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Incorporating Foreign Legal Ideas through Translation

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ON THE SIGNIFICANCE OF THE PROBLEM OF TRANSLATION IN THE CONTEXT OF THE DIFFUSION OF LAW

Introduction

I WISH TO explore in this chapter the theoretical characteristics of the import of foreign legal ideas into domestic law from a viewpoint of legal philosophy, based on some historical experience of modern Japan. Although there will be various aspects or factors in the process of legal modernisation in various societies such as individual activities, institutional planning, or social movements,[1] I wish to focus on the agential and formative aspect of that process in terms of interpretation and translation by the leading intellectuals in a society. Also I am keen to explore the philosophical issues involved here such as the comparability and the commensurability of legal ideas and values between divergent societies or cultures.[2]

The background view for my exploration is that the incorporation of a foreign legal system generally begins in the adaptive efforts of intellectual elites over basic legal ideas, and then these ideas and values pervade systematically first into the central part of social institutions and later toward the rest of society. This heuristic view is itself of course debatable from several viewpoints.

[1] Cf W Twining, 'Diffusion of Law: A Global Perspective' (2006) 1 *Journal of Comparative Law* 237.

[2] Cf HP Glenn, *Legal Traditions of the World,* 3rd edn (Oxford, Oxford University Press, 2007) chs 1, 2, and 10; A Halpin, 'Glenn's Legal Traditions of the World: Some Broader Philosophical Issues' (2004) 1 *Journal of Comparative Law* 116; Glenn, 'Legal Tradition and Legal Traditions' (2007) 2 *Journal of Comparative Law*, 69; 74; Halpin, 'A Rejoinder to Glenn' (2007) 2 *Journal of Comparative Law* 88, 90.

One viewpoint is moral. While I consider the incorporation of foreign legal ideas and values and the transformation of law in the way that Western values are now becoming prevalent on a global scale, I still wish to understand that phenomenon in terms of to what extent Western ideas and values can be viable in other societies or to what extent those ideas and values should be revised in various contextual conditions in other societies. Of course, the permeation of ideas and values is not a one-way, sometimes imperialistic, process but rather a mutual interactive process among different societies. But, as a matter of the actual course of modern history, I think it significant to take the view above.

The other viewpoint is conceptual, concerning the relationship between the permeation of foreign ideas and values and the transformation of law in a domestic setting. I understand law to be the combination of political morality, established statutory provisions, and social convention. This is law in a broad sense. Political morality can be a part of law when it is the basic guideline of statutes or when statutory provisions are indeterminate. Statutes are law in a narrow sense. And social conventions are, as a spontaneous order at the level of tacit social knowledge, a basic part of law. Theoretical details aside,[3] what I would like to emphasise here is just that I do not think law is limited to statutes and precedents as legal positivism usually assumes. From this viewpoint, it is natural that there exists a necessary relationship between values, especially political values, and law.[4] And I would like to consider how law in a broad sense can be developed and transformed based on certain ideas and values introduced from foreign societies. But, needless to say, there remains a problem from the positivist standpoint: law should not be defined in such a vague way. Rather law is considered as the bulk of explicit rules within a discrete system, grounded on criteria for factual recognition in society.

Also there is a sociological viewpoint, which is concerned with the multiple social processes in the diffusion of law. Yet I wish to leave this issue open for future considerations, except for referring now to the suggestive idea of *connected critic* by Michael Walzer.[5] In trying to avoid the unfruitful alternative between insider and outsider in society, Walzer contends that the person who criticises and revises the existing values or culture relies on the marginality of his position in society. This person, who is at the edge of society, has a subtle relationship to society: he can see foreign values or culture from the edge of society on the one hand, while on the other hand he is related and involved in the existing society and its tradition. By this double-faceted relationship to society, this person can identify and also criticise its dominant values or culture. The insight of Walzer is suggestive for our understanding of the incorporation of foreign legal ideas: any person, including intellectuals, scholar or lawyer, may be a connected critic in his effort

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[3] See, eg, B Bix, *Jurisprudence: Theory and Context,* 4th edn (London, Sweet & Maxwell, 2006) Part B.

[4] Law in this broad sense is itself the bulk of societal values. Those values are expressed concretely in a form of law, when social control of them is necessary. Cf K Hasegawa, 'The Structuration of Law and Its Working in the Japanese Legal System' in J. Vanderlinden et al (eds), *La structure des systèmes juridiques* (Brussels, Bruylant, 2003) 319, s 2-A.

[5] M Walzer, *Interpretation and Social Criticism* (Cambridge, MA, Harvard University Press, 1987) ch1.

for the transformation of law with an adequate interpretation of relevant foreign ideas and values at the edge of society.

Yet, the working of connected critic seems a little bit opaque: how can he influence the existing tradition of society and arouse its transformation? Regarding this influence, Toshiaki Kozakai presents an interesting thesis: *a theory of minority influence*. And here we can relate the concept of connected critic to another interesting concept introduced by Kozakai, mediator.[6] According to Kozakai, mediator is the person who faces two different cultures, identifies foreign values and interprets them in a proper way for his society. He works out his own interpretation in another form which people in the existing society can understand and accept. Mediator is partly burdened with the existing values and culture, while he is also open to foreign values and culture. In this regard, he becomes a Janus-like encounter point through his own perspective; he is a starting point of the internal transformation of existing values and culture, as well as an intellectual or information pioneer. Thus we can say that mediator and connected critic are the same type of person. They are marginal, and yet, based on this marginal position, they can make novel inputs to the existing values and culture.

If people like the mediator or connected critic are only a minority in the existing society, Kozakai maintains that they can have a greater influence on the majority when they persistently continue to push their own claims. This continuation itself exercises a power over the majority, which may legitimise the importance of the claims. Of course, there are important conditions for the success of this push. In particular, there needs to be a certain moral significance in minority claims.[7] Still, as a matter of fact, it might not be easy for a morally decent minority to hold enough power in society. Not only do they need decent moral views, but also they need social impact to broaden the truthfulness of their moral views.

Yet, although there will be multiple processes in the development and transformation of society, we may at least find the initial factor which gives the fundamental drive to that process. And I think this drive is to be given by connected critics and their works.[8] Especially in such a historical setting as the modernisation of East Asian societies including Japan, as well as in the famous case of the modernisation of Turkey,[9] the role of legal intellectuals as connected critics was enormous. Japanese intellectuals, politicians and bureaucrats in the late 19th century led the country to shape the nation and empire of Japan, and the

[6] T Kozakai, *Ibunka Juyou no Paradokkusu* [The Paradox of the Acceptance of Foreign Culture] (Tokyo, Asahi Shinbunsha, 1996).

