



# A judicial officer's mission and legal justice and the Relations of the Ethics

Toshikatsu Aso <sup>1)</sup>

Preface

1. Rule (Justice)-society and non-Rule (Ethics)-society
2. The balance collapse of the legal standard and the implied standard
3. The social balance which measures legal justice and ethics
4. A Principle in Circulation of Organization
5. The prescription of the recovery balance between Legal Justice and the ethics
6. Summary

---

1) Professor of Daito Bunka University School of Law.

## Preface

Legal justice and relations with the ethics are argued with the judicial officer's mission. It is because the necessity to argue for an opinion that to be now by the agreement particularly is memorized. There is a lawyer's mission "Protect fundamental human rights, and realize social justice." (Attorney law one article one clause) The protection of the fundamental human rights is understood with the realization form of the social justice, and it just argues the following as "a legal justice" in this paper.<sup>2)</sup>

If it looks back on the history, it can know how many people tasted pain astringent juice under the legal justice in the organization of the state or the state resemblance. Moreover, emphasis is only put on the realization of the legal justice in each territory of politics and administration and the judiciary, and relations with the ethics in the civil society are made vague, and it has forget done by time in the modern state. Even civil society thinks that ethics are goals for an ideal of the life, and it is an every-day experience.

Unless violation of ethics is exposed, it seems mistakes it for the thing sentenced to overlook. These causes must study the matter whether it is where. As for the legal justice of sincerity which a judicial officer makes a mission, something, relevance to the ethics is the reasons to feel the importance to search for these how.

Citizenry is raised which in the tradition, a custom and the culture, and he carries out "The perfect virtue" as a way of the person succeeded to, and a family and a friend are needless to say, and there is no objection in dying in the pursuit of "the true love" for human race widely. Ethics as a citizen's "implied standard" is formed when this "The perfect virtue and true love" is raised even in many citizens' character. The judicial officer (a national judicial officer) who is the member of the state organization forms the character which moved "an implied standard" from being a judicial officer (a citizen judicial officer) as a citizen at the same time to the kernel, and he must possess it though he is not here until it is said that you should contribute to the realization of the legal justice based on the statute. Though it is implied and it is here, "ethics for the judicial officer (When and it" means both of the judicial officers concerning a citizen, the following is just omitted with the judicial officer.) is fundamental act standards in the justice and the same rank in that meaning. Judicial officer must work

---

2) lawyer law social legal justice make legal synonym distinction separately doubt should Generally, legal justice, the former can divide substantial legal justice or the latter into the legal justice the formal legal justice concerning the legal justice and the general purpose (common sense) concerning a specialist concerning the legal justice or the general public. Legal justice is just dealt with as a legal justice in this paper. Incidentally, there is legal justice, opinion to divide it from the formal legal justice into 3 steps of the substantial legal justice concerning suitable law. (N. Tanaka "modern law theory" October, 1984, less than 159 pages) With this opinion, legal justice as to the substantial legal justice which means "When legal justice is discussed in the level of the substantial value standard to judge a good reason such as a decision based on the contents that it be fixed positive law, and that is taken in legal standard, procedure through the judgment concerning statute, and realized directly.", in this paper It hits legal justice to deal with.

for the realization of “the legal justice backed in the ethics” by the act along both standards.<sup>3)</sup> The following, I will study the effect of the balance of the concrete contents of the legal justice and both with the judicial officer's general idea and the ethics concerning the national judicial officer and the citizen, and the importance of a judicial officer's balance sense is argued from point of the organization circulation argument.

## 1. Rule (Justice)-society and non-Rule (Ethics)-society

The society of the non-rule-ization (rule of thumb) not to get used to the society that society became the rule which must be based on the statute, and rule-ization (make it a rule to do) exists. A country and self-governing body organization occupy the legislation, administration, judiciary as a master in the rule-ization society in the central society of the organization that it became a system. A national judicial officer and the one with the general idea are the judicial officers who belong in this society stage. A national judicial officer must contribute to the realization of the legal justice. That official deed must be based on the statute. The personal group handed down such as the family whose influence by the belief and the personal passion is good, art and a taste in accordance with the tradition, custom historically exists, and non-rule-ization society becomes attached not the society area of system but passion. A general idea is the judicial officer who belongs in this society stage with the judicial officer concerning a citizen. It is decided that a judicial officer follows the implied standard that “the true love” as a universal value that it is cultivated by the traditional value that it is handed down in the non-rule-ization society historically to mention it later, and the custom was raised even in the character concerning a citizen. Classification with the judicial officer is similar to the difference in the general idea with the people state and the citizen state concerning the national judicial officer and the citizen.

