Winter 2013

Fukushima: Catastrophe, Compensation, and Justice in Japan

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FUKUSHIMA: CATASTROPHE, COMPENSATION, AND JUSTICE IN JAPAN

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INTRODUCTION

I am honored to take part in this year's Clifford Symposium and celebrate the extraordinary breadth and depth of Marc Galanter's scholarship. So often when I begin to explore a new research area, I discover that Marc has been there, sometimes decades earlier. Therefore, it was no surprise to find that Marc's work on access to justice raises many of the issues that I am now confronting as I examine the natural and nuclear disaster in Fukushima, Japan, and the effort by the victims to obtain compensation for their harms.[1]

Well before the Fukushima disaster of March 11, 2011, governments in the developed world struggled with victim compensation in cases of environmental contamination, harms caused by pharmaceutical products, terrorist attacks, and more.[2] All of those are important precedents to Fukushima, but none of them approach the breadth of harms resulting from the triple disaster of huge earthquake, massive tsunami, and nuclear meltdown now known in Japan as 3/11. With close to 20,000 people dead or missing, one million homes fully destroyed or seriously damaged, and 100,000 people displaced, getting those whose lives were affected by the events in Fukushima back on their feet is a

* Eric A. Feldman is a Professor of Law at the University of Pennsylvania Law School. The research and writing of this Article were supported by a University of Pennsylvania Law School Summer Research Grant. I am grateful to Masayuki Murayama for inviting me to participate in his project "Problems of Law in Response to Disasters," which inspired this Article, and to Kenneth Feinberg, for talking with me about disaster compensation in the United States.

1. *See generally* Marc Galanter, *Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC'Y REV. 95, 98, 100 (1974); Marc Galanter, *Adjudication, Litigation, and Related Phenomena*, *in* LAW AND THE SOCIAL SCIENCES 151, 228–29 (Leon Lipson & Stanton Wheeler eds., 1986) (addressing the tensions between different forms of dispute processing (like litigation and mediation); discussing how and why bigger and wealthier parties are advantaged in legal conflicts; and looking broadly at the link between the institutional structure of disputing, the nature of parties engaged in disputes, and the outcome of disputes).

2. *See, e.g.*, Eric A. Feldman & Ronald Bayer, *Introduction: Understanding the Blood Feuds*, *in* BLOOD FEUDS: AIDS, BLOOD, AND THE POLITICS OF MEDICAL DISASTER 1, 4 (Eric A. Feldman & Ronald Bayer eds., 1999) [hereinafter BLOOD FEUDS]; Eric A. Feldman, *Blood Justice: Courts, Conflict, and Compensation in Japan, France, and the United States*, 34 LAW & SOC'Y REV. 651 (2000).

daunting task. How should Japanese society, and the Japanese state, respond? How much compensation, if any, should be offered to the victims? What types of losses should be considered compensable? Which institutions are best equipped to evaluate and manage a system of redress?

II. Disaster Compensation in Japan: The Past

In both industrialized and developing nations, historically and currently, accident victims are generally expected to bear the cost of their harms.[3] In the oft-quoted language of Oliver Wendell Holmes, "[T]he general principle of our law is that loss from accident must lie where it falls."[4] That principle has also guided how governments approach disaster victim compensation. The tendency to stand back and let victims manage on their own is well illustrated by the United States, with its tradition of individualism, deep antagonism to paternalism, and lack of interest in European ideas of social solidarity.[5] When disasters strike, as they often do, the state (both national and local) has little inclination to offer financial compensation. From Hurricane Katrina to the U.S.S. Cole, Americans whose lives were crushed by disaster have been left to take care of themselves, even when in many cases they were unable to do so.

Yet, in a number of highly visible cases, a mix of government aid and private largesse has been offered to disaster victims in the United States. The 9/11 Victim Compensation Fund is perhaps the most notable example of the government articulating a vision of disaster compensation as a display of national solidarity. It is joined by other disasters—the Deepwater Horizon oil spill and the Virginia Tech shootings, for example—that also triggered the creation of compensation mechanisms. Compensation in these cases has been justified in a number of ways—as a moral imperative to aid victims, an economic imperative to shield corporations from potentially crippling liability, and a political imperative to heal public and private wounds.[6]

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3. There are, of course, some exceptions, like the no fault medical liability system in Sweden. *See* Jerome Harleston, *No-Fault Medical Liability Compensation System*, Conn. Gen. Assembly (Apr. 16, 2003), http://www.cga.ct.gov/2003/olrdata/ins/rpt/2003-R-0386.htm.

4. O. W. Holmes, Jr., The Common Law 94 (1881).

5. *See, e.g.*, 2 Alexis De Tocqueville, Democracy in America 120 (Henry Reeve trans., 1862) ("[Americans] owe nothing to any man, they expect nothing from any man; they acquire the habit of always considering themselves as standing alone, and they are apt to imagine that their whole destiny is in their own hands.").

6. *See* Kenneth R. Feinberg, What Is Life Worth?: The Unprecedented Effort to Compensate the Victims of 9/11, at 42 (2005).

The disaster in Fukushima could have been the Japanese government's 9/11 moment—an opportunity to offer compensation to victims as a symbol of national unity in a time of crisis, to help economically challenged victims, and to support the nuclear power industry. Doing so would have underscored the emphasis on social bonds, or *kizuna*, which was so heavily promoted by the government in the wake of the Fukushima disaster.[7] It would also appear to complement a number of long-standing Japanese norms and practices: a legacy of central government control of the policy agenda, a history of state entanglement in the lives of citizens, an emphasis on national values (and overemphasis, at least in some circumstances, on nationalism), and a desire to communicate to the public that the success of individuals and the success of the nation are inseparable.[8] If ever there was a time for a nation seen increasingly as a marginal global player to pull together, and for the central government to use a national tragedy to rebind the fraying ties of a country suffering from two decades of economic malaise, Fukushima was it.

Yet, the destruction in Fukushima did not spark a moral or political discussion about whether victims of mass tragedies should benefit from government action to compensate. Instead, in apparent defiance of a number of background conditions that make disaster compensation seem like a plausible option in Japan, the response to Fukushima underscored the absence of a compensation norm. Indeed, one is hard pressed to find examples in which the state has compensated because it believes that compensation is the "right" thing to do or is essential to some notion of solidarity; compensation schemes justified on political or economic grounds are also rare.