[7] For example, while anti-racists are to be counted, fanatical terrorists must be excluded. And, even religious fundamentalists, if they are non-violent, might be an example of this influence. Historically speaking, there are important cases of minority influence, such as the civil rights movement in the United States. If the mediator or connected critic can become a properly persistent moral minority in society, they can also give much influence to the existing society.

[8] This view suggested by Walzer and Kozakai may seem somewhat elitist. Yet this should not be taken as an ideological thesis; rather this should be taken as a natural understanding of the historical course of events.

[9] Cf E Örücü, 'A Synthetic and Hyphenated Legal System: The Turkish Experience' (2006) 1 *Journal of Comparative Law* 261, 267.

movement among these people spread afterwards to the broader society, which resulted in the epoch-making success of the modernisation process. To understand the initially significant conditions of this success, it is thus natural to pay attention to the circumstance of the works by those intellectuals and other elites. And here the more important thing is that those intellectuals in Japan tried to learn and adapt significant Western concepts, related ideas and values through such tremendous efforts of translation. Without this creatively constructive effort, there was no beginning of the entire process of legal modernisation in Japan. And this may also show a general truth in the diffusion of law from one part of the world to another: the innovation or advancement of knowledge through the efforts of intellectual elites precedes the consciousness of people in society.[10]

Of course, the traditional legal system in Japan has been transformed first by the European impact in the late 19th century, then by the American impact after 1945, and further by other global trends today; all of which have made the compound of different kinds of ideas and values in one legal system. If we consider this case theoretically, we can say that the Japanese legal system has been constituted by the divergent layers of European, American, and other foreign values, even if they were sometimes imposed by political pressures. I regard this kind of situation as one of the typical examples of the diffusion of law.[11] Yet, for my exploration here, it will suffice that I should note that at the very beginning of modernisation, the adaptive process in the late 19th century is very significant. I think it clear that the basic scheme of modern legal ideas in Japan got started in that early stage, especially when Japanese intellectuals at that time tried to capture the essence of Western legal ideas such as rights through their efforts of learning by translation and to apply it for the establishment of a modern legal system in Japan.

Incidentally, this might present some difference from the case of Turkey, which also famously transplanted European laws to, as it were, place a Western canopy on the head of Muslim societal culture.[12] Contrary to this aspect of legal transplant in Turkey, I think that Japanese modernisation of law is to be characterised as the legal amalgamation through translation: Japanese intellectuals attempted not transplanting European law but rather *grafting* it for Japanese society. Indeed, they tried to understand and introduce Western ideas and values into Japanese society principally to enlighten and westernise it. But that was a selective incorporation, which made the Japanese legal system an organic unit of heterogeneous legal ideas and values.[13]

Here we should ideally distinguish the multi-layered legal system from the organically combined or hybrid legal system as in the case of Japan that I am

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[10] Cf Twining above n 1, s 3 ; also A Watson, *Society and Legal Change* (Philadelphia, PA, Temple University Press, 2001) ch 9.

[11] Hasegawa, above n 4, s 2-B; cf K Hasegawa, '*Hou no Kureouru no Gainen wo Meguru Kisoteki Kousatsu*' [Fundamental Considerations concerning the Concept of the Creole of Law] (2008) 58 *Hokkaido Law Review* 244, 259.

[12] Örücü above n 9, 262.

[13] To what extent organic is also hybrid or not, might be problematic: for example, there exists a subtle difference between total amalgamation, half amalgamation, and spotted amalgamation of foreign ideas and values in a domestic legal system.

discussing.[14] This distinction is concerned with the totality of translation in the process of law-making. In the case of Japan, the main legal codes were not simple transplants from European law but rather the reconstruction of various European laws through translation, which includes not only the adaptive modification but also the critical discarding of European legal ideas and values. In addition, the operation of the legal system in Japan is conducted through the traditional sense of justice, ie, of harmony or equitability.[15] Even if the legal provision in question was derived from a similar Western one, the understanding and application of it is curbed with the mind that ordinary Japanese people tend to appreciate by their own valuational sense.[16] These are important characteristics of legal grafting.

The Introduction of Rights in Modern Japan

Before entering my main discussion, I wish to make a brief summary about the introduction of the concept of rights in modern Japan. This is the basic experience around which I am developing my theoretical exploration on the incorporation of foreign legal ideas through translation.

First and foremost, I should note that it is Japanese intellectuals in the late 19th century who studied foreign languages and went abroad to absorb a new understanding of law and politics in Europe for the modernisation of Japan.[17] While they were keenly aware of the political situation and the fate of the Japanese nation surrounded by powerful Western societies, they had such excellent knowledge of Chinese and Japanese literature and a good ability in foreign languages, that they could seek to translate Western concepts in law and politics into the space of Japanese language with the construction of novel words. Also, they had learned from Chinese translations of Western books in law and politics beforehand, which gave them a significant background to introduce the meaning of Western legal and political concepts. With these experiences, Japanese intellectuals faced the lectures, talks and books of Western people and tried to capture the core meaning of the ideas in question. This kind of translation by several Japanese intellectuals contributed to the establishment of the basic legal ideas in the problem-context of Japanese society. This activity of personal reception is significant for the later development of Japanese modernisation, simply because those intellectuals

[14] Cf Örücü above n 9 , 277.

[15] Cf Glenn, above n 2 ,ch 9.

[16] If we take Asian societies as the cases to be kept in mind, the problem concerning the transformation of law is apparently very complicated. Asian societies are enormously plural: multi-cultural, multi-lingual, multi-racial, and multi-religious. Governmental forms are also diverse, such as monarchy, authoritarian regime, or liberal democracy. Meanwhile, recent Asian societies have been greatly influenced by American ideas and values in various ways, whether they like it or not. Thus it will not be easy to consider generally the cultural influences from foreign societies to Asian societies. Still, keeping this in mind, I focus on the Japanese case as an example of the transformation of law in Asian societies, assuming general points common to these societies.

[17] See for the details on this situation, K Hasegawa, 'Between Rights and *"Kenri"*' (to be published in the Report of the Swiss Institute of Comparative Law, 2009); also Hasegawa, above, n 11 at 261.

became the central figures of that modernisation process both in government and in private associations. This standing also made it possible for their thoughts to permeate effectively into society in a shorter period of time.

