

THE FUNCTIONS OF LAW FROM THE STANDPOINT OF «COLOUR THEORY» AS A EQSY PHILOSOPHIE OF LAW

1) *The substance of the functions of law.*

The conception of law is very variable. I postulate that law is a social existence, consists of norms with facts and is given a compelling force by the state.

The base of law is social life in state. In social life we can see the two opposite trends. One trend is independence of an individual from state, the other trend is unity by state to an individual.

The demand of independence and the necessity of unity is the indispensable element of social life, but there are easy to happen inconsistency and opposition. It's most important functions of law to defend inconsistency and opposition and to harmonize the tension between independence and unity.

In this line of defend and harmony there are three moving colours or tones. That is moral element, technical element and historical element. I assign moral element to yellow, technical element to red, historical element to blue. (I call technical every rational motive by which we can catch the outer world.)

These three colours have a delicate dialectic construction. Often yellow opposits to red, or red opposits to yellow and this tension will be sublated by blue. The three colours are overlapped, but the share of colour began to change. Further the colour moves to dark or to light. When it moves to dark, the character of colour begins to strong. When it moves to light, the character of colour begins to week. I notice that law has some bits of three colours.

Every law has some bits of three colours. For instance the traffic law (Keep to the right) is most technical. (Red-80 points), but the background of this law is moral (Yellow-10 points) and history (Blue-10 points). The motive of protect people from traffic congestion is mo-

ral, the policy of «Keep to the right» is historical. After the II world-war «Keep to the left» are changed to «Keep to the right» in Japan. Contrary this law the flow of politics in Japan moves a little to left from old right.

Such colour construction 10-80-10 (Y-R-B) is the minimum composition to hold as a law, 80-10-10 (Y-R-B) or 10-10-80 (Y-R-B) composition are also the minimum terms.

This colour theory works as a digestive. In the pretation of law it helps to catch the charactor of law and promote the concrete process to the object of law. If there are some indigestion we must add other pills. (Some results of other social science.)

2) *The functions of legal types.*

The law is the norm with facts. Facts are gathered to a group. This group can be called a type. So there are many legal types. We can say that to catch the legal types is the first step to interpret the law.

For instance succession is a social type, but when state enforces a new law about succession or admits some social type as a habit law, so this social type becomes a legal type.

In old Japan the eldest son wants to success all inheritance (primogeniture). It's the trend of independance. But the state begins to want not admitting such egoism. So the state admit that the heir at law have equal right of heirship. This tren is unity. Of course we can notice the sprits of new constitution overflows the law of succession. Here blue is 50 and yellows is 40 and red is only 10. This is the one of the most important change after the worldwar II in Japan about the law of succession.

The new legal type went too far ahead the social type. So there are happened some case of inconsistence and opposition. But legal type works a factor of harmony and leader and now social type catches up with legal type. The change of family system effects strongly to social type through legal type.

The legal type or types have it's own character. We can find this character on the amalgamation of three colours. Of course there are laws which are notbelonged to the category of legal type, but we must not miss that such law will have gather and make a group with other law. For instance anti-pollution law become many and are constructing a new legal types. The chemical companies must provide some equipp-

ment not to flow their waste fluid incontinently in the river. The law regulates about the limit of B. O. D. of this waste fluid.

Anti-pollution law become strictly. The opinion reflects more strongly against offenders.

We can say here historical element became 30 from 20 in 100. In this case most important point is moral element to admit the right of human being to live healthy in the environment. (Yellow is 50.) The will to control the anti pollution system or equipment by law is based on the technical element. (Red is 20.) Such analysis of colour helps to catch the character of legal type and can get to know the «raison d'être» or «elan vital» of law.

3 *Functions of interpreter of law.*

Functions of interpretation of law is different the functions of law itself. In case of interpretation of law the standpoint of interpreter plays an important part in decision.

I suggest that here is the problem of ideologie. I rely on the scientific view of the world, but what is the contents of scientific view of the world is very delicate.

The personality or education often effects strongly on the decision making of the judge or administrator. Further we must not miss that the power of environment of closed society effects on them strongly also. Here the functions of interpretation of law become the functions of interpretation of law become the functions of interpreter of law.

We can analyze the character of interpreters by the colours which they like.

a) The people who like yellows are idealistic. Those people respects moral elements. They insists on their moral views.

b) The people who like red are emotional. Some such people insists on to control every thing by law. It must be called technically or red-tape.

c) The people who like blue are conservative. Blue colour is the colour of historical element. It's ironic the history is sympathetic to conservative.

Of course this is an allegory. The history changes every day. Man makes history every day.

Here I notice some interpreter neglects specially the historical element. (blue) Of course politics flows in law. But we must not miss the historical sense of law. For instance the anti-trust law has will to limit

the concentration of industries. (monopolization) Because the opinion becomes aware of the evils by monopolization. Some judge neglect this historical trend and is enervated to such law. He judges only by formality of law. He doesn't like to see the real situation or background (especially economical situation — the results of law). Here we must emphasize yellow. (moral element) If some admitting about trust become the cause of advance in price in future, it's not good. The standpoint of maintain the status quo is not always good. We can say the right of rational living must be kept and judge must to ask his conscience in this case. In this situation the functions of judge become important and if he had a good decision, so its useful for people in state.

2 *The scientific view of the world.*

I believe the world are progressing to good. The object of this trend is that every people in the world enjoy happy human life without war, poor and ill. Here the interpreter of law must think of the object of law. The object of law must be same as the object of the world. Of course law has it's speciality. This speciality is rule. The object of law is to rule the social life in good order and to keep the stability and flexibility of social order. Take it other way the interpreter of law must recognize his responsibility as man of action about functions of law.

I want to quote a idea as the scientific view of the world. Prof. Saburo Ichi says «Every homo sapiens put on his back some kinds of pains which he is no need to respond. But this kind of pains —irrational, pains— must be decreased.»

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