

**November 2, 2012, 14:30-16:30**

**Venue: CIGS Meeting Room 3**

**CIGS Seminar :**

**"Rethinking of Compliance: Do Legal Institutions  
Require Virtuous Practitioners?"**

**by Professor Kenneth Winston**

**< Discussion after His Speech >**

***Jun Kurihara (Moderator)***

Thank you very much indeed, Professor Winston, for your splendid presentation. I am really impressed by your insightful remarks. Taking full advantage of moderatorship let me present my comment first.

Professor Emeritus Ikujiro Nonaka, one of the prominent scholars in Japan and one of the advisors of the Canon Institute for Global Studies, proposes in his article in the last year's May issue of Harvard Business Review six elements of leaders rather than your five of convener, catalyst, monitor, funder, or deliberator.

Professor Nonaka said that a wise leader should be a philosopher who grabs the essence. He should be a master craftsman who understands the key elements. A wise leader should be an idealist who can work for the betterment of a company or a society, a politician who can spur people to action, a novelist who can use a metaphor as a story, and a teacher with a good virtue.

I respectfully responded to him that it is really good but it is too much of a burden and cumbersome for a leader. So it would be very difficult to find such a type of ideal leader, and it would be inappropriate to put everything on the shoulder of one leader. It should be much simpler like Confucius who said that being virtuous is everything.

### ***Professor Winston***

One of the characteristics of a leader is being a realist. Professor Nonaka also needs to be a realist in thinking about what burden to place on a leader. It looks like this is quite a lot to expect of a leader, particularly being a novelist. It sounds wonderful if we have a talent for metaphor, and storytelling can be very important as a leader. But being a wise philosopher is much too much.

I was trained as a philosopher, but that is a burden I have been trying to overcome ever since because philosophers are really not very good at thinking practically, whether about leadership or anything else. Philosophy gets in the way. Aside from Confucius, the only philosopher that I use in my ethics course is Machiavelli, who was a realist. He spoke very practically. In fact, he wrote a handbook which had to make sense to rulers. We could read Confucius in the same way. If we get beyond that with philosophy, we are in trouble.

### ***Question 1:***

I would like to ask a simple question. You talked about the essential ingredients of leaders, and Professor Nonaka talked about requirements for leaders. I would like to know how you come to that conclusion.

From the view point of an economist like me, those propositions must be contestable, meaning we have to test them. In order to come to the proposition that leaders are conveners or catalysts, etc., how many leaders do you choose from history? I am asking a simple question about methodology of your school of thought.

### ***Professor Winston***

That is a very good question, but it may not be answerable in terms that would satisfy you. Suppose I had done a study of a variety of leaders and had a set of categories like catalyst and convener and there were other categories for other types of leadership. I can classify all these different leaders that I studied into these different categories. What might I conclude from that? I am not going to know which category to favor unless I know which leaders are the better leaders. But what criteria am I using for that? Presumably, those criteria are not empirical unless we are implicitly assuming that a leader is to be preferred simply if the entity being led perseveres. If the entity survives and the leader was successful regardless of anything else, that is a pretty thin

notion of success. But as soon as we try to enrich the notion of who we are looking for as the model leaders, we are getting back to some normative question.

My approach is totally different and it does not come from that empirical base, that is, trying to draw on a literature of how leadership has been thought about by a lot of countries and its people over a long period of time.

It is the Confucian method. That is, what we learn from wise people. We try to build on a succession of thoughts, and maybe there is a very similar implicit test, namely, this body of thought would not have lasted so long unless there was something to it. Maybe I am assuming that, but normative questions cannot be decided empirically. So we need some other methodology.

### ***Jun Kurihara***

I just want to call your attention to the reference I made in my slide to Nobel Laureate for economics Daniel Kahneman who touches upon such issues of problem of representative in the book entitled "*Judgment under Uncertainty: Heuristics and Biases.*" The argument only comes through the normative issues, and there are a lot of biases because of the deliberate intention of different people who argue about the jurisdiction.

