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# The Role of Law and Lawyers for Disaster Victims: A UC Hastings-Waseda Symposium on the Legal Aftermath of the Fukushima Daiichi Nuclear Power Station Disaster – Introduction to the Symposium Issue

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# The Role of Law and Lawyers for Disaster Victims: A UC Hastings-Waseda Symposium on the Legal Aftermath of the Fukushima Daiichi Nuclear Power Station Disaster

## – Introduction to the Symposium Issue–

*Setsuo Miyazawa*\*

### I. UC HASTINGS SYMPOSIUMS ON JAPANESE LAW

The University of California Hastings College of the Law (“UC Hastings”) has organized a symposium on Japanese law every fall since 2012. The topic for the 2012 Symposium was “Successes, Failures, and Remaining Issues of the Justice System Reform in Japan” and eight papers were published,<sup>1</sup> while the topic for the 2013 Symposium was “Corporate

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<sup>1</sup> Setsuo Miyazawa, *Successes, Failures, and Remaining Issues of the Justice System Reform in Japan: An Introduction to the Symposium Issue*, 36 HASTINGS INT’L & COMP. L. REV. 313 (2013); Shunsuke Marushima, *Historical Genealogy of Japan’s Judicial Reform: Its Achievements and Challenges*, 36 HASTINGS INT’L & COMP. L. REV. 349 (2013); Daniel H. Foote, *The Trials and Tribulations of Japan’s Legal Education Reforms*, 36 HASTINGS INT’L & COMP. L. REV. 369 (2013); Eric C. Sibbitt, *Adjusting Course: Proposals to Recalibrate Japan’s Law Schools and Bar Exam System*, 36 HASTINGS INT’L & COMP. L. REV. 443 (2013); Takayuki Ii, *Japan’s Judicial System May Change, but Its Fundamental Nature Stays Virtually the Same? Recent Japanese Reforms on the Judicial Appointment and Evaluation*, 36 HASTINGS INT’L & COMP. L. REV. 459 (2013); Mark A. Levin, *Circumstances That Would Prejudice Impartiality: The Meaning of Fairness in Japanese Jurisprudence*, 36 HASTINGS INT’L & COMP. L. REV. 475 (2013); Hiroshi Fukurai, *A Step in the Right Direction for Japan’s Judicial Reform: Impact of the Justice System Reform Council Recommendations on Criminal Justice and Citizen Participation in Criminal, Civil, and Administrative Litigation*, 36 HASTINGS INT’L & COMP. L. REV. 517 (2013); Frank K. Upham, *Japanese Legal Reform in Institutional*,

Governance in Japan” and three papers were published.<sup>2</sup> The 2014 Symposium was entitled “The Role of Law and Lawyers for Disaster Victims: A UC Hastings-Waseda Symposium on the Legal Aftermath of the Fukushima Daiichi Nuclear Power Station Disaster,” while the 2015 Symposium was entitled “Glass Ceiling for Female Professionals, Executives, and Managerial Employees in Japan: 30th Anniversary of the EEOA and Prime Minister Abe’s ‘Womenomics’.” This Symposium Issue is based on the 2014 Symposium held at UC Hastings on September 19, 2014.

## II. THE 2014 UC HASTINGS-WASEDA SYMPOSIUM ON JAPANESE LAW

Unprecedented disasters test the ability of law and lawyers to provide relief to disaster victims exactly because those disasters are beyond imagination, and law and lawyers are unprepared for them. The disaster at the Fukushima Daiichi Nuclear Power Station of the Tokyo Electric Power Corporation (“TEPCO”), caused by a massive earthquake and subsequent tsunami on an unprecedented scale on March 11, 2011, was one such disaster.

