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## Preface: Hate Speech Laws in Japan in Comparative Perspectives

Setsuo Miyazawa

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## Preface

# Hate Speech Laws in Japan in Comparative Perspectives

by SETSUO MIYAZAWA\*

### 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> The topic for the 2013 symposium was “Corporate 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” and five papers were published.<sup>3</sup> 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’” and four papers were published.<sup>4</sup> The topic for the 2016 symposium was

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\* Senior Professor of Law and Senior Director of the East Asian Legal Studies Program, University of California, Hastings College of the Law. As the main planner of the symposium on which this symposium issue is based, the author is grateful to the Associate Dean for Research Scott Dodson and the Associate Dean for Global Programs Keith J. Hand of the University of California, Hastings College of the Law for their support of this symposium. The author also wishes to express appreciation to the East Asian Studies Program of the University of California at Santa Cruz, *Hastings Constitutional Law Quarterly (CLQ)*, and the American Constitution Society for Law and Policy of the University of California, Hastings College of the Law for jointly sponsoring this symposium. The author would like to further express deep appreciation to the patience and assistance of the editors of *CLQ*.

1. See 36 HASTINGS INT’L & COMP. L. REV. 313 ff. (2013).
2. See 11 HASTINGS BUS. L.J. 57 ff. (2015).
3. See 16 ASIAN-PAC. L. & POL’Y J. 116 ff. (2015).
4. See 39 HASTINGS INT’L & COMP. L. REV. 389 ff. (2016).

“Globalization of Japanese Lawyers: Achievements, Challenges, and Expectations to American Law Schools” and five papers are planned to be published.<sup>5</sup> The East Asian Legal Studies Program of UC Hastings is committed to the enrichment of research literature on East Asian law and legal institutions through its organization of seminars and the publication of papers presented at symposiums.

### The 2017 UC Hastings Symposium on Japanese Law

The topic of the 2017 symposium was “Hate Speech Law in Japan in Comparative Perspectives” and the symposium was held on September 22, 2017. The East Asian Studies Program of the University of California at Santa Cruz (“UCSC”), *Hastings Constitutional Law Quarterly*, and the UC Hastings student chapter of the American Constitution Society for Law and Policy were co-sponsors of the symposium.

The tragedy caused by white nationalists in Charlottesville, Virginia, on August 12, 2017, is a painful reminder that hate speech is a serious and rising problem in the United States which might require reexamination of the meaning of the First Amendment protection of the freedom of speech.<sup>6</sup> Is Japan free from hate speech? The answer is, unfortunately, negative.

Hate speech became highly visible in Japan particularly when huge groups of nationalists took to the streets in Tokyo and Osaka in 2013 and expressed their extreme hatred against Koreans residing in Japan, describing them as cockroaches and calling for their immediate extermination.<sup>7</sup> Though Japanese nationalists are unarmed, intensity of their hatred looks strikingly similar to that of white supremacists.<sup>8</sup> Like in the United States, social media is considered to have contributed to the expansion of their movement. This development attracted international attention. The U.N. Human Rights Committee and the U.N. Committee on the Elimination of Racial Discrimination recommended that the Japanese government take measures to curb the nationalists’ activities in 2014.<sup>9</sup> In response, the Japanese

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5. In a near future issue of HASTINGS INT’L & COMP. L. REV.

6. U.S. CONST. amend. I (“Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble . . .”).

7. On Koreans residing in Japan, often called *zainichi* in Japanese, see, e.g., JOHN LIE, ZAINICHI (KOREANS IN JAPAN): DIASPORIC NATIONALISM AND POSTCOLONIAL IDENTITY (2008).

8. See, e.g., *Japanese Hate Speech Against Koreans*, YOUTUBE (June 25, 2013), <https://www.youtube.com/watch?v=G-n3XBz-fig>.

9. See Human Rights Comm., Concluding Observations on the Sixth Periodic Report of Japan, U.N. Doc. CCPR/C/JPN/CO/6 (2014); Comm. on the Elimination of Racial Discrimination, Concluding Observations on the Combined Seventh to Ninth Periodic Reports of Japan, U.N. Doc. CERD/C/JPN/CO/7-9 (2014).

government enacted its first anti-hate speech law, “Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan,” in June 2016 and is engaging in various campaigns to raise public awareness based on this law.<sup>10</sup>

What are historical, social, and political backgrounds of the recent rise of hate speech in Japan? How has civil society, the judiciary, and the government dealt with it? What is the content of the new law? What is its relationship to Article 21 of the Japanese Constitution which guarantees the freedom of expression?<sup>11</sup> How effective is the law? Has the law already produced any impacts? This symposium was organized to examine these and related issues in comparative perspectives

The program of the symposium consisted of the following:

1:00–1:15 pm: Welcome: Keith Hand, Associate Dean for Global Programs, Professor of Law, and Director of the East Asian Legal Studies Program, UC Hastings.

1:15–2:00 pm: Session 1: Keynote Speech “A Comparative Perspective on Hate Speech Laws and the Balancing of Rights in Japan.”

- Moderator: Setsuo Miyazawa, Senior Professor of Law and Senior Director of the East Asian Legal Studies Program, UC Hastings.
- Speaker: Craig Martin, Professor of Law and Co-Director of International & Comparative Law Center, Washburn University School of Law.

2:00–3:00 pm: Session 2: Comments from a Sociologist and a Historian.

- Moderator: Setsuo Miyazawa.
- Discussants: Hiroshi Fukurai, Professor of Sociology and Legal Studies, UCSC; Alice S. Yang, Stevenson Provost and Associate Professor of History, UCSC.
- Open discussion.

3:00–3:15 pm: Coffee Break.

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10. See The Ministry of Justice, *Stop! Hate Speech*, [http://www.moj.go.jp/ENGLISH/m\\_jinken04\\_00001.html](http://www.moj.go.jp/ENGLISH/m_jinken04_00001.html) (last visited Jan. 20, 2018).

11. Article 21 of the Japanese Constitution provides that “Freedom of assembly and association as well as speech, press and all other forms of expression are guaranteed.”

3:15–4:30 pm: Session 2: Comments from Constitutional Scholars and a Practitioner.

- Moderator: David A. Makman, Law Offices of David A. Makman, Immediate Past Chairman of the Japan Society of Northern California.
- Discussants: Rory Little, Joseph W. Cotchett Professor of Law, UC Hastings; Junko Kotani, Professor of Law, Shizuoka University; Jeff Adachi, Public Defender of San Francisco.
- Open discussion.
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4:30-5:00 pm: Session 3: Concluding Discussion.

- Moderator: Setsuo Miyazawa.
- Panelists: Craig Martin, Rory Little, Junko Kotani, Hiroshi Fukurai, and Alice S. Yang.
- Closing Remarks: Shoichi Nagayoshi, Deputy Consul General, Consulate General of Japan in San Francisco.

This symposium issue consists of the four papers contributed by the keynote speaker (Martin), two discussants on historical and social backgrounds (Fukurai and Yang), and the two discussants on comparative constitutional issues (Little and Kotani).<sup>12</sup> I believe that these essays are the most comprehensive analysis of the hate speech law in Japan currently available in the English language and hope that they will contribute to the advancement of the broader comparative analysis of hate speech law and freedom of expression in the world.

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12. Jeff Adachi made a comment based on his short film, *AMERICA NEEDS A RACIAL FACIAL* (2016); see <http://www.racialfacial.org/>.