

# THE METHOD OF LEGAL REASONING

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## (1) *Introduction*

The method of legal reasoning is part of the philosophy of law. Legal reasoning itself of course belongs to the philosophy of law. So this essay is a theory on the philosophy of law.

From the stand-point of philosophy the method stand in a mutual regulating relation to the object. The object influences the method. The method also influences the object. In research on the method of legal reasoning the object is law. So the character of law influences the method of legal reasoning.

The conception of law is very variable. But I postulate that law has a social existence, consists of norms and facts and is given a compelling force by the state. This conception of law is a narrow definition. In a broader conception some rules of religious, community or social groups also may be law. But I notice that law in modern ages must be law in a state, national law. We can say that the state is a frame of law.

Human nature makes law as a social existence. So human nature influences powerfully the method of legal reasoning. That's the reason I get the three elements and the color theory.

Law consists of norms and facts: generally the norms are the upper stratum and the facts are the under stratum. So the facts are more influential than the norms. But sometimes the power of norms is very strong and they become the under-stratum. We must notice that norms and facts are often mixed up and make a very delicate construction.

We can find three kinds of norms. They are conduct norm, judge norm and constitution as basic norm. They make up a delicate composition. The confrontation between conduct norm and judge norm is sublated by the constitution.

In the world of facts in law many elements of other social

existence are flowed. Factors of religion, mores, moral, economy, policy and other stuff are mixed up in the flow of law. And if the state regulates some of them in that situation as law, they become a part of law and lose some part of their original color.

The method of legal reasoning is the method how to find the color and character of the norms and facts of law. I think there are three important elements in the norms and facts of law; moral element, technical element and historical element. I assign moral element to yellow, technical element to red, historical element to blue. Those three elements are the three primary colors with which we can sketch the character of the norms and facts of law and easily recognize the delicate construction of law.

## (2) *The three elements*

### (a) m o r a l   e l e m e n t

The moral element in norms of law emerges from conformity. It means to follow with the norms. The conduct norm has much of this trend. Why has conformity the color of moral element? In the background I notice there are some primitive moral feelings of people that conformity is a kind of virtue.

The moral element in facts of law emerges from justice or equity. Justice or equity is connected with moral. Of course we must not mix up justice or equity with moral. Moral is internal, the moral element in facts of law is external. The moral element in facts of law is sometimes called "Minimum of moral". Without a moral element law becomes weary in our social relation.

The state regulates law and gives it some moral element by directing a welfare state or culture state. Welfare or culture makes also a minimum point of moral. So also here law itself begins to wear the moral element. I hope the development of the moral element of law will help to promote the living level of every people.

Mores has also a moral element. But we can't miss that mores has very intimate connections with the religious, economical and social relations of a community.

### (b) technical element

I call technical every rational motive by which we can catch at the outer world.

We find that specially judge norm has a technical element. Judge norm works to the judicial decision directly, so the color of its technical element becomes deep.

The technical element in the facts of law emerges from some motive of language, logic, economy and social relation.

Language is the rib of law. Without language we can't catch or express law. The language of law must be used consistently. We must prohibit the talismanic use of words in law. I think some results of philology help to analyze law.

Logic also helps to analyze law. Syllogisms are often used in legal reasoning. Besides, dialectic is also useful. In the process of dialectic I notice the activity of intuition. Intuition itself is very delicate and has a keen insight.

Economy is also technical. The target of economy in capitalism is to get profits. In the process of production one makes profits and it usually emerges in money. We can't live without money. We must analyze the economical situation of participants and make clear their interest in law. In courts the judge will measure their economical gain or loss. In this case he must learn the special economical situation. So here the theories and statistics of economy are useful.

Social relations have also a technical element. Law itself is a social engineering technique to control social relations. So the results of sociology is useful to legal reasoning, and also the results of law sociology is more useful to legal reasoning. Once sociology tried to be queen of the social science as philosophy, but did not succeed. However some theories of sociology suggest clearly the character of law.

