instead, *Beswick* seems to encompass the common law approach, in that the decision-making process is a careful exercise in exercising discretion while referring to established authorities and legislative intent. Pound as expressed, the common law tradition is "a functional point of view in contrast with the purely anatomical or morphological" views of the legal process[10], and it is furthermore a process that is "an adjustment of principles and doctrines to the human condition".[11]

The common law essentially is a culmination of both realist and positivist standpoints. While the common law thinker generally accepts that backward reasoning has its desirability, he also

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[6] [1968] AC 58 at 73
[7] 1925, cl. 20
[8] [1968] AC 58 at 72
[9] [1968] AC 58 at 86
[10] Roscoe Pound, "Judge Holmes' Contributions to the Law of Science" (1921) 34 Harv LR 449 at 450
[11] Roscoe Pound, "Mechanical Jurisprudence" at 610

looks to legal institutions and authorities in order not to upset principles of certainty. In that same vein, the common law approach balances the relationship of the judiciary to the citizen against the relationship of the judiciary to the legislature.

Ultimately, the court in Beswick was restrained to an extent by the existing authorities that were present, and the judges, in exercising discretion, recognized the need to limit this discretion.

The Common Law as a Backward Looking Mechanism

Nonetheless, *Beswick* does bring out one limitation of the common law, primarily that the common law approach is a backward looking approach. Frank pointed out that judges, in their fear of overruling established precedents, were concerned with ""possible bad effect(s) of a just opinion in the instant case" on future cases.[12] The realist would point out that *Beswick* was the perfect chance for the Lords to reconsider the rule of privity, a doctrine that has been long questioned. Instead, fear held the judges back from stepping up to make a decision on the issue.

If we look at some parts of the judgment in *Beswick*, this argument seems to hold some weight. The Lords chose to circumvent the general rule of privity and instead chose to take a narrow approach in debating the issue of whether s 56 of the LPA could create an exception. [13] Lord Reid chose to avoid discussing privity as a general rule by simply stating he "would not deal with it in a case where it is not essential."[14] With all due respect, had an alternative remedy not been available to Mrs. Beswick and the court chose to uphold privity, a bar towards Mrs. Beswick achieving justice would have been created.

The Lords' evasiveness on the matters comes from the criticism that the common law is backward looking. Lord Upjohn opined that the lawlords could not overrule decisions that "go back over 100 years".[15] Strong common law supporters, such as Holmes, describe the common law legal process as one that relies on experience rather than logic. As such the process is very much dependent upon its past.[16] Pollock and Maine echo this view. Despite Pound being a common law advocate himself, he too recognizes that while judges seek to "apply new principles to situations old and new", oftentimes, the judiciary relies on old principles and authorities.[17] As such, the judiciary is often adverse towards change and this can hinder the function of the common law. In this case, when the judges chose not to discuss the issue with

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[12] Jerome Frank, "Law and the Modern Mind," (New Jersey: Transaction Publishers, 1930) at 154

[13] [1968] AC 58 at 83

[14] [1968] AC 58 at 72

[15] [1968] AC 58 at 95

[16] Oliver Wendell Holmes "The Common Law" (1881) at 5

[17] Roscoe Pound "Common Law and Legislation" (1908) 21 Harv LR 383 at 406

privity, the CRTPA was only enacted 30 years later.

However, we should not be too quick to attack the backward looking nature of the common law. Although it might hinder change from taking place, this approach helps the decision-making process to be a careful, measured one. This helps circumvent the dangers of the rash approach that realists propose. Without reliance on established authorities and legislation, the trust that the citizen has in the legal system weakens. If judges could decide a case however they wanted, there is the lack of accountability that one seeks of the system, undermining society's confidence in the justice system.

Also, while legal posivitism purports that the legislature can enact changes efficiently, in reality this is subject to many limitations exacerbated by the complex bureaucracy of a society. This is also evident in the example mentioned earlier, where there was a huge time lag between the Law Reform Committee's recommendation in 1937 and legislative change in 1999. Thus, the backward looking approach that the common law adopts may not be as much of a hindrance to the legal process as seems to be suggested. Positivism suffers from time lags and complexities, whereas realism only circumvents these time lags through undermining the importance of established authorities and institutions.

Although a backward looking approach appears to hinder and place a limit on flexibility, such limitations are necessary toward upholding certainty as well as stability within the process of justice. In fact, the approach helps reach a compromise between the two extreme ends of the spectrum.

Reardon from a Positivist Perspective

In the contractual case of *Reardon Smith v Yngvar Hansen-Tangen* [1976] 1 WLR 989 [*Reardon*] [2010] SGHC 82, a contract was made for an oil tanker to be chartered prior to its construction. The oil tanker was constructed according to the contractual specifications, but the name of the tanker was different from what was stipulated by the parties. Eventually, in a failing market that was brought about by the oil crisis, the charterers, in seeking to escape a bad bargain, sought to rely on the technicality in order not to perform. Under s 13 of the *Sale of Goods Act* 1893 [*SGA*][18], a condition is implied that goods must correspond with their "description". Since the tanker had a different name than what was described, the charterers seeked to repudiate the contract. The court disagreed, holding that s 13 could not apply.

