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Note, Sisyphus in a Coal Mine: Responses to Slave Labor in Japan and the United States

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SISYPHUS IN A COAL MINE: RESPONSES TO SLAVE LABOR IN JAPAN AND THE UNITED STATES

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INTRODUCTION

Liu Lianren spent twelve years wandering the mountainous wilds of Hokkaido, Japan's northernmost and coldest island. He ate weeds, slept in caves, and assiduously avoided the Japanese.[1] A few weeks before the end of World War II, Liu and several of his Chinese compatriots had fled the mine where they were forced to labor for the now-defunct Meiji Mining Company.[2] Liu separated from his companions and lived as a fugitive for over a decade. His isolation ended in February 1958, well after military hostilities between China and Japan had ceased.[3] A Japanese hunter happened upon the snowy concrete barrier into which Liu had burrowed, then surrendered the Chinese national to local police.[4] Unbeknownst to Liu, his Chinese citizenship no longer made him an enemy of Japan, but merely a very unwelcome figure. Japan promptly deported him to China for overstaying his visa.[5]

As one of 38,935 men abducted from China, transported to Japan, and forced to engage in hard labor during World War II,[6] Liu's plight foreshadowed a lifetime of delayed justice and bitter irony, for him and other Chinese slave laborers. He returned to Japan in 1997 and successfully sued the state, though he passed away ten months before the Tokyo District Court handed down the verdict.[7] While Liu's story may appear improbable, it is not at all atypical of recent slave-labor litigation in Japan.

In the past decade, dozens of former slave laborers from China have gone to Japan to sue both the corporations that used their labor during the war and the government that orchestrated their abduction.[8] Chinese plaintiffs have filed fourteen lawsuits at the district court level,[9] with decidedly mixed results.[10] Of the eight decisions already rendered, three have found for the plaintiffs, awarding them

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1 Liu Lianren v. Japan, 1067 HANREI TAIMUZU 119, 131 (Tokyo D. Ct., July 12, 2001). The Tokyo High Court reversed the district court's ruling on June 23, 2005. *See* Masami Ito, *Escaped Slave's Kin Lose Redress Award in Appeal*, JAPAN TIMES, June 24, 2005, at 2; *Naki Chichi, Nemurenai [My Deceased Father Cannot Rest]*; ASAHI SHIMBUN, June 24, 2005, at 38.

2 MATSUO SHOICHI, IWANAMI PAMPHLET NO. 466: CHUGOKUJIN SENSO HIGAISHA TO SENGO BAISHO [CHINESE WAR VICTIMS AND POSTWAR REPARATIONS] 30 (1998).

3 *Id.*

4 *Id.*

5 *Id.*

6 *See Liu Lianren*, 1067 HANREI TAIMUZU at 126.

7 *See id.* at 131.

8 *See infra* Part II.B.

9 Like the U.S. federal court system, the Japanese judiciary employs a three-tiered system, consisting of fifty district courts, eight high courts (commensurate with the U.S. circuit courts of appeals), and a supreme court. *See* Percy R. Luney, Jr., *The Judiciary: Its Organization and Status in the Parliamentary System*, LAW & CONTEMP. PROBS., Winter & Spring 1990, at 135, 145–46.

10 *See infra* Part II.B.

tens of thousands of dollars in damages; five have dismissed the suits as time-barred or on grounds of state immunity, exculpating defendant corporations, the state, or both. Two other suits have arranged for settlements.

At present, the Supreme Court of Japan is deliberating three slave-labor cases, appealed from the Tokyo, Fukuoka, and Hiroshima High Courts.[11] The Tokyo and Fukuoka High Courts found for the defendants, while the Hiroshima High Court found for the plaintiffs. These high courts actually reversed the decisions rendered by their respective lower courts, underscoring pervasive uncertainty and inconsistency regarding the resolution of such claims. The supreme court's decisions, expected to come down later this year, will influence lower courts now wrestling with the slave-labor lawsuits, though it will not bind them.[12] Although the supreme court has evinced little sympathy for compensation claims arising out of World War II,[13] this disinclination should not shut the door to compensation. A different approach, bearing the imprimatur of the Japanese Diet—Japan's parliament—would be much more desirable.[14]

This Note argues that the recent wave of litigation brought by former Chinese slave laborers, while important in its own right, highlights the need for a more comprehensive solution. Although ideally the Japanese Diet will devise its own response to the problem of compensation, the experiences arising from the Holocaust litigation in the United States provide a meaningful yardstick for comparison. In the United States, a large-scale settlement scheme followed, and *finalized,* numerous lawsuits brought by former forced and slave laborers from World War II Europe.[15] The American response, though based on different circumstances, led to a multibillion-dollar fund that has compensated over 1.5 million former forced and slave laborers.[16] A similar mass settlement for Chinese slave laborers would provide a systematic and equitable distribution of funds to all aggrieved parties, rather than to some lucky subset of litigants.

Part I of this Note investigates the history of World War II slave labor in Japan, as well as the many provisions of international and domestic law the practice violated. Part II surveys the factual back-

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11 *See infra* Part II.B.

12 *See* Luney, *supra* note 9, at 159 ("Lower court judges have the discretion to render decisions that differ from prior Supreme Court decisions on the same subject.").

13 *See id.* ("[L]ower court judges tend to be more liberal and more protective of fundamental human rights than Supreme Court justices."); *see also Top Court Nixes Sex Slave, Korean Vet Suit,* JAPAN TIMES, Nov. 30, 2004 (noting the Japanese Supreme Court's dismissal in November 2004 of a thirteen-year-old suit by former Korean sex slaves).

14 *See infra* Part IV.

15 *See infra* Part III.A.

16 *See infra* Part III.A.

grounds and results of recent Japanese slave-labor lawsuits. Part III shifts focus from Japan to the United States, where slave-labor litigation has yielded two methods of compensation. Finally, Part IV proposes mass settlement as a solution to the problems raised by slave-labor litigation.

I
SLAVE LABOR: IN PRACTICE AND THEORY

A. Solving Japan's Wartime Labor Shortage

Japan took three years to plan the abduction of over 40,000 people from China.[17] On March 19, 1940, the Japanese Ministry of Commerce and Industry convened a meeting to discuss the possibility of employing "coolies," or Chinese workers, to compensate for domestic labor shortages.[18] Representatives from several corporations—including Mitsubishi Mining Enterprises, Mitsui Mining and Forestry, and Hokkaido Coalmining and Shipping—also attended the meeting.[19] The proposal they drafted clearly envisioned a role for the Japanese army in recruiting and transporting the laborers to Japan.[20] Thus, the Japanese government, army, and private sector participated from the very inception of the slave-labor campaign.

In November 1942, the Cabinet passed a resolution, *Issues Concerning the Importation of Chinese Laborers*, which envisioned a two-part scheme to abduct laborers.[21] In the first "experimental" stage, the resolution provided that Chinese laborers would be brought to Japan to compensate the severe labor shortage in heavy industry.[22] In the second "full-scale" stage, the government would examine the results of the first stage and adjust the amount of "imported labor" accordingly.[23] The resolution also suggested the ideal physical characteris-

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17 The Japanese army, at times with the help of Chinese accessories, brought 41,762 Chinese, primarily men, to concentration camps set up on the Chinese mainland. NIHON BENGOSHI RENGŌKAI [JAPAN LAWYERS' ASS'N], NIHON NO SENGO HOSHŌ [JAPAN'S POSTWAR REPARATIONS] 75 (1994) [hereinafter NICHIBENKAI]. Over 2,800 Chinese either fled or died in the camps, leaving some 38,935 to board the ships to Japan. *Id.*

18 NISHINARITA YUTAKA, CHŪGOKUJIN KYŌSEI RENKŌ [CHINESE FORCED MOBILIZATION] 19–20 (2002). The use of the term "coolie" for Chinese laborer, and "Shina" for China, was part of a larger discursive strategy to dehumanize the Chinese. *See* STEFAN TANAKA, JAPAN'S ORIENT: RENDERING PASTS INTO HISTORY 3–6 (1993) (noting that Japanese scholars and officials used terms such as "Shina" to suggest Japan's preeminence, and China's backwardness, in the early twentieth century).

19 NISHINARITA, *supra* note 18, at 19.

20 *Id.* at 20.

21 Cai Shujing v. Mitsui Mining Co., 1098 HANREI TAIMUZU 267, 273 (Fukuoka D. Ct., Apr. 26, 2002), *rev'd*, 1875 HANREI JIHŌ 62 (Fukuoka High Ct., May 24, 2004).

22 *Id.*

23 *Id.*

tics of the laborers,[24] what they should eat,[25] and, in another ironic twist, how much they would be paid.[26]

From April to November 1943, the government entered into the first phase of the forced mobilization scheme, bringing 1,411 Chinese laborers[27] into Japanese coal mines, factories, and stevedoring operations.[28] After positively appraising the success of the first phase, the government summoned in the second phase by passing the resolution entitled "Issues Concerning the Acceleration of the Importation of Chinese Laborers" on February 28, 1944.[29] From March 1944 to May 1945, the Japanese redoubled their efforts, abducting over 37,000 additional Chinese laborers.[30]

Once captured, the Chinese were brought to concentration camps set up in China and subsequently sent in cargo ships to Japan.[31] From there, they were dispatched to one of 135 worksites throughout the archipelago.[32] According to a report drawn up after the war by the Japanese Ministry of Foreign Affairs (MFA),[33] Chinese laborers engaged in four basic types of labor:

1) 16,368 mined (extracting coal, copper, mercury, and iron; refining ores).
2) 15,253 worked on civil engineering projects (constructing power plants, airfields, and factories; removing snow from railroads).
3) 6,099 worked as stevedores.
4) 1,215 built ships.[34]

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24 Issues Concerning the Importation of Chinese Laborers (ICICL) § 2.4 states: "'Imported Chinese laborers should be men under the age of 40, screened for good health, and not be accompanied by their families.'" *See* Zhang Wenbin v. Rinko Co. & Japan, 50 SHŌMU GEPPŌ 3444, 3456 (Niigata D. Ct., Mar. 26, 2004).