Although the area had been a known risk for massive earthquakes and tsunamis for centuries, that risk was downgraded when the power station was constructed in 1967. When the earthquake occurred and the tsunami hit the station on March 11th,<sup>3</sup> electricity was lost, the cooling system failed, meltdown occurred, and ultimately, hydrogen explosions spewed nuclear contaminated air to surrounding areas.<sup>4</sup> The accident was considered worse than that of Three Mile Island in 1979 and close to that of Chernobyl in 1986. Seven municipal governments were moved to other places, far away from their original locations, where they had to take care of their residents who were widely dispersed nearly all over Japan.<sup>5</sup>

This situation posed an enormous challenge for the law and lawyers. How could people seek remedies for their damages? What new

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*Ideological, and Comparative Perspective*, 36 HASTINGS INT’L & COMP. L. REV. 369 (2013).

<sup>2</sup> David Makman, *The 2013 Symposium on Corporate Governance in Japan*, 11 HASTINGS BUS. L.J. 57 (2015); Hideki Kanda, *Corporate Governance in Japanese Law: Recent Trends and Issues*, 11 HASTINGS BUS. L.J. 69 (2015); Bruce E. Aronson, *Japanese Corporate Governance Reform: A Comparative Perspective*, 11 HASTINGS BUS. L.J. 85 (2015).

<sup>3</sup> *Disaster Overview: Japan Beyond 3.11*, Great East Japan Earthquake Project, NHK WORLD, <http://www.nhk.or.jp/japan311/311-disaster2.html>.

<sup>4</sup> *Radiation Map: Japan Beyond 3.11*, Great East Japan Earthquake Project, NHK WORLD, <http://www.nhk.or.jp/japan311/311-nuclear.html>.

<sup>5</sup> For overviews of the disaster, see for e.g. NATURAL DISASTER AND NUCLEAR CRISIS IN JAPAN: RESPONSE AND RECOVERY AFTER JAPAN’S 3/11 (Jeff Kingston, ed., 2012); RICHARD J. SAMUELS, 3.11: DISASTER AND CHANGE IN JAPAN (2013).

laws would be required to help local governments and residents? Would the devastated areas have a sufficient number of lawyers who could handle such tasks, and how could outside lawyers help if the local resources were insufficient? How could Japan provide legal services to relocated local governments and dispersed residents? Three and a half years after the disaster, I thought that it was a prime time to look back at what has been achieved, and what has been left untouched, and to look ahead at what is still necessary to be done in the near future.

A group of faculty members and affiliated lawyers of Waseda University Law School organized a project, continuing their prior activities in the devastated areas, to meet these and other challenges in the legal aftermath of the disaster. Waseda's project particularly focused on Namie town,<sup>6</sup> one of the seven municipalities whose government itself was relocated to another place. Scholars and lawyers of the project surveyed residents, helped them seek compensations from TEPCO, presented policy proposals to the government, provided a team of lawyers to the town government, and otherwise assisted the town government's activities.

Since Waseda University Law School has been a major partner in Japan for the student exchange program at UC Hastings, it was natural for me to conceive the 2014 Symposium on the legal aftermath of the Fukushima disaster as a joint event with Waseda. I was grateful to Waseda for not only sending three central members of their project as panelists, but also for covering part of the expenses of the Symposium.

The program for the Symposium on September 19, 2014 follows:

9:00-9:15 am: Opening Speech. Richard Boswell, Associate Dean for Global Programs & Professor of Law, UC Hastings.

9:15-9:45 am: "What Happened In and Following the Fukushima Daiichi Nuclear Power Station Disaster? Introduction to the Symposium." Setsuo Miyazawa, Senior Professor of Law, UC Hastings & Professor of Law; Aoyama Gakuin University.

9:45-11:15 am: Session 1: Chair: Setsuo Miyazawa  
"Compensating Victims of Man-Made Disasters: The American Experience."  
Morris A. Ratner, Associate Professor of Law, UC Hastings.  
Discussant: Eric Sibbitt, Partner, O'Melveny & Myers LLP & Adjunct Professor of Law, UC Hastings.

11:15 am-12:45 pm: Session 2: Chair: Keith Hand, Professor of Law, UC Hastings.

