The Way of Legal Thinking and Law & Management

Legal literacy as an essential quality in the Internet Society

2020/04/01
Written by **Shigeru KAGAYAMA**
Emeritus Professor of Nagoya University and Meijigakuin University

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Abstract

The purpose of the law is peace, and the way to realize the purpose should be also peaceful argument, not struggle. In order to do so, it is necessary to discover principles that are acceptable to both parties and experts, and “to resolve disputes peacefully based on those principles”, rather than the conventional concept of "settlement by winning or losing".

The legal way of thinking for realizing it is " IRAC (Issue, Rules, Application/Argument, Conclusion) " which started from the Sophist in the Greek age and developed “the art of speech (Rhetoric)” systematized by Aristotle. The discussion between the parties occupies an important position in IRAC, and the technique to carry out the argument constructively is Toulmin’s diagram of “the art of argument”.

However, since “the diagram of Toulmin's art of argument” is modeled after a win-lose argument in a court of law, it needs to be revised in terms of discovering legal principles to satisfy both parties and experts, rather than win-lose.

Then, in order to achieve the above purpose, I propose that "diagram of legal argument" should be prepared by revising the diagram of Toulmin’s diagram of argument, and that my new diagram should be utilized in IRAC.

If citizens acquire such a legal way of thinking and discover a solution acceptable to both parties and experts, permanent world peace will not be a dream.

Introduction: The Reason Why I Became Interested in Greek Classics.

(Summary)

The purpose of law is to peacefully resolve disputes based on justice. Therefore, as a student of faculty of law, I was interested in Aristotle, who explored the meaning of justice, and in his teacher, Plato, and Socrates.

However, because it is an issue that belongs to the field of legal philosophy to deeply examine it, I, who was devoted to the study of civil law, did not study the Greek classics in depth, only reading the outline for the purpose of education in general.

It is the first time since 1998 that I have broadened my research areas of civil law, consumer law, and forensic informatics to include “legal education”, and read and reflect on the Greek classics.

This is because since that year I have been involved in the preparatory work for the establishment of the first "law school" in Japan as part of the "judicial reform" ([Justice System Reform Council, "Recommendations"(2001)]). And then I have been forced to study the teaching methods of American law schools that use method of teaching called the “Socratic method”.

Section (1) Consideration of social justice as the object of law (legal philosophy).

(A) Relationship between the Purpose of Law and Greek Classics.

The purpose of the law is to resolve disputes before they happen or after they happen, but the way to resolve them must follow peaceful and proper procedures, and the result must be justice.

The phrase "The goal of the law is **peace**, and the means to reach it is **struggle**." from Rudolf v. Jaring, “Der Kampf ums Recht (The struggle for Right)”, 1872, followed by the following statements, are certainly persuasive.

"All the laws of the world were fought against, and all the important laws had to first be taken from the hands of those who denied them. Law is not a mere thought but a living force.

Therefore, **the goddess of justice has a measure of right in one hand and a sword in the other hand to claim it**. A sword without measure is naked violence, and a sword without measure means the powerlessness of the law.

The balance and the sword are interdependent, and the perfect state of law exists only where the power of the sword of the goddess of justice and the skill of handling the balance are balanced."

Photo 1
Statue of Themis
(goddess of justice)

However, there is no guarantee that real peace will be brought about by "struggle" by force. This is because there is a high risk that a solution by force will lead to repeated struggles because it will not win the consent of the parties.

If that is the case, I believe that the means of law should be peaceful, as in "**The goal of the law is peace, and the means of reaching it is not struggle, but peaceful argument.**".

Therefore, I have been interested in justice through the Statue of Justice, ever since I entered the faculty of law. In particular, I'm interested in the debate over whether "Bad law is law." or "A bad law is not a law.".。

Photo 2

Socrates, Plato, Aristotle

And when it comes to justice, Aristotle's book, which classifies it into "Distributive justice (each one with his own)" and "Corrective justice (One must not gain at the expense of others, and such gains must be returned to the loser.)" and discusses it in detail, is important. Therefore, we cannot ignore the writings of Aristotle. We should also pay attention to the words and actions of Plato, the master of Aristotle, and Socrates, the master of Plato.

(B) Those who majors in interpretation of law tend to distance themselves from the Greek classics.

However, as a civil law major, I must devote myself to the study of the interpretation of the Civil Code.

I decided, therefore, that I could leave the grand question of what justice is to a legal philosophy expert. As for the works of Aristotle and Plato, I only read the general outline as a general knowledge, and I gave up full-scale learning such as reading the original.

As an excuse, I thought as follows.

First, among the principles of justice argued by Aristotle, distributive justice is clearly indicated in the Civil Code as the cause of acquisition of ownership by means of the preoccupation of movables, acquisitive prescription, inheritance, and provisions of contracts (gift, sale, and exchange contracts).

Second, Aristotle's correctional justice is clearly stated in the Civil Code in terms of unjust enrichment (return of profits without just cause) and tort (Recovery of willful or negligent infringement).

Therefore, I thought that studying those provisions would eventually lead to learning specifically about Aristotle's theory of justice.

(C) The reason why the law Interpreters become to have to learn Greek Classics.

Photo 3　Lecture on Torts in USA with Socratic method, 2000.

This attitude toward research had to change since the start of judicial reform in Japan under the slogan of "Making the Judiciary Close to the People". This trend led to the establishment of **the law school (master's course) modeled after the American law school**, in Japan, where no law school existed but only continental faculty of law existed. In the process of preparing for its establishment, I understood that **the Socratic method was used in all the lectures at American law schools** and that it was necessary to know in detail about the Socratic method of dialogue (midwifery).

Although it is called the Socratic method, in fact, Socrates has not left any books, so all of Socrates's dialogue methods must be understood through reading Plato's books.

So I began to read the writings of "Gorgias","Menon", "Phaedrus", "Theaetetus" and others. I have come to know that the way of thinking of American lawyers is based on the method of Aristotle (IRAC), which relies on Aristotle's method of oral argument, and that the origin of this method is derived from the sophists before Socrates.

When I read Sophists' writings, which I believed had been denied by Socrates, I came to understand that the sophistry which Socrates had attacked was, in fact, not an abhorrent being, and raised the important question of "meta-inference" which was unavoidable in order to make the argument constructive.

Section (2) The Influence of Socrates's "Know thyself" and the Greatness of Goethe, Sun Tzu.

(A) Why can the proposition "Know thyself" be the highest proposition in philosophy?

Photo 4　Socrates enjoying dialogue (Right Edge)

It is said that the final subject of philosophy is what Socrates calls "Know thyself". The reason why a proposition that seems so simple can be the ultimate goal of an esoteric philosophy is that it involves "meta proposition" and "meta-inference" to overcome sophistry.

Human beings, even if they have a lot of prejudice, can know it fairly accurately if it is an object other than themselves. It is, however, difficult to know yourself. Because "Know thyself" is the same as telling your brain to understand itself.

(B) When is the "A bad law is not a law." proposition possible?

By applying the problem of "Know thyself" to the law, we can understand the complexity of the problem.

The law can judge people. But the law cannot judge the law itself. That's why the problem of "Is a bad law a law?" becomes a challenge.

Let's take a simpler example of a meta-inference problem.

Can you understand the proposition that Japanese is not Japanese but English, “日本語” is, however, Japanese?

Generally speaking, Japanese, is not English but Japanese, seems to be correct. But if you think of it as meaning "Japanese is (As a translation of "日本語" instead of "Japanese") English" you will realize that the proposition "Japanese is not Japanese but English" is also the correct proposition.

If a proposition discusses itself in a higher dimension, the answer will be different from discussing it in the same dimension.

The proposition of "unconstitutional laws are void" can only be understood when we understand that the Constitution is "law of law" or "existence beyond the law".

In other words, only those which go beyond the law can judge the validity or invalidity of the law. If this is the case, we can see that the correct answer to the proposition of "Is a bad law a law?" is "A bad law is not a law." in the case of "unconstitutional law is a bad law".

You will also be able to understand "a law that is contrary to the general principles of law is a bad law that is void", a very high-level problem that we'll discuss later.

I will discuss this in more detail later when I discuss the Nuremberg Tribunal, which condemned the Nazis for lawfully seizing power and enacting successive laws that violate human rights.

(C) How can we "Know thyself"?

Now, let's go back to the original proposition. What should be done to "Know thyself"?

Based on what we've seen so far, it's clear that to know yourself, you have to assume a presence beyond yourself. That is the community that has nurtured us.

To know yourself, you need to listen to others in the community. It is difficult for others to know themselves, but others can know you. As the word "岡目八目（Okame hachime: Onlookers can read the game far better than the players themselves.)" suggests, others can evaluate you fairly accurately.

Thus, while we know that we can take other people's opinions and "Know thyself", we cannot "Know thyself" if the other person is not trustworthy. So how do you know yourself?

The words of Goethe (Johann Wolfgang von Goethe, 1749 -1832) are helpful in this regard. Goethe stated that " Wer fremde Sprachen nicht kennt, weiß auch nichts von seiner eigenen. (Those who don't know foreign languages, don't understand their own.) ".

For this proposition, if we take the "contrapositive" which can convert a negative sentence into a positive sentence without changing its content, we find the following proposition. In other words, "If you want to understand your own language, you should know a foreign language.".

If you project the story of such a language onto a human being, it becomes "If you want to understand yourself, know others." or "Look at people, and look at me (One man's fault is another's lesson).".

The great strategist stated in his " Sun Zi Art of War" that “知彼知己者，百戰不殆（If you know the enemy and know yourself, you need not fear the result of a hundred battles.）”. I think that it can be interpreted as knowing your enemies first and then comparing them and then knowing yourself. To know yourself, it is essential to compare yourself with others.

Section (3) Learn not to be deceived by sophistry - see the work of the sophists before Socrates.

(A) The sophism of self-reference (Typical: Paradox of liar in Crete).

A typical example of self-referential sophistry is a paradox of Crete liar.

There is a lore that ancient Greek Epimenides said, "All Cretarian (Crete islanders) are liars.". The problem here is that Epimenides, who made the above statement, is also a Cretarian. Is this statement credible?