25 ICICL § 2.9 states, "'Chinese laborers will not eat rice, but will be given what Chinese laborers normally eat; special measures for food rations will be devised in Japan.'" *Id.*

26 ICICL § 2.10 states, "'The salary of the laborers will be commensurate with wages they would make in China [*Shina*]; they will be allowed to remit money back to their families.'" *Id.*

27 *Id.*

28 *Id.* at 3461.

29 Liu Lianren v. Japan, 1067 HANREI TAIMUZU 124 (Tokyo D. Ct., July 12, 2001).

30 Zhang Wenbin v. Rinko Co. & Japan, 50 SHŌMU GEPPŌ 3444, 3462 (Niigata D. Ct., Mar. 26, 2004).

31 Though the Chinese labored throughout Japan, over half (19,631) were sent to Hokkaido, Japan's coldest and harshest island. *Id.* at 3467.

32 *Id.*

33 Throughout the slave-labor litigation, the Japanese government has denied the existence of this detailed and controversial report. *See* William Underwood, *Chinese Forced Labor, the Japanese Government and the Prospects for Redress*, JAPAN FOCUS, July 8, 2005, http://japanfocus.org/article.asp?id=326. The report contains elaborate information about, *inter alia*, the treatment, living conditions, and causes of death of the slave laborers. *See* Minami Norio, *Zenmen Kaiketsu e Shōnenba Mukaeru: Kyōsei Renkō Hoshō Mondai* [*The Forced Mobilization Compensation Problem: Heading Toward a Comprehensive Solution*], 508 SHŪKAN KIN'YŌBI 46, 46 (2004).

34 *Rinko*, 50 SHŌMU GEPPŌ at 3466.

Working conditions varied from site to site, but anecdotal evidence suggests that twelve-hour days were common,[35] meals meager,[36] and abuse from Japanese employers rampant.[37]

B. Slave Labor as a Violation of International Law

Slave labor violates numerous provisions of international, Japanese, and Chinese law. Because Chinese plaintiffs have brought claims based on all three legal regimes, an examination of the relevant international and domestic law is in order. This subpart first examines violations of international treaties and customary international law, then focuses on specific articles of the Chinese and Japanese civil codes.

1. *International Treaty Law*

The International Court of Justice, the judicial organ of the United Nations, lists several sources of international law, chief among them "international conventions, whether general or particular."[38] This section will show that Japan's abduction of forced laborers violated two international treaties to which it was a signatory: the Hague Convention and the Convention Concerning Forced or Compulsory Labor.

The Hague Convention provides, in pertinent part, that an occupying military force must respect "the lives of persons" in the occupied territory.[39] Japan ratified the Hague Convention on December 13, 1911,[40] signaling its commitment to upholding this provision. By 1942, the Japanese military had penetrated vast swaths of central and northeastern China,[41] triggering Japan's obligation under the Hague Convention to respect the lives of Chinese in that area. However, by

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35 The MFA Report put the number at nine to ten hours. *Id.* at 3468. However, the laborers themselves estimated that the figure was closer to twelve hours. *See* MATSUO, *supra* note 2, at 29–30 (noting that Liu Lianren, working in Hokkaido, and Li Wanzhong, working in Gunma prefecture, labored twelve hours per day).

36 Sakaguchi Yoshihiko, *Chūgokujin sensō baishō seikyū soshō no dōkō* [*Winning Trends Among Chinese War Reparations Claims*], RŌDŌ HŌRITSU JUNPŌ, Feb. 25, 1997, at 45. Similarly, Liu Lianren "was given only one mantou, made of a fistful of flour, per day." MATSUO, *supra* note 2, at 29.

37 *See* MATSUO, *supra* note 2, at 29; Sakaguchi, *supra* note 36, at 45.

38 Statute of the Court of International Justice art. 38(1)(a), June 26, 1945, 59 Stat. 1055, 3 Bevans 1153; *see also* MARK W. JANIS, AN INTRODUCTION TO INTERNATIONAL LAW 11 (3d ed. 1999) ("[M]ost observers assign legal rules drawn from international agreements the highest rank among all the sources of international law.").

39 Hague Convention (IV) Respecting the Laws and Customs of War on Land art. 46, Oct. 18, 1907, 36 Stat. 2277, 1 Bevans 631.

40 CARNEGIE ENDOWMENT FOR INT'L PEACE, THE HAGUE CONVENTIONS AND DECLARATIONS OF 1899 AND 1907, at 131 (James Brown Scott ed., 2d ed. 1915).

41 *See* JOHN KING FAIRBANK, CHINA: A NEW HISTORY 315 map 23 (1992) (featuring a map of Japan's penetration into northern China through 1942).

abducting individuals from the occupied area, forcibly transporting them to Japan, and reducing them to forced laborers, the Japanese government violated the integrity of the tens of thousands of lives.[42] The Hague Convention was further violated when nearly 7,000 Chinese lost their lives to malnourishment, beatings, and other acts of violence at the hands of the Japanese.[43]

Moreover, Japan's forced labor campaign violated the Convention Concerning Forced or Compulsory Labor.[44] Article 1 requires signatories to "suppress the use of forced or compulsory labour in all its forms within the shortest possible period."[45] One might argue that the language "the shortest possible period" would allow Japan some time to comply with the treaty, but Japan ratified the Forced Labor Convention in November 1932,[46] a decade before the first abductions. Thus, the decision in 1942 to engage in forced labor, which came from the highest echelon of government,[47] demonstrated Japan's willingness to violate a binding international treaty.

Despite clear violations of two international treaties, Japanese courts have refused to compensate plaintiffs in claims based on these violations.[48] While scholars believe that international treaties should have direct effect in such claims against Japan,[49] few judges agree. As Judge Katano Nobuyoshi stated in *Zhang Wenbin v. Rinko Co.*, "[T]he [Hague] Convention does not provide that warring states owe a duty of compensation directly to individuals; rather, as is the general principle of international law, the convention can only be interpreted as

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42 Plaintiffs made a similar argument in *Rinko*, but the Niigata District Court held that the Hague Convention did not give individuals standing to sue the government. *See* Zhang Wenbin v. Rinko Co. & Japan, 50 SHŌMU GEPPŌ 3444, 3616 (Niigata D. Ct., Mar. 26, 2004). The court claimed that Chinese laborers served, on average, 13.3 months of labor; some worked for well over two years, while others worked only for five weeks. *See id.* at 3467.

43 Ōkōchi Minori, *Chūgokujin Kyōsei Renkō, Kyōsei Rōdō Soshō Hanketsu* [*Chinese Forced Mobilization and Forced Labor*], 597 HŌGAKU SEMINA [LAW SEMINAR] 20, 20 (2004).

44 Convention Concerning Forced or Compulsory Labor (ILO No. 29), June 28, 1930, 39 U.N.T.S. 56 [hereinafter Forced Labor Convention]. Article 2(1) defines forced or compulsory labor as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." *Id.* art. 2(1). Forced laborers frequently faced the threat of death, starvation, or abuse, either at the concentration camps or in their workplaces. ZHONGGUO LAOGONG ZAI RIBEN [CHINESE LABOR IN JAPAN] 20 (He Tianyi ed., 1995). Moreover, scholars estimate that 95% of Chinese laborers were forcibly detained, while the rest "volunteered" based on misinformation. *Id.* at 17.

45 Forced Labor Convention, *supra* note 44, art. 1(1).

46 NICHIBENKAI, *supra* note 17, at 289.

47 *See supra* notes 17–26 and accompanying text.

48 *See, e.g.*, Zhang Wenbin v. Rinko Co. & Japan, 50 SHŌMU GEPPŌ 3444, 3617 (Niigata D. Ct., Mar. 26, 2004) (rejecting plaintiffs' arguments for compensation based on Japan's violation of the Hague Convention).

49 *See* YUJI IWASAWA, INTERNATIONAL LAW, HUMAN RIGHTS, AND JAPANESE LAW: THE IMPACT OF INTERNATIONAL LAW ON JAPANESE LAW 29 (1998) ("[International] treaties have domestic legal force in Japan.").

establishing obligations between states."[50] In other words, according to Japanese judges, international treaties do not provide a cause of action to a person who has suffered due to a treaty violation. Consequently, successful slave-labor plaintiffs have had to turn to other legal regimes to vindicate themselves.[51]

2. *Customary International Law*

Japan undoubtedly imposed numerous affirmative obligations on itself by signing treaties, but it may also have been bound by treaties it did *not* sign. A nonsignatory state may be bound if, for example, a treaty's provisions have attained the status of customary international law (CIL).[52] In theory, Japan follows the formulation endorsed by most countries: The general practice of states coupled with *opinio juris*, or a sense of legal obligation, creates CIL.[53] In practice, however, the government rarely speaks openly about whether its actions follow from *opinio juris*.[54] Instead, scholars look to widespread acceptance from various countries to decide whether a norm has attained the status of CIL.[55] A brief examination of international treaties from the early twentieth century, such as the League of Nations Mandate[56] and the Slavery Convention,[57] reveals that CIL firmly prohibited the use of forced or slave labor by the 1940s.[58]

Numerous treaties helped to erode the credibility of forced labor in the nineteenth century[59] such that, by the early twentieth century,

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50 *Rinko*, 50 SHŌMU GEPPŌ at 3617.

51 *See infra* Part I.C.

52 JANIS, *supra* note 38, at 22–23.

53 IWASAWA, *supra* note 49, at 35.

54 *See* JANIS, *supra* note 38, at 47 ("[E]xamples of formal state expressions of *opinio juris* . . . are rare . . . and indeed far from prevalent in practice generally.").

