

Road to Redress: Analyzing the Civil Liberties Act of 1988 as a Model to Resolve the “Comfort Women” Issue Between Japan and South Korea

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Abstract

Historical issues have been at the center of Japan and South Korea’s tense relationship over the past decade. One issue in particular that has caused considerable strain is the “comfort women” issue. This paper examines whether the Civil Liberties Act of 1988 could serve as a model to resolve the “comfort women” issue between Japan and South Korea. This paper makes the argument that the Civil Liberties Act of 1988 can be a successful model for a “comfort women” resolution by: 1) using the demands of the redress movement to establish what is required for a satisfactory resolution; 2) demonstrating why Japan’s past resolution attempts failed to meet the requirements of a satisfactory resolution; 3) explaining why the Civil Liberties Act of 1988 successfully resolved similar redress demands; and 4) showing how lessons from the Civil Liberties Act of 1988’s success can set the framework for a successful resolution to the “comfort women” issue between Japan and South Korea.

Keywords: “comfort women,” Japan-South Korea relations, reparations, government apologies

Introduction

More than eighty years since the conclusion of the Pacific War, the “comfort women” issue still haunts East Asia and the Pacific. “Comfort women” is a euphemism for the women across Asian and Pacific nations who were forced to provide sex to Japanese troops during the Pacific War. Although the “comfort women” issue is largely viewed as an East Asian matter, a notable occurrence was the passage of House Resolution 121 in the US House of Representatives in 2007. Resolution 121 was a clear, public rebuke aimed at Japan’s government over its inability to settle the “comfort women” issue (H.R. Res. 121 2007). A leading sponsor of Resolution 121 was Representative Mike Honda of California. In an interview with NPR about Resolution 121, Representative Honda was asked why the House demanded that the Japanese government apologize. Honda answered that the goal was to get Japan to take “historical responsibility,” and he elaborated on how the US took historical responsibility for Japanese American internment when it passed the Civil Liberties Act of 1988 (*NPR* 2007).

This paper seeks to answer the following question: can the Civil Liberties Act of 1988 (hereafter CLA) serve as a model for resolving the “comfort women” issue between Japan and South Korea? To answer this question, this paper will: 1) present the components it believes are required to form a satisfactory resolution to the “comfort women” issue based on the demands from the redress movement; 2) illustrate why Japan’s past resolution attempts fell short of those requirements; 3) show how the CLA had to address similar redress demands to Japan for the “comfort women” issue; and 4) demonstrate how lessons from the CLA’s success can set a framework for a successful resolution to the “comfort women” issue between Japan and South Korea. Ultimately, this paper argues that a “comfort women” redress based on the CLA could form a successful resolution.

Before the analysis, three clarifications are needed. First, this paper will specifically address the “comfort women” issue between Japan and

South Korea. The “comfort women” system involved women from several Asian and Pacific countries. However, South Korean women constituted the majority of “comfort women” (Min 2021, 1, 81-82; Soh 2008, xi-xii, 1; Soh 2003, 212). A second clarification is that this paper will only discuss the Japanese American portions of the CLA. The CLA also included redress for inhabitants of the Aleutian Islands. This paper focuses only on the Japanese American portions because the context, experience, and redress measures for the Aleuts differed slightly, Japanese Americans were the majority of internment victims, and because much of the lobbying and debate over redress for internment revolved around the Japanese American experience. The third clarification is that this paper is not attempting to compare the injustices of Japanese American internment and the “comfort women” system. Rather, this paper is taking the CLA—a widely regarded example of a well-executed government resolution to a historical injustice—and exploring what lessons can be applied to a possible resolution to the “comfort women” issue between Japan and South Korea.

Answering this question is significant for several reasons. First, given the rising age of surviving “comfort women,” it is important to quickly identify a model or at least possible strategies that will achieve an acceptable resolution. Second, Japan-South Korea relations play—and will continue to play—an important role in global geopolitics as North Korea continues its aggressive behavior and China continues to exert itself as a superpower. Failure to resolve the “comfort women” issue has caused real strife in Japan-South Korea relations with potentially significant consequences for regional security and power (Stangarone 2020; *BBC* 2019). Furthermore, as the US continues to focus on East Asia and balancing against China, it will need Japan and South Korea to cooperate on the best terms. Third, while much scholarship and advocacy regarding the “comfort women” issue has thoroughly documented the “comfort women” system and echoed Resolution 121’s condemnation of the Japanese government, few attempts have been made to find resolutions to the “comfort women” issue.

What is a Satisfactory Resolution?

