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Edwin Chadwick and *Sanitary Report*: Mainly on His Design about Central-Local Relations

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Abstract: This paper discusses Edwin Chadwick's ideas of public health through examining his report of 1842, *Report of the Sanitary Condition of the Labouring Population of Great Britain*. It particularly focuses on Chadwick's design about central-local relations.

It firstly demonstrates that Chadwick restricted targets of public interference to residential matters to make it compatible with labour market and self-help. Secondly, He modelled a local authority, so called the Local Board of Health, on the remedies of common law such as nuisance and the court leet. It was because he thought that it would be possible to constitute the authority capable of working salaried professions and executing sanitary improvements by rousing sense of community among inhabitants. Thirdly, Chadwick designed the General Board of Health as a central authority and gave it the power to direct the local authorities to execute the improvements and to resolve the troubles caused there. Fourthly, central and local lawyers united the both boards and enabled them to make judgements independently from the court proceedings. The sanitary affairs thus came to be handled at the discretion of the both General and Local Boards. Chadwick called it a 'quasi judicial' system, and it was a structure peculiar to England unlike the continental bureaucratic control that Robert von Mohl showed as *Polizei*.

Keywords：Sanitation, England, the Nineteenth Century, Poor Law, Common Law, Enclosure, Centralisation

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This paper discusses Edwin Chadwick's ideas of public health through examining his famous report of 1842, *Report of the Sanitary Condition of the Labouring Population of Great Britain*（hereafter referred to as *Sanitary Report*）[1]. It particularly focuses on Chadwick's design about central-local relations.

I have hitherto studied the international sanitary conferences in the nineteenth century and found that it was difficult to reach international agreements on preventive measures of epidemic diseases[2]. The cause of it was in diversity of the administrative structures among nation states rather than scientific problems such as medicine, and it hence seems indispensable to make comparative studies of such structures.

In this paper, I will take up the case of England at the beginning of the studies. England is well known as a country in which local autonomy is firmly kept, but it is also the country where the central authorities for public health, that is, the General Board of Health（1848）and the Local Government Board（1871）were founded earlier than anywhere else. Some countries modelled their central authorities on them. It was Edwin Chadwick who elaborated the General Board of Health which was the first central authority for sanitation in the world, and I will take him up as a pioneer and discuss his ideas on central-local relations.

Chadwick is well known as a person who took the lead in amending poor law in 1834 and enacting Public Health Act in 1848. He also took part in improving constabulary force in those days, and it is possible to say that he was one of advocates of English administrative reform during the 1830s and the early 1850s. We have many studies on him such as biographical works by Finer, Lewis and others[3]. I, nevertheless, will review the person for the reasons as follows.

Firstly, scholars are likely to regard Chadwick's design on public health as having been deadlocked because the General Board of Health elaborated by him was abolished in 1858

1　Edwin Chadwick, *Report on the Sanitary Condition of the Labouring Population of Great Britain*, 1842,（M. W. Flinn（ed.）, Edinburgh: Edinburgh University Press, 1965）. In this paper, I quote *Sanitary Report* from the version edited by Flinn and page numbers of quoted passages show those of this edition as a rule. Flinn's edition, however, does not include appendixes and I will quote them from another edition if necessary and point it out each time.

2　Koji Ozaki, 'International Sanitary Congress and Modern Japan,' *Nihonshi Kenkyu* [*Journal of Japanese History*], 439（Kyoto: Japanese Society for Historical Studies, 1999）, 120－144.

3　S. E. Finer, *The Life and Times of Sir Edwin Chadwick*（London: Methuen, 1952）, R. A. Lewis, *Edwin Chadwick and the Public Health Movement, 1832－1854*（London: Longmans, Green & Co., 1952）, and Flinn, 'Introduction'（Flinn, op. cit.）. Hodgkinson's study is known as one of representative works which regarded Chadwick reform as the origin of British welfare state in which the National Health Service was established. See Ruth. G. Hodgkinson, *The Origins of the National Health Service: the Medical Services of the New Poor Law, 1834－1871*（California: University of California Press, 1967）.

and he himself fell from power in the central government simultaneously although he had played an active part until the early 1850s.[4] We, however, should not miss that his design noticing the central institution was accepted by other countries. Germany, for example, modelled the Imperial Board of Health [*Kaiserliches Gesundheitsamt*] on the English system in 1876. Karl Finkelnburg, who was one of advocates of constructing the board in Germany, described the General Board of Health as the origin of central institutions with much space in his book.[5] Chadwick's ideas reached Japan through the medium of Germany.[6]

It seems plausible that his design about the central-local relations lived on even in the English administrative structure thereafter. Speaking conclusions in advance, it is noteworthy that his design and the structure affected by it reflected something like a peculiarity in the socio-political culture of England. The peculiarity was that other countries could by no means introduce into themselves even if they could build similar central institutions in appearance. We, therefore, might well get clues for the comparative studies on the administrative structures if we should be able to clarify what sort of thing the peculiarity meant. It is the first reason for taking up Edwin Chadwick.

Secondly, I have to discuss the issues in the historiography as well. Recent studies, in which Christopher Hamlin and Anthony Brundage are representative figures, have a tendency to criticise Finer and Lewis for having made the studies into seeking the origin of British welfare state in Chadwick's sanitary reform.[7] Hamlin exposed Chadwick's arbitrariness in the sanitary reform in particular; that is, Chadwick excluded physicians such as Thomas Southwood Smith from the pivot of the reform because it seemed to him that their 'moral economy' was an obstruction to the industrialism he pursued.[8] The recent studies on poor law, in which Bernard Harris is one of representative figures, discuss that the private sectors including philanthropy had played a critical role in poor relief even after

4 Finer, *op. cit.*, 453－474.
5 K. M. Finkelnburg, *Die öffentliche Gesundheitspflege Englands* [*the Public Health of England*] (Bonn, 1874), 6－17.
6 See Koji Ozaki, 'Goto Shinpei's Ideas on Sanitation and a State,' *Historia*, 153 (Osaka: Osaka Historical Association, 1996), 199－218.
7 Christopher Hamlin, *Public health and Social Justice in the Age of Chadwick: Britain, 1800－1854* (Cambridge: Cambridge University Press, 1998), and Anthony Brundage, *England's "Prussian Minister:" Edwin Chadwick and the Politics of Government Growth, 1832－1854*, (Pennsylvania State University Press, 1988).
8 Hamlin, *op. cit.*

the enactment of Poor Law Amendment Act of 1834.[9] Public intervention through the law and the administration, contrary to it, is regarded as relative. These works now require us to reconsider the historiography in which Chadwick's achievements have been esteemed.

Yet it seems to me that a lot of issues still remain not being discussed in spite of the research trend. Firstly, it is true that the studies investigating the role of private sector show an alternative such as 'interactions with both the state and voluntary agencies'[10] to us who are likely to take for granted that the public sector should promote social welfare. We, however, would have to look back and reconsider the ideas of advocates who had promoted the government-led reform all the more if we should evaluate the private sector in this way. We must clarify under what kind of tense relationship with the philanthropies the ideas of public intervention would have emerged. This paper will discuss it through examining the relationship with custom of the communities in particular.