This case essentially overruled many cases that relied on the rule that technical breaches amounted to a breach of condition under s 13 of *SGA*. In *Arcos v Ronaasen* [1933] AC 470, timber staves were rejected because of minute measurement mistakes, despite that they could still serve the very same purpose that they were purchased for. In *Reardon*, Lord Wilberforce

[18] 1893, c. 71

declined to follow precedent, or even the *SGA*, regarding preceding cases as overly technical and "due for fresh examination".[19]

The Problems with Hart's Core-Penumbra Distinction

Lord Wilberforce held that since the name of ship was only a means of identification, it as not crucial to the description of the tanker. [20] Thus, the contract could not be repudiated since the name of the tanker could not fall within the ambit of "description" under s 13 of the SGA.

The positivist would bring up Hart's core-penumbra distinction and point out that *Reardon* is a perfect example of this core-penumbra distinction. In this case, the name of the tanker fell in to the penumbra of the rule. Hart proposes that every statute has a "core of settled meaning" as well as a penumbra. Where a situation falls within a statute, the judge can simply play the role of a rule-applier, and only in rare cases where the case falls into the penumbra would the judge consider the purpose of the statute in his decision. Following this, a positivist would argue that "name" of the tanker fell within the penumbra, not the core of the statute, which allowed the judges to exercise discretion in their judgment. At first blush, this is a strong, plausible contention, but a closer inspection would reveal the flaw of Hart's core-penumbra distinction.

The first main problem we face with the core-penumbra distinction is that language is not enough for us to understand the distinction between the core and the penumbra. Additionally, there is oftentimes no clean break between the core and the penumbra. If we apply Hart's model to *Reardon*, the problem arises as to where exactly the point of definition of the meaning of word "description" in s 13 of the SGA starts and ends. Several questions arise, for instance, what is the core of the word "description"? On what basis can one argue that the name of a tanker is not part of it's "description"? Positivists are thus limited by their heavy reliance on language to encapsulate the purpose of a law.

In *Reardon*, there was much more than just language that could determine if the name of the tanker was a condition, a breach of which would warrant repudiation. In the judgment of *Reardon*, the judges continually examined the context and purpose of the statute to help them through the decision-making process.

As such, *Reardon* as a case neatly brings out the impracticality of this core-penumbra distinction approach that Hart proposes. Common law advocates, such as Fuller[21], have been pointing out the same criticism. The purpose of a law, as well as it's contextual interpretation, are both crucial to the process of decision-making, seeing as how language can limit us. When we looked at how a judge should decide if a name falls within the ambit of "description" in a statute, Hart's model crumbled.

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[19] [1976] 1 WLR 989 at 998
[20] [1976] 1 WLR 989 at 999
[21] Lon L. Fuller "Positivism and Fidelity to Law" (1958) 71 Harv LR 630 at 662

The Façade of Upholding Certainty

Lord Wilberforce also questioned the "excessively technical" precedents that relied heavily on application of s 13 of the SGA, even where such technical breaches had negligible consequences on parties. [22] This led to the absurdly unjust outcome of parties escaping bad bargains simply by virtue of minute technical errors. Legal positivism results in the judge being restrained to strict rule application without the availability of discernment or informed thought.

One in support of positivism may go so far as to say that *Reardon* was wrongly decided, since the law expressly stated in s 13 should have applied. He would argue that the law is a mechanism for certainty, especially so in a commercial context with strong considerations of commercial certainty in legal relations should apply.

The counter-argument to this is that, ironically, the positivist approach may in fact lead to uncertainty rather than uphold certainty. Fuller, a common law theorist, pointed out that the legal process is a two-way, reciprocal relationship between citizens and the law. There is mutual respect between both parties. As such, applying this to *Reardon*, a citizen would not expect that an inconsequential breach of no effect on parties could undermine the very principles of certainty that the law ought to uphold. Certainty and contractual sanctity would thus be undermined by a technical breach of something "obviously immaterial" [23] to both parties. It was this very refusal of allowing repudiation that upheld the parties' true intentions and upheld the commercial certainty the law seeks to afford citizens. Thus, more certainty was achieved as a result of **not** strictly applying rules as they are.

Common Law as a Facilitator of Change

The judges in *Reardon* did recognize that they were shifting away form the common law precedents that dealt with this matter, but that did not stop them from overruling those precedents. Positivists would not agree with such changes but instead argue that a fixed system would still be the way to go, compared to the unstructured system of common law and realists. However, in *Reardon*, it was this common law fluidity that in fact effected change that was just for the circumstances. The common law fluidity enabled a change that overturned a host of absurd cases of the past. While the legislature can indeed amend its' laws, this feedback mechanism is limited. Legal realism is largely based on the closer relationship between the judge and the citizen, as opposed to the not-so-close relationship between the legislature and the citizen, since a judge is able to fully understand the individual factual matric of a citizen's case. It was precisely this relationship and judicial discretion that allowed the

[22] [1976] 1 WLR 989 at 998
[23] [1976] 1 WLR 989 at 1001

Judges in *Reardon* to be able to set straight the rule in undesirable precedents.

Having said that, the realist's excessive need to constantly weigh factors and circumstances may pose a threat to the efficiency of the legal system. In *Reardon*, the judges relied too heavily on too many conflicting factors. Hence, the sensible and practical limitation that the common law approach puts forward in causing resistance to change is welcome.

Problem-Solving or Applying the Rule?

