

Global Focus on Knowledge 2010

Law and Contemporary Society —Visible Law and Invisible Law—

Shozo Ota

University of Tokyo Graduate Schools for Law and Politics

<http://www.sota.j.u-tokyo.ac.jp/>

e-mail: sota@j.u-tokyo.ac.jp

Introduction: About “Global Focus on Knowledge”

The coursework under “Global Focus on Knowledge” started in 2005 for the first attempt in the world.

Students in the first and second grades, having taken their first step into the world of learning, are expected to capture the entire picture of each fields and how they are organically linked up with each other by looking at a vast system and structure of “knowledge” on a macro scale.

This coursework will provide them with an opportunity to take recognition of meaning and positioning of the classwork they currently take, and to find prospects for their future research and work.

Unified Theme of “Law and Contemporary Society: Visible Law and Invisible Law”

According to a folklore in an age of perfect peace and happiness, a certain old person in times of a peaceful monarchical century chanted, “I till a field with sunrise and rest with sunset. I drink from a bored well, cultivate a field and eat. Is there any monarchical power having to do with me?” The true meaning of this folklore is said to be: “Though not distinctively visible to eyes,” like the “invisible hand of God,” the “monarchical power” with its “noble work” ubiquitously supports the world peace. The ubiquitous way this “monarchical power” works can be applied, just as it is, to “law.” As men and women, corporations, and organizations are glorying in their daily activities thinking, “Is there any power of law having to do with me?,” such national tranquility can only be due to the effectual function of the “invisible hand of law.”

It is in a changing domain in society that this “invisible hand of law” comes to be visible. And contemporary society is marked by turbulence in various domains. Such a distinction becomes obvious by comparing the world in the end of the 20th century, e.g., the 1990s, and that of the state during the last few years in this century. To name just a few, regenerative medicine in medical science, the Internet in the information field, invention and discovery in science and technology, market globalization in the economic field, a landscape, view and sunshine in urban communities and feminism in the field of culture. And most of all, contemporary society is signified by transformations and reforms that are taking place at an increasing tempo in all aspects of civic life such as one's daily life as a consumer and popular participation.

In the wake of changes in social conditions and people's values, a deliberate legal control becomes necessary to minimize costs for the transition of those conditions, and conversely, law transforms itself responsively to social conditions and values that have changed.

It is the “scheme” of this particular course of Global Focus on Knowledge for us together to pick up and reconsider some of these forefront interactions between law and society out of the Japan's society.

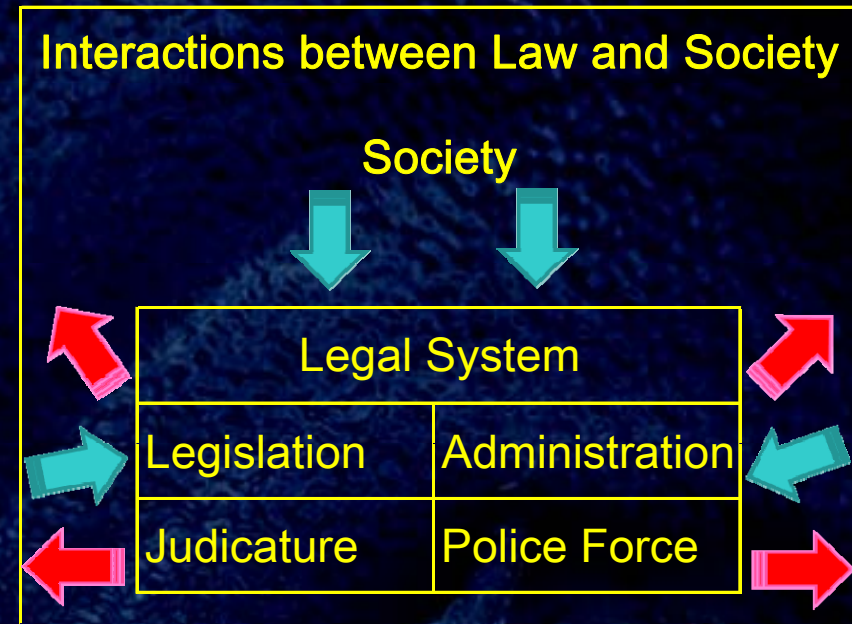
Class No.1: “Visible Law and Invisible Law: Ubiquitous Law and Social Order —Serving also as an introduction to Global Focus on Knowledge”

