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For Those Who Had No Voice:
The Multifaceted Fight for Redress by and for the “Comfort Women”
Christine J. Hung†

These days I hum a song, Katusa, putting my own words to the tune: ‘I am so miserable; return my youth to me; apologize . . . . You dragged us off against our own will. You trod on us. Apologize . . . .’
—Lee Yong-soo, former Korean “comfort woman,” testifying in the U.S. House of Representatives in February 20071

I. INTRODUCTION
For the Asian women who were brutally confined in sexual slavery by the Imperial Japanese military during World War II—and known euphemistically, both then and today, as “comfort women”2—the first half of 2007 saw a remarkable political turn in their decades-long struggle to obtain redress from Japan’s government. The stage for this particular turn of events—the floor of the United States House of Representatives—was a relatively unusual one in the context of this battle, which, up to that point, had been fought primarily in courtrooms and classrooms, on patches of

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† J.D. Candidate, 2009, University of California, Berkeley, School of Law (Boalt Hall); B.A., Yale College, 2006. My deepest thanks go to Professor David Lieberman at Boalt Hall, in whose Law and History Foundation Seminar this project began, for his invaluable guidance and assistance in developing early drafts of this Article. I would also like to thank the staff of the Asian American Law Journal—in particular, Christina Yang and her team of Lea Francisco, Kerry Kumabe, June Luu, Jennifer Murakami, and My Linh Nguyen—for their invaluable editing advice and assistance.
2. The commonly utilized English phrase “comfort women” is a loose translation of the Japanese term jugun ianfu (lit., “comfort women attached to the military”), which was used before and during World War II to refer to the women and girls who were held in sexual slavery by the Japanese Imperial Army. However, the widely held contemporary view is that the use of the phrase “military sexual slaves” to describe the female victims of the Japanese “comfort station” system more accurately and appropriately represents the victims’ deep physical and psychological suffering, engendered by the systematic, multiple daily rapes and severe physical abuse that were inflicted upon them. Radhika Coomaraswamy, Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences, U.N. ESCOR, Comm. Hum. Rts., 52d Sess., at ¶ 1.10, in accordance with Commission on Human Rights resolution 1994/45, U.N. Doc. E/CN.4/1996/53 (Feb. 7, 1996).
sidewalk outside Japan's embassies, and in differing political, historical, and personal narratives.

On January 31, 2007, Representative Michael M. Honda of the Fifteenth District of California introduced House Resolution 121, a nonbinding resolution that called on the government of Japan to "formally acknowledge, apologize, and accept historical responsibility in a clear and unequivocal manner for its Imperial Armed Force's coercion of young women into sexual slavery,"\(^3\) Later that same day, Honda also introduced House Resolution 122 to commemorate the sixty-fifth anniversary of President Franklin D. Roosevelt's signing of Executive Order 9066—the presidential decree which authorized the government's internment of United States citizens of Japanese heritage during World War II—and to support "the goals of the Japanese American . . . [community] in recognizing a National Day of Remembrance to increase public awareness of the events surrounding the restriction, exclusion, and internment of individuals and families during World War II."\(^4\) The latter resolution was passed within days. In sharp contrast, House Resolution 121's months-long path to final passage—a journey that received extensive media exposure in Asia as well as in the United States—was marked by tension between Washington and Tokyo.

That Honda, who is currently the chair of the Congressional Asian Pacific American Caucus ("CAPAC"),\(^5\) spearheaded House Resolution 121, and was one of its most prominent and unyielding advocates throughout its journey to passage by the House, is particularly noteworthy not only because Honda is a third-generation Japanese American (sansei),\(^6\) but also because he himself was also a victim of severe World War II-era injustice that went uncorrected for decades: the internment of Japanese Americans by their own government, the very injustice memorialized by House Resolution 122. As a young child, Honda was detained,\(^7\) along with his family, in the network of internment camps set up by the United States government for the purpose of detaining Japanese Americans who had been

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6. Honda’s grandparents emigrated from Kumamoto prefecture in southwestern Japan in the early 1900s; they were part of the first wave of Japanese immigration to the United States. Norimitsu Onishi, The Saturday Profile: A Congressman Faces Foes in Japan as He Seeks an Apology, N.Y. TIMES, May 12, 2007, at 4 [hereinafter Congressman].
classified as “alien enemies” after Pearl Harbor. Given his *sansui* heritage, Honda’s vocal support of the comfort women, which he expressed through public statements and interviews as well as his sponsorship of House Resolution 121, has made him one of the most famous American congressmen in Japan, where some Japanese conservatives have accused him “of being an agent of a Chinese government bent on humiliating Japan on American soil.” His advocacy has drawn widespread attention in the United States, Japan, and other nations to battles to right wartime injustices that have already been successfully waged and won. Yet, it has also highlighted the still-unresolved struggle by the few surviving former comfort women to obtain their own measure of justice for their suffering.

In this Article, I examine the link between the successful effort in the 1980s to obtain reparations and a formal governmental apology for Japanese American internees, and contemporary Asian American perceptions of how best to obtain a proper measure of justice for the comfort women, both the living and the dead. The affinity between these two movements has most recently been evinced by the intense support given by Honda, other members of the House of Representatives, and other Asian American individuals and organizations to the elderly comfort women’s cause. I argue that, despite strong similarities between the movements, both the comfort women and their Asian American allies recognize that the avenues for redress that were successfully pursued by Japanese Americans in the 1980s—i.e., undertaking renewed litigation, receiving monetary restitution for past harms suffered, and obtaining official statements of apology and regret from the United States government—are, unfortunately, currently not viable strategies in the Korean comfort women’s quest for relief from the Japanese government. From there, I will explore the alternative routes to redress that the comfort women and their allies have taken, and/or may consider taking in the future.

Part I outlines the tragic history of the comfort women and their unsuccessful modern-day quest for justice in both Japanese and United States courts, as well as the controversial, widely repudiated (and, as of March 2007, terminated) Asian Women’s Fund, a nongovernmental organization set up by the Japanese government in an attempt to financially compensate the comfort women. Part II explores the contemporary efforts of a United States-based coalition of Korean Americans, Japanese Americans, and other Asian Americans on behalf of the comfort women, and contextualizes these initiatives within the movement among individuals and communities of Asian heritage in the United States toward recognizing and aligning with a pan-Asian American identity. Part II also details this

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Asian American coalition of allies’ movement away from the Japanese American community’s model for seeking redress (successful community-driven litigation followed by the legal remedy of monetary compensation), and that coalition’s shift toward a more grassroots, contemporary model that harnesses political activism to apply pressure on domestic and foreign governments. Within this contemporary framework of mixed legal, political, and grassroots approaches to obtaining redress for the comfort women, Part III describes the application of reparations theory to subjugated, victimized, and/or racialized populations. Finally, Part IV addresses the urgent need for various forms of non-legal resolution. It also explores the possibility of the comfort women’s finding some measure of recompense, however small, in discovering their public voices and broadcasting their call for justice to the international community.

I note with great regret that although the Imperial Japanese system of military sexual slavery victimized women and girls of many different nationalities and ethnicities, the limited dimensions of this project allow me only to focus on one particular group of comfort women: those who were recruited and coerced into sexual slavery from the Korean peninsula, beginning in the 1930s. I focus on the Korean comfort women because they have occupied the greatest prominence in contemporary litigation and political debate—in Japan, the United States, and internationally—over whether and how to compensate the comfort women. In addition to Korean American organizations being among the most vocal advocates of justice for the remaining comfort women, the Korean American community’s investment in the pan-Asian American coalition backing the comfort women is of particular interest given the historical animosities between Korea and Japan. As such, the combined efforts of the Korean comfort women and the Asian American community provide some of the clearest examples of how contemporary legal and political battles to correct grave historical wrongs can translate from Asia to the United States; how they can both draw on and distinguish themselves from a long tradition of Asian American political and legal activism; and how they tie into the debate over how best to make reparations to subjugated, marginalized, and/or victimized groups.

