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Social Justice – Considered in Hell

Act 1 and Act 2

By

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Translated by Ruth VANBAELEN and Mamoru KANEKO

July 2007

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JAPAN

# **Social Justice**

**- Considered in Hell -**

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**2007, July**

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## Foreword

The reader might find the combination of “Social Justice” and “Hell” strange, and might wonder why the author, a game theorist, writes about “Social Justice”. Also, the reader might be surprised about the “fanciful” style of a drama containing choruses (poems). However, the themes of “Social Justice” and “Hell” as well as using drama with choruses as the style of this book are almost inevitable for the author. The author feels hesitant to comment on his own writing. However, adding some explanation may help the reader understand that this is the result of the author’s research activities.

When one hears “game theory”, he or she will typically think of a mathematical theory. However, game theory is part of social science, and the essential issues are the questions of how to understand humans and society, how man’s living and society’s structure should be, how these can be improved, and which form of society should be avoided by all means. One cannot ignore “Social Justice” when he or she wants discuss those questions. Some or many people may have the opinion that social science should be free from value judgment just like natural science. However, if so, social science follows the prevailing atmosphere of time and space, and it will become a servant without independence for the dominant groups of each era. The author believes that social science has a meaning of its existence only when one critically and objectively examines social and economical structures as well as values and justice.

In order for “Social Justice” not to finish as book learning, we should study what have possibly been happening or what would possibly happen in the empirical world. Two methods for such a study can be thought of. One is to look at such social events and phenomena in the present world; and the other is to look at them in history. This time the latter method is adopted to look at social events and phenomena in the past 400 years of Japan. This is the reason why “Hell” was chosen as the setting.

In addition, “Social Justice” is a central issue for the choice of a social system, for example, between democracy and dictatorship, or between capitalism and socialism. On the other hand, it may be regarded as a problem of man’s internal reason and emotion. Thus “Social Justice” is related to many facets of man and society.

To consider a problem with many facets, we need to abstract its skeleton by deleting many details, but some details should not be forgotten. For the analysis of something with a clear structure, a mathematical theory like game theory could be useful, but different methods would be required to describe particularities in historical events. When one approach is already adopted, other ones might be forgotten. The viewpoint chosen for the approach taken may become universal for the researcher, and the other viewpoints could totally disappear. On the other hand, when one tries to describe every single detail, the discussion will not advance. After all, to discuss “Social Justice”, we should keep different viewpoints consciously and observe

many facets from those different viewpoints.

Toward a discussion of the problems described above, we should try to present the whole picture while maintaining important details as well as keeping different viewpoints consciously in our minds. At the same time, we would look for a clear assertion. To make such purpose possible, this book employs the “fanciful” style of a drama with choruses. First, drama is a method to express the discussion between persons having different experiences, opinions as well as different propensities. Also, the choruses have two roles: one is to look at an event or an assertion from the positive and negative points of view, and the other is to express a long story in a concise manner.

As problems of justice in a broad sense, one can also think of, for example, the way an autonomous person ought to be and what it means to have a free and noble mind when searching for values and truth. These factors are not discussed, this time, as part of “Social Justice”, while they have been described in the attitudes of some casts in searching for “Social Justice”. This is also one of the reasons why the style of a drama with choruses was necessary.

It took a while to explain the author’s challenges and methods, but it is more important to present the contents of the book. I hope the reader judge the above “explanations” by reading the book.

## **The Cast**

Judge: Shinnosuke Oguri: Judge of the Court of Acheron Bay. He has held the position of Judge at the Court for almost 200 years.

Customer: Movie Director: In the 1950's he once crossed over to Acheron Bay and went to the Court, but was sent back to this world.

Frog: Sancho: Captain of the ferry to Acheron Bay. He will perform the prologue of each act.

Frog: Maria: Sancho's wife. She helps out in the restaurant of Osuzu, and sings a duet with Sancho.

The Samurai: They fought for the farmers 350 years ago.

The Village Patriarch: The elder of the farmers

Salamander: Pablo: Captain of the Ferry to Heaven.

The Judges of the Grand Court of Heaven: The brilliant elite Judges of the Grand Court of Heaven.

Doctor: the movie director's doctor

Kurai Shinzuki: Professor of Economics at Ts University. Once he was promising but nowadays almost forgotten in his profession. He is summoned by the Judge of the Court of Acheron Bay, crosses over and will spend three days on Bigot Island.

Toru Hazamajime: Lecturer in Economics at Ts University. He graduated from the doctoral program at A University in the United States of America. He is a young Game theorist who is a rising star very much in demand in his profession. Everyone calls him "Majime", meaning "Serious". He joins Shinzuki during his visit to Bigot Island.

Genki Morimori: Graduate student, belongs to the lab of Professor Shinzuki. Shinzuki and Hazamajime love him because of his childish character. Together with Hazamajime he joins Shinzuki on his voyage.

Osuzu: Princess Suzu: Suzu Yokoyama: The Judge's wife

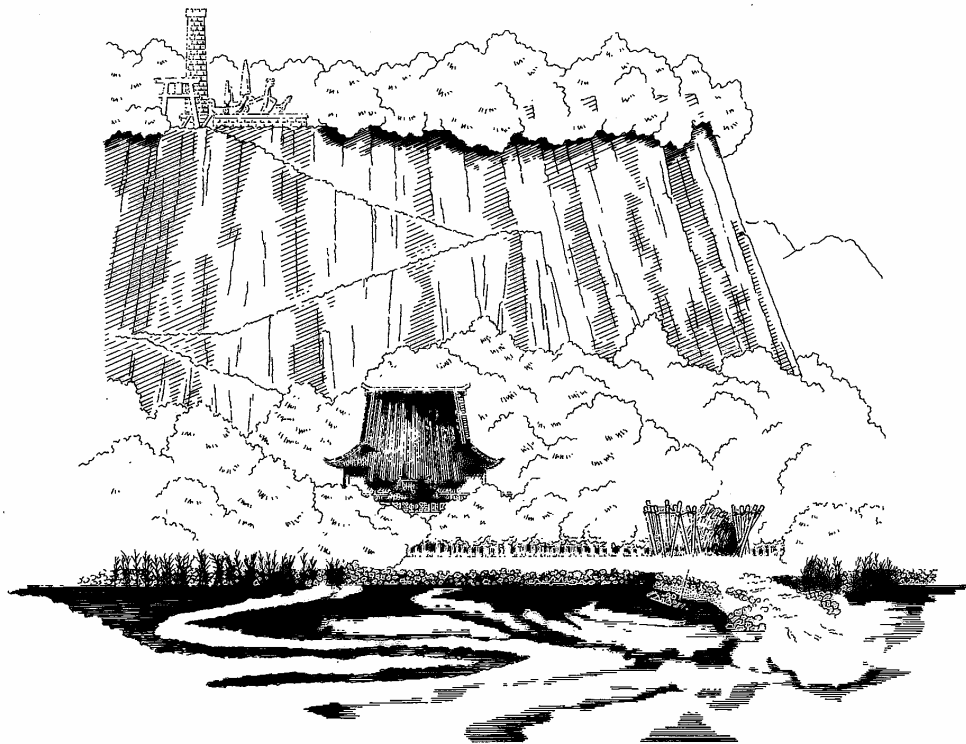
The Chief Retainer: Suzu's father

Kyubei: Suzu's servant

Left Chorus: Two carrion crows

Right Chorus: Two large-billed crows

## Act 1: Bigot Island of Acheron Bay



## Act 1: Bigot Island of Acheron Bay

**Sancho's Prologue:** Me is the frog Sancho, working as a ferryman between the world of the living and Bigot Island. Lately this ferry doesn't have many customers, and me doesn't have much work to do. Me feels a day is real long. About 30 years ago, me was transferred here from Heaven. Me used to work to exterminate bugs at the entrance of Heaven. A cloud of horseflies, mosquitoes or winged ants sometimes came up from below. My task was to eat them to extermination. When a cloud of locusts appeared, we, frogs, would be full in a minute and couldn't work any further. But since we usually had nothing to do, me got bored and croaked bad. Me didn't complain about my boring job. But, oh no, my boss found that my voice showed my being bored. He said that me didn't croak well and that my voice would fit better in Acheron. Thus, me has been here since then. It was very busy here up to several years ago. Once the war was over in that world, the number of customers shrank. Now, we have had virtually no business in our ferry industry. Oops, a new customer is coming. Ribbet, ribbet.

### Left Chorus

Cold rain, lonely rain, sleety rain  
It wets all stones at the Acheron seashore  
You wander unflinching at the same place  
You are just at the beginning

### Right Chorus

Dark wind, tough wind, black wind  
It shakes all reeds of the wealthy land  
You arrive eventually at the same place  
You are already at the end

Customer: Hey, black and white frog, are you the master of this ferry? Hey, do you hear me, black and white frog?!

Frog: What? What an arrogant customer he is! Wow, he is a strange looking guy, quite tall with black sunglasses and with a nice leather jacket. He looks very tired though and his clothes look shabby but for the jacket. What a weird customer he is?

Customer: I'm a movie director, but I've been in a slump. It was quite boring for me to live the same life every day, and so I took drugs. That's why I'm here.

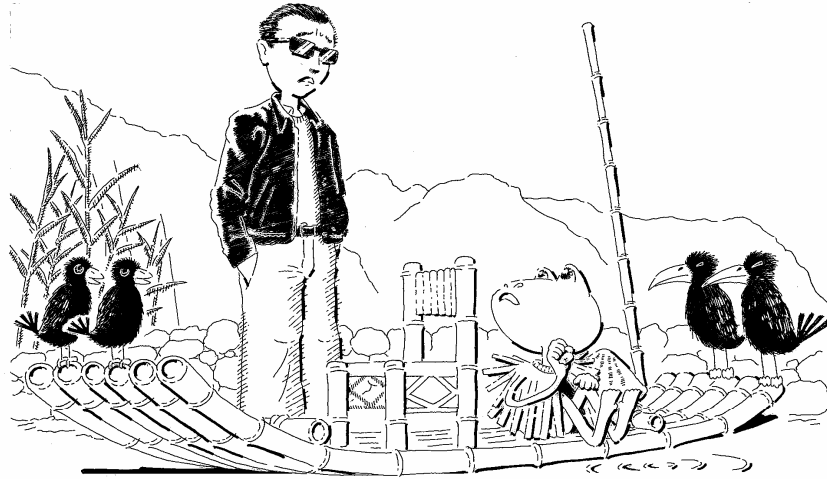
By the way, all I ever made were black and white movies, but this is not a movie. So why are you black and white?

Frog: Me used to be a tree frog in your world. Me had a pale green color with dark green stripes. It would be very nice if me could show you my beautiful colors. Me is sure you would be impressed and pleased. Ah, but it is no longer possible, since it was a long time ago and now me is dead and here.

Customer: Hey, just answer my question. I don't care whether you used to be beautiful or



covered with warts. My question is why you are black and white. Just answer my question. I should caution you not to make me proud of my short temper.



Frog: Surely you are a short-tempered customer. You really don't know the reason for the black and whiteness, eh?

Customer: No, of course not, I have no clue, that's why I am asking you. But wait a moment, now I recall all the people in the waiting room were quite pale. Will they also change into black and white?

Frog: Yep, Sir, ribbet, ribbet. When you are dead and your body decays, you start loosing color. When your body disappears, you turn black and white. So, the people in the waiting room were all pale but you, eh?

But judging from your color, you must still have quite some attachment to that world. Your body over there is still alive and kicking. In some cases, the body keeps the true intention, but the mind doesn't notice it, ha. This means that what your mind chose wasn't truly intended by your body. In your world, your body still wants to live longer.

Customer: Um..., indeed, I still have some attachment to the world over there. I'm sure my movies are classified among the best of those of the past ten years<sup>1</sup>. But I don't think they will stand out against other movies for another 30 years. I was reluctant to continue

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<sup>1</sup> In the scenes to follow, the reader will find that the director models after Akira Kurosawa, but many of the described events are created and are not based on historical facts. The same is true for references to Katsushika Hokusai and his work.

making movies at that level. That's why I took drugs.

Anyhow, I will also turn all black and white, once the funeral is finished and my body is cremated.

Ah, but to be honest, I have still some attachment to that world, particularly, to movie making. No one doubts I can still make good movies.

Frog: Well, it is time to forget that world.

But your color really hasn't faded at all. Normally when a person arrives here at the ferry, he or she has already faded a lot. Perhaps your body was quite separated from your mind and it wants to live longer. In that world, you had a tough time to control the lusts of your body, didn't you? People like you are said to be lingering without grace.

Customer: Shut your mouth. Black and white frog, you should simply row this junk ferry to anyplace you want.

Tell me how long does this ferry take?

Frog: It takes about ten hours till Bigot Island, and there you will stay for three days. Then it is another ten hours of rowing to reach the world of the dead, Hell, which is your final destination, Sir. It must be a nice place to you, he he he. But lately some people are simply remaining on Bigot Island without going all the way to Hell.

Customer: Phew, that far?! Frog, don't laugh at me like that. It rubs my fur the wrong way.

In our world, we call this the Acheron River or the River of Woe, right? But, hey, wait, this is not a river. It's dark and I can't see very well, but it just seems to go on without end.

Frog: In fact, it is called *Acheron Bay*. Possibly those who returned to the world of the living might have mistakenly called it the *Acheron River*. Most of those who returned didn't even come all the way down to here. Before arriving here, they heard about the ferry and they must have imagined something like the Nile River or the Indus River. In reality it is much wider, isn't it?

Customer: You mean that once you have come as far as this place, you can't return anymore?

Frog: Absolutely yep.

Customer: "Absolutely yep"? Where did you get such an expression? Hey, little frog, don't use such strange expressions. Anyway, it is too bad to hear this is the point of no return.

But I must admit that the colors of the water and the sky here are amazing.

Frog: Sir, it's dark here. You can't distinguish colors.

Customer: You should believe in the ability of a great professional movie director like me.

I have made many black and white movies. Even when it's dark, I can imagine the actual colors. But we can't express such colors well with today's color film. So, I have made only black and white movies, but if I could reproduce these colors, I would have used

color film.

