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SUMMARY OF ARTICLES

Uchimura Kanzo's View of History (2)

Hiroaki MATSUZAWA

Professor of Intellectual History
Faculty of Law
Hokkaido University

In the years from early 1890s to 1910, Uchimura wrote books and essays on history and biographies. Many other writings, especially Bible exegeses and comments on current events, were also deeply related to these historical works.

Amang motivations of his studies in history, important ones were his consciousness of his time —e. g. the consciousness of national crises of his country in the world politics and that of "la fin-de-siècle" of the nineteenth century world—and his religious experiences as one of the first-fruits of "Heathen converts" and as an outsider to his country and to her church.

Uchimura described human history in term of an oecumenical history steadily progressing toward the perfection. Every nation had joined in world history with its own specific value, and was to contribute to the mankind at the determined place and time, and further once and for all. Thus all nations had made something like an historical organism. Through rises and falls of nations leading the world history, the human civilization

had been borne from one nation to another at each stage. Through theses successions, a line of human civilization had progressed and was to progress more and more toward its perfection.

Uchimura's view of progressive oecumenical history was related to his belief in Providence. So, in Uchimura's discourses on history we can find various ideas similar to "cairos" and "aeon" in Paul's theology and those similar to Hegel's "World history is world judgement" and "Cunning of reason."

It seemed to me that on this point Uchimura somewhat identified the secular human history (Weltgeschichte) with the history of salvation (Heilsgeschichte), and that this caused some difficulties and ambiguities in Uchimura's thought on history.

A Legal Theory on Publication of Books

Masao HANDA

Associate Professor of Law
Hokkai Gakuen University

The Author has recently done a research on the actual condition of publishing agreements about 280 companies in Japan.

On the basis of the result, he points out legal problems relating to publication and attempts to propose the establishment of legal principles which resolve these problems.

An Introduction to the Study of State Administrative Procedure Act in the United States of America (I)

Nobuo KUMAMOTO

Lecturer of Administrative Law
Faculty of Law
Hokkai Gakuen University

1. An introduction to the study of state administrative procedure acts in the United States of America is presented in this short article. It consists of three parts. Firstly, an outline of the history of state administrative procedure acts, that include the Model State Administrative Procedue Act of 1946 and its Revised Act of 1961 (Chap. I). Secondly, the translation into Japanese of the entire articles of the Revised State Administrative Procedure Act of 1961 and the comparision thereof with the Federal Administrative Act and the Model Administrative Procedure Act (Chap. II). Thirdly, an interpretation of the Model State Administrative Procedure Act of 1946 (Chap. II). This introduction is based on the work, *State Administrative Law* in two volumes, by Professor Frank E. Cooper

of the University of Michigan, in which an analysis is made in the light of the provisions of the Revised Model State Administrative Procedure Act, as drafted and promulgated by the Commissioners on Uniform State Laws in 1961.

One of the reasons why the present writer intends to introduce the state administrative procedure act is the lack in this country of a study on problems of administrative procedures of the United States at a state level, in spite of some studies made at a federal level. The circumstances in which an attempt is being made in Japan to draft a general act for administrative procedure has also stimulated the writer to undertake this work. ※

2. Needless to say, we cannot consider state procedure problems without thinking of the federal ones. After four months of adopting the Federal Administrative Procedure Act of 1946, the Model State Administrative Procedure Act was approved by the National Conference of Commissioners. Since the adoption of the original Model Act, further consideration has been given the subject of administrative procedure at both federal and state levels; the President called a conference concerning adjudication and rule-making proceedings in the federal agencies (April, 1953); Congress established so-called the "Second Hoover Commission," the Task Force of which proposed legislation for complete recodification of federal procedures together with some 74 recommendations (July, 1953); the American Bar Association established a Special Committee to undertake a re-examination of the Federal Administrative Procedure Act

※ The third Special Committee of the Extra-Ordinary Investigation Commission on Administration was asked to make a report on administrative procedure problems in Japan. The Second Section of the Committee was organized on the 23rd of May in 1952 for making investigation into the present system and its practice concerning administrative procedure to bring them under deliberation for promoting services of administration to the public. The Second Section of the Committee drew up "a draft of Administrative Procedure Act", from August to November in 1953, after some processes, as

in the light of the recommendations of the Task Force of the Hoover Commission (May, 1955); many of the changes in the Revised Model State Administrative Procedure Act were derived from the result the Committee presented.

