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Between the Law: The Unmaking of Empire and Law's Imperial Amnesia

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Asian victims of Japanese imperialism have filed lawsuits against the Japanese government and corporations since the 1990s, which became prime sites for redress decades after Japan's defeat in World War II. As this ethnography demonstrates, this process paradoxically exposes a legal lacuna within this emergent transnational legal space, with plaintiffs effectively caught between the law, *instead of standing before the law. Exploring this absence of law, I map out a* post-~~imperial~~ legal space, *created through the erasure of imperial and colonial subjects in the legal framework after empire.* Between the law *is an optic that makes visible uneven legal terrains that embody temporal and spatial disjuncture, rupture, and asymmetry. The role of law in post-imperial transitions remains underexplored in literatures on transnational law, legal imperialism, postcolonialism, and transitional justice. I demonstrate how, at the intersection of law and economy, post-imperial reckoning is emerging as a new legal frontier, putting at stake* law's imperial amnesia.

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I. INTRODUCTION

Legal efforts seeking official apology and compensation for Japanese imperial violence have become a prime site of Chinese and Japanese attempts to come to terms with the past since the 1990s, when Chinese victims of Japanese imperialism from the first half of the twentieth century filed scores of lawsuits against the Japanese government and Japanese corporations in the Japanese courts. Coming to terms with the past takes many forms, yet legal redress has gained momentum in the past two decades, not only in East Asia but also elsewhere in the world to account for violence and injustice committed during World War II.[1]

This article examines what it means to account for past violence through legal means, especially after decades have passed since the demise of the Japanese empire in 1945. It looks specifically at a series of postwar compensation lawsuits filed in Japan by Chinese victims in the past two decades that underscore the unfinished project of the unmaking of empire, which formally ended with Imperial Japan's defeat in World War II.[2] These lawsuits have also brought to the fore both the potential and challenges for juridifying historical responsibility transnationally through the use of the domestic law of the former perpetrator nation. Unlike the Tokyo Tribunal, which took place immediately after the war to criminalize wartime violence,[3] these recent postwar compensation lawsuits use the Japanese Civil Code (*minpō*) and the State Redress Act (*kokka baishō-hō*)[4] to seek monetary compensation and an official apology for the deaths and injuries caused by the Japanese government and corporations. Combining legal analyses of these postwar compensation lawsuits with ethnographic observation inside and outside the courtroom, this article explores the role of law in this belated project of the unmaking of empire.

Since the early 1990s, the Japanese court system has processed more than a dozen lawsuits filed by Chinese victims represented by a group of nearly 300 Japanese lawyers working *pro bono*. These lawsuits—referred to in Japan as postwar

1. For a global context in which postwar compensation for Japanese wartime violence is motivated by Holocaust compensation attempts, see Yoneyama (2003).

2. This article is based on my field research in China and Japan (2003–2004, 2012–2013, and follow-up research in summers). During my field research in Asia, I worked with Japanese lawyers representing Chinese war victims pro bono in their lawsuits against the Japanese government and corporations. I observed weekly court proceedings of various postwar compensation trials; participated in meetings with lawyers, plaintiffs, and civic support groups; accompanied the lawyers on investigative trips to China; and participated in activities of victim groups in China. Since I speak both Japanese and Chinese and have formal training in law and experience living in northeast China (where many victims were from), I ended up playing the role of interpreter and mediator among Chinese victims, Japanese and Chinese lawyers and citizen supporters, and the media. During my year-long field research in 2012–2013, I was affiliated with the People's Law Office in Tokyo, where I had access to the relevant legal documents and ample opportunities to discuss the cases with the lawyers involved on a daily basis. In some cases in the text I have altered names and identifying details of individuals to protect their identity.

3. The International Military Tribunal for the Far East (IMTFE), also known as the Tokyo Tribunal, was convened on April 29, 1946, and adjourned on November 12, 1948.

4. The State Redress Act is categorized as part of the Japanese administrative law, but also considered as supplementary to the Civil Code. It has been established to regard cases using the State Redress Act as civil cases. See Murashige (1996, 163–64).

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compensation lawsuits (*sengo hoshō saiban*)[5]—range from the wartime use of forced labor (abduction of male Chinese to be enslaved in Japan), the so-called comfort women (victims of wartime sexual slavery), the 1932 Pingdongshan and 1937 Nanjing Massacres, and air raids, to human experiments for biological and chemical warfare perpetrated by Japanese Army Unit 731.

Four landmark rulings by the Supreme Court of Japan in 2007 rejecting the compensation claims filed by the former comfort women and survivors of wartime forced labor, who were all male and were abducted from China to work in Japan, came to mark the end of an era for the decades-long legal redress movements.[6] Analyses of these lawsuits, predominantly by legal scholars, primarily make normative claims accusing the Japanese government and corporations of irresponsibility and thus shift the discussion of these cases to the realm of political will, leaving the law and legal space themselves underexplored.[7] Furthermore, by focusing on the intersection of law and politics, these legal analyses often leave out exploring the intersection of law and economy, which I argue is the crux of the incomplete project of the unmaking of empire.

This article weaves together three interconnected stories. First, at the intersection of economy and law we find a debt-driven mode of unmaking of empire, which perpetually defers legal redress while pursuing new forms of wealth accumulation through debts, both moral and monetary, in the economic sphere. From this intersection, we move to the second story of the emergence of a particular kind of *transnational legal space* for historical redress, which was propelled by the underlying economy of debt. This section explores ethnographically this emergent legal space, where Chinese plaintiffs crossed jurisdictions and came to stand before the Japanese law. In the third section, I examine the three primary legal arguments developed over more than a decade of legal processes to demonstrate how the deployment of these legal doctrines effectively created a legal lacuna, which positions the plaintiffs not *before the law* but *between the law* by declaring the Law's irrelevance in belatedly accounting for historical violence.

I argue that this legal lacuna points to two significant but underexplored areas in the discussion on redress for past wrongs: in the first, the legal lacuna highlights the persistently imperial nature, albeit disguised, of the post-imperial Japanese legal framework after Japan's "rebirth" as a democratic state, raising the question of what happens to the legal landscape when the empire disappears. At stake here is the assumed radical discontinuity between the prewar and postwar Japanese legal systems, which is often oddly absent from otherwise robust debates about latent continuity in political and cultural spheres due, in part, to the symbolic status of the postwar Japanese "Peace" Constitution in Japan and also elsewhere in Asia.

In the second, the legal lacuna points to an underexplored absence of law in addressing de-imperialization within the legal sphere. I explore this simultaneous

5. In China, these lawsuits are often referred to as compensation lawsuits against Japan (*dui Ri suopei susong*).

6. Heisei 16 (ju) No. 1658 (forced labor case) and Heisei 17 (ju) No. 1735 (comfort women case). On the basis of these rulings, the Supreme Court dismissed the appeals of other cases on the same day (Heisei 17 [o] No. 985 [comfort women case], Heisei 14 [ne] No. 511 and Heisei 8 [wa] No. 5435 [forced labor case]).

7. See, for example, Askin (2001), Shin (2005), Gao (2007), and Levin (2008).

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persistence and absence of law, the revelation of which itself is integral to the belated efforts to redress the past. Through the optic of *between the law*, this article elucidates *post-imperial legal space* as an underexplored aspect of transitional justice in the unmaking of empire. I demonstrate how, at the intersection of law and economy, post-imperial reckoning is emerging as a new legal frontier, putting at stake what I call *law's imperial amnesia*, produced through the erasure of former colonial and imperial subjects within the post-*war* legal framework.

II. THE UNMAKING OF EMPIRE

Matsuda Yutaka, a former labor union organizer at one of the biggest coal mines in Japan turned attorney late in his life, was the lead lawyer representing the victims of wartime forced labor in the Fukuoka Regional Court of Japan. He had carefully prepared a courtroom spectacle that in 2002 culminated in a landmark ruling.[8] Rejecting the defendants' claim that the statute of limitations had run out, the judges found Mitsui Mining Corporation responsible for the wartime use of Chinese slave labor and ordered it to pay 11 million Japanese yen (approximately $85,000 based on an exchange rate of 130 yen per dollar at the time) to each plaintiff. Yet, similar to other forced labor cases, the judges denied the responsibility of the Japanese state by invoking the doctrine of sovereign immunity under the Meiji Constitution of Imperial Japan. The court determined that the Japanese state was not liable for damages resulting from actions related to its exercise of state power (*kenryoku sayō*).

I have discussed this case and the subsequent 2007 Supreme Court decision elsewhere in an analysis of the plaintiff-lawyer dynamics in cause lawyering (Koga 2013), but it is necessary to recapitulate the story itself here because it highlights a different aspect that is essential to the tripartite structure of this article, namely, the role of law in the belated redress movement. Not only did the Fukuoka case mark a milestone in overcoming the statute of limitations, a formidable legal hurdle in the series of postwar compensation cases, but it also disclosed how the postwar Japanese economy was built on the compounded debt to the Chinese victims that was never paid back. The Fukuoka case tells a story of how the legal intervention revealed the complicity of the economy in silencing the victims while accumulating wealth at the expense of collecting debts. The 2007 Supreme Court decision underscored this underlying economy of debt—both moral and monetary—despite its formal rejection of the plaintiffs' claims. It is at this intersection of law and economy that our exploration begins.

Hidden Japanese Archives and the Inverted Compensation

By the time Matsuda planned the strategy for the Fukuoka forced labor case, several forced labor cases had already been filed in various regional courts, where

8. Heisei 12 (wa) No. 1550; Heisei 13 (wa) No. 1690; Heisei 13 (wa) No. 3862, April 26, 2002, written by Kimura Motoaki, Miyao Naoko, and Kushihashi Sayaka. The Japanese government and Mitsui Mining Corporation appealed, and Fukuoka High Court overturned the lower court decision on May 24, 2004 (Heisei 14 [ne] No. 511), which I discuss later.

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the statute of limitations became the contentious issue. Matsuda knew he had to establish not only wartime violence, but also postwar injustice in order to break this legal barrier. He had a secret weapon—a set of the allegedly destroyed 1946 Japanese government archives (Gaimushō kanrikyoku 1946a, 1946b) that detailed the wartime use of Chinese forced laborers, which he would dramatically introduce to the court.

In several court sessions, the plaintiffs' lawyers repeatedly requested that the government confirm and disclose the existence of this archive while the defense lawyers consistently denied their knowledge of its existence. This verbal ping-pong in the courtroom was an elaborate performance of a public secret: both sides knew of the existence of this "secret" archive. In fact, the plaintiffs' lawyers even had a secret copy, to which they alluded in order to provoke the judges. Kimura Motoaki, the presiding judge, eventually lost patience and urged the plaintiffs' lawyers to submit this elusive archive to the court: "You lawyers on both sides seem to know what this 'missing' archive is all about. Yet in the past six months, *we*, the judges, have yet to see this seemingly first-class historical archive. The more we hear about it, the more we desire to see it. Instead of requesting the government side to submit these materials, would it be possible for the plaintiffs' side to submit them to the court?"

This secret archive is a set of reports compiled by the Japanese government in early 1946, several months after the Japanese defeat in World War II. The first set of archives consists of thousands of handwritten pages of field reports (Gaimushō kanrikyoku 1946a), prepared by a group of social scientists hired by the Japanese Ministry of Foreign Affairs to provide a detailed record of the wartime use of Chinese forced labor at 135 corporate sites all over Japan. Fearing prosecution by the Allied Forces, the government ordered them to document how individual victims were captured in China and transported to Japan, how they were housed, fed, enslaved, and, often, how they died. The Ministry of Foreign Affair then compiled a summary report (Gaimushō kanrikyoku 1946b) to be used as a cover-up in the event of an Allied Forces investigation, which never took place.

