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Bulldozing the dead: Chinese, citizenry, and cemetery in post-colonial South Korea

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Abstract

This article looks at lawsuits surrounding two Chinese cemeteries in the mid-twentieth century South Korean cities of Incheon and Seoul as crucial sites to examine the post-colonial legal construction of national citizenry based on property rights. While different legal rationales were employed in each case, the two Chinese cemeteries were relocated to the periphery of each city as a consequence of the litigation. In Incheon, it was argued that the cemetery was owned by Chinese nationals whose land rights were ambiguous and hence open to question, both during the colonial and post-colonial period. On the other hand, in Seoul, rights to the cemetery were at stake due to its association with Japanese nationals, whose holdings were regarded as ‘enemy properties’ in the post-colonial years. Not only were the lawsuits symbolic events that foreshadowed the displacement of Chinese residents from what was considered to be Korea’s national land, they also revealed an operative ambiguity in the post-colonial legal system, readily exploited as a tool for discrimination. Drawing upon an analysis of these cases, I argue that the Chinese cemeteries served as a reminder that uncertainty and ambiguity were on tap in the legal workings of post-colonial society, manifested in blunt efforts to define its legitimate members and dictate who is entitled to be buried within a nation’s borders.

Keywords: Cemetery; diaspora; post-colonialism; citizenship; legality

Introduction

In December 2014, a piece of paper was posted on the front door of the headquarters of the Association for Overseas Chinese in Incheon (henceforth, the Association), a Korean port city located on the west coast of the country. Written in traditional Chinese, the paper bore the names and addresses of people who had buried families or relatives in the Chinese cemetery. Some lived across the country, in Incheon, Seoul, or elsewhere. Some had foreign

addresses in Japan, Taiwan, or the United States. The city government had long been attempting to relocate the Chinese burial ground in order to refurbish the site, creating an eco-friendly cemetery park. Meanwhile, the Association was trying to locate the bereaved before the graves would be classed as *muyŏnpunmyo*, or graves to which no families or relatives make claim, thereby subject to removal at the discretion of the government.¹ A former chair of the Association, however, resented use of the term *muyŏnpunmyo* when describing the status of the graves. It was not that those interred in the graves had neither families nor relatives, he argued, but that the loved ones were merely absent at the moment of notice, hard to reach out to, and thus unable to respond immediately, mostly because of their residence in foreign countries or for other reasons.

Removed from the bustle of urban life, a cemetery is regarded as a site of peaceful seclusion and sacred rest. Added to the cemetery's symbolic character is its material form—fenced off from surrounding environs as if to clearly demarcate the space of death from that of the living. This geography of death not only refers to a place of corpses in the literal sense, but to a space that has no economic function, particularly because the corpses have become 'unusable' in the capitalist economy (Ragon 1983), considered to no longer have productive purposes (Baudrillard 1993). Construed as the house of the dead, the cemetery is therefore readily relegated to the very periphery of the modern world, of use only within the affective economy of the living.

Building on a growing body of scholarship on the politics of deathscapes, I propose the cemetery as an active space which incited legal and ethical debates around national identity and belonging in a post-colonial polity. Taking South Korea as an example, I consider material aspects of the cemetery as a site where nation-making and post-colonial citizenship intersect in the legal domain. More specifically, this article explores mid-twentieth century lawsuits pertaining to two Chinese cemeteries in the South Korean cities of Incheon and Seoul. These lawsuits were symbolic events that foreshadowed the displacement of Chinese residents from what was considered to be Korea's national land. Moreover, the legal cases reveal how a particular polity understands itself by constructing national citizenry based on property rights.