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<sup>6</sup> *Namie evacuees unable to return home*, NHK TODAY'S CLOSE-UP (September 11, 2012), <http://www.nhk.or.jp/japan311/kuro-home.html>; *Return or Relocate: The Dilemma of Fukushima Evacuees*, NHK TODAY'S CLOSE-UP (February 28, 2014), <http://www.nhk.or.jp/japan311/kuro-return.html>.

“Compensating the Victims of Japan’s Fukushima Disaster: Looking Back, Looking Ahead.” Eric A. Feldman, Professor of Law, University of Pennsylvania Law School.

Discussant: Richard Marcus, Distinguished Professor of Law, UC Hastings.

2:00-3:15 pm: Session 3: Chair: Setsuo Miyazawa.

“Need of Rights-Based Approach in Government Support for the Victims of Fukushima Nuclear Accident.” Kenji Fukuda, Partner, Waseda Legal Commons LPC & Research Associate of Law, Waseda University School of Law.

Discussant: David Makman, Partner, Makman & Matz LLP.

3:30-4:45 pm: Session 4: Chair: Keith Hand

“Legal Support to Fukushima Municipalities: Law School, Lawyers, and Nuclear Disaster Victims.” Takao Suami, Professor of Law, Waseda Law School.

Discussant: Nancy Stuart, Associate Dean for Experiential Programs & Clinical Professor of Law, UC Hastings.

4:45-6:00 pm: Session 5: Chair: Setsuo Miyazawa.

“Rethinking the Meaning of Damage and Disaster: Incommensurability and Power in Disputing Process.” Yoshitaka Wada, Professor of Law, Waseda Law School.

Discussant: Hiroshi Fukurai, Professor of Sociology, UC Santa Cruz.

6:00-6:15 pm: Closing Speech. Richard Boswell.

The first presenter at the symposium was Morris Ratner. He is an associate professor of law at UC Hastings who teaches civil procedure, legal ethics, and the business of law, and produces scholarship at the intersection of those fields. His most recent articles consider how court-awarded fees and costs can inspire the right level and quality of representation by private attorneys.<sup>7</sup> He was asked to speak first in this program on comparable cases in the United States so that the audience would obtain a comparative perspective about difficulties disaster victims face in Japan in seeking compensations, particularly with regard to aggregation of claims. I am most grateful to him for accepting this role. Since his paper, “Compensating Victims of Man-Made Disasters: The American Experience,” is not published in this Symposium Issue, his abstract is reproduced below as a help to readers.

There is no singular American experience regarding the compensation of victims of man-made disasters, where human activity creates substantial harm on a broad scale. Insurance (social and private), voluntary private payments (e.g., the faulty ignition switch claims program unilaterally

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<sup>7</sup> Morris A. Ratner & William B. Rubenstein, *Profit for Costs*, 63 DEPAUL L. REV. 587 (2014); Morris A. Ratner, *Class Counsel as Litigation Funders*, 28 GEORGETOWN J. LEGAL ETHICS 271 (2015).

announced by GM in June of 2014), and *sui generis* legislative schemes (e.g., the Price-Anderson Nuclear Indemnity Act) all co-exist with a system of private enforcement of individuals' rights to be compensated by responsible parties. The distinguishing features of the American experience are a heavy reliance on private enforcement of law combined with a dependence on mechanisms to aggregate claims in order to generate compensation for victims of man-made disasters.

The purpose of compensation in tort is to make injured persons whole. However, that rarely happens. Private litigation as a mode of achieving victim compensation is subject to a number of limitations: Injured persons face barriers to entry into the legal system, including the cost of litigation; jurisdictional hurdles; and the necessity of translating their experiences into cognizable legal claims and remedies. Once an action is commenced, the procedural system can be conceived as a series of gauntlets through which injured persons must run, including pleading, discovery, summary judgment, and, in rare cases, trial. These gauntlets are coupled with an inherent resource asymmetry between injured persons and potentially responsible parties and a resource-constrained court system that values effective docket management. The result is that many victims of man-made disasters – even those with legitimate injuries – receive no compensation whatsoever.

