

Post-war Japan and the law: Mapping discourses of legalization and modernization

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Abstrak

The concept of 'legalization' denotes heavy reliance on law as a means of settling social disputes and, in the United States, Germany and many other countries, it carries connotations of excessive reliance on law. In Japan, however, the rate of utilization of law (or litigation) as a means of settling social disputes remains low, despite the democratization process that unfolded after the war and despite profound changes in social structure, such as urbanization and growing individualism. Consequently, it is the lingering unwillingness to make use of the law that tends to be found problematic. Post-war Japanese scholarship of law and society has regarded litigation rates as an index of social modernization. Hence legalization must be analyzed in relation to the related discourse of 'modernization'. This paper examines some of the important approaches to this relationship that have been proposed, namely those emphasizing democratization; the relationship between imported and indigenous law; the company-centered nature of Japanese society; and the processes by which legal decisions are justified. The objective is to elucidate the peculiar locus that the discourse of 'legalization' occupies in Japanese society.