However, this methodological choice is in no way intended to gloss over or to deemphasize the immense tragedy of the sexual, physical, and psychological brutalities committed against comfort women of other ethnicities and nationalities. Nor does it simplify the morass of international legal and political issues surrounding these other women’s battles for relief, or diminish the importance of redressing the wrongs they, too, have suffered. Successfully obtaining a measure of justice for the Korean comfort women would be, after all, not merely an attempt to

10. See infra p. 183.
assuage the physical and psychological pain that an ever-dwindling group of elderly women have suffered for decades, but also a substantial step toward correcting a fundamental legal and moral wrong done against all women and against humanity. The universal moral imperative to correct the injustices suffered by all of the comfort women—and, by extension, to safeguard against societies’ perpetuating the same kind of harm in the future—is best described by Korean American professor Chungmoo Choi: “[T]he comfort women issue is not simply a matter of a wartime use of women or an event of the past, nor is it a matter just between Asian countries. The politics surrounding the silent history of the comfort women threatens the fundamentals of humanity.”

II. HISTORICAL BACKGROUND

A. The Modern Controversy: House Resolution 121 and the Japanese Government

Less than two months after the introduction of House Resolution 121, the then-Prime Minister of Japan, Shinzo Abe, categorically denied the admission made in a 1993 statement by Yohei Kono (who was Chief Cabinet Secretary at the time of his statement) that the “Japanese military was, directly or indirectly, involved in the establishment and management of the comfort stations and the transfer of comfort women.” Abe, a member of the long-ruling Liberal Democratic Party (“LDP”), had—long before becoming Prime Minister in September 2006—been recognized as one of the most prominent young politicians in Japan’s resurgent conservative movement. He was also an influential figure in the backlash against the revision of Japanese junior high history textbooks to include the story of the comfort women—revisions that were made in the wake of Kono’s statement. Even as an obscure LDP lawmaker, Abe had lobbied hard for the rescission of Kono’s admission of the Japanese government’s responsibility.

Kono issued the statement of state responsibility after Japanese historian and professor Yoshiaki Yoshimi (who was by his own account “fed up with the Japanese government’s denials that the military had set up

14. Id.
15. Id.
and run brothels throughout Asia during World War II."\textsuperscript{16} went to the Tokyo archives of the Defense Agency, searched official military records from the 1930s, and unearthed a trove of incriminating documents that pointed to the Imperial Japanese military's direct role in managing its system of sexual slavery.\textsuperscript{17} The publication of Yoshimi's book ignited a fiery domestic controversy. Although Abe said in March 2007 that he would allow the Kono statement to stand, he also undercut Kono's words by asserting that the military had not exercised "coercion, like the authorities breaking into houses and kidnapping" women and girls for the use of Japanese soldiers.\textsuperscript{18} Abe argued instead that the coercion of women and girls for service in the comfort stations was, on the whole, the work of private agents and private contractors.\textsuperscript{19}

Shortly after Abe made this statement, Honda, in an interview with a \textit{New York Times} reporter, countered that "Prime Minister Abe was [in his statement] in effect saying that the women are lying . . . . I find it hard to believe that he is correct given the evidence uncovered by Japanese historians and the testimony of the comfort women."\textsuperscript{20} After his statements prompted a furious backlash from the governments and citizens of other Asian nations, later that month Abe apologized in the Japanese parliament for the military's use of "comfort women." However, he made his apology "here and now as prime minister"\textsuperscript{21}—that is, in the capacity of an individual and not a representative of the Japanese government as a whole.\textsuperscript{22} In the latter statement, Abe also did not retract his earlier denial of

\begin{itemize}
\item \textsuperscript{16} Id.
\item \textsuperscript{17} Id.
\item \textsuperscript{18} Norimitsu Onishi, \textit{Denial Reopens Wounds of Japan's Ex-Sex Slaves} [hereinafter \textit{Denial}], \textit{N.Y. Times}, Mar. 8, 2007, at 1. However, in two April 2007 rulings in lawsuits concerning compensation claims filed by Chinese former sex slaves and laborers forced into slave labor for the Japanese military, the Supreme Court of Japan—although it ruled against the plaintiffs and "effectively quash[ed] dozens of similar cases that have been working their way through the lower courts"—"acknowledged the historical facts of sex slavery and forced labor, two practices that continue to fuel anger in Asia six decades after" the end of World War II. Norimitsu Onishi, \textit{Japan Court Rules Against Sex Slaves and Laborers}, \textit{N.Y. Times}, Apr. 28, 2007, at 1.
\item \textsuperscript{19} Onishi, \textit{Denial}, supra note 18.
\item \textsuperscript{20} Id.
\item \textsuperscript{22} "An apology by a Japanese prime minister (or any cabinet minister) is an individual's opinion. An apology is not official whether the prime minister says it in a form letter . . . or in answer to a question during a committee meeting (as what provoked an apology to the Comfort Women by Prime Minister Shinzo Abe on March 26th [2007]). . . . [Pursuant to Article 65 of the Japanese Constitution, neither the prime minister nor any individual cabinet minister is the chief executive of Japan. Although the powers of the prime minister are increasing, a prime minister can rarely act on an important matter of State such as the extension [of] a State apology, without the authority of the Cabinet.\textquotedblright\textemdash Asia Policy Point Brief, \textit{What Constitutes an "Official Government Statement in Japan: With Special Reference to Apologies for Comfort Women}, Apr. 2007, available at \url{http://support121.org/research/whatconstitutesapology.pdf} (last visited Mar. 22, 2008) (emphasis added).\n\end{itemize}
coercion of women by the military.\textsuperscript{23}

\textbf{B. World War II and Its Aftermath}

By nearly all primary and scholarly accounts, the history of the comfort women is a horrifying and wrenching saga of wartime brutality, and a particularly heinous example of mass crimes against women. Historians estimate that as many as 200,000 women and girls, some as young as twelve years of age, were victimized by the Japanese Army’s system of sexual slavery.\textsuperscript{24} Some of the enslaved women’s acknowledged nationalities include Korean and Taiwanese (both groups were, at the time, classified as subjects of the Japanese Empire), Filipina, Chinese, Indonesian, Burmese, Dutch, and Japanese.\textsuperscript{26} It is also estimated that less than thirty percent of the comfort women survive today.\textsuperscript{27} As of February 1993, there were only about 103 known survivors in South Korea and 123 in North Korea.\textsuperscript{28}

The formalized “comfort station” system was specifically designed to provide a controlled on-site prostitution service for officers and enlisted men in the Japanese army.\textsuperscript{29} It was introduced as early as 1932 in Shanghai, following the “Shanghai Incident,”\textsuperscript{30} and revived in 1937 after the horrifically violent capture of the Chinese city of Nanking (Nanjing).\textsuperscript{31}


\textsuperscript{24} Id.

\textsuperscript{25} Although Taiwan was formally annexed to the Empire of Japan in 1895 following the Treaty of Shimonoseki between Qing Dynasty China and Meiji Japan, and Korea became a formal protectorate of Japan in 1910 (and was later formally annexed to Japan), under Japanese law and within Japanese society in general and the “comfort station” system in particular, persons not of Japanese ethnicity from Taiwan and Korea were considered of lower social and legal standing than ethnic Japanese. \textit{See generally} Peter Duus, \textit{The Abacus and the Sword: The Japanese Penetration of Korea, 1895-1910} (1998); Leo T.S. Ching, \textit{Becoming Japanese: Colonial Taiwan and the Politics of Identity Formation} (2001). “Koreans, especially, were placed in an ambiguous position. They were officially included among the ‘Emperor’s children’, so as to secure their loyalty. At the same time they were deprived of even the limited civil rights available under the old Japanese Constitution, such as voting for the Diet’s Lower House—unless they lived permanently in Japan.” George Hicks, \textit{The Comfort Women: Japan’s Brutal Regime of Enforced Prostitution in the Second World War} 40 (1995).