For persons with post-disaster claims that advance sufficiently through the procedural hoops, aggregation is virtually inevitable. Aggregation of private claims creates one overriding problem: it empowers counsel acting on behalf of the aggregates, and it simultaneously creates the conditions of their disloyalty. Counsel's disloyalty is understood through the lens of microeconomics and the theory of agency costs. Unless properly managed, profit-maximizing plaintiffs' counsel will predictably pursue their own interests at the expense of disaster victim clients, by investing in litigation sub-optimally and by trading class member compensation for attorney's fees.

The mechanisms used to formally achieve aggregation affect the extent to which counsel's disloyalty can be controlled. Those aggregation mechanisms evolve over time. Since the 1980s, two basic models can be discerned, as revealed through three case studies, the traditional model represented by the Three Mile Island litigation, and a newer

model the contours of which are illustrated by reference to the Vioxx<sup>8</sup> and BP oil spill<sup>9</sup> litigation matters.

The Three Mile Island (“TMI”) litigation in the 1980s represents the classic aggregation model, one in which Fed. R. Civ. P. 23’s strictures informed the course of the proceeding from the outset. Consistent with the classic model, the court in the TMI proceeding certified litigation classes early in the proceeding before advancing the case to the point of a class settlement. Rule 23 offers a number of structural protections to class members designed to check counsel’s disloyalty, including the requirement of adequate representation; class members’ opportunity to object and, in compensatory damages cases, to opt out of the class; and the court’s role as a fiduciary acting on behalf of the class when evaluating proposed settlements and awarding attorney’s fees. As evidenced by spectacular instances of disloyalty by class counsel, these protections work imperfectly. Moreover, though Rule 23 aggregation presents the threat of a single class trial to drive settlement discussions and, presumably, settlement values, the infrequent use or availability of bellwether trials and the rarity of class trials make it easy to unhinge settlement negotiations from expected case outcomes. A series of Supreme Court and intermediate appellate court cases beginning in the mid-1990s dramatically limited the

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<sup>8</sup> *Settlement Agreement Between Merck & Co., Inc. and The Counsel Listed on the Signature Pages Hereto, Dated as of November 9, 2007*, available at <http://www.officialvioxxsettlement.com/documents/Master%20Settlement%20Agreement%20-%20new.pdf>; *In re Vioxx Prods. Liab. Litig.*, MDL No. 1657 (E.D. La. November 8, 2007) (order granting in part motions for summary judgment on statutes of limitations grounds, available at [http://vioxx.laed.uscourts.gov/Orders/Vioxx.11-8-07\(1\).pdf](http://vioxx.laed.uscourts.gov/Orders/Vioxx.11-8-07(1).pdf)); *In re Vioxx Prods. Liab. Litig.*, MDL No. 1657 (E.D. La. November 22, 2006) (order denying motion for certification of personal injury class), available at <http://vioxx.laed.uscourts.gov/Orders/o&r112206.pdf>; *In re Vioxx Prods. Liab. Litig.*, MDL No. 1657 (E.D. La. August 30, 2006) (order dismissing foreign class actions on *forum non conveniens* grounds), available at <http://vioxx.laed.uscourts.gov/Orders/ord6578.pdf>.

<sup>9</sup> *Deepwater Horizon Economic and Property Damages Settlement Agreement as Amended on May 2, 2012*, available at <http://www.deepwaterhorizonsettlements.com/Economic/SettlementAgreement.aspx>; *Deepwater Horizon Medical Benefits Class Action Settlement Agreement as Amended on May 1, 2012*, available at <http://www.deepwaterhorizonsettlements.com/Medical/SettlementAgreement.aspx>; *In re Deepwater Horizon*, 744 F.3d 370 (5<sup>th</sup> Cir. 2014) (rejecting BP’s challenges regarding settlement implementation).

availability of this classic model of aggregating claims in litigation resulting from man-made disasters.