(A) Social Control by Law

- Law’s compelling force
- Law’s informational effect
- Law’s justificatory effect
- Law’s persuasive power
- Law being a persuasive weapon
- Law’s signaling effect

(B) Society’s Influence on Law

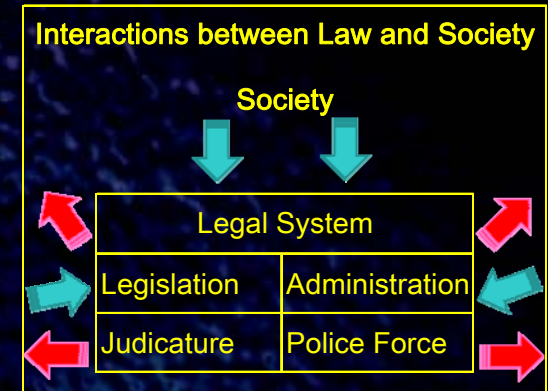
- Lobbying
- Advocacy
- Compromise among various social power
- Securing of validity
 - Backing approval, procedural justice
 - Democratic lawmaking process
 - General trust in courts and judges



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(A) Social Control by Law

Reality of social grip by law?



R. Ellickson’s research in Shasta County, California

Open-range ordinances: No liability without bad faith or mistakes

Closed-range ordinances: Strict responsibility (no-fault liability with damage)

How do differences in the law affect human behavior?

⇒ People’s knowledge on law is inaccurate, and they take action in accordance with autogenous social norms rather than with the law (regardless of an open or closed range).

- Prompted by a victim’s complaint call, a rancher makes an apology and brings cattle back home.

- But there is a norm that the victim does not claim damage.

⇒ State law has a weak grip over a sectional society.

Sectional society: close-knittedness of social relationship

a) Unofficial mutual control power is widely shared among the members.

b) Information necessary for unofficial control gets easily prevalent among the members.

c) Existence of long-term and continuous relationships ⇒ Same as a family!

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(A) Social Control by Law

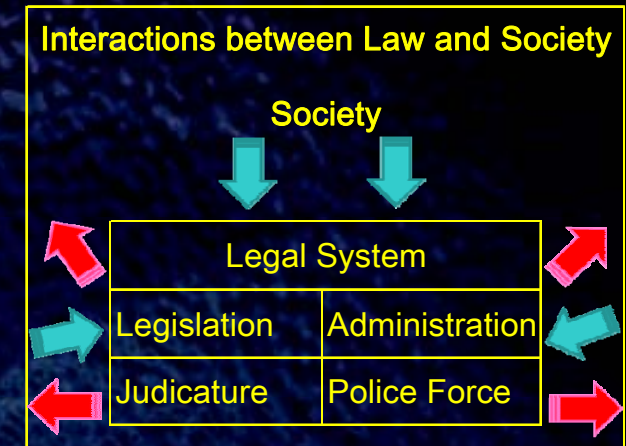
R. Ellickson’s view:

State law has a weak grip over a sectional society.

⇒ Conversely, as a continuous and closed sectional society is unlikely to exist in a modern society—particularly in urban districts— where each individual lives in anomie, it is difficult to maintain social discipline by means of social norms instead of the state law.

- a) Unofficial mutual control power is not shared among the members.
- b) Information necessary for unofficial control does not get prevalent among the members.
- c) Nonexistence of long-term and continuous relationships

⇒ Contemporary society as “legalized society”

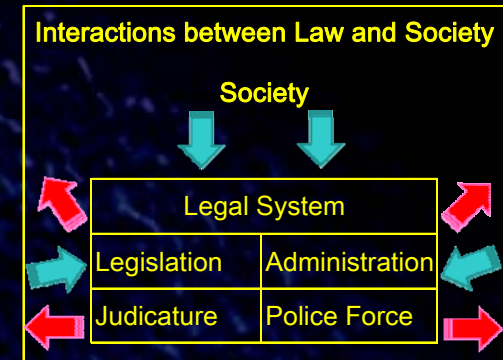


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B) Society’s Influence on Law

Rights of Crime Victims

(from the Web site of the Ministry of Justice (http://www.moj.go.jp/keiji/keiji_keiji11.html))



Crime victims' compensation system: a scheme to provide crime victims with such assistance as response to victims' consultation, guidance to and accompanying in law courts, aids for proceedings for reading of case records, restitution of evidence, and with activities of introducing to concerned institutions and groups that give support in moral, living and economic aspects.