### ***Question 2:***

Because of my specialty in law as well as US-Japan relationship, I am very interested in your paper "*On the Ethics of Exporting Ethics: The Right to Silence in Japan and the United States.*"

In your presentation, you have mentioned that institutional design for sustaining the moral relationship between leaders and followers is very important, but probably such institutional design might be different depending on the country or circumstances. In your paper what do you find is different between Japan and United States in introducing the ethics, especially the right to silence?

### ***Professor Winston***

I wrote this article a number of years ago trying to compare Japan and the United States on this issue of the right to silence. When a person is arrested as

a suspect in a criminal case, both the US and Japanese constitutions provide that the suspect does not have to speak or answer questions to the police or a prosecutor until, for example, a lawyer arrives. That is the right to silence.

What I was interested in when I wrote this article was the fact that the Japanese constitution was largely written by the occupational forces in the late 1940s, and many provisions were just borrowed from the US constitution.

From what I have read about what happened in Japan, it did not seem that the right to silence was the practice at all. Here is the provision in the Japanese constitution, but the practice was very different. It seemed that in many cases the police asked people to speak and the people did not recognize the right to silence. And more importantly suspects felt obliged to speak. The suspects themselves did not think that the right to silence was appropriate as they felt that they were accountable. There was something that had happened and they were involved in some way, and they felt that they had to give an explanation for whatever they did whether or not they may have been guilty of the crime. The practice looked very different from what is written in the Japanese constitution.

My question to myself as an outsider (because I am an American) was how I could understand Japanese practice. I have lived with the US constitution, so can I understand a country where the practice is very different, in fact the opposite of what I am familiar with?

I realized that I could understand it in a certain context, the context of college tribunals. In the US, especially in small colleges, when a student violates a rule, the student is expected to speak. There is an expectation that the student will provide an explanation of what happened.

So, there is a context in the US which looks like the Japanese practice. The basic difference is that in Japan it applies to the whole country. Nonetheless the idea is the same. My purpose was to notice the difference with Japan, but then to say I have the resources to understand that because that happens in the United States in a certain context. So that was really the point of the article.

***Question 3:***

I am very much interested to know what you could tell us about one of your favorite items of Harry Truman and the use of atomic bombs. I went to college in the United States and also served in Washington, so I know that in the US there are two major thinking; one is that the US had no choice but use the atomic bombs to end the war quickly; and a smaller portion of the US people think that it was wrong to use the atomic bombs.

In Japan, it is one of the very rare issues where Japanese people have the consensus. Japanese are very much against the use of atomic bombs in Hiroshima or Nagasaki in a manner in which it was done sacrificing a large number of civilians. This may come from the difference in the positions of the country which was bombed and the country which used the atomic bombs. I am interested to know your view on this issue.

***Professor Winston***

I will try to be brief as we could go on about this issue for a long time. It is quite fascinating and complicated. This time in Tokyo I have been seeing a number of my Japanese students I taught in Harvard, and they have told me that one case that they really remember from my course is the case on Truman's decision to use the atomic bombs. That somehow had a lasting impact on them.

I have been trying to write on this subject and do a lot of research, and try to come to terms with it. In the United States, there has been a shift of view. If we went back to the late 1940s, 1950s, or even 1960s, there was virtually a consensus that Truman was right in using the bombs. Since then, there has been more of a shift in opinion, which in the United States appears more divided. There are people who defend it, but there are quite a number of people, including some prominent political philosophers, who criticize the decision.

It is hard to judge to what extent a retrospective view is at work there. This is one of the difficulties in making a decision. Do we take Truman's perspective as we look at things in his terms and feel the urgency of the decision as he felt it? Or, do we look back now in a calmer state of mind to make a decision knowing more than Truman knew and to make a judgment on that basis?

In my own work, I decided to look at it from Truman's point of view. That makes it more controversial because he clearly thought it was the right thing to do.

Did he have any real basis for thinking in that way? As I said it is complicated. One of the things we need to think about is whether there were international standards in place against targeting civilian populations. That is a crucial question. In looking at the history from the point of view of 1945, I find it very difficult to make the argument that there was an international standard recognized in place that would have told Truman that it was the wrong thing to do.

