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**HISTORY AND BACKGROUND OF THE
ADMINISTRATIVE COUNSELOR OF JAPAN**

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Presentation

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1 Ombudsman of the world

For the standards by which to classify the ombudsman of the world, it seems that there are two types, one based on the difference in the organization of the ombudsman system from the viewpoint of “Is it set up by the assembly?” “Who has the right of appointment?” and “How are the complaints to be handled?” and the other on a basis of its functions to be performed, such as “Are the ministers or judges included in the jurisdiction?” “Which is it intended for, the administrative control or protection of human rights?” and “how are the complaints made use of?” With an emphasis placed on such function, it may be classified to Swedish type, Danish type, British type, Spanish type, German type and Japanese type.

In the Swedish type, the executive power which decides the policies and the administrative power which executes the policies are systematically separated from each other. And as the ombudsman is intended only to watch the administrative power the executive power were to be outside the jurisdiction of the Ombudsman.

As the ombudsman was originally introduced by the Caps party, a minor citizen political party replacing the then power during the free age resulted from the defeat in the north war of 1700, thus intended to control the bureaucracy of hereditary peer so that its main purpose was to bring the public servant to account for its criminal responsibility for the administration of official duties.

Accordingly, the fact that there was a detailed criminal code of the public servants' responsibility and also that the judges were included in the relevant jurisdiction, made it hard for other countries to copy them as they were.

As for the **Danish type**, since the ombudsman was introduced in a form where ministers were included in the jurisdiction of the ombudsman in order to control the administrative power in the parliamentary system of government and due to the fact that the judges were excluded from the jurisdiction to protect the independency of judicature, it is important to note that this institution was then urged to quickly prevail among other countries based on the parliamentary system of government.

Regarding the **British type**, in consideration of the fact that the Danish type was unable to deal with the complaints from among ten millions of people, the ombudsman was introduced in a form that the complaints would be processed through the assembly members. Ever since, however, there were many kinds of ombudsman inaugurated such as autonomy ombudsman, and they were adopted on a basis of accepting the complaints directly from the people. Following the adoption of this institution by the United Kingdom, this institution was adopted by many countries that belong to the British federation and old colony. And it is important to note that this triggered the motive power for the popularization of Ombudsman throughout the world.

Spanish type refers to the ombudsman inaugurated as intended to play a role of protecting the human rights, this resulted from self-examination on the invasion of the human rights caused by the tyranny following the death of Generalissimo Franco in Spain where such tyranny had lasted long under his power, and this led to inauguration of ombudsman in order to cope with the invasion of human rights done by the military regime in the autocratic countries. As a result, ombudsman was triggered to be inaugurated under the name of citizen protecting officer in Russia, Eastern Europe, South America and Caribbean countries.

In respect to the **German type**, it is not simply that the range of function of petition committee of the assembly is magnified to make not only a decision on the petition between "to be adopted" or "not to be adopted" and the result is sent to the organs concerned, but it is that the content of the petition is studied based on the right to conduct investigation in relation to government and the results are used for recommendation to the relevant organs or to suggestion for appropriate legislation.

Japanese type refers to the Japanese administrative counselor, allowing the general citizens of no particular authority to deal with the people complaints in affiliation with the administrative organs. Though it is not originated from the ombudsman, it is handled as an organ academically in a similar way to the ombudsman. In the International Ombudsman Association, the administrative management agency, under which the administrative counselors fall, is registered as an official member and national organization of administrative counselors were recognized as an associate member.

Ombudsman of Japan

In Japan, there are a total of five kinds of institutions popularly called ombudsman.

(1) Administrative counselor

There are about 5,000 administrative counselors throughout the country including approximately 1,700 cities, towns and villages at the rate of one out of 50,000 people, and they are taking care of about 100,000 complaints throughout the country. These counselors are so appointed by the Minister of Public Management, Home Affairs, Posts and Telecommunications as recommended by the city mayors, town mayors or village chiefs, and they as volunteers will serve to guide the people regarding the administrative problems of the citizens. No qualification has been set up so that anyone may be appointed as such a counselor but mostly with willingness to look after others and with popularity among them. No special knowledge or qualification is required. They were recognized as the Japan's ombudsman by the International Ombudsman Institute. Discussed here is mainly this institution (1).