\textsuperscript{27} Id. at 542.

\textsuperscript{28} Kim, \textit{supra} note 11, at 267 (citing Hyunah Yang, \textit{Revisiting the Issue of Korean “Military Comfort Women”: The Question of Truth and Positionality, in The Comfort Women: Colonialism, War and Sex} 68 (Chungmoo Choi ed., 1997)).

\textsuperscript{29} Coomaraswamy, \textit{supra} note 2, at paras. 2.a.11, 2.a.12.

\textsuperscript{30} Id.

\textsuperscript{31} \textit{See generally} Iris Chang, \textit{The Rape of Nanking: The Forgotten Holocaust of World War II} (1997); John Rabe, \textit{The Good Man of Nanking: The Diaries of John Rabe} (1998). For an example of the contemporary right-wing Japanese revisionist perspective on the Nanking massacre, which essentially amounts to a wholesale repudiation of the gravity of the rapes and killings perpetrated in Nanking—or a denial of the fact that the atrocities happened at all—see, e.g., Tadao Takemoto &
by the Japanese Imperial Army, which involved the rapes and/or massacres of reportedly thousands of Nanking residents by Japanese soldiers.\textsuperscript{32} The militaristic wartime Japanese government's rationale behind implementing this systematized network of "comfort stations," along with an officially sanctioned system for the procurement of female sex slaves, has been characterized as threefold: to maintain stability in occupied areas by preventing the Japanese soldiers from raping local women; to stave off the spread of venereal disease among the officers and enlisted men; and to counter the possibility of native women exchanging sexual favors for Japanese military secrets.\textsuperscript{33} As such, the main underlying dynamic of the comfort station system was the complicated, psychologically fraught interplay of battlefield violence and sex, with the continuous sexual violence perpetrated on the comfort women seen as a necessary antidote to war's cruel effects on its participants. This sprang from both the highly regimented Japanese military culture of the era and the military's attempts to regiment the release of the sexual tension it perceived to be endemic to its enlisted men in the theater of war:\textsuperscript{34}

> Combat [in the modern conditions of World War II] ... has been justly described as the most stressful environment possible, apt to produce what one Japanese Army medical officer described as 'temporary derangement'. Combat aside, any ex-soldier will remember the obsession with sex in a community of men—the fittest of their generation in the prime of life, in a confined and regimented situation—deprived of usual social and emotional outlets.\textsuperscript{35}

Given the valence of sex in the Japanese military psyche, as the number of men in the Japanese armed forces increased, so too did military demand for the services of comfort women; eventually, it became necessary to procure additional women for the comfort stations on a non-voluntary basis.\textsuperscript{36} The first women to enter the comfort station system in this manner were a group of ethnic Koreans from the southern Japanese island of Kyushu, who in 1932 were sent to the prototype comfort station in Shanghai.\textsuperscript{37} They were later followed by professional prostitutes from brothels in Japan, who had volunteered to serve in the comfort stations.\textsuperscript{38}

In addition to the recruitment of willing women and girls who were
already prostitutes, two kinds of coercive recruitment for the comfort station system were utilized to meet the military demand for women. The first type involved making deceptive offers of employment to women and girls, promising them well-paid work in restaurants or positions as army cooks or cleaners, when in reality, they were to be conscripted into the comfort stations to serve the sexual desires of the military. The second recruitment method was the slave raid: the large-scale coercion and violent abduction of women conducted in Korea and other territories and countries under Japanese control.

At first, given the poverty and scarcity of jobs for women in rural Korea, the deceptive offers of supposedly respectable work provided sufficient lure to its female victims, who were mainly poor, of low social standing, and relatively uneducated. However, when the tactic of proffering purported jobs to the women “did not yield sufficient numbers, direct recruitment [for the teishintai, or ‘Women’s Voluntary Service Corps’] through police or local government became more common. Here again, there was often an element of deception. The concurrent drafting of women to provide labour for war industries disguised the recruitment of comfort women.” Collaborationist local Korean operators, police, and even schoolteachers in charge of young female students were often complicit in recruitment for the teishintai; it was through the work of these Korean collaborators that the Japanese military was able to make effective use of Korean authority at the local level in order to put pressure on women and girls to “join the war effort” under false pretenses.

The second method of coercive recruitment—seizing female victims from towns and villages under conditions that amounted to slave raids—was done under the authority of the National General Mobilization Law. While this law was passed by the Japanese Diet in 1938, it was only employed to forcibly recruit Koreans starting in 1942. In these cases of forced abduction, the Japanese military used “violence, undisguised force, and raids which involved the slaughter of family members who tried to prevent the abduction of their daughters.” The girls who were seized in

39. Id. at para. 2.b.27.
40. Id.
41. Id.
42. HICKS, supra note 25, at 49.
43. Id.; COOMARASWAMY, supra note 2, at para. 2.b.28.
44. COOMARASWAMY, supra note 2, at para. 2.b.28.
45. Id.
46. Id. at para. 2.b.29. Many former comfort women have given accounts of “the widespread use of violence and coercion in the recruitment process.” Id.
47. Id. (offering as corroborating evidence the autobiographical account of Japanese slave raider Yoshida Seiji, “in which he confesses to having been part of slave raids in which, among other Koreans, as many as 1,000 women were obtained for ‘comfort women’ duties” (citing YOSHIDA SEIJI, MY WAR CRIMES: THE FORCED DRAFT OF KOREANS (1983))).
this way were mostly between the ages of fourteen and eighteen years, and "[a]s a result of their young age and innocence . . . were unable to resist forcible removal [from their homes and families] and, in most cases, were complete strangers to any understanding of prostitution or the sexual act."

Once the women and girls arrived in the comfort stations, they were subjected to repeated daily rapes and other forms of sexual abuse, as well as beatings and other physical abuse. In addition to the brutalities inflicted upon them because of their sex, the comfort women were also subject to hierarchical, often racialized treatment based upon their nationality. As is still the case in contemporary Japan, Japanese society before and during World War II was infused with a kind of status consciousness that was closely linked to—and arguably predicated upon—one’s ethnic and/or racial origins. This hyper-awareness of ethnicity and race likely influenced where the majority of the comfort women were obtained, and how they were treated once they were placed in the comfort stations. George Hicks describes the intra-comfort station scale of Japanese preference for various ethnicities as such: "Koreans were ranked after Japanese and Okinawans; then came the Chinese, and lastly Southeast Asians, who tended to be darker-skinned."

After the war, the Tokyo Tribunal for prosecutions of war criminals heard personal testimony from several comfort women. However, the Tokyo Tribunal did not prosecute the perpetrators of the sexual slavery program. Only the Dutch government took action against the Japanese for forcing women into military prostitution, with the Batavia Military Tribunal conducting trials in the Dutch East Indies (now Indonesia) in 1948. However, the prosecutions of the Batavia Tribunal were only mounted on behalf of Caucasian comfort women of Dutch nationality. Not a single native Indonesian or other Asian woman was the subject of the

48. COOMARASWAMY, supra note 2, at para. 2.b.31.
49. See generally DAI SIL KIM-GIBSON, SILENCE BROKEN: KOREAN COMFORT WOMEN (1999); HICKS, supra note 25 (citing the accounts given by many comfort women of various nationalities of the extreme sexual and physical abuse they suffered while in the comfort stations); COOMARASWAMY, supra note 2 (citing interviews with surviving comfort women in both modern-day South Korea and North Korea; characterizing military sexual slavery as "extraordinary inhumanity . . . in which large numbers of women were forced to submit to prolonged prostitution under conditions which were frequently indescribably traumatic").
51. HICKS, supra note 25, at 48.
52. Id.
53. Id.
55. Kim, supra note 11, at 267 (quoting Professor Chungmoo Choi).
The exclusion of Asian comfort women as subjects of the postwar war crimes prosecutions has been described by one professor as stemming from “the assumption of Western humanism, which was the philosophical basis of the Nuremberg and Batavia Trials, [that] Asians did not belong to the category of humanity” and therefore, could be left out of inquiries into crimes against humanity. The postwar absence of any tribunal or other form of international adjudication of the Asian comfort women’s case thus became yet another instance in which they were racialized and subjugated—this time, on the international stage.