The lawsuits involving the Chinese cemeteries show how urban space constitutes and is constitutive of 'the way in which the nation imagines its body' (Kusno 2000: 97), when the question emerged as to whose bodies should be considered the legitimate residents of the new nation after decolonization. By discussing the lawsuits and ensuing displacement of the dead, this article illuminates three important aspects of the complex relationship between law

¹ Relocation was not unheard of by most of the Chinese residents in the city. As of 2014, Incheon's Chinese community had experienced a number of reburials since the Chinese burial ground was originally designated within the city in 1884. The first relocation took place in 1912 after Japan took over the Korean peninsula, when public cemeteries began to become the object of government regulation. The second was in the 1960s to make way for urban development and the third took place in 1989 in tandem with a housing development in the adjacent area. This was the fourth attempt to relocate the cemetery, an initiative that was started in 2008 by the city government.

and post-coloniality surrounding deathscapes in South Korea. First, the litigation reveals the ambiguity and confusion inherent in the post-colonial legal structure, which created a legal loophole to be exploited for the purpose of discrimination against the people outside of the reconstituted national citizenry. Second, the litigation reflects the post-colonial state's mission to establish a legal system of property rights and national membership to legitimize its regime. Third, I argue that the lawsuits expose the implication of the post-colonial state in a form of symbolic violence thinly veiled under the banner of national development. In so doing, this article seeks to explore how the bulldozing of the Chinese cemetery, and by extension the displacement and dispossession of the Chinese residents, signifies a political death of others in the *legally* sanctioned regime of exclusion and dispossession forged in the post-colonial state.

Materiality of deathscapes in the post-colony

The term 'post' in 'post-colonial' implies 'neither a celebration of the end of colonialism nor the simple reproduction of the colonial in the present, but the mutated, impure and unsettling legacies of colonialism' (Nash 2002: 225). East Asia, whose colonial experiences were not the exclusive preserve of European colonization, has witnessed a peculiar mutation of colonial trajectories in the post-colonial present. The specific ways in which post-colonialism has unfolded in East Asia reflect how 'the post-colonial' cannot be equated with 'a bounded set of attributes or characteristics that is used as a yardstick to measure the degree of post-coloniality exhibited in different places', but instead is invoked as a conceptual tool that 'signal(s), without occluding, different but also interconnected colonial trajectories and legacies' (Nash 2002: 227).

Through the optic of deathscapes, an analysis of colonial legacies, entangled as they are in the post-colonial present, interrogates the spatiality of post-colonial politics. In colonial Asian cities, burial grounds were contested sites through which social norms and forms were defined (Yeoh 1996). Public health concerns in particular played a role in relegating the dead to the urban periphery in the name of building a sanitary city. In the context of colonial Korea, burial sites emerged as 'social' problems when the Japanese colonial government embarked upon a cadastral survey in 1910 to lay the ground for the colonial enterprise in terms of logging, farming, railroads, mining, or housing developments (Takamura 2000: 137). The complete land survey led to the first legislation regarding the management of cemeteries in June 1912, which mandated where the dead could no longer be buried, even on privately owned land: burial would be allowed only in a cemetery designated by the colonial government (Jeong 2019: 307). By the same token, the colonial government launched another campaign to encourage cremation as a legitimate way of handling the dead (Jeong 2013: 84). Such colonial acts not only reveal how the colonial government tried to impose social meanings over foreign territory by way of managing burial sites, but also show how the cemetery was at the centre of land politics in the colony.

In newly independent countries, the space of death became a fulcrum for postwar nation-building, positioning the cemetery as another front for the

project of capitalist urbanization. Especially in post-colonial Asia, the notion of 'national land' was imbued with affective power, elevated to sacred status. Contrary to the colonial government, which took issue with 'the unsanitary nature' of indigenous burial grounds, the post-colonial state extended its sovereign power to control over burial space by reframing the *problem* of burial grounds as 'obstructive' to national development (Tan and Yeoh 2002: 2). It was thus landscapes of death that played an active role in the production of postwar state violence while reproducing contradictions already inherent in colonial society. The cemetery, in this regard, evolved as means for the state apparatus to impose meanings on, control over, and segment urban space according to state-sanctioned functions. The cemetery was often razed in the name of national interest as it was equated with 'a national problem to be tackled and eradicated along with the eradication of disease and slum problems in central areas' (Kong and Yeoh 2003: 56).

