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5 Law, Society, and Setsuo: Miyazawa's Influence on Socio-Legal Studies

Eric A. Feldman

First impressions can often be misleading, but I still clearly remember my first encounter with Setsuo Miyazawa, and it reveals a great deal about the person and scholar I have come to know and admire over 30 years. It was 1987, and Setsuo (for those of us in the US, he has always been Setsuo, not Professor Miyazawa or Miyazawa-sensei) was visiting the University of California, Berkeley, where one of his former advisors from Yale University, Malcolm Feeley, was serving as Director of the Center for the Study of Law and Society. Malcolm had recently agreed to Chair my Ph.D. dissertation committee, and as was typical of Malcolm he was keen to introduce me to people who could facilitate my study of Japanese law and society. I don't remember exactly what he said, but it was something to the effect of "I've got a terrific former student who is going to be a star law and society scholar in Japan. Go meet him at his hotel and bring him up here." So off I went to the Durant Hotel in search of someone I had never met or seen but was told to greet.

The Center for the Study of Law and Society was, and still is, housed in the same building as the Jurisprudence and Social Policy Program, at 2240 Piedmont Avenue. To get to the Duran Hotel, it was necessary to walk down Bancroft Way, not a terribly long walk but one that went straight downhill. When I entered the lobby I was immediately greeted by a young man with a full head of dark hair and a quick smile, with whom I exchanged a business-like greeting, introducing myself as a student of Malcolm's who was interested in Japan and looked forward to getting to know him. He was extremely pleasant and polite, but seemed to have little interest in chatting. Instead, he wanted to go directly to his meeting with Malcolm, so I offered to help him with his suitcase and show him the way.

It was immediately clear that he knew exactly where he was going; he walked down the front steps of the hotel, turned right, and began walking up the hill toward Piedmont Avenue, leaving me at the top of the stairs. Since we had started a conversation I grabbed his suitcase and tried to follow him. But I met massive resistance. I can't imagine what he had put inside to make it so heavy-perhaps a few dozen casebooks-but getting it down the stairs took all of my strength. I then had to try to keep up with Setsuo as he walked toward JSP, while at the same time making conversation. There were, of course, no wheels on suitcases in those days, and Setsuo's normal walk outpaced the speed of most joggers. When we finally arrived at JSP I was exhausted. I still wonder whether the back problems I experienced later in life were triggered by that weighty piece of luggage.

Thinking back on that first encounter with Setsuo Miyazawa, I now realize how much it revealed about him as a scholar. Setsuo always knows where he is going, and never dilly dallies on the way. Indeed, he has an uncanny ability to identify worthwhile but unnoticed destinations, and he possesses extraordinary leadership skills that inspire others to follow him. He is as warm and inclusive with young, unknown scholars as he is with senior, established luminaries. No one works harder than Setsuo, and he is both perfectly capable and perfectly willing to undertake tasks large and small. He is also excellent at delegating, so when people offer to work with him he is delighted to accept their involvement. Setsuo's fast walk is not meant to exhaust others; it is just that he has so many things to do, and so many places to be, that he needs to move quickly or too much will remain undone. And his quick laugh? I think it in part shows his appreciation for irony, in part suggests that he takes things seriously but not overly so, and most of all demonstrates his warmth as a human being and his ability to enjoy a good joke. That first meeting was evocative of the kind of scholar Setsuo Miyazawa would become, and the type of mentor and colleague he would be dynamic, visionary, charismatic, and deeply human.

What Setsuo has accomplished over these past 30 years is nothing short of remarkable. I can think of no other scholar within or outside of Japan who has had a greater impact on both the legal academic community and society more generally. Indeed, when Setsuo was still quite young he had already written a number of influential articles. But they turn out to represent only a fraction of his extraordinary output over the next years. In reflecting on Setsuo's many achievements, I am particularly drawn to comment on three of them. First, his empirical and comparative law and society scholarship, which has set a gold standard for work on the Japanese legal system. Second, his work on reforming the Japanese legal system, particularly legal education. And third, his devotion to building institutions and organizations to support socio-legal research in and about Asia.