Representative of Japanese intellectuals in this regard are Rinsho Mitsukuri, Yukichi Fukuzawa, Amane Nishi, and Mamichi Tsuda. In 1870, Fukuzawa tried to translate the concept of rights as '*tsuugi*' (通義); which literally means 'common just-cause.' This translation is said to preserve the fundamental meaning of rights, ie, just entitlement to demand something important for a person. Later, Fukuzawa also tried to translate rights into '*ken-ri*' (権理) in the same vein, which literally meant 'power with right reason.'[18] But what became popular later was the word '*kenri*' (権利), which had been proposed mainly by Mitsukuri, Nishi or Tsuda around 1865-68. In particular, Nishi and Tsuda had studied law at Leiden University in the Netherlands and learned the idea of rights through the lectures on international law in Dutch. It was thus natural for them to understand the meaning of rights ('*regt*' in Dutch then) as some power to claim against others, somewhat regardless of its being just or not.[19]

Actually, '*kenri*' in Chinese characters literally tended to mean 'power benefit' for Japanese people, which places it some distance from the word '*tsuugi*'. Although Nishi and Tsuda could grasp a sense of just claim, we may say that the word '*kenri*' they introduced tended itself to slide, in its actual extension, to mean the power to claim economic benefit of some person without any justness. Thus, in the Japanese context of law and politics, '*kenri*' tends to be recognized as egoistic or self-righteous demands, not only from people but also even from government. Also to add is the point that the Japanese understanding of rights was already statute-oriented, because the time of learning in Japan was the culmination of positivist thinking in the social sciences in Europe in the late 19th century;[20] and also because new political and legal ideas had to be the product of newly planned institutions. In this regard, the power element of rights was almost always connected to artificial legality, which led people to understand rights as a type of strict legal power. This understanding easily slipped to the idea that rights were always given in positive laws. And, when this idea worked in the context of authoritarian politics then prevalent in East Asia, the idea of rights tended to imply that rights were given to people by higher authority through the form of legal commands. This understanding tended to result in the weakness of, or even the suppression of the idea of just entitlements people may originally hold.[21]

Yet, although this twist of the idea of rights is interesting in itself, the main problem to explore here is rather the circumstances and conditions of the translation process concerning legal ideas such as rights in their transference beyond social and cultural boundaries. I believe this is concerned with a core

[18] I use here '*ken-ri*' to refer to '権理' in order to distinguish from '*kenri*' (権利), simply because these two words have the same pronunciation in Japanese.

[19] Yet Nishi seemed to have some uneasiness about '*kenri*'. For he also talked about '*ichibun no ken*' (一分の権) in 1870, which meant the small but certain basic due (with power) of an individual.

[20] M Maruyama, *Nihon no Shisou* [Japanese Thought] (Tokyo, Iwanami Shoten, 1961).

[21] Cf E Feldman, *The Ritual of Rights in Japan* (Cambridge, Cambridge University Press, 2000) ch 1.

aspect of the diffusion of law. Thus our question is how we can develop a theory which adequately explains the kind of translation to be performed. To explore this question further, we shall turn our eyes for a while to a general theory of translation.

BRIEF SKETCH OF A THEORY OF INTERPRETIVE AGENCY AS THE BASIS OF A THEORY OF TRANSLATION

Translation

As for the study of translation, we have a certain stock of knowledge especially in the field of linguistics, anthropology, and philosophy. There are various theories of translation, such as the theory of translation as a branch of communication theory, the theory of understanding of others and different cultures in the anthropological problem-setting, or the theory of so-called 'radical translation' in philosophy of language.[22] Although it is important to survey the current developments of these theories, I wish here to take the *hermeneutic* perspective that has been developed in philosophical phenomenology, literal criticism, the interpretivist theory of law, or the so-called interpretive anthropology.[23]

From this perspective, translation is characterised as a specific case of the general activity of understanding on the meaning of human endeavours. Beyond the alternate framework of subject and object in common-sense epistemology, hermeneutics has been emphasizing the importance of the prerequisite work in human intellect, generally referred to as interpretation: the activity of pre-understanding, articulation, and reflective reconstruction, which develops spirally toward a better understanding of the text in question. Here we need first the interpretive stance toward text, ie, the facing with the phenomena to be understood; then second we need the interpretive grasp, ie, the reading and meaning-giving to the text; and third we need the post-interpretative reflection, ie, the meta-interpretive analyses and revisions of preceding interpretations. All of these make a cyclic whole for a wider interpretive equilibrium. In this sense, interpretation is the fundamental mode of human cognition, judgment, and action.

Also, as for law, we may say from this hermeneutic perspective that people, living under societal values, norms and other institutions in society, shape their lives meaningfully always through interpretive activities. People are themselves interpreting units of the normative world, including law. They start their legal activities from the pre-understanding of given legal values, norms, and institutions; then articulate the contents of them constructively; and revise those understandings

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[22] Cf J Munday, *Introducing Translation Studies: Theories and Applications,* 2nd edn (London, Routledge, 2008) ch 10.

[23] Of particular importance, H Gadamer, *Truth and Method,* (2nd edn (London, Sheed & Ward, 1989) Part II; R Bernstein, *Beyond Objectivism and Relativism* (Pennsylvania, University of Pennsylvania Press, 1983), Parts 2 and 3; R Dworkin, *Law's Empire* (Cambridge, MA, Harvard University Press, 1986) ch 2; G Steiner, *After Babel* (Oxford, Oxford University Press, 1992) ch 5.

reflectively to make law more integral to the possibly adequate interpretation. Everyone, lawyer, scholar, administrator, politician, or ordinary citizen, does this over time and collectively make the whole of these interpretations into the practice of law in society.[24] Anything potentially legal which people may think and do is an interpretation of law, and every specific activity contributes to the practice of law from its own angle.

I should add that this sort of view implies a certain *agency* of the person whose thinkings and doings are carried with interpretation. Although there are various philosophical issues in the concept of personhood and its nature, I simply assume here that being a person derives from being human. Being complicated and conflictual in nature, the human person tries to live his own life by pursuing some significant good for himself. When he tries to do so under the condition of complexity and conflict, there should appear a particular ethics in himself. In holding this ethics, he tries to explain and justify his thinking and doing, and to act in the best possible way for him. Also, as far as individual lives are divergent in society, ethics can be divergent among people. Still, in thinking about this fact of human life, we find a deeper condition, that to pursue a certain decent way of life has itself an intrinsic value for every human being, regardless of its various forms. The core of this pursuit for a better life is an ultimate sort of ethical drive in a person: *self-formation*, as I call it.[25]

If what this brief reflection indicates is, in fact, the case, we should pay attention to the dimension of ethical ordering in our agency. Despite having various forms, this dimension of ethical ordering must determine the particular mode of personal life in each individual: it classifies the importance of basic or derivative values in the person and shapes his thinking and doing with them. Also, as the plasticity of person may imply the necessity of integration over time, we may seek in our agency the ethical consistency between the future and the past via the construction of the present, toward the realisation of a certain objective in life.[26]

This view also suggests that there must exist the agential dimension of judgmental competency that can generate the objective space of reasons from which we may derive the justificatory triggers for our thinking and doing. The substance of this objective space of reasons will be furnished by various considerations that may arise conflictingly within our mind in claiming their own force.[27] Also, this space of reasons is generated through a judgmental core in the agency which yields one's thinking and doing in synchronic and diachronic settings. It is here that, to carry out this integration, we may say that interpretation of values is important to give some coherence to our conflicting motivational forces. In trying to understand what is of value, we wish to shape our own life in the best possible way.