How did the burial grounds for non-national members, or those who were not considered legitimate constituents of a new nation, become subject to acquisition and demolition? Several legal reforms supported the rhetoric of national development by granting the new government the right to acquire land for any public purpose as well as 'absolute discretion to decide what that "public purpose" entailed' (Kong and Yeoh 2003: 60). As a consequence, cemeteries became a space that marked boundaries between who, even posthumously, would be eligible to claim national citizenry and who would not. Given the developmentalist aspiration of the modern state in the postwar period, the place of the dead, especially that of 'others' who were not regarded as legitimate members of the new nation, was seen as a hindrance to efficient and rational use of national land.

A post-colonial stratification of national citizenry intensified in the 1960s and the 1970s, when South Korea went through massive industrialization and urbanization. As was the case with the developmentalist Asian states, South Korea embarked upon the wholesale restructuring of national land in the name of economic growth. The goal of the post-colonial government to build a new nation dovetailed well with top-down construction projects that required a large amount of available land. The transregional spread of post-Second World War construction culture, which was epitomized by the mechanistic forms of bulldozers and wrecking balls, applied the modernist doctrine of planning to the developmentalist landscape in Asia (Eom 2020). The bulldozer, a machine widely used for earthmoving and construction (Ammon 2016), also functioned as a trope crucial for comprehending the post-war landscape of cities in Korea. The word was particularly symptomatic of the developmental landscapes in the 1960s, when the image of the machine that bulldozes over backwardness and poverty represented the national aspiration to build the new landscape of the modern city.

Despite the growing scholarly interest in deathscapes as crucial sites for examining 'a shifting rapport between the state and its citizen' (O'Neill 2012: 513), I contend that the relationship between national citizenry and deathscapes in post-colonial Asia merits more research, especially with regard to those removed from the imaginaries of a national community and rendered 'foreigners'. In

Korea, overseas Chinese have occupied a symbolic position in the colonial structure of sentiment. Chinese merchants and traders first migrated to Korea en masse in the 1880s after Chosŏn Korea concluded a treaty with Qing China to open its ports to foreign commerce and trade. Along with other treaty nationals, from British and Americans to Russians and Japanese, the Chinese enjoyed economic privileges and exerted extraterritorial rights in Korea's treaty ports. Even after the treaty port system came to an end under Japanese colonial rule, the Chinese merchant community continued to accumulate a substantial amount of wealth—an enviable prosperity that epitomized an imperial economy of differential inclusion and brought the abjection of colonized Koreans into sharp relief. Such complex feelings vis-à-vis Chinese migrants in Korea played a role in activating nationalistic sentiments and implementing anti-Chinese legislation in the post-colonial years, especially in the Cold War geopolitical climate, which ultimately led to massive Chinese re-migration to other countries (Eom 2019).

As the post-colonial government strove to build a national identity, this layered structure of anti-Chinese sentiment manifested itself in contested deathscapes. The following sections will examine the discursive development of 'national land' (*kukt'o*) in the 1950–1960s, an aspirational concept that led to a set of legal reforms regarding cemeteries and facilitated national development in urban space, thereby providing the foundation for the legal construction of national citizenry based on property rights in the post-colonial years. I will further show the ways in which the Chinese were removed from the imaginaries of the nation and therefore denied the right to be buried in what was construed as the national space.

Kukt'o and the cemetery: Rationality and the pathos of nation-building

Originally coined in the colonial period, the term *kukt'o* (國土)—national land or soil—came to hold great significance after independence, taking on much more symbolic weight than its literal meaning. After decolonization, *kukt'o* did not merely indicate the land owned by the government, it signified the whole territory of the Korean peninsula, even half divided and war-devastated after the Korean War (1950–1953), elevated to sacred status. In the name of national development, there was an urgent need to secure more land, to be put to use in the most efficient way possible. The whole nation was mobilized to industrialize the country, and any attempt to hinder national development was considered inimical to the well-being and security of the nation.

