

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

Translating Tanase:  
Challenging Paradigms of  
Japanese Law and Society

Luke Nottage  
University of Sydney

All rights reserved by the author.

This paper was presented at a Sho Sato Conference held on February 12-13, 2005 at Boalt Hall School of Law, University of California, Berkeley.

## Translating Tanase: Challenging Paradigms of Japanese Law and Society<sup>#</sup>

Luke Nottage<sup>\*</sup>

The collection of essays that became a centerpiece of the Sixth Sho Sato Conference on Japanese Law held at the University of California, Berkeley over February 12-13, 2005, celebrates the intellectual journey of a leading scholar of legal sociology in Japan and world-wide: Takao Tanase, professor at Kyoto University Law Faculty from 1977-2007. His discipline has deep roots in Japan, drawing from studies of “law in action” encouraged by legal realists in the United States, for example, and the tradition established by Eugen Ehrlich and others in Europe before World War II. The Japanese Association of the Sociology of Law, for which Tanase served as Program Director in the early 1990s and as President from 1999-2002, has grown to join together around 850 members since its founding in 1947.<sup>1</sup> This makes it one of the world’s oldest and largest associations in the field, and it collaborates actively with others based elsewhere. Individual scholars in Japan have also made contributed many important theoretical and empirical studies, but many have not been readily accessible to English language readers. These collected essays therefore provide more than a window onto Tanase’s thought-provoking insights. They also offer glimpses into the vibrant world of socio-legal studies in Japan.<sup>2</sup>

Tanase’s work also reflects, and contributes to, broader shifts in this field and the social sciences more generally. He has moved away from a more functional approach to the sociology of law, dating back to his doctoral studies in sociology at Harvard University in the early 1970s. Influenced also by critical

---

<sup>#</sup> An expanded version of this paper is being co-authored with Leon Wolff, co-translator of Professor Takao Tanase’s collection of essays, as a Translators’ Preface for that manuscript. I thank Leon for helpful comments on an initial draft of this paper, and more generally for his persistent efforts in bringing the complete manuscript to fruition.

<sup>\*</sup> Senior Lecturer, University of Sydney Faculty of Law; Co-Director, Australian Network for Japanese Law.

<sup>1</sup> See <http://wwwsoc.nii.ac.jp/hosha/english/eindex.htm>.

<sup>2</sup> For earlier overviews in English, see, e.g., Frank Upham, “The Sociology of Law (Japan),” *Law and Society Review* 23 (1989), 879-889; Shozo Ota, “Law and Economics in Japan: Hatching Stage,” *International Review of Law and Economics* 11 (1991), 301-308.

philosophy and legal theory particularly in the United States, Tanase has taken a strong “interpretive turn” since around 1990.<sup>3</sup> The core of his approach nowadays is a hermeneutical understanding of the world, in which subjects cannot be clearly separated from objects, and goals cannot be clearly separated from acts.<sup>4</sup> This undermines more than lawyers’ ethics that adopt an extreme partisan approach – prepared to take clients’ expressed goals as given and then pursuing them to the full extent of the law (**Chapter 1** for this collection of his works in English<sup>5</sup>). Tanase’s epistemology also leads to sharp critiques of modern liberalism itself, in a broad array of legal arenas, beginning with family law (**Chapter 2**),<sup>6</sup> and leads him to imaginative attempts to reinstate new forms of community in law and social life.<sup>7</sup>

Although Tanase’s general approach and the applications revealed in this book draw considerably on tensions prominent in modern liberal law in the United States, they are also heavily imprinted by his understanding of socio-legal developments in Japan. This understanding is particularly timely because of the “third wave” of legal reform underway in Japan since its economic slowdown and political fragmentation in the early 1990s. These reforms continue in the tradition of the “reception” of modern Western law after the country was reopened to the world during the Meiji Period (1868-1912), primarily in the form of codifications derived from continental European models, and the imposition of more far-

---

<sup>3</sup> Cf., e.g., Stephen M. Feldman, “The New Metaphysics: The Interpretive Turn in Jurisprudence,” *Iowa Law Review* 76 (1991), 661-699.

