
The Mechanisms behind Litigation's "Radiating Effects": Historical Grievances against Japan

Celeste L. Arrington 

Scholars argue that litigation can have positive and negative "radiating" or indirect effects for social movements, irrespective of formal judicial decisions. They see litigation as a dynamic process with distinctive features yet nonetheless intertwined with advocacy in other forums. Litigation can indirectly shape collective identities, reframe debates, or provide political leverage. However, the mechanisms behind these radiating effects are poorly understood. Through an analysis of lawsuits and related activism by Korean survivors of Japanese actions in the first half of the twentieth century, this article disaggregates the mechanisms behind litigation's productive indirect effects. It theorizes and illustrates mechanisms such as attribution of similarity, brokerage, issue dramatization, political cover, and intergroup discussions. These mechanisms help us understand how litigants obtain litigation's indirect effects and thus also the broader impact of postwar compensation lawsuits in East Asia, despite few judicial victories. The article contributes non-Western and transnational cases to scholarship on litigation's indirect effects.

In the past three decades, Koreans have filed dozens of lawsuits in Japanese, Korean, and U.S. courts with various claims related to Japanese colonial rule over the Korean peninsula (1910–1945). Claimants have included Korean victims of forced labor in Japanese factories, sexual slavery for Japanese troops (the "comfort women"), the atomic bombings (*hibakusha*), leprosy facilities, military conscription, and relatives of such victims. Chinese, Taiwanese, and claimants of other nationalities have filed similar lawsuits. Despite more than a hundred rulings, including more than 25 from top courts, such litigation has yielded few judicial victories for the claimants. Lower court rulings in the plaintiffs' favor were often

Please direct all correspondence to Celeste Arrington, Department of Political Science, 2115 G St. NW, Monroe Hall 440, Washington, DC 20052; e-mail: cla@gwu.edu.

I thank Logan Strother, Jennifer Dixon, Sheila Smith, the editors, and anonymous reviewers for their feedback. Earlier versions of this paper were presented at the Council on Foreign Relations, the James Joo-Jin Kim Program in Korean Studies at the University of Pennsylvania, and the annual meeting of the Association of Asian Studies. Thanks for superb research assistance from Miho Moon and Leslie Kim. This research would not have been possible without the generosity and honesty of the plaintiffs, lawyers, journalists, activists, and scholars with whom I spoke in Japan and Korea. I am also grateful for the fellowship year at the Program in Law and Public Affairs at Princeton University in 2017–18 and research support from the George Washington University Institute for Korean Studies.

Law & Society Review, Volume 53, Number 1 (2019): 6–40
© 2019 Law and Society Association. All rights reserved.

overturned on appeal. Courts ruled that the statute of limitations on the right to bring claims had expired, that the doctrines of political question and sovereign immunity rendered the case moot, or that postwar treaties absolved the Japanese government of liability and denied individuals the right to claim compensation. Nevertheless, the number of lawsuits grew, and claims diversified.

In one sense, these varied and largely separate lawsuits seem to affirm scholars' contention that litigation is a "hollow hope" for those seeking social change (Rosenberg 2008). Besides costing time and money, lawsuits can divert energy from other tactics and be difficult to win. The process of bringing legal claims frequently empowers lawyers over affected parties or divides social movements (Albiston 2011; McCann and Silverstein 1998; Scheingold 2004). It sometimes also sparks a backlash in rhetoric, actual policies, or policy implementation (Klarman 2004).

In another sense, these lawsuits, while largely unconnected, are part of the global trend toward historical justice. In the trend, individuals and NGOs are increasingly influencing disputes formerly settled between governments. Some scholars praise how long silences have been broken, transnational advocacy networks formed, and public memory and perceptions of justice transformed (e.g., Berger 2012 ; Keck and Sikkink 1998 ; Neumann and Thompson 2015). Others argue that lawsuits related to history complicate and constrain diplomacy (Slaughter and Bosco 2000) or that state apologies incite domestic counter-mobilization (Lind 2008). Diplomatic tensions between Japan and the Republic of Korea (ROK) in early 2019, following the Korean Supreme Court's rulings in former forced laborers' favor last fall, confirm such arguments.¹

In a third sense, these lawsuits are a testament to the fact that litigation's indirect or "radiating effects" (I use the terms interchangeably) are often more significant than formal judicial outcomes (Galanter 1983). The classic work by McCann (1994) elaborated many radiating effects of the litigation process, and NeJaime (2011) recently examined how litigation loss specifically can be productive for movements. To date, however, the *mechanisms* behind litigation's indirect effects remain undertheorized. This article conducts a meta-study of possible mechanisms to fill the gap. Since definitions abound (Mahoney 2001: 577–81), I follow Falleti and Lynch (2009: 1145) in defining mechanisms as "relatively abstract [and portable] concepts or patterns of action that explain how a hypothesized cause creates a particular outcome in a given context." Analyzing mechanisms helps uncover ripple effects beyond the courtroom and how litigants might

¹ Korean Supreme Court, 2013da61381 (ruling Oct. 30, 2018) and 2013da67587 (ruling Nov. 29, 2018).

attain these effects. As such, they deserve more attention. Scholarship on movements for historical redress in East Asia usually mentions litigation only in passing or focuses on the legal merits of specific cases (e.g., Boling 1994; Totsuka 1999; Gao 2006; Levin 2008; Kim 2014; Chun and Kim 2014). But this article asks: What radiating effects have lawsuits against the Japanese government or Japanese firms had, and what mechanisms produce these effects?

This article highlights four types of indirect or radiating effects that benefited claimants and facilitated movements for historical justice even in the absence of court victories. Litigation (1) helped build movements and their capacity; (2) supplied discursive resources and certified evidence of past abuses; (3) bolstered claimants' leverage in other arenas; and (4) fostered interpersonal cross-national reconciliation. Rather than try to produce an exhaustive list of effects and associated mechanisms, I focus on unpacking several radiating effects that have been productive for historical justice movements and appear often in sociolegal scholarship, acknowledging that litigation can also have negative effects. While the concept of mechanisms often carries causal connotations, I adopt a less deterministic view of mechanisms (see also Elster 1998; McAdam et al. 2008). Even if the mechanism is known, we cannot be certain that it will lead to a particular outcome because mechanisms combine and interact with the context in different ways (Falleti and Lynch 2009). To illustrate the mechanisms, I draw on interpretive analysis and process tracing of original interviews, media accounts, movement and government publications, court rulings, and secondary scholarship (see "Data and Methods" section). Such qualitative data are ideal for elucidating mechanisms, which can be hard to observe and are often left implicit. I focus on Koreans' lawsuits in Japanese and Korean courts, since they constitute the bulk of historical claims. As described in the next section, they have given rise to various movements, only some of which are connected.

This study makes three contributions to existing scholarship on legal mobilization and transnational activism for historical justice. First, by specifying the oft-overlooked mechanisms behind litigation's indirect effects, it advances a literature that contends that particular features of legal processes have broader political and policy implications. This research examines the relational processes whereby factors such as rules on lawsuit filing or the rhythm of oral hearings held once every few months might be productive for social movements. It thus illuminates how litigants might obtain litigation's indirect effects. Second, I explore how these mechanisms and the associated interactions among those involved in litigation operate across national borders. The

literature on litigation's indirect effects has been largely U.S.-focused to date (but see Merry 2006; Holzmeyer 2009). Third, the findings counterbalance arguments against using litigation as opposed to legislation in addressing historical grievances by exposing the fallacy in their (implicit) assumption that lawyers and judges are not also players in the political arena (see also Price and Keck 2015). This study reveals that positive outcomes, including cross-border trust-building and reconciliation, sometimes emerge from even the most contentious disputes over past wrongs and the most emotionally charged historical memories that roil relations between Japan and Korea (see also Park 2006). I do not attempt to adjudicate the fraught historical and legal debates at the center of these lawsuits and the accompanying movements. I am also under no illusions that improved relations among the few individuals from Japan and Korea involved in these lawsuits, which the next section briefly summarizes, will necessarily overcome accumulated tensions and mistrust between the two countries. Rather, I highlight the need to look beyond formal legal outcomes and unpack the processes by which lawsuits over historical grievances might have broader sociopolitical consequences.

Background: Litigation over Historical Grievances against Japan

Korean movements to redress Japanese historical wrongs are multidimensional and fraught. Litigation has been a significant but hardly homogeneous component of these struggles. Lawsuits filed to hold the Japanese government or Japanese firms accountable have involved various claims, including tort, state compensation, unpaid wages and pensions, discrimination, the constitutionality of government actions or policies, free speech and defamation, and international law. The multiple movements associated with such lawsuits made diverse demands, including compensation, the creation of memorials, the establishment of historical archives, the identification and repatriation of victims' remains, and the issuance of official apologies. They have achieved few definitive victories for plaintiffs, especially in Japanese and U.S. courts. At different times, however, state and nonstate actors have responded to activism with statements and visits from government officials, joint commissions to draft textbooks, schemes to alleviate victims' hardship (e.g., the Asian Women's Fund or medical care provisions), exchange programs, and other initiatives (e.g., Kwak and Nobles 2013; Lind 2008; Soh 2008). In addition, the lawsuits have had various indirect effects on the claimants, supporters, public discourse, and even

government policies. These effects deserve attention because they help account for the increasing number, type, and location of lawsuits and the meaning of the history issue in Korea–Japan relations.

Legal activism is surprising in light of the hurdles to bringing claims. Japan and Korea historically had legal systems with high cultural and structural impediments to litigation (Haley 1978; Yang 1989). In both countries, quotas on the number of private attorneys limited citizens' access to legal representation, damages were capped, and court proceedings often faced delays. In the past two decades, political changes and legal reforms in both countries have lowered some of these hurdles to litigation. But courts were also notoriously conservative on questions related to the state's responsibility for alleged past wrongs, and on who could bring claims and when.

Naming past suffering, blaming a powerful entity for it, and claiming compensation is particularly challenging for Korean survivors of Japanese colonialism and aggression, though it is never easy (Felstiner et al. 1981). Stigmatization deterred many from revealing past suffering. Relatives of former comfort women and atomic bomb survivors were less likely to marry due to prejudice, which compounded the poverty many endured. Additionally, victims often lacked the contacts with other victims that might have helped them organize to seek redress (on "mobilizing structures," see McAdam et al. 1996). Migration during World War II and the Korean War and dislocation afterward had broken up families and social networks. South Korea's authoritarian governments also curtailed freedoms of association and press and discouraged individual claims for compensation from Japan. Yet Korea's democratization in 1987, as well as the death of Japan's Shōwa emperor in 1989, created new opportunities for colonial-era victims to seek redress and released a "pent-up resentment of victimhood" created by Japanese occupation, national division, and authoritarian oppression (Shin et al. 2007: 20).