55 *See* RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW § 102, cmt. b (1987) ("[A customary law practice] should reflect wide acceptance among the states particularly involved in the relevant activity. Failure of a significant number of important states to adopt a practice can prevent a principle from becoming general customary law . . . .").

56 Japan was one of the original forty-two members of the League of Nations, formed on January 10, 1920. *See* F.P. WALTERS, A HISTORY OF THE LEAGUE OF NATIONS 65, 495 (1969). Though it later withdrew from the League in March 1933, many of the provisions contained in the League's mandate had achieved status as CIL and would bind Japan regardless of its withdrawal. *See id.* at 495.

57 *See generally* Convention to Suppress the Slave Trade and Slavery, Sept. 25, 1926, 46 Stat. 2183, 60 L.N.T.S. 253 (outlining an international ban on the slave trade). Japan did not accede to this convention, yet slavery was a clear violation of CIL at this time. *See infra* notes 60–67 and accompanying text.

58 *See* NICHIBENKAI, *supra* note 17, at 287–88.

59 *See, e.g.*, Convention to Suppress the Slave Trade and Slavery, *supra* note 57, pmbl. (noting that the General Act of the Brussells Conference of 1889–90 "declared that they were . . . animated by the firm intention of putting an end to the traffic in African slaves"); Treaty Between the United States and Great Britain for the Suppression of the Slave Trade, U.S.-U.K., Apr. 7, 1862, 12 Stat. 1225.

the prohibition of forced labor had reached the status of CIL.[60] Article 22 of the League of Nations Covenant, for example, provides that each signatory must guarantee the "prohibition of abuses such as the slave trade" in its colonies.[61] Signatories should also "secure and maintain fair and humane conditions of labour . . . both in their own countries and in all countries to which their commercial and industrial relations extend."[62] While one document alone cannot create CIL, in 1919 the Covenant nonetheless took an important first step toward universalizing the condemnation of forced labor.

In 1926, the League of Nations followed up with the supplementary Slavery Convention.[63] In this agreement, every high contracting state agreed both to "prevent and suppress the slave trade"[64] and "to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery."[65] Thus, the agreement placed affirmative obligations on signatories to eradicate slavery, or any similar conditions. Postwar treaties banning slavery, such as the Universal Declaration of Human Rights,[66] also indicate that slave labor violated contemporary norms and customary international law.[67]

As noted above, Japan was not a party to several significant treaties. Though an original member of the League of Nations, Japan withdrew its membership in March 1933.[68] Japan also declined to sign the Slavery Convention.[69] Nevertheless, by the 1940s, global condemnation of slave labor signified that the practice violated CIL, a position adopted by U.S. district courts.[70] As with international treaty viola-

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60 The Vienna Convention defines *jus cogens* (compelling law) as "a norm accepted and recognized by the international community as a norm . . . from which no derogation is permitted." Vienna Convention on the Law of Treaties art. 53, May 23, 1969, 1155 U.N.T.S. 331.

61 League of Nations Covenant art. 22, para. 5. Fifty-two nations counted among its original members, signifying the widespread acceptance of the ideals enshrined therein. *See* WALTERS, *supra* note 56, at 64–66.

62 League of Nations Covenant art. 23(a).

63 The convention was signed by thirty-seven nations. *See* Convention to Suppress the Slave Trade and Slavery, *supra* note 57.

64 *Id.* art. 2(a).

65 *Id.* art. 5.

66 Universal Declaration of Human Rights, G.A. Res. 217A (III), art. 4, U.N. GAOR, 3d Sess., 1st plen. mtg. U.N. Doc. A/810 (Dec. 10, 1948) ("No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.").

67 *See* NICHIBENKAI, *supra* note 17, at 288 (noting that by 1938, the prohibition of slavery was a confirmed part of CIL).

68 *See* W.G. BEASLEY, JAPANESE IMPERIALISM 1894–1945, at 200 (1987).

69 *See* United Nations Treaty Collection, Slavery Convention Participants, http://www.unhchr.html/menu3/b/treaty3.htm (last visited Feb. 7, 2006).

70 *See* Iwanowa v. Ford Motor Co., 67 F. Supp. 2d 424, 440 (D.N.J. 1999) ("The use of unpaid, forced labor during World War II violated clearly established norms of customary international law.").

tions, however, issues of standing have prevented plaintiffs from successfully pursuing CIL claims.[71] As discussed in greater detail below, the handful of Japanese courts that have found defendants liable ultimately relied upon the domestic legal regime to attach liability.[72]

C. Slave Labor as a Violation of Japanese and Chinese Domestic Law

Quite apart from its repugnance to international law and legal norms, the Japanese slave-labor campaign also violated various provisions of Chinese and Japanese domestic law. As civil law countries, both Japan[73] and China[74] have amalgamated much of their law into civil codes, phrasing law in general terms for wide applicability. The broad provisions of both systems not only prohibit slave labor, but also allow for individual damages.

1. *Japanese Law*

In the slave-labor lawsuits, the most commonly cited violations of the Japanese Civil Code involve Articles 415, 709, and 715. The most straightforward of these, Article 709, states that "[a] person who violates intentionally or negligently the right of another is bound to make compensation for damages arising therefrom."[75] While this provision may appear hopelessly vague, its applicability to the slave-labor cases is relatively transparent: Virtually any of the state's acts (abduction, forced transportation, enslavement) or the defendant corporations' acts (enslavement, abuse, failure to provide humane conditions) would qualify as an infringement on the rights of the laborers. Given the wide latitude that Article 709 affords, courts have repeatedly found defendants liable based on this provision.[76]

A less obvious claim stems from Article 415 of the Civil Code: "If an obligor fails to effect performance in accordance with the tenor and purport of the obligation, the obligee may claim damages."[77] In the employment context, this Article is often interpreted to impose upon the employer (obligor) a "duty to ensure the safety" of its em-

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71 *See, e.g.*, Liu Zonggen v. Nippon Yakin Kōgyō Co. & Japan, 1822 HANREI JIHŌ 83, 96 (Kyoto D. Ct., Jan. 15, 2003).

72 *See infra* Part II.B.2.

73 The Meiji government instituted the *Minpō*, or Civil Code of Japan, still in force today, in 1899. *See* COMPARATIVE LAW: LAW AND THE LEGAL PROCESS IN JAPAN 15 (Kenneth L. Port & Gerald Paul McAlinn eds., 2003).

74 Though it has since changed, the Chinese Civil Code of 1930 was in effect at the time of the crimes discussed here.

75 MINPŌ, art. 709.

76 *See, e.g.*, Zhang Wenbin v. Rinko Co. & Japan, 50 SHŌMU GEPPŌ 3444, 3578 (Niigata D. Ct., Mar. 26, 2004); Cai Shujing v. Mitsui Mining Co., 1098 HANREI TAIMUZU 267 (Fukuoka D. Ct., Apr. 26, 2002), *rev'd*, 1875 HANREI JIHŌ 62 (Fukuoka High Ct., May 24, 2004).

77 MINPŌ, art. 415.

ployees (obligees).[78] In the context of slave-labor litigation, courts frequently entertain the legal fiction that relations between Japanese companies and Chinese slave laborers were contractual, or equivalent to an employer-employee relationship.[79] Although at least two key facts belie this understanding of slave-labor relations,[80] the 2004 *Rinko* decision, building on earlier cases,[81] extrapolated from Article 415's provision to find that both the state and the defendant corporation owed a "duty to ensure the safety" of the slave laborers.[82]

Finally, claims based on Article 715, the Civil Code's equivalent of *respondeat superior*, have also been successfully pursued against the defendants. This Article provides, "A person who employs another to carry out an undertaking is bound to make compensation for damage done to a third person by the employee in the course of the execution of the undertaking."[83] In applying this principle, Japanese courts have broadly construed the provision to protect those directly harmed by the defendants' actions. The *Rinko* decision, for instance, found the state liable under Article 715.[84]

2. *Chinese Law*

In certain circumstances, Japanese courts permit the application of foreign law. Foreign-law claims are adjudicated under the Japanese *Hôrei*, or Act on the Application of Laws, which provides, "The formation and effect of claims arising from agency by necessity (negotiorum gestio), unjust enrichment, and tort shall be governed by the law of the place where the events causing the claims occurred."[85] Slave la-

78 *See, e.g.*, *infra* Part II.B.2(c).

79 *See* ZHONGGUO LAOGONG ZAI RIBEN, *supra* note 44, at 19–20.

80 First, any such contract would have been invalid. Most Chinese laborers were abducted and forced to work against their will, without any mention of a contract. *Id.* In a small minority of cases, Japanese quasi-governmental recruiters did offer contracts to Chinese laborers, wbich included terms for wages, provisions, transportation to Japan, and so on. *Id.* Given the subsequent treatment of the laborers, these contracts were manifestly broken. Scholars also suggest that these contracts were invalid because the laborers either did not sign the contracts or did not understand the contract's provisions. *See id.*

Second, both "employment" and its Japanese counterpart, *koyō*, suggest that the worker will receive compensation for his work. *See* WEBSTER'S NEW WORLD DICTIONARY 459 (2d college ed. 1986) (defining "employ" as "to engage the services of labor of for pay"); KŌJIEN (defining "*koyō*" as "an arrangement where one party (the employee) agrees to perform some service, and the other party (employer) agrees to give compensation").

81 *See, e.g.*, Shao Yicheng v. Nishimatsu Constr., 1110 HANREI TAIMUZU 253 (Hiroshima D. Ct., July 9, 2002), *rev'd*, 1865 HANREI JINŌ 62 (Hiroshima High Ct., July 9, 2004); Geng Zhun v. Kajima Co., 990 HANREI TAIMUZU 250 (Tokyo D. Ct., Dec. 12, 1997).