I have illustrated the dramatic life of this set of archives (Koga 2013, 497–98), yet it is important to revisit the unusual trajectory of these field reports, which the government ordered destroyed after the compilation of the summary reports. The field reports went "missing" immediately after their completion in 1946, yet these documents nevertheless survived through decades of the Cold War as a result of the defiant actions of those who safeguarded these archival traces of wartime violence. These archives eventually resurfaced after the end of the Cold War, first through a public television broadcast and then through courtroom drama.[9]

9. Part of the 1946 archives became public through a Japanese public television program broadcast on August 14, 1993 (NHK Special, "Maboroshino gaimushō hōkokusho: Chūgokujin kyōsei renkō no kiroku" [A Phantom Reports on the Work Condition of the Chinese Laborers Compiled by the Ministry of Foreign Affairs: The Record of the Chinese Forced Labor]), which was later published in a book form under the same title (NHK Research Team 1994). Although this public disclosure failed to gain much traction at that time, it resulted in the reproduction of the original archival materials (Tanaka and Matsuzawa 1995). On the background of this government archive, see Tanaka, Utsumi, and Ishitobi (1987) and Tanaka, Utsumi, and Nīimi (1990).

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Chen Kunwang, the director emeritus of the Tokyo Overseas Chinese Association (*Tokyo kakyō sōkai*), had guarded these supposedly destroyed archives for decades ever since a group of social scientists responsible for writing the field reports in 1946 secretly entrusted these thousands of pages of documents to Chen by carrying them in their backpacks in small batches, walking across the burned-down Tokyo cityscape. When I visited Chen at the Association in the center of Tokyo in July 2008, he pulled a portion of the field reports from tall piles of documents that filled two large closets in his office. In an affectionate manner, he carefully opened one envelope to show me the yellowed pages, and recounted how he became the guardian of these archives, how he strategically pressured the Japanese government in the 1950s by alluding to the presence of these documents when the Sino-Japanese negotiations were underway to swap Japanese left behind in China for the remains of the Chinese forced labor victims, and how he finally came to the decision to disclose their existence after decades of keeping them out of the public eye.

With the geopolitical shift of the post-Cold War era and the mounting demands across the world to seek redress for World War II violence, Chen felt that the time was ripe to make these long-hidden traces of Japanese wartime violence public. Recalling how the group of Japanese lawyers representing the Chinese war victims persuaded him to let them use these materials for the lawsuit, how these lawyers brought a portable copy machine (still a rarity at that time) to Chen's office and spent weeks copying the thousands of pages, and how these documents played a significant role in these legal cases, Chen seemed finally ready to give closure to his role as the guardian of these imperial remains. He ended our meeting by telling me his plan in the near future to donate them to a museum in China.

What made these archives particularly pivotal in the lawsuit is twofold: first, they provide evidence of the systematic nature of the wartime use of forced labor; second, they document how in 1946 the Japanese corporations that enslaved the Chinese received large sums of compensation from the Japanese government for the "losses" incurred through the wartime use and postwar loss of Chinese labor. While the original purpose of these reports was to prepare for a possible investigation by the Allied Forces, the Japanese government repurposed these records to determine the allocation of compensation to 135 corporate offices, which amounted to approximately 57 million Japanese yen. This *inverted compensation*—in which the involved corporations were rewarded against the background of unpaid wages to the victims, who were shipped back to civil-war-torn China without a penny—took place during the US occupation of Japan following the Japanese defeat, indicating tacit US approval at the advent of the Cold War.[10]

The public disclosure of this *inverted compensation* was accompanied by another disclosure in the courtroom: through the defense lawyers' insistent denial of the knowledge of these archival materials, they demonstrated the Japanese government's continuous attempts to suppress its involvement in this wartime practice.

10. It should be noted that my usage of the term "inverted compensation," which suggests an inversion of the common-sense logic of compensation, is a moral one. Historically, there are other cases of inverted compensation. For example, Haiti was required to pay 150 million francs as compensation for France and slave owners at its independence. Similarly, British slaver owners received a total of 20 million pounds when colonial slavery was abolished in 1833, as detailed in Draper (2010).

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The courtroom spectacle thus revealed two forms of postwar injustice inflicted by the Japanese government and corporations on the Chinese victims: one in the form of inverted compensation and the other in the form of persistent attempts to deny and erase its historical involvement even today.

Shortly after these archives became public, the Japanese government announced that it had discovered its own copy in its warehouse. This announcement was then followed by the decision to declassify nearly 2,000 pages of government archives dating from 1952 to 1972 (Gaimushō kanrikyoku 1952–1972). These internal documents, many in the form of handwritten memos from the period between the end of the US occupation and the start of diplomatic relations with the People's Republic of China, further confirmed the systematic attempts by the Japanese government to prevent the "missing" 1946 archives from becoming public.

This legal intervention thus presented the postwar compensation issue as resulting from wartime violence as well as postwar injustice. In so doing, the Fukuoka forced labor case underscores the compounded debt that the Japanese owe to the Chinese victims. Both the Japanese government and corporations, while the United States was looking away, pursued postwar economic recovery and prosperity at the expense of compensating wartime slave laborers. By demonstrating how Japanese postwar prosperity was in part predicated precisely on redirecting funds from victims to the very companies that had enslaved them, this legal intervention has located the question of economy at the center stage of belated imperial reckoning.

(For)given Time

The Japanese and the US governments were not the only ones complicit in this postwar structure of erasure at the expense of accumulating debts to the victims. Economy and the question of redress intersected yet again in a state-to-state agreement in the 1970s, this time between China and Japan, to confirm this silencing structure built on the economy of debt. This historical juncture is crucial to understanding the 2007 Supreme Court decision that came to play a major role.

The Cold War prevented the Republic of China (ROC) and the People's Republic of China (PRC) from participating in the Treaty of Peace with Japan (commonly known as the San Francisco Peace Treaty) signed in 1951 and enacted in 1952 between Japan and forty-eight countries, which officially ended World War II with Japan and also ended the Allied occupation of Japan.[11] Furthermore, Cold War politics deferred the establishment of diplomatic relations between Japan and the PRC until 1972. The signing of the Joint Communiqué in 1972, followed by the Peace and Friendship Treaty in 1978, then, marked the zero hour of postwar Sino-Japanese relations in which the two countries officially put the issue of Japan's war responsibility on the table, but then subsequently set it aside in favor of formal economic relations through their shared goal of pursuing economic cooperation. In

11. The San Francisco Peace Treaty exempted Japan from reparations except as regarding the transfer of its overseas assets and the compensation for POWs through the International Committee of the Red Cross.

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so doing, this state-to-state agreement ambiguously located the moral economy of accounting for Japanese imperial violence in relation to the formal economy.

By renouncing reparation claims in the Joint Communiqué, which the Japanese side feared that the Chinese would demand, the Chinese government in effect gave a "gift" to Japan. Instead of war reparations, the new Sino-Japanese relations centered around Japan's Official Development Assistance (ODA) to China, at a time when other countries were reluctant to invest in China, which was just beginning to recover from the turmoil of the Cultural Revolution. But the Japanese ODA was never declared the replacement for war reparations, and the "gift" from China came with the expectation that Japan would not revert to its imperialist past.[12]

As anthropological studies demonstrate, receiving of a gift does not signal the end of a story, but the beginning of it: a gift demands reciprocity and thereby becomes a debt to be repaid (Mauss [1924] 1990). In 1972, the Japanese received a gift—China's renunciation of war reparation claims—and in turn incurred a debt that they would find difficult to repay, since it was measured in their attitude toward the past rather than in currency or concrete demands. The 1972 agreement gave the Japanese not forgiveness, but the gift of time to repay this moral debt.[13] It is this *(for)given time* that set the stage for the new phase in Sino-Japanese relations: the robust development of the formal economy, initially through Japanese ODA, which started in 1979, and increasingly through Japan's direct investment in China.[14] This new and official postwar Sino-Japan relationship, which was delayed by twenty-seven Cold War years, privileged the formal economy over the moral economy of accounting for Japanese imperial violence.

By accepting this monetary gift, the Chinese state became complicit in an amoral gift economy where, at the state-to-state level, the question of moral debt became artificially separated from and subordinated to the formal economy surrounding monetary transactions. The complicity of the Chinese state in privileging the formal economy over the moral economy has expressed itself in small and large gestures, ranging from its reluctance to support the victim initiatives to seek redress to outright intimidation of those involved in the legal redress movement to the judicial refusal to accept lawsuits by its own citizens. Since 2000, the Chinese

12. The Chinese renunciation of reparation claims in the Communiqué was prefaced by and framed within the proclamation of Japanese responsibility for Chinese losses sustained during the war, effectively presenting China's waiver as a generous gift to Japan. The Preamble of the Joint Communiqué of the Government of Japan and the Government of the People's Republic of China states that "[t]he Japanese side is keenly conscious of the responsibility for the serious damage that Japan caused in the past to the Chinese people through war, and deeply reproaches itself." Having said that, Article 5 of the Communiqué reads: "The Government of the People's Republic of China declares that in the interest of the friendship between the Chinese and the Japanese peoples, it renounces its demand for war reparation from Japan." By linking its renunciation of reparation claims to the promise of good deeds in the future ("in the interest of the friendship between the Chinese and the Japanese peoples"), the Chinese side expresses its expectation for reciprocity from the Japanese government, in the form of a return gift of "friendship" built on a "deep" sense of repentance.

13. On the role of time in gift relations, see Derrida (1991, chs. 1, 2).

14. The explosion of heated discussions in China, which was triggered by the Japanese government's announcement in 2007 of its plan to end the ODA to China, highlighted this enigmatic location of the Japanese ODA in relation to the Japanese moral debt to China. See, for example, Cao and Huang (2008).

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courts in various provinces had refused to accept five attempts by the victims to file compensation lawsuits[15] until February 2014, when the Beijing No. 1 Intermediate People's Court decided to accept a forced labor case, to which I will return later. In one of these five cases involving a prominent Japanese corporation, after the court refused to accept the case, the lead Chinese lawyer and the leading figures among the plaintiffs were browbeaten by a high-ranking local government official, who expressed strong concerns that such a lawsuit would jeopardize ongoing negotiations with a corporation to invest in the region.

My use of parentheses in *(for)given time* expresses this ambiguous location of moral debt, which the Chinese state has used as a political leverage for both domestic and diplomatic maneuvering. *(For)given time* is a temporal framework produced through the Japanese and Chinese governments' shared project of deferring the pursuit of redress while seeking wealth accumulation. Structurally, it is a silencing mechanism that forced many Chinese victims to maintain their long years of silence.

While recurring anti-Japanese street demonstrations in China underscore this unaccounted-for moral debt, in their focus on demanding an official apology and acknowledgment of historical facts (Japanese wartime violence) from the Japanese government, these public outcries for imperial reckoning often fail to situate what is known as Japan's "history problem" within a larger economic structure on which the postwar Sino-Japan relations are built. The 2007 Supreme Court decision, as we shall see next, officially declared that despite its formal rejection of the plaintiffs' claims for compensation, Japan still owes this double debt thanks to these latent gift relations.

The 2007 Supreme Court Decision and *Fugen* [Supplement]

The Supreme Court decision on April 27, 2007 effectively put an end to the series of forced labor cases.[16] Unlike the lower court decisions, which deployed the statute of limitations or sovereign immunity to reject the plaintiffs' claims, the Supreme Court judges pointed to the 1972 Sino-Japanese agreement. Referring to the Joint Communiqué in which the Chinese government renounced its reparation claims against Japan, the court ruled that the Chinese plaintiffs did not have individual rights to claim compensation in court (*saiban-jō seikyū suru kinō wo ushinatta*, which literally means "lost the function to claim compensation through legal means").

Despite its formal rejection of the plaintiffs' claims, the court acknowledged the injustice committed by the defendant (Nishimatsu Construction) and the Japanese government during the war. The judges emphasized the psychological and

15. These cases were submitted to Hebei High Court on December 27, 2000 (forced labor case), Zhejiang High Court on May 12, 2003 (biological warfare case), Shanghai High Court on September 5, 2003 (forced labor case), Shandong High Court on September 16, 2010 (forced labor case), and Chongqing High Court on September 10, 2012 (air raid case).