<sup>4</sup> Cf., e.g., Ingrid Scheibler, “Gadamer, Heidegger, and the Social Dimensions of Language: Reflections on the Critical Potential of Hermeneutical Philosophy (Symposium on Philosophical Hermeneutics and Critical Legal Theory),” *Chicago-Kent Law Review* 76 (2000), 853-892, and other articles in that Symposium special issue.

<sup>5</sup> Originally, Takao Tanase, “Katari to Shite No Ho Enyo – Ho No Monogatari to Bengoshi Rinri [Invoking Law as Narrative: Lawyers’ Ethics and the Discourse of Law],” *Minshoho Zasshi* 111 (1995), 677-706 (and 865-903).

<sup>6</sup> Takao Tanase, “Rikongo No Mensetsu Kosho to Oya No Kenri – Hikakuho Bunkateki Kosatsu [Post-Divorce Child Visitations and Parental Rights: Insights from Comparative Legal Cultures],” *Hanrei Taimuzu* 712 (and 713) (1990), 4-19 (and 14-15).

<sup>7</sup> Despite significant differences in origins, concerns and conclusions, Tanase’s recent work selected for this book thus overlaps considerably with the studies of another innovative sociologist of law, Philip Selznick at the University of California, Berkeley, where Tanase has developed close connections. Cf. generally Robert A. Kagan, Martin Krygier and Kenneth I. Winston, eds., *Legality and Community: On the Intellectual Legacy of Philip Selznick* (Lanham/Berkeley, 2002) (especially the chapters by Krygier and Rokumoto); and Roger Cotterrell, “Selznick Interviewed: Philip Selznick in Conversation with Roger Cotterrell,” *Journal of Law and Society* 31 (2004), 291-317.

reaching democratic reforms during the U.S.-led Occupation (1945-1952). The current wave of reforms, spreading from commercial law into the broader civil and criminal justice systems as well as public law, aim to fully entrench a liberal rights-based democracy in Japan. In this way, on a third attempt, the project seeks to fill what Tanase describes as “the empty space of the modern” in Japanese law and society (**Chapter 7**<sup>8</sup>). Yet his work in this book provides an empirically based theoretical framework for understanding and predicting the problems that this agenda seems to be encountering. His comparative analysis of the United States strongly suggests that the more the ideal of subjecting social life to law is pursued, the harder it becomes to achieve, as tensions inherent to the model emerge and communities reassert themselves. Whether Japan is at, or near, such a stage remains an empirical as well as a theoretical issue. Much work also remains to be done in thinking how the tensions identified might be minimized or overcome through redesigning socio-legal institutions.<sup>9</sup> But Tanase’s recent scholarship opens up a rich new paradigm for ongoing research and policy-making.

As innovations continue to proliferate in legislation, case law and other levels of Japan’s legal system, debate is also being rekindled regarding more conventional theories or paradigms used to understand the Japanese legal system, particularly amongst outside observers. Similar methodological differences now enliven the field of Japanese studies more generally.<sup>10</sup> Among those focusing on Japanese law, a central debate has revolved around low per-capita civil litigation rates, compared to other similar economies, especially in Europe and the United States.<sup>11</sup> One of the earliest paradigms was “culturalist,” deriving particularly from publications by Professor Takeyoshi Kawashima, Tanase’s mentor at the University of Tokyo, whose death in 1992 occasioned the work translated in

---

<sup>8</sup> Reproduced from Takao Tanase, “The Empty Space of the Modern in Japanese Law Discourse,” in David Nelken and Johannes Feest, eds., *Adapting Legal Cultures* (Oxford, 2001) 187-198.

<sup>9</sup> See, e.g., Robert A. Kagan, “On the Routinization of Tort Claims: Takao Tanase’s ‘The Management of Disputes,’” Proceedings from the 2005 Sho Sato Conference in Honor of Takao Tanase ([http://www.law.berkeley.edu/centers/ilr/pub\\_sho\\_sato\\_2005](http://www.law.berkeley.edu/centers/ilr/pub_sho_sato_2005)), and the other online papers commemorating and commenting on Tanase’s work.

<sup>10</sup> See, e.g., Patrick Smith, *Japan: A Reinterpretation* (New York, 1998); Yoshio Sugimoto, *An Introduction to Japanese Society*, 2nd ed. (New York, 2003).

