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Japan's Transnational War Reparations Litigation: An Empirical Analysis

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Negotiating war reparations is traditionally the province of the political branches, yet in recent decades, domestic courts have presided over hundreds of compensation lawsuits stemming from World War II. In the West, governments responded to these lawsuits with elaborate compensation mechanisms. In East Asia, by contrast, civil litigation continues apace. This Article analyzes eighty-three lawsuits filed in Japan, the epicenter of Asia's World War II reparations movement. While many scholars criticize the passivity of Japanese courts on war-related issues, this Article detects a meaningful role for Japanese courts in the reparations process: awarding compensation, verifying facts, and allocating legal liability. By classifying the various types of lawsuits brought in recent decades and examining all *relevant cases, not just the ones that attract significant media attention, this Article delimits the breadth and depth of the war reparations movement. It also posits a more active role for the Japanese judiciary in the war reparations debate than scholars have observed. In consistently awarding compensation to victims of the atomic bombings of Hiroshima and Nagasaki, Japanese judges not only play a key role in providing compensation, they also countervail the policy prerogatives of Japan's ruling conservative party.*

INTRODUCTION

World War II ended seventy-five years ago, but its meaning, legacy, and legality are vigorously contested around the world. Over the past two decades, Western governments have devised a series of initiatives to compensate forced laborers,[1] deportees to concentration camps,[2] and persons whose property was seized by Nazis or Nazi sympathizers.[3] Each program responds

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1. In 2000, after class-action lawsuits were filed in the United States, Germany passed a law, and established a foundation to make "individual humanitarian payments to former slave and forced laborers and other victims of National Socialism." Symbolic compensation payments of $2,500 (for forced laborers) or $7,500 (for forced laborers who served in concentration camps) were disbursed between 2001 and 2007. *See* Stiftung Erinnerung Verantwortung Und Zukunft [Foundation on Remembrance, Responsibility and Future Foundation], *Entstehungsgeschichte der Stiftung EVZ* [*History of the Foundation EVZ*], https://www.stiftung-evz.de/stiftung/geschichte/entstehung.html [https://perma.cc/VE9Z-MRNS].

2. In 2015, the United States and France established the Holocaust Deportation Claims Program, which provided comparative large payments (up to $400,000) to men and women who survived deportation from France to concentration camps. *See* U.S. Dep't. of State, *Notice Regarding Holocaust Deportation Claims Program Under U.S.-France Agreement* (Feb. 19, 2019), https://www.state.gov/notice-regarding-holocaust-deportation-claims-program-under-u-s-france-agreement/ [https://perma.cc/TL2J-RKUX].

3. The Swiss and French governments both set up claims tribunals to preside over claims of looted property. In 2000, the Swiss government established the Claims Resolution Tribunal of the Holocaust Victim Assets Litigation against Swiss Banks and other Swiss Entities. The tribunal processed over

to a complex contemporary reality, offering at best partial redress to grave human rights abuses from the first half of the twentieth century.[4] We can question the appropriateness of these schemata: Did they provide meaningful redress?[5] To whom? Why these crimes? Needless to say, each initiative required political capital, administrative resources, and diplomatic pressure.

East Asia is also reevaluating the War. To varying degrees, the governments of China, Japan, and South Korea have devised their own interpretations of the War over the past three decades. In Japan, politicians affiliated with the conservative Liberal Democratic Party ("LDP") deny or downplay their country's wartime aggression,[6] in an attempt to rid the nation of its "masochistic" view of wartime history.[7] In China, the Communist Party invokes the war both to recall Chinese membership in the "Big Four," the four allies that defeated the Axis powers, and to reclaim the moral authority

32,000 claims from Jews and others whose bank accounts were seized before and during the war. The website is still operative. Holocaust Victim Assets Litigation (Swiss Banks), *CRT-II Home* (Nov. 16, 2012), crt-ii.org/index_en.php.html [https://perma.cc/B7D5-CGME]; *see also* Edward R. Korman, *Rewriting the Holocaust History of the Swiss Banks: A Growing Scandal*, *in* HOLOCAUST RESTITUTION: PERSPECTIVES ON THE LITIGATION AND ITS LEGACY 120, 129 (Michael J. Bazyler & Roger P. Alford eds., 2005). In 1999, after studying the issue for several years, the French government set up the *Commission pour l'Indemnisation des Victimes de Spoliations* [Commission for the Compensation of Victims of Spoliation]. The Commission hears claims related to property illegally seized during the Vichy regime (1941–44). *See generally* Commission for the Compensation of Victims of Spoliation, civs.gouv.fr/home/ [https://perma.cc/9V8P-49M4].

4. As Professor Bazyler writes, "at most we can call these payments 'symbolic justice.'" MICHAEL J. BAZYLER, HOLOCAUST, GENOCIDE AND THE LAW: A QUEST FOR JUSTICE IN A POST-HOLOCAUST WORLD 164 (2017). Bazyler notes the small size of the payments and the delay of over half a century as factors that limit the restorative properties of various mechanisms. *Id.* Professor Leora Bilsky is somewhat more sanguine, hailing the Holocaust Litigation Movement as "an important legal milestone bearing many lessons for pressing contemporary issues, in particular how best to hold giant corporations accountable for human rights violations." LEORA BILSKY, THE HOLOCAUST, CORPORATIONS, AND THE LAW 2 (2017).

5. Most of the European initiatives stemmed, at least in part, from litigation filed in American, Austrian, French, or German courts.

6. Philip Seaton succinctly summarizes the situation in Japan as a clash between "a *politically powerful conservative lobby* whose war stance . . . has been a minority opinion but which has maintained control over the official narrative and policy, and . . . a *politically weak progressive lobby* which has had the support of a small majority of public opinion but has failed to turn that support into the political power necessary to change the official narrative." PHILIP A. SEATON, JAPAN'S CONTESTED WAR MEMORIES: THE 'MEMORY RIFTS' IN HISTORICAL CONSCIOUSNESS OF WORLD WAR II 36 (2009). Professor Seaton summarizes the historical evolution of Japanese postwar memory, from the 1940s to the 2000s, in the second chapter. *See id.* at 37–64. Professor Seraphim notes a shift from a domestically facing discussion of the war in the immediate postwar period, to the 1980s, "when issues of Japanese war memory and postwar responsibility became part of a broader global culture of memory characterized by a more robust recognition of Japan as a brutal colonizer in Asia." FRANZISKA SERAPHIM, WAR MEMORY AND SOCIAL POLITICS IN JAPAN, 1945-2005 8 (2006). This contestation accelerated in the 1990s, when opposition Prime Minister Hosokawa Morihiro produced Japan's first apology for an "aggressive war." After Hosokawa, Japan's conservative Liberal Democratic Party again took control of the government and insisted on minimizing Japanese aggressiveness. *See* TAKASHI YOSHIDA, THE MAKING OF THE 'RAPE OF NANKING': HISTORY AND MEMORY IN JAPAN, CHINA AND THE UNITED STATES 132–36 (2006).

7. *See* SEATON, *supra* note 6, at 25; YOSHIDA, *supra* note 6, at 142–43 (describing conservative Japanese historians' efforts to eliminate "masochistic historical views" by condemning peace museums, the inclusion of materials on comfort women in junior high school textbooks, and downplaying the Nanjing Massacre).

of banishing global fascism.[8] The South Korean government has also launched a number of initiatives to "clear up the past." Special legislation, truth and reconciliation commissions, and other joint (civilian-official) entities review, repair and reflect on historical episodes, including the period of Japanese colonialism from 1910–1945.[9] These initiatives unearthed materials that substantiate claims for compensation against Japanese interests.[10]

In this more nationalistic, less politically integrated atmosphere, East Asia has produced far fewer international accords than its transatlantic counterparts.[11] The only international agreement reached so far—the unratified comfort women agreement between Japan and South Korea[12]—was dissolved by the next Korean administration and lasted less than three years.[13] Japan's signal domestic initiative, the Asian Women's Fund (1995), only partially resolved the multifaceted comfort women problem.[14] While politicians, journalists, and civil society actors have vigorously debated the treatment of comfort women, most war victims—forced laborers, victims of medical experimentation, survivors of massacres and chemical weapon attacks—continue to receive little attention.

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8. *See generally* Rana Mitter, China's Good War: How World War II Is Shaping a New Nationalism (2020). Professor Mitter notes that China's "growing wealth has little morally weighted content." *Id.* at 4. The war, then, confers a moral ballast and international recognition that amplify China's soft power. *Id.* at 5.

9. *See* Andrew Wolman, *Looking Back While Moving Forward: The Evolution of Truth Commissions in Korea*, 14 Asian-Pacific L. & Pol'y J. 27, 36–43 (2013). In 2004–05, the National Assembly of South Korea passed several laws establishing commissions on the Japanese colonial period. They include the (a) Commission on Truths of Anti-Nation Activities and Pro-Japanese Acts under Japanese Rule, (b) the Commission on Confiscation of Properties of Pro-Japanese Collaborators, and (c) the Commission for Identifying Truth Regarding Servitude under Japanese Colonial Occupation. *Id.* at 39. *See* Ethan Hee-Seok Shin, *The "Comfort Women" Reparation Movement: Between Universal Women's Human Right and Particular Anti-Colonial Nationalism*, 28 Fla. J. Int'l L. 87, 127–32 (2016) (describing executive, legislative and judicial efforts to reconcile Korea's modern history).

10. As explained below, the 2018 rulings of the Supreme Court of South Korea reference a 2005 report, issued after the Republic of Korea released the *travaux préparatoires* of the 1965 Basic Treaty between Japan and Korea. *See generally* Daebeobwon [S. Ct.], Oct. 30, 2018, 2013Da61831 (S. Kor.), *translated in* Seokwoo Lee & Seryon Lee, Yeo Woon Taek v. New Nippon Steel Corporation, 113 Am. J. Int'l L. 592, 594 (2019) [hereinafter Yeo v. New Nippon Steel Corp.].

11. Timothy Webster, *Bilateral Regionalism: Paradoxes of East Asian Integration*, 25 Berkeley J. Int'l L. 435, 435 (2007) (describing East Asia as "one of the least integrated areas in the world"); *see Full Text of Announcement on 'Comfort Women' Issue by Japanese, South Korean Foreign Ministers*, Japan Times (Dec. 28, 2015), https://www.japantimes.co.jp/news/2015/12/28/national/politics-diplomacy/full-text-announcement-comfort-women-issue-japanese-south-korean-foreign-ministers/ [http://perma.cc/C6XD-CLS5].

12. *See Full Text of Announcement on 'Comfort Women' Issue by Japanese, South Korean Foreign Ministers*, *supra* note 11.

13. *See* Tim Kelly & Hyonhee Shin, *South Korea Risks Ties by Disbanding 'Comfort Women' Fund: Japan PM*, Reuters (Nov. 20, 2018), https://www.reuters.com/article/us-southkorea-japan-comfortwomen-abe/south-korea-risks-ties-by-disbanding-comfort-women-fund-japan-pm-idUSKCN1NQ0CH [https://perma.cc/848G-QCTV].

14. *See* Kim Puja, *The Failure of the Asian Women's Fund*, *in* Denying the Comfort Women: The Japanese State's Assault on Historical Truth 93 (Nishino Rumiko et al. eds. 2018). Professor Kim cites "three major problems" with the fund as (a) the ambiguous terminology, (b) incomplete apologies, and (c) lack of transparency about taxpayer money. *Id.* at 97. The fund did, however, provide monetary compensation, a signed letter of apology from Japan's Prime Minister, and medical and welfare support. *Id.* at 96.

In the absence of international agreements, domestic courts play a meaningful role in framing, resolving, and highlighting disputes over wartime liability. In 2018, the South Korean Supreme Court ordered two of Japan's most powerful multinational enterprises to compensate Korean forced laborers and their heirs.[15] Those verdicts proved enormously controversial, setting in motion a diplomatic fallout that has frayed Japan-South Korea ties to their thinnest point in five decades.[16] A Chinese lawsuit produced an arguably more salutary outcome.[17] In 2016, Mitsubishi Materials announced a multi-million dollar settlement with hundreds of Chinese forced laborers.[18] Mitsubishi not only publicly apologized, a rarity in these lawsuits, but also designed Asia's most elaborate war reparations scheme.[19] A handful of Japanese companies settled lawsuits, on less favorable terms than those of the Mitsubishi settlement in China.[20] With dozens of lawsuits pending in South Korea, the prospect of a comprehensive settlement is dim.[21] Without a major diplomatic breakthrough, South Korean courts will continue to adjudicate disputes, likely in favor of Korean plaintiffs.[22]

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15. *See* Daebeobwon, Oct. 30, 2018, 2013Da61831, *supra* note 10.

16. Simon Denyer, *Japan-South Korea Ties 'Worst in Five Decades' as U.S. Leaves Alliance Untended*, WASH. POST (Feb. 9, 2019), https://www.washingtonpost.com/world/asia_pacific/japan-south-korea-ties-worst-in-five-decades-as-us-leaves-alliance-untended/2019/02/08/f17230be-2ad8-11e9-906e-9d55b6451eb4_story.html [https://perma.cc/YQ7A-JJ8A].

17. While Chinese plaintiffs have filed lawsuits in Chinese courts, this is the first time a Chinese court accepted such a filing. *See* GUAN JIANQIANG, GONGPING, ZHENGYI, ZUNYAN: ZHONGGUO MINJIAN ZHANZHENG SHOUHAIZHE DUIRI SUOCHANG DE FALÜ JICHU [FAIRNESS, JUSTICE, DIGNITY: THE LEGAL BASIS FOR CHINESE CIVILIAN WAR VICTIMS TO CLAIM COMPENSATION AGAINST JAPAN] 368–69 (2006) (mentioning cases filed in Shijiazhuang and Shanghai). The Beijing court's acceptance no doubt pressured Mitsubishi to settle.

18. Austin Ramzy, *Mitsubishi Apologizes to Chinese World War II Forced Laborers*, N.Y. TIMES (June 1, 2016), https://www.nytimes.com/2016/06/02/world/asia/mitsubishi-china-ww2-apology.html [https://perma.cc/U83C-LPJE].

19. *Id.*

20. *See generally* Timothy Webster, *The Price of Settlement: World War II Reparations in China, Japan and Korea*, 51 N.Y.U. J. INT'L L. & POL. 301 (2019) (analyzing the results of six settlement agreements between Asian forced laborers and Japanese corporations).

21. The most comprehensive list of Korean lawsuits currently lists fifty-eight lawsuits, many of which are still active. *See generally* Hōritsu Jimusho no Shiryō Tana [Law Firm Shelf of Materials], *Kankoku Sengo Hoshō Saiban Sōran* [*List of Postwar Compensation Trials in Korea*], justice.skr.jp/souran/souran-kr-web.htm [https://perma.cc/859N-5JCE] (in Japanese); *Hanguk Jeonhu Posang Jaepan Illam* [*List of Postwar Compensation Trials in Korea*], justice.skr.jp/souran/ksouran-kr-web.htm (in Korean). The website contains a comprehensive list of lawsuits in Japan and Korea, links to dozens of judicial opinions, and various legal documents (complaints, plaintiff testimony, etc.). It is run by Yamamoto Seita, a Japanese attorney who has represented Chinese and Korean forced laborers in various lawsuits.

22. The 2018 decisions by the South Korean Supreme Court suggest a pathway to holding corporations legally liable. More surprisingly, in January 2021, a Seoul trial court found Japan civilly liable for forcing twelve Korean women into sexual slavery during World War II. The trial court waived Japan's state immunity and distinguished the case from the ICJ's decision in the 2012 Jurisdictional Immunities decision. Judge Kim Jeong-kon wrote that the "Defendant violated jus cogens norms by committing crimes against humanity in a planned, systematic, and widespread manner. Korean courts have international jurisdiction over this case as plaintiffs are Korean citizens, and the Korean peninsula was under illegal occupation by the Empire of Japan at that time." *See also* Seoul Jung-ang Jibangbeobwon [Seoul Cent. Dist. Ct.], Jan. 8, 2021, 2016Kahap505092 (S. Kor.) [hereinafter Pe v. Japan] (holding the Japanese government civilly liable for enslaving and facilitating the rape of twelve Korean comfort women).

Law is vital to the reparations process, both domestically and internationally. Japan's national legislature, the Diet, has passed numerous laws to address wartime damage, from the Relief Act,[23] Pension Act (revised in 1952),[24] and Atomic Bomb Victims Act[25] of the 1950s, to the Siberian Special Measures Act of 2010.[26] Except for the Atomic Bomb Victims Act, these laws all impose nationality requirements,[27] extending benefits exclusively to Japanese citizens.[28] They thus exclude Taiwanese and Korean veterans who served in the Japanese Imperial Army, comfort women from many countries, and forced laborers from China and Korea. With the help of lawyers, historians, scholars, and activists, Asian victims have sought redress in the domestic courts of many jurisdictions.[29] The resulting jurisprudence informs a host of critical issues in transnational law: the bias of national

The Seoul Central District Court issued a press release to explain the verdict, which is not available at the time of this writing (Jan. 15, 2021). *See* Press Release, Seoul Jung-ang Jibangbeobweon [Seoul Cent. Dist. Ct.], (Jan. 8, 2021), justice.skr.jp/documents/kgist.pdf [https://perma.cc/4Y6U-P859].

23. *See* Senshō Byōsha Senbotsusha Izoku-nado Engohō [Law to Assist Casualties of War, Bereaved Families and Others], Law No. 127 of 1952 (Japan) [hereinafter Relief Act]. This law provides financial assistance to combat veterans and civilian employees of the Japanese military.

24. *See* Onkyūhō no Tokurei ni kan suru ken no Sochi ni kan suru Hōritsu [Law on Measures Relating to Special Provisions of the Pension Act], Law No. 205 of 1952 (Japan) [hereinafter Pension Act]. This law, originally passed in 1923, gave pensions to public officials and civil servants. In 1953, pensions were given to veterans, regardless of whether they sustained injuries. For a complete list of postwar compensatory legislation, see Hiroshi Tanaka, 28 HITOTSUBASHI J. SOC. STUD. 1, 6–8 (1996).

25. *See* Genshi Bakudan Hibakusha no Iryō-nado ni kan suru Hōritsu [Law on Medical Care for Atomic Bomb Survivors], Law No. 41 of 1957 (Japan) [hereinafter Atomic Bomb Victims Act].

26. *See* Sengo Kyōsei Yokuryūsha ni Kakawaru Mondai ni kan suru Tokubetsu Sochihō [*Shiberia Tokubetsu Sochi Hō*] [Special Measures Law Relating to Postwar Forced Detainees], Law No. 45 of 2010 (Japan) [hereinafter Siberian Special Measures Act]. This law provides payments to Japanese prisoners of war in the former Soviet Union, many of whom performed forced labor for years.

27. *See, e.g.*, Relief Act, art. 11; Pension Act, art. 9; Siberian Special Measures Act, art. 3; *see also* Tanaka, *supra* note 24, at 9.

28. Not all of Japan's war reparations laws contain nationality requirements. The 1957 Hibakusha Law, as explored below, does not require Japanese nationality. In 2000, Japan passed the Heiwa Jōyaku Kokuseki Ridatsusha-nado de aru Senbotsusha Izoku-nado ni tai suru Ichōkin-nado no Shikyū ni kan suru Hōritsu [Law on Condolence Payments to War Victims and Bereft Families Denationalized by the Peace Treaty], Law No. 104 of 2000 (Japan) [hereinafter Law to Compensate Foreign Victims]. *See generally Law to compensate foreign war veterans*, JAPAN TIMES, June 1, 2000. The law provides one-time payments of four million yen to Korean and Taiwanese veterans of the Japanese Imperial Army. The 1952 Relief Act provided Japanese veterans with a variety of benefits but excluded non-citizens. *See supra* note 23. Taiwanese veterans mobilized to demand such benefits in the 1970s, and the Diet ultimately responded with the 1988 Taiwan Veterans Act. But that law did not cover Korean veterans. The 2000 Law to Compensate Foreign Victims addresses some of those gaps, but it applies only to permanent residents of Japan (that is, Taiwanese or Koreans residing in Japan). It does not apply to Taiwanese living in Taiwan, or Koreans living in Korea. Moreover, veterans complain that the payments they received amount to less than 4% of what Japanese soldiers might receive. *Id.* (reporting statements of Plaintiff Kang Bu-jung).

29. The focus here is on civil litigation addressing injuries during the war. A separate strand of litigation addresses the *representation* of World War II in East Asia. For example, South Korean prosecutors brought civil and criminal defamation actions against Professor Park Yu-ha for her scholarship on Korean comfort women. Choe Sang-hun, *Professor Who Wrote of Korean 'Comfort Women' Wins Defamation Case*, N.Y. TIMES (Jan. 25, 2017), https://www.nytimes.com/2017/01/25/world/asia/korean-comfort-women-park-yu-ha-japan.html [https://perma.cc/C8YH-SSJT]. In China, a historian was found civilly liable for writing an article that rebutted a widely-known myth about Chinese heroism in the face of advancing Japanese troops. *See* Kiki Zhao, *Chinese Court Orders Apology over Challenge to Tale of Wartime Heroes*, N.Y.

courts; the judicialization of politics; the competence of courts to redress human rights violations; the effectiveness of the Tokyo Tribunal; and the role of civil society in public law litigation.

This Article reviews transnational World War II lawsuits adjudicated in Japan, the epicenter of the war reparations movement from the 1990s to the 2010s. From 1972 to the present, South Korean, Taiwanese, Chinese, Filipino, American, Brazilian, and Dutch plaintiffs filed over one hundred lawsuits in Japan, arguably the largest corpus of World War II reparations litigation in the world.[30] The resort to litigation reflects underlying regional tensions, resurgent nationalism in East Asia, and collective failure by the Japanese, Chinese and Korean governments to resolve the reparations issue. But it also reflects careful coordination by lawyers, researchers, and activists to satisfy debts and injuries long held by victims.

To date, no scholarship accounts for all of Japan's transnational reparations lawsuits. Scholars have focused on specific categories of cases, as defined by nationality (Korean, Chinese), type of harm (civilian war damage, atomic bombings), or professional status (soldier, laborer, comfort woman).[31] These approaches shed light on the results of a specific type of case, but fail to allow meaningful comparison across categories. Moreover, such surveys highlight plaintiff victories, deflecting attention from the far greater number of judicial rejections. Like their counterparts in most Western jurisdictions, Japanese judges have dismissed war reparations cases far more often than not.[32]

TIMES (June 28, 2016), https://www.nytimes.com/2016/06/29/world/asia/china-hong-zhenkuai-five-heroes.html [https://perma.cc/9WXR-HNQ5].

30. The judiciaries of many countries—Asian, European, North American—have presided over war compensation. While these cases have generated media coverage, scholarly attention, and bitter recrimination, judges have largely dismissed these lawsuits for one reason or another. In the United States, for instance, scholars have documented the "Holocaust restitution" efforts and the modest role that judges played in that movement. As Professor Bazyler puts it, "none of these lawsuits went to trial," while several "ended in complete defeat in court." *See* BAZYLER, *supra* note 4, at 163. Instead, settlement agreements, often negotiated by state actors, provided a modicum of redress to certain plaintiffs. *Id.* In Europe, Italian and Greek courts both attached liability to the German government for its participation in jus cogens violations, but the ICJ ultimately immunized Germany in the Jurisdictional Immunities decision of 2012. Ger. v. It., 2012 I.C.J. 99 at 154–55 (Feb. 3).

31. *See, e.g.*, Celeste Arrington, *The Mechanisms Behind Litigation's 'Radiating Effects': Historical Grievances Against Japan*, 53 L. & SOC. REV. 6 (2019) (describing lawsuits brought by South Korean citizens in Japan); Yukiko Koga, *Between the Law: The Unmasking of Empire and Law's Imperial Amnesia,* 41 L. & SOC. INQUIRY 402 (2016) (focusing on lawsuits brought by Chinese citizens in Japan); Celeste Arrington, *Leprosy, Legal Mobilization, and the Public Sphere in Japan and South Korea*, 48 LAW & SOC'Y REV. 563 (2014) (describing lawsuits by wartime "Korean leprosy survivors" in Japan); Yukiko Koga, *Accounting for Silence: Inheritance, Debt and the Moral Economy of Legal Redress in China and Japan*, 40 AM. ETHNOLOGIST 494 (2013) (analyzing cases brought by Chinese forced laborers, and Chinese victims of gas leaks from bombs that Japan abandoned in China); William Gao, *Overdue Redress: Surveying and Explaining the Shifting Japanese Jurisprudence on Victims' Compensation Claims*, 45 COLUM. J. TRANSNAT'L L. 529 (2007) (examining Japanese court decisions brought by Chinese forced laborers); Timothy Webster, *Sisyphus in a Coalmine: Responses to Slave Labor in Japan and the United States*, 91 CORNELL L. REV. 733 (2006) (examining Japanese jurisprudence on Chinese forced labor).

32. A brief review of World War II litigation in other states suggests that victories for plaintiffs are the exception. In the United States, courts ultimately dismissed all European and Asian war compensa-

This Article makes three primary contributions. First, it categorizes Japanese war reparations lawsuits, both to survey the field, and to inform scholars about the breadth and depth of this movement. The Appendix lists some ninety lawsuits adjudicated in Japan,[33] and pertinent information about the courts, names of plaintiffs, and outcomes. This is the most comprehensive list available in English and also includes information missing from many Japanese and Korean lists, which exclude certain cases, and the plaintiffs' names. The list responds to a criticism that social scientists frequently direct at legal scholarship: a lawyerly focus on "exceptional cases" exaggerates the role of courts in social movements and inflates the potentially curative effects of public interest litigation on society writ large.[34] By analyzing and classifying all cases, this Article offers new insights on where, why, and how plaintiffs win.

Second, the Article compares judicial support for war reparations plaintiffs. Specifically, courts consistently find in favor of *hibakusha*, as victims of the atomic bombings of Hiroshima and Nagasaki are known in Japanese. By contrast, Japanese judges show far more qualified support for forced laborers, the most common class of war reparations litigants. Finally, judges show little support for comfort women, wartime creditors, and civilian victims of the war. These findings demonstrate that Japanese judges in the main merit their reputation as passive, conservative, or conformist. But, in rare and well-defined instances, judges have challenged the LDP's policy preferences and shaped social policy.

Third, this Article explains why Japanese courts favor *hibakusha*, but no other war victims. To date, no other scholar has detected, much less explained, the judiciary's consistent support for *hibakusha* over time and

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tion cases, either as time-barred, treaty-waived, or a non-justiciable political question. *See* BAZYLER, *supra* note 4, at 163. In France, an administrative tribunal found in favor of a Jewish deportee to Drancy (a concentration camp outside Paris active from 1941 to 1944) against the French national railway. But the appellate court overturned the judgment in 2007. *See generally* Vivian Grosswald Curran, *Globalization, Legal Transnationalization and Crimes Against Humanity: The* Lipietz *Case*, 56 AM J. COMP. L. 363 (2008). Likewise, in Germany, a trial court allowed claims against the government, but an appellate court reversed. *See generally* Iwanowa v. Ford Motor Co., 67 F. Supp. 2d 424 489 (D.N.J. 1999). Italian and Greek courts both found in favor of Italian and Greek citizens in their cases against Germany. But the ICJ immunized Germany in the *Jurisdictional Immunities* decision, Ger. v. It., 2012 I.C.J. at 154–55. In South Korea, however, many (but not all) recent verdicts found in favor of Korean plaintiffs.