Meanwhile, the surviving comfort women suffered unspeakable pain in the decades following World War II, from both their wartime experiences and their attempts to reintegrate into societies that traditionally stigmatized prostitution, sex outside of marriage, and rape. The Korean comfort women in particular, having been brought up in a strict Confucian society which valued female virginity and chastity as “prime virtues,” were for decades unwilling to share their wartime experiences with others, even their immediate family members. Many felt they had been so sullied by their loss of virginity and their enslavement in the comfort stations that they could never marry. In addition, many discovered that they had been rendered sterile by the repeated rapes and continuous sexual abuse they had suffered, a condition which further alienated them from a society in which the birth of heirs is a highly valued duty of women. In addition, the surviving comfort women have had to live for decades with other chronic and severe physical and psychological ailments.

Public recognition of the comfort women’s harrowing stories has been decades in the making. Drawing on firsthand accounts by former comfort women and Japanese war veterans, the Japanese writer Senda Kako published the first extensive exposé on the experiences of the comfort women in 1978. Senda’s book, Military Comfort Women, became a bestseller in Japan; but despite its high volume of sales, it was not publicly discussed or even acknowledged. Moreover, the surviving comfort women who were interviewed for Senda’s study and other subsequent studies refused for years to disclose their identities, even after advocacy groups in Japan and South Korea began to openly discuss the “comfort women issue.” It was not until December 1991—when Kim Hak Sun, one of the South Korean plaintiffs in a suit for monetary damages filed against

56. Id.
57. Id. at 267-68.
58. Id. at 267.
59. Hicks, supra note 25, at 165.
60. Id.
61. Kim, supra note 11, at 266.
62. Hicks, supra note 25, at 153.
63. Kim, supra note 11, at 266.
64. Hicks, supra note 25, at 156.
the Japanese government in Tokyo District Court, came forward to tell of how she was abducted at the age of seventeen and forced into sexual slavery in a comfort station—that other former comfort women began to emerge from anonymity to tell their stories in the public arena.

C. Two Failed Attempts at Obtaining Redress:
Litigation and Monetary Compensation

1. Litigation by Comfort Women in Japanese and United States Courts

We heal our tongues . . .
We give testimony.
Our noise is dangerous.
—Janice Mirikitani, “Breaking Silence”

Ever since the comfort women issue resurfaced in the early 1990s—with a new public wave of testimony by survivors about their horrific wartime experiences and Yoshiaki Yoshimi’s exposé of the Japanese government’s key and active role in conceptualizing and operating the comfort station system—repeated requests to Japan for redress have been made not only by the former comfort women themselves, but also by “international and domestic organizations, foreign governments, the International Labor Organization, the United Nations, and the Japanese Bar Association” on the women’s behalf. However, the Japanese government has repeatedly refused to issue direct compensation for the comfort women’s considerable physical and emotional sufferings resulting from their service as sexual slaves. This has led to litigation on the international level by comfort women of various nationalities who seek remedies from courts of law. Unfortunately, the context in which the comfort women have brought their claims for monetary damages in tort is a “hostile legal framework” established by international law, in which they have been “forced to wrestle with [finding] a legal basis to support their claim that rape violates international law.” This struggle serves as a “strong testament to the shortcomings of such law, which still has not sufficiently matured so as to provide unequivocally a sound cause of action to the charge of mass rape.” The Korean comfort women’s legal claims against the Japanese government have, to date, been brought in two forums:

66. HICKS, supra note 25, at 11.
69. Boling, supra note 26, at 552.
70. Id. at 551.
71. Id.
Japanese courts in Tokyo and in the port city of Shimonoseki, and United States federal district court.

Since 1991, when the first comfort women filed a lawsuit in a Japanese court, comfort women from various nations have filed eight lawsuits in different Japanese courts, seeking damages for injuries suffered as a result of their wartime sexual slavery. Of these suits, three involved plaintiffs of South Korean nationality. However, none of the eight suits resulted in damage awards to the plaintiffs for injuries suffered, with the Japanese government successfully avoiding legal liability on four bases:

1) the uncertain state of international human rights law during [World War II] and the principle against applying such laws retroactively; 2) the inability of individuals to be compensated under international law; 3) the prior settlement of claims by post-war bilateral treaties; and 4) the passage of more than fifty years, rendering the complaints of the comfort women timebarred.

A paltry one suit out of these eight—the so-called “Kan-Pu Trial” brought in 1998 in the remote Shimonoseki district by three South Korean plaintiffs—resulted in the district court ordering the Japanese government to award monetary damages to the plaintiffs on the basis of its negligent failure to “legislate an official apology and compensation[, which] further violates the human rights of the victims.”

After this trend of failure in hostile Japanese courts, fifteen former comfort women filed a class action lawsuit in the United States District Court for the District of Columbia. Their cause of action arose under the Alien Tort Claims Act (“ATCA”), which grants original jurisdiction to United States district courts over any civil action brought by an alien for a tort “committed in violation of the law of nations or a treaty of the United States.” Because the suit was brought in the United States against the government of Japan, jurisdiction was premised on the Foreign Sovereign Immunities Act (“FSIA”). FSIA “mandate[s] presumptive immunity for

72. Arakawa, supra note 68, at 175.
74. Arakawa, supra note 68, at 175.
75. Id. at 183-84. See also Boling, supra note 26, at 569 (detailing the Japanese government’s argument that because of the bilateral postwar resolution of claims between South Korea and Japan, individuals are barred from recovery: “The traditional posture of international law has been that, after the state espouses the claims of its nationals against another state’s citizen, the claim has no independent existence. In other words, the claim vanishes from the perspective of the individual and thereafter redounds in favor of the government of Japan, jurisdiction was premised on the Foreign Sovereign Immunities Act (“FSIA”)). For a detailed explanation of the legal arguments wielded by the Japanese government against the plaintiffs in these lawsuits, as well as possible refutations to those arguments, see generally Arakawa, supra note 68, at 183-91.
76. Okada, supra note 50, at 102-103.
78. 28 U.S.C. § 1350.
79. 28 U.S.C. § 1602 et seq.
foreign nations from lawsuits brought in the United States. However, under FSIA, there are two scenarios in which a foreign nation will not be considered immune from such suits: one, if the foreign state has “waived its immunity either explicitly or by implication . . . [or two, if the foreign state’s] action [was] based upon a commercial activity” conducted in, in connection with, or outside of but causing a direct effect in the United States (the “commercial activity exception”). The plaintiffs argued that their case fell within the second scenario for waiving Japan’s immunity under FSIA because

“comfort stations” were established [by Japan] inside Guam and the Philippines. Because these were United States territories at the time, plaintiffs maintain there was a direct effect in the United States. Second[,] . . . after World War II the Japanese territories occupied by the United States military became part of the United States. Therefore, the burden of repatriating, debriefing, housing, clothing, and treating “comfort women” in these areas was a direct effect in the United States. Third[,] . . . the alleged use of “comfort women” by United States servicemen after the war constituted a direct effect in the United States.