Consequently, the number of lawsuits over the postwar responsibility (*sengo sekinin*) of the Japanese government and/or firms grew in the 1990s. A few had been filed in the 1960s and 1970s. The present wave of lawsuits began in 1991, when Kim Hak-Sun became the first former comfort woman to speak of her suffering publicly and sue the Japanese government along with 34 other plaintiffs, who had been comfort women, forced laborers, former soldiers, and civilian employees of the Japanese Imperial Army. Separately, Korean and Chinese forced laborers began suing Japanese companies in the same year. Lawsuits were usually collective but rarely included multiple types of victims. Plaintiffs' lawyers felt that bundling claims about diverse forms

and duration of suffering would increase the complexity of their argument and reduce the chances of winning. The suits were also rarely explicitly connected, though they learned from each other. In the late 1990s, Korean atomic bomb survivors, who had also been forced to work in Japanese factories, started suing for access to the medical subsidies that Japanese atomic bomb victims receive, and the Atomic Bomb Survivors' Assistance Law was amended in 2008 to enable *hibakusha* to obtain certification overseas. The Japanese Supreme Court handed down a landmark ruling in 2015 declaring that *hibakusha* are eligible for assistance "no matter where they live" (Osaki 2015). Korean and Taiwanese leprosy survivors similarly used litigation to push the Japanese Diet to revise its Hansen's Disease Compensation Law to grant compensation to former residents of colonial-era leprosaria in 2006 (Arrington 2014). Since the 1970s and most recently in 2009, Korean forced laborers left stateless on Sakhalin Island in what was then the Soviet Union have tried to claim compensation and pensions from Japan and ROK citizenship. Former comfort women also unsuccessfully sought damages and an apology from Japan by filing a lawsuit in 2000 in the United States under the Alien Tort Claims Act. For space reasons, I am unable to detail each lawsuit, but most litigants lost.

The most common legal justifications for rejecting victims' claims in Japanese courts have been Japan's 20-year statute of limitations (Art. 724 of the Civil Code), the doctrine of sovereign immunity of the Japanese state, and postwar treaties and agreements that settled wartime claims and relinquished individuals' rights to claim anything from Japan. Koga (2016) argues that litigation over historical grievances exposed a "legal lacuna" in which former colonial subjects struggled to remedy past suffering through Japanese courts because they could not use the State Redress Act of 1947 when they ceased to be citizens after World War II. American courts, meanwhile, have generally dismissed cases as nonjusticiable based on the political question doctrine or postwar treaties. One example is *Hwang vs. Japan*, which 15 comfort women from Korea, China, Taiwan, and the Philippines filed in the late 1990s (Arakawa 2001; Davis 2008).

In the past decade, Korean plaintiffs have turned to Korean courts to pursue historical justice, with more success (Chun and Kim 2014). The legal opportunity structure opened considerably in 2005 when President Roh Moo-hyun decided to declassify all records related to the 1965 normalization of Japan–ROK relations and the associated claims agreement. Hence, 109 former comfort women (more than half of Korea's surviving registered comfort women) filed suit with the Korean Constitutional Court (KCC) in 2006 to push their government to utilize the arbitration

commission, which was available but never used under Art. 3 of the Japan–ROK Claims Agreement. The KCC issued a historic ruling finding that the ROK government had a constitutional obligation to do more to help the former comfort women obtain compensation from Japan.² In 2012, Korea's Supreme Court issued landmark rulings that accepted forced laborers' claims against Japanese firms for the first time (Lee 2014).³ They overturned lower courts' decisions by recognizing Korean courts' right to exercise international jurisdiction because the Japanese firms had offices in Korea, the tort was committed in Korea, and the claims were deeply connected with ROK history. The Supreme Court also ruled in 2012 that Japanese courts' decisions regarding former forced laborers violated core values in the ROK constitution. This further opened the legal opportunity structure; since then at least five other Korean courts have ruled similarly. Since 2000, more than 1,300 forced laborers have filed 16 suits against 70 Japanese firms. Two landmark Supreme Court rulings in late 2018 ordered Japanese firms to compensate former forced laborers and may therefore encourage further litigation.

Yet not all litigation in Korea has succeeded. For example, in June 2018, a court rejected a dozen former comfort women's claims for damages from the ROK government over the controversial agreement it reached with Japan in 2015 (Ko 2018). And, in what was the KCC's longest pending case, the court rejected in 2015 a plaintiff's claim over the amount of the ROK government compensation available to former forced laborers.⁴ Though relatively more successful, the Korean lawsuits have had similar indirect effects as those in Japanese courts, apart from cross-border reconciliation. I argue that fully understanding the significance of such diverse lawsuits requires examining how litigants activate litigation's productive radiating effects. As described next, I mainly draw on evidence from Koreans' lawsuits in Japanese courts, but make reference to analogous suits brought by Chinese plaintiffs in Japan and litigation in Korean courts.

Data and Methods

To elucidate the mechanisms behind litigation's indirect effects, this article makes two methodological decisions. First, I do not view courts in isolation from other political and social spheres

² ROK Constitutional Court, 2006HeonMa788 (ruling Aug. 30, 2011).

³ 2009Da22549 and 2009Da68620, both rulings on May 24, 2012.

⁴ 2009HeonBa317 (Dec. 23, 2015), regarding the Act on Assistance to Victims of Forced Overseas Mobilization at the Time of the Pacific War (law no. 8669, Dec. 10, 2007).

and claimants' activities in them (Barnes 2009). Second, following Galanter and others, I move beyond simple notions of success or failure to consider the impact of the litigation *process*. I adopt a relational approach that acknowledges the contingency of dynamic sociopolitical processes (McCann 1992: 741–42). The mechanisms I detail rarely operate in isolation. Whether litigation on balance helps or hinders a movement depends on the particular sequencing or mix of mechanisms and the broader context (Falleti and Lynch 2009; McAdam et al. 2001). My goal is to theorize and illustrate the mechanisms litigation can activate, not to prove causation. In the conclusion, however, I consider some conditions that might make these mechanisms more likely to be activated.

The four radiating effects elaborated below are not intended to be exhaustive. Indeed, the universe of possible indirect effects of courts is boundless—and thus undefinable—because it depends on the creativity, will, and interactions of various actors. I selected these four effects, which are productive for social movement, because they are common in the legal mobilization literature (e.g., Holzmeyer 2009; McCann 1994) and repeatedly surfaced in my interviews with participants. Furthermore, though I mention them below, the counterproductive effects have arguably received more attention in the sociolegal literature and studies of historical justice. While not exhaustive, the effects I discuss do span the full disputing process, from first defining something as an injurious experience to seeking remedies to realizing the longer-term consequences of claims-making.

I illustrate how the mechanisms operate with evidence from postwar compensation lawsuits, though space constraints prevent full discussion of each lawsuit. I utilize interpretive analysis and process tracing of 30 original interviews, media and scholarly accounts, and court and movement documents. I conducted the semistructured interviews with lawyers, plaintiffs, activists, and scholars in Japanese and Korean in 2008–2015. Rather than obtain a representative sample, I contacted key participants who had experience both inside and outside the courtroom. Close reading of movement blogs, participants' memoirs, media interviews, and scholarly accounts validated and contextualized my informants' impressions. I also collected a corpus of about 400 news articles published since 1990 by searching the main Japanese newspapers (*Asahi*, *Mainichi*, and *Yomiuri*) and Korean newspapers (*Chosun*, *Joon-gAng*, *DongA*, *Hankyoreh*) for “lawsuit” and the different types of postwar compensation claimants (e.g., “comfort women”). These articles are a source of contemporaneous quotes that elucidate how litigants made sense of the litigation process while it was still ongoing. They also helped me develop detailed chronologies of the

disputing process. Process tracing is excellent for illuminating mechanisms (Collier 2011: 824). By comparing various movements for postwar compensation with an "ethnographic sensibility," I answer Simmons and Smith's (2017) call for more attention to meaning-making, which is critical for studying indirect effects. As Galanter (1983: 136) noted, messages from courts have different consequences depending on how they are received and interpreted.

Litigation's "Radiating Effects" and the Mechanisms behind Them

Several literatures speak to the impact of litigation campaigns such as those over postwar compensation from Japan. First, scholarship on the spread of human rights, transnational activism, and historical justice examines the multipronged campaigns to right past wrongs but rarely focuses on the litigation process. Second, the legal mobilization approach in sociolegal scholarship provides added leverage on the question because it pays more explicit attention to distinctive aspects of the litigation process, while still seeing law as connected to social and political processes. In particular, Galanter's influential work on the "radiating effects" of litigation inspired sociolegal scholars to look beyond formal legal outcomes to examine the process of contesting claims in court and the mutually constitutive relationship between activities inside and outside the courtroom (1983). Neither of these voluminous literatures, however, has explicitly elaborated the *mechanisms* behind the radiating effects of litigation. Hence, we turn to scholarship on social movements and social psychology, which details numerous relevant mechanisms. This section brings together these literatures to unpack the mechanisms behind four primary indirect effects of litigation, using examples from postwar compensation litigation to illustrate how the mechanisms work.

One way to analyze the effects of lawsuits over historical grievances is to see them as part of the broader global trend that started in the 1990s toward righting historical injustices (e.g., Barkan 2000). Brooks (1999) referred to the late twentieth century as the "age of apology." Although redress proved elusive for many claimants, their activism (including in courts) transformed perceptions about public memory and justice. Holocaust victims' testimonies and activism opened the door to other historical justice claims (e.g., Woolford and Wolejszo 2006). Emerging international human rights discourses provided further momentum as they resonated with and fostered movements to hold governments accountable for historic wrongs. For example, Tsutsui

(2009: 1412) argues that the rise of historical justice movements worldwide and international human rights norms gave victims and Japanese progressives leverage and the terms with which to articulate a “remorse frame in the national discourse” and persuade the Japanese government to acknowledge past wrongs. Additionally, growing global awareness of women’s rights and sexual violence facilitated a potent transnational network sympathetic to former sex slaves (“comfort women”). It has raised the issue’s profile, spurred supportive resolutions in foreign legislatures, and delegitimized the 2015 agreement on the comfort women issue between Japan and the ROK. It also contributed to diplomatic stalemates and backlash, such as the 3-year hiatus in bilateral Japan–Korea summit meetings from May 2012 to November 2015 and right-wing counter-mobilization in Japan (Kim and Sohn 2017; Ku 2015).

Yet few historical justice studies specify *how* litigation and the distinctive features of legal processes contributed to any of these outcomes. One exception, Torpey (2015), posits that the growing tendency to frame political conflicts as legal ones—juridification—has accelerated the rise of individual claims over government-to-government settlements because human rights apply to individuals and not communities. Increasingly, individuals are holding corporations and/or governments accountable, often with backing from a growing array of nonstate actors. Critics of this trend have argued that postwar compensation litigation complicates diplomacy, distracts government officials, and constrains diplomats’ options for pursuing the national interest (Slaughter and Bosco 2000). Yet activism without litigation can also frustrate foreign affairs, as illustrated by the 2017 months-long recall of Japan’s ambassador to Korea and the consul general over a disputed comfort woman statue in Busan (Rich 2017). In short, while helpfully attuned to cross-national dynamics, few scholars of historical justice have examined how the *process* of asserting and pursuing rights through the courts affects plaintiffs, their supporters, and broader publics across the multiple arenas of activism.

By contrast, sociolegal scholars have long studied such dynamics, adopting a bottom-up approach that takes an expansive view of how law shapes behavior. After early studies highlighted the “gap” between law in action and law on the books (reviewed in Gould and Barclay 2012), many sociolegal scholars demonstrated the limits of legal remedies or the “myth of rights” (Scheingold 2004). They concluded that litigation is difficult, costly, time-consuming, and generally maintains the status quo. Rosenberg (2008) famously called litigation a “hollow hope.” These studies expected too much from litigation and focused too narrowly on formal

judicial outcomes, but the track record of cases related to Japanese postwar compensation seems to reaffirm their pessimism.