Secondly, the previous works dealing with Chadwick's *Sanitary Report* seem to leave some issues behind. Hamlin as well as Finer investigated in detail the points that Chadwick considered civil engineers important,[11] but they did not so much notice what kind of administrative structure Chadwick had planned in order to achieve his sanitary reform nevertheless. Chadwick mentioned legacies in the English constitutional history such as nuisance and the court leet in common law by taking much space of *Sanitary Report*,[12] but Hamlin simply concluded that the legacies were no more than 'archaic institutions,' and by no means examined the reasons why Chadwick took up such things.[13]

Public Health cannot be performed without interfering in individual bodies, or cannot help interfering in private properties if the improvements of water-supply, sewers, streets and buildings should be necessary; therefore, it inevitably needs some administrative structures to carry out, authorise and justify the actions. Chadwick started his career as a lawyer and was a person taking part in the project to compile *The Constitutional Code* as one of assistants of Jeremy Bentham. He wrote to the Prime Minister, John Russell, during the deliberation of Public Health Bill at Parliament in 1848, and said on the central authority that, 'But I proposed that the [central] committee should be a quasi judicial

9 Bernard Harris, *The Origins of the British Welfare State: Society, State, and Social Welfare in England and Wales, 1800－1945*（Basingstoke: Palgrave Macmillan, 2004）, 40－58; 59－75.
10 *Ibid.*, 7.
11 Finer, *op. cit.*, Hamlin, *op. cit.*
12 *Sanitary Report*, 348－354.
13 Hamlin, *op. cit.*, 179－181, and Finer, *op. cit.*, 215.

committee, for their functions would in fact be judicial.'[14] The words, 'quasi judicial,' seemed to play an important role in Chadwick's design, and we shall see later what they meant. However that may be, Chadwick was a person who had a great interest in regulating the administrative structure, and it is impossible for him to be indifferent to the justification and authorisation of use of power. Many studies, nevertheless, have not noticed it so far, and it hence has been left as a blank in the historiography. This paper dares to rethink Chadwick's *Sanitary Report* in spite of a lot of previous works, and it is because I am aiming to fill the blank. I anticipate that, if we should learn the relationship between the justification of use of power and the tradition of the English constitutional history, we would be able to clarify the peculiarity of English administrative structure, peculiarity which other countries would not be able to introduce even if they should try.

This paper will demonstrate Chadwick's design about the administrative structure through examining *Sanitary Report* and Public Health Act of 1848. I would be very glad if we should find some clues to learn the difference in the structures between nation states from the present discussion.

Outline of *Sanitary Report*

Poor people increased in England in the nineteenth century because many soldiers returned from the front of the Napoleonic Wars and a lot of peasants lost their lands for parliamentary enclosure. Rapid developments of lands for housing in both urban and rural areas followed it and quite a few inferior cottages were built for such people. The increase of faulty buildings caused the deterioration of sanitary conditions such as stagnation of sewage. Cholera outbreak of 1831－32 made people notice such problems in particular. John Russell who was the Home Secretary of the Second Melbourne Ministry inquired the causal relations between the paupers and the sanitary conditions to the Poor Law Commission in 1838, and Edwin Chadwick and three physicians such as Thomas Southwood Smith started the first preparatory research. The nation-wide research was delayed and *Sanitary Report* was submitted to the parliament in 1842 at last although the Cabinet had been changed to the Second Peel Ministry.[15]

Sanitary Report is composed of the main part written by Chadwick and the supplement

14 Chadwick to Russell, 14 May 1848, *Chadwick Papers* (University College London), #1733. See Finer, *op. cit.*, 304.

15 Flinn, 'Introduction,' Flinn, *op. cit.*, and Brundage, *op. cit.*, 79－83.

Table 1. The rough contents of *Sanitary Report*

General Prevalence of Epidemic, Endemic, and Contagious Diseases.
I. General Condition of the Residences of the Labouring Classes, where Disease is Found to be the Most Prevalent
II. Public Arrangements, External to the Residences, by which the Sanitary Condition of the Labouring Population is Affected Drainage
III. Circumstances Chiefly in the Internal Economy and Bad Ventilation of Places of Work; Workmen's Lodging-Houses, Dwellings, and the Domestic Habits Affecting the Health of the Labouring Classes
IV. Comparative Chances of Life in Different Classes of the Community
V. Pecuniary Burdens Created by the Neglect of Sanitary Measures
VI. Evidence of the Effects of Preventive Measures in Raising the Standard the Health and the Chances of Life
VII. Recognised Principles of Legislation and State of the Existing Law for the Protection of the Public Health
VIII. Common Lodging-Houses
IX. Recapitulation of Conclusions

Sanitary Report（M. W. Flinn（ed.）, Edinburgh: Edinburgh University Press, 1965）.

constituted of references and evidences collected during the research. Table 1 shows the rough contents of the main part.

What we notice when we glance over *Sanitary Report* is that Chadwick said as follows, 'The defects which are the most important, and which come most immediately within practical legislative and administrative control, are those chiefly *external* to the dwellings of the population, and principally arise from the neglect of drainage.'[16] He emphasised the word, 'external', and it meant external structure of houses or external conditions around them. Chadwick showed in this report the plan to construct water supply and to drain sewage with high-pressure flush which the steam pumps of the water supply produced,[17] and he was selected as one of the members of the Health of Towns Commission in 1843 because it was highly evaluated. Paying attention to 'external' conditions around houses as above seems one of the characteristics of *Sanitary Report*. What kind of things would it mean then?

It does not seem profitable that we try to grasp the gist of Chadwick's discussion from a simple medical perspective such as his concern for miasma evolved from polluted soil. Chadwick had ever showed the same remark even in another context from public health. I will give an example. *Poor Law Report* was made at the time of amending poor law in

16 *Sanitary Report*, 99.
17 *Ibid.*, 120.

1834 and it is known that Chadwick wrote many parts of it.[18] A description of the case of Cookham in Berkshire are particularly interesting because Chadwick himself took charge of the research there and it is known as a place where the ideas of 'less eligible' had already been applied to the workhouse before the enactment of Poor Law Amendment Act of 1834. *Poor Law Report* explained that Chadwick visited a large proportion of the cottages in the village of Cookham and some in Cookham Dean, and said, 'Their internal cleanliness and comfort certainly corresponded with the condition of the exteriors.'[19] We can see the similar words, 'the condition of the exteriors,' used in this description. The report mentions the relationship of labourers' lives with the conditions of houses hereafter, and we hence learn that the external conditions were one of common issues between sanitation and poor law.

Public interference with residences of labourers

Why ever did Chadwick emphasise the external conditions then? We will, at the beginning, view one of Chadwick's comments on a research of the mortality in Manchester of 1840 in *Sanitary Report*. The research investigated the mortality of the stages into which the population between zero and twenty years old were divided every five years of age and showed how high the infant mortality of five years old or younger was.[20] Chadwick took up the figures and said, 'It is proper to observe...that opinion is erroneous which ascribes greater sickness and mortality to the children employed in factories than amongst the children who remain in such homes as these towns afford to the labouring classes.' 'It is,' Chadwick pointed out, 'an appalling fact that, of all who are born of the labouring classes in Manchester, more than 57 per cent. die before they attain five years of age; that is, before they can be engaged in factory labour, or in any other labour whatsoever.'[21] Chadwick emphasised the external conditions of houses and it was because he was ascribing the cause of the infant mortality to residences, whereas he had no intent to pursue the problems of juvenile labour. We can see here a sort of arbitrariness in Chadwick's discussion.

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18 *The Poor Law Report of 1834* (hereafter, *Poor Law Report*) (S. G. and E. O. A. Checkland (eds.), Harmondsworth: Penguin Books, 1974).

19 *Poor Law Report*, 355.

20 It showed 2649 infants died at the age of five or younger indeed while 4629 died between zero and twenty years old (*Sanitary Report*, 224).

21 *Sanitary Report*, 223.

We can find the same arbitrariness in some descriptions of *Poor Law Report*. *Poor Law Report* criticised the parish allowance to labourers for aid of their wages which had been adopted in a lot of places since the Speenhamland system of 1795 in Berkshire.[22] It blamed the labour rate system for the thoughtlessness that it assumed that the public sectors such as parishes were capable of creating jobs without taking the demand into consideration.[23] *Poor Law Report* did not like the public interference with labour market. The allotment of land was also opposed in this report for resulting in rebinding labourers with lands.[24] The words in the report, 'the condition of the exteriors,' seemed to be represented in a close relationship with avoiding the interference with 'free labour market' as Karl Marks mentioned,[25] and the both reports corresponded with each other in this point.