82 *See* Zhang Wenbin v. Rinko Co. & Japan, 50 SHŌMU GEPPŌ 3444, 3579 (Niigata D. Ct., Mar. 26, 2004) (noting that defendant state and corporation were jointly obliged to compensate plaintiffs).

83 MINPŌ, art. 715.

84 *Rinko*, 50 SHŌMU GEPPŌ at 3580.

85 HŌREI, art. 11, para. 1, *translated in* Kent Anderson & Yasuhiro Okuda, *Translation: Horei, Act on the Application of Laws*, 3 ASIAN-PAC. L. & POL'Y J. 230, 235–36 (2002).

borers have availed themselves of this provision in advancing two claims based on the Chinese Civil Code.[86]

First, Article 184 of the Chinese Civil Code provides, "A person who, intentionally or by his own fault, wrongfully injures the rights of another is bound to compensate him for any damage arising therefrom."[87] Thus, the abductions, forcible transports to Chinese concentration camps, substandard living conditions in those camps, and other activities that took place on Chinese soil could expose Japan to liability.[88] It is not surprising that Chinese plaintiffs frequently invoke this Article in their lawsuits.[89]

Second, Article 195 protects people's bodily integrity and liberty interests by providing that "[i]n the case of injury to the body, health . . . or liberty of another, the injured party may claim a reasonable compensation in money for such damage as is not a purely pecuniary loss."[90] Chinese laborers, who suffered injury to body, health, and liberty, would have a strong case against the Japanese government for the same unlawful acts outlined above. Nevertheless, Japanese courts have refused claims based on extraterritorial theories.[91] Even the *Rinko* decision, the most sympathetic to slave laborers so far, refused to apply foreign law (i.e., the Chinese Civil Code) to an act of the Japanese government. Instead, reasoning that slave labor was both a government act and part of government policy, the court concluded that Japanese rather than Chinese law had a closer relationship to the slave-labor claims—even claims relating to the acts that occurred on Chinese soil.[92] Thus, slave-labor claims would not be adjudicated under Chinese law via Article 11 of the *Hôrei*.[93]

Despite the wide array of legal provisions and theories upon which plaintiffs have based their claims, Japanese courts have thus far only recognized violations of the Japanese Civil Code.[94] As the next Part discusses, even when Japanese courts made the groundbreaking choice to find for plaintiffs in these lawsuits, they did so within a domestic legal framework.[95] A more detailed look at slave-labor litiga-

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86 *See, e.g.*, *Rinko*, 50 SHŌMU GEPPŌ at 3620; Chinese Plaintiffs v. Japan, 50 SHŌMU GEPPŌ 439 (Tokyo D. Ct., Mar. 11, 2003).

87 MINFA [Civil Code], art. 184 (P.R.C. 1930).

88 The government and military of Japan were responsible for rounding up labor on Chinese soil; the corporations, however, used the labor on only Japanese soil and thus are not likely liable under Chinese law.

89 *See, e.g.*, *Rinko*, 50 SHŌMU GEPPŌ at 3620; Liu Lianren v. Japan, 1067 HANREI TAIMUZU 119, 141 (Tokyo D. Ct., July 7, 2000).

90 MINFA, art. 195.

91 *See, e.g.*, *Rinko*, 50 SHŌMU GEPPŌ at 3621.

92 *See id.* at 3621.

93 *Id.*

94 *See infra* Part II.B.2.

95 *See infra* Part II.B.2.

tion reveals that Japanese courts rarely accept claims based on violations of international treaty or other nondomestic law, even though scholarly writings urge otherwise.[96]

II
SLAVE-LABOR LITIGATION IN JAPAN

A. Recent Reevaluation of World War II

The slave-labor litigation in Japan has helped raise awareness of this dark episode in Japanese history. Yet why, five decades after the war, did Chinese plaintiffs finally seek justice in Japanese district courts? A wide range of factors contributed to this trend, several of which are addressed here. First, the Chinese government alleviated bans on foreign travel for its own citizens in 1986.[97] Insignificant though the lifting of this restriction may seem, it has had important consequences for the frequently fatal statute-of-limitations defense. Some courts have decided to toll the statute of limitations, starting the clock in 1986, when Chinese citizens were first allowed to go to Japan to file claims, rather than in 1944 or 1945, when the events actually took place.[98]

Second, discontent among other East Asian countries *vis-à-vis* Japan's reluctance to acknowledge responsibility for World War II has festered for decades, stoked by the ongoing "textbook controversies"[99] and official visits to Yasukuni Shrine.[100] Disgruntlement peaked in 1991, after the Japanese government denied the existence of "comfort women"—or military sexual slaves[101]—who then decided to file a law-

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96 *See infra* Part II.

97 *See* Yamada Katsuhiko, *Saiban Jitsumu kara Mita Sengo Baishō* [*Postwar Reparations as Seen from Trial Results*], *in* KYŌDŌ KENKYŪ: CHŪGOKU SENGO BAISHŌ—REKISHI, HŌ, SAIBAN [JOINT RESEARCH ON CHINESE POSTWAR REPARATIONS: HISTORY, LAW, COURTS] 217, 229 (Kawashima Shin et al. eds., 2000).

98 *Id.* at 229–30.

99 The depiction of various Japanese military actions during World War II in Professor Ienaga Saburo's textbook of Japanese history has displeased officials in the Japanese Ministry of Education since at least 1965, when Ienaga first filed suit for violations of his constitutional right to expression. A 1984 decision by the Tokyo High Court fueled continental animosity toward Japan when the court ordered Ienaga to delete phrases such as "Japanese military atrocities" and "Korean resistance" from his texts. *See generally* COMPARATIVE LAW, *supra* note 73, at 262 (describing the background to the Ienaga case and providing a translation of the supreme court's decision).

100 Official visits to Yasukuni Shrine, which commemorates and houses the remains of numerous Japanese war criminals, have provoked criticisms from neighboring countries since the 1980s. *See* YOSHIKUNI IGARASHI, BODIES OF MEMORY: NARRATIVES OF WAR IN POSTWAR JAPANESE CULTURE, 1945–1970, at 203–04 (2000). Prime Minister Koizumi Junichirō's visit on October 17, 2005, for instance, incited protests from South Korea and China and led the latter to cancel talks between Chinese and Japanese foreign ministers. *See* Reiji Yoshida, *Koizumi Visits Yasukuni Shrine*, JAPAN TIMES, Oct. 18, 2005, at 1.

101 *See* CHIZUKO UENO, NATIONALISM AND GENDER ix (Beverly Yamamoto trans., 2004).

suit of their own.[102] By 1995, Korean, Taiwanese, and Chinese plaintiffs filed over twenty lawsuits in Japanese district courts, seeking compensation for Japan's wartime atrocities.[103] More recently, in March and April 2005, tens of thousands of Chinese protesters took to the streets of Beijing, Shanghai, and other Chinese cities, shouting anti-Japanese slogans, vandalizing Japanese establishments, and demanding apologies for Japan's conduct during World War II.[104] The conspicuous silence of the Japanese Diet no longer seemed a tenable response.[105]

However averse the Japanese government has been to acknowledging responsibility for the war, many Japanese lawyers and scholars have helped uncover Japan's role in World War II. Crucial to the Chinese slave-labor lawsuits was a corps of Japanese lawyers who actually sought out and interviewed former laborers in China.[106] As one scholar stated, "Nearly all of the cases were brought by Japanese lawyers (*bengoshi*) who sought out and made contacts with foreign war victims."[107] Many of these lawyers have created websites about the liti-

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102 In April 1991, the Japanese Embassy flatly denied the request of a group of Korean comfort women that Japan produce evidence and acknowledge the truth of the forced conscription of the women; spurred by the Japanese government's denial of responsibility, nine comfort women filed suit in Tokyo District Court on December 6, 1991. George Hicks, *The "Comfort Women," in* THE JAPANESE WARTIME EMPIRE, 1931–1945, at 305, 307–08 (Peter Duus et al. eds., 1996).

103 *See* Aitani Kunio, *Sengo Hoshō Saiban no Genjō to Kadai* [*Current Status and Issues on Postwar Compensation Lawsuits*], 10 KIKAN SENSŌ SEKININ KENKYŪ 2, 3 (1995) (displaying a chart of twenty-two lawsuits brought by victims of Japanese wartime behavior). As of May 2004, experts put the number of such lawsuits at seventy-two. *See* Minami, *supra* note 33, at 46.

104 Whether or not these protests represent an outpouring of popular Chinese sentiment, they at least reflect a widespread belief among contemporary Chinese that Japan still owes a sizable debt from World War II. *See* Jim Yardley, *Chinese Police Head Off Anti-Japan Protests*, N.Y. TIMES, May 5, 2005, at A12.

105 The Diet has yet to respond to the challenges posed by slave laborers, though recent victories may force the Diet to break its silence. In response to the comfort women's demands, by contrast, the Diet set up the Asian Women's Fund, which funnels private donations from Japanese people to former comfort women under the auspices of the government. *See* UENO, *supra* note 101, at 179–82. Significantly, however, the government contributes nothing to the fund, merely acting as a conduit for funds raised from private citizens. *Id.* at 182. Many former comfort women have objected to the emptiness of this gesture and have refused to accept financial assistance from the fund. *Id.* at 182.

106 Japanese lawyers and scholars have organized research groups (*chōsadan*) and lawyers groups (*bengodan*) to plan strategies, meet with plaintiffs, and conduct research. For instance, the Chinese War Victims Legal Research Group made four fact-finding visits to China in 1994. *See* Yamada, *supra* note 97, at 229–30.