16. Heisei 16 (ju) No. 1658, written by Nakagawa Ryōji, Imai Isao, and Furuta Yūki. For an overview of the Supreme Court decision in English, see Levin (2008). While this Supreme Court decision concerned a forced labor compensation case originally filed in Hiroshima, often referred to as the Nishimatsu case (as it involved Nishimatsu Construction Company), the court used it as the basis for dismissing the appeals filed in the Fukuoka and other related cases on the same day.

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physical suffering that the plaintiffs endured over the years against the background of the economic benefits that the defendant received through the wartime slave labor and the inverted compensation. The judges further reminded the defendant that the Chinese plaintiffs' lack of individual rights to claim for compensation in the court did not prohibit the defendant from making its own voluntary arrangements for redress. Repeatedly emphasizing these points in a supplementary paragraph *(fugen)* to the ruling, the court strongly encouraged Nishimatsu Construction and the Japanese government to make such efforts.

By underscoring the compounded debts—moral and monetary—that Japan owes to Chinese victims, the Supreme Court decision publicly acknowledged not only the historical fact of wartime practice, but also the unfinished project of the unmaking of empire in the economic sphere. By urging the defendants to repay these debts out of court, the court made the belated task of settling accounts the cornerstone of this incomplete project.

This case draws attention to the centrality of economy and the contradictory function of market mechanisms for redressing past violence. On the one hand, the market elides past injustice through an amoral emphasis on productivity, as epitomized by the inverted compensation in 1946 and the Joint Communiqué in 1972. On the other hand, market opportunities work to motivate participants to settle accounts. With China's rise as a global economic power against the background of a decades-long Japanese recession, the Chinese market has become a crucial site for Japan's economic recovery. The changing economic balance of power is driving involved Japanese corporations to settle accounts, as indicated by the eager out-of-court negotiations prompted by the 2007 Supreme Court decision. Of the Japanese corporations implicated in the lawsuits, Nishimatsu Construction was among the first to settle out of court.[17] On September 23, 2009, it agreed to pay 250 million Japanese yen (approximately $2.5 million) to 360 Chinese men who were enslaved at the Yasuno power plant in Hiroshima, and on April 26, 2010, to pay 128 million Japanese yen ($1.3 million) to 183 Chinese enslaved at the Shinanogawa power plant in Nīgata.

The legal intervention, in effect, uncovered the underlying economy of debt, which privileged formal economy over moral economy at the expense of silencing the victims. In this way, the unfinished project of the unmaking of empire in the economic sphere is dramatically revealed through the courtroom betrayal of the inverted compensation for Japanese corporations immediately after the Japanese defeat and during the postwar cover-up.

I use the term *(for)given time* to illustrate the time before the law—the prehistory of the series of postwar compensation lawsuits—and how this structural framework silenced the Chinese victims for decades. Postwar silence was a silencing that created wealth through the economy of debt. Yet, this underlying moral economy also propelled the Chinese victims and Japanese lawyers to pursue the shared goal of redemption through legal redress. These transnational redress movements, in turn, produced a *transnational legal space*, to which we now turn.

17. The first postwar compensation case involving Chinese victims to settle out of court took place in 2000 with Kajima Construction Company.

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III. BEFORE THE LAW

In the last section we saw how the legal process revealed an economy of debt, in which repayment for past violence was deferred in favor of wealth accumulation in the economic sphere. Yet the legal intervention uncovered something else: the unfinished project of the unmaking of empire *within* the legal sphere. In exposing the incomplete project in the economic sphere, the legal processes also betrayed how law itself is implicated—law betrays itself. The three major legal doctrines deployed through the course of the lawsuits over two decades—sovereign immunity, the statute of limitations, and individual legal rights to claims compensation—effectively presented a legal lacuna in addressing post-imperial justice. This legal lacuna, I argue, reveals how unfinished the de-imperialization of Japanese empire is in the legal sphere despite the presumed radical discontinuity between the prewar and postwar Japanese legal systems, marked by the enactment of the Japanese "Peace" Constitution (1946), a symbol of Japan's "re-birth," and the State Redress Act (1947), which made the Japanese state accountable to the people for its actions.

But I am ahead of myself. Before we examine this legal lacuna, it is necessary for us to step back in time before the series of postwar compensation lawsuits started like an avalanche in the mid-1990s in order to get a sense of the legal space that emerged through these lawsuits. The lacuna becomes visible only if we are aware of the existence of that which came to present itself as absent presence.

Breaking the Silence and Standing Before the Law

In his parable "Before the Law," Franz Kafka ([1924] 1988, 213–15) describes a countryman in front of the gate of Law, which is guarded by a doorkeeper. Despite the countryman's repeated pleas to enter the gate to stand before the Law, the doorkeeper suggests the difficulty in reaching the Law and answers time and again, "not yet." Time passes by, and the aged and weakened countryman eventually dies at the foot of the doorkeeper without ever passing through the gate of Law. Whereas Kafka's story is silent about how the countryman arrived *before* the gate of Law, it is important not to underestimate the enormous efforts and historical constellation that brought Chinese victims before the Law in the 1990s.

The *(for)given time* explored in the last section produced a powerful silencing structure *and* it functions as a reminder of gift relations and attendant moral debt that have fueled the redress movements in China and Japan, as I have demonstrated elsewhere.[18] While a full analysis of the emergence of legal redress in these movements requires a separate essay, their genesis highlights how these

18. I explored more in detail the relationship between formal and moral economies in relation to *(for)given* time, and examined how unpaid moral and financial debts drove silence into redress movements. My ethnography of two compensation cases—one on wartime forced labor and the other on the chemical weapons abandoned by the Japanese Imperial Army—shows how the legal interventions belied the artificial separation between these two forms of economies. By elucidating the entangled relations between the two, my ethnography further demonstrates not only how the underlying gift relations at the state-to-state level propelled these transnational legal movements, but also how gift relations and an attendant sense of indebtedness shaped the lawyer-plaintiff dynamics in pro bono lawyering. See Koga (2013).

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simultaneous movements opened up a *transnational legal space* for redressing Japan's imperial violence. To do this I share some montages of various participants to give a sense of how disparate sentiments—deep-seated anger, hope, and responsibility—and global contexts collided to bring Chinese victims before the law.[19]

The Survivor

When I visited one survivor of wartime forced labor, seventy-eight-year-old Li Guoqiang, in his modest, lower-middle-class apartment on the outskirts of Beijing in July 2008, he had just returned from Chengdu, in central China, where he and fellow survivors were guests of honor at the Jianchuan Museum, a privately run historical museum established recently by a local millionaire. Li is among the few surviving members of the roughly 40,000 Chinese men who were abducted and forcibly brought to Japan in the 1940s to work, mostly in mines, factories, and shipyards. Subjected to brutal work conditions, only about 32,000 survived to see the Japanese defeat in 1945.[20] While offering me watermelon to cool off from the heat of a nearly three-hour journey from the center of Beijing to his home, he shared pictures of the trip.

One picture captured the moment when the museum staff took imprints of the ailing men's hands to be set into the pavement of the museum plaza, among life-size statues of revolutionary heroes of modern Chinese history and significant political figures in the Chinese Communist Party (CCP). "We are also part of China's history," Li proudly declared, while showing me a picture of the group standing among the statues. The weight of his utterance "We are also part of China's history" only became clear to me later when he finished recounting his wartime ordeal in Japan and his thoughts drifted back to his life in China after repatriation.

He invited me to his bedroom-turned-study, which was filled with books. While proudly showing me his large collection of books on the Japanese invasion of China, Li explained, "I left my family, my wife and six children, to learn why China was invaded by Japan, and why I almost died three times in Japan during the war." In his thick accent, he recounted how, after repatriation to civil-war-torn China, he was first recruited by the Kuomindang Army and then eventually made his way to the Chinese Communist People's Liberation Army, in which he built a

19. A large portion of the following montage is copied from my field notes with some editorial changes. A segment of my notes for "The Survivor" section is reproduced elsewhere (Koga 2013, 496). Given the politically sensitive nature of the issue and the ongoing intimidations that many who are portrayed in this section continue to receive from the authorities, identities of my informants and details of my contact with them are modified or left intentionally vague to protect them.

20. These numbers are drawn from the Japanese government archive (Gaimushō kanrikyoku 1946b), which records the number of those brought to Japan as 38,935, those who died as 6,830. These numbers include neither those who died before arriving in Japan nor those who were enslaved within China. For an overview of the mobilization of Chinese forced laborers, see Nishinarita (2002). In English, see Kratoska (2005). Many Chinese peasants were rounded up in Hebei Province to be shipped to work in Japan and elsewhere (some were enslaved in the Japanese puppet state of Manchukuo in Northeast China). He Tianyi, a local historian in Shijiazhuan in Hebei Province who has researched the issue over two decades and who has played a pivotal role in organizing a victims' group, led a project to collect oral histories of survivors in the early 2000s. For edited narratives from this project, see He (2005).

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career and earned numerous medals for his outstanding service. In the early 1950s, he was cast out of the Liberation Army, suspected of being a spy because of his wartime experience in Japan and because he had been repatriated to China on a US ship after the Japanese defeat.[21] With nowhere else to go, he returned to his village to become a farmer. Li explained to me why he remained silent about his wartime experience: "My wife didn't want me to tell my wartime story to our children for fear of harming them. I hadn't told my story to anybody else until the Japanese lawyers contacted me in the 1990s to file a lawsuit. It was only after being contacted by the Japanese lawyers that I learned about other survivors of the wartime forced labor now living in Beijing."

Li appreciated that the new historical museum in Chengdu recognized his and fellow forced laborers' wartime ordeals as an integral part of China's national history, that their sacrifice was recognized as part of communist nation-building. His elation, captured in the group pictures taken at the museum, also underscores the postwar silencing that took place not only in Japan but also in China. The Jianchuan Museum is the only historical museum in China to date that devotes a section to wartime forced labor, although the memorial in the Tianjin Martyr Cemetery on the outskirts of Tianjin enshrines the repatriated remains of forced laborers who perished in Japan. The legal process not only made the survivors' voices audible but also brought this silencing mechanism to the fore.

Li and others like him had to travel a long road before they became the face of Chinese suffering under Japanese imperialist aggression in China. Various factors had to align before these gray-haired victims could stand in front of Japanese judges. What prompted Li to break his silence, he recounted to me as we sat for lunch at a restaurant in Beijing in the spring of 2013, was a Chinese media report about emergent historical revisionism in Japan: "I felt the need to take action in the face of Japan's unwillingness to repent." "The media reported the Japanese history textbook censorship, which forced the textbook author to remove his descriptions of the Japanese invasion of China. Seeing how the Japanese didn't acknowledge what they did in China forced me to change my mind about keeping my silence."

Li first went to the Japanese Embassy in Beijing, but was refused entry by the young Chinese guard. However, as soon as Li showed the guard his ID indicating his retirement status from the People's Liberation Army, the guard became extremely polite. The guard then told Li to ask for help at the local municipal government, which, in turn, suggested that Li seek out Geng Zhun, the former leader of the forced labor uprising, known as the Hanaoka Uprising, which took place in one of the mines a few months before the Japanese defeat in 1945. Although Geng Zhun had told him upon meeting him, "Don't even think about filing a lawsuit, it'll be difficult (*Bu yao da, bu hao da*)," Li could not let it go. After he returned to Beijing, Li saw a television news report on Zhang Jian, a Chinese lawyer working

21. Both the Japanese government and the Supreme Commander of the Allied Powers (which occupied Japan after World War II, from 1945 to 1952) had growing concerns about the labor movements emerging as a result of coalitions between the Chinese, particularly CCP members, and the Japanese laborers in occupied Japan. It became in their respective interests to repatriate the Chinese, which took place from October 9 to December 11, 1945. A total of 10,924 Chinese were sent home by the Nihon Senpaku (a Japanese shipping company), and 19,686 aboard US-manned landing ships, tank (LSTs).