The history of natural disasters in Japan reveals little appetite for compensation. In 1959, for example, the Isewan Typhoon, one of the worst natural disasters in Japan's history, killed over 5,000 people, injured more than 40,000, and destroyed 120,000 homes.[9] The government mounted a major reconstruction effort, but did not offer any monetary compensation for death, injury, or property damage. Likewise, the 1993 earthquake in Okushiri, a small island near Hokkaido, was the largest in twenty-five years, causing a tsunami with waves of

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7. Japanese public opinion surveys found that the kanji (written character) for *kizuna* summed up 2011. *Japanese Public Chooses 'Kizuna' as Kanji of 2011*, BBC NEWS (Dec. 23, 2011), http://www.bbc.co.uk/news/world-asia-16321999.

8. Masao Maruyama, *The Logic and Psychology of Ultranationalism*, *in* THOUGHT AND BEHAVIOR IN MODERN JAPANESE POLITICS 1, 6 (Ivan Morris ed., 1963).

9. JAPAN WATER FORUM, TYPHOON ISEWAN (VERA) AND ITS LESSONS (2005), *available at* http://www.waterforum.jp/jpn/katrina/Typhoon_Isewan.pdf.

ten to thirty meters.[10] Almost two hundred people were killed, and 70% of homes on the island were destroyed. Despite the discrete geographical scope of the damage and the relatively limited number of victims, no government compensation was offered and victims received only small private donations allocated by the local government.

The most deadly earthquake of the postwar era was the 1995 Hanshin (Kobe) earthquake, which was responsible for over 6,000 deaths, 40,000 injuries, and almost 400,000 destroyed homes.[11] The fact that it was an election year may explain why the government invested heavily in infrastructure reconstruction.[12] Those who suffered personal injury or property loss, however, received little aid beyond a charity payment of approximately $2,500 per family from the Japanese Red Cross and a small condolence payment (*mimaikin*) authorized by the Japan Legislature (Diet) as part of the reconstruction budget.[13]

Compensation is no more forthcoming in other types of major accidents or disasters. Flood victims, for example, are not compensated for their losses, even in extraordinary circumstances, nor are those who are harmed by environmental pollution or who suffer iatrogenic injuries, as the Minamata mercury pollution case and the HIV-tainted blood case demonstrate.[14] In both of those cases, at least some victims were ultimately paid, but not without the government denying or

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10. Masayuki Nakao, *Okushiri Tsunami Generated by Southwest-off Hokkaido Earthquake*, HATAMURA INSTITUTE FOR THE ADVANCEMENT OF TECHNOLOGY, http://www.sozogaku.com/fkd/cn/cfcn/CA1000618.html (last visited Feb. 17, 2013).

11. DAVID W. EDGINGTON, RECONSTRUCTING KOBE: THE GEOGRAPHY OF CRISIS AND OPPORTUNITY 236 (2010).

12. *See id.* at 85–86 ("For some commentators, the reasons [for Japan's expenditures on infrastructure] had to do with the fact that 1995 was an election year in Japan. The ruling Liberal Democratic Party (LDP), then in a coalition with the Japan Socialist Party, felt that it would gain politically by providing subsidies to the Kobe region . . . .").

13. Condolence payments (*mimaikin*) are clearly distinguished from compensation because they are given as an expression of sympathy rather than an effort to make the victim whole. For Kobe earthquake victims, the payments were five million yen to families that lost the head of household, and 2.5 million yen for those who lost a family member. The exchange rate of U.S. dollars to yen (as of February 17, 2013) is approximately 1:93. *Currencies Center*, YAHOO! FINANCE, http://finance.yahoo.com/currency-converter (last visited Feb. 17, 2013).

14. *See, e.g.*, FRANK K. UPHAM, LAW AND SOCIAL CHANGE IN POSTWAR JAPAN 30–34 (1987) ("The explicit characterization of the payments as *mimaikin* is further evidence of the company's close attention to the legal nature of the agreement and its determination to use legal doctrine to prevent continuing liability. Under the agreement [the company] does no more than express sympathy for the victims, who, in turn, forfeit all legal rights to compensation."); Feldman, *supra* note 2, at 60, 69 (describing the struggle that hemophiliacs and others who had been affected by HIV-tainted blood in Japan went through to obtain compensation for their suffering, and noting that, even after the compensation system was established, the government "steadfastly denied its responsibility for infecting hemophiliacs"; it was only after years of litigation that the hemophiliacs obtained large cash settlements and an apology from the government and pharmaceutical companies involved).

obscuring its responsibility and the victims engaging in protracted legal struggles. If some form of disaster insurance was the norm, it might explain the state's blanket refusal to compensate, but earthquake insurance is relatively rare and insurance against most other types of disasters is unavailable.

Although the Japanese government rarely, if ever, offers compensation to victims of natural disasters, one might expect victims of terrorism to receive more generous treatment. Japan has experienced two potentially compensable terrorist events. One occurred in 1995, when the cult Aum Shinrikyo released highly toxic sarin nerve gas into the Tokyo subway system, killing twelve people, seriously injuring dozens more, and exposing approximately 5,500.[15] In the absence of state action, victims successfully sued Aum, but the cult was only able to satisfy 1.5 billion yen of the court's 3.8 billion yen judgment.[16] The victims then turned to the state to fill the gap, triggering a political debate over the state's responsibility to the victims. The Diet ultimately passed legislation enabling the government to supplement Aum's payments, but rejected a proposal that it authorize government compensation for future victims of terrorism.[17]

The second terrorist act involved the abduction of Japanese nationals by North Korea in the 1970s and 1980s, in what appears to have been an unorthodox effort to improve North Korea's intelligence and surveillance system.[18] In 2002, what had long been unsubstantiated allegations of abduction were confirmed by the North Korean government, which issued an apology to the Japanese government and confirmed that five abductees were still alive. The five were repatriated and the Diet passed the Abductee's Support Law, which provides a monthly allowance of 170,000 yen per repatriated abductee, 240,000 yen per two-person household, and an additional 30,000 yen for each

15. *See* Manabu Watanabe, *Religion and Violence in Japan Today: A Chronological and Doctrinal Analysis of Aum Shinrikyo*, 10 TERRORISM & POL. VIOLENCE 80, 80–81 (1998).

16. *See* Jun Hongo, *Aum's Bankruptcy Proceedings to End 13 Years On*, JAPAN TIMES (March 20, 2008), http://info.japantimes.co.jp/text/nn20080320a6.html.

17. Toshimitsu Miyai, *Aum Compensation Unresolved*, DAILY YOMIURI, June 17, 2008, *available at* http://www.religionnewsblog.com/21650/aum-compensation-unresolved.

