Public and Victim Participation in Criminal Justice in Japan: A Tenth Anniversary Symposium

September 20, 2019
1 pm – 6 pm
UC Hastings Law
200 McAllister Street, 2nd Floor
Alumni Reception Center

This event is co-sponsored by:

East Asian Legal Studies Program, UC Hastings
Japan Society of Northern California
Hastings Journal of Crime and Punishment
2019 Japanese Law Symposium at UC Hastings

Public and Victim Participation in Criminal Justice in Japan:
A Tenth Anniversary Symposium

UC Hastings held a symposium which commemorated the tenth anniversary of the comprehensive justice system reform in Japan in 2012 under the title of “Successes, Failures, and Remaining Issues of the Justice System Reform in Japan.” A symposium issue based on that symposium was published in Vol. 36, No. 2 of the Hastings International and Comparative Law Review (HICLR) in 2013. It is still the most comprehensive analysis of the justice system reform in Japan available in English-language.

One of the most prominent items of the justice system reform is public participation in the administration of criminal justice. There are two forms. One is the introduction of criminal trials for a limited range of most serious cases by a mixed panel consisting of three professional judges and six lay judges. Like American jurors, those lay judges are randomly selected from among local voters on a case by case basis. Unlike American jurors, however, they decide both on guilt and sentencing together with professional judges. This system is called the lay judge system and was introduced in May 2009. The other is the introduction of compulsory prosecution by the Prosecution Review Board. The Board was introduced as part of the post-World War II reform for the democratization of the justice system in Japan and consists of eleven members randomly selected from local voters. Japanese prosecutors have a wide range of discretion to suspend prosecution even in cases which have enough evidence for a conviction. The Board reviews such non-prosecution decisions and can express an opinion that the suspect should have been prosecuted by a special majority of eight or more members. Prosecutors could still suspend prosecution rejecting such an opinion. Since May 2009, however, such opinion from the Board became mandatory if it is made twice. The prosecution will become mandatory and practicing attorneys will be appointed as special prosecutors. These two systems have attracted much international attention.

There is another item of reform which came from outside the justice system reform movement. That is the system of victim participation in a limited range of serious cases which is virtually the same to the range of cases handled by the lay judge system. Under this system, the victim or victim representatives such as members of the bereaved family and their lawyers can question witnesses and the defendant and express their views about the guilt and sentence. This system was a result of the victim rights movement which quickly appeared since 2000 and introduced in December 2008, six months earlier than the lay judge system. Introduction of this system has made criminal defense lawyering particularly difficult.

This year’s Japanese law symposium will discuss these three systems from a comparative perspective. It is reported that some symposia are planned in Japan to discuss the lay judge system and the compulsory prosecution system, but there is no report about a symposium which will add the victim participation system to the discussion. Another unique element of this symposium is the participation of a panelist with a Continental European perspective. While the lay judge system and the victim participation have more similarities with Continental European systems, it has been rare to include a panelist with such a perspective at symposia on these systems. Thus, our symposium will again make a significant and a unique contribution to the scholarship on the Japanese justice system.
Program

Organizer/Moderator:
Setsuo Miyazawa, Senior Visiting Professor of Law and Senior Director of the East Asian Legal Studies Program, UC Hastings.

1:00-1:15 PM: Welcome:
(1) Keith Hand, Professor of Law, Associate Dean for Global Programs, and Director of the East Asian Law Legal Studies Program, UC Hastings.
(2) C. Lawrence Greenwood, Jr., President, Japan Society of the Northern California.

Panel Discussion:

1:15-2:00 PM: Keynote: David Ted Johnson, University of Hawaii, co-authored with Dimitri Vanoverbeke, Leuven Catholic University.

2:00-2:30 PM: Lay judge system: Mari Hirayama, Hakuoh University.

2:30-3:00 PM: Victim participation system: Shigenori Matsui, University of British Columbia.

3:00-3:15 PM: Coffee break (group photo session of the panelists).

3:15-3:45 PM: Challenges posed to defense lawyers: Megumi Wada, Law Offices of Takashi Takano.

3:45-4:30 PM: Discussion: Hiroshi Fukurai, University of California, Santa Cruz; Nikolai Kovalev, Wilfrid Laurier University; panelists; audience.

4:30-4:45 PM: Coffee break.


