

Proceedings from the 2005 Sho Sato Conference  
in Honor of Takao Tanase

Comments on the  
Theme of Modernism  
in the Work of Takao Tanase

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## Comments on the Theme of Modernism in the Work of Takao Tanase

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It was a great pleasure to read the chapters of Professor Tanase's book in preparation for today's event; the pleasure that comes through encountering for the first time a body of rich, sophisticated, subtle, and eloquent scholarship. As I read, I found myself in deep sympathy for Professor Tanase's project, which I take to be a critical vindication of the concept of rights in Japanese law, and the pursuit, so it seems to me, of a redemptive theory of community-through-language as a force for good to be brought to bear – along with and inseparably from law – on the many forms of what he calls “micro-violence” in society. It is this commitment that constitutes Tanase's “modernism” – or even, as I will suggest later, his belief in “development.”

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I have been asked to comment briefly on the theme of “modernism” in Professor Tanase's work. I will do that, but with reference more to the close-in context of Japanese social and political thought rather than to the general issue of modernity.

Let me begin with the title of today's conference, which refers to “Emerging Concepts of Rights in Japanese Law.” We should understand that to mean “new” or “current” concepts; it does not mean that the concept of rights is emerging for the first time. Years ago, in graduate school, I was a research assistant for Thomas C. Smith, who died in April 2004. Smith was perhaps the most important Western historian of Japan of the postwar era, and wrote a seminal study of the “agrarian origins,” that is, the preindustrial Tokugawa roots, of modern Japan, necessarily including its labor force.

In his later years, Smith became interested in the attitudes, the consciousness, of Japanese workers in the early 20<sup>th</sup> century, and as his assistant I read through many issues of labor union newspapers and tracts. One day he got very excited when I told him that in their protocols of protest over poor treatment, workers frequently referred to themselves as persons (*jinkaku*), among whose attributes were certain rights. Smith took things from there, going on to argue that included among these rights was the “right to benevolence,” that is, to appropriate

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Note: The following comments have been reconstructed from the short outline I prepared for my oral presentation. I have tried to preserve their ad hoc character here.

treatment by superiors. This formulation made clear that hierarchy was accepted, but the right claimed was a right nonetheless, and if it were ignored or trampled on, workers would assert another one: to strike. Strictly speaking, I should add, this wasn't a fully legal right, since a labor union bill guaranteeing the right to bargain collectively and strike was never passed by the parliament – until 1945, that is. But there were many strikes, some of them involving multiple thousands of workers, over the decades after World War I. One other instance I can cite of rights consciousness comes from the same time period, and that is of geisha protesting ill treatment by patrons by calling it “unconstitutional.” So, rights consciousness goes back some way.

Well, so much for preliminaries. The main thing I wanted to say about “modernism” in connection with Professor Tanase's work – I have read only a fraction of it, of course – has to do with its more immediate context in the world of Japanese social, political, and legal thought of the generation that had been nourished on imperial Japan's final crisis. This is the generation of Professor Tanase's teachers, particularly Takeyoshi Kawashima, who basically founded the field of the sociology of law in Japan and whose work is discussed in Chapter 6 of Tanase's forthcoming book. When we think of “modernism” (*kindaishugi*) in Japanese thought, along with its “modernization” (*kindaika*), its conceptual cousin, Kawashima's is one of the names that comes immediately to mind. The list includes, at the very top, the intellectual historian and political scientist Masao Maruyama, the economic historian Hisao Ôtsuka, and Yoshihiko Uchida, a historian of economics.

One way or another, each of these thinkers was concerned with a Weberian problem: how to “overcome” the tenacious influence in Japanese society and politics of what they regarded as a premodern communal consciousness, one whose foundations lay in Japan's still large agrarian society, and characterized in their view by a familistic mode of production. It's very important, however, to understand that this ostensibly premodern consciousness had been co-opted, and written, so to speak, into the very structures of Japan's mode of modernization, which, as you undoubtedly know, was characterized by a vigorous neo-traditionalism; from top to bottom, from emperor to village, Japan was held to have modernized *through* the mobilization of tradition, most importantly of the family as the primary model for all social institutions. This was said again and again, from the 1890s onward. And as Japan in the late 1930s committed itself to an unwinnable, total war, scholars such as Kawashima, Maruyama, Ôtsuka, Uchida, and others thought that they were witnessing the ultimate consequence of their society's failure to make rational decisions, and that their generation – the generation sent to war – would pay the heaviest price for that failure. Japan had failed to modernize completely; that was its tragedy. A

truly modern Japan, they believed in the marrow of their bones, would not have gone to war as it had.