Frog: Hm ... do movie directors have such great senses?

Customer: Absolutely yep. See, you make me start using such a stupid expression!

But I feel as if I have seen this color somewhere else. Has anyone used something like this in a painting? And you also look familiar to me.

Frog: You must be thinking of somebody else, Sir. Me is sure this is your first time here. Honestly, meeting such an arrogant customer once is more than enough.

Sir, your color isn't fading yet. You really have an attachment to that world, eh?

Customer: You should stop nagging me. Even if I'm still attached, I can't return. Keep on rowing.

Frog: Aye Sir! Row, row my ferry, ribbet, ribbet.

#### **Left Chorus**

All the reeds of Acheron sing softly  
Go slowly to the place of arrival  
You still have a long future  
Dawn there is dusk here

The geese in that world kick up a racket  
The white moon inclines to that world  
The white moon turns black clouds grey  
I want to remain amongst the living

#### **Right Chorus**

All the winds of Acheron sing gently  
Forget quickly the place you departed  
Your past is already finished  
Sunset there is daybreak here

The crows in the other world rejoice  
Black clouds float to the other world  
Black clouds avoids and hides the moon  
Hurry up, hurry up, it's time to join the dead

Frog: Sir, we are about to reach Bigot Island.

Customer: Finally, it was about time! But doesn't it smell awful around here?

Frog: Well, people have been crossing here continuously for several thousands of years. They throw stuff from this ferry, and all this garbage on the bottom of the bay decayed and gives off this horrible smell.

Before coming here, customers thought they would need all different things in the world of the dead, and so they brought rice balls and bananas etc. As they loose color, they think they don't need such stuff anymore and throw it all out around here. That's why this port of Bigot Island is smelly. Actually, it seems those bananas go for a high price in the other world.

Customer: Such nonsense. Can't you say anything sensible, frog?

Frog: You must trust me. Honesty is my asset.

Whoa there, land ahoy! Sir, welcome to Bigot Island.

Customer: So, this is Bigot Island, where we have been heading.

Hey, there are quite some boats over there, both big and small.

Frog: The small ones carry one to four customers like ours, the medium ones are for five to twenty persons, and the big ones can hold more than twenty. Ten years ago the medium ships as well as the big ones were used a lot to carry people from the world of the living to the other world. Now we handle all the customers with only 15 small boats. The big boats are now used for the deportation of people from the other world to the other world's other world.

Customer: What? You are sometimes calling the world of the living "that world" and the world of the dead "the other world", right? And do you mean there is another other world after the other world? Did you say that the big boats over there deport people from, here, the other world, to the other world's other world?

Frog: Absolutely yep. Me hasn't been yet to the other world's other world, but people here gossip that it is a pretty bad place. Usually people dwell here for about 300 or 400 years, and then they are deported to the other world's other world. I have been here for about 150 years, which means I have another 200 or 250 years before going to the other world's other world.

Customer: I had never heard about the other world's other world. Then, does the other world's other world's other world exist too?

Frog: Me myself has never heard stories further than the other world's other world. Perhaps, nobody here knows about what lies beyond.

Customer: Hmm, look, look at those people walking over the quay. They remind me of the famine in the Tohoku<sup>2</sup> region around the year ten of the Showa<sup>3</sup> period.

I cannot forget the faces of the children I saw then. Children in the north usually have red cheeks, but during that famine the children's complexion was yellowish. I wouldn't know how to express that yellowish color. You might compare it with the color of liquid diarrhea when you have had bad diarrhea for several days. In Tokyo, even at the end of the war, I never saw children with such complexion.

Frog: Me doesn't like your comparisons. Those starved looking children came here in the beginning of the Showa period due to hunger and disease. Look at the people over there

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<sup>2</sup> Tohoku region: A region in the north of Honshu, the main island of Japan.

<sup>3</sup> Showa period: Japan starts a new era when a new emperor is inaugurated. The Showa period ran from 1926 to 1989.

who appear even more starved. They came here during the famine of the Meiji<sup>4</sup> period and all look terribly miserable. But don't make comparisons with liquid diarrhea.

Customer: Alright, I understand. But is it possible to see people here from even older periods?

Frog: Piece of cake. The eldest people here came about 400 years ago.

Bigot Island is a whole lot better than the other world itself, but even so you can see all kinds of people.

### **Left Chorus**

Hot oven, needle mount, maggot bath

Red demons, blue demons, guards of Hades

Strip the skin and grind up salt

Maggots crawling throughout the body

Tuberculosis, pleurisy, pneumonia, all the same

Smallpox, cholera, typhus, all mortal

Living hell, 50% of production for farm rent

Living and dying are all the same

### **Right Chorus**

Rabbit houses, credit debtors, crowded trains

Tattooed yakuza, macho cops, prison guards

Lend money and suck the bones

Fingers crawling up under skirts

Enteritis, catarrh, appendicitis, all the same

Lepra, syphilis, gonorrhoea, all endless

Debt-entangled hell, daughters for sale

Life and death are all the same

Customer: Surely all sorts of people are here! Even so, they all look seedy and have bad complexions. They can't be used for a movie.

You said all these people came here during or after the Meiji period, right?

Frog: Yep.

Customer: I'd like to see people from before the Meiji period.

Frog: Piece of cake. Look at the people of that group walking over there. They are from a much older era.

Customer: Hmm, that group?

Frog: Absolutely.

Customer: The short people in that group must be farmers, aren't they? They are quite small but can't be children. There must be about 30 of them. Umm..., four much taller persons are with them. They must be samurai warriors.

Frog: Sir, you are still taller than the samurai. You must have been raised in the city, where you grew up with good food, that's why you are so tall.

Customer: Forget about myself. I'm only interested in those people. Look at their strange way

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<sup>4</sup> The Meiji period: 1868-1912

of walking. The farmers have their knees bent and are humpbacked. Also, they move with their arms and legs together. What a weird way of walking!

Frog: That's called "Namba walking". Before the Meiji period, all farmers walked like that. It is the most convenient way to move in a rice field. Even the samurai don't walk with their hands moving like you do.

Customer: Samurai keep their arms close to their swords when they walk. But look at that samurai with the long sword. He seems ill at ease and looks around restlessly. The other samurai is more relaxed but I really feel a bloodthirsty aura emanating from him. Hey, little boy, where does that group come from?

Frog: Ribbet, ribbet, me is not a little boy, croak! My name is Sancho.

All me knows is that about 300 years ago that group crossed over from your world.

Customer: This year is 1950, so it means around 1650 AD. Ah, they are from the beginning of the Edo<sup>5</sup> period, right? I can't believe it. Hey, little boy, introduce me to them!

Frog: Ribbet, me is Sancho!

Ok, let's go together. But me doesn't want to be killed by the samurai! Sir, are you going to ask them about what happened with them in that world?

#### **Left Chorus**

A samurai carrying a long sword  
A smiling samurai with a thirst for blood  
Despair in their deeply creased faces  
A body tired of forever defeated fights

#### **Right Chorus**

A farmer holding bags of rice  
A farmer worrying about his daughter  
Girls indistinguishable from men  
A body tired of never-ending poverty

Frog: Sir, leader of the samurai, my customer wants to talk to you.

Samurai A: What do you want, idiot?!

Frog: Honorable samurai, please don't call me an idiot, ribbet. Me is the frog Sancho, operating the ferry here. My customer, that tall guy over there, wants to talk to you.

Samurai A: I see, little boy. Your customer is quite tall, and it is strange he still has a good color. Also, he wears those strange things on top of his nose. Hey you, are you a samurai?

Customer: No, I'm not, but I'm an honorable cinema director. By seeing you guys, I believe something special happened in that world. So I came to talk to you. In particular, you seem to be an interesting fellow, though a bit vulgar. So tell me, what happened?

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<sup>5</sup> Edo period: 1603-1867



Samurai A: Hey man, who the hell do you think you are, boasting as if you were a samurai? You should learn how to talk to me. Otherwise I will cut you into pieces with this long and beautiful sword! Since you are still keeping your beautiful color, my sword wants your red blood. It hasn't drunk red blood for long time.

Customer: I didn't come here to be cut into pieces, but to listen to your story.

Samurai A: This is really a boasting fellow. He won't understand until he is cut into pieces.

Samurai B: Hold on, this guy is an able man and seems to know what he is doing. You can't fight with him. If anyone is to kill him, I'll do it.

Customer: You seem to be a decent samurai, unlike that vulgar fellow. Tell me something. As far as I can see, you guys look different from the people I saw in our world or from the ones here. What happened in our world before you came here? This is what I came to ask.

Samurai B: About us? So far only the previous Judge of the Acheron Bay Court asked us what happened about 300 years ago in that world. It is quite a good story. All right, let me tell you what happened. Listen carefully.

**Left Chorus**

100 farmers in a mountain village  
 Millet, potato, bracken roots  
 One harvest a year  
 This is living hell

**Right Chorus**

20 bandits in the forest  
 They produce, we consume  
 One robbery a year  
 This is famishing hell

The patriarch says, fight them	The chief says, they are still hiding things
Hire samurai, we are hiding the money	Rob them of it all, without killing them
Hire samurai, make them fight	Let the farmers live, just barely
Nothing is left for us	No future is left for us

Fight, samurai, it's your duty	They are scheming something
Seven samurai are not enough	They made a moat around the village
Everybody, take bamboo spears	Posts are blocking the entrance
Fight, fight, living or dying is all the same	Don't let samurai take away our living

Samurai A: That is what happened in the world of the living, understood?

Samurai B: It happened in that world a long time ago. But the farmers are still here with us. We have helped each other these 300 years. Some bandits were also sent here and sometimes they still come to harass us. We drive them back, and in exchange, we sometimes get some rice balls or other things from the farmers.

Samurai A: If you still don't understand, I will cut you into pieces with my long sword, he he he.

Customer: All right, alright, I get it. But what an interesting story!

Samurai A: Interesting? We fought for our lives, and eventually we were killed. If you laugh at us, I will cut you up and then grind you into even smaller pieces.

Customer: No, no, I don't mean to laugh at you at all. Your story is important and should be recorded.

Samurai A: What do you mean, recorded? It happened in the mountains long time ago. There were no such things as recordings. This guy is making a fool of us.

Samurai B: Wait, hold on, there is truth in what he says. Look at how unusual his face is shining. But if you show your feelings so easily, you will get killed right away in a fight.

Customer: That's why I'm wearing these sunglasses.

I really think it is amazing what you have done. Unless it's recorded, both what happened and what you have done will disappear forever.

I have never felt such an urge to create a movie as I do now. Hey, Sancho, is it possible to make movies in the other world?

Frog: Absolutely nope. Movies are something of the world of the living.

Customer: I see. Well then, Sancho, take me back to that world. I'm not yet pale enough, so my body there should be ok, right?

Frog: Nope, that's out of the question. As a rule, the ferry only goes one way. To return to the shore of the other side of Acheron Bay, we use a special boat. Your big body would



definitely not fit.

Ah but, ribbet, ribbet, me recalls to have heard about a man long ago who returned from Bigot Island to that world.

Samurai B: It happened about 150 years ago, right? It is a famous story about how that guy, Hokusai, deceived the judge and returned to that world. Then 50 years later, the guy showed up again and finally went to the other world. That old man went to the 7<sup>th</sup> level, if I'm not mistaken. He was such an evil man. He studied anatomy of human bodies by dissecting corpses of men and women, in order to learn about the structure of the human body and the functioning of each organ. People said that he caught and killed animals to dissect them. But his purpose was to draw perfect paintings.

Frog: Me is scared and my body starts trembling. Me is so happy he didn't get his hands on me!

Samurai B: I have also seen him a few times, but it was a shame to see how decrepit he was.

Customer: That is horribly terrible. But now I understand what I felt when I saw Acheron Bay. I recall it was Hokusai's painting. He brought that color of Acheron Bay back to that world. How clever he was! Oh now I remember, Sancho, you were in one of his paintings too!

Frog: Me has been on Bigot Island for only 30 years, so it has to be a different frog.

Customer: Hokusai was here about a 150 years ago? Then it wasn't you. Yeah, it was a much more charming frog! Tell me how Hokusai deceived the judge.

Samurai B: As far as I heard, he saw the water and the sky here, and he found a totally new style of painting. He presented a big crazy speech in front of the judge of how he would make great paintings. The judge was overwhelmed by the speech and gave him permission to return to that world. That guy named himself a *mad painter* and his passion was so strong to impress even the judge.

Customer: That's all? I can do that. I'm also crazy about making movies. Sancho, take me to the Court.

Frog: Whether me want or not, you have to go to the Court anyway, and you will be sentenced to assign yourself to one of the eight levels of the other world.

Customer: It sounds like a department store having eighth levels. But I'm not interested in going to the first floor or the sixth floor, and who cares about using an escalator or an elevator? What I'm really interested in is to make a great movie. Sancho, hurry up and take me there!

Frog: All right, let me take you to the Court. But the judge is a fearfully scary man, so you should behave as me tells you to do. First, stop your boastful way of talking. Remember, he is a scary judge!

Customer: Okey-dokey, I will behave as you tell me to do.

Samurai B: We will come with you, too. The village elder is also coming, he said.

**Left Chorus**

After all, you will be sent to the other world  
Long ago, 150 years ago a guy returned  
That Judge's voice is frightening  
There he is, there he is, start shivering.

**Right Chorus**

There is still some hope of probability 0  
Also, 600 years, 800years, 2600 years ago  
The Judge is fair, exact and square  
Cheer up, even though he has five fangs

Frog: Grand Judge, thou who blows winds to the length and breadth of the first level to the eighth level of the other world, who is honorably merciful, who is only fair and right. I am the humble Sancho, who runs the ferry from the world of the living to the world of the dead. I have brought a man here before thee. Please bestow him with thy merciful judgment.

Customer: Sancho is talking in such a classic way. Why and how is it possible?

Frog: Psst, Sir, Sir, put your knees and head down on the floor and your bottom up in the air.  
Hurry up, hurry down!

Customer: What? Anyway, like this?

Frog: What a strange sight he is! Let's hope the Judge forgives. You should talk to the Judge the way I did.

