



Influence of Japanese Local Administrative Counselors on Ombudsman — in Commemoration of Establishment of Japanese Institute of Ombudsman Studies—

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1. Preface

It is on April 25, 2005 when Japanese Institute of Ombudsman Studies was inaugurated in Nihon University. It was the honor and pleasure of the author to be given a opportunity to insert the contents of his talks as a panelist, and to discuss it here in some amplification.

2. Characteristics of Japanese Local Administrative Counselors in comparison with foreign ombudsman

It is the social worker institution that was responsible for realization of Japanese Local Administrative Counselors. Regarding the start of such social workers, there is a complete survey records, that is "fifty-year history of social workers system in Osaka Region (issued in March,1969)," the first model being the Saisei (life-saving) Conference Institution established in Okayama prefecture. While it was intended to save the poor, one year later Osaka Regional Committee Institution was set up in 1918 following the rice disturbance, which was available in a wide range of applications to other fields in view of its main purpose of providing the citizens with the administrative information as required.

Later, Osaka Regional Committee Institution spread to the whole country, becoming the present unpaid social workers institution, which was a model for establishing local administrative counselors, family court mediators, human rights protecting counselors and many others in the volunteer form consisting of learned civilian persons.

What should be specially noted here is why we undoubtedly accept the fact that civilian people of no specialist or no expert are entrusted with the administrative missions simply based on their personality and personal grace. This came as a problem to us because I noticed that there was no comparable institution in the European countries. Admitting there are some similar but they are basically different in the philosophy.

The author then wishes to build a hypothesis that there is no such an institution in the European countries as evaluates the human personality and personal grace, and then to discuss the Citizens Advice Bureau in England as an example of verification.

3. Evaluation system of European countries based on knowledge or ability

It is common in Europe that knowledge or ability counts and has to be so verified for appointment of civil servants or assignment of professions. This system is called "Merit System," which Japan has

accepted today. In Japan, however, there are some institutions including the "seniority system" and "life-time employment" now coexisting with the said system, conflicting each other, though in the course of abolishment. The author, putting aside the evaluation of such confliction, feels there are some difference in religion hidden in the back.

According to Christianity, it is the truth that God preaches and we must follow the truth for us to obtain freedom. God also preaches "27. But I say unto you that hear, love your enemies, do good to them that hate you. 28. Bless them that curse you, pray for them that despitefully use you. 29. To him that smiteth thee on the one cheek offer also the other and from him that taketh away thy cloak withhold not thy coat also. 30. Give to every one that asketh thee: and of him that taketh away thy goods ask them not again." insisting that this has to be unconditionally followed because these are the truth.

However, we human beings, often finds it hard to recognize the truth because of our emotional move. By suppressing the emotion and allowing the reason to function, human beings may arrive at the truth. They are characterized by having reason and by this reason can recognize the truth. On the other hand, there is no reason in the animals. What there is to an animal, is merely the immediate desire and it therefore jumps at a food indiscriminately if found in the cage. A horse follows a carrot and keeps walking if hanging in front of its eye. However, while human beings are different from animals in that the former has a foreseeing ability by the reason functioning, they cannot recognize the truth itself. What they can do is merely to have an access to the truth. Therefore, God preaches that the truth has to be unconditionally followed as indicated by God in the bible.

Then the Christian thought what they or human beings should do to have an access to the truth and get freedom. Since individuals are of incomplete existence, they cannot come to the truth no matter how hard they try. This is an individual that cannot make a correct judgment due to his (her) emotion. In this case, some people of knowledge got together and discussed this matter to reach a conclusion that it is not until the immediate desires and emotion are suppressed that the fair judgment can be expected not taking any individual benefit into consideration. As a result, they thought of selecting wise people by votes, allowing them to enact laws and regulations and of following the laws in an attempt to get closer to the truth, thus getting themselves freedom. In this case freedom refers to self-determination according to one's long-range views for the future.