107 He Ming, *Trial for Personal Legal Compensation After World War II: The Issues and Significance*, 15 BUNKYŌ DAIGAKU KOKUSAI GAKUBU KIYŌ 97, 101 (2004), available at http://www.bunkyo.ac.jp/faculty/lib/slib/kiyo/Int/it1501/it150106.pdf. A plaintiff in the Niigata District Court case, Wang Chengwei, congenially confirmed the collaboration of Japanese lawyers: "At the time [the suit was filed], a few Japanese friends—Japanese lawyers—came to our village." *Shendu Baogao: Zhongguo Laogong Riben Suopei'an Shengsu* [*In-depth Report: Chinese Laborers Win Compensation Suit in Japan*], Mar. 30, 2004, http://

gation, initiated petition campaigns, and written articles documenting the successes and failures of this movement.[108]

Numerous groups supporting compensation have also emerged, circulating petitions, gathering signatures, and disseminating information through the web.[109] It may be difficult to quantify the effects of these groups' efforts: Only judges will know for sure if a petition with 104,000 signatures presented to the Fukuoka District Court was "the key to victory," as one member of the Group Supporting the Fukuoka Trial on Chinese Forced Labor asserted.[110] Nevertheless, the efforts of these groups have both heightened awareness of slave labor and highlighted recent attempts to obtain compensation.

B. Litigating Slave-Labor Claims in Japan

Since 1995, former Chinese slave laborers have filed fifteen suits in Japanese district courts.[111] Two of these suits have been settled, six have been decided (and subsequently appealed), and seven are pending.[112] Among the six decisions handed down, a clear split emerges: three courts have found for plaintiffs, and three courts have found for defendants.[113] The Supreme Court of Japan is currently hearing appeals from three different high courts, and its decisions will provide

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news.xinhuanet.com/newscenter/2004-03/30/content_1391462.htm (last visited Nov. 25, 2004).

108 *See, e.g.*, Chūgokujin Sensō Higaisha no Yōkyū wo Sasaeru Kai [Support Group for the Demands of Chinese War Victims], http://www.suopei.org/index-j.html; Sengo Sekinin [War Responsibility], http://www.sengo-sekinin.com. Both websites list articles, comments, news, and upcoming events relating to the slave-labor issue in particular and war responsibility more generally.

109 *See, e.g.*, Asian Holocaust, http://www.skycitygallery.com/japan/japan.html (last visited Jan. 30, 2006).

110 *See* Maeumi Mitsuhiro, *Chūgokujin Kyōsei Renkō, Kyōsei Rōdō Jiken Fukuoka Saiban kara, Ayamachi wo Mitome, Tsugunai, tomo no Ayamu Ajia no Rekishi wo!* [*From the Fukuoka Trial on Chinese Forced Labor and Mobilization, Walking Toward an Asian History that Admits Mistakes and Compensates!*], 624 SHINPO TO KAIKAKU [PROGRESS AND REFORM] 39, 42 (2003).

111 *See Chinese Laborers Demand Apology, Compensation*, PEOPLE'S DAILY ONLINE, Aug. 12, 2004, http://english.peopledaily.com.cn/200408/12/eng20040812_152695.html (listing thirteen lawsuits). Since that time, Chinese laborers have initiated at least two other lawsuits in Japan—one in Yamagata District Court, the other in Kanazawa District Court. *See Chūgokujin Kyōsei Renkō de Teiso: Baishō Motome Yonin, Kanazawa Chisai* [*Four Chinese Forced Laborers Sue, Seeking Compensation in Kanazawa District Court*], YAHOO! NEWS JAPAN, July 19, 2005, http://headlines.yahoo.co.jp/hl?a=20050719-00000079-kyodo-soci (noting that four Chinese plaintiffs filed suit against Japan and the Nanao Land & Sea Transport Company, seeking forty-four million yen and an apology); *Saketa ni Kyōsei Renkō: Chūgokujin Rokunin, Teiso e Kuni to Kigyō Aite tori* [*Forced Labor in Saketa: Six Chinese Bring Suit Against State and Company*], MAINICHI SHIMBUN, Nov. 26, 2004, *available at* http://www.mainichi-msn.co.jp/shakai/jiken/news/20041111k0000m040163000c.html (noting that six former Chinese forced laborers filed a suit against Japan and the Saketa Land & Sea Transport Company, seeking twenty million yen and an apology).

112 *See infra* Part II.B.1–3.

113 *See infra* Part II.B.2–3.

important guidance to lower courts faced with slave-labor disputes.[114] The following sections present the suits in roughly chronological order.

1. *Settlements: Hanaoka and Beyond*

Though former Korean forced laborers first brought World War II compensation claims in the early 1990s,[115] the first Chinese forced laborers did not file suit until 1995.[116] At that point, eleven Chinese former slave laborers sought compensation from the Kajima Construction Corporation, which ran a copper mine during the war.[117] After five years of unsuccessful negotiations with Kajima,[118] the former laborers sued in Tokyo District Court,[119] where, before testimony had even begun,[120] the trial court dismissed the action based on the Japanese Civil Code's twenty-year statute of limitations.[121] On appeal in April 2000, the Tokyo High Court suggested a compromise settlement, whereby Kajima would pay approximately $4.3 million to the families of the 986 slave laborers in the form of a Hanaoka Fund for Peace Friendship.[122] After seven more months of negotiating, the company finally agreed to establish the fund.[123] Thus, the first suit

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114 As Japan is a civil-law society, its courts do not follow the doctrine of stare decisis. Similarly, lower courts are not bound to follow the decisions of the Japanese Supreme Court, though they tend to do so. Luney, *supra* note 9, at 159.

115 *See, e.g.*, Kim Kyŏng-sŏk v. NKK Co., 1614 HANREI JIHŌ 41 (Tokyo D. Ct., Sep. 25, 1997); Kim Sun-gil v. Mitsubishi Heavy Indus. Co., 1641 HANREI JIHŌ 124 (Nagasaki D. Ct., Dec. 2, 1997). Kim Kyŏ ng-sŏk's case settled eight years later, when Kim received over four million yen from the steel-making company. *See NKK to Compensate Korean Forced Laborer for Assault*, KYODO NEWS INT'L, Apr. 12, 1999, *available at* http://www.findarticles.com/p/articles/mi_m0WDQ/is_1999_April_12/ai_54388547.

116 Geng Zhun v. Kajima Co., 988 HANREI TAIMUZU 250 (Tokyo D. Ct., Dec. 12, 1997).

117 *See id.*

118 *See* Niimi Tadashi, *Hanaoka Jiken Saiban ni tsuite* [*On the Trial of the Hanaoka Incident*], 20 KIKAN SENSŌ SEKININ KENKYŪ 2, 7 (1998) ("In the 'Joint Declaration' issued by the Chinese victims and Kajima Construction Company on July 5, 1990, Kajima not only recognized the historical facts of forced mobilization and labor, but also apologized, and acknowledged its own corporate responsibility. [However,] Kajima afterward divided responsibility into legal responsibility and moral responsibility; it denied the former, and only went so far as to admit to the latter.").

119 Joji Sakurai, *Japanese Firm Will Pay Chinese for Brutality: Settlement Could Open Way for Other WWII Cases*, SEATTLE TIMES, Nov. 30, 2000, at A16.

120 Uchida Masatoshi, *The Hanaoka Incident: Corporate Compensation for Forced Labor*, JAPAN IN THE WORLD, May 2, 2001, http://www.iwanami.co.jp/jpworld/text/hanaoka01.html.

121 Article 724 of the Civil Code of Japan provides, "A right to claim compensation for the damage which has arisen from an unlawful act shall lapse . . . if twenty years have elapsed from the time the unlawful act was committed." MINPŌ, art. 724.

122 *See* Uchida, *supra* note 120.

123 *Id.* (noting that the court announced both parties' agreement on November 29, 2000).

brought by Chinese slave laborers was also the first case to be resolved through settlement.[124]

Based on this brief synopsis, settlement might seem a likely conclusion to most slave-labor cases. Yet, two unique factors likely pressed the Tokyo High Court into devising a settlement in the case against Kajima. First, an event that transpired during the war, known as the Hanaoka Incident, lent urgency to the plaintiffs' case.[125] In the summer of 1945, after enduring months of harsh treatment, hundreds of Chinese slave laborers rose up against their employers at the Kajima mine.[126] Consequently, Japanese military and civilian police killed over 100 Chinese laborers, and the event has since become a powerful symbol of the brutality of forced labor in Japan.[127]

Second, the contemporaneous Holocaust litigation in the United States may have added pressure. While Part III examines this process in greater detail, here it suffices to note that the solution devised by the U.S. judiciary may have either put moral pressure on or offered a plausible model for the Tokyo High Court.[128] According to one commentator, the court "took account not only of the particular circumstances and problems of the [Hanaoka] Incident as such, but also of the efforts and achievements of several foreign countries to [repair] the damages brought by the war."[129] Whatever its motivations, the court orchestrated a compromise settlement that has been followed in only one other case.[130]

In September 2004, the Osaka High Court announced it had brokered a settlement between defendant Japan Metallurgy Company (*Nippon Yakin Kôgyô*) and six former slave laborers in its nickel factory.[131] A year before, the Kyoto District Court held that the plaintiffs' claims were time-barred by the twenty-year statute of limitations.[132] On appeal, however, the company and former laborers struck an

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124 U.S. DEP'T OF STATE, JAPAN: COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES—2000 (2001), *available at* http://www.state.gov/g/drl/rls/hrrpt/2000/eap/709.htm.

125 *See* Uchida, *supra* note 120.

126 *See id.*

127 *See* NICHIBENKAI, *supra* note 17, at 75.

128 *See infra* Part III.A.

129 Uchida, *supra* note 120. The court also tried "to think in a robust way, instead of being constrained by conventional ways of compromise, in an effort to find solutions to each and every pending problem concerning the Hanaoka Incident." *Id.*

130 Courts bave unsuccessfully attempted settlements in other slave-labor cases. In July 2003, the Hiroshima High Court negotiated a settlement, which the defendant corporation later rejected. A year later, that court found for the plaintiffs, ordering the defendant to pay each plaintiff 5.5 million yen, around $53,000. *See Chinese Wartime Laborers Win in Landmark High Court Ruling,* ASAHI SHIMBUN, July 10, 2004, *available at* http://www.asahi.com/english/nation/TKY200407100152.html.