18. *See generally* Richard J. Samuels, *Kidnapping Politics in East Asia*, 10 J. E. ASIAN STUD. 363, 367 (2010) (describing the abduction of Japanese nationals by North Korea and the response of the Japanese government); Celeste Arrington, Interest Group Influence in Policy-Making Processes: Comparing the Abductions Issue and North Korea Policy in Japan and South Korea 3 (Aug. 30–Sept. 2, 2007) (unpublished manuscript), *available at* http://citation.allacademic.com/meta/p_mla_apa_research_citation/2/0/9/6/4/pages209641/p209641-1.php.

family member.[19] The Japanese government also made the repatriated abductees eligible for full pension benefits.

Both the victims of the sarin nerve gas attack and the five repatriated abductees benefitted from government legislation that provided them with compensation, and as such, they can be seen as exceptions to the general norm in Japan of leaving disaster victims to fend for themselves. But they are exceptions of the narrowest kind. In one case, government compensation was offered only after victims successfully sued a private party. In legislating compensation, the government supplemented the payments of a judgment-proof private party while making clear its disinterest in compensating victims of terrorism more generally. In the other, compensation followed an extraordinary political engagement between Japan and North Korea, and involved a highly unusual set of circumstances and a very small number of victims. Overall, however, one can clearly observe a non-compensation norm that defines the state's response to natural and other disasters.

III. DISASTER COMPENSATION IN JAPAN: FUKUSHIMA

Fukushima thus unfolded against a background that strongly signaled the improbability of the government embracing the opportunity to create a victim compensation scheme. David Edgington observed two related sentiments in his fine book about the Kobe earthquake: that government cannot help people to reconstruct their lives, and that "all Japan[ese] people should be treated equally in the provision of government services and support."[20] However tempting a symbolic opportunity Fukushima offered to unify the nation in a time of crisis, and whatever merit there may be to the view that the structure and function of the Japanese state make disaster compensation plausible, countervailing qualities—be they a disregard for public welfare, an overemphasis on fiscal conservatism, a subservience to private interests, a deep commitment to individual autonomy, or others—clearly disincline the state to distribute financial compensation.[21] Indeed, even a massive disaster like Fukushima sparked little debate about the creation of a general compensation program for those whose lives

19. [Aid to Victims Kidnapped by North Korean Authorities], Act No. 143 of 2002 (Japan), *available at* http://law.e-gov.go.jp/htmldata/H14/H14HO143.html.

20. *See* EDGINGTON, *supra* note 11, at 86 (internal quotation marks omitted).

21. *See, e.g.*, David McNeill, *The Fukushima Nuclear Crisis and the Fight for Compensation*, ASIA-PAC. J. (Mar. 5, 2012), http://www.japanfocus.org/-David-McNeill/3707 (describing the compensation scheme in place and noting the lack of a government-supported comprehensive compensation program).

were affected by the earthquake and tsunami. Unlike 9/11 in the U.S., and the prevailing view that victims in the vicinity of the World Trade Center were especially deserving of government largesse, few in Japan framed their expressions of sympathy in the language of recompense.

Although the government did not craft a compensation system for all Fukushima victims, it was forced to deal differently with one particular group. Those harmed by the nuclear accident, as distinguished from those whose injuries were caused by the earthquake or tsunami, are eligible for compensation under legislation that governs the operation of nuclear power facilities.[22] Similar legislation exists in most industrialized democracies—the U.S. equivalent is the 1957 Price-Anderson Act[23]—but the dearth of nuclear accidents throughout the world means that such legislation has rarely been invoked.[24]

A. The Nuclear Damage Compensation Act

Under the terms of Japan's 1961 Nuclear Damage Compensation Act (NDCA), private power providers have no-fault responsibility for nuclear accidents, with liability capped at 120 billion yen.[25] Beyond that amount, the government may (but is not legally obligated to) shoulder the cost of compensation.[26] In the aftermath of events in Fukushima, it was clear that a large number of people had suffered potentially compensable harms. Less clear was the question of who

22. [Nuclear Damage Compensation Act], Act No. 147 of 1961 (Japan), *available at* http://www.oecd-nea.org/law/legislation/japan-docs/Japan-Nuclear-Damage-Compensation-Act.pdf. Of course, the majority of those who were rendered homeless in Fukushima, or who suffered injury or death, were affected by the natural disasters, not the nuclear meltdown. However, the government has no legal obligation to compensate them, and has no plans to do so.

23. Price-Anderson Nuclear Industries Indemnity Act, 42 U.S.C. § 2210 (2006).

24. The Price-Anderson Act was in place in 1979 at the time of the Three Mile Island accident in the United States; however, claims from the accident failed to exceed the required private liability insurance from which the first claims under the Act are to be paid. Moreover, the accident was not deemed to be an "extraordinary nuclear occurrence," which would have caused certain provisions under the Act to come into play. While the Three Mile Island accident was a serious and tragic event, it was not of a large enough scale to fully test the functionality of the Price-Anderson Act. *See* Leslie Lass, Comment, *The Price-Anderson Act: If a "Chernobyl" Occurs in the United States, Will the Victims Be Adequately Compensated*, 7 GLENDALE L. REV. 200, 200–01 (1985); *see also Nuclear Insurance and Disaster Relief Funds*, U.S. NRC (June 2011), http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/funds-fs.html.

25. *See* [Nuclear Damage Compensation Act], Act No. 147 of 1961, §§ 3, 7 (Japan), *available at* http://www.oecd-nea.org/law/legislation/japan-docs/Japan-Nuclear-Damage-Compensation-Act.pdf.

26. Prior to the Fukushima disaster, the NDCA had been triggered only once, in 1999, when a uranium reprocessing plant operated by a subsidiary of Sumitomo Metal Mining Corporation malfunctioned, exposing both workers and residents to radiation. *See* Eri Osaka, *Corporate Liability, Government Liability, and the Fukushima Nuclear Disaster*, 21 PAC. RIM L. & POL'Y J. 433, 438 (2012).

was eligible for compensation, which harms were compensable, how much proof should be required by those requesting compensation, what administrative structure was best suited to evaluating such proof and paying claims, and what sorts of obligations should be borne by claimants who received compensation. The following Parts will address these issues in succession.

B. Defining Eligibility

The government's first step in creating an administrative structure for Fukushima claims, in keeping with the NDCA, was to assemble a Dispute Reconciliation Committee for Nuclear Damage Compensation. Chaired by Yoshihisa Nomi, a distinguished civil law scholar from Gakushuiin University, the panel consists of nine additional members, five of whom are prominent legal experts and four of whom have expertise in medicine, science, and radiation. The goal of the committee was to address a question at the heart of all compensation funds—eligibility.