We have to notice that Chadwick gave not only avoidance of public interference but also further limited meanings to the words, 'external conditions'. It was the concept of self-help of labourers' families based on adult male labour. For example, Chadwick mentioned the increase of widows and orphans in *Sanitary Report* and said that the average period of working ability is extended to the natural period of superannuation, namely an average of full 60 years, if a combination of internal and external sanitary measures may be expected to give. 'The account for one place,' Chadwick said, 'would be one superannuated workman and one widow, and a family of four or five well-grown children, who, having received parental care during that period, will probably all have obtained, before its termination, the means of independent self-support.'[26] He meant that a labourer would be capable of supporting his son's widow and grandsons even though his son should meet an untimely death, if the average period of working ability should be extended to 60 years by good sanitary conditions. He said, contrary to it, that the labourer would not be capable of supporting his family to the degree that his grandsons would reach full maturity or a condition for self-support if the average period of working ability should be extended to only 15 or 20 years.[27] He gave priority to the self-help of families by adult male labour, and sanitary measures were considered necessary as far as they would be compatible with the self-help. The word, 'external,' represented the rest parts of labourers' lives except both

22 *Poor Law Report*, 90.
23 *Ibid*, 113; 294－333.
24 *Ibid.*, 278－294.
25 Karl Marks, *Das Kapital*, bind 1 (Werke (ed.), *Karl Marx, Friedrich Engels*, bind 23, Berlin: Dietz, 1962), 742.
26 *Sanitary Report*. 270. In this passage, the words, 'internal sanitary measures', meant things related to buildings such as ventilating rooms, and they did not mean medicine or social policies.
27 *Ibid.*

free labour market and the self-help, namely, residential matters.

Small proprietors of lands and speculating builders

We saw that the arrangements of the external conditions meant the public interference with residences whilst keeping self-help. Whatever would concretely be aimed for by the arrangements? It is noteworthy that *Sanitary Report* stated that, 'the land has been disposed of in so many small lots, to petty proprietors, who have subsequently built at pleasure, both as to outward form and inward ideas, that the streets present all sorts of incongruities in the architecture.'[28] This quotation from the first chapter follows the discussion on the causal relationship between the external conditions and febrile diseases. Chadwick pointed out here that it was one of the causes of incongruities in the architecture that lands were disposed of in many small lots to petty proprietors.

Chadwick is known as one of the advocates of parliamentary enclosure and high farming. He took up the case of the development of lands by the Earl of Stradbroke in Henham of Norfolk in *Sanitary Report* and highly esteemed it as a desirable plan of erecting cottages for agricultural workers; and this tells us well that he was such an advocate.[29] He, on the other hand, criticised small proprietors. What we must notice is Chadwick's words as follows, 'In the rural districts, the worst of the new cottages are those erected on the borders of commons by the labourers themselves.' 'In the manufacturing districts,' he said, 'the tenements erected by building clubs and by speculating builders of the class of workmen, are frequently the subject of complaint, as being the least substantial and the most destitute of proper accommodation.'[30] Chadwick suspected the existence of commons and the building speculation to cause the increase of defective houses.

We can find the same understanding in *Poor Law Report*. The report cited the preamble of Settlement Act of 1662 and said, 'poor people are not restrained from going from one parish to another, and, therefore, do endeavour to settle themselves in those parishes where there is the best stock, the largest commons or wastes to build cottages, and the most woods for them to burn and destroy; and when they have consumed it, then to

28 *Ibid.*, 113.
29 *Ibid.*, 326.
30 *Ibid.*, 297.

another parish, and at last become rogues and vagabonds...'[31] It used the line of argument by which readers could not help remembering that the existence of commons or wastes in parishes was the source of defective cottages and it resulted in producing rogues and vagabonds. Another description on the settlement said that a parish in which the property was much divided had no defence to prevent unsettled labourers from sleeping within it. 'Small master bricklayers and carpenters, and retired tradesmen with trifling accumulations,' it continued, 'find cottages and houses inhabited by the poor a most lucrative investment.'[32] Commons in parishes, small proprietors of lands, and speculating builders were suspected to be the sources of deterioration of the external conditions in the both reports.

Janet Neeson explored commoners and common right between the eighteenth and the early nineteenth century, and proved that commoners who had lived as small peasants using common right before parliamentary enclosure still remained in the nineteenth century.[33] The recent work on parishes by Steve Hindle vividly expressed the living of commoners between the sixteenth and the eighteenth century with the concept of 'the economy of makeshifts.' He said that they could live not with the public relief, but with some cash incomes from such as gleaning in commons besides support from relatives and mutual aid from neighbours.[34] Neeson also mentioned that commoners' living was altered into something suitable for capitalism according as advance in the enclosure and they came to have to profit from the tenements which they borrowed to balance with the rent. Commoners, she said, were forced into production for market more than before.[35] Chadwick particularly pointed out that small proprietors and speculating builders built cottages in the suburbs of towns in anticipation of the inflow of the poor,[36] and we can realise the meaning of his words well by learning the alteration of basis of commoners' living from the economy of makeshifts to market economy. Both *Sanitary Report* and *Poor Law Report* aimed to resolve the problems caused from the alteration.

In the case of building speculation, builders erected small tenements for the poor and it was because they could profit from them in some ways. Cottages for the paupers, as *Poor*

31 *Poor Law Report*, 242.
32 *Ibid.*, 249.
33 J. M. Neeson, *Commoners: Common Right, Enclosure and Social Change in England, 1700－1820* (Cambridge: Cambridge University Press, 1993).
34 S. Hindle, *On the Parish? : The Micro-Politics of Poor Relief in Rural England c. 1550－1750* (Oxford: Oxford University Press, 2004).
35 Neeson, *op. cit.*, 254－255.
36 *Sanitary Report*, 340.

Law Report pointed out, were not only exempted from the rates but also assisted rent by parishes, and builders interested in the measures intentionally produced 'a description of houses of the worst and most unhealthy kind' in order to make them exempted and aided.[37] *Poor Law Report* moreover stated, 'Paupers have thus become a very desirable class of tenants, much preferable, as was admitted by several cottage proprietors, to the independent labourers.'[38] Both proprietors and builders preferred to leave the poor aided rather than make them independent. The more the living of the poor hence deteriorated, the more the parish finance became strained; namely, it resulted in causing a negative spiral.

It was not so easy to solve this spiral because of some problems as follows, and tackling them seems to have led Chadwick to an idea about the administrative structure.

The first problem was the frequent alteration of owners of dwelling houses caused by building speculation. Building speculation is generally known to have been made as follows; namely, builders made contracts with proprietors and took lands on lease of between sixty and ninety nine years. The contracts generally had special agreements that the rents were set quite low for the first one or two years, and the builders profited from them by selling off the houses only frameworks and roofs of which were constructed during the period.[39] It was the reason why the frequent alteration of owners was brought about. *Sanitary Report* mentioned it and said, 'Persons well acquainted with the inferior descriptions of tenements in Manchester state that a large proportion of them change owners in ten years, and that few remain in the same hands more than twenty years.'[40] It was quite difficult in such a state of affairs to improve residential conditions, because there was no chance for the speculating builders anticipating profits in short terms to agree with such improvements as water supply and sewerage which it would take long time to construct.

Chadwick mentioned a plan to resolve this situation in *Sanitary Report*. That is to say, he proposed that parishes should execute the structural improvements of tenements occupied by the poorer classes 'by loans paying interest on the security of the rates, and spread the charge over 30 years during which the original outlay should be repaid.' 'This would,' Chadwick said, 'allow of the annual instalment being charged in fair proportions to

37 *Poor Law Report*, 83－84.
38 *Ibid.*
39 John Summerson, *Georgian London* (Howard Colvin (ed.), New Haven and London: Yale University Press, 2003), 28; 63.
40 *Sanitary Report*, 287.

the tenant, and to the holders of short interests.'[41] Raising the funds for the structural improvements by long term loans over 30 years and securing the loans by rates seemed to Chadwick to enable parishes to levy the yearly instalments not only from the tenants but also the holders of short interests. They, moreover, seemed to pave the way to levy them not only from the present but also the future dwellers who would benefit from the completed arrangements. Complaints of the builders would be softened in this way and it was supposed to result in making it easy to execute the improvements of external conditions.

The second problem was on local autonomy. The both reports pointed out maladministration in local authorities composed of honorary officers such as justices of the peace, vestries, and overseers. *Poor Law Report* stated on overseers that, 'In rural districts the overseers are farmers; in towns generally shopkeepers,'[42] and also said on vestries that, 'the bad constitution of parish vestries, particularly when in the hands of small farmers, where there is no resident proprietor, and where the clergyman takes no part, seems to be the cause of the bad condition of the worst parishes.'[43] They belonged to not so far classes from the said speculating builders constituted of small master bricklayers, carpenters, and retired tradesmen, and it seemed to be 'the cause of the bad condition of the worst parishes.'