Commentators have pointed to Vioxx as the new paradigm for aggregation in disaster cases, identifying it as a prime example of the “MDL” or “quasi-class action” model, in which MDL aggregation leads to a contractual, non-class settlement of pending and/or inventoried claims, one that occurs outside the ambit of Rule 23 and without the protections it affords. However, to fully understand the modern approach to aggregating man-made disaster claims, one must consider, too, the enduring availability of the settlement class action even with regard to personal injury claims, as highlighted by the BP Oil Spill litigation. Considering the Vioxx and the BP proceedings together reveals that the modern approach to aggregating claims in mass disaster cases includes MDL aggregation at the front end followed by an *election* by the settling parties between contractual or class aggregation for settlement purposes at the back end. This new aggregation model holds promise for producing settlements that are more rationally related to case value, because of the opportunity for courts to closely manage discovery and to conduct bellwether trials to establish claim values. However, it also raises troubling questions about the role of plaintiffs’ attorneys in establishing both compensation schemes and the means by which such schemes will be reviewed, if at all. In particular, placing the power to elect between contractual and class aggregation for settlement purposes in the hands of settling parties will predictably funnel more questionable settlements into the Vioxx contractual model, creating a space in which disloyalty can flourish.

While the procedures for resolving disaster claims are in flux, the end result is consistent across models – compensation arising out of most disasters occurs, if at all, pursuant to a negotiated settlement involving a claims process or payment schedule that functions as an alternative to the litigation system. While such settlements are negotiated in the shadow of the procedural and substantive law pertaining to each claim, the settlements may provide compensation that only remotely reflects the strength of each individual claim in the litigation system. Negotiated claims processes vary dramatically in terms of their structural and substantive fairness. In class actions, the settlement must simply be sufficiently “fair, reasonable and

adequate” to warrant final approval under Fed. R. Civ. P. 23(e), a loose standard that regularly leads to compensation packages approaching as little as 10 percent of the loss experienced by plaintiffs. In contractual, non-class settlements, there is no floor except the one created as a practical matter by the need for individual plaintiffs’ counsel to sign off on the deal and for plaintiffs to opt into it. The Vioxx and BP settlements suggest that – despite its many flaws – this system can lead to substantial compensation, but the large number of less high-profile settlements involving less generous or reliable compensation schemes reveals systemic obstacles to achieving the make-whole compensatory ideal.

### III. PAPERS IN THIS SYMPOSIUM ISSUE

The first paper in this symposium issue is “Compensating the Victims of Japan’s 3-11 Fukushima Disaster” by Eric A. Feldman. Feldman is a professor of law at the University of Pennsylvania Law School whose expertise is in Japanese law, comparative public health law, torts, and law and society.<sup>10</sup> Building on his earlier work on the Fukushima disaster,<sup>11</sup> Feldman describes Japan’s nuclear liability system, discusses the three methods for compensating victims (TEPCO’s direct compensation, ADR, and litigation), and presents a sober conclusion. He argues that from one perspective, the Japanese approach has been remarkably successful because victims have access to TEPCO’s direct compensation system, the ADR system, and litigation in seeking compensation.<sup>12</sup> However, he also argues that an alternative evaluation is

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<sup>10</sup> His publications include *BLOOD FEUDS: AIDS, BLOOD, AND THE POLITICS OF MEDICAL DISASTER*, (Eric A. Feldman & Ronald Bayer, eds., 1999); *ERIC A. FELDMAN, THE RITUAL OF RIGHTS IN JAPAN: LAW, SOCIETY, AND HEALTH POLICY* (2000); *UNFILTERED: CONFLICTS OVER TOBACCO POLICY AND PUBLIC HEALTH* (Eric A. Feldman & Ronald Bayer, eds., 2004).

<sup>11</sup> Eric A. Feldman, *Fukushima: Catastrophe, Compensation, and Justice in Japan*, 62 *DEPAUL L.REV.* 335 (2013). Other earlier works on liability and compensation include Eri Osaka, *Corporate Liability, Government Liability, and the Fukushima Nuclear Disaster*, 21 *PAC. RIM L. & POL. J.* 433 (2012); Joel Rheuben, *Government Liability for Regulatory Failure in the Fukushima Disaster: A Common Law Comparison*, 23 *PAC. RIM L. & POL. J.* 113 (2014); Julius Weitzdörfer, *Liability for Nuclear Damages under Japanese Law: Key Legal Problems Arising from the Fukushima Daiichi Nuclear Accident*, in *ASIA-PACIFIC DISASTER MANAGEMENT: COMPARATIVE AND SOCIO-LEGAL PERSPECTIVES* 119 (Simon Butt, Hitoshi Nasu, Luke Nottage eds., Springer, 2014).