The notion of *kukt'o* gained so much currency that it was widely embraced by public intellectuals across the political spectrum. Chang Chun-ha, pro-democracy journalist and the military dictator Park Chung-hee's political opponent, penned an essay in 1961 asking, 'Why should we undertake construction projects of *kukt'o*?' He gave two reasons: first, the peninsula was devastated after the Korean War; and second, almost three-quarters of the national land is mountainous, making it difficult to use for practical purposes (Chang 1961: 9). Even while emphasizing the role of roads in pursuing the goal of economic development, Chang seamlessly drew an association between 'beautify (*mihwa*) the national land' and 'enrich the state'.

The most efficient and productive way to achieve this national goal to modernize *kukt'o* appeared to be the construction of roads, highways, and bridges—symbols of economic mobility par excellence, the pulsing ‘arteries of the nation’ (Watson 2011: 167). In the climate of Cold War geopolitics during the 1960s, President Park Chung-hee and his administration regarded urban planning as a way of promoting economic development, legitimating his military dictatorship, and realizing political stability in the region. Park’s repeated emphasis on *kukt'o kaepal*, or development of national land, was manifested through numerous construction projects, including the Gyeongbu Highway. In the same vein, Mayor Kim Hyoun-ok of Seoul, who maintained close ties with Park, was another figure who epitomized ‘an insatiable and modernist desire for development’ (Eom 2020: 307) in the 1960s. Mayor Kim, often dubbed the ‘Bulldozer Mayor’, wrought a drastic transformation on the city of Seoul by widening roads, constructing elevated highways, building subways, and razing squatter areas. During the Bulldozer Mayor’s term, the total length of the city’s roads increased by 267 per cent, from 1.44 million kilometres in 1965 to 5.29 million kilometres by 1970 (Seoul Yoksa Pakmulkwan 2013: 42).

Arguably, control over the space of the dead was inseparable from these developmentalist imperatives to industrialize and modernize *kukt'o*. In the 1960s, initiatives to build more roads were closely bound up with the need to formulate policies that would help secure more usable land while at the same time locating unproductive and supposedly purposeless—seizable—pieces of land. It was under these circumstances that the cemetery, a space deemed functionless par excellence in the modernizing city, increasingly came to be subjected to a range of legal reforms. After Park’s military coup in May 1961, the Burial and Graveyard Act was first enacted in December, replacing colonial legislation regarding funerary practices. However, even after the law was revised in 1968 with additional clauses emphasizing the legislative imperatives, ranging from public health to national defence and urban development, its effects seemed to remain marginal, despite the push to revolutionize through regulation.

Then, starting in the early 1970s, further cemetery reform, with stronger and stricter measures, was called for in order that ‘the entire *kukt'o* might not be covered with cemeteries’ (Kyunghyang Shinmun 1972). The 1973 amendment made significant and consequential changes to funeral practices and spaces. As opposed to the previous legislation, which provided ambiguous rationales and had little legal binding force, the amendment clearly emphasized that the fortification of the cemetery law was needed to ‘expand the utilizable area of *kukt'o* and contribute to its industrialization’. In 1973, the category of *myuŏnpunmyo* was introduced, defined as ‘graves without families or relatives’.² If no one laid a claim with the authorities within a certain period, the grave would subsequently be considered *myuŏnpunmyo* and the government would have the right to claim the site. With penal regulations strengthened, this amendment had the apparent purpose of rationalizing land use of *kukt'o*, yet it was at the discretion of the state to determine what would be deemed rational land use.

² Burial and Cemetery Act (amended on 13 March 1973) (R. O. Korea).