If this statement is true, all Cretans are liars. Then what Epimenides says is true, and thus he is not a liar, which is inconsistent with " All Cretarian are liars.".

On the contrary, this statement is a lie: "Not all Cretans are liars.". As a result, this contradicts the statement that "All Crete islanders are liars.".

This means that you cannot trust one’s own reputation.

This becomes more evident when you consider the simpler statement "I'm a liar.".

Let’s explain the paradox of saying "I'm a liar.".

If this statement is true, it would contradict my statement that "I'm a liar." because I am an honest person who honestly admits that "lie".

On the other hand, if this statement is false, it means that "I am not a liar.", which is also inconsistent with the statement that "I'm a liar.".

Now, let's try the opposite exercise of honesty.

Suppose someone says, "I'm honest.". In this case, is this statement credible?

Before reading the following sentence, you should first consider the answer yourself.

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Now, since "honest person" says "I'm honest." this statement by an honest person itself is correct. In that sense, this statement neither sophistry nor paradox.

However, we must not forget that "liar" must also say, "I'm honest.". Because "liar" can't honestly say "I'm a liar.".

In other words, both "honest person" and "liar" say, "I'm honest.". So saying "I'm honest." in itself is totally unappreciated.

"Honesty or not." is meaningless to judge for yourself. This is an issue that can only be evaluated by a third party after they have objectively observed what the person says and what they actually do.

After all, keep in mind that statements such as "I'm honest." or "I'm a liar." are typical examples of the paradox of self-reference, and such statements are meaningless and untrustworthy.

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Finally, a summary of "self-referential sophistry".

"Know thyself" is not easy. When you travel to know yourself, you always find sophistry, typified by "self-referential sophistry". And if you are careless, there is a great risk of being tossed about or deceived by these sophistries.

Therefore, people are less likely to fall for deception if they develop the habit of objectively observing whether what a person says is consistent with what they do.

(B) Sophistry That Puts Someone In a Dilemma (Korax paradox).

As for sophism, we have to be careful when we encounter more sophisticated sophistry than the first, that it appears to be complete in all cases and that the statements in each case are one-sided assessments.

A typical example is the dilemma described as "Korax paradox" (Olivier Boulle (Translated by Sano Yasuo), “Rhetoric”, Paperback Kuseju (Collection Que sais-je?) (2000), p. 13 -14)

A man named Tisias heard that rhetoric is a technique of persuasion, and left his residence to study this art(technique) under the tutor Korax. But as soon as there was nothing more to be taught in the course, Tisias would not pay the promised tuition. In court, before the assembled judges, Tisias used the following dilemma:

Photo 5 Tisias

Tisias: Dr. Korax, what did you promise me to teach?

Korax: The art of persuading whoever they are.

Tisias: That's right. So if Dr. Korax taught me the art, I have the ability to persuade anyone.

So can I convince Dr. Korax not to accept the reward?

(I mean, I should be able to use art of persuasion to convince Dr. Korax that I don't have to pay his fees, right?)

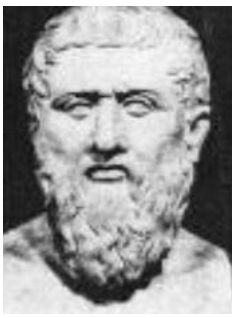


Photo 6 Korax

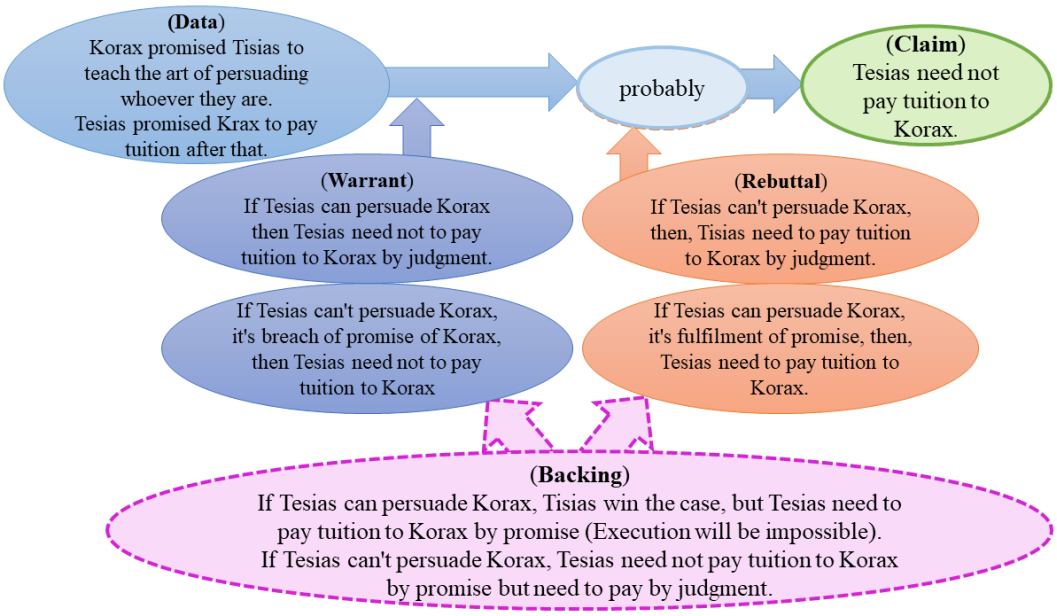
On the other hand, if the teacher didn't teach me properly, it would be a breach of the promise, and in this case, there would be no reason for me to pay the teacher (If I can't persuade Dr. Korax, it's Dr. Korax's breach of the promise and I don't have to pay any reward.).

On the face of Tisias' seemingly impeccable argument, Korax countered with an art of counter-offensive to deal with sophistry (cf. Hidenobu KOZAI “Rhetoric and Sophistry - a forbidden argument course”", Chikuma Bunko (2010/5/10), p. 109).

When we encounter a paradox in which 2 outcomes of good and evil (No payment of remuneration and payment of remuneration) accompany each of 2 opposing things (Here, we discuss the failure to fulfill promise and the achievement of promise.), we may counterattack by cross-combining each of these opposing outcomes with each of the other opposing outcomes.

Korax: If you succeed in persuading me that I am not entitled to a penny, you must pay me a reward. For I have kept my promise to teach rhetoric fully (Promised Payment Request).

On the contrary, if you could not succeeded in persuading me, in this case it is only natural that you should pay me in accordance with your judgment of loss (Order for payment in a judgment against the plaintiff).



In this way, the ability to counter the paradox with a paradox, as in Korax, increases freedom of action.

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Now, let's practice the opposite paradox against a paradox.

Here are two examples: One is the paradox of discouraging marriage, and the other is the paradox of discouraging persuasion of malicious people.

When we can compete with these two paradoxes, we can better understand the meaning of the Korax paradox.

Let us refute the following dilemma ([KOZAI, "Rhetoric and Sophistry" (2010), p. 112 -114.]).

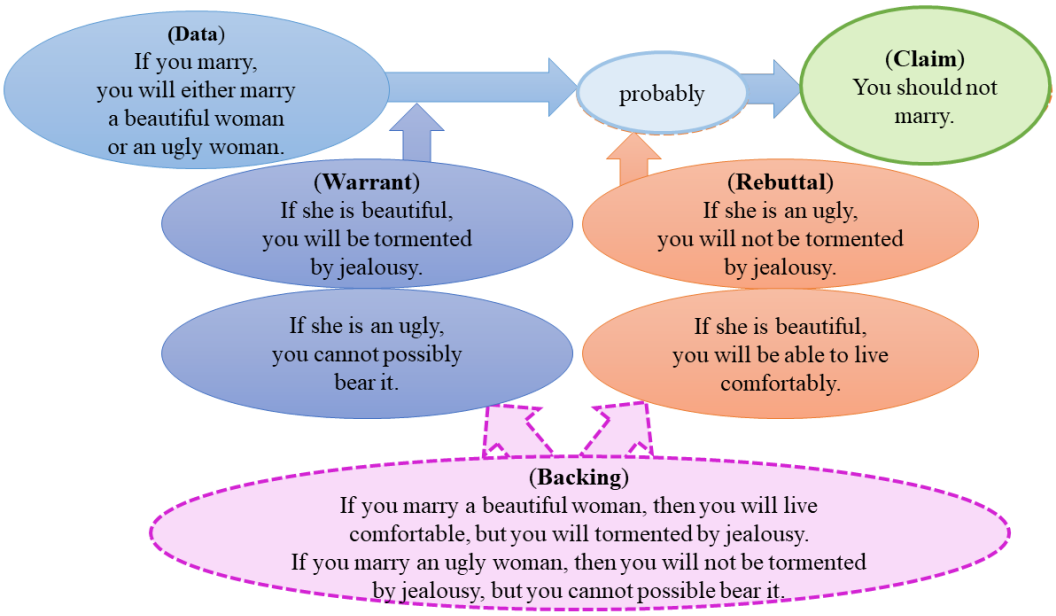
(The major premise) If you marry, you will either marry a beautiful woman or an ugly woman (You can't argue with us on this point.).

- (Case 1) If she is beautiful, you will be tormented by jealousy.
- (Case 2) If she is an ugly, you cannot possibly bear it.
- (Conclusion) Therefore, you should not marry.

Here is an example of the paradox that counters this dilemma.

You should get married. The reasons are as follows.

- (Case 2) If she is an ugly, you will not be tormented by jealousy.
- (Case 1) If she is beautiful, you will be able to live comfortably.
- (Opposite conclusion) Therefore, you should marry.

