紛争処理展開モデル再考

理解枠組みとしての「展開モデル」

紛争処理展開モデルは、現象を意味あるものとして可視化するひとつの理解枠組みである。人間理性に生得的に偏っている現象が、他の理解する側のための枠組みが必要になる。理解すべき現象は対象とし、それぞれの自足性をもってそこにあるのではなく、理解する側の我々がそれをどのように捉えるかという主観的性のあるものでなければならない。このことは、現象の前におきかけに依存して初めて「意味あるもの」として我々の前に存在するようになるからである。そのための枠組み自体を再生させるという再帰性の無限循環を、つまり解釈学的循環として捉えることもできる。

そのような理解枠組みとし、紛争処理展開モデルを見た場合に、まず第一に、このモデルが徹底して主観的なものであることが注目される。紛争ないし紛争処理は物理的モノでなければならない自然現象でもないのだが、それを捉えれば意味あるものとして理解するためには、そのためのモデルが「主観的」的に構成されるのでなくてはならない。「主観的」性にギリシア哲学の「基本」（ヒポメナ…）下に横たわるもの」としての位置を与え、それを「基本」（スプイ・クトゥム）下に投げ出されてあるもの」と呼んだことによるものであると言われている（木田元「反哲学史」）に「主観」が「基本」なのであり、「展開モデル」はこの要請をよく満たしている。

和田安弘

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「NAMING, BLAMING, CLAIMING」
三

クレーミングを左右するもうひとつの要因

というの「関係」

ここで、当分の間には発生する様情的な（つ

まり戦略的合理性から）は理解不能な緊張関係がクレーミ

ンを抑え込んでしまう事例は少なからずある。ただそ

れはそれを見ていないのである。

ここで、九七〇年代末から八〇年代にかけて大きな注目

されていいた四つの知恵（1）人と事柄が分離する、2）立

場に固執せず利害を洗い出す、3）選択肢をつや、4）


四

「関係」の要因の「技術」化


１８０
紛争処理展開モデル再考

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* Fish & Urzy (1981) Getting to Yes

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The Dispute Transformation Model Reconsidered

Yasuhiro Wada

We need a model or a frame of reference if we are to understand a thing or an issue. Dispute processing is no exception. The subjective side of the story should be emphasized more as we elaborate on the key concepts embedded in NAMING, BLAMING and CLAIMING. Such concepts as assumption, attribution and logistics are discussed in this context. However, logistics, similar to gijutsu in my argument, is not the only factor which determines the course of CLAIMING. Somewhat illogical factors also determine behavior. I will term them kankei. The latter seems to be invisible in American legal culture.

A critique of my book suggests three possible drawbacks in my argument. One is related to the definition of the main concepts, gijutsu and kankei. The other two rest on their comprehensiveness in explaining overall dispute processing. The certain fluidity of the concepts in the discussion of the first problem and the distinctive roles of model and theory in the second can be seen. Through consideration of these problems my true concern is identified: the influence of legal culture on dispute processing, the subjective side of the story.

Finally a short comment on the sense of right in KT-Generation is added.

Max Weber’s Comparative Study of Jurists in Rome and England

Toru Otsu

In the comparison of Rome and England, Weber firstly tried to control political factors. According to him, there was a coexistence of the lack of bureaucracy and the lack of the systematic rationality of law. Both were the great states ruled by notables. Both had the functional equivalents for bureaucracy, e.g., the military character of the magistrates’ power in Rome, the bureaucratization of the royal exchequer in England. Second, he revealed both similarity and difference between Roman law and English law. In both, the adaptation to new economic needs took place through the rational interpretation and extension of old concepts. Both evolved the same possibility for making purposive contracts legally enforceable: the artificial creation of new contractual actions out of actions ex delicto. But the manner was technically quite different. In the English case, legally heterogeneous phenomena are thrown together in order to obtain actionability by indirection. In the Roman case, by contrast, situations which are new and diverse economically, are subsumed under a single and appropriate legal concept. So Roman law was more rational than English law concerning the abstract character of law. Third, there were historical changes in the status of Roman jurists: from independent legal honoratiore, via practicing lawyers and writers and teachers, to the loss of prestige under bureaucratization. Contrary to them, the position of English jurists remained private practicing lawyers. The author aims at the instrumental use of Weber for middle-range theory. This paper is the first step for such.

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