3. Comparing provisions of the Revised State Administrative Procedure Act with provisions of the Federal Administrative Procedure Act and of the Model State Administrative Procedure Act of 1946, we will be able to find out some special features in details of the Revised Act, which come from certain basic principles of common sense, justice and fairness that can and should prevail universally in the administrative process;

1) "Ratemaking" is included in the process of the "contested cases" (R. A. Sec. I. (2)), not in the process of the "rule-making" as in the Federal Act (F. A. Sec. 2, (c)).

2) Section 1 of the Revised Act contains more precise articles than of the original Model Act, in the manner of the provisions of the Federal Act.

3) Instead of stating and publishing descriptions, statements, substantive rules in the Federal Register, agency rule, order or decision is not valid or effective until it has been made available for public inspection (R. A. Sec. 3, (b)). The Federal Act (F. A. Sec. 3 (b)) does not require public inspection as a condition

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follows : (1) washing out all provisions in force on administrative procedure (227 statutes, 481 provisions, 764 kinds of desposition) ; (2) making some reports on administrative hearing procedure depending upon answers sent by public corporations ; (3) collecting opinioaires from members of Japan Public Law Association, the courts and the bar associations.

The Draft Administrative Procedure Act by the Committee has 168 provisions, which consist of General Provisions (Chap. I), Procedures (Chap. II), Procedures for Disposition of Grievances (Chap. III). The Article 1 of the Draft specifies its aim :

"This statute aims to provide common matters concerning administrative decision of an agency and other actions to execute public officers, and to seek reasonable operation of administration, together with intending protection for rights and interests of the public, with providing fair and prompt procedure."

of giving effectiveness of rule, order, or decision, in contradiction to the provisions of the Model Act (M. A. Sec. 3) which requires filing in a permanent register in the office of the Secretary of State, and the provision stated above of the Revised Act (R. A. Sec. 2, (b)).

4) Opportunity for oral hearing in case of substantive rules must be granted, if requested, in the Revised Act (R. A. Sec. 3, (a) 2), instead of setting forth the problem under the agency's discre tistonary power (F. A. Sec. 4, (b)).

5) Concise statements of the principal reasons for and against adoption of a rule must be stated, if requested, befere or after adoption of the rule. (R. A. Sec. 3 (a) (2));

6) It takes 20 days after filing for a rule to be effective in the Revised Act (R. A. Sec. 4, (2)), instead of being effective on the filing date (M. A. Sec. 3).

7) All effective rules adopted by each agency must be published, supplemented, and revised (R. A. Sec. 5 (a)), instead of publication under the Federal Register Act of 1935 for rules of the Federal Agencies.

8) Validity or applicability of rules may be determined in an action for declaratory judgment (R. A. Sec. 7), instead of no provisions except Sec. 10 of Judicial Review of the Federal Act.

9) The rules of evidence of (non-jury) civil cases, evidence admitted by reasonably prudent men in the conduct of their affairs, documentary evidence in the form of copies or excerpts, and judicially cognizable facts shall or may be followed (R. A. Sec. 10), in addition to exclusion of irrelevant evidence and right of cross-examination (F. A. Sec. 7 (c)); putting stress on the evaluation of evidence in the Revised Act, in contrast to the manner of evidence of the Federal Act.

10) According to the provisions of Sec. 12 of the Revised Act, (1) a final decision or order which shall be in writing or stated in the record is adverse to a party, (2) such a decision or order

shall be noticed to a party, though findings of fact and conclusions to be stated in the record under the Federal Act (F. A. Sec. 8, (d)).

11) Ex Parte discussion of the law clause was provided (R. A. Sec. 13).

12) Provisions on "licenses" in the Revised Act (R. A. Sec. 14) provide more precise procedure than in the Federal Act (F. A. Sec. 9 (b)).