Satisfactory government resolutions to historical injustices have come in various forms. Historian Robert Weyeneth (2001, 12-20, 24) points out that governments have built memorials, issued apologies, paid compensation, created truth commissions, set aside commemoration days, and renamed locations or entities. Ultimately, what constitutes a “satisfactory” resolution should be determined by the circumstances of the specific injustice and its redress movement. For the “comfort women” issue, the redress movement has consisted of the surviving “comfort women,” their advocacy groups, and some scholars. Additionally, the redress movement has been consistently aided by various UN entities and occasionally the South Korean government. As early as 1990—before Kim Hak-sun’s testimony that is often credited with kick-starting the modern redress movement—advocacy groups demanded the Japanese government conduct a public inquiry into the “comfort women” system, take responsibility, apologize, provide compensation to the “comfort women,” and create educational measures and memorials that appropriately address the “comfort women” issue (AWF, n.d.; Soh 2008, 63; Saito 2017, 79). These demands were reaffirmed by the UN Commission on Human Rights Special Rapporteur on Violence Against Women, Its Causes and Consequences, Radhika Coomaraswamy, in the findings of her 1995 investigation into the “comfort women” issue and the Japanese government’s attempted resolutions, as well as by the Center for Research and Documentation on Japan’s War Responsibility—a research and advocacy organization for victims of Japan’s military during the Pacific War (Coomaraswamy 1996, 16-17, 31-32; Hayashi 2008, 129). Finally, in her article “Resolving the Japan-Korea ‘Comfort Women’ Conflict: The Most Effective vs. The Most Likely Solution,” scholar Grace Kang argues that the “ideal” solution to the “comfort women” issue would be Japan utilizing a victim-centered approach to acknowledge the Japanese government’s responsibility for the “comfort women” system,

pay government-funded compensation, and implement educational measures (Kang 2021, 44-47).

The redress movement has consistently agreed that the first required component for a satisfactory resolution is a proper apology from the Japanese government. What is considered a “proper apology” has been the subject of much discussion among social scientists; and again, no single definition exists. However, a few components appear repeatedly in the literature on apologies and in the redress movement’s demands. First, it is a virtually unanimous opinion that an apology must use the word “apologize” or a close synonym that shows remorse (Blatz, Schumann, and Ross 2009, 221; Weyeneth 2001, 12; Harris, Grainger, and Mullany 2006, 721-722). Second, the apologizer must specify the injustice for which they are apologizing (Blatz, Schumann, and Ross 2009, 221; Harris, Grainger, and Mullany 2006, 726-730). Using the word “apologize” and identifying the specific injustice being apologized for helps achieve the third component: the apologizer must acknowledge their responsibility for the injustice (Blatz, Schumann, and Ross 2009, 221; Weyeneth 2001, 17; Harris, Grainger, and Mullany 2006, 721-722, 728-729). Fourth, the apologizer must show they have repaired or show a willingness to repair the situation through changed behavior, monetary compensation, educational measures, punishing the individuals responsible for the injustice, etc. (Blatz, Schumann, and Ross 2009, 221; Weyeneth 2001, 18, 20; Harris, Grainger, and Mullany 2006, 721; Coomaraswamy 1996, 16-17, 31-32).

Besides these four components, who does the apologizing is crucial. While this is key to “comfort women” apologies, it is relevant to government apologies in general. An apology by a national legislature—especially in a parliamentary system—is a much stronger display of a country’s remorse than the statement of an individual leader. Apologies issued through legislative resolutions must pass through several stages of debates and votes. Thus, a legislature issues an apology only after the majority of its elected members hear arguments for and against the apology and decide the apology is necessary. Likewise, a future

retraction of that apology must also pass through multiple stages of debates and votes. In contrast, individual politicians can issue apologies as they see fit, individual views may not coincide with the view of the majority of their constituents or colleagues, and apologies from individuals are more easily undercut by inflammatory statements from other individuals and themselves. Abe Shinzo was a prime example of this. During his first tenure as Japan's prime minister, Abe said of "comfort women," "The fact is, there is no evidence to prove there was coercion [in forcing women into the 'comfort women' system]," as well as "testimony to the effect that there had been a hunt for comfort women is a complete fabrication" (*NBC News* 2007; Fackler 2007). Yet, Abe also said soon after that "There probably was not anyone who followed that path because they wanted to follow it...In the broad sense, there was coercion" (Fackler 2007). Such flip-flopping is much less likely in an apology issued by a national legislature. As a result, an apology issued by the Diet will accordingly carry greater sincerity and will be more likely to survive succeeding governments.

After delivering a proper apology, the next requirement for a satisfactory resolution to the "comfort women" issue is Japanese government-funded compensation. As historian Robert Weyeneth (2001, 18) put it, compensation gives apologies "a distinctly material form." Without compensation, victims and their support groups are more likely to question the sincerity of a government's apology (2001, 18, 29, 31-32). However, Weyeneth (2001, 31-32) also notes that compensation without an apology can be viewed as meaningless by victims. Sociologist Hiro Saito showed that both these sentiments are shared by the "comfort women" redress movement. In the chapter titled "Apologies and Denunciations, 1989-1996" in his book *The History Problem: The Politics of War Commemoration in East Asia*, Saito (2017, 81) quotes former "comfort woman" Kim Hak-sun's and Japan Socialist Party chairman Tanabe Makoto's condemnations of Japan's refusal to offer compensation. Saito quotes Kim as saying "Simply apologizing means nothing. I would like the Japanese government to fulfill its

responsibility for compensation," and he quotes chairman Tanabe as saying "Apology without compensation is hypocrisy. Compensation without apology is strategic calculus" (2017, 81). Thus, the redress movement has clearly demanded both an apology and government-funded compensation are required for a satisfactory resolution.