131 *See Chinese Wartime Slave Laborers Win Payout: Nippon Yakin Kogyo Coughs Up ¥ 21 Million for 14-Hour Work Days in Nickel Factory,* JAPAN TIMES, Sept. 30, 2004, at 2.

132 *Id.*

agreement whereby each plaintiff would receive about $31,500, roughly $164,000 less than they originally sought.[133] While somewhat lower than other awards,[134] the sum nevertheless satisfied the plaintiffs, who sacrificed a possibly larger award for the certainty of payment.

2. *Findings for Plaintiffs*

The slave-labor issue has polarized Japanese district courts—three have held in favor of and three against slave-labor plaintiffs. Litigants have appealed three of these decisions, and the subsequent high court decisions manifest a similar split—two overturned lower court decisions for the plaintiff, while another reversed a decision for the defendant.[135] One clear pattern surfaces from all this uncertainty: The outcomes of slave-labor cases are unpredictable at any level.[136] The three district-court decisions discussed below show a broadening web of liability, first attaching to the state, then to the corporation involved, and finally to both.

a. *Liu Lianren*

The first lower-court victory for a former Chinese slave laborer returns us to the story of Liu Lianren. After the war, Liu's former "employer" (the Meiji Mining Company) had dissolved, leaving him only one extant defendant: the state.[137] Liu's legal team therefore focused on state action and charged the Japanese government with abducting and enslaving Liu, and ultimately neglecting its duty to ensure Liu's safety.[138] Tbe court agreed on only the last point, finding

133 *See id.*

134 By way of comparison, the family of Liu Lianren received a $200,000 award from the Tokyo District Court, while laborers who sued in the Niigata District Court received approximately $78,000 each; both of these cases have been appealed, however, so no remuneration has changed hands. *See* Zhang Wenbin v. Rinko Co. & Japan, 50 SHŌMU GEPPŌ 3444, 3445 (Niigata D. Ct., Mar. 26, 2004); Liu Lianren v. Japan, 1067 HANREI TAIMUZU 119 (Tokyo D. Ct., July 12, 2001).

135 In May 2004, the Fukuoka High Court overturned a district court's award on statute-of-limitations grounds. Cai Shujing v. Mitsui Mining Co., 1098 HANREI TAIMUZU 267 (Fukuoka D. Ct., Apr. 26, 2002), *rev'd*, 1875 HANREI JIHŌ 62 (Fukuoka High Ct., May 24, 2004). Six weeks later, the Hiroshima High Court awarded 27.5 million yen ($250,000) to five former laborers, reversing an earlier district court decision. *See* Shao Yicheng v. Nishimatsu Constr., 1110 HANREI TAIMUZU 253 (Hiroshima D. Ct., July 9, 2002), *rev'd*, 1865 HANREI JIHŌ 62 (Hiroshima High Ct., July 9, 2004). Finally, the Tokyo High Court reversed the seminal decision that awarded the heirs of Liu Lianren twenty million yen for his "lost decade." *See* Masami, *supra* note 1.

136 A chart outlining the Chinese forced labor decisions up until March 27, 2004 is available online at http://www.sengo-sekinin.com/home/contents/issue_china/saiban.html.

137 Takahashi Yū, *Ryū Renjin Hanketsu no Seika to Eikyō* [*The Outcome and Influence of the Liu Lianren Case*], 362 HŌ TO MINSHU SHUGI 47, 48 (2001).

138 *See id.*

that the government had failed to "secure the life and wellbeing" of Liu after he fled the mine.[139] Because the state failed to locate Liu for over twelve years, well after Japan passed its expansive 1947 National Compensation Law,[140] the court concluded that the government incurred liability by not promptly finding and repatriating him.[141]

Although Liu's victory attached liability to the state, the Tokyo High Court reversed the lower court's decision in June 2005.[142] The Tokyo High Court acknowledged that the government had a duty to search for and protect Liu, but it ultimately held that the current Japanese government could not be responsible for actions occurring before World War II.[143] Moreover, "at the time Mr. Liu fled, there was no 'mutual guarantee' permitting the citizens of China to sue Japan for compensation, or vice versa."[144] Finally, the twenty-year statute of limitations had run on violations of the Civil Code.[145]

b. *Mitsui Mining Co.*

Although subsequently overturned, the Fukuoka District Court's 2002 decision to compensate fifteen Chinese laborers contributed importantly, if obliquely, to the slave-labor litigation.[146] Perhaps foreshadowing its verdict, the lower court chronicled the various processes of slave labor in excruciating detail, taking up over half of the opinion to do so.[147] Moreover, the court unambiguously deemed forced labor and mobilization "joint unlawful acts" commissioned by Mitsui and the state.[148] However, only Mitsui incurred liability for the acts and had to pay each plaintiff over $100,000 in damages.[149] The court, invoking the principle of state immunity, exculpated the current gov-

139 *See Liu Lianren*, 1067 HANREI TAIMUZU at 119.

140 *See* John O. Haley, *Japanese Administrative Law*, 19 LAW IN JAPAN 1, 4–5 (1986). This law, passed during the Allied Occupation, significantly broadened state liability to cover acts, as well as omissions, exercised by any public authority. *See id.* at 6. It also overturned the concept of state immunity, which the government had enjoyed up until the time. *See id.*

141 *See Liu Lianren*, 1067 HANREI TAIMUZU at 119.

142 *See Japanese Court Rejects Compensation for Chinese Forced Laborer*, PEOPLE'S DAILY ONLINE, June 24, 2005, http://englisb.people.com.cn/200506/24/eng20050624_192005.html.

143 *See* Masami, *supra* note 1.

144 *Gyakuten Baiso no Ryū Renjin San Izoku ga Jōkoku: Kyō sei Renkō Soshō* [*Mr. Liu Lianren's Heirs Face Reversal, Appeal: Forced Labor Litigation*], ASAHI SHIMBUN, June 27, 2005, http://www.asahi.com/national/update/0627/TKY20056270259.html.

145 *See* Masami, *supra* note 1. A good synopsis of the case in Japanese is available at http://www.suopei.org/saiban/renko/ryu/hanketsu.html.

146 *See* Cai Shujing v. Mitsui Mining Co., 1098 HANREI TAIMUZU 267 (Fukuoka D. Ct., Apr. 26, 2002), *rev'd*, 1875 HANREI JIHŌ 62 (Fukuoka High Ct., May 24, 2004).

147 *See id.* Twenty-six of its fifty pages were devoted to the factual background.

148 *Id.* at 296.

149 *Id.* at 301.

ernment for the actions of its wartime predecessor.[150] Thus, while the decision advanced slave laborers' rights to recovery in one respect—by finding a corporation liable—it simultaneously hindered their cause by shielding the state. The Fukuoka High Court overturned the decision two years later, holding the claims against Mitsui barred by the statute of limitations.[151] In the meantime, other slave laborer litigants had at least one case to which to point for the proposition that a corporation could be held liable for its wartime conduct.

c. *Japan and Rinko Corp.*

In March 2004, former slave laborers won their most complete victory. A district court in Niigata held both Japan and the defendant Rinko Corporation liable for their roles in the slave-labor system.[152] Rather than finding the defendants liable for any of their numerous unlawful acts, the court attached liability somewhat circuitously. The district court held that by abducting, transporting, and commissioning out the slave laborers, the state created a "special social relationship"[153] with the slave laborers, thereby incurring and violating a "duty to ensure [their] safety."[154] The state's subsequent lack of supervision or corrective measures once it placed the laborers with Rinko made the state liable for the abuses the laborers experienced there.[155] The court made a similar move with Rinko, which incurred liability by violating "legal relations resembling that of an employment contract" with the slave laborers.[156]

But this indirection did not disappoint Japanese scholars and lawyers, who hailed the decision as "epochal."[157] One scholar noted that "the decision placed weight on the fact that the state's participation was not just direct, but *substantial*."[158] The decision thus builds on the *Liu Lianren* and *Mitsui* cases, and yokes them: Japan and Rinko Corporation were both liable for their respective roles in harming plaintiffs.

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150 *See infra* notes 168–72 and accompanying text.

151 *See Mitsui*, 1875 HANREI JIHŌ 20.

152 Zhang Wenbin v. Rinko Co. & Japan, 50 SHŌMU GEPPŌ 3444 (Niigata D. Ct., Mar. 26, 2004).

153 *Id.* at 3526.

154 *Id.* All employers owe their employees a "duty to provide a safe workplace" (*anzen hairyo no gimu*). *See* HAYASHI ŌKI, HŌRITSU YŌGO JITEN [DICTIONARY OF LEGAL TERMINOLOGY] 11 (3d ed. 1994).

155 *See Rinko*, 50 SHŌMU GEPPŌ at 3527.

156 *See* Ōkōchi, *supra* note 43, at 23.

157 The term "epochal" (*kakusei*) has appeared repeatedly in the media. *See, e.g.*, *id.* at 23; Minami, *supra* note 33, at 46.

158 *See* Ōkōchi, *supra* note 43, at 23.