<sup>11</sup> Masaki Abe and Luke Nottage, “Japanese Law,” in Jan Smits, ed., *Encyclopedia of Comparative Law* (Cheltenham, 2006) 357-377.

**Chapter 6.**<sup>12</sup> When publications by Kawashima and a few other Japanese scholars were translated into English over the 1960s and 1970s, the heyday of cultural relativism, they became most popular for the proposition that “the Japanese don’t like law.”<sup>13</sup> Kawashima’s criticism of this tendency, as well as his expectation that such laggard social consciousness would evolve to meet the ideals set by modern law as industrialization progressed, tended to be downplayed. There may have been some justification for this reading because, as Chapter 6 indicates, Kawashima’s prediction seemed to be increasingly untenable in view of Japan’s strong economic performance over the 1970s and 1980s even without much additional formal engagement with the legal system. Also, as illustrated by the first and often-cited publication in English by Tanase (1990) on resolution of traffic accident disputes, diverse social and legal actors were strategically reconfigured precisely to avoid the necessity of taking cases through the court system. When aggregate per-capita civil litigation rates did start to escalate, beginning with the economic slowdown prompted by the Oil Shocks in the 1970s, some remembered Kawashima’s prediction. But the still comparatively low litigation rates were also emphasized, as implying an enduring broader cultural tendency to avoid formal litigation processes.<sup>14</sup> Tanase’s most recent empirical work in this area, translated in **Chapter 8,**<sup>15</sup> likewise points out that the rising rates are largely driven by debt collection litigation, less illustrative of burgeoning consciousness of legal rights – especially when the legal norm requiring repayment seems to mesh anyway with the “cultural” norm of repaying one’s debts. However, he also uncovers rises in general tort litigation, and more contentiousness even in traffic dispute resolution cases (correlated with increases in lawyer numbers and involvement). These suggest both a degree of “modernization” of legal consciousness in Japan, and the patterning effect still of social structures and more diffuse cultural norms.

Tanase’s more nuanced re-interpretation and empirical study of ongoing issues first highlighted by Kawashima, in English translation, go largely against

---

<sup>12</sup> Takao Tanase, “Kindai No Rinen to Yuragi – Kawashima Hoshakaigaku No Riron to Jissen [The Ideal and Unsettling of Modernity: The Theory and Practice of Kawashima’s Sociology of Law],” *Horitsu Jiho* 65 (1993), 26-34.

<sup>13</sup> Yoshiyuki Noda, *Introduction to Japanese Law* (Tokyo, 1976).

<sup>14</sup> Christian Wollschläger, “Historical Trends of Civil Litigation in Japan, Arizona, Sweden and Germany: Japanese Legal Culture in the Light of Judicial Statistics,” in Harald Baum, ed., *Japan: Economic Success and Legal System* (Berlin/New York, 1997).

<sup>15</sup> Takao Tanase, “Soshoriyo to Kindaika Kasetsu [Litigation and the Modernization Hypothesis],” in *Minjisoshoho Riron No Aratana Kochiku [New Constructions in Civil Procedure Law Theory]* (Tokyo, 2001) 287-322.

the tide generated by over two decades of socio-legal studies of Japan from abroad. A sharp critique of the culturalist paradigm came first from an article entitled “The Myth of the Reluctant Litigation,” published by (then) University of Washington Professor John Haley (1978). This highlighted the possible malleability of culture and social structures, observing that litigation rates had been higher before than after World War II. The main explanation given was that “institutional barriers” to bringing suit had been raised, by limiting the numbers of legal professionals and allowing problems in civil procedure to persist, so that fewer claimants could afford to sue and thus obtain outcomes nominally prescribed by the law. Thus, this early work by Haley established an alternative paradigm, that “the Japanese can’t like law” – even if they would prefer to pursue it. His later work did become less critical of this post-War situation, increasingly asserting positive effects from retaining communitarian tendencies in socio-legal life in Japan.<sup>16</sup> But that developed quite separately from Tanase’s turn to communitarianism over the 1990s, without the latter’s clear theoretical underpinnings. That may explain the more limited direct impact of Haley’s later work, compared to his initial study of “institutional barriers.”