I Empirical and Comparative Law and Society Scholarship

Everyone who takes an interest in the Japanese legal system quickly discovers the work of Setsuo Miyazawa, particularly his scholarship on Japanese criminal justice and his work on legal culture, legal institutions, and the state. At its most basic, Setsuo's work has introduced a generation (or two) of criminologists and socio-legal scholars to core issues of Japanese socio-legal scholarship, including policing in Japan, public participation in criminal justice, legal culture, and access to justice. But Professor Miyazawa's work does much more than simply make Japanese scholarship accessible to the English-speaking world; it has played a foundational role in creating and advancing the scholarly agenda of those in both the US and Japan.

In the area of criminal justice, about which he has done his most extensive work, Professor Miyazawa has departed from the conventional approach to the study of criminal law in Japanese law faculties, which is primarily doctrinal, and taken a decidedly different path. In his classic book exploring the day-to-day activities of Japanese police detectives, *Policing in Japan: A Study on Making Crime*, Miyazawa bemoans the "dearth of information on criminal investigations in Japan."⁽¹⁾ To address that gap in the literature, he takes inspiration from Jerome Skolnick's 1966 study of police in the US, *Justice Without Trial: Law Enforcement in Democratic Society*, and sets out to do an observational study of the police in Hokkaido.⁽²⁾ As he tells it, when Miyazawa was a graduate student at Hokkaido University studying criminal law, he was inspired by Skolnick's work and "quickly changed my interest from traditional, German-style doctrinal analysis, to empirical analysis of criminal justice and related matters."⁽³⁾

Doing his fieldwork in 1974, Miyazawa was acutely aware that such work was not the norm for a Japanese legal academic; the fact that he devotes an entire chapter of the book to a detailed explanation of his research methodology is a clear indication that his sociological approach to criminal justice needed justification. Indeed, in what is clearly a preemptive strike at his critics, Miyazawa argues that despite the difficulty of conducting empirical research on the police, "the value of observation in providing firsthand information on actual circumstances in the field is incomparably superior to archival research and other research methods."⁽⁴⁾ Now, almost a half-century later, those who neglect empirical study of criminal justice in Japan are the ones who must justify a purely doctrinal approach, and we should credit Miyazawa with initiating a fundamental shift in the scholarly agenda.

Miyazawa's empirical work on police and crime in Japan has continued unabated. In both English and Japanese, in books, edited volumes, and articles, he has produced a steady flow of empirical scholarship. His focus has included work on wiretapping (*Scandal and Hard Reform: Implications of a Wiretapping Case to the Control of Organizational Police Crime in Japan*⁽⁵⁾), policing and individual rights (*Policing in Japan and Individual Rights*⁽⁶⁾), citizen participation in the criminal justice system (*Citizen Participation in Criminal Trials in Japan*:

(1) Setsuo Miyazawa, *Policing in Japan: A Study on Making Crime*, NY: State Univ. N.Y. Press, 1992 (translated by Frank G. Bennett, Jr. with John O. Haley), p.2.

(2) Jerome H. Skolnick, *Justice Without Trial: Law Enforcement in Democratic Society*, NY: John Wiley and Sons, 1966.

(3) Miyazawa, 1992, p.xiv.

(4) Miyazawa, 1992, p.38.

(5) Setsuo Miyazawa, "Scandal and Hard Reform: Implications of a Wiretapping Case to the Control of Organizational Police Crime in Japan," 23 *Kobe Univ. L. Rev.* 13 (1989).