(2) Citizens ombudsman

In Japan, there is an institution, introduced to Japan as guided by the institution of America's tax payers' lawsuit, by which the residents can watch and account for the public funds spent within the district where they reside. By this institution, the residents may claim an audit of a particular public fund spent in the form of resident audit claim, and should there be anything found disagreeable or dissatisfied as a result of the auditing, they may request the correction or sue the alleged official in the form of resident lawsuit for compensation of the public funds illegally spent. Lawyers and licensed tax accountants as volunteers have frequently made a use of this institution to proceed against illegal use of the public funds within the cities, towns and villages. This was so sensationally reported by the press that whenever it comes to ombudsman, it is associated with this volunteers in Japan.

(3) Autonomy ombudsman

When the ombudsman system in the Western Europe became popular in Japan, some autonomies have come to establish various ombudsman systems. According to the Japanese law, it has been prohibited for the diet to establish its affiliated organ (the recently revised law permits an affiliated organ to be established), so that it is not the diet but the head that establishes it. One of them is intended to deal with the complaints on the whole administration. There are 26 of these organs now out of 1,700 autonomies.

Another one is designed to take care of only the special fields including welfare, women and children affairs. About 40 of them are present (as of 2010). As regarded from the whole autonomy, there is not much of it and therefore it is little known to the public.

(4) Special ombudsman as viewed from country level

In January 1982, as one of the means to promote the market freeing, Office of Trade and Investment Ombudsman (OTO) were established by the government in order to eliminate the trade friction through processing of the complaints regarding the import inspection procedures and also to correspond to the requests by the foreign countries on the market freeing problem requiring employment of the foreign check materials for the procedures of Japan's certification standards and the relevant inspections.

The secretary office is located within the Economic Planning Agency.(2)

(5) Administrative Observation Committee of House of Councilors

The Japanese diet is based on bicameral system, the House of Councilors and the House of Representatives. While both of them consist of the members representing whole nation, the House of Councilors performs only in subordination to the House of Representatives, this feared to cause a stronger opinion that the House of Councilors be abolished. Because of this, the House of Councilors established an administrative committee for administrative observation in Jan. 1998, imitating the ombudsman system thus realizing a system to handle the requests from the nation making the best use of the administrative investigation rights of the House of Councilors.

It is the German Federal Assembly Petition Committee that was then modeled, featuring classification of the requests from the nation into types for instance that requires reviewing of the policy or that needs further administrative studies, rather not deciding whether they are adopted or suspended, as has been done so far. However, when the House of Councilors established the administrative observation committee, the House of Representatives also reorganized "The Account Settlement Committee" to "The Account Settlement Administrative Observation Committee" to handle the complaints of nation on the administration. As a result, most of the complains from the nation were concentrated mostly to the House of Representatives, thus forcing "The Administrative Observation Committee of the House of Councilors" to be inactive. (3)

History of administrative counselor of Japan

The administrative counselor of Japan is the system where citizen volunteers of no special skill or knowledge will handle complaints of other people, and the question is how a volunteer having no special knowledge could handle others' complaints or worries particularly when such complaints or worries contain requests and suggestions on the administration, or personal troubles among their families and neighbor and many other problems.

It seems that a characteristic of administrative counselor of Japan consists in the mechanism or system in which to make use of not only his special knowledge but also others' knowledge and/or information through magnification of "mutual help". This characteristic is reflected upon the function of consultation.

First of all, the counselor is not an expert as a licensed tax accountant nor is he a lawyer, so that he doesn't have to make any field selection on consultation.

Such being the case, the administrative counselor accept when requested to counsel, even matters regarding neighborly or domestic troubles which has nothing to do with administrative concerns.

Therefore, it has now become a practice that the volunteers will not refuse such troubles just because they are not their assignments but they will be willing to give appropriate advices as much in detail as possible and to study whatever remains unknown for the resultant instructions.

When asked for advice, the volunteer counselors will do their best to deal with the complaints or troubles by contacting the relevant government organs, studying it in the library or by telephone or even on the site or asking the expert for their ideas.