Chadwick ascribed the maladministration to the legislative as well as the administrative structure, as he wrote in *Sanitary Report* that, 'All these local defects again are referred back to the defective construction of the Acts of Parliament.'[44] 'The legislature in making demands for such honorary services,' Chadwick said on the one hand, 'has usually proceeded on the theory which views all those who may be called upon to render them, as persons qualified to understand the whole subject intuitively, and having no other interest or views than to perform the services zealously for the common weal; whereas, in the locality they are viewed in a totally different light, not as public officers, but in their private capacities, as owners or tradesmen, competitors for advantages of various kinds.'[45] The Acts of Parliament, on the other hand, were enacted without considering such state of affairs and they directed 'the execution of only part of the necessary means, leaving other

41 *Ibid.*, 288.
42 *Poor Law Report*, 182.
43 *Ibid.*, 192.
44 Sanitary Report, 110.
45 *Ibid.*, 379.

essential parts to the discretion of individuals'.[46] Both faults were resonant with each other and led local authorities to malfunction.

Enactment of local acts or private acts was required for carrying out new local projects such as sanitary improvements and workhouse construction in England.[47] David Lemmings clarified that it was a phenomenon developing rapidly since the eighteenth century.[48] Local affairs, Lemmings said, were originally managed on the judicial responsibilities through the quarter sessions and people participated in them as juries. Common law supported them legally.[49] However, in the eighteenth century, the American revolutionary challenge and the doctrines of French Revolution required a restatement of constitutional orthodoxy in the form of 'a high doctrine of sovereign authority.'[50] Magisterial competence extended offensively and summary justice undermined the constitutional protections provided by trial by jury in the locality.[51] Consolidated elite of genteel property owners, on the other hand, enjoyed the benefits of traffic developments and repeated petitioning in London. Statutes enacted by these petitions endorsed the magisterial competence.[52] Parliamentary statute became the principal instrument of government rather than the culture of common law and the business of government became more linear and one-dimensional in this way.[53] The Speenhamland system since 1795, Lemmings said, was no other than a good example of exercise of such magisterial competence.[54]

Chadwick supported land ownership developed through parliamentary enclosure and might have shared interests with the elite of genteel property owners, but he did not necessarily agree with extension of the parliamentary competence.

It took long time to enact parliamentary statute generally speaking, and confrontations between political parties surely affected the procedures. We shall see this point later. Local affairs, as Lemmings said, might have come to be managed by magisterial competence; even so, justices of the peace were able to fulfil their responsibilities only with help of the inferior honorary officers such as vestries and overseers. The inferior

46 *Ibid.*, 110.
47 Hamlin, *op. cit.*, p. 257.
48 David Lemmings, *Law and Government in England during the Long Eighteenth Century: From Consent to Command* (Basingstoke: Palgrave Macmillan, 2011).
49 *Ibid.*, 19－20.
50 *Ibid.*, 139.
51 *Ibid.*, 32.
52 *Ibid.*, 155－159; 162－164.
53 *Ibid.*, 11.
54 *Ibid.*, 50.

honorary officers, nevertheless, were generally composed of the people belonging to not so high classes as already mentioned, and it hence resulted in tolerating defective premises built by small proprietors and speculating builders. Chadwick was not able to overlook such problems. It seemed to him that the administrative structure was required to change entirely from the base, namely, from parishes or unions.

We will see in the next section what kind of plan Chadwick had in order to change it.

Nuisance and paid officers

We would notice that Chadwick mentioned the ideas of a German jurist, Robert von Mohl, if we view the design of the administrative structure in *Sanitary Report*.[55] Mohl said that medical police was essentially German both in theory and in practice and England besides the US did nothing at all, whereas Chadwick refuted the opinion and said, 'The professor's reproach is, however, scarcely applicable to the substantive English law, or to the early constitutional arrangements in which are found extensive and useful provisions, and complete principles for the protection of the public health.'[56] Chadwick found something like an equivalent of German *Polizei* in the existing law system of England.

Robert von Mohl was contemporary with Chadwick. He is known to publish *Die Polizei-Wissenschaft nach den Grundsätzen des Rechtsstaates* [*Science of Police Based on Principles of Constitutional States*] (3 volumes, first edition, 1832－1834) and to suggest the way of public interference with individuals in modern constitutional states with a term, *Polizei*, which meant not only public security but also the whole of national administration.

Syuichiro Kimura mentioned that Mohl was affected by works of Jeremy Bentham.[57] Mohl respected personal freedom and regarded governments as no more than devices to protect it; therefore, he took a different standpoint from such persons as Hegel who proved infallibility of the state by exposing the defectiveness of civil society.[58] Mohl proved the legitimacy of the state intervention into personal freedom whilst avoiding to damage the latter as far as possible; namely, he divided the roles of the state into judicature and *Polizei* [national administration]. The latter, moreover, was divided into 'judicial *Polizei*' and 'supplemental *Polizei*'. 'Judicial *Polizei*' meant police in the narrow word and included

55 *Sanitary Report*, 348.
56 *Ibid.*
57 Syuichiro Kimura, *Doitsu Fukushi Kokka Shisoshi* [*History of Thought on German Welfare State*], (Tokyo: Miraisha, 2000), 362－367. This book is written in Japanese.
58 *Ibid.*, 351.

public security, whereas 'supplemental *Polizei*' signified a wide range of internal affairs such as public health and poor law.[59] Mohl grasped 'supplemental *Polizei*' as public affairs handling minor offenses except trespasses, and thought it possible for the authorities to enforce administrative orders without court proceedings by applying the concept.[60] He discussed that such authorities relatively independent from judicature were capable of removing obstructions which each person could not do by himself, and as a result, the intervention by them came not to infringe upon personal freedom but to enlarge it on the contrary.

Cahdwick had acquaintance with Mohl. Mohl is said to have been affected by Bentham's *The Constitutional Code* which Chadwick took part in compiling as one of his assistants, whilst Chadwick took up Mohl in *Sanitary Report*.[61] In 1847, Mohl visited London and observed workhouses based on Poor Law Amendment Act which Chadwick made efforts to enact.[62] In this good relationship, Chadwick's descriptions on the administrative structure seem to have been affected by Mohl and inquired by what means the authorities could win autonomy. What he found as an equivalent with Mohl's *Polizei* from within the existing law system of England was, curiously enough, remedies based on common law besides statutes since Henry VIII.[63] 'The common law,' Chadwick said, 'provided general remedies for the redress of injuries, under the comprehensive title nuisance (*nocumentum*), meaning anything by which the health or the personal safety, or the conveniences of the subject might be endangered or affected injuriously.'[64] He noticed a term in common law, namely nuisance. Nuisance signifies as a legal term a sort of minor offences which works hurt, inconvenience or damage such as corrupting the air with noisome smells or erecting a smelting-house near the land of another. Trespass, which also signifies some minor offences, is related to a person's body or his property such as beating another or entering on another's land and it needs an original writ to start court

59 *Ibid.*, 320－321.
60 *Ibid.*, 342－343.
61 *Report to Her Majesty's Principal Secretary of State for the Home Department, from the Poor Law Commissioners, on an Inquiry into the Sanitary Condition of the Labouring Population of Great Britain; with Appendices* (London: W. Clowes and Sons, 1842), 431－432. This edition will be referred to as *Appendices* hereafter.
62 Erich Angermann, *Robert von Mohl; 1799－1875, Leben und Werk, eines altliberalen Staatsgelehrten* [*Robert von Mohl; 1799－1875, Life and Work, an Old Liberal Scholar Researching Nations*] (Berlin: Hermann Luchterhand Verlag, 1962), 57.
63 *Sanitary Report*, 348－354.
64 *Ibid.*, 348－349.

proceedings, whereas nuisance does not so.[65] Chadwick found potential for making the authorities independent from judicature in this legal term. Firstly, nuisance signified not only private but also common or public injuries.[66] Secondly, it provided a legal ground to prevent defective construction by small proprietors or speculating builders. Chadwick cited Edward Coke's Reports and said, 'The common-law obligation upon all owners of property has, in general, been adhered to by the superior courts. "*Prohibetur ne quis faciet in suo quod nocere possit alieno; et sic utere tuo ut alienum non lædas* [It is forbidden for anyone to to do on his own property something that may injure another's; and so use your own as not to injure another]."[67] 'Thus,' he said moreover, 'it is held to be a common nuisance and indictable to divide a messuage in a town for poor people to inhabit, by which it will be more dangerous in time of infection.'[68] It would be possible to demonstrate the illegality of the defective buildings by referring to the common-law obligation even if proprietors insisted that constructing them should belong to their rights.