An interesting observation is that Lord Wilberforce begins his leading judgment describing the problem at hand.[24] This is notable when we compare it to preceding cases, which out rightly stated s13 of the SGA and applied the section the dispute rather than vice versa. In Lord Wilberforce's judgment, he only refers to the statute in the later part of his judgment, after having went through all the circumstances and facts of the case.[25]

Further, even in the process of him mentioning the statute, he disregards it insofar as he points out its inapplicability to the situation and holding that the present case laid beyond the ambit of s 13 of the *SGA*.

Lord Wilberforce's judgment calls forward the tension between positivism and realism. Should the judiciary's role be that of the problem-solver (realism) or rule-applied (positivism)? Positivists would be against Lord Wilberforce's approach. They would argue that the starting point in any legal inquiry would be what the law says, not what the problem is.

However, *Reardon* does accentuate the problems with the positivist approach. The Benthamite approach relies on the fallacious assumption that all problems do fit within a given rule. The factual matrix of *Reardon*, in which the name of a tanker would have been of little consequence to both parties[26], nicely encapsulates how the legal posivitist approach of simply applying the rule would have resulted in an unjust outcome. It does not seem plausible that the solution a myriad of problems (what with the sheer variations of ways in which a problem can surface) should depend on or not whether they fit into rigid statutes and rules. As demonstrated by *Reardon*, regarding the judiciary as rule-appliers over-simplifies and discredits the complexities of real-life problems.

On the other hand, legal realists or common law advocates would support the process that Lord Wilberforce undertook in his decision – he began by looking at the problem.
Lord Simon's illustrates the problem-solving role advocated by the common law in his statement: "It would be odd were the law to elevate a matter obviously immaterial to the

[24] [1976] 1 WLR 989 at 994
[25] [1976] 1 WLR 989 at 998
[26] [1976] 1 WLR 989 at 998

parties at the time of contracting into a matter of fundamental obligation".[27] The problem was the "obviously immaterial" matter the court chose to look at, and not the rule. I propose that the problem-solving approach better accounts for the legal approach the Court took in *Reardon*, and that the court used this approach rightly.

Conclusion

To conclude, the common law approach best describes the way our courts work. This approach is one that is workable and highly practical. When contrasted with positivism and realism, the common law approach goes beyond the one-dimensional process that the former two approaches advocate.

The common law approach helps to temper the flaws of both ends. The lack of accountability within the realist process is solved through the referral to precedents, and the rigidity of positivism is softened through the discretion Judges exercise in the common law approach to decision-making. Adopting the common law approach as the best way of approaching the legal process is the best as it assimilates and neutralizes the best and worst of positivism and realism. As earlier mentioned, it "adjusts principles and doctrines to the human condition".[28]

Ultimately, the common law approach seeks to create a system that can cater to the citizen's needs while retaining its stability.

[27] [1976] 1 WLR 989 at 1001

[28] Roscoe Pound, "Mechanical Jurisprudence" at 610

Kim Naeun

29th November in 1954, the rulling party 'Jayudang' had amended the Constitution with the reason of 'Rounding off to the nearest interger(四捨五入)'. Though The party secured of a parliamentary majority for the third election of the chamber of Deputies, it failed to secure 136 quorum for constitutional amendment. Then the party submitted a constitutional amendment including that the first president was not limited by reappointment. However, with the result that the vote stood at 135 ayes, 60 noes and 7 abstains, it was rejected. Because 135 ayes were not enough to secure the quorum which was 135.33 ayes, two-thirds of incumbent Assembly. But Jayudang, the rulling party, did not accept the result and proclaimed that the amendment had been passed with a weird logic which is 'Rounding off to the nearest interger'. Their opinion was that 0.33 could not be a number of a human being and was not enough to regard as one person. With this insistence, they said that 0.33 must be deleted and 135 should be accepted as the quorum. Therefore jayudang made this item discussed again and the opposition lawmakers left assembly hall. There stayed only members of rulling party and 123 of 125 members said yes to the amendment.

It was provocative enough to make the public upset. It was violation of the Constitution(reversing and passing a bill which had been rejected already), violation of the National Assembly law(neglecting the opinion of the opposition party, the Chairman of Congress, the chairperson), and the application an illogic compulsorily. The nonsense deed was possible at that time due to the government at that time which was an absolute despotism. This amendment is a historically illegal amendment which runs counter to the spirit of the Constitution.

Sedition Act & Freedom of Expression in Malaysia

Ooi Zi

In recent years, an issue that has been plaguing the minds of Malaysian citizens is that of the law protecting (or rather, restricting) our right to freedom of expression, also known as the Sedition Act 1948. Although it was first introduced by the British with the intention of limiting the powers of those protesting against colonisation, the draconian Act still remains in use long after Malaysia obtained independence. In fact, this Act has been enforced multiple times over the past two decades, the accused ranging from former Members of Parliament to news publications to mere university students.

In short, this Act prohibits any actions or speech that the legal authorities deem seditious, or that can be seen as going against the established order. While this can be construed as an attempt on the government's part to stifle speech that are inciteful and that may endanger the safety of Malaysian citizens, it can also be seen as an Act that will make the oppressed and the underrepresented members of society too fearful to voice out the issues that everybody is aware is happening but that nobody addresses. In fact, the manner in which it has been employed thus far indicates that it is a tool used to infringe human rights for the mere purpose of furthering political agenda.