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with a group of Japanese lawyers on behalf of several former comfort women to file lawsuits in Japan. This report prompted him to contact Zhang Jian, to whom he expressed his desire to file a lawsuit. "The bottom line is," Li punctuated his recounting, "every time our government negotiated with Japan, they didn't bring up the issue of reparations in favor of getting trade deals from Japan."

The Chinese Lawyers

Chinese lawyer Zhang Jian was drawn into the legal redress movement through a chance encounter with one of the Japanese lawyers at the 1995 Fourth World Conference on Women in Beijing. When Morita Noriko, a veteran female Japanese lawyer, contacted her after the conference to work with a group of Japanese lawyers to file lawsuits in Japan on behalf of victims of sexual slavery by the Japanese Army, Zhang was taken by surprise. She had never heard of comfort women, she told me in her modest law office in Beijing in the spring of 2013.

While she usually maintains a cool composure, her eyes sparkled and her voice became animated as she started to recount her early days of involvement in the lawsuits. "I couldn't help asking why these Japanese lawyers were starting these lawsuits on behalf of Chinese victims, I mean, as Japanese," Zhang shook her head laughing and continued, "I was skeptical of their motives, you know. But then, after reading the legal document submitted to the court, I realized that these Japanese were serious and conscientious (*renzhen*). They'd put so much effort into studying the issue. I came to realize that for these Japanese lawyers, working for Chinese victims pro bono is a way of redeeming their own nation. I came to understand that they were the real patriots (*aiguo*)."

Zhang thus agreed to help the Japanese lawyers' ambitious, if not "reckless," project (as many colleagues of the Japanese lawyers described it, well aware of the tremendous difficulty ahead, both legally and politically) by identifying some former comfort women and obtaining their stories. "I told them that there was no problem working with them pro bono because I thought it would be easy," Zhang laughed again, and pulled out photo albums from her field trips to rural Chinese villages in the mid-1990s. "It was really hard for a city girl like me. For me, it was a discovery of rural China. Going hours and hours on a cart pulled by a horse on unpaved roads in this dry, mountainous landscape to find a level of poverty never seen before .... And the stories these women told me. They were nothing like the stories recounted in the legal document. They didn't tell the Japanese lawyers their whole stories. I was in shock."

The Chinese Activist

In the early 1990s, the Chinese media started to pick up on sentiments like those held by Li Guoqiang. Tong Zeng, a young legal scholar who holds a masters' degree from Beijing University, wrote an essay in 1990 entitled "China Should Not

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Wait to Seek Compensation from Japan," suggesting that ordinary individuals could pursue compensation by separating the reparation issue between states from the compensation issue for individuals. Tong later wrote another essay entitled "New Concept in International Law: Victim Compensation" in *Fazhi ribao [Legal Daily]* (Beijing) in 1991 (Tong 1991), subsequently reprinted in various other newspapers in China.

While he was studying economic law at Beijing University between 1986 and 1989, he was mesmerized by various global tectonic shifts—the fall of the Soviet Union, the unification of Germany, and the end of the Cold War. Hearing about how former Eastern Bloc countries such as Poland were seeking compensation from Russia, Tong started to look into the issue of compensation, which resulted in the aforementioned essay. After this essay was reprinted in various other newspapers, an avalanche of letters from victims or victims' bereaved families started to arrive. Many letters were simply addressed to "Tong Zeng, legal scholar in Beijing." He keeps in cardboard boxes the more than 10,000 letters that made it to him. When I visited him in his sleek office in the spring of 2013, he pulled out some of these boxes for me. Many letters were written with such force that the subsequent sheets of paper had imprints. Many letter writers recounted their sufferings over many pages. Many came from bereaved family members written on work-unit letterheads from all around China. The time was ripe, it seemed, for their voices to be heard.

But when more than 10,000 victims and their family members showed up in front of the Japanese embassy in Beijing in 1993, the Chinese government started to suppress this emerging movement. Tong was followed by the Public Security Bureau police. When Hayashi Toshitaka, one of the lead Japanese lawyers, visited Beijing to meet Tong, the police watched over their meeting and the assembled victims were sent away. The second time around, Tong managed to introduce one of the victims to Hayashi by arranging a secret meeting in the basement of a hotel. While leafing through scrapbooks containing newspaper articles reporting on his activities, Tong recounted his involvement at that time:

> When I wrote the essay in 1991, I originally thought of it as an intellectual exercise and that was it—I didn't think about anything beyond it. But then after receiving more than ten thousand letters, I started to feel responsibility. Chinese courts at that time were not open (*bu kaifang*) and didn't accept victims' claims. While it is undeniable that these compensation lawsuits filed in Japan would never have happened without the Japanese lawyers' initiatives, these thousands of letters demonstrated that the lawsuits in Japan were based on real demands from the Chinese. And until I received these letters, the predominant sentiments in China had been all about "friendship with Japan!" But these voices demanding justice, which became public through these letters, shifted the sentiments, I think.

The Chinese government saw these growing sentiments as potential political threats, and it exerted pressure large and small on victims as well as their supporters to curtail or abandon their efforts.

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The Japanese Lawyers

Many plaintiffs in the compensation lawsuits shared with me how until very recently they had received various threats from the Chinese authorities, so much so that they felt the need to change their phone numbers frequently. Yet the Japanese lawyers, unaware of the tense and suppressive atmosphere in China in response to growing public sentiments for seeking redress, were upbeat. They were driven to represent Chinese victims by a newly discovered urge to redeem Japan as well as their own professionalism through their pro bono work. These were elite and highly accomplished lawyers, who, one way or another, came to the shockingly embarrassing recognition that, despite their famed careers as human rights lawyers, they had never given any thought to challenging one of the most gruesome and systematic forms of injustice—Japan's imperial violence.

It started with a chance encounter of a prominent Japanese lawyer Hayashi Toshitaka, who was visiting Beijing in May 1994 as part of a Japanese delegation of lawyers to participate in a conference. The meeting was set up by the Chinese Academy of Social Sciences in order to promote interactions among Chinese and Japanese lawyers. During their stay in Beijing and only a few days after their emotional visit to the Nanjing Massacre Museum, the Japanese lawyers heard the media reports on the public remarks made by the newly appointed Japanese Minister of Justice, Nagano Shigeto, at a press conference on May 6, 1994. Minister Nagano expressed his view that "the Nanjing Massacre is made up" and that it was a mistake to consider the Asia-Pacific War as invasion. He instead claimed that the war was a liberation of colonized countries.[22] Nagano's remarks triggered fierce responses in China. The Japanese lawyers' delegation in Beijing delivered a statement to the Chinese media, expressing their protest against the Justice Minister's remarks. It was on this occasion that Hayashi was confronted by a Japanese journalist, who had been stationed in Beijing and who had been following the growing public sentiment to seek belated redress. Why had he never considered taking up a compensation case on behalf of Chinese war victims? This was, as Hayashi put it, "a slap in my face. His challenging words totally shattered my confidence and sense of achievement as a human rights lawyer with several landmark cases under my belt."

One by one, Japanese lawyers were drawn into this mission of, on the one hand, seeking belated compensation and an official apology for the Chinese victims, and, on the other, re-presenting historical facts to the public to remedy the pervasive historical amnesia within Japanese society that the lawyers saw as the source of Japanese inability to come to terms with its own imperialist past. Tanaka Makio, a passionate, articulate lawyer and a man of action, explained to a group of Chinese victims how he felt the need to repay the debt that he had inherited from his parents' generation:

> When I started working as a lawyer many years ago, I was not interested in Japan's imperial past. But the news about the discovery of human

22. Justice Minister Nagano was forced to resign within eleven days of his appointment as a result of these remarks.

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> remains [which many suspected belonged to victims of wartime human experiments] at the former site of the Japanese Army Medical College near Shinjuku [a downtown Tokyo skyscraper area] led me to start interviewing the surviving families of the victims of human biological experiments at Unit 731 in Harbin [in Northeast China], which shocked me tremendously.[23] Since then, I have strongly felt the weight of perpetration *(kagai no omosa)*. As the postwar generation, we inherit the burden of the past. This is my lifework, and I cannot simply consign these events to the past.

The "Chinese postwar compensation lawyers team" (*Chūgokujin sengo hoshō bengodan*) was thus formed in August 1995 on the occasion of the fiftieth anniversary of the Japanese defeat in World War II. Since its inception, the Japanese lawyers' team has grown to nearly 300 members. How this lawyers' movement emerged reflects a larger historical context–China's transition to a market-oriented economy, the end of the Cold War, and Japanese society's revisionist swing, to name a few–that aligned the sentiments of varying actors involved in these transnational legal redress movements. All in all, the actors involved felt the need to challenge *(for)-given time* and the underlying economy of debt that their respective governments had set as their organizing principle for dealing with their contested pasts stemming from the Japanese imperial violence in China.

The Witness

When Wang Aimei, one of the first former comfort women that the Chinese lawyer Zhang Jian contacted, went to Japan as a witness, she was terrified at both the idea of going to Japan and of testifying in court. Zhang related to me how she was quite shocked when she first visited Wang in rural Shanxi Province in 1996. The story Wang told Zhang about her wartime experience—a story that she had never shared with her own family and that she had asked Zhang to keep secret from them—was much more brutal than what Zhang had read in the legal document prepared by the Japanese lawyers. Asked why she had not told the full story to the Japanese lawyers, Wang told Zhang: "If I tell the Japanese too much, they would kill me, wouldn't they?" She had never left her remote village before, but she became one of the first women to testify in the Japanese court along with three other women.

23. On July 22, 1989, construction workers unearthed remains of more than 100 human individuals at the construction site for the new National Institute of Health building in Shinjuku. Since the site was once that of the Japanese Army Medical College and only steps away from the former laboratory of Ishii Shirō, who taught bacteriology at the college and was in charge of the Unit 731 human biological experimental site in Northeast China, speculation emerged that the remains belonged to victims of human experiments by the Japanese Army. Suspicion intensified when the Japanese government ordered the Shinjuku Ward office to cremate and bury the remains without delay. A group of citizens organized a movement to preserve the remains for further examination and filed a lawsuit on September 2, 1993 (Heisei 5 [gyō u] No. 244), which Tanaka and other lawyers represented. The case eventually went to the Supreme Court (Heisei 8 [gyō tsu] No. 67), which ruled against the plaintiffs on December 19, 2000.

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Distrust of the Japanese was so strong that one plaintiff had to deceive her son to obtain her passport to join the trip to Japan. Her son was afraid that the Japanese would kill his mother if she appeared in court. Testifying in court on only the third day after their arrival in Japan was torturous for these women, and Zhang was concerned about them: "They were in so much pain testifying in court and they were under such distress that I seriously worried that they might fall apart," Zhang recalled. Yet, by the time they were about to leave Japan, Wang whispered to Zhang: "There are good Japanese, actually. They are different from Japanese devils (*Riben guizi*, a Chinese term often used to describe Japanese during and after the war)."

What Wang Aimei probably did not quite realize when she waved at the assembled Japanese supporters with a big smile at Narita airport on her way back to China is how her courageous trip opened up a new legal space for other victims to follow. Out of the series of postwar compensation lawsuits emerged a *transnational legal space* where Chinese victims came to attain a form of *transnational legal agency* to seek belated justice for the deaths and injuries inflicted by the Japanese government and corporations in Japanese courts. The countryman in Kafka's "Before the Law" never gained the courage to go through the gate of Law; we as readers never know what kind of legal space awaited the man. The man was, temporally, before the Law, but never spatially before the Law. In contrast, our protagonists from China now finally stood before the law.