Nuisance seemed to Chadwick to enable the authorities to execute their power apart from complicated court proceedings and to check small proprietors' claim of common rights. It was a term proper to justify preventive measures against things which were likely to bring about serious injuries such as infectious diseases. Remedies of public and common nuisances, however, required the proceedings such as indictments and trials by grand jury at quarter sessions, and it hence took much time and money. It would be possible to lay out the administrative structure comparing with German *Polizei* if there should be some authorities to remedy public or common nuisances apart from such proceedings. It would be possible to reform it not from magisterial competence such as summary justice but from within further inferior officers.[69] It was the court leet that Chadwick regarded as having played such roles in the constitutional history of England.

The court leet was derived from the sheriff's circuit court; that is, the sheriffs had powers such as holding circuit court for reforming nuisances in the ancient time but they were granted to the lords of manors for the ease of the people afterwards.[70] The leets were

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65 See William Blackstone and Thomas Cooley, *The Commentaries on the Laws of England*, volume 3 (James Andrews (ed.), Chicago: Callaghan and Company, 1899), 1006－1016.
66 *Sanitary Report*, 349.
67 *Sanitary Report*, 349. See *The Ninth Part of the Reports of Sir Edward Coke Kt.* (E. and R. Nutt and R. Gosling, 1727), 59.
68 *Sanitary Report*, 349.
69 Lemmings, *op. cit.*, 32.
70 Joseph Ritson, *The Jurisdiction of the Court Leet* (London: W. Clarke and Sons. Law Booksellers, 1809), 8 － 9 .

held before the stewards of the lords, and these officers should be barristers of learning and ability.[71] Common nuisances had been judged in these courts managed by lawyers working as generalists. Chadwick valued them and said, 'The most important, perhaps, because the most cheap and accessible authority for reclaiming the execution of the law for the protection of the subject against nuisances, for punishing particular violations of it, was vested in the Courts Leet.'[72]

The court leets were certainly falling into desuetude and the jurymen of the remains were composed of people including builders and bricklayers interested in construction;[73] therefore, it seemed to Chadwick to be impossible to use them as they were. He developed his argument here from the court leet to the necessity of making the Local Board of Health widespread. Chadwick gave an example of cholera outbreak in Bolton of 1837 and said, 'The nuisances which favoured the introduction and spread of the cholera were for the most part evils within the cognizance of the Leets, and could not have existed had their powers been properly exercised, yet so complete was the desuetude of the machinery of these Courts that it appeared nowhere to be thought of as applicable.'[74] At the very time, the Board of Health was founded by about twenty trustees in the city and a surveyor was called before them to draw attention to a pool of stagnant water.[75] The Board of Health assumed the duties of the court leet on nuisances and simultaneously raised the ability to treat them through adding a surveyor working as a specialist to it. This board of Bolton resulted in fail for the lack of funds, but Chadwick highly evaluated it as follows, 'the new and special machinery of the Boards of Health were created for the purpose of meeting the pestilence.'[76]

Chadwick made efforts to enact Public Health Act of 1848[77] and included a design of installing specialists as paid officers in the local authorities there.

The act provided that it should be applied to city, town, borough, parish and other places, and the Local Board of Health should be selected in each district. However in the case of parish, it should be done in a union composed of two or more parishes, and there were some cases that the selection should be made in a district consisting of two or more

71 *Ibid.*, viii.
72 *Sanitary Report*, 354.
73 *Ibid.*, 358－359.
74 *Ibid.*, 360.
75 *Ibid.*
76 *Ibid.*
77 11 & 12 Vict., c. 63, 1848.

boroughs（clauses 10 and 12）. The Local Boards of Health had the power to supervise building and rebuilding houses（clause 53）and to manage all sewers（clause 43）. They were capable of controlling the construction of defective houses in question. The boards were allowed to provide their districts with water supply furthermore（clause 75）, and it hence seems plausible that not a little power to improve external conditions was vested in such boards and they established themselves as the local authorities.

Some paid officers were employed by the boards; that is, surveyors, inspectors of nuisances, treasurers, and clerks（clause 37）. Surveyors were charged with supervising the conditions of real estates, whilst inspectors of nuisances oversaw filth and controlled foods. There were some cases that one person charged himself with both of them especially in rural areas, but the former had to be persons familiar with engineering, hydraulic engineering in particular.[78] The surveyors made plans for water-supply and sewerage（clause 85）and watched whether or not houses were built along the rules（clauses 49 and 51）.

Lawyers, on the other hand, seem to have taken office as clerks.[79] The boards in non-corporate districts such as unions sued or were sued in the name of the clerks, and contracts relating to properties or works were also vested in them（clause 138）. They handled almost all legal services of the boards, and we can see here that the roles of the stewards of the court leets were taken over by the clerks and they worked as a sort of generalists.

Each board had a treasurer. Public Health Act provided the boards with financial resources. Some new rates were created; that is, 'special district rates' for purchasing lands or construction（clause 86）, 'general district rates' for ordinary expenses（clause 87）, and 'water rates'（clause 76）. Water rates were levied on occupiers of premises supplied water by the Local Boards of Health（clause 93）, whilst special and general district rates were collected from occupiers of all properties on which poor rates were levied（clause 88）. The rates were collected according as the net annual value of the premises or the properties which were assessed for poor rates（clauses 88 and 93）. The Local Boards of Health were capable of borrowing money for the sanitary improvements on the credit of the rates（clause 107）, and Chadwick realized here his proposal that the local authorities should raise the funds for the improvements by long term loans and

78　W. C. Glen（ed.）, *Shaw's Union officers' and Local Boards of Health Manual, for 1854*（London: Shaw and Sons, 1854）, 179.
79　*Ibid.*, 177.

secure them by rates. This act also stipulated that the boards were able to do works instead of owners or occupiers and to collect the expenses by levying 'private improvement rates' on them when they left the works behind in spite of the notice (clause 90), and we shall see it later. The treasurers handled those financial affairs, and they were appointed to from among bankers in the districts.[80]

Lawyers, bankers, and experts such as engineers took office as paid officers such as clerks, treasurers, and surveyors, and tackled nuisances in the localities in cooperation. We can find here the first characteristic of the Local Boards of Health.

Trial by equals: as knots of private freedom and public intervention

Deriving the Local Boards of Health from the court leets was not only for pointing out the importance of experts. It simultaneously suggested the way to justify the arrangements by them.

The court leets were used to be held in the open air, and whether masters or servants, all male inhabitants aged twelve or more had to attend them if they were resident in the district for one year and one day or more. The leets independently judged the cases of minor offences fined less than forty shilling, and needed indictments by a body of suitors elected from among the said inhabitants and verdicts by a jury elected in the same way. Not the inhabitants but the stewards handled almost all legal services in fact and the latter made presentments to the king's justices on behalf of the leets in serious cases;[81] but nevertheless, it was important that the residents participated in following the procedures. They were summary proceedings unlike those of grand jury, but able to procure the popular will. It resulted in justifying the arrangements by the stewards. It seemed noteworthy to Chadwick who was devising methods that the inferior authorities employing paid officers were capable of handling local affairs independently from the courts of assizes.