The Saiban-in System and Victim Participation — in Japan in International Perspectives: —⁽⁷⁾ *Will Penal Populism in Japan Decline? A Discussion*;⁽⁸⁾ “The Resurgence of Lay Adjudicatory Systems in East Asia”⁽⁹⁾, comparative work (“The Enigma of Japan as a Testing Ground for Cross-Cultural Criminological Studies”⁽¹⁰⁾), and general studies of police, crime and justice (*Criminal Justice and Criminals in Society*⁽¹¹⁾). This is only a partial listing of his work in the area, work that has been widely admired and garnered multiple awards, including the Distinguished Book Award from the Division of International Criminology of the American Society of Criminology.

Professor Miyazawa's prodigious output of work on police and crime in Japan would, for most people, represent a lifetime of scholarly publication. But it is only one part of his academic focus. As Albert Reiss points out in his Forward to *Policing in Japan*, Miyazawa's work “adds immeasurably to our understanding of the role of culture and of social organization in explaining differences in the behavior of law and legal agents.”⁽¹²⁾ Reiss was referring to the work on policing, but Miyazawa's contribution to our understanding of legal culture goes far deeper.⁽¹³⁾ Take, for example, his 1987 article, “Taking Kawashima Seriously: A Review of Japanese Research on Japanese Legal Consciousness and Disputing Behavior.”⁽¹⁴⁾ In that article, Miyazawa bemoans the fact that “since Kawashima's works appeared, the dominant form of analysis of the Japanese legal consciousness has been

(6) Hans — Heiner Kühne & Koichi Miyazawa, eds., “Policing in Japan and Individual Rights,” in *Internal Security in Modern Industrialized Societies*, Nomos Verlagsgesellschaft, 1998.

(7) Setsuo Miyazawa, “Citizen Participation in Criminal Trials in Japan: The Saiban — in System and Victim Participation in Japan in International Perspectives,” 42 *Int'l J. L. Crime & Just.* 71, 2014.

(8) Setsuo Miyazawa, “Will Penal Populism in Japan Decline?: A Discussion,” 33 *Japanese J. Soc. Criminology* 122, 2008.

(9) Setsuo Miyazawa, “The Resurgence of Lay Adjudicatory Systems in East Asia,” *Asian Pacific Law and Policy Journal*, 2010.

(10) Setsuo Miyazawa, “The Enigma of Japan as a Testing Ground for Cross-Cultural Criminological Studies,” *International Annals of Criminology*, 2012.

(11) Setsuo Miyazawa, Koichi Kikuta & Haruo Nishimura, eds., *Criminal Justice and Criminals in Society*, Nihon Hyoronsha, 2007 (in Japanese).

(12) Miyazawa, 1992, p.ix.

(13) Miyazawa's work on Kawashima and legal culture inspired my own interest in the subject, and resulted in the publication of Eric A. Feldman, “Law, Culture, and Conflict: Dispute Resolution in Postwar Japan,” in Daniel H. Foote, ed., *Law in Japan: A Turning Point*, Seattle: University of Washington Press, 2007.

anecdotal,” and sets out first to describe Kawashima's work, and then review and critique empirical work on Japanese legal culture and legal consciousness.⁽¹⁵⁾ Miyazawa's explication of Kawashima was the clearest ever published in English, and in his effort to “spur international scholars to conduct serious empirical research in Japan,”⁽¹⁶⁾ he offered a template for future work:

My plan is to conduct an interregional comparison of Japan. We need not worry much about legal culture if it does not help explain the operation of the formal legal system. If regional variations in legal consciousness are discovered and if, after proper control, such differences are found to be related to regional variations in the operation of the legal system, we may say at least that legal culture is significant.”⁽¹⁷⁾

In addition to his focus on Kawashima, and his work on criminal justice, Miyazawa has also taken a broader institutional look at legal culture, notably in his article “Legal Culture and the State in Modern Japan: Continuity and Change.”⁽¹⁸⁾ That article presents an historical overview of the Japanese legal system since the late Tokugawa period, and highlights a variety of ways in which certain aspects of Japan's legal culture have persevered. Highlighting continuity rather than change in the legal system is a clever approach, particularly because the article was written in the shadow of Japan's post-2001 legal reforms, and raises questions about whether the those reforms will reshape Japan's legal culture and change the relationship between the state and the bar.