At this time, when cemetery reform offered advantages in an era when *kukt'o kaebal*, or development of national land, was seen as crucial to the well-being and security of the nation, rhetoric in the public sphere paved the way for this instrumentalist use of spaces once reserved for the dead. A newspaper editorial argued in January 1973 that every possible means—from local administrations to mass media—should be mobilized to enlighten and educate the people on this matter (*Dong-a Ilbo* 1973). In addition to such newspaper articles, local administrations propagated government campaigns to sway individual households to endorse the reduction of cemeteries. The 1970s campaign ‘The more cemetery, the less national land’ (*Nŭlŏnanŭn myochi, churŏtŭnŭn kukt'o*) was carried out foremost at the local level (Seo and Park 2014: 103). Since increasing the number of cemeteries was considered to damage *kukt'o*, the passage of the Cemetery Law unfolded in a way that would increase and reinforce the government’s regulatory interventions on burial grounds. The government even came to dictate what would be the appropriate size and shape of individual tombs as well as location of cemeteries. In the 1981 revision, the Cemetery Law became more precisely articulated, making it impossible to establish funeral facilities—cemeteries, crematoria, or cineraria—in areas ‘crucial to the future development of *kukt'o*’, as stipulated in the Burial and Graveyard Act. Media efforts to enlighten and educate the public as to modern funeral practices continued. In February 1983, a newspaper editorial strongly urged the public to accept the necessity for stricter reforms of cemetery law in order to ‘prevent cemeteries from encroaching on *kukt'o*’ (*Kyunghyang Shinmun* 1983).

As such, the Cemetery Law has developed in accordance with *kukt'o* as emblematic of the prosperous nation itself. While the change in the law is indicative of how the space of the dead served the interests of the modernizing and industrializing state, there was progress in another legal development regarding the use of national land: the Alien Landownership Act, enacted in September, three months before the Burial and Graveyard Act was legislated in 1961. This Act took steps to prohibit and restrict land ownership by foreigners, replacing the colonial legislation of 1936. While it was part of Park’s legal reforms, many of the clauses remained almost identical to its colonial counterpart, as in the case of other laws. Then, in 1968, the Alien Landownership Act was amended, placing more restrictions on foreign ownership. The Ministry of Home Affairs had found in 1967 that approximately five million *p'yŏng* (1 *p'yŏng* = 3.3 m²) in the whole country was owned by foreigners. The largest amount of land was in the possession of American nationals (4.2 million *p'yŏng*), followed by Chinese (0.6 million), West Germans (0.07 million), and Irish (0.05 million) (*Dong-a Ilbo* 1967).

Although it was American nationals that owned the largest amount of land, public sentiment was directed against the Chinese owners, who took the biggest hit with the advent of more regulatory measures on landownership. An editorial cartoon in the *Dong-A Ilbo* clearly reflects the anti-Chinese sentiment of the time. On the same page that introduced the government decision to impose stricter restrictions on foreign landownership, a sly-looking Chinese farmer tending crops was depicted with the caption, ‘Your money is my

money.’ The 1968 amendment restricted land ownership by foreigners, above all Chinese, to no more than 50 *p’yŏng* (165 m²) for commercial use and 200 *p’yŏng* (660 m²) for residential use. This limitation on land ownership confined Chinese economic activity to small-scale businesses with limited capital and which were prevented from expanding. Moreover, this legislation made the legal status of Chinese landownership conditional and precarious, thereby contributing to the formation of an embattled Chinese self-identity in Korea (Eom 2019). A number of urban renewal projects, ranging from residential developments to road construction, capitalized on the precarious legal status of Chinese property owners. As a consequence, Chinese-owned restaurants, shops, and houses were bulldozed—and graveyards were not an exception.

Bulldozer: An affective machine of displacement

At the intersection of the legal reforms and nationwide economic development in the 1960s, when a debate had emerged over who would be eligible to claim national citizenry and own land, lay the burial grounds of Chinese residents. The Chinese cemeteries, as I will show in the present and following sections, became symbolically deracinated and physically displaced from what was imagined to be national soil. The lawsuits surrounding the Chinese cemeteries of Incheon and Seoul during these years were symbolic events that foreshadowed the displacement of Chinese residents from *kukt’o*, which was believed to belong to legitimate members of the Korean nation.