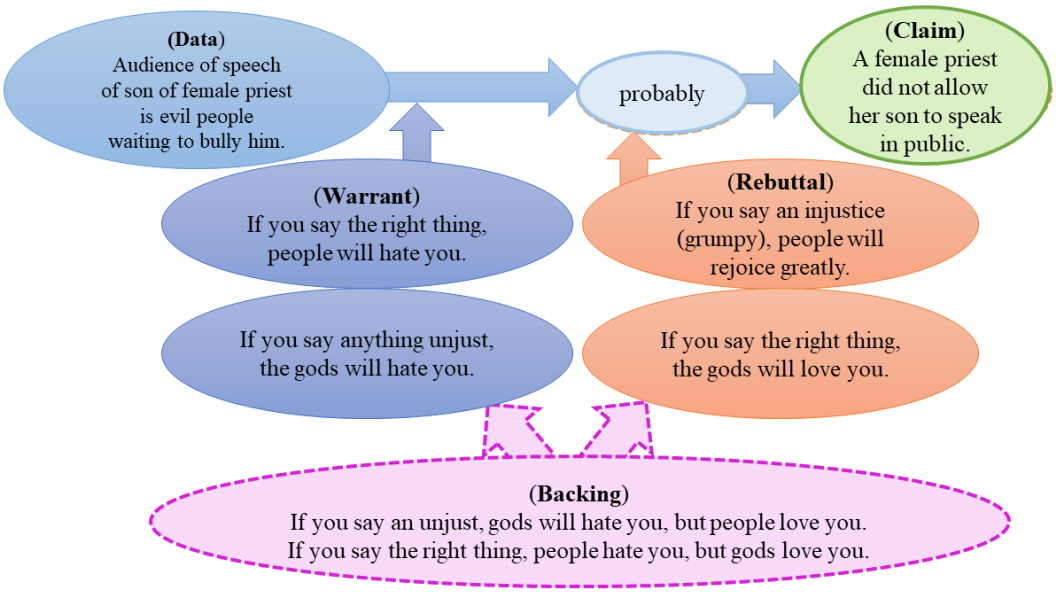


Finally, counter the following paradox [Hidenobu KOZA, “Rhetoric and Sophistry (2010), p. 109]

A female priest did not allow her son to speak in public. The reasons are as follows. ・If you say the right thing, people will hate you (Adversity makes friends, and truth breeds hatred (Homer).). ・If you say anything unjust, the gods will hate you.

The paradox to counteract this dilemma is as follows.

She should allow her son to make a speech in public. The reasons are as follows. ・If you say an injustice (grumpy), people will rejoice greatly. ・If you say the right thing, the gods will love you.



As described above, in discussions, we may be faced with the dilemma of being forced to choose between two alternatives and both of them not likely to achieve the desired result. People must still choose one or the other.

Thinking about the paradox and the counter-paradox makes it clear that both options have their advantages and disadvantages.

If you understand the two paradoxes well and choose an option that has more advantages and fewer disadvantages, you can live a better life.

Therefore, considering both the paradox and the opposing paradox will help to broaden the choices that occur in life.

A modern solution to the Korax paradox is discussed at the end of this chapter (D). (to be continued)

(C) Questions that are disadvantageous to answer easily (Answer malicious questions with questions!).

(a) Responding to a question shifts the burden of proof.

People tend to answer questions when they are asked.

When a person tries to answer a question, however, the burden of proof shifts from the person who asks the question to the person who answers the question, and the person who answers the question bears a heavy burden.

Therefore, in response to a question, you should ask the interrogator the meaning of the question, or ask the interrogator the reason for the question, and make it clear that the responsibility for proof (burden of proof) rests with the interrogator.

Let me give you an example.

A: “I recently read a book called ‘So and so’ and it was interesting.”
B: “What? That ‘So and so’ is the worst. Why did you find it interesting?”

Normally, Mr./Ms. A would come out and explain why the book “So and so” is interesting. However, if you answer the question easily like this, Mr./Ms. A will be borne burden for proving the reason why the book “So and so” is interesting.

It is dangerous to assume the burden of proof easily because it is more difficult to prove affirmation and easier to deny the proof easily.

Therefore, Mr./Ms. A should not assume the burden of proof by practicing the method of "Answer a question with a question" as follows.

A: Oh, for you, the book is the worst. But why did you think the book was the worst? In the first place, does "That book is the worst." Mean the criticism against the author or against me who found the book interesting?
B: No, not really. I read the review and it said so ...

This way, you can avoid the risk of assuming unnecessary burden of proof.

(b) Questions to be refused to answer.

In some cases, you should not answer a maliciously crafted question with Yes or No. For example.

A: You've never used violence against your wife, have you? Please answer yes or no.
B: No.
A: All right. If you didn't beat your wife before, you're doing it now. Your confession has been obtained.

This is an example that is a little too simple, but if the answer is yes or no, there is a high possibility that you will be caught in a leading question.

In this case, also, it is necessary to decline the answer of yes or no, and confirm first the purpose of the question, and proceed with dialogue while taking care not to be burdened with the burden of proof.

In particular, the same phenomenon as “witch trials” may occur in judicial proceedings, where interrogations that are similar to “torture” are conducted.

(c) The process of witch trials and the importance of due process.

In the witch trials of the Middle Ages, when a woman was suspected of being a witch, she was tortured and convicted whether or not she confessed. The following is a very dangerous sophism in which the suspect was proved to be a witch if he did not confess under torture.

A: Are you a witch?

B: I'm not a witch.

A: If you were not a witch, surely you would say, "I'm not a witch.". But the Witch will say, "I'm not a witch.". Therefore, whether you are a witch or not, you must be tortured.

B: I'm not a witch, so I can't say I'm a witch under any torture.

A : ... (against B, who had been tortured nearly to death) No one but a witch could endure such severe torture. You have endured such cruel torture. This is sufficient proof that you are a “Witch.”

The case of Mr. Carlos Ghosn, who fled to Lebanon behind a musical instrument case while he was released on bail, has triggered a harsh view of the Japanese criminal justice system from around the world.

In Japan, the extraordinary figure of 99% being found guilty if prosecuted is one of the grounds for the abnormality of Japan's criminal justice system.

Furthermore, the Japanese criminal justice system has been criticized for allowing suspects to suffer almost as much as torture, not only because lawyers cannot be present during interrogations, but also because the period of detention can be extended one after another for various reasons.

The reason why the eyes of the world on Mr. Ghosn's flight overseas are not so severe compared to Japanese public opinion is probably because there is a common understanding throughout the world that the Japanese judicial system does not protect the human rights of suspects for the above reasons.

Other points to note regarding witchcraft trials include the following: In the days when science was not developed, when an unexplained calamity occurred, it was blamed on demons and witches in Western countries. When such calamity occurred, witch hunting was frequently conducted, and many innocent people were victimized only because they were suspected.

So these days, it seems that there is no room for such problems and that they are not considered a serious issue to be addressed.

However, the nature of the causative virus of the corona virus has not been scientifically elucidated, and the current state of the corona virus is that no cure has been established. The situation is similar to that of the witch hunt in the era when plague was raging.

For this reason, panic situations such as "toilet paper buyout" which had been regarded as a relic of the past have been reproduced in the corona virus disturbance. In addition, many people have been harmed by false rumors, malicious slander and slander similar to witch-hunting.

In this sense, witch trials can be said to be a problem that needs to be properly studied even today.

(D) The Law and the Management Perspective of Korax's Dilemma.

The Korax’s dilemma presented earlier in paragraph (B) of this section has been categorized as a

"sophism" in which both arguments contain inconsistencies, and there has been no logically valid solution that satisfies both arguments.

However, in the real world, such problems can occur, and they cannot be left as difficult problems to solve.

First, we examine what kind of solutions can be provided by interpretation of law when problems such as the Korax's dilemma arise in the real world.

Second, if it is difficult for both parties to reach a solution that is acceptable to both parties only through the study of interpretation of law, I will examine in detail what kind of reasonable solution can be proposed from the viewpoint of " Law and Management".

(a) Review of Logics of Tisias and Korax

There are two conflicting theories about Korax's dilemma. There are two conflicting theories of Tisias and Korax.

One is Thisias' logic of not paying tuition. Tisias' logic is as follows:

If Tisias fails to persuade Korax and loses the case, Korax does not have to pay tuition because he is breaking his promise (impart universal persuasive skills to).

On the other hand, if Tisias persuades Korax and wins the case, Tisias does not have to pay tuition because of the effect of the winning judgment.

Certainly, it is a persuasive logic (sophism).

The other is the Korax logic of having to pay tuition.

Korax's logic follows a paradoxical counterattack (In accordance with the case, refute the cross-talk about each matter.), counterattacking Tisias' theory as follows:

If Tisias persuades Korax and obtains a judgment in favor (decision not to pay tuition), the judgment in favor of him must pay the tuition as promised, since it is a public proof that I have fulfilled my promise.

Conversely, if Tisias is unable to persuade Korax and a judgment is rendered against him, that is, to pay the tuition to Korax, Tisias must pay the tuition in accordance with the public judgment.

Thus, Korax's logic (sophism) is persuasive, even though it leads the other way. Thus, since both are persuasive logic (sophism), it has been difficult to determine which argument is correct, and in previous studies, which argument is correct.

If such a case occurred now, how should the judge decide?

We will analyze this issue from the perspective of "Law and Business Administration" and draw conclusions. I'll think about it over time.

(b) The nature of contract between Korax and Tisias

First, we will consider the contract that Korax signed with the students, that is, a contract that fosters

the ability of argument that is second to none.

Contracts for educational services are usually referred to as mandate contracts (Article 644 and subsequent articles of the Civil Code). If the contract includes a special agreement that requires payment of tuition fees, the mandatary (Korax) can claim remuneration from the mandator (Tisias) if mandatary (Korax) makes the best efforts, even if no results are obtained (Article 648 of the Civil Code).

In this case, however, Korax made an aggressive promise to "impart persuasive powers to all the public" in order to get more income. As a result, the nature of the contract has changed from a general educational service contract (mandate contract) to a work contract (contracts committed to the results).

So if Korax's students don't have the ability to convince anyone at the time they graduate, they don't have to pay.

(c) The target of the contract whom graduates want to persuade.

The 2nd issue is who is the "anyone." in the "To foster the ability to persuade anyone" which is the content of the contract.

First of all, if interpreted literally, "Anyone." includes "Korax" who is a master of Tisias and a plaintiff in this case, as well as judges.

However, with regard to "judge", if the judges are not regarded as a subject of persuasion because they are public people who make neutral judgments only in accordance with the law, they will be excluded from the scope of persuasion, and the subject of persuasion will be Korax himself.

Here, considering that this case is a civil case, I would like the judge in public position to exclude the subject of persuasion and consider only the plaintiff, Korax, as the subject of persuasion.