---

3) it isn't made to compare ethics with law, and there is a position which study comparison with the law with the morality. As for Tanaka, it is emphasis “caused by inside-ization of morality to begin for the promotion of state-ization of the law by the modern united nation and the Reformation and the establishment of the individual morality, law and morality, the development of the argument in the rest when culture became independent respectively as a standard order concerning independence and moreover came often to be seen” . (op.cit. calligraphy 81 pages). Ethics in this paper are thought to be the proof of the legal justice though they are standard of the standard order concerning autonomy. As for the distinction argument of this law and the morality, Kant develops “a difference in the way of obligation is asked for both standards for a distinction, the theory of the validity (Legal tat) and the morality (Moral tat)” , and secures the territory of the free activities of the individual concerning autonomy from interference by the legal compulsion according to Tanaka's indication. Though it does, it faces law by catching a legal duty as a passive duty which is indispensable to the existence, maintenance of the human community life at the same time, and it is said that society ethical meaning concerning a base was being given to it. Rule-ization society and non-rule-ization society are asked for a standard for a distinction of the law and the ethics, and “the passive duty which is indispensable to the existence, maintenance of the human community life” is understood with the ethics in this paper.

As for a state and the people and the relations with the citizen are recently argue from the system argument, a position are influential. <sup>4)</sup> Characteristic differences in both territories are a difference in the succession means, method of the information (The intention to indicate the fact to transmit it, and a member's order contained.) and a transmission time lag and the existence of the punishment to face unjust transmission time as that effect on anti-target practice with the illegal succession means.

The former is "the document-ization society" which can become a character so that moreover he may transmit the information that the member of the organization possesses it to length and breadth to the mutuality promptly again and they may be transmitted securely. Intellectual faculty as an information carrying capacity and an information understanding ability is taken seriously, and a precedent respect principle takes root in the organization which takes past knowledge seriously in this society. Decision making and a standard for the act are "the specific legal justice" decided by a statute from the purpose of being public and the public system of the official business, the request for the transparency of the decision making progress, and so on. Many illegal sex arguments of un-intentional behavior are seen, and it shows a tendency to guide "legal justice" (It can be called latent legal justice.) from the purpose, point of not only the specific legal violation of justice but also the statute at this time necessarily. Remedial action for the benefit is prepared when it is contrary to the legal justice and the coercive measures of the benefit when document-ization society was symbolized by legal justice and it suited legal justice. A thing contrary to the legal justice is rejected as a justice as a violation of a statute and it convicts it of it. <sup>5)</sup> The elite who excelled in the interpretation of the statute and the execution is born, and it decides to find useful in this society to be natural. The judicial officer of the Past is trained for the elite of this seed, and he can say that those activities were expected.

The latter does the transmission of the information that an individual possesses it in accordance with the personal reason and the tradition, custom historically. A difference happens in that result by the reasons such as a characteristic and time target difference concerning the personal ability and the place. And, or misunderstanding and so on occurs in the transmission information because ability of understanding and the degree of the experience are different even if the individual who receives information is taken. Because it isn't transmitted precisely, the result which isn't expected is brought

---

4) T. Sato "the duplicities - of system-, people, of the people state, and the citizen" (T. Inoue/ K. Shimazu /Y.matsuura compiled "the criticalness of the law" II order figure, in March, 1999, a Tokyo university publishing meeting 3-page)

5) When legal justice and relations between the ethics or the morality are argued, it gets in the problem of "To follow law is a moral duty?" It was explained that the social act of the obedience person was prescribed because law was its will of the obedience person or it had the moral authority which required obedience of the law. But, many jurisprudents denied moral authority after 1970 years fee, and it reached that the general moral duty to obey law was denied, too. Being involved in this theory deeply [ ( H.Yonvalt/T. Mishima editing "the theory 15 of the law" December, 1995, Seibundo 100 pages) ] is avoided, and a tentative explanation is possible by arguing relations between the law and the ethics in accordance with a standard for classification in both above society areas.