This problem has further escalated in April this year, when the government made several amendments to the Act. The main area causing unease among Malaysians are the clauses that make it unlawful to make seditious remarks on the internet, even if it is the mere act of “sharing” a link containing seditious material or even “retweeting” a tweet. From this, it is clear that the government intends to restrict the flow of information that has the potential to shed a negative light on the authorities.

Critics of the Act have expressed concern on the ambiguity of the term “sedition” within the Act, allowing it to potentially be abused by the authorities to use it in matters that may have absolutely no relevance to the original intention of the Act. Not only will this have the possible outcome of incriminating many undeserving citizens, it might also be placing limits on activities such as public debates, which are necessary and an integral part of strengthening the bonds between citizens and reinforcing democracy. Not only that, this piece of legislation defies the rule of law, the concept in which a country is governed by clearly-stated and well-defined laws, as opposed to the arbitrary decisions of government officials.

Although this is not as grave an issue as some others – genocide and torture, for example – it remains to be a worrisome problem that Malaysians have to deal with until this day. Many international voices have denounced this Act, deeming it deplorable and as having no place in this day and age. The very nature of this Act implies that the government intends to silence dissenting voices in a rather dictatorial manner, and hope to force the nation to conform to the same way of thinking and to not hold any contradicting opinions. This can be quite dangerous as

having the freedom to think for oneself is the textbook definition of free will, and without free will Malaysia can no longer consider itself a democratic country.

Preventive detention has been a human rights violation issue even before Malaysia has gained its independence. One of the infamous preventive detention laws drafted during the dark days of Malaysia was the Internal Security Act 1960(ISA). The legislation was enacted after the Malaysia independence from Britain in 1957 to combat the armed insurgency of the Malayan Communist Party during the Malayan Emergency. Although communist insurgency is no longer an issue in Malaysia, the draconian law continued to subsist until its repeal in 2011.

Under the ISA, the Minister of Home Affairs may issue preventive detention order to detain a person based on national security considerations. ISA allowed initial detention of 60 days with unlimited renewals based solely on the will of the Home Minister. After the communist insurgency in 1940s and 1950s in Malaya, the Malaysian government continues to arrest and detain individuals without warrant and trial before the court. The law was used against political dissidents, students, and labor activists who have the tendency to upset the stability and security of the country. The decision of detention is based solely on the opinion of the minister and it has effect to exclude the power of the court to review the decision of the detaining authority except on procedural grounds.

Under the ISA, detainees will be held in the special police holding centers for an initial period of 60 days, which is allegedly for investigation purpose. Judicial order is not required under the detention. To maintain the secrecy of the location of the holding centers, the detainees will be blindfolded before they are transported to and from these centers. The detainees are denied access to legal counsel and their family members. During the beginning of the detention period, detainees are usually subject to torture and other cruel, inhuman and degrading treatment for investigation purpose. This is against the international human right standard and the people called for the repeal of this particular piece of legislation.

There are no bad laws, only bad enforcers. Perhaps the ISA has rightly served its purpose during the communist insurgency in 1940s and 1950s but it was outdated and totally unfit for the current society. The politicians to their advantage to quell dissents and curb their opponents had used this piece of legislation; this is why ISA is a bad law because it was used for an improper purpose. The law was even used to detain an unarmed reporter who was reporting the truth while it was drafted to arrest extremist and terrorist threat. Abdul Malek Hussin, a former detainee under ISA was an example of unlawfulness of usage ISA by the authority whereby he was beaten and kicked when he was detained. He was also sexually abused and forced to drink his own urine while in the police custody.

AV Dicey stated that 'no man is punishable or can lawfully be made to suffer in body or goods except for a distinct breach of law established in the ordinary legal manner before the ordinary courts of the land'. A guilty person should be tried openly before the court under proper procedures. Preventive detention has been clearly abused by the government towards innocent

citizens. Although ISA was repealed, the issue of preventive detention continues to subsist in Malaysia by the existing laws. It is time for a reformation.

Tiffany Ow Zi Wei

Introduction

Singapore has seen its fair share of war and conflict despite its relatively short history. Desperate times call for desperate measures and various legislation has been enacted in Singapore to counter threats to our society. Amongst these are laws which authorise preventive detention, which refers to detention without trial. However, these laws are controversial amidst fears of potential abuse, accusations that they violate fundamental liberties and concerns regarding their relevance in today's society.

Background

Preventive detention was first introduced in the Colony of Singapore in 1948 under the Emergency Regulations Ordinance, to counter a Communist uprising. This was succeeded by the Preservation of Public Security Ordinance in 1955 after the Hock Lee bus riots. In 1960, Malaya enacted the Internal Security Act to deter communist activity. When Singapore joined Malaysia in 1963, the Act was incorporated into Singapore law and retained after Singapore gained independence in 1965. It has since been amended and the current version in Singapore is the Internal Security Act (Cap 143, 1985 Rev Ed) [*ISA*].

Under the *ISA*, a person may be detained for up to two years without trial if the President, acting on the Cabinet's advice, is satisfied that the person poses a risk to national security or public order. The Minister for Home Affairs may suspend the detention, but may also revoke the suspension if satisfied that the person failed to observe an imposed condition or that it was necessary in the public interest to do so.