In certain circumstances, like the 9/11 fund in the US, a simple rule of proximity is used to determine eligibility, with injuries occurring within clearly defined geographical parameters deemed eligible and those beyond the parameters ineligible.[27] Other cases are more difficult; when determining eligibility under the Deepwater Horizon Disaster Victim Compensation Fund for damage caused by spilled oil, for example, administrators were confronted with claims from all fifty states and various foreign countries.[28] Similarly, the huge toll taken by the Fukushima disaster first required a determination of whether all victims or only a subset would be eligible for compensation. Pragmatically, it would have been difficult, if not impossible, to offer more than token compensation if the eligible pool were defined broadly. Moreover, as already noted, the possibility of an overall compensation program was never a serious option. Without a general statute mandating disaster compensation, only those affected by the nuclear accident would be eligible for compensation.

Even that limitation left a number of unanswered questions. First, under the terms of the NDCA, nuclear facility operators have strict, unlimited liability for nuclear accidents unless the accident is caused by a "grave natural disaster."[29] Not surprisingly, the Tokyo Electric

27. *See* FEINBERG, *supra* note 6, at 42.

28. Interview with Kenneth Feinberg, Administrator, Deepwater Horizon Disaster Victim Compensation Fund, in Wash., D.C. (Feb. 6, 2012).

29. [Nuclear Damage Compensation Act], Act No. 147 of 1961, § 3 (Japan), *available at* http://www.oecd-nea.org/law/legislation/japan-docs/Japan-Nuclear-Damage-Compensation-Act.pdf.

Power Company (TEPCO) did not wait long to claim that the triple disaster in Fukushima constituted a "grave natural disaster" and that it therefore had no liability. That claim appears to have had little traction with the government, which has proceeded as if liability rests with TEPCO and not the government.[30]

Second, the NDCA anticipates that funds for compensation will be raised in one of two ways: through mandatory insurance (insurers are released from liability when accidents are caused by earthquakes or other natural disasters) or through an indemnity contract between the government and the nuclear power provider.[31] With the insurer released from liability, Fukushima victims would receive compensation from TEPCO with funds collected by way of the indemnity contract.

The third question left open by the NDCA is how to handle compensation payments once the 120 billion yen reserve mandated by the NDCA is depleted. Here, the NDCA is profoundly ambiguous. Section 16 states: "[W]hen the actual amount which he should pay for the nuclear damage pursuant to Section 3 exceeds the financial security amount *and* when the Government deems it necessary in order to attain the objectives of this act," the government will give the nuclear operator "such aid as is required for him to compensate the damage."[32] With estimates that the cost of compensation in Fukushima could cost trillions of yen, this provision left the government with a set of distasteful alternatives: (1) refuse to provide additional cash to TEPCO, forcing the company into bankruptcy and potentially shutting out many claimants; (2) take over the task of compensating Fukushima victims; or (3) provide money to TEPCO and require that the funds be repaid. Fearing the impact of bankruptcy on Japan's struggling economy and wanting to distance itself from direct payments to victims,[33] in May 2011 the government announced a framework to provide financial support to TEPCO.[34] Under the plan, the

30. Masayuki Murayama, There Are Few Cases Around Here: Lawyers' Response to Nuclear Compensation and Structural Problems of the Japanese Legal Profession (unpublished manuscript) (on file with author).

31. *See* [Nuclear Damage Compensation Act], Act No. 147 of 1961 (Japan), *available at* http://www.oecd-nea.org/law/legislation/japan-docs/Japan-Nuclear-Damage-Compensation-Act.pdf.

32. *Id.* § 16 (emphasis added). Section 3 of this Act addresses government payments if there is an exoneration for a grave natural disaster. *See id.* § 3.

33. With foreign investment in TEPCO bonds, bankruptcy would unsettle an already weak investment climate, and taking control of the compensation system would imply an undesired degree of state responsibility for the accident.

34. *See* X. Vásquez-Maignan, *Fukushima: Liability and Compensation*, NEA News (2011), http://www.oecd-nea.org/nea-news/2011/29-2/nea-news-29-2-fukushima-e.pdf. The Diet approved the plan in August 2011. *See* Cody Harding, *Japan Lawmakers Approved Fukushima Victim Compensation Plan*, Jurist (Aug. 3, 2012), http://jurist.org/thisday/2012/08/japan-

Nuclear Damage Compensation Facilitation Corporation issued government bonds that enabled it to provide funds to TEPCO.[35] In return, TEPCO must repay the government, cut its costs, and improve the Fukushima compensation procedures.[36] This structure leaves both TEPCO and the government in an awkward position. The government has no legal obligation to fund TEPCO's compensation fund beyond its 120 billion yen indemnity agreement, but it considers propping up TEPCO to be a better alternative than taking over the compensation process and paying victims directly. TEPCO, which has long enjoyed a cozy relationship with regulators, survives as a private company, but must run a complex and expensive compensation program for victims of a nuclear accident who blame the company for their harms and believe that its key incentive is to pay as little compensation as possible.

Finally, the question of which types of victims would be compensated had to be addressed. The government's August 2011 preliminary compensation guidelines, for example, focused on emergency compensation payments to those who were subject to official orders in the wake of the nuclear accident.[37] This included people whose harms were caused by mandatory evacuation from areas within twenty kilometers of the plant (approximately 60,000 people), the prohibition of navigation and flight in designated areas, limitations on the sale of certain products, negative publicity that caused a drop in commodity

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lawmakers-approve-fukushima-victim-compensation-plan.php; *see also* Takashi Hirokawa & Sachiko Sakamaki, *Japan to Help TEPCO Pay Nuclear Claims; Banks May Have to Write Off Debt*, BLOOMBERG (May 13, 2011), http://www.bloomberg.com/news/2011-05-13/japan-to-support-tepco-compensation.html (explaining that the Japanese government had decided to step in and provide aid to TEPCO, but that TEPCO would still be unlimitedly liable for damages).

35. Vásquez-Maignan, *supra* note 34, at 11.

36. A Japanese newspaper described the process as follows:

> TEPCO has requested a total of 1.01 trillion yen of financial assistance for the time being, including 120 billion yen in government compensation to be paid over the nuclear accident under the nuclear damage compensation law.
>
> The funding entity, the Nuclear Damage Liability Facilitation Fund, is designed to support TEPCO by receiving funds through a special type of government bond that will carry no interest and can be cashed in when necessary, in addition to annual contributions from all utilities operating nuclear plants in Japan.
>
> TEPCO is obligated to eventually repay the funds provided by the body.