Nevertheless, as with all plaintiff victories so far, the state and the corporation have appealed the ruling.[159] How the appellate court, here the Tokyo High Court, will decide remains a mystery. If the 2005 reversal of the *Liu Lianren* case is any indication, however, the prospects that the *Rinko* decision will be upheld appear dim.[160]

3. *Findings for Defendants*

Several courts have not ordered defendants—corporate or state—to compensate the slave laborers. Instead, these courts have struck a compromise: They acknowledge the illegality of forced labor, but still immunize the corporation and state through a number of defenses.[161] The two most successful defenses include the statute of limitations and state immunity.[162]

Statute-of-limitations defenses originate from the civil code: "The right to claim compensation for the damage which has arisen from an unlawful act shall lapse . . . if twenty years have elapsed from the time the unlawful act was committed."[163] Since the allegedly unlawful acts occurred in the 1940s, this defense has been fatal to numerous plaintiffs' claims.[164] Though some judges, following a precedent set in the *Liu Lianren* case,[165] have circumvented the time restriction by finding that it "flagrantly violates principles of fairness and justice,"[166] others have applied it to shield various corporations.[167]

The Japanese government also has another defense on which it frequently relies, which is translated here as "state immunity."[168] A

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159 *See Slave-Laborers Win Landmark Redress in Landmark Court Ruling*, JAPAN TIMES, Apr. 3, 2004, *available at* http://www.japantimes.co.jp/cgi-bin/getarticle_p15?nn20040327al.htm.

160 *See supra* notes 142–45 and accompanying text.

161 *See "Toki no Keika" Genkaku Tekiyō: Kokka Mutōseki wa Mitomezu* ["*Passage of Time*" *Strictly Construed: State Immunity Not Acknowledged*], NIHON KEIZAI SHIMBUN YŪ KAN, May 24, 2004, at 15 (noting that six of eight decisions found the state liable for unlawful acts, though it was exonerated by time restrictions in each).

162 *See id.*

163 MINPŌ, art. 724.

164 The following cases have invoked the statute of limitations in dismissing claims: Zhao Zongren v. Mitsubishi Material Co., 50 SHŌMU GEPPŌ 3369 (Sapporo D. Ct., Mar. 23, 2004); 42 Chinese Plaintiffs v. Japan & Hazama Co., 50 SHŌMU GEPPŌ 439 (Tokyo D. Ct., Mar. 11, 2003); Cai Shujing v. Mitsui Mining Co., 1098 HANREI TAIMUZU 267 (Fukuoka D. Ct., Apr.26, 2002), *rev'd*, 1875 HANREI JIHŌ 62 (Fukuoka High Ct., May 24, 2004).

165 *See* Liu Lianren v. Japan, 1067 HANREI TAIMUZU 119 (Tokyo D. Ct., July 12, 2001) (holding the state liable for damages).

166 *See, e.g.*, *Mitsui*, 1098 HANREI TAIMUZU at 300. The Supreme Court of Japan first used the phrase to strike down a statute-of-limitations defense used by the state in 1998. Furukawa Hiroshi v. Health Center, 52 MINSHŪ 1087 (Sup. Ct., July 12, 1998).

167 *See supra* note 164.

168 The principle of state immunity (*kokka mutōseki no hōri*) derives from Article 3 of the Meiji Constitution, "The Emperor is sacred and inviolable." MEIJI KENPŌ, art. 3. The Meiji Constitution, in effect during World War II, inoculated a variety of official acts, such as those performed by the police, judiciary, and military. A citizen injured in the exercise of

corollary of the Meiji Constitution, the state-immunity principle allowed the state *not* to compensate people for damages caused by an official act.[169] The principle had wide currency in the eighteenth and nineteenth centuries, but scholars have noted its gradual decline over the course of the twentieth century.[170] Despite this trend, Japanese courts have continued to recognize the state-immunity defense in slave-labor cases.[171] In fact, only in the past year have courts refused to apply the principle,[172] perhaps signaling a change in judicial attitudes toward state liability.

The defenses of state immunity and statute of limitations have shielded the government and various corporations from liability in numerous cases. While not infallible, these defenses remain persistent hurdles that former forced laborers must confront with each lawsuit. Both defenses have almost talismanic properties; when a court intends to shield the defendant, these mantels provide adequate justification for the court's decision. But like all forms of magic, these defenses can be undone by other incantations, such as the familiar refrain from the *Liu Lianren* case: to find for defendant would "flagrantly violate the principles of fairness and justice."[173] Rather than leave a decision to the whims of spells, a more systematic approach is needed. The next Part highlights two alternatives.

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an official action or policy, for example, could not sue the state for damages. *See* Akiyama Yoshiaki, *Gyōseihō kara Mita Sengo Baishō* [*Postwar Compensation: Perspectives from Administrative Law*], *in* KYŌDŌ KENKYŪ: CHŪGOKU SENGO BAISHŌ, *supra* note 97, at 59. This protection was eliminated by Article 17 of the current Japanese constitution, which provides, "Every person may sue for redress as provided by law from the State or a public entity, in case he has suffered damage through illegal act of any public official." KENPŌ, art. 17.

169 *See* Akiyama, *supra* note 168, at 59.

170 *Id.* at 52.

171 The Fukuoka District Court's 2002 decision, for example, ordered the Mitsui Mining Company to pay each plaintiff eleven million yen, but dismissed the claim against tbe Japanese government. *See Mitsui*, 1098 HANREI TAIMUZU at 301.

172 The epochal Niigata District Court case of 2004 said the application of state immunity would "violate the principles of fairness and justice." Zhang Wenbin v. Rinko Co. & Japan, 50 SHŌMU GEPPŌ 3444, 3585 (Niigata D. Ct., Mar. 26, 2004). Likewise, the Fukuoka High Court case held that "there is no provision in positive law for denying state responsibility in the exercise of sovereignty." *Genkoku Ga Gyakuten Haiso: Fukuoka Kōsai Hanketsu: Kuni, Kigyō No Sekinin 'Jikō'* [*Plaintiffs Lose on Appeal: Fukuoka High Court Holds Responsibility of Government and Corporation Is Time-Barred*], NIHON KEIZAI SHIMBUN, May 24, 2004, at 1. Unfortunately for the plaintiffs, the Fukuoka High Court resuscitated the statute-of-limitations defense to exculpate both the State and Mitsui Mining. *See* Cai Shujug v. Mitsui Mining Co., 1875 HANREI JIHŌ 62 (Fukuaka High Ct., May 24, 2004).

173 *See* Liu Lianren v. Japan, 1067 HANREI TAIMUZU 119, 149 (Tokyo D. Ct., July 12, 2001) (bolding Japan liable for damages).

III
COMPENSATING SLAVE LABOR IN THE UNITED STATES

A. The Judicial Response

In the past decade, U.S. courts have heard a number of cases stemming from slave labor during World War II. While the impact American lawsuits have had on the Japanese litigation is open to debate, the American experience can serve as a useful model for resolving the issue of slave-labor compensation in Japan. Beginning in October 1996, Holocaust-era slave laborers filed numerous class action lawsuits against Swiss banks.[174] Among other claims, the plaintiffs argued that by trading assets derived from slave labor, Swiss banks abetted the Nazi regime "in furtherance of war crimes, crimes against humanity, crimes against peace, slave labor and genocide."[175] Thus, even though the banks did not directly employ slave labor, plaintiffs charged that the banks could be held liable simply by virtue of their knowledge that these assets were tainted.[176]

A number of contemporaneous political events significantly strengthened the plaintiffs' position. The support of high-ranking officials and politicians, such as Senator Alfonse d'Amato and Under Secretary of State Stuart Eizenstatt, helped raise the profile of the slave-labor lawsuits.[177] Threats by local and state politicians to boycott Swiss banks likewise lent urgency to the slave laborers' case.[178] In June 1998, the banks initially offered to settle the claims for $600 million,[179] but under the judge's guidance, the parties ultimately agreed to over twice that sum just two months later.[180] By the terms of the settlement agreements, the banks were protected from future lawsuits in American courts.[181] This settlement revealed to many spectators the efficacy of political pressure coupled with the threat of sanctions.[182]

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174 *See In re* Holocaust Victim Assets Litig., 105 F. Supp. 2d 139, 141–42 (E.D.N.Y. 2000) (describing the procedural history of the lawsuits).

175 *Id.* at 141.

176 *See id.*

177 *See* Michael J. Bazyler, *The Holocaust Restitution Movement in Comparative Perspective*, 20 BERKELEY J. INT'L L. 11, 15 (2002).

178 *See id.* at 15.

179 *Id.*

180 *See In re Holocaust Victim Assets Litig.*, 105 F. Supp. 2d at 142. ("Defendants . . . agreed to pay $1.25 billion, in four installments, over the course of three years."); *see also* Bazyler, *supra* note 177, at 15 ("Under Judge Korman's guidance [the parties] settled the case for $1.25 billion.").

181 *See* In re *Holocaust Victim Assets Litig.*, 105 F. Supp. 2d at 142–43 ("[S]ettling plaintiffs and settlement class members have agreed irrevocably and unconditionally to release, acquit and forever discharge certain releasees from any and all claims relating to the Holocaust, . . . or any related cause or thing whatever.").

182 *See* John Authers & Richard Wolfe, *Comment & Analysis: When Sanctions Work*, FIN. TIMES (U.K.), Sept. 9, 1998, at 22 ("The clearest lesson from the Swiss banks' $1.25-bn

In the wake of the Swiss-bank litigation, slave-labor suits against German companies flooded American courts.[183] Before these cases could be decided, however, German government and industry representatives stepped in, eager to avoid the disrepute suffered by the Swiss.[184] They established a compensatory fund in February 1999, with the clear intent of curbing lawsuits against German companies in the United States.[185] The litigation against German industry proceeded, however, resulting in a settlement in December 1999 in the amount of ten billion deutschemarks, approximately $4.8 billion.[186] The German government and private sector each contributed $2.4 billion to the fund, which then granted 1.25 million former laborers awards ranging from $2,500 to $7,500.[187] As with the Swiss banks, the German state and corporations obtained "legal peace," or complete protection from future litigation in the United States.[188] Austria, seeing the writing on the wall, likewise set up a $410 million fund for its former slave laborers.[189]

It is unlikely that a similar series of political events would unfold in Japan. America's relatively litigation-friendly legal culture and high concentration of Holocaust survivors made it a particularly advantageous place for the former slave laborers to sue. Before turning to whether a similar strategy might work for Chinese litigants in Japanese courts, however, one other U.S. approach to reparation requires consideration.