**Judge: Oh, that director! You are a quite talented person, but you have not succeeded in producing as great a movie as you wanted. Nonetheless, you have made some reasonably good ones. You could have deserved to go to Heaven.**

**However, everybody working with you has complained that you are too boastful and have used them in a terrible manner. Some people even call you "the emperor". Thus, you were sent here. Here it has been decided that you will belong to the second level of the other world. Now, everything about you and your behavior in that world has been taken into account, and I dismiss the case.**

**Well, what are you waiting for, hurry up, go. Don't boast too much in the other world.**

Frog: Grand, fair and right Judge, this man seems to have a request.

**Judge: What? "A request", you say? Well, I don't have many cases today, so speak up. If you bore me, you will be dropped from the second level to the seventh level. Are you ready to explain your own request?**

Frog: Grand Judge, this man must be ready.

**Judge: Lift your head up. I am ready to spend my precious time on you.**

Customer: Grand Judge, thou who breaks wind to the length and breadth from the first to the eighth level of the other world, I would greatly appreciate if thou listens to my request.

**Judge: You are a vulgar guy! Incidentally, I have never done such a big wind. Humph, this guy is not the standard Japanese type.**

**Okay, tell me why your face has still such a good color. You must be totally dead by now.**

Customer: Sir Grand Judge, Sir, I have never, ever, felt such an urge as I do now to create a good movie. I really want to make the best masterpiece ever made in the world of the living. Can't you, Grand Judge, Sir, give Sancho permission to row and return to that world?

**Judge: All you want is Sancho to return to the world of the living, isn't it?**

Customer: No, no, I am returning, but I said it in that way because Sancho will be rowing.

Sancho can't make movies, can he? I cannot believe what a dumb judge this is.

**Judge: Did you say something, director?**

**You want to make the best masterpiece of a movie ever. I am becoming curious what it will be about.**

Customer: It's a story of 300 years ago. 100 villagers were attacked every year in autumn by a group of vicious bandits, who took almost all the villagers' products. So the villagers hired some samurai to defend the village against the bandits.

**Judge: Yes, that happened 300 years ago. I heard about it when I took over from the former judge. The former judge was impressed and that's why he sent them to the first level of the other world.**

Customer: I think I can make a real masterpiece, based on this true story.

**Judge: It sounds interesting. Explain me how you make a movie from that story.**

Customer: The story of the movie is simply amazing. No, no, it will be my masterpiece, and it must not so simple.

The overall theme of the movie will be "cowardice and courage" and "egocentrism and self-devotion". At the same time, I will depict the farmers' miserable lives, their weakness and toughness, and also the process of their awakening to independency, as well as the hopeless stubbornness of the village elders. The movie describes also the absolute lack of future for the samurai, and their pathetic sentiments. On top of that, it has a lot of beautiful scenes, from breath-taking duel scenes and dreadful fighting scenes to a beautiful love scene of a young samurai with a village girl.

**Judge: It sounds interesting, indeed.**

**Do these two samurai or the village elder have anything to say?**

Samurai B: Well, it was an amazing event that you can hardly ever experience. Could you allow this director to make a movie?

Samurai A: Hey, director, you will depict my outstanding action in the movie, right? Otherwise,

I will cut you into small pieces with this beautiful sword. Director, understood?

Customer: Of course, I know one simple actor suitable for your part!

Village elder: It happened so long time ago. It is not as if his movie will cause us trouble.

Besides, if he depicts it all in the movie, we will be remembered forever. So please, why should we not let him make a movie?

Um... but it worries me that a young samurai seduces a village girl in the movie. Can't you leave that part out of the movie?

**Judge: You are all idiots. It is too early to worry about such things. Besides, I have not made up my mind yet.**

**However, if it has no foolish samurai or a love scene between a village girl and a young samurai, the story will not be interesting at all. If you want to make a story, you have to include such a fool and a love affair. On top of that, if those things didn't happen at all, I would be out of business.**

Customer: Wow, the Judge understands the arts well. Now I can see why you are the Grand Judge who breaks wind from the first to the eighth level.

**Judge: Again, that vulgar sentence! Bigot Island starts to smell.**

**Frankly speaking, I must admit that the story is interesting. However, I require you to explain how your movie fulfills the criterion I will give you. If you cannot persuasively explain it to me, you will be dismissed. Understood?**

Customer: What is the criterion, Sir Grand Judge?

**Judge: The criterion is whether the movie will do something useful for that world and for the people. In other words, will your movie have any use?**

Customer: Well, be damned. Why is the judge of the other world concerned about whether it will be useful for the world of the living or for the people living in it?

Sir Grand Judge, may I ask one question, Sir?

**Judge: Only one question!**

Customer: What are you thinking of when you say "any use"?

**Judge: You idiot! You told me that you want to make something new and great but you don't even understand whether it will have any use? This case is dismissed. Send him to the second level.**

Customer: Sir Judge Sir, please wait a second. I will explain the use.

**Judge: All right, I will wait only once.**

Customer: The use will be its use and is to be beneficial. Of course, it will neither increase the car production, nor it will save people when an earthquake occurs.

But you know, as I said before, when I make this movie I will depict how the farmers stood up from their miserable living conditions, how they forgot about their

self-centeredness, and how the samurai overcame their thirst for fame and made self-sacrifice possible. Accordingly, the people who will see this movie will profoundly feel courage, hope and also human love. If lots of people see this movie, I have no doubt that society will improve. Of course, if the whole world could see it, it would no doubt contribute to world peace.

On top of it all, this movie would contain so many interesting points that it will surely win first prize in international movie festivals. That will be Japan's pride. Then this movie will be sold abroad by the ten thousands, which will produce invaluable income of foreign currency. It would not only bring profit to the cinema company I belong to but also augment the income of foreign currency for Japan.

**Judge: Those are all welcome to Japan, but sooner or later, there would be a surplus of foreign currency in Japan. And I already happen to know that your cinema company will be closed down one day.**

**The speech you just gave alone is not enough. Can't the movie have more benefits? To be beneficial is the condition to make something. If you can't answer immediately, you will be dismissed.**

Customer: God damn you! I have enough of it. As many times as you want, I can repeat that it is useful for this, or that or another purpose. But I know that you don't want to listen to such repetitions of detailed purposes. No matter how I explain, you have already made up your mind just to make me talk and then send me to the other world. You are a huge, useless bigot deadwood with five fangs! Let me tell you how I really feel.

**Judge: What? Speak up! Idiot! I don't have much time for this.**

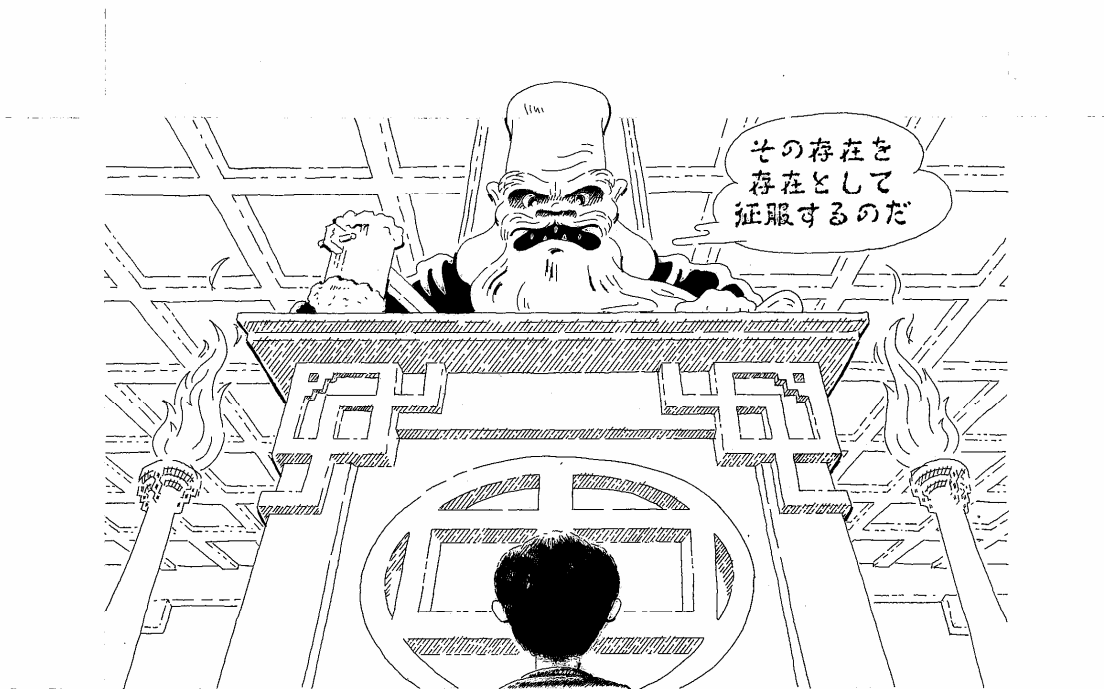
Customer: First-class art is self-evidently useful for many things. We shouldn't need evidence for it. Real art shouldn't be judged whether it is useful or not. It should be judged only whether it is first-class art or not. In other words, visual expression must appeal to the eye, music structure must inspire the listener's ear, and these will bring about the highest emotion. A scenario must be constructed so logically that it is superior even to the highest intellect. People who understand it will feel infinite veneration for it. This is what real art is, and whether it is useful for something or not is a side issue.

To create such first-class art is a right granted only to the gifted like myself. Only humans who have made steady efforts for several decades in addition to their talent received from Heaven have this right. Even then, however, they need access to the highest material. Only when all these coincidences come together, one can challenge oneself to create the highest art. That is comparable to conquering the universe. Again, when a human being like me encounters some amazing material, it is a challenge to its existence itself.

When I heard the story of the samurai and the farmers here, I felt I finally came across

such an opportunity. An opportunity I never had before.

And you, five-fanged, ask me what it will be useful for. Who is the idiot here, just think about it! Come on Sancho, I'm bound for the other world. We will take a rest for three days somewhere on this island. Let's go.



**Judge:** Well done, brilliant, great boaster! Those lines, “It is comparable to conquering the universe...that is a challenge to its existence itself”, were spoken by the mountaineer Mallory in 1923 in an interview with the New York Times. In the same interview, he spoke the famous words “Because it is there” when he was asked why climbing Mt. Everest. These words don't mean to climb whatever mountain exists, but to climb a mountain that has the value of challenging the truth. And climbing Mt. Everest has value for the truth and therefore is comparable with conquering the universe. In fact, he explained also how his expeditions would contribute to science and society. However, Mallory went missing during his last expedition to Mt. Everest. Even now his body is remaining at a height of more than 8000 meters, turned into a mummy.

Customer: Why do you know so much about Mallory?

**Judge:** I told you my ears catch everything!

I have judged that you have the capacity to make a great movie. I will grant you the

right to return to the world of the living. However, if you make a trash movie out of it, you should know I will spike you with my fangs. Beware of my fangs when you come here next time.

Before you go, I also have something to say. Wait a minute or two.

**Left Chorus**

A masterpiece is born in this court  
All factors become intertwined nicely  
Execution proceeds logically  
Cheer up, cheer up, aiming for completion

**Right Chorus**

A dream is born in his day dream  
Too many contradictions involved tightly  
Always on the verge of ruin in mid-air  
Give up, give up, with a happy medium

Frog: Judge, Sir, what are you writing?

**Judge: This man gave a brilliant speech, so I also feel the urge to give one. I am jotting down the gist.**

Frog: Hmm..., the Judge is a strange person.

**Judge: Let me explain one thing. You did not understand why I asked you about the usefulness for the world, did you?**

Customer: Indeed, I had no clue why you asked me about the usefulness for the world of the living when I was heading for the other world.

**Judge: In my job, I don't rule this world for my satisfaction. All my rulings are based on the law. It is decided by law which punishment I impose for which crimes. In legal theory, this is called *the principle of legality of crime and punishment*, that is, "*nulla poena sine lege*" in Latin.**

Frog: Wow, you know Latin! But even you can't speak Tree-Frogian, my mother tongue, can you?

**Judge: Of course, I cannot speak Tree-Frogian, because it is a well-kept secret between your family and fellow friends. But since I am a highbrow intellectual, I know a bit of Latin. I would be regarded even as better educated if I could speak Tree-Frogian. Anyhow, I should continue. In that world, you people must understand what will happen when you do something legal or illegal. With this understanding, you can make a decision to commit a certain crime or not, expecting a given punishment for that crime if you commit it. This is the foundation of basic freedom. So, whether I look scary or not, my judgment is essentially decided by law. To begin with, I hear everything and my information is complete.**

Customer: Does that mean you are going to take away the permission you just gave me? This can't be happening!

**Judge:** Be quiet and listen to what I am speaking.

If you follow the principle of legality of crime and punishment, it is not the law that imposes a punishment as a punitive for a crime. It is made so that in order to nip any crimes in the bud, a certain punishment is imposed when a certain crime is committed. The crime and the punishment are weighed fairly so one can commit a crime if one is prepared to accept the punishment. It is by knowing the relation between the crime and the punishment that humans can earn the freedom to choose their deeds.

To begin with, the law that imposes a punishment in correspondence with the crime guarantees that society can work smoothly. It also has as goal that individuals can have as much freedom as possible. That is why a legal system is the foundation of the existence of a free society.

Even at present time, however, the Grand Court of Heaven still sticks to the ancient idea of retributivism. Retributivism was the legal thought of ancient times, which was expressed as: “An eye for an eye and a tooth for a tooth”. Can you believe that?

Customer: Of course I can't. On top of that, I'm very grateful for your great thoughts and thoughtful decision about me. But, I don't have much time, do I? Is your speech still going to take much longer?

**Judge:** Fool! I still have not explained why I asked you about the usefulness for the world. Also, I have not explained yet why I can give you permission.

Customer: Yes, you are right. But could you keep it short and simple?

Frog: Yes, once a customer said that shorter speeches would be better, just as skirts of girls are better to be shorter. Me didn't understand it then, but now me understands.

**Judge:** Ah, what uneducated and vulgar fellows they are. I feel pity with my existence here. My speech is always simple, short and logical. But it does not seem to please them. Anyway, I have to continue with my speech.

