２０２１年度大学院博士後期課程入学試験問題

研 究 科 名	科　目　名
法学研究科 法律学専攻	英　　語(No. 1)

次の問１と問２の両方について解答しなさい。

問１　次の英文を和訳しなさい。

It is true many have seen that the word "law" has different meanings in general usage from the more precisely limited sense with which alone we are concerned in jurisprudence. In the Platonic Minos, the companion to whom Socrates addresses his question, "What is law?" counters at once with "What sort of law is it about which you ask?" But Socrates overwhelms him by asking whether law differs from law in the very respect of being law, as if gold should differ from gold in being gold. In the Middle Ages a distinction between rules of law and customs is presented constantly. But as lawyers come to be governed by the ideas, or at least the language of the Roman texts, the two seem to be embraced in the one idea of "law." Ideas of natural law confirm this mode of thought, which comes from the identification of law and morals in the natural law of the Roman jurists and goes back to ambiguities in Greek philosophical thinking, at a time when law was not in the hands of professional lawyers and legal precepts had not been differentiated clearly from traditional religious customs, settled social habits, and general philosophical ideas of the just. To Suarez, in the beginning of the seventeenth century, the actual legal precepts that obtained in contemporary Spain, the precepts of Roman law not in force in Spain which it seemed to him ought to obtain, practical morality, and the dictates of reason and conscience were all parts of a universal system of law. The critical analysis of nineteenth-century jurists gradually dispelled this way of thinking. Austin distinguishes laws properly so-called from laws improperly so-called, for example, by metaphor or analogy. Holland distinguishes law as a rule of conduct from law as the order of the universe. And although historical jurists are wont to include all social control in their conception of law, the tendency of recent thinking has been to confine the term to that part of social control which is achieved through the agency of politically organized society.

Even so limited, however, law is by no means so simple a conception as has been assumed. Bentham says that "law" is a collective term which can mean no more nor less than "the sum total of a number of individual laws taken together," and that "a law" is a command or the revocation of a command. But this is too simple for the actual phenomena for which we must frame our theory. In truth no fewer than three quite distinct things are included in the idea of law, even limited as the analytical jurists have limited it, namely to the apparatus by which tribunals actually decide controversies in modern societies. Sometimes the jurist has one of these before his mind, sometimes some two of them, sometimes all three. Much of the controversy as to the nature of law turns on which one of these is to be taken as the type and as standing for the whole. These three elements that make up the whole of what we call law are: (1) a number of legal precepts more or less defined, the element to which Bentham referred when he said that law was an aggregate of laws; (2) a body of traditional ideas as to how legal precepts should be interpreted and applied and causes decided, and a traditional technique of developing and applying legal precepts whereby these precepts are eked out, extended, restricted, and adapted to the exigencies of administration of justice; (3) a body of philosophical, political, and ethical ideas as to the end of law, and as to what legal precepts should be in view thereof, held consciously or subconsciously, with reference to which legal precepts and the traditional ideas of application and decision and the traditional technique are continually reshaped and given new content or new application.

出典：　Roscoe Pound, “THREE ADDRESSES OF ROSCOE POUND” in *Lectures on Legal Topics*, (New York: MacMillan., 1922-1923), HeinOnline, pp.96-98.

２０２１年度大学院博士後期課程入学試験問題

研 究 科 名	科　目　名
法学研究科 法律学専攻	英　　語(No. 2)

問２　次の英文を和訳しなさい。

There are few general propositions concerning the age to which we belong which seem at first sight likely to be received with readier concurrence than the assertion that the society of our day is mainly distinguished from that of preceding generations by the largeness of the sphere which is occupied in it by Contract. Some of the phenomena on which this proposition rests are among those most frequently singled out for notice, for comment, and for eulogy. Not many of us are so unobservant as not to perceive that in innumerable cases where old law fixed a man's social position irreversibly at his birth, modem law allows him to create it for himself by convention ; and indeed several of the few exceptions which remain to this rule are constantly denounced with passionate indignation. The point, for instance, which is really debated in the vigorous controversy still carried on upon the subject of negro servitude, is whether the status of the slave does not belong to by-gone institutions, and whether the only relation between employer and labourer which commends itself to modem morality be not a relation determined exclusively by contract. The recognition of this difference between past ages and the present enters into the very essence of the most famous contemporary speculations. It is certain that the science of Political Economy, the only department of moral inquiry which has made any considerable progress in our day, would fail to correspond with the facts of life if it were not true that Imperative Law had abandoned the largest part of the field which it once occupied, and had left men to settle rules of conduct for themselves with a liberty never allowed to them till recently. The bias indeed of most persons trained in political economy is to consider the general truth on which their science reposes as entitled to become universal, and, when they apply it as an art, their efforts are ordinarily directed to enlarging the province of Contract and to curtailing that of Imperative Law, except so far as law is necessary to enforce the performance of Contracts. The impulse given by thinkers who are under the influence of these ideas is beginning to be very strongly felt in the Western world. Legislation has nearly confessed its inability to keep pace with the activity of man in discovery, in invention, and in the manipulation of accumulated wealth ; and the law even of the least advanced communities tends more and more to become a mere surface-stratum, having under it an ever-changing assemblage of contractual rules with which it rarely interferes except to compel compliance with a few fundamental principles, or unless it be called in to punish the violation of good faith.

出典：Henry Sumner Maine, *Ancient Law - Its Connection with the Early History of Society and Its Relation to Modern Ideas*. (London: J. Murray., 1920), HeinOnline, pp. 319-320.