To tell the truth, it is said that there are a total of 35 occupational jobs where volunteers of no special knowledge are engaged in counseling, some of which are as follows;

(1) Social worker

The first volunteer counselor in Japan was said to be a social worker. It first appeared in Okayama prefecture as a relief counsel institution established in 1918. This is said to have copied from the "Armenpflege" or "poverty relief" established in Elberfeld city of Germany. In the following year, a regional counselor institution was established in Osaka triggered the nationwide prevalence of this system.

It is said that the name "regional" was used because the word "relief" couldn't be used in consideration of the contents of the task involved in the system. The episode in foundation of this institution by the then Osaka mayor, is well known as follows.(4)

The Japan's business improved because of the first world war that broke out in 1914, which on the other hand resulted in a steep rise in commodity prices, and caused remarkable cleavage in society between the rich and the poor. The rice price also soared up by several times, causing a riot in 1918. Toward the end of the year, the mayor was in a barbershop, watching a poorly clad woman at the age of about 40 with two children sell the newspaper evening edition, exposed to the cold wind. The mayor had his men check her circumstances. The mayor thus came to know that her husband was sick in bed and they cannot pay the house rent and electric bill Although the rice prices were then lowered, they still couldn't buy it. The mayor knew that the welfare policy didn't reach those who were really in need of it so he realized that in order to save the poor, what's important was to make a complete survey as a prerequisite for the action and he then appointed some committee members to find out the procedures for the improvement of life status of the habitants.

This committee was what the present social worker is today, and its duty is to provide those habitants in need of livelihood protection with all and any information, advice and assistance for living and usage of welfare services, as entrusted by the Minister of Health, Labor and Welfare based on or according to the recommendations of the district social workers association. Using this as a model thereafter, there have been born a lot of volunteer counselors.

(2) Volunteer probation officer

For the juvenile delinquents under supervision, those under probation and those on parole from the reform school or prison to improve and rehabilitation, the officers will have them observe the necessary rules under their guidance and assistance so that they may live in the general society.

(3) Human rights protection committee members

They are civilian volunteers to be entrusted by the Minister of Justice will survey, act to enlighten and relieve the sufferers because of the human rights abuse including cruelty and discrimination.

(4) Peacemaker of family court

They are part time officials whose job is to survey, hear opinions, take evidences and make an interim measure for arbitration of family troubles and civil cases. They need no particular qualifications to be the officials.

3 Idea of Wa (“Peace and Harmony” or “Solidarity”) in Japan

An administrative counselor is not required to have any special knowledge. It is not, however, that he needs no ability at all whatsoever. Actually he needs some special knowledge or ability to collect necessary information and also appropriate communication skill with some experts to get what he needs from them. Above all, he must have a sense of responsibility for maintaining the local community in which to allow the people to maintain a system for their lives by aiding people in need. To that end, not prepossessed with an immediate profit and a transient emotion, he should be able to make a proper and rational judgment fully based on a long range of view. It is true that there are many volunteer institutions in operation now, and this may be attributable to existence of comparatively a large number of Japanese having this sense of value. Now, let's discuss where such a sense of value comes from. There are two points to think of.

(1) Natural disaster

There is one thing that can be thought of and it is the fact that Japan is a sort of a earthquake country, where large earthquakes and the resultant fire and Tsunami have so far occurred, statistically once in about 20 years, serious enough to make sufferers in the devastated area lose their houses and assets, this leaving only human relations that could be depended upon. It is only by accident that one encounters a disaster and this has long been said, and if it is true, then it would be nothing but just by an accident that you are saved and you have lost a lot, and this is where a sense of solidarity is thought to arise among those involved in the disasters.

(2) Idea of Wa (“Peace and Harmony” or “Solidarity”)

There is another thing to be reminded, and that is an idea of Wa (“peace and harmony.” or “solidarity”).

First of all, there is a proverb unique to Japan, saying “San-nin yoreba monjuno chie” in Japanese or “When three persons tax one's brain with one another for a solution, good ideas would arise as only God of wisdom could conceive”. This proverb is not seen nor is it heard in Western Europe. This proverb has drawn some attention in Germany and according to the book written by a German, when three German people are arguing, one who is talked down will finally start divinity dispute in order to justify his/her insistence (5) by his/her ideology.