Fears that the ISA will be abused

Given the potential abuse of detention powers under the *ISA*, it is important to have checks on executive power, such as judicial review. With regard to the *ISA*, the scope of judicial review depends on whether the President and Minister had to be satisfied objectively or subjectively. An objective test would allow the court to examine if there was sufficient evidence for the President or Minister to be satisfied, whereas a subjective test would not.

The High Court adopted a subjective test in *Lee Mau Seng v Minister for Home Affairs*, [1971] SGHC 10, [1971-1973] SLR(R) 135 [*Lee*]. However, this was overturned by the Court of Appeal which adopted an objective test in *Chng Suan Tze v Minister for Home Affairs*, [1988] SGCA 16, [1988] SLR(R) 525 [*Chng*]. However, in 1989, Parliament amended the *ISA* to freeze the law regarding judicial review at the date of *Lee*. In *Teo Soh Lung v Minister for Home Affairs* [1990] 1 SLR(R) 347 [*Teo*], the Court of Appeal affirmed that the amendments reinstated the legal position in *Lee* and restored the subjective test. Nevertheless, the Court of Appeal in *Teo* left the door open for the court to decide whether the President's or Minister's satisfaction was in fact based on matters within the scope of the *ISA*. Hence, the court may invalidate a detention order if a detainee can show that he was not detained on security grounds.

Accusations that the *ISA* violates fundamental liberties

The Court of Appeal in *Chng* held that a subjective test was inconsistent with the Constitution, which guaranteed rights to equality and equal protection (Article 12) and the fact that judicial power may only be exercised by the courts (Article 93). However, in 1989, Parliament amended the Constitution such that the *ISA* is not unconstitutional despite its inconsistencies.

Although the *ISA* is not unconstitutional, it may still be argued that preventive detention violates fundamental liberties. On the other hand, some believe that this is a necessary sacrifice to preserve national security. However, fundamental liberty and national security are not mutually exclusive, and we should strive to find a balance between these two values.

Relevance of *ISA* in today's society

The *ISA* was primarily used to counter communist threats in the past but with the fall of communism, some have questioned its relevance in today's society. In 2011, the Deputy Prime Minister and Minister for Home Affairs Teo Chee Hean noted that the ISA remained relevant to combat a different threat – terrorism. Most detainees since the late 1980s were members of the militant organisation Jemaah Islamiyah or people sharing its ideology or planning terror attacks. Some have argued that terrorism can be countered using existing criminal offences. However, there may be insufficient evidence to put a person involved in terrorist activities on trial, especially if witnesses are afraid to speak up. In addition, criminal proceedings may become a platform for him to spread his extremist views. On the other hand, certain procedures may be put in place to protect witnesses and an open trial may rally society against extremist views (Jack Tsen-Ta Lee, "The Past, Present and Future of the Internal Security Act"). The *ISA* is no doubt a useful tool to counter terrorism, but whether there are better alternatives remain to be seen.

Conclusion

Whether the *ISA* should be maintained, revised or abolished is not an easy decision. It is a useful tool to counter threats to national security but may cause fears of potential abuse, accusations that it violates fundamental liberties and concerns about its relevance in today's society. One option is to retain the *ISA* to combat the current threat of terrorism where criminal proceedings may be inadequate, restore the objective test and allow greater judicial review to prevent potential abuse of power, and finally balance fundamental liberty and national security by ensuring that it is used only when necessary.

Wenting Ye

As for legislations that are considered most sinister in our modern history, as a Chinese, what first comes to my mind is the legislation during the period of Cultural Revolution.The full name of which is "the Great Proletarian Cultural revolution". Refers to the political movement of the Chinese nation from May 1976 to October 1966 in China launched by Mao Zedong , which was used by Lin Biao and Jiang Qing two anti Revolution Group, brings a serious disaster to the Chinese nation.

Then what about the Cultural Revolution? Is there a rule of law during the Cultural Revolution? First of all, the cultural revolution period, China's formal law is only two, a "Constitution", a "Marriage law". Obviously, the social order is not only regulated by these two laws. What are the rules of social practice? The answer is imperative, is the ruling party's resolution. A speech of Mao Zedong in the Beidaihe conference in 1958 can serve as a reference: the majority of people cannot rely on legal governance..... The Constitution was written by me, and I cannot remember it..... Each of our resolution is a law, and every meeting is a law..... We have all kinds of rules and regulations..... We don't rely on these, mainly by resolution..... Not to maintain order in civil law. The people's Congress, the State Council meeting has their own way to do this, we also rely on our own way.”

As can be seen from the resolution ,the society is not charged by law, but by the ruling party's will, in the form of resolution to regulate. Theoretically, the ruling party can through the legislative expression of their will and through the rule of law to achieve the will; however, it is inevitable there will be multiple social game process if you take a procedural rule of law .Since then the social forces have opportunities for their own interests expression, increase the difficulty of the ruling party monopoly will expression and reduce the flexibility of it. With the rule of the party instead of the rule of law, it is easier to reach the maximum of the ruling party's will.