For instance, it may be difficult to demand a 20-year old young person with a wage of 150,000yen to pay 15,000 each month for pension premium by his or her self-determination. This is because it would be 45 years later that he or she gets benefit of the pension. Even if human being has reason, it would be unreasonable to ask all the young to act considering 45 years ahead. This is where difference lies from God. God is capable of determining the present situation in or based on the permanent view. To prove this, the young for instance may suffer from an unrequited love or failure in employment test, and this is because they are bound to seek only for immediate profits as animals are. Such

distress may have been even a good luck as considered in a long range of their whole lives, something that has to be welcome.

Such being the case, human beings cannot but determine things only by counting profit or loss in a very short range of view, so that the young won't realize the privilege until they are in their forties or fifties. However, it is too late for them to pay the pension premium in such age range. Some try to sue for the benefits but the world is not so easy to accept that. Then a law is enacted to force them the payment of the pension premium. The enforcement is intended to realize freedom, and by obeying the law, the youth may arrive at a determination by reason which would otherwise never be achieved by their own judgment, thus permitting them freedom.

The laws are made up essentially by parity of reasoning with the commandment in the Bible, so that human beings were supposed to follow them unconditionally. This is the idea of law-governing state or constitutional state.

Hence, it seemed just and fair to evaluate people by the degree of accession to the truth, namely by their ability, meaning that the evaluation by the personal grace and/or personality was an isolated, irrelevant idea to the Occident peoples. The Occidental laws provide in detail not only on the entity but also on the technical procedures, and this seems to be because the laws are not based on the confidence of human virtues of the people.

4. National Association of Citizens Advice Bureaux in England, most similar to the Japanese Local Administrative Counselors

In reality, there is an institute in the United Kingdom that is very similar to Local Administrative Counselors and it was established comparatively not quite long ago. But was in 1939 in order to meet with the national emergency needs including treatment of the refugees, search for missing soldiers, contacting war prisoners and payment of allowance and/or pension. This is somewhat related to the establishment of Osaka Regional Committee Institution as the model of Japanese Administrative Counselors as set off by the rise fuss in 1918.

According to the statistics as a result from the author's survey as entrusted by the Institute of Administrative Management about 20 years ago, there are a total of about 800 bureaux throughout the country, consisting of about 9000 volunteers engaged in the advice services, as financially supported by the subsidy mainly from the Commune.

This institute was earlier noticed also in Japan, therefore with the relevant surveys often conducted. It should be noted that such an advice-giving agencies are different from the Local Administrative Counselors in that there anyone may apply for the Counselors. The Citizens Advice Bureaux will train the volunteers professionally and in the fixed manner they will confer with the citizens based on their

professional knowledge. Furthermore, the Information Department of the Bureaus will collect any necessary information from the laws and ordinances or from the relevant magazines for the counselors to use in their advice services. They will ask the Information Department for support when they are in need of it. The Counselors are prohibited from taking a direct contact with the public offices, and have to go through the Information Officer to collect their necessary information. When compared with Local Administrative Counselors in Japan, it is found different in the following points:

1. Any adult may apply.
2. After professionally trained and probation of more than three months or minimum of 50 hours, the applicants may be allowed to be engaged in the service based on their professional qualification.
3. Financial support is made by the commune.
4. The Counselors are trained by profession and their service is selected by profession.

Judging from the above, it may be said that in Occident the functions as in the Japanese Local Administrative Counselors, are done not by making use of the personal grace itself but by professionally training volunteers and their professional knowledge and ability.

5. Japanese Local Administrative Counselors based on the personal grace

The Japanese Administrative Counselors are so appointed not because of their profession, but because of their recommendation by the commune supervisors based on the evaluations on the personality or personal grace, and are finally so appointed by the minister. For patronage in the Occident, there are two systems, the Merit System and Spoils System, with no office appointment based on the personality or personal grace. The Spoils System is intended to appoint those as a reward according to the extent of their contribution or distinguished services to election, hardly evaluating their personality or personal grace. Why is it that such system was set up only in Japan ?