As an extraterritorial jurisdiction in nineteenth-century treaty ports, Chinese settlements in Korea were established with the provision that Chinese burial grounds would be legally delimited. Based on the treaty signed between Qing China and Chosŏn Korea in 1884, the Chinese burial ground in Incheon was situated in the vicinity of the Chinese settlement. Then in 1912, it was relocated from its original site to the periphery of the city. Starting in 1959, as Incheon city limits expanded once again, this burial ground faced another relocation to a site even further away, as the original area was slated for urban redevelopment. In 1962, this relocation was completed, but the problem remained as to who had the right to the vacated land.

A clash occurred over the right to a plot of land measuring 8,874 *p’yŏng* (29,284 m²), on which the Association had been intent on erecting a Chinese school after the relocation (Inchŏn hwagyo chach’igu 1964). Immediately after the Chinese corpses were evacuated from the land, the Sŏngkwang Academy (henceforth, the Academy), which owned schools in the vicinity, began to encroach little by little on the territory of the former Chinese burial site with the intention of constructing its own school building.³ In response, the Association sent an official letter to the Academy on 13 May 1963 asking for an apology after the Academy had its students dig up a large amount of earth from a former burial site, under the supervision of teachers (Inchŏn hwagyo hyŏphoe 1963): ‘The School has

³ Founded in 1958, the Sŏngkwang Academy changed its name to the Sŏnin Academy in 1965. Its founder was Paik In-yup, whose elder brother had close military ties with President Park.

trespassed on our community property numerous times and *bulldozed* it to clear the way for the school [my italics]' (Inchŏn hwagyo hyŏphoe 1964).

The Academy issued a prompt apology the next day. The principal explained that they had not been aware of the fact that the land was the Association's property and gave assurances that such a trespass would not happen again (Sŏngkwang chungsangyŏp kodŭng 1963). And yet the promise was never kept. From 5 March 1964 onwards, by clearing the ground several times with a bulldozer loaned by the US Army, the Academy came to occupy a large amount of land, which had reached 500 *p'yŏng* (1,650 m²) by November (Inchŏn hwagyo hyŏphoe 1964b).

The loss has been poignantly remembered and narrated in the Incheon Chinese community as the '*hwagyo* (= overseas Chinese) cemetery dispossession incident'. It is significant that the word 'bulldozer' was frequently used in the Association's petition to the city government. Especially given its strong connection to the US Army, the bulldozer is not just colloquial jargon for a machine used to clear the ground or demolish buildings. In this context, the term becomes part of an affective language that vividly conveys strong sentiments aroused by urban development in post-colonial Korea, in this case underscoring the violence of that process.

The Association further appealed to 'the rule of law' by arguing, 'Such an act is an absolute impossibility in a law-abiding country' (Inchŏn hwagyo hyŏphoe 1964b). However, the law to which the Association was appealing ultimately became an entrapment. The Association began to seek out ways to legally secure land rights by reaching out to the Overseas Chinese Association of Korea for administrative assistance (Inchŏn hwagyo chach'igu 1964a; 1964b); they also simultaneously continued to send letters to Korean authorities, from the city government to the police bureau (Inchŏnsichŏng 1964; Inchŏn hwagyo hyŏphoe 1964a; 1964b), in order to stop the Academy's 'illegitimate' construction of the school. These appeals had minimal effect. The Korean authorities did not want to get involved, or even if they did intervene minimally, the Academy warded off compliance by again stating that it would follow due process.