In the first place, I should make a judgment based on the law and what I know about the person who committed an offence. Thus, if there is something I do not know, then it is my job to look into new facts. However, I normally never find any new facts because my ears catch everything.

In your case, you came to Bigot Island and found a hint for some new and great possibility. We are allowed to take such a situation into account. Nevertheless, when the person wants to pursue such a great possibility, he has the duty to explain how it will be useful for the world to pursue that. Without such an explanation, the new discovery may be just a waste or it may be even used only for his egocentric purpose. If this is the case, we cannot change our judgment.



Customer: So that is why you asked so persistently about how it would be useful, Sir Grand Judge?

**Judge: Exactly.**

**Also, part of the job of an artist, explorer or a scholar is to challenge something new that has value for the truth. Without such challenges, society cannot be kept free and active, and repetitiveness is spread out. People will be buried under daily trivial matters seeking for whatever little profit there is. Also, a decision about such a trivial matter is harmless one by one, but what is accumulated by repetition of such decisions is not only harmful, it will also veil all people's eyes from correct judgment. It becomes evil for society.**

**In fact, even for a lot of artists, explorers and scholars, it is easier to escape in everyday trivial details. If all artists, explorers and scholars would escape in trivial details and no longer challenge truth anew, it would mean the end of that society.**

**As you said, those who claim to be doing something useful are typically doing insignificant things. In the end, they produce mediocre work and still claim it to be useful. There is plenty of such poor mediocre work. You have the right talent and the real ambition, and therefore I judged that if you use them, it will be useful for the world.**

**However, do not compromise in any way. If you do so, you will end up with a mediocre product. If existence itself is the challenge, then conquer that existence as existence. Only by doing so, a job useful for the world will be completed.**

Customer: It must be true, eh?

**Judge: Indeed. You have the determination to make something that has value for the truth.**

Customer: Well, that is a really welcome judgment you have given me. I must say, Sir Grand Judge, we understand each other. Shall we, in due time, tilt a glass together?

**Judge: Next time when you come here! Now you do not have time. Hurry up. Your body is decaying.**

**Sancho, here is a tag. Take it with you and hang it at the back of your boat. With it you can row backwards to take this man back to that world. But it will take you twenty hours because the wind is blowing in the opposite direction. Hurry up. If your body in that world decays or is cremated, you will drown in Acheron Bay. Sancho will drown together with you as he is blamed too. Understood?! Go now!**

**Left Chorus**

The highest top is a challenge to you

**Right Chorus**

Efforts are useless if the work isn't sold

No excuses needed for the challenge                      Plenty of mountains you can climb  
Nobody understands, nobody can understand            Choose a famous but mediocre mountain  
Hang in there, don't give up, until you conquer        Give up, give up, stick to a famous mountain

Frog: Sir, you did an excellent job. Well, me will be rowing for twenty hours to reach that world,  
so give me ten minutes to get something to eat.

**Left Chorus**

A small house drifting in the reed field  
The couple lives in a house of reeds  
The couple are sweet, sweet tree frogs  
The couple speaks beautiful Tree-Frogian

**Right Chorus**

A golden moon in a dark brown sky  
The house is standing in the blowing wind  
A bull frog bothers the sweet couple  
Singing in harmony in the rain and wind

Sancho: Ribbet, ribbet, ribbet, froga, froga, finally, frogo is home!

Maria: Ribbit ribbit, froga thought it was about time for frogo to come home.

How was frogo's day?

Sancho: Good, frogo is good, ribbet. Today frogo had a weird customer with dark glasses, and  
now frogo has to send him right back to that world. Get me some food, quickly, ribbet.

Maria: Ribbit. Crickets, locusts, earthworms, snails, cockroaches, what would you like, ribbet?

Sancho: Frogo is starving. Frogo will take plenty of cockroaches; they are the most nutritious,  
ribbet.

Maria: Froga is also hungry. Froga makes some delicious roach dish.

By the way, today again that horrible Ribbedo was peeking into the house.

Sancho: Frogo is worried about froga. That Ribbedo is interested in froga, he is a lecherous bull  
frog, and also has a habit to steal whatever he can get with his webbings, ribbet. On top  
of that, his voice is unbearable. Even amorous Ribbirta, who flirts with everyone,  
dislikes Ribbedo.

Maria: Froga also dislikes him, too. But froga will be careful.

Sancho: By the way, is Princess Suzu doing well?

Maria: Princess Suzu is the same as usual, ribbet. The master who lives with her is very gentle  
and they get along very well. It makes froga happy too.

Sancho: That's good. Who is that master living with Princess Suzu, ribbet?

Maria: When he leaves he covers himself with a cloak, so froga has no idea where he goes. But  
he might be going to the courthouse, ribbet. He is a very handsome man.

Sancho: As handsome as frogo, ribbet?

Maria: Much better looking than frogo.

Sancho: Frogo would like to meet the master some day. But now it is time to go.

Maria: Before frogo goes, froga likes to ask something. Froga wants to sing a duet with frogo, even just for a little while. Lately frogo is busy, so we hardly sing anymore.

Sancho: Well then, how about we sing “Couple of Dried Reeds”?

Maria: Again that song? Froga wants to sing something more romantic. My amigos are singing “Nights in Manhattan”, ribbit.

Sancho: But frogo doesn’t know that song yet, ribbet.

Maria: Froga sees. Practice a bit, ribbit. Today, let’s sing “Couple of Dried Reeds”, ribbit, ribbit.

**Ribbet ribbet, ribribribbet**

We lost to poorness

This town expelled us to the end

We lived as best as we could

Even the flowers don’t blossom, we are dried pampas reeds

Ribbet ribbit ribbet ribbit ribbet ribbit, ribbet ribbit ribbet ribbit ribbet ribbit

**Ribbit ribbit, ribribribbit**

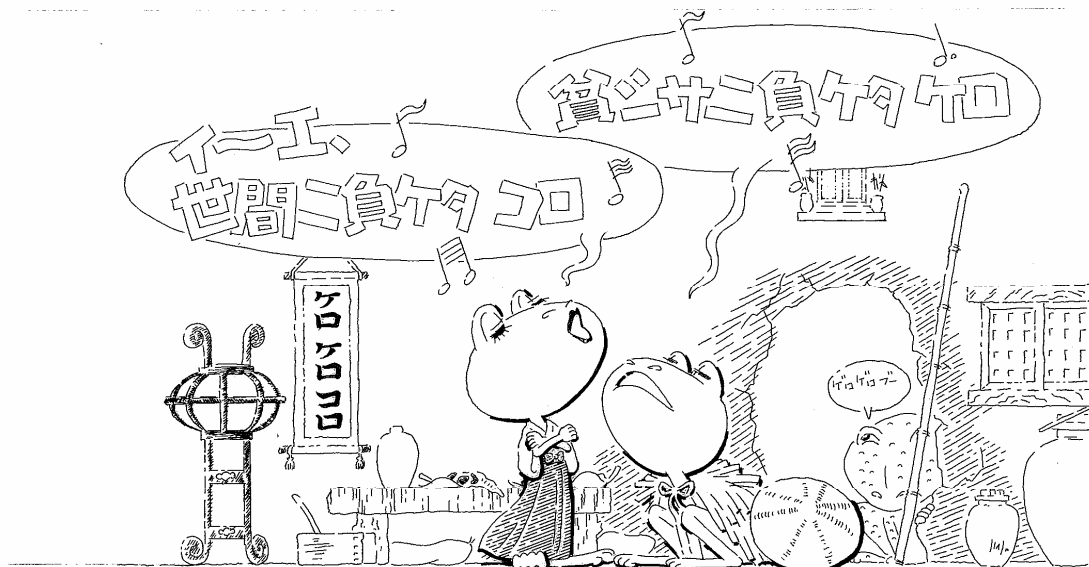
No, we lost to society

Is it graceful for us to kill ourselves?

We are no longer attached

Maria: Have a good day. Take care, give me a kiss. Kiss, kiss, smooch, smooch.

Sancho: See you soon. Kiss, kiss, smack, smack.



**Left Chorus**

Their song is always in Tree-Fogian  
 Ribbet ribbet ribbet ribbet  
 Ribbit ribbit ribbit ribbit  
 They speak in secret Tree-Frogian

**Right Chorus**

Lovely tree frogs are always together  
 A beautiful love blooming in Acheron Bay  
 Nobody can stop their eternal love  
 Tree-Frogian lost in translation

Frog: Sir, sorry to have kept you waiting.

Customer: I heard a frog chorus over there. Was that you and someone else singing?

Frog: Me with my partner, Sir. If me once in a while doesn't sing with my partner, she complains. So sometimes me sings along with her. Sorry it took a while.

Customer: It is good to take care of one's partner. Well then, please take me to back to the world of the living.

**Left Chorus**

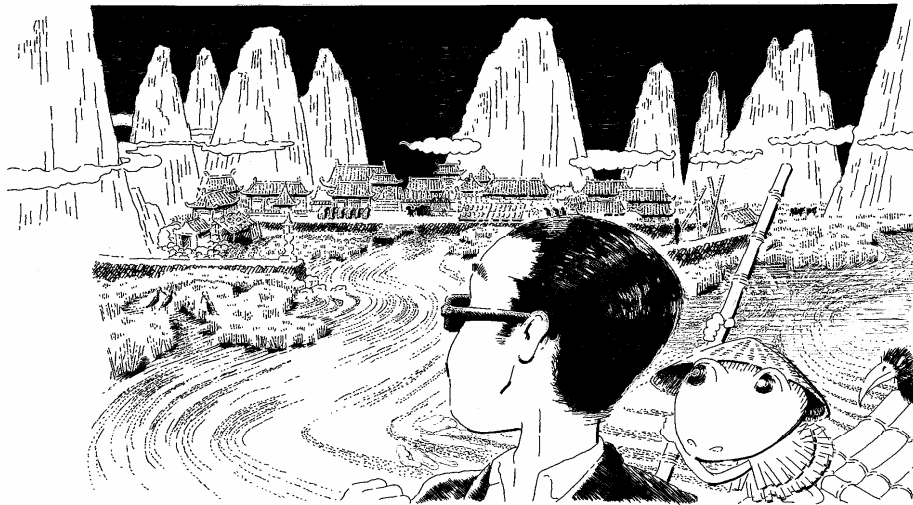
Hurry, hurry to the world of the living  
 Cut the wind, fight the current  
 That world is peaceful  
 Everyday is the same repetition

**Right Chorus**

Will they wait for twenty hours?  
 The wind is strong, the current as well  
 The other world is Hell  
 Everybody is all alone

The sky is becoming clear  
 The water is becoming clear  
 Don't speak of Hokusai's secret  
 That world is getting close

That is the dawn of Acheron Bay  
 This is the scenery I saw when arriving  
 I have to use this color somewhere  
 Row, row to the entrance of Acheron Bay



Frog: Sir, we are almost there.

Customer: Really? Then I must get ready.

Frog: Sir, your speech was amazing. But the Judge's speech was something as well. Not that me understood much of it...

Customer: For sure, his speech had an amazing strength. This five-fanged Judge impressed me with his ideas about legal thought and the true foundation of society. Indeed, he is a fearful judge of Acheron. I really want to use his character in my movie.

Frog: Boy, me has been in this world for about 150 years but such an experience is the first time. It was really exciting, indeed!

But Sir, your complexion is becoming paler.

Customer: Hurry up a bit more. Now that you say so, I'm feeling lightheaded.

Frog: We are almost there, hang on a bit longer.

By the way, before leaving Bigot Island, the Judge gave me a message. Sir, you can't talk at all about anything seen on Bigot Island.

Customer: But then how can I make a movie about it?

Frog: All you have to do, Sir, is to say simply that it is your own creation. Besides, the details of what happened on Bigot Island will disappear from your memory.

Customer: Can I really make a movie?

Frog: The Judge said that if you try to recall with all your might, you will remember the broad lines of what happened.

Customer: But look at me, my body is almost black and white.

Frog: Don't worry. The color of your leather jacket hasn't faded yet. That means your body isn't yet decayed. Look, there is the quay, from there please run.

Customer: Okey-dokey. Well, I don't have time, so this is it. Thank you what you have done for me. I can't give anything back but I appreciate what you did, Sancho. Farewell.

Frog: See you again in 50 years time!

