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From Legal Derivatives to Legal Subjects: Adjudicating Sex Crimes from the Sino-Japanese War

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論 文 名　：　From Legal Derivatives to Legal Subjects: Adjudicating Sex Crimes from the Sino-Japanese War (法的派生から法的主体へ：日中戦争の性犯罪をめぐる司法処理)

区　　分　：

論　文　内　容　の　要　旨

This dissertation traces the historical trajectory of the judicial handling of wartime Japanese sex crimes against Chinese women in different political, legal, and social settings. More specifically, it examines the International Military Tribunal on the Far East (aka. the Tokyo Trial), Class B/C war crimes trials carried out by the Chinese Nationalist government (Kuomintang or the KMT), military tribunals held by the Chinese Communist Party (CCP) in the 1950s, civil reparation litigations filed by former comfort women victims in the 1990s and 2000s, and the Women's International War Crimes Tribunal on Japan's Military Sexual Slavery (Women's Tribunal) organized by civil society.

This dissertation notes that while the war crimes trials subsumed women's pain into national suffering, the reparation litigations and the Women's Tribunal resurrected it in order to address it squarely. The historical analysis draws on philosopher Ann Cahill's theory on "derivatization." Borrowing Cahill's insights, I coin the phrase "legal derivatization" to examine the judicial treatment of sex crimes against women in war crimes trials. I contend that what is at stake is not the judicial perception of women as men's belongings or objects, but rather the legal derivatization that reduces the suffering of women to the suffering of men in postwar war crimes trials. Later, during the reparation litigations and the Women's Tribunal, feminists aimed for the legal recognition of sexual violence inflicted upon women as a gender-specific crime against women. The Women's Tribunal, in particular, actualized full legal recognition of women's pain, thereby restoring what Shoshana Felman calls the "legal subjectivity" to victims. I argue that the shift from state-sponsored war crimes trials to civil endeavors (including the reparation litigations and the people's court) reflected the change of the judicial treatment of victims from legal derivatives to legal subjects, and of the legal handling of sexual violence from a reflection of men's suffering to gender-specific crimes.