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Next, from the perspective of legal interpretation, that is, interpretation according to the purpose of the contract, let us consider who the "Anyone." in the "To foster the ability to persuade anyone" refers to.

The reason why Korax decided to make a contract to commit to the results, while ordinary educational services were nothing more than a mandate contract to make the best efforts, was to emphasize that the school is more responsible for training each student than other schools run by sophists, and that graduates are of such a high level that they can acquire the ability to persuade anyone. In modern terms, it's a marketing differentiation strategy.

This strategy is based on the premise that Korax's school will continue. That means we don't expect graduates to be higher in level than Korax. If the level of graduates is higher than that of graduates, the goal of "ability to persuade anyone" cannot be realized and the school will go bankrupt.

In other words, graduates should not obstruct the business of Korax's school by learning at Korax's school, even if they have acquired a level of rhetoric that exceeds Korax's. In other words, it is the idea of prohibiting graduates from engaging in non-competition.

In this way, when the purpose of the contract is interpreted in consideration of the continuity of the Korax School, the meaning of "To foster the ability to persuade anyone" is interpreted as "everybody except their mentor, Korax,".

Therefore, Tisias has to pay tuition if he can convince Korax, or if he can't, as long as he wears a "ability to convince anyone other than Korax". This is the conclusion drawn from the legal interpretation of Korax's dilemma.

(d) Analysis the case from the viewpoint of "Law & Management"

Let's widen our perspective a bit and look at this issue from a "Law and Management" perspective.

Indeed, as I mentioned, in the interpretation of the law, there is a point in Korax, but even if Korax wins the case, it is not possible to ignore the reputation of being childish to take tuition by suing his disciples. Also, if Korax loses the case, and if he charges tuition because it is the result of his education, his reputation as a sophister may be further damaged in comparison to Socrates, who took poison according to the result of the case.

Moreover, if Korax loses the case, it will not only damage the reputation of the Korax Academy in itself, but it will also be practically impossible for Korax to enforce compulsory execution for the payment of tuition against Tisias, who has the sentence that "Korax may not claim payment of tuition from Tisias".

In addition, even if Korax filed a second trial by arguing that the fact that Tisias won the case was a result of the educational achievements of the Korax Academy, it is not realistic to seek a judgment against the conclusion of the court, which is based on the principle of " prohibition of double jeopardy (not retreating the same case)", although it may be theoretically possible.

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Rather, if the point of view of "Continuation of Korax Academy" is emphasized, it is risky to leave the content of the contract as "To foster the ability to persuade anyone" just because tuition can be recovered. Taking this opportunity, the wording of this contract will be changed to "To foster the ability of persuade anyone (except Korax)". In addition, in order for graduates to continue without threatening the business of Korax Academy, it will be necessary to add a contract clause of "Graduates may not interfere with the sound operation of Korax.".

It would be appropriate for Tisias, who made a decisive contribution to the revision of the contract clauses, to make a decision to waive tuition, regardless of the outcome of the trial.

Although it is different from the result of legal interpretation, the above conclusion can be drawn from the viewpoint of "Law and Management".

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Certainly, it is not impossible to draw the same conclusion as the conclusion of "Law and Management" by adopting the latest contract theory and applying the principle of " Contra Proferentem" , and by interpreting the "Anyone." in the "To foster the ability to persuade anyone"

includes "Korax" in a way that is disadvantageous to the creator, that is, interpreting it in a way that is advantageous to the contract user.

However, in the era of Korax, the Academy was small in scale, and it seems that individual contracts were made between the master and the disciple, so it would be difficult to apply the legal theory of interpretation of the terms and conditions in modern times.

In any case, I believe that in modern times, law interpretation must seek solutions that take into account the perspective of “Law and Management”.

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Finally, the summary of Chapter 1 (Why I am interested in Greek classics) is as follows.

From the viewpoint of the policymakers, law is a tool to control citizens in an orderly manner, but from the viewpoint of citizens, law is also a tool to put a brake on power in order to prevent human rights violations caused by arbitrary control by policymakers.

Furthermore, the law also plays a role in the relationship between citizens, promoting good deeds (Right to reimbursement of costs and, where appropriate, remuneration based on management without contracts and restitution based on unjust enrichment) and protecting citizens from malicious and fraudulent acts (Claim for damages for tort or breach of contract).

Even before such legislation was put in place, the Greek sophists and philosophers had developed ways to protect themselves from sophistry and malicious questioning (Sophistry is returned by sophistry. And the art of pleading, in which malicious questions are answered by questions.).

With this mindset in mind, citizens can prevent damage before it occurs in their daily lives.

Before we learn the law, it makes a lot of sense to master the IRAC, the dialectic invented by the Greek sophists and perfected by Aristotle (rhetoric), the dialogue developed by Socrates and Plato (dialectic), and the way of thinking of the evolving lawyers by integrating them.

Because I believe that the IRAC, the way lawyers think, is the practical knowledge that every citizen needs, so that they are not deceived by malicious people, and so that they can promote cooperation with well-meaning people.

Readers should take this chapter as an opportunity to learn about the IRAC and the discussion skills it contains (Art of Argument).

Chapter 1. Why Do Law Schools Need the Socratic Method?

(Summary)

The reason is that U.S. state lawyers understand, through the development of case law, that in order to solve a problem, it is essential to have a fiercely contested discussion with all the opposing reasons, rather than a quick compromise at the middle, and that only by doing so, a reasonable solution to the problem can be found. (Adversity strengthens the foundations.)

On the other hand, in continental law countries, the authority of the source of law is important, and it is believed that an appropriate solution can be reached if judges, not the parties concerned, make a correct interpretation based on the provisions of the law.

In the process of establishing a law school in Japan, I visited law schools in the United States and learned Greek classics, which are the basis of the way American lawyers think. As a result, I came to understand that even in Japan, which belongs to a continental law country, we should learn a lot from the thinking of the legal profession in the United States, which places emphasis on discussions between the plaintiff and the defendant, rather than relying on almost only judges.

Section (1) IRAC (Issue, Rules, Argument, Conclusion) as a way of thinking for lawyers.

(A) Proximity of Greek Direct Democracy to Modern Internet Society

When times changed from the Middle Ages to the early modern ages (14 to 16 centuries), a renaissance movement emerged, calling for a return to Greek civilization. Today, when society is changing from an analog society to a digital Internet age, a new system of renaissance is needed that returns to the Greek civilization as the starting point, including politics and law.

The Internet is beginning to give individuals a powerful voice in politics, just like Greece's direct democracy. In this sense, we can say that the Internet era in the 21 century is the 2nd Renaissance period.

(a) The seriousness of the responsibility of the individual to speak as opposed to a representative system.

In Greece's direct democracy, ordinary citizens had to take responsibility for their individual views. On the other hand, since modern times, representative politics has become the mainstream, and politics has been conducted through delegates, and ordinary citizens have not appeared directly in politics.

However, in the modern Internet society, it has become possible for individuals to directly influence politics and public opinion through SNS, apart from the representative system. As in the era of direct democracy in Greece, individual speech has come to assume a grave responsibility [Ryozo NOUCHI: Introduction to rhetoric (2002), p. 5 -6].

In other words, in the same way as the direct democracy in Greece, where an individual bears a grave responsibility for his or her statements both in the political arena (private association) and in court, in the Internet society, it is possible for an individual's statements to have a direct impact on legislation, administration, and justice.

(b) Necessity and high evaluation for the art of speech, and emergence of experts.

In the Greek period, as represented by direct democracy, the value of argumentation was highly valued in order to have individual opinions accepted persuasively in civil society and courts. As experts in this field, sophists made a large income [Kosai: Ronso to Kiben (1999), p. -178 178.].

This is similar to today's high Twitter followers and high incomes for lawyers.

(c) The idea of IRAC, which arose from the development of rhetoric.

Photo 7

Plato(left): the idealist,
Aristotle(right): the realist.

Rhetoric is a style of speech organized by Aristotle. By contrast, Socrates and Plato adopted a method of dialogue (dialectics) ([Aristotle Argued (1968), p. 3]).

The difference is that while Socrates and Plato believed that the goal of life was in the pursuit of truth, and that in order to achieve that goal, errors had to be eliminated thoroughly, and that the method of dialogue was best suited to that purpose, Aristotle took a more realistic approach than idealism.

While Aristotle acknowledged the importance of truth, he was aware that man, not God, was far from being able to ascertain whether it was true or not, and he believed that in life it was more important whether people were convinced or not, whether they agreed or not, than whether it was true.

In other words, while the dialectic recommended by Socrates and Plato is the "method of getting to the truth," the rhetoric recommended by Aristotle is the "method of convincing people.

Plato's idea of idealism is, in the first place, incompatible with the principle of majority rule in a democracy. Because history proves that the truth is not decisive by majority rule. Majority rule can only be adopted in realism, which seeks to satisfy people.

It should be noted that a majority vote is more realistic than a unanimous vote as a method of obtaining conviction. The reason is that unanimity may seem ideal at first glance, but in fact, if even one person opposes it (it is easy for opponents to bribe one person), they cannot make any decisions and the organization is likely to become dysfunctional.

In addition, there is a principle that if there is a tie, the decision will be made by the chairman (Paragraph 2, Article 56 of the Constitution of Japan). This idea has nothing to do with Plato's principle of inquiry into the truth.

The idea is to have an authoritative third party make a decision on an argument that is equally persuasive, such as the argument between Korax and Tisias. In other words, this method is acceptable from the point of view of Aristotle's rhetoric, which explores the personality and authority of the speaker, the feelings of the other party, and the persuasion by reason.

Aristotle systematized the art of speech (the art of rhetoric), as described above, in three ways: persuasion by the personality and authority of the argumentative body, persuasion by appealing to the sentiments of the adversary, and persuasion by logic. The arrangement method, which plays an important role in persuasion by logic at the end, is the origin of IRAC (Issue, Rules, Argument and Conclusion) which we will discuss in detail in the future.

This method of arrangement was very important in ancient Greece, which adopted direct democracy. It is clear that no one listens to what people think when they speak at random, whether they are trying to persuade people in a civil society or judges in a court. Therefore, it is said that the person who clarified the sequence of the oral arguments and was called the founder of the oral argument was Korax and his disciple Tisias, who were introduced in the section of “the dilemma of Korax” earlier ([Aristotle Argued (1968), p. 296,322]).