IV. BETWEEN THE LAW

What I am calling *transnational legal space* entitles plaintiffs to full participation in legal performances in courts, yet simultaneously subjects them to the Law's absence as they enter the gate of Law to account for Japan's imperial violence, which is at once both transnational and irreducibly local. What is described in Kafka's "Before the Law" assumes spatial and temporal homogeneity within unspecified time and place in the manner of a fable. Chinese plaintiffs standing before Japanese judges, however, negotiate a much more complex and heterogeneous temporality and spatiality. An exploration of this emergent transnational legal space tells a story of those who actually enter the gate but find themselves *between the law*, where Law remains as elusive as Kafka's "Before the Law" to account for the past violence.

The compensation cases filed by Chinese victims take place within a space of fundamental disjuncture between law and society: the plaintiffs' society (China) is not governed by the law under which their claims are judged (Japan). They are appealing to the legal system of the country that originally inflicted violence against them. Added to this geographical disjuncture in jurisdiction is the legal standing of individuals under what is loosely termed international law—international legal agency of individuals—which remains a disputed point among legal scholars. Plaintiffs' claims based on Article 3 of the Hague Convention of 1907, which sets out compensation liability for wartime damage, were all rejected in the various Japanese courts based on the argument that this article is not meant for

defining individual rights.[24] Put simply, the courts have repeatedly refused to engage international law by denying the international legal agency of individuals. Instead, the legal discussion primarily revolved around the deployment of codified Japanese law (Civil Code).

This situation has led to the emergence of what I call *transnational legal agency* and *transnational legal space*, not as neutral and homogeneous in-betweenness but as an embodiment of geographical and temporal disjuncture, rupture, and asymmetry that reflects the historical constellation of the region. Transnational legal *agency* emerges from crossing over one's own jurisdiction to stand before another in order to make transnational claims. A particular form of transnational legal *space* emerges out of the necessity to juridify transnational claims using a domestic legal system.[25] The makeshift nature of this legal space itself indicates how the unmaking of empire in the legal sphere through legal redress for imperial violence appears as an afterthought. Or was it part of the original plan not to address such issues within the legal sphere? To answer this question, we shall first look at how this legal space emerges as an uncharted legal frontier and examine the place of law within this space.

Since the Japanese legal system does not allow class action lawsuits, these postwar compensation lawsuits have taken place in a series of localized and simultaneous cases across Japan, with varying results. But all those involved in these cases—Chinese plaintiffs, lawyers, the Japanese government and corporations, the judges, and citizen supporters—see these cases as a linked whole that addresses historical responsibility for Japan's imperial violence. Looking at the series of compensation lawsuits as a whole, therefore, gives us a better sense of how the legal redress processes developed over two decades and what kind of role that Law played.

Three Legal Doctrines and the Legal Lacuna

Hayashi Toshitaka, the Japanese lawyer whose chance encounter in Beijing set in motion the legal redress movement across national boundaries, recounted to me in May 2004 how "reckless" the whole idea of starting lawsuits like theirs seemed at the time:

> If you are not an insane lawyer, you wouldn't join lawsuits like these postwar compensation lawsuits. Lawyers' common sense tells you that there is

24. Japan ratified the Hague Convention on November 6, 1911, and then enacted "*Riku-sen no hōki kanshū ni kansuru jōyaku*" (Regulations Concerning the Laws and Customs of War on Land) on January 13, 1912. Article 3 of the Hague Convention of 1907 (Laws and Customs of War on Land and its annex: Regulations Concerning the Laws and Customs of War on Land) states: "A belligerent party which violates the provisions of the said Regulations shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces."

25. The transnational legal space that this article analyzes points to dynamics different from those discussed under the rubric of transnational law. The starting point of the discussion on transnational law is the absence of what is traditionally considered "law," as Roger Cotterrell's (2012) concise overview of the literature sums up. In contrast, the series of compensation lawsuits analyzed in this article starts with a public recognition of the presence of codified law, which, as the legal process makes visible, is not as firmly engraved in stone as it may initially appear.

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> no way of winning cases like these. I contacted many of my colleagues—all highly accomplished and with a strong sense of pursuing justice—and they looked at me like I'm insane. All of them immediately pointed out the impossibility of breaking the twin legal barriers of the statute of limitations and the sovereign immunity doctrines, with which I concurred. You know the article 724 of Civil Code, which defines the twenty-year statute of limitations. When we filed the first lawsuit in 1995, fifty years had already passed since the end of Japanese empire in 1945.[26] And the sovereign immunity doctrine. The Imperial Constitution of Japan [prewar Constitution] exempted the Japanese state from taking responsibility for exercise of state power, and we were dealing with state violence that officially ended in 1945. We were really reckless, if you think about it. But, then, we were much younger, you know, and we felt that we had nothing to lose by being creative and thinking outside of box. And we felt like we were stepping into the legal frontier.

Legal frontier it was. The Cold War and other historical factors, including *(for)given time* between China and Japan, had effectively prevented postwar compensation lawsuits from taking place earlier. Legal redress for individuals that should have happened immediately after the demise of the Japanese Empire in 1945 (thus avoiding the expiration of the statute of limitations) was deferred for fifty Cold War years. Just as many frontier studies reveal the manufactured nature of "frontiers," the legal frontier that the Japanese lawyers saw in front of them was thus a product of the post-1945 world—it became frontier when the long-deferred attempts to account for historical responsibility emerged in the 1990s as a belated project of the unmaking of empire in the legal sphere.

The three legal doctrines deployed over the course of two decades that the plaintiffs' lawyers recognized as legal frontiers—the statute of limitations, sovereign immunity, and the rejection of individual legal rights to claim compensation—denied the Chinese plaintiffs' claims in succession. These legal developments have effectively presented a legal lacuna, where the plaintiffs found themselves not *before the law* as they had expected but *between the law*, an extra-legal space devoid of Law.[27] It is to this lacuna that we now turn.

The First Legal Frontier: The Statute of Limitations

In the majority of cases relating to Chinese victims, the court deployed the statute of limitations to deny the Chinese plaintiffs' legal standing. The plaintiffs

26. Due to the lack of diplomatic relations between the PRC and Japan until 1972, individual Chinese were not allowed to travel to Japan until 1979. And even after 1979, for most plaintiffs, who are mostly impoverished and illiterate farmers in rural China, filing a lawsuit in Japan was beyond their means and imagination.

27. While the seemingly makeshift nature of the transnational legal space created through the postwar compensation cases and the legal lacuna that the legal process produced may at first glance resemble what Fleur Johns calls "non-legality in international law" (Johns 2013), the legal space that has emerged through the redress movement points to different dynamics, as we shall see through my following ethnography.

were perplexed by the temporal space of exception, which denied them the benefit of the law's blessing. It is ironic that many plaintiffs expected law's ability to deliver justice, since, as many put it, they were in "a society with the rule of law [i.e., Japan], unlike ours here in China."[28]

Yet the development of the lawsuits resulted in turning this temporal barrier upside down by effectively extending the temporal scope of what counts as violence inflicted by the Japanese. The lawsuits brought to the fore not only the violence and injustice during the wartime, but also in the postwar era. We have seen earlier in this article how, in the forced labor case filed in the Fukuoka Regional Court, the courtroom disclosure of the hidden Japanese government archives revealed not only the inverted compensation that the Japanese government paid in 1946 for the Japanese corporations involved in the use of Chinese forced labor but also the postwar Japanese government's active involvement in concealing this wartime practice. It is a vivid illustration of *postwar* injustice.

The statute of limitations rests on the notion of radical discontinuity, which equates the end of injury with the end of original violence. The story of inverted compensation posed a sharp critique of this assumption by demonstrating the persistent *and* new forms of injury brought by systematic injustice *after* the Japanese defeat and the demise of the Japanese Empire. The courtroom discussion around the statute of limitations thus came to highlight the question of *postwar responsibility* (*sengo sekinin*) by shifting the focus from wartime violence to postwar injustice.[29] The case thus raises a new set of questions: Where and when do violence and injustice actually end? Where and when does injury from violence end?

By shifting the terms of debate to consider such questions, the courts' deployment of the statute of limitations—meant to limit the temporal scope of law's applicability—ironically resulted in expanding the temporal scope of accountability to encompass post-1945 actions and inactions of the Japanese government and corporations. Indeed, winning cases for the plaintiffs came through a detailed accounting of postwar violence and injury. In several forced labor cases, the courts ruled that the deployment of the statute of limitations is "against the principle of justice and fairness." The 2002 forced labor ruling at the Fukuoka Regional Court, as we saw earlier, made this point crystal clear and brought a winning ruling for the plaintiffs against Mitsui Corporation. Yet even in this landmark case that broke the legal barrier of the statute of limitations, the judges continued to deny the legal responsibility of the Japanese state by using the second doctrine, that of sovereign immunity.

The Second Legal Frontier: Sovereign Immunity

"Ghostly" is how many Japanese lawyers involved in the postwar compensation cases often describe the doctrine of sovereign immunity. They liken the deployment

28. These comments reflect many Chinese plaintiffs' perception of the Japanese court as "a utopic institutional site" (Comaroff and Comaroff 2006, 33) in contrast to their perception of their own society.

29. On postwar responsibility (*sengo sekinin*), see, for example, Ōnuma (2007).

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of this doctrine to the apparition of prewar imperial Japan. What the deployment of sovereign immunity does in effect is to declare the present Japanese Constitution irrelevant for deciding the cases because the cases involve actions that took place under the 1899 Meiji Imperial Constitution of Japan. The plaintiffs had thought that they were standing before the law of the present, yet they found themselves standing before a law that no longer exists. Under this doctrine, a legal void is created through the declaration of the law's absence (the current Japanese "Peace" Constitution) and apparitional presenting (the Imperial Constitution), leaving the Chinese plaintiffs between the two temporalities of prewar and postwar, raising questions about the assumed radical discontinuity between prewar and postwar legal systems.

As the legal processes developed, however, it became clearer and clearer to the parties involved that somebody was doing the work of conjuring up the ghost: as the plaintiffs' lawyers dug deep into the historical literature on the prewar legal system, they discovered, to their surprise, that there was no codified legal foundation to this doctrine. Instead, a close reading of prewar legal practice actually showed that even the Imperial Japanese state did not enjoy automatic exemption from legal responsibility for state actions. They learned how even under the Imperial Constitution, sovereign immunity became effective through precedents that conjured up the illusory image of the state devoid of accountability, without a codified legal basis but often in response to political pressures.[30]

In a "good news, bad news" scenario, in 2004 the Fukuoka High Court dramatically acknowledged in the forced labor case that the doctrine of sovereign immunity was a product of precedents without legal grounds, and declared that deployment of this doctrine went against "the principle of justice and fairness." Yet while this High Court decision overcame the second legal barrier, it simultaneously restored the first one, overturning the lower court decision (to demand the Mitsui Corporation to pay compensation) by deploying the statute of limitations.[31] In effect, these two doctrines were deployed to create a legal space of exception in which the law becomes irrelevant by bringing to the fore the layers of temporal legal terrains, which destabilizes the presentness of law in the present.

The Third Legal Frontier: Individual Legal Right to Claim Compensation

In the last doctrine to be deployed, this time in the 2007 Supreme Court decision, the judges ruled that the plaintiffs lack the legal right to claim compensation due to the 1972 Joint Communiqué in which the Chinese government renounced the right to claim reparations from Japan. While standing before the Japanese law,

30. For an account of these lawyers' quest for the origin of sovereign immunity doctrine, see Chūgokujin sensō higai baishō seikyū jiken bengodan (2005, 224–37). For detailed historical and legal analyses of the ghostly nature of sovereign immunity doctrine, see Matsumoto (2003) and Okada (2013).

31. Fukuoka High Court ruling on May 24, 2004 (Heisei 14 [ne] No. 511). Judges Minoda Takayuki and Komatani Takao signed the judgment document, but Judge Fujimoto Hisatoshi did not sign due to his objection ("*sashitsukae no tame*") to the decision. The same language of "the principle of justice and fairness" was used in another forced labor case in the Nīgata Regional Court ruling on March 26, 2004 (Heisei 11 [wa] No. 543, Heisei 12 [wa] No. 489, and Heisei 14 [wa] No. 139).