Taking a different tack, "glass half-full" interpretations of litigation's impact drew on Galanter's notion of "radiating effects." He helped shift attention toward the ways in which different actors perceive or leverage aspects of the legal process and the gap between law in action and law on the books (1983). He also emphasized the messages that the judicial process can send. The legal mobilization approach, which flourished with this shift, acknowledges the challenges of litigation but emphasizes the need to analyze tactics, processes, interactions, and context in constitutive and relational terms. As an influential articulator of this approach, McCann (1994) showed how the U.S. pay equity movement—even after legal defeats in court—raised rights awareness, built a movement, and catalyzed policy changes. Many of the radiating or indirect effects identified in this literature are not dependent on winning or losing in court, but follow from the processes of filing and arguing legal claims. Often, scholars hint at the mechanisms behind such effects (but see Keck 2009). But few explicitly discuss them, perhaps because they eschew the kinds of linear or law-like interpretations of causation that accompany most conceptions of mechanisms (McCann 1996; Mahoney 2001: 580). By contrast, studies of social movements, social psychology, and policymaking specify mechanisms, some of which illuminate *how* litigation might be productive for claimants.

Building on these literatures, this article conducts a meta-study of litigation's radiating effects to elucidate mechanisms at work, paying attention to the dynamics of multisited and transnational activism. Prior scholars have outlined numerous side effects—both positive and negative—that litigation can have for social movements, and many of them resonate with Korean claimants' experiences. I build on NeJaime's (2011) analysis of the indirect effect of litigation loss, which is especially relevant for postwar compensation litigation. In a response to him, Albiston (2011) offers a useful typology of positive and negative effects across legal loss, victory, and "just playing the game." Though I focus on productive effects from the perspective of social movements, I acknowledge that litigation also has negative effects (summarized at the end of this section). I highlight four productive indirect effects: (1) building movements and their capacity, (2) supplying discursive resources and evidence, (3) enhancing leverage in other venues, and (4) fostering interpersonal and cross-national reconciliation. As I show below, some effects are more closely associated with particular phases of litigation (e.g., filing a complaint versus adjudication). They encompass effects both on the movement and on its external outreach (NeJaime 2011).

Table 1. Some Mechanisms behind Litigation's Productive Effects

Effects and Mechanisms	Brief Definition	Sample Citations
Stronger Movements with More Capacity		
Attribution of similarity	Highlighting similarities among individuals to motivate collective action	McAdam et al. (2001: 334)
Cultivating rights consciousness and dignity	How people's understanding and use of the law shape their self-worth	Merry (1990); Engel and Munger (2002: 11)
Raising expectations and collective efficacy	Similarly affected people gain hope of remedies and thus mobilize	McCann (1994: 48, 280); Keck (2009: 158)
Fostering solidarity and thus commitment	Group identification makes people stay engaged in collective action	Stürmer et al. (2003)
Brokerage	Connecting previously unconnected entities, including across borders	McAdam et al. (2001: 26); Holzmeyer (2009: 289–90)
Discursive Resources and Certified Evidence		
Framing	Interpreting, labeling what's going on to mobilize constituents, supporters	Minow (1990: 297); Snow and Benford (1988: 198)
Certification and validation	Reduce costs of discerning speakers' credibility	Allen (2010: 121–32)
Issue dramatization	Individuals' stories to illustrate what happened	Gitlin (1980: 146–47); Holzmeyer (2009: 293)
Personalization	Real people embody past suffering	Arrington (2019: 315–16)
Focal events	Trial dates are events, punctuate court process, and sustain controversy	Kidder and Miyazawa (1993: 614)
Heightened Leverage in Other Forums		
Information transmission and subsidy	Litigants assist their legislative allies with policy-relevant information	Naoi and Krauss (2009: 876); Hall and Deardorff (2006)
Expanding the scope of a conflict	Draw in bystanders, redefine who is a stakeholder in an issue	Schattschneider (1960)
Agenda setting	Media/ public attention begets political attention	Mather (1998: 902); McCann (1994: 58)
Political cover and anticipatory reactions	Courts make policies less controversial, legislation anticipates rulings	Keck (2009: 159); Andersen (2006); Feeley (1973: 226)
Venue and/or scale shift	Moving activism to another level or place	NeJaime (2011: 991)
Cross-Border Interpersonal Reconciliation		
Activating empathy, re-humanization	Personally experiencing the other group's diversity undermines stereotypes	Halpern and Weinstein (2004); Verdeja (2009: 149)
Intergroup discussions	Repeated, cooperative interpersonal interactions that build trust	Drury and Reicher (2009); Paluck and Green (2009)
Formation of a new social identity	When members of two groups realize shared membership in a third group	Hewstone et al. (2002); Passy (2001)
Cross-border networks	Cross-group friendships reduce prejudice, facilitate mobilization	Paolini et al. (2004); He (2009)
Counter-narratives	Embodying alternative versions of history	He (2009); Suh (2010)

Note: Table modeled after Falleti and Lynch (2009, 1150).

The rest of this section elaborates these productive indirect effects and the individual-level, group, or society-wide cognitive and relational mechanisms behind them (summarized in Table 1). The mechanisms discussed here vary in their level of abstraction. Some are also more closely tied to courts and may even be in courts' control (e.g., fact-finding). Others may be activated by nonjudicial forms of political activism (e.g., information subsidy), but have distinctive dynamics when operating in the context of litigation. I am not claiming that any of these mechanisms is sufficient to explain litigation's indirect effects. Depending on mechanisms' interactions and the context in which they are activated, the same mechanisms may produce different outcomes (Falleti and Lynch 2009). Rather than proving causation, my aim is to theorize and illustrate potential mechanisms with evidence from Korean postwar compensation lawsuits. Furthermore, by emphasizing the productive byproducts of legal mobilization, I do not intend to suggest that legal action entails no downsides or that it is necessarily an effective way to address historical grievances. The examples below confirm that litigation is time-consuming, costly, and difficult. But analyzing the mechanisms of litigation's radiating effects reveals the means by which litigants might attain them.

Building Movements and their Capacity

Legal activism has the potential to augment the size, infrastructure, and capacity of movements by mobilizing other victims, experts, and bystanders. Five main mechanisms operate in these concentric circles around victims. The first three are what Tilly (2001) called cognitive mechanisms. The act of framing grievances as legal or rights-based claims highlights commonalities among individuals' past experiences and raises individuals' rights consciousness, even among those with little direct exposure to the court proceedings (Merry 1990; Scheingold 2004: 131). Attribution of similarity with first-movers and raised consciousness, in turn, facilitate mobilization as other victims realize the utility of collective action, particularly through the courts (McAdam et al. 2001: 334). Pioneering early lawsuits that are not summarily dismissed can also raise expectations among similarly affected people and lead them to mobilize (McCann 1994: 280). To identify potential plaintiffs and start preparing a case, for example, Japanese and Korean lawyers usually held information sessions at which they explained linkages among disparate forms of suffering and emphasized how these fit into legal categories of rights violations. These explanations helped former victims recognize similarities in their experiences and develop rights consciousness. Korean

Hansen's disease survivors describe having had "no idea about the implications of the Japanese [Hansen's Disease Compensation Law of 2001] for them until the Japanese lawyers first visited" (Arrington 2014: 576). In addition, moving personal testimonies by former forced laborers in Japanese court and media interviews with them in the 1990s inspired other victims to come forward (Park 2006: 57–58). Similarly, Korean comfort women increasingly spoke out about their past suffering after Kim Hak-sun first did so in 2001, and news of the Japanese government's denials of responsibility in court accelerated this trend.

The fourth mechanism is relational: solidarity. Claimants develop solidarity as their identities and self-perceptions transform from victims to rights bearers with dignity (Engel and Munger 2002). Studies show that a sense of solidarity and collective identification breeds commitment to the cause, as individuals are less likely to abandon their friends, and commitment helps sustain activism (Stürmer et al. 2003). Often, Korean plaintiffs who gained a novel sense of collective efficacy through legal activism subsequently became supporters for other claimants. For example, a Korean *hibakusha* who won a landmark court victory in Japan in 2002 later traveled to Japan repeatedly to support other overseas *hibakusha* lawsuits. He explained, "I did what I did because I felt I had a mission, imposed on me by history, to fight to put an end to discrimination" (Mainichi 2008). As plaintiffs attended court hearings, testified, or joined activism outside the courtroom, they tapped into the "participatory potential of litigation" (Marshall 2006) and developed a sense of solidarity. Uneven rulings often triggered claimants' sense of solidarity. As one *hibakusha* explained: "I cannot accept that a different judgement was handed down on my fellow plaintiffs, who have fought together" (Kyodo 2004). Thus, movements were strengthened and sustained through victims' attribution of similarity, increased rights consciousness, heightened expectations and sense of collective efficacy, and solidarity.

Fifth, litigation builds movements and their capacity through the mechanism of brokerage. Brokerage is when a third party connects two previously unconnected groups (McAdam et al. 2001). Lawyers and sometimes other activists serve as such third parties whose plethora of weak network ties act as bridges that facilitate the mobilization of other victims, lawyers, and civil society actors (Granovetter 1973). Mobilizing lawyers gives claimants access to legal expertise, which is especially needed in complex collective lawsuits. Lawyers also bring experience as "repeat players" (Galanter 1974) who can coordinate tactics inside and outside the courtroom and have elite contacts (Arrington 2019; Kidder and Miyazawa 1993). Lawyers in postwar compensation

lawsuits often worked pro bono, with incidental costs subsidized by donations from their firms or fellow lawyers. In the case of Sakhalin-related litigation, nearly 2,000 lawyers in Japan and Korea each donated about \$100 per year to cover travel expenses for plaintiffs' lawyers (*Chosun Ilbo* 1990). Though the particularities of different categories of wartime compensation claims kept victims' activism and lawsuits separate, lawyers sometimes engaged in brokerage by bridging otherwise unconnected groups and transferring ideas about legal strategy from one movement to another (Park 2006: 60–61). After a Sakhalin-related lawsuit was dismissed in 1988, for example, a group of seven Japanese lawyers, three of whom were ethnically Korean, started researching Korean *hibakusha* issues. Leprosy-related litigation also resulted in the diffusion to Korea of the idea of visiting the site of alleged victimization—*genchi shugi* (literally “on-site-ism”) in Japanese/*hyeonji siltae josa* (on-site fact-finding) in Korean.⁵ And the Japanese and Korean bar associations initiated joint symposiums on postwar compensation in 2010.

Personal and professional connections among Japanese and Korean lawyers forged in the context of litigation facilitated mobilization for future transnational activism. For instance, Korean lawyers' activism alongside Japanese lawyers recently inspired them to spearhead litigation against the ROK government by victims of civilian massacres perpetrated by ROK soldiers during the Vietnam War (Hwang 2017). Ethnic ties also led some *zaimichi* lawyers (Korean residents of Japan) to join Japanese lawyers in representing claimants, such as the comfort women in the Shimonoseki trial filed in 1992.

Activist lawyers may also facilitate coalitions with other sympathetic civil society groups. Many were support groups (*shien dantai*) that Japanese citizens organized around the plaintiffs, which echoed the Japanese practices of supporting political dissidents who were arrested and tried in the 1960s (Steinhoff 1999) and of “victim-centered” mobilization (Avenell 2012). These groups of 10 to 20 Japanese citizens offered diverse forms of support and worked with plaintiffs' lawyers but rarely cooperated across lawsuits. Social psychologists argue that such networks help sustain a movement when they encourage discussions about law and politics because these enhance claimants' sense of efficacy (van Stekelenburg and Klandermans 2013: 894–95). In the case of the comfort women's lawsuit in the Shimonoseki branch of the Yamaguchi District Court, local civic groups helped subsidize the cost of litigation and associated travel (Totsuka 1999: 54). In 2005,

⁵ Interviews, lawyer, Seoul (July 13, 2012) and lawyer, Kumamoto (May 15, 2009).