Hotline for crime victims: to install an exclusive telephone for a victim to readily make contact with a public prosecutors office for consultation or a request for information about the crime.

Measure to notify crime victims: a scheme to provide victims or their relatives with information concerning an outcome of punishment for the crime, a result of the criminal trial, conditions of the prisoner serving a sentence, time of the release from prison.

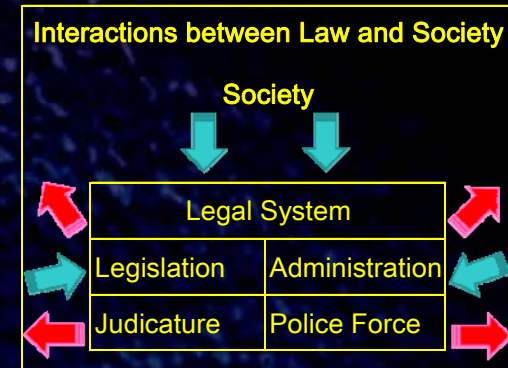
Measure for crime victims to make a statement: a scheme in which victims or their bereaved family may state in court their feelings about the damage and opinions about the crime.

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B) Society’s Influence on Law

Rights of Crime Victims

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Crime victims’ intervention system: a scheme in which victims or their bereaved family may participate in the criminal trial

- (i) They may attend a court of law on a trial date and take a chair next to a public prosecutor
- (ii) They may express their opinion or request an explanation as to the public prosecutor’s litigation acts such as a demand for examination of evidence and summation/recommendation regarding sentencing.
- (iii) They may cross-examine a witness in order to contest probative value of the witness’ s deposition regarding circumstances.
- (iv) They may ask a question of a defendant.
- (v) They may express their opinion regarding facts or the application of law at the time of the conclusion of a trial.

Measure to appoint a lawyer for the victim participant: a scheme for the state to bear a lawyer's fees on behalf of a poor victim participant.

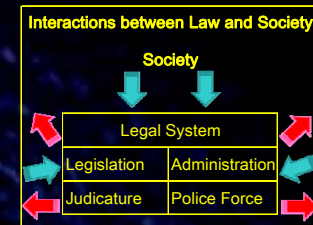
Measure to order indemnity: a scheme in which victims may set forth an indemnity order against a defendant to a criminal court in charge in the period after the prosecution till conclusion of proceedings of the criminal trial.

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B) Society’s Influence on Law

Influence from Society toward Establishing Rights of Crime Victims

(from the Web site of National Association of Crime Victims and Surviving Families <http://www.navs.jp/>)



Before 2000: Kept in the dark, victims could have nothing whatever to do with criminal investigations or trials

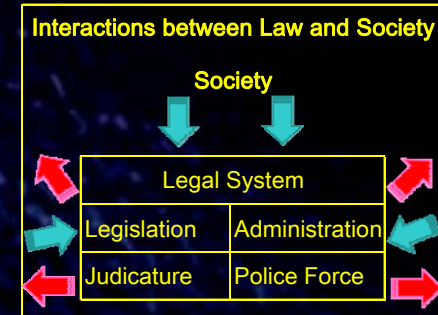
Jan. 23, 2000: National Association of Crime Victims and Surviving Families (Asu no Kai, literally translated as Association for Tomorrow) was established primarily led by an attorney Susumu Okamura who was deprived of his wife in 1997 by a murderer who unjustly resented him for a matter on his business as lawyer.

Feb.-Mar. 2000: Approaches to Social Democratic Party, Democratic Party of Japan, and New Komeito, to explain about the purpose of setting up the Association, and to offer opinions on establishing and instituting laws for crime victims’ rights, and preparing relevant laws to protect crime victims.

Apr. 7, 2000: Attorney Okamura and others participated in the Lower House Committee on Judicial Affairs unsworn witnesses and made statements regarding the real state of affairs and rights of crime victims, and the need for a measure for the recovery from damages.

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from the Web site of National Association of Crime Victims and Surviving Families <http://www.navs.jp/>)

Apr. 28, 2000: Attorney Okamura brought “a violation of human rights against victims” to an attention of Ministry of Justice’s Council for the Protection of Human Rights

May 12, 2000: Two laws to protect crime victims were enacted.