Along with a proper apology and government-funded compensation, the "comfort women" redress movement has consistently demanded educational measures appropriately addressing the "comfort women" system (AWF, n.d.; Coomaraswamy 1996, 17). Like compensation, education measures provide an opportunity for the Japanese government to prove changed behavior and sincerity. Much of the discussion surrounding educational measures has centered on Japanese history textbooks and "comfort women" memorials (AWF, n.d.; Coomaraswamy 1996, 17; Kang 2021, 20, 30-31; Saito 2017, 97-100). However, this paper proposes that "educational measures" can be expanded to include the support of the existing Women's Active Museum on War and Peace and the Asian Women's Fund Digital Museum or the establishment of grants for "comfort women" research projects.

Finally, a variety of actors including the redress movement and former South Korean President Moon Jae-in's administration have stated that a "victim-centered approach" must be used while forming the resolution of a historical injustice (ROKMOFA 2018, 3, 21; Kang 2021, 35). What does "victim-centered approach" mean? According to a Moon administration report criticizing the 2015 Agreement, a victim-centered approach "requires that a remedy and reparation should be made with the victims at the center," as opposed to a resolution like the 2015 Agreement that was "reached through give-and-take negotiations as if it were a common diplomatic issue" (ROKMOFA 2018, 21, 24). Ultimately, a victim-centered approach is important because it forces the apologizing government to remember that a resolution's first priority is to address the injustice suffered by victims and not political expediency.

Why Japan's Past Resolution Attempts Were Not Satisfactory

Japan's past resolution attempts include several apologies from high-level officials as well as the Agreement on the Settlement of Problems Concerning Property and Claims and on Economic Cooperation (hereafter the "1965 Agreement"), the Asian Women's Fund, and the 2015 Agreement. The first resolution attempt was the 1965 Agreement which re-established relations between Japan and South Korea. The Japanese government believes the 1965 Agreement provided compensation for Pacific War-related issues and colonization and legally protects Japan from new claims for compensation (JMOFA, n.d.). However, the 1965 Agreement is not a satisfactory resolution because it contained no apology and it is unclear whether the agreement covered "comfort women" and other Pacific War injustices. When it comes to defining the scope of the 1965 Agreement, Section One of Article Two states:

The Contracting Parties confirm that [the] problem concerning property, rights and interests of the two Contracting Parties and their nationals (including juridical persons) and concerning claims between the Contracting Parties and their nationals, including those provided for in Article IV, paragraph (a) of the Treaty of Peace with Japan signed at the city of San Francisco on September 8, 1951, is settled completely and finally (Agreement on the Settlement of Problems Concerning Property and Claims and on Economic Cooperation 1965, 260).

Interpreting this passage has been difficult and contentious. The minutes section of the 1965 Agreement clarifies that "it is understood that 'property, rights and interests' means all kinds of substantial rights which are recognized under law to be of property value" (1965, 290). Thus, some argue that the 1965 Agreement only covered property claims, not other claims such as war crimes like the "comfort women"

system (Coomaraswamy 1996, 20; Min 2021, 46). However, because the section went on to say "*and* [emphasis added] concerning claims between the Contracting Parties and their nationals" in addition to "property, rights and interests," one could also argue that the 1965 Agreement does in fact cover all claims regarding the Pacific War (Agreement on the Settlement of Problems Concerning Property and Claims and on Economic Cooperation 1965, 260). Ultimately, the redress movement remains unconvinced that redress was provided through the 1965 Agreement.

The second attempt at a resolution for the "comfort women" issue between Japan and South Korea was the Kono Statement, which was given by Chief Cabinet Secretary Kono Yohei on August 4, 1993. The Kono Statement was the result of a Japanese government study of the "comfort women" issue sparked by the emergence of the redress movement (Soh 2008, 44; 2003, 219; Saito 2017, 81; Kang 2021, 17). Of the four required components for a proper apology discussed earlier, the Kono Statement arguably contains all four. By stating "the Government of Japan would like to take this opportunity once again to extend its sincere apologies and remorse to all those, irrespective of place of origin, who suffered immeasurable pain and incurable physical and psychological wounds as comfort women," the Kono Statement showed remorse and specified the injustice for which it was apologizing (Kono 1993). The Kono Statement mostly acknowledges the Japanese government's responsibility for the "comfort women" system by noting that "comfort women" were "recruited against their own will, through coaxing, coercion, etc.," but its couching of the government's involvement as "directly or indirectly" simultaneously hampers the idea of fully accepting responsibility (Kono 1993). Finally, the Kono Statement promised changed behavior by stating the Japanese government was "determin[ed] never to repeat the same mistake by forever engraving such issues in our memories through the study and teaching of history" (Kono 1993). However, the Kono Statement was not accompanied by Japanese government-funded compensation or concrete educational

measures addressing the “comfort women.” While former “comfort women” and advocacy groups were already demanding compensation and educational measures at this time, former South Korean president Kim Young-sam did not demand compensation from Japan (AWF, n.d.; ROKMOFA 2018, 5). Japan’s government responded to the South Korean government’s demand of only apologizing and acknowledging responsibility for the “comfort women” system rather than the survivors’ and advocacy groups’ demands of an apology, compensation, educational measures, and punishment of appropriate individuals. Thus, the Kono Statement did not resolve the “comfort women” issue.