All in all,the performance of “Cultural Revolution”undermine the rule of law and democratic can be concluded as below:

1.Violations of human rights: the rebels criticize "capitalist" “reactionary academic authority" and“monster"everywhere.A large number of leaders of the party and government at all levels, celebrities and academics, was brutally denounced as the traitor and to be subjected to persecution. As President Liu Shaoqi was persecuted to death, resulting in the history of China's largest injustice.
2.Law became null and void: During the turmoil of “Cultural Revolution" , the fundamental law of the "People's Republic of China"—The Constitution, has become a dead letter and is only a legal name, the basic rights and personal freedom of citizens have lost protection.
3.Rebels seize power and attribute to the destruction of the social order.Government leading organs from central to local are seizing power and paralyzed at each level. Conflicts happened everywhere, workers left the factory , students left the school. Learning activities

and normal production has halt during this period. Revolutionary Committees were temporary power institutes in each area.

4.The interruption of democratic political system: the People Congress had not held for ten years, multi-party cooperation and political consultation system led by the Communist Party of China can not be implemented.

Fortunately,after the Cultural Revolution,the Communist Party of China re-start the construction of China's legal system and get rapid and successful development. Since the third Plenary Session of 11th Party Central Committee, to redress unjust, false and wrong cases as well as adhering to and perfecting the People Congress System was a significant political project for the Communist Party of China to bring about a new historical situation.In 1982, the promulgation of the fourth section of the Constitution in the history of New China, has laid a solid legal foundation for the reform and modernization. Then, the legal system gradually formed, legal education took shape, legal thought gradually dip into the life from the books, and plays an increasingly important role in social life. What's more,the movement of popularizing the concept of the rule of law enhance the people's knowledge of it.In 1999, the Communist Party of China Central Committee made it clear " building a socialist country ruled by law" as a basic strategy, and written into the Constitution as well as the government work report.This not only fully reflects the requirements of social progress, and will promote the development of rule of law in our country to a new stage.

In conclusion,we should lay emphasis on the authority of the legal system.And only by this way can we live a orderly life.

Crime of counterrevolution

Xiaoyi He

Chinese criminal law included crimes of counterrevolution, which refer to crimes that endanger state security and purposefully overthrow the regime of the country, namely, acts with the intention of overthrowing the political power of the country and acts that objectively endanger state security. Apparently, Crime of counterrevolution was one of the most serious sort of crimes in criminal law. Moreover, Crimes of counterrevolution accounted for more than half of the crimes with death penalty punishment. It suggested that legislators attached great importance to utilizing criminal law, which serves as a sharp weapon to severely punish varieties of counterrevolutionary activities. Instead of being a defendant of the charge, I persist in abolishing the crime of counterrevolution. The reasons are manifold and can be listed as follow.

Firstly, Criminal law had been deemed as a sword for People's democratic dictatorship, a kind of sharp sword to fight against crimes. Meanwhile, it was considered that crime was a kind of very serious wrongdoings that an individual infringes upon the public interest of State and society. However, the politicalization of the law is a prominent phenomenon in Chinese modern legislation history. Needless to say, the crime of counterrevolution is a typical example. From my perspective, crime of counterrevolution was stipulated by the statute as a legal concept, but it is not a legal concept from a strict sense. I am convinced that it’s mainly a political concept. The term of counterrevolution was produced during political struggle and served for the authorities. As the political power and political position can be changed with time passing by. I think crimes of counterrevolution should not be stipulated by legislation at all. Only when the revolution become the common pursuit of an era, the only standard and value judgment in social behavior after the highest standard of "counterrevolutionary" will crime of counterrevolution be constructed as a "evil" of the largest and the most evil "sin". Secondly, the purpose of counterrevolution is the necessary condition of the criminal law if the case constitutes the crime of counterrevolution. In addition, the political attitudes as the criminal purpose and rules in the practice of subjective factor also lost the criterions for the conviction. For instance, the same kind of reactionary behavior, which can lead to two distinctly different results, free from prison or suffering from heavy penalty. It gave rise to a number of injustices. Take an example, during the Cultural Revolution, about 135000 people were sentenced to death. Thousands of people were buried under the charge within the mixture of truth and falsehood.

Lastly, crime of counterrevolutionary is one of the charges of taking class struggle as the key link’s criminal law. With the regime stability, economic development and social harmony, the charges of the crime of counterrevolutionary valid for 70 years was eventually abolished in criminal law in 1997. The foremost reason of abolishment is that the charge did not meet the conditions. And "crime of counterrevolution " was officially renamed to "crime of endangering national security " by the new Criminal Code. Two years later, the word "counterrevolutionary"

was removed thoroughly in the constitution of the People's Republic of China. Moreover, crime of endangering national security can more accurately reflect the essential characteristics of this kind of crime. Generally, the objective of counterrevolution was to overthrow the dictatorship of the proletariat regime and the socialist system, which was against capitalism. To the contrast, crime of endangering national security is conducive to the policy of "one country, two systems ". It facilitates the economic development in Hong Kong, Macau and Taiwan of capitalism. Not only is it beneficial to safeguard national independence and sovereignty, but also to the international criminal judicial assistance.

Renaming "Crime of counterrevolution" to "crime of endangering national security "can effectively reduce or even eliminate in determining accusation with too much subjectivity and arbitrariness, truly reflecting the principle of a legally prescribed punishment. In a word, "Crime of counterrevolution" renamed to "crime of endangering national security" is strictly in line with criminal law theory and inevitable requirement in accordance with international conventions, which is the product of the development of practical circumstances in our country. Last but no least, China has increasingly been implementing rule of law in the field of criminal law and focusing on criminal law’s function of protection of human rights.