Another possible reason for its enduring attraction is that a powerful third paradigm also grew out of Haley’s early work. The “social management” paradigm refined the idea that institutional barriers could be maintained particularly by social elites in Japan, to resolve social problems outside the courts and thus minimize the possibility of society being led unpredictable directions. Often, alternative dispute resolution procedures and resources were inaugurated to facilitate such management. More so than Haley, Boston University Professor Frank Upham<sup>17</sup> detailed how this management approach was embedded in a variety of areas after World War II: pollution, discrimination (against women or *burakumin* outcastes), and – perhaps less pervasively – industrial policy. The early study of traffic accident dispute resolution by Tanase<sup>18</sup> was often read as consistent with this paradigm too. In short, the paradigm suggested instead that “the Japanese are made not to like law.” Further, just as Haley’s later insights have tended to be overlooked, most commentators writing outside Japan and adopting this perspective have tended to remain critical of the management approach to socio-legal ordering, and to emphasize the heavy hand of the

---

<sup>16</sup> John O. Haley, *Authority without Power: Law and the Japanese Paradox* (New York, 1991); John O. Haley, *The Spirit of Japanese Law* (Athens/London, 1998).

<sup>17</sup> Frank G. Upham, *Law and Social Change in Postwar Japan* (Cambridge, 1987).

<sup>18</sup> Takao Tanase, “The Management of Automobile Disputes: Automobile Accident Compensation in Japan,” *Law and Society Review* 24 (1990), 651.

bureaucracy in directing the elite response,<sup>19</sup> even though Upham<sup>20</sup> himself became more circumspect. Tanase's more recent work on tort law (**Chapter 3**<sup>21</sup>) and the socially disadvantaged (**Chapters 4 and 5**<sup>22</sup>) seeks to find a middle way. It tries to highlight and avoid both tightly structured and potentially openly oppressive solutions to complex social problems, and an individual rights-based approach that tends to mask other forms of violence (**Chapter 4**). Instead, he favors more contextualized problem-solving processes through which communities can continuously redefine both themselves and the legal system (Chapter 5).

Tanase's approach therefore directly contradicts a fourth paradigm for analyzing Japanese law and society, which became increasingly popular especially in the United States over the 1990s. The "economic rationalist" paradigm takes to an extreme the idea of individuals (as litigants in civil disputes faced by institutional barriers) or elite groups (managing society) acting in their self-interest, resulting in little litigation through the courts. The distinctive feature of this paradigm is that it asserts instead that "the Japanese do like law," rationally acting in its shadow or patterning their behavior around it.<sup>23</sup> Thus, despite high barriers to bringing suit, Japanese law is predictable – at least in some areas such as traffic accident dispute resolution, and compared to countries like the United States – so claimants do not even need to file suits to be able to obtain favorable settlements out of court.<sup>24</sup> Much recent work within this economic rationalist paradigm, championed especially by Harvard Law School Professor Mark Ramseyer, also relies on quantitative techniques in social science, particularly

---

<sup>19</sup> See, e.g., Anita Bernstein and Paul Fanning, "'Weightier Than a Mountain': Duty, Hierarchy, and the Consumer in Japan," *Vanderbilt Journal of Transnational Law* 29 (1996), 45-73.

<sup>20</sup> Frank K. Upham, "Privatized Regulation: Japanese Regulatory Style in Comparative and International Perspective," *Fordham International Law Journal* 20 (1996), 396-511; Frank K. Upham, "Weak Legal Consciousness as Invented Tradition," in Stephen Vlastos, ed., *Mirror of Modernity: Invented Traditions of Modern Japan* (Berkeley, 1998) 48-66.

<sup>21</sup> Takao Tanase, "Fuhokosekinin No Dotokuteki Kiso [The Moral Foundations of Tort Liability]," in Takao Tanase, ed., *Gendai Fuhukoiho [Modern Tort Law: Ideals of Law and the Life-World]* (Tokyo, 1994) 3-20.

<sup>22</sup> Takao Tanase, "Kenri to Kyodotai [Rights and Community]," *Horitsu Jiho* 69 (1997), 7-13; Takao Tanase, "Kyodotairon to Kenpo Kaishaku [Communitarianism and Constitutional Interpretation]," *Jurisuto* 1222 (2002), 11-12 and 138-150.