The author believes that this is influenced by Buddhism. The fundamental thought is understood to mean to the effect that in this world there is nothing stable or unchangeable, nothing existing alone by itself, that is nothing exists there but depends upon others and that anything is comparative and correlative, hence the phenomenal world keeps changing and never holds. As a result, there would be a certain outcome over an individual or the society as caused directly by their past matters and indirectly by other influences, this then causing another result as influenced by other things. This is how the things change, appear and disappear. It preaches that we can realize our ideal only if we correctly know how we become unhappy and how we can get rid of such misfortune, acting in a complete compliance with the rules preached. While Christianity does not preach how our anxiety and agony are caused on us, Buddhism insists that they come according to the Engi (or omen) rules which

is as it preaches the truth universally applicable, and this is what the law is. In Buddhism, there is nothing of absolute existence of perpetual universality, but it preaches that any and all things related to our lives belong to the world or reality always in change, so that our happiness and unhappiness are the results of our behavior and fate, whether good or evil, and further that the casualty will not discontinue throughout the past, present and future.

Therefore, when we know the logic of omen, we would get rid of ignorance, and when we do the right things, the results would form a habit by which to create the character, attitude and act. These will be the second nature. This will be the capability based on the habitual power, where our characters are built up. Our existence and society in being are the result from our judgment, activities and efforts, so that all our behaviors become "causes" and "results," eventually prevailing over others. Anything good that you have done, will result in making not only others happy but also yourself that happy, though not generally known. Anything evil you have done will return to you and harm you. This is what casualty is. Namely, in the world people are combined together in solidarity through the casualty, relativity and mutual dependability, where unity is preached and self-centered acts are warned. Many Buddhism-related stories prove this.

For instance there is an old story, or fairy tale called "Shitakiri Suzume" or "A tongue-cut sparrow." It tells about an old couple. A Sparrow ate starch for washing and was cut its tongue by grandmother as penalty. A grandfather cured the sparrow. The sparrow invite him as a recognition of his kindness. On the parting proposed the sparrow to give him one of the footlockers. The grandfather was told to select one of two footlockers. He picked up a smaller one and then became happy while his old wife chose the larger one and was made unhappy by devil. The reason why the grandfather picked up the smaller one was because he intended to save the larger one for the poorer, which kindness was actually admired, this implying thought of solidarity that we human beings cannot live alone. They develop their characters and then become complete as a human being, or near to Buddha from Budhisattva. In the Christianity, a man can never be a God. In Buddhism, it preaches that a man can become a Buddha by developing their characters. This is where a fundamental difference lies from Christianity, and where there would be appearing a thought that personal grace is evaluated as itself. In a water-struggle for the rice paddy between villages, for instance, they sometimes appealed to force, and since the less armed asked for assistance from another village or hired some fighters, this causing a running battle. In Occident in this case they would have held a meeting attended by the parties of interest and solved the struggle possibly by applying the relevant law and/or regulation.

However, in Japan, there wasn't any thought that law would be observed to obtain freedom. The law is an order enacted by the ruler to maintain peace among the people. It was a law forced to the general people and it was the best not to have it for them. The law at the time, therefore, was an ethical order on which they depended, and was nothing but a standard by which to reach agreement. In Japan, for instance, there were some defects which need amendment found in the "17-article" Consti-

tutional Law, the oldest constitutional law in Japan enacted in 604 or in the Meiji-Constitutional Law enacted in 1889 or in the present Constitution, but no action was taken to amend them. This was because there was no need of it. To support the reason, there was no foundation in Japan on which to convince people to obey absolutely these laws and regulations as their standard in comparison with the truth or commandments in the Christianity. Such standards could be a people's moral strength, but was never considered to be the subject of absolute obedience.

It is not by unconditionally following the law but by discipline of personality that a man could become a buddha, and also it was thought that the person such as buddha, without bias and without favor, can make so fair and just a judgment that in the case stated above a person of character with personal grace was selected rather than appealing to law and entrusted with the arbitration of the struggle. This was how the disputes were solved in the age prior to introduction of the thought of constitutional state. This traditional trend is still available and applicable even after such thought of law-governing state was adopted, as a technique of avoiding any mechanical or non-flexible application of the law, thus making it possible to give proper determination. This is the world's famous Japanese administrative guidance.

