早稲田大学 大学院法学研究科

2021年度 修士課程入学試験問題（国内受験）

外国語科目 **英語**

外国人留学生

次の（1）～（3）のうち、いずれか２問を選び解答しなさい。

（1）

次の文章を読み、後の問いに日本語で答えなさい。

(1)What is the criminal law for? Most explanations nowadays focus exclusively on the activities of criminal offenders. The criminal law exists to deter or incapacitate potential criminal offenders, say, or to give actual criminal offenders their just deserts. In all this we seem to have lost sight of the origins of the criminal law as a response to the activities of *victims*, together with their families, associates, and supporters. The blood feud, the vendetta, the duel, the revenge, the lynching: for the elimination of these modes of retaliation, more than anything else, the criminal law as we know it today came into existence. It is important to bring this point back into focus, not least because one common assumption of contemporary writing about punishment, including criminal punishment, is that its justifiability is closely connected with the justifiability of our retaliating (tit-for-tat, or otherwise) against those who wrong us. The spirit of the criminal law is, on this assumption, fundamentally in continuity with the spirit of the vendetta. To my mind, however, the opposite relation holds with much greater(2) force. The justifiability of criminal punishment, and criminal law in general, is closely connected to the *un*justifiability of our retaliating against those who wrong us. That people are inclined to retaliate against those who wrong them, often with good excuse but rarely with adequate justification, creates a rational pressure for social practices which tend to take the heat out of the situation and remove some of the temptation to retaliate, eliminating in the process some of the basis for excusing those who do so. In the modern world, the criminal law has become the most ubiquitous, sophisticated, and influential repository of such practices. Indeed, it seems to me, this displacement function of the criminal law always was and remains today one of the central pillars of its justification.

問1　下線部(1)について、刑法の目的は今日どのように説明されることが多いのか、またその問題点はどこにあるのか、それぞれ簡潔にまとめて記しなさい。

問2　下線部(2)について、筆者は刑法の目的をどのように捉えているか、簡潔に記しなさい。

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（2）　次の文章を日本語に訳しなさい。

Following considerable debate, the practice of euthanasia was legalized in Belgium in 2002, thereby making Belgium one of the few places in the world where this practice is legal. The law that was passed in 2002 contained a number of caveats regarding the due care that has to be taken before a physician can perform euthanasia. One of the important criteria was that euthanasia could only apply to adult patients (over the age of eighteen) or to a rare category of so-called "emancipated minors." However, in early 2014, this law was amended and the age criterion was abandoned. The new amendment makes euthanasia legally possible for all minors who repeatedly and voluntarily request euthanasia and who are judged to possess "capacity of discernment" (regardless of their biological age) as well as fulfil all other criteria. This extension of the 2002 Euthanasia Act, which has generated much national and international debate, has been applauded by many and heavily criticized by others.

（3）　次の文章を日本語に訳しなさい。

As a rule, all states are under a mutual duty to respect one another's sovereignty, and are bound not to violate one another's independence. Exceptionally, however, a state may in certain circumstances violate another state's territory. One such exception occurs in those few cases in which intervention is permitted. The other principal exception was formerly regarded as covering violations for the purpose of self-preservation, it being widely maintained that every state had a fundamental right of self-preservation. But this alleged rights, if it ever existed, was often a barely colourable excuse for violations of another state's sovereignty. If every state really had a *right* of self-preservation, all the states would have the duty to admit, suffer, and endure every violation done to one another in self-preservation. The inviolability of a state's territory is now so firmly and peremptorily established by Article 2(4) of the Charter of the United Nations, and the prohibition of aggression and other unlawful uses of armed force is so fundamental a rule of international law, that self-preservation can no longer be invoked to justify such violations.