II Reforming the Japanese Legal System

Beyond analyzing and engaging in empirical scholarship about Japanese legal culture, Professor Miyazawa has played a central role in actively trying to change Japanese legal culture. No doubt influenced by his time as a graduate student in the US, where he studied

(14) Setsuo Miyazawa, “Taking Kawashima Seriously: A Review of Japanese Research on Japanese Legal Consciousness and Disputing Behavior,” 21 *Law & Soc'y Rev.* 219, 1987.

(15) *Ibid.*, p.223.

(16) *Ibid.*, p.238-9.

(17) *Ibid.*, p.229.

(18) Setsuo Miyazawa, “Legal Culture and the State in Modern Japan: Continuity and Change,” in Robert W. Gordon and Morton J. Horwitz, eds., *Law, Society, and History: Themes of the Legal Sociology and Legal History of Lawrence W. Friedman*, NY: Cambridge University Press, 2014. See also, Setsuo Miyazawa, “How Does Culture Count in Legal Change?: A Review with a Proposal from a Social Movement Perspective,” 37 *Mich. J. Int'l L.* 917, 2006.

sociology at Yale and came to value the contribution of social science to the study of law, Miyazawa was an early critic of Japanese legal education. Frustrated by the fact that sitting the Japanese bar exam and gaining admission to the Legal Training and Research Institute (LTRI) did not require a law degree, and that the training provided at the LTRI was narrowly doctrinal, he joined with a small group of other legal academics who in the 1980s and 1990s were pressing for the creation of graduate professional law schools in Japan.⁽¹⁹⁾ Press as they may, there was little support for their proposal, and few appeared to share their concern that the training to become a lawyer in Japan did not involve “critical and reflective examinations of the law, the judicial system, and the legal profession.”⁽²⁰⁾

Miyazawa's critique of Japanese legal education was not simply borne of nostalgia for his days at Yale, and a preference for things American. As is so often the case, he offered an original and compelling analysis in which he drew a causal connection between legal education, on the one hand, and what he perceived to be certain failures of the legal system, on the other. With regard to judges, for example, he argued that the narrow, practical education provided to lawyers (including prosecutors and judges), along with the fact that assistant judges are appointed immediately after their legal education and come under the administrative control of the Ministry of Justice, was responsible for “the extreme form of legal positivism and passivity of most judges in Japan.”⁽²¹⁾ His solution, predictably, was big and bold; scrap the LTRI and create a decentralized system of graduate legal education staffed by a well-rounded faculty who could present law students with a wide range of methodological and conceptual perspectives on the law.

The merits of the critique notwithstanding, Miyazawa could not have expected that he would find a significant audience for such views. One need look only at the diversity of individuals and institutions with vested interests in legal education — the Ministry of Justice, Ministry of Education, public and private universities, the bar association, law firms, bar exam preparatory companies, and many more — to appreciate the powerful forces ready to resist anything other than minor, cosmetic changes to the system. Perhaps only Setsuo could have been optimistic enough (was he?) to imagine that his radical reimagining of legal education in Japan would become a central issue in a more general debate over legal reform.

The story of legal reform in Japan has been well told by numerous commentators, and there is no need to rehash it here.⁽²²⁾ But the part of that story highlighting legal education is

important, because without Setsuo it would have played out quite differently. As the discussion of legal reform gained momentum and the possibility of actual change to various parts of the system looked increasingly real, Professor Miyazawa was intent on not missing an opportunity to bring about the types of changes that he believed would strengthen Japanese legal education. He provided a blueprint for reform in an article he wrote at the outset of the reform process, in which he proposed the following:

