

Annual Conference on Technical Assistance in the Legal Field (25 June 2022)

Technical Assistance in the Legal Field and Juridical Science

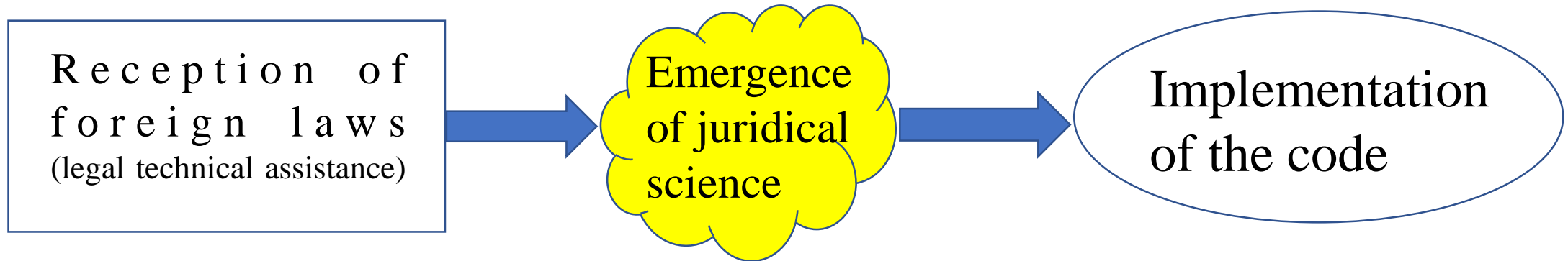
UCHIDA Takashi

University Professor, Waseda University
Professor Emeritus, the University of Tokyo

1. Difficulty of legal technical assistance— Necessity of juridical science

* UCHIDA Takashi

Emergence of Juridical Science: What Significance do “Laws” Have in Modern Japan?
(Chikumashobo Ltd., 2018)



2. What is juridical science?

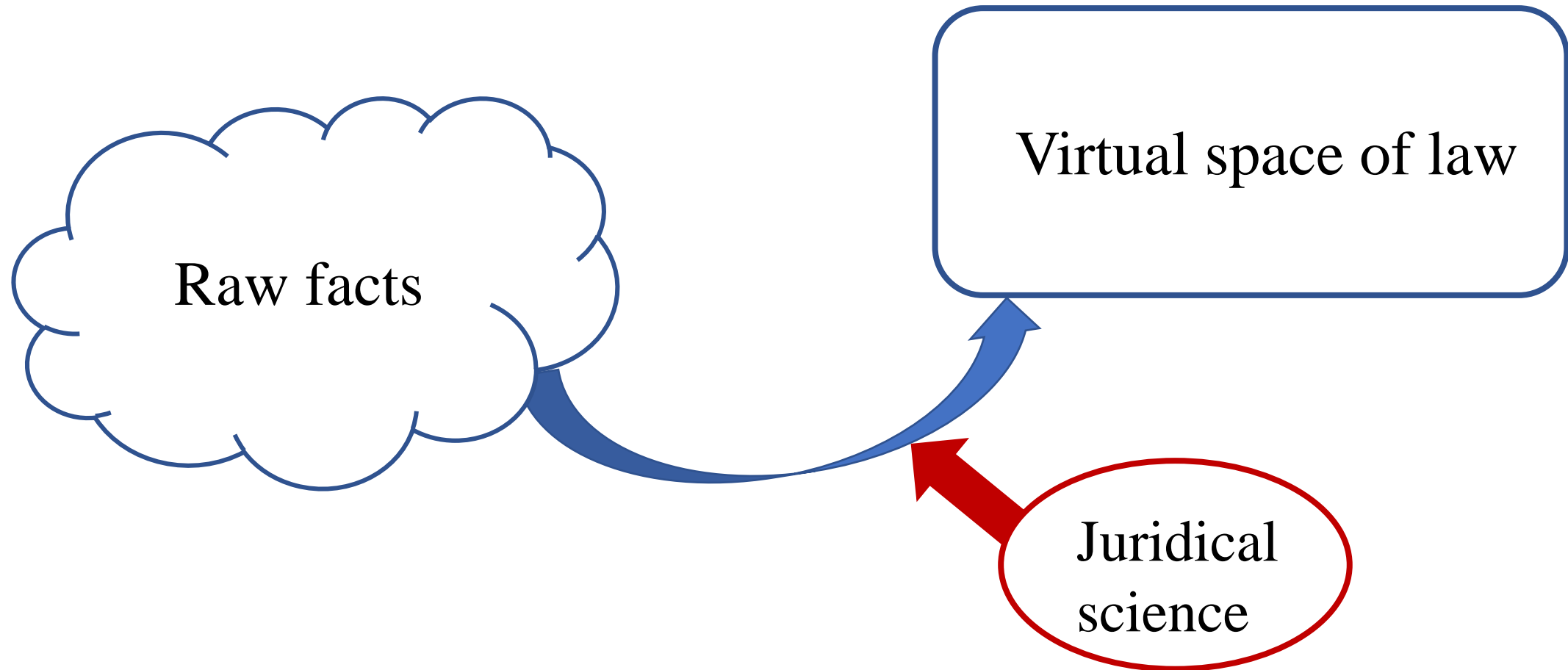
2-1 Juridical science as a language

“Figuratively speaking, juridical science is like a language. Learning juridical science is akin to studying a new foreign language.”