about, and a new matter beyond the value of the transmission information is brought in the time. It is the characteristics of this society area that the creation of the value beyond the purpose of the transmission of the information is often seen, too. That is "the non-document-ization society" which isn't necessarily guaranteed though the transmission of the private information not to mind a character is oral instruction society and it is sometimes succeeded to by the telepathy. A confidential relationship between the succession person concerned mutuality is taken seriously in this society.

It is the problem when it was in proportion to the existence of the personal applicable ability and the degree of the problem is necessary by contents of tradition. Deep relations become indispensable between the people concerned in a place to touch directly each other and the time to do community life. Successor's personality and an experience and skill are respected, especially the belief as a transmitter and the passion. Enthusiasm and passion such as earnestness are necessary to the person who takes tradition historically. The love which necessarily occurs in the true as a citizen's way and the citizen's connection, that is, "the true love" forms the citizen's behavior outline in the society of this passion, that is, the non-rule-ization society. When the true love is raised even in the citizen's average character, ethics as an implied standard in the non-rule-ization society are established. Non-rule-ization society is symbolized by ethics when it is compared with the rule-ization society symbolized by legal justice.<sup>6)</sup> Decide have it the excellent person such as the craftsman who needs skill, and a teacher in the personal talent or the parents brother respected in this society, the elder with the common sense. As for the quality as a judicial officer, the judicial officer of the Past is being entrusted to the training by the self-responsibility concerning the knowledge in this society stage, that is, the citizen. Is it because the degree of ripeness of the ethics can't be measured for the deviation education as a result of an examination? However, judicial officer's everyday activities have the full human side concerning the side of the law profession as a national judicial officer and the citizen of the true love as a judicial officer. It can't be evaluated as the suitable activities as a judicial officer which when or a shaft foot leans to either. It can be understood that it is because it has the purpose of requesting the judicial officer who is never missing to see ethics though a post-graduate law faculty made the man of business teacher who excelled in the deep experience and the scholarship a necessary member. Moreover, not only it aims at the mere economic activation but also recent "thing making society promotion policy" can be understood with one of the recurrence phenomena to the ethics society caused in the non-rule-ization society of the this country.

---

6) It is agreed officially that there is ethics in the blockade conditions in the modern society, and the understanding of the classical virtue has an effective breakthrough plan, and you will have to pay attention to the opinion to propose the moral life that it paid attention to the importance of the relations between the dignity and the community. (Daniel Mark Nelson/arrowroot student J. Sakae "Good think and the new interpretation-of the natural law-Thomas ethics" February, 1996, Seibundou 213 pages)

## 2. The balance collapse of the legal standard and the implied standard

Legal justice is the legal standard of the rule-ization society, and ethics are the implied standards of the non-rule-ization society. It is the same quality in both being a judicial officer's act standard. That realization matter is different, and there is difference in the existence of the compulsion (punishment for the contravention).

「A , judicial officer, should take his deed which meets legal justice and ethics. 」 There is no room of the doubt in the thing. The problem is the balance between legal justice and ethics. It is eager only to suit legal justice, and you must not be the judicial officer who isn't ashamed of against act in the ethics. It is "Reverse is right, too." <sup>7)</sup>

It is examined with some cases. Individual ethics loses, in proportion to social general development and order of the legal justice of the rule-ization society though it is temporarily easy to maintain when it gets into the territory of the ethics of the non-rule-ization society too much. Many people fall in "the official system dependence syndrome" , stranger dependence syndrome and so on, and the ethical speech and action in the non-rule-ization society can't be expected, and human relations get confused in everywhere.

The various policies that the elite in the rule-ization society suited legal justice were enforced, and a postwar this country was pulled, and excellent reconstruction was accomplished. This thing itself should be evaluated high, and the person who proposes little government is the fact which must not be forgotten, too. Only, or the ethics of the non-rule-ization society as that result are ignored or disregarded , and you must not avert an eye from the fact to break down legal justice and the balance of the ethics greatly.