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this doctrine put the plaintiffs in a transnational space between China and Japan, a space in the form of legal void due to the agreement between the two governments.

What needs to be underlined, however, is that the court refused to recognize the plaintiffs' *legal* right to claim compensation, a detail often overlooked in commentaries on this landmark case. To understand the importance of this detail, we have to revisit the supplementary paragraph (*fugen*) of the ruling, which was introduced in my earlier discussion of the case. *Fugen*, or supplement, plays an interesting role within the Japanese legal lexicon. *Fugen* follows *shubun* (summary of the decision) and "facts and reasons" (the main argument of the ruling), often as a paragraph or two at the end of the ruling. The function of *fugen* is disputed among legal professionals. Some call it extra-legal, a nonintegral part of the decision, and therefore not having the same legal effect as the preceding text. Some call it the essence of the conscience of the judges, which is expressed outside of the constraints of law. In either case, both views share an understanding that *fugen* is something external to the actual ruling, something that goes beyond the boundary of Law.

In the *fugen* written for the forced labor case, the Supreme Court judges' deeply emotional and strong language emphasized the sufferings the plaintiffs endured not only during the war but also over the ensuing years. They contrasted the plaintiffs' psychological and physical sufferings to the economic benefits that the defendant, Nishimatsu Construction Corporation, enjoyed through its wartime use of forced labor *and* through the inverted compensation it received from the Japanese government after the war ended. The judges further reminded the defendant and the Japanese government that the Chinese plaintiffs' lack of individual legal rights to claim compensation did not prohibit the Nishimatsu Corporation and the Japanese government from making their own voluntary arrangements for redress, and strongly encouraged them to make such efforts to provide compensation for the Chinese.

Fugen, this extra-legal supplementary text, declares Law's irrelevance for seeking redress. Yet in its extra-legal authority, the court strongly suggests that the moral and financial debt be paid back to the Chinese. The voices of the judges are tucked into this supplementary space between the law. In other words, the supplementary space is supposed to supplement or provide what the law itself cannot. Indeed, in creating this space, the judiciary declares itself incapable of providing justice through the law. Instead, yet again, Law defers the arrival of justice, this time by suggesting that the appropriate sphere for its arrival is outside of Law.

When we began this section, it was the Chinese plaintiffs who stood before the law. Or so it seemed. As the legal processes progressed, we found these plaintiffs not *before the law* but *between the law*, as the successive deployment of legal doctrines made their legal standing questionable, and, in turn, made the law irrelevant to them. Temporal and geographical disjunctures, which effectively located the plaintiffs between prewar and postwar Japanese legal systems and between Chinese and Japanese jurisdictions, made the transnational legal space for individuals devoid of itself. At the end of the story culminating in the Supreme Court decision, we realize that it was a story of how Law made itself irrelevant through various doctrinal measures. Law absented itself by declaring itself irrelevant to the case.

The gate of law opened, it seemed, yet, as in Kafka's story, one gate led to another in succession, and in the end, Law did not seem present after all.[32] What does this legal lacuna indicate? We have seen earlier how the forced labor case disclosed the unfinished project of the unmaking of empire in the *economic* sphere through the story of hidden archives. When Law perpetually defers justice in cases that confront this unfinished project, how are we to understand this legal development?

An answer, I suggest in the next and last section, lies in the moment of Japan's de-imperialization in 1945 and the place of law at that historical juncture. As we shall see, this lacuna reflects a much less discussed moment back in history—the moment of the Japanese empire's demise in 1945 and the birth of a new legal framework that publicly announced Japan's rebirth as a democratic nation-state. Law's absence reveals the unfinished project of unmaking of empire within the *legal* sphere.

Foundational Violence and the Post-~~Imperial~~ Legal Space

Once again we need to go back in time to the foundational moment of the postwar Japanese Constitution, the symbol of Japan's rebirth as a democratic and peace-seeking nation devoid of its imperial ambition, and commonly referred to in Japan as the "Peace" Constitution. The Preamble of the Japanese Constitution declares to the world in an idealistic and poetically powerful language that the Japanese people seek to establish themselves as "peace-seeking" (*kōkyū no heiwa wo kinen*) people. The Constitution was written in the form of an official pronouncement of Japan's rebirth as a democratic and peace-seeking nation. To mark this new beginning as a radical departure from its imperialist past, Japanese society embraced the term "Japan's rebirth" (*shinsei Nihon*) along with the Japanese Constitution, which literally marks this rebirth through inscription. The most emblematic and championed text is Article 9, which many see as the symbol of Japan's de-imperialization. In it, Japan renounces war as well as the possession and the use of military forces.

But there are other significant moments in the Constitution that squarely announce Japan's radical shift to a democratic society. Article 1 proclaims that the Japanese people are sovereign, not the Emperor, as was the case under the 1899 Imperial Constitution. To reinforce this point, Article 17 declares that the Japanese state is accountable to the people for state actions and that individuals can seek compensation for wrongful acts, which is a direct rejection of the prewar doctrine of sovereign immunity. The State Redress Act was enacted in 1947 to articulate this Article 17. The message that this Constitution proclaims to the world is that Japanese society embraces the democratic ideal through the determination not to resort to another war while making the state accountable for its exercise of state power. It seemed as if nothing could be missing from this seemingly progressive new legal system.

32. My analysis of these legal doctrines in this section is inspired by Jacques Derrida (1992a), who, through his reading of Kafka's fable, points to the Law's lack of presence in the here and now.

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Yet, the legal lacuna, made visible through the successive deployment of the three legal doctrines, directs us to the foundational violence contained within the seemingly innocent pronouncement of "we, the Japanese people" in the newly adopted "Peace Constitution." Those excluded through this pronouncement of "we, the Japanese people" are the former colonial and imperial subjects of Japanese Empire, who "disappeared" from the postwar Japanese legal consciousness. Japan's de-imperialization in the legal sphere took the form of erasing the empire by the declaration of *kokumin* (Japanese people) as the holder of the subject position and by *abandoning* the former colonial and imperial subjects by denying them the protection of the new democratic and peace-seeking legal system.[33]

Yet this erasure, which took place during the drafting of the Constitution (another instance of *before the law*),[34] leaves no trace within the Preamble. Despite the stated determination to seek peace spelled out poetically in the Preamble, any sense of repentance is located in the war experience of the Japanese people: "We, the Japanese people … resolved that never again shall we be visited with the horrors of war through the action of government." The oft-used phrase, "*postwar* Constitution" is apt here: the "Peace" Constitution was a *post-war* Constitution, not a *post-imperial* Constitution. The origin story of Japan's rebirth is thus silent about Japan's imperialist history. Moreover, in portraying the Japanese people as the passive recipient of "the horrors of the war," the Preamble evades the responsibility of the Japanese people while making the state solely accountable for the war. This historical amnesia—the silencing of its imperial violence—forms the foundational violence of the Japanese Constitution, which is championed as the embodiment of postwar peace and democracy.[35]

The abandonment of the former colonial and imperial subjects in the legal sphere—a fact that is often neglected, forgotten, or unspoken in the mainstream scholarship of the Japanese legal system—manifests itself today in the form of the legal lacuna, a transnational legal space of exception, where the victims stand *between the law*. Despite the nationwide obsession with Japan's wartime past (which often expresses itself in amnesic practices), the structure of justice in Japan is deeply embedded in the structure of erasure that I call *law's imperial amnesia*.[36] This

33. Japanese sociologist Oguma Eiji (1995) provides a sharp analysis of the creation of what he calls "the myth of a single ethnic nation" in postwar Japan. See also Kang (1996). From a legal perspective, see Gotō (2012, 2013) and Ōnuma (1986, 2004, 2007). For a detailed historical study of the movement of people and properties in the process of dissolving the Japanese empire and how such post-1945 arrangement shaped the reparation issues, see Asano (2013).

34. The draft Constitution written by Government Section of the General Headquarters (GHQ) was completed and approved by General Douglas MacArthur on February 12, 1946. In this GHQ draft, the subject position was held by those referred to as "people," "person," and "all natural persons." Furthermore, Article XVI explicitly states the inclusion of foreign nationals under the legal protection by stating that "[a]liens shall be entitled to the equal protection of law." Yet in the finalized version of the Constitution in Japanese, the subject position is reduced to "*kokumin*" (Japanese people) and no article is devoted to state the equal protection of foreign nationals spelled out in the GHQ draft Article XVI.

For a concise analysis of this of erasure in the process of drafting the Constitution of Japan, see Gotō (2012, 2013) and Koseki (1989).

35. Jacques Derrida directs our attention to such amnesia embedded at the origin of law by pointing out how "a silence is walled up in the violent structure of the founding act" (1992b, 13–14).

36. Imperial amnesia in the legal sphere, then, goes parallel to that within sociocultural sphere, which, as many have shown, often expresses itself in obsession with Japanese own victimhood.

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abandonment is inscribed even more explicitly in the State Redress Act, which symbolizes Japan's de-imperialization alongside the Constitution. The legal grounds for not recognizing the legal agency of the Chinese plaintiffs in various compensation lawsuits, for example, drew on Article 6 of the State Redress Act, which excludes foreigners from benefiting from this law unless their home countries offer reciprocal legal protection.[37] The court's use of this Article 6 sheds light on the oft-neglected inscription of exclusion.

The legal lacuna thus ironically points to this silent abandonment and erasure that took place at the moment of Japan's rebirth. The legal lacuna, which leaves the Chinese plaintiffs between the law, is thus created not only through the deployment of legal doctrines. I argue that it also reflects postwar Japan's foundational violence, in which the unwillingness to provide a legal space to address Japan's imperial violence became inscribed as an integral part of the process of the unmaking of empire. This is what I call a *post-~~imperial~~ legal space*, which is created through *erasure* of empire and imperial and colonial subjects in the post-imperial legal consciousness.

V. CONCLUSION: LAW'S IMPERIAL AMNESIA AND THE PERSISTENCE OF REDRESS

The *post-~~imperial~~ legal space* that I bring to light in this article directs our attention to a slightly different terrain than what is explored through the concept of legal imperialism in such forms as the law's role in colonialism, American legal imperialism after World War II, or international law as an expression of legal imperialism of the West.[38] What I highlighted instead is the foundational violence inscribed onto the radically new legal system: legal abandonment through the erasure of empire at the moment of its demise. This imperial amnesia manifests itself today as a legal lacuna, made visible through the deployment of legal doctrines. We have found in the compensation cases—the formal and belated process of the unmaking of empire in the legal sphere—a refusal to complete this long-deferred task of imperial reckoning legally.

Analytically, *between the law* is an optic that allows us to access the uneven terrain of legal space that embodies temporal and spatial disjuncture, rupture, and asymmetry, and, in doing so, to capture the role and place of law. In the compensation cases examined in this article, *between the law* elucidates the legal dynamics that defy the assumed presence of Law by disclosing the etched erasure within it. We have seen how the legal process revealed the absence of Law hidden behind the appearance of law. I have argued that this lacuna reflects the institutional memory of the legal abandonment of former colonial and imperial subjects after the demise of Japanese empire.

37. This calls for further investigation into how this exclusionary clause entered into this law, especially given the timing of its enactment in 1947, when Japan was under the US occupation and the world saw the deepening of the Cold War.

38. On legal imperialism, see, for example, Gardner (1980), Schmidhauser (1992), Buchanan and Pahuja (2004), and Anghie (2004).

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Lacuna is the sign and manifestation of this historical erasure, which is inscribed onto the existing codified law, but that nevertheless remains illegible to the public. This legal lacuna, then, captures the place of law different from that explored under the rubric of transnational law (where nontraditional "law" presides)[39] or "non-legality" (a legal vacuum that is often recognized as illegal or outside of the purview of law).[40] The discussion on transnational law or non-legality revolves around the question of how to recognize seemingly law-less space as a legal space. In contrast, *between the law* makes visible the concealed absence of law, *despite* the assumed presence of law. In so doing, *between the law* points to the inscribed erasure within the law in the present.