Japanese citizens helped drive elderly Korean leprosy survivors to court hearings in Tokyo, collect signatures to petition Tokyo to grant compensation, and so packed the courtroom that the lawyers established a system of rotation for gallery seats.⁶ A Fukuoka-based group also organized hotels and charter buses for the plaintiffs whenever they visited Japan. Separately, Japanese historians and citizens formed the Network for Research on Forced Labor Mobilization in 2005 to help gather evidence for former forced laborers' lawsuits (see Underwood 2006).

Networks and brokerage also works across borders, as lawyers or activists sometimes supply links to transnational human rights advocacy. Japanese *hibakusha* groups aided Korean *hibakusha* in filling out applications for recognition for medical assistance. Such transnational networks were often brokered through the enterprising efforts of individuals who had access to unique evidence of past wrongs and/or were motivated to personally atone for Japan's past. Consider, for instance, Takahashi Makoto, who was given a document containing the names of young Korean girls who had worked at a Mitsubishi airplane plant during the war while he was teaching high school history in Nagoya in the 1980s (Jung 2017). Using the document, he found survivors of the so-called Korean Women's Volunteer Labor Corps and mobilized more than 1,000 Japanese lawyers, scholars, and citizens to support their litigation, first in Japanese courts and then in Korea. Such personal connections facilitate "scale shift," in which the level and number of coordinated collective actions changes (Tarrow and McAdam 2005). Domestic and international supporter networks facilitated subsequent lawsuits in Korean (Lee 2014) and Chinese courts (see Koga 2016: 430) once Japanese judicial options were exhausted. Thus, both the cognitive and perceptual shifts and the networks forged in the litigation process bolster movements.

Discursive Resources and Certified Evidence

The second cluster of mechanisms concerns the communicative resources and tactics of claimants. Galanter emphasizes the importance of communication and the various messages that emanate from the courts and claimants in legal activism. He cautions, however, that the "influences of courts mingle with [influences] from other sources" in the real world, sometimes with unintended consequences (Galanter 1983: 135). As with advocacy in any venue, litigants must seek attention for their cause, competing with other voices and other issues. The act of filing a lawsuit does not guarantee that claimants' message will break through, but it

⁶ Interview, leprosy survivor, Seoul (Feb. 5, 2009).

requires that grievances be framed in the generalizing terms of rights, which increases claimants' relevance to bystanders (McCann 1994: 84, 279–80). Korean victims' experiences of past—and continuing—suffering boosted the empirical credibility of their framing claims as violations of basic rights. Public lectures or seminars gave ordinary citizens opportunities to hear plaintiffs' stories in their "raw voices" (*nama no koe*) and sometimes literally see their scars. Plaintiffs' willingness to bear the costs and stigma of litigation also enhanced their empirical credibility, which Snow and Benford (1988) argue is key to successful framing. As Minow notes, moreover, invoking rights transforms demands into entitlements and, because the court is a branch of government, it "makes those in power at least listen" (1990: 297).

The court process itself has distinctive features, well before formal rulings, that facilitate claimants' efforts to leverage discursive resources and publicity to reach bystanders and policy makers. Gaining support is especially important for sustaining a movement's momentum in civil law systems, like Japan and Korea, where courts hear any particular case sporadically, about once every few months. Litigants can obtain discursive resources via several mechanisms. First, claimants gain credibility when judges certify plaintiffs' right to bring claims—their standing—by agreeing to hear the case (Handler 1978: 217–18; Holzmeyer 2009: 293). Such external recognition lowers the costs for audiences of discerning the validity of victims and/or their claims (Allen 2010). Movements' claims are more likely to gain media attention if they are allowed to come before courts, which are government entities. Journalists tend to cite government sources at higher rates worldwide, and especially in Japan (Bennett 1990); newspapers also often have reporters assigned to cover the courts. As parties to lawsuits, moreover, plaintiffs and lawyers in postwar compensation lawsuits became recognizable points of contact and credible sources for journalists, whose media coverage served to educate the Japanese and Korean publics about victims' claims (Park 2006).

Courts subsequently activate the mechanism of certification through fact-finding in court rulings, even ones dismissing plaintiffs' claims. For example, in 8 of the 10 lawsuits that former comfort women filed in the 1990s, Japanese courts' unfavorable rulings nonetheless acknowledged women's suffering (e.g., Japanese Imperial Army involvement, trauma, anguish, impact on later life, and severity of the damage). Fact-finding in court spurred state and non-state actors to conduct inquiries. Since discovery is not available in Japanese or Korean courts, postwar compensation claimants have depended on such research, as well as the ability to use litigation or the threat thereof to catalyze government fact-finding. For example,

the Japanese government responded to new scholarship and lawsuits by conducting an inquiry into the “comfort women” issue; Japan’s Chief Cabinet Secretary Kono Yōhei issued a statement in 1993 acknowledging the Japanese military’s role in establishing and maintaining comfort stations and apologizing to surviving victims.⁷ Also, research by the plaintiffs’ lawyers, the Japanese Federation of Bar Associations, the civil society-organized Women’s International War Crimes Tribunal in 2000 in Tokyo, and UN special rapporteurs’ reports in 1996 and 1998 unearthed further evidence about the comfort station system (e.g., Chinkin 2001; Coomaraswamy 1996; McDougall 1998). Then, in April 2007, the Japanese Supreme Court handed down two landmark rulings using identical reasoning to reject Chinese forced laborers’ and comfort women’s claims, but also using “unprecedented, strong language [to describe] the violence and injustice committed by the Japanese government and corporations during the war” (Koga 2013: 494). Furthermore, as the lead attorney on a forced labor lawsuit against the Japanese government and Mitsubishi Heavy Industries (1999–2008) explained, “though we were unable to win in Japanese courts, at least the fact that the courts acknowledged the plaintiffs’ suffering should be counted a success... [because] it has helped the lawsuit in Korea” (Han 2017).

Similarly, lawyers’ legal arguments in court can transform public perceptions and debates and have “spillover effects” for public opinion on cognate issues, as found in studies of U.S. tobacco and LGBT litigation (Mather 1998: 919–20, 929; Engel 2013). For instance, Koga (2016: 422) contends that courtroom debates about the statute of limitations “shifted the focus from wartime violence to postwar injustice” because they tackled questions about whether violence and the injuries caused were coterminous. Plaintiffs’ lawyers emphasized the severity of continuing suffering to overcome Japan’s 20-year statute of limitations. Although lower courts’ fact-finding is not binding for appellate courts in Japan, narratives about continued suffering gained legitimacy through the courts’ recognition of it, transforming public discourses (Totsuka 1999: 59). News stories or public seminars organized alongside the lawsuits enabled Korean claimants further explain their continued hardship, which helped overcome the challenges of getting media coverage of trials in lower courts. Korean *hibakusha*, for instance, spoke of ostracism or accusations of having aided the Japanese when they returned to Korea after liberation (Hippin 2005). The 2007 Supreme Court rulings also acknowledged the plaintiffs’ long-term physical and

⁷ An English translation of the statement is at <http://www.mofa.go.jp/policy/women/fund/state9308.html>.

psychological suffering. In a supplemental paragraph (*fugen*) to the rulings, the court even urged that the defendants privately compensate the plaintiffs, which they did in 2009–2010 (Koga 2016: 423–25). The top court's rejection of plaintiffs' claims, however, was seen as a death knell for other lawsuits over historical compensation in Japanese courts because the rulings accepted the government's main arguments about postwar treaties and agreements extinguishing legal claims (Levin 2008). As a result, claimants shifted efforts to Korean courts and other forums, but they leveraged Japanese courts' acknowledgment of their longtime suffering.

Additionally, documents uncovered in formulating legal arguments can become resources and create a more favorable opportunity environment for future litigation, as Vanhala (2012: 525) notes about British environmental movements. For instance, lawyers in a forced labor lawsuit uncovered Japanese government documents that had been given to the ROK government in the 1990s (Park 2006: 66–67). These documents detailed the names of 21,181 Koreans enshrined at Yasukuni Shrine in Tokyo, which is controversial because it includes the souls of convicted war criminals. The revelations sparked a movement by Korean families to dis-enshrine their relatives' souls from Yasukuni. One of the most dramatic revelations of evidence occurred in 2005, when President Roh Moo-hyun ordered all records related to the normalization of Japan–ROK relations declassified. Originally, a Korean court had only requested those parts pertaining to the comfort women and *hibakusha* (Underwood 2006). Yet the full declassification provided evidence and political leverage for various new claims.

Third, the drama of disputes in court appeals to news outlets' bottom line (Gitlin 1980). Plaintiffs and their lawyers can tap into the media's interest in personalizing issues by giving interviews that supply vivid details of their suffering or the court process and "new news" before rulings are handed down. Research from the U.S. context finds no clear relationship between a ruling's controversialness or the extent to which it alters the status quo and the level of media coverage (Strother 2017). But the drama of the process increases when, for instance, defendants' witnesses deny liability (NeJaime 2011: 984, 1002–3). Claimants in postwar compensation lawsuits used Japanese denials and judicial defeats to dramatize and substantiate their narrative of injustice to the media and public. Korean victims' sense of injustice and fury in interviews also personalized the abstract issue of postwar compensation; here were "grandmothers" (*halmeoni* is the Korean appellation for former sex slaves or laborers) and grandfathers appealing for justice in the final years of their lives (e.g., Chung and Im

2016). Often plaintiffs emphasized their age, as Kim Gyeong-seok did: “Victims of the Pacific War are dying today and will die tomorrow. Please help us while we are still alive” (Shin 2005). At the same time, public seminars organized by lawyers and supporters gave plaintiffs opportunities to experience rehabilitation by gaining agency over their stories and seeing Japanese audiences’ sympathetic reactions. One Korean *hibakusha* argued, “As other nations have negotiated with Japan for ample compensation, we, too, must find our rights in ourselves and show a good example to the world” (Shin 2005).

Finally, court dates entail an element of public performance and institutionalized ritual that provides moments to rally supporters and media attention in postwar compensation lawsuits. While the discontinuous schedule of Japanese (and Korean) trials makes sustaining a movement’s momentum difficult, it also enables litigants to turn court dates into focal events, arguably more easily than in the United States. Kidder and Miyazawa (1993: 618–19) detail how litigants in Japanese pollution lawsuits turned the drawn-out court process to the movement’s advantage, to maintain commitment among participants and recruit new members. Similarly, news photographs from the leprosy survivors’ lawsuit in 2005 show Korean plaintiffs in wheelchairs covered in sheets of handwritten notes from Japanese and Korean supporters entering court. Lawyers in Japan, including for Korean plaintiffs, often organize debriefing sessions, press conferences, and rallies near the court. Japanese rulings are also traditionally announced by unfurling a banner outside the court, as supporters await news, making for good photo-ops for journalists. Thus, court procedures and rhythms can supply discursive resources, focal events, or new evidence that help claimants reach external audiences and maintain issue attention.

