# Community and the Law

A Critical Reassessment of American Liberalism and Japanese Modernity

### Takao Tanase

Professor of Legal Sociology, Chuo University Law School, Japan

Translated and Edited by

Luke Nottage

Associate Professor of Law, University of Sydney, Australia

Leon Wolff

Associate Professor of Law, Bond University, Australia

## **Edward Elgar**

Cheltenham, UK • Northampton, MA, USA

### © Takao Tanase 2010

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical or photocopying, recording, or otherwise without the prior permission of the publisher.

Published by Edward Elgar Publishing Limited The Lypiatts 15 Lansdown Road Cheltenham Glos GL50 2JA UK

Edward Elgar Publishing, Inc. William Pratt House 9 Dewey Court Northampton Massachusetts 01060 USA

A catalogue record for this book is available from the British Library

Library of Congress Control Number: 2009937883



ISBN 978 1 84844 785 1

Typeset by Cambrian Typesetters, Camberley, Surrey Printed and bound by MPG Books Group, UK

# **Contents**

Translators' preface: the legal sociology of Takao Tanase Acknowledgements PART I INTRODUCTION	vi x
	•
1 Introduction – community and the law: a critical reassessment of American liberalism and Japanese modernity	3
PART II A CRITIQUE OF AMERICAN LIBERALISM	
<ul> <li>Invoking law as narrative: lawyers' ethics and the discourse of law in the United States</li> <li>The moral foundations of tort liability</li> <li>Post-divorce child visitations and parental rights: insights from comparative legal cultures</li> </ul>	17 54 63
PART III A NORMATIVE THEORY OF COMMUNITY AND THE LAW	
<ul><li>5 Rights and community</li><li>6 Communitarianism and constitutional interpretation</li></ul>	95 106
PART IV A RE-EVALUATION OF JAPANESE MODERNITY	
<ul> <li>Japanese modernity revisited: a critique of the theory and practice of Kawashima's sociology of law</li> <li>Litigation in Japan and the modernisation thesis</li> </ul>	139 155
Bibliography Index	179 195