Ultimately, the district court dismissed the plaintiffs’ claims, finding that Japan had neither explicitly waived immunity from suit by accepting the Potsdam Declaration nor implicitly waived immunity by violating jus cogens norms of international law. The court also held that Japan’s maintenance of the geographically far-flung networks of comfort stations did not fall under the commercial activity exception to FSIA. In addition, the court held that independently of questions of sovereign immunity or waiver thereof under the FSIA, the plaintiffs’ suit presented a nonjusticiable political question and, as such, had to be dismissed under the “political question doctrine”:

There is no question that this court is not the appropriate forum in which plaintiffs may seek to reopen those discussions [of war crimes] nearly a half century later. Just as the agreements and treaties made with Japan after World War II were negotiated at the government-to-government level, so too should the current claims of the “comfort women” be

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81. Id. at 58-59 (citing 28 U.S.C. § 1605(a)).
82. Id. at 61.
83. Id. at 60-61. Compare Adam C. Belsky et al., Comment, Implied Waiver Under the FSIA: A Proposed Exception to Immunity for Violations of Peremptory Norms of International Law, 77 CAL. L. REV. 365, 412-13 (1989) (proposing that “[i]ndividual remedies for individual harm provide a sharply tuned instrument of justice, while self-help measures are frequently blunt and problematic . . . [Allowing implied waiver under the FSIA for foreign states’ violations of jus cogens norms] advances the ‘shared interest of the several States’ in furthering the ‘fundamental social policy’ of worldwide respect for universally recognized norms of conduct. Although this argument is most compelling where the potential plaintiff is a U.S. citizen, it is also valid for noncitizens.”).
84. Hwang, 172 F. Supp. 2d 52, 64.
85. Id. at 64 (citing Marbury v. Madison, 5 U.S. 137, 169 (1803) (Marshall, C.J., holding that “[q]uestions, in their nature political . . . can never be made in this court”).
addressed directly between governments.\(^{86}\)

2. Monetary Compensation

"We know that [the comfort women's] deep scars and damage will not be compensated by a little money and we will not be forgiven for what we've done."

—Haruki Wada, last executive director of the Asian Women's Fund\(^{87}\)

Running parallel to the failures of Korean comfort women to obtain relief in various courts of law is the decade-long controversy over the Japanese government's establishment of the quasi-governmental Asian Women’s Fund, formed in 1995 to financially compensate identified surviving comfort women. The Fund has been criticized by most of its intended beneficiaries as an attempt to give "charity" handouts in lieu of adequate official compensation for harms suffered.\(^{88}\)

The history of the Fund can be traced back to the aftermath of the 1993 statement of responsibility made by Yohei Kono. In August 1994, amid the mounting international criticism and pressure being leveled at the Japanese government for its handling of the comfort women issue, then-Prime Minister Tomiichi Murayama, who had, at that point, recently returned from visits to South Korea and several Southeast Asian countries,\(^{89}\) announced the establishment of the “Peace, Exchange, and Friendship Initiative,”\(^{90}\) a ten-year program of cultural and vocational projects aimed at resolving the “pain” of World War II.\(^{91}\) Although the one billion dollar initiative included academic exchanges with other Asian countries and vocational education for women in other Asian countries, it did not provide for direct compensation to the comfort women by the government.\(^{92}\)

Soon after Murayama’s announcement, the private Asian Women’s Fund was set up in June 1995 under the auspices of the Japanese government, which provided an initial 300 million yen for a campaign to solicit donations to the Fund from private citizens, and also covered the Fund’s annual operating costs throughout its nearly twelve years of

existence. In a July 1995 declaration, a group of the Fund’s supporters and organizers “gathered together . . . in the conviction that atonement in the form of compensation by the people of Japan to the victims of the institution of ‘comfort women’ [was] urgently needed . . . along with an apology by the Government,” and appealed to ordinary Japanese citizens for monetary donations to the Fund.

At the time of its scheduled and actual termination on April 1, 2007, only 285 surviving comfort women from Korea, Taiwan, and the Philippines had accepted compensation (of nineteen million yen, or approximately 20,000 U.S. dollars, per claimant) from the Fund. Other survivors and their families have consistently refused to take payments from the Fund, saying that they will not accept compensation from a Japanese government that has never taken responsibility for its wartime actions toward the comfort women. The position of this latter group of survivors has been buttressed by supporters throughout Asia and the international community, some of whom argue that by establishing a private foundation to compensate the comfort women, the Japanese government is clearly circumventing an official confession of wrongdoing, “thus . . . preventing the restoration of the victims’ dignity as human beings.” As Yoshiaki Yoshimi argued in 1996, a year after the Fund’s inception, “It’s inhumane to stick money in front of those poor victims while the government refuses to offer [official] compensation.”

Meanwhile, in the case of South Korean comfort women, it was decided that the South Korean government should directly compensate the women for their suffering.

II. POLITICAL QUEST FOR REDRESS

A. Collective Asian American Support for the Comfort Women

During one television interview [in Japan], an announcer asked Mr. Honda how he could back such a resolution when he has a Japanese face. “I told her I could have a black face, a brown face, a white face—I could have a black face, a brown face, a white face—I could...”

93. Sakamaki, supra note 88.
95. Hogg, supra note 87.
96. Onishi, Denial, supra note 18; Sakamaki, supra note 88; Bryan Bender, Congress Backs Off of Wartime Japan Rebuke: Lobbyist Efforts Halt Resolution, BOSTON GLOBE, Oct. 15, 2006, at A12.
98. Kim, supra note 11, at 269.
99. Sakamaki, supra note 88.
100. Kim, supra note 11, at 269. As of 1998, there was no official figure available as to the amount of compensation issued by the South Korean government. Id. at n. 47.
be Mexican, I could be Indian—it doesn’t matter.” Mr. Honda recalled.
—Norimitsu Onishi, New York Times profile of Representative Michael Honda

In the absence of legal remedies for the comfort women, and with the Japanese government’s continued attempts to eschew directly compensating survivors for their injuries, the course now taken by the comfort women and their Asian American allies in the United States has been a decidedly non-legal one: that of political mobilization behind legislation that, while nonbinding, is designed to make a strong public statement directed toward Japan on behalf of the government and the people of the United States. As prominent in the news and as internationally controversial as House Resolution 121 became in 2007, the push to pass the resolution, and to pressure the Japanese government into issuing a full and official apology is not the first test of the political mobilization efforts of the pro-comfort women coalition of Asian Americans. The Korean American community, along with its allies, had, as recently as 2006, experienced a bitter defeat in its advocacy efforts on behalf of a nonbinding Congressional resolution which, like House Resolution 121, called on Japan to officially atone for its wartime atrocities against the comfort women. Although that earlier resolution, known as House Resolution 759, had more than fifty Republican and Democratic co-sponsors, it was effectively killed by the Japanese government’s powerful lobbyists on Capitol Hill and K Street:

[After House Resolution 759’s approval by the House International Relations Committee,] Japan’s embassy in Washington, which had said the measure could harm relations with the United States and trigger an avalanche of other wartime claims, called in one of its biggest guns—the former House majority leader Bob Michel, now a senior advisor at Hogan & Hartson, the lobbying firm that has represented Tokyo’s interests in Washington for more than four decades. He intervened with the [then-Speaker] of the House, J. Dennis Hastert, and Representative Henry Hyde, chairman of the international relations panel, according to two participants in the discussions. Supporters of the measure, including the Korean American Coalition and the Korean-American Association, then were informed . . . that the resolution was effectively dead.¹²

The Japan lobby’s victory in defeating House Resolution 759—which Ken Silverstein characterized as but the latest in a string of successes¹³—was attributed by at least one Beltway observer to the Bush Administration’s keen interest in maintaining Japan “as the key regional bulwark against an

¹¹ Onishi, Congressman, supra note 6.
¹² Bender, supra note 96.
¹³ “Japan has always been able to block attempts to pass a congressional resolution on the exploitation of comfort women, partly because it runs a lavishly-funded Beltway lobbying operation.” Silverstein, supra note 97.
emerging Chinese regime that may be hostile to the United States in the future."\textsuperscript{104}