B. California's Legislative Solution

In 1999, the California legislature proposed a statutory solution to the reparations problem. Controversial from its inception,[190] the statute allowed "[a]ny Second World War slave labor victim, or heir . . . [to] bring an action to recover compensation for labor per-

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settlement with holocaust survivors is this: threatening to impose sanctions can work. Every important breakthrough in the negotiations came soon after threats from US local government officials to impose sanctions . . . .").

183 Michael J. Bazyler, *Nuremberg in America: Litigating the Holocaust in United States Courts*, 34 U. RICH. L. REV. 1, 194 (2000).

184 David E. Sanger, *Germans Establishing Huge Fund for Victims of Holocaust*, SEATTLE POST-INTELLIGENCER, Feb. 10, 1999, at A2.

185 *See* Bazyler, *supra* note 183, at 196.

186 *See* Bazyler, *supra* note 177, at 23–24.

187 *Id.* Slave laborers, or workers in concentration camps, were awarded $7,500 each; forced laborers, or people abducted from eastern Europe and forced to work in German factories, received $2,500 each. *See id.* at 24.

188 *Id.*

189 *Id.* at 25.

190 *See* Teresa Watanabe, *Measure Urges Japan to Apologize for Atrocities*, L.A. TIMES, Aug. 24, 1999, at A3 (noting opposing viewpoints of Assemblymembers Mike Honda and George Nakano, the legislature's only Asian Americans).

formed as a [slave or forced labor victim]."[191] It also extended the period in which one may file suit to December 31, 2010,[192] addressing concerns about the expiration of the statute of limitations. During the following year, plaintiffs—among them former U.S. POWs, Korean comfort women, and Chinese slave laborers—filed over thirty lawsuits under this statute.[193] Defendants included Japanese corporations such as Mitsubishi Materials, Mitsui Mining, and Nippon Steel.[194]

In a suit consolidating seven claims brought by Chinese and Korean plaintiffs, however, the Northern District of California struck down the statute.[195] While the court agreed with the plaintiffs' basic contention that "forced labor violates the law of nations,"[196] it held that the state statute unconstitutionally infringed on the federal government's exclusive foreign affairs power.[197] The court also determined that the claims, without the aid of California law, would have been time-barred.[198]

While the United States has been inconsistent in its treatment of slave-labor claims,[199] its approaches to such claims are worthy of consideration. First, the courts responded. Class action lawsuits against foreign companies attracted international attention and the participation of federal, state, and local government entities;[200] adding judicial pressure to this political pressure, U.S. courts succeeded in facilitating multibillion dollar settlements against foreign companies and governments.[201]

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191 CAL. CIV. PROC. CODE § 354.6(b) (West Supp. 2006).

192 *See id.* § 354.6(c).

193 John Haberstroh, Note, *In re* World War II Era Japanese Forced Labor Litigation *and Obstacles to International Human Rights Claims in U.S. Courts*, 10 ASIAN L.J. 253, 260 (2003).

194 *See In re* World War II Era Japanese Forced Labor Litig., 164 F. Supp. 2d 1160 (N.D. Cal. 2001); *In re* World War II Era Japanese Forced Labor Litig., 114 F. Supp. 2d. 939 (N.D. Cal. 2000).

195 *See* In re *World War II Era Japanese Forced Labor Litig.*, 164 F. Supp. 2d at 1160. The claims brought by American POWs were dismissed in a previous suit. *See* In re *World War II Era Japanese Forced Labor Litig.*, 114 F. Supp. 2d at 944–45 (holding that the signing of the 1951 Treaty of Peace with Japan waived all reparations claims brougbt by nationals of Allied Powers).

196 *See* In re *World War II Era Japanese Forced Labor Litig.*, 164 F. Supp. 2d at 1179.

197 *Id.* at 1164.

198 *Id.* at 1180.

199 *See* Bazyler, *supra* note 177, at 28 ("The U.S. government continued to play an active role . . . [in] the German slave labor negotiations, even after the courts dismissed the slave labor cases as being precluded by the post-war German treaties. For the Japanese slave labor claims, however, the U.S. government not only sided with the Japanese companies, but, to date, has failed to press Japan and its private industry to recognize the same type of claims that it forced Germany and its private industry to resolve.").

200 *See supra* notes 177–78 and accompanying text.

201 *See supra* Part III.A.

Second, the California legislature responded. Noting the insufficiency of Japanese responses to slave-labor claims,[202] state legislators worked to provide redress by creating a statutory cause of action. Though the district court later struck down the California statute, a federal statute with a similar aim could achieve the results envisioned by the California legislature. However unlikely such a statute is to pass in the United States now that the Holocaust litigation has subsided, a comparable statute from the Japanese Diet would provide recourse for those slave laborers who remain uncompensated.

IV
SOLVING JAPAN'S WAR REPARATIONS PROBLEM

Frank Upham has written that litigation in Japan can serve as a "vehicle for making the [bureaucratic] elite aware of serious social discontent and spurring it to take remedial action."[203] While it may be an overstatement to claim that Japanese concern over slave-labor awards has reached the level of serious social discontent, various petition drives, marches, and websites indicate that many sectors of Japanese society would prefer a more comprehensive remedy. The ambivalent decisions rendered by Japanese courts reflect the inadequacy of having isolated judges solve the war-reparations problem. The Japanese government should step forward with a settlement plan.[204]

The settlements devised by the U.S. government and courts, in conjunction with various European states and corporations, offer a feasible model.[205] In both Europe and Japan, corporations conspired with the national governments to force millions of "outsiders" (Jews, Russians, and Poles in Europe; Chinese and Koreans in Japan) to work without compensation for years.[206] In the European cases, the push to settle—however belated—afforded some measure of solace to the victims and provided a modest amount of financial compensation.[207] In return, corporations that collaborated with the Nazi regime have partially restored their images and, more importantly, have gained protection from future lawsuits.[208]

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202 *See* Watanabe, *supra* note 190 ("[T]he resolution . . . calls on the [Japanese] government to issue a 'clear and unambiguous apology.'").

203 FRANK UPHAM, LAW AND SOCIAL CHANGE IN POSTWAR JAPAN (1987), quoted in COMPARATIVE LAW, *supra* note 73, at 420.

204 Other scholars have suggested a similar approach. *See, e.g.*, Minami, *supra* note 33, at 47.

205 *See supra* Part III.A.

206 *See supra* Parts I.A, III.

207 *See In re* Holocaust Victim Assets Litig., 105 F. Supp. 2d 139, 142 (E.D.N.Y. 2000).

208 *See id.* at 142–43.

Given the unpredictable nature of recent Japanese litigation,[209] the state and the thirty-five corporations that used slave labor may find a legislatively mandated settlement attractive. First, a settlement would render the Japanese government and private sector immune to the financial burden, uncertainty, and psychological costs of litigation. Furthermore, because fewer than 4,000 Chinese former slave laborers are still alive, the total sum of any settlement would not be overly burdensome.[210] Scholars estimate the value of unpaid wages owed to former Chinese slave laborers to be about 777 million of today's dollars.[211] The actual settlement would be significantly less than this, as only one in ten is alive to receive payment. By contrast, 1.25 million laborers received $4.8 billion from the German state and industry.[212]

Second, a settlement would signal official acceptance of Japan's role in World War II abuses. While Japanese prime ministers have sporadically apologized for some of Japan's World War II conduct,[213] no official has yet addressed the government's careful orchestration of the slave-labor campaign.[214] An officially sanctioned settlement would force the government, as well as the offending corporations, to acknowledge responsibility for their manifold abuses. Furthermore, a settlement would require the government and private sector to participate in resolving the problem, rather than continue the tight-lipped strategy of denial that litigation requires.

Finally, settlement would allow for a harmonized and rational approach to compensation. As noted above, European awards were based on the type of labor the slave laborer performed. A slave laborer, who worked in a concentration camp, was entitled to $7,500; a forced laborer, who worked in a factory, was entitled to $2,500.[215] While not generous, such awards at least reflect a systematic attempt to achieve equity in compensation. Japanese awards, by contrast, have undoubtedly been greater, but also much more variable. In addition to $32,000 settlements, former Chinese laborers have received awards of $55,000, $78,000, and $195,000.[216] Of course, many laborers have received nothing at all. Mass settlement effectuates a less idiosyncratic approach to compensation: Instead of *some* lucky subset of survivors

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209 *See supra* Part II.

210 Minami Norio, *Resolving the Wartime Forced Labor Compensation Question*, JAPAN FOCUS, http://japanfocus.org/138.html.

211 Minami, *supra* note 33, at 47.

212 *See* Bazyler, *supra* note 177, at 23–24.

213 Laura Hein & Mark Selden, *The Lessons of War, Global Power, and Social Change*, *in* CENSORING HISTORY: CITIZENSHIP AND MEMORY IN JAPAN, GERMANY, AND THE UNITED STATES 3, 25 (Laura Hein & Mark Selden eds., 2000).

214 *See id.*

215 *See* Bazyler, *supra* note 177, at 23–24.

216 *See supra* Part II.B.1–2.

getting *all* of the compensation, *all* survivors would get *some* compensation.

CONCLUSION

The slave-labor litigation in the United States and Japan is remarkable in many ways, not the least of which is the long-delayed relief it has provided many victims of some of the twentieth century's most egregious human-rights abuses. In 2005, the sixtieth anniversary of the end of World War II, the lawsuits underscore both the important human-rights ideals that have developed since the war and the current commitment to them. The varied outcomes of the Japanese litigation reflect deep-seated divisions over whether to compensate victims of forced labor. Given this variability, a large-scale settlement, based roughly on the Euro-American scheme developed in the late 1990s, seems an ideal solution to this lingering problem.