In England, as provided in the clause 39 of the Magna Charta, it occupied one of the significant parts of socio-political culture that no one must be infringed on the rights and properties without being brought to trial by equals such as jury. It is said that there has been a tendency for the jury to become, at least in popular thought, a safeguard of political

80 *Ibid.*, p. 178.
81 Ritson, *op. cit.*, ix－x; 15－16; 43.

liberty since the seventeenth century.[82] English society had another safeguard such as private prosecution. Private prosecution was a sort of means of self-help derived from the prosecution by the injured party in the Anglo-Saxon period, and the prosecution of offenders was regarded there as not only the right but also the duty of individuals.[83] Trial by jury and private prosecution cooperated with each other and played a role to protect private freedom together. However, trial by jury, the grand jury in the quarter session in particular, was criticised for the complicated proceedings, and people claimed the necessity of simplifying it. Summary justice executed by the magisterial competence, as Lemmings mentioned, was one of the methods to do it, but on the other hand, they were Jeremy Bentham and his colleagues who proposed the way to do so whilst putting something comparing with trial by jury as far as possible. Bentham, for example, showed the way to reform judicial system by putting 'quasi juries' under 'public opinion tribunal.'[84]

The Benthamites are generally known with their liberal characteristics, but on the other hand, some members of them had an inclination for vested rights protection as we see from the facts that they were likely to regard the political liberty after the Glorious Revolution as linked to property rights inseparably and aimed to establish the polity based on land-ownership.[85] Henry Brougham was one of the representative figures inheriting such characteristics more firmly unlike J. S. Mill.

Brougham is known as Lord Chancellor between 1830 and 1834 and supported Chadwick in amending poor law in 1834. It is said that the friendship between them lasted all their lives.[86] Brougham made a speech on the present state of the law in 1828 and said that the whole machinery of the state ended in simply 'bringing twelve good men into a box,' namely, a jury, and, 'it is this only which can excuse constant interference with the rights and the property of men.'[87] Michiatsu Kaino discussed that Brougham made such a speech for purposes to lead the middle class into the polity based on land-ownership which

82 Theodore Plucknett, A Concise History of the Common Law (reprint edition, Indianapolis: Liberty Fund, 2010), 107.

83 Itsuhiro Namazugoshi, *Keiji Sotsui Rinen no Kenkyu* [*Study on the Principle of Criminal Suits*] (Tokyo: Seibundo, 2005), 8－29.

84 Jeremy Bentham, 'Principles of Judicial Procedure,' *The Works of Jeremy Bentham*, Vol. 2, (John Bowring (ed.), Edinburgh: Russell & Russell, 1962), 141－149.

85 Michiatsu Kaino, *Igirisu Tochi Shoyuken Hou Kenkyu* [*Study on Land-ownership laws in England*] (Tokyo: Iwanami Shoten Publishers, 1980), 334－335.

86 Finer, *op. cit.*, 98－99; 488; 496.

87 Henry Brougham, 'Speech on the Present State of the Law,' 7 February 1828, *Speeches of Henry Lord Brougham*, vol. 2 (Edinburgh: Adam and Charles Black, 1838), 324. See Kaino, *op. cit.*, 330.

was formed along advance of parliamentary enclosure.[88]

Chadwick was on familiar terms with Brougham and took the standpoint close to him rather than the other Benthamites. In the court leets, he found the methods to simplify the court proceedings whilst maintaining juries. He criticised the leets for being constituted of people such as bricklayers but by no means denied its *raison d'être*. On the contrary, some leets remained in urban areas and Chadwick esteemed them as 'annoyance juries' grasping nuisances in the localities usually.[89] It seems plausible that he had the same intention to maintain simplified juries as Bentham and Brougham.

Chadwick's references to the said case of cholera outbreak in Bolton were related with trial by equals or private prosecution as follows. That is, he said that the Board of Health was founded by about twenty trustees in Bolton at that time instead of the leet falling into desuetude and, 'There are no funds provided by which the common remedy by indictment could now be prosecuted.'[90] He mentioned here the lack of funds but we should rather notice that the role of the board was regarded as prosecuting common remedy by indictment. The residents had selected a body of suitors and a jury from among themselves in the case of the court leets. The remedies for common nuisances had been executed with the procedure of common law including both trials by equals and private prosecutions there. Also in the case of Bolton, people tried to remedy the nuisances by taking judicial measures, namely indictments by about twenty trustees forming the board. The Board of Health seemed to be considered something like comparing with a jury. These narratives alone, of course, will not be enough to convince readers of it. We will see the provisions of Public Health Act of 1848 again because such a characteristic of the board was reflected in them.

The most noteworthy clause in the act is the clause 49. This clause stipulated the way to checking the defectiveness in building and rebuilding houses and it was one of key provisions to improve external conditions; that is, it provided that Notice in Writing was given to the owner or occupier of the defective house based on the report of the surveyor and it required them to improve the houses such as constructing drainage to connect with sewer. The Local Board of Health executed the improvements instead of the owner or occupier in question and levied the costs as private improvement rate on them if they should neglect the notice. The Local Boards of Health thereby won the power to work the

88 Kaino, *op. cit.*, 335.
89 *Sanitary Report*, 354; 358－359.
90 *Ibid.*, 360.

surveyor and remedy common nuisances to some degree by themselves. What we have to observe here carefully is that the opinions of the surveyor as an expert in engineering were justified by a body of selected persons. The clause used the phrases, 'If at any Time, upon the Report of the Surveyor, it appear to the said Local Board that...,' or 'if they shall think fit,' in the cases that the notices were issued or private improvement rates were levied. The word, 'they', shows the board.[91] The board was composed of the persons selected from among the residents and others as we will see later, and a body of the persons gave authority to salaried professionals and executed the power such as issuing the notices and levying private improvement rates according to their judgement as we see the words, 'if they shall think fit.'

The court leets had been able to justify the interference with private freedom and to remedy common nuisances by having a characteristic of trial by equals, and the boards also had the similar characteristic that a body of selected persons executed power. It endorsed the arrangements by experts such as the surveyors. The boards, moreover, were allowed to sue for contracts or matters relating to properties or works in the name of the clerks composed of lawyers if they should be put in non-corporate districts（clause 138）. Actions of Debt were brought against offenders in the case of offences fined not exceeding fifty pounds in particular, and they were prosecuted in the name of the said clerks（clause 49）. The court leets had been held before the stewards constituted of barristers, and the stewards had indicted offenders to the king's justices if the offences should be felony.[92] The boards took legal action by working lawyers likewise. The boards, as we see, were comparing with the court leets, and moreover, they shaped into something to unite new skill of the experts with the old leets. Justices of the peace were not able to indict offenders ex officio even if they were aware of the cases because the said private prosecutions were kept in England unlike the countries introducing public prosecutions. Chadwick referred to this and said, 'There is a law by which those who most offend, as regards their chimneys, can be punished; but of course the magistrates are not also prosecutors, whilst private individuals, being unwilling to become informers,

91 It appears strange to the people in other countries who are used to Continental law or likely to associate a local body with a corporation, but the words such as 'Board' often indicate the persons forming it or actions of the persons in British English. It was applied to the act, and the clause 13 provided, 'such number of Persons...shall be the Local Board of Health,' or the clause 54 indicated the board with a relative pronoun, 'who.'

92 Ritson, *op. cit.*, viii; x.

little is done to check this nuisance.'[93] However, the Local Boards of Health seemed to be capable of resolving this situation.

The mayor, aldermen, and burgesses were selected as the members of the Local Board of Health by the council in the case of the district constituted of one corporate borough, and similarly, the mayors and persons qualified to be councillors were selected in the case of the district composed of two corporate boroughs or more (clause 12). In the case of the district not comprising any corporate boroughs, on the other hand, the selection of the members was made by election (clause 13). The eligibility to be elected was to be resident within the district or to be seized or possessed of real or personal estate (clause 16). The election was held by owners of property and rate-payers in the district (clause 20), but it seems that the persons as follows were excepted from voting; that is, the persons occupying the premises the net annual value of which did not exceed the sum of ten pounds, and those living in the premises let to weekly or monthly tenants or in separate apartments. It was because the rate of such premises was collected not from the dwellers but from the owners (clause 95). Being resident in the premises the net annual value of which exceeded ten pounds, to put it the other way around, was one of the qualifications for an elector in boroughs that Electoral Act of 1832 stipulated. It seems that Public Health Act tried to create a characteristic of equals based on property artificially,[94] and raise a sense of community by letting the inhabitants participate in the election of the board if they should satisfy such residential qualifications. It intended that such a characteristic or a sense of equals enabled the board elected from among them to justify the arrangements of the experts. Chadwick, as already mentioned, paid attention to the external conditions and it meant that he was thinking of the public interference with residences whilst keeping self-help. He highly esteemed the autonomy of families based on adult male labour. We now realise that it was paired with creating communities comprising such inhabitants.

The General Board of Health

It would have been desirable if the central authority should fully have been narrated, but it

93 *Sanitary Report*, 356.