What had happened during the war was that there was quite a lot of bombing of civilian populations on both sides, which even preceded the war, including bombing by Japan in China and other places. It seems hard for Japan to make the argument that the US violated an international standard when Japan itself was involved in doing it. There is a question about moral standing to make a complaint about what Truman did. That seems to me really important.

The other thing I have been trying to wrestle with is what exactly Truman's responsibility to Americans was. This is in regard to the question about ending the war; what were his options for ending the terrible burden on Americans. Here I emphasize his role as Commander in Chief of the military. The President in the United States is the Commander in Chief. These are his soldiers. He has responsibility for their lives. If he can save their lives, and if there is an imperative to act, he had to do it. He did not have that relationship with the Japanese. The weight of that suggests the need to act, to use the bombs.

Those are the kinds of things I have been trying to think about. Sometimes I am sorry I got into this because it is so complicated. But these are some of the key issues.

### ***Jun Kurihara***

I just want to make a brief comment in relation to the Hiroshima bombing. During my stay at Harvard, the number of Chinese students outnumbered that of Japan. So, the main topics are not the Hiroshima bombing but Nanking

Bombing or Shanghai Bombing. Last time I visited Berlin, Germany, the Japanese students were outnumbered by Chinese at the University of Berlin. So, rather than talking about the Dresden Bombing, they were talking about the Nanking Massacre. We should pay attention to what is being discussed on the international scene on the topics of moral standards, which may be very different from the Japanese perspective.

***Question 4-1:***

My question is simple; how do we educate people about leadership in terms of ethics because I have read your paper in March 2008 on what makes ethics practical. You explained that ethical education is important, especially for leaders. How do we practice the ethical education?

***Professor Winston***

I mentioned at the end of my talk that I prefer the case method of teaching at the Kennedy School. In the course of a semester, my students will discuss about 24 cases. For example, they will discuss Surgeon General Koop, Truman, Chief Minister Naidu, and others. Each class session is devoted to a very detailed discussion about those cases. As I suggested the result of the classes over a semester is to begin to develop the skills, particularly the skills of analysis.

When we are in a difficult ethical conflict, we need to be able to figure out what the key issues are and what we need to think about? We need to think about who our allies are within an organization, who can help us both in thinking about the issues and in helping us implement the solution if we come up with some solution. We need to think organizationally about ethics issues, not just intellectually.

My hope is that with the semester's worth of those kinds of discussions there will be some skill set that they will come away with.

I am sure you all know that we have to keep practicing in order to maintain skill sets. The question is what happens after their graduation; what happens when they get back to the workplace; and are they going to lose all these skills that I was trying to inculcate in them? The answer is, yes, they are going to lose them unless something is done to continue the educational process.

What I would like to see is organizations that will commit themselves to regular discussion of cases. The cases can be those which are within the organization or outside the organization. But in either way there will be materials that will be useful in maintaining the skills of analysis, organizational understanding and so on that are crucial to maintaining the ethical sense. That is what I would like to see happen. It does not happen very often, but I do not think that the solution is a terribly difficult one. I think organizations could do it.

***Question 4-2:***

I would like to know how to hold our resilience of mental correctness. We have analytical capability, opinions, viewpoints, etc. which are a skill set. We can train a skill set in a class, but as you have suggested, the ambience or tendency can affect us to make decisions on ethical issues like the case of Truman's decision. People are taking into account the entire ambience. It is very harsh to make a human error being affected by the ambience. Thus, I understand that it is important to continue to practice to brush up the skill set, but it is more important for us to obtain the mental resilience of ethical correctness. How can we do that?

***Professor Winston***

I do not think there is a perfect solution to that. But if we go back to the list of positions that I identified within legal institutions; legislators, prosecutors, lawyers, and so on. In each of those cases I suggest a redesign of institutions that would help people to be ethical. None of those can guarantee and we may still have problems. But we can think about the way that institutions are structured that will at least mitigate the chances and will reduce the likelihood that the institutions themselves might be fostering unethical behavior. We may have to pay attention to the institutional context. That is quite crucial as well.

***Jun Kurihara***

I would like to thank Professor Winston again for his very insightful views. Thank you very much indeed.