Two years after the Kono Statement, the Japanese government attempted to resolve the “comfort women” issue through the Asian Women’s Fund. As C. Sarah Soh notes, the Asian Women’s Fund was established in 1995 with four missions: to provide monetary compensation and apologies for “comfort women,” to fund healthcare services for “comfort women,” to further research the “comfort women” issue, and to support other “comfort women”-related projects (Soh 2003, 223; AWF, n.d.). The Asian Women’s Fund sent reparations to the “comfort women” consisting of private donations from Japanese nationals (Soh 2003, 222-223; 2008, 44; Min 2021, 169, 218; JMOFA, n.d.; AWF, n.d.). These private donations totaled somewhere between ¥448-600 million—roughly ¥2,000,000 or \$18,800 per “comfort woman” (Soh 2003, 222; Min 2021, 218; JMOFA, n.d.; AWF, n.d.). The Japanese government, meanwhile, covered the operational costs of the Asian Women’s Fund and provided ¥700-830 million to cover the fees for “comfort women’s” health care services (Min 2021, 218; AWF, n.d.; Soh 2003, 222). Accompanying the money delivered to “comfort women” who accepted the payments were apology letters from the prime minister and the Asian Women’s Fund’s president (AWF, n.d.).

Overall, the Asian Women’s Fund received mixed to negative responses in South Korea and internationally. Seven “comfort women” initially accepted the Asian Women’s Fund’s payments and letters (Soh 2003, 228; Min 2021, 219; AWF, n.d.). However, the majority of South

Korean “comfort women” did not accept the payments and letters, and the Korean Council—the primary “comfort women” advocacy group—publicly criticized the Asian Women’s Fund. The chief criticism of the Asian Women’s Fund was that because the monetary compensation came from private Japanese citizens’ donations, Japan’s government continued to “evade” its legal responsibility to provide compensation (Coomaraswamy 1996, 17; Soh 2003, 218, 228; Saito 2017, 92-93). In fact, the Korean Council objected to the Asian Women’s Fund to such a degree that it urged “comfort women” not to take the Asian Women’s Fund’s payments and “refused to even meet with [Asian Women’s Fund] staff members” (Min 2021, 219; Soh 2003, 228-229). Furthermore, the Korean Council worked with President Kim Dae-jung’s administration to pay ₩31,500,000 (\$20,000-\$26,000) to each of the “comfort women” who had not accepted the Asian Women’s Fund’s payments in exchange for their promise not to accept the Asian Women’s Fund’s payments in the future (Min 2021, 219-220; Soh 2003, 228-229; AWF, n.d.). As it turns out, however, 54 “comfort women” who received the South Korean government’s payments also accepted the Asian Women’s Fund’s payments, bringing the total number of South Korean “comfort women” who received Asian Women’s Fund payments to 61 (JMOFA, n.d.; Min 2021, 220).¹ Given the increasing resistance to the Asian Women’s Fund in South Korea, the Asian Women’s Fund suspended its South Korean operations in 1999 (AWF, n.d.).

The most recent attempt to resolve the “comfort women” issue between Japan and South Korea was the 2015 Agreement (Announcement by Foreign Ministers of Republic of Korea and Japan at the Joint Press Availability 2015). The 2015 Agreement was negotiated between the governments of Prime Minister Abe Shinzo and President Park Geun-hye. On Japan’s side of the 2015 Agreement, the Japanese

¹ Min puts the total number of “comfort women” who accepted the Asian Women’s Fund’s money at sixty-eight, but I have chosen to go with the figure published by the Japanese government. It should also be noted the Japanese government’s number is lower than Min’s, so this is not an attempt to inflate the success of the Asian Women’s Fund.

government issued another apology. At the press conference announcing the 2015 Agreement, Japan's Minister of Foreign Affairs Kishida Fumio stated:

The issue of "comfort women" was a matter which, with the involvement of the military authorities of the day, severely injured the honor and dignity of many women. In this regard, the Government of Japan painfully acknowledges its responsibility.

Prime Minister Abe, in his capacity as Prime Minister of Japan, expresses anew sincere apologies and remorse from the bottom of his heart to all those who suffered immeasurable pain and incurable physical and psychological wounds as "comfort women" (Announcement by Foreign Ministers of Republic of Korea and Japan at the Joint Press Availability 2015, 2).

In addition to the apology, the Japanese government agreed to make a one-time payment of one billion yen (\$8,800,000-\$9,500,000) to the South Korean government and the Reconciliation and Healing Foundation to be used to directly compensate "comfort women" (Announcement by Foreign Ministers of Republic of Korea and Japan at the Joint Press Availability 2015, 2; Choi 2018; Min 2021, 223). Professor Pyong Gap Min asserts that "comfort women" received \$85,000 and deceased "comfort women's" family members received \$18,000.

On the other side of the 2015 Agreement (Announcement by Foreign Ministers of Republic of Korea and Japan at the Joint Press Availability 2015), South Korea first pledged to consider the "comfort women" issue "finally and irreversibly resolved" once Japan apologized and made its payment and promised to "make efforts to appropriately address the concern" of "comfort women" statues (2015, 3-4). Action on the "comfort women" statues would also help with the third and final obligation for South Korea (which also applied to Japan): ending public criticism of each other's governments "in international forums,

including at the United Nations" (2015, 3-4).