33. While Japanese scholars and lawyers tend to list lawsuits that were later withdrawn, I have excluded them from my analysis. *See, e.g.*, Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] *filed* Dec. 1, 1975, *withdrawn* June 15, 1989, *no opinion available* (Japan) ("Four Korean Citizens Stranded on Sakhalin Island v. Japan").

34. Katerina Linos & Melissa Carlson, *Qualitative Methods for Law Review Writing*, 84 U. CHI. L. REV. 213, 217 (2017) (criticizing many traditional legal research projects as suffering from selection bias); *see also* GERALD R. ROSENBERG, THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE? (2d. ed. 2008) (arguing that the Supreme Court's decision in *Brown v. Board of Education* played a far less important role in securing civil rights than subsequent laws passed by Congress, executive action by the White House, and activism by civil society organizations).

space.[35] Nor have scholars sought to explain why one group of war reparations plaintiffs consistently fares better than others.

The Article proceeds in three parts. Part I sets out assumptions, answers possible objections to the project, and briefly outlines the history of war reparations litigation in Japan. Part II classifies the lawsuits into six categories, and briefly describes the results of each category. Part III drills down on the three main categories—*hibakusha*, forced laborers, and comfort women—to understand the judicial interpretation of World War II. A conclusion distills the lessons about war reparations litigation in general and the Japanese judiciary in particular.

I. Background

A. Assumptions

At the outset, I acknowledge certain assumptions behind this project and address possible objections. First, this Article assumes that courts in a liberal democracy enjoy independence from political actors, such as officials within the executive branch, elected legislators, and political parties. Such an assumption will strike legal scholars as incomplete, and political scientists as naïve. Legal realism, which has held sway over the American legal academy for most of the past century, posits a combination of external factors (precedent, legal rules) and internal factors (personal biases, political preferences, moral sensibility) as the primary informants of judicial decisions.[36] This is not to deny the many commonalities that judges in any jurisdiction may share: similar class, educational, gender, and political backgrounds. In Japan, too, the judiciary often draws from a narrow segment of society.[37] However, Japanese judges enjoy relative autonomy in rendering verdicts, even on politically sensitive matters such as war reparations litigation.[38]

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35. *See infra* Part II.A.

36. *See* Brian Z. Tamanaha, *Understanding Legal Realism*, 87 Tex. L. Rev. 731, 732 (2009) (bifurcating legal realism into a skeptical view and a constrained view). The skeptical view sees the act of judging as ineluctably influenced by individual political and moral views. *Id.* The constrained view predicts that judges will render "predictable, legally based decisions." *Id.* Benjamin Cardozo, an early legal realist, views judging as "a collision" of statute, precedent, customs, and morals through which the judge exercises "a power frankly *legislative* in function." Nonetheless, Cardozo insists that, in most cases, "the law is so clear that judges have no discretion." Benjamin N. Cardozo, The Nature of the Judicial Process 128–29 (1928).

37. Most Japanese judges are men, and many graduated from a handful of elite institutions (Tokyo, Kyoto, Keio, Chūō, and Waseda Universities). J. Mark Ramseyer & Eric B. Rasmusen, *The Case for Managed Judges: Learning from Japan after the Political Upheaval of 1993*, 154 U. Pa L. Rev. 1879, 1886 (2012). The same criticism has been leveled at American judges, and Supreme Court justices in particular.

38. Ramseyer and Rasmusen write that Japanese judges who rule in accordance with LDP policy preferences advance more quickly in their careers, but note that many judges still rule against the LDP on politically sensitive matters. *See* J. Mark Ramseyer & Eric B. Rasmusen, *Why Are Japanese Judges So Conservative in Politically Charged Cases?*, 95 Am. Pol. Sci. Rev. 331, 341 (2001).

Political scientists view courts as nakedly political agencies, and judges as political actors. As Martin Shapiro notes, the aim of "political jurisprudence" is

> to examine court and judges as participants in the political process rather than presenting law, with a capital L, as an independent area of substantive knowledge. Quite fundamentally, political jurisprudence subordinates the study of law, in the sense of a concrete and independent system of prescriptive statements, to the study of men . . . who fulfill their political functions by the creation, application, and interpretation of law.[39]

Of course, we should hesitate before applying American theories to Japanese reality. But the idea that Japanese judges are also political actors resonates in much contemporary scholarship.[40]

It is standard in the literature to note the conservatism of Japan's Supreme Court.[41] The precise ingredients of that conservatism vary from one account to the next, but the recipe calls for some combination of institutional,[42] strategic,[43] cultural,[44] political,[45]and ideological[46] factors.

Many espy conservatism in lower courts as well. Professor Mark Ramseyer paints the Japanese judiciary in a fairly monochromatic palette. According to Ramseyer and his coauthors, the LDP—which has ruled Japan for most of

39. Martin Shapiro, *Political Jurisprudence*, *in* On Law, Politics, and Judicialization 19, 21 (Martin Shapiro & Alec Stone Sweet eds., 2002).

40. *See* Joseph Sanders, *Courts and Law in Japan*, *in* Courts, Law, and Politics in Comparative Perspective, 315, 372 (Herbert Jacob et al. eds., 1996) (noting the judiciary's "great deference" toward the two other branches of government).

41. *See, e.g.*, Shigenori Matsui, *Why Is the Japanese Supreme Court So Conservative?*, 88 Wash. U. L. Rev. 1375, 1400–16 (2011) (analyzing various factors to explain the conservative jurisprudence of the Supreme Court); Ramseyer & Rasmusen, *supra* note 38, at 342 (hypothesizing that lower court judges defer to Liberal Democratic Party policy preferences due to rosier career prospects).

42. Professor John Haley points to the lack of information about decisions, the low number of lawyers and courts, and the limited nature of Japanese remedies as the most important factors for the country's low litigation rates. John Owen Haley, *The Myth of the Reluctant Litigant*, 4 J. Japanese Stud. 359, 379–89 (1978). Professor Miyazawa notes the role that the politically conservative General Secretariat of the Supreme Court plays in appointing judges to desirable, and undesirable, posts throughout the Japanese archipelago. Setsuo Miyazawa, *Administrative Control of Japanese Judges*, 25 Kobe Univ. L. Rev. 45, 48 (1991). He adds that a judge would need "tremendous courage to decide a case in the way that is likely to displease the [General Secretariat]." *Id.* at 52.

43. Professor Ramseyer posits the *predictability* of Japanese litigation—that plaintiffs and lawyers can accurately presage how a judge will rule on a particular case—means that potentially controversial cases will not be brought in the first place. J. Mark Ramseyer, *Reluctant Litigant Revisited: Rationality and Disputes in Japan*, 14 J. Japanese Stud. 111, 113 (1988).

44. Professor Kawashima Takeyoshi is best known for attributing Japan's comparatively low litigation rates to traditional cultural preferences for informal dispute resolution over formal litigation. *See* Takeyoshi Kawashima, *Dispute Resolution in Contemporary Japan*, *in* Law in Japan: The Legal Order in a Changing Society 41 (Arthur von Mehren ed., 1963).

45. Ramseyer & Rasmusen, *supra* note 38.

46. *See* David S. Law, *The Anatomy of a Conservative Court: Judicial Review in Japan*, 87 Tex. L. Rev. 1545 (2009) (describing the "lifelong process of ideological vetting" that all judges must undergo before nomination to the Supreme Court).

the postwar period—effectively controls the judiciary, deploying formal and informal mechanisms to exert political influence on judges.[47] This pressure often pushes judges to rule in conformity with LDP policy preferences.[48]

LDP control is, however, only one possible explanation. Professor John Haley identifies "intensive judicial socialization" as a major contributor to consistency across verdicts.[49] At the same time, Haley detects periods and political issues where judges assume more activist postures. The 1970s, for instance, were "years of significant judicial activism."[50] In high-profile decisions, from pollution to parricide, judges "were not acting as tools for LDP politicians" and instead "overturned well-established government policies."[51] Haley does not deny the conservative tendency of Japanese judges but instead locates a judicial integrity that resists reflexively rubber-stamping LDP policy prerogatives.

Second, this Article assumes that courts create, concretize, and disseminate judgments with important normative dimensions, from human rights and historical memory to legal liability and state immunity. Sociologists and political scientists articulate various models by which activists "socialize" states through international law: by acknowledging human rights abuses, embracing norms of accountability, and then pushing states to change their behavior by compensating victims, guaranteeing they will not repeat the abuse, and changing discursive practices.[52] These steps rarely un-

47. The LDP influences the politics of the Supreme Court directly by appointing justices with conservative backgrounds. The Chief Justice of the Supreme Court in turn influences lower courts through appointments and salary decisions. As judges typically rotate positions every three years, a remote posting—in a provincial city, cut off from one's family—may be tantamount to punishing the judge who issues an opinion at odds with LDP orthodoxy. Likewise, a heterodox judge may earn less than his more politically pliable peers. *See* Ramseyer and Rasmusen, *supra* note 38, at 342 (hypothesizing that lower court judges defer to LDP policy preferences due to rosier career prospects).

48. *Id.* at 331 (finding that lower courts judges "parrot the moderately conservative positions of the longtime incumbent Liberal Democratic Party"); *see* J. Mark Ramseyer, *Predicting Court Outcomes Through Political Preferences: The Japanese Supreme Court and the Chaos of 1993*, 58 Duke L.J. 1557, 1569–70 (2009). Ramseyer is skeptical that Japanese courts even address politically charged questions at all, writing "most opinions have no serious political complexion to manipulate." *Id.* at 1566.

49. John Owen Haley, The Spirit of Japanese Law 117 (1991).

50. John O. Haley, *The Japanese Judiciary: Maintaining Integrity, Autonomy and the Public Trust*, *in* Law in Japan: A Turning Point 99, 126 (Daniel H. Foote ed., 2007).

51. *Id.*

52. The scholarship is voluminous at this point. Major models include the "boomerang" model of Keck and Sikkink, later refined in the "spiral" model of Risse and Sikkink. The boomerang refers to a situation where a state violates or fails to recognize certain human rights. In response, individuals or groups contact activists or organizations beyond the state's borders. Those external activists and organizations apply pressure to their home states, or international organizations, which then take action (sanctions, criticism, political campaigns) against the offending state. *See* Margaret E. Keck & Kathryn Sikkink, Activists Beyond Borders: Advocacy Networks in International Politics 12–14 (1998). The spiral model unfolds in five phases: (1) the state engages in repression and the transnational advocacy network is activated, (2) the state denies the validity of international norms and international jurisdiction, which then leads the transnational advocacy network to apply increasing pressure, after which (3) the state makes some concessions in response to international criticism and (4) the state begins to accept the validity of international norms, such as by ratifying international conventions or institutionalizing the norms in domestic practice, until (5) the state finally exhibits rule-consistent behavior itself. *See generally* Thomas Risse & Kathryn Sikkink, *The Socialization of International Human Rights Norms*

fold in a uniform process across jurisdictions and social movements, but they provide a template for understanding how nonstate actors challenge and change state behavior.[53]

It is true that sociologists and political scientists generally discuss activist networks and responses by state governments, not judicial decisions.[54] But as many legal scholars suggest, judgments, too, provide an important site of norm reception and contestation. Professor Harold Koh's theory of transnational legal process describes how private and public actors interact to interpret and internalize transnational norms.[55] Koh notes that the process is both dynamic—outcomes differ at various levels in the process—and deeply normative, in that the outcomes reflect value judgments that, over time, may establish standards of behavior or common interpretations.[56]

Koh's theory would challenge the idea that Japanese judges mechanically apply the law, automatically obeying the LDP.[57] Many scholars of Japanese law would agree, finding a clearly rights-protective strain within Japanese jurisprudence. Professor Daniel Foote of the University of Tokyo writes that "the judiciary frequently has played an important—and at times highly active— role in creating norms[,]" including those that protect workers' labor rights vis-à-vis their employers.[58] Professor Frank Upham of New York University finds a similar inclination in the Japanese judiciary's "stealth" protection of women's labor rights.[59] Japanese judges have also used

into Domestic Practices: Introduction, *in* The Power of Human Rights: International Norms and Domestic Change 1, 19–35 (Thomas Risse et al. eds., 1999).

53. For an application of these models to the Japanese context, see Kiyoteru Tsutsui, Rights Make Might: Global Human Rights and Minority Social Movements in Japan (2018). Professor Tsutsui notes differences in reception among states, and also *within* states. He then posits three processes to explain subnational variation, that is, differences between non-state actors within a particular national jurisdiction: movement initiation, movement facilitation, and movement reorientation. *See id.* at 15–20.

54. *See, e.g.*, Keck & Sikkink, *supra* note 52. Noticeably absent from Keck and Sikkink's list of "major actors" in transnational advocacy networks are lawyers and judges. Instead, they enumerate civil society organs (non-governmental organizations), social movements, foundations, media, churches, trade unions, consumer organizations, intellectuals, regional and intergovernmental organizations, and "parts of the executive and/or parliamentary branches of governments." *Id.* at 9.

55. Harold Hongju Koh, *The 1994 Roscoe Pound Lecture: Transnational Legal Process*, 75 Neb. L. Rev. 181, 183–186 (1996).

56. *Id.* at 184.

57. Ramseyer & Rasmusen, *supra* note 38, at 331 (noting that judges "tend to parrot the moderately conservative positions of the longtime incumbent Liberal Democratic Party").

58. *See* Daniel H. Foote, *Judicial Creation of Norms in Japanese Labor Law: Activism in the Service of – Stability?*, 43 UCLA L. Rev. 635, 637 (1996). Professor Foote describes a dialectic where judges issue rulings that protect workers' rights, and then companies implement new strategies to loosen labor protections, making it easier to dismiss employees. *Id.* at 638. Foote also makes clear that this judicial activism targets private actors (companies), not the state. *Id.* at 637.

59. Frank K. Upham, *Stealth Activism: Norm Formation by Japanese Courts*, 88 Wash. Univ. L. Rev. 1493, 1499 (2011). Of particular relevance here is Upham's observation that these "decisions went directly against the interests of the Liberal Democratic Party (LDP)." *Id.* at 1502. If the LDP wields the total authority proposed by Ramseyer, courts would not render decisions that go against the party's interests.

international human rights law to fill legal gaps in racial discrimination, criminal justice, and public accommodations lawsuits.[60]

B. Objections

Let me also address potential objections to the project. First, Asia's war reparations movement is animated by a confluence of concerns—historical, political, reparative, and economic. One could argue that an empirical account of a political or social movement commits a categorical error: using statistical methods to explore an essentially ideological phenomenon.[61] Of course, many lawsuits, from school desegregation to sexual orientation, are "political" in the sense that they challenge policy prescriptions or address issues that the political branches failed to solve.[62] That cannot immunize them from empirical analysis. As noted above, many scholars would object to a strict division between law and politics.[63] One can acknowledge that a lawsuit may contain deeply political elements yet expect judges to take meaningful stances on the underlying legal and political issues.

A helpful parallel can be drawn with World War II litigation in the West. European victims sued banks, multinational corporations, and governments for injuries ranging from forced labor to destroyed property. U.S. courts ultimately dismissed the cases, yet American judges took the cases seriously, not as politically motivated or ideologically suspect subterfuges.[64] The same could be said of judges in France, Germany, Greece, Italy, and—ultimately—the International Court of Justice. We should expect nothing less of judges in Japan.

A second set of objections is more narrowly legal. First, many underlying claims date back half a century or more.[65] This presents issues of both timeliness (statute of limitations) and logistics (difficulties in adducing credible

60. *See* Timothy Webster, *International Human Rights in Japan: The View at Thirty*, 23 COLUM. J. ASIAN L. 241 (2010) (discussing criminal procedure and minority rights cases citing to international human rights law); Timothy Webster, *Reconstituting Japanese Law: International Norms and Domestic Litigation*, 30 MICH. J. INT'L L. 211 (2008) (reviewing public accommodations lawsuits brought by ethnic minorities). Recent scholarship on hate speech in Japan also points out the role of the judiciary in domesticating international human rights norms in Japan. *See, e.g.*, Ayako Hatano, *The Internalization of International Human Rights Law: The Case of Hate Speech in Japan*, 50 N.Y.U. J. INT'L L. & POL. 637, 649–50 (2018).

61. *See generally* GILBERT RYLE, THE CONCEPT OF MIND (1949). Ryle defines "category-mistake" as representing "the facts of mental life as if they belonged to one logical type or category . . . when they actually belong to another." *Id.* at 6.

62. Professor Abraham Chayes would cite cases where the political branches have failed a discrete group of citizens as examples of "public law litigation." Abraham Chayes, *The Role of the Judge in Public Law Litigation*, 89 HARV. L. REV. 1281 (1976).

63. *See supra* notes 37–40 and accompanying text.

64. *See* Morris Ratner & Caryn Becker, *The Legacy of Holocaust Class Action Suits: Have They Broken Ground for Other Cases of Historical Grounds*, *in* HOLOCAUST RESTITUTION: PERSPECTIVES ON THE LITIGATION AND ITS LEGACY 345, 346–47 (Michael J. Bazyler & Roger P. Alford eds., 2006). Judge Edward Korman, of the Eastern District of New York, has been singled out for his seriousness of purpose in presiding over the Swiss banks' litigation. *Id.*

65. Since some of the lawsuits were filed in the 1990s, and the underlying conduct took place in the 1940s, a half-century elapsed. Of course, it may take a decade or more to adjudicate the dispute.

evidence, overreliance on witness testimony, paucity of living witnesses). Second, the damage took place in the context of a war, which may call for the application of different international legal regimes.[66] Third, many post-war treaties purport to extinguish individual claims against state actors and, potentially, private actors.[67]

These present serious, but hardly insuperable, objections. Regarding timeliness, courts can refuse to apply the statute of limitations. Sometimes, the legislature instructs them to do so. In 1999, California opened its courts to World War II compensation suits by extending until 2010 the period in which victims could sue.[68] Judges can also resort to equitable grounds. In the United States, the doctrine of equitable tolling may suspend the limitations period when the plaintiff has pursued his rights diligently, but an extraordinary circumstance impedes a timely filing.[69] Likewise, Japanese judges can invoke the principle of good faith (*shingizoku*) when defendants try to dismiss claims on timeliness grounds.[70] Thus, the absence of timeliness need not preclude litigation.

Another objection lies in the appropriate legal standards. International law and domestic law alike have changed considerably between the 1940s, when the events took place, and the 1990s, when many cases were first filed. To avoid charges of applying law *ex post facto*—one of the major criticisms leveled at the Nuremberg and Tokyo Tribunals—Japanese lawyers invoke laws in force during the 1930s and 1940s. They cite international treaties, statutory laws of Japan and China, and customary international law that crystalized in the 1930s. This assuages one concern of intertemporal law,[71]

66. This can be partially explained by the difference between international humanitarian law (which protects persons and property during times of armed conflict), and international human rights law (which protects people and property in times of peace or conflict). Some protections of international human rights law may be waived during conflict. For example, the Forced Labor Convention, one of the most frequently cited treaties in the war reparations movement, specifically excludes "work or service exacted in cases of emergency, that is to say, in the event of war" from its definition of forced labor. Convention Concerning Forced or Compulsory Labour (ILO No. 29) art. 2(2)(d), June 28, 1930, 39 U.N.T.S. 55.

67. For example, the San Francisco Peace Treaty waives all claims from "the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war." Treaty of Peace with Japan art. 14(b), Sept. 8, 1951, 3 U.S.T. 3169, 136 U.N.T.S. 46 (entered into force Apr. 28, 1952) [hereinafter SFPT].

68. *See* Cal. Civ. Proc. Code § 354.6 (West 1999). California's law, passed in 1999, extended until 2010 compensation claims that forced laborers might bring against the "Nazi regime, its allies and sympathizers." *Id.* The Ninth Circuit upheld a trial court's decision to nullify the California law as an unconstitutional infringement of "the federal government's exclusive power to make and resolve war, including the procedure for resolving war claims." Deutsch v. Turner Corp., 324 F.3d 692, 712 (9th Cir. 2003).

69. *See, e.g.*, Menominee Indian Tribe of Wisconsin v. United States, 577 U.S. 250, 255 (2016).

70. *See* Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Oct. 31, 1980, Shō 52 (wa) no. 12076, 425 Hanrei taimuzu 56 (Japan) ("Hong Wu Chen-chih v. Dai'ichi Kangyo Bank") (refusing bank's prescription defense on good faith grounds); Niigata Chihō Saibansho [Niigata Dist. Ct.] Mar. 26, 2004, Hei 11 (wa) no. 543, Hei 12 (wa) no. 489, Hei 14 (wa) no. 139, 50 Shōmu geppō 3357 (Japan) ("Zhang Wenbin et al. v. Rinko Corporation and Japan") (denying corporation's prescription defense on good faith grounds).

71. The intertemporal debate goes back to the *Island of Palmas* case between the Netherlands and the United States. There Judge Huber stated that "a juridical fact must be appreciated in the light of the law

but raises another: even if individuals can bring legal claims against states at the present moment, they almost certainly could not in the 1940s. Which standard, then, should a contemporary court apply: the more permissive standard of the present or the more restrictive standard of the 1940s? Classically, of course, states alone were subjects of international law. Individuals, by contrast, were "passive recipients of rights and obligations in the international legal system."[72] And while individuals have recently made "remarkable progress" in asserting rights under international law,[73] state practice of an individual right to compensation would be hard to find in the 1940s, when the conduct took place, or even in 1950s, 1960s, and 1970s, when Japan negotiated bilateral treaties with Taiwan, Korea, and China, respectively.

A final objection emerges from the network of bilateral and multilateral peace treaties. The 1952 San Francisco Peace Treaty explicitly "recognized that Japan should pay reparations to the Allied Powers for the damage and suffering caused by it during the war."[74] But since Japan could not simultaneously "maintain a viable economy" and "make complete reparation,"[75] the treaty waived "all reparations claims of the Allied Powers . . . and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war."[76] The United States—in comparison with China, Taiwan, Korea, and other Asian jurisdictions—suffered relatively little damage at the hands of Japan. One commentator has called the U.S. waiver of reparations a "sweetener" to induce Japan to sign a "less equitable security treaty" years later.[77] Since the United States did not include China, Taiwan, or Korea in the treaty negotiations, the claims issue was deferred for decades.[78]

Eventually, Japan negotiated bilateral treaties with the Republic of China on Taiwan ("Taiwan") (1952),[79] South Korea (1965),[80] and the People's Re-

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contemporary with it, and not of the law in force at the time when a dispute" arises. Island of Palmas (U.S./Neth.), II R.I.A.A. 829, 845 (Perm. Ct. Arb. 1928), BB R21.5.1(b).

72. KATE PARLETT, THE INDIVIDUAL IN THE INTERNATIONAL LEGAL SYSTEM: CONTINUITY AND CHANGE IN INTERNATIONAL LAW 353 (CAMBRIDGE UNIV. PRESS) (2011).

73. As the late Antonio Cassese wrote, "Given the present structure of the world community and the fact that States are still the overlords, the limited status of individuals can be regarded as remarkable progress." ANTONIO CASSESE, INTERNATIONAL LAW 149 (2d ed. 2005). Robert McCorquodale appears a bit more sanguine about the prospects of individual rights, arguing that states no longer completely control "the continuance, development, and interpretation of individual rights," and that many individual rights are "independent rights within the international legal system." Robert McCorquodale, *The Individual and the International Legal System*, INTERNATIONAL LAW 284, 291 (Malcolm Evans ed., 2010).

74. SFPT, *supra* note 67, art. 14(a).

75. *Id.*

76. *Id.* art. 14(b).

77. MICHAEL SCHALLER, ALTERED STATES: THE UNITED STATES AND JAPANESE SINCE THE OCCUPATION 41 (OXFORD UNIV. PRESS) (1997).

78. John Price, *Cold War Relic: The 1951 San Francisco Peace Treaty and the Politics of Memory*, 25 ASIAN PERSPECTIVE 31, 39, 43 (2001).

79. Treaty of Peace between the Republic of China and Japan, R.O.C.-Japan, Apr. 28, 1952, 138 U.N.T.S. 3 [hereinafter Taipei Treaty].

public of China ("PRC") (1972).[81] Each treaty dealt with individual reparations rights differently. The P.R.C. government renounced "its demand for war reparation from Japan," but the treaty does not directly address whether Chinese citizens retained those rights.[82] South Korea waived its rights and those of its citizens in the 1965 Claims Agreement.[83] Taiwan agreed to negotiate "special arrangements" with Japan in the future, but the states never concluded such an agreement.[84] However, whether these treaties extinguish the individual's right to seek compensation, irrespective of the state's decision to waive rights on behalf of its citizenry, is an open question.[85]

C. *Brief History of War Reparations Litigation in Japan*

Before examining the results of the lawsuits, some historical background is in order. Since the 1950s, Japanese lawyers, activists, and civil society organizations have turned to the courts, both to allocate legal liability for war reparations claims and to demand compensation from various state actors. Under the U.S. occupation (1945–1952), the Supreme Command of the Allied Powers scrapped benefits that Japan paid to its military personnel, in an effort to demilitarize the defeated nation.[86] Two days after the American occupation ended, Japan's Relief Act came into effect, providing lump-sum payments to bereft families of Japanese soldiers and civilian workers.[87] But the Relief Act imposed nationality requirements, limiting benefits to Japanese citizens.[88] Korean and Taiwanese veterans—who fought, sustained injuries, and died as "Japanese" soldiers during the war—

80. Treaty on Basic Relations between Japan and the Republic of Korea, Japan-S. Kor., June 22, 1965, 583 U.N.T.S. 33 [hereinafter Basic Treaty]; Agreement on the Settlement of Problems Concerning Property and Claims and on Economic Cooperation between Japan and the Republic of Korea, Japan-S. Kor., June 22, 1965, 583 U.N.T.S. 174 [hereinafter Claims Agreement].

81. Joint Communique of the Government of Japan and the Government and the People's Republic of China, P.R.C.-Japan, Sept. 29, 1972 [hereinafter Joint Communique].

82. *Id.* art. 5. In the early 1990s, the Chinese Foreign Minister indicated that Chinese citizens retained the right to seek compensation from Japan. *See* Japanese Economic Newswire, *Qian Qichen Backs Demands for Japanese War Reparations*, Mar. 23, 1992. Despite Qian's pronouncement, Chinese courts refused to adjudicate war reparations lawsuits brought by Chinese citizens, depriving the Chinese judiciary of the chance to test out this theory.

83. Claims Agreement, *supra* note 80, art. II(1). Article II(1) provides that the "problem concerning property, rights and interests of the two Contracting Parties and their nationals (including juridical persons) . . . is settled completely and finally.").