In this regard, I am inclined to think that the core of our interpretive agency is understood as the interpretive spiral of *receptivity*, *sagacity*, and *practicality*, as I

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[24] This is also related to the shaping of legal traditions. Cf Glenn, above n 2, chs 1 and 10.

[25] Cf K Hasegawa, 'Human Well-being and Public Provision' (2004) 54 *Hokkaido Law Review*, 432, s 2.

[26] Cf C Taylor, 'Leading a Life' in R Chang (ed), *Incommensurability, Incompatibility, and Practical Reason* (Cambridge, MA, Harvard University Press, 1997) 170, 180.

[27] T Nagel, *Mortal Questions* (Cambridge, Cambridge University Press, 1979) ch 9.

shall term it. This spiral consists of the intelligent ability of sensible understanding of the problem-situation at hand, the imaginative ability of progressive response to the situation, and the practical ability of attaining the life objectives there.[28] The first ability indicates that one can interpretively consider other's thinking and doing in the best possible way, with the sense that these people basically share certain problem-interests, even if they have different opinions. The second ability indicates that one can devote oneself to judge valuationally with adequate explanation and justification the problems discussed. And the third ability is that one has enough prospect to act for the realisation of the reasonable solution of the problem at hand. Also, this spiral develops successively toward a new dimension of itself over time,[29] with the better interpretation and integration of values.

In particular, for the person who endorses some value in the midst of the encounter and transformation of culturally different ideas and values, it is always the question of the agential integration of internal conflict among or within heterogeneous values embedded in those ideas. Whether to lean on traditionally existing or on novel foreign ideas is the question of interpretive commitment for him; this judgment depends on the setting of the valuational axis in his interpretive activities. Relevant here may be the value of constitutional justice for the development of adequate social order in the face of culturally conflicting ideas. Whether democratic or authoritarian, some conception of constitutional justice will lead the agential process of translation of foreign ideas, and this process may be identified as holding some significant conception of rights and duties of people. A conception of the axis value of constitutional justice need not be, in principle, supposed as neutral to particular cultures, because it has to accommodate diverse ideas and values from the viewpoint of someone. A conception of constitutional justice is to be proposed by him as a particular value interpretation for an integration of the various societal values in question. Also, to note from a hermeneutic standpoint, what is the best interpretation is to be contested among people, and the direction of the transformation of society is still indeterminate.[30]

Lastly, the work of translation through interpretive agency also lies in the dimension of time and informational stream in the shaping of tradition.[31] In this diachronic setting, the translator works as mediator and canalizer for the continuing flow of ideas and values; and the translation produced is a chain of successive bridges in this dynamic flow.

The translation is carried out through the working of relevant moral precepts on the spiral of receptivity, sagacity, and practicality in the agency of translator that holds the objective space of reasons under certain interpretive purposes. In trying to integrate various moral precepts for finding an adequate understanding

[28] This view is developed from the idea of the so-called hermeneutic circle. See Gadamer, above n 23. Part II; and his *Philosophical Hermeneutics* (Berkeley, University of California Press, 1976) Part I.

[29] This may be viewed also as a process of incessant problem solving in human life (problems-tentative hypotheses-error elimination): K Popper, *Objective Knowledge* (Oxford, Oxford University Press, 1972) chs 1 and 3.

[30] See Dworkin, above n 23, ch 1; cf Hasegawa, above n4, 261.

[31] See Gadamer, above n 23, Part II; Glenn, above n 2, chs 1 and 10; Munday, above n 22, ch 10-3.

of the text, one carries out the activity of translation to construct a new horizon of language for society. The translation process is such an agentially positive working of the human mind, a complex but integrating process.

The Attuned Dispersal of Critics

I should make a complementary remark that although the activity I have discussed is an aspect of ethical thinking and doing by an individual, the cumulative result yields a collective movement of various people in society. The activities of these people constitute the micro-level and meso-level transformation of society, while some pattern will appear at the macro-level transformation of society as a whole.

At the micro-level, we may take an example of us, legal scholars. Each of us accepts and constructs the significance of certain legal principles in a society, identifies and constructs the meanings of statutes, and makes or changes the directions of legal performance. Further, through teaching, each legal scholar tries to crystallise a better understanding of law and also to convey and expand it to other people, especially to law students. If these individual activities are successful, they can further the range of activities of legal scholars and have wider effects for the transformation of law by revising or changing people's thoughts and attitudes. This is what every legal scholar is *socially* doing, and this is also common with the practical doings of each person in society.

Meanwhile, in these micro-level viewpoints, people have to decide which future direction they wish to pursue. They wish to identify, give meanings to, and revise or change society through their own understandings of a possible direction of the future transformation of society. It is this collective combination of micro-level activities that can extend, further, or develop social order to yield its macro-level structural patterns.

Yet we should also beware that there exists the meso-level process which combines the micro-level activities with the macro-level structures in society.[32] Although the micro-level evaluative activities develop into the macro-level pattern of social structure, there exists also a certain norm-making process through some selective systematisation by various groups of people. In this regard, a related point to note from the agential standpoint is the nature of the connection of interpretive activities among various people. This is *the attuned dispersal of critics*, as I call it. Critics live and make voices scattered in society. Thus, basically speaking, each of their interpretations of important ideas and values float distinctly within society, sometimes clearly heard but sometimes dimly unheard. To grasp how these detached voices are to be linked to proceed towards the minority influence in society, we may capture this link as the attuned dispersal of critics. And I wish to suggest it holds the following three aspects: *casual genesis*, *hyper jump*, and *vector integration*.

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[32] Cf M Archer, *Culture and Agency,* Revised edn (Cambridge, Cambridge University Press, 1996) pt II.

First, the voice of a critic appears on the forum in society fortuitously. Anyone cannot perfectly anticipate any voice; anyone in society has some potential for becoming a critic. Of course, there is a certain tendency, as I already mentioned, that leading intellectuals may easily become connected critics in society: they are relatively free to use more resources for critical reflection than those of ordinary citizens. Still, this does not mean that only these intellectuals can be critics in society. Although sophisticated analyses and judgments may be effective as a criticism of society, any kind of voice may have potential as relevant criticism, whether argumentative or non-argumentative. I call this situation as the casual genesis of critics in society.