The people evaluate the intention of the elite of the rule-ization society and a past act high too much, and or still the elite himself is confined in the modern society in too self-conscious the conditions today. The disorder of the recent public order, a family and the collapse of the order in the school, area necessarily occurred from the elite making too much in the rule-ization society if it said without being afraid of the misunderstanding.

---

7) It is never criticized at once even if a formal legal justice argument is swung and the eyes are shut to the substantial legal justice when legal justice is realized. But, the general public who appreciates legal justice in the general meaning shows a tendency not to understand legal justice unless it is the realization of the substantial legal justice. It is the cause said in "Common sense in judgment is absurd in the society." and a part, too. However legal knowledge is swung, against measure isn't accepted in the ethics because the general public's common sense is universalized by ethics.

### 3. The social balance which measures legal justice and ethics

It supposes that there is a social balance which measures the intention of the society member and the actual condition of the act. The weight of the subjective reason emphasis principle has the weight of the objective reason emphasis principle about the right non-rule-ization society with general (with personal) as an apex on the left of the balance the legal justice in the rule-ization society, the statute center principle, passion such as the true love with moving ethics to the apex. When it does from the empirical science, as for this balance, it is understood that a weight in the organization in the two poles on the fulcrum of the standard organization located in that center wavers with the change (the progress of the time) of the age in top and bottom.

The various social factors of that age influence the intention of the organization member and an act, and an opposite pole becomes relatively light when either becomes heavy. Swing return to face the opposite side with the progress of the time soon happens in the extreme side which became light. The social balance is because it always tries to take back balance from that organic nature. The standard for an act which the value standard which the intention of the people in the society of one age is decided as, and an act are decided as always wavers, and knows that a fixed position can't be kept though it tries to keep ideal balance (balance) in that weight when this is observed as a phenomenon. A social member concerned slopes for central objective thinking of the statute in the "legal justice" stage and his speech and action, or this social balance is suitable for measuring the matter whether it slopes for the speech and action concerning passion in the "ethics" stage.

It is just a moment, and it slopes in either that it can think of it, too, when balance can be taken as the balance conditions of the social balance in time scale which it guesses from the past measurement. The ideal society that balance does balance can't last long though ideal society that balance does balance are not the fantastic stories which can't be realized. The reality of the bad dream which sloped in either too much is a transition in that meaning historically, too, and it can't sometimes last long. It is a good reason to feel it the world that it isn't usual for rise and fall, the various lines. As for expressing it "It is washed away if you do against human feeling, and it sows the seeds of discord if against reason." Souseki Natsume expounded the matter that a balance sense of the pole was a seductive subject for the life.

### 4. A Principle in Circulation of Organization

The state in the modern society and the actual condition of the enterprise organization (The following is just omitted with the organization.) based on the temporary construction of the social balance and examined.

It is formed as an organic organization that the two poles are person's groups, and the (legal justice, swing return of the ethics and balance) factor that organization takes back member's social balance can be thought to originate in the circulation phenomenon of the organization that that organization surely repeats collapse or regeneration from the formation, development, peak, and decline.

Though it cannot but be omitted on account of the paper, it wants to explain the next in this paper from a position to propose the hypothesis (organization circulation principle) for which to make this organization circulation phenomenon a fixed principle from the empirical science and to research.

- ① The circulation phenomenon of the organization is unavoidable, and it is irreversible.
- ② Organization makes each bring about "a delicate twist phenomenon" in time scale to circulate in the time when an act is put into action by a code of behavior more in both space between the intention formation process decided by that value standard to possess it, and the contents of a decision, and the applicable space to the organization member.
- ③ The power is given to the social balance which moves legal justice and "the perfect virtue and true" love to the two poles as to get characteristics and it becomes the energy of swing return this twist phenomenon and the organization.
- ④ Therefore, swing return energy is in proportion to qualitative degree of the above twist phenomenon.
- ⑤ In other words, and organization circulation unavoidably occurs irreversible in proportion to the intention of the organization member in the two poles and degree of the twist phenomenon in the act by swing return energy which brings it about.