Empirically, my ethnographic study has demonstrated a curious absence of Law—or to put it more accurately, absenting of the law—despite the acknowledged presence of codified domestic Japanese law that is deployed within this emergent transnational legal space. I have shown how Law absents itself through legal practices, and with what consequences.[41] The ethnographic reality of *between the law* as a product of legal practices directs us to the unfinished project of the unmaking of empire in the legal sphere at the intersection of law and economy.[42] This is produced not by accident, deferral, or inertia but by the *erasure* of empire from the post-imperial legal consciousness in East Asia in pursuit of postwar reconstruction, economic development, and wealth accumulation. The task of unmaking of empire within the legal sphere was framed within the concept of post-*war* while consciously erasing that of post-*imperial*.

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39. Echoing the conceptualization of transnational law laid out by Philip C. Jessup (1956), Zumbansen (2008, 10–11) contends that transnational "law" emerges out of norm-generating mechanisms, broadly speaking. Zumbansen writes that "transnational law invites a fundamental reflection of what is to be considered *law*" (Zumbansen 2011, 3). For a concise overview of transnational law, see Cotterrell (2012).

40. Through the concept of "non-legality in international law," Fleur Johns (2013) explores places where international law is considered absent, and she shows that the seeming legal "vacuum" (which is often recognized as illegal or outside of law) is actually an integral part of international law. In contrast, Law's presence is not only recognized but also assumed within the transnational legal space that the compensation lawsuits filed by Chinese war victims have opened up, in the form of codified Japanese law. Yet, as my ethnographic analysis of the three doctrines deployed in these cases demonstrates, the plaintiffs found themselves standing *effectively* in the absence of Law. The legal proceedings that I have examined in this article illustrate how the courtroom *became* a site for extra-legality as Law declares itself absent or irrelevant *through* the legal proceedings.

As we have seen, Law's absence becomes only visible through a careful reading of the legal proceedings. The secret of the foundational violence—Law's refusal to deliver imperial reckoning to former colonial and imperial subjects—remains less visible and much less discussed even with these cases. To reduce the failed delivery of justice in these lawsuits to the lack of political will, as many commentaries on these cases have done, misses this imperial amnesia that characterizes the postwar Japanese legal structure.

41. As Sally Engle Merry (2006) maintains, an ethnographic analysis of the practice of law is crucial for capturing the presence and absence of law within this transnational legal space. As I have demonstrated ethnographically in this article, Law's presence (and absence) emerges through practice of law, not through the positivist understanding of law. The way in which I "read" the legal doctrines in the cases I study is also ethnographic, and I have presented these doctrines as an integral part of the theatrical performance within the courtroom. I shed light on the ethnographic realities of the heterogeneous legal space where for some Law remains absent as a result of the erasure of empire without accountability for its violence.

42. For a different take on the intersection of law and economy, see Comaroff and Comaroff (2006). Whereas they observe the emergence of "lawlessness" under neoliberal conditions, East Asian cases point to the absence of Law that predate the proliferation of neoliberalism.

Post-imperial legal space explored in this article is both analytical and empirical. Analytically, it is a transitional legal space that follows the dissolution of empire, and captures the process of the unmaking of empire in the legal sphere. I have crossed out "imperial" (post-~~imperial~~ legal space) to call attention to the imperial amnesia embedded in this legal space, captured through the concept of *between the law*. I have shown how the task of post-imperial reckoning was reduced to post-*war* reckoning of the Japanese within the Cold War framework. Post-~~imperial~~ legal space, then, points to the structural unwillingness within the legal domain to engage with imperial reckoning. De-imperialization—transition from an empire to a nation-state—is an essential part of the process of unmaking of empire, but this process has received less attention than its counterpart of decolonization.

The East Asian experience that I have explored in this article brings to light the new dynamics emerging within this *post-~~imperial~~ legal space*, which is not unique to East Asia. As the recent Mau Mau Rebellion case in Britain attests, post-imperial legal redress remains an uncharted legal frontier.[43] Yet there is a noticeable lack of analyses on how former imperialist nations dealt with de-imperialization within their respective legal frameworks within the literature on East Asia, postcolonial studies, or the legal literature on transitional justice, transnational law, or legal imperialism. The ghostly absence of post-imperial legal space within the transitional justice discourse is particularly telling of this glaring omission in our understanding of law's role in colonialism, imperialism, and globalization.[44] Post-imperial legal space remains a legal frontier both as practice and as academic inquiry.

In this article, I have attempted to capture this deliberate and systematic legal lacuna in redressing imperial violence. The cases in East Asia present a particularly revealing form of post-imperial ethos in the legal sphere precisely because the Japanese legal system went through formal de-imperialization, replacing the prewar Imperial Constitution with the postwar "Peace" Constitution, and enacting the 1947 State Redress Act. What I have illustrated in this article is how post-imperial injustice—of erasure, silencing, and inaction—found an alibi in the logic of economy built on debt—that is, the economy of debt endorsed by Japanese, Chinese, and US governments in their common pursuit of economic prosperity at the expense of accounting for individual losses. At the intersection of economy and

43. One of the landmark cases of the post-imperial legal frontier outside of East Asia is the Mau Mau Rebellion. For an overview of this case, see Elkins (2005).

44. How the post-imperial legal space is underexplored intellectually corresponds to the belatedness in addressing such post-imperial reckoning in practice, which is epitomized in Ruti G. Teitel's (2003) historical overview of modern transitional justice. She shows how the first phase starts immediately after World War II with various war tribunals to account for wartime violence. The second phase is the post-Cold War period when the world witnessed a wave of post-socialist and post-authoritarian transitions and reckoning. The third phase is the belated accounting for long-past wrongs at the end of the twentieth century, such as slavery, colonialism, or World War II. Teitel's genealogy of modern transitional justice curiously skips the era of decolonization and de-imperialization, leaving these double processes of major political transitions outside of the analytical realm of transitional justice.

By drawing a link between the transitional *injustice* immediately following the demise of Japanese empire and the recent attempt to belatedly seek imperial reckoning, my study suggests that incorporation of de-imperialization transitional injustice in into the analysis of transitional justice allows us to see hidden dynamics.

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law, we thus found this debt-driven form of the unmaking of empire, perpetually deferring justice while privileging wealth accumulation.

In Kafka's parable, the countryman eventually dies while waiting to go through the gate to stand in front of the Law. This may well be the desired outcome of the Japanese government's persistent deferral of legal justice. It might be hoping that the last of the surviving witnesses will eventually die in front of the gate even though the gate of the law remains open, as the numerous compensation lawsuits filed within Japan since the 1990s attest. Yet persistence of redress is starting to shift the legal frontier itself.

Ever since the South Korean Constitutional Court's landmark decision in 2011 declaring unconstitutional the South Korean government's prohibition on individual compensation claims by its citizens against Japan, some Korean plaintiffs who lost in the forced labor cases in Japan have filed and won cases in the South Korean courts in quick succession, and more cases are yet to come.[45] A different gate of law is now open to South Korean victims in their home country, allowing them to stand before the law.

This new development in South Korea is spurring renewed interest among Chinese victims, lawyers, and activists to seek legal redress within Chinese jurisdictions. On March 18, 2014, the Beijing No. 1 Intermediate People's Court officially accepted the lawsuit submitted on February 26, 2014 by a group of forty wartime forced labor victims and their bereaved family members, who seek compensation and apologies from Mitsubishi Material Corporation and Nippon Coke & Engineering Company (formerly Mitsui Mining). With the emergent pressure

45. See the South Korean Constitutional Court decision, "Challenge Against Act of Omission Involving Article 3 of the 'Agreement on the Settlement of Problem Concerning Property and Claims and the Economic Cooperation Between the Republic of Korea and Japan'" (23-2[A] KCCR 366, *2006Hun-Ma788*, August 30, 2011), which recognized the individual right to claim compensation in the so-called comfort women cases. Similar to the 1972 Joint Communiqué between PRC and Japan, the South Korean government renounced its right to claim reparation from Japan in exchange for future economic cooperation arrangements in the 1965 Treaty between South Korea and Japan ("Treaty on Basic Relations Between Japan and the Republic of Korea" and the accompanying "Agreement Between Japan and the Republic of Korea Concerning the Settlement of Problems in Regard to Property and Claims and Economic Cooperation").

The landmark decision by the Supreme Court of Korea on May 24, 2012 (2009Da22549) echoed the 2011 South Korean Constitutional Court decision in recognizing the individual rights to claim compensation from Japan, and remanded the lower court case against Mitsubishi Heavy Industries (Busan High Court decision 2007Na4288, February 3, 2009) involved in the wartime use of forced labor. Following this Supreme Court decision, on July 10, 2013, the Seoul High Court ordered Nippon Steel & Sumitomo Metal Corporation (former Nippon Steel Corporation, which merged with Sumitomo Metal Industries in October 2012) to pay 100 million Korean won (approximately $88,000) each to the four plaintiffs for the wartime use of forced labor (2012Na44947). On July 30, 2013, the Busan High Court ordered Mitsubishi Heavy Industry to pay 80 million won ($72,040) each to the five plaintiffs (2012Na4497). In addition to these cases remanded by the 2012 Supreme Court decision, the decision prompted other cases to be filed against Japanese corporations. Of those new cases, the Gwangju District Court was the first one to rule on November 1, 2013. The court ordered Mitsubishi Heavy Industries Ltd. to pay 150 million won ($143,000) each in compensation to four surviving Korean women who were enslaved during the war and 80 million won to the bereaved family of the two victims. For an overview of these cases, see Kim (2014).

Development of these legal cases is entwined with the development of legal activism, similar to what Arrington (2014) observes in the Hansen's disease cases, where the structure of the public sphere in Japan and South Korea, respectively, influenced the outcome.

to shift the legal frontier to the jurisdiction of victims, the 2007 Japanese Supreme Court decision to deny legal rights to Chinese forced labor victims while suggesting extra-legal forms of redress to repay moral and monetary debts may not be the end of the legal redress movement, as many have suggested. It may actually signal the opening of a new phase—the belated project of the unmaking of empire in the legal sphere within *post-imperial* legal space—in which the particular form of *postwar* legal space, a product of the Cold War, itself is being challenged.

REFERENCES

Anghie, Antony. 2004. *Imperialism, Sovereignty, and the Making of International Law*. New York: Cambridge University Press.

Arrington, Celeste L. 2014. Leprosy, Legal Mobilization, and the Public Sphere in Japan and South Korea. *Law & Society Review* 48 (3): 563–93.

Asano Toyomi. 2013. *Sengo Nihon no baishō mondai to Higashi Ajia chiiki saihen: seikyūken to rekishi ninshiki mondai no kigen [Japanese Postwar Reparation and Reconfiguration of the East Asia Region: The Right to Claim Reparation and the Origin of the Historical Consciousness Problem]*. Tokyo: Jigakusha shuppan.

Askin, Kelly D. 2001. Comfort Women: Shifting Shame and Stigma from Victims to Victimizers. *International Criminal Law Review* 1 (1/2): 5–32.

Buchanan, Ruth, and Sundhya Pahuja. 2004. Legal Imperialism: Empire's Invisible Hand? In *Empire's New Clothes: Reading Hardt and Negri*, ed. Paul Andrew Passavant and Jodi Dean, 73–95. New York: Routledge.

Cao Haidong, and Huang Xiaowei. 2008. Riben dui hua yuanzhu san shi nian [Thirty Years of Japan's Aid to China]. *Nanfang zhoumo*, February 20. http://www.infzm.com/content/7707 (accessed May 28, 2015).

Chūgokujin sensō higai baishō seikyū jiken bengodan, ed. 2005. *Sajō no shōheki: Chūgokujin sengo hoshō saiban 10 nen no kiseki [The Barrier Built on the Sand: The Ten-Year Trajectory of the Postwar Compensation Lawsuits by Chinese War Victims]*. Tokyo: Nihon hyōronsha.