This recognition of casual genesis leads secondly to the possibility of the nexus of critics. To the extent that the appearance of critics is accidental and thus dispersed, the effective power of criticism is not so strong even if other conditions are somehow satisfied. For the criticism to have persuasive power in society, there should be a certain amount of accumulation and nexus of voices in some collective way. I think we should introduce here the idea of hyper jump. Although this idea is proposed mainly in a virtual world,[33] I sense it is also suggestive for us. For it may indicate the fortuitous meeting of various thoughts in society via books, articles, essays or other types of communicative channels. By this kind of fortuitous contact among critics, there appears a variety of inner circles which are mostly local. Yet, they have powers to extend communicative relationships with other groups through the process which is naturally related to the theory of minority influence mentioned before.

Lastly, we should note how the nexus of critics can establish a certain attuned thought in a society. If the situation of critics is in the casual genesis and the hyper jump, we cannot simply assume that the thoughts of critics can be wholly integrated. Although they may have some mutual influences in a society, their thoughts cannot become monolithic. If so, I think that their thoughts are to be attuned only to the extent that they can be mutually interactive. From this, regarding the content of these mutually interactive thoughts, we should say that the accumulated thoughts of critics are to take a form of vector integration. This means that, like the vector integration in mathematics, the thoughts of critics have some accumulatively directional effects on society to the extent that their thoughts are not mutually exclusionary. We should recall here the fact that in historically influential social movements, there were always certain factions each of which has similar and yet slightly different beliefs and views. Even if there is no complete integration, the vectors of thoughts may forward social movements in a certain direction which those critical thoughts hold in common.

I am fully aware that there are more issues to be discussed, especially the empirical or realistic conditions for the attainment of successful integration of critical voices in society via minority influence. But I will not enter these details here.[34]

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[33] Originally, it means that we can jump to any web-site in any place in the world just by a click via www. see M Heim, *The Metaphysics of Virtual Reality* (Oxford, Oxford University Press, 1993).

[34] Cf W Twining, above n 1, s 4; E Rogers, *Diffusion of Innovations* 5th edn (New York, Free Press, 2003) chs 1 and 5.

In any case, this bridging process holds in any kind of normative situation in society. And, in this way, people interpretively identify themselves situated within the normative world, capture relevant normative problems, and respond to them practically by the possible interpretive criteria. All of this forms the mass of our interpretive activities toward a certain integration of social order and law; which shapes the dynamic normative space in society.

The Encounter and Acceptance of Foreign Values

Incidentally, I wish to mention a related work concerning the problem of cultural transference of normative ideas; which is Gopal Sreenivasan's significant article.[35] To consider this issue, we should first imagine two kinds of situations: one in which there is some culturally common ground between two different values, and the other in which there is no culturally common ground between them. In the former situation, it will be relatively easy to accept foreign values into the existing society, because there already exists a certain common background for the acceptance of foreign values. However, in the latter, it will be tougher to accept foreign values.

Sreenivasan discussed this fundamental problem in his article. Take first the example of toleration in the same society, say, England. According to Sreenivasan, before Locke, the salvation of our soul was to some extent accepted under the Catholic doctrine of God. Thus the salvation based on some heretic doctrine was also to be accepted so far as it was suitable to the salvational concern of God; and the religious majority could tolerate this heretic doctrine. But, Locke promoted another interpretation of the salvation of our soul that emphasised the basic nature of individual autonomy; the ground of salvation became different and depended on the will of an autonomous individual person. In this regard, the significance of toleration may be changed from the Catholic generosity to the protection of individual beliefs. Sreenivasan captures this change as the emergence of novel goods in toleration in England. According to him, this novel good, ie, individual autonomy, can be more comprehensive than the existing good, ie, God's concern for the human soul; it gave a new wider meaning of toleration.[36]

The second case is more foreign in that one society is an authoritarian society which acknowledges certain religious liberty under the paternalistic view of the King's salvation, while the other society is liberal and bases religious toleration on the protection of individual autonomy. The question here is how the former society can accept the latter's view of autonomy, when both encounter each other. Here individual autonomy is a foreign good against the paternalistic salvation of the soul. Even in this case, Sreenivasan contends the possibility of the extension of autonomy into the authoritarian society. Because, Sreenivasan thinks, if the authoritarian society already has some type of protection of religious liberty for the salvation of the soul, it may also recognise the importance of individual

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[35] G Sreenivasan, 'Interpretation and Reason' (1998) 27 *Philosophy & Public Affairs*, 142.
[36] This may be identified as an example of the annexation which I will explicate later in this chapter.

autonomy in the liberal society via the recognition of religious liberty even in its own way. Here Sreenivasan notes that there is need for minimal conditions for this acceptance. The acceptance of autonomy by that authoritarian society is to be expected from the side of liberal society with some informed consent; the acceptance of autonomy is to be evaluated as worthy in the authoritarian society. If such keys are to be satisfied, Sreenivasan points out, the acceptance of liberal values of autonomy in the authoritarian society is not impossible and that liberal value may flourish in this society.

Indeed, I should add, if there is minority influence and the working of connected critics which I have discussed, what Sreenivasan contends seems really to be the case. And, once the autonomy of the individual person is accepted in some way in the society in question, its inner logic may be more powerful than the paternalistic salvation of the soul; because, between the limited liberty of the subject under God or King and the full liberty of individual person with autonomy, the latter seems to have more potential for human dignity and development. Thus I think that Sreenivasan is right in suggesting that interpretive extension and acceptance of foreign values in a society is possible not only in the historical change in one and the same society but also in the encounter of different societies.

Still, I also think we should take one step further. Here the question is how the encounter and acceptance of different values is possible if there is no common ground between two societies. For, the relationship between Western values and Eastern values I have discussed seems to be this kind of problem. We may make some suggestions from what I have discussed, as well as what Sreenivasan suggested. The most important thing is the existence and interpretive working of connected critics, as I have explained. They are the loci for the permeation of foreign values or cultures into the existing society.