84. The Taipei Treaty states that property claims of Taiwanese and Japanese citizens shall be the "subject of special arrangements" between the two governments. Taipei Treaty, *supra* note 79, art. 3.

85. In the main, U.S. and Japanese courts have answered this question in the affirmative: the countries *did* waive compensation claims on behalf of their citizens. However, recent decisions by the Supreme Court of South Korea allow individuals to bring compensation claims against both Japan and Japanese corporations. *See* Yeo v. New Nippon Steel, 2013 Da 61381 (interpreting the treaty to waive the state's right, but not the individual's right, to seek compensation); Pe v. Japan (allowing individual claims to proceed against the Japanese government for violating jus cogens norms).

86. Seraphim, *supra* note 6, at 66–67.

87. *See supra* note 23 and accompanying text.

88. *Id.* art. 14(2).

were excluded, pursuant to Japan's postwar denationalization of colonial subjects.

Long before "foreign" (non-Japanese) plaintiffs began to sue in the 1970s, Japanese citizens had already filed reparations lawsuits against the Japanese government. In 1963, the Tokyo District Court dismissed a case from Japanese victims of Hiroshima and Nagasaki; the judges rejected the domestic law claims under sovereign immunity and the international law claims on the grounds that only states—not individuals—can bring claims for violating international law.[89] Five years later, the Supreme Court of Japan dismissed a suit pitting the government against two Japanese citizens whose assets had been seized by Canada.[90] In a unanimous decision from the Grand Bench, the Court wrote that Japan, as a defeated nation, could neither negotiate with the Allied Powers on an equal footing nor turn down their demands; it simply had to cede assets within the territory of Allied states.[91] The Court articulated the "theory of endurance" or "doctrine of suffering" (*ju'ninron*). During the War, *all* Japanese citizens endured sacrifices to life, body, and property. In the absence of specific legislation from the Diet, war victims had simply to endure the suffering. Since then, the Supreme Court has repeatedly invoked the doctrine to reject claims for war reparations by Japanese citizens.[92]

Non-Japanese plaintiffs filed the first compensation suits in the 1970s, as Korean atomic-bomb survivors,[93] Taiwanese soldiers,[94] and others sought

89. Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Dec. 7, 1963, Shō 30 (wa) no. 2914, Shō 32 (wa) no. 4199, 355 HANREI JIHŌ 17 (Japan) ("Shimoda Ryūichi v. Japan").

90. Saikō Saibansho [Sup. Ct.] Nov. 27, 1968, Shō 40 (o) no. 417, 22 SAIKŌ SAIBANSHO MINJI HANREISHO [MINSHŪ] 12, 2808 (Japan) ("Fujimoto Akiyama v. Japan"), *partially translated in* 13 JAPANESE ANN. INT'L L. 121, 123 (1969).

91. *Id.* at 123. The gist of the lawsuit was that Japan incurred legal liability to Japanese citizens when it waived the individual's right to seek compensation from another country, in this case, Canada.

92. In 1987, the Supreme Court dismissed a case brought by Japanese citizens injured during the U.S. firebombing of Nagoya in 1944–45. *See* Saikō Saibansho [Sup. Ct.] June 26, 1987, Shō 58 (o) no. 1337, 1262 HANREI JIHŌ 100 (Japan) ("Akasaka Ritsuko v. Japan"). On March 13, 1997, the Court dismissed claims from Japanese prisoners of war who were stranded after the war for several years in the Soviet Union. *See* Saikō Saibansho [Sup. Ct.] Mar. 13, 1997, Hei 5 (o) no. 1751, 51-3 MINSHŪ 1233, 1236 (Japan) ("Kanbayashi Tomoya v. Japan"). The Court cited the "endurance" theory in each case. *Id.* at 1239.

93. Fukuoka Chihō Saibansho [Fukuoka Dist. Ct.] Mar. 30, 1974, Shō 47 (gyō u) no. 33, 306 HANREI TAIMUZU 173 (Japan) ("Son Jin-du v. Fukuoka") (determining that Japan's *hibakusha* laws apply to foreign and Japanese citizens to the extent they reside in Japan including temporary sojourn), *aff'ed,* Fukuoka Kōtō Saibansho [Fukuoka H. Ct.] July 17, 1975, Shō 49 (gyō ko) no. 3, 325 HANREI TAIMUZU 175 (Japan) (" Fukuoka v. Son Jin-du") (determining that law applies to foreigners without "residential relations" in Japan), *aff'ed,* Saikō Saibansho [Sup. Ct.] Mar. 30, 1978, Shō 50 (gyō tsu) no. 98, 362 HANREI TAIMUZU 196 (Japan) (" Fukuoka v. Son Jin-du") (determining that law applies even to those who illegally entered Japan).

94. Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Feb. 26, 1982, Shō 52 (ne) no. 7674 (Japan) ("Deng Sheng v. Japan"), 1032 HANREI JIHŌ 31 (dismissing claims, by Taiwanese veterans and others, for medical benefits on nationality grounds), *aff'ed* Tōkyō Kōtō Saibansho [Tokyo H. Ct.] Aug. 26, 1985, Shō 57 (ne) no. 611, 1163 HANREI JIHŌ 41 (Japan), *aff'ed* Saikō Saibansho [Sup. Ct.] Apr. 28, 1992, Shō 60 (o) no. 1427, 787 HANREI TAIMUZU 58 (Japan).

redress from Japan.[95] Resulting from mobilization efforts by both Japanese and local (Taiwanese or Korean) civil society groups, this wave of lawsuits yielded important, perhaps unexpected, results. The first Korean atomic-bomb victim to file a lawsuit, Mr. Son Jin-du, won his case at all three levels, outlining a remedial role for Japanese courts.[96] By contrast, a lawsuit by Taiwanese veterans failed at all three levels of the Japanese judiciary, but ultimately prodded the Diet to enact legislation in 1987. These varied efforts suggested that the judiciary could, at the very least, provide a forum to demand compensation.

Only after the Cold War, however, did the transnational war reparations movement unfold. In the early 1990s, the world witnessed a "memory boom of unprecedented proportions . . . in the cultural, social and natural sciences."[97] The boom resonated loudly in East Asia, prodding Chinese, Korean, Japanese, and Taiwanese historians, politicians, lawyers, and civil society groups to debate the history, legality, and memorialization of the War.[98]

East Asian societies underwent a fundamental transformation in the 1990s, mostly toward more democratic modes of governance and greater entrenchment of citizens' human rights. South Korea and Taiwan both emerged as democracies after decades of dictatorial rule.[99] China, too, made progress in the field of human rights, though it started from a very low bar after the suppression of civil rights after Tiananmen.[100] Chinese citizens could sue government actors, travel abroad more freely, and enjoy a limited set of human rights previously unknown in the People's Republic of China.[101] Even in Japan, the most democratic country in East Asia at the time, the death of Emperor Hirohito in 1989 loosened long-standing taboos about discussing war responsibility in Japan. A few years later, the brief

95. *See, e.g.*, Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Jan. 14, 1974, *unpublished opinion* (Japan) ("Song Du-hoe v. Japan"), slip opinion available at justice.skr.jp/petition/3.pdf [https://perma.cc/6G3H-QQ7Z]. Song sought damages on behalf of thousands of Korean citizens stranded on Sakhalin Island after World War II. Once the Soviet Union took control of the Island, Japan no longer sought to repatriate Koreans living on the Island, as they were no longer Japanese citizens. The complaint is available online, but the case was dismissed on standing grounds.

96. *See supra* note 93.

97. Andreas Huyssen, Twilight Memories: Marking Time in a Culture of Amnesia 5 (Routledge) (1995).

98. Caroline Rose, Sino-Japanese Relations: Facing the Past, Looking to the Future 17 (Routledge) (2005).

99. According to the Economist's 2019 Democracy Index, both South Korea and Taiwan fall into the "flawed democracy" category, alongside Japan, Israel, and the United States. Democracy Index 2019, The Economist Intelligence Unit, https://www.eiu.com/topic/democracy-index [https://perma.cc/U75K-TS3S].

100. Minxin Pei, China's Trapped Transition 56–57 (Harv. Univ. Press) (2006) (discussing the post-Tiananmen crackdown on political reformers).

101. Ann Kent notes greater freedom of expression and political rights in the early reform period (1980s–1990s) than in the period under Mao (1949–1976). Ann Kent, Between Freedom & Subsistence: China & Human Rights 109, 211–212 (Oxford Univ. Press) (1999). Of course, many human rights remained severely curtailed throughout the post-1978 period.

(1994–1995) ouster of the LDP from political power led to a reexamination of Japan's wartime conduct, an apology from Socialist Prime Minister Murayama Tomiichi, and ultimately the establishment of the Asian Women's Fund.[102]

II. Results

This Article defines transnational war reparations litigation in the following ways. First, the harm was caused during the War or in its immediate aftermath.[103] Second, the harm exceeded a level commonly experienced by the general public. Many people suffer during war, but only certain harm presents a colorable claim. Third, the underlying conduct is illegal, violating either domestic law (Chinese or Japanese) or international law (custom or treaty).[104] Fourth, at least one plaintiff is foreign, not Japanese. Many Japanese citizens have filed war reparations claims against their government, but such suits are more accurately characterized as domestic, not transnational.[105]

With these parameters in mind, this Article refines the lists of transnational war reparations litigation generated by several Japanese scholars, lawyers, and activists over the years.[106] From these lists, I exclude cases that did

102. The Murayama statement provided that "Japan, following a mistaken national policy, advanced along the road to war, only to ensnare the Japanese people in a fateful crisis and, through its colonial rule and aggression, caused tremendous damage and suffering to the people of many countries, particularly to those of Asian nations." It followed a similarly contrite statement from Chief Cabinet Secretary Kono Yohei in 1993. However, the fact that Murayama was Japan's Prime Minister, and not an appointed member of the cabinet, gave his apology an unprecedented gravity.

103. *See* Managi Izutarō, *Sengo Hoshō Saiban no Genjō to Kenpōgaku no Kadai* [The Current State of Postwar Compensation Lawsuits and Issues of Constitutional Law], 22 Sapporo Gakuin Hōgaku [Sapporo Gakuin L. Rev.] 179, 182 (2005).

104. By Chinese law, I mean the law of the Republic of China, which was in force in mainland China during World War II. The People's Republic of China, of course, did not exist until 1949. By Japanese law, I refer to the constitutional and statutory law in force in Japan, as well as its colonies (Taiwan, Korea, Sakhalin) during the war.

105. In a couple of lawsuits involving repatriation from Russia and Sakhalin, Chinese and South Korean nationals joined Japanese citizens. *See* Saikō Saibansho [Sup. Ct.] Mar. 8, 2002, Hei 12 (gyō tsu) no. 342, *unpublished opinion* (Japan) ("Siberian repatriation litigation") (Chinese nationals joining Japanese plaintiffs); Song Du-hoe v. Japan (South Korean national joining Japanese plaintiffs).

106. The most comprehensive list is maintained by lawyer Yamamoto Seita, who has served as counsel in eight lawsuits. In the appendix, I adopt his numbering system by adding a Y to a number. So Y35 would be lawsuit 35 listed on his website. *See* Seita Yamamoto, *Nihon Sengo Hoshō Saiban Sōran* [*Overview of Japan's Postwar Compensation Trials*], justice.skr.jp/souran/souran-jp-web.htm [https://perma.cc/A6MZ-FL37] [hereinafter Yamamoto, Overview]. Yamamoto's list mirrors compilations found in prior publications, but updates the trials and explains the cases in greater detail. For prior lists, see Utsumi Aiko, Sengo Hoshō kara Kangaeru Nihon to Ajia [Thinking about Postwar Compensation: Japan and Asia] 105–110 (2015) (listing 90 lawsuits filed by 2012); Shintani Chikako & Arimitsu Ken, *Sensō, Sengo Hoshō Saiban Ichiranhyō* [War Reparations Lawsuits at a Glance], *in* Hōtei de Sabakareru Nihon no Sensō Sekinin [Japan's War Responsibility as Adjudicated in Court] 616, 616–21 (Zukeyama Shigeru eds., 2014) (listing 90 lawsuits filed by 2014). Tawara Yoshifumi's online list ends in 1999. *See* Tawara Yoshifumi, *Sengo Hoshō Saiban Ichiranhyō* [*Postwar Compensation Trials at a Glance*] (June 1, 2017), https://web.archive.org/web/20170601034705/www.ne.jp/asahi/tawara/goma/sengo.hoshou.html.

not yield a final judgment, as well as certain types of claims that did not generate a statistically significant number of lawsuits.[107] I also included all *hibakusha* lawsuits that I could find.[108] After confirming the presence of each lawsuit in major Japanese media, activist websites, and newsletters, I narrowed the list down to eighty-three lawsuits filed between 1972 and 2016.[109]

A small body of interdisciplinary work has addressed Japan's war reparations litigation in English.[110] Yet many studies focus on exceptional cases that find in favor of plaintiffs.[111] Such an approach skews the results, potentially overstating judicial support for war reparations claims.[112] This Article addresses selection bias by looking at all lawsuits and classifying them according to their features.

Classifying war reparations lawsuits is more art than science. Chinese, Japanese and Korean scholars have devised numerous classification schemes. Some rely on nationality, dividing cases into Japanese, Korean, Chinese, Taiwanese, and Allied suits.[113] Nationality certainly matters. Plaintiffs from

107. For instance, Chinese plaintiffs brought four lawsuits seeking compensation from bombs that Japan left in China. Those bombs began to leak decades after the war (1970s, 1980s, 1990s), inflicting damage many decades after the war, far beyond the "immediate postwar" temporal frame adopted here. *See generally* Yukiko Koga, *Accounting for Silence: Inheritance, Debt and the Moral Economy of Legal Redress in China and Japan*, 40 Am. Ethnologist 494 (2013). Also, Taiwanese and Korean persons afflicted with Hansen's disease (leprosy) have sued, but the number of cases—two—does not make for a statistically significant sample. *See generally* Celeste Arrington, *Leprosy, Legal Mobilization, and the Public Sphere in Japan and South Korea*, 48 Law & Soc'y Rev. 563 (2014).

108. *See infra* Appendix, Part II (*hibakusha*), cases 17–20 (listing lawsuits filed by ethnically Japanese *hibakusha* living in Brazil and the United States).

109. I excluded a number of lawsuits that appear on lists compiled by Japanese lawyers and activists. In five instances, plaintiffs withdrew (*torisage*) their claims before a trial court rendered a decision. In three other lawsuits, plaintiffs requested documents (*travaux préparatoires*) from the Japanese government relating to the 1965 Basic Treaty. These lawsuits—similar to Freedom of Information Act requests in the United States—did not address injuries from the war, but rather sought information about the treaty negotiations between Korea and Japan in the early 1960s. Finally, a victim of the Nanjing Massacre won a defamation lawsuit against a conservative Japanese author, Matsumura Toshio, and his publisher, Tentensha, for making false statements about her in his book, "Nankin Gyakusatsu" e no Daigimon [Big Questions about the "Nanjing Massacre"]. *See Nanjing Massacre Survivor Wins Defamation Case*, China Daily (Jan. 22, 2005), https://www.chinadaily.com.cn/english/doc/2005-01/22/content_411376.htm [https://perma.cc/YD6P-DYCP].

110. *See supra* note 31 (describing recent scholarship).

111. *See* Timothy Webster, *Discursive Justice: World War II Litigation in Japan*, 58 Va. J. Int'l L. 161, 184–210 (2018) (questioning the concept of victory and discussing cases where plaintiffs won in the traditional sense); Gao, *supra* note 31, at 546–50 (suggesting that an increasingly powerful China has changed Japanese judges' views of war reparations litigation).

112. *See generally* Linos & Carlson, *supra* note 34, at 217 (criticizing many traditional legal-doctrinal research projects as suffering from selection bias).

113. *See*, *e.g.*, Ishikawa Takako, *Sengo Hoshō ni kan suru Kenpōteki Kōsatsu* [*Constitutional Concerns relating to Postwar Compensation*], 79 Hōritsu Ronsō [Meiji L. Rev.] 31, 38 (2007). Professor Ishikawa divides the cases into (1) Japanese citizens, (2) citizens of former colonies, and (3) citizens of the Allied powers. She further subdivides the second category, "citizens of former colonies," into i. Korean, ii. Chinese and iii. Taiwanese/other (Filipinos and Hongkongers). *Id.* at 35–42. This classification is problematic for a couple of reasons. First, Korea and Taiwan were actual colonies of Japan. But few would consider China, Hong Kong, or the Philippines as colonies. Japan did, of course, colonize northeast China in the puppet state of Manchukuo. But the reparations lawsuits have not come from people living in Manchukuo, but

Taiwan or Korea, who were Japanese subjects during the war, occupy a different legal status vis-à-vis Japan than Chinese or Filipino plaintiffs. Taiwanese and Korean plaintiffs tend to seek medical treatment, financial allowances, pensions, and other social services available to Japanese citizens; they challenge the constitutionality of Japanese exclusions on social services.[114] By contrast, Chinese and Filipino plaintiffs more often portray themselves as victims of Japanese war crimes, such as forced labor and sexual enslavement. As explored more fully below, nationality matters most in differentiating Chinese forced labor from Korean forced labor.[115]

A second strain examines the underlying harm.[116] This, too, is not without challenges. Beyond a few widely accepted categories, scholars disagree on how to categorize war reparations litigation. In constructing categories, one must establish parameters expansive enough to yield a statistically significant sample yet narrow enough to specify the harm. The endeavor is complicated by the fact that many lawsuits combine disparate types of claims. The watershed Kim Hak-sun case, for instance, brought together Korean veterans from the Imperial Japanese Army, bereft families, and former comfort women.[117] Accordingly, this lawsuit falls into two categories: soldiers and comfort women. In other cases, the same plaintiff may suffer multiple harms, as when Korean forced laborers were irradiated at Hiroshima and Nagasaki, thereby becoming *hibakusha*.[118]

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civilians in other war-torn parts of China. Second, China was actually one of the Allied powers, fighting alongside American troops against the Japanese.

114. *See infra* Part III.A.

115. The salient difference between Korean and Chinese forced laborers, at least in Japanese jurisprudence, is that Koreans were conscripted pursuant to the National Mobilization Law of 1938; their conscription is legal in the sense that it proceeded according to regularly enacted national legislation. China's forced labor program, however, stems from a cabinet regulation "On Importing Chinese Laborers to Japan".

116. Professor Guan Jianqiang, China's leading legal scholar on war compensation claims against Japan, divides cases into (a) forced labor, (b) comfort women, and (c) other, which includes lawsuits such as the Unit 731, leaking gas bombs, and others. *See* GUAN JIANQIANG, GONGPING, ZHENGYI, ZUNYAN: ZHONGGUO MINJIAN ZHANZHENG SHOUHAIZHE DUI RI SUOCHANGDE FALÜ JICHU [FAIRNESS, JUSTICE, RESPECT: THE LEGAL BASIS FOR CIVIL CLAIMS OF CHINESE WAR VICTIMS AGAINST JAPAN] 71–129 (2006). Guan does not address the lawsuits brought by Korean victims. Korean scholarship has tended to focus on Korean plaintiffs, usually on one type of harm. For example, Lawyer Kim Jae-Yeong writes that comfort women litigation in Japan moved the discussion from the political or moral realm into the legal realm, while attracting plenty of popular opinion. *See* Kim Jae-Yeong, *Ilbon-eseo eui Ilbon-gun Wianbu Sosong* [*Japanese Military Comfort Women Litigation in Japan*], *in* ILBON-GUN WIANBU MUNJE [THE PROBLEM OF JAPANESE MILITARY COMFORT WOMEN] 46, 84 (Yi Seok-t'ae et al. eds., 2009). But his comments focus only comfort women. Likewise, Korean scholars such as Lee Keun-gwan and Kim Chang-Rok have written about forced labor litigation.

117. Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Mar. 26, 2001, *unpublished opinion* (Japan) ("Kim Hak-sun et al. v. Japan"), slip opinion available at justice.skr.jp/judgements/17-1.pdf [https://perma.cc/8B97-RKZM].

118. Hiroshima Chihō Saibansho [Hiroshima Dist. Ct.] Mar. 25, 1999, Hei 7 (wa) no. 2158, *unpublished opinion* (Japan) ("Park Chang-hwan v. Mitsubishi Heavy Industries & Japan") (claims dismissed as time-barred).

In addition to four categories adopted from Japanese scholars, I synthesize two of my own, yielding a total of six categories.[119] First, forced laborers have filed twenty-seven lawsuits against Japanese corporations, as well as the Japanese government, for compensation and apologies. During World War II, Japan mobilized approximately nine hundred thousand Koreans from its peninsular colony and another forty thousand Chinese from territory it invaded and occupied on the mainland.[120] Chinese and Korean laborers alike performed grueling work in extraordinary circumstances, subject to physical attacks, verbal abuse, inadequate nutrition, and insufficient clothing. Moreover, very few were paid for their work. They returned to Japan in the 1990s and 2000s demanding unpaid wages, damages, and apologies.

A second category involves twenty lawsuits filed by *hibakusha*—victims of the American bombing of Hiroshima and Nagasaki.[121] Most plaintiffs are Korean, requesting access to medical treatment and other benefits that Japan provides to its own citizenry.[122] It is controversial to include *hibakusha* in this analysis because the United States, not Japan, caused the harm.[123] In other categories, the Japanese state perpetrated the wrong, either directly or indirectly. But with *hibakusha*, the decision to use the bomb was made by the U.S. government, leaving Japan to confront unprecedented medical problems on an industrial scale. Since 1957, the Japanese government has

119. For example, Naitō Mitsuhiro enumerates the six *non-exhaustive* categories of plaintiffs as comfort women, forced laborers, veterans, BC-level war criminals, holders of debts and savings accounts, and allied POWs. Mitsuhiro Naitō, *Taiwanjin Moto Nihon Hei Senshishō Hoshō Seikyū Jiken ni Miru Nihon no Sengo Hoshō Mondai*, 418 Senshū Daigaku Shakai Kagaku Kenkyūsho Geppō 18, 18 (1998).

120. Chung Hye-Kyung, *The Forcible Drafting of Koreans during the Final Phase of Colonial Rule and the Formation of the Korean Community in Japan*, 44 Korea J. 31 (2004) (estimating 900,000 Koreans were mobilized); Cai Hong, *Slave Laborers: Japan, Businesses Owe Us*, China Daily (Nov. 28, 2017, 7:48 AM), https://usa.chinadaily.com.cn/world/2017-11/28/content_35088578.htm [https://perma.cc/W42S-4M6L] (estimating 38,935 Chinese men served as forced laborers in Japan).

121. According to UCLA's *Children of the Atomic Bomb* project, the "real mortality of the atomic bombs . . . dropped on Japan *will never be known.*" UCLA, *Hiroshima and Nagasaki Death Toll*, Children of the Atomic Bomb (Oct. 10, 2007, 7:55 PM), www.aasc.ucla.edu/cab/200708230009.html [https://perma.cc/HDY2-DV37] (emphasis added). The UCLA project makes a "conservative" estimate of 150,000 casualties (dead and injured) in Hiroshima, and 75,000 casualties (same) in Nagasaki. Yale Law School's *Avalon Project* provides an even more conservative estimate: 66,000 deaths and 69,000 injuries at Hiroshima, and 39,000 deaths and 25,000 injuries at Nagasaki. *See* Yale Law School, *The Atomic Bombings of Hiroshima and Nagasaki*: *Total Casualties*, The Avalon Project (2008), https://avalon.law.yale.edu/20th_century/mp10.asp [https://perma.cc/D2MH-9LPK].

122. Under the Medical Care for Atomic Bomb Survivors of 1957, Japan offers free medical treatment and compensation to survivors of Hiroshima and Nagasaki. *See* Genshi Bakudan Hibakusha no Iryō-nado ni kan suru Hōritsu [Act on Medical Care for Atomic Bomb Survivors], Law No. 41 of 1957 (Japan). Survivors must document their presence within specific locations in either city during August 1945. *See* Lisa Yoneyama, Hiroshima Traces: Time, Space and the Dialectics of Memory 93 (1999).

123. In *Shimoda v. Japan*, five Japanese survivors of the bombings in Hiroshima and Nagasaki sued Japan. They argued that since Japan waived their rights to seek damages from the United States, Japan should compensate them for the harm they suffered. *See* Shimoda Ryūichi v. Japan, 355 Hanrei jihō 17. The court found that the United States violated international law by indiscriminately bombing an undefended city. *Id.* at 37. But the court denied compensation to the *hibakusha* on the grounds that individuals cannot bring claims against states based on international law. The lawsuit *did*, however, spur Japan to pass the 1957 medical assistance law for *hibakusha*.

provided some form of medical care to *hibakusha*.[124] This Article follows many Japanese scholars by including *hibakusha* as a category of war reparations litigation,[125] even while acknowledging that the Japanese government did not perpetrate the underlying harm.[126]

Third, comfort women and other victims of sexual violence have filed ten lawsuits in Japan.[127] According to U.N. Special Rapporteur Gay McDougall, between 1932 and 1945, "the Japanese Government and the Japanese Imperial Army forced over 200,000 women into sexual slavery in rape centers throughout Asia."[128] Circumstances varied across the more than one hundred "comfort stations" or rape centers, but most plaintiffs testify that the experience was harrowing, involuntary, and painful.[129] For decades, most

124. Yoneyama notes that 70,000 people registered as *hibakusha* in Hiroshima during the first year—1957—when the certificates were available. YONEYAMA, *supra* note 122, at 93.

125. *See, e.g.*, Tanaka Hiroshi, Nakayama Taketoshi & Arimitsu Ken, *Sengo Hoshō: Nokosareta Kadai* [*Postwar Compensation: Remaining Issues*], *in* MIKAIKETSU NO SENGO HOSHŌ: TOWARERU NIHON NO KAKO TO MIRAI [UNRESOLVED POSTWAR COMPENSATION: QUESTIONING JAPAN'S PAST AND FUTURE] 8, 13–14 (Tanaka Hiroshi, Nakayama Taketoshi & Arimitsu Ken eds., 2013). The editors list fourteen types of harm litigated by non-Japanese: (1) sexual violence (comfort women), (2) forced laborers, (3) veterans, (4) B/C-level war criminals, (5) Allied POWs, (6) massacres, (7) Unit 731, (8) poison gas, (9) indiscriminate bombing (Chongqing), (10) Koreans left behind on Sakhalin Island, (11) *hibakusha*, (12) financial instruments, (13) forced laborers in Indonesia, and (14) harm to indigenous people in China and Taiwan.

126. The United States government has variously justified dropping the bombs. On August 9, 1945—three days after Hiroshima, and the same day as Nagasaki—President Truman posited three rationales: avenging Pearl Harbor, deterring abuse of American POWs, and shortening "the agony of war, in order to save the lives of thousands of and thousands of young Americans." *See* President Harry S. Truman, *Radio Report to the American People on the Potsdam Conference*, UVA Miller Center (Aug. 9, 1945), https://millercenter.org/the-presidency/presidential-speeches/august-9-1945-radio-report-american-people-potsdam-conference [https://perma.cc/2H8K-N72U]. Truman further chastised the Japanese for "abandon[ing] all pretense of obeying international laws of warfare." *Id.* To be clear, the bombing of Hiroshima and Nagasaki also violated international humanitarian law, as the Tokyo District Court held in a 1963 decision.