To put this the other way around, in the paper written by a German there are whatever arguments may be needed to justify his/her theory or to rebut any and all objections that may be thought to arise, so that many of such papers are very persuasive.

Then arose the practice, various issues grown out of daily life to solve by talking. Here is a clear reason for the fact that there are so many volunteer councilor systems so far established in Japan. It is the existence of the traditional thought that it is always reasonable to settle any disputes by talking. This idea was first codified in the Constitution of Japan consisting of 17 articles issued in 604, in its Art.1. in which it is said that "Value Wa" (solidarity or cooperation), and try to adapt to community life, avoiding conflict. Men are motivated by self-interest. Few behave with fairness and objectivity. Hence, they disobey superiors and maintain feuds with neighbors. When men of high and low discuss matters cooperatively and constructively, things will proceed spontaneously by themselves to reason." (5)

It is about two centuries after the supremacy by the emperor was built that this constitution was promulgated as intended most likely to have the nation prove their allegiance to the emperor since the powerful family had come into existence to threaten the throne of the emperor. Therefore the contents of the constitution is mostly related to the intention of the Emperor to urge his officials to perform their official duties. The substantial content of the constitution may be similar to the present government official worker law. Today, it has become evident that the 17 articles of the constitution were drawn out on the base of the classical literatures of China, Korea and Indochina. However, there is no literature found so far, by which the idea of "Wa" was drawn out. Therefore this is supposed to have been based on or copied from the traditional convention.

The latest folklore studies show that it comes from the mechanism of mind determination on isolated islands. There are many isolated islands in Japan, and in this connection, even when a crime has happened on these isolated islands, there is no police authority that controls it and the criminal may not be exiled, so that the people on the island will have to live together with the criminal or other heretics if any. Therefore at that time all the island habitants including both the criminal and heretics got together and took a long talking to arrive at a settlement. This kind of talking and settlement are known to have remained up to now and are still applicable and function on these islands. The following refers to the recent survey, showing how the mind determination is made on the isolated island "Tsushima" located between Japan and Korea(7).

"All get together and listen to the group leader and then they talk to one another in each group and bring the conclusion to the group leader. If no agreement is reached, it is taken back to the original group to talk again, some people may get out of group talking to go home to do something needed. While on the other hand the group leader or the group representative may have to remain there to perform their listening and settling duties. This practice may last even for two days, and therefore there is no day and night for them." This practice has not started recently but some originates back to 200 years ago, according to the old record of a village. Even before this there must have been such an assembling practice.

According to a man older than 70, this was a usual practice in his childhood except that the lunches were brought to the assembling site from home to prevent them from going home for lunch, thus staying at the site even all night long and for a few consecutive days if needed only until the conclusion was reached.

Most of the talking was settled within three days at longest. In such a long talking, there was no forcing whatsoever in it. They talked and talked until a conclusion was reached, Therefore, once they all agreed to the conclusion, it had to be observed by all. There is no theory in their long talking but they gave as many experienced practices as possible regarding the matter in question. It seems that if such talking is based on the theories piled up one on another, such a talking may become out of hand. It was much easier to give one's experiences and how he has been in his livelihood and for others to understand. If there was an opposition in the talking, give a certain period of cooling time before doing anything. Soon when there were some agreeable opinions coming out, they were left as they were until they started to discuss it.

Finally they brought the matter up to the highest-ranking person for his final determination, there would be no one that feels awkward with others even when they still met almost every day in the small village. Furthermore it is understood that there was what they call authority in the meeting.

The thought of "Wa" shown in the 17-Article constitution seems to be the then practices into which the above-said mind determination system of ancient times was codified. In fact, in this constitution there is another article stating the thought of "Wa" which appears in the last Article 17. It says "It is in general not good to decide matters by one's own discretion. It should be examined closely with many people. Trivial matters are not important and need not be discussed with many people. When you decide important matters independently, you must be vigilant, that your decision is not faulty; if you consult with many people, then all perspectives of the matter will become clear and the truth will be perceived."