**Left Chorus**

Leave the boat to the wind, entrust it to the current

Heave-ho, heave-ho, ribbet, ribbet

The sky is beautiful, the sea is blue

The ferry of Acheron goes as usual

**Right Chorus**

I leave it to your seamanship

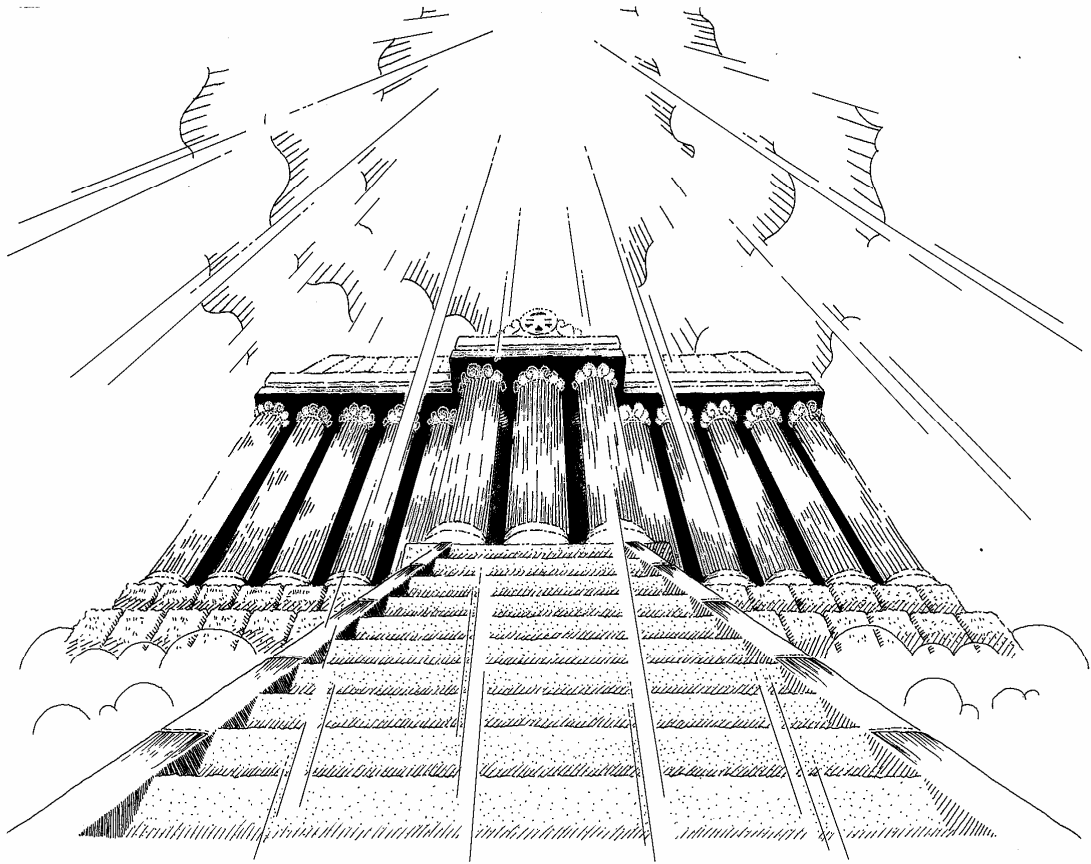
Row, row your boat up to that world

The mountains are green,

The end is near, Acheron Bay

## Act 2: The Grand Court of Heaven

### and the Impeachment Case



## Act 2 The Grand Court of Heaven and the Impeachment Case

Sancho's prologue: A month has passed in peace and quiet since me sent the customer back to the world of the living. But yesterday me got a message from the honorable Judge to come to the waiting room of the ferry of the world of the living. Me is wondering if that customer has again done something wrong or if me did something, eh? In either case, if the honorable Judge shows up in this waiting room, me has no doubt everyone will start shivering. It is about time for him to arrive.

### Left Chorus

I called you, Sancho, to punish you  
Recall carefully anything you have done  
There must be more, think harder  
The honorable Judge is square and fair

### Right Chorus

Me has done nothing wrong  
Peeing from the wharf, pooing in the reeds  
Bananas, potato chips given by customers  
The honorable Judge makes me shiver

Judge: Sancho, it's me! Me! Don't you recognize me?

Frog: You? Who are you, tall and handsome person? Have we met before?

Judge: It's me, the Judge.

Frog: What? The honorable Judge? But you are totally different from the honorable Judge me knows!

Judge: This is my real self. Usually, I wear a gown and put a mask on my face. I'm sure you don't recognize me, because the gown and mask entirely hide me.

Frog: Is it really you, Sir Judge?

**Judge: Sancho, you recognize this voice, don't you?**

Frog: Yep, it surely is the honorable Judge's voice. Um, ... this is what you really look like. You are quite handsome.

Judge: Don't stare at me like that.

Frog: But people think you are really a scary person, because everyone only knows you as that scary judge of Bigot Island. Also me only knows that image.

Judge: That image is necessary for my job. If I don't look scary, I couldn't do the job of assigning people to the first level to eighth level of the other world. That is why I dress in that gown and wear that terrible looking mask.

Frog: Me sees. The honorable Judge keeps on surprising me.

By the way, why did you want to see me today? Anything me can do for you?

Judge: It's not me who wants to see you. I received a message from the Grand Court of Heaven that they want to see both of us.



Frog: Sir Judge, did something bad happen?

Judge: I think the reason we are summoned has to do with the judgment I made about that man a month ago. I hope it won't cause any trouble for you.

Frog: Ah, that movie director, isn't it?

But, Sir Judge, I think that both you and that man did really well.

Judge: Unfortunately, the legal brotherhood of Heaven has different habits and a very different way of thinking. In general, they don't like judgments not fitting the provisions of the law, or judgments without precedents. For most of them, it is important to follow literally a legal provision, or if such a provision isn't found, they want to find some precedents. Perhaps, I can't avoid being sentenced one way or another. The worst case for you is a transfer to a heavier job than the present one. Please forgive me if it happens. But I shall do my best.

Frog: Ah, me may be transferred to somewhere else.

But, Sir Judge, no worries about me, your judgment wasn't wrong. Even if me is given a heavier job, me had the chance to witness such an interesting case. It gave me the greatest satisfaction!

Judge: Thank you for saying so. I myself don't think I did anything wrong.

Oh, there is the gondola to Heaven.

Frog: The gondola to Heaven is really comfortable!

#### **Left Chorus**

Between the blue sky and white clouds  
What a beautiful scenery  
Mind and body are lustrated  
Let's go to the Grand Court of Heaven

#### **Right Chorus**

The sky and clouds drawn on plywood  
Mt. Fuji should be added to it  
Wash your dirty legs and dusty hair  
Hurry up, hurry up to the veneer palace

Salamander: Hey, guys. I'm the salamander Pablo, and will guide you from here to the Fourth World of Heaven. My gondola is very, very comfortable.

Frog: You don't look like a salamander. Me thought a salamander was a big scary animal with a huge head. During my time in that world, my fellow frogs always told me to be careful with salamanders. They said that the worst case is to be swallowed by one in a second.

Salamander: No, no, you are talking about giant salamanders. They are scary indeed, and their heads are very, very big.

I'm a Tokyo salamander, but have now only a small number of relatives remaining in the Tokyo area. Some people think we are similar to giant salamanders. It bothers me very, very much to be regarded as a relative to such vulgar animals. Just look at me - my

slender and beautiful body!

Frog: Right. You're really skinny.

But everybody living in Heaven for a long time becomes skinny and sunburned, eh? Even me was quite skinny when me was living in Heaven.

Judge: Indeed, around my thirtieth year in Heaven, I also lost quite some weight and got sunburned. After I came to Bigot Island, I have returned to my former self.

Salamander: By the way, you guys are bound for the Grand Court of Heaven, right? I heard gossip that in the Fourth World of Heaven everybody is talking about the Judge of Bigot Island. He seems to be terrible dreadful judge according to it.

Since you are from Bigot Island, you know what kind of a person the Judge of Bigot Island is, don't you?

Judge: I'm afraid I am that Judge of Bigot Island.

Salamander: Boy, you are that Judge! Everybody says you are a very dreadful person, but you don't look like so.

Frog: No, no, actually, he is a great judge. Once a guy said, "The Judge breaks wind to the length and breadth from the first to the eighth level of the other world", didn't he, eh?

Judge: Don't mimic that vulgar director.

Frog: Anyway, we are going to the Grand Court of Heaven located in the Fourth World of Heaven. Long time ago, me received training in the Eighth World, and me knew there were the First to the Eighth World. But me has no idea about what the Seventh World and up are. Do you know about them, Sir Judge?

Judge: More or less. In the First World, you may find polite and well-mannered people, who look like being neutered and have never committed an offense. There, those people are recording and classifying moss or shells at the seashore. It is a really boring place. But their ancestors spent all their time to obtain power in politics, and they killed each other. Most of them went to Hell through Bigot Island. The "Kojiki" and the "Nihon Shoki", which are the two oldest books in Japan, describe in detail how they obtained power by killing brothers, sisters and other family members, and how they conquered many places in Japan by killing tribes and local inhabitants hindering them.

The people in the Second World are similar, but the objects of their recording job are slightly more interesting. They record and classify how lower animals reproduce. In the Third World, you will find more general historians and classifiers etc. The Fourth World is of the legal brotherhood. The Grand Court of Heaven is located in the center of that world. In the Fifth World, you will find people who are dealing with more practical and empirical sciences such as economics, physics, engineering etc. The Sixth World is for artists and businessmen who didn't commit crimes in the world of the living. To be honest, nobody is

interesting there. It seems that all excellent scholars and artists go to Hell. The Seventh World is for big animals and the Eighth World for smaller animals. Pablo and Sancho, you were trained in the Eighth World, right?

Frog: Yes, I was trained in the Eighth World.

Salamander: Me too,

Frog: Now I understand how it works. So, tell me, Mr. Pablo, what is happening in the Fourth World?

Salamander: People are gossiping about the Judge of Bigot Island. It is widely rumored that when the man was in the Fourth World long ago, he didn't follow the tradition and was very, very dreaded. Finally he was sent to Bigot Island to serve as judge. Recently that man again ignored the law in a trial there. The gossip continues with the speculation of how the Grand Court of Heaven should punish him.

Judge: Most judges only think about obeying the law's provisions and precedents.

Frog: You don't fear anything, do you, Sir Judge?

Judge: Yes and no.

Frog: That is the problem.

Judge: Yes, I fear slightly, but on the other hand, I think nothing is wrong with my judgement.

Frog: Didn't you expect this when you passed your judgment to the movie director?

Judge: In fact, I was entirely absorbed in talking to him, since I hadn't had such an exciting conversation for a long time. So, I forgot it when I made that judgment, though it should have been easy for me to guess the result of my judgment. Afterwards I have thought about my judgment and expected to be called to the Grand Court of Heaven.

Frog: Eh, I understand why you are dreaded even in the Grand Court of Heaven.

Do you know the Grand Court of Heaven well?

Judge: Yes and no. Long ago, right upon finishing the judiciary training school in the Fourth World, I became assistant-judge at the Grand Court of Heaven. Well, lot of things happened. In one word, quite often I made judgments different from the others, and I became a disturbance there. One day, the Grand judge came and told me: "I have protected you as far as I could, but I cannot keep you here any longer. There is an open position on Bigot Island and I recommended you for it. I think you are fit for the job and you will learn a lot there. Leave for Bigot Island in a week." Since then I have worked as judge for about 140 years on Bigot Island. The case of Hokusai was one of my first judgments. Because I was just appointed at that time, the Grand Court of Heaven overlooked my decision.

The Grand Judge of that time protected me. However, the present Grand Judge was my supervisor of the time I worked there, and he totally differs from the former Grand Judge.

He always sticks to secure decisions. He works very hard for himself and is a typical career oriented guy. If that man is informed of my judgment of a month ago, he will follow the precedents and start a case of demotion or an impeachment case.

Frog: You mean we are in great trouble.

Salamander: Are you talking about the Principal Grand Judge?

Judge: Yes, indeed, I'm talking about him.

Salamander: People gossip that he is a very, very hard worker and hides himself in the Grand Court from morning till evening buried in a pile of documents. But they also say he hardly shows his own opinion.

Judge: Exactly, that is the type of person he is. Only precedents of the past and interpretations of provisions are important to him.

Frog: Sir Judge, aren't you afraid?

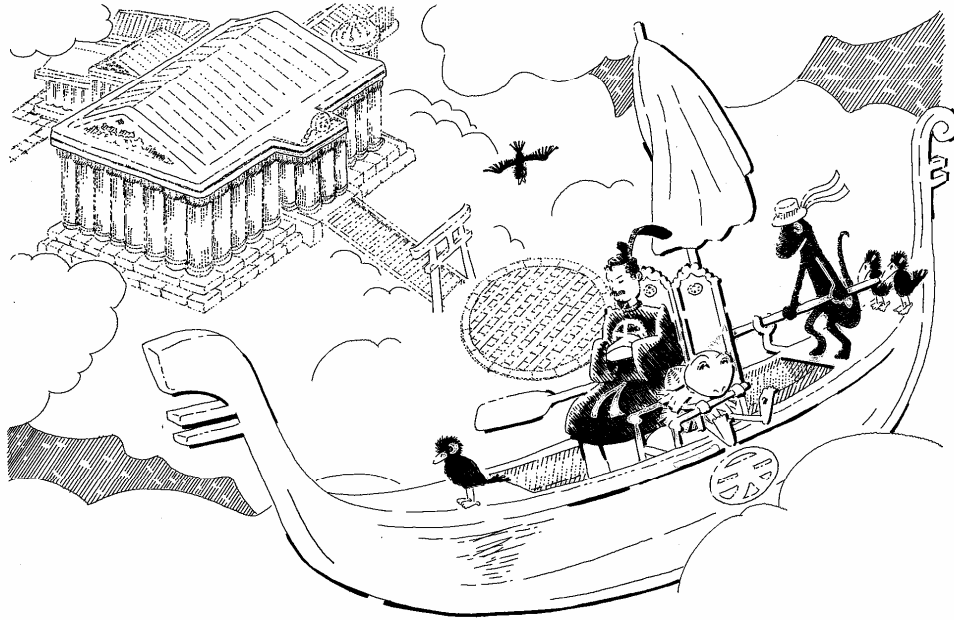
Judge: Well, I'm getting slightly nervous because I haven't been to the Grand Court of Heaven for a long time. But I haven't done anything guilty, so why should I be afraid?

Frog: You might not be afraid, but me is.

How many people will be participating in the court?

Judge: When I was assistant-judge, the Grand Court consisted of two grand judges and three other judges. Each of them had an assistant-judge, so five assistants were also in the court. In addition, 10 to 15 interns or people from the judiciary training school were present in the galleries.

Frog: That many? So many important people will discuss what we did? Me is so scared and me is starting to shiver. Ah ..., me would like to return to Acheron Bay. Over there, me could take it easy.



Salamander: Sir, we are almost reaching the Grand Court. You can see a big red gate as well as a magnificent white building on the top of that cloud, can't you? That is the Grand Court of Heaven. I also will attend in the galleries!

Judge: That is the red gate so yearned for by the elite people of the Fourth World of Heaven.

Frog: Yep, it is a magnificent gate and building. The gate looks like made of wood, but is the building made of marble?

Judge: Hey, come on now! If they were made of wood and marble, both the gate and the building would fall through the foundation cloud and end up down in the world below. It is all made of plywood and Styrofoam. However, it would be a good idea if all of them would once fall down and have a look at the world below!