Despite Kishida and Abe's apology and the provision of Japanese government funds for compensation, the 2015 Agreement was short-lived for three reasons. First, the deal lacked broad approval from the moment it was initially announced. Some representatives in South Korea's Parliament went as far as to call the Agreement "traitorous" and demanded the resignation of South Korea's Foreign Minister (Soble and Sang-Hun 2015). This may have been dramatic partisanship to a degree. However, significant opposition to the deal was also expressed through opinion polls. The newspaper *Korea JoongAng Daily* reported the results of a poll of 1,000 South Koreans that found 58% of the respondents disagreed that the 2015 Agreement resolved the "comfort women" issue, and 54% said they were not "content" with the deal (*Korea JoongAng Daily* 2016). Second, the 2015 Agreement was not accepted by the Korean Council (Min 2021, 223). Similar to their response to the Asian Women's Fund, the Korean Council tried to persuade "comfort women" not to accept Japan's payments, and they secured funds to pay the "comfort women" instead (Min 2021, 223-224). Third, the 2015 Agreement was short-lived because President Park's successor, Moon Jae-in, opposed the deal. Moon established a task force to investigate the 2015 Agreement's negotiation, and the task force ultimately concluded that the 2015 Agreement was unsatisfactory because the Park administration's emphasis on the "comfort women" issue jeopardized relations with Japan, the negotiations were not transparent, and the 2015 Agreement did not follow a "victim-centered approach" (ROKMOFA 2018, 3-4, 21-25; Jung 2017).

In sum, the Japanese government made attempts to resolve the "comfort women" issue, but none were satisfactory to the redress movement. Now that we understand what past Japanese attempts at resolution looked like and why they were unsuccessful, we can examine the CLA and determine if it could serve as a model for successful redress for the "comfort women" issue between Japan and South Korea.

Why the CLA was a Satisfactory Resolution

At the start of the 1980s, the US Congress and Reagan's administration were confronted by increasingly firm demands for redress for Japanese Americans' internment during World War II. In their book *Achieving the Impossible Dream: How Japanese Americans Obtained Redress*, scholars Mitchell T. Maki, Harry H. L. Kitano, and Megan Berthold show that starting in 1970, the Japanese American Citizens League—the largest Japanese American advocacy group—officially demanded that Congress pass “legislation to provide tax-free monetary ‘reparations’ to Japanese Americans (or their heirs) who were excluded and incarcerated during World War II and a \$400 million fund for community projects” (1999, 64). Maki, Kitano, and Berthold describe how the internment redress movement grew in strength throughout the 1970s and persistently pursued redress for internment before Congress established the Commission on Wartime Relocation and Internment of Civilians (hereafter “the Commission”) to investigate internment and provide recommendations for resolution (Maki, Kitano, and Berthold 1999, 64-83, 96; CWRIC 1982, 1). The Commission held 11 hearings where hundreds of people including “evacuees, former government officials, public figures, interested citizens, and historians and other professionals,” testified to their experiences, research findings, or opinions concerning internment and possible redress (CWRIC 1982, 1; Maki, Kitano, and Berthold 1999, 99). Ultimately, the Commission recommended that Congress pass a resolution that: 1) acknowledges internment was an injustice and the US government's responsibility for that injustice; 2) contains a proper apology; 3) provides government-funded compensation to the victims; and 4) establishes an education fund for future studies on internment (CWRIC 1983, 8-10). Additionally, the Commission (1983, 8) recommended that President Reagan issue pardons for internment-related criminal convictions. Thus, we see that both the US and Japanese governments were faced with similar demands from their respective redress movements: a proper apology

from the national legislature, government-funded compensation, and educational measures.

Next, like “comfort women” redress proponents, supporters of the CLA had to contend with the argument that compensation and apologies had already been delivered. The most cited example of prior legislation that already provided compensation to internees was the Japanese American Evacuation Claims Act of 1948. The Commission described the Japanese American Evacuation Claims Act of 1948 as a law that only allowed people who were interned the “right to claim from the government ‘damage to or loss of real or personal property,’ not compensated by insurance, which occurred as ‘a reasonable and natural consequence of the evacuation or exclusion’” (CWRIC 1982, 118). Altogether, the Commission (1982, 118) determined that the Japanese American Evacuation Claims Act of 1948 paid out \$37,000,000 in compensation out of \$148,000,000 in claimed damages.

Furthermore, scholars point out additional forms of partial redress besides the Japanese American Evacuation Claims Act of 1948. For example, Maki, Kitano, and Berthold discuss the Supreme Court's ruling in *Honda v. Clark* (1967) which “permitted approximately 4,100 Japanese Americans to recover bank deposits from the Yokohama Specie Bank Ltd... seized by the US government at the outset of World War II” (Maki, Kitano, and Berthold 1999, 60). Additionally, Maki, Kitano, and Berthold mention that Nixon signed a law in 1972 that gave interned individuals credit towards Social Security contributions (Maki, Kitano, and Berthold 1999, 67). Finally, in 1976, President Ford terminated Executive Order 9066—the executive order that started internment—and issued an apology (Maki, Kitano, and Berthold 1999, 70-71; Hatamiya 1993, 135). Thus, opponents of the CLA could point to several examples of redress already being delivered.