<sup>23</sup> J. Mark Ramseyer and Minoru Nakazato, *Japanese Law: An Economic Approach* (Chicago, 1999).

<sup>24</sup> J. Mark Ramseyer and Minoru Nakazato, "The Rational Litigant: Settlement Amounts and Verdict Rates in Japan," *Journal of Legal Studies* 18 (1989), 263-290.

econometrics.<sup>25</sup> The assumptions of crystal-clear distinctions between empirical observation and normative implications, and of prediction rather than broader understanding as the sole goal of social science creates a major tension with Tanase's hermeneutical approach and his more eclectic methodological toolkit. Another tension arises because Ramseyer's economic rationalism nowadays implies – or at least leads to – a normative preference for minimal legal intervention in social as well as economic ordering, with such intervention moreover adopting simple bright-line rules.<sup>26</sup>

Thus, the work by Tanase introduced in this book recreates broader methodological struggles within legal sociology and the social sciences more generally. In particular, it provides another foothold especially for those dubious about one true religion in understanding rapidly evolving law and society in Japan. Already, we may be witnessing the emergence of more “hybrid” paradigms. Some of these combine both qualitative and quantitative methodologies,<sup>27</sup> and all generally adopt more nuanced approaches to demonstrate why and how “the Japanese sometimes like law, but sometimes don't.”<sup>28</sup> Tanase's recent work offers rich potential particularly for these sorts of studies, and also may revive the more normative proposition that “the Japanese need not like all law.”

For example, Ginsburg and Hoetker interpret their quantitative analysis as largely supporting Haley's thesis that institutional incapacity (especially low numbers of judges) governs civil litigation. Their results are also seen as going against Upham's elite management thesis (albeit on the arguable assumption that Japan's elite has not changed much since the 1990s), as well as Ramseyer's predictability thesis (although underlying substantive law has been changing

---

<sup>25</sup> See, e.g., J. Mark Ramseyer and Minoru Nakazato, *Japanese Law: An Economic Approach* (Chicago, 1999); and J. Mark Ramseyer and Eric Rasmusen, *Measuring Judicial Independence: The Political Economy of Judging in Japan* (Chicago, 2003).

<sup>26</sup> Cf. also Richard Allen Epstein, *Simple Rules for a Complex World* (Cambridge, 1995); Richard Allen Epstein, *Skepticism and Freedom: A Modern Case for Classical Liberalism* (Chicago, 2003).

<sup>27</sup> See, e.g., Mark D. West, “The Resolution of Karaoke Disputes: The Calculus of Institutions and Social Capital,” *Journal of Japanese Studies* 28 (2002), 301; and more generally Mark D. West, *Law in Everyday Japan: Sex, Sumo, Suicide, and Statutes* (Chicago, 2005).

<sup>28</sup> See, e.g., Eric A. Feldman, *The Ritual of Rights in Japan: Law, Society and Health Policy* (Cambridge, 2000); Curtis J. Milhaupt and Mark D. West, *Economic Organizations and Corporate Governance in Japan: The Impact of Formal and Informal Rules* (Oxford, 2004); Luke Nottage, *Product Safety and Liability Law in Japan: From Minamata to Mad Cows* (London, 2004).



rapidly in many more areas than they imply). Ginsburg and Hoetker also question one aspect of Kawashima's culturalist/modernization thesis, by finding that urban residents (usually considered more "modern") are not statistically more likely to sue, and more broadly (developing Wollschlaeger's analysis) by emphasizing the cyclical inverse correlation with economic growth. Their overall conclusion that "Japanese appear to respond to incentives to litigate just as do citizens of other advanced industrialized democracies" still leaves open the question of whether such incentives are purely economic, contested by Tanase's own quantitative analysis and his general theory.<sup>29</sup>