Golgias, introduced by Plato as an opponent of Socrates, is a disciple of Tisias. Unlike Plato, Aristotle systematized his art of speech (rhetoric), accepting the art of speech produced by Socrates and Plato's opponent, Gorgias, and his master, Thisias, and his master, Korax.

Aristotle's rhetoric took a real line, prioritizing persuasion, like the sophists, over the search for truth. Moreover, it is characterized by systematizing the art of oral argument by incorporating sophisticated dialogue methods by Socrates and Plato.

The IRAC, as the American law school's way of thinking of lawyers, specializes in and refines the logical persuasion of these Aristotle rhetoric.

(B) What is “IRAC” ?

In the United States, it has been clarified that legal reasoning is a method of thinking for lawyers called (IRAC) which involves solving legal problems in the following order: Issue, Rules, Application /Argument, and Conclusion. This is considered as such in Japan.

Here, IRAC as a way of thinking of a lawyer is a series of thinking processes of a lawyer as shown below [Kagayama, Introduction to Learning Method (2007), pp. 33-47].

What is IRAC ?		
I	Issue	Finding issues and facts
R	Rules	Finding rules applicable to facts
A	Application	Apply rules to facts which are found
	Argument	Argument between plaintiff and defendant
C	Conclusion	Conclude the argument

1. Issue: What is contested there … e.g. murder, manslaughter, professional negligence resulting in death or negligent homicide.

2. Rules: What law applies to the facts disputed there ... e.g., Penal Code Article 199 (murder), Penal Code Article 210 (negligent homicide) or Penal Code Article 211 (professional negligence resulting in death).

3. Application: What results can be derived from the application of the law to the case... For example, is it murder punishable by imprisonment for more than three years, including the death penalty (Article 199 of the Penal Code), negligent homicide punishable by a fine of up to 500,000 yen (Article 210 of the Penal Code), or professional negligence resulting in death punishable by imprisonment for up to five years or imprisonment or a fine of up to 500,000 yen (Article 211 of the Penal Code)

4. Argument: Discuss the applicability of other rules when the case is viewed from a different perspective.

- In any of the above cases, the issue of whether or not a crime such as Article 36 of the Penal Code (self-defense), Article 37 of the Penal Code (emergency evacuation), Article 39 of the Penal Code (Insanity, etc.), or Article 66 of the Penal Code (Reduction of Punishment in Light of Extenuating Circumstances) should be dismissed or whether or not the punishment should be reduced or exempted is discussed.

5. Conclusion: Based on the above discussion, propose a reasonable solution ... For example, although there was intent to kill, self-defense was established.

As mentioned above, the IRAC, which is the way of thinking of lawyers, is a rhetoric that is specialized in law. Therefore, if ordinary citizens master rhetoric, discussions with lawyers can be expected to mesh smoothly in legal reasoning.

(C) Application range of "IRAC".

The strength of the rhetoric lies in the fact that it is not limited to the law, but extends to the way arguments are made in all areas. Rhetoric has three divisions other than courtroom (forensic) speech, namely, legislative technique (political speech), which discusses policy on future issues from the viewpoint of gain or loss of interest, and presentation technique (speech of display), which praises virtuous acts and condemns immorality on current issues (for details, see [Asano, Rhetoric of Argumentation (1996), pp. 64-65, folded figure]).

Moreover, rhetoric includes the field of persuasion and argumentation (pistis) as well as the field of arrangement (taxis), such as the aforementioned IRAC, and there is another field called figure of speech (lexis).

In rhetoric, "flower" is reduced or limited to only "cherry blossoms" within flowers (reduced interpretation: "Hanami" is an example), "flower" is expanded to the whole of "tasteful things" other than flowers (expanded interpretation: "dumplings rather than flowers" is an example), and "flower" is used to infer by analogy the concept of "nobility" that goes beyond the category of plants and animals (analogous interpretation: "she is a flower of high rank").

Not only that, rhetoric encompasses all the techniques of argumentation and persuasion, such as the three categories of persuasion techniques (political oratory, forensic speech, and speech of display), which appeal not only to logos (logic) but also to the ethos (dignity) of the persuader and to the pathos (emotion) of the opponent ([Asano, Rhetoric of Argumentation (1996), pp. 68-69, 120-132]).

Thus, in the modern era, the use of rhetorical techniques in any situation where persuasion is required will increase its power.

For example, you can use the rhetoric of alignment (fall under IRAC in jurisprudence) when giving presentations in schools, in companies, and in various places. You can't convince your audience if you're just preoccupied with what you want to say. It is clear that it is easier and more convincing for the listener to say what you want to say in the following order and with the possible objections in mind.

1. 1. Raising the problem (issue) ... What issues are you discussing? Identify issues, such as the standards of conduct and social evaluation of stakeholders.
2. 2. Principles, or hypotheses (Rules) … You have to present which principles, rules, or hypotheses should be applied to solve the problem and whether general standards are sufficient, or whether there are other reasonable criteria that are best suited to solve the case.
3. 3. Consideration of the merits and demerits of the results (Argument) ... You have to discuss the merits and demerits on the result of the application of each criterion from different positions.
4. 4. Conclusion ... Based on the above discussion, you have to conclude what kind of approach should be taken when making a comprehensive judgment.

It took mankind thousands of years of trial and error to discover these rules of presentation order (the method of arrangement). With hindsight, it may seem that the order of the speech was not much of a contrivance. However, at the time this method was discovered, it was so valuable that teaching this method (1. Introduction, 2. Main argument (proof and argument), and 3. Conclusion) was enough to earn a huge income.

Among those who were babbling what came into their heads, that Korax, and his disciple Tisias, came up with the idea of "composing" it to make the story clearer.

Even with this simple technology, it was not something that would naturally arise from normal language use, and it required a single "genius" to be formulated as a technology. In that sense, sophist such as Korax, certainly had the skills to deserve a high reward [Kosai: Ronso to Kiben (1999), p. -178 178.].

Aristotle is the one who incorporated the knowledge pioneered by these Sophists into a part of rhetoric and put it together theoretically. (For the achievements of the Sophists as professional teachers of oratory, see [Tanaka, “the Sophists” (1976)], [Romeyer-Dherbey, “The Sophist Biography” (2003)], and [Notomi, “Who are the Sophists” (2006)]).

From this perspective, it must be said that rhetoric is an intangible world heritage that has been acquired by mankind as a peaceful solution for people with different opinions, regardless of whether they are amateurs or experts, to reach a consensus through persuasion, and that it has great utility even in modern society.

In other words, if you learn the law properly, you can learn the underlying rhetoric at the same time. This is another reason why legal education is necessary for all citizens.

Section (2) Importance of Rebuttal in Argument.

In the case of a syllogism that starts with a major premise (axioms or undisputed principles) and leads to a conclusion, a rebuttal is unnecessary because the validity of the assertion as a conclusion has already been ensured.

However, in an argument examining a claim when the axiom or principle that should be the major premise is unknown, a rebuttal is necessary to ensure the validity of the argument.

That is the same as approaching "knowing oneself" by the comparison obtained through "knowing others" to the proposition "know thyself".

This is because, by attempting to refute the warrant on which the claim is based, the warrant and the refutation are compared and contrasted, the validity of the claim is examined, and through this, the soundness of the argument is guaranteed.

That's not all. In order for the disputing parties to be convinced by both parties, it is necessary to have a common support which both parties consider reasonable, and experience has shown that such support is often capable of discovering the principle of a combination of text and proviso which can lead to warrant and rebuttal.

An inference in which a conclusion is drawn by applying the principle to a specific case, starting from the principle that is a major premise, is called deduction.

On the other hand, an inference in which a prerequisite principle is discovered in the process of drawing a conclusion that both parties are satisfied by discussing a specific case is called abduction. Abduction is also called the inference of discovery, and the effective way to achieve this abduction is through the opposition and sublimation between the warrant that grounds the claim and the refutation of it.

In other words, a close comparison of warrant and rebuttal is essential in order to derive principles that will satisfy both parties to the argument.

Aristotle also describes this point:

> Such a form of speech is satisfying, because the significance of contrasted ideas is easily felt, especially when they are thus put side by side, and also because it has the effect of a logical argument; it is by putting two opposing conclusions side by side that you prove one of them false. (Aristotle, “Rhetoric”, Book III, Chapter9 [a410a20])

Section (3) Modern Significance of Learning IRAC or Art of Argument Developed from Rhetoric.

In the information society, especially in the Internet society, it is necessary to acquire correct rhetorical skills, firstly, to protect oneself from fraudulent commercial practices, secondly, to gain consensus among people of different opinions, and thirdly, to refute unfair accusations and to stop fraud [Reboul, “Rhetoric” (2000), p. 155].

First, it is necessary to understand the rhetoric of "the art of persuasion and argument" in order not to be easily taken in by a company that advertises through its website or e-mail by using "just" rhetoric or "fishy" rhetoric (sophism). In particular, individuals, as consumers, need to understand both the benefits and risks of rhetoric in order to protect their assets from companies that abuse rhetoric and engage in fraudulent business practices. This is "defensive rhetoric" (See [Kozai, “Rhetoric and sophistry” (2010)] on this point.).

Second, if you want to transmit your thoughts in the Internet society and gain the approval of others, you need to master rhetoric as a way of expressing your thoughts in an understandable and persuasive manner. This is "consensus-building rhetoric" (on this point, see [Perelman, “The Logic of Lawyers “(1986), p. 316]).

Third, they need to learn rhetoric as a correct way of attacking in order to avoid being too forceful and causing flames, or being abusive and self-destructive. This is "rhetoric for accusation" (See [Iwata, “The rulebook of argument” (2007)] on this point.).

These functions of rhetoric, such as 1) self-defense, 2) agreement, and 3) accusation, have traditionally tended to be accomplished by weapons such as swords and guns.

But the result can only be disastrous consequences, from violence to war. In our modern society, where freedom and peace are sought after, I believe that rhetoric as a generic term for the "art of persuasion by speech" should replace swords and guns as a means of solving problems.