### (c) historical element

Historical element in law is also important. When the moral element conflicts with the technical element, or the technical element conflicts with moral element, the last decision is left to the historical element. When this decision works, we can say it's a historical decision. Historical element emerges from

politics. The historical element in law connects intimately with a constitution. A constitution as basic norm is the supreme law in every state. The contents (idea) of constitution as facts in law must spread out in every law (conduct norm and judge norm). Backing on this position politics works powerfully as historical element.

### (3) *The character of three elements*

Moral element — The moral element has the character of present-future type. It emerges in originality. The moral element maintains to develop his present idea in future in flow of time.

Technical element — The technical element has the character of past-present type. It emerges in stability. The technical element maintains to develop his past idea in present in flow of time.

Historical element — The historical element has the character of past-present-future type. It emerges in utility. In this point it reflects his fitness in future world. Historical element makes his decision in this present time considering past and future. So here is a special validity of the historical element.

### (4) *The theory of color*

— a method of legal reasoning —

I think those three elements in norms and facts of law are the three primary color of law, as yellow, red and blue. Those elements have various degrees in law.

In Japan the statute law of anti-pollution was proclaimed last year. It tries to protect people from the environmental destruction. In this point it has a moral element (yellow-50). So it has a character of originality (the character of the moral element). Before this regulation we are disputing that we can't solve this problem of pollution, if we don't put the teeth in them. Of course it provided the sphere of duties of enterprises

if it wasn't enough. In this point we can find the technical element. This color is red (30 points) and it has stability (the character of the technical element). And why proclaim such laws? It's the need of politics in present time. In this point it has naturally a historical element (blue-20 point). So this law's color is yellow 50, red 30 and blue 20. The synthetical color will be lemon. By this process we can catch the color of law as a color photograph.

And we suppose a case that a father killed his disabled son worrying about his son's illness. How long a sentence will the judge decide? Will this judge suspend the execution of the sentence or not? In this case the problem of deciding the length of a sentence must be moved to the problem of quantization of punishment. And here yellow color (moral element) will denote that the father's motive of crime had awakened the public sympathy. The judge will take care and learn the situation of the institution for the disabled children. Red color (technical color) will claim that the father's conduct deserved a sentence inspite of his motives. (I fear red tape!). Blue color (historical element) will decide that this father's conduct is a kind of euthanasia and lacks criminal intent. After considering those element the judge will declare this father not guilty. A bolt from the blue! No, I hear there was such a case in Belgium. I think blue color became deep and wiped out the other colors.

Then the question how to measure the point of color (shade) will be remain. We must get details of the three elements and set up some equations to count point. This equation will become complex and arrive at an equation of higher degree. It suggests a three dimensional color prism. To take a chart and draw color with various depth is also usefull. I think the method of public opinion poll among some specialist (for instance 100 lawyers) is helpful to lead a quantization of color. Such a quantization leads even to possible computarization. Generally quantization helps to develop science. In the sphere of jurisprudence this quantization helps much to give color of science to jurisprudence.

In optics spectrum analysis leads to a phototherapy. So the color analysis of law will be useful to remedy social

illness. Besides I expect by using this color analysis of law a preventive jurisprudence will appear in the future, as powerful as preventive medicine.

(5) *The scientific view of the world*

I think that every method must be constructed on a view of the world. Generally the end of a method in the science of human nature will be a view of the world. It is an aim of science. Of course there are many different views of the world and they fight a battle of thoughts. I think the scientific view of the world will show its validity also in the sphere of jurisprudence.

So what is the scientific view of the world ? This construction is a tautologie, isn't ?

I think some inheritance of legal ideas or jurisprudence or philosophy of law, the idea of democracy, the belief in progress and harmony in human nature, will illuminate the future.

Those ideas must be called the scientific view of the world.