Increased Leverage in Other Forums

Litigation can improve claimants’ leverage in other forums. Galanter notes how, even short of actual rulings, features of the legal process, including “costs, remedies, delays, uncertainty, legitimation [etc.],” can be used by claimants in lobbying or bargaining with state actors (1983: 134). Lawyers and activists worldwide try to leverage these synergies through what Cummings and NeJaime (2009) call “multidimensional advocacy” using various forums and tactics. They activate some or all of the following five mechanisms. The first is information transmission and subsidy. Capitalizing on the fact that legislators have limited time, resources, and attention, claimants supply information and issue framing to sympathetic political elites. Studies of lobbying find that it usually targets

like-minded legislators, bolstering their coincident objectives rather than changing the minds of legislators who disagree (Hall and Deardorff 2006; Naoi and Krauss 2009). Information uncovered through courts' fact-finding has heightened credibility. Korean plaintiffs, despite losing in Japanese courts, provided information subsidies to legislators, especially Korean National Assembly members. Their lobbying resulted in legislation establishing inquiries into past abuses and financial aid to Korean victims, as well as diplomatic pressure on Japan. Korean forced laborers, for example, leveraged a dearth of judicial victories in Japanese courts to persuade their own government to enact special legislation establishing a truth commission in 2004 and providing unpaid wages in 2007.⁸ The commission has collected evidence, including Japanese governmental and corporate documents, showing that almost 500 companies used Korean laborers without fair wages and pensions. It has also lobbied the ROK government to increase diplomatic pressure on Japan and opened the door to more litigation, including in Korea.

Second, the process of litigation can expand the scope of a conflict and redefine who is considered a stakeholder in an issue (Schattschneider 1960). Lawyers thus use litigation to surmount the collective action problem and organize diffuse interests (Barnes 2009: 100). After a court recognizes their standing, plaintiffs may demand a voice in policymaking. For example, one of the main criticisms of the 2015 comfort women agreement was its exclusion of surviving comfort women and the Korean Council for Women Drafted into Military Sexual Slavery from the negotiation process; the panel reviewing the agreement after Moon Jae-in took office specifically faulted the previous government for such exclusion (Choe 2017). In transnational legal mobilization, foreign claimants aim to mobilize support from the target country's citizens to gain leverage with its legislators, whose perception of the electoral stakes of an issue may change. Doing so activates a grassroots correlate to Keck and Sikkink's (1998) boomerang. In Japan, for instance, movement leaders aimed to fill observers' seats with supporters on court dates to signal Japanese public concern for the plaintiffs to Japanese judges, replicating a tactic used in domestic Japanese legal activism (Steinhoff 2014).

Using litigation to redefine an issue in the public sphere and mobilize supporters activates the third mechanism: agenda setting. Often, claimants turn to the courts because politicians ignore

⁸ The Commission on the Verification and Support for Victims of Forced Mobilization under Japanese Colonialism was established by Special Law: *Ilje Gangjeomha Gangjedongwon Pihae Jinsang Gyumyeong deungegwanhwan Teukbyeolbeop* (law no. 7174, March 5, 2004).

small groups with few resources, resist tackling controversial or difficult questions, or face legislative deadlock (e.g., Frymer 2003; Lovell 2003). Courts may be claimants' only option. However, litigation can prevent an issue from getting on the political agenda and being efficiently addressed, as legislators adopt a "wait and see" approach until the court rules (Barnes 2011). Lawsuits may also serve as an early warning regarding policy issues that need attention and add an issue to the political agenda, as legislators' perceptions of threat and opportunity change (McAdam et al. 2001: 92). Although judges are not beholden to public opinion, lawyers found that a crowded courtroom—"especially in Tokyo"—attracted media coverage or signaled issue salience to the judges.⁹ Japanese citizens who attended court hearings in Koreans' lawsuits put pressure on their own government to address its history more extensively. Media coverage and public outrage over perceived Japanese denials of responsibility for past abuses have also made postwar compensation an attractive topic for Korean politicians across the political spectrum. In the May 2017 snap election, for instance, all five major candidates called for revisiting the controversial 2015 comfort women agreement with Japan (Yi 2017). Impeached conservative President Park Geun-hye had prioritized resolving the comfort women issue. And, in support of forced laborers' right to compensation from Japan, the ROK's new progressive President Moon Jae-in—who was formerly a lawyer for Korean forced laborers suing Japanese firms—recently declared that "it is necessary for Japanese leaders to take a courageous attitude" (*Kyodo* 2017).

Fourth, ongoing litigation can provide "political cover" for legislators trying to get controversial issues on the political agenda (Keck 2009: 159). Framing an issue as a legal claim and gaining standing from a court may de-radicalize the issue (Andersen 2006: 237) or lead legislators to act in anticipation of a ruling (Feeley 1973: 226). For example, despite strained budgets, former members of the Korean Women's Volunteer Labor Corps, who worked in munitions plants for free, started receiving livelihood subsidies from local governments in Korea in January 2014, even as Japanese businesses continued to fight claims in court. Additionally, after the courts' fact-finding described above, opposition lawmakers repeatedly submitted bills to the Diet aiming to resolve the issue of wartime sexual slavery.¹⁰ And a Japanese government decision to appeal a 2001 ruling, which found that Japanese government policy on overseas *hibakusha* eligibility for medical care

⁹ Interview, lawyer, Fukuoka (Aug 13, 2009).

¹⁰ Archived at the Digital Museum of the Asian Women's Fund, <http://www.awf.or.jp/e4/legislation.htm> (accessed July 12, 2018).

constituted "discrimination," catalyzed efforts by Korean National Assembly members to issue a statement against the Japanese government's policy.

Fifth, litigation, even if ultimately unsuccessful, can activate the process of venue or scale shifting, whereby the location or scope of collective action changes. The uncertainty of judicial outcomes may encourage political or private settlements, though litigation often also structures the parameters of negotiation (McCann 1994: 144–45). In addition, NeJaime (2011: 991) contends that loss in one court can enable other courts to approach an issue differently, especially if the ruling includes statements of dissent or recognition of suffering. Legal arguments from one jurisdiction became resources for cases like those filed in Korea after Japanese judicial options were exhausted, as detailed above. Litigation can thus fuel venue or scale shifting to third countries or the UN in conjunction with attribution of similarity, diffusion, brokerage, and other mechanisms (Tarrow and McAdam 2005). Framing grievances in terms of formal human rights also highlighted similarities with other transnational movements. The Korean comfort women's movement, for example, effectively tapped into a rising awareness of women's rights and sexual violence internationally (Piper 2001; Ku 2015: 256). Hence, UN bodies issued supportive reports in the 1990s and criticized the 2015 Japan–ROK agreement on the issue (*The Japan Times* 2016). In sum, litigation may enhance litigants' leverage in other forums indirectly by sending messages about an issue's definition, salience, or partisan utility that motivate legislative action or broaden the scope and level of activism.

Interpersonal and Cross-Border Reconciliation

Finally, litigation can foster interpersonal and cross-border reconciliation. War crimes trials and truth commissions aim for societal reconciliation, but I highlight interpersonal reconciliation. Few sociolegal scholars have adopted what Holzmeyer (2009) terms a "transnationally attuned legal mobilization framework." Transnational advocacy network scholars and new legal realists have been more attentive to interactions among actors and institutions across national borders (e.g., Keck and Sikkink 1998; Klug and Merry 2016). Yet most overlook how judicial processes, in particular, affect these interactions. I identified five mechanisms that can foster interpersonal cross-border reconciliation. First, since Japanese civil procedural rules require attorneys admitted to local bars to represent plaintiffs, individuals from former perpetrator and victim nations come into repeated, cooperative contact over long periods of time. While litigation does not

necessarily involve close attorney–clients relations, trust-building is an explicit tactic of Japanese legal activism. A Japanese lawyer who worked on Korean leprosy survivors’ lawsuit explained that she and her colleagues aimed to “earn victims’ trust by personally taking depositions and communicating with plaintiffs throughout the lawsuit.”¹¹ Studies of social psychology and reconciliation indicate that such relationships rehumanize the other and activate empathy (Halpern and Weinstein 2004; Verdeja 2009: 149). While collaborating with Japanese lawyers and activists toward the shared goal of winning a lawsuit, plaintiffs personally experience the other group’s diversity, weakening negative stereotypes (e.g., the Japanese are unrepentant) (Paluck and Green 2009). Studies of Northern Ireland likewise indicate that even indirect knowledge of friendships between Catholics and Protestants reveals outgroup variability and thus helps reduce prejudice (Paolini et al. 2004). Shattering stereotypes about the infectiousness of leprosy and about Japanese nonrepentance, a Korean lawyer recalled being “really touched to see a young Japanese lawyer feeding rice to Hansen’s patients and then eating the leftover rice himself” (Kim 2017). A Japanese student who participated in an exchange in Gwangju to meet forced laborers also reported that “my thoughts about Korea have changed” (Choi 2013). Similarly, after testifying in court in Japan, one Chinese comfort woman reportedly acknowledged, “There are good Japanese, actually” (Koga 2016: 419).

Second, research on collective action finds that interpersonal interactions foster the trust and communication that sustains collective action (Ostrom 2009: 201; Drury and Reicher 2009). By visiting with survivors and listening to their stories, the lawyers embodied a different Japanese perspective on history from the revisionism that is usually portrayed in the media. One plaintiff later told me that she was “impressed that Japanese lawyers were willing to work against their own country on her behalf.”¹² A Chinese forced laborer explained, “What is healing my deep wounds from the torturous wartime experiences is the truly conscientious and heartfelt support that I have received over the past two decades from my Japanese friends” (Koga 2013: 503).

Third, studies have shown that prejudice declines when members of two groups realize that they share membership in a third group—here, those seeking to right past wrongs—and shared identity sustains activism (Hewstone et al. 2002; Passy 2003). These mechanisms primarily affect people directly involved in

¹¹ Interview, lawyer, Kumamoto (May 15, 2009).

¹² Interview, leprosy survivor, Sorokdo (Aug. 14, 2009).

activism, although they can influence others in their social networks. Through activities in and around the court Korean plaintiffs and their Japanese supporters forged a new social identity as members of cross-border movements for historical justice. Some transnational networks predated litigation, as in the case of the comfort women movement, which had its roots in the anti-sex tourism movement founded by Korean and Japanese women's groups (Piper 2001: 162–63). Supporters included Japanese who were themselves victims but saw their cause as reaching beyond Japan's borders. For example, when explaining his activism on behalf of Korean *hibakusha*, Toyonaga Keisaburō wrote that "even more than to provide aid to Japanese atomic bomb victims like myself, I believe that we must work even harder to offer aid to victims residing in places other than Japan" (2001: 393). More generally, cross-border activism transformed participants on both sides. Take the example of Takahashi, introduced above. He visited Korea more than a hundred times over the course of his 30 years' activism. Calling his work "destiny," he notes that his daughter married a Korean man and that his ashes will be scattered in Korea after he dies (Jung 2017).