The conflict came to a head in August 1966. At this point the Academy filed a complaint against the Association with the court, backing its claims by insistence on the letter of colonial law. According to this new lawsuit, two Chinese leaders had purchased the land on 27 November 1936, one month before the colonial law prohibiting foreign landownership was enacted and implemented by the Japanese colonial government. That law, however, also dictated that foreigners must report their land acquisition to the authorities, and the plaintiff had found out that the Chinese leaders had not followed the process. The ownership of the land by the Chinese, the Academy argued, should thus be adjudicated as illegal, because even after decolonization, the colonial legislation remained retroactively effective. With this line of argument, the Academy successfully made a case that its construction project was lawful. In the end, the court decided in favour of the plaintiff. By 1973, the Academy had completed 'Asia's biggest gymnasium' upon the former Chinese burial ground, while a new road connecting Incheon and Seoul was constructed right next to the

massive sports complex, marking it as ‘Inchŏn’s new attraction’ (*Kyunggyang Shinmun* 1973).

Enemy property: Post-colonial construction of national land

In the early 1970s, another lawsuit against a Chinese cemetery was launched in the capital city of Seoul. Located in what was then the outskirts of the city (then Sadang-dong, Yŏngdŭngp’o-gu), the Fenghuangshan cemetery had been the burial ground for Chinese since 1945. Then, on 7 November 1972, the Korean government announced its confiscation of the land. Upon learning of this abrupt decision, the ambassador of the Republic of China demanded an explanation.

The answer, a complicated, even convoluted, account leading to a conclusion that justified dispossession, was as follows. A Korean resident named Shin Dong-kwan claimed that the owner of the cemetery was Japanese and, therefore, the land should be confiscated by the government because it was an ‘enemy property’. The land was in fact under Chinese ownership: in May 1945, when Korea was still under Japanese rule, a Chinese man named Feng Zi-zhou had purchased the land from a Korean named Kayama Masafumi, who was an ethnic Korean originally with the Korean name Lee Chang-mun. After the purchase, Feng Zi-zhou registered that piece of property in his son’s name, and instead of using his son’s Chinese name, Feng Qing-yi, the father had used his son’s Japanese name, Umeda Keiichi, for the registration. His son was studying in Japan at the time of the purchase, a place that must have appeared significant to Feng Zi-zhou regarding his son’s future. After Korea was liberated from Japanese colonial rule, and given the anti-Japanese climate, in January 1955 Feng Zi-zhou did change the registration to his son’s Chinese name, but too late, it seemed, for shedding the implication of Japanese ownership.

The son, who was staying in Japan as of 1973, went to Seoul in attempt to prove the following facts pertaining to his lawful land ownership:

1. Feng Qing-yi is the biological son of Feng Zi-zhou, an overseas Chinese in South Korea. Since he did not make any formal request to relinquish his Taiwanese citizenship, Feng Qing-yi thus holds Taiwanese citizenship.
2. Feng Qing-yi adopted his Japanese mother’s last name only for purpose of attending school in Japan, which should not indicate that he was intent on relinquishing his Taiwanese citizenship.
3. Feng Qing-yi was listed on his Japanese mother’s family register as an illegitimate child only for the sake of his education in Japan. But other documents produced while he was a student in Seoul attested that he is the legitimate son of Feng Zi-zhou.
4. If Feng Qing-yi should be adjudged to be Japanese, there must be a proof of his being not Taiwanese. But the Seoul District Court provides no jurisprudential explanation on this matter and the verdict is thus not legitimate.

5. The Fenghuangshan cemetery is the burial ground of the overseas Chinese of Seoul and it has been twenty-eight years since their remains were relocated to this site in 1945. Both countries have longstanding traditions for commemoration of their long history and ancestors, especially including respect for their gravesites. The Korean government's confiscation of this (Chinese) cemetery would result in the desecration of Chinese ancestral graves. Since this would incur the wrath of the overseas Chinese in Korea, it is strongly advised that this issue should be treated with circumspection lest grave consequences ensue.⁴