#### **Left Chorus**

The Grand Court of Heaven is a scary place  
 The Grand Judge unearths your crime  
 Decision is always made by total consensus  
 The court will be finished in just one minute

You'll be in charge of the boiling oil bath  
 It feels good to mix boiling oil

#### **Right Chorus**

Justice and impartiality are made there  
 Decisions are based on reason and sympathy  
 Some judges are quite reasonable  
 Even the longest case is finished in a day

No, no, at most the boiler room  
 The boiler room is warm even in winter

The decision in made in a minute  
Have you made up your mind?

No, no, the defense will take a whole day  
I want to return to peaceful Acheron Bay

Five Judges on a high dais  
The purple gown is the Grand Judge  
The dark blue gown is the Deputy Judge  
The other three wear yellow gowns

The five-fanged isn't there  
Such a beautiful purple  
Both are beautiful colors of dung beetles  
Such vivid color of excrement

Frog: Sir Judge, me is so scared. Look, the galleries are filled with people.

Judge: Don't worry. I'll do my best. You shouldn't be scared. But you are right, what a big crowd, I didn't expect that many spectators. They must be bored with their lives here.

**Judge C: Shinnosuke Oguri, Judge at the Court of Acheron Bay, and Sancho, the ferry frog between the world of the living and the world of the dead, be seated in the defendant stand. I am Judge C in charge of this impeachment case. From now on, your crime charge will be discussed.**

**First, concerning the Judge of the Court of Acheron Bay: One month ago, during the case of a man who was a movie director, although it was clear from the behavior of this man during his life in that world that he deserves being sent to the second level of Hell, you heard his defense about making a new movie, and instead of sending him to Hell, you let him return to the world of the living. This is against the judiciary court decision stipulation article 12, clause 3, namely "It is adjured that when the punishment for a certain crime is clear, retributivism has to be applied." The punishment for encroachment of this clause is written in the same article 12, clause 4, and this will be applied when the defendant is found guilty.**

**Second, concerning the ferry frog, Sancho: You primed the man with some ideas before arriving at the court, and additionally you abetted him when fleeing back to the world of the living. This is against the law concerning ferrymen article 43, clause 2, namely "It is not allowed to provide any information useful in court to those who are being sent from the world of the living to the world of the dead." Abetment of fleeing is against article 46, clause 4. Punishment for this crime is written in article 43, clause 3 and article 46, clause 5. These will be applied when the defendant is found guilty.**

**Sir Deputy Judge, do you have anything you would like to add? If not, may the crime be determined?**

**Deputy Judge: Well, just to make sure, shouldn't we listen to what the defendant has to say? The Judge of Acheron Bay here in front of us, Shinnosuke Oguri, used to be**

assistant-judge at the Grand Court of Heaven a long time ago. At that time he was a young man with much promise for the future. It will be useful for the future of this Grand Court of Heaven to listen to why such a “promising” judge did not obey the law.

Also, today, we have a big audience of about a hundred people. They would like to listen to what he has been thinking in Bigot Island.

**Judge C: Is that so? Thanks to the generous opinion of the Deputy Judge, Shinnosuke Oguri, Judge of the Court of Acheron Bay, you can defend yourself concerning your judgment of one month ago. Do you have anything to say for your self-defense?**

Judge: Thank you very much for granting me the chance to defend myself. I presided at the case a month ago, and since then I have had enough time to reconsider my judgment.

**Judge C: That is very good. You mean that you have remorse for the violation of the provisions. Your remorse can extenuate your misconduct. Sir Deputy Judge, because of his repentance, it would be appreciated to consider mitigating circumstances for your judgment on his case.**

Judge: I am sorry to interrupt you. You misunderstood what I said. I’ve been thinking if the judgment I made in the case was really correct.

**Judge C: Are you saying you have been thinking about something else besides remorse?**

Judge: Yes, I am. I have been thinking whether my judgment follows the spirit of the law and is really right.

**Judge C: Whether the judgment is right or not is simply whether it follows the provisions of the law. Evidently your judgment does not follow the provisions. Or do you possibly want to say you followed the provisions?**

Judge: No, I don’t want to say I followed the provisions in that case.

**Judge C: You are admitting to your crime, aren’t you? But even so, what do you mean by saying that you were thinking about the rightness of your judgment? Your statement ignoring the law is hard to forgive. This might become a felony, depending on your answer.**

Judge: I understand well the way the Grand Court of Heaven thinks here. However, as a judge practicing the law, I have always considered how the law should be practiced and enforced. That is why I was thinking if my judgment was right or wrong.

**Judge C: What are you babbling!?! You should know the answer without thinking about such a thing. When the provisions can be applied to the case, all you have to do is a right application of the judgment written in the provisions. When the provisions are unclear for the case, you should look for and follow former precedents. If there are no clear precedents, you may use your own discretion in making a judgment, in**

**which case you should think about former precedents in as many similar cases as possible.**

**As for that man one month ago, an applicable provision exists. Thus you had simply to apply it to his case. Such a right application is justice.**

Judge: You all think in such a way here at the court, and that is what you teach to young judge-candidates at the judiciary training school. However, the law is made by humans, and it did not exist before the presence of man. However, the spirit of the law existed before the legal system was constructed, and each law should be made based on that spirit. So I was thinking that if I followed the spirit of the law, my judgment had to be right or wrong<sup>1</sup>.

**Judge C: Even if such spirit ever exists, to follow the provision of the law is to follow such spirit, isn't it? What else is possible?**

Judge: Well, provisions of the law do not perfectly express the spirit of the law, and sometimes the provisions and the spirit differ. From time to time, we may be required during court not to blindly follow the provisions but to return to the spirit of the law before passing judgment.

**Judge C: Are you saying we should follow the spirit of the law but not the provisions of the law?! First of all, where is the spirit of the law written down? It surely is something you made up by yourself!**

**Deputy Judge: No, no, a subject called the spirit of the law is briefly discussed in the very beginning of legal theory taught at our judiciary school. Is it what you are talking about, Shinnosuke Oguri ?**

Judge: Exactly, it is the philosophy and foundation for a legal system.

**Deputy Judge: I think, Judge B, you are most familiar with legal theory, aren't you?**

**Judge B: Yes, I am. I am teaching legal theory at the judiciary school.**

**Deputy Judge: Well, Judge B, what does the spirit of the law mean in the present legal theory? Also, what is the foundation for a new law when it is made?**

**Judge B: Recently, the true foundation for legal theory is the refined retribution theory<sup>2</sup>. It is simply the modern and advanced form of the old "retribution theory". As the measurement technology of crime has become more advanced in recent years, we can measure any crime with high accuracy. Therefore, an appropriate punishment is given to any committed crime.**

**Following the old "retribution theory", we would judge that "if you cut someone's wrist, your wrist will be cut", in other words, "an eye for an eye and a tooth for a**

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<sup>1</sup> The legal discussion below contains quite a lot of fictitious parts. A good introduction to legal thoughts is "*The Problems of Jurisprudence*," by R. A. Posner, Harvard University Press, London, (1990).

<sup>2</sup> Note that the term "refined retribution theory" is made up by the author.



tooth”. However, following the advanced measurement technology of the present day, we can measure accurately “what kind of person cut the wrist of another person under which circumstances and for what purpose”. Accordingly, we can accurately assign each person who committed a crime to an appropriate world of Heaven or an adequate level of the other world, Hell.

For a few decades ago, some people believed the idea that the law should be made for the people and their freedom. This is called the *principle of legality of crime and punishment*. It states that a punishment for a crime should be stipulated in the law’s provisions and should be made clear to all the people before their enforcement. For the execution of the punishment we have to follow the provisions. Those people emphasized that if the principle of legality of crime and punishment is ideally practiced and enforced, people could act free under the law. This may sound nice, but actually they always had the tendency to stop at abstract discussions by using the words “for the people”, “for the freedom” or “for society”. They have never given practical opinions at legal enforcement in real society.

With the recent improvements in measurement technology, we can forget such abstract and nonsense discussions. By the accurate measurement of each crime, we can simply give a right amount of punishment. Thus, the refined retribution theory has become mainstream nowadays in the Grand Court of Heaven and the judiciary school. Accordingly, the principle of legality of crime and punishment has fallen in disuse but is still taught as one historical thought in the history of legal ideas at the school.

**Deputy Judge: Judge of Acheron Bay, did you hear this? In the present legal theory, the accurate measurement of each crime is enough and anything else should be a side problem.**

Also, within the refined retribution theory, if the defendant clearly has serious remorse about his crime, the level of his remorse is taken into account and deducted from the level of the crime. In the vernacular, this is expressed as: “There is room for mitigating circumstances because the person shows serious remorse and the punishment is reduced.”

Such law enforcement is based exactly on humanism. Judge at the Court of Acheron Bay, if you understand this, you should show remorse. Then we can surely reduce the level of your demotion.

Judge: My judgment might indeed be regarded as a mistake if you follow the refined retribution theory. However, for about a month I have been thinking about whether the refined retribution theory entirely follows the spirit of the law.

**Judge B: The refined retribution theory has been developed out of the old form of retribution theory, which we and our predecessors have followed for thousands of years. Also, the present form is much more exact than the old form.**

**Now are you saying that this theory is mistaken?**

Judge: I was thinking about it for a month and I have reached that conclusion in the end. No matter how retribution theory is elaborated, it still keeps the basic principle of the old retribution theory that a crime and a punishment should have equal weights, and it ignores the problem of how the legal structure is supposed to be. There is no room to consider the good and the bad parts of the legal system. In addition, the refined retribution theory has asked no real question of how the legal system should be, but is escaping into the technological problems of how to make the details more accurate. Certainly, it is good to improve measurement technology, but the fundamental problem should be about how humans and society ought to be.

**Judge C: Deputy Judge, Sir, it is self-evident that this man only tries to make his own crime lighter. For this purpose, he is only quibbling to deny the retribution theory which is the existential foundation of this Grand Court of Heaven. We have no need to listen to such babbling. Let us hurry and pass judgment.**

**Left Chorus**

Grand Court of Heaven, the highest authority  
The decision is always right and just  
Determining social and individual justices  
The highest authority makes authority itself

**Right Chorus**

The honorable hall, governing the world  
No slightest doubt about the decision  
All doubts must be cleared  
The highest authority surpasses all

[Part of the audience joins in and repeats]

It is suspiciously suspicious

**It is suspiciously suspicious**

Is it truly the highest authority?

**Is it truly the highest authority?**

We want to know the veritable truth

**We want to know the veritable truth**

Still we want to know, want to know it

**Still we want to know, want to know it**

Settle it, let's settle it quickly

**Settle it, let's settle it quickly**

Use your authority, settle it

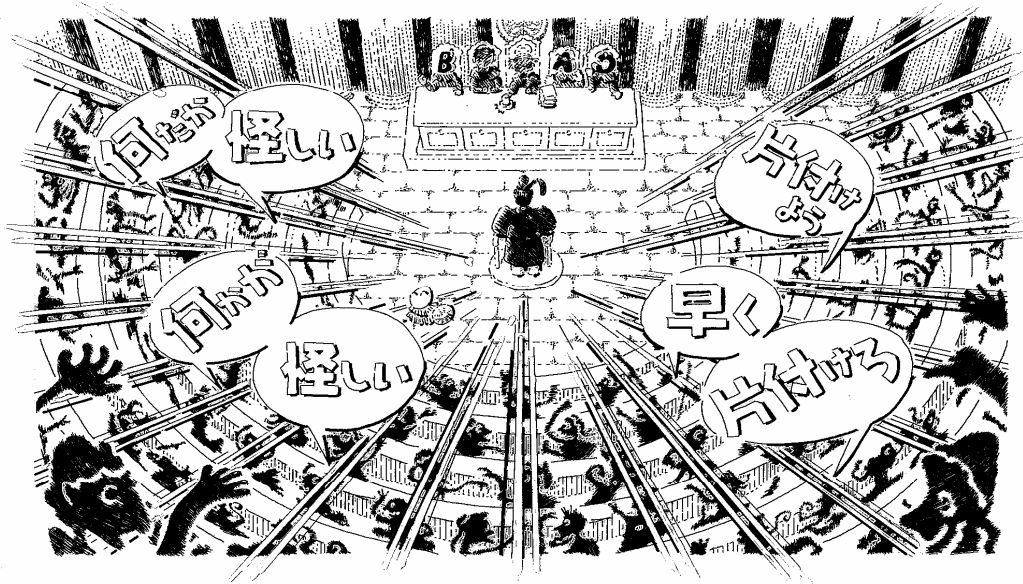
**Use your authority, settle it**

We, authority, are all the truth

**We, authority, are all the truth**

Believe us, believe in us, to be saved

**Believe us, believe in us, to be saved**



**Deputy Judge: Be quiet, quiet, audience! Order in the court!**

**Mm ... Judge C, you might find his opinions sound funny from our viewpoint, but the Judge of Acheron Bay still is our colleague. Maybe, we should give this colleague a chance to explain his ideas. Judge Oguri, please explain briefly what you are thinking.**

Judge: I appreciate your generous decision to give me the opportunity to talk about what I have been thinking. I will try to keep it short. But if anything is unclear, please feel free to ask. The spirit of the law is the fundamental principle for designing a legal system and enforcing it, but in legal practices, some parts deviate from the spirit of the law. I will explain this point later.

I should start with the criteria constituting the fundamental principle of the law. I list three criteria, namely:

- (1) the equality criterion
- (2) the welfare criterion
- (3) the individual freedom criterion

However, we will meet quite some stumbling blocks with these criteria when we consider the details of designing and enforcing the law. First, we may derive totally different conclusions from these criteria depending upon their specifications of the details. Second, the criteria themselves may contradict each other. Even so, these criteria form the base for

the principle of the law, and we cannot discard them.

Now I will explain these three criteria, and then I will consider a few simple examples from the viewpoints of these criteria.

- (1) The equality criterion emphasizes that people should be treated equally as much as possible. To begin with, however, in reality, big differences exist between individuals born with different talents and in different environments. It would inversely result in inequality if they are treated all the same by forgetting these differences.
- (2) The welfare criterion states that the lives of people should be as wealthy as possible. This also sounds simple but there are many stumbling blocks when we come to the design and enforcement of the law. In addition, contradictions with the equality principle will occur.
- (3) The individual freedom criterion may be regarded, on the one hand, as the most fundamental requirement from the viewpoint of the relation between people and society. On the other hand, this criterion may also be regarded, rather than the fundamental requirement, as ways and means to achieve the welfare criterion, since individual freedom stimulates work motivation.