In light of this initial unsuccessful attempt to overcome the behemoth pro-Japan Washington lobby, as well as the failure to obtain redress for the comfort women through international litigation, the redoubled efforts of Asian American individuals and organizations involved in the Korean comfort women's legal and political struggle are particularly noteworthy. This strikingly deep-rooted, activist-spirited investment by Asian Americans in the comfort women's cause can be construed as the natural result of both the formation (largely accomplished in the latter half of the twentieth century, after World War II) of a universal "Asian American" identity, as well as of the gradual move by individual Asian ethnic communities toward acceptance of pan-Asian American causes as closely enough related to their traditional priorities and agendas so as to become their own. According to UC Berkeley professor Ronald Takaki, who is himself Japanese American and grew up in a melting pot of Asian cultures in Hawaii\textsuperscript{105}: "Asian Americans are continuing to modify their cultural inheritances and inventing new dimensions to their identities. Many of them are reaching toward . . . Asian-American panethnicity."\textsuperscript{106}

Lisa Lowe, in her seminal work on the interactions between Asian American culture and politics, characterizes this contemporary acceptance of the pan-Asian American identity as, at least in part, politically motivated: a deliberate construct that enables Asian ethnic communities to overcome or sidestep historically nearly insurmountable ethnic divisions, in order to mobilize behind various causes—whether they be political, legal, social, or cultural—that traditionally were not on the agendas of their respective ethnic groups. In essence, Lowe argues, Asian American identity can and has been "articulat[ed] . . . as an organizing tool . . . provid[ing] a concept of political unity that enables diverse Asian groups to understand unequal circumstances and histories as being related."\textsuperscript{107}

Other critical race theorists and scholars of Asian American history have noted and traced the post-World War II movement toward a pan-"Asian American" identity as less similar to a deliberate effort to politically mobilize disparate groups by constructing a new identity which knows no traditional boundaries predicated on ethnicity or national origin, and more like the natural end product of centuries spent living as a subaltern group

\textsuperscript{104} Id. (citing the author's interview with Mindy Kotler, director of Asia Policy Point). "Any issue that the Japanese have defined as disturbing has been shunted aside to ensure that nothing upsets the alliance with Japan . . . whether it's a trade dispute or taking responsibility for the comfort women." Id. (quoting Kotler).

\textsuperscript{105} RONALD T. TAKAKI, STRANGERS FROM A DIFFERENT SHORE: A HISTORY OF ASIAN AMERICANS 3 (1989).

\textsuperscript{106} Id. at 503 (quoting the Asian American critical race theorist Yen Le Espiritu, who coined the term "Asian American panethnicity").

\textsuperscript{107} LISA LOWE, IMMIGRANT ACTS 70-71 (5th prtg. 2004).
within a majority non-Asian society and culture. This view depicts Asian American status (throughout most of the history of Asians’ presence in the United States) as a racialized, often culturally stereotyped, often disadvantaged population as the catalyst for erasing—or at least softening—previously hard-drawn lines of ethnicity and national origins within American communities of Asian descent. In his history of Asians in the United States from the beginnings of Asian immigration to the present day, Takaki describes the gradual but inexorable emergence of an overarching Asian American identity. He characterizes this new identity as the product of the common struggle—shared by all Americans of Asian descent—of living as a racialized group within a “mainstream” society whose laws, politics, and cultural values are often at odds with, and often aimed against, Asians:

There are no Asians in Asia, only people with national identities .... But on this side of the Pacific there are Asian Americans. This broader identity was forged in the crucible of racial discrimination and exclusion: their national origins did not matter as much as their race. Thus, out of ‘necessity,’ theirs became a community rooted in the struggle against racism .... From struggles emerged an ‘extravagance’—an Asian-American identity.

In the twenty-first century, these concepts of pan-Asian American identity, shared Asian American historical and cultural heritage, and political power through inter-ethnic unity—all of which were forged through the commonality of struggles with the injustices that are a running motif throughout the history of Asian America—have been harnessed to rally diverse Asian American groups and individuals behind the Korean comfort women’s cause, and to summon their collective power and experience to the aid of that cause.

B. Moving away from the Korematsu Model: Using Grassroots Asian American Activism in Support of the Comfort Women

Arguably, the most famous Asian American effort to right the wrongs of history to date was the Japanese American community’s triumph in obtaining redress from the United States government for the injustices of World War II internment. The Japanese Americans’ success was accomplished in two ways: victory in federal courts, and lobbying for government apologies and government-issued monetary compensation for


109. TAKAKI, supra note 105, at 503.

110. Id.
past wrongs.

The former avenue, litigation, was employed in the mid-1980s with the reopening (using the ancient and now seldom-employed writ of error coram nobis) of the so-called “Japanese American cases” of the 1940s. In the original cases, Fred Korematsu, Gordon Hirabayashi, and Minoru Yasui mounted three challenges—struck down by the wartime Supreme Court—to the United States government’s racially-based curfew and detention programs for Japanese Americans. Vindication under the law of the named Japanese American litigants—and, by extension, of the Japanese American community at large—came, in the form of landmark court decisions vacating the elderly appellants’ criminal convictions and clearing their names, four decades after the Supreme Court ruled that the United States government had correctly classified them as “enemy aliens.”

As Takaki explains, “[T]he memory of the internment—the separate families, the infants lost from lack of medical care, the machine gun towers, the primitive facilities and smell of horse manure in the race-track holding camps—remains a part of Japanese-American consciousness,” and has been infused into a greater pan-Asian American sense, imbuing the entire community with legal and political history as it relates to Asian American civil rights, community activism, and efforts toward obtaining redress. Although the contemporary Asian American movement on the comfort women’s behalf is in many respects an outgrowth of this strongly legalistic post-internment Asian American ethos, it can also be characterized as being informed by a sense of realpolitik in terms of moving away from established models of seeking redress. In lieu of using courts of law to secure for the comfort women a Korematsu-esque vindication of their personal accounts of history and redress for their suffering—efforts which, as previously described, seem to already have been exhausted in both Japan and the United States—the Asian American coalition of support for the comfort women has employed a strategy markedly different from that used by the Japanese American community in


113. Although the functions of the writ of coram nobis were largely supplanted by the writ of habeas corpus, relief for the petitioners in the reopened Japanese American cases would not have been possible under habeas corpus, as they had already served out their criminal sentences. Korematsu, 584 F. Supp. 1406, 1412. “It is in these unusual circumstances that an extraordinary writ such as the writ of coram nobis is appropriate to correct fundamental errors and prevent injustice.” Id. (citing United States v. Correa-De Jesus, 708 F.2d 1283 (7th Cir. 1983)).

114. Id.

115. TAKAKI, supra note 105, at 340.
the coram nobis cases and the internees’ push for redress from the United States government. Despite the collective Asian American awareness of the need to correct wartime wrongs to safeguard against society’s future perpetration of the same kind of tragic mistake against different minority groups,\textsuperscript{116} the cause of the comfort women has, unfortunately, proved to be one in which the Korematsu model of litigation, followed by official monetary compensation, was unsuccessful.