Tanase's work also generates much more than a controversy within a discipline like legal sociology, let alone a sub-discipline like Japanese law. Such divergent paradigms for interpreting law, society and the economy have framed important policy-making domestically and in other countries dealing with Japan, and no doubt will continue to do so.<sup>30</sup> Under the culturalist paradigm in Kawashima's variant, for example, Japan could more readily justify placing top priority on economic growth particularly over the 1960s, since the implication was that modernization in the sense of industrialization would lead to modernization of legal consciousness anyway. Its trading partners, notably the United States, could go along with this too. By the 1980s, however, the institutional barriers and social management paradigms not only identified a tension within Kawashima's theory, namely the possibility of manipulating culture or at least related social structures. Those paradigms also led to divergent views in Japan as opposed to the United States. While Japan became confident that it had turned the tension to its social and economic advantage, the United States became increasingly critical about what it perceived (and sometimes certainly experienced) as the closed nature of "Japan, Inc." This standoff has lessened somewhat, as the deregulation movement – underpinning, and underpinned by, the economic rationalism paradigm – has not only maintained momentum in the United States, but also found increasing traction in Japan since

---

<sup>29</sup> Tom Ginsburg and George Hoetker, "The Unreluctant Litigant? An Empirical Analysis of Japan's Turn to Litigation," *Journal of Legal Studies* 35 (2006) 56. Cf. generally also Tanase's further recent quantitative analysis, but of citizens' attitudes towards the law (rather than their behavior): Takao Tanase, "Nihonjin No Kenrikan/Keibatsu Ishiki to Jiyushugiteki Hochitsujo [Japanese Conceptions of Rights and Attitudes Towards Punishment, and Liberal Legal Order]," *Hogaku Ronso* 157 (2005), 1-32.

<sup>30</sup> Luke Nottage, "Redirecting Japan's Multi-Level Governance," in Klaus Hopt, Eddy Wymeersch, Hideki Kanda and Harald Baum, eds., *Corporate Governance in Context: Corporations, State, and Markets in Europe, Japan, and the US* (Oxford, 2005) 571-598; and cf. generally, e.g., Steven Kent Vogel, ed., *U.S.-Japan Relations in a Changing World* (Washington, D.C., 2002).

the financial crisis since the late 1990s. Nonetheless, Japanese law and society have certainly not become Americanized.<sup>31</sup> More hybrid approaches, advanced by work like Tanase's, are likely to mean ongoing "re-regulation" and divergences in policy-making processes and outcomes.<sup>32</sup>

In addition, whatever form it ends up taking, Japan's transfiguration will have important repercussions for its partners in trade, investment, security and social issues that also increasingly transcend national borders. By better understanding what is happening in Japan nowadays, we also become better placed to understand transformations world-wide. Notably, Japan maintains a very large Overseas Development Assistance budget, especially in Asia. A growing proportion is directed at "legal technical assistance" to developing countries further jolted by the Asian Financial Crisis of 1998, raising the question of whether any distinctive Japanese views on socio-legal ordering may be "exported" anew.<sup>33</sup> Japanese firms have also developed particularly extensive bilateral trade and investment relations with the People's Republic of China. In that country's context, too, Tanase and some associates have also begun sounding warning bells about simplistic attempts to impose a pure liberal model of law. His critiques are based on sophisticated theoretical and empirical observations rooted in comparing Japan's experience.<sup>34</sup> This contrasts with some more

---

<sup>31</sup> Cf. R. Daniel Kelemen and Eric C. Sibbitt, "The Americanization of Japanese Law," *University of Pennsylvania Journal of International Economic Law* 23 (2002), 269.

<sup>32</sup> See, e.g., Peter Drysdale and Jennifer Ann Amyx, eds., *Japanese Governance: Beyond Japan Inc.* (London, 2003); Jennifer Ann Amyx, *Japan's Financial Crisis: Institutional Rigidity and Reluctant Change* (Princeton, 2004); Luke Nottage, "Redirecting Japan's Multi-Level Governance."

<sup>33</sup> See, e.g., Veronica Taylor, "New Markets, New Commodity: Japanese Legal Technical Assistance," *Wisconsin International Law Journal* 23 (2005), 251; and earlier Alexis Dudden, *Japan's Colonization of Korea: Discourse and Power* (Honolulu, 2005), reviewed by Luke Nottage in *Asian Studies Review* (2005), 432-433.