**Judge B: This guy is finally showing his stupidity. As he pointed out by himself, the spirit of the law or the principle of legality of crime and punishment contains so many contradictions. That is the reason it cannot function as the foundational theory. Thus, it is enough to simply follow retribution theory offering the right correspondence between a crime and a punishment.**

**Deputy Judge: Mm .... Be patient and let us listen to him. But Judge of Acheron Bay, you should not talk for too long!**

Judge: Yes, Deputy Judge, I will try to keep it short.

Well, let us consider a simple example. Let us assume there are two men here. I will call one *A* and the other *B*. The situation is as follows:

*A*: born in a wealthy family, living a wealthy life at present

*B*: born in a poor family, barely having lived till the present

Now, let us assume that both *A* and *B* committed the same crime, say, robbery.

**Judge C: Why would *A* who lives a wealthy life commit the same crime as *B* who lives a poor life? I would find no necessity for *A* to commit the same crime as *B*!**

Judge: To begin with, there should be no necessity for crime. When a person makes a willful decision to commit a bad act, the act together with his decision would form a crime. If the

act was caused by necessity, we should not charge it as a crime. You agree with this, don't you, Sir Judge C?

**Judge C: That is right, I agree. Continue.**

Judge: The example that *A* and *B* committed the same crime was a thought experiment. I'm not referring to an actual precedent.

Well, let me add a bit to our assumption. At the point of time, person *A* embezzled some money from his company and lost it at gambling; he needed ten thousand dollars and broke into a family home. On the other hand, *B*'s savings finally hit the bottom; he needed money to survive and broke in.

Now I will consider from the viewpoint of retribution theory how *A* and *B* should be tried for robbery. First, the old form of retribution theory simply states that both should be punished the same because they committed the same crime. However, we know the difference between them: One was brought up in a wealthy family, but the other was born in a poor family and is still poor at present. Well Judge B, Sir, you are teaching the theory of jurisprudence. How would you proceed with an example like this?

**Judge B: If I were in charge of these cases, I would say that *B* is coming from a poor family and thus the chance of committing a similar crime is high. On the other hand, since person *A* was raised in a wealthy family, he simply erred at the time when he committed the crime. Also, considering these men's recidivism and people in the same situation, it would be possible to use mitigating circumstances in the case of *A*. Contrary to the case of *A*, if we would use mitigating circumstances in the case of *B*, he would take his punishment lightly and the probability he would commit a second crime would be high. Moreover, it would not function as an exemplary punishment for people in the same situation. Accordingly, we should simply follow retribution theory in the case of *B*.**

Judge: You say that *B* has a higher probability of committing a crime because of his familial and social background. This probability is lower for *A*. Mitigating circumstances can be used for the person with the lower probability, but they cannot be used for the person with a higher probability since mitigating circumstances would encourage crime.

Well then, let us consider a more extreme case. Person *B* is extremely poor, did not graduate from school, has no job at present, his savings hit the bottom and he has no more money to buy food. The choice left for *B* is either to breach the law and steal someone's money or to follow the law and wait till he starves to death.

I'm sure that you all know plenty of examples like this in the past as well in the present. Even nowadays plenty of people die of starvation. For example, a lot of peasants starved

to death during the great famine of Showa 9<sup>3</sup> in the Tohoku<sup>4</sup> area.

If we look at it in this way, *B*'s choice against the law was close to necessity, don't you agree, Judge C, Sir?

**Judge C: Yes, I agree. He made his choice almost out of necessity.**

Judge: Honorable Judge C, I believe you agreed 10 minutes ago that if some action is done out of necessity, the person cannot be responsible. In this case here, the action person *B* took was nearly out of necessity. Therefore, shouldn't he not be charged for the crime? Or even if charged, shouldn't it be a light punishment?

If we are still following retribution theory, then we should combine the conclusion from retribution theory with mitigating circumstances, i.e., first, a determined amount of punishment should be given and later mitigating circumstances should be applied.

This is the exact opposite of the conclusion reached by Judge B, who said that in the case of person *B*, we should simply follow retribution theory.

**Judge B: That is right. But what do you want to say?**

Judge: It is my point that retribution theory and mitigating circumstances often lead to strange conclusions.

**Deputy Judge: Well, Judge A, you are regarded as the best-versed theorist here at the Grand Court of Heaven. What do you think about this? I grant you permission to speak.**

**Judge A: This is truly the Judge of Acheron Bay, who used to be so distinguished for his eloquence. Ah, but it is a great pity for him not to know the advancements in the present refined retribution theory and the crime measurement technology, because of his isolation on Bigot Island for a couple of centuries. Nowadays, such contradictions will be solved even before they occur.**

Judge: Judge A, Sir, I would be grateful if you can explain how the contradictions are solved.

**Judge A: If we use the recent crime measurement technology, we can measure even the criminal's childhood and family situation. In the case of person *B*, he had a lot of misfortune since his childhood. It suffices to measure his misfortune and deduce it from the punishment. In other words, we consider his misfortune since childhood as a part of the punishment. If *B*'s childhood was extremely poor, he already received a big punishment and therefore his ultimate punishment for the crime should be made lighter.**

**Deputy Judge: This is truly Judge A, who is so promising at present. His words distinguish him from the others. Well, Judge of Acheron Bay, does this satisfy you?**

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<sup>3</sup> Showa era 1926~1989: Showa 9 is 1934.

<sup>4</sup> Tohoku area is the northeastern region of Honshu, the largest island of Japan.

Judge: Well, I would like to ask one question. Am I correct that person *B* will receive a reduction of punishment in your conclusion, honorable Judge A?

Judge A: Yes, it is correct. Is there a problem?

Judge: I believe your conclusion, honorable Judge A, is exactly opposite to the conclusion derived by the honorable Judge B. Please recall once more the conclusion stated by Judge B. If I'm not mistaken, he essentially said: "*Because B is a needy man, the probability he will commit such a crime is high. Therefore, mitigating circumstances should not be applied. If they would be applied, he will push his luck and it is likely he will commit similar crimes.*" If mitigating circumstances are applied to such a needy person, equally needy people will turn to committing similar crimes. When poverty spreads through the whole society such as villages struck by famine, there would be scores of people prone to crime. This means that mitigating circumstances will increase crimes. One important function of the law is to deter people from committing crimes. Therefore, mitigating circumstances are fine for *A*, but should be limited for *B*. I believe the conclusion of the honorable Judge B is derived from this thought.

**Judge B: That is exactly what I meant to say.**

Judge: But it is the opposite of Judge A's conclusion.

**Judge A: Well, no problem with eliminating such a contradiction. With a little deliberation on it, we would reach the same conclusion or even a conclusion of giving *B* a bigger punishment in the case of person *B* if we add the part of his childhood's misfortune to the punishment from retribution theory.**

**Deputy Judge: You idiot! Is this a problem of changing subtractions into additions? Ah... the young people here are such twerps.**

**Well then, I myself should discuss this situation. Judge of Acheron Bay, is your conclusion that mitigating circumstances should be applied to neither *A* nor *B*?**

Judge: Spoken from the viewpoint of deterrence of crime, *B* should not be given mitigating circumstances. However, there is some room for mitigating circumstances for *B* when we consider the premeditation of the crime or the necessity of it.

**Deputy Judge: Then, tell us what should be done.**

Judge: The only answer we will deduce from retribution theory is at most that punishment is determined by the crime without taking the background of the criminal into consideration.

**Deputy Judge: But how does this conclusion differ from the principle of legality of crime and punishment, which you have emphasized from the beginning? Does it appear to have all the same conclusion ultimately?**

Judge: I don't try to make, within the principle, the relation clear between crime and punishment. Instead, as said before, I'm trying to say that we should consider a legal system as part of

the entire social system. The principle of legality of crime and punishment is part of that.

Deputy Judge: This is all too abstract. Explain it in more concrete terms!

Judge: Well, let us return to the problem of person *B*. This person was born in an extremely poor family and became an adult without attending school. So his extreme poverty continued, he piled up debts, and could no longer buy food. In the end he turned to crime. The problem should be considered together with the social system and its design.

**Deputy Judge: But that is not a problem of the law!**

Judge: However, it should be a problem related to the law as well. For example, even if *B* grew up in an extremely poor family, if a social security system would exist, he might have been able to receive a scholarship and to go to school when he was a child. Don't you think he would have been able to receive a decent education, find a proper job and not turn to crime?

Of course, this is only the case when the poverty is of such level that a scholarship would be sufficient to go to school. Maybe, he would have to use the scholarship to buy food for his family. If that were the case, the whole social structure would have to be reconsidered.

**Deputy Judge: But isn't that a problem of politics and economics, instead of the law?**

Judge: Ultimately, social security is practiced within the system of the law.

**Deputy Judge: Okay, I give way a bit here, and let us assume it is a problem of the law. Do you mean that the scholarship system has to be modified?**

Judge: That is only one part of it; I wish to look at the whole of the social system.

**Deputy Judge: It is becoming abstract again. How do you think about this problem more concretely?**

Judge: Okay, I should be more concrete. Let us make the background of *B* even more tragic. By doing so, new elements will emerge.

In the previous setting, *B*'s family was extremely poor, but if *B* were to receive a scholarship, he could have received higher education. But receiving a scholarship does not necessarily imply that he can receive an education. Let us say, for example, that *B* was born with a very low intelligence, for example an IQ of 70. This number is the lowest level to receive compulsory education.

**Grand Judge: Wait a moment. This seems to take a while. This court has been in session for more than one hour now. We will interrupt for a recess of 15 minutes. Deputy Judge and other Judges, please come to the judge lounge in the back.**

**Left Chorus**

An archenemy appears at the Grand Court  
What he says is all reasonable

**Right Chorus**

We are the supreme authority!  
Don't believe such babbling



Justice, fairness, right, what are they?  
We want to hear more, tell us more!

Everything is controlled by us  
Make him shut up, we are the authority!

[The audience also gets excited and joins the chorus]

**Left Chorus**

**An archenemy appears at the Grand Court  
What he says is all reasonable  
Justice, fairness, right, what are they?  
We want to hear more, tell us more!**

**Right Chorus**

**We are the authority!  
Don't believe such babbling  
Everything is controlled by us  
Make him shut up, we are the authority!**



Grand Judge: Judges, what are you going to do about this case? Do you want to kill our prestige and great tradition of the Grand Court of Heaven? Does nobody have a good idea?

Judge C: How about we pass judgment and get it over and done with?

Deputy Judge: You fool! If we stop this case and pass judgment in front of so many people in the audience, you can imagine how they will speak about us to other people!

Judge B: By diverting the subject, we will be able to stop the Judge of Acheron Bay speaking in his own way, won't we?

Deputy Judge: The Judge of Acheron Bay is amazingly smart. When someone tries to divert the story on purpose, he will perhaps make your diverting clear in front of the audience.

Judge B, are you ready to take that task upon you?

Judge B: Indeed it is better to avoid unnatural logic. We better think of something else.

Judge A: I would be able to make that guy shut up by talking about the details of refined retribution theory and the crime measurement technology. It would be easy to spend two hours if I talk about such technical details. The audience will be tired by listening to my technical explanations, and then we can pass judgment without any problem.

Deputy Judge: That might work for today, but later the audience will start gossiping about how the Grand Court of Heaven escaped from the judge of Acheron Bay.

Grand Judge: Well then Deputy Judge, what do you suggest for this case?

Deputy Judge: Let him talk as he wants to. I don't think he will be able to deny entirely retribution theory having a history of 6000 years. Then we will pass judgment after we have let him talk amply, and then even the audience will notice our generosity.

Grand Judge: Very well, we will let that man continue to talk. Interrupt him immediately when you find any problem with what he is saying. His reliability will deteriorate as we continue to point out small mistakes. Okay, let us return to the court room.

**Left Chorus**

That man is our natural enemy  
Just wait until the enemy passes over  
Let's point out all his mistakes  
Hurry up, may this day pass quickly

**Right Chorus**

We want to hear what he says next  
We have had enough of authority  
Always the same judgment, the same opinion  
Hurry up, destroy such unchanged authority

**Grand Judge: We continue with the case. Judge of Acheron Bay, continue with your story.**

Judge: Thank you so much for the opportunity to talk more about my own opinion. Let me start with the rest of the story of person *B*. Before, I slightly changed the assumption about *B*.

In the original assumption, *B*'s family was poor but if he had received a scholarship, he would have been able to receive an education. Next, however, we assumed that *B* was born with a low intelligence, say IQ 70. This number is the lowest level to receive compulsory education. This is what I explained before.

**Judge C: Then, you concluded that a scholarship system did not help *B* because he would not be able to receive higher education. Doesn't this contradict the conclusion you derived before?**

Judge: For the person *B* we are talking about now, a scholarship is irrelevant, but for the other *B*, a scholarship system would still be important.

Judge C: No other *B* has ever appeared in your story! Now, inconsistencies in your story become apparent.

**Deputy Judge: Judge C, you should refrain from such hairsplitting remarks.**

**Judge A: Yes, I agree with the Deputy Judge. However, regarding a person like *B*, people say that everybody has a talent in his/her own way.**

Judge: But I think it is a hard fact that there are some people less gifted than the average in any respect, no matter what you look at and how you look at it.

**Judge A: Well, no problem with eliminating such a contradiction. With a little deliberation, we can find in such a case that having no talent itself is his talent. A person inferior in every respect is superior to others in that his existence makes others feel at ease.**

**Deputy Judge: Judge A, what you are doing is what we call quibbling. You should just listen please.**

**Judge of Acheron Bay, then what does happen with the *B* with IQ 70?**

Judge: This *B* cannot be saved by a scholarship and will end up wandering about at the lowest end of society. The chance that this man will commit a crime is even higher than the *B* we talked about before. Well then, how can we save this *B* from committing crimes?