Gov't OKs Plan to Provide 900 Bil. Yen Financial Aid to TEPCO, KYODO NEWS INT'L., INC., Nov. 4, 2011, *available at* http://www.thefreelibrary.com/Gov%27t+OKs+plan+to+provide+900+bil.+yen+financial+aid+to+TEPCO.-a0271825437; *see also* Vásquez-Maignan, *supra* note 34, at 11.

37. Midterm Guidelines, Dispute Reconciliation Committee for Nuclear Damage Compensation (Aug. 2011). Although the government's Dispute Reconciliation Committee for Nuclear Damage has established guidelines for compensation, requests for compensation are submitted directly to TEPCO and the ultimate decisions regarding compensation lie with TEPCO.

prices, and more. In essence, those affected by state mandates were eligible for compensation, while others were not.

Not surprisingly, using mandates as the determinant of eligibility provoked those who were excluded, particularly people living beyond the mandatory evacuation zone. Those living between twenty and thirty kilometers from the Fukushima plant, for example, were advised by the government to prepare for evacuation, but were not required to evacuate. Yet many of them, particularly families with children, left their homes and relocated to temporary shelters. In their view, they had suffered harms identical to those within the twenty-kilometer zone and should therefore be similarly compensated. Bowing to pressure, in December 2011, the Dispute Reconciliation Committee for Nuclear Damage Compensation supplemented its preliminary guidelines with a recommendation that voluntary evacuees in twenty-three municipalities also be compensated, adding an estimated 1.5 million people to the compensation-eligible pool.[38]

C. Defining Compensable Harms

Deciding who is eligible for compensation is one critical step, but equally important is the need to define compensable harms by distinguishing between losses closely linked to the nuclear accident and those that are distant and attenuated. Directly implicating scholarly debates about proximate cause, that determination is as much a matter of social policy as of legal doctrine.[39] Claims from overseas fishing net manufacturers who sought compensation from the Deepwater Horizon Fund for their economic loss, for example, or from students in adjacent buildings at Virginia Tech who sought compensation for emotional distress, underscore the difficultly of deciding which harms are compensable and which are not.

It is easy to imagine the wide range of harms plausibly attributed to the Fukushima nuclear disaster for which people may seek compensation—the economic loss suffered by farmers and fishermen, the drop in revenue experienced by tourist attractions in the Fukushima area, the emotional distress felt by those exposed to radiation, and much more. In deciding which harms will trigger payment, the challenge for

38. *Gov't Panel Sets N-Payment Scope, Amounts*, DAILY YOMIURI ONLINE (Dec. 8, 2011), http://www.yomiuri.co.jp/dy/national/T111207005778.htm.

39. Following German law, Japanese legal scholars generally frame the debate as implicating a distinction between direct and indirect harm. As one legal expert on the committee put it, if a fisherman suffers harm because radiation prevents him from fishing, it is direct and compensable; if a net maker suffers harm, it is indirect and not compensable. Early common law cases relied upon a similar distinction. *See, e.g.*, *In re* Polemis, [1921] 3 K.B. 560 (A.C.) (Eng.); Overseas Tankship (U.K.) Ltd. v. Morts Dock & Eng'g Co. (*Wagon Mound I*), [1961] A.C. 388 (J.C.).

the government and TEPCO has been to articulate legally, politically, and ethically defensible lines between compensable and noncompensable injuries.

The long latency period typical in toxic chemical exposure cases presents one particularly difficult dilemma. In legal conflicts like that surrounding Agent Orange, the majority of claims centered on the possibility of *future* health harms to those who were exposed to the chemical defoliant, but had not yet suffered any ill effects.[40] In Fukushima, similarly, many residents and workers were exposed to elevated levels of radiation, but few have experienced any negative health consequences. Some of those exposed will surely worry about the increased risk of getting various types of cancers, and a few will develop radiation-related diseases they would not have otherwise contracted.[41] Yet in most cases it will be impossible to know whether an individual cancer or disease was caused by Fukushima-related radiation or had an alternative cause. Whether to compensate those who may get sick, what to do about the impossibility of identifying the cause of future cases of cancer, and how to handle the harms resulting from anxiety about one's future health are all implicated in the effort to define compensable harms.

The most widespread harm resulting from Fukushima, suggested by the worry associated with latent disease, is emotional distress. The national trauma associated with the events in Fukushima makes it particularly difficult to determine who should be eligible for emotional distress compensation and what degree of emotional distress justifies compensation. Initially, only those who were forced to evacuate were eligible to receive payments for emotional harms. A standardized amount of 100,000 yen per person, per month was available for six months, dropping to 50,000 yen per month thereafter.[42] Complaints about the decrease in the monthly payment led TEPCO to keep payments at the 100,000 yen level, but that too was controversial, with some lawyers pointing out that tort judgments that included awards for emotional harm generally exceeded the cap set by TEPCO. Because many Fukushima victims relied upon emotional distress pay-

40. *See generally* Kenneth R. Feinberg, *Reporting from the Front Line—One Mediator's Experience with Mass Torts*, 31 LOY. L.A. L. REV. 359, 368 (1998) (describing the problems associated with latent future claims in the Agent Orange Litigation).

41. Recent estimates suggest that there will be relatively few cancers or other serious illnesses caused by the radiation that leaked from the Fukushima nuclear power plants. Geoff Brumfiel, *Fukushima's Doses Tallied*, NATURE (May 23, 2012), http://www.nature.com/news/fukushima-s-doses-tallied-1.10686.