<sup>34</sup> Takao Tanase, "Gurobaru Shijo to Ho No Shinka [Global Markets and Law's Progress]," *Juristo* 1258 (2003), 44-56; with a version published as "Global Markets and the Evolution of Law in China and Japan," *Michigan Journal of International Law* 26(4) (Winter 2005) 873-893. Thus, addressing first China's recent reform initiatives regarding property rights, Tanase points out the parallel to the overly idealized view of rights propounded by Kawashima decades ago (**Chapter 6**). Contrasting actual experiences subsequently in Japan (e.g., the pseudo-legal "administrative guidance" that limited owners' rights to develop "large-scale retail stores"), as well as other countries (such as colonial Africa and the United States itself), Tanase stresses that the "exclusory" nature of property rights is socially constructed and constrained. More generally, rights are much more diffuse than Kawashima and contemporary law reformers in China believe. Secondly, responding to China's efforts to create an independent judiciary as a centerpiece to the autonomy of law, Tanase argues that independence is relative not only to politics, but also to society – and yet society continually reinvents and reasserts itself, even as law (and its ideological

emotional over-reactions we find nowadays, or more straightforward concerns raised about the practical problems likely to arise when transplanting any legal institutions into new environments. Thus, the work introduced in this book contributes not only to the perennial concern of historians, lawyers, legal sociologists, lawyers and many other social scientists: modernity.<sup>35</sup> It also intersects with another major issue preoccupying many of them: globalization.<sup>36</sup>

For these reasons – as legal academics and former practitioners with interests in the law in action, in comparing Japanese law, and in broader trajectories for the globalization of law – it has been a privilege and pleasure for myself and Leon Wolff to begin to introduce this sampling of Tanase’s work to a broader international audience. It has also been a personal challenge. As **Chapter 1** shows, it is hard enough for lawyers to act as “translators” of their clients’ experiences and of social life more generally. But when translating socio-legal studies from one language to another, there is a further risk of becoming “lost in translation.” Our translations went through many drafts, reviewed by each other, Tanase himself, and several others – befitting the hermeneutical enterprise he champions. It is appropriate therefore to end first with warm thanks particularly to those who assisted in this process, primarily Kent Anderson, Tom Ginsburg, Hitoshi Nasu, Veronica Taylor, Melanie Trezise, and commentators or other participants in the Sixth Sho Sato Conference on “Emerging Concepts of

---

counterpart, legalism) invades social spaces. This is evident not only in the context of the family (see also **Chapter 2**), but also the economy. In contractual relationships, for example, the tension between law and society emerges for two main reasons. There are always limits to enforcement through formal court processes, so parties must call on more diffuse “credible commitments.” In addition, more formalized legal rules can in fact create more scope for opportunistic “hold-ups” once a party has entered into a contract, thus necessitating broader social constraints on such narrow self-interest – evident in Japanese “relational contracting.” Finally, Tanase outlines major direct challenges raised against the market principle as the primary means to order law and society: democracy (evidenced by moves towards more citizen participation in the judicial system), social solidarity (evident for example in the EU), and sovereignty (acknowledged even by institutions like the World Bank, in attempts to promote “good governance” through law reform, primarily to support economic growth).

<sup>35</sup> In Japanese studies recently, in particular, see, e.g., Nancy Ross Rosenberger, *Gambling with Virtue: Japanese Women and the Search for Self in a Changing Nation* (Honolulu, 2001); Robert Bellah, *Imagining Japan: The Japanese Tradition and Its Modern Interpretation* (Berkeley, 2003); Ai Maeda and James A. Fujii, *Text and the City: Essays on Japanese Modernity* (Durham, 2004); Simon Partner, *Toshie: A Story of Village Life in Twentieth-Century Japan* (Berkeley, 2004).

<sup>36</sup> Ulrich Beck, *What Is Globalization?* (Malden, 2000). Tanase’s work is also deeply suggestive for analyzing a parallel phenomenon, the emergence of the “information society.” In Japan, see, e.g., Nanette Gottlieb, Mark J. McLelland and David Gauntlett, eds., *Japanese Cybercultures* (London, 2003).

Rights in Japanese Law” (kindly coordinated by Harry Scheiber). We also encourage readers to build in their own interpretations into our understanding of his work and, in turn, to share those views in ongoing studies and policy-making related to Japan or law and society more generally.