Ability in swing return is in proportion to the ability of the twist phenomenon of the people of that age. Logical ability is added to passion which made ethics as a code of behavior in the non-rule-ization society, a character and an experience a base with intellectual • in the rule-ization society, and this ability is raised. A character and experiential wisdom are made a cutout, and the synthetic ability to become the energy of swing return isn't raised. It is because only an egoistical short-term idea is born of a result of education of knowledge making too much. Swing return becomes difficult if a help of the natural phenomenon is asked as the previous item or it isn't based on passion of the minor reformer in that case. The maintenance, development of the foreign relations becomes difficult only with the passion developed in the other side, a character in the non-rule-ization society and the experiential wisdom, the whole order of the organization. If a pole uses against human feeling, it has to that the general steering becomes difficult.

Member's consciousness and ability of the behavior are only investigated, and it is sufficient to know for the organization which one belongs to whether to be in any organization circulation process



at present if this hypothesis is right. But, as for the artificial thing, swing return doesn't limit the political revolution and the educational reform to swing return. When human lack of policy is left too long, a reprimand does this, or natural calamity disaster such as a deluge and a massive quake becomes an opportunity to suggest human intention and a reform in the act. It is different from a thing to analogize out of the power struggle in history and the domain dispute just, and the place to make a matter a circulation factor concerning nature has the characteristics of the Principle of circulation of organization. D·H· Meadows who is a specialist in the global environment, Dennis ·L· Meadows in [Limits to Growth The30-Year Update] are supposing that global environment problems is based on huge organization by all mankind on the earth. The new choice to be live again is given, and it thinks that you should tax your ingenuity because the earth collapses or it shall be down with the earth where the activities of that organization member, namely human being are "it is too much" . The global environment regenerated as a result of the idea is as it is, and it can't be maintained, but over load happens soon again, and believes that it decides to be pressed for the choice of the collapse or the regeneration by the human history and the past data. It considers that this thinking stance makes research into my organization circulation principle and the same stance.

## **5. The prescription of the recovery balance between Legal Justice and the ethics**

Obviously a social balance is slanted to the legal justice too much when it is evaluated by modern society is analyzed from point of 3 and 4. Organization passes the prime again, and it is here in the period of decadence, and it is in the stage of the collapse or the extinction.

A stage in the present of this social organization is verified concretely. Emphasis was placed in the postwar this country in the motto for the elite training in the rule-ization society "the domestic reconstruction and the foreign development" . The rule-ization society located on the left of the balance became fatness, and became heavy, and a balance leaned in that direction naturally. Many men of talent were discharged, and the national university which existed as the elite educational facilities of the rule-ization society after Meiji, and a noble family private university accomplished reconstruction and development. It can be estimated in a certain meaning that a result appeared from the balance left policy in the postwar this country. But, it can't be avoided the ill effect's of that share appearing because the balance collapses with the left. If it does from the received education, the elite of the rule-ization society is supposed to excel in the fair measure with the realization of the legal justice. But, political confusion after the bubble burst and the disorder of the social order can't be denied. They should realize that most as a cause until it isn't said that the elite has that cause completely.

Non-rule-ization society has been left behind from the social concern for sixty years some postwar.

It is because it got over the enterprise that the elite of the rule-ization society was located in the fulcrum of the balance and got even into the non-rule-ization society deeply and came. The individual of the non-rule-ization society gave up self-efforts with rather fall in the official system dependence syndrome this only being forgiven, too. Soon, many people fall in search of the ease for others dependence disease in the daily life, and went away from the self-responsibility. If public order becomes worse, the 「 politics of the person who suffered from others dependence disease is bad. The police are wrong. Education is improper. Society is wrong. It was criticized with 」。 A particle isn't seen with the idea and so on which self-defense has its town, either. However, though it is a part recently, the formation of the vigilance committee is finally taken up in the media. As for today's non-rule-ization society, does the mind of autonomy self-respect by the self-responsibility and the self-reform decline, and compel result equality, and are the buck-passing of the disgraceful affair and a responsibility-less criticism principle widespread?

A woman went into the rule-ization society to strengthen manpower. Woman's human rights are obstructed, or it is known the role of mother at the family, and the promotion of separate family-ization and the understanding of the intention between the parent and child weaken as a result, and the child whom parents' affection was the most necessary is a sacrifice. It will be crushed by the excessive affection of the parents and the expectation, or many mental's will hold an emotional problem in the only child to the person as well whom it can think of when it grew smoothly.