Comaroff, John L., and Jean Comaroff. 2006. Law and Disorder in the Postcolony: An Introduction. In *Law and Disorder in the Postcolony*, ed. Jean Comaroff, and John L. Comaroff, 1–56, Chicago, IL: University of Chicago Press.

Cotterrell, Roger. 2012. What Is Transnational Law? *Law & Social Inquiry* 37 (2): 500–24.

Derrida, Jacques. 1991. *Given Time: I. Counterfeit Money*, trans. Peggy Kamuf. Chicago, IL: University of Chicago Press.

——. 1992a. Before the Law. In *Acts of Literature*, ed. Derek Attridge, 181–220. New York: Routledge.

——. 1992b. Force of Law: "The Mystical Foundations of Authority." In *Deconstruction and the Possibility of Justice*, ed. Drucilla Cornell, Michel Rosenfeld, and David Gray Calson, 3–29. New York: Routledge.

Draper, Nicholas. 2010. *The Price of Emancipation: Slave-Ownership, Compensation and British Society at the End of Slavery*. New York: Cambridge University Press.

Elkins, Caroline. 2005. *Imperial Reckoning: The Untold Story of Britain's Gulag in Kenya*. New York: Henry Holt and Company.

Gaimushō kanrikyoku. 1946a. *Kajin rōmusha shūrō jijō chōsa hōkokusho [Field Reports on the Work Condition of the Chinese Laborers]*. Tokyo: Diplomatic Record Office of the Ministry of Foreign Affairs of Japan.

——. 1946b. *Kajin rōmusha shūrō tenmatsu hōkoku (yōshi) [Reports on the Work Condition of the Chinese Laborers (Summary)]*. Tokyo: Diplomatic Record Office of the Ministry of Foreign Affairs of Japan.

https://doi.org/10.1111/lsi.12173 Published online by Cambridge University Press

——. 1952–1972. *Taiheiyō sensō shūketsu ni yoru naigai jin hogo hikiage (gaikokujin) [Protection and Repatriation of Japanese and Foreigners at the End of the Pacific War (Foreigners)]*. Tokyo: Diplomatic Record Office of the Ministry of Foreign Affairs of Japan.

Gao, William. 2007. Overdue Redress: Surveying and Explaining the Shifting Japanese Jurisprudence on Victims' Compensation Claims. *Columbia Journal of Transnational Law* 45:529–50.

Gardner, James A. 1980. *Legal Imperialism: American Lawyers and Foreign Aid in Latin America*. Madison, WI: University of Wisconsin Press.

Gotō, Mitsuo. 2012. Nihonkoku kenpō seiteishi ni okeru "Nihon kokumin" to "gaikokujin" ["Japanese People" and "Foreigners" in the Drafting of the Japanese Constitution]. *Hikaku hōgaku [Comparative Law Review]* 45 (3): 1–28.

——. 2013. Nihonkoku kenpō 10-jō: kokusekihō to kyūshokuminchi shusshinsha" [Japanese Constitution Article 10: Japanese Nationality Law and Former Colonial Subjects]. *Waseda shakai kagaku sōgō kenkyū [Waseda Studies in Social Sciences]* 13 (3): 19–39.

He Tianyi, ed. 2005. *Erzhan lu Ri Zhongguo laogong koushushi [Oral History of Japanese-Captured Chinese Forced Laborers during the Second World War]*. 5 vols. Jinan, China: Qilu shushe.

Jessup, Philip C. 1956. *Transnational Law*. New Haven, CT: Yale University Press.

Johns, Fleur. 2013. *Non-Legality in International Law: Unruly Law*. New York: Cambridge University Press.

Kafka, Franz. [1924] 1988. *The Trial, definitive ed.*, trans. Willa and Edwin Muir. New York: Schocken Books.

Kang Sang-jung. 1996. *Orientarizumu no kanata e: kindai bunka hihan [Beyond Orientalism: Critique of Modern Culture]*. Tokyo: Iwanami shoten.

Kim, Taejin. 2014. "Views on Compensation for Conscripted Korean Laborers from Japanese Companies: A Recent Korean Supreme Court Case." *Asian Business Lawyer* 13 (Spring): 15–34.

Koga, Yukiko. 2013. Accounting for Silence: Inheritance, Debt, and the Moral Economy of Legal Redress in China and Japan. *American Ethnologist* 40 (3): 494–507.

Koseki Shōichi. 1989. *Shin-kenpō no tanjō [The Birth of the New Constitution]*. Tokyo: Chūō kōronsha.

Kratoska, Paul H., ed. 2005. *Asian Labor in the Wartime Japanese Empire: Unknown Histories*. Armonk, NY: M. E. Sharpe.

Levin, Mark A. 2008. Supreme Court of Japan Decision 2008/04/27: Nishimatsu Construction Co. v. Song Jixiao et al. *American Journal of International Law* 102:148–54.

Matsumoto Katsuyoshi. 2003. "Kokka mutōseki no hōri" to minpōten [The Doctrine of State Immunity and the Civil Code]. *Ritsumeikan hōgaku* 292:317–82.

Mauss, Marcel. [1924] 1990. *The Gift: The Form and Reason for Exchange in Archaic Societies*, trans. W. D. Halls. New York: W. W. Norton.

Merry, Sally Engle. 2006. New Legal Realism and the Ethnography of Transnational Law. *Law & Social Inquiry* 31 (4): 975–95.

Murashige Kei'ichi. 1996. *Kokka baishō kenkyū nōto [State Redress Research Notes]*. Tokyo: Hanrei taimuzu.

NHK Research Team. 1994. *Maboroshino gaimushō hōkokusho: Chūgokujin kyōsei renkō no kiroku [A Phantom Reports on the Work Condition of the Chinese Laborers Compiled by the Ministry of Foreign Affairs: The Record of the Chinese Forced Labor]*. Tokyo: Nihon hōsō shuppan kyōkai.

Nishinarita Yutaka. 2002. *Chūgokujin kyōsei renkō [Chinese Forced Labor]*. Tokyo: Tokyo Daigaku shuppankai.

Oguma Eiji. 1995. *Tan'itsu minzoku shinwa no kigen: "Nihonjin" no jigazō no keigu [The Origin of the Myth of the Single Ethnic Nation: The Genealogy of the Self-Portrait of "Japanese"]*. Tokyo: Shinyōsha.

Okada Masanori. 2013. *Kuni no fuhō kōi sekinin to kōkenryoku no gainen-shi: kokka baishō seido-shi kenkyū [Wrongful Conduct of the State and the Intellectual History of Governmental Authority: Legal History of the State Redress System]*. Tokyo: Kōbundō.

Ōnuma Yasuaki. 1986. *Tan'itsu minzoku shakai no shinwa o koete: zainichi Kankoku Chōsenjin to shutsunyūkoku kanri taisei [Beyond the Myth of a Single Ethnic Society: Koreans in Japan and the Emigration and Immigration Administration]*. Tokyo: Tōshindō.

Ōnuma, Yasuaki. 2004. *Zainichi Kankoku Chōsenjin no kokuseki to jinken [Nationality and Human Rights of Koreans in Japan]*. Tokyo: Tōshindō.
Ōnuma, Yasuaki.. 2007. *Tōkyō saiban, sensō sekinin, sengo sekinin [Tokyo Tribunal, War Responsibility, Postwar Responsibility]*. Tokyo: Tōshindō.
Schmidhauser, John R. 1992. Legal Imperialism: Its Enduring Impact on Colonial and Post-Colonial Judicial Systems. *International Political Science Review* 13 (3): 321–34.
Shin, Hae Bong. 2005. Compensation for Victims of Wartime Atrocities: Recent Developments in Japan's Case Law. *Journal of International Criminal Justice* 3:187–206.
Tanaka Hiroshi, and Matsuzawa Tetsunari, eds. 1995. *Chūgokujin kyōsei renkō shiryō: "Gaimuhō hōkokusho" zen 5 bunsatsu hoka [Source Material on the Chinese Forced Labor: The Reports of the Ministry of Foreign Affairs of Japan]*. Tokyo: Gendai shokan.
Tanaka Hiroshi, Utsumi Aiko, and Ishitobi Jin, eds. 1987. *Shiryō Chūgokujin kyōsei renkō [Source Material: The Chinese Forced Labor]*. Tokyo: Akashi shoten.
Tanaka Hiroshi, Utsumi Aiko, and Nīimi Takashi, eds. 1990. *Shiryō Chūgokujin kyōsei renkō no kiroku [Source Material: Records of the Chinese Forced Labor]*. Tokyo: Akashi shoten.
Teitel, Ruti G. 2003. Transitional Justice Genealogy. *Harvard Human Rights Journal* 16:69–94.
Tong Zeng. 1991. Guozhifa de xingainian: shouhai peichang [New Concept in International Law: Victim Compensation]. *Fazhi ribao [Legal Daily] (Beijing)*, May 20, 3.
Yoneyama, Lisa. 2003. Traveling Memories, Contagious Justice: Americanization of Japanese War Crimes at the End of the Post-Cold War. *Journal of Asian American Studies* 6 (1): 57–93.
Zumbansen, Peer. 2008. Transitional Justice in a Transnational World: The Ambiguous Role of Law. Osgoode CLPE Research Paper No. 40/2008. http://ssrn.com/abstract+1313725 (accessed May 28, 2015).
——. 2011. Transnational Law, Evolving. Osgoode CLPE Research Paper No. 27/2011. http://ssrn.com/abstract=1975403 (accessed May 28, 2015).

CASES CITED

Heisei 5 (gyō u) No. 244 (human skeleton case). Tokyo Regional Court in Japan, December 5, 1994.
Heisei 8 (gyō tsu) No. 67 (human skeleton case). Supreme Court of Japan, December 19, 2000.
Heisei 8 (wa) No. 5435 (forced labor case). Supreme Court of Japan (dismissed on April 27, 2007).
Heisei 11 (wa) No. 543; Heisei 12 (wa) No. 489; Heisei 14 (wa) No. 139 (forced labor case). Nīgata Regional Court in Japan, March 26, 2004.
Heisei 12 (wa) No. 1550; Heisei 13 (wa) No. 1690; Heisei 13 (wa) No. 3862 (forced labor case). Fukuoka Regional Court of Japan, April 26, 2002.
Heisei 14 (ne) No. 511 (forced labor case). Fukuoka High Court in Japan, May 24, 2004.
Heisei 14 (ne) No. 511 (forced labor case). Supreme Court of Japan (dismissed on April 27, 2007).
Heisei 16 (ju) No. 1658 (forced labor case). Supreme Court of Japan, April 27, 2007.
Heisei 17 (ju) No. 1735 (comfort women case). Supreme Court of Japan, April 27, 2007.
Heisei 17 [o] No. 985 (comfort women case). Supreme Court of Japan (dismissed on April 27, 2007).
23-2[A] KCCR 366, *2006Hun-Ma788*, "Challenge against Act of Omission Involving Article 3 of the 'Agreement on the Settlement of Problem Concerning Property and Claims and the Economic Cooperation Between the Republic of Korea and Japan.'" South Korean Constitutional Court, August 30, 2011.
2009Da22549 (forced labor case). Supreme Court of Korea, May 24, 2012.
2012Na44947 (forced labor case). Seoul High Court in South Korea, July 10, 2013.
2012Na4497 (forced labor case). Busan High Court in South Korea, July 30, 2013.

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STATUTES CITED

Constitution of Japan (*Nihonkoku kenpō*)
Constitution of the Empire of Japan (*Dai-Nippon teikoku kenpō*)
Hague Convention
Japanese Civil Code (*Minpō*)
Regulations Concerning the Laws and Customs of War on Land (*Riku-sen no hōki kanshū ni kansuru jōyaku*), Japan
State Redress Act (*Kokka baishō-hō*), Japan

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