127. Most plaintiffs were comfort women, trafficked to "comfort stations" run by the Japanese military. *See, e.g.*, Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Oct. 15, 2002, Hei 14 (wa) no. 15638, 1162 HANREI TAIMUZU 154 (Japan) ("Kao Bao-chu v. Japan") (dismissing case brought by Taiwanese women trafficked to "comfort stations" in Burma and Indonesia); Yamaguchi Chihō Saibansho [Yamaguchi Dist. Ct.] Apr. 27, 1998, Hei 4 (wa) no. 349, Hei 5 (wa) no. 373, Hei 6 (wa) no. 51, 1642 HANREI JIHŌ 24 (Japan) ("Ha Sun-nyeo v. Japan") (finding for three Korean women trafficked to a "comfort station" in Shanghai). But some women were raped in their own homes or nearby caves. *See, e.g.*, Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Aug. 30, 2006, *unpublished opinion* (Japan) ("Chen Yapian et al. v. Japan") (plaintiff raped in cave); Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Apr. 24, 2003, Hei 10 (wa) no. 24987, 1127 HANREI TAIMUZU 281 (Japan) ("Wan Aihua v. Japan") (plaintiff raped in her own home was abducted from her home).

128. *See* U.N. Sub-Commission on the Promotion and Protection of Human Rights, *Systematic Rape, Sexual Slavery, and Slavery-Like Practices During Armed Conflict: Final Report*, Appendix: An Analysis of the Legal Liability of the Government of Japan for "Comfort Women Stations" Established during the Second World War, June 22, 1998, E/CN.4/Sub.2/1998/13, p. 38. To be clear, no one knows exactly how many women were forced into sexual slavery, with estimates varying between 20,000 and 400,000. *See* C. SARAH SOH, THE COMFORT WOMEN: SEXUAL VIOLENCE AND POSTCOLONIAL MEMORY IN KOREA AND JAPAN 23 (2008).

129. *See* U.N. Comm. on Human Rights, *Report on the Mission to the Democratic People's Republic of Korea, the Republic of Korea and Japan on the Issue of Military Sexual Slavery in Wartime*, Jan. 4, 1996, E/CN.4/1996/53/Add.1; *see also* Wan Aihua v. Japan, 1127 HANREI TAIMUZU 281 (defendant seized by Japanese army at age 15, and confined to a cave, where she was repeatedly beaten and raped by Japanese troops); Tōkyō

women maintained their silence about the abuse. Korea's highly Confucian society prized chastity, whether due to shame, pain, or concern about appearing "impure." In 1990, Kim Hak-sun broke the silence, publicly acknowledging that she had been a comfort woman. Kim's public statement inspired many other women to step forward and discuss their experiences. Her lawsuit against the Japanese government is widely regarded as the beginning of both the debate surrounding comfort women and the transnational litigation movement.[130]

The fourth category centers on wartime debts. Like Britain and the United States, Japan issued many types of financial instruments to fund the war effort.[131] Japan forced colonized Taiwanese subjects to purchase war bonds, yet Taiwanese creditors never had the chance to redeem them.[132] Taiwanese soldiers also received part, or all, of their salary in postal savings accounts. In the 1970s, Taiwanese citizens stepped forward to demand that Japan repay wartime bonds and other instruments.[133] In 1993, a group of

Chihō Saibansho [Tokyo Dist. Ct.] Mar. 29, 2002, Hei 8 (wa) no. 3316, 1154 HANREI TAIMUZU 244 ("Guo Xicui 郭喜翠 v. Japan") (defendants seized by Japanese troops at ages 15 and 13); Nishino Rumiko, *Forcible Mobilization: What Survivor Testimonies Tell Us*, *in* Rumiko et al., *supra* note 14, at 44–49 (finding that most comfort women plaintiffs were minors and had been transported either through (a) fraud, (b) kidnapping, or (c) after having been sold to procurers).

130. *See generally, e.g.*, CHIZUKO UENO, NATIONALISM AND GENDER (Beverley Yamamoto trans., Trans Pacific Press 1st ed. 2004). According to Professor Ueno, one of Japan's leading feminist scholars, the "conclusive problematizing of the military comfort women within Japan occurred in December 1991, when Kim Hak-sun and two other former comfort women filed suits against the Japanese government at the Tokyo District Court." *Id*. at 69. Yoshimi Yoshiaki, Japan's most prominent historian of comfort women and other war crimes, begins his chapter on "The Emergence of the Issue" by referring to Kim's December 1991 lawsuit. YOSHIMI YOSHIAKI, COMFORT WOMEN: SEXUAL SLAVERY IN THE JAPANESE MILITARY DURING WORLD WAR II 33 (2002).

131. Japan financed World War II through various transnational financial instruments. In Tokyo, the Bank of Japan issued war bonds. *See* Benjamin Cole, *Financing World War II: Lessons from Japan and the US*, THE CORNER (Oct. 28, 2018), https://thecorner.eu/news-the-world/world-economy/financing-world-war-ii-lessons-from-japan-and-the-us/76348/ [https://perma.cc/8EHD-YGUH]. Japan also issued scrip (military currency) in occupied territories, such as Burma, Hong Kong, Indonesia, and the Philippines. Gregg Huff & Shinobu Majima, *Financing Japan's World War II Occupation of Southeast Asia*, 73 J. ECON. HIST. 937, 939 (2013). It printed paper currency in Manchukuo, its quasi-colony in Northeast China; *see* Samantha Hatton & Kelly Lindberg, *Hidden Turtles and Rude Gestures in World War II-Era Chinese Banknotes*, Nat'l Museum of American Hist. Blog (Dec. 6, 2016), https://americanhistory.si.edu/blog/world-war-ii-chinese-banknotes [https://perma.cc/R3F5-ZJR3] (describing "secret propaganda messages that Chinese engravers snuck in . . . to protest Japanese occupation during World War II"). And Japan also issued bonds in its colonies of Korea and Taiwan. *A Long, Long Way to Go*, TAIWAN TODAY, Oct. 1, 1995 (describing bonds, donations, and other payments that Taiwanese citizens made to support the Japanese war effort in the 1930s and 1940s).

132. Sao-yang Hong [Hong Shaoyang], *Taiwan Jiceng Jinrong Tizhide Xinggou: Cong Taiwan Chanye Zuhe Lianhehui Dao Hezuo Jinku (1942-1949)* [*Establishing a Basic Financial System in Taiwan: From Taiwan Industrial Cooperative Association to Taiwan Cooperative Bank (1942-1949)*], 20 TAIWAN SHI YANJIU [STUD. IN TAIWAN HISTORY] 99, 108 (2013).

133. *See, e.g.*, Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Mar. 25, 1980, Shō 52 (wa) no. 112086, 974 HANREI JIHŌ 102 (Japan) ("Chen Shanggui v. Japan") (dismissing case to redeem war bonds on statute of limitations grounds); Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Oct. 31, 1980, Shō 52 (wa) no. 12076, 984 HANREI JIHŌ 47 (Japan) ("Hong Wu Chen-chih v. Dai'chi Kangyo Bank") (awarding Hong the face value of ¥1,500 for war bonds she bought between 1942 and 1944).

Hong Kong citizens tried to convert into Japanese yen the military scrip that Japanese authorities forced Hong Kongers to buy during the war.[134]

Beyond these four categories—forced laborers, *hibakusha*, comfort women, and wartime creditors—scholarly consensus on categorization disintegrates. Some individuate the lawsuits into ten or more categories.[135] Others corral the remainder into "general war damage."[136] This Article charts a middle course, adopting the category of "general war damage," and synthesizing a category centering around veterans.[137]

The fifth category cobbles together issues confronted by veterans. In the first subset, Korean and Taiwanese veterans[138] of the Japanese Imperial Army demanded access to benefits available to veterans of Japanese nationality.[139] In the second subset, Korean and Taiwanese B/C-level war

134. Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] June 17, 1999, Hei 5 (wa) no. 15280, *unpublished opinion* (Japan) ("Ng Yat-hing v. Japan"). The court acknowledged that Japan forced Hong Kong residents to convert Hong Kong dollars into Japanese military currency (*gunyō shuhyō*, or *gunpyō*), which lost all value when the war ended. But according to Judge Nishioka Seiichirō, "Whether to compensate plaintiffs is a matter for the Diet to decide, not the courts." *Id.* at 214. *See* Juliana Liu, *The Hong Kong Fight to Cash in Japanese Military Yen*, BBC (Aug. 14. 2015), https://www.bbc.com/news/world-asia-china-33906603 [https://perma.cc/P6QA-9QVU] (describing ongoing efforts by Hong Kong residents to redeem their military currency for legal tender).

135. *See* Tanaka, Nakayama & Arimitsu, *supra* note 125, at 13–14. Of the fourteen types of harm specified by Tanaka, Nakayama & Arimitsu, perhaps twelve would constitute their own category. The harm specified in categories thirteen and fourteen is claimed in other lawsuits. The Indonesian forced labor issue was raised in a conglomerated lawsuit filed by eight Dutch citizens. Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Nov. 30, 1998, Hei 6 (wa) no. 1218, 991 HANREI TAIMUZU 262 ("Sjoerd Albert Lapre v. Japan"). The harm to indigenous people was raised in various comfort women lawsuits, including those by Taiwanese, Hainanese, and Filipinas. I aggregate several of Tanaka, Nakayama & Arimitsu's categories to create two new ones.

136. For example, Zukeyama Shigeru, who runs the Utsonomiya Disarmament Research Center War and Reconciliation project, divides the suits into five categories: (1) comfort women, (2) forced laborers, (3) damage from the Japanese Army, (4) B/C-level war criminals and Ukishima-Maru, and (5) cases brought by Japanese citizens. *See* HŌTEI DE SABAKARERU NIHON NO SENSŌ SEKININ [JAPAN'S WAR RESPONSIBILITY AS ADJUDICATED IN COURT] (Zukeyama Shigeru ed. 2014).

137. I also exclude a number of decisions that do not fit neatly into an established category. For example, Japan did not repatriate large numbers of ethnic Koreans from Sakhalin Island. This in turn led to four lawsuits, all of which were withdrawn before a final judgment could be issued. Second, Japan left behind chemical weapons in Northeast China, which have leaked and poisoned Chinese citizens in the postwar period. Because the damage was done decades after the war, I have excluded the four "poison gas" lawsuits.

138. During Japanese colonization of Taiwan (1895–1945) and Korea (1910–1945), inhabitants of both countries were considered Japanese citizens, or imperial Japanese subjects. After the war, Japan unilaterally denationalized all Koreans and Taiwanese. YUJI IWASAWA, INTERNATIONAL LAW, HUMAN RIGHTS, AND JAPANESE LAW: THE IMPACT OF INTERNATIONAL LAW ON JAPANESE LAW 132–33 (1998) (arguing that Japan should have given the Koreans the right to choose their own nationality, rather than unilaterally stripping them of Japanese nationality). In 1952, Japan promulgated the Relief Law to provide benefits to veterans, among others, but only if they were Japanese citizens. *See* Relief Act, art. 14.

139. *See, e.g.*, Ōtsu Chihō Saibansho [Ōtsu Dist. Ct.] Nov. 11, 1997, Hei 5 (gyō u) no. 2, 1718 HANREI JIHŌ 44 (Japan) ("Kang Bu-jung v. Japan") (dismissing wounded Korean veteran's claims for medical benefits on nationality grounds); Ōsaka Chihō Saibansho [Osaka Dist. Ct.] Oct. 11, 1995, Hei 3 (gyō u) no. 7, Hei 6 (gyō u) no. 26, 901 HANREI TAIMUZU 84 (Japan) ("Jeong Sang-geun v. Ministry of Health & State") (holding that Basic Treaty of 1965 waived Korean veteran's claim for compensation); Deng Sheng v. Japan, 1032 HANREI JIHŌ 31 (dismissing wounded Taiwanese veterans' claims for medical benefits on nationality grounds).

criminals[140] (from national military tribunals) sought benefits available to Japanese citizens.[141] A third group of lawsuits demanded the expungement of soldiers memorialized at Yasukuni Shrine, which houses the souls of Japan's wartime dead.[142] Finally, Allied prisoners of war sued Japan for the poor conditions and abuses they endured in Japanese prison camps.[143]

The sixth category unites disparate forms of civilian damage. Many of the lawsuits center around a particular incident or military campaign: the Nanjing Massacre,[144] the lesser-known Pingdingshan Massacre,[145] the indiscrimi-

140. After the war, the Tokyo Tribunal judged major (A-level) war criminals, while smaller tribunals—run by individual Allied nations like the United States, Australia, and the Netherlands—presided over lower-level (B-level, C-level) war criminals. Of the 984 persons executed for war crimes at the national tribunals, twenty-three were Korean and twenty-one were Taiwanese. Of the 3,419 persons imprisoned, 125 were Korean and 147 were Taiwanese. *See* Utsumi Aiko, *Korean "Imperial Soldiers": Remembering Colonialism and Crimes Against Allied POWs*, *in* PERILOUS MEMORIES: THE ASIA-PACIFIC WAR(S) 199, 211 (T. Fujitani et al. eds., 2001). The Japanese government compensated Japanese convicts, but not Korean or Taiwanese convicts. *See* Petra Schmidt, *Disabled Colonial Veterans of the Imperial Japanese Forces and the Right to Receive Social Welfare Benefits from Japan*, 21 SYDNEY L. REV. 231, 235 (2005).

141. *See, e.g.*, Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Mar. 24, 1999, *unpublished opinion* (Japan) ("Heirs of Yim Yeong-jun v. Japan") slip opinion available at justice.skr.jp/judgements/36-1.pdf [https://perma.cc/Y8BK-SUYP] (dismissing claims for damages, unpaid wages and apology by Korean prison guard sentenced to death by Australian Military Tribunal); Miyazaki Chihō Saibansho [Miyazaki Dist. Ct.] Feb. 23, 2001, Hei 10 (wa) no. 218, *unpublished opinion* (Japan) ("Taiwanese B/C war criminal v. Japan") (dismissing claims by Taiwanese prison guard who served eleven years of a fifteen-year sentence handed down by Australian Military Tribunal).

142. Yasukuni Shrine has emerged as a charged symbol in current debates over Japan's war responsibility. The shrine purports to house the souls (*kami*) of Japanese soldiers killed in battle. In 1978, Yasukuni enshrined fourteen Class A war criminals, including General Tojo Hideki, and General Iwate Matsui (who planned and executed the Rape of Nanjing). Their enshrinement prompted Emperor Hirohito to stop visiting the shrine that same year. However, many prime ministers from Japan's Liberal Democratic Party—Abe Shinzo (2013), Koizumi Junichiro (2001-06), Hashimoto Ryutaro (1996), and Nakasone Yasuhiro (1983)—have since paid their respects at the shrine. Given the shrine's association with war criminals, families of Korean and Taiwanese soldiers have requested the shrine remove the names of their family members, and release their souls. *See* Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] May 25, 2006, Hei 17 (wa) no. 2598, 1931 HANREI JIHŌ 70 (Japan) (Kim v. Japan) (dismissing claims by families of Korean soldiers to remove soldiers' names from Yasukuni Shrine); *Rightists Thwart Yasukuni Rally by Taiwanese*, JAPAN TIMES (June 15, 2005), https://www.japantimes.co.jp/news/2005/06/15/national/rightists-thwart-yasukuni-rally-by-taiwanese/ [https://perma.cc/MK8S-HJL9] (discussing protest staged by Taiwanese aboriginals near Yasukuni Shrine to request the removal of the names and to return the souls of their dead ancestors).

143. *See* Merrill Goozner, *Allied POWs Seek Redress from Japan*, CHICAGO TRIBUNE (May 2, 1995), https://www.chicagotribune.com/news/ct-xpm-1995-05-02-9505030001-story.html [https://perma.cc/6DDQ-UFAM] (describing the lawsuit filed by POWs from various Allied states, and the grim conditions they faced in Japanese prison camps); Sjoerd Albert Lapre v. Japan, *supra* note 135 (dismissing claims brought by seven Dutch prisoners of war and one "comfort woman"); Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Nov. 26, 1998, Hei 7 (wa) no. 1382, 1685 HANREI JIHŌ 3 (Japan) (Arthur Titherington v. Japan) (dismissing claims by American, Australian, British, and New Zealand POWs and civilian internees because individuals cannot sue states for violating international law).

144. In December 1937 and January 1938, the Japanese Army killed between 200,000 and 300,000 Chinese citizens, and raped approximately 20,000 women, in the Chinese capital of Nanjing. China relocated its capital to the southwest city of Chongqing in January 1938. Unit 731 was a scientific research center that Japan set up in Northeast China to test biochemical weapons on Chinese citizens. Both Nanjing and Unit 731 were the subject of a conglomerated lawsuit: Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Sept. 22, 1999, Hei 7 (wa) no. 15636, 1028 HANREI TAIMUZU 92 (Japan) ("Jing Lanzhi 敬蘭芝 et al. v. Japan") (dismissing claims against the state on sovereign immunity grounds).

nate bombing of Chongqing,[146] and the use of chemical weapons.[147] Korean plaintiffs also sued Japan for individual incidents. For instance, family members of Korean civilians killed by Japanese police on Sakhalin Island sought solatia and apologies for their loss.[148] Finally, several cases aggregated civilian harms, often with scores or even hundreds of plaintiffs, into de facto collective action suits.[149]

I define victory very liberally: any court that recognized even one of the plaintiffs' claims, in part or in whole, counts as "victory." With this standard in place, the following results emerge:

145. In 1931, Japan began its invasion of Northeast China, where it later established the puppet-state of Manchukuo. In 1932, Japan rounded up and killed approximately 3,000 Chinese civilians in Pingdingshan, a small village in Liaoning Province. *See generally* Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] June 28, 2002, Hei 8 (wa) no. 15770, *unpublished opinion* (Japan) ("Li Peizhen 李佩珍, Mo Desheng 莫德勝, Yang Baoshan 楊寶山 et al. v. Japan") (dismissing claims against the state on sovereign immunity grounds).

146. *See* Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Feb. 25, 2015, Hei 18 (wa) no. 15280, Hei 20 (wa) no. 18382, Hei 20 (wa) no. 35183, Hei 21 (wa) no. 35262, *unpublished opinion* (Japan) (Wang Zixiong 王子雄 et al. v. Japan) (finding that the Joint Communique resolved all individual claims brought by Chinese citizens).

147. In 1935, Japan established a research center—Unit 731—for biochemical weapons in the puppet-state of Manchukuo. Japanese scientists subjected thousands of Chinese to medical experimentation in this facility. They also developed chemical weapons later deployed in the war. Between 1940 and 1942, Japan then used those weapons to spread bubonic plague and typhoid among Chinese civilians in Ningbo and Changde. After the war, the United States struck a deal, immunizing Japanese researchers in exchange for the exclusive rights to the results of their experiments. *See generally* SHELDON H. HARRIS, FACTORIES OF DEATH: JAPANESE BIOLOGICAL WARFARE, 1932-45, AND THE AMERICAN COVER-UP 152 (2d ed. 2005).

148. A solatium (*isharyō* in Japanese) aims to compensate people for the emotional pain they suffer when a family member or relative is wrongfully killed. *See* Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] July 27, 1995, Hei 3 (wa) no. 11465, 894 HANREI TAIMUZU 197 (Tokyo Dist. Ct., July 27, 1995) (Japan) ("Kim Gyeong-Sun 金景順 v. Japan"). .

149. The three collective action lawsuits include (a) Bereft Families from Kangwon Province (24 plaintiffs, comprising forced laborers, veterans and civvies, and bereaved families), (b) the Gwangju 1000 (1000 plaintiffs, including forced laborers, veterans, and civilians), and (c) 369 plaintiffs v. Japan (including forced laborers, members of the "teishintai" volunteer labor force, veterans, civilians, and even independence movement activists).

Category	Win Rate	Wins	Losses	Degree of Judicial Support
Hibakusha	70%	14	6	Strong
Forced Labor	15%	4	27	Weak
Korean FL	0%	0	11	None
Chinese FL	25%	4	16	Moderate
Debts	14%	1	6	Weak
General Damage	13%	1	7	Weak
Sexual Violence	10%	1	9	Weak
Soldiers	0%	0	15	None

The limited sample size cautions modesty in drawing conclusions. Still, distinct ranges of judicial support are visible. At one end, Japanese courts found for *hibakusha* in a supermajority (70%) of lawsuits. Moreover, within a particular lawsuit, Japanese trial and appellate courts, and even the Supreme Court, delivered victories to the victims of the atomic bombing.[150] This means that judges repeatedly issued judgments in favor of foreign *hibakusha* against Japanese state actors.

These results stand in stark contrast to the next group, forced laborers, where *only* the trial court *or* the appellate court found in favor of plaintiffs. No case succeeded at *both* the trial and appellate levels, and the Supreme Court ultimately dismissed all forced labor cases. Moreover, courts only found in favor of Chinese forced laborers, not Korean forced laborers, reflecting the view—common in Japan—that the forced labor program was legal vis-à-vis Korea.[151] The fact that judges in four different courts—including the Fukuoka District Court, Niigata District Court, Tokyo District Court, and Hiroshima High Court—found for Chinese plaintiffs amounts to "moderate" support.

On the other hand, only one case found in favor of wartime creditors, comfort women, and injured civilians, signaling weak judicial support. This is not to suggest that the verdicts were completely irrelevant. Some opinions

150. This was the case with Son Jin-du. *See supra* note 93. Other foreign *hibakusha* who won multiple cases include Korean Kwak Kwi-hun, and Brazilian Morita Takashi. *See* Ōsaka Chihō Saibansho [Ōsaka Dist. Ct.] June 1, 2001, Hei 10 (gyō u) no. 60, 1084 HANREI TAIMUZU 85 (Japan) ("Kwak Kwi-hun v. Osaka Gov. & Japan") (finding unreasonable the Osaka governor's decision to nullify a Korean *hibakusha*'s health care allowance payment after he left the country and returned home), *aff'med* Ōsaka Kōtō Saibansho [Ōsaka H. Ct.] Dec. 5, 2002, Hei 13 (gyō ko) no. 58, 1111 HANREI TAIMUZU 194 (Japan). Morita Takashi left Hiroshima for Brazil in 1955, returning to Japan in 2002 to file a lawsuit seeking payment of the health allowance. He lost at trial but won at both appellate and supreme courts. *See* Hiroshima Chihō Saibansho [Hiroshima Dist. Ct.] Oct. 14, 2004, Hei 14 (gyō u) no. 14, *unpublished opinion* (Japan) ("Morita Takashi v. Hiroshima Prefecture & Japan").

151. *See infra* notes 203–05 and accompanying text.

graphically depicted the violence done to plaintiffs, underlining both the veracity of their claims and the flagrance of the underlying conduct.[152] But judges did not take the additional step of finding for plaintiffs, setting limits on how far into the reparations debate the judiciary would wade.

Finally, the *absence* of judgments in favor of veterans or civilians reveals no judicial support for these sorts of claims. How do we understand these findings? The following Part explains the results of the *hibakusha*, forced labor, and comfort women decisions. Because of space constraints, the lack of support for wartime creditors, veterans, and civilians is discussed collectively.

III. Explanations

This Part explains the variable support within the Japanese judiciary for war reparations plaintiffs. Because so little English-language scholarship addresses *hibakusha* litigation—an important finding in itself—this Article disproportionately focuses on those lawsuits. But it also explains the moderate judicial support for forced laborers and the weak judicial support for comfort women. The final section addresses the lack of support for the three other types of cases: wartime debts, general damage, and soldiers.

A. Hibakusha

Strong judicial support for *hibakusha* presents a paradox. Why would Japanese judges consistently find for the *only* war reparations plaintiffs not directly harmed by Japan? A strong moral imperative, of course, inures to *hibakusha*, victims of the only two nuclear attacks in world history. But why should the judiciary—not the legislature—discharge that onus?

Perhaps the fact that the United States caused the injury, and not Japan, attenuates Japan's culpability. Judicial opinions, however, rarely identify the United States.[153] Given the importance of Hiroshima and Nagasaki in Japan's postwar posture as a victim—not the aggressor—of World War II, a cynic might postulate that judicial support for *hibakusha* reinforces Japanese victimhood and blamelessness for the war.

Two other explanations appear to be at least as convincing. First, Japan has erected a complex regulatory apparatus for *hibakusha*. Since the 1950s, Japan has enacted laws and measures—sometimes in response to litigation—to address the health concerns of *hibakusha*. This pattern confirms

152. Contrary to claims that comfort women were actually willing prostitutes, the verdicts depict both the forcible abduction and violent rape of many women. The Tokyo District Court determined that plaintiff Guo Xicui had been "repeatedly gangraped by several Japanese soldiers, including the squad captain." Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Mar. 29, 2002, Hei 8 (wa) no. 3316, 1154 Hanrei taimuzu 244 (Japan) ("Guo Xicui v. Japan").

153. *See, e.g.*, Son Jin-du v. Fukuoka, 306 Hanrei taimuzu 173, slip opinion available at justice.skr.jp/judgements/01-1.pdf [https://perma.cc/48FF-MQD4]. The judge wrote that "an atomic bomb was dropped on Hiroshima on August 6, 1945," but did not identify *who* dropped it. *Id.*, slip op. at 4.

Professor Upham's thesis about Japan's bureaucratization of socio-legal problems. In response to litigation, successful or not, Japanese policymakers create administrative mechanisms to remove the issue from the judiciary and place it in the more pliant hands of the bureaucracy.[154] These mechanisms allow Japanese bureaucrats, including LDP loyalists, "to recapture control of the social agenda."[155]

Yet the creation of a regulatory apparatus for *hibakusha* has not vitiated the judiciary, but in effect invited judges to review administrative determinations. This leads to the second explanation. Over the decades, the judiciary has become the de facto defender of *hibakusha* rights within the Japanese government, pushing back against the parsimonious positions of the LDP. Judges do not always side with *hibakusha* in the face of countervailing administrative decisions. But they often do, whether the plaintiff is Japanese or foreign.[156] In sum, the concept of "universal *hibakusha*" that the Supreme Court of Japan first articulated in the 1978 *Son Jin-du* case retains its relevancy decades later, a super-precedent of sorts.

Since so little English-language scholarship addresses the laws and regulations of *hibakusha*, we briefly explain the main features.[157] Japan passed the first *hibakusha* relief law in 1957, in response to a lawsuit filed by Japanese *hibakusha*, the establishment of a national civil society organization, and political mobilization by social activists.[158] Since then, the Diet passed two more laws, and numerous revisions.[159] The resulting structure has two main elements: (1) a procedure to recognize one's legal status as *hibakusha*, and (2) a procedure to certify one's disease was caused by radiation exposure.

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154. *See* Frank K. Upham, Law and Social Change in Postwar Japan 23–27 (1987).

155. *Id.* at 27.