Chapter 2. Toulmin's Art of Argument

(Summary)

In order to do so, we need to devise ways of discussing in IRAC. In this regard, it was devised by Toulmin, with reference to the arguments made in the courtroom, in the "Toulmin's Diagram of Argument" which allows for an objective diagramming of the process of argumentation.

It became apparent that the discussion based on this diagram and the minutes of the discussion based on this diagram allowed the discussion to proceed calmly without being flamed.

This figure, however, is inadequate in terms of the parties' satisfaction, as it is modeled after the Court's argument, which emphasizes resolution by winning and losing. Therefore, this paper proposes a new diagram, the "diagram of legal argument" by revising the "diagram of Toulmin's argument" to resolve this inadequacy.

Section (1) Difficulty of Discussions and the Utility of Illustration of Discussions.

The prototype of the scheme of Toulmin's diagram of the argument is a scheme of syllogism, the basis of rhetoric. In order to have a discussion here, you should first show the evidence (Data) and say what you want (Claim). In addition, it also states that discussions should be started after the other party has presented a reason (Warrant) that is at least acceptable to the other party [Toulmin's art of Argument (2011), p. 147].

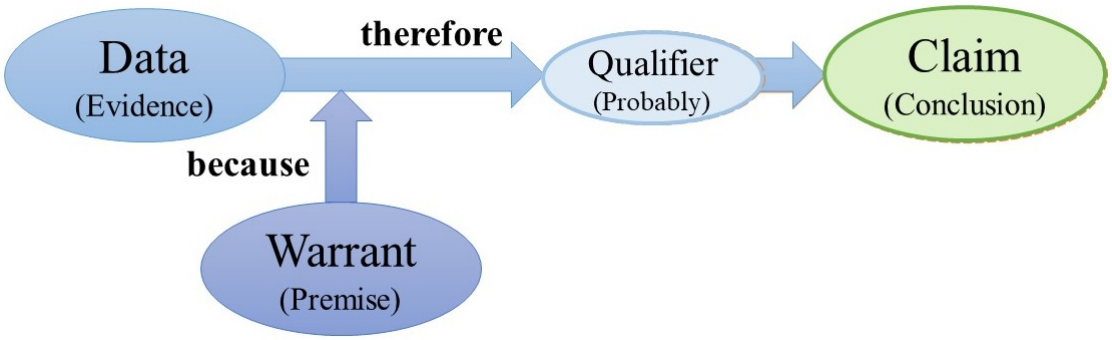


Diagram 1 Toulmin's diagram of argument (1)

The figure above (prototype of the scheme of Toulmin's diagram of the argument) is no different from the conventional syllogism. Because you can see it when you contrast it with the following syllogism.

Premise: All men die.

Minor premise: Socrates is human.

Conclusion: Socrates dies.

In the Toulmin's model, C: Claim (Conclusion: Socrates dies.) is stated based on the fact D: Data (Minor premise: Socrates is a human being), which is a minor premise. When asked why, they would say W: Warrant (Premise: All humans die.).

In daily life, the expression "D: Data" and therefore "C: Claim", i.e., "Socrates is a man, so he dies" or "I think, therefore I am" which omit "W: Argument" (fallacy in syllogism) is accepted without resistance.

If you are forced to ask the reason in the above case, "W: Warrant" i.e., "Because we all die." or "Because there is something to think about." will be added.

Incidentally, although syllogism is useful in the world of logic, it has a major problem that it cannot be used in the real world (theoretical speculation). This is because the laws that are the major premises of daily life are "Human is mortal." and "power is subject to corruption" and other major premises that can be used in daily life are rarely discovered.

On the other hand, in the case of the diagram of Toulmin's argument, by adding to its original form "modal determiner (Qualifier)" "most likely" or "Probably." that limits the "Claim" aspect, and by adding " (Rebuttal", it can be used in daily life as a powerful tool for analyzing arguments [Toulmin, "The art of argument "(2011), p. 153].

This is because, according to the Toulmin's diagram of argument, it is not only possible to develop a persuasive argument based on "common sense" without necessarily relying on conventional logic or law, but it is also possible to accurately position the process of any argument in the diagram.

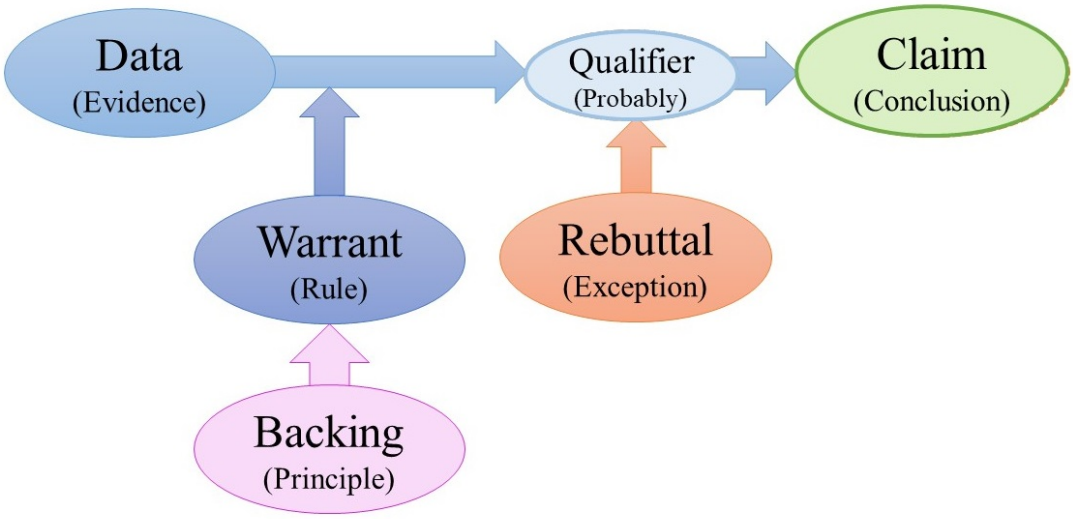


Diagram 2 Toulmin's diagram of argument (2)

The distinction between "D: Data" and "W: Warrant" in the above diagram of Toulmin's art of argument can be easily understood as a matter of fact and a matter of law.

The difficulty in the scheme of Toulmin's art of argument is that the distinction between "W: inference guarantee (argument)" and "B: Supporting" is at first glance difficult to understand. According to Toulmin's own description [Toulmin, “The art of argument (2011), p. 154], "W: Warrant is "Hypothetical statements (e.g. A is B.)". Therefore, the provisions of the law, written in terms of requirements and effects, are also included in the "W: Warrant". In contrast, "B: Backing" is defined as "Definitive factual proposition (e.g. A is.)" which includes definitions and axioms that are not intended to be refuted.

However, this point is controversial ([Shimazaki "Structure of proof and Toulmin’s diagram of the argument" (1986), p. 471] , [Kamebon: Legal Thinking (2006), p. 235]).

According to the prevailing view in Japan, "W: Warrant" is a legal norm and "B:Backing" is a provision (See [Takahashi "From syllogism to interactive default logic" (2009)] page 28, [Takahashi "a legal inference model that goes beyond legal syllogism", p. -152 149 (2009)]).

However, as I mentioned earlier, since each "provision" of the law has exceptions and allows counterarguments, I believe that each provision is not a "B: Backing" but a "W: Warrant" in accordance with the [Toulmin, The art of Argument (2011), p. 154].

In addition, I think it is appropriate to construe that the "B: Backing" includes not only the principles that support the provisions that become clear from the legislative purpose, etc., but also the general provisions (Rules of good faith, public order and morals, public welfare, etc.) which are mandatory provisions having a nature different from that of the individual provisions, as statements that both the proponent and the refuter should follow.

Section (2) Merits of Toulmin's art of argument.

As I mentioned earlier, the distinctive feature of the Toulmin’s diagram of argument is that it is possible to develop persuasive arguments based on "common sense" which is not strictly scientific knowledge. Not only that, but it's important to be able to accurately position any discussion process in this diagram. For this reason, I think that using Toulmin’s diagrams of argument will help us understand the whole picture of the discussion and prevent it from spreading or straying.

Section (3) the significance of an argument and how to make it so that those who argue don't stick to winning or losing.

Taking into account the above viewpoints and the new requirement fact theory ([Kagayama: New Requirements: Necessity of Fact Theory (2010) p. 23 -49] , [Kagayama: Constructing a new theory of requirement facts (2012)]), the following is a diagram of the discussion of Toulmin, which is specialized in civil arguments.

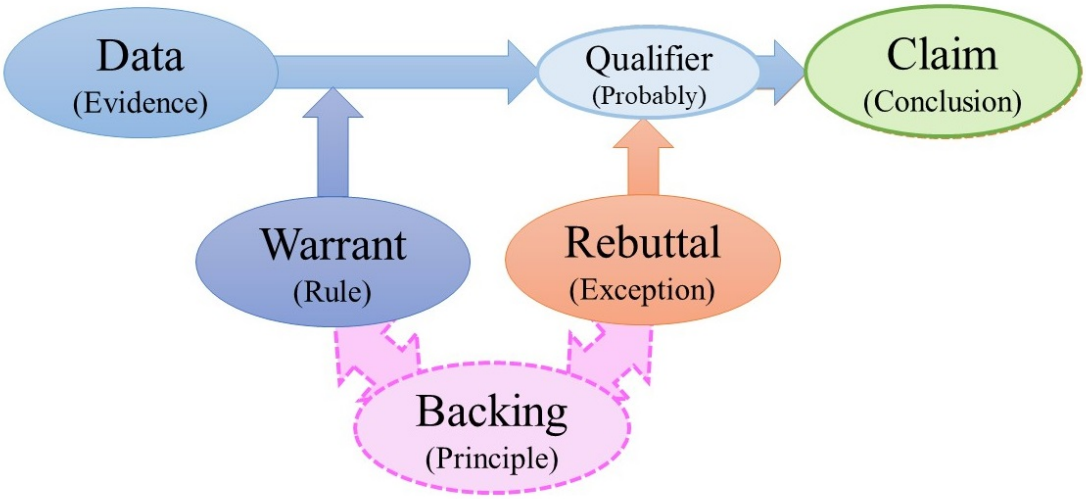


Diagram 3 Diagram of Legal Argument

The above diagram is based on Toulmin's diagram of argument, but I made some changes to it to clearly distinguish between W: Warrant and B: Backing, which have been considered ambiguous in Toulmin's diagram of argument, and to show that B: Backing is also useful as a corroboration of R: rebuttal.