- 1) Because most undergraduate law faculties teach both law and political science, law programs should be turned into liberal arts programs combining political science and social scientific studies of law and reducing technical and doctrinal courses. This would be comparable to the Legal Studies Program at the University of California at Berkeley.
- 2) Graduate professional law schools should be established to provide three years of professional legal education as a prerequisite to the National Bar Examination, and their clinical programs should be used as resources for legal aid.
- 3) Graduate professional law schools should admit students from a broad range of undergraduate educational backgrounds as well as a sizable number of mature students.
- 4) The Legal Research and Training Institute should be abolished and practical training should be provided by the bar itself, as in the Canadian model.⁽²³⁾

Setsuo presented these proposals in writing and at various meetings and thereby made an important contribution to the process of legal reform. But he was not content to be a bench player in the debate. Instead, he immersed himself not only in the scholarly enterprise of rethinking the central institutions of legal education, but also in the political and policy conflicts that would determine the direction of legal change. He developed strong relationships with the senior staff of the Japan Federation of Bar Associations and made them a partner in his reform efforts. He brought other prominent legal academics into the debate who joined him in making the case for serious, significant changes to legal education. He attended countless meetings, met with innumerable interested parties, gave talks and interviews, and engaged in other forms of policy advocacy, all meant to bring about positive

(19) Setsuo Miyazawa, “The Politics of Judicial Reform in Japan: The Rule of Law at Last?,” 1 *Asian-Pac. L. & Pol’y J.* 89 (2001), p.111.

(20) *Ibid.*, p.111.

(21) *Ibid.*, p.112.

(22) See, for example, Shunsuke Marushima, “Historical Genealogy of Japan’s Judicial Reform,” 36 *Hastings International and Comparative Law Review* 349, 2013.

(23) Setsuo Miyazawa, “The Politics of Judicial Reform in Japan: The Rule of Law at Last?,” 1 *Asian-Pac. L. & Pol’y J.* 89 (2001), p.113.

change to legal education. He even started a journal, the *Journal of Judicial Reform in Japan* (*Gekkan Shihō Kaikaku*), as a venue for academic debate about reform. Indeed, some of his friends and colleagues, myself included, started to worry that he had become so involved in the policy conflict that he would never return to his scholarship, and bemoaned the idea that we might not in the future enjoy the ability to learn from his academic writings. How wrong we were.

As we now know, only some of Setsuo's reform proposals prevailed; his most radical proposals, like transforming undergraduate law faculties and eliminating the LTRI, were not adopted. I recall several conversations with him about whether to support or reject the reforms; whether one should appreciate a partial victory and continue to press for further change, or insist on complete victory and be uncompromising. And I remember clearly how pragmatic he was, and how he was unwilling to step away from what was likely to be the only moment in our lifetimes when fundamental legal reform was a possibility. He decided to take what he could get, reform-wise, and then continue to press for more. Which is another way of saying that unlike many people who failed to appreciate how the reform of legal education would play out, Setsuo was clear-eyed. As he wrote in 2001, "I am not satisfied with the present trend in reform that is led by more moderate proposals. If the final plan is more moderate than the currently proposed moderate plans, it will effectively result in maintaining the present system of undergraduate law faculties and the Training Institute."²⁴ Today, in 2017, many commentators have declared the reform of legal education in Japan a failure, and have criticized the reformers for their poor vision. I believe that Setsuo would agree with their account of the failures, but unlike the critics he is surely not surprised by the outcome. Indeed, I continue to believe that if the reforms had followed his blueprint Japanese legal education would provide a model for the world.

III Building Institutions to Promote-Socio-Legal Research in and About Asia

One might think that Miyazawa's high productivity as a scholar would leave little time for other activities, and that his involvement in legal reform would consume whatever extra time he was able to find in his schedule. But somehow he is always able to find more hours in a day, and he has spent those hours leading a major international effort to increase the quantity and quality of law and society research about Asian legal systems. There is simply no question that Setsuo is the most prominent socio-legal scholar working on Asia in the 21st century, and

²⁴ Ibid, p.114.

that he has used his prominence to mentor a new generation of scholars.