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We can see, looking at their scholarship and later autobiographical writings, how urgently, even desperately, the so-called “modernists” sought to save their souls through the intense study, in the middle of the war, of thinkers and histories that they regarded as *genuinely* modern, and to imagine how, after Japan’s inevitable defeat, they might make use of a hard-won second chance to realize modernity for themselves. Uchida, for example, studied Adam Smith, and discovered (in *The Wealth of Nations* and *The Theory of Moral Sentiments*) the notion that a genuine market requires that those who participate in its transactions recognize each other’s good faith efforts as expressed in their labor. Japan’s feudal society, Uchida thought, had recognized the sanctity of private ownership, thus moving a long way toward a modern capitalist order. But that sanctity, he held, had not “been broken by a belief in the sanctity of labor,” and that was the vital step that had to be taken next. Ôtsuka and Kawashima put things in more Weberian terms: how can we overcome “community”? Incidentally, in the last phase of the war, when Tokyo and Japan’s other great cities were being bombed almost daily and literally millions of people were evacuated to the countryside, Kawashima and Ôtsuka spent quite a lot of time together in the small village of Yose, not far to the southwest of Tokyo, along the shore of Lake Sagami. Along with one other colleague, they rode the trains into the city to work and back – this got to be more and more dangerous as time went by – and spent long evenings and nights talking about what they were reading and thinking. They later wrote about themselves, almost nostalgically, as the “Three Gents of Yose (*Yose no sannin-gumi*).” The point I’d like to make about this episode is that, in a real sense, the *concept* of postwar (defeated) Japan as a modern society-to-be was born of this experience; the common references after the war to Japan’s “backwardness” should be understood as the combined product of wartime *destruction* and social scientific *construction*.

Professor Tanase was a student of Kawashima. In a sense, every Japanese scholar in the field of social science, including law, is a student of the “modernist” generation. This is hardly the place to recapitulate Japan’s postwar history, its economic achievements under conservative political hegemony, its current malaise. But as Professor Tanase’s comments show, his generation has lived in a Japan unimaginably different from the humiliated, abject society that was their teachers’ fervent concern. So it is not at all surprising that Professor Tanase, with a nice, dialectical turn, evinces doubts and qualifications concerning Kawashima’s modernism; but he does not reject it, for reasons that he makes clear. Why? Well, if the worst of traditional communal consciousness is summed

up in Gretchen's wretched death in Goethe's *Faust* – she is ostracized for daring to step beyond her sanctioned feminine role – the worst of modern “individualism” is captured in the death of Kitty Genovese, the young woman in New York (I forget which borough), who was murdered in the street, her screams for help ignored by her neighbors. Neither Kawashima nor his student Takao Tanase is seeking to leave Gretchen's village only to land in Kitty Genovese's mean street. Whatever predicaments it brings, modern life *is* about making people capable of living more fully, more happily. Kawashima was explicit about this. For his part, Tanase too is looking for a modernity humanized through the instrumentality of language, of people talking together, not as a replacement for “cold” legal rights, but as their crucial complement. One can see here, perhaps, an echo of Uchida's view that the “sanctity” of labor and mutual good faith must be nurtured in order to make capitalist society livable. The sense I always get with Uchida is that he believed in this possibility. So too with Kawashima – and, *mutatis mutandis*, with Tanase.

I do not think that Professor Tanase is at all naïve about the real world of language. A Habermasian, such as he is, may sound utopian to some. But he quite astutely remarks that in Japan, the greater danger lies in relying on “implicit understandings” that in effect deprive the vulnerable of voice. Speech, for him, carries the same moral weight that labor does for Uchida. It is sacred and must be protected, not for the sake of the strong but of the weak. And it bears the specifically modern, paradoxical sense that its “sacredness” consists in its being subject to criticism without fear of retribution.

Let me conclude with just a brief remark: that although Professor Tanase's zone of engagement, quite properly, is with law in Japan, he is by no means merely seeking to complete its formal “modernization.” What he is after now is *aggiornamento*, a term that was used to describe the work of Vatican II. It is development, in the broadest, fullest sense of the term, that is the concern of Tanase's law-in-society perspective. This is a never-ending task, just as (I think) modernity never really ends, yet requires constant development, that is, as a papal encyclical of 1967 put it, “to seek to do more, know more and have more in order to be more.” How can law serve, or be made to serve, the end of development in this sense? That is the question Professor Tanase has posed, and to which he has ventured a most compelling answer.

+ Kawashima and Ôtsuka, it's interesting to note, were close friends.