As Wendell Philips once said, every law has no atom of strength, as far as no public opinion supports it. With support of the people, the tenacious abolishment of crimes of counterrevolution remains a great landmark in the history of China’s legislation, exerting a profound influence over criminal judicial practice.

Ryoko Harada

During World War II, Japanese government maintained strict thought control by establishing laws and making propaganda. Around World War II, the law of Maintenance of the Public Order Act was established to ban social movements denying the idea of the Emperor's sovereignty or the private ownership system. Also, Japanese propaganda during World War II was designed to assist the ruling government of Japan during that time. These severe regulations for Japanese people and people under Japanese colonization went against human rights and was reformed after Japan lost the war. Then, present constitution of Japan included contents for people to get free from this control.

The law of maintenance of the Public Order Act was established in 1925, same as establishment of universal suffrage. At that time, the Japanese government did not want to happen activation of politicking through universal suffrage, so the law was established with General Election Law was a law extending to all males aged 25 and over. Originally the aim of this law was to oppress the Communist Party which objected to existence of Emperor of Japan and capitalism, but expanded to anti-government movement and its ideology. In Japan, propaganda was also taken very seriously to maintain National General Mobilization system during World War II. For example, speech control and the law of movie were made. In speech control, Japan Broadcasting Corporation which is former NHK was a only publicity organ and there were a lot of propaganda including articles which praise the victory of Japan and while failure was highly censored in newspapers, books, and other media. The law of movie was established to make movies which was based on national policy. The government tried to control Japanese artists and artists who were anti- government were arrested. “Sayon’s bell” is a movie which was a remake of a story in Taiwan. Sayon who was Atayal girl, which they are one tribe of Taiwanese aborigines, helped carrying the luggage of her teacher and went missing. The teacher was a Japanese policeman in Taiwan and Atayal students adored him. Then this movie was made as a moving story and intended to make a good impression of Japanese colonization on Taiwanese. As a result, the law of maintenance of the Public Order Act allow people not to criticize government and follow them. People was brainwashed wrongly by propaganda during World war II. After the war, Maintenance of the Public Order Act was abolished, and government said that they reflected on this control of thought and it was violations of human rights. Moreover, Potsdam Declaration Clause 10 made by this reflection. Therefore, the constitution of Japan now accepts Japanese people to freedom of speech, religion, thought, the meeting, and the association, and has become to respect human rights. These contents were not included in the constitution before the end of World War II.

These control of thought, and its ware threats to the Japanese people and people under Japanese colonization by Japanese government seemed more ingenious strategy than any other strategy. This tells you that war can make law lawless, because around almost all wars, countries aim not for happiness of human but for just victory and improve their position during the world, and now we are trying to stop it by our present constitution. However, in Japan,

making of legislations are mainly controlled by the government, so it may be easy for Japan to return to Japan of during World War II, and it should be a frightening thing for all of us. Therefore, Japanese people have to insist their rights to their government, according to the constitution. An only way that can stop the law run to lawlessness is the contents of the constitution of Japan and it is an ideal one, but if we don't care about this, that notorious history may be repeated. We should protect this constitution and share the contents with foreign people not to cause a new war.

Ayano Goto

War makes people crazy. You can easily understand that by carefully looking into the laws that were legislated during the war period. Leaders made many notorious laws to eliminate people who oppose to the authority. By taking people's "freedom", (suppressing the peoples' thoughts, making sure not to express it, restricting their movements and so on) leaders became tyrannical, high-handed and despotic. As a result, during the war, no one could say anything to the authority and many people sacrificed their lives "for the nation". Of course, the war itself should be criticized too, but I think the bad laws that were hidden in the back side, are "the root of all evil". From this awareness of issues, I would like to introduce one notorious law in Japan.

In Japan, 1925, the "Peace Preservation Law" (Japanese name "Chian-iji Hou") was established. This law says "People who organizes a group or join a group which has the thought of the *left wing* and are trying to rebel the authority, will be put in jail for max 10 years." At the same time in 1925 a normal "election law" was legislated too. This law admitted election rights to all men and women whose age is older than 20. This means that, instead of being kind to the people for giving them election rights, the nation gave severe punishment who oppose to the authority. The "Peace Preservation Law" was legislated because of the Russian revolution (1917). Because the Capitalism society (including Japan) had a huge gap between the poor and the rich, people began to admire an equal society, which everyone had almost the same amount of money, work and happiness. And the best example was the Communist society like Russia. Unlike the people, the authority thought that communist society is dangerous because the nation knew the detail of the Russian revolution. The Japanese government also knew the detail of the revolution too, so they thought that suppressing the thought of communist and dissolve the "Japanese communist party" would be a must. In 1928, the"Peace Preservation law" was amended and punishments became severe. The punishment was extended to "more than 5 years or imprisonment for life or max, death penalty." In 1941, the law became even more severe. A "prevented punishment (people who are *predicted* to rebel the authority will also be put in prison too.)" was set too. This means that even though a person did nothing, but the government thought he *will do* something, they can easily put him into jail. Because of this severe law, few thousand people were arrested and many people changed their idea" from left to the right." However, some eager "left wing" activist didn't bend their thoughts and tried to express it. One famous writer Tajiki Kobayashi was tortured and killed brutally. 65 people were killed in the same way too, and 75681 people were arrested by this law. As you can see, laws can easily be amended to a wrong direction and the influence is huge. This "Peace Preservation Law" is one bad example that led Japan to a ruin.