94 Poor rate had once been levied on the persons having stock-in-trade, but they were exempted from it by Poor Rate Exemption Act of 1840 (3 & 4 Vict., c. 89, 1840). The rate-payers that Public Health Act of 1848 defined hence meant owners of real property or occupiers in fact.

is a shame that *Sanitary Report* did not. The report mentioned it barely in the note; for example, 'the central board may be described as an agency necessary for consolidating and preserving the local administration, by communicating to each board the principles deducible from the experience of the whole,' or 'in cases such as those in which its intervention is now actually sought, acting so as to protect the administration being torn by disputes between members of the same local board; between a part or a minority of the inhabitants and the board, and between one local board and another.'[95] We hence have to reconstruct Chadwick's design on the central authority with other materials.

There is a memorandum comprising 69 sheets of paper in *Chadwick Papers* kept in University College London Library.[96] It is written by Chadwick's handwriting and discusses the improvements of the central-local administrative structure including sanitation, poor law, prison inspection, factory inspection, and others. The memorandum has no date but seems to have been written in 1841 immediately before *Sanitary Report* was made because it mentions Drainage of Towns Bill laid before Parliament by Lord Normanby in April of the same year;[97] therefore, it seems to show Chadwick's ideas on the central authority at that time.

Chadwick stated in this memorandum that he did not conceive that the the existing establishments should be broken up into one common department to effect a combination of duties of diverse officers such as assistant poor law commissioners, factory inspectors, prison inspectors and others. 'Considerable advantage, he said, 'would result from empowering the secretary of state to avail himself of the services of these officers for the execution of any commissioner required in future.'[98] The Poor Law Commission for which Chadwick himself worked as the secretary was under the direction of the Home Secretary,[99] and he seems to have thought it fit in those days not to create a new common department but to effect a combination of duties of such governmental officers under the Home Secretary for the present.

On the other hand, this memorandum simultaneously states that Chadwick began to have a suspicion that it was wrong to concentrate the power to supervise diverse duties

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95 *Sanitary Report*, 394.
96 Edwin Chadwick, 'Memorandum on Local-Central Administration and Proposals for Administrative Reform,' probably written in 1841, *Chadwick Papers*, #71（hereafter referred to as 'Memorandum' #71）.
97 'Memorandum' #71, 51.
98 'Memorandum' #71, 28－29.
99 Poor Law Act（4 & 5 George IV, c. 76, 1834）, clauses 4 － 6 ; 16.

into the Secretary excessively. The Home Secretary of the Second Melbourne Ministry, John Russell, shelved Poor Law Amendment Bill regardless of Chadwick's claim in 1839 when the Chartist movement increased.[100] Chadwick looked back at it and said, 'Had it been known that the delay arise not from any exercise of discretion by the commissioners but from the secretary of state, I believe he would have been more liable to be questioned as to the cause of the delay.'[101] Russell established the General Register Office apart from the Poor Law Commission, and Chadwick said that he wrote to him a paper of remonstrance against it.[102] Sanitary Report was late in being laid before the Parliament, and it is said that the delay arose from Russell. Chadwick by no means appears to have built the good relations with Russell as far as we see above.

Chadwick mentioned more general matters as follows besides such private relations;

> I cannot conscientiously but state what has been the subject of complaint by all the officers concerned in the execution of this change that during the three years, it has been kept in a greater state of paralysis & dependence on political movements than could any branches of the business of the Home Office.[103]

The Second Melbourne Ministry were forced to resign in 1841 after shelving many plans for the administrative improvements including the said Poor Law Amendment Bill. The phrase, 'during the three years', might well indicate the period between the discard of Poor Law Bill of 1839 and the resignation of 1841. The two parties of the Tories and the Whigs were fiercely competing with each other in those days, and Chadwick was concerned that the 'political movements' might have bad influence on the central-local authorities.

The influence of the 'political movements' actually appeared as obstructions to issue orders. The Home Secretary directed diverse committees and officers as above, but to put it the other way around, the orders of the committees were difficult to be issued effectively for it. It was because the countersignature of the Secretary was necessary for issuing them but he was able to hold office merely in a short term by repeated changes of government. Chadwick stated it as follows;

> I may observe by the way that without some arrangements at the Home Office to make the supervision effectual an enactment that all orders shall be countersigned

100 'Memorandum' #71, 35 – 36, and see Finer, *op. cit.*, 186.
101 'Memorandum' #71, 36.
102 'Memorandum' #71, 42.
103 'Memorandum' #71, 35.

> by a secretary of state is merely the enactment of an addition to his pro forma labours: burthening him with signatures imparting responsibility for acts he has no time to make himself acquainted with; which he will sign on trust to a stranger to his office; or delay fluidly.[104]

Enactment of local or private acts, as already mentioned, was required for carrying out new local projects in England. Chadwick, however, did not necessarily agree with extension of the parliamentary competence, and he noticed that it was the reason of tolerating the small proprietors erecting the defective houses that the Acts of Parliament gave power to the honorary officers such as the magistrates and the inferior officers. Chadwick hence needed some other measures than local or private acts to give authority to the Local Boards of Health in order to improve the external conditions independently from Parliament, the local honorary officers, and small proprietors. Poor Law Commission used to issue orders and regulations for it,[105] but they were not so helpful because of the necessity of the said countersignature of the Home Secretary. The 'political movements' cast a shadow in this way. Chadwick seems to have had both positive and negative views on the Home Secretary and been able to design no obvious plan on the central authority yet when *Sanitary Report* was written.

It was not until the enactment of Public Health Act of 1848 that Chadwick was barely able to submit the plan. Public Health Act defined the central authority as the General Board of Health（clause 4）, and it was directed not by the Home Secretary but by the Privy Council. The General Board of Health became to be able to issue 'provisional orders' besides 'order in councils' instead of the said orders and regulations requiring the countersignature of the Home Secretary. The act enabled the General Board of Health to direct superintending inspectors to visit the districts and to make public inquiries as to sewerage, drainage and supply of water by their own decision if the returns made up by the Registrar General should show that the number of deaths in each district exceeded the proportion of twenty three to a thousand of the population on an average in not less than seven years（clause 8）. In such case, the General Board came to be able to direct the districts to improve the defectiveness by issuing provisional orders（clause 10）. Issuing provisional orders required no countersignature of the Home Secretary, and it resulted in his losing the competence to interfere in the General Board（clauses 10; 141; 142）.

104　*Ibid.*, 33.
105　4 & 5 George IV, c. 76, 1834, clause 15.

We need some explanations about provisional order. Provisional order is a sort of order made by government ministers to whom the Acts of Parliament give power, and it is issued in executing things which should be done with private acts primarily but would take much time and money if so. The order requires confirmation of Parliament before becoming law.

Finer's work pointed out that some clauses of the Public Health Bill were revised during the deliberation at Parliament. The number of commissioners of the General Board of Health, for example, was reduced from five in the Bill to three in the Act.[106] He mentioned that stipulating provisional order was also one of such cases, and the General Board of Health thereby came to be under restraint by Parliament.[107] However, some modifications seem to be required for Finer's view.

Provisional order, according to Frederick Clifford, came to be used more often along advance of parliamentary enclosure.[108] The enclosure had increasingly been carried out with provisional orders particularly since the Enclosure Commissioners were constituted in 1845.[109] A provisional order, once made, became 'a Government measure,' and it hence put petitioners at a disadvantage in opposing the confirmation of the orders in Parliament.[110] Indeed, no fewer than 958 provisional orders for the enclosure were granted by the Commissioners from 1845 to 1869, and 842 of them were confirmed by Parliament without opposition.[111] Provisional order was by no means the measure for restraint by Parliament as Finer mentioned; instead it was the suitable way to carry out new projects in the localities whilst evading local or private acts.

Chadwick showed he was thinking positively of using provisional orders. When the Bishop of London opposed the clauses on interments during the deliberation on the Public Health Bill at Parliament, Chadwick wrote to Viscount Morpeth making efforts to pass the Bill with him and said, 'Allow me to propose that you should make the whole arrangements for interments upon the Provisional Order.'[112]

Public Health Act provided that the First Commissioner of Woods and Forests, Land Revenues, Works and Buildings should assume the presidency of the General Board of

106 Finer, *op. cit.*, 321－326.
107 *Ibid.*, 322.
108 See Frederick Clifford, *A History of Private Bill Legislation*, Vol. 2 (London: Butterworths, 1887).
109 *Ibid.*, 678.
110 *Ibid.*, 710.
111 *Ibid.*, 678.
112 Chadwick to Morpeth, 16 June 1848, *Chadwick Papers*, #1055, 230－232.