5:15-5:45 PM: Discussion: Hiroshi Fukurai; Nikolai Kovalev; panelists; audience.

5:45-6:00 PM: Closing remarks: Setsuo Miyazawa.

CLE credits:

Please sign up at the registration desk. A list of references and a set of handouts will be available online until November 8, 2019 at https://uchastings.webconnex.com/japanlawconf2019.
Setsuo Miyazawa

Setsuo Miyazawa is Senior Visiting Professor of Law and Senior Director of the East Asian Legal Studies Program at UC Hastings. He is a legal sociologist who received LL.B., LL.M., and S.J.D. from Hokkaido University and M.A., M.Phil., and Ph.D. in sociology from Yale. He has been a full-time faculty member at Hokkaido University, Kobe University, Waseda University, Omiya Law School, and Aoyama Gakuin University in Japan before reaching mandatory retirement at Aoyama Gakuin in 2016. He has also taught as a visiting professor at ten North American law schools, including the University of Washington, Harvard, UC Berkeley, NYU, and the University of Pennsylvania. His first visit to Hastings was in 2008 and teaches at Hastings in the fall. He has also organized an annual symposium on Japanese law at Hastings since 2012.

Professor Miyazawa has a wide range of research interests; he received his doctoral degree in Japan with a study on police, while receiving his American doctoral degree with a study on corporate legal departments. He has published or edited more than a dozen books in Japanese and English. His first English book, *Policing in Japan* (SUNY Press, 1992), received the 1993 Distinguished Book Award of the Division of International Criminology of the American Society of Criminology. He has been highly active in the promotion of judicial reform in Japan, where he was one of the most prominent proponents of the introduction of the American-style graduate professional law schools.

He has also been active in the Law and Society Association (LSA) in the US, twice serving on its Board of Trustees. He co-founded the Collaborative Research Network 33 in East Asian Law and Society in the LSA in 2008 and received the International Scholarship Prize from the LSA in 2014. He co-founded the Section on East Asian Law and Society in the AALS in 2015 and the Asian Law and Society Association (ALSA) in 2016. He was the founding President of the ALSA in 2016 and 2017. A two-volume festschrift in his honor was published in 2017 with more than 70 papers in both Japanese and English. He is currently the President of the Asian Criminological Society.
Keith Hand

Professor Keith Hand is Associate Dean for Global Programs and Director of the East Asian Legal Studies Program of UC Hastings. Professor Hand brings more than 20 years of professional experience in private practice, government, and academia to his teaching and research at UC Hastings. Professor Hand’s research focuses on legal reform in the Greater China, with particular attention to constitutional law, criminal justice, citizen efforts to use the law to promote legal and political change; and the role and development of China’s procuratorate. In January 2015, he co-founded the UC Hastings East Asian Legal Studies Program with Senior Visiting Professor Setsuo Miyazawa.

Professor Hand holds a JD and an MAIS in China Studies from the University of Washington and a BA from Whitman College. As a law student, he served as editor-in-chief of the *Pacific Rim Law & Policy Journal*. After graduating Order of the Coif in 2000, he joined the New York office of Paul, Weiss, Rifkind, Wharton & Garrison, where his practice focused on mergers and acquisitions and private equity funds. He later served as senior counsel to the U.S. Congressional-Executive Commission on China. Immediately prior to joining the UC Hastings faculty in 2009, Professor Hand was Beijing director, senior fellow, and lecturer-in-law at Yale Law School’s China Law Center and visiting scholar at Peking University Law School. During his tenure with the Center, Professor Hand worked with Chinese courts, government agencies and law schools to implement cooperative legal reform projects in the areas of criminal justice, judicial reform and property law.

Professor Hand has been cited as an expert on Chinese legal issues in a wide variety of media, including *The New York Times, The Guardian, Foreign Policy, Foreign Affairs, Deutsche Welle, Radio Free Asia, Reuters, The Christian Science Monitor, ChinaFile*, and *Time*. In 2011, Professor Hand was named a National Committee on U.S.-China Relations Public Intellectuals Fellow. In 2014, he was presented with the UC Hastings Foundation Faculty Award for Scholarship.