Fourth, cross-border networks built through litigation help counter the perceptions of malignant intent that scholars find stymie interstate reconciliation (He 2009). For many Japanese citizens involved in these lawsuits, whether as lawyers or supporters, personal desires to atone for Japan's past wrongs motivated them. One Japanese attorney involved in Chinese forced labor claims explained that "since [the discovery of human remains of vivisection and biological experimentation at Unit 731 in Harbin, China] I have strongly felt the weight of perpetration (*kagai no omosa*). As the postwar generation, we inherit the burden of the past. This is my lifework, and I cannot simply consign these events to the past" (quoted in Koga 2013: 502). A leading Japanese lawyer on the leprosy lawsuit likewise offered a personal apology for his country's mistreatment of Koreans affected by leprosy during the colonial era.¹³ Koga (2016: 415) reports how a Chinese lawyer who was active with comfort women litigation was initially "skeptical of [the Japanese lawyers'] motives... [but then] came to realize that for these Japanese lawyers, working for Chinese victims pro bono is a way of redeeming their own nation." Toyonaga describes the "sin of discrimination" as motivating his activism for Korean *hibakusha* (Maimichi 2015). Koga found that many Japanese lawyers also took up historical issues to counter the seemingly "pervasive historical amnesia" that arose in Japan in the

¹³ Text of Tokuda Yasuyuki's 2003 speech on Sorokdo, <http://www5b.biglobe.ne.jp/~naoko-k/soroktopeo2.htm> (accessed January 23, 2014).

1990s (2016: 419). Such interpersonal reconciliation is unlikely to outweigh the well-publicized acrimony and mutual distrust between Korea and Japan, but it highlights how much more complex the politics and the relationships surrounding wartime compensation claims are in Japan. As noted below, litigation can spark backlash, such as resistance that prevents their enforcement or negative affective reactions that spur counter-mobilization. But litigants and their supporters embody alternative narratives that can even appeal to audiences without direct contact to the movement.

Negative Effects

In addition to such productive effects, scholars have identified various negative consequences that litigation can have for social movements, although not all are unique to litigation (e.g., Gash 2015). For example, litigation can take precious resources and energy away from other tactics (McCann and Silverstein 1998). Litigation also often requires movements to moderate their demands or downplay differences among individual claimants to fit their claims into legal categories (Galanter 1983: 123; Kelman 1987). Doing so may foreground or reify a disfavored dimension of a person's identity, as Bloom and Miller (2011: 716–17) found in their study of disability-related litigation in the United States. Rules governing standing—who has the right to sue—and legal discourses can also privilege some claims and claimants over others or homogenize the diversity of experiences (Merry 1990: 9). Rulings, whether for or against plaintiffs, may likewise divide or sap movements (McCann 1998: 91; Engel and McCann 2009). Tortfeasors often try to make legalistic or minimal concessions (e.g., by compensating only certain types of victims) or require confidentiality after settlement negotiations, both of which limit may deter future claims-making (Barkan 1984; Upham 1987). Rulings could also be symbolic or fleeting before appeal or legislative action undermines them (Albiston 1999).

Additionally, litigation may result in backlash or resistance that impedes court decisions' enforcement or mobilizes opponents (e.g., Klarman 2004; NeJaime 2011). As of this writing, for instance, Japan-Korea relations are strained because the ROK froze the local assets of a Japanese company that owes compensation to former forced laborers after landmark Korean Supreme Court rulings in late 2018 (Kim 2019). Counter-movements sometimes also use litigation. One recent example in Japan are lawsuits filed by nearly 25,000 Japanese citizens against the *Asahi* newspaper over articles it published about the comfort women issue decades ago (Murai 2016). The lawsuits, ultimately dismissed, sought redress for “damaging Japanese people's personal rights and honor” even after the newspaper

retracted the articles. Yet counter-litigation can backfire. In March 2017, for instance, the U.S. Supreme Court refused to hear a case seeking the removal of a California statue of a young girl commemorating the comfort women (Johnston 2017).

The litigation process can be detrimental to plaintiffs. They often come to depend on lawyers and their expertise; the procedural and formal complexities of the courts mean that legal professionals can easily dominate (Milner 1987; Olson 1984: 28–31; Scheingold 2004). Yet some lawyers prioritize the movement, and scholars of other forms of activism have noted the similar risks of involving professionals (e.g., Staggenborg 1988). Of greatest concern for elderly victims of historical wrongs, however, is the duration of most lawsuits. For example, 48 of the 109 plaintiffs on the comfort women case brought to the KCC passed away before that court's landmark 2011 ruling. And only one plaintiff lived to hear the Korean Supreme Court's landmark 2018 rulings in forced labor-related litigation. Political and diplomatic settlements can also take time and may involve compromises, but they are often faster and apply to larger number of victims than lawsuits do. Judicial procedural rules, on the other hand, give courts more discretion with which to stall for ostensibly neutral reasons, such as when waiting for evidence to be collected. Courts may hesitate, fearing a flood of similar claims or attacks about judicial overreach. Korean plaintiffs' Japanese and Korean lawyers were generally aware of such risks and sought to minimize them, including by combining litigation with other tactics, as detailed above.

Conclusion

Survivors of Japanese colonial and wartime actions have sought redress by filing lawsuits in Japanese, and later American and Korean, courts. Although such legal mobilization has produced few definitive legal victories, these lawsuits and related activism across multiple forums have had significant and multifaceted effects on the victims, their supporters, broader publics, historical memories, diplomacy, and foreign affairs. Litigation has facilitated movement-building domestically and transnationally, augmented the historical record about the first half of the twentieth century, spurred symbolic and financial initiatives to alleviate survivors' hardships, and fostered trust-building and reconciliation at the individual level, even while frustrating interstate relations. As such, these cases offer an opportunity to examine the mechanisms behind litigation's indirect or radiating effects. These effects deserve more attention in analyses of the global spread of

historical justice movements, truth commissions, and human rights.

This article did not focus on specifying the conditions under which the productive indirect effects of litigation are more likely to obtain, but the research suggests several. First, some mechanisms, such as brokerage and information subsidy, are easier to activate with some baseline “support structures,” which include advocacy lawyers, advocacy organizations, and funding (Epp 1998). Second, most mechanisms both internal and external to the movements will be more effective if both the target country and the home country are democratic polities with relatively free news media and separation of powers. In particular, the impact of courts’ recognition of standing, fact-finding, and media appeals should be strongest in democratic polities. Third, mechanisms such as agenda setting and political cover depend on some degree of political openness among government branches to discussing historical memory issues (Albiston 2011: 72–73). Future research should test the applicability of these conditions across time and contexts.

This article built on insights from studies of social movements, legal mobilization, and social psychology to specify mechanisms—including transnational ones—that enable litigants to obtain litigation’s indirect effects. It demonstrated how litigation can be a political resource, a source of ideas and normative claims for activists, and a site for meaningful interactions among different actors. Thus, it contributes to scholarship highlighting how seemingly technical aspects of judicial procedure can have significant political consequences. To fully understand the impact of litigation, I join others in arguing that we need to consider both its distinctive features and its interactions with broader political processes (see also Silverstein 2009). Future research might explore the synergies between court processes and court-like forums such as truth commissions or national human rights institutions (e.g., the National Human Rights Commission of Korea), which are also addressing historical grievances. In sum, narrow empirical analyses of legal outcomes in lawsuits against the Japanese government or Japanese firms overlook the radiating effects of such lawsuits, and as such overlook their myriad benefits and contributions to social change.

References

- Albiston, Catherine (1999) “The Rule of Law and the Litigation Process: The Paradox of Losing by Winning,” 33 *Law & Society Rev.* 869–910.
- (2011) “The Dark Side of Litigation as a Social Movement Strategy,” 96 *Iowa Law Rev.* 61.

- Allen, Danielle (2010) "Anonymous: On Silence and the Public Sphere," in Sarat, Austin, ed., *Speech and Silence in American Law*. Cambridge: Cambridge University Press. 106–33.
- Andersen, Ellen Ann (2006) *Out of the Closets and into the Courts: Legal Opportunity Structure and Gay Rights Litigation*. Ann Arbor, MI: University of Michigan Press.
- Arakawa, Maki (2001) "A New Forum for Comfort Women: Fighting Japan in United States Federal Court," 16 *Berkeley Women's Law J.* 174.
- Arrington, Celeste L. (2014) "Leprosy, Legal Mobilization, and the Public Sphere in Japan and South Korea," 48 *Law & Society Rev.* 563–93.
- (2019) "Hiding in Plain Sight: Pseudonymity and Participation in Legal Mobilization," 52 *Comparative Political Studies*. 310–41.
- Avenell, Simon (2012) "From Fearsome Pollution to Fukushima: Environmental Activism and the Nuclear Blind Spot in Contemporary Japan," 17 *Environmental History* 244–76.
- Barkan, Elazar (2000) *The Guilt of Nations: Restitution and Negotiating Historical Injustices*. New York: Norton.
- Barkan, Steven E. (1984) "Legal Control of the Southern Civil Rights Movement," 49 *American Sociological Rev.* 552–65.
- Barnes, Jeb (2009) "U.S. District Courts, Litigation, and the Policy-Making Process," in Miller, Mark C., ed., *Exploring Judicial Politics*. New York: Oxford University Press. 97–109.
- (2011) *Dust-Up: Asbestos Litigation and the Failure of Commonsense Policy Reform*. Washington: Georgetown University Press.
- Bennett, W. Lance (1990) "Toward a Theory of Press-State Relations in the United States," 40 *J. of Communication* 103–27.
- Berger, Thomas U. (2012) *War, Guilt, and World Politics after World War II*. Cambridge: Cambridge University Press.
- Bloom, Anne & Paul Steven Miller (2011) "Blindsight: How We See Disabilities in Tort Litigation," 86 *Washington Law Rev.* 709–53.
- Boling, David (1994) "Mass Rape, Enforced Prostitution, and the Japanese Imperial Army: Japan Eschews International Legal Responsibility," 32 *Columbia J. of Transnational Law* 533–90.
- Brooks, Roy L., ed. (1999) *When Sorry Isn't Enough: The Controversy over Apologies and Reparations for Human Injustice*. New York: New York University Press.
- Chinkin, Christine M. (2001) "Women's International Tribunal on Japanese Military Sexual Slavery," 95 *The American J. of International Law* 335–41.
- Choe, Sang-Hun (2017) "Deal With Japan on Former Sex Slaves Failed Victims, South Korean Panel Says." *The New York Times*, December 27, 2017. <https://www.nytimes.com/2017/12/27/world/asia/comfort-women-south-korea-japan.html>.
- Choi, Kyung-ho (2013) "Octogenarian Recalls Days of Forced Labor in Japan." *Joon-gAng Daily*, January 8, 2013. <http://mengnews.joins.com/view.aspx?aId=2965111>.
- Chosun Ilbo* (1990) "Sakhalin Dongpo Yeongju Gwiguk Baesang Cheonggu [Sakhalin Compatriots Request Repatriation and Compensation]," June 5, 1990.
- Chun, Ja-hyun & Youcheer Kim (2014) "A New Interpretation of Korea-Japan Relations: 'Rights Revolution' of Sex Slaves and Forced Laborers in the Courtroom," 12 *Korean J. of International Studies* 255–76.
- Chung, Joo-won, and Mi-na Im (2016) "S. Korean Victim Vents Her Fury at Japan's Wartime Sex Slavery." *Yonhap*, August 14, 2016. <http://english.yonhapnews.co.kr/national/2016/08/13/24/0301000000AEN20160813004800315F.html>.
- Collier, David (2011) "Understanding Process Tracing," 44 *PS: Political Science & Politics* 823–30.
- Coomaraswamy, Radhika (1996) "Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences." UN Commission on Human Rights E/CN.4/1996/53/Add.1. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G96/101/23/PDF/G9610123.pdf?OpenElement>.