The fact that there are two articles out of seventeen and that these two articles are related to detailed explanation of the Wa, that such thought had been the idea to some extent generally acceptable to the concerning society. The word "Wa" was well established in Japan ever since as the most favorite saying. Further, this word "Wa" has been most often used in the names of Japanese eras such as "wado" or "showa," according to a certain survey. This word Wa is also used very often in the recent citizens' Charter in the cities, towns or villages, and for instance, this word "Wa" is used in the text of Charter of Yamato Takada city of Nara prefecture.

This tradition of settling troubles by talking is intended to make decisions fully based on agreement of the whole, so that it is not based on the majority decision but it is to make a decision in consideration of minority at least in principle. From this standpoint of view, this tradition is considered to be the prerequisite to the administrative counselor institution intended to respect everyone's position and opinion.

The traditional way of settling the matters by talking is supposed to be supported through the negotiation system by many volunteers in Japan. This thought of “Wa” when compared with dispute settlement practiced in the Western Europe becomes obvious in its identity.

Observance of standards in Western Europe

In Western Europe, they believe that there being a dispute in the society is itself an evidence that every one is acting freely and there being no dispute happening means the freedom is suppressed by some authority and they highly appreciate the fact that there is a dispute rather than denying it. They also believe it is even desirable to realize better conditions to be obtained by settling a dispute in a constructive way than the previous conditions where conflicts were not given rise. Therefore, it is believed that the rules for constructive settlement of disputes, such as a trial, have been developed.

When, in Western Europe, people have decided the settling procedure of whatever dispute occurred then, because it was thought that, if there were no such settling procedure, some decision to solve conflicts would be made against their long-ranged interest because of their emotion then, immediate profit and power relationship. According to the Bible, it was interpreted that the human being made to resemble the God shape could control his emotion and could make decisions as closely to those of God as ever, based on the phase or outlook of eternity owing to its reason. Then there, in Western Europe, they decided a standard, so abstract that it wouldn't be influenced by the immediate profit or emotion, by which a decision was esteemed as a reasonable one.

In the Bible, there are a number of lessons for good living including one to the effect that “Do to others what you want them to do to you” and another “Work for others before you use them.” However, there is no explanation shown “why” in the Bible. Written in the Bible is only “What I say is true and this truth will allow you freedom”. Then, many scholars in Western Europe investigated whether what is written in the Bible is true or not, and as a result there were born such learning fields as divinity and philosophy and they proved that they were true and also that by keeping to them freedom could be acquired.

In order that freedom might be enlarged, people in Western Europe chose wise people who could talk in an attempt to make rules to be obeyed by the people for attaining freedom, and this resulted in the law, and in order to make sure that laws are strictly observed, the thought arose to establish an institution, the court. Accordingly, a solution based on the law was the natural prerequisite to settle any dispute including complaints.

The standard, named law, was considered to be the subject of the absolute obedience in analogy with the Bible. It is, as a result, natural that the people's consciousness towards the law was different from that of such a country where the law was adopted as means of government or order following the Meiji era as Japan.

Consequently, at the court in America, for instance, the law is strictly applied and accordingly “the juror at the court will first of all state whether the accused is guilty or not guilty and if he is found guilty, the law is hence applied quite automatically, so that the accused who has committed plural crimes may be sentenced to 256 years in prison.(8)

But on the other hand, there is such a decision in Germany, where it is the prerequisite that the law should be strictly applied. For instance, there has been a decision brought in by the federal constitutional court that a person who carries a little amount of hemp for the purpose of his own use, though the Narcotic Control Law is constitutional, but shall not be prosecuted, and this is because the evil caused by aspiration of a little amount of the hemp is scientifically found to be less than that of cigarette or alcohol. (9).

Here the constitutional court decided that the law should not be applied to this case.

On the other hand, in Japan the regulations are carried out provided that the laws are applied but not so strictly. It is usual that automobiles are running at more than 100km per hour on the expressway where its speed limit is 80km per hour and it is up to the police whether they catch them because of their speeding. In the case of Ohm Shinri-kyo, or Ohm supreme truth cult (this cult brought rebellion against the government and killed people with poisonous gas), a person who just was found with the wanted suspect in his car, was accused for criminal concealment, while on the other hand a person who distributed fliers was accused for trespassing. These applications of the laws impress abuse of laws.