By understanding this fact, I strongly thought again that "freedom" is a must. Of course, we need some restriction to some extent because we need to maintain the public order. However, that doesn't mean that leaders can restrict everything and control people's whole life. As I am a law student, I think that laws shall not be used to oppress people, but help people live in peace

forever.

Act on the Protection of Specially Designated Secrets

Yusuke Yamazaki

Why I chose this act is that it was so controversial when the government attempted to establish but nevertheless, this is inevitable, now people seem to forget it. This is so hazardous because this act can be bad law. We might be able to remind its risk when it is too late. We have to think again about this act and do something to prevent our nation from taking the wrong way.

Referring to the provision of Act on the Protection of Specially Designated Secrets, the purpose of the law is to keep us safe by concealing from terrorists the significant information relating to the security, diplomacy or terrorism. I think there are mainly three key problems. First one is that our right to access information can be neglected by the government as what the secret is is designated by the Minister of Defense, the Minister of Foreign Affairs or the Commissioner of the National Police Agency who is under control by the cabinet and they can be made to designate as secret the information which has a bad influence. Additionary, they don't have duty to let the people know what matter is concealed so we don't have chances to check if the functions work correctly. To these concerns, the government state that the outside organizations check the validity of the designation however, they have relation with the governments. There is also another fault. If the officer who designate the secrets didn't have enough knowledge or understanding the important information which should be secret may be leaked and abused to attack Japan. So we can say that this system has the crucial faults. Secondly, when someone do something against the law, regardless of the fact he or she is public or not, the one can is punished and its sentence can be heavy. This means that the government can arrest and eliminate the people who stand in the way of them. Last, judging the aptitude for the secret checker, the sphere to be checked over a candidate includes the close people like friends or family, which can invade their privacy. On the other hand, this act has several significant merits. Until now Japan has not strong rules to protect secrets and this act might realize the security of Japan under the strict regulation. And the alliances with other countries will be more tight because the strict security of the country let other country believe her. This leads to the easiness for immediate sharing important matters which is so useful for an emergency. For example, in accident at a nuclear power generation plant in Japan, the government might have lessened the damage through the quick exchanging information between other countries who could help us.

As the above suggests, this act has positive side and risky side but the latter seems to have too much negative influences. In my opinion, the act to protect information is indispensable but in this case, the process has too many faults and should be improved. Additonary the aggressive way to pass the bill by the ruling party is to blame as they neglected the public opinion entirely. Now we must involve our selves to politics to prevent the rise of tyranny before it's too late.

Mai Moriyama

In 1917, the Russian Revolution broke out and communism started to spread all over the world. For the fear against communism, Japanese government enforced The Maintenance of the Public Order Act in 1925. This law was established in order to control and regulate communists who schemed to abolish private property system and change the emperor system in Japan. In those days because of the Taisho-democracy, labor movement and peasant movement became active. Rice riots broke out and party politics began. Therefore, popular election system started in 1925 and The Maintenance of the Public Order Act was also introduced in the same year. Indeed, some of communist plot to overthrow the nation, oppressing them are one of the ways to keep nation stable. I am sure that the law was necessary to keep the society safe. However, I have other idea; the government should not have named the law as “The Maintenance of the Public Order Act”. They should have named it as “Communism suppressing law”. The reason is because I think the law itself was not such a bad idea, but stretched interpretation of it caused terrible situation. Due to the stretched interpretation in 1928, approximately 1600 people were arrested and maximum punishment was the death penalty. Also in 1941 when the Pacific War was to begin, people were arrested only because they did not follow the policy. It is clear that not all of those who were arrested were communist.

In any society, we establish many kinds of laws and follow them. Therefore, scope of application is very important. In this case, the coverage of The Maintenance of the Public Order Act was not appropriate. It was too wide due to the name of the law. So, great numbers of people were arrested or even died. What we can say is that we should pay more attention to the coverage of the law.

These days, right of collective self-defense have attracted public attention and we have a discussion over interpretation against the article 9 of constitution. If we expand the definition in order to strengthen the Japan-U.S. alliance, the Self-Defense Forces of Japan will be able to use military force in foreign countries. As for this matter, the yeas and nays are divided, but we should think about the Pacific War and remind of atomic bomb which were dropped on Hiroshima and Nagasaki. We should not forget the fact. Natsuki Yasuda, a photo journalist once wrote her experience on her Facebook.

I was asked “Where are you from?” by Jordanian at the refugee camp in Jordan. When I answered “I’m from Japan”, I was offered my hand. They said “We welcome the country that doesn’t attack us.” At that time, I came to realize what our strong point is again.
When I was talking with Syrian, Hiroshima and Nagasaki often became topic. They said” We respect Japan because you built such a peaceful country after being destroyed during the Pacific war. We want to make as nice country as Japan after this war”.

Hearing this, I felt guilty. Is there a peace in Japan, which we can be proud of now?”

We shouldn’t repeat the same mistake. History repeats, but we can change the future by establishing good and proper laws. What we should do is to know the reality and pay a little more attention against scope of application of laws.