Needless to say, as already mentioned, we should be aware that the process shaped by connected critics is carried through based on some interpretive hypothesis of each critic; and this hypothesis itself is the product of each critic's own construction of values and reality.[37] And, in this regard, we recognise that it is a problem of contest and that there might be only the test of time among those hypotheses. However, I also believe there are some general constraints for

[37] For some historical examples in Japan, see Hasegawa, above n17. Another example is the recent trend in legal philosophy in China. There the traditional principle of governance is the rule of authoritative person, and not the rule of law. However, there are many legal scholars today who tell us that recently in China the establishment of the rule of law has become a very urgent problem. The influence of legal scholarship might not be so enormous in China; and yet we should be aware that those scholars are connected critics in our sense. They have learned many things about the rule of law in Europe and the United States, and are committed to this ideal and try to transfer it in China by expressing that ideal in a variety of academic activities. In so doing, they have been considering a new form of Chinese law, which can be said to be a project of the transformation of law in China. Even if there is a limitation of political power of academics in China, it will be significant thing over time in the future. Still, the most interesting thing might be that while legal scholars in China admire Western ideals and values in law and politics, they stick to the Chinese socialist tradition. The concept of rule of law, rights, or utility is ultimately justified on the basis of the socialist values such as labour solidarity, democratic centralisation, or people's property. For them, Western values are to be circumscribed and placed in the socialist values, or arranged to realise the socialist values in China.

these hypotheses to be developed in the context of the transformation of society. Although the transference in question is always a hypothetical project, its success is to be appreciated in a substantive way. We have to acknowledge that there should be some criteria for this appreciation; which I will leave unexplored here.[38]

THE CONDITIONS OF TRANSLATION FROM THE VIEWPOINT OF INTERPRETIVE AGENCY

Key Elements of Agential Interpretation

Let us return now to the question how a theory of interpretive agency briefly sketched above can elucidate the salient features of our translation problem and can illuminate the crucial points concerning the cross-cultural transference of legal ideas by way of translation.

As I have developed elsewhere an analysis of this kind of process with a historical example of modern Japan,[39] I first wish to recapitulate as the key elements of agential interpretation; the pre-interpretation before understanding of the text in question, which is a central part of receptivity; the interpretive judgment and reflection to integrate evaluative considerations concerning the text in question, which is a central part of sagacity; and the interpretive prospect toward the practical realisation of the text in question, which is a central part of practicality. And, in accordance with these elements, I wish to suggest that the working of these in the context of translation implies the importance of: (i) the accumulative readiness for translation, in terms of *isomorphic recognition*, as I call it; (ii) the absorbing reading of the text in question, in terms of *converting conceptualisation*, as I call it; and (iii) the forwarding orientation in a practical perspective, in terms of *ideational expectation*, as I call it. These three are also some aspects of the interpretive spiral of receptivity, sagacity, and practicality. And they are to be combined toward a better translation of the text in question.

(i) The Accumulative Readiness for Translation

The readiness for translation is the prerequisite condition for the beginning of translation. In this readiness, there may be a couple of factors. First, needless to say, the foreign idea in question has to be regarded as significant in some way. Then, there must be the understanding of the background (conceptual, social, or cultural) of that foreign idea, of the existing circumstances and problem-context of the domestic society in question, and also of the difference of these conditions between the two societies in question. These factors shape together

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[38] As I have suggested elsewhere, a loosely integrated sort of plurality and complexity of law is to be appreciated, and we should be sensitive to this complexity from a liberal perspective. See Hasegawa, above n 4; above n 25.

[39] Hasegawa, above, n 17.

the intellectual ecology which generate and support the translation activities of people.[40]

When one translates some foreign legal idea with the prerequisite readiness, he cannot do so effectively into the context of his society without adequate notice of the common features in culturally different ideas. Thus he will try to abstract the salient features of the foreign idea in question to bridge them to the possible idea workable in his society. In other words, he tries to understand the structural similarity between the foreign idea and the related circumstances in his society. Here he needs isomorphic recognition of the skeleton of the ideas in question between the foreign and his own society.

In this isomorphic recognition, how to relate some common features of the ideas in question is theoretically important; there are three possibilities. One is to abstract the features of the foreign idea and to apply them for translation; the other is to grasp the features of the domestically possible idea and to project them for translation; and another is to hold certain interaction between these two activities and to try to attain some equilibrium for translation with a final emphasis on either of those two activities. Which of the possibilities stated above is significant for the point of translation is a very difficult question as there are no definite answers at the moment; yet I am inclined to think that the third possibility with the emphasis on projection is significant. This point is to be backed by several insights on theory construction in hermeneutics and philosophy of science: we are basically bound by our prejudice or theoretical perspective in understanding the social or natural world.[41]

This means basically that when someone tries to understand the meaning of a radically foreign idea he tries to grasp the essence of it with reliance on the structural understanding of a possible domestic analogue.[42] Of course, as far as he can sense broader features of the foreign idea in question, the possibility of simple projection of domestic analogue may be reduced; in finding the constellations of those salient features between the different ideas in question, he tries to sort out relevant connections among those features to finally reach a certain result for the main features relevant to translation.[43] Probably this process is three-dimensional: at one dimension a perspective from domestic analogue may circumscribe the boundary of the identification of relevant features in the foreign idea in question; at the other dimension the domestic perspective may shape the suitable features

[40] See text preceding and following n 17 above.

[41] See Cf Gadamer, above n 23, Part II; A Chalmers, *What is This Thing Called Science?* 3rd edn (Buckingham, Open University Press, 1999) chs 8 and 9.

[42] As I suggested in 'Between Rights and "*Kenri*"', above n 17, it was possible for the Japanese intellectuals in the late 19th century to understand the meaning of rights in terms of certain power relations within some groupistic circumstances. In other words, the stance for the understanding of rights is predetermined with some authoritarian view that the strong or the weak has its own demands, though the weak might have to finally yield to the strong.

[43] Of course, this kind of interactive check is to be performed almost intuitively. And there should be various constituents such as reference, mode, illocutionary force, or contextual implications of the word in question. But I cannot but leave these more fundamental questions concerning philosophy of language open for future discussions.

for translation; and at another dimension meta-reflections led by the domestic analogue may refine this entire process.[44] With some interactive process in which these three dimensions are reiterated, one works out a certain translation. Then, if the ideas in question are radically different, the possibility of translation will become harder than expected at first. But, this probably means that the degree of choice and judgment by the translator becomes greater.

What this consideration implies for the character of translation is that translation is a process of *conceptual approximation* between two different schemes of ideas through a structural similarity with remaining different substances between them. Translation is effectively possible when there can be established a certain bridge between different ideas through some skeletally common features, despite different substantive meanings which tend to yield some deviant working of the idea in question in each context. This does not guarantee any promise of the retention of substantive meaning between the ideas in question, as seems to be almost always assumed. This suggests rather that translation is necessarily accompanied with the twist of meaning. Yet I believe this is the real nature of translation.[45]

(ii) The Absorbing Reading of the Text

While isomorphic recognition is the prerequisite for translation of foreign ideas, there needs more conditions to complete translation: one has to give a suitable conceptual form of the foreign idea in question in his own language. This is a process of the construction of novel reading of the idea in question, to be referred to as converting conceptualisation; thus the entire process of isomorphic recognition cum converting conceptualisation may be captured as *isomorphic conversion*.

In the part of converting conceptualisation, it is important to give certain meaning to the foreign idea in the language of another by proposing a new concept in this language. Here are included two dimensions: one is to give meaning to the foreign idea in question in the domestic setting, and the other is to construct an adequate word in that domestic setting. Of course, these dimensions are intertwined: there cannot appear relevant meaning of the foreign idea in question without getting any suitable word for it.