13) The substantial evidence rule (R. A. Sec. 15 (g)) has been replaced by the clearly erroneous rule (M. A. Sec. 12 (7)) following the recommendations of the Hoover Commission Task Force.

14) "Clearly unwarranted exercise of discretion" has been specifically equated to "arbitrary action" (R. A. Sec. 15 (g) (6)).

15) Contents of the Revised Act (R. A. Sec. 15) is provided on the concreat process of judicial review, contrast to the provisions for right of review, form and venue of action, reviewable acts, etc. (F. A. Sec. 10).

16) It provides on Appeals in the Rivised Act (R. A. Sec. 16), instead of no articles in the Federal Act.

4. Thinking of each article of the Rivised Act, I will be able to point out at least some distinguished provisions as stated above, though I have to pick up all provisions changed and revised from the original Model Act, and differed from the Federal Act. So I can conclude briefly that these distinguished provisions of the Rivised Act stated above required more clearly fairness, justice and common sense to the agencies and its officers in the contested cases than in the original Model Act and the Federal Act.

Das Recht auf Kriegsdienstverweigerung aus den Gewissensgründen

——Zur Theorie und Praxis in Art. 4 Abs. 3 Bonner Grundgesetz——(1)

Norikatsu SASAGAWA

Assistent,
Juristische Fakultät,
Hokkaido-Universität

Inhalt

A) 1. Erste Fälle von Kriegsdienstverweigerung werden schon aus der Zeit von Urchristen berichtet. Danach treten Fälle von ihr und zugleich deren Regelungen von den Staaten im 16. -18. Jahrhunderte für den Sekten wie Mennoniten und Quäkern hervor. In der Gegenwart erkennen etwa 20 Staaten die Kriegsdienstverweigerer in einem gewissen Maße an.

2. Das Wesen der Kriegsdienstverweigerung ist "Pflichtenkollision" oder "conflict of loyalties" ; die Kollision zwischen der vom Staate geforderten Wehrpflicht und der vom Gewissen geforderten individuellen Pflicht ; dieser zu gehorchen, nicht jener.

3. In den positivesrechtlichen Systeme für die Kriegsdienstverweigerer befinden sich zwei Typen ; der amerikanische Typus (z. B., Art. 456 (j) Universal Military Training And Service Act in U. S. A. und Art. 1 loi n° 63-1255 du 21 décembre 1963 relative à certaines modalités d'accomplissment des obligations imposées par la loi sur le recrutementin Frankreich)

und der englische Typus (z. B., Art.17 Abs. 1 National Service Act in England und Art. 4 Abs. 3 Bonner GG). Art. 25 Wehrpflichtgesetz, das Einführungsgesetz nach Art. 4 Abs. 3 G G, gehört aber nicht zu diesem Typus.

B) 1. 1) Die Bundesregierung benutzt auch Art. 4 Abs. 3 GG, die Wiederaufrüstung zu tun.

2) Bei der Verwirklickung zum Art. 4 Abs. 3 GG handelt es sich darum, ob das Recht zur Kriegsdienstverweigerung im Ausnahmeverhältnis zu der Wehrpflicht stehe. Meine Meinung; das Recht kommt nicht unmittelbar aus der Gewissensfreiheit und das Recht stellt die Erweiterung der Gewissensfreiheit dar, i. e., das Recht bedeutet das Ausnahmerecht.

3) Man muß achtgeben auf die Behauptung der Bundesregierung, daß Ausnahmen strikt auszulegen seien. Es ist mir die Frage, ob diese Behauptung für die Bestimmung des Art. 4 Abs. 3 GG gelte und ob die Bestimmung so einschränkend auszulegen sei ; es gibt keinen, den Inhalt des Art. 4 Abs. 3 Satz 1 GG einschränkend auszulegenden Grund und das Einführungsgesetz nach Art. 4 Abs. 3 Satz 2 GG kann den Inhalt des Art. 4 Abs. 3 Satz 1 GG auch nicht einschränken.

(Fortsetzung auf dem nächsten Heft)