42. Daniel H. Foote, Japan's ADR System for Resolving Nuclear Power-Related Damage Disputes 10 (unpublished manuscript) (on file with author).

ments as their only source of income, the stipend level was of critical importance. Only in June 2012 did voluntary evacuees become eligible to receive compensation for their emotional distress, with the amount capped at 200,000 yen per person.[43]

In many cases, payments for property damage are of even greater financial importance than emotional distress payments. Tens of thousands of people were displaced by the nuclear accident[44] and, perhaps without exception, the value of their land has decreased precipitously. Some may never be able to return home due to radiation contamination, whereas others may not want to return to their homes out of fear of radiation, a preference to leave the Fukushima region, or for other reasons. Moreover, in cases in which property is not useable for the foreseeable future, it is unclear whether those who are compensated for its full value will continue to own the property or will be obligated to clean it up in the future.[45]

The magnitude of the costs associated with property damage and the difficulty of determining its fair value led TEPCO to sidestep the issue of property compensation for many months. Finally, in March 2012, the government's advisory committee on compensation announced guidelines for handling property damage.[46] The guidelines divided the area around the nuclear plant into three regions: (1) where radiation levels of fifty or more millisieverts per year (ms/year) make property uninhabitable for five or more years; (2) where levels of between twenty and fifty ms/year mean that property is unlikely to be useable for between 1 and 5 years; and (3) where radiation levels of less than twenty ms/year suggest that property will be inhabitable within a year.[47] Implied in this scheme is that compensation payments

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43. *See* Press Release, TEPCO, Start of Compensation Payouts for the Voluntary Evacuees from Southern Fukushima Prefecture (June 11, 2012), *available at* http://www.tepco.co.jp/en/press/corp-com/release/2012/1205326_1870.html.

44. *See* Matt Smith, *Radioactive Levels Staying High off Fukushima Daiichi in Japan*, CNN (Oct. 26, 2012), http://www.cnn.com/2012/10/25/world/asia/japan-fukushima/index.html.

45. A lawsuit brought by the private owners of a golf course against TEPCO signals the degree of confusion about such issues. In that case, the owners of Sunfield Golf Club sought to impose the cost of radiation decontamination on TEPCO. TEPCO successfully defended the claim, arguing in part that it was not liable because TEPCO no longer owned the radioactive particles, which were now covering the ground and thus the property of Sunfield. *Cf. Fukushima Golf Course Lawsuit Against TEPCO Dismissed*, MAJIROX NEWS (Jan. 24, 2013), http://www.majiroxnews.com/2011/11/14/fukushima-golf-course-lawsuit-against-tepco-dismissed.

46. *See* McNeill, *supra* note 21.

47. *Second Supplement to Interim Guidelines on Determination of the Scope of Nuclear Damage Resulting from the Accident at the Tokyo Electric Power Company Fukushima Daiichi and Daini Nuclear Power Plants*, *in* ORG. FOR ECON. CO-OPERATION & DEV., JAPAN'S COMPENSATION SYSTEM FOR NUCLEAR DAMAGES 173, 174 (2012), *available at* http://www.oecd-nea.org/law/fukushima/7089-fukushima-compensation-system-pp.pdf.

can be scaled to the level of radiation found in different locations, with the possibility of a lump sum buyout payment to those whose property has radiation in the 50 or more ms/year range. So far, there have been no official estimates of the cost of fully compensating those unable to return to their homes, but it is clear that compensation payments for property-related losses will be extremely costly.

Another high-cost category of harm resulting from the Fukushima nuclear accident is the financial loss suffered by farmers who had to destroy their crops or were unable to find buyers for their products. Formerly a highly productive agricultural area, the value of produce and grain grown in the vicinity of Fukushima plummeted after radiation levels increased.[48] The government's compensation guidelines addressed these losses directly, specifying that compensation would be offered to both those who were prohibited by government policy from growing or selling certain crops as well as those whose ability to sell their products was affected by rumors of radiation contamination and a corresponding loss of reputation.

Much has been said in the academic literature about the political ties between Japan's agricultural cooperatives and the Liberal Democratic Party (LDP), and how the cozy relationship between them helps to explain both the LDP's long-standing postwar electoral success and the many subsidies and benefits enjoyed by farmers.[49] That political dynamic has clearly changed with the waning power of the LDP and the shrinking of the agricultural sector.[50] But judging from the ability of farmers to mobilize in the aftermath of Fukushima, at least some of the agriculture sector's political clout appears to be intact. Rather than pursue compensation individually, 100,000 farmers aggregated their claims through their umbrella organization, Central Union of Agricultural Cooperatives, or JA-Zenchu (JA) and hired an extremely powerful and politically effective attorney. Representing seventeen regional JAs and directly negotiating with TEPCO, the attorney had (as of March 2012) obtained almost $1.5 billion for his clients.[51] Those funds are considered short-term, temporary outlays and do not include the cost of decontamination or loss of use of land. Coupled with the recent lowering of national radiation exposure standards, those uncompensated loses suggest that farmers will be seeking much more

48. Interview with Hideaki Kubori, in Tokyo, Japan (Mar. 8, 2012).

49. *See, e.g.*, AURELIA GEORGE MULGAN, THE POLITICS OF AGRICULTURE IN JAPAN 37–38 (2000).

50. *See* Aurelia George Mulgan, *Where Tradition Meets Change: Japan's Agricultural Politics in Transition*, 31 J. JAPANESE STUD. 261, 261 (2005).

51. Interview with Hideaki Kubori, *supra* note 48. $1.5 billion is roughly equal to 1100 oku yen.

compensation in the future. In contrast to those in the fishing industry, who also suffered significant financial damage but are not as politically connected or organized, farmers are well positioned to prevail in their effort to obtain recompense.

The compensable harms discussed thus far involve victims who were subject to some form of government mandate—inhabitants forced to evacuate or farmers prohibited from selling their crops, for example. But there are of course many others in the Fukushima region who were affected by the nuclear accident and have sought compensation. Under the government's first set of guidelines no compensation was available for such parties. When those guidelines were updated in December 2011, however, individuals who evacuated their homes voluntarily became eligible for payments to compensate emotional distress and increased living expenses.[52] Initial, temporary payments covering the time from the accident until December 31, 2011 were capped at 400,000 yen for children and pregnant women, and 80,000 yen for others.[53] Those seeking compensation for evacuation costs and business losses were left to petition TEPCO on an individual basis.

D. Proof

Determining the pool of compensation-eligible claimants and identifying the types of compensable harms is critical to the creation of a compensation scheme; so too is deciding upon the kind of evidence that must be submitted in order to obtain compensation. What burden must those who believe they are eligible for compensation bear in showing a causal link between the nuclear meltdown and their harms? What documentation must they provide to convince administrators that their alleged loses are real?

Fukushima raises complicated questions of causation that resist easy solution. A decline in business at a local hot spring resort, for example, may be explained by the fear that potential patrons have of radiation. But the decline may also be the result of the sluggish economy and signal an overall change in how people are spending their leisure time. Even more generally, disentangling the effects of the earthquake, the tsunami, and the nuclear accident can be exceedingly difficult. How can one assess the relative causal weight of each of those factors when evaluating something like emotional distress?