From the side of upholding Feng Qing-yi's ownership, the claimant, in fact, seemed to have had a Japanese mother whose last name was Kayama. During his stay in Japan, Feng Qing-yi was listed as his mother's illegitimate son on her family register, but just for the convenience of schooling, as he argued. Given gaps in the document trail, it is actually not clear whether he was intent on becoming Japanese or whether his parents were married at the time of the land purchase. What is recorded indicates only that Feng Qing-yi had remained Feng Zi-zhou's legal son before he moved to Japan, and there was no evidence that Feng Qing-yi went through legal processes to relinquish his Taiwanese citizenship. Despite the Taiwanese consul's support and complaints, however, the court ruled that Feng Qing-yi was Japanese and adjudicated that the Korean government's confiscation was lawful on account of the landowner being a Japanese national.

A dearth of legal documentation might have enabled such a ruling. But more importantly, this litigation reveals the crux of the ambiguity regarding land ownership and the complexity of national belonging in the post-1945 years. After decolonization, properties of the former colonial government and Japanese nationals became vested in the US Army military government in Korea, which occupied half of the Korean peninsula until 1948. 'Enemy property', often called *chöksan kaok* in Korean, indicates properties left behind by Japanese nationals in their hasty evacuation, holdings which ranged from banks and factories to houses and shops. While the US Army military government initially referred to these vested properties as 'Japanese property', the Korean government and mass media preferred to use the term 'enemy property' or *chöksan kaok* (Lee 2019).

After the Republic of Korea was established in August 1945, these properties were transferred to the Korean government, as stipulated by the Initial Financial and Property Settlement Between the Government of the Republic of Korea and the Government of the United States of America, signed in September 1945. The properties accounted for as much as 80 per cent of the national wealth at the time. Not only was the handling of such properties symbolically important for the government in the process of decolonization, but it was also crucial for the government to jumpstart the new system of national economy (Cho 2015: 69). In post-colonial Korea, the term *chöksan kaok*, which includes any structure built under Japanese colonial rule, has carried

⁴ Embassy of the Republic of China, Memorandum on the litigation concerning the ownership of the Fenghuangshan Chinese Cemetery, National Archives of Korea.

with its connotations of oppression and exploitation. Although it is not a legally binding term, *chōksan kaok* remains powerfully affective language that conveys colonial resentment embedded in the material environment.

There was no clear legal distinction between ‘Koreans’ and ‘Japanese’ in the years immediately following decolonization, however. It was thus not uncommon for banks, often out of confusion or a lack of relevant administrative infrastructures, to freeze the deposits of Koreans who had Japanese names (Kim 2009: 119). To sequester property rights, a series of legal actions were enacted to distinguish Koreans from Japanese. Specifically, the temporary Regulation of Korean Nationality was established on 11 May 1948, the first legal attempt to clarify who would be considered ‘Korean’ after decolonization. While this provisional legislation would later become the legal foundation of the Nationality Law enacted in December 1948 (Wang 2008: 183), it did not actually take effect. To this day, conflicts continue to abound in land ownership disputes surrounding *chōksan kaok* because distinguishing Koreans from Japanese in the post-colonial context was so hard to accomplish.

The in and outs of Feng’s name change are but one example of the complexity of post-colonial legal construction of national citizenry with respect to property rights. The lawsuit demonstrates the fundamental ambiguity in the post-colonial legal structure wherein colonial vestiges were often found—and even exploited to advance nationalistic goals.⁵ Furthermore, the removal of the Chinese burial ground vividly shows the violence attached to the notion of enemy property—once a piece of private property was labelled foreign-held, the government often reserved the right to confiscate it even if their legal position was weak. In the end, the Fenghuangshan cemetery was confiscated by the Korean government after the lawsuit and finally bulldozed in 1973 when an urban development project was undertaken in this area. Relegated to a new cemetery located outside of Seoul, about 50 kilometres away, the corpses were abjected, and their legacy and claim to remembrance disregarded.

Deathscapes at the intersection of law and post-coloniality

Public cemeteries were at the centre of land politics in postwar South Korea, especially when the nation underwent rapid urbanization processes in the 1960s and 