The reason why I changed the Toulmin's diagram of argument is that when the resolution of a dispute is acceptable to the parties, experts, and public opinion, i.e., the ideal resolution of the dispute is realized when the arguments and objections of both parties are equally justified by common support.

What is important in legal education is to make students understand the path to solving specific facts (D: Data) in accordance with the Constitution or the letter of the law (W: Warranty). In doing so, it is important to make students aware that there are rules (R: Rebuttal) that lead to an opposite conclusion from the same facts.

Healthy common sense always has a rebuttal. For example, "The sooner the better." and "More haste, less speed." are opposed to each other, and "There is no devil in the world." and "If you see a man, think he's a thief." are opposed to each other. In addition, there are many sentences that appear to be contradictory.

For example, "lose to win", "A penny saved is a penny gained. ", "The devil has the devil. ", " the enemy of the enemy is an ally.".

On the other hand, although legal provisions still have overlapping provisions and mutually conflicting or contradictory provisions, by adding detailed preconditions, such conflicts and contradictions are suppressed to the utmost limit.

It is possible, as I have done, to specialize Toulmin’s diagram of argument into a legal argument, because the law tends to be a closed system, and it has succeeded to some extent in this.

A lawyer's ability is "having professional legal knowledges and making legal inferences". Of these, legal reasoning is only a specialized and sophisticated way of adapting rhetoric to legal thinking. And while Toulmin's diagram of argument is intended for court arguments, it is generalized so that not only legal arguments, but the entire process of argument can be diagrammed using 6 elements: data, warrant, support, modal determiner, rebuttal, and claim [Toulmin, The art of argument (2011) p. 10, 15, 59,142].

Therefore, when using concrete examples to educate students on how to apply legal knowledge to the concrete examples, it is important to make use of the simplicity of Toulmin's diagram of argument, and to refine the diagram for lawyers so that it fits the IRAC. By adopting this method, the legal educational effect can be greatly improved.

On the basis of Toulmin's diagram of argument, specialization for lawyers based on IRAC is significant not only from the perspective of providing legal education but also for legal professionals as follows.

1. The use of Toulmin's diagram of the argument clarifies the process and overall picture of the argument, so that the benefits of IRAC are beneficial not only to the parties but also to the judges.
2. For judges, it is necessary, from the constitutional requirements, to find a basis for their arguments in the Constitution and the law. Therefore, Toulmin's diagram of argument clarifies how the warrant and rebuttal are related to each other, and is useful for the direction of proceedings.
3. If it can be found that the arguments of the parties' warrant and rebuttal are based on common support, the probability of reaching an agreement is increased.

Chapter 3. Interpretation of Law

(Summary)

Laws differ from religious codes in that they can be changed by certain procedures. But the law, like the religious codes, is the code of conduct for everyone until it is changed. Therefore, if a society advances while a law is not changed and the law is literally applied to disputes that arise in that society, there may be cases where a reasonable solution cannot be achieved. In such cases, the judge must interpret the language of the law appropriately in accordance with the purpose of the law.

There are two types of Interpretations to affirm the conclusion (e.g., broad interpretation, interpretation for stronger reason, and interpretation by analogy) and to negate the conclusion (e.g., restrictive interpretation, interpretation e contrario, and interpretation of Exemplary Text). These interpretations seem to be difficult to understand, but if you take a simple example of "Cars or horses are prohibited from entering" and visualize it in a Venn diagram of set theory, you can quickly understand the basic idea of legal interpretation.

(1) Why is interpretation of law necessary?

Laws combine two characteristics in comparison with religious codes: dissimilarity and similarity. First, religious codes are codes of God that cannot be changed for any reason. On the other hand, the law can be changed by certain procedures.

Second, laws, like religious codes, are the norm that everyone should follow until they are changed. Therefore, in the same way as religious and legal codes, it becomes necessary to interpret the contents of each norm in accordance with the times so that they can respond to changes in society.

In the case of Japan, Article 76, paragraph 3 of the Constitution requires judges to seek the resolution of disputes by applying the provisions of the Constitution and laws.

Article 76 of the Constitution (jurisdiction, prohibition of special courts, independence of judges)
③ All judges shall be independent in the exercise of their conscience and shall be bound only by this Constitution and the law.

However, due to social developments, incidents may arise that legislators do not anticipate. In such cases, a reasonable solution cannot be reached by applying the law as it is written. Therefore, in applying the law to a case that the legislator did not anticipate, the law must be properly interpreted by reducing, expanding, or analogizing the language of the law so that the result has concrete validity.

This is why the law needs to be interpreted, as in the case of religious codes.

(2) Types of Interpretation of Law

The law can be interpreted in the following ways.

(1) (Literal interpretation ... interpretation that only those strictly belonging to the requirements set have legal effect.

(2) (Interpretation for strong reason ... Interpretation giving legal effect as "for a stronger reason" to those that do not belong to the set of requirements

(3) Broad Interpretation ... Interpretation which expands the set of requirements into a legal effect

(4) Restrictive interpretation ... Interpret that the set of requirements has been reduced to no legal effect.

(5) Interpretation e contrario ... Interpretation that the difference set of the requirement set gives "contra" legal effect.

(If (A →B) then (¬ A → ¬ B) (It's not always right, so be careful.))

(6) Interpretation by analogy ... Does not belong to the requirement set, but interprets that similar facts have the same legal effect (of course, there are limits to expansion).

(7) (Interpretation of Exemplary Text ... Interpretation that the requirement is set forth only as an example

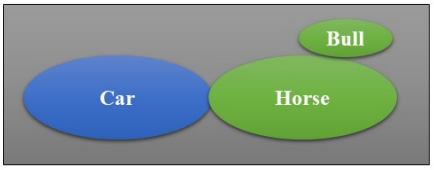
The simplest case is used to quiz for readers on their understanding of the specific content of these interpretations, so please try to fill in the blanks. This makes it possible to understand the types of legal interpretations mentioned above.

(3) Interpretation from the view point of “Venn diagram”

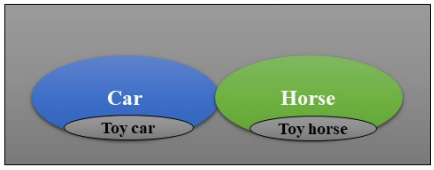
In order to be able to clearly distinguish between the types of statutory interpretations described above, it would be easier to understand if the simple rule of "Cars or horses are prohibited from entering." was used as an example and the classification was made using the following Venn diagram of set theory.

Interpretation of
“Cars or horses are prohibited from entering”

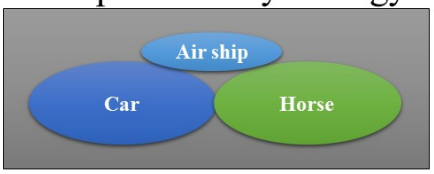
Broad interpretation



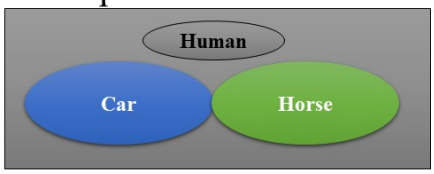
Restrictive interpretation



Interpretation by analogy



Interpretation e contrario



Readers are asked to fill in the blanks in a quiz using the simplest rule of "Cars or horses are prohibited from entering" to see if they understand the specifics of the type of interpretation. By doing so, it is likely that you will be able to understand the types of legal interpretations mentioned above.

Suppose there is a notice at the entrance of the park saying, "Cars or horses are prohibited from entering.". When is it appropriate to make a "No Entry" (x) decision in each of the following cases? Conversely, when is it appropriate to make a "approach clearance" (○) judgment? Please answer by clarifying the interpretation method.

① When a person driving a car tries to enter a park

…Yes or no to enter: (　), Type of interpretation:(　　)

② When a person on a horse tries to enter a park

..... Yes or no to enter: (　), Type of interpretation:(　　)

③ When a person riding an elephant are about to enter the park

..... Yes or no to enter: (　), Type of interpretation:(　　)

④ When getting off a bicycle and trying to enter the park by pushing the bicycle

… Yes or no to enter: (　), Type of interpretation:(　　)

⑤ When a disabled person tries to enter a park with an electric wheelchair

... Yes or no to enter: (　), Type of interpretation:(　　)

Chapter 4. Confidence Crisis in the Law and Chaïm Perelman's New Rhetoric

(Summary)

It was Hitler who destroyed trust in the law, including statutes, by legally seizing power and legally trampling on human rights.

The traditional elaborate jurisprudence, which practiced annotation and positivism as "evil law is also law," has been dealt a heavy blow by this.

What can be done to restore confidence in the law, including the statute? There is a need to question again the significance of the law, why it is used for peaceful resolution of conflicts, and why it is also used to justify wars.

Section (1) the merits and demerits of Hitler's strategy that destroyed confidence in the law.

There is no tension between justice and law when social order is peaceful and law is realized and trusted.

Therefore, in such a peaceful era, the study of appropriate interpretation of law, i.e., annotation, has been developed with law as a given, and legal interpretation plays a central role in law.

However, if social order is disrupted and the relationship of trust that law provides justice is lost, for example, if the Nazis legally usurped power in accordance with democratic procedures in Germany and enacted a series of laws that infringe human rights, the Annotation School (Glosslator) also loses trust.

In this case, the Weimar Constitution, a meta-law that controls the law and eliminates bad laws as unconstitutional, was also abolished by the Nazis, and the means to overturn the proposition of "A bad law is a law." was lost.

Section (2) Impact of the Nuremberg Trial.

This ended when the Nazis were overthrown by the Allies. The question, however, was whether the Nazis could be punished for crimes committed by them in cases where many human rights violations were carried out by legally enacted laws.

In order to protect the human rights of suspects, there is a fundamental principle of law called the ("Nulla poena sine left: No punishment without law"). The principle is that an act suspected of being a crime cannot be punished if it is justified under the law at the time.