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52. *TEPCO Ups Payout for Some Evacuees*, DAILY YOMIURI ONLINE (Mar. 1, 2012), http://www.yomiuri.co.jp/dy/national/T120229004312.htm.

53. *Id.* In February 2012, the cap for children and pregnant women increased to 600,000 yen. *See id.*

Cautioned by the August 2011 interim guidelines, which advised TEPCO to treat causation as more art than science, compensation administrators appear to be steering clear of explicit conflicts over causation by treating them as part of the discussion of eligibility.

When it comes to proof, the focus is instead on the seemingly more mechanical task of providing documentation to support one's claims. Even there complications can arise. In the aftermath of the Deepwater Horizon oil spill, some claimants who sought compensation for lost income were only able to proffer a fishing license as proof of their loss.[54] Similarly, although the interim guidelines counseled TEPCO to relax formal evidentiary standards when it was "necessary and reasonable" to do so, some Fukushima claimants, their homes leveled by the earthquake, washed away by the tsunami, or otherwise uninhabitable, have complained that the requirement to submit original documents to demonstrate financial loss was an unreasonable burden. Evidentiary standards in such cases have sometimes been relaxed, but questions remain about how to assess lost income, property damage, and other losses in the absence of good documentation.

E. Infrastructure

Defining the eligible class of claimants, the range of compensable harms, and the proof required to demonstrate harms all raise difficult legal, ethical, and policy questions. They are also all dependent upon an equally challenging task; creating the necessary administrative structure for evaluating claims and tendering payments has raised the most vexing issues. Through what process, for example, can one apply for compensation? Who evaluates claims? How can one ensure that similarly situated claimants will receive similar awards? As in most legal institutions, the goals here include efficiency, effectiveness, transparency, accountability, and justice. But how to achieve them is not at all clear.

Rather than set up a unitary compensation system for all possible claims and claimants, Fukushima victims can follow three separate routes. The largest—run by TEPCO and staffed by over 10,000 people, including 3,000 TEPCO employees and several hundred attorneys[55]—is known as the *direct* route to compensation. Largely adhering to the guidelines of the Dispute Reconciliation Committee for Nuclear Damage Compensation, this approach to compensation is meant to address the majority of losses caused by the nuclear acci-

54. Interview with Kenneth Feinberg, *supra* note 28.

55. The data in this Part were current as of spring, 2012.

dent. Although payments under this approach are meant to be standardized, the guidelines generally suggest a range rather than a precise amount, leaving TEPCO a good deal of discretion in its determination of compensation awards. As of March 2012, TEPCO had paid 25,700 claims to individuals and 21,400 to corporations through this process. There were approximately 10,000 pending claims.

Why have relatively few of the 150,000 evacuees sought compensation thus far? Among the explanations is the cumbersome application process that initially required the submission of a sixty-page claim form, which was cut back to thirty-four pages after an initial outcry about its length.[56] No electronic filing of claims is permitted, which can make it difficult for some victims to submit their forms.[57] In addition, some evacuees and affected businesses have stated that they refuse to engage with TEPCO, whom they blame for the nuclear accident; that the compensation amounts being offered are too meager and not worth seeking; and that there are too few compensable categories.[58] A tourism resort that experienced a drop in business, for example, can potentially be compensated for bookings cancelled before May 31, 2011, the day on which the travel ban to the Fukushima area was lifted. But neither cancellations after that date nor a decrease in the volume of bookings are compensable.

Because the Committee's guidelines for "direct" compensation address the most common types of claims, but do not cover all victims or losses, the government and TEPCO set up a second route to compensation under the supervision of the Ministry of Education, Culture, Sports, Science and Technology. Called the Center for Nuclear Damage Reconciliation, this part of the compensation system is headed by High Court Judge Hiroshi Noyama and controlled by attorney-mediators commissioned by the Japanese government and seconded by the Japan Federation of Bar Associations (JFBA) to adjudicate claims. In contrast to "direct" compensation, this second approach has come to be known as alternative dispute resolution (ADR), although unlike most ADR it is not an alternative to litigation, but rather an alternative to a form of compensation that is itself a type of ADR.

Modeled on the United Nation's Compensation Commission for Iraq,[59] the ADR system has been used to compensate specific categories of people, such as young children and pregnant women, as well as

56. Osaka, *supra* note 26, at 441.

57. *Id.*

58. I obtained this information during a research trip to Tokyo in March 2012.

59. Foote, *supra* note 42, at 6.

for categories of damages not clearly addressed by the guidelines. Approximately 20% of claimants using ADR have hired attorneys, who generally charge a 10,000 yen retainer and receive 5% of the value of the award. Although class action claims do not exist in Japan, some attorneys have been able to bundle multiple cases into a single action; one such action includes 130 evacuees seeking compensation for the cost of evacuation, lost wages, and emotional distress. Another suit brought together thirty-three people negotiating for property damage payments.

One of the first cases resolved through ADR hints at how the process operates. The claimant lived five kilometers from the Fukushima nuclear power plant, and because she was unable to return to her home she sought compensation for property loss. No compensation was available through the "direct" process; TEPCO's view was that because high levels of radiation made it impossible to inspect her home compensation was premature. The claimant brought her claim through ADR, seeking payment for the value of her home, personal effects, and emotional distress. ADR mediators set the award for property damage at 50% of the most recent tax assessment, leading to speculation that future awards for property damage might take a similar approach.[60]

The ADR route to compensation has encountered a number of procedural difficulties. Initially, the hope was that all claims would be reviewed by a panel of three mediators, but with hundreds of cases filed each month and a growing backlog of cases, mediators have been left to evaluate claims on their own.[61] Similarly, what was supposed to be an extremely quick process lasting less than three months has become increasingly slow, and the fact that proceedings are conducted behind closed doors with little transparency limits their precedential value.[62] Mediators worry about inconsistency and try to avoid it through internal case discussions, but it remains difficult for those outside of the process to predict how potential claims will be settled.

Because the resolution of ADR cases requires TEPCO's assent, some lawyers have suggested that it is faster and more profitable to sidestep ADR and utilize a third approach to obtaining compensa-

60. Interview with Junichiro Makita, Attorney at Law, Harago & Partners Law Offices, in Tokyo, Japan (Mar. 8, 2012).

61. Chico Harlan, *Nuclear Redress Will Never Approximate Losses*, JAPAN TIMES (June 27, 2012), http://aws.japantimes.co.jp/news/2012/06/27/news/nuclear-redress-will-never-approximate-losses. There were 200–300 new cases filed every month as of March 2012, and a backlog of roughly 1,100 cases. The pace of filings has continued to accelerate.