As a longtime member of the Law and Society Association (LSA), for example, Setsuo appreciated the potential for a Collaborative Research Network (CRN) within LSA, so he started the East Asian Law and Society CRN, recruited some of his friends and colleagues to help with the organization, and before long had one of largest memberships (if not the largest membership) of any of the LSA's CRNs. The CRN became a vehicle for bringing together scholars with common interests, who presented their work on panels organized and promoted by the CRN. Indeed, the CRN was so successful that it presented a policy challenge to the LSA, which had to figure out how to engage with a subgroup of members that had grown well beyond a small gathering and become a significant organization within the LSA itself.

The LSA administration may have seen Setsuo's success as a mixed blessing, but Setsuo clearly saw it as an opportunity. Why confine this newly formed group of scholars from around the world to a subgroup when it could be its very own organization? Once again, Setsuo leveraged his extensive group of friends, admirers, and supporters, and with their help he built a new organization in 2015 — the Asian Law and Society Association (ALSA)— headquartered at Waseda University. Under Miyazawa's leadership (he was of course everyone's choice to serve as President) the Association developed bylaws, instituted elections, and created a Board of Trustees and an Executive Office. First under the auspices of the CRN, and then as part of the ALSA, Miyazawa spearheaded a series of conferences, starting with the Inaugural East Asian Law and Society Conference in Hong Kong in 2010, and followed by conferences at Yonsei University in Seoul, Korea (2011); KoGuan Law School, Shanghai Jiao Tong University, Shanghai, China (2013); Waseda Law School, Waseda University, Tokyo, Japan (2015); and National University of Singapore (2016).

Not only has Professor Miyazawa spearheaded the development of a vibrant community of scholars under the umbrella of the ALSA, but he has also made it his mission to bring the study of Asian law and society into the mainstream of US legal academia. Given the pressures facing American law schools that is no easy task, but as usual Setsuo has taken an extremely tactical approach. He recognized that many US legal academics gather annually at the meeting of the American Association of Law Schools (AALS), and so he once again identified a small group of his supporters who shared his goal, and founded the Section on East Asian Law & Society within the AALS. As Miyazawa construes it, the Section "promotes learning about East Asian law and society, particularly in a comparative context; collaborates with other AALS Sections on matters of common interest related to globalization and legal education;

and facilitates the communication of ideas, interests and activities among members concerning legal systems in East Asia.” The result is one or more panels at the Annual Meeting of the AALS with papers on various aspects of law and society in Asia that attract the attention of the entire AALS membership, as well as a book award, a panel featuring work by young scholars, and more.

In all of these organizational endeavors Professor Miyazawa has provided not only leadership but also inspiration. He has reached out to old friends while making new ones; done more work than anyone while sharing credit with everyone; highlighted the work of established scholars and promoted the work of upcoming academics. All the while, he has continued his effort to improve legal education in Japan, and maintained a brisk pace of publishing his own scholarship. It is no wonder that among the many ways in which Setsuo has been recognized and honored, in 2014 he was awarded the International Prize by the Law and Society Association. The LSA's statement when that award was presented does an able job of summarizing what makes Setsuo so special:

Setsuo Miyazawa's contribution to law and society scholarship and pedagogy in Japan and around the world is truly astounding. ... his research ranges from policing and criminal justice to corporate lawyering, and he has written extensively about public interest lawyering as well. He has written or edited more than a dozen books in Japanese and English. ... Prof. Miyazawa's scholarship is not merely abstract and academic; he has been an influential and courageous voice in promoting judicial reform in Japan, and has had a significant role in reforming legal education in Japan. Prof. Miyazawa's contributions to the Law and Society Association have also been remarkable.

Astounding, remarkable, influential, courageous-those are the qualities that are so apparent in Setsuo's writing, advocacy, and leadership. I first saw them up close on Bancroft Way many years ago, and see them more than ever in the extraordinary legacy that he continues to create.