It was difficult to punish Nazi human rights violations (atrocities) because many of them were based on legally enacted laws.

The Nuremberg Tribunal (November 20, 1945 - October 1, 1946) decided to punish these acts of the Nazis as war crimes, but there is still debate as to whether it is possible to punish acts done under the law.

At that time, the following criticisms were already made about the trial (Justice Harlan Fiske Stone, then Chief Justice of the U.S. Supreme Court, in an interview with a reporter from Fortune magazine).

> The Nuremberg Tribunal judged criminals under the guise of the Common Law [unwritten law] or the Constitution, which makes me think. We seem to have supported a proposition. In other words, in any war, the leader of the defeated country must be executed by the victorious country.

The only way to justify this case is that the law at the time recognizing atrocities of human rights violations was invalid. The only way to invalidate a law based on legal proceedings is to bring up the Constitution or, if not, the "general rule of law" as ungrammatical. However, is this recognized?

Chaïm Perelman discusses this point in detail. Let's take a look at the argument.

Section (3) Chaïm Perelman's new rhetoric.

Chaïm Perelman (1912 -1984) was a Belgian born in Poland. He received his law degree from the Freie Universität Brussels in 1934, and studied Polish logic at the University of Warsaw for 1 year. He received his philosophy degree from a dissertation on the logician Frege in 1938.

Chaïm Perelman is one of the founders of the "new rhetoric" theory, which revived the "Art of speech" systematized by Aristotle, which had been reduced to a rhetorical "Figure of speech" over a long period of time, and was in decline.

In addition to [Perelman, “The Logic of Lawyers” (1986)] (hereinafter referred to as this book), which is dealt with here, there are other books such as [Perelman, “The Logic of Persuasion (1980)]. As the author is an expert in new rhetoric, this book makes the logic of law easy to understand and interesting for the layman.

Perelman is also a graduate of the School of Law and, as one of the chairmen of the Institute of Legal Philosophy of the Free University of Brussels and the National Institute of Theoretical Science of Belgium, organized various joint studies on legal reasoning. This makes this book an excellent resource for legal professionals to learn new things.

In the first part of the book, Perelman divides the transition of the way of thinking of lawyers from the establishment of the Napoleon Code, the first legal code in modern times, to the present, into three periods. The 1st period is the period of the Annotation School from 1804 to 1899, the 2nd period is the period of the Functional and Social Schools from 1900 to 1945, and the 3rd period is the restoration period of the rhetoric from 1946 to the present.

Perelman carefully traces the history of the period from the 1st to the 2nd periods of legal positivism,

"Bad law is law." in which he distinguished between written law and unwritten law, and acknowledged that (the general principles of law and topos) to the period (third term) when he declared that "bad laws are broken by 'general rule of law'" in the Nuremberg Trial (1945 – 46).

In Part 2 of this book, Perelman clarifies the utility of a new rhetoric, the "general theory of argument" and, based on this new rhetoric, repositions the legal logic as a theory of persuasion to persuade the parties to the case, legal experts, and public opinion.

According to Pererman, topos (An argument. The explanation of [Reboul, “Rhetoric” (2000) p 30 -33] is easy to understand.) are listed in the topology catalog (159 page -171).

It also clarifies that "The latter law abolishes the former law.", "special laws take precedence over general laws", "You must listen equally to the opposing party.", "In the interests of the accused when in doubt", and "No person may transfer more rights than he has to others" are general principles of law and should be applied (should be incorporated into a system of legal reasoning) even without a provision of law.

In other words, Perelman's way of thinking has continued to have a great influence on the study of legal interpretations because he clarified that not only can a specific provision of law be justified by the Constitution, which is a superior law, but also that the principle of law (Personal dignity, essential equality of the sexes, the principle of good faith and good faith, prohibition of abuse of rights, nullity of acts contrary to public order and morals, etc.), which supports the provisions of several laws from behind, is a superior norm that cannot be violated by law.

Chapter 5. New Objective of Law

(Summary)

My current conclusion is that the purpose of law is not to settle disputes by winning or losing, but to "the peaceful resolution of disputes through reasonable solutions that satisfy both parties as well as legal experts". The means of achieving this is not struggle, but "achieved by peaceful means of a diagrammatic discussion of legal issues".

There is no problem with a solution that reveals victory or defeat in a trial, as long as it meets the objectives of the law mentioned above, but if the loser is not convinced, the dispute will be virtually resurrected and no real solution will be reached.

In other words, my idea is to create a new system that is different from the judicial settlement that the current lawyers think is the last resort.

We are currently looking for concrete ideas for such an unusual system. And when that happens, I hope we can create a new field in the Nobel Prize, “the Nobel Prize of Law”. I believe that when this happens, young people will come to see law as a branch of science, rather than learning for qualifications, and learn law for the pursuit of truth.

Section (1) A solution to a dispute cannot be obtained by winning or losing.

Lawyers in the past have believed that a final settlement of a dispute can be achieved by determining which side of the argument is reasonable through a fair trial, and having either party win and the other party lose.

If we compare it to the fact that the goddess of law, Themis, has a balance and a sword, then Themis measures the claim of the parties by balance, and allows one party to accept the claim of the other party and make the other party lose the case. If the other party does not follow the judgment, the court will impose a sword on the losing party. Traditionally, lawyers have thought that in this way, legal disputes can be completely resolved.

However, if the winner or loser is decided without the party's consent, the winner will be satisfied, but the loser will be dissatisfied. In some cases, the dissatisfaction of the loser may turn into resentment, and the dispute may be resorted to again or the execution may be impeded, and the dispute may not be resolved.

Section (2) The settlement of the dispute can be realized by the consent of both parties.

Historically, it is clear that the resolution of conflict by victory or defeat is not the final solution, even in the case of a typical war. The final settlement of the dispute depends on the mutual consent of

both parties.

To liken it to the statue of Themis, just because the balance that Themis holds up in his left hand is tilted in one party's favor, does not mean that one party should be awarded a judgment in favor of the other. Later, when the balance of the balance is balanced by the other party's promise of atonement, etc. (refer to the expression "When litigation has been sufficiently developed to allow the court to reach a judicial decision" in Article 243(1) of the Code of Civil Procedure), a reconciliation is established between the parties and the dispute is settled, and the content of the reconciliation should be the content of the judgment.

I believe that this will be realized through a completely new interpretation of the provisions of Article 267 (Effect of the Record of Settlement, etc.) of the Code of Civil Procedure.

Article 267 of Code of Civil Procedure (Effect of a Record of Settlement)

When a settlement or a waiver or an acknowledgement of a claim is entered in the record, that entry has the same effect as a final and binding judgment.

Article 267 of the Code of Civil Procedure states that settlement (Where both parties are satisfied with the contents of the record of settlement), waiver of claims (the same way the plaintiff agreed to a total defeat), and acknowledgment of claims (as the defendant agreed to a total defeat) are all ideal forms of dispute resolution when both parties agree.

Unfortunately, the commonly accepted theory of the Code of Civil Procedure is that it is preoccupied with the old way of thinking and regards these as exceptional dispute resolution methods, and it does not recognize res judicata in these methods.

However, I believe that settlement, waiver of claims, and acknowledgement of claims are the most ideal causes for the termination of a civil action, and that the contents of this record should be accepted as the contents of a judgment. Other decisions should be considered as exceptions to dispute resolution in civil proceedings.

The Themis Balance balances the claims of the parties at the start of litigation. Depending on the course of the subsequent lawsuit, the balance may lean to one side or to the other side. In principle, the balance of the balance in which oral arguments are concentrated recovers equilibrium through reconciliation, waiver or acknowledgement of the parties, and exceptionally through judgment (E.G. determination of damages). When the balance is restored to equilibrium, a solution to the dispute that is acceptable to the parties concerned will be realized. If a judgment is made while the balance is tilted, the dispute will not be resolved.

By the way, when it comes to balances, accounting uses its symbol as a balance [Watanabe, “The Birth of Accounting” (2017) p. 122, 157]. The balance between assets and liabilities is balanced by adding profits to liabilities, and the balance sheet is completed.

Photo 8 A Balance at the Entrance of ICAEW

If both the dispute settlement trial and the management guidance balance sheet are common efforts to bring the balance back to equilibrium, the resolution of a legal dispute, whether out of court or in court, should be achieved through a settlement that is acceptable to both parties.

Section (3) The goal of the law is to create reasonable standards that will satisfy both parties and experts and, eventually, public opinion.

We have looked at the ways of thinking of lawyers, from their origins, in the art of Sophists' rhetoric and the rhetoric that Aristotle has perfected by incorporating the dialogue of Socrates and Plato into it, as well as the IRAC that has become refined through its subsequent use in law schools.

The most important of these is a diagram of the Toulmin’s art of argument. Through this art of argumet, I would like you not only to gain knowledge of the law, but also to constantly reflect on "What is the law?" "Can the law judge the law?" and "whether the learners of law are making efforts to improve law".

Socrates emphasized the proposition that "Know thyself". People who study law, including the lawyers themselves, should focus on the proposition that "Know yourself as a lawyer.".

Legislators, administrators, and judiciary should not only establish and faithfully interpret and apply laws, but should always examine whether the relevant laws are contrary to general principles and whether their actions contribute to justice.

In particular, those involved in the judiciary must always look back on the "whether one's own actions contribute to justice".

Judges should always look back on whether both parties have tried to convince experts. The public prosecutor must always reflect on whether his actions (especially investigative activity) violate the law or create false accusations. Lawyers also need to constantly review whether they are contributing to social justice and whether their interests conflict with those of their customers.

Through such retrospectives, we should bear in mind that the law is designed to prevent conflicts and resolve existing conflicts peacefully through peaceful means, and recognize that conflict resolution based on evidence obtained through illegal or violent means will not bring about final peace.

If the purpose of the law is peace, peaceful means should be adopted for the means of the law, and if the purpose of the trial is the peaceful resolution of the dispute, I believe that a method should be

realized in which a judicial settlement that satisfies both parties is incorporated into the judgment.

I believe that such steady judicial reform (Realization of trials that satisfy both parties and experts) will lead to the road to world peace.

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