It has been argued that the Japanese American community was able to obtain redress in the manner it did because it could fit its claims for redress tightly within the paradigm of “individual rights”—thereby making their claims more comprehensible and palatable to the judiciary as well as to mainstream American society—and that perhaps this could only have been accomplished by the Japanese Americans at that specific moment in history.\textsuperscript{117}

For the contemporary Asian American supporters of the comfort women, the employment of realpolitik in advocating for the comfort women on the international stage is reflected in their nontraditional methods of mobilization, which employ decidedly twenty-first century methods of information dissemination and rallying of participants\textsuperscript{118} in the service of a sixty-plus-year-old cause. One of the prominent pan-Asian American groups formed to support House Resolution 121, the 121 Coalition—an umbrella group comprised of various civic organizations representing the Korean American community, the Japanese American community, and other individual Asian American ethnic communities, as well as pan-Asian American groups, international groups, and groups not specifically affiliated with the Asian American community—has as its home base and central clearinghouse of information not a physical office, but rather a Web site.\textsuperscript{119} This mode of organization, in which information is instantaneously disseminated to as broad-based of an audience as possible, exemplifies the contemporary grassroots, awareness-focused model of the contemporary Asian American effort on behalf of the comfort women. As of mid-May 2007, the 121 Coalition had a listed membership of nearly 200 organizations from all over the world that had joined the coalition in urging

\textsuperscript{116} See, e.g., Nina Bernstein, Echoes of ’40s Internment Are Seen in Muslim Detainees’ Suit, N.Y. TIMES, Apr. 3, 2007, at 1 (noting that in April 2007 Holly Yasui, Jay Hirabayashi, and Karen Korematsu-Haigh, children of the litigants in the original Japanese American cases, filed an amicus brief in the Second Circuit Court of Appeals on behalf of the Muslim plaintiffs and appellants in the pending Turkmens v. Ashcroft case).


\textsuperscript{118} These include World Wide Web-based collections of documents pertaining to the comfort women, online petitions garnering support for House Resolution 121, groups hosted by social networking sites, and awareness videos posted on YouTube.

\textsuperscript{119} 121 Coalition, http://support121.org/ (last visited May 6, 2008).
the passage of House Resolution 121.\textsuperscript{120}

III. MAKING THE SUBALTERN WHOLE: APPLICATION OF REPARATIONS THEORY TO VICTIMS OF WARTIME INJUSTICE

"But, above all, when I am discouraged and disheartened, I have this to fall back on: if there is a principle of right in the world, which finally prevails, and I believe that there is; if there is a merciful but justice-loving God in heaven, and I believe that there is, we shall win; for we have right on our side; while those who oppose us can defend themselves by nothing in the moral law, nor even by anything in the enlightened thought of the present age."

—James Weldon Johnson, The Autobiography of an Ex-Colored Man\textsuperscript{121}

Does this model of advocacy—a model that is more political, Asian American community-oriented, largely grassroots-run, and not entirely legal remedies-based—have hope of being more effective at securing redress for the comfort women than a strictly legalistic model? Arguably, the former model's potential for efficacy stems from its roots in both history (the past horrors suffered by the comfort women, and their failures to secure justice either in court or through official government apologies) and in a vibrant minority activist tradition of lawyering or advocating not only for one's own individual community, but for the marginalized, the subjugated, the victimized, and the legal and societal outsiders in general, by "passionately invok[ing] legal doctrine, legal ideals, and liberal theory in the struggle against racism . . . ."\textsuperscript{122} In other words, the flexibility inherent in this strategy arises from the long minority history of struggle against the established American legal system—a struggle in which minority litigants, lawyers, and activists have had to use the law both to fight the law, and also to transcend the law in order to battle injustice. This legal struggle, Mari Matsuda writes, is an "experience of dual consciousness [that] accommodates both the idea of legal indeterminacy as well as the core belief in a liberating law that transcends indeterminacy."

Eric K. Yamamoto argues that it is actually ineffective for subjugated or formerly persecuted groups to continue to shape their claims for reparations in "the common law paradigm of a lawsuit—where an individual wrongfully harmed by the specific actions of another in the recent past is entitled to recover damages to compensate for actual personal losses."\textsuperscript{124} Yamamoto proposes that adhering to a strictly legalistic

\textsuperscript{120} 121 Coalition, "Members." http://support12l.org/?page_id=45 (last visited May 6, 2008).


\textsuperscript{122} Id. at 339.

\textsuperscript{123} Id. at 341.

\textsuperscript{124} Yamamoto, supra note 117, at 488.
approach to obtaining redress has “a darker underside,”\textsuperscript{125} entailing significant risks that reparations claimants will not actually recover for their losses should they choose to continue to utilize as their sole framework existing redress models provided by the law, the courts, and the established legal systems of their respective societies.\textsuperscript{126} Yamamoto characterizes these claimants’ barriers to reparations as the immense social cost that governments, elites, and/or well-established societal institutions risk incurring when they admit to, and acquiesce to making reparations for, grave wrongs they committed. Taking this risk, Yamamoto argues, can endanger those entities’ deep entrenchments in social and political power, both domestically and internationally: “Meaningful reparations entail change. Change means the loss of some social advantages by those more powerful. For these reasons, those charged with repairing the harms always resist.”\textsuperscript{127}

From the subaltern’s perspective, the proper measure of reparations does not, then, equate to a standard legal judgment,\textsuperscript{128} imposed from above and hewing closely to a conventional legal remedial structure—in other words, the type of reparations that has repeatedly failed to give the comfort women actual relief. Rather, proper recompense for their suffering should be “the formal acknowledgment of historical wrong, the recognition of continuing injury, and the commitment to redress, looking always to victims for guidance.”\textsuperscript{129}

IV. SPEAKING FOR THOSE WHO HAD NO VOICE

The reality is that there is little we can do for the comfort women . . . . They’ve lived with this hell for sixty years and most of them are going to find peace soon. The real importance of [Congressional resolutions concerning the comfort women] is that it would serve as a precedent for going after the miscreants and perpetrators running today’s rape camps and help protect future generations of women from similar violence.

—Mindy Kotler, director, Asia Policy Point\textsuperscript{130}

An apology is the most important thing we want—an apology that comes from the government, not only a personal one—because this would give us back our dignity.

—Jan Ruff O’Herne, former “comfort woman” of Dutch nationality from Indonesia\textsuperscript{131}

\begin{itemize}
  \item \textsuperscript{125} Id.
  \item \textsuperscript{126} Id. at 487.
  \item \textsuperscript{127} Id.
  \item \textsuperscript{128} Matsuda, \textit{supra} note 121, at 397.
  \item \textsuperscript{129} Id.
  \item \textsuperscript{130} Silverstein, \textit{supra} note 97.
  \item \textsuperscript{131} Onishi, \textit{Denial}, \textit{supra} note 18.
\end{itemize}
What, then, constitutes the proper measure of reparations that should be paid to the comfort women, many of whom are not expected to survive for much longer? Moreover, if on the macro level "[r]edress means that full justice should be done vis-à-vis society as a whole, including the persons responsible and the victims,"132 then what should be done not only to make the comfort women themselves whole, but to heal the rifts in the international community that the divisive debate over this issue has exacerbated?

A. A New Strategy for Claiming Reparations

In light of the many failures in Japanese and American courts of law to obtain proper redress for the comfort women, it would perhaps be more effective to follow the proposal put forth by Eric Yamamoto, who refashions claimants' ideal approach to reparations as a two-pronged strategy for bringing successful reparations claims. The first prong of Yamamoto's proposed strategy is still partially focused on traditional legal forms of litigation and redress, "[f]ocus[ed] on bite-sized legal claims . . . framed in terms of individual rights and remedies."133 However, the second, more radical prong grows out of the concept of reparations as repair for an entire society, and has as its main governing principle the "reconceptualiz[ing of] law and litigation broadly as key components of larger political strategies."134 The alternative second path, in the rubric fashioned by Yamamoto, would "[t]reat law and court process—regardless of formal legal outcome—as generators of ‘cultural performances’ and as vehicles for providing outsiders [to the traditional legal establishment] an institutional public forum"135 for testimony and healing.

The two-part approach Yamamoto proposes would make the concept of reparations into a true "repair paradigm" which redirects attention away from individual rights (recognized by law) and legal remedies (monetary compensation). It focuses instead on (1) historical wrongs committed by one group, (2) which harmed, and continue to harm, both the material living conditions and psychological outlook of another group, (3) which, in turn, has damaged present-day relations between the groups, and (4) which ultimately has damaged the larger community, resulting in divisiveness, distrust, social disease . . . .