- Cummings, Scott & Douglas NeJaime (2009) "Lawyering for Marriage Equality Symposium: Sexuality & Gender Law: Assessing the Field, Envisioning the Future," 57 *UCLA Law Rev.* 1235–332.
- Davis, Jeffrey (2008) *Justice across Borders: The Struggle for Human Rights in U.S. Courts*. Cambridge University Press.
- Drury, John & Steve Reicher (2009) "Collective Psychological Empowerment as a Model of Social Change: Researching Crowds and Power," 65 *J. of Social Issues* 707–25.
- Elster, Jon (1998) "A Plea for Mechanisms," in Hedström, Peter & Richard Swedberg, eds., *Social Mechanisms: An Analytical Approach to Social Theory*. Cambridge: Cambridge University Press. 45–73.
- Engel, David M. & Michael W. McCann, eds. (2009) *Fault Lines: Tort Law as Cultural Practice*. Stanford, CA: Stanford University Press.
- Engel, David M. & Frank W. Munger (2002) *Rights of Inclusion: Law and Identity in the Life Stories of Americans with Disabilities*. Chicago, IL: University of Chicago Press.
- Engel, Stephen M. (2013) "Frame Spillover: Media Framing and Public Opinion of a Multifaceted LGBT Rights Agenda," 38 *Law & Social Inquiry* 403–41.
- Epp, Charles R. (1998) *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*. Chicago, IL: University of Chicago Press.
- Falletti, Tulia G. & Julia F. Lynch (2009) "Context and Causal Mechanisms in Political Analysis," 42 *Comparative Political Studies* 1143–66.
- Feeley, Malcolm M. (1973) "Power, Impact, and the Supreme Court," in Becker, Theodore L. & Malcolm M. Feeley, eds., *The Impact of Supreme Court Decisions: Empirical Studies*. New York: Oxford University Press.
- Felstiner, William L. F., Richard L. Abel, & Abel Sarat (1981) "The Emergence and Transformation of Disputes: Naming, Blaming, and Claiming," 15 *Law & Society Rev.* 631–54.
- Frymer, Paul (2003) "Acting when Elected Officials Won't: Federal Courts and Civil Rights Enforcement in U.S. Labor Unions 1935–85," 97 *American Political Science Rev.* 483–99.
- Galanter, Marc (1974) "Why the 'Haves' Come out Ahead: Speculations on the Limits of Legal Change," 9 *Law & Society Rev.* 95–160.
- (1983) "The Radiating Effects of Courts," in Boyum, Keith O. & Lynn Mather, eds., *Empirical Theories about Courts*. New York: Longman. 117–42.
- Gao, William (2006) "Overdue Redress: Surveying and Explaining the Shifting Japanese Jurisprudence on Victims' Compensation Claims," 45 *Columbia J. of Transnational Law* 529.
- Gash, Alison L. (2015) *Below the Radar: How Silence Can Save Civil Rights*. Oxford: Oxford University Press.
- Gitlin, Todd (1980) *The Whole World Is Watching*. Berkeley: University of California Press.
- Gould, Jon B. & Scott Barclay (2012) "Mind the Gap: The Place of Gap Studies in Sociological Scholarship," 8 *Annual Rev. of Law and Social Science* 323–35.
- Granovetter, Mark (1973) "The Strength of Weak Ties," 78 *American J. of Sociology* 1360–80.
- Haley, John O. (1978) "The Myth of the Reluctant Litigant," 4 *J. of Japanese Studies* 359–90.
- Hall, Richard L. & Alan V. Deardorff (2006) "Lobbying as Legislative Subsidy," 100 *The American Political Science Rev.* 69–84.
- Halpern, Jodi & Harvey M. Weinstein (2004) "Rehumanizing the Other: Empathy and Reconciliation," 26 *Human Rights Q.* 561–83.
- Han, San (2017) "Gwangju Byeonhohoe Geunrojeongsindae Sosong Ilbon Byeonhoda e Gamsapae [Gwangju Bar Association Establishes Memorial for the Japanese Lawyers in the Forced Labor Corps Lawsuits]." *News1*, December 7, 2017. <http://news1.kr/articles/?3173472>.

- Handler, Joel F. (1978) *Social Movements and the Legal System: Theory of Law Reform and Social Change*. New York: Academic Press.
- He, Yanan (2009) *The Search for Reconciliation: Sino-Japanese and German-Polish Relations since World War II*. Cambridge University Press.
- Hewstone, Miles, Mark Rubin, & Hazel Willis (2002) "Intergroup Bias," 53 *Annual Rev. of Psychology* 575–604.
- Hippin, Andreas (2005) "The End of Silence: Korea's A-Bomb Victims Seek Redress," 3 *The Asia-Pacific J.*
- Holzmeyer, Cheryl (2009) "Human Rights in an Era of Neoliberal Globalization: The Alien Tort Claims Act and Grassroots Mobilization in *Doe v. Unocal*," 43 *Law & Society Rev.* 271–304.
- Hwang, Keum-bi (2017) "First Citizens' Tribunal Coming from Vietnam War Victims of South Korean Soldiers." *Hankyoreh*, June 25, 2017.
- Johnston, Eric (2017) "U.S. Supreme Court Refuses to Review Challenge to California 'Comfort Women' Statue." *The Japan Times Online*, March 28, 2017.
- Jung, Dae-ha (2017) "[Interview] Gaining Justice for the Young Korean Women Forced to Work in Japanese Factories Is His Destiny." *Hankyoreh*, August 15, 2017.
- Keck, Margaret E. & Kathryn Sikkink (1998) *Activists beyond Borders: Advocacy Networks in International Politics*. Ithaca, NY: Cornell University Press.
- Keck, Thomas M. (2009) "Beyond Backlash: Assessing the Impact of Judicial Decisions on LGBT Rights," 43 *Law & Society Rev.* 151–86.
- Kelman, Mark (1987) *A Guide to Critical Legal Studies*. Cambridge, MA: Harvard University Press.
- Kidder, Robert L. & Setsuo Miyazawa (1993) "Long-Term Strategies in Japanese Environmental Litigation," 18 *Law & Social Inquiry* 605–28.
- Kim, Hyung-Jin (2019) "S.K. Freezes Japan Company Assets Over Forced Labor Spat." *The Washington Post*. January 9, 2019. https://www.washingtonpost.com/business/s-korea-freezes-japan-company-assets-over-forced-labor-spat/2019/01/08/b34fe540-13b5-11e9-ab79-30cd4f7926f2_story.html?utm_term=.229f6d4d62af.
- Kim, Ji Young & Jeyong Sohn (2017) "Settlement without Consensus: International Pressure, Domestic Backlash, and the Comfort Women Issue in Japan," 90 *Pacific Affairs* 77–99.
- Kim, Min-kyung (2017) "13 Years of Cooperative Struggle by S. Korean and Japanese Lawyers." *Hankyoreh*, January 29, 2017.
- Kim, Taejin (2014) "Views on Compensation for Conscripted Korean Laborers from Japanese Companies: A Recent Korean Supreme Court Case," 13 *Asian Business Lawyer* 15–34.
- Klarman, Michael J. (2004) *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality*. Oxford: Oxford University Press.
- Klug, Heinz & Sally Engle Merry (2016) *The New Legal Realism: Volume 2: Studying Law Globally*. Cambridge University Press.
- Ko, Han-sol (2018) "Court Dismisses Comfort Women's Suit against Government for Signing 2015 Agreement with Japan." *Hankyoreh*, June 17, 2018.
- Koga, Yukiko (2013) "Accounting for Silence: Inheritance, Debt, and the Moral Economy of Legal Redress in China and Japan," 40 *American Ethnologist* 494–507.
- (2016) "Between the Law: The Unmaking of Empire and Law's Imperial Amnesia," 41 *Law & Social Inquiry* 402–34.
- Ku, Yangmo (2015) "National Interest or Transnational Alliances? Japanese Policy on the Comfort Women Issue," 15 *J. of East Asian Studies* 243–69.
- Kwak, Jun-Hyeok & Melissa Nobles, eds. (2013) *Inherited Responsibility and Historical Reconciliation in East Asia*. New York: Routledge.
- Kyodo (2004) "State Loses Fifth Suit over Snub of Hibakusha Illness Claims," October 15, 2004.
- (2017) "Forced Laborers' Right to Compensation from Japan Stands: Moon," August 17, 2017.

- Lee, Seokwoo (2014) "The Views of Korean International Law Schools Regarding the 2012 Supreme Court Decisions on Compensation for Forced Labor and Translations of the Decisions," 2 *Korean J. of International and Comparative Law* 193–238.
- Levin, Mark A. (2008) "Nishimatsu Construction Co. v. Song Jixiao et al; Kō Hanako et al. v. Japan," 102 *The American J. of International Law* 148–54.
- Lind, Jennifer (2008) *Sorry States: Apologies in International Politics*. Ithaca, NY: Cornell University Press.
- Lovell, George I. (2003) *Legislative Deferrals: Statutory Ambiguity, Judicial Power, and American Democracy*. Cambridge: Cambridge University Press.
- Mahoney, James (2001) "Beyond Correlational Analysis: Recent Innovations in Theory and Method," in Hedström, Peter, Richard Swedberg, & Charles C. Ragin, eds., *Sociological Forum*, Vol. 16. 575–93.
- Mainichi (2008) "Hibakusha: A Korean's Fight to End Discrimination toward Foreign A-Bomb Victims," May 9, 2008.
- (2015) "Hibakusha: Breaking down a Wall of Discrimination to Help Korean A-Bomb Survivors," November 16, 2015.
- Marshall, Anna-Maria (2006) "Social Movement Strategies and the Participatory Potential of Litigation," in Sarat, Austin & Stuart A. Scheingold, eds., *Cause Lawyers and Social Movements*. Stanford, CA: Stanford University Press. 164–81.
- Mather, Lynn (1998) "Theorizing about Trial Courts: Lawyers, Policymaking, and Tobacco Litigation," 23 *Law & Social Inquiry* 897–940.
- McAdam, Doug, John D. McCarthy, & Meyer N. Zald (1996) *Comparative Perspectives on Social Movements: Political Opportunities, Mobilizing Structures and Cultural Framings*. Cambridge: Cambridge University Press.
- McAdam, Doug, Sidney Tarrow, & Charles Tilly, eds. (2001) *Dynamics of Contention*. New York: Cambridge University Press.
- McAdam, Doug, Sidney Tarrow, & Charles Tilly, eds. (2008) "Methods for Measuring Mechanisms of Contention," 31 *Qualitative Sociology* 307.
- McCann, Michael (1992) "Review: Reform Litigation on Trial," 17 *Law and Social Inquiry* 715–43.
- (1994) *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago, IL: University of Chicago Press.
- (1996) "Causal Versus Constitutive Explanations (or, on the Difficulty of Being So Positive...)," 21 *Law & Social Inquiry* 457–82.
- (1998) "How Does Law Matter for Social Movements?" In *How Does Law Matter?*, edited by Bryant Garth and Austin Sarat, 76–108. Evanston, IL: Northwestern University Press.
- McCann, Michael & Helena Silverstein (1998) "Rethinking Law's 'Allurements': A Relational Analysis of Social Movement Lawyers in the United States," in Sarat, Austin & Stuart A. Scheingold, eds., *Cause Lawyering: Political Commitments and Professional Responsibilities*. New York: Oxford University Press.
- McDougall, Gay J. (1998) "Report of the Special Rapporteur on Systematic Rape, Sexual Slavery, and Slavery-like Practices." UN Document E/CN.4/Sub.2/1998/13. UN Sub-Commission on the Promotion and Protection of Human Rights. <http://www.refworld.org/docid/3b00f44114.html>.
- Merry, Sally Engle (1990) *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans*. Chicago, IL: University of Chicago Press.
- (2006) "New Legal Realism and the Ethnography of Transnational Law," 31 *Law & Social Inquiry* 975–95.
- Milner, Neal (1987) "The Right to Refuse Treatment: Four Case Studies of Legal Mobilization," 21 *Law & Society Rev.* 447–85.
- Minow, Martha (1990) *Making all the Difference: Inclusion, Exclusion, and American Law*. Ithaca, NY: Cornell University Press.
- Murai, Shusuke (2016) "Tokyo Court Rules against Conservative Group Suing Asahi over 'comfort Women' Articles." *Japan Times*, July 29, 2016.

