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The TEPCO Trial: Prosecution and Acquittal after Japan's Fukushima Nuclear Meltdown

By Prof. David T. Johnson, Prof. Hiroshi Fukurai, and Prof. Mari Hirayama

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On September 19, 2019, a panel of three professional judges in the Tokyo District Court acquitted three former executives of the Tokyo Electric Power Company (TEPCO). The defendants were former chairman Katsumata Tsunehisa (79), and former vice presidents Takekuro Ichiro (73) and Muto Sakae (69), who shared responsibility for the company's nuclear energy sector. They had been charged with criminal negligence[1] for failing to prevent the meltdown of the Fukushima Daiichi nuclear power plant, which was precipitated by the earthquake and tsunami of March 11, 2011, which killed more than 18,000 people and forced 400,000 to evacuate their homes in order to escape the nuclear fallout (Hasegawa, 2013).[2]

The 3/11 earthquake was the most powerful ever recorded in Japan, and it was the fourth most powerful earthquake in the world since modern record keeping started in 1900. The tsunami it precipitated reached heights up to 40 meters (130 feet), and in some places the colossal swell traveled at 700 kmh (435 mph) and surged 10 kilometers (6 miles) inland. The only nuclear accident as serious as the meltdowns at the Fukushima plant was the 1986 disaster at Chernobyl in Ukraine. But while the Fukushima triple-disaster was severe, it was not precipitated by a low-probability event. The 3/11 earthquake was a "high-probability event," for massive earthquakes and tsunamis have been assaulting the northeastern coast of Japan for centuries – in 869, 1611, 1793, 1896, and 1933 (Ramseyer, 2012). The size of the tsunami in 2011 was almost the same as the one in 1933.

There have been many legal and political reactions to the meltdowns in Fukushima (Samuels, 2013; Aldrich, 2019). Japan stopped using nuclear power for much of 2011 and 2012, and its usage has remained low since then, though the administration of Prime Minister Abe Shinzo seems determined to restart many of the country's reactors. More broadly, several countries, including Germany, Italy, Belgium, and Taiwan, suspended or ended their use of nuclear power, and China suspended its plan to expand its use of nuclear power for half a year.

New nuclear safety laws were also established in Japan, China, and South Korea, though in most of East Asia, major changes in the field of nuclear power seem unlikely because of "nuclear power's sunk-cost structure and embeddedness in national energy plans" (Fraser and Aldrich, 2019, p.58). As for administrative law, Japan's lax regulatory system (Kingston, 2012) was reformed after 3/11, with the Nuclear and Industrial Safety Agency (NISA) and the Nuclear Safety Commission (NSC) replaced by the Nuclear Regulation Authority (NRA).

Government supervision of the nuclear industry was also transferred from the ministry responsible for promoting it (the Ministry of Economy, Trade, & Industry, or METI) to the Ministry of Environment (MOE), which *might* result in more emphasis on safety and less on profit and the production of power (time will tell). In civil law, about 30 collective actions have been filed against TEPCO and government officials, in addition to some 400 individual lawsuits filed nationwide by the victims of the Fukushima meltdown (Jobin, 2019, p.74). As of September 2019, eight of the collective actions had resulted in judgments – and all found TEPCO liable (Dooley, Yamamitsu, and Inoue, 2019).[3]

And then there is the legal process through which criminal sanctions can be imposed. Significant efforts were made to respond to the anti-social behavior of TEPCO executives and government officials by imposing punishment on those believed guilty of violating Japanese criminal law. The central question in this essay is this: what was the criminal process good for in the TEPCO case?

We argue that, despite the acquittal of the TEPCO defendants, Japan's criminal process did some good in this case, and that when it failed it did so in ways that are common in other systems of criminal justice. The latter claim will be no consolation to the victims and survivors of 3/11, but it does reflect how hard it is to hold corporations and their executives criminally accountable for the harms that they cause, not only in Japan but in all countries. While we focus on the limits of criminal law and criminal procedure in a case that may be the biggest crime in postwar Japanese history, our point applies more broadly, for in many societies white-collar crime is "the greatest crime problem of our age" (Coleman, 2002, p. xi).[4]

Our essay proceeds in three parts. Part one describes the complicated process of criminal prosecution through which charges were filed against the three TEPCO executives. This part of our story involves a uniquely Japanese institution called the Prosecution Review Commission (*kensatsu shinsakai*), which was reformed in 2009 to enable panels of 11 citizens to override the non-charge decisions of professional prosecutors. Part two analyzes the reasoning of the Tokyo District Court and describes some of the reactions to its decision to acquit the executives. Many Japanese were harshly critical of that decision, but Japanese prosecutors essentially said "we told you so" after the Court concluded there was insufficient evidence to convict. In our view, the verdicts in this case are troubling but unsurprising, for impunity is common both in white-collar crime cases and in cases of "mandatory prosecution" (*kyosei kiso*) initiated by Japan's PRCs. Part three of this article concludes by suggesting some lessons to learn from the TEPCO trial. Foremost among them is how difficult it is for criminal law and the institutions of criminal justice to control the conduct of corporations and their agents.

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David T. Johnson is Professor of Sociology at the University of Hawaii. His most recent books are Amerikajin no Mita Nihon no Shikei [An American Perspective on Capital Punishment in Japan] (Iwanami Shinsho, 2019), and The Culture of Capital Punishment in Japan (Palgrave Macmillan, 2020), available through Open Access.

Hiroshi Fukurai is Professor of Legal Studies and Sociology at the University of California, Santa Cruz and President of the Asian Law and Society Association (ALSA). He has published seven books and more than 100 articles on citizen participation in justice systems, race and inequality, Asian law and politics, and indigenous approaches to international law.

Mari Hirayama is Professor of Criminal Procedure and Criminal Justice at Hakuoh University in Oyama, Japan. She does research on lay participation in Japanese criminal justice, focusing on sex crime cases and the lay judge system. With David T. Johnson she recently wrote "Japan's Reformed Prosecution Review Commission: Changes, Challenges, and Lessons," which was published in Asian Journal of Criminology in 2019.

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