However, setting up the speed limit of 80km per hour on the expressway where more than 100km speed limit is practically allowed is supposed to give a free hand that is feared to restrict human rights more than necessary to the executive powers. And this measure is considered in Germany to violate the principle of rule of law by excessive restriction of freedom. In Western Europe it is thought that giving freehand to the executive powers is a violation of the basic law that stipulates that human dignity is of supreme value. Accordingly, only when a law is enacted that is feared to lead to abuse, enactment of law itself is supposed to be a violation of the Constitution. With such a thought of the law being a prerequisite, observance of the law is indispensable for dealing with complaints.

6 Absolutism of talking to agreement

The thought of regarding the result of talking to agreement of more value than the standards such as laws, is named “absolutism of talking”by Shichihei Yamamoto (Izaya Pendasan). According to him, there is “a law outside the law”in Japan. He then explains that the law is applicable so far as the human nature is not ignored, hence stating as follows, (10) “That the Japanese have never revised their Constitution in any age or era. What’s interesting is the Taiho Code (as it was the constitution of about 1000 years ago), and when the time stream has changed to an extent where the Code could not control,

though it was easy to revise it to meet with the new situation, but instead, without revising constitution they set up “officials outside the Code” and Keibiishi police in those days was established, was one of them. It is interesting to note that the Japanese self-defense force is also this “officials outside the Code” as there is no article in the present Japanese constitution that is related to the force, so that the force may be said to be “outside the Constitution” rather than “violation of the Constitution.” For the general people, they should be worried about the existence of such a defense force, or armed mass, not stated in the Constitution, and they should appeal to the government to get them placed “under control”, but it was not done.

In Japan, however, they had no experience until the Edo era (until about 150 years ago) where better results could be obtained by the determination based on the laws than by the determination based on the talking to agreement, so that the laws were nothing but either a means of getting an appropriate result or a tool for ruling.

Man complied with the laws when application of the laws is forced or by compliance appropriate results are obtained, but otherwise it was morally difficult to justify the observance of the laws in those days.

The existence of administrative counselor in Japan may lead to rationalization on the ground over here. In Western Europe, even for settlement of disputes, observance of laws was the prerequisite, it was impossible to advise and take any measures against the laws. Therefore, when it was necessary to take a measure based on the laws and when the laws are not appropriate, it was approved that a law expert was appointed with the rights to advise such a matter and also to take a measure against the laws in order to settle the disputes, and this is what the ombudsman is now.

Regarding the application of the law in Japan except for the criminal case, however, even a administrative counselor with no special knowledge of ordinance seems to have been providing life guidance and new information of the world with the people, not based on the laws, thus dealing with their complaints. Therefore, it can be said that the administrative counselors have, through settling the people’s complaints, been maintaining links in the whole personality with the people, thus establishing the ground on which to realize and develop the local solidarity. In this connection, there seems to have been something that exceeded the function of the ombudsman.

Actually, the measure for settling things strictly by talking but not by the standard, has been officially evaluated recently as the core part of the political unification of the people in the Pacific Ocean Melanesia, Polynesia and Micronesia, and it is now called the Pacific Way.

7. Pacific Way

Truly, such a method of settling disputes by talking has recently become officially appreciated as a core part of the pacific way intended for political unification of nations among the Pacific Ocean’s Melanesian countries, Polynesian countries and Micronesian countries.

This word Pacific Way was first used in the speech that the prime minister of Fiji, Kamisese Mara, gave at the United Nations in connection with its transition to independence from the colony of the Pacific countries, and this word Pacific Way has been often used later to the effect that the identity of the Pacific countries becomes concrete. The prime minister's speech is as follows:

"Many speakers have committed on our peaceful transition to independence, and we ourselves are deeply grateful for our good fortune in this way. But this is nothing new in the Pacific. Similar calm and orderly moves to independence have taken place in Western Samoa, in the Cook Islands, in Naruru, and in Tonga. We like to think that this is the Pacific Way, both geographically and ideologically".(11)