And point they did. For example, during the debate in the Senate over the CLA, Senator Strom Thurmond cited both the Japanese American Evacuation Claims Act of 1948 and President Ford's termination of and apology for Executive Order 9066, concluding “that these actions by

our Government have resolved this matter” (100 Cong. Rec. 1988, 7625). Likewise, Senator Malcolm Wallop pointed to the “undeniable facts” that the US government already atoned for internment by paying \$37,000,000 in compensation via the Japanese American Evacuation Claims Act of 1948 and President Ford’s apology (100 Cong. Rec. 1988, 7615). Senator Chic Hecht proposed an amendment (which was not adopted) to remove the monetary compensation in the CLA because he argued monetary compensation had already been provided via the Japanese American Evacuation Claims Act of 1948 (100 Cong. Rec. 1988, 7543). Additionally, Senator Hecht (1988, 7543) argued that compensation was financially irresponsible due to the \$136 billion federal deficit. Finally, Senator Jesse Helms argued that “if [the Japanese American Evacuation Claims Act of 1948] was inadequate, those inadequacies can and should be determined and resolved by the courts—not in a political carnival in an election year by the Congress” (100 Cong. Rec. 1988, 7612). Clearly, there were numerous Congresspeople who believed redress had already been achieved.

These arguments that the US government already apologized and compensated Japanese Americans for internment did not stop Congress from passing the CLA, however, and even President Reagan signed the CLA into law despite his own Justice Department’s public opposition. Why? Leslie Hatamiya’s *Righting a Wrong: Japanese Americans and the Passage of the Civil Liberties Act of 1988* offers some insight. Hatamiya argues that Democratic leadership, the Nikkei Congressmen’s efforts, the absence of a formidable opposition lobby, and the law’s compatibility with some conservative values best explain why the CLA was passed by Congress (1993, 32-35, 48-49, 51, 81, 99, 100-120, 149-152). In addition, Hatamiya (1993, 1, 81) mentions in passing that the mission of the CLA was to “redress the loss of constitutional right, not compensate for any personal property losses” and “reconfirm[ing] all citizens’ constitutional civil rights and civil liberties.” I largely agree with all these sentiments, but I will tweak the final point. Yes, most prior redress measures focused on the economic injustices of internment. However,

President Ford’s apology and revocation of Executive Order 9066 clearly sought to redress internment’s unconstitutionality, and it still did not end the demand for redress. I believe the reason why the internment redress movement demanded a resolution that ultimately became the CLA was because prior redress measures were simply too piecemeal, too limited, and thus too inadequate. In sum, I agree with Hatamiya’s analysis, but based on my reading of the Congressional Record, I emphasize that the key component to the CLA’s passage was that proponents of redress successfully rebutted the argument that prior redress measures were adequate.

The argument that the CLA was needed because prior redress was too limited started with the Commission’s findings and report. For example, in Chapter Four of its report *Personal Justice Denied*, the Commission noted that the Japanese American Evacuation Claims Act of 1948 only dealt with material losses—specifically property losses—at the time of evacuation. As the Commission declared:

There were many kinds of injury the Evacuation Claims Act made no attempt to compensate: the stigma placed on people who fell under the evacuation and relocation orders; the deprivation of liberty suffered during detention in the assembly and relocation centers; the psychological impact of evacuation and relocation; the loss of earnings or profits; physical injury or death during detention; and losses from resettlement outside the camps (CWRIC 1982, 118).

Thus, the Commission found the Japanese American Evacuation Claims Act of 1948 too limited to be adequate redress.

This argument proved to resonate with many Congresspeople when it came time to pass the Civil Liberties Act of 1988. For example, Senator Inouye argued that “the individual payments acknowledge the unjust deprivation of liberty, the infliction of mental and physical suffering, and the stigma of being branded disloyal, losses not compensable under the Japanese Evacuation Claims Act of 1948” (100 Cong. Rec. 1988, 7543). Inouye’s remarks about the stigma of internment and

discrimination of Japanese Americans was particularly powerful for other Congresspeople because Inouye was Japanese American and transparent about his experience with racial discrimination. In addition to Senator Inouye, Senator Dennis DeConcini argued that the Japanese American Evacuation Claims Act of 1948 was insufficient because it “only provided compensation for 75 percent or the total value of approved real and personal property losses or \$2,500—whichever was less. The act did not allow for loss of liberty, income or pain and suffering. It even placed an elaborate proof of loss on the injured parties” (100 Cong. Rec. 1988, 7624). Thus, Senator DeConcini also believed prior redress measures were too limited.

Several Democratic House members agreed. For example, Representative Ronald Dellums stated he supported the CLA despite earlier redress measures because “later legislation, such as the [Japanese American] Evacuation Claims Act, did not come close to repaying the massive economic hardships imposed upon Japanese Americans” (100 Cong. Rec. 1987, 24287). Likewise, Representative Sidney Yates supported the CLA on the grounds that prior redress measures only redressed a “pittance of the actual losses that took place against those who had been placed in the camps” (100 Cong. Rec. 1987, 242302). Thus, numerous Democratic members of Congress were clearly convinced that redress had not been sufficiently attained by prior measures.