2-2 Legal words developed in ancient Rome

- Society “AISEIYOU-NO-MICHI” (NISHI Amane, TSUDA Mamichi)
 “JINNKAN-KOUSAI-NO-MICHI” (FUKUZAWA Yukichi)
- Rights “KENRI” (FUKUZAWA Yukichi)

3. Juridical science which “creates a case”

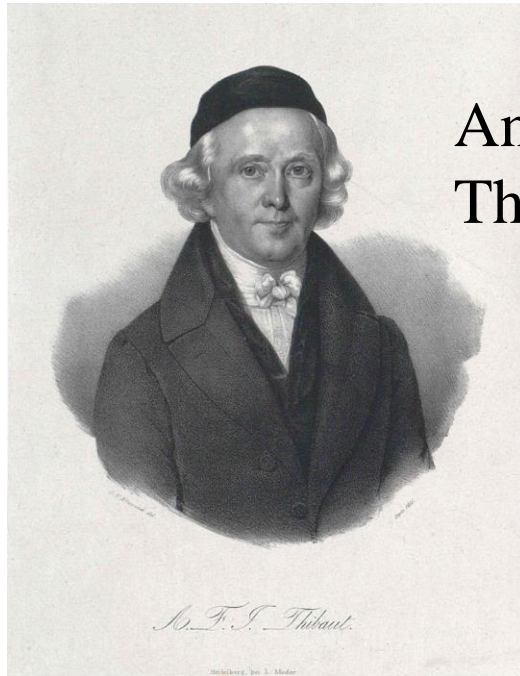


4. Legal development and juridical science

4-1 Legal development and juridical science in Japan

French civil code (1804) German civil code (1896)

Dispute over codes of law (Thibaut versus Savigny)



Anton Friedrich Justus
Thibaut (1772–1840)

Friedrich Carl von Savigny
(1779–1861)



4. Legal development and juridical science

4-2 Legal technical assistance by retained foreigners

Boissonade

Resided in Japan from 1873 to 1895

Drafted the Penal Code, Code of Criminal Procedure (Criminal Procedure Law), and Civil Code (former);
Provided advise on international law



Roesler

Resided in Japan from 1878 to 1893

Provided advise on drafting of the Constitution;
Drafted the Commercial Code (former)



4. Legal development and juridical science

4-2 Legal technical assistance by retained foreigners

Overseas dispatch of students by the Ministry of Education

From 1875 → Dispatched students began to return to Japan in 1880

HOZUMI Nobushige

1876–1881 Studied abroad in England and Germany

1881 Professor at Tokyo Imperial University and
head of the Faculty of Law

Around 1887 Started juridical science education in Japanese

“Outline of Juridical Science” (ADACHI Mineichiro’s notes):

the natural law jurisprudence , the historical law jurisprudence



4. Legal development and juridical science

4-3 Emergence of juridical science in Japan

1889 Constitution of the Empire of Japan was enacted

1890 Former Civil Code was enacted

1893 Code Research Committee was established

1896 First 3 volumes of the Meiji Civil Code were enacted

1898 Meiji Civil Code was enforced

1905 Secured Bond Trust Act, Railway Mortgage Act, Mining Mortgage Act and Factory Mortgage Act were enacted

1911 Daishin-in (Supreme Court) full bench rule on the right to rescind fraudulent acts
(Daishin-in ruling, 24 March 1911, Record of Civil Judgments 17-117)

Taisho era Legal theories were received



1889–1892 Dispute over codes of law in Japan

5. Factors in the emergence of juridical science

No. 1 Knowledge of the Chinese classics (Neo-Confucianism)

“It is like living two lives with one body, or having two bodies for one person.”

(An Outline of a Theory of Civilization,” FUKUZAWA Yukichi)

TSUDA Mamichi jurisprudence “SUJI-NO-MANABI”

No. 2 1,200 year-experience of implementing the law since receiving the ritsuryo system

Kujikata Osadamegaki, TOKUGAWA Yoshimune (1742)

A compilation of judgments by the magistrate’s office according to precedents

John Henry Wigmore (1863–1943; 1889–1892 Keio University)

“Case law was formed by professional judges only in England and Japan”

5. Factors in the emergence of juridical science

No. 3 A concentration of human resources

A standard for court practices

Reduction of old judges (around 1898)

Led by YOKOTA Kuniomi and others

6. Conclusion

- Implications for Japan's legal technical assistance