156. *See* Kōsei Rōdōshō [Ministry of Health, Labor and Welfare], Genbakushō Nintei ni Kakawaru Shihō Handan no Jōkyō ni tsuite [On Judicial Decisions Relating to the Certification of Atomic Bomb Diseases] (July 2011). This report lists over 300 lawsuits, many still pending at the time of publication, filed between 2006 and 2011.

157. A complete list of the laws and regulations can be found on the Ministry of Health, Labor and Welfare's website. *See* Kōsei Rōdōshō [Ministry of Health, Labor and Welfare], *Hibakusha Engo Shisaku no Rekishi* [History of *Hibakusha* Support Measures], https://www.mhlw.go.jp/bunya/kenkou/genbaku09/17.html [https://perma.cc/XW7Y-PPPN] (Japan).

158. In May 1955, Shimoda Ryuichi filed a compensation lawsuit against the Japanese government for injuries he suffered during the bombing of Hiroshima. The trial court took eight years to decide the case. *See* Shimoda Ryūichi v. Japan, 355 Hanrei jihō 17. In 1956, various interest groups came together to form the Japan Council of Atomic and Hydrogen Bomb Victim Groups (Nihon Gensuibaku Higaisha Dantai Kyōgikai, or Hidankyō). The Council called on the Japanese government to establish a health care system for *hibakusha*. *See* James Orr, The Victim as Hero: Ideologies of Peace and National Identity in Postwar Japan 143 (2001).

159. *See* Genshi Bakudan Hibakusha ni tai suru Tokubetsu Sochi ni kan suru Hōritsu [Genbaku Tokubetsu Sochi Hō] [Special Measures Law], Law No. 53 of 1968, (Japan) (providing various types of allowances to *hibakusha* below a certain income level), Genshi Bakudan Hibakusha ni tai suru Engo ni kan suru Hōritsu [Hibakusha Engo Hō] [Hibakusha Relief Law], Law No. 107 of 1994, (Japan) (merging the 1957 and 1968 laws and waiving the income restrictions). *See generally* Shi Lin Loh, *Defining* Hibakusha *in Postwar Japan: The Boundaries of Medicine and the Law*, 49 Zinbun 81, 84–85 (2019) (describing the laws and their revisions); Nihon Hidankyo, Hibakusha Taisaku no Hensen [Changes in *Hibakusha* Measures], www.ne.jp/asahi/hidankyo/nihon/seek/seek6-02.html [https://perma.cc/FG45-TRRP] (providing a comprehensive history of *hibakusha* laws and regulations from 1957 to 2008).

In the first procedure, prefectural governments—applying standards articulated by the Ministry of Health—decide whether to legally recognize a person as *hibakusha*. They will issue a health certificate (*kenkō techō*) upon ascertaining that the applicant belongs to one of four categories: (1) was within a certain distance of ground zero at the time of explosion, (2) entered Hiroshima or Nagasaki within two weeks of the bombing, (3) was otherwise affected by radiation (for instance, by caring for the sick and wounded), or (4) was *in utero* and belongs to one of the three above categories.[160] The health certificate enables the holder to receive free medical examinations and medical treatment in hospitals designated by the prefecture.

Second, if a legally certified *hibakusha* seeks medical treatment for a particular disease, the Ministry of Health may certify that the atomic bombing "caused" his disease.[161] The Ministry convenes a group of medical experts, doctors, and lawyers to examine each applicant.[162] If the expert group recognizes (a) a causal relationship between the applicant's disease and the bombing, and (b) the medical *necessity* of providing treatment, the applicant will be officially recognized as suffering from a disease related to the atomic bomb (*genbakushō*).[163] The state will then bear the full cost of medical treatment, as well as special allowances (*teate*) during and after treatment.[164] This is a fairly probing inquiry; fewer than 1% of legally recognized *hibakusha* have qualified as suffering from an atomic-bomb disease.[165]

Needless to say, ample opportunities arise to challenge government determinations. An applicant may be unable to adduce evidence of how far from ground zero he stood when the bomb fell. He might not recall the exact date he entered the city, and whether that date falls within the two-week window. In addition, prefectural governments reject applications by foreign *hibakusha* for various reasons. Some refuse to issue a health certificate for *hibakusha* who cannot travel to Japan;[166] others nullify allowances and other

160. *See* Kōsei Rōdōshō [Ministry of Health, Labor and Welfare], *Hibakusha to wa* [Who is a *hibakusha*], https://www.mhlw.go.jp/bunya/kenkou/genbaku09/01.html [https://perma.cc/N5FS-84AM].

161. *See* Kōsei Rōdōshō [Ministry of Health, Labor and Welfare], *Genbakushō Nintei ni suite* [About Certification of Atomic Bomb Diseases], https://www.mhlw.go.jp/stf/genbakusyou.html [https://perma.cc/XTP9-7P27].

162. *Id.*

163. On causality, the ministry will not recognize diseases if the applicant was not exposed to significant amounts of radiation, if no causal relationship between the disease and radiation can be proven, or if other factors (age, smoking, obesity, etc.) might have contributed to the disease. On medical necessity, the ministry will not cover cases where the patient does not require treatment, the treatment has ended and no further treatment is required, or a certain period has elapsed since the previous medical procedure and the patient appears to be healing. *Id.*

164. *Id.*

165. In March 2007, Japan officially recognized 251,834 *hibakusha*, but just 2,242 were officially recognized as suffering from a bomb-related disease. *Relief for A-bomb Victims*, JAPAN TIMES (Aug. 15, 2007), https://www.japantimes.co.jp/opinion/2007/08/15/editorials/relief-for-a-bomb-victims/ [https://perma.cc/KEW7-PAFB].

166. *See, e.g.*, Nagasaki Chihō Saibansho [Nagasaki Dist. Ct.] Nov. 10, 2008, Hei 19 (gyō u) no. 2, 2058 HANREI JIHŌ 42 (Japan) ("Jeong Nam-su v. Nagasaki") (ordering prefectural government to issue health certificate to *hibakusha* even if he cannot be physically present in Japan looking at the purpose of

benefits once the foreign *hibakusha* leaves Japan to return home;[167] still others refuse to extend benefits to qualified *hibakusha*.[168] On occasion, these lawsuits prompt legislative or regulatory change of one sort or another.[169] Two lawsuits in particular have significantly impacted Japan's regulatory apparatus: one brought by Son Jin-du, and the other by Kwak Ki-hun.[170]

Son's case, in some ways, initiated the turn to litigation by foreign victims of the war.[171] In 1970, Son entered Japan illegally from South Korea in order to access medical treatment for tuberculosis and leukopenia. Subsequently detained by Japanese immigration authorities, Son applied for a *hibakusha* health certificate from the Fukuoka prefectural government. Fukuoka rejected his application on the grounds that he lacked the appropriate "residential relationship," that is, he was not properly within Japan.[172]

Son sued, winning at the trial, appellate, and Supreme courts, a rare trifecta in war reparations jurisprudence.[173] The Supreme Court made three

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the relevant law); Nagasaki Chihō Saibansho [Nagasaki Dist. Ct.] Sep. 28, 2004, Hei 16 (gyō u) no. 2, 1228 HANREI JIHŌ 153 (Japan) ("Choe Gye-cheol v. Nagasaki"), *aff'ed* Fukuoka Kōtō Saibansho [Fukuoka H. Ct.] Sept. 26, 2005, Hei 16 (gyō ko) no. 31, 1228 HANREI TAIMUZU 150 (Japan) (ordering local government to issue certify allowances for Korean applicant), *aff'd* Saikō Saibansho [Sup. Ct.] Feb. 18, 2008, *unpublished opinion* (Japan) ("Choe Gye-cheol v. Nagasaki & Japan").

167. *See, e.g.*, Ōsaka Chihō Saibansho [Osaka Dist. Ct.] Mar. 2, 2003, Hei 13 (gyō u) no. 84, *unpublished opinion* (Japan) ("Lee Jae-seok v. Osaka & Japan").

168. *See, e.g.*, Nagasaki Chihō Saibansho [Nagasaki Dist. Ct.] Mar. 8, 2005, Hei 16 (gyō u) no. 9, 1214 HANREI TAIMUZU 1698 ("Heirs of Choe Gye-cheol v. Nagasaki") (ordering local government to cover funeral expenses of Korean *hibakusha*).

169. To be sure, this topic awaits further research. Sometimes the change is positive, as when a class-action lawsuit by 306 Japanese *hibakusha* pushed the Diet to increase funding for *hibakusha* relief efforts. *See* Kohei Okata, *Bill for Fund to Settle Lawsuits Over A-bomb Disease Certification Enacted*, CHUGOKU SHIMBUN (Dec. 7, 2009), https://www.hiroshimapeacemedia.jp/?p=14792 [https://perma.cc/DB66-S8XL] (noting that LDP members boycotted the session in the House of Representatives where the law was approved). Other times, as explained below, the bureaucracy reacts to a lawsuit by further restricting access. *See supra* notes 136–37 and accompanying text.

170. Korean citizens make up the overwhelming majority of plaintiffs in *hibakusha* litigation. But it is important to point out that Brazilian, American, and Chinese *hibakusha* have also filed lawsuits. *See infra* Appendix C (listing twenty lawsuits brought by *hibakusha*, sixteen of which were brought by Koreans).

171. Son's case has received little attention in the English language. One helpful corrective is a 2017 doctoral dissertation by Ágota Duró entitled "Confronting Colonial Legacies: The Historical Significance of Japanese Grassroots Cooperation for the Support of Korean Atomic Bomb Survivors," especially Chapter Three. Son's case is briefly mentioned in Toyonaga Keisaburō, *Colonialism and Atom Bombs: About Survivors of Hiroshima Living in Korea*, *in* PERILOUS MEMORIES: THE ASIA-PACIFIC WAR(S) 378, 384–85 (T. Fujitani, Geoffrey M. White, and Lisa Yoneyama eds., 2001).

172. In effect, Son engaged in parallel litigation: one to fight his deportation order, and one to access medical benefits.

173. Only one other plaintiff succeeded at all three levels. *See* Ōsaka Chihō Saibansho [Osaka Dist. Ct.] Oct. 24, 2013, Hei 23 (gyō u) no. 103, 2013, *unpublished opinion* (Japan) ("Lee Hong-hyeon v. Osaka Governor") (awarding medical expenses to three Korean *hibakusha* who were treated in Seoul), *aff'ed* Ōsaka Kōtō Saibansho [Osaka H. Ct.] June 20, 2014, Hei 25 (gyō ko) no. 202, *unpublished opinion* (Japan), *aff'ed* Saikō Saibansho [Sup. Ct.] Sept. 9, 2015, Hei 26 (gyō hi) no. 406, *unpublished opinion* (Japan). In addition, Korean *hibakusha* have also won at trial and on appeal, but since the government did not take a final appeal to the Supreme Court, they only won twice (yet achieved a final victory). Such repeat victors include Kwak Ki-hun and Choe Gye-cheol. *See* ōsaka Chihō Saibansho [ōsaka Dist. Ct.] June 1, 2001, Hei 10 (gyō u) no. 60, 1792 HANREI JIHŌ 31 (Japan) ("Kwak Ki-hun v. Governor of Osaka") (ordering the Osaka government to pay Kwak's health care allowance, and to restore his illegally

findings that influenced subsequent jurisprudence on foreign *hibakusha*. First, the Court distinguished the 1957 Hibakusha Law, which has no nationality requirements, from the 1952 Pension Law and Relief Law, which only applies to Japanese citizens.[174] The Court envisaged a "universal *hibakusha*" who could access medical benefits even without Japanese citizenship.[175] While Japanese trial courts would still reject cases filed by foreign *hibakusha*, at least one Supreme Court precedent favored this position.

Second, citing the "unprecedented, peculiar, and serious health hazards from exposure to the atomic bombs," the Court emphasized that it "cannot overlook the fact that many *hibakusha* still live in a state of instability, in comparison to ordinary victims of the war."[176] While millions suffered a wide array of injuries *during* World War II, many *hibakusha* did not experience the health consequences of radiation exposure until years or even decades after the War.[177] Thus *hibakusha* never know exactly when a disease will arise, whether it results from exposure to radiation, and how it will affect their lives. This heightened insecurity calls for a more liberal interpretation of *hibakusha* protection laws.[178]

Third, the Court determined that the *hibakusha* laws have a dual nature as both "social security" (*shakai hoshō*) and "state compensation" (*kokka hoshō*).[179] This Solomonic position responds to a broader political debate on the nature of *hibakusha* relief. The LDP stresses that the relief laws constitute social security to address the special medical needs of *hibakusha*.[180] As James Orr has observed, this inclination limits government aid to *hibakusha*.[181] By contrast, progressive politicians and left-leaning civil society organizations view *hibakusha* relief efforts as state compensation—a spe-

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rescinded health certificate), *aff'ed* ōsaka Kōtō Saibansho [Ōsaka H. Ct.] Dec. 5, 2002, 1111 HANREI TAIMUZU 194 (Japan) [hereinafter Kwak II]; *supra* note 166 (describing litigation history of Choe Gye-cheol).

174. Saikō Saibansho [Sup. Ct.] Mar. 30, 1978, Shō 50 (gyō tsu) no. 98, 362 HANREI TAIMUZU 196 (Japan) ("Son Jin-du v. Fukuoka"), slip opinion available at courts.go.jp/app/files/hanrei_jp/260/053260_hanrei.pdf [https://perma.cc/AR32-M4XR].

175. In Japanese, the principle is expressed "A *hibakusha* is a *hibakusha*, wherever he may be" (*hibakusha wa doko ni ite mo hibakusha deari*). Japanese Supreme Court decisions are binding on lower courts only when issued by the 15-person Grand Bench, and not one of the three 5-person Petty Benches. *See* John O. Haley, *Constitutional Adjudication in Japan: Context, Structures, and Values*, 88 WASH. U. L. REV. 1467, 1488 (2011). The Son Jin-du decision was issued by the five-justice First Petty Bench. Nevertheless, petty bench decisions carry great precedential weight.

176. Son Jin-du v. Fukuoka, slip op. at 2.

177. This is not to suggest that those injured during the war do not suffer afterwards. If a soldier loses a limb, or a civilian is paralyzed by shrapnel, those conditions last a lifetime. But they are at least aware of the injury. Of course, many courts have also determined that comfort women suffer from post-traumatic stress disorder, a condition that may haunt them for the rest of their lives.

178. Son Jin-du v. Fukuoka, slip op. at 2.

179. *Id.* The Japanese terms "hoshō" are not the same here, though they appear the same when transliterated. The first *hoshō* 保障 (stress on the penultimate syllable) means protection, security, or guarantee, and is often used to describe Japan's social safety net. The second *hoshō* 補償 (stress on the ultimate syllable) means compensation, a payment to redress a past wrong.

180. ORR, *supra* note 158, at 143–44.

181. *Id.* at 144.

cial dispensation for people who suffered loss *because* of state policy.[182] The Court opined in the following way:

> One aspect of the Atomic Bomb Medical Law is to provide relief for special war damage, which flows from the state's own responsibility as the primary actor that prosecuted the war. From this perspective, one cannot deny that considerations of *state compensation* underlie the system. It would be difficult, for example, to justify the Law merely as social security since it applies to hibakusha regardless of their income or assets. Despite one's financial background, the entire payment is covered from the public purse. We thus recognize that the Law is partially concerned with state compensation.[183]

By splitting the middle, the Supreme Court staked out an independent position, contrary to the one adopted by the LDP. Seven years and three trials later, Fukuoka prefecture issued Son's health certificate on April 3, 1978.[184]

Son's case marked the beginning of transnational war reparations litigation in East Asia, with external and internal consequences. Regionally, it signaled to Korean and Taiwanese citizens that war reparations issues were not resolved and that litigation offered a possible channel to redress.[185] Within Japan, the Ministry of Health issued a new regulation, Circular 402, which permitted foreign *hibakusha* to access medical benefits while physically present in Japan, but annulled those benefits when they left the country.[186] Since foreign *hibakusha* typically remain in Japan only for a limited period of time, while undergoing medical treatment, this rule ensured that they would not receive payments while back in their home country. It also meant that they were required to reapply for certification if they returned to Japan for subsequent treatment. One critic viewed Circular 402 as part of a "conscious effort" by Japan to impede foreign *hibakusha*'s access to medical benefits.[187]

182. *Id.* at 140, 145.

183. Son Jin-du v. Fukuoka, slip op. at 2.

184. *See* Ágota Duró, *Research Note: A Pioneer Among the South Korean Atomic Bomb Victims: Significance of the Son Jin-doo Trial*, 4 Asian J. Peacebuilding 271, 282 (2016).

185. In the 1970s, a total of eight other lawsuits was filed. Taiwanese citizens filed six lawsuits related to wartime debts and compensation measures for Taiwanese veterans, while Koreans stranded on Sakhalin Island filed two lawsuits to demand repatriation to Korea. *See* Yamamoto, Overview, *supra* note 107.

186. Kōsei Rōdōshō [Ministry of Health], Genshi Bakudan Hibakusha no Iryō nado ni kan suru hōritsu oyobi Genshi Bakudan Hibakusha ni tai suru Tokubetsu Sochi ni kan suru Hōritsu no Ichibu o Kaisei suru Hōritsu nado no Shikō ni tsuite [Enforcement of the Law to Partially Revise the Law on Medical Treatment of Atomic Bomb Survivors and the Law on Special Measures for Atomic Bomb Survivors], Regulation No. 27 of 1974 (Japan).

187. Duró, *supra* note 184, at 283.

A second case involved Kwak Kwi-hun, a conscripted member of the Japanese Imperial Army stationed in Hiroshima in August 1945.[188] In May 1998, Kwak sought medical treatment in Osaka, and successfully applied for a *hibakusha* health certificate from the prefectural government.[189] While being treated at an Osaka hospital, Kwak also applied for, and received, a health care allowance.[190] But when he returned to South Korea in July 1998, he lost both his *hibakusha* health certificate and his health care allowance.[191] In 2001, Kwak sued the Osaka prefectural government for discontinuing the allowance, and the national government for revoking his *hibakusha* status.[192] Kwak won at both the trial and appellate levels.[193]

The Osaka High Court made several important determinations in finding for Kwak. First, Judge Nemoto Makoto noted that the 1995 revisions of the *Hibakusha* law did not inquire into an applicant's nationality or finances, but instead served broad humanitarian purposes (*jindōteki mokuteki*).[194] He also took a rights-protective stance toward statutory interpretation, noting that "laws directly relating to human rights obligations should be clearly defined so as to avoid ambiguity."[195] Since legislators raised the issue of foreign *hibakusha* during the legislative process, but did not explicitly exclude them, the law should be interpreted to include foreign *hibakusha*.[196] Judge Nemoto also invoked the Supreme Court's concept of "universal *hibakusha*" first articulated in *Son Jin-du*.[197]

This outcome was hardly inevitable. Judge Nemoto could just as easily have reasoned that the Diet's failure to provide for foreign *hibakusha* meant that the 1995 law, on its own terms, did not apply to foreigners. Alternatively, he could have interpreted the *Son* decision strictly; since it only discussed *hibakusha inside* Japan, it has no bearing on *hibakusha* outside of Japan. Instead, the judge relied on the "universal *hibakusha*" theory articulated in *Son.* This shows that the Japanese judiciary may directly contravene the stance taken by the LDP and the bureaucracy it purportedly controls. After the Osaka High Court decision, legislators stepped forward to per-

188. Kwak Kwi-hun v. Governor of Osaka, 1792 HANREI JIHŌ 31, slip opinion available at justice.skr.jp/judgements/57-1.pdf [https://perma.cc/SE5Z-GCGM].

189. *Id.* slip op. at 4.

190. *Id.* The Osaka government granted Kwak a five-year allotment, meaning he would receive a monthly allowance of ¥34,130 (about $340) from June 1998 to May 2003.

191. *Id.* at 4–5.

192. *Id.*

193. The case did not reach the Supreme Court, as the Osaka prefecture and Japanese government did not appeal the high court's decision.

194. Kwak II, 1111 HANREI TAIMUZU 194, slip opinion available at justice.skr.jp/judgements/57-2.pdf [https://perma.cc/H2YX-TSYY]. *See* Kwak II, slip op. at 11.

195. *Id.* at 14.

196. *Id.*

197. *Id.* at 22.

suade relevant government actors *not* to appeal the verdict to the Supreme Court.[198]

Kwak did not, however, succeed on every claim. Judge Nemoto disagreed with the assertion that Circular 402 was an illegal interpretation of the *hibakusha* laws.[199] He applied a deferential standard of review to the Health Ministry, finding Circular 402 "not irrational."[200] One month after Judge Nemoto's decision, the Ministry of Health withdrew Circular 402.[201] As a result, twenty-nine years after the issuance of Circular 402, foreign *hibakusha* would no longer lose their benefits upon returning home.

But the Ministry's withdrawal did not resolve all issues confronting foreign *hibakusha*. Could they apply for the *hibakusha* health certificate without traveling to Japan? Could they seek reimbursement for medical expenses incurred in their home jurisdiction? What about the allowances they could have received while Circular 402 was still in effect? Could foreign families of deceased *hibakusha* obtain funeral allowances given to Japanese *hibakusha*?[202] Such matters, among others, would require additional adjudication.[203]

As the above analysis shows, the Japanese judiciary has played an active role in the war reparations debate, particularly with regard to the protection of human rights. The Ramseyer thesis—that judges perfunctorily parrot the Liberal Democratic Party—does not hold. Indeed, even the conservative Supreme Court has challenged positions adopted by the LDP, which has aimed to restrict access, financial compensation, and medical care for foreign

198. Janice Tang, *Lawmakers to Ask Gov't Not to Appeal A-bomb Survivor Case*, KYODO NEWS, Dec. 12, 2002 (reporting that group of legislators, from both ruling and opposition parties, requested the Ministry of Health *not* to appeal the verdict).

199. Kwak II, slip op. at 25–27. Under Japan's State Compensation Law, when a public official, in the course of his official duties, illegally injures another person, the state entity is liable to compensate for the injured person's loss. *See* Kokka Baishō Hō [State Compensation Law], Law No. 125 of 1947, art. 1(1).

200. Kwak II, slip op. at 29.

201. The Ministry of Health ultimately withdrew Circular 402, effective March 1, 2003. *See* Fukunaga Minoru, *Hibakusha Engohō no Kaishaku to Kokka Baishō* [*Interpreting the Hibakusha Support Law and State Compensation*], 12 HIROSHIMA HŌKA DAIGAKUIN RONSHŪ [HIROSHIMA LAW REVIEW] 247, 256 (2016).

202. Under the revised Hibakusha Law of 1995, family members of deceased *hibakusha* could apply for special funeral benefits.

203. One Korean *hibakusha*, Choe Gye-cheol, litigated three such cases. In May, 1980, Nagasaki issued Choe a *hibakusha* health certificate. Pursuant to Circular 402, his certificate was nullified on returning to Busan in June, 1980. In his first lawsuit, filed in February 2004—after the revocation of Circular 402—Choe applied for the health care allowance through a representative in Nagasaki, as his lumbar degenerative arthritis prevented him from leaving Korea. Since Choe did not reside in Nagasaki, the prefectural government rejected his application. He sued, winning at both trial and appellate courts. In his second lawsuit, Choe sued to receive the health care allowance he should have received between 1980 and 1983. He won at trial, lost on appeal, and ultimately won at the Supreme Court. *See supra* note 169. After Choe's death in July 2004, in the third lawsuit, his wife applied for his funeral expenses, but was rejected by Nagasaki Prefecture. She sued and won at both trial and appellate courts. *See* Nagasaki Chihō Saibansho [Nagasaki Dist. Ct.] Mar. 8, 2005, Hei 17 (gyō u) no. 9, 1930 HANREI JIHŌ 85 (Japan) ("Paek Rak-im v. Nagasaki") (awarding Paek funeral expenses for her deceased husband), *aff'ed* Fukuoka Kōtō Saibansho [Fukuoka H. Ct.] Sept. 26, 2005, Hei 17 (gyō ko) no. 5, 1214 HANREI TAIMUZU 168 (Japan) ("Paek Rak-im v. Nagasaki").

hibakusha.[204] But the Supreme Court, and many individual judges throughout Japan, have proven unlikely defenders for *hibakusha* rights.

Still, two points bear repetition. First, foreign and Japanese *hibakusha* alike struggle to access benefits. Hundreds of lawsuits, filed primarily by Japanese citizens, have challenged rejections by prefectural governments, or the Ministry of Health, as to *hibakusha* status or medical benefits. Moreover, the Diet has not passed comprehensive legislation to provide equal treatment for foreign *hibakusha*. Second, the rights-protective role of the judiciary in the war reparations context is limited largely to *hibakusha*. This reflects the peculiar nature of the harm suffered by *hibakusha*; the illness may emerge only decades after, or continents away from, ground zero. Courts routinely dismiss "garden-variety" war reparations claims from Japanese citizens and foreigners alike. But they have also carved out a modest role as defenders of *hibakusha*, at least vis-à-vis other branches of government. One should not overstate the judicial activism evident here. Individual judges could have done more; courts entertained several challenges to Circular 402 in the 1990s, but found the regulation legal in all of them. Still, many judges supported *hibakusha* against LDP policy preferences, a rare instance when courts "correct" state actors.

B. Forced Laborers

Japanese courts have expressed moderate support for forced laborers. Judges recognized some portion of Chinese forced laborers' claims in four of seventeen lawsuits,[205] and presided over settlements with corporate defendants in three others.[206] Korean forced laborers, by contrast, did not win a single decision in Japan,[207] though three lawsuits yielded settlements with Japanese corporations.[208] The Japanese judiciary accepts the legality of Japan's colonization of the Korean peninsula, a conclusion that recent South

204. Orr, *supra* note 158; *see also* Kurihara Toshio, Sengo Hoshō Saiban: Minkanjin tachi no Owaranai 'Sensō' [Postwar Compensation Trials: Civilians' Never-Ending 'War'] 47 (describing LDP efforts to limit *hibakusha* compensation in wake of Supreme Court's *Son Jin-du* ruling).

205. The four lawsuits are (1) Niigata Chihō Saibansho [Niigata Dist. Ct.] Mar. 26, 2004, *unpublished opinion* (Japan) ("Zhang Wenbin v. Rinko Corp. & Japan") (finding state and corporation liable for failing to discharge their duty to care); (2) Hiroshima Kōtō Saibansho [Hiroshima H. Ct.], July 15, 2003, Hei 14 (ne) no. 321, 1865 Hanrei jihō 62 (Japan) ("Lü Xuewen et al. v. Nishimatsu Construction") (holding company liable for violating its duty of care to Chinese forced laborers); (3) Fukuoka Chihō Saibansho [Fukuoka Dist. Ct.] Apr. 26. 2002, Hei 12 (wa) no. 1550, 1098 Hanrei taimuzu 267 (Japan) ("Zhang Baoheng et al. v. Mitsui Mining & Japan") (holding corporation liable, but dismissing claim against state on sovereign immunity grounds); (4) Tōkyō Chihō Saibansho, [Tokyo Dist. Ct.] July 12, 2001, Hei 8 (wa) no. 5435, 1067 Hanrei taimuzu 119 (Japan) ("Liu Lianren v. Japan"). In the fourth case (Liu Lianren), the corporation had gone bankrupt, leaving only the state to serve as a defendant. In this way, it is different than the three other lawsuits, where plaintiffs prevailed directly against the corporation.