The Pacific Way will function to make the people conscious more as being the state habitants than those of village and island, thus the Pacific Way taken up as a symbol for achievement of the nation's unification that will lead to development of consciousness being a nation. Externally, it functions as a district unification symbol to carry out strongly the district solidarity of island countries in opposition to the advanced countries centering upon the old suzerain. (12)

While on the other hand, there is another meaning in this word. and it is the "Pacific-like Way" This is a very quiet way, featuring the compromise based on agreement by all with no one alienated. According to professor Higashi, it is understood that the mind determination in the council system by this "Pacific-like Way" is fully based on full agreement by all members, and talking continuously and gently until such an agreement is reached. Management of such council system seems to be partly similar to the way of the classic parliamentary system of Europe, when it is based on the "discussion and persuasion system", but what answers to the philosophy of the Pacific Way is to allow the agenda to proceed quietly rather than an intense controversy to happen. In this sense, an insistent persuasion is continued without debating, and compromise is sought for until full agreement by all is obtained at least nominally. (13)

This is where we can see a method common to the Japan's administrative counselors.

8 Restorative justice

Recently in the field of the criminal policies, the sanction measures by invocation of the punishment rights to the criminals do not necessarily function as it should for prevention of the second offense and for rehabilitation. On the contrary, in correspondence to the high rate of the second offense, there is much interest caused among the criminal policy scholars in the countermeasures to the crimes in the developing countries, and there is a sign seen that it has gradually been prevailing among the advanced countries as the restorative justice.

This is intended to have the criminal or the assailant share the damages, pains and fears that the person thus attacked suffer so that the assailants may positively be free from the second offense and urged to rehabilitate themselves.

The counter-measures to the crimes like these is now ready to be adopted into the punishment system of the advanced countries, using as a model the method where the crime is processed by apologetic compensation and labour services in the developing countries where the civil case and criminal case are not clearly separated.

In concrete, Norway started the criminal mediation committee in addition to the civil mediation committee (or a mechanism where any lawsuit cannot be made unless it goes through the civil mediation) thus allowing the assailant or the criminal and the person attacked to meet in the presence of the peacemaker and has adopted the system in which when as a result the assailant regrets having done it and shows it in a concrete manner and the person attacked accepts it, there will be no prosecution involved in the case. This system was first employed to deal with the juvenile delinquency but is now used for regular criminal cases since its effectiveness was proved for prevention of the second offense and rehabilitation.

It is not clear whether this has come from the method of settling the dispute by the agricultural race different from the hunting race or from mind determination system of the island country based on an unanimous verdict. It is not that the punishment is imposed as unified according to the strict standards, but it is just that the settlement is made by talking. This talking method for settlement is common to the Japan's administrative counselor. (14)

10 Closing

Here I made the supposition that the roots of the system of administrative counselors might lie in the decision-making system developed on the isolated islands. Japan itself is composed of many islands and there are also many isolated islands in Japan. As on the isolated islands man cannot abandon the offender from the island, man is forced to consider means to coexist with the offender on the same island. That will be the common basis of the idea of Pacific Way, Restorative Justice and the system of administrative counselor in which ordinary people will help the other ordinary people.

Administrative counselor is the system which developed from another root as Ombudsman, but both systems pursue the same object, to help people from impersonal governance which emanates from the flood of laws and formal and impersonal application of laws. In this respect I consider that the Ombudsman and the system of administrative counselors could discuss on the same ground.

Note

- (1) The following is the literature regarding Japans administrative counseling. “Why an Ombudsman may not be introduced in Japan,” Prof. Tsuyoshi Hiramatsu, International Ombudsman Institute, Occasional Paper #43, May 1, 1988, “Reflection on the concepts of Japanese Law and its applications to settling disputes in Local govern-ments,” Journal of Behavioral and Social Science Vol. 1997 No.2 pp.35-43**
- (2) Tsuyoshi Hiramatsu, “Market Opening Ombudsman Institution” in “Institution and Human Rights in the modern state” published by Horitsu Bunka-sha, Kyoto, pp.403-420**
- (3) Tsuyoshi Hiramatsu, “Ombudsman and Observation Committee of the House of Councilors” Jurist No. 1177, Tokyo, May, 2000 pp.158-162**
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