62. Parties are permitted to publicize the results of their claims, and the law stipulates that the ADR center may publicize the outcome of "important" cases.

tion—litigation. Suing TEPCO is an available option for all affected parties, both individuals and corporations, and one might think that it would be an attractive option given the emerging evidence of potential carelessness in managing the nuclear reactors.[63] But judging from the small number of cases that have been publicized, parties may have concluded that "direct" compensation and ADR are the better approaches.[64] In fact, nothing precludes the possibility of parties pursuing multiple routes to compensation. One can simultaneously bring a claim directly to TEPCO, file through ADR, and litigate. It is difficult to know whether parties are pursuing the first two routes concurrently, but at least at this point in time they do not appear to see litigation as an attractive option.[65]

For all Fukushima victims, finding legal representation appears to be a challenge. Attorneys are unevenly distributed in Japan, with half of all practicing lawyers located in Tokyo and very few in rural areas like Fukushima.[66] Believing that there was unmet demand in Fukushima and that outreach to potential clients in shelters was necessary, some lawyers in the Tokyo area (particularly those with an inclination to public service) travelled to Fukushima to offer their services.[67] They were quickly rebuffed by the local bar association, which did not want lawyers from outside the area to set up regional offices and argued that there was no unmet demand for legal services to justify their presence. The clash between local and outside attorneys may have been in part about legal fees, but it was primarily a conflict of legal cultures. With the more entrepreneurial Tokyo lawyers wanting to seek out clients and the rural Fukushima lawyers arguing that such an approach was unprofessional, their disagreement could only be resolved by appeal to the JFBA and the courts, a process that would be time-consuming and contentious.[68] Consequently,

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63. Malcolm Grimston, *Viewpoint: Can Japan Learn Lessons from the Fukushima Disaster*, BBC News (July 6, 2012), http://www.bbc.co.uk/news/world-asia-18728421 (noting that a "string of errors" and "willful negligence" left TEPCO's Fukushima plant unprepared for the nuclear disaster).

64. Chico Harlan, *Japan's Nuclear Crisis Victims Left Few Options for Compensation*, BOSTON GLOBE, July 1, 2012, at A4 (noting the "dearth" of lawsuits filed in the wake of the nuclear disaster).

65. *Id.*

66. Norimitsu Onishi, *Lawyers in Rural Japan: Low Supply, Iffy Demand*, N.Y. TIMES, July 29, 2008, at A10 ("[H]alf of Japan's lawyers are concentrated in Tokyo, leaving only one lawyer for every 30,000 Japanese outside the capital . . . .").

67. *See* Robert B. Leflar et al., *Human Flotsam, Legal Fallout: Japan's Tsunami and Nuclear Meltdown*, 27 J. ENVTL. L. & LITIG. 107, 115 (2012).

68. Legally, Tokyo lawyers practicing in Fukushima are required to register with the local bar, and the Fukushima bar can keep them out if they are deemed "inappropriate." With the

the Tokyo lawyers returned home and the Fukushima victims were left to rely primarily on local counsel.[69]

Finally, one additional factor further complicates the process of victim compensation. For more than a year, TEPCO's emphasis was on temporary, serial awards rather than on lump sum payments. The result was that victims were unable to tender their claims, receive compensation, and get on with their lives. Instead, they were pulled into a cycle of claiming and compensation, with little end in sight. The logic of temporary payments is clear—the nuclear disaster is still unfolding, evacuee costs remain uncertain, business losses are ongoing, property damage is difficult to assess, and lost wages are mounting. But that logic is only part of the reason for the failure to offer single, final payments. Equally if not more important is the fact that TEPCO oversees all aspects of the compensation process and lump sum payments to victims would exact a huge financial cost on the company (and, by extension, on the government). It is better to bear the increased administrative costs of the compensation program than to pay out a large amount of money up front, especially because at least some victims will inevitably give up rather than continue to file compensation claims.

F. Claimant Responsibility

Most compensation schemes impose obligations on victims. Often, at least in the U.S., claimants are given the option of either accepting or rejecting a compensation offer. If they accept it, they give up the right to litigate, whereas rejecting the offer enables them to sue. The first draft of the Fukushima compensation guidelines included a similar provision, which was met with immediate opposition.[70] The provision was abandoned and Fukushima claimants obtained the right to simultaneously pursue multiple avenues to compensation. A claimant may seek and be awarded "direct" payments, for example, and then use the funds to hire a lawyer to sue TEPCO. Presumably, there will be offsets so that compensation is tendered from only one source for any given loss. But it is nonetheless unusual that claimants in Fukushima are under few constraints when it comes to bringing their disputes through different channels.

Fukushima bar threatening to take the case first to the JFBA and then up to the Supreme Court of Japan, a resolution would take considerable time.

69. Recently a Tokyo firm was allowed to, and did, set up an office in Fukushima.

70. Murayama, *supra* note 30.

IV. CONCLUSION

The Fukushima compensation process is still in the early stages, so it is premature to reach any hard and fast conclusions. Provisionally, however, a few general comments are in order. First, the approach to compensation in Fukushima is consonant with the general norm that governs disaster compensation in Japan: compensate if the law requires, but not otherwise; compensate symbolically, but not enough to truly cover losses; compensate uniformly, but not tailored to individual loss.

Second, the architecture of the compensation system makes it extremely difficult for potential claimants to figure out which route to payment is most appropriate to their losses and needs. Because the legislation leaves those most directly responsible for the accident—the nuclear power industry—in charge of meting out payments, the compensation process is ad hoc and deeply political. Key decisions about eligibility have been made behind closed doors by committees of elites that lack transparency or accountability. The result is an extremely unwieldy and expensive administrative structure that impedes rather than facilitates compensation, fueling the view that the needs of the government and TEPCO, not the needs of victims, predominate.

Third and most generally, as politicians, the energy industry, attorneys, and activists debate the design of the Fukushima compensation system, it is clear that the needs of victims are not being met. Evacuation centers are full of individuals and families who are unable to return to their contaminated homes, but lack the financial means to start new lives elsewhere. Widespread emotional trauma has been largely untreated. Those who have received compensation have generally been awarded only small, temporary payments. Energy rate hikes and nuclear plant restarts have dominated the news, while the needs of the Fukushima victims have receded into the background. When seen through the lens of access to justice that Marc Galanter has so importantly emphasized, it is clear that much remains to be accomplished in Japan's northern provinces.