Another important point for converting conceptualisation is that there may be various hypotheses for the meaning giving and the construction of a new word for translation; that the choice of relevant hypothesis relies on the political view of translator concerning the point of the foreign idea in question. In this regard,

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[44] The reason why I suggest these three dimensions is concerned with the theory of interpretive agency I have developed in the previous section, particularly with the spiral of receptivity, sagacity, and practicality.

[45] Hasegawa, above, n 17. The idea of rights in Japan may be characterised as threefold: one authoritarian, the other anti-authoritarian, and another moral. And the degree of the combination of these three characteristics may determine the mode of that idea, though the moral characteristic be the least influential.

isomorphic recognition is the formal prerequisite for translation, while converting conceptualisation is the substantive condition for it. And, in particular, the choice of an adequate word determines the latter condition, with the result that that choice tends to make some twist of meaning in translation by some extrapolated view of the translator himself. This is really a critical point for translation where heterogeneous ideas confront each other in the incorporation of foreign legal ideas into domestic law.[46]

We should also note that in this conceptual conversion the very use of letters or characters in language may also be an important factor. For example, in the translation case of modern Japan, it is sometimes said that the ideogram in Japanese language (as well as in Chinese language) is very important because people tend to be aware the meaning of words, putting detailed attention, character by character, and that this way of understanding gives certain logical effects on the shaping of ideas. Indeed, there should be some subtle difference between the use of ideogram in Japanese or Chinese language and of phonogram in Western language. If we use ideogram, it naturally tend to reinforce the novelty of new idea or word with certain hieroglyphic visibility.[47] Still, I do not sense that this is such a key factor for conceptual conversion. Needless to say for phonogram; but also the use of adequate ideogram is to be considered as a product of deeper understanding of the meaning of the idea in question.

(iii) The Forwarding Orientation in a Practical Perspective

The entire process of isomorphic conversion also includes a certain prospect for its realisability from the viewpoint of translator; which is to be called as ideational expectation. In translation, there should be at work a certain perspective on what should or will happen by the translational introduction of new idea in a domestic society. And the translation is to be so introduced as producing desirable effects in that society. This reflective anticipation may work in various ways: indifferently, regressively, or progressively, and the like. Although what kind of attitude among these may be taken depends on the perspective and valuation of the translator, it is important here to confirm that a certain prospect gives certain reflective inputs for converting conceptualisation.

Sometimes, capturing the meaning of foreign ideas in relatively old terminology for the existing society may look obsolete in some problem-context. In this case, people will need a more progressive response for the establishment of new social order. And, for this orientation, constructing a novel word is considered suitable; which naturally implies the necessity of the transformation of society. Of course, we cannot ignore the possibility that simple indifference in translation fortuitously results in the revolutionary change in society. Still, for many actual situations,

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[46] See the historical example concerning the Japanese idea of rights, mentioned above.

[47] In Japan, the following three ideas in Chinese character tend to impress one to imagine subtly different things: "権利" (*kenri:* power benefit), "権理"(*ken-ri*: power with right reason), and "通義" (*tsuugi*: common just-cause).

we may safely say that basically progressive responses are necessary for effective translation.[48]

We may distinguish two forms of feedback in this ideational expectation, especially to assess the effectiveness of converting conceptualization: strong or weak. Strong feedback means that practical anticipations determine converting conceptualisation in a strictly logical manner, ie, by fixing certain pivotal propositions in the network of reasoning which requires the convert in question to significantly secure those propositions. Weak feedback means that practical anticipations determine converting conceptualisation in a loose manner of boundary control, ie, by circumscribing certain limits for the network of reasoning which restraints the convert in question in a discretional way. Whether the translator is aware of strong or weak feedback depends on his stance toward the practical perspective, and yet I consider that even the translations in the Japanese case were formed in a process of weak feedback. This is just because I think a translator as connected critic cannot be so radical as to place him entirely distant from the tradition of society, even if he hopes for a certain advancement of his society.[49] But it is still important that the very future of society may depend on the choice of ideas and words by the connected critic.

Judgmental Activity and Strategy

I wish to note a bit more on the issue of the kind of judgmental activity that works in interpretation and translation for relating foreign ideas to existing ideas.

Let me distinguish first, in accordance with the suggestive idea by Thomas Nagel, four general ways to identify the basic characteristics of the accommodation of different ideas and values: *subjection*, *rejection*, *annexation*, and *coexistence*.[50] In the former two cases, the character of accommodation becomes contrastingly monolithic by only foreign ideas (subjection) or by only existing ideas (rejection). Still, although interesting in themselves, these two are not what we have been concerned with. Our concern lies in the latter two cases (annexation and coexistence), both of which try to combine culturally heterogeneous ideas. Yet we should be careful about the difference between these two cases. If existing ideas interpretively try to subsume foreign ideas, it is annexation; if existing ideas interpretively try to acknowledge foreign ideas, it is coexistence. Between these two, there is the difference in their progressiveness. Annexation is a more conservative response in that it tries to absorb the impact of foreign ideas to existing ideas by constructing logical connections; coexistence is a more progressive response in that it tries to localise the impact of foreign ideas by way of some logical distinctions.

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[48] See Hasegawa, above n 17; and above n 11, at 261.
[49] For example, even Yukichi Fukuzawa who famously held an enlightened and progressive orientation for the transformation of Japanese society in the late 19th century had much concern for the establishment of the nation of Japan.
[50] Nagel, above n 27, ch 9.

In the accommodation of heterogeneous ideas, people use these two interpretive methods case by case. And in the translation problem for us, the main characteristic of it lies in annexation, as translation is the process of the incorporation of foreign ideas into a domestic setting.

Second, as for annexation and coexistence, we can distinguish the strategies of *inclusion, exceptionalisation*, and *sphericalisation*. Inclusion is to make logical connections between different ideas from a standpoint of one idea, which is congenial to annexation. The other two strategies are congenial to coexistence. Exceptionalisation is to place foreign ideas as the exceptions of existing values by introducing *ceteris paribus* devices. Sphericalisation assigns different ideas to different spheres with adequate distinctions.[51] Among these strategies, the main strategy adopted by the Japanese intellectuals seems to be inclusion. The reason why this method was chosen as suitable may be that while Japanese intellectuals at the time had much knowledge and ability of foreign language and culture, they thought it necessary to catch up with Western societies by transforming their own society.[52]

Also, for this interpretive strategy of annexation to work effectively, one needs to consider two factors: quality and quantity. Regarding quality, some understanding of foreign ideas has to throw light on the relevantly similar parts of existing ideas, while, regarding quantity, that understanding of foreign ideas has to include the maximal contents of existing ideas. Thus an interpretation and translation of a foreign idea needs to reconstruct the various existing ideas as a set of related interpretations and translations suitable to it as far as possible.[53]

The Process of Social Change

Of course, we need to be aware that the spiral of interpretation and translation may not wholly determine the social direction of the incorporation process of foreign legal ideas. In this regard, isomorphic conversion is simply the starting point of the transformation of law in society. The other matter to be discussed with more detailed historical examination is the later developments of such an incorporation process in Japan; there will appear various political, economic, or social effects that are often unintended.[54]

Incidentally, there will be three dimensions in this process of social change: first, the elitist extension route from social elites, their colleagues, sympathizers,

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[51] As Ji Wei Dong at Kobe University in Japan once suggested, the 'exterritorialisation' of law is a typical way for China to incorporate the Western legal system. We may also say that this is the case for Turkey, because it introduced the Western legal system solely as the way to construct its political sphere, independent of the cultural (religious) sphere in society.