C. Lawrence Greenwood, Jr.

C. Lawrence Greenwood, Jr., is the President of the Japan Society of Northern California. Mr. Greenwood joined the Japan Society in 2016 following a long career that spanned both public and private sectors. His 30-year diplomatic career in the State Department included assignments in the US Embassy in Tokyo, as US Ambassador to the Asia Pacific Economic Cooperation (APEC) group, and as the Deputy Assistant Secretary of State dealing with finance and development. Following his work in government, he went on to serve as Vice President of the Asian Development Bank, where he oversaw a tripling of lending of the bank to build infrastructure and alleviate poverty throughout Asia. Most recently, Mr. Greenwood worked in Tokyo managing government relations in Asia for MetLife, America’s largest life insurer. Mr. Greenwood has lived four times in Japan for a total of 14 years and speaks and reads Japanese.
David Ted Johnson

David T. Johnson is Professor of Sociology at the University of Hawaii at Manoa. He has been studying criminal justice in Japan since 1989. His books include *The Japanese Way of Justice: Prosecuting Crime in Japan* (Oxford, 2002), which received awards from the American Society of Criminology and the American Sociological Association; *The Culture of Capital Punishment in Japan* (Palgrave, 2019, available through Open Access); and *Amerikajin no Mita Nihon no Shikei* [An American Perspective on Capital Punishment in Japan] (Iwanami Shinsho, 2019). His research with Mari Hirayama was published in the June 2019 issue of *Asian Journal of Criminology* as “Japan's Reformed Prosecution Review Commission: Changes, Challenges, and Lessons,” and his research with Setsuo Miyazawa was published in *The Legal Process and the Promise of Justice: Studies Inspired by the Work of Malcolm Feeley* (Cambridge, 2019) as “Japanese Court Reform on Trial.”

Dimitri Vanoverbeke

Mari Hirayama

Mari Hirayama is Professor of Criminal Procedure and Criminology at Hakuoh University in Tochigi Prefecture of Japan. Professor Hirayama holds Master of Laws from Kwansei Gakuin University as well as LL.M. from the University of Minnesota Law School (on the Fulbright Program). From 2013-2014, again on the Fulbright Program, she conducted her research at the Center for the Study of Law and Society at UC Berkeley Law School, as a Visiting Scholar.


She has most recently been conducting research on videotaped interrogations and their status as evidence at criminal trials. She has published “Introduction of Videotaping of Interrogations and the Lessons of the Imaichi Case; A Case of Conventional Progress of Criminal Justice Policy-Making in Japan,” Washington International Law Journal, Vol. 27 No. 1 (2018) (with Setsuo Miyazawa). Since 2017, she has been serving as an associate member for the Science Council of Japan.

Shigenori Matsui

Shigenori Matsui is a professor of law at the University of British Columbia, Peter A. Allard School of Law, in Vancouver, Canada. Upon obtaining LL.B. from Kyoto University in 1978, and LL.M. also from Kyoto University in 1980, he worked as a research associate at the Kyoto University Faculty of Law for 3 years. After moving to Osaka University as an associate professor in 1983, he went to Stanford Law School for his graduate study under supervision of late professor John Hart Ely. He ultimately obtained J.S.D. from Stanford Law School in 1986. He later submitted his LL.D. dissertation and obtained LL.D. from Kyoto University in 2000 as well. He became full professor at the Osaka University in 1994 and moved to the newly created Osaka University Law School in 2004. He then moved across the Pacific Ocean to become a professor of law at the University of British Columbia. He is also serving as a director of Japanese Law Program of the Centre for Asian Legal Studies. He is currently teaching Comparative Constitutional Law, Cyberspace Law, Freedom of Expression, and Japanese Law. He has published over 40 books, including The Constitution of Japan: A Contextual Analysis (Hart Pub. 2011) and Law and Disaster: Earthquake, Tsunami and Nuclear Meltdown in Japan (Routledge 2019).
Megumi Wada

Megumi Wada is a partner at the Law Offices of Takashi Takano and a member of the Tokyo Bar Association. Since she was admitted to the Bar in Japan in 2007, Ms. Wada has been practicing law, specifically focusing on the criminal defense.

After four-year experience at Tokyo Surugadai Law Offices, Ms. Wada became a staff attorney at the Japan Legal Support Center (JLSC) in 2011 to gain more experience in criminal defense. JLSC was established in 2006 in order to provide legal representations for low-income individuals, and as such its function is similar to that of the public defenders in the U.S. As a staff attorney, she represented her clients in a variety of cases including the victims of Fukushima nuclear disaster, provided legal services in rural areas, and gained extensive experience in criminal defense, especially in trials.