- Naoi, Megumi & Ellis S. Krauss (2009) "Who Lobbies Whom? Special Interest Politics under Alternative Electoral Systems," 53 *American J. of Political Science* 874–92.
- NeJaime, Douglas (2011) "Winning through Losing," 96 *Iowa Law Rev.* 941–1012.
- Neumann, Klaus & Janna Thompson, eds. (2015) *Historical Justice and Memory*. Madison: University of Wisconsin Press.
- Olson, Susan M. (1984) *Clients and Lawyers: Securing the Rights of Disabled Persons*. Westport, CT: Greenwood Press.
- Osaki, Tomohiro (2015) "Supreme Court Rules Hibakusha Overseas Are Entitled to Full Medical Expenses." *Japan Times*, September 8, 2015.
- Ostrom, Elinor (2009) "Collective Action Theory," in Boix, Carles & Susan C. Stokes, eds., *The Oxford Handbook of Comparative Politics*. Oxford: Oxford University Press.
- Paluck, Elizabeth Levy & Donald P. Green (2009) "Prejudice Reduction: What Works? A Review and Assessment of Research and Practice," 60 *Annual Rev. of Psychology* 339–67.
- Paolini, Stefania, Miles Hewstone, Ed Cairns, & Alberto Voci (2004) "Effects of Direct and Indirect Cross-Group Friendships on Judgments of Catholics and Protestants in Northern Ireland: The Mediating Role of an Anxiety-Reduction Mechanism," 30 *Personality and Social Psychology Bulletin* 770–86.
- Park, Soon-Won (2006) "The Politics of Remembrance: The Case of Korean Forced Laborers in the Second World War," in Shin, Gi-Wook, Soon-Won Park, & Daqing Yang, eds., *Rethinking Injustice and Reconciliation in Northeast Asia*. London, UK: Routledge. 55–74.
- Passy, Florence (2001) "Socializing, Connecting, and the Structural Agency/Gap: A Specification of the Impact of Networks on Participation in Social Movements," 6 *Mobilization* 173–92.
- (2003) "Social Networks Matter. But How?" in Diani, Mario & Doug McAdam, eds., *Social Movements and Networks*. New York: Oxford University Press. 21–48.
- Piper, Nicola (2001) "Transnational Women's Activism in Japan and Korea: The Unresolved Issue of Military Sexual Slavery," 1 *Global Networks* 155–70.
- Price, Richard S. & Thomas M. Keck (2015) "Movement Litigation and Unilateral Disarmament: Abortion and the Right to Die," 40 *Law & Social Inquiry* 880–907.
- Rich, Motoko (2017) "Japan Envoy, Recalled Over 'Comfort Woman' Statue, Is Returning to Seoul." *The New York Times*, April 3, 2017.
- Rosenberg, Gerald N. (2008) *The Hollow Hope: Can Courts Bring about Social Change? Second Edition*, 2nd ed. Chicago, IL: University of Chicago Press.
- Schattschneider, E. E. (1960) *The Semisovereign People: A Realist's View of Democracy in America*, 1st ed. New York: Holt, Rinehart and Winston.
- Scheingold, Stuart A. (2004) *The Politics of Rights: Lawyers, Public Policy, and Social Change*, 2nd ed. Ann Arbor, MI: University of Michigan Press.
- Shin, Gi-Wook, Soon-Won Park, & Daqing Yang, eds. (2007) *Rethinking Historical Injustice and Reconciliation in Northeast Asia: The Korean Experience*. New York: Routledge.
- Shin, Ji-eun (2005) "Han Il Hyeopjeong Munseo Gonggae [Disclosure of the Korea-Japan Negotiation Documents]." *Chosun Ilbo*, January 18, 2005.
- Silverstein, Gordon (2009) *Law's Allure: How Law Shapes, Constrains, Saves, and Kills Politics*. Cambridge: Cambridge University Press.
- Simmons, Erica S. & Nicholas Rush Smith (2017) "Comparison with an Ethnographic Sensibility," 50 *PS: Political Science & Politics* 126–30.
- Slaughter, Anne-Marie, & David Bosco (2000) "Plaintiff's Diplomacy." 79 *Foreign Affairs*, 102–16.
- Snow, David A. & Robert D. Benford (1988) "Ideology, Frame Resonance, and Participant Mobilization," in Klandermans, Bert, Hanspeter Kriesi, & Sidney G. Tarrow, eds., *From Structure to Action: Comparing Social Movement Research across Cultures*, Vol. 1. International Social Movement Research. Greenwich: JAI Press.
- Soh, Chunghee Sarah (2008) *The Comfort Women: Sexual Violence and Postcolonial Memory in Korea and Japan*. Worlds of Desire. Chicago, IL: University of Chicago Press.

- Staggenborg, Suzanne (1988) "The Consequences of Professionalization and Formalization in the Pro-Choice Movement," 53 *American Sociological Rev.* 585–606.
- Steinhoff, Patricia G. (1999) "Doing the Defendant's Laundry: Support Groups as Social Movement Organizations in Contemporary Japan," 11 *Japanstudien: Jahrbuch Des Deutschen Instituts Für Japanstudien* 55–78.
- Steinhoff, Patricia G., ed. (2014) *Going to Court to Change Japan*. Ann Arbor, MI: University of Michigan, Center for Japanese Studies.
- van Stekelenburg, Jacquelin & Bert Klandermans (2013) "The Social Psychology of Protest," 61 *Current Sociology* 886–905.
- Strother, Logan (2017) "How Expected Political and Legal Impact Drive Media Coverage of Supreme Court Cases." 34 *Political Communication* 571–89.
- Stürmer, Stefan, Bernd Simon, Michael Loewy, & Heike Jörger (2003) "The Dual-Pathway Model of Social Movement Participation: The Case of the Fat Acceptance Movement," 66 *Social Psychology Q.* 71–82.
- Suh, Jae-Jung (2010) "Truth and Reconciliation in South Korea," 42 *Critical Asian Studies* 503–24.
- Tarrow, Sidney & Doug McAdam (2005) "Scale Shift in Transnational Contention," in Porta, Donatella Della & Sidney Tarrow, eds., *Transnational Protest and Global Activism*. Lanham, MD: Rowman & Littlefield. 121–50.
- The Japan Times* (2016) "U.N. Chief Meets with Comfort Woman; Rights Chief Calls Japan-South Korea Deal 'Insufficient,'" March 12, 2016.
- Tilly, Charles (2001) "Mechanisms in Political Processes," 4 *Annual Rev. of Political Science* 21–41.
- Torpey, John C. (2015) "The Political Field of Reparations," in Neumann, Klaus & Janna Thompson, eds., *Historical Justice and Memory*. Madison, WI: University of Wisconsin Press. 63–73.
- Totsuka, Etsuro (1999) "Commentary on a Victory for Comfort Women: Japan's Judicial Recognition of Military Sexual Slavery," 8 *Pacific Rim Law & Policy J.* 47.
- Tsutsui, Kiyoteru (2009) "The Trajectory of Perpetrators' Trauma: Mnemonic Politics around the Asia-Pacific War in Japan," 87 *Social Forces* 1389–422.
- Underwood, William (2006) "Names, Bones, and Unpaid Wages (1): Reparations for Korean Forced Labor in Japan." *The Asia-Pacific Journal*, September. <http://www.japanfocus.org/-William-Underwood/2219>.
- Upham, Frank K. (1987) *Law and Social Change in Postwar Japan*. Cambridge, MA: Harvard University Press.
- Vanhala, Lisa (2012) "Legal Opportunity Structures and the Paradox of Legal Mobilization by the Environmental Movement in the UK," 46 *Law & Society Rev.* 523–56.
- Verdeja, Ernesto (2009) *Unchopping a Tree: Reconciliation in the Aftermath of Political Violence*. Temple University Press.
- Woolford, Andrew & Stefan Wolejszo (2006) "Collecting on Moral Debts: Reparations for the Holocaust and Pořajmos," 40 *Law & Society Rev.* 871–902.
- Yang, K. (1989) "Law and Society Studies in Korea: Beyond the Hahm Theses," 23 *Law & Society Rev.* 891–901.
- Yi, Whan-woo (2017) "No Candidate Respects 'comfort Women' Deal with Japan." *Korea Times*, April 5, 2017.

Cases Cited

- Korean Constitutional Court, 2006HeonMa788, ruling on Aug. 30, 2011.
- Supreme Court of Korea, 2009Da22549 and 2009Da68620, both rulings on May 24, 2012.
- Korean Supreme Court, 2013da61381, ruling on Oct. 30, 2018; and 2013da67587, ruling on Nov. 29, 2018.

Korean Constitutional Court, 2009HeonBa317, ruling on Dec. 23, 2015.

Supreme Court of Japan, Heisei 14 (ne) no. 511 (on forced labor), dismissed on April 27, 2007a.

Heisei 16 (ju) no. 1658 (on forced labor) ruling on April 27, 2007.

Heisei 17 (ju) no. 1735 (on comfort women) ruling on April 27, 2007.

Heisei 17 (o) no. 985 (on comfort women), dismissed on April 27, 2007.

Hwang Geum Joo vs. Japan, U.S. District Court of Appeals, No. 01-7169, ruling on June 28, 2005.

Statutes Cited

Act on Assistance to Victims of Forced Overseas Mobilization at the Time of the Pacific War (*Ilje Gangjeomha Gangjedongwon Pihaeja Jiwon Beopryul*) (law no. 8669, Dec. 10, 2007), Korea.

Special Law on Verification and Support for Victims of Forced Mobilization under Japanese Colonialism (*Ilje Gangjeomha Gangjedongwon Pihae Jinsang Gyumyeong deungwanhan Teukbyeolbeop*) (law no. 7174, March 5, 2004), Korea.

Hansen's Disease Compensation Law (*Hansenbyō Ryōyōjo Nyūshoshani taisuru Hoshōkin no Shigo nado ni kansuru Hōritsu*) (law no. 63, June 22, 2001, revised Feb. 3, 2006).

Celeste L. Arrington is Korea Foundation assistant professor of Political Science and International Affairs at the George Washington University. She studies social movements, policymaking, state–society relations, lawyers, and the media, with a focus on the Koreas and Japan. Her first book was *Accidental Activists: Victim Movements and Government Accountability in Japan and South Korea* (2016). Her current research examines lawyers and litigation in policymaking related to disability rights and tobacco control in Japan and Korea.