<sup>12</sup> A fourth way to seek the liability of TEPCO executives appears to be criminal procedure. In July 2015, a group of Japanese lawyers succeeded in obtaining a binding decision indicting three former TEPCO executives from the Tokyo No. 5 Committee for the Inquest of Prosecution which overrides repeated decisions by public prosecutors to refrain from seeking criminal responsibility of TEPCO executives. Opinion, *Bringing TEPCO Officials to Trial*, *The Japan Times*, August 7, 2015 (available on LexisNexis).

also possible because too few victims have been adequately compensated by TEPCO's direct compensation system, the ADR system has been too slow and stingy, and litigation has not offered real alternative for the great majority of victims. Unfortunately, systems in other countries also have their own problems and limitations. Therefore, in the end, Feldman states that "Japan's approach to compensating the victims of the 3/11 disaster appears to be no worse than what would have occurred in many other nations, and perhaps better than what one would find in more resource constrained nations. That is, perhaps, damning with faint praise. Japan, one might hope, could do a better job of taking care of the victims of mass disorder. So too could the rest of the world."

The second paper, "Need for a Rights-Based Approach in Government Support for the Victims of Fukushima Accident" by Kenji Fukuda, changes the focus from compensation by TEPCO to support by the government. Fukuda is a graduate of Waseda University Law School and partner at a unique law firm originally established by a group of Waseda graduates in order to promote, among other activities, public interest lawyering and to support clinical legal education at Waseda. He has also been active in Waseda's project to help victims of the Fukushima disaster. Fukuda argues that given the great uncertainty about the future of evacuees, each evacuee should have the right to choose whether they continue to live in the affected areas, evacuate from affected areas, or return to their original areas. From this perspective, he criticizes the government's old-fashioned Reconstruct and Return policy which gives priority to reconstruction of infrastructure and pays little attention to the daily lives of people, and he calls for new legislation to provide more effective support to victims.

The third paper, "Legal Support to Fukushima Municipality: Law School, Lawyers, and Nuclear Disaster Victims" by Takao Suami, describes the plight of Namie town, the process of Waseda's involvement and collective actions by victims, and discusses critical implications of their activities for both the legal profession and the legal system. With an extensive practical experience as an attorney in Japan and in Belgium before becoming a scholar, Suami's teaching and research has been mainly in EU law and international legal matters. However, he has also been very active as a leading proponent of justice system reform in Japan. He was one of the founding members of Waseda's program in clinical legal education and, at the time of this symposium, was the Director of

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The Inquest of Prosecution is a system where eleven randomly selected voters in the jurisdiction of a district court reviews prosecutors' non-indictment decisions. If the Inquest decides twice with more than eight votes that the accused should have been indicted, the court will appoint practicing attorneys to indict them. Carl F. Goodman, *Prosecution Review Commissions, the Public Interest, and the Right of the Accused: The Need for a "Grown Up" in the Room*, 22 PAC. RIM L. & POL. J. 20 (2013). However, a conviction cannot provide financial and other tangible compensations to victims.