Moreover, this framing proved persuasive for several conservative members of Congress. Senator Orrin Hatch offered his support for the CLA despite prior redress measures by stating, “Despite various court rulings since [internment], it is clear that these citizens were denied their constitutional right to due process. The bill that we are acting upon today is truly an important step in correcting that denial of due process, and I intend to support its final passage” (100 Cong. Rec. 1988, 7619). Thus, Senator Hatch believed that a violation of civil rights required additional redress not provided in prior measures. Additionally, Representative Hamilton Fish supported the CLA and stated “It is important to emphasize that this \$20,000 payment per person is not

reimbursement for the loss of property or employment. Rather...these individuals are being partially compensated for the violation of their civil rights” (100 Cong. Rec. 1987, 24280). Thus, Representative Fish clearly identified the limited nature of prior redress measures and explained why the CLA needed to be passed. Overall, it appears that stressing the limited nature of prior redress was another important strategy in gaining Congressional support for the CLA.

As we see, the CLA can serve as a strong model for a resolution to the “comfort women” issue between Japan and South Korea because it not only contained the required components for a satisfactory resolution (a proper apology, government-funded compensation, educational measures, and a victim-centered approach), but it also overcame similar obstacles facing the “comfort women” redress movement today (arguments that the government already apologized for the issue and already provided legal redress). Now, we can examine how the CLA specifically addressed the demands of the redress movement.

The CLA’s text had three main parts: an apology from Congress, a plan for paying reparations to surviving victims of internment, and the announcement of a “public education fund” to ensure that internment would never be forgotten or repeated (Civil Liberties Act of 1988 1988, 903-916). Additionally, Congress’s use of the Commission’s hearings and its determination to address each of the redress movement’s core demands can be considered a fourth component—a victim-centered approach. Recalling the four required components for a proper apology, Congress’s apology contained all four. First, Congress conveyed remorse by saying it “apologizes on behalf of the Nation” (1988, 904). Second, Congress specified the “grave injustice” it was apologizing for: “the evacuation, relocation, and internment of civilians during World War II” (1988, 903). Third, Congress took responsibility by stating that internment was “carried out without adequate security reasons...and motivated largely by racial prejudice, wartime hysteria, and a *failure of political leadership*” [emphasis added] (1988, 903-904). Fourth, Congress provided a tangible example of planned changed behavior by

paying compensation and establishing a public education fund dedicated to studying Japanese American internment (1988, 908-909). In addition to a proper apology, the CLA also paid government-funded compensation to surviving internees. Specifically, the CLA provided \$20,000 to surviving internees and \$20,000 to the spouse, children, or parents of deceased internees (1988, 906-907). Finally, the CLA included educational measures which showed a commitment to changed behavior. The CLA created a “public education fund” to:

sponsor research and public educational activities, and to publish and distribute the hearings, findings, and recommendations of the Commission [on Wartime Relocation and Internment of Civilians], so that the events surrounding the evacuation, relocation, and internment of United States citizens and permanent resident aliens of Japanese ancestry will be remembered, and so that the causes and circumstances of this and similar events may be illuminated and understood (Civil Liberties Act of 1988 1988, 903, 908).

In addition to this fund, the CLA mandated that all relevant documents from the Commission and Congress were to be preserved and made publicly available (1988, 909).

Can the CLA Set a Framework for a “Comfort Women” Resolution?

A bill modeled after the CLA could serve as a feasible model to resolve the “comfort women” issue between Japan and South Korea because it would check the four boxes required for a satisfactory resolution to the redress movement’s demands. First, a resolution modeled after the CLA would include an apology passed by members of the Diet. Numerous individual officials have issued apologies in the past claiming to speak for the Japanese government, but the Diet has never passed its own apology. An apology that contains the four

required components for a proper apology, is passed by the Diet, and is approved by the prime minister would undeniably show that the Japanese government is remorseful for the “comfort women” system. Again, the groundwork has already been laid for this apology, most notably through the Kono Statement.

Second, a resolution modeled after the CLA would provide direct monetary compensation to former “comfort women” from the Japanese government. In the Asian Women’s Fund, Japan was able to work with foreign governments and former “comfort women” to arrange direct payments, albeit consisting of private donations. In the 2015 Agreement, the Japanese government directly provided money to compensate the “comfort women,” but the money was paid to a separate foundation in South Korea. Thus, the Japanese government has demonstrated it can provide government funds for compensation and that it can organize direct payments; it just needs to put the two together in the same resolution.

The third reason the CLA provides a feasible model for a resolution to the “comfort women” issue is the educational component. In the CLA, an education fund was established “to sponsor research and public educational activities, and to publish and distribute the hearings, findings, and recommendations of the Commission [on Wartime Relocation and Internment of Civilians]” (Civil Liberties Act of 1988 1988, 908). Again, possible models and groundwork have already been established for a similar organization in Japan to deal with the “comfort women” issue. For example, there is already an online museum dedicated to the “comfort women” issue and the Asian Women’s Fund (AWF, n.d.). This website not only provides information on the “comfort women” system, but it also serves as an archive by providing digital versions of documents related to the “comfort women” system/issue. Additionally, there is the Women’s Active Museum on War and Peace located in Japan which is dedicated to the “comfort women” issue (Min 2021, 214). The Japanese government could fulfill the educational component of a CLA-based resolution by creating its own museum on the “comfort women” issue, or it could publicly support these already existing museums through

financial contributions or organizing visits (in the Women's Active Museum's case) for government officials.