It is not enough, within this "repair paradigm," for reparations—whether they ultimately come in the form of financial restitution, legislation in the

133. Yamamoto, supra note 117, at 492.
134. Id.
135. Id.
136. Id. at 522.
United States or in Japan, formal apology by the Japanese government, or even some combination of the above—to merely be paid to the comfort women alone (as would be the case in the traditional model of tort law). To stay faithful to the idea of reparations as true “repair,” an effective model of reparations must include “collective actions, foster[ing] the mending of tears in the social fabric, the repairing of breaches in the polity.” In short, the remedies for past wrongs cannot be strictly legal; they must also contemplate and include non-legal strategies for healing whole societies.

In this framework, non-legal remedies for historical injustice must extend beyond individual victims and perpetrators to encompass the societies in which those individuals live. Moreover, in the case of harms that transcend national boundaries, such as Japan’s war crimes against the comfort women, they must include measures to mend rifts in the international community stemming from those harms. To that end, fundamental changes in Japan’s view of its own history—and its view of that history’s intersections with and ramifications for international legal and political issues—must take place in order to repair the profound damage to the world community (in particular, the continuing harm to intra-Asian international relations) caused by Japan’s wartime misdeeds and by its continued refusal to take full legal and moral responsibility for them.

B. Recommendations for Japan

The 1995 appeal to the Japanese populace for donations to the Asian Women’s Fund cited “the need for as many Japanese citizens as possible to appreciate the suffering of the victims and to express a genuine desire for atonement.” The appeal went on to say:

The indignities and pain suffered by these women, both during the war and in the fifty years since, can never be fully compensated for. But we are convinced that, if each and every citizen of Japan would do his or her best to understand the plight of the victims, and then act in a concrete manner to make amends, and if such a commitment—coming, as it must, from the heart—could reach the women involved, then our actions would help mitigate, to some extent, the trauma they have lived through and continue to live with.

With regard to any possible reformation of its collective view and teaching of history, Japan as a country and a society should perhaps take to heart the objectives laid out in 1993 by Yohei Kono: “We shall face squarely the historical facts as described . . . instead of evading them, and take them to heart as lessons of history. We hereby reiterate our firm

137. Id. at 519.
139. Id.
determination never to repeat the same mistake by forever engraving such
issues in our memories through the study and teaching of history."140 A
nationwide revision of history textbooks to fully disclose Japan’s wartime
crimes—along the lines of the revisions begun in the 1990s and then
rescinded—“will convey the sincerity of Japan’s denunciation of its
wartime atrocities and the resolve not to engage in further acts of
aggression . . . [and] will assist the young people of Japan to recognize,
condemn and prevent violations of fundamental human rights, such as the
forced prostitution of women.”141

In the utopian scenario in which Japan chooses to undertake a radical
reexamination of history similar to the one outlined by Kono above,
another essential aspect of that full accounting of history would be for
Japan to examine its courts’ behavior in the comfort women tort cases in
light of the government’s duty to act as a moral state imposed by the
Japanese Constitution.142 Such a reexamination may find that reopening
the comfort women cases, or even bringing surviving parties involved in the
procurement and rape of the comfort women to criminal trial, will go far in
establishing Japan’s commitment not only to justice for the comfort
women, but also to acting as a responsible member of the community of
nations. “When . . . international law insists upon punishment of atrocious
crimes, the prosecutions can, as Otto Kirchheimer said of the Nuremberg
prosecutions . . . ‘define where the realm of politics ends or, rather, is
transformed into the concerns of the human condition, the survival of
mankind in both its universality and diversity.’”143

It is likely that the argument for infusing the heretofore strictly legal144
debate over the comfort women issue with Japanese society-wide
considerations of morality and ethics, internationally shared transcendental
values, and delayed granting of justice may meet with significant resistance
in Japan, where “unlike [in] Europe and China, the notion of universally
applicable, transcendental norms—whether conceived as natural law or a
separate moral order—did not take hold . . . [as h]istorically, Japanese
culture did not include a shared belief in universal values nor a dichotomy
between ‘good’ and ‘evil.’”145 However, as Yvonne Park Hsu observes,
moral-ethical questions in and of themselves, while perhaps not often
addressed in individual suits by courts of law, are central to the

140. KONO, supra note 12.
141. Hsu, supra note 132, at 127.
142. Kim, supra note 11, at 269.
143. Diane F. Orentlicher, Settling Accounts: The Duty to Prosecute Human Rights Violations of a
144. The Japanese government’s arguments in court in the comfort women cases have, to date,
relied on complex technical legal arguments, leaving questions of morality and ethics entirely aside.
Arakawa, supra note 68, at 175.
determination of an individual state’s behavior regarding its history and its past deeds. Hsu argues that Japan’s handling of these considerations can also have incredible impact on its future behavior—and its standing in the international community—with regard to similar human rights issues of international scope and concern: “[M]oral-ethical considerations . . . regarding the comfort women will not only set an influential precedent in Japanese law, but may also determine a future course of national conduct in the area of human rights.” Japan—by framing its examination of the comfort women issue not as a legal battle in which it can evade substantive legal liability, but as an opportunity to reevaluate its past from a moral and philosophical standpoint—can, in the twenty-first century, transcend its sordid history by taking ownership of and responsibility for it. Already a society of incredible innovation and a longstanding member of the community of thoroughly modern, developed nations, Japan will in the process serve as a positive example for other nations (in Asia and elsewhere) that have not taken full ownership of their historical misdeeds. A thorough accounting on Japan’s part of its past atrocities may also bolster its current political standing among its Asian neighbors and within the international community.

C. Extralegal Reparations for the Comfort Women

Regardless of the likelihood of such change in Japanese government and society, perhaps the most important objective of reparations is that the comfort women, after suffering through decades of subjugation, pain, and anonymous silence, are able to at last seize agency in defining what reparations are and what the process of reparations must accomplish. In large part, a reparations scheme which aims to properly redress subaltern victim groups derives its legitimacy and potency from allowing the victims to assume power in “defin[ing] the remedies, and [pressing for] the [continued] obligation of reparations . . . until all vestiges of past injustice are dead and buried.” Moreover, giving victims like the comfort women the opportunity to actively delineate the nature and scope of the redress they desire not only legitimizes the remedies eventually given to that specific group of victims, but also radically reconfigures the general power dynamics between perpetrators and victims, governments and individuals, colonizers and colonized, and the historically powerful and traditionally powerless. Mari Matsuda writes that, as a higher ideal, “[r]eparations . . . is a concept directed at remedying wrongs committed against the powerless . . . [And it is through seizing agency in defining remedies that t]hose on the bottom—minority group members, political outsiders, the exploited—will

146. Hsu, supra note 132, at 122.
147. Id.
148. Matsuda, supra note 121, at 394.
receive reparations.\textsuperscript{149}

Fortunately, no matter what the outcome of the comfort women’s long struggle for official redress from Japan, their case shows the latter principle of reparations fiercely at work. It is exemplified by the actions (in venues large and small, all over the world) of the comfort women themselves, who have broken the confines of their formerly subjugated statuses—as women and as victims—by bringing lawsuits, giving testimony, telling their stories with frankness and honesty, demanding justice for the harms they have suffered, and advocating for the human rights of women of the past, the present, and the future. They have issued a challenge to Japan to hold itself accountable for its atrocities against women and humanity, and it is the resounding impact of this demand that has prevented those atrocities from becoming obscured by history. Through their brave efforts to raise awareness of their painful, once-unspeakable history and their struggles in the contemporary political and legal worlds, the comfort women have also compelled the international community to examine how best to compensate indescribable suffering, both by using the law and by transcending it.

\textsuperscript{149} Id.