Let me give you still another example, there is often wording in an agreement in Japan to the effect that when a dispute has arisen, the parties hereto will talk friendly to solve the problem. This seems to be based on the human reliance that leads to a rational resolution if they talk in faith and sincerity, and also on the national traits of detesting any dispute. Likewise, Japan's traditional seniority is not the system of evaluation based on the capability. Such a system is an institution of the evaluation method based on our experience that by aging human capability may deteriorate after a certain age, but the personality will improve. The emperor's system of only one ancestry that continues throughout the years, and the conservative power in its long continuance, seem to be attributable to national traits that Japanese people seek the order on which an ideal society is built up of people in their faith and dependence. The system in which to evaluate the personality as itself is now deteriorating due to the thought of Occidental free competition. To our surprise, however, this is now recovering in Occident, the detail of which will be discussed in the following.

6. Introduction of Ombudsman into the world of Christianity

The Ombudsman is said to originate back in 1700 when Karl XII of Sweden couldn't return home from Turkey during and because of Northern War, so he appointed his substitution in his country to stop its disorder, calling the substitution "ombudsman(representative)." This ombudsman held the rights of punishment and impeaching to maintain order among the public servants. When Sweden lost the war and the farmers and/or merchants came into power, they made use of Congress for a founda-

tion of their power established Ombudsman as appointed by the congress, separately from that to be appointed by the King, in order to control the mandarin concurrently composed of lords. This is the origin of what is generally referred to as Ombudsman today. This Ombudsman periodically visited the public offices for inspection against injustice. During their visits, people sometimes filed some complaints against them. Later the Ombudsman made it a rule to positively accept the complaints from general people in order to use them for the punishment and impeaching. This complaint acceptance had gradually become Ombudsman's main task, with the impeaching and punishment made subsidiary.

For the appointment qualification of Ombudsman in Sweden, they decided to consider not personal grace but the knowledge of law, and as this tendency spread throughout Occident, it became quite natural that the knowledge of law was the prerequisite to appointment of Ombudsman. This fact was easily understandable and this is because in Occident law is respected as it is analogy to commandment.

As the knowledge of the operation of the Ombudsman deepens in the advanced country at present, it gives an impression that such operation is becoming actually similar to Japanese Local Administrative Counselors. It is not clear, as not studied in verification, whether such similarity resulted from the said Administrative Counselors or it is caused naturally while meeting with the real demands. However, it may be something to watch in foreseeing what to become of Ombudsman.

7. Approach of Ombudsman to Local Administrative Counselors

A. Appointing qualification

In Occident, there is a system firmly established where a man is evaluated by the extent of his accession to the truth, namely by his knowledge and/or ability, and where personality itself is not evaluated. For appointing qualification of Ombudsman, when introduced into Occident, knowledge of law was prerequisite as said above. When, however, a mediator was appointed in France as an Ombudsman, they didn't set up the appointing qualification, which resulted in appearance of different people of different occupations including pharmacists and farm engineer as Ombudsman in France. There was only one law expert included in them. This caused to consider mainly the aspect of personality rather than professional expert capability, this now being more positively evaluated and of the Ombudsman in Sweden was the knowledge of law as the appointing qualifications also deprived. This is based somewhat on different idea or thought when seen from the Occidental tradition. It might have been based on the appointing prerequisites of the Local Administrative Counselors.

B. Law = liberation from the dogma of justice.

From the analogy between law and the commandment in Occident, the law once enacted, must absolutely be obeyed, and no public servants can take any acts violating the law, in which point the same is applied to Japan. Since, however, law is originally of universal and general characters, there may be some inconveniences if law is applied to a concrete case. So the laws were enacted in England and in France to permit Ombudsman to recommend some acts to take that violates the law when deemed so required to solve the complaint, though the public servants were not permitted to do so. This was justified because doing so meets with the justice in broader sense. In this justifying process, there is something that would lead to a belief that Japan's experience was used for reference that the flexibility was emphasized in making judgment rather than abided by law and that the autonomy (local government) has often been making the law hollow through administrative guidance as was necessary. In the Japanese administrative institution, it is the administrative guidance that drew most interest from among Occident and was widely introduced by many literatures. It is further because of the premise that there is no thought that law is mechanically applied to realizing justice but that there is a thought that the administrative tasks are to give proper judgment to meet with cases even without appealing to law.