206. For a discussion of Chinese and Korean settlement agreements, *see generally* Webster, *supra* note 20.

207. Korean forced laborers have been winning cases in the South Korean judiciary, especially after a 2012 decision from the Supreme Court opened a path to victory against Japanese multinationals.

208. Webster, *supra* note 20, at 332–59.

Korean verdicts would contest.[209] For Japanese courts, the National Mobilization Law of 1938 provided a legal basis to conscript Koreans, who were Japanese citizens at that time.[210] Courts have determined that the mobilization process was legal, even in the late stages (1944–45), when mobilization became brutally coercive.[211] By comparison, as explored below, the Chinese forced labor program enjoyed far less legitimacy.

Why, then, do courts show qualified support for forced laborers? At the most basic level, Japan tends to protect laborers vis-à-vis their employers, at least in comparison with the United States. Japan has ratified dozens of international labor conventions, providing a broader set of protections than U.S. workers can expect.[212] While the generosity of Japan's lifetime employment system has withered in the past few decades, Japanese workers still enjoy more stable employment prospects than similarly situated Americans.[213] Moreover, Japanese courts often protect workers to a higher degree than statutory law requires. The judicial doctrine of "abusive dismissal" typifies the pro-worker orientation of the Japanese judiciary.[214] While statutory law recognizes at-will dismissal, under which no explanation is required to fire an employee, Japanese judges consistently demand that employers articulate reasons for dismissing employees. Over the decades, as Professor Foote writes, judges "built a complex and sophisticated body of law providing workers strong rights against dismissal."[215] The employer must justify the decision by satisfying four conditions.[216]

How, then, do we account for the differential treatment of Chinese and Korean forced laborers? Here, the legal instruments and mobilization processes matter. As noted, Japan's 1938 Mobilization Law applied to subjects of the Japanese Empire, including those who lived in Japan, Korea, and

209. *See, e.g.*, Yeo v. New Nippon Steel Corp, 2013 Da 61381.

210. Yoshiko Nozaki, Hiromitsu Inokuchi & Kim Tae-young, *Legal Categories, Demographic Change and Japan's Korean Residents in the Long Twentieth Century*, 4 Asia-Pacific J.: Japan Focus 1, 1 (2006). They were literally "imperial subjects" (*teikoku shinmin*).

211. Scholars divide Japanese mobilization of Korean laborers into three phases: a "recruitment" period from 1939 to 1942, a "government-involvement" period from 1942 to 1944, and a "forced conscription" period from 1944 to 1945. The general idea is that the means of mobilization grew increasingly coercive over the course of the war, though some degree of coercion may have been present throughout the program. Chung Hye-Kyung, *The Forcible Drafting of Koreans during the Final Phase of Colonial Rule and the Formation of the Korean Community in Japan*, 41 Korean J. 30, 39–40 (2004).

212. The International Labor Organization indicates that Japan has ratified 49 of the major labor conventions, compared with just 14 for the United States. *See* International Labour Organization, *Normlex: Ratifications by Country*, ilo.org/dyn/normlex/en/f?p=1000:11001::::NO::: [https://perma.cc/2BYS-W4DH].

213. Takashi Araki, *Changing Employment Practices, Corporate Governance and the Role of Labor Law in Japan*, 28 Comp. Law. L. & Pol'y J. 251, 258 (2007).

214. *Id.* at 253–54.

215. Foote, *supra* note 58, at 638.

216. Araki, *supra* note 213, at 254. Employers must (a) make a business-based need for the dismissal, (b) take every possible measure to avoid dismissals, (c) select fired workers on a reasonable and objective basis, and (d) explain the necessity to the union. *Id.*

Taiwan. This made the mobilization of Korean forced laborers "legal" in the sense that it derived from properly enacted legislation.

The Chinese forced labor program, in contrast, stemmed from a 1942 Cabinet directive, not a statute. The directive provided for wages, payments to family members, nutrition, clothing, and even the onsite instruction of Chinese forced laborers.[217] Yet the actual mobilization and subsequent treatment of Chinese forced laborers, as determined by several Japanese courts, fell far short of this outline.[218]

In numerous lawsuits, Japanese judges determined that the recruitment of Chinese labor amounted to "abduction" (*rachi*).[219] Japanese soldiers would abduct Chinese civilians, after engaging in a practice called "rabbit-hunting."[220] As the Sapporo District Court wrote, "Beginning in 1941, the Japanese government and military implemented a strategy of indiscriminate coercive abduction, known as 'laborer-hunting' or 'rabbit-hunting' in North China."[221] Other times, the Japanese army sent recently captured prisoners-of-war from the Chinese battlefield to Japanese mines and factories.[222] On other occasions, judges identified the state and the corporation as "joint defendants . . . engaged in abductions through the use of fraud, intimidation and violence."[223]

Once captured, transported to Qingdao or Tanggu, and thence trafficked to the archipelago, Chinese citizens fared no better in Japan. Japanese companies exploited Chinese laborers—abusing them verbally and physically, providing very little food, shelter, or clothing, and making them work twelve to fourteen hours per day. The lawsuits exposed the corporations' abusive treatment of Chinese forced laborers in all of its brutality. One judge wrote that the Mitsui Mining Company, in conjunction with the Jap-

217. Kajin Rōmusha Naichi I'nyū ni kansuru Ken [On Transporting Chinese Workers to Japan], Kakugi Kettei [Cabinet Decision] Nov. 27, 1942 (Japan).

218. Taizō Morita, *Chūgokujin Kyōsei Renkō, Kyōsei Rōdō Soshō: Sōkatsuteki Kōsatsu* [*Chinese Forced Mobilization and Forced Labor Litigation: A Comprehensive Account*], *in* HŌTEI DE SABAKARERU NIHON NO SENSŌ SEKININ [JAPAN'S WAR RESPONSIBILITY AS ADJUDICATED IN COURT] 118, 120 (Shigeru Zukeyama ed., 2014).

219. *See, e.g.*, Yamagata Chihō Saibansho [Yamagata Dist. Ct.] Feb. 12, 2008, Hei 16 (wa) no. 397, *unpublished opinion* (Japan) ("Tan Yinchun 檀蔭春 et al. v. Sakeda Ports & Japan") (describing the September 1944 abduction of plaintiff after the Japanese Army captured his village) (Japan). Japan also sent numerous Chinese prisoners of war to Japan to perform forced labor. *See* Hiroshima Chihō Saibansho [Hiroshima Dist. Ct.] July 9, 2002, Hei 10 (wa) 52, 1110 HANREI TAIMUZU 253 (Japan) ("Song Jixiao v. Nishimatsu Construction"), slip opinion available at justice.skr.jp/judgements/54-1.pdf [https://perma.cc/7SX4-RXVE].

220. *See* Katsuoka Kanji, *Chōsenjin, Chūgokujin 'Kyōsei Renkō' Mondai no Kigen: Undōshiteki Kanten kara no Ichikōsatsu* [*Origins of the Korean and Chinese 'Forced Mobilization' Issue: Considerations from the Perspective of the Movement's History*, 3 REKISHI NINSHIKI MONDAI KENKYŪ [STUDIES ON THE ISSUE OF HISTORICAL AWARENESS] 45, 47 (2017).

221. Sapporo Chihō Saibansho [Sapporo Dist. Ct.] Mar. 23, 2004, Hei 14 (wa) no. 1717, *unpublished opinion* ("Zhao Zongren 趙宗仁 et al. v. Mitsui Mining, Japan et al.") (Japan).

222. *See* Song Jixiao v. Nishimatsu Construction, 1119 HANREI TAIMUZU 29.

223. Fukuoka Chihō Saibansho [Fukuoka Dist. Ct.] Apr. 26, 2002, Hei 12 (wa) no. 1550, 1098 HANREI TAIMUZU 267, 270 (Japan) ("Zhang Baoheng v. Mitsui Mining").

anese government, "engaged in abductions through the use of fraud, intimidation and violence, and imposed forced labor under terrible conditions. The conduct was extremely malicious."[224] The court found that Mitsui did not pay or provide adequate food to the plaintiffs, even though the Japanese government deposited over seven million yen (in 1945 terms, worth billions of yen now) in Mitsui's bank account to pay the forced laborers.[225]

The fact that many defendants were private corporations, not the Japanese government, facilitated findings for the plaintiffs.[226] Time and again, Japanese courts exculpated the government in war reparations lawsuits by invoking sovereign immunity (*kokka mutōseki*).[227] But no such privilege attaches to private actors. In other words, it is not the illegality of defendant's conduct, but rather its legal personhood, that determines whether a judge finds legal liability.

Finally, even when judges do not hold the corporate or state defendant legally liable, they express moral support for forced laborers. Judges pressured several companies to settle with forced laborers from both Korea and China, even though those same judges were unlikely to hold the corporation liable.[228] If plaintiffs' claims lacked merit, judges would not devote their limited resources to push the parties to settle.[229] Furthermore, many judges issued additional remarks (*fugen*) to underscore the credibility of the plaintiffs' claims.[230] By contrast, only one judge issued such a statement in the

224. Zhang Baoheng v. Mitsui Mining, 1098 HANREI TAIMUZU at 270, *translated in* Webster, *supra* note 113, at 207.

225. *Id.* at 270.

226. To be clear, most forced labor lawsuits targeted both the Japanese government and at least one Japanese company. In one case, plaintiffs only sued the company. *See* Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Dec. 10, 1997, Hei 7 (wa) no. 12631, 988 HANREI TAIMUZU 250 (Japan) ("Geng Zhun v. Kajima Construction") (dismissing case on timeliness grounds). In another case, a forced laborer sued the Japanese government exclusively, because the company no longer existed. *See* Liu Lianren v. Japan, 1067 HANREI TAIMUZU 119. The government was found liable, not for forced labor, but for failing to find and repatriate Liu after the war's end.

227. *See, e.g.*, Nagasaki Chihō Saibansho [Nagasaki Dist. Ct.] Dec. 2, 1997, Hei 4 (wa) no. 315, 979 HANREI TAIMUZU 204 (Japan) ("Kim Sun-gil v. Mitsubishi Heavy Industry & Japan") (dismissing claims against Japan under sovereign immunity); Hiroshima Chihō Saibansho [Hiroshima Dist. Ct.] Mar. 25, 1997, *unpublished opinion* (Japan) ("Park Chang-hwan v. Mitsubishi Heavy Industry & Japan") (dismissing claims against Japan under sovereign immunity). Courts have also invoked the defense in cases brought by comfort women, and general war damage cases (such as Unit 731).

228. *See generally* Webster, *The Price of Settlement*, *supra* note 20 (analyzing the contents and achievements of six settlement agreements between Japanese corporations and Chinese and Korean forced laborers).

229. In a court-ordered settlement between Kajima Construction and several Chinese forced laborers, Judge Niimura Masato included settlement conditions (*wakai jōkō*), and his own personal impression (*shokan*). In the latter, he wrote that the court encouraged settlement because of the difficult nature of the case. He also noted that "conventional methods of settlements" would not suffice, and so decided to pursue a "bold approach" to resolving the dispute. *See* Tokyo Kōtō Saibansho [Tokyo H. Ct.] *settled* Nov. 29, 2003, Hei 9 (ne) no. 5746 (Japan) ("Settlement Agreement between Kajima Corporation and Chinese Forced Laborers"), available at justice.skr.jp/judgements/37-2.pdf [https://perma.cc/4WY4-EFGD].

230. On at least eight occasions, judges appended addenda (*fugen*, 付言) to their judicial opinions. While not formally a part of the opinion, the addendum reveals the judge's attitude about the case, irrespective of the legal merits. A list of eight addenda, culled from eight different judicial opinions, can

comfort women lawsuits, described below. In other words, the narrow focus on plaintiff victories likely understates judicial support for forced laborers.

C. Sexual Violence

Without doubt, sexual violence is the most vigorously debated issue in Japan's war reparations movement. From 1932 to 1945, an estimated 200,000 women—mostly Korean, but also Chinese, Taiwanese, Filipina, Dutch, Vietnamese, Malaysian, and Indonesian—were forced into sexual enslavement to satisfy soldiers of the Japanese Imperial Army.[231] After the war, the Tokyo Tribunal and Batavia (Dutch) military tribunal addressed Japan's wartime sexual violence.[232] But there was no attempt to compensate the women, nor investigate the system that trafficked them across East and Southeast Asia. Indeed, the issue was suppressed or avoided for decades. In the early 1990s, however, the issue broke through, propelled first by South Korean feminist groups, and later by transnational activists and the international community.[233]

Civil litigation proved an essential part of the repertoire of contention in the comfort women reparations movement. Kim Hak-sun, the first woman to publicly identify as a "comfort woman" in 1991, filed a lawsuit against Japan just four months after her public announcement. Her lawsuit is the genesis of East Asia's contemporary war reparations movement, as well as the comfort women movement. It inspired hundreds of other comfort women to step forward, publicly acknowledge this painful period of their lives, and demand compensation from Japan in the courts of Japan, Korea, the Philippines, and the United States. Japan adjudicated ten lawsuits, each of which was appealed to the appellate and Supreme courts, yielding thirty discrete judgments.

With one exception, Japanese courts dismissed the lawsuits at all levels. For domestic law claims, judges cited defenses such as sovereign immunity, prescription (statutes of limitations), and treaty waiver.[234] For international law claims, they invoked the "classical" international law principle that only states, not individuals, can bring claims for violating international

be found in HAJIME MATSUOKA, NITCHŪ REKISHI WAKAI E NO MICHI [THE ROAD TO RECONCILIATION IN SINO-JAPANESE HISTORY] 186–191 (2014).

231. To be clear, this number is just an estimate. *See generally* SOH, *supra* note 128, at 23–24.

232. Kelly D. Askin, *Prosecuting Wartime Rape and Other Gender-Related Crimes under International Law: Extraordinary Advances, Enduring Obstacles,* 21 BERKELEY J. INT'L L. 288, 302 (2003) (noting prosecution of various Japanese men for their roles in a "series of crimes, including rape crimes, committed by persons under their authority."

233. Shin, *supra* note 9, at 113–14 (describing national, transnational and international advocacy efforts on behalf of comfort women).

234. *See* Tōkyō Chihō Saibansho [Tokyo D. Ct.] Oct. 9, 1998, Hei 5 (wa) no. 5966, 1029 HANREI TAIMUZU 96 (Japan) ("Maria Rosa Henson v. Japan") (dismissing domestic law claims on grounds of both sovereign immunity (*kokka mutōseki*) and prescription (*joseki kikan*)).

law.[235] From a comparative law perspective, this is hardly unexpected. Courts in many jurisdictions have dismissed World War II-era cases,[236] including those filed by comfort women against the Japanese government, on similar grounds.[237]

Despite these hurdles, one Japanese trial court found for the plaintiffs. In 1998, the Yamaguchi District Court—closer geographically to Seoul than Tokyo—rendered the world's first civil verdict on the issue of comfort women. Judge Chikashita Hideaki invoked the precarious theory of "legislative omission" to find against the Japanese government;[238] liability attached *not* to the fact that Japan enslaved, raped and confined the three plaintiffs during the war, but rather to the Diet's current failure to pass compensatory legislation.[239] The judge ordered the Diet to pay each plaintiff ¥300,000 (about $2,300) to compensate for the omission. By focusing on legislative *inactivity*, as opposed to the state-sponsored system of transnational trafficking and sexual exploitation, the decision obscured the issue of legal liability; the court did not attach legal liability for the comfort women system itself.[240] Instead, it provided a small damages award based on the contemporaneous Diet's failure to act, potentially opening itself up to the two major criticisms of the 1995 Asian Women's Fund: the government's refusal to

235. *Id.* Henson also asserted international violations under the Hague Convention and customary international law, which were dismissed under the classic theory.

236. *See generally* Ger. v. Italy, 2012 I.C.J. at 2 (dismissing Italian lawsuits against the German government as an infringement of Germany's sovereign immunity); Abrams v. Société Nationale des Chemins de Fer Français, 175 F. Supp. 2d 423 (E.D.N.Y. 2001) (dismissing war-era case against French national railway on sovereign immunity grounds); Princz v. Fed. Rep. Germany, 26 F.3d 1166 (D.C. Cir. 1994) (dismissing suit brought by Jewish forced laborers against German government on sovereign immunity grounds).

237. Comfort women unsuccessfully sued the Japanese government in the Philippines and United States. *See* Isabelita C. Vinuya v. Executive Secretary, G.R. No. 162230 (Sup. Ct. Phil., Apr. 28, 2010) (dismissing case as a "political question"); Hwang Geum-joo v. Japan, 332 F.3d 679 (D.C. Cir. 2003) (dismissing case brought by fifteen comfort women of various nationalities on the grounds of sovereign immunity). *But see* Pe v. Japan (holding Japanese government civilly liable for the abduction and rape of a dozen Korean comfort women).

238. According to the Supreme Court of Japan, this theory only applies "when the content of the legislation unambiguously violates the text of the Constitution." Saikō Saibansho [Sup. Ct.], First Petty Bench, Nov. 21, 1985, Shō 53 (o) no. 1240, 39 Minshū 7, 1512 (Japan). Since no law had been issued from the Diet, just a statement made by Chief Cabinet Secretary Kono Yohei, it is unlikely that a court would call this a failure to legislate.

239. Judge Chikashita interpreted a 1993 apology issued by Chief Cabinet Secretary Kono Yohei—known as the Kono Statement—as requiring the Diet to pass compensatory legislation. But Kono merely stated, "It is incumbent upon us, the Government of Japan, to continue to consider seriously, while listening to the views of learned circles, how best to express this sentiment [of apology]." There is no mention of a law, or compensation of any sort. Yohei Kono, Chief Cabinet Secretary, Statement on the Result of the Study on the Issue of "Comfort Women" (Aug. 4, 1993), https://www.awf.or.jp/e6/statement-02.html [https://perma.cc/U3ZN-EFUD].

240. *See* Kunio Aitani, *Kankokujin Jūgun 'Ianfu' Soshō o Furimaette* [*Looking Back on Korean Military Comfort Women Litigation*], *in* Hōtei de Sabakareru Nihon no Sensō Sekinin [Court Adjudication of Japan's War Responsibility] 36, 38 (Shigeru Zukeyama ed. 2014).

accept legal responsibility for the comfort women system itself and the ambiguous nature of the money given to the victims.[241]

Still, the Yamaguchi court found the comfort women system "illegal and unconstitutional" under Japanese law.[242] This might appear trifling but may prove among the decision's most lasting contributions. Japanese jurisprudence has contributed to a broader project of norm articulation, legal proscription, and human rights protection by delimiting "legality" in the context of war crimes and other human rights abuses.[243] Judicial opinions can advance legal norms, including the rule of law, even if they exculpate the defendant. But as in the forced laborer decisions analyzed above, the Yamaguchi decision was overturned on appeal. Perhaps influenced by other comfort women cases handed down between 1998 and 2001,[244] the Hiroshima High Court dismissed the case.[245] That court held that the Diet has the discretion to compensate—or *not* to compensate—casualties of the war. It then found that courts could not question the discretion that the legislature exercises.[246] If the Diet chose *not* to compensate comfort women, it was not for the judiciary to question this aspect of social policy.

Indeed, judicial reluctance to wade into politics features in many war reparations lawsuits. In another comfort women decision, Judge Takizawa Takaomi delineated the respective roles of each branch of government.[247] The Constitution empowers the Diet to pass laws.[248] That body enjoys "ex-

241. In 1995, the Japanese government put in place the "Asian Women's Fund." The anodyne appellation, like the term comfort women, detracts from the serious nature of its primary aim: to compensate sex slaves. The Fund included medical and welfare payments—drawn from state coffers—and reparations payments raised from donations by private Japanese citizens. Civil society groups, the Taiwanese and South Korean governments, and many comfort women criticized the fund, *inter alia*, for the Japanese government's continued denial of legal responsibility vis-à-vis the comfort women and refusal to compensate them directly. *See* YOSHIAKI, *supra* note 130, at 24.

242. Yamaguchi Chihō Saibansho [Yamaguchi Dist. Ct.] Apr. 27, 1998. Hei 4 (wa) no. 349, 1642 HANREI JIHŌ 24 (Japan) ("Ha Sun-nyeo et al. v. Japan"). This Article cites to the English translation. *See* Taihei Okada (trans.), *The "Comfort Women" Case: Judgment of April 27, 1998, Shimonoseki Branch, Yamaguchi Prefectural Court, Japan*, 8 PAC. RIM L. & POL'Y J. 64, 100 (1999).

243. *See* Timothy Webster, *Disaggregating Corporate Liability: Japanese Multinationals and World War II*, 56 STAN. J. INT'L L. 175 (2020) (discussing modes of liability that Japanese courts have used against corporate defendants).

244. Maria Rosa Henson v. Japan, 1029 HANREI TAIMUZU 96 (dismissing case as untimely and on sovereign immunity grounds); Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Oct. 1, 1999, *unpublished opinion* (Japan) ("Song Shin-do v. Japan"), slip opinion available at http://justice.skr.jp/judgements/28-1.pdf [https://perma.cc/NYQ6-BEU3], *aff'ed* Tōkyō Kōtō Saibansho [Tokyo H. Ct.] Nov. 30, 2000, Hei 11 (ne) no. 5333, 1741 HANREI JIHŌ 40, 46 (Japan) ("Song Shin-do v. Japan"). The trial court in *Song* offered a different interpretation of the "legislative omission" theory. According to the Tokyo District Court, this theory applies only when the text of the Japanese Constitution is unambiguously violated. Nothing in the constitution requires the state to offer compensation to war victims.

245. Hiroshima Kōtō Saibansho [Hiroshima H. Ct.] Mar. 29, 2001, Hei (ne) no. 278, 1081 HANREI TAIMUZU 91 ("Ha Sun-Nyeo 河順女 v. Japan").

246. *Id.*

247. Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Apr. 24, 2003, Hei 10 (wa) no. 24987, 1127 HANREI TAIMUZU 281 (Japan) ("Wan Aihua 萬愛花 et al. v. Japan"), slip opinion available at justice.skr.jp/judgements/58-1.pdf. *See* Wan Aihua v Japan, slip op., at 40–43.

248. *Id.* at 40.

tensive discretion" (*kōhan na sairyō*) in enacting legislation and may refuse to do so "even when there is a serious human rights violation or a pressing need for a remedy."[249] The executive branch has the power to submit bills to the Diet, but its failure to do so does not rise to "dereliction of duty" (*shokumu no ketai*) and, thus, it cannot incur legal liability.[250] The judiciary, of course, only applies duly enacted laws and regulations. In this case, "when the court applies relevant laws and regulations, the result is dismissal of plaintiffs' claims. That does not, however, amount to a denial of justice" (*saiban kyohi*).[251] In other words, separation of powers, not judicial abdication, explains the lack of compensation provided to comfort women. Still, Judge Takizawa expressed his hope that "the so-called postwar compensation issue—including this case—will be resolved through negotiations between relevant states and entities, without a judicial solution, so as to bring, directly or indirectly, some measure of relief to victims."[252]

The depiction of the judge as mechanical engineer, pulling the levers of duly enacted laws and regulations, is standard in many civil law jurisdictions.[253] Of course, whether this characterization matches reality is an open question, as is the extent to which it applies to Japan.[254] Few would accuse the Japanese judiciary of unrestrained activism, but courts sometimes go "beyond the text" in rendering their decisions. As John Haley suggests, "judges play an activist role in the development of legal norms, filling lacunae left by legislative and administrative inaction."[255] Yet they are loath to introduce entirely new remedial schemes without guidance from the political branches. Given the sensitivity of the comfort women issue, coupled with the LDP's reluctance to compensate war victims in general and acknowledge the existence of comfort women in particular, judges are unlikely to order compensation on their own initiative.

To be clear, the lack of judicial support does not mean that judges approved of the underlying conduct. In comfort women cases, judges determined that the comfort women system violated international law, such as the Prostitution Convention, the Forced Labor Convention, and customary

249. *Id.* at 40–41.

250. *Id.* at 42.

251. *Id.*

252. *Id.* at 43.

253. *See, e.g.*, John Henry Merryman & Rogelio Pérez-Perdomo, The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America 34–36 (3d ed. 2007). "The net image is of judges as operators of a machine designed and built by legislators. The judicial function is a mechanical one." *Id.* at 36.

254. Japanese judges have, on occasion, cited international human rights treaties to fill gaps in the domestic statutory framework.

255. John O. Haley, *The Japanese Judiciary: Maintaining Integrity, Autonomy, and the Public Trust*, *in* Law in Japan: A Turning Point 99 (Daniel H. Foote ed., 2007)

international law on slavery.[256] Yet, they dismissed these cases as either time-barred or barred by postwar treaties.[257]

What do these cases tell us about the Japanese judiciary? As with the forced labor cases, judges used various techniques—legal proscriptions, admonitions to the political branches, expressions of sympathy—to manifest moral support for plaintiffs. But they dismissed their legal claims. Why do Japanese judges evince so little support for victims of World War II's most serious war crimes? The answer lies at the intersection of geopolitics, geography, separation of powers, national identity, and gender relations.

First, the debate over comfort women is the most notorious and controversial of Japan's war reparations issues. The United Nations, International Labor Organization, International Commission of Jurists, among others, have called on Japan to apologize, to acknowledge the role played by state actors, and to provide adequate compensation.[258] Even close allies—Canada, the European Union, the Netherlands, the United States—have urged Japan to atone and apologize.[259] The governments of South Korea, China, and Taiwan have expressed varying degrees of disapproval with Japan's response.

Despite international condemnation, the LDP is reluctant to resolve the issues surrounding comfort women. The party line has changed over the past thirty years. Yet the instillation of doubt threads the various pronouncements—from the 1990 Diet testimony that comfort women were "prostitutes working in brothels, whose private owners took them around wherever the imperial army went,"[260] to the current formula that "no documentary

256. *See, e.g.*, Tōkyō Kōtō Saibansho [Tokyo H. Ct.] Nov. 30, 2000, Hei 11 (ne) no. 5333, 1741 HANREI JIHŌ 40, 46 ("Song Shin-do v. Japan") (finding that Japan's comfort women system violated the Forced Labor Convention and the Prostitution Convention); Tōkyō Kōtō Saibansho [Tokyo H. Ct.] Mar. 26, 2009, *unpublished opinion* (Japan) ("Chen Yapian 陳亞扁 et al. v. Japan") (finding the comfort women system violated international law), slip opinion available at http://www.ne.jp/asahi/suopei/net/3_saiban/4_ianhu/hainan/090326_kosai_hanketu.pdf [https://perma.cc/9632-2YED]. Of course, many experts—including two U.N. special rapporteurs and the International Commission of Jurists—found that the comfort women system gave rise to serious violations of international law. *See, e.g.*, Comm. On Human Rights, Sub-Comm. on Prevention of Discrimination and Prot. of Minorities, *Contemporary Forms of Slavery: Systematic Rape, Sexual Slavery and Slavery-Like Practices During Armed Conflict*, ¶ 8, U.N. Doc. E/CN.4/Sub.2/1998/13 (June 22, 1998) ("The appropriate characterizations of these acts as international crimes of slavery, crimes against humanity, genocide, grave breaches of the Geneva Conventions, war crimes or torture is also essential. These crimes have particular legal consequences as *jus cogens* crimes that are prohibited at all times and in all situations."); *see also* Comm. on Human Rights, *Report on the Mission to the Democratic People's Republic of Korea, the Republic of Korea and Japan on the Issue of Military Sexual Slavery in Wartime*, ¶ IV(c), U.N. Doc. E/CN.4/1996/53/Add.1 (Jan. 4, 1996) (calling on the Japanese government to recognize that the comfort women system "should be considered a crime against humanity, a gross violation of international humanitarian law, and a crime against peace, as well as a crime of slavery, trafficking in persons and of forced prostitution"). While it is not uncommon for a U.N. special rapporteur to denote conduct as a gross violation of international law, it is fairly rare that a domestic judge finds that his own country violated international law.