**Judge B: I guess there is nothing we can do but put him in some asylum or provide him with social security money.**

Judge: That is right, perhaps. The problem is, however, where to get the money for such an asylum or for social security. In the case of the first *B*, it would probably be okay to provide him with a scholarship and make him pay back the same or a slightly higher amount later. However, the latter *B* will not be able to pay back the money. Well, what should we do about him?

**Judge B: It might be best if other people share these expenses equally.**

Judge: Why should they share equally?

**Judge B: That, that should be taken for granted! You, you are the person who mentioned equality as one of the principles for the foundations of the law!**

**Deputy Judge: Be patient.**

Judge: Okay, let me explain why I asked that question.

Person *B* only has IQ 70 and has a hard time to survive in society. However, while some people are of IQ 75, others are of IQ 130. Also, while some people are good at earning money, others are bad at it. Should all these people be charged equally?

**Judge B: Of course, all people should pay equal amounts if they need to pay. We can derive this implication from retribution theory if we generalize retribution theory in the positive direction.**

**Retribution theory will give a punishment corresponding to what you have done wrong. It is important to notice that this principle is equally applied to everybody. Now, you should notice that the principle has a positive side, too. The positive side of this principle should be described as “if one has done something good, he should**

*receive a reward corresponding to what he has done*". Thus, all earnings by one's hard work belong to that person. This is the positive side of retribution theory. Thus, proprietary rights have been based on the same principle as the retribution theory of crime and punishment.

When society collectively needs some amount money, everybody should share the same burden, since nobody receives special treatment in the generalized retribution theory. However, poor people might not be able to pay their shares, so let me modify it by saying "pay equal proportions".

Judge: In the income tax system of the world of the living, the concept of progressive taxation exists. A person earning a high income is taxed with a higher income tax rate than a person with a lower income.

**Judge A: No, your explanation is improper. You have to say that "the tax on the last unit faced by a person with a high income is higher than the income tax on the last unit faced by a person with a lower income." In economics terms, progressive taxation means that the marginal tax rate is increasing as one's total income increases.**

Judge: I appreciate your explanation, Judge A. However, the problem does not lie at the technical side. It is the point whether the conclusion contradicts the generalized retribution theory. Judge B, what do you think?

**Judge B: Indeed, the progressive taxation of income does not fit in the general idea of retributivism. The generalized retribution theory teaches us that all people should be taxed equally. Consumption tax is levied at the same percentage on all people, so the problem is solved by levying consumption tax rather than income tax.**

Judge: I see. In such case, *B* would be taxed at the same tax rate?

**Judge B: Of course, it is derived from the retributivism principle. It states that the principle should be applied equally to everybody.**

Judge: However, you agreed with our previous conclusion that we should not think about taxing *B* but put him in some asylum or give him social security money. Then does your answer contradict this?

If we treat *B* as an exception to the generalized retribution theory from the beginning, no contradiction occurs. However, this means that the generalized retribution theory has exceptions from the beginning. It is applied to everybody but not to exceptions. How do you determine that some are exceptions and some are not?

**Judge B: Exceptions? Why is it wrong for the generalized retribution theory to have exceptions?**

**Deputy Judge: Judge B, don't turn to bay in the end. You should have a broad back to admit your mistakes when they become clear.**

**As far as I listen to all this, retributivism seems to contain quite some contradictions. Judge of Acheron Bay, after all, how should person *B* be treated? Also, explain what the equality of taxation is.**

Judge: First, please acknowledge that people like the *B* we have been assuming exist. In fact, there are a lot of people who are even more unfortunate. On the other hand, there are a lot of fortunate people. These people are typically talented and socially successful. People like *B* may not survive with only the money they earn. The opposites of *B* earn more than enough of money. This is a logical conclusion of the generalization of retributivism.

However, consider our existence itself carefully. It is a matter of fate that I was born with this body and this face. The chance existed I were born like *B*, just as I could have been born like a person with a great talent for baseball to earn several millions a year. In addition, we should not forget that no one lives alone all by himself but he lives in society. The talent we are born with only has meaning because society exists. Also, we should not forget that such a social environment differs time to time and place to place.

Of course, even when one is born with a great talent specific to baseball and baseball is popular in his society, one has to strive hard. However, this body as well as this talent is nothing more than something we borrow when we are born. If somebody ask where we borrow them from, I would answer they are borrowed from the entire human community.

Mm ..., Sancho and Pablo here should be counted as members of the community as well, I think.

**Deputy Judge: Do we borrow our bodies and talents from the entire human community? What are you trying to say?**

Judge: Let me explain what it means. I will use a simple metaphor and I will call it the “metaphor of the agricultural community”.

Let us assume that in a certain village there are several lots of land. The productivity of each lot of land is different, and differences will become clear to farmers when they start cultivating each lot. No matter how much you cultivate or fertilize a certain lot of land, only a small harvest can be expected. On the other hand, another lot of land will produce a fixed amount, no matter how much you neglect your work. If you work diligently on such a lot, you will be able to have a big harvest.

These lots of land are allotted to a number of farmers for a fixed duration of time, where they can produce the crop they choose.

Now, I would like to consider how we should decide on the tax rates. Assume that the administration of the village knows the amount of the harvest at the time of harvest in autumn, but does not know how much each individual farmer worked. Also, let us assume that they do not know which lot of land has a high productivity. Under these assumptions,

they can levy taxes only on the total produced amount of each farmer.

**Deputy Judge: That is an interesting example. In this case it would be logical to put a higher tax rate on the places with a high produced amount, because the farmers of these lots were, perhaps, given a better lot after all.**

**However, you should be careful about designing tax rates: You will kill the motivation for the farmers to work if the disposable after-tax income for the places with higher production is smaller than that with a lower production.**

Judge: These are truly words spoken by the Deputy Judge. This is the foundation of progressive taxation of the income tax system.

Our bodies and talents are borrowed from the community or the society. We, however, often have the illusion that these borrowed things really belong to ourselves.

**Deputy Judge: By this, perhaps, you mean that the application of retributivism cannot simply be extended in the positive direction to discuss income etc. Well then, what happens if you apply your idea to that poor person *B*?**

Judge: As we discussed before, from the point of deterrence of crimes, the idea of a correspondence between a crime and a punishment should be applied equally to each case. However, *B* can be saved with some other social system.

**Deputy Judge: To deter the farmers with land filled with stones from turning into crime, some compensation should be given to them. And such compensation should come from the farmers with a fertile lot of land.**

Judge: That is right. Let me apply this to the tax system reforms of the world of the living. The present Japanese government together with the Liberal-Democratic Party insists on lowering the marginal tax rate for the high income class, and even the main party in the opposition agrees with this. However, this is clearly a mistake. It is just fine that the marginal tax rate for a ridiculously high income class is nearly 100%. For these people it is only fair, and even is a duty, to pay a lot of taxes because talent and opportunities are borrowed from his community. However, as you pointed out, Sir Deputy Judge, we have to make sure that the reversal of the disposable income for high tax ranges and that of low tax ranges should not occur.

**Deputy Judge: You are talking of a tax system where the marginal tax income rate is getting close to 100%, but no reversal of disposable incomes occurs. Is such a tax system possible?**

Judge: Yes, it is mathematically possible. It would not be difficult to prove.

However, as I said before, the basis of this idea is that our bodies and talents are borrowed from the human community.

**Deputy Judge: Wait, the discussions with you are interesting but they are making me**

**forget the purpose of this trial. I should ask you how you connect the present discussions up to now with the movie director's case a month ago.**

Judge: Taking our discussions all into account, it must be clear that I was not mistaken in my judgment.

**Deputy Judge: What are you saying? You discussed so many problems that the main point is totally unclear. That is why I am asking you to explain!**

Judge: I see. I should explain my point. I made the judgment to send him back to his world, because I believe that he would be able to make an outstanding movie over there. I made my judgment not because of mitigating circumstances. When his movie will be completed, it will give courage for independence to many people, and will teach the spirit of self-sacrifice for society rather than self-protection. I have high expectations of him to contribute to the world of the living.

Next, I would like to consider my judgment from the viewpoint of the principle of legality of crime and judgment. Indeed, it contradicts the idea of a balance of a punishment and a committed crime. This is needed for the prevention and deterrence of crimes. In the case of the movie director, he will surely make an outstanding movie. Men like him are rare. Even if my judgment concerning this man would become known in his world, almost no one will be able to imitate him. Therefore, even from this point of view, I believe my judgment to be appropriate.

**Deputy Judge: I understand. Chairman, what shall we do?**

**Grand Judge: Well, the court will adjourn for some time. We will proceed in 30 minutes. Then I will pass judgment.**

Judge: Should I not defend Sancho?

**Grand Judge: The frog over there is not the problem. Who cares about frogs! The court is adjourned.**

#### **Left Chorus**

The excellent spirit of the law  
The spirit defines society to be  
Body, talent are borrowed from society  
That is how real equality is obtained

#### **Right Chorus**

Don't be fooled by his sweet talk  
The majesty of the law is here  
Punishment for a crime, reward for labor  
Equality only exists in textbooks

[The audience joins in]

**Left Chorus**

**The excellent spirit of the law  
The spirit defines society to be  
Body, talent are borrowed from society  
That is how real equality is obtained**

**Right Chorus**

**Don't be fooled by his sweet talk  
The majesty of the law is here  
Punishment for crime, reward for labor  
Equality only exists in textbooks**

Grand Judge: Deputy Judge, what are you planning to do? We will not be able to punish that Judge.

Deputy Judge: Well, it was worth listening to his opinion. I think it is enough to lower his position as a judge by a level or two and to send him back to Acheron Bay.

Grand Judge: Other Judges, what do you think about this?

Judge C: Well, a crime is a crime and the punishment for his crime corresponds to the suspension of him from office for 50 years. I think we should give this punishment to him.

Judge B: I agree.

Judge A: There is no way we can avoid this punishment.

Grand Judge: Deputy Judge, what do you think?

Deputy Judge: I'm against. We would waste his talent as a judge for 50 years.

By the way, if this man were to be suspended from office for 50 years, then one of us will have to become judge at the Court of Acheron Bay. Are you willing to go there?

Judge C: I have been in office here only for a short time. I am afraid I have to say that my experiences are not enough at all to deal properly with the job at the Court of Acheron Bay. Simply my experiences are not enough, and obviously it is not a problem of my talent.

Judge B: I am very busy with lecturing at the judiciary training school. Going to the Court of Acheron Bay is impossible.

Judge A: I am, more or less, in the same situation.

Grand Judge: Then what should we do?

Judge A: Well, it might be a good idea to follow the suggestion by the Deputy Judge.

Judge B: That is better than doing nothing.

Judge C: If everyone agrees, it must be the best way. I will follow that suggestion.

Grand Judge: What judges you are! Does no one here have the spirit of self-sacrifice and go to Acheron Bay? If I were you, I would sacrifice myself to go there, but unfortunately, you know I'm responsible for the entire Grand Court of Heaven.

Deputy Judge: Well then, I guess we will follow my suggestion.

Grand Judge: The greatest authority of the Grand Court of Heaven will lose prestige over this.



I am disgusted with such a judgment. Deputy Judge, you will read it. Understood?  
Deputy Judge: Understood. I will prepare the ruling.

Left Chorus	Right Chorus
No one wants to go Acheron Bay	You are an important person for Acheron Bay
Acheron Bay needs someone	We trust you there for another 100 years.
Someone else but me should go	Judge at Acheron Bay is a very important task
I'm supposed to make career here	Acheron Bay needs outstanding talent

**Grand Judge: The verdict has been made. The Deputy Judge will read the ruling.**

**Deputy Judge: Shinnosuke Oguri, Judge of Acheron Bay, I will now read the ruling concerning your deviation from the provisions.**

**Ruling: The Judge of Acheron Bay failed to pass the correct punishment for a movie director and sent him back to the world of the living. The items of the breached legal provisions were presented in Judge C's report. It is clear these provisions were breached. However, the judgment as such was to improve society and came from the heart of the Judge of Acheron Bay to care for society. Also, we have judged that his perception of the director's actions from now on is correct. Accordingly, following the tradition of mitigating circumstances at the Grand Court of Heaven, we have ruled that the punishment is greatly reduced.**

**The punishment for the Judge of Acheron Bay is as follows: He will be degraded from his present judicial rank, class 2 level 3, to class 2 level 4.**

**As for Sancho, the ferryman, who helped the movie director flee, it has become clear that he merely followed orders from the Judge of Acheron Bay. Therefore, we have judged that there is more than plenty of room for mitigating circumstances and that this time there will be no punishment.**

**This will be all.**

Left Chorus	Right Chorus
Thankful mitigating circumstances	The judgment follows the past 6000 years
The Grand Court of Heaven is merciful	Neither thought nor reality change
The tradition will go on	Neither ideals nor practices change
The authority of the Grand Court continues	Future talent is raised successfully
Heaven is peaceful as usual	Unchanged for 6000 years
Boredom covers the Grand Court	The ideal and reality are in perfect harmony

Tradition is so boring  
Grand Court looking down upon heaven

Tradition will continue  
Talent protecting tradition flocks together

Salamander: Sir, you were magnificent. I have never seen or heard such an amazing case. The audience became very, very excited.

Frog: Sir Judge, me really wants to thank you. Me is so obliged to you.

Judge: Thank you. To be honest, I was quite worried how this would end. I can't imagine what would have happened if the Deputy Judge had not been present. If he had not been around, I would be suspended from office for 50 years without any defense.

Frog: But if that were the case, someone of that bunch would become judge at the Court of Acheron Bay, and that would be so bad. If one of those fools became judge, a riot would happen in Bigot Island or in the other world.

Judge: You are right. It could be difficult to put down a riot on Bigot Island or the other world. We have to keep that in mind too.

That Deputy Judge still has a term of 70 years. Sometime I need to talk to him about the possibilities of riots.

Salamander: Look down there. The waiting house for the ferry has come into view. Not far more now.

**Left Chorus**

The ship rides on the clouds, trusting the wind  
Let's go slowly, on a fresh wind  
No need for endurance anymore  
Slowly, slowly, the ferry from Heaven

**Right Chorus**

Not far more, Acheron Bay we long for  
Your boat trusts the waves  
The waves make me comfortably seasick  
Enjoy the nice seasickness