C. National access

In the United Kingdom and France, there has been a system employed in which complaints are made to the member of parliament, who will then select them and remit it (them) to the Ombudsman, and this Ombudsman will reply to the member of parliament. This institution is what is called filter set up to suppress a large number of national complaints. There has been often necessity coming up of reforming the institution, but it remains unchanged so far today, as there has been no substitution found for it.

In France, however, there was established regional correspondents of the Mediator in the prefectures in 1978, which was very much favored by the nation. Since the demand for the correspondents exploded, delegations as local representatives was extended to the whole country in the year of 2000, resulting in setting up a total of 260 delegations throughout the country. Because of this, in the case where the complaints couldn't be taken care of at the prefectural level, it originally had to go through the member of parliament to bring the matter up to the Mediator. This is covered up by the prefectural delegations, which may even be exempted in an emergency. This prefectural delegations will be appointed by the mediator as recommended by the prefecture mayor, in the same manner as Japanese Local Administrative Counselors. This Reform was well accepted by the nation, and is likely not only to expand but also to develop into foreign countries. It is not certain where this idea come from, but it cannot be denied that the Japanese Local Administrative Counselors was a model.

8. Future development of Local Administrative Counselors

Japan may be proud of its Local Administrative Counselors used as a model for development of the Ombudsman, as above stated. It is not that there is no room of improvement in Japanese Local Administrative Counselors as compared with the Occidental Ombudsman, of which the author wishes to give some comments.

(1) Problem is with low publicity of Japanese Local Administrative Counselors. There cannot be no demand of counseling now in Japan when the suicide exceeds yearly 30,000. When a famous person is engaged with the work of Ombudsman, it may be effective in making the national complaints and sufferings known. Should there be a symbolic Ombudsman system established in which to evaluate not only the knowledge and ability but the personality itself with the present Local Administrative Counselors network maintained as it is, it may be effective in raising up its celebrity whether such system is needed or not.

(2) On the other hand, if a public servant gets in a trouble with a citizen in managing his complaint, it is usual in United Kingdom that the servant is admonished to apologize preferably with bouquet and/or with consolation money. As for the consolation money, sometimes the amount was a problem with the autonomy. The mission of the ombudsman was originally to use their authority in acting to maintain the discipline among the public servants. The complaint managing was nothing but a start of invocation of the authority. Therefore, it was completely free and up to the Ombudsman whether they accept the complaint or not. When, however, the complaint management became the main job to be handled, there was a problem as to how far they should meet with the private complaints that would not always be led to the public interest, referred to as improvement of administration. There might have been caused such admonishment as said above, probably because if the emotional complaints of the inhabitants were left untouched it would affect the evaluation of the ombudsman. It may be thought to be a negative effect as resulted from raising the celebrity of the authority of complaint management.

(3) The ombudsman is said to feature maintaining the outer appearance of neutrality as viewed from the people and independency from the politics. The Local Administrative Counselors is recommended by the superintendent and appointed by the minister. Since, however, the autonomy is regarded as a body equally independent as the country as far as the Constitution goes, the appointment by the minister is merely a ritual. Therefore, the Local Administrative Counselors may insist that they are neutral. In Japan, complaints accepted by the Counselors will go through the administrative evaluation offices to the regional complaint relief promotion conference for selection, some selected as considered necessary to be processed by the central authority sent to its promotion conference. This conference is held once in three to four months, so that it may be feared that while the complaints are passing the bureaucratic filters, daring reforms may be selected out, only the harmless cases remain-

ing to be processed.

(4) As is done in United Kingdom and France, when the law is a barrier to proper processing of the cases, it may be possible to exempt a particular case from the law, but with the present it may be hard to do so. In the law advancing countries as British and France, while there are some exceptional measures set up to secure a concrete propriety even violating the law, it seems to be a sarcastic phenomenon that in Japan where there is a tradition of having solved disputes based on just and flexible judgment in full consideration of individual personality, nothing can be done to meet with the rigid processing as caused contrarily by law.