Though the human group of the enterprise and others much is located between the two poles society, it becomes the ruler which it is decided as how many characteristics of the two poles to accept as an organization which as for themselves, all the differences in the distance with the rule-ization society and the non-rule-ization society belong to. An enterprise can think that it is located in about the middle of the two poles. Because, Foundation of enterprise is based on the law and ordinances, and member's acts are based on the internal standard without being based on the statute and everyday activities conscious of the statute. There is an internal standard of the enterprise when it has the contents which are peculiar to the enterprise caused essentially by the enterprise climate. When many standards of the rule-ization society are brought, a public interest enterprise is decided to approach it from the private enterprise. It is moved to the position the Independent Administrative Institution. Great development is made in the enterprise if it is in the close position to the world of passion to belong on the right of the social balance when it does from the past case. The importance of the thing to entrust it in the freedom of the market economy can be read in activating the economic activities of the private company.

The power that the management of Japan, Inc. by the elite group of the rule-ization society was powerful was shown for the postwar reconstruction term, and economical prosperity was brought in a short time. But, that over load becomes definite, and it is the age when swing return happens at

present. It decides to advance the way of the collapse with an organization circulation argument in not only the country but also the various countries which advance from the decline. The country struggling because still a decline is stopped though there is a country which began to walk a live new way to collapse already again, too, is seen, too. But, a thing to collapse more as struggling more is only hastened, and you must say useless efforts after all. When the decline which can't do a thing to avoid begins for a while, an organization body such as a country and an enterprise can't be returned conversely. Even if it is based on any wisdom and the policy, it declines loosely at most, and it is made to collapse, or a decline is hastened conversely, and reaches collapse, and fresh regeneration is begun from there, or there are only two choices.

The decline of this country is quickened, and the various plans of Koizumi administration can bring regeneration as soon as possible.

The policy of the opposition elements makes a decline speed gentle, and only makes national pain prolonged. The organization which reached the depths early can expect only that the new prosperity which it can be equipped with the condition that it can regenerate fast.

The policy which has a proper direction can be said if it is in planning the balance of the social balance by the reduction of the rule-ization society which the purpose of the postal service privatization made fatness and restoration of rights in the non-rule-ization society. If the purpose of the decentralization is the same, it should be welcomed as a thing which hastens restoration of right in the non-rule-ization society. It may be their only good plan that the House of Representatives dispersion was realized by the opposition elements.

The decline conditions in the judicial world.

A present feeling of the blockade is overcome, and these are corrected, and one prescription which makes it legal justice and the balance of the ethics recovered are decrease of the public organization in the rule-ization society and building of the central society system of the area by the decentralization. Moreover, it is effective at a stretch to lead the social conditions of a guidance variety to the depths all the more in the confusion for the reason to mention it later the present condition. It is because it can regenerate only from the depths. It is unacceptable in the noncommittal reform really to go to the necessary opposite bank (the shore of the reform) now to be in the maxim with "When it crosses a large river, marching in place has it in the middle of the muddy stream, and doesn't finish crossing."

## 6. Summary

A judicial officer appreciates the characteristics of the relations between the rule-ization society and the non-rule-ization society, and learning legal justice and the balance of the ethics is the most

important. The ethics which sublimated benevolence love even in the character are acquired, and you should work for the realization of the legal justice backed in this. Unless it is so, the benefit is empty at the time of the judicial officer, and falls into the cold authoritarianism, and private consideration and unfair can't be wiped away in ethics that it doesn't suit legal justice.

All judicial officers try to keep legal justice and the balance of the ethics. They should contribute to a solution of a dispute with the warmth as a human being. The moment the view of the legal justice is raised, it is indispensable to wear ethics firmly by the study to raise benevolence love in the world of passion as a personal character because of that. Of course you should learn knowledge from different angles from the philosophy of history, literature, economy, scientific treatise and so on from the superior who is excellent to see ethics as the same when legal knowledge is looked for from the superior and the book. The direction of a post-graduate law faculty to raise general arts to the judicial officer is right.