[52] Through this interpretive strategy, the translation in question can attain more power to develop and scatter itself widely in the domestic setting, and can contribute more to transform it.

[53] To take a example in the case of the idea of rights in Japan, if we construct the idea of '*kenri*', this should explicate other traditional ideas in terms of this new idea; which may replace the ideas of '*bun*' (分) (some due for one), '*menmoku*'（面目）(face honor), or even '*giri*'（義理）(obligatory dues).

[54] This is an important theme of the modern history of Japan, which I am not able to touch on here.

to ordinary people; second, the existence of several centrifugal powers and their surrounding social forces in society; third, other subsequent movements in society in the context of economy and culture.[55] And, related to this point, there will be the problem of societal structure of the existing society which surrounds and counters the activities of elites in society.[56]

But, as for these dimensions and related conditions for the further developments of foreign legal ideas in the transplanted or grafted society, we need another study. Thus I will leave these issues open for the moment.

SOME PHILOSOPHICAL IMPLICATIONS FOR THE FUNDAMENTAL PROBLEMS IN TRANSLATION

To conclude my reflections, I wish to examine some points relevant to the philosophy of translation and make clear the theoretical significance of my view of isomorphic conversion.

First to note are three fundamental problems which are persistent in the problems of translation. They are the problem of translatability, the problem of incommensurability, and the problem of continuity. I will discuss these problems respectively in a brief manner.

The problem of translatability is concerned with the actual possibility of translation between culturally different ideas or concepts. As for this problem, I think that foreign ideas are translated in an indirect manner by way of isomorphic conversion. Isomorphic conversion indicates the formal assimilation and substantive transformation of culturally different ideas in the process of translation. This means not that translation is to be considered as always incomplete by the ideal of the complete transference of reference and meaning between different languages, but rather that translation is always a sort of creation which is led by the ideal of productive furtherance of the understanding on real differences between divergent languages. Of course, this never means that translatability is unbounded; this simply means that translatability is a mater of interpretation that necessarily involves the contested criteria of fitness.[57]

The problem of incommensurability is concerned with the possibility of real understanding of the ideas or concepts in different cultural settings.[58] As for this problem, the idea of isomorphic conversion may indicate that there is no radical incommensurability between culturally different ideas and values and also that the problem should be reconsidered in taking into account the aspects of translation. The problem of incommensurability appears especially when we have some simple assumption that interpretation or translation is performed in the ideal of complete transference of reference and meaning. Yet, from the standpoint of isomorphic

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[55] Cf Twining, above n 1, s 4; Rogers, above n 34, chs 7 and 8.
[56] Cf Hasegawa, above n 17.
[57] Cf Dworkin, above n 23, ch 3.
[58] See the exchange between Glenn and Halpin, above n 2.

conversion, this is a false ideal. If the process in question is necessarily indirect as suggested above, we have to account for the approximal value in both formal assimilation and substantive transformation between different ideas. If translation can be done in some adequate way, then that value in formal assimilation must be very high, while that value in substantive transformation may be relatively low. And, even if it is an almost zero value in the latter aspect of translation, the former aspect of translation may lead the translation in the direction that makes people aware of a relationship between the different ideas in question.[59] The translation of the idea of rights into *'kenri'* is a good example of this. Despite the cultural differences between the idea of rights and '*kenri*'（権利）, there exists a certain connection (in the form of isomorphism) in the dimension of the structural recognition of the problem of individual demands in society. And it is evident that this connection makes possible the exchange between heterogeneous ideas and values.

The problem of continuity is concerned with the possibility of the successive transmission of information beyond cultural boundaries. As for this problem, the idea of isomorphic conversion will indicate that there is a sort of skeletal continuity between the different systems in question.[60] Here the idea of isomorphism is also very relevant. This idea does not show the direct continuity between cultural substances, because the point of this idea is a sort of parallelism. However, this parallelism is significant because we can sense here some sort of *conceptual resonance*. What I mean by resonance is not the working of sympathy that is often limited to some homogeneous group of human beings and thus not easily extended in larger heterogeneous human relations in society. Rather, resonance is considered here as indicating a significant condition of the human perspective which can extend beyond the border of heterogeneity. Originally, resonance is a physical phenomenon that different bodies of materials respond with each other in being vibrated in the same length of sonic waves. Still, this may suggest an abstract idea of the co-oscillation among different things; and I think it is also to be utilised in the social matters of human beings. It is evident that the idea of isomorphism can be related to this idea of resonance, through finding in the idea of isomorphism a certain commonality among human cultural endeavours. Even if different in substantive readings, people can find a common attitude to produce a good understanding of foreign ideas.[61] Thus, conceptual resonance guarantees the continuity in the successive extension of foreign ideas and values with their domestication, which is transferring the significant aspect of the points in those ideas through the bridges of translation over time.[62]

[59] Cf Y Murakami, *Kagaku no Dainamikkusu* [The Dynamics of Science] (Tokyo, Saiensu-sha, 1980).

[60] This is an important part of the problem of the informational working of legal traditions in H Glenn's *Legal Traditions of the World*, above n 2 ch 2.

[61] This point is also related to the principle of charity espoused in the theory of translation in philosophical semantics. Cf D Davidson, *Inquiries into Truth and Interpretation* (Oxford, Oxford University Press, 1984) Essays 13 and 18.

[62] Cf Munday, above n 22, ch 10 s 3.

Finally, I wish to draw the reader's attention to the point that what I have been exploring for the interpretive and translational formation of law is itself an exercise of that process. Philosophical reflection on this process, as the very one I have been attempting, is itself a meta-level feedback to the process which that reflection tries to grasp. This is an aspect of the so-called hermeneutic circle and also an aspect of the interpretive spiral I have discussed. Such a study as the present one forms itself into a significant part of the dynamic process of global legal order.