257. Chen Yapian et al. v. Japan, slip op. at 40; Shin, *supra* note 9, at 88–89.

258. *Id.* (listing organizations that have expressed concern about the Japanese government's handling of the comfort women issue).

259. *Id.*

260. This is from Diet testimony given by Ministry of Labor official Shimizu Tsutao before the Diet. *See* TAKU TAMAKI, DECONSTRUCTING JAPAN'S IMAGE OF SOUTH KOREA: IDENTITY IN FOREIGN POLICY

evidence shows forced recruitment."[261] The LDP has downplayed the violence of recruitment, minimized the dire conditions of "comfort stations," and diminished the credibility of individual comfort women.[262]

The remarks of Kobayashi Yasuo, a Japanese lawyer in war reparations cases, illuminate the politics beneath the judiciary's reserve. His comment refers specifically to the Supreme Court, but a similar dynamic of deference applies to many lower court judges, especially in Tokyo:

> The Supreme Court handed a victory to the government in each of the {comfort women} decisions. These were deliberate and politically significant choices. We may not be able to say that this Justice, or that Petty Bench, holds subjective political intentions. But they all share an objective political intention. What are the ideologies, thoughts, and beliefs of Supreme Court Justices?
>
> Since the justices were selected and appointed by the government, they probably share the same basic values as the government. At the very least, in cases delimiting the state's interest, the justices clearly weigh the state's expectations. When rendering judgments, the court is undeniably influenced by the state's basic position and understanding of the issue.[263]

Kobayashi explains the close link between Court and Cabinet, not as political pressure, but as ideological identification. The Cabinet selects the justices, from politically dependable lower-court judges, and grooms them to articulate pro-LDP positions—the "objective political intention." In other words, the Ramseyer thesis of LDP control resonates here. This is not to suggest the LDP's omnipotence. But the judiciary is unlikely to antagonize the party on such a delicate matter.[264]

One way to influence judicial decisions is to adjudicate the dispute in Tokyo, by far the most pro-defendant venue in war reparations cases. Invari-

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122, 128 (2010). The last two Prime Ministers (Suga and Abe, respectively) have both stated that "no documentary evidence" shows that comfort women were coerced. *See* Gi Jae Han, *An Uncomfortable Past*, Colum. Pol. Rev. (Mar. 23, 2015), www.cpreview.org/blog/2015/03/an-uncomfortable-past [https://perma.cc/J43D-P4SX]. Suga has also called for the "revision" of the Kono Statement, though he later backed down from this position.

261. Norimitsu Onishi, *Abe Rejects Japan's Files on War Sex*, N.Y. Times (Mar. 2, 2007), https://www.nytimes.com/2007/03/02/world/asia/02japan.html [https://perma.cc/G7HF-KQDM]. The article quotes then-Prime Minister Abe Shinzo's remarks: "There is no evidence to prove there was coercion, nothing to support it." *Id.*

262. Nishino, *supra* note 129, at 40–41 (breaking the denialist position down into four arguments).

263. *See* Kobayashi Yasuo, *Chūgokujin Kyōsei Renkō, Kyōsei Rōdō, 'Jūgun Ianfu:' Saikōsai Hanketsu ni Miru Saibankan no Kihan Ishiki to Sono Keifu* [*Chinese Forced Mobilization, Forced Labor, 'Military Comfort Women:' The Ideology and Genealogy of the Justices in Light of the Supreme Court Verdicts*], *in* Hōtei de Sabakareru Nihon no Sensō Sekinin [Japan's War Responsibility as Adjudicated in Court] 107, 112 (Zukeyama Shigeru ed., 2014).

264. *See generally* Miyazawa, *supra* note 42, at 60 (noting the "stable control of the political process," including judicial appointments, "by the conservative Liberal Democratic Party").

ably, plaintiffs that prevailed had selected venues other than Tokyo. *Hibakusha* enjoyed successes in Hiroshima, Nagasaki, and Osaka,[265] while forced laborers won their suits in Fukuoka, Hiroshima, and Niigata.[266] By contrast, Tokyo ruled against plaintiffs in nine out of nine comfort women cases litigated in that city, nine out of nine veterans cases, and seven out of eight wartime debt cases.[267] The only comfort women case heard *outside* of the capital was the Yamaguchi decision, discussed above. Even there, the government moved to transfer (*isō*) the case to Tokyo, but was unsuccessful.[268]

Tokyo is, among other features, the seat of Japan's government.[269] On at least a dozen occasions, leftwing legislators introduced bills to address "victims of wartime sexual coercion,"[270] which would provide official apologies, monetary payments, and public education.[271] But these efforts failed due to LDP opposition, leading to floor debate just once.[272] The importance of legislation in war reparations cannot be underestimated. A suite of laws to support *hibakusha*, as well as the absence of nationality requirements therein, proved essential to the judicial success of *hibakusha*.[273] By contrast, courts strictly construed the nationality requirements of the Relief Act and the Pension Act to deny benefits to Taiwanese and Korean soldiers.[274] Without a comfort women law enacted by the Diet, the judiciary has largely avoided the compensation issue.[275]

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265. *See supra* Part III.A.

266. *See supra* Part III.B.

267. For additional details about each category of lawsuit, see the Appendix.

268. The government moved to change venues, from Yamaguchi District Court to Tokyo District Court, in April 1993. Korean plaintiffs chose Yamaguchi allegedly because it is close to Busan, South Korea, where most of them lived. Traveling to Yamaguchi would be much easier for the elderly plaintiffs than traveling to Tokyo. *See* Hanafusa Emiko, *Kuni no Tōkyō Chisai e no Isō Mōshidate ni Tsuyoi Ikidōri* [*Strong Resentment at State's Motion to Transfer to Tokyo District Court*], KANPU SHIEN NYŪSU [KANPU SUPPORT GROUP NEWS], Apr. 30, 1993, kanpusaiban.bit.ph/pdfbannews/No.1%20(1993.4.30).pdf [https://perma.cc/BL9C-YXRT]. As in many war reparations lawsuits, a trial support group (*shienkai*) of Japanese citizens formed to support this lawsuit. The group published over sixty "newsletters" between 1993 and 2013, detailing the trial proceedings. *See generally* Kanpu Saiban o Shien suru Kai [Trial Support Group for Kanpu Trial], Kanpu Saiban Nyūsu Zengō [All Issues of Kanpu Trial News], kanpusaiban.bit.ph/pdfbannews.htm [https://perma.cc/PUP6-8RDC].

269. Ramseyer and Rasmusen, in explaining the politically conservative nature of Japanese judges, note that the "majority party leaders choose the Cabinet; the Cabinet chooses the Supreme Court; the Supreme Court supervises the Secretariat; and the Secretariat decides which judge works where for how long and at what pay." J. Mark Ramseyer & Eric B. Rasmusen, *Skewed Incentives: Paying for Politics as a Japanese Judge*, 83 JUDICATURE 190, 195 (2000).

270. A list of bills, dates of introduction, and sponsors, from both the House of Representatives (lower house) and House of Councilors (upper house) can be found on the Asian Women Fund's website. *Attempts at Legislation in the Japanese Diet*, Digital Museum: The Comfort Women Issue and the Asian Women's Fund, awf.or.jp/e4/legislation.htm (last accessed Nov. 21, 2021).

271. *See* Promotion of Resolution for Issues Concerning Victims of Wartime Sexual Coercion Act (Bill), House of Councilors Session 153, Bill 4 (2001).

272. *Id.*

273. *See, e.g.*, Son Jin-du v. Fukuoka, 306 HANREI TAIMUZU 173.

274. *See, e.g.*, Deng Sheng v. Japan, 1032 HANREI JIHŌ 31; Kang Bu-jung v. Osaka, 1718 HANREI JIHŌ 44.

275. Aitani, *supra* note 240, at 43.

The lack of legislation may also stem from the fact that the Diet, like the judiciary, is staffed primarily by Japanese men.[276] Moreover, the comfort women cases pit foreign women against the Japanese government about potentially embarrassing Japanese war crimes, putting both national identity and gender relations into the mix. A male Japanese judge may not openly identify with the Japanese soldiers that used "comfort stations," but he shares a common language, culture, and, in many cases, gender identity, with those who did. It would be reductive in the extreme to collapse judges and soldiers into a common category. But one cannot overlook the fact that Japanese judges have more in common with the soldiers that frequented "comfort stations," than the Chinese, Korean, or Taiwanese women forced to reside there.[277]

Nor can we ignore the fact that law historically gave women short shrift, especially in cases of sexual violence. Catherine MacKinnon writes that sex crimes have "never been taken seriously before domestically or internationally, at least on any large scale."[278] She goes on:

> It is as if there is a tacit agreement underlying enforcement in most jurisdictions to look the other way as women and children and sometimes men are sexually violated: to minimize, trivialize, denigrate, shame and silence the victims, to destroy their credibility legally and socially, and further shatter their psyches and dignity, so these abuses can continue unredressed and unimpeded.[279]

These comments certainly apply to the situation of comfort women. Until the 1990s, wartime rape was rarely prosecuted. Under prevailing legal theories, rape was not as an offense against women, but an attack on "family honour," or men's property rights.[280] Only with the international tribunals for Rwanda and Yugoslavia did rape "come into its own," both as a war crime,[281] and a serious violation of women's human rights.[282] The lack of a

276. The Japan Federation of Bar Associations published statistics showing that for each year between 2005 and 2019, between 73% and 84% of total judges were male, suggesting a sizeable gender imbalance. *See* Nichibenren [Japan Federation of Bar Associations], *Saibankansū, Kensatsukansū, Bengoshisū no Suii* [*Changes in the Number of Judges, Prosecutors and Attorneys*], https://www.nichibenren.or.jp/library/pdf/document/statistics/2019/1-3-4_2019.pdf [https://perma.cc/6DLJ-WNH6]. Note that a judge's gender does not necessarily make her more likely to find in favor of a female plaintiff. But a judge who has been sexually harassed (or worse) may show more empathy.

277. Issues of gender bias in the law are legion and include the underrepresentation of women in the courtroom and on the bench, treatment of men versus women, perception of evidence proffered by men versus women, the proper interpretation of that evidence, and sexism in the laws themselves.

278. Catherine A. MacKinnon, *Creating International Law: Gender as Leading Edge*, 36 Harv. J.L. & Gender 105, 113 (2012).

279. *Id.* at 113.

280. The Hague Regulations' protection of "family honor and rights" has been construed as a prohibition on rape, but only rarely was it so interpreted. Hague Regulations concerning the Laws and Customs of War on Land art. 46, Oct. 18, 1907, U.S.T.S. 539.

281. Theodor Meron, *Rape as a Crime Under International Humanitarian Law*, 87 Am. J. Int'l L. 424, 428 (1993).

developed jurisprudence on wartime sexual violence did not make the Japanese judges' jobs any easier.

D. Other Cases

It is worth mentioning, albeit briefly, the lack of judicial support for soldiers, wartime creditors, and civilians (that is, general war damage). Given the judiciary's reluctance to allocate reparations from the bench, and its deference to the political branches on policy matters, this is not an unexpected result.

Regarding the lack of support for veterans, Japanese judges are enforcing the law as it has been written. Throughout the postwar period, Japan passed a spate of compensation laws for veterans, families of soldiers killed in action, citizens stranded in foreign countries (such as the Soviet Union), and those who returned to Japan years after the war's end.[283] In each enactment, the Diet included "citizenship clauses," limiting benefits to Japanese citizens.[284] Since Japan denationalized its former colonial subjects in Korea and Taiwan in 1952, plaintiffs from those countries are ineligible for the benefits. In denying claims from Taiwanese or Korean veterans, judges are construing literally the language of the relevant statute. Nevertheless, judges have expressed their views about the underlying inequities of excluding Taiwanese[285] and Korean[286] veterans from these benefits.

Wartime creditors have also attracted little help from Japanese judges. They were among the first transnational litigants in Asia's war compensation movement, filing several lawsuits in the 1970s. Their credits stem from the large number of debt instruments that Japan issued to finance the war: bonds, scrip (military currency), and paper currency.[287] After the war, Japan nullified the scrip, erasing enormous quantities of wealth held by people in

282. Karen Engle, *Feminism and its (Dis)contents: Criminalizing Wartime Rape in Bosnia and Herzegovina,* 99 AM. J. INT'L L. 778, 779 (2005).

283. Tanaka, *supra* note 24, at 69 (listing laws, the years they were passed, and approximate expenditures).

284. *Id.* at 10.

285. In the Taiwan veterans case, Tokyo High Court judge Kondō Hirotake wrote that "plaintiffs may be in circumstances similar to that of Japanese soldiers, but they are clearly at a severe disadvantage by comparison. More than forty years have passed since they were injured or killed. We expect the state actors—striving to increase international confidence—will overcome the diplomatic, financial and legal-technical difficulties and erase these advantages as quickly as possible." Tōkyō Kōtō Saibansho [Tokyo H. Ct.] Aug. 26, 1985, Shō 57 (ne) no. 611, 1163 HANREI JIHŌ 41, 52 (Japan) ("Deng Sheng 鄧盛 et al. v. Japan") (Japan).

286. *See* Ōsaka Kōtō Saibansho [Osaka High Ct.] Sept. 19, 1999, *unpublished opinion* (Japan) ("Jeong Sang-geun 鄭商根 v. Ministry of Health & State"), slip opinion available at courts.go.jp/app/files/hanrei_jp/021/016021_hanrei.pdf (last accessed Nov. 21, 2021). Judge Iseki Masahiro acknowledged that any measures that Japan should take for former Korean military personnel were a "matter of legislative policy," something that falls within the Diet's discretion. Nevertheless, he also noted that it was a "terrible situation where plaintiffs have been excluded from compensation for so many years, while their financial losses have piled up." He then urged the Diet to consider new legislation.

287. *See supra* note 132 and accompanying text.

East and Southeast Asia.[288] This nullification provided the legal basis to dismiss lawsuits to redeem scrip by plaintiffs from Taiwan and Hong Kong.[289]

The Japanese judiciary did, however, find in favor of a debt-holder in one instance.[290] In the mid-1970s, Taiwanese war reparations activist Hong Wu Chen-Chih gathered together a number of financial instruments that she and her fellow Taiwanese compatriots still possessed from the war. She and fellow activist Chen Shanggui then launched a litigation campaign in the Tokyo District Court to redeem these debts.[291] The court certainly could have dismissed Hong's suit against a Japanese bank as time-barred, as other decisions had.[292] Instead, Judge Uetani Kamiya ordered the bank to pay Hong face value for the bonds, but not interest or inflation.[293] He called out the Japanese government for failing to negotiate the "special arrangements" it pledged to complete with Taiwan.[294] He then rejected the bank's statute of limitations defense on grounds of good faith: since Hong could not redeem the bonds while living in Taiwan, and the defendant "probably would not have redeemed the bonds" even if she tried, the judge ordered the bank to pay Hong ¥1,500 (about $7.50 in 1980). The judgment appeared to be a reaction against the Japanese government: first, for promising to negotiate "special arrangements" per the Taipei Treaty; second, for failing to complete those negotiations; and third, for voiding the treaty in 1972, when Japan recognized China and withdrew diplomatic recognition of Taiwan. However, lest we focus too much attention on the one "winning" case, it is important to remember that plaintiffs failed in all other wartime debt cases.

Finally, judges have rejected general war damages claims from Korean and Chinese civilians. In light of precedents rejecting similar claims from Japanese civilians,[295] judicial indifference to Korean or Chinese plaintiffs' claims is not unexpected. Of course, these plaintiffs are not Japanese, mak-

288. *See Court Rejects H.K. Residents' Claims on Military Yen,* KYODO NEWS, June 17, 1999 (indicating that Japan's Ministry of Finance, under instructions from the Allied powers, nullified all military currency in September, 1945).

289. *See* Ng Yat-hing v. Japan (unpublished); Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Oct. 31, 1980, Shō 52 (wa) no. 12076, 425 HANREI TAIMUZU 56 (Japan) ("Hong Wu Chen-chih v. Dai'ichi Kanygyo Bank").

290. Hong Wu Chen-chih v. Dai'ichi Kanygyo Bank, 425 HANREI TAIMUZU 56. The case was partially translated in 25 JAPAN ANN. INT'L L. 214 (1982).

291. For more on the Taiwan reparations movement of the 1970s and 1980s, *see* Timothy Webster, *The Taiwanese Roots of East Asia's War Reparations Movement* 17–21 (on file with author).

292. *See, e.g.,* Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Mar. 25, 1980, Shō 52 (wa) no.12086, 974 HANREI JIHŌ 102 (Japan) ("Chen Shanggui 陳上貴 v. Japan").

293. Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Oct. 31, 1980, Shō 52 (wa) no. 12076, 425 HANREI TAIMUZU 56 (Japan) ("Hong Wu Chen-chih v. Dai'ichi Kanygyo Bank"); *see also* 25 JAPAN ANN. INT'L L. 220 (1982).

294. *Id.* As noted above in footnote 84, Japan and Taiwan pledged to negotiate special arrangements to dispose of outstanding property claims of Taiwanese citizens.

295. Fujimoto Akiyama v. Japan, 22 SAIKŌ SAIBANSHO MINJI HANREISHO [MINSHŪ] 12 (noting that "all Japanese were obliged to endure and tolerate sacrifices of life, limb or property of one sort or another").

ing the "shared sacrifice" theme inherent in the endurance theory (*juninron*) less applicable. In these cases, judges generally cite the postwar treaties with China or Korea to dismiss the plaintiffs' claims. Simply put, any claim that a Chinese or Korean plaintiff might once have had was extinguished by the respective treaty with Japan.[296]

Japanese courts have maintained a respectful distance from transnational war reparations litigation. Judges tend to view the reparations issue as belonging exclusively to the political branches: the executive is in charge of negotiating treaties with other states, while the legislature ratifies those treaties and enacts compensation laws to make whole *certain* victims. In Japan, with the exception of *hibakusha*, compensation laws exclusively benefit Japanese citizens. Judges have dismissed challenges brought by former Japanese citizens—such as Korean and Taiwanese plaintiffs—as outside the remit of the Japanese judiciary. Nevertheless, judges have used judicial tools to criticize Japan's exclusion of its former colonial subjects.

Conclusion

Having surveyed five decades of transnational war reparations litigation in Japan, we briefly summarize the variegated roles played by Japanese courts. First, judges exhibit different degrees of support for war reparations plaintiff. Consistent judicial support for *hibakusha* contrasts with the meager support provided to victims such as comfort women and forced laborers. Several reasons explain the judicial solicitude for *hibakusha*. The massive scale and indiscriminate destruction of the atomic bombs, coupled with the excruciating anxiety felt by many *hibakusha*, created a moral imperative to provide assistance. America's absence in attending to the human, medical, and social consequences of the bombing meant that the Japanese government alone would have to deal with the human toll, which it has done through a series of laws and regulations.[297] A key feature of these enactments is the absence of nationality provisions, an omission that the Japanese judiciary has found significant on numerous occasions. The rights-protective juris-

296. Tōkyō Chihō Saibansho [Tokyo Dist. Ct.] Dec. 21, 1998, *unpublished opinion* (Japan) ("Lee Geum-Ju et al. v. Japan"), slip opinion available at justice.skr.jp/judgements/29-1.pdf [https://perma.cc/K8TX-UVTR], 70 (dismissing Korean plaintiffs' claims as extinguished by 1965 Basic Treaty); *see also* Wang Zixiong et al. v. Japan (unpublished) (dismissing Chinese plaintiffs' claims as waived by 1972 Joint Communique).

297. Scholars and judges agree that the bombing of Hiroshima violated international law and constituted a war crime. *See* Shimoda Ryūichi v. Japan, 355 Hanrei jihō 17 (U.S. bombing violated international law); *see also* Michael Walzer, Just and Unjust Wars 263 (1979) ("To use the atomic bomb, to kill and terrorize civilians, without even attempting [an experiment to show the Japanese people its destructive power] was a double crime."). The International Court of Justice, in its *Nuclear Weapons Advisory Opinion*, wrote that the "threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law." Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, ¶ 105 (July 8).

prudence that Japanese courts developed for Japanese *hibakusha* has had a spillover effect on all *hibakusha*—whether they are ethnic Korean or ethnic Japanese living in the United States and Brazil. Japanese judges—including Supreme Court justices—have repeatedly construed *hibakusha* relief laws to reach foreign *hibakusha*, creating the "universal *hibakusha*" in the process.

This provides a second explanation. As it has since the early 1950s, the Diet remains the primary architect of war reparations in Japan. Japanese courts are known for their deference to the legislature across a range of social and political issues. If the Diet passes a law, courts will strictly construe the statutory text, including eligibility provisions.[298] But if the Diet does not pass a law, courts consider this lacuna to be within the legislature's discretion; the one comfort woman decision that found a "legislative omission" and then ordered the Diet to enact "special legislation" was reversed on appeal.[299] Of course, it is not simply a matter of a law, or its absence. The results of *hibakusha* cases turn in part on the ambiguity of law—one that provides certain benefits, but does not specify the beneficiaries. Judges have liberally construed this ambiguity, permitting foreign *hibakusha* to enjoy the social services Japan has made available to its own citizens for half a century.

The Diet brings into focus a third consideration: the role of the Liberal Democratic Party. Like many nationalist parties, the LDP amplifies the glories of national history, and minimizes the less savory episodes: Japan's wartime aggression, imperialism, and exploitation of colonized subjects.[300] In recent decades, the LDP has doubled down on this campaign, creating its own caucus within the Diet, and collaborating with organizations such as the Textbook Reform Society[301] and the Liberal Historical View Study Group.[302] Together, as Lisa Yoneyama argues, these groups "argue that Japan's war atrocities and colonial exploitation should be not singled out, and that those who ceaselessly call attention to Japan's dishonorable past have

298. This is by no means unique to the Japanese judiciary. However, the UN Human Rights Committee has found that nationality-based discrimination in accessing pensions and social benefits constitutes illegal discrimination under the International Convention on Civil and Political Rights. *See* Ibrahima Gueye et al. v. France, U.N. Human Rights Committee Comm'n, U.N. Doc. CCPR/C/35/D/196/1985 (Apr. 6, 1989).

299. Hiroshima Kōtō Saibansho [Hiroshima H. Ct.] Mar. 29, 2001, Hei 10 (ne) no. 278, Hei 11 (ne) no. 257, 1081 HANREI TAIMUZU 91 (Japan) ("Ha Sun-nyeo et al. v. Japan") (overturning trial court decision that ordered Diet to pass special legislation, pursuant to Kono Statement, on behalf of Korean comfort women).

300. These efforts have been carried by individuals, as well as the Group of Concerned Diet Members for Japan's Future and History Textbooks [Nihon no Zento to Rekishi Kyōkasho o Kangaeru Giin Kai]. Formed in 1997, and headed by then-Representative Abe Shinzo, the group has called for, among other things, the retraction of the Kono Statement. *See* Narusawa Muneo, *Abe Shinzo: Japan's New Prime Minister a Far-Right Denier of History*, 11 ASIA-PAC. J. 1 (2013).

301. The Japan Society for History Textbook Reform [Atarashii Kyōkasho o Tsukuru Kai] was founded in 1996 to promote a less "masochistic," and more "noble," interpretation of Japanese history.

302. The group calls itself the "Association for Advancement of Unbiased View of History" [Jiyūshugi Shikan Kenkyūkai] in English. It was founded in 1995 to promote a similarly tendentious view of Japanese history.

marred the nation's image."[303] The LDP tends to gloss over Japan's worst wartime atrocities, such as the sexual violence against comfort women, while trying to extinguish compensation claims from *hibakusha*, especially when they are foreign. On the one hand, the abundance of cases *exculpating* the state suggests that the LDP retains a tight grip on the judiciary. On the other hand, this requires qualification: dozens of judgments favoring *foreign hibakusha* delimit the power of the LDP. Moreover, the small number of cases finding for Korean comfort women, Chinese forced laborers, and Taiwanese creditors hints at a judiciary potentially more independent than might be assumed.

Seventy-five years after the end of World War II, questions over liability remain contested around the world. Courts play an important role in arriving at the truth, crediting witness testimony, and determining the legality of the wartime past under domestic and international standards. Of course, concerns such as separation of powers and diplomatic relations caution against overactive judicial involvement. Compensation, education, memorialization and apology are probably best left to the political branches, which possess the resources and legitimacy to advance such efforts. Viewed in this light, Japan's mild judicial activism avoids both the dismissiveness seen in many U.S. lawsuits and the turmoil occasioned by the South Korean Supreme Court.

303. Lisa Yoneyama, Cold War Ruins: Transpacific Critique of American Justice and Japanese War Crimes 112 (2016).

Appendix: Index of Cases

The following list compiles eighty-nine (89) lawsuits filed, and adjudicated at least in the first instance, in Japan. It draws on lists formed by Japanese scholars, lawyers, and activists, but also adds several lawsuits filed by *hibakusha* currently living in the Western Hemisphere. The cases are arranged chronologically by the date of the trial court opinion, not the date on which the case was filed.

In Japan, it is common to refer to cases by their general content (Taiwan BC War Criminal Case, Hainan Comfort Women case), not the parties' names, as in the United States. Plaintiffs' names are generally omitted when the case is published in a Japanese reporter. And even when Japanese attorneys post the opinion on websites, they usually blacken out plaintiffs' names each time they are mentioned in the opinion. Yet in most cases, I tracked down the names of plaintiffs by consulting reports in Japanese, Chinese, and Korean media; academic studies; discussion boards online; and other sources.

Still, many lawsuits remain obscure, both in Japan and the plaintiff's country of origin (Taiwan, China, Korea, Brazil, etc.). For plaintiffs of Asian descent, I provide both the Chinese characters and the Romanized spelling—using pinyin system for Mainland PRC plaintiffs, Wade-Giles for Taiwanese plaintiffs, Yale Cantonese for Hong Kong plaintiffs, and modified McCune-Reischauer for Korean plaintiffs. This list will assist, and hopefully prod, other scholars to conduct further research in these cases. Where possible, I include the Japanese legal reporter (for example Hanrei taimuzu, Hanrei jihō) that published the opinion. I otherwise write NP for "not published."