The fourth and final reason a "comfort women" resolution modeled after the CLA would be successful is that it would provide the Japanese government the opportunity to use a victim-centered approach. It is important that former "comfort women" and their advocates are given ample opportunity to participate in the formation of a new redress measure because—as we saw with criticism of the 2015 Agreement—victim participation is considered crucial to reaching redress today. The Japanese government could carry out another investigation or hold a public hearing for former "comfort women" and their advocates to give testimony (if they choose) prior to passing a resolution modeled after the CLA. This hearing could resemble a shorter version of the Commission on Wartime Relocation and Internment of Civilians' hearings. The Japanese government conducted some investigations prior to the issuing of the Kono Statement and the establishment of the Asian Women's Fund, so it would not be starting from scratch in terms of implementing an investigation or report on the "comfort women" issue (Saito 2017, 81, 90-91; AWF, n.d.).

Despite these reasons why the CLA provides a model to resolve the "comfort women" issue between Japan and South Korea, some may question whether their contexts are too incompatible. For example, skeptics may reject the use of the CLA as a model for resolving the "comfort women" issue by saying that the CLA was an entirely domestic measure where the US Congress negotiated with itself whereas a resolution to the "comfort women" issue requires Japan to negotiate with South Korea. I believe the contexts are still compatible for two reasons. First, I do not believe resolving the "comfort women" issue is a matter of the Japanese and South Korean governments negotiating; they already negotiated two attempted resolutions that ultimately failed for two reasons. One, the South Korean government has inadequately represented the redress movement's demands for a satisfactory resolution. The 1965 Agreement is considered by the redress movement

to have not addressed the "comfort women" issue. The Kono Statement was not accompanied by compensation because President Kim Young-sam stated the South Korean government would not demand it (AWF, n.d.; ROKMOFA 2018, 5). Finally, a Moon administration-appointed task force condemned President Park's negotiating of the 2015 Agreement for not using a victim-centered approach (ROKMOFA 2018, 3-4, 21-25). Since the South Korean government has demanded less from Japan than the redress movement to resolve the issue, the Japanese government naturally chose to meet the South Korean government's demands rather than the redress movement's. In contrast, a resolution based on the CLA would employ a "victim-centered" approach where the redress movement's demands are the focus of resolution. Two, the CLA is still a feasible model to resolve the "comfort women" issue because it would force the Japanese Diet—just like the US Congress in the 1980s with the issue of internment—to debate amongst itself and ultimately realize their responsibility for the "comfort women" issue and the inadequacies of past resolution attempts. Just as the CLA forced Congress to realize the Japanese American Evacuation Claims Act of 1948, President Ford's apology and revocation of Executive Order 9066, and several other redress measures had failed to resolve the injustice of internment, a similarly modeled resolution would force the Diet to realize why the 1965 Agreement, the Kono Statement, the Asian Women's Fund, and the 2015 Agreement all fell short. The second reason the contexts are still compatible is that because Koreans were subjects of the Japanese empire when the "comfort women" system was created, there is an argument that a resolution like the CLA, which addressed a domestic injustice, is appropriate.

Conclusion

So, can the Civil Liberties Act of 1988 serve as a model for resolving the "comfort women" issue between Japan and South Korea? I be-

lieve it can. The “comfort women” redress movement has consistently maintained that a proper apology from the Japanese government, government-funded compensation, educational measures, and a victim-centered approach are required for a satisfactory resolution. While Japan’s government has made several attempts to resolve the issue with South Korea, these attempts fell short because none of them met all the required components of a satisfactory resolution. The 1965 Agreement contained no apology, and it is unclear whether the deal actually covered the “comfort women” system. While the Kono Statement did contain an apology, it did not contain government-funded compensation or concrete plans for educational measures. The Asian Women’s Fund was ultimately unsuccessful in South Korea mainly because the compensation it provided only consisted of donations from regular citizens, not Japanese government funds. Additionally, the apologies from Japanese prime ministers included in the letters sent to the “comfort women” were ambiguous as to whether they reflected the prime minister’s personal feelings rather than the government’s feelings. Finally, the 2015 Agreement was scrapped because it failed to follow a victim-centered approach.

In the 1980s, the US government faced similar demands to provide redress for Japanese American internment. After a series of hearings where victims of internment testified about their experiences, the Congressionally appointed Commission on Wartime Relocation and Internment of Civilians recommended that the US government offer a proper apology, pay government-funded compensation, pardon internment-related criminal convictions, and implement internment-related educational measures. Congress eventually passed the CLA which met all those requirements.

Thus, the CLA can serve as a model to resolve the “comfort women” issue between Japan and South Korea. A resolution modeled after the CLA that must be approved by the legislature and signed by the chief executive clearly shows a government’s remorse and acceptance of responsibility. Furthermore, such a resolution should include a public

hearing for “comfort women” and advocates to testify or submit records, provide state-funded monetary compensation, and establish educational measures for the study and/or memorialization of the “comfort women.” A resolution that contains all these components should theoretically end criticisms that the Japanese government has not taken responsibility, listened to or worked with its former victims, and paid government-funded compensation.

More than thirty years since the “comfort women” redress movement emerged, redress has still not been achieved between Japan and South Korea. With so few South Korean “comfort women” still living, time is of the essence to reach an appropriate resolution, and I believe a resolution modeled after the Civil Liberties Act of 1988 presents a successful framework to resolve the “comfort women” issue between Japan and South Korea.

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