Jul. 8, 2003: Association brought crime victims’ actual circumstances to the attention of the then Prime Minister Koizumi.

Jul. 9, 2003: 390,000 signatures were submitted to the then Minister of Justice Moriyama.

Dec. 1, 2004: Basic Act on Crime Victims was enacted (enforced on Apr. 1, 2005).

Jun. 2, 2007: Revised Code of Criminal Procedure was enacted (the crime victims’ intervention system, the measure to order indemnity)

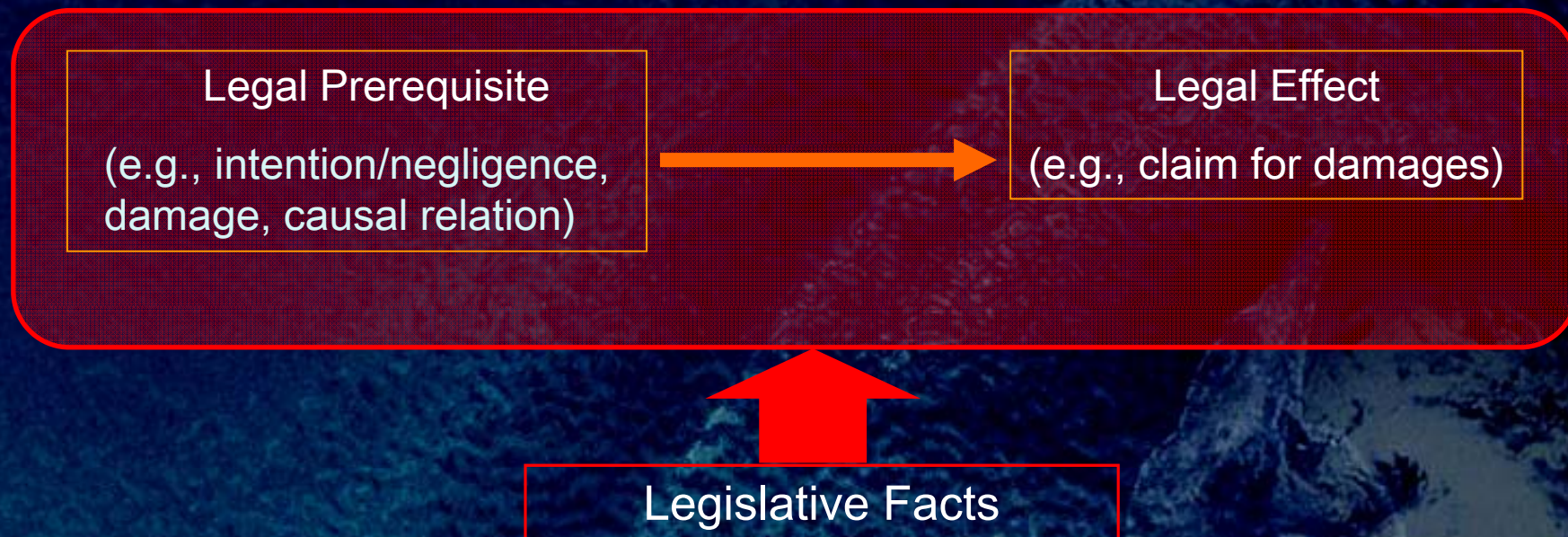
Apr. 15, 2008: Measure to appoint a legal counsel for the crime victim was set up.

Dec. 1, 2008: In operation were the crime victims’ intervention system, the measure to order indemnity, and the measure to appoint a lawyer for the victim participant.

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**Rational development of law: rational creation of law by means of legislation
and court**