Successful lawsuits have been marked with an asterisk. If there is no asterisk, readers may assume the plaintiffs lost, including at the appellate level. Finally, when possible, each case also references the online list maintained by Japanese lawyer Yamamoto Seita, with the letter Y (for Yamamoto) and the number that he assigned to the particular case. His list appears in Japanese, available at http://justice.skr.jp/souran/souran-jp-pdf.pdf [https://perma.cc/8TL2-HPP9], and in Korean, available at justice.skr.jp/souran/ksouran-jp-web.htm [https://perma.cc/EZA9-L2AE].

A. Forced Labor

1. *Korean Forced Labor Decisions (0/11 victories)*

1. Lee Jong-suk 李鐘淑 v. Fujikoshi (Y23)
   - Toyama District Court, July 24, 1996 (941 Hanrei taimuzu 183)
   - Nagoya High Court, December 21, 1998 (1046 Hanrei taimuzu 161)
   - Supreme Court, July 11, 2000 (Settlement agreement)

2. Kim Gyeong-seok 金景錫 v. Japan (Y18) cf. Soldiers #4
   - Tokyo District Court, November 22, 1996 (NP)
   - Tokyo High Court, March 28, 2002 (NP)
   - Supreme Court, March 28, 2003 (NP)

3. Kim Gyeong-seok 金景錫 v. Nihon Kōkan (Y15)
   - Tokyo District Court, May 26, 1997 (960 HANREI TAIMUZU 220)
   - Tokyo High Court, April 6, 1999 (Settlement agreement)

4. Kim Sun-gil 金順吉 v. Mitsubishi Heavy Industry & Japan (Y19)
   - Nagasaki District Court, December 2, 1997 (979 HANREI TAIMUZU 204)
   - Fukuoka High Court, October 1, 1999 (1019 HANREI TAIMUZU 155)
   - Supreme Court, March 28, 2003 (NP)

5. Park Chang-hwan 朴昌煥 v. Mitsubishi Heavy Industries & Japan (Y41) cf. Hibakusha #3
   - Hiroshima District Court, March 25, 1999 (NP)
   - Hiroshima High Court, January 19, 2005 (1217 HANREI TAIMUZU 157)
   - Supreme Court, November 1, 2007 (NP)

6. Cho Gap-sun 曺甲順 & Woo Jeong-sun 禹貞順 v. Japan (Y47)
   - Shizuoka District Court, January 27, 2000 (1067 HANREI TAIMUZU 173)
   - Tokyo High Court, January 15, 2002 (NP)
   - Supreme Court, March 27, 2003 (NP)

7. Shin Cheon-su 申千洙 & Yeo Un-taek 呂運沢 v. Nippon Steel & Japan (Y53)
   - Osaka District Court, March 27, 2001 (NP)
   - Osaka High Court, November 19, 2002 (NP)
   - Supreme Court, October 9, 2003 (NP)

8. Cho Yeong-sik 趙英植 et al. v. Nippon Steel & Japan (Y40)
   - September 1999 (Settlement agreement with Nippon Steel, NP)
   - Tokyo District Court, March 26, 2003 (against government, NP)
   - Tokyo High Court, September 29, 2005 (against government, NP)
   - Supreme Court, July 29, 2007 (against government, NP)

9. Hong Yong-seon 洪湧善 et al. v. Nippon Steel (Y66)
   - Tokyo District Court, October 15, 2004 (NP)
   - Tokyo High Court, December 14, 2005 (NP)
   - Supreme Court, January 29, 2007 (NP)

10. Yang Geum-deok 梁錦德 et al. v. Mitsubishi Heavy Industries & Japan (Y59)
    - Nagoya District Court, February 24, 2005 (1210 HANREI TAIMUZU 186)
    - Nagoya High Court, September 29, 2004 (1894 HANREI JIHŌ 44)
    - Supreme Court, November, 11, 2008 (NP)

11. Lee Bok-sil 李福実 et al. v. Fujikoshi & Japan (Y75)
    - Toyama District Court, September 19, 2007 (NP)
    - Nagoya High Court, March 8, 2010 (NP)
    - Supreme Court, October 24, 2011 (NP)

2. *Chinese Forced Labor Decisions (4/16 victories)*

1. Geng Zhun 耿諄 v. Kajima Construction Company (Y37)
    - Tokyo District Court, December 10, 1997 (988 HANREI TAIMUZU 250)
    - Tokyo High Court, November 29, 2000 (Settlement agreement)

2. Liu Lianren 劉連仁 v. Japan (Y43)
    - Tokyo District Court, July 12, 2001 (1067 HANREI TAIMUZU 119)*
    - Tokyo High Court, June 23, 2005 (1904 HANREI JIHŌ 83)
    - Supreme Court, April 27, 2007

3. Zhang Baoheng 張寶恆 et al. v. Mitsui Mining & Japan (Y67)
    - Fukuoka District Court, April 26, 2002 (1098 HANREI TAIMUZU 267)*
    - Fukuoka High Court, May 24, 2004 (1875 HANREI JIHŌ 62)
    - Supreme Court, April 27, 2007 (NP)

4. Lü Xuewen 呂學文 et al. v. Nishimatsu Construction (Y54)
    - Hiroshima District Court, July 9, 2002 (1110 HANREI TAIMUZU 253)
    - Hiroshima High Court, July 9, 2004 (1865 HANREI JIHŌ 62)*
    - Supreme Court, April 27, 2007 (1240 HANREI TAIMUZU 121)
    - Settlement, October 27, 2009

5. Liu Zonggen 劉宗根 et al. v. Nippon Yakin Co.日本冶金工業 & Japan (Y56)
    - Kyoto District Court, January 15, 2003 (1822 HANREI JIHŌ 83)
    - Osaka High Court, September 29, 2004 (Settlement with Nippon Yakin)
    - Osaka High Court, September 27, 2006 (vs. state, NP)
    - Supreme Court, June 12, 2007 (vs. state, NP)

6. Han Yinglin 韓英林 et al. v. Hazama, Japan & 10 Companies (Y49)
   - Tokyo District Court, March 11, 2003 (NP)
   - Tokyo High Court, March 16, 2006 (NP)
   - Supreme Court, June 15, 2007 (NP)

7. Zhao Zongren 趙宗仁 et al. v. Mitsui Mining, Japan et al. (Y64)
   - Sapporo District Court, March 23, 2004 (NP)
   - Sapporo High Court, June 28, 2007 (NP)
   - Supreme Court, July 8, 2008 (NP)

8. Zhang Wenbin 張文彬 et al. v. Rinko Corporation & Japan (Y63)
   - Niigata District Court, March 26, 2004 (NP)*
   - Tokyo High Court, March 14, 2007 (NP)
   - Supreme Court, July 4, 2008 (NP)

9. Cang Xinshu 蒼欣書 et al. v. Kajima Construction, Japan et al. (Y52)
   - Nagano District Court, March 10, 2006 (1931 HANREI JIHŌ 109)
   - Tokyo High Court, September 17, 2009 (NP)
   - Supreme Court, February 24, 2011 (NP)

10. Li Shu 李述 et al. v. Mitsui Mining, Mitsubishi Materials & Japan (Y73)
    - Fukuoka District Court, March 29, 2006 (NP)
    - Fukuoka High Court, March 9, 2009 (NP)
    - Supreme Court, December 24, 2009 (NP)

11. Shao Changshui 邵長水 et al. v. Mitsubishi Materials & Japan (Y79)
    - Miyazaki District Court, March 26, 2007 (NP)
    - Fukuoka High Court, March 27, 2009 (NP)
    - Supreme Court, May 27, 2010 (NP)

12. Li Qingyun 李慶雲 et al. v. Mitsubishi Materials, Nagasaki Prefecture & Japan (Y76)
    - Nagasaki District Court, March 27, 2007 (NP)
    - Fukuoka High Court, October 20, 2008 (NP)
    - Supreme Court, December 24, 2009 (NP)

13. Wang Junfang 王俊芳 et al. v. Kajima Construction Comp., Aoyama Assets & Japan (Y72)
    - Maebashi District Court, August 29, 2007 (NP)
    - Tokyo High Court, February 27, 2010 (NP)
    - Supreme Court, March 1, 2011 (NP)

14. Tan Yinchun 檀蔭春 et al. v. Sakeda Ports & Japan (Y81)
    - Yamagata District Court, February 12, 2008 (NP)
    - Sendai High Court, November 20, 2009 (NP)

- Supreme Court, February 18, 2011 (NP)

15. Ma Dezhi 馬得志 et al. v. Nanao Land & Sea Transport (Y85)
    - Kanazawa District Court, October 31, 2008 (NP)
    - Nagoya High Court, March 10, 2010 (NP)
    - Supreme Court, July 15, 2010 (NP)

16. Li Tiechui 李鐵垂 et al. v. Japan (Y100)
    - Osaka District Court, January 29, 2019 (NP)
    - Osaka High Court, February 4, 2020 (NP)
    - Supreme Court, March 24, 2021

B. Hibakusha *(14/20 victories)*

1. Son Jin-du 孫振斗 v. Fukuoka Governor (Y1)
    - Fukuoka District Court, March 30, 1974 (306 Hanrei taimuzu 173)*
    - Fukuoka High Court, July 7, 1975 (325 Hanrei taimuzu 175)*
    - Supreme Court, March 30, 1978 (362 Hanrei taimuzu 196)*

2. Kim Sun-gil 金順吉 v. Japan & Mitsubishi Heavy Industry (Y19)
    - Nagasaki District Court, December 2, 1997 (979 Hanrei taimuzu 204)
    - Fukuoka High Court, October 1, 1999 (1019 Hanrei taimuzu 155)
    - Supreme Court, March 28, 2003

3. Park Chang-hwan 朴昌煥 v. Mitsubishi Heavy Industry & Japan (Y41) cf. Forced Labor #5
    - Hiroshima District Court, March 25, 1999 (NP)
    - Hiroshima High Court, January 19, 2005 (1217 Hanrei taimuzu 157)*
    - Supreme Court, November 1, 2007 (NP)*

4. Gwak Gwi-hun 郭貴勳 v. Osaka Mayor & Japan (Y57)
    - Osaka District Court, June 1, 2001 (1084 Hanrei taimuzu 85)*
    - Osaka High Court, December 5, 2002 (1111 Hanrei taimuzu 194)*

5. Lee Gang-neung 李康寧 v. Nagasaki Mayor & Japan (Y61)
    - Nagasaki District Court, December 26, 2001 (1113 Hanrei taimuzu 134)*
    - Fukuoka High Court, February 7, 2003 (1119 Hanrei taimuzu 118)*
    - Supreme Court, June 13, 2006 (1213 Hanrei taimuzu 79)

6. Lee Jae-seok 李在錫 v. Osaka Mayor & Japan (Y70)
   - Osaka District Court, March 20, 2003 (NP)*

7. Choe Gye-cheol 崔季澈 v. Nagasaki Mayor (Y77)
   - Nagasaki District Court, September 28, 2004 (1228 HANREI TAIMUZU 150)
   - Fukuoka High Court, September 26, 2005 (1228 HANREI TAIMUZU 150)

8. Morita Takashi 森田隆 v. Hiroshima Mayor (Japanese-Brazilian hibakusha)
   - Hiroshima District Court, October 14, 2004 (NP)
   - Hiroshima High Court, February 8, 2006 (NP)*
   - Supreme Court, February 6, 2007 (1237 HANREI TAIMUZU 164)*

9. Heirs of Choe Gye-cheol 崔季澈 v. Nagasaki Mayor (funeral costs) (Y83)
   - Nagasaki District Court, March 8, 2005 (1930 HANREI JIHŌ 85)*
   - Fukuoka District Court, September 26, 2005 (1214 HANREI TAIMUZU 168)*

10. Kuramoto Chisato 倉本千里 et al. v. Hiroshima Mayor (American hibakusha)
    - Hiroshima District Court, May 10, 2005 (NP)

11. Choe Gye-cheol 崔季澈 v. Nagasaki & Japan (Y78)
    - Nagasaki District Court, December 20, 2005 (1250 HANREI TAIMUZU 147)*
    - Fukuoka High Court, January 22, 2007 (1250 HANREI TAIMUZU 141)
    - Supreme Court, February 18, 2008*

12. Jeong Yeon-bun 鄭連分& Park Weon-gyeong 朴源慶 v. Osaka & Japan (Y80)
    - Osaka District Court, February 21, 2006 (NP)*

13. Lee Sang-yeop 李相燁 v. Hiroshima Prefecture & Japan (Y84)
    - Hiroshima District Court, September 26, 2006 (1239 HANREI TAIMUZU 148)
    - Hiroshima High Court, September 2, 2008 (NP)
    - Supreme Court, December 22, 2009

14. Lian Shuangyin 連双印 et al. v. Mitsubishi, Nagasaki Prefecture & Japan (Y76)
    - Nagasaki District Court, March 27, 2007 (NP)
    - Fukuoka High Court, October 20, 2008 (NP)

- Supreme Court, December 25, 2009 (NP)

15. Two Brazilian hibakusha v. Hiroshima Prefecture & Japan
    - Hiroshima District Court, July 31, 2008 (NP)*

16. Cheong Nam-su 鄭南壽 v. Nagasaki & Japan (Y92)
    - Nagasaki District Court, November 10, 2008 (2058 Hanrei jihō 42)*

17. Cha O-sun et al. v. Osaka Mayor (Y87)
    - Osaka District Court, June 18, 2009 (1322 Hanrei taimuzu 70)*

18. Jang Yeong-jun 張令俊 v. Nagasaki Mayor
    - Nagasaki District Court, September 18, 2012 (NP)

19. Lee Hong-hyeon 李洪鉉 v. Osaka Mayor (Y97)
    - Osaka District Court, October 24, 2013 (NP)*
    - Osaka High Court, June 20, 2014*
    - Supreme Court, September 8, 2015*

20. Lee Gwan-mo 李寬模 v. Nagasaki Mayor (Y101)
    - Nagasaki District Court, January 8, 2019

C. Comfort Women (1/10 victories)

1. Kim Hak-sun 金學順 et al. v. Japan (Y17)
    - Tokyo District Court, March 26, 2001 (NP)
    - Tokyo High Court, July 22, 2003 (1843 Hanrei jihō 32)
    - Supreme Court, November 29, 2004 (1879 Hanrei jihō 58)

2. Ha Sun-ayeo 河順女 et al. v. Japan (Y26)
    - Yamaguchi District Court, April 27, 1998 (1642 Hanrei jihō 24)*
    - Hiroshima High Court, March 29, 2001 (1159 Hanrei jihō 42)
    - Supreme Court, March 25, 2003 (NP)

3. Maria Rosa Henson et al. v. Japan (Y27)
    - Tokyo District Court, October 9, 1998 (1683 Hanrei jihō 57)
    - Tokyo High Court, December 6, 2000 (1744 Hanrei jihō 48)
    - Supreme Court, December 25, 2003 (NP)

4. Song Shin-do 宋神道 v. Japan (Y28)
    - Tokyo District Court, October 1, 1999 (NP)
    - Tokyo High Court, November 30, 2000 (1741 Hanrei jihō 40)
    - Supreme Court, March 28, 2003 (NP)

5. Elly van der Ploeg et al. v. Japan (Y33) cf. Soldiers #10
   - Tokyo District Court, November 30, 1998 (1685 HANREI JIHŌ 3)
   - Tokyo High Court, October 11, 2001 (1769 HANREI JIHŌ 61)
   - Supreme Court, March 30, 2004

6. Li Xiumei 李秀梅 et al. v. Japan (Y38)
   - Tokyo District Court, May 30, 2001 (1138 HANREI TAIMUZU 167)
   - Tokyo High Court, December 15, 2004 (NP)
   - Supreme Court, April 27, 2007 (1240 HANREI TAIMUZU 121)

7. Guo Xicui 郭喜翠 et al. v. Japan (Y42)
   - Tokyo District Court, March 29, 2002 (1154 HANREI TAIMUZU 244)
   - Tokyo High Court, March 18, 2005 (NP)
   - Supreme Court, April 27, 2007 (1240 HANREI TAIMUZU 121)

8. Wan Aihua 萬愛花 et al. v. Japan (Y58)
   - Tokyo District Court, April 24, 2003 (1127 HANREI TAIMUZU 1281)
   - Tokyo High Court, March 31, 2005 (NP)
   - Supreme Court, November 18, 2005 (NP)

9. Kao Pao-chu 高寶珠 et al. v. Japan (Y62)
   - Tokyo District Court, October 15, 2002 (1162 HANREI TAIMUZU 154)
   - Tokyo High Court, February 9, 2004 (NP)
   - Supreme Court, February 25, 2005 (NP)

10. Chen Yapian 陳亞扁 et al. v. Japan (Y69)
    - Tokyo District Court, August 30, 2006 (NP)
    - Tokyo High Court, March 26, 2009 (NP)
    - Supreme Court, March 2, 2010 (NP)

D. Wartime Debts (1/7 victories)

1. Li Zaichuan 李再傳 v. Japan (Y9)
   - Tokyo District Court, January 26, 1977 (NP)
   - Tokyo High Court, January 28, 1982 (NP)
   - Supreme Court, October 5, 1982 (483 HANREI TAIMUZU 75)

2. Chen Jinquan 陳金泉 v. Chiyoda Life Insurance (Y2)
   - Tokyo District Court, January 26, 1978 (915 HANREI JIHŌ 78)

3. Hong Wu Chen-chih 洪吳振治 v. Dai'ichi Kangyō Bank (Y6)
   - Tokyo District Court, October 31, 1980 (425 HANREI TAIMUZU 56)*

- Tokyo High Court, July 30, 1984 (533 Hanrei taimuzu 147)*

4. Hong Wu Chen-chih 洪吳振治 v. Japan (Y7)
   - Tokyo District Court, November 17, 1980 (991 Hanrei jihō 93)
   - Tokyo High Court, April 27, 1982 (479 Hanrei taimuzu 104)

5. Chen Shang-gui 陳上貴 v. Japan (Y5)
   - Tokyo District Court, March 25, 1980 (422 Hanrei taimuzu 108)

6. Ng Yat-hing 吳溢興 v. Japan (Y30)
   - Tokyo District Court, June 17, 1999 (NP)
   - Tokyo High Court, February 8, 2001 (NP)
   - Supreme Court, October 16, 2001 (NP)

7. Choe Gyu-myeong 崔圭明 v. Nippon Life Insurance Company (Y60)
   - Osaka District Court, December 8, 2000 (NP)
   - Osaka High Court, April 25, 2001 (NP)
   - Supreme Court, October 5, 1982 (483 Hanrei taimuzu 75)

E. Soldiers (0/15 victories)

1. Deng Sheng 鄧盛 et al. v. Japan (Y8)
   - Tokyo District Court, February 26, 1982 (463 Hanrei taimuzu 90)
   - Tokyo High Court, August 26, 1985 (562 Hanrei taimuzu 90)
   - Supreme Court, April 28, 1992 (787 Hanrei taimuzu 58)

2. Seok Seong-gi 石成基 v. Ministry of Health, Labor and Welfare (Y20)
   - Tokyo District Court, July 14, 1994 (1505 Hanrei jihō 46)
   - Tokyo High Court, September 29, 1998 (1659 Hanrei jihō 35)
   - Supreme Court, April 5, 2001 (1751 Hanrei jihō 68)

3. Jeong Sang-geun 鄭商根 v. Ministry of Health & State (Y12)
   - Osaka District Court, October 11, 1995 (901 Hanrei taimuzu 84)
   - Osaka High Court, September 10, 1999 (NP)
   - Supreme Court, April 13, 2001 (NP)

4. Kim Gyeong-seok 金景錫 v. Japan (Y18) (Gangwondo Association) cf. Forced Labor #3
   - Tokyo District Court, November 22, 1996 (NP)
   - Tokyo High Court, March 28, 2002 (NP)
   - Supreme Court, March 28, 2003 (NP)

5. Moon Tae-bok 文泰福 & Lee Hak-rae 李鶴来 et al. v. Japan (Y16)
   - Tokyo District Court, September 9, 1996 (1600 Hanrei jihō 3)
   - Tokyo High Court, July 13, 1998 (1647 Hanrei jihō 39)

- Supreme Court, December 20, 1999 (NP)

6. Kang Bu-jung 姜富中 v. Ministry of Health, Labor and Welfare & Japan (Y31)
   - ōtsu District Court, November 17, 1997 (1718 HANREI JIHŌ 44)
   - Osaka High Court, October 15, 1999 (1718 HANREI JIHŌ 30)
   - Supreme Court, April 13, 2001 (NP)

7. Kim Seong-su 金成壽 v. Japan (Y24)
   - Tokyo District Court, June 23, 1998 (NP)
   - Tokyo High Court, April 27, 2000 (NP)
   - Supreme Court, November 16, 2001 (NP)

8. Kim Seong-su 金成壽 v. Pension Director of Ministry of Internal Affairs (Y34)
   - Tokyo District Court, July 31, 1998 (1657 HANREI JIHŌ 43)
   - Tokyo High Court, December 27, 1999 (NP)
   - Supreme Court, November 16, 2001 (1770 HANREI JIHŌ 86)

9. Arthur Titherington et al. v. Japan (Y35)
   - Tokyo District Court, November 26, 1998 (1685 HANREI JIHŌ 3)
   - Tokyo High Court, March 27, 2002 (1802 HANREI JIHŌ 76)
   - Supreme Court, March 30, 2004 (NP)

10. Elly van der Ploeg (Dutch POWs) et al. v. Japan (Y33) cf. Comfort Women # 5
    - Tokyo District Court, November 30, 1998 (1685 HANREI JIHŌ 3)
    - Tokyo High Court, October 11, 2001(1769 HANREI JIHŌ 61)
    - Supreme Court, March 30, 2004

11. Yim Yeong-jun 林永春 et al. v. Japan (Y36)
    - Tokyo District Court, March 24, 1999 (NP)
    - Tokyo High Court, May 25, 2000 (NP)
    - Supreme Court, November 22, 2000 (1771 HANREI JIHŌ 83)

12. Taiwanese BC war criminal v. Japan (Y55)
    - Miyazaki District Court, February 23, 2001 (NP)
    - Fukuoka High Court, May 21, 2001 (NP)
    - Supreme Court, April 23, 2004 (NP)

13. Lee Nak-jin 李洛鎭 et al. v. Japan & Japan Post (Y68)
    - Tokyo District Court, May 25, 2006 (1212 HANREI TAIMUZU 189)
    - Tokyo High Court, October 29, 2009 (NP)
    - Supreme Court, November 30, 2011 (NP)

14. Kim Hwi-jong 金希鍾 et al. v. Japan & Yasukuni Shrine (Y90)
    - Tokyo District Court, July 21, 2011 (NP)
    - Tokyo High Court, October 23, 2013 (NP)

15. Lee Myeong-gu 李明九 & Park Nam-sun 朴南順 v. Japan & Yasukuni Shrine (Y99)
    - Tokyo District Court, May 28, 2019 (NP)

F. Civilian War Damage (1/8 victories)

1. Kim Gyeong-baek 金慶白 et al. v. Japan (Y14) (Kamishisuka Incident)
    - Tokyo District Court, July 27, 1995 (894 HANREI TAIMUZU 197)
    - Tokyo High Court, August 7, 1996 (NP)

2. 369 Korean plaintiffs v. Japan (Y22)
    - Tokyo District Court, March 25, 1996 (1597 HANREI JIHŌ 102)
    - Tokyo High Court, August 30, 1999 (1704 HANREI JIHŌ 54)
    - Supreme Court, March 27, 2003 (NP)

3. Lee Geum-ju 李金珠 et al. v. Japan (Y29)
    - Tokyo District Court, December 21, 1998 (NP)
    - Tokyo High Court, December 21, 1999 (NP)
    - Supreme Court, February 8, 2000 (NP)

4. Jing Lanzhi 敬蘭芝 et al. v. Japan (Y39)
    - Tokyo District Court, September 22, 1999 (1028 HANREI TAIMUZU 92)
    - Tokyo High Court, April 19, 2005 (NP)
    - Supreme Court, May 9, 2007 (NP)

5. Seo Pong-gu 徐鳳求 v. Japan (Y21)
    - Kyoto District Court, August 23, 2001 (1772 HANREI JIHŌ 121)*
    - Osaka High Court, May 30, 2003 (1141 HANREI TAIMUZU 84)
    - Supreme Court, November 30, 2004 (NP)

6. Li Peizhen 李佩珍, Mo Desheng 莫德勝, Yang Baoshan 楊寶山 et al. v. Japan (Y44)
    - Tokyo District Court, June 28, 2002 (NP)
    - Tokyo High Court, May 13, 2005 (NP)
    - Supreme Court, May 16, 2006 (NP)

7. Wang Jinti 王錦梯 et al. v. Japan (Y48)
    - Tokyo District Court, August 27, 2002 (NP)
    - Tokyo High Court, July 19, 2005 (NP)
    - Supreme Court, May 9, 2007 (NP)

8. Wang Zixiong 王子雄 et al. v. Japan (Y86)
   - Tokyo District Court, February 25, 2015 (NP)
   - Tokyo High Court, December 14, 2017 (NP)
   - Supreme Court, December 25, 2019 (NP)

G. Poison gas cases (NB: results excluded from this analysis)

1. Sun Jingxia 孫景霞 et al. v. Japan (Y46)
   - Tokyo District Court, September 29, 2003 (1140 HANREI TAIMUZU 300)*
   - Tokyo High Court, July 18, 2007 (1994 HANREI JIHŌ 36)
   - Supreme Court, May 26, 2009 (NP)

2. Wang Yuliang 王宇亮 et al. v. Japan (Y50)
   - Tokyo District Court, May 15, 2003 (NP)
   - Tokyo High Court, March 13, 2007 (NP)
   - Supreme Court, May 26, 2009 (NP)

3. Wang Chunlin 王春林 et al. v. Japan (Y89)
   - Tokyo District Court, May 24, 2010 (NP)
   - Tokyo High Court, September 21, 2012 (NP)
   - Supreme Court, October 28, 2014 (NP)

4. Zhou Tong 周桐 & Liu Hao 劉浩 v. Japan (Y93)
   - Tokyo District Court, April 16, 2012 (NP)
   - Tokyo High Court, November 26, 2013 (NP)
   - Supreme Court, October 28, 2014 (NP)

H. Hansen's Disease Survivors (NB: results excluded from this analysis

1. Chang Gi-jin et al. v. Ministry of Health (Y74) (Korean Survivors of Hansen's Disease)
   - Tokyo District Court, October 25, 2005 (1192 HANREI TAIMUZU 131)

2. Wang Jianghe et al. v. Ministry of Health (Y82) (Taiwanese Survivors of Hansen's Disease)
   - Tokyo District Court, October 25, 2005 (1192 HANREI TAIMUZU 106)*