Health ex officio（clause 4）. It was Viscount Morpeth who had been filling office as the First Commissioner since 1846, and he was installed as the president of the General Board of Health. It is noteworthy that this First Commissioner was the very person who had also held the post of the chairman of the Enclosure Commissioners based on Enclosure Act of 1845.[113] The Enclosure Commissioners advanced enclosure by using provisional orders as above, and Morpeth was one of the key persons to do so. It seems plausible that he was a man of ripe experience and took office as the president for it. Provisional order appeared to Chadwick and Morpeth to be favourable for the General Board of Health unlike Finer's view.

Public Health Act stipulated that the General Board of Health should comprise two members appointed by royalty besides the said president（clause 4）. Chadwick and Lord Ashley were installed as such.[114] One of the members except the president was defined as a paid official（clause 7）, and Chadwick who was a lawyer became that. Some salaried officers such as a secretary, clerks, servants, and superintending inspectors were subordinated to the board（clauses 5 and 6）.

We cannot miss another clause when we see the roles of the General Board of Health stipulated by the act. That is the clause 120. The Local Boards of Health, as already mentioned, were capable of executing the improvements instead of the owner or occupier and levying the private improvement rates on them if they should neglect the notices（clause 49）. The clause 120 gave the General Board the power to resolve troubles brought about from there independently; namely, if the owner or occupier in question should object to the decision by the Local Board, the General Board was able to receive the objection with a form of a memorial and make an order based on their own judgement. This order, by the way, means not a provisional but a usual order.

The principle of 'equality under law' was firmly kept in England, and serious offences hence were judged by justices of the peace and in the superior courts as usual（clauses 49; 129; 135）. However, minor offences without infringement on others' bodies or properties such as nuisance thus came to be left to the discretion of the General and Local Board of Health. The said provisional orders enabled the General Board to direct the localities to execute things stipulated in the act, and now the General and Local Board thus won autonomy to some degree from the complicated court proceedings by having power

113　8 & 9 Vict., c. 118, 1845, clause 2.
114　Brundage, *op. cit.*, 133－134（note 7）.

to direct the execution and resolve the troubles.

We can now realise the meanings of the words, 'I proposed that the [central] committee should be a quasi judicial committee,' which Chadwick wrote in the said letter to John Russell.[115] It was ironical that John Russell who had delayed the submission of *Sanitary Report* as the Home Secretary of the Second Melbourne Ministry held office as the Prime Minister when Public Health Act was enacted, but the General Board of Health was established as just the 'quasi judicial' authority judging things independently with the provisional and usual orders.

Robert von Mohl discussed that the state should take the responsibility of carrying out the sanitary improvements and anticipated that the power should be vested in the government bureaucrats.[116] Chadwick, contrary to it, did not agree with such a continental way of thinking although many scholars are likely to regard him as an advocate of centralism. He did not adopt such bureaucratic control as the central authority had even the power concerning personnel matters. He did not agree with the way that central technocrats immediately directed local salaried professionals either. The resources of power were different between the General and the Local Boards; namely, the General Board of Health was authorised by royalty, whilst the Local Boards were selected and justified by the will of the people. They were central-local lawyers who united the both boards of the different origin. Chadwick's design of the administrative structure was 'quasi judicial' in this way.

Conclusion

This study has investigated Chadwick's ideas about public health through examining *Sanitary Report*, and mainly taken notice of his design on the administrative structure. In conclusion, it firstly demonstrated that Chadwick restricted the subject of the public interference to residence to make it compatible with labour market and self-help. Secondly, he modelled a local authority, so called the Local Board of Health, on the remedies of common law such as nuisance and the court leet. That is, he reached the ideas that it would be possible to constitute the authority which worked salaried professions and executed the improvements if the residents should share a sense of

115 Chadwick to Russell, 14 May 1848, *Chadwick Papers*, #1733 (note 14).
116 Mohl's discussion extracted by Chadwick showed that the project such as water supply was 'one important duty of a State.' (*Appendixes*, 431) (note 61).

equals by participating in the election of the board as they had done in the court leet before and their will should justify the arrangements. The view to respect the autonomy of families based on adult male labour was being paired with the intention to try to create a sense of community among the people satisfying the residential qualifications. Thirdly, Chadwick designed the General Board of Health as a central authority and gave it the power to direct the local authorities to execute the improvements with provisional orders, and to resolve the troubles caused there independently. The sanitary affairs thus came to be handled at the discretion of the both General and Local Boards. Fourthly, central-local lawyers united the boards making judgements apart from the court proceedings. It sounds curious, but indeed he found the way to give autonomy to the administrative authorities from within the tradition of common law. Chadwick considered it a 'quasi judicial' system, and it was a peculiar structure to England unlike the bureaucratic control that Robert von Mohl showed as *Polizei*.

The General Board of Health was abolished in 1858, and then Chadwick felled from power ultimately. However, the 'quasi judicial' system seems to have lived on in the English sanitary administrative structure thereafter. For example, when the Local Government Board was founded in 1871, a qualified solicitor, John Lambert, took office as the secretary whilst James Stansfeld assumed the presidency. Barristers such as Hugh Owen, Samuel Provis and Horace Monro succeeded as the secretary in turn thereafter.[117] John Simon was a person who tried to create the Local Government Board under the leadership of medical officers of health in the central and local authorities, but he failed to do so because of the opposition of John Lambert persisting in the initiative of lawyers.[118] Simon looked back at the trying experience later and wrote, 'From its legal standpoint, manned exclusively by legal or quasi-legal officers, the Board could obtain its record of all formal acts of local sanitary administration, but would hardly approach the question of their substantial merits.'[119] We can see here that Simon used the words, 'quasi-legal officers,' with evident sarcasm, but it seems obvious that the system in which lawyers united the central-local authorities was firmly kept and it was rather blocking the advance of specialists such as medical officers to the contrary. It would be understandable if we should remember that the administrative structure was founded based on the remedies of

117 Christine Bellamy, *Administering Central-Local Relations, 1871－1919*（Manchester: Manchester University Press, 1988）, 133.

118 *Ibid.*, 118－123. About John Simon, see Royston Lambert, *Sir John Simon 1816－1904 and English Social Administration*（London: Macgibbon & Kee, 1963）.

119 John Simon, *English Sanitary Institutions*（London: Cassell & Co, 1890）, 376.

common law in the localities. It would become a problem to be resolved in the English society hereafter that lawyers working as generalists were likely to be dominant over specialists such as the medical officers.

This study started with the aim of finding clues for a comparative research on the administrative structures for public health. What it has demonstrated is that simple technology alone such as medicine and engineering was not enough to execute power and to interfere with private rights. Something like a frame of reference peculiar to the country was required there, and the things playing such a role in England were the remedies of common law such as nuisance and the court leet. Technology would be capable of being transmitted from advanced countries to the others as something like module.[120] It might be possible to say that modularisation of diverse technology resulted in producing the modern globalising world. The present study, contrary to it, discussed that there might have been a sort of native culture unable to be transplanted as a module to others or from others and it might have been amplified as a coordinate system to the globalising technology simultaneously.

This study, however, does not explain the medical officers of health put under the Local Boards so much. Chadwick had a distrust of such officers if anything,[121] and Public Health Act left the disposition of the medical officers to the discretion of each Local Board unlike the surveyors put compulsorily (clause 40). We must research the said John Simon's ideas to learn the roles of the officers because he was one of the leading persons who made efforts to create a nation-wide network of medical officers through founding the Society of Medical Officers of Health. The future challenge is to discuss Simon's ideas and to extend our knowledge on the sanitary administrative structure in England moreover through the work.

120 Benedict Anderson showed transmission of the revolutionary thought from France to the Bolsheviks as 'a century of modular theorizing.' Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London: Verso, revised edition, 2006), 156－157.

121 *Sanitary Report*, 404.