In 2015, Ms. Wada studied at UC Hastings College of the Law (LL.M.) and interned at the Public Defender’s Office in San Francisco after graduating. She was admitted to the New York Bar in 2016.


Hiroshi Fukurai

Hiroshi Fukurai, Professor of Legal Studies and Sociology at the University of California, Santa Cruz, is currently the President of the Asian Law and Society Association (ALSA). He is specialized in lay adjudication, indigenous approaches to international law, and Asian law and politics.


Professor Fukurai is the Book Review Editor of the Asian Journal of Law and Society, and on the editorial board of the Asian Journal of Law and Society and the International Journal of Political Science and Diplomacy.

Current projects include: (1) Civic participation in civil trials in a post-Fukushima nuclear disaster era; (2) Historical analysis of jury trial in Okinawa, Japan under the U.S. military occupation in the 1960s and 1970s,
and (3) Prosecution Review Commissions (i.e., Japan’s grand jury system) and its impact on Japan’s democratization.

He is completing a book, Original Nation Approaches to “Inter-National” Law (ONAIL): Indigenous Communities, Ethnic Minorities, and the Quest for Autonomy (2020), in which he tried to advance the theory of international law, beyond the Third World Approaches to International Law (TWAIL) or other variant theories, by offering the perspective that places indigenous nations and peoples at the geopolitical analytic core of interpreting the geography, history, politics and the role of international law.

Nikolai Kovalev

Nikolai Kovalev is Associate Professor, Department of Criminology, Wilfrid Laurier University and Barrister-at-Law, Law Society of Ontario, admitted 2016. Dr. Kovalev holds a Ph.D. in Criminal Law and Criminal Procedure from Queen’s University Belfast (2007) and LL.M. in Criminal Law from Indiana University at Bloomington (2003).

Dr. Kovalev's research is focused on comparative criminal justice, criminal law, criminal procedure and human rights. He is particularly interested in the evolution of jury trials and reforms in the criminal justice systems of post-Communist transitional countries. His current research projects concern jury selection process in Canada and jury trial reform in Georgia. His research has been published in several prestigious international law and socio-legal journals, such as the Columbia Journal of East European Law, Columbia Journal of European Law, Journal of Power Institutions in Post-Soviet Societies, International Journal of Law, Crime and Justice, Chicago-Kent Law Review, Onati Socio-Legal Series, European Journal of Crime, Criminal Law and Criminal Justice, and Post-Soviet Affairs.

Dr. Kovalev is qualified to practice law as barrister in Canada and represented clients both in criminal trial and appellate courts. Canadian and international tribunals have relied upon his expertise in comparative criminal law and procedure, and he has been retained as an expert on comparative criminal law and procedure in immigration, criminal, and international arbitrage cases.

Dr. Kovalev has served as an external expert for the Organization for Security and Co-operation in Europe (OSCE), the United Nations Office on Drugs and Crime (UNODC), the International Commission of Jurists (ICJ), the United States Department of Justice, the American Bar Association Rule of Law Initiative (ABA/ROLI), and other international organizations. This advisory work has resulted in numerous published analyses and expert opinions on draft laws on criminal justice reform efforts in several post-Soviet countries, as well as briefs and articles on the subject. His analyses have been presented to parliaments, governments, and the supreme courts of several post-Soviet countries.
Carl F. Goodman

Carl F. Goodman is a retired partner of the International Law Firm Jones Day. In 1961 he was an Honors Program hire at the Department of Justice. From 1965 to 1968 he was a Foreign Service Reserve Officer and United States Agent before the International Lake Ontario Claims Tribunal (Ottawa, Canada). He left government as General Counsel of the then Civil Service Commission. In private law practice he represented Japanese and other firms dealing with a range of legal issues including litigation, corporate restructuring, etc. Upon retirement from Jones Day he became a Professor at the Hogakubu Faculty at Hiroshima University (3 years). He has been an adjunct professor at both Georgetown University Law Center (LL.M., 1965) and George Washington University teaching Japanese and Comparative Law related courses. He taught at the Tokyo Campus of Temple University and has lectured at several Japanese and US law schools.