Waseda's Legal Support Project for Fukushima. Particularly interesting may be the process of what Suami calls "collective complaints." Like most other victims of the Fukushima disaster, townspeople of Namie initially filed complaints individually to the ADR system especially established for providing compensation to the victims of this disaster. However, they became increasingly frustrated by the low compensation standards and the complexity of the procedure. Against the opinion of the local bar association, the Waseda project advised and helped the town government to prepare and file complaints to the ADR system on behalf of its residents. Eventually 75 percent of the residents participated in this scheme. The ADR proposed a settlement and most complainants accepted it. However, unfortunately, TEPCO refused the settlement, and this innovative approach to dispute resolution has deadlocked. Litigation, of course, remains as an alternative.<sup>13</sup> However, lacking mechanisms to aggregate claims like class actions in the United States, the traditional method of large scale litigations in Japan is to combine the individual litigations of a large number of plaintiffs, and then to represent them all by a large team of lawyers. Suami presents data about the ratios of plaintiff to lawyers in the affected areas which imply that the strategy used by Namie town was more efficient than the traditional method of collective litigation. After briefly discussing class-action lawsuits in the United States as a possible alternative for the Fukushima victims, Suami concludes his paper by expressing hope that other law schools will follow Waseda's example and directly contribute to the improvement of Japanese society.

The fourth and last paper, "Rethinking the Meaning of Damages and Disaster: Incommensurability and Power in Disputing Process," is written by Yoshitaka Wada. Wada is a leading socio-legal scholar in Japan known for his work on law and social theory, ADR, medical malpractice, and the legal profession. He begins his analysis by presenting a theoretical

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<sup>13</sup> For instance, in July 2015, a medical corporation in Namie filed a suit against TEPCO and the state seeking a compensation of approximately 790 million Japanese yen (approximately 6.6 million US dollars) with an allegation that it had been forced to close a home for elderly people from where approximately 110 residents and approximately 70 staff members had been evacuated (*Asahi Shimbun*, August 2, 2015, morning). In September 2015, 117 residents of Namie who had been evacuated from the town filed a suit against the TEPCO and the state seeking the restoration of the original condition and a compensation of approximately 6.5 billion Japanese yen (approximately 54 million US dollars) for mental anguish caused by the loss of the hometown (*furusato*), and it was expected that the number of plaintiffs would reach 700 by next year (*Asahi Shimbun*, September 30, morning). In another suit filed by approximately 180 former residents of the neighboring city of Minami Soma, plaintiffs sought about 4.5 billion Japanese yen (approximately 37.5 million US dollars) only for mental anguish from TEPCO, considering that the litigation would become too long if the state was also named a defendant. The restoration of the original condition was also sought (*Asahi Shimbun*, September 12, 2015, morning).

perspective concerning the inherent incommensurability of the different meanings of damages constructed by victims and by scientists working in TEPCO, on the one hand, and the oppressive function of law which forces a legal construction of damages largely based on traffic accident cases onto the victims' very different construction of damages. The paper proceeds to presents results of a survey of Namie residents where 63 percent of residents older than 18 years old responded to show that victims' construction of damages was based on a board range of factors, including: breakdown of family; deterioration of the quality of life; loss of employment; decline of income in spite of continuing cost of living; fear of radioactivity; lack of confidence in the recovery of the town; anguish from the inability to see the house, garden, plots of lands, livestock, and rice fields; unpredictability of the future; etc. Wada argues that the assessment of emotional damages made by the special ADR based on traffic accident cases is inappropriate as a basis for determining the emotional harm caused by an unprecedented nuclear accident where ones' place to live and living environment are completely lost, and he concludes that a "place of interaction" should be established where not only TEPCO, but also legal specialists involved in the ADR, sympathetically listen to the narratives of victims. Wada concludes that even lawyers who are assisting victims should listen to the narratives of victims, or risk being caught up solely in the pursuit of increasing amounts of reparations.

#### IV. CONCLUSION

In retrospect, one may criticize this Symposium for not including a concluding paper which presents a new method of aggregation of claims, a concrete example of right-based legislation, and a clear design for an ADR system which honors victims' construction of the meaning of damages in such a way that is effective, efficient, and politically feasible. In this sense, we still stand where we stood before this Symposium because there is no easy answer to these questions. Yet now the problems have been clearly outlined, based on new and unique data, where before there was only ignorance of the situation throughout society. I still hope, therefore, that this Symposium Issue will at least provide readers with an opportunity to engage in their own thoughts about these measures and to build on this foundation the future design of such systems for Japan, and the world.