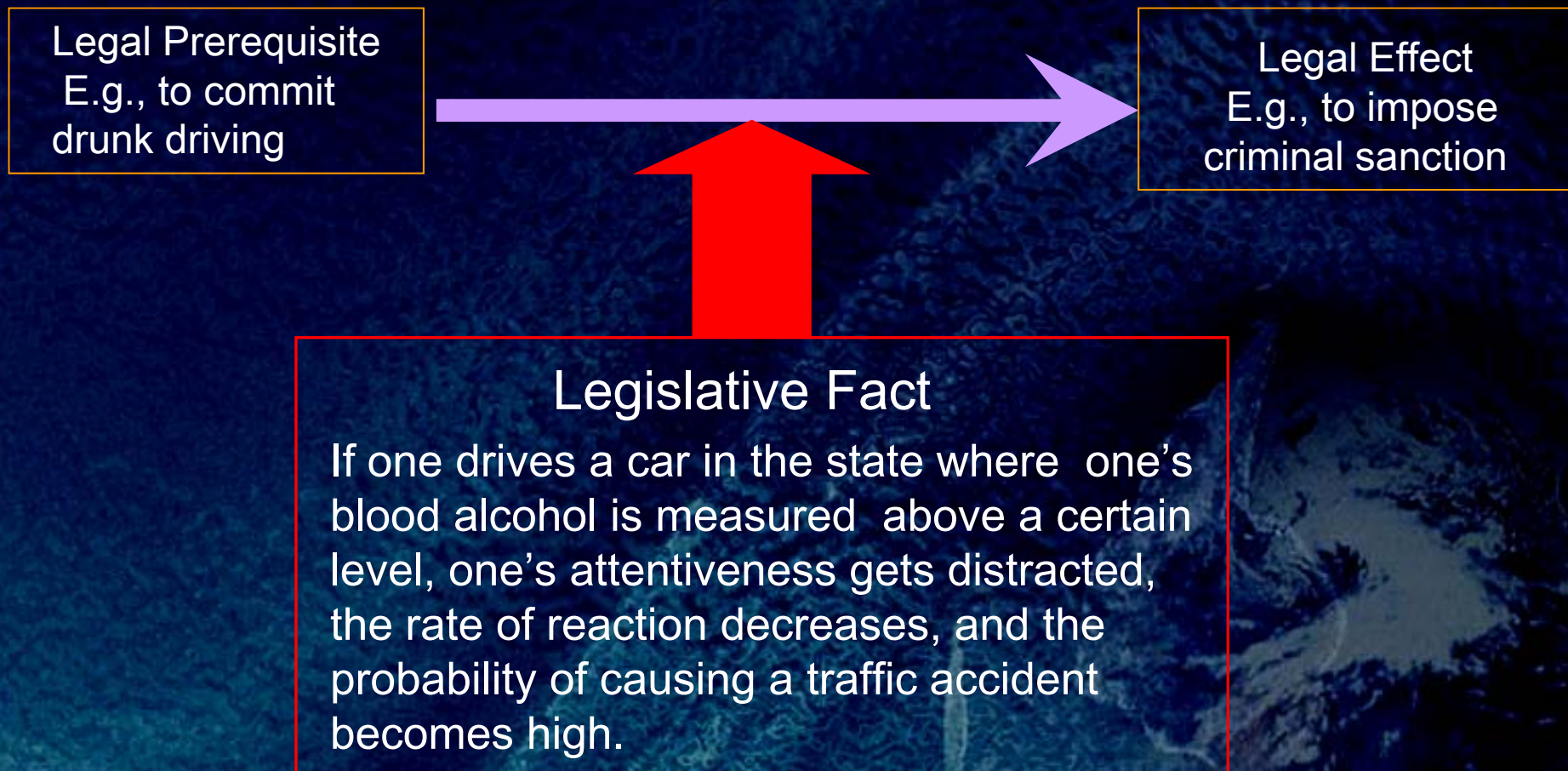
Legislative-fact approach: Usage of social/natural sciences in law
Definition of legislative facts (illustration)



≡ “Social facts that constitute the foundation of legal value judgment, and scientific theories and facts in general”

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Rational development of law: rational creation of law by means of legislation and court

Example of a legislative fact: If one drives a car in the state where one's blood alcohol is measured above a certain level, one's attentiveness gets distracted, the rate of reaction decreases, and the probability of causing a traffic accident becomes high.

Example of studying a legislative fact: On Apr. 26, 2007 National Police Agency summarized its research results with respect to an influence a small amount of alcohol exerted on driving, the level of which was below the standard value of alcohol in a breath (0.15mg per 1lit.) that was the subject of punitive provisions under the Road Traffic Law as “drunken driving.”

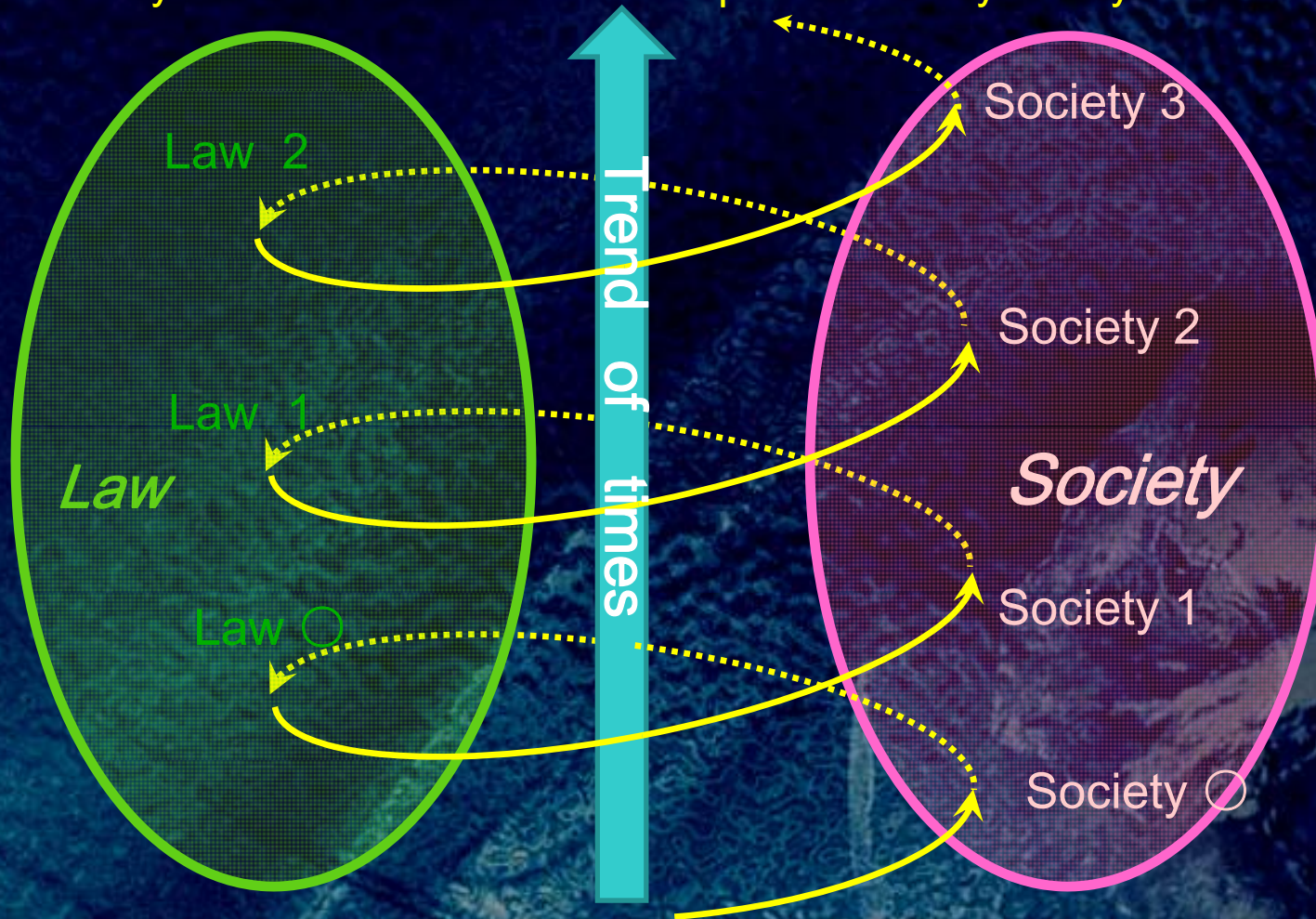
The research was conducted in 2005-2006 in order to ascertain viability of lowering the standard value as a measure on drunken driving which was incorporated in the “program for the promotion of traffic safety” formulated in Apr. 2006.

Investigated in the study was about driving capability of those who came to have some 0.1mg of alcohol content in their breath, being below the standard value, in 20 minutes after drinking 400-800ml of beer containing 5% alcohol. While influence of alcohol was observed in response to visual stimuli, the decision was that the issue of lowering the standard value needed a continuous examination, because there were variations among individuals.

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Coevolution model for law and society

Law ⇒ Society : Efficient control of society by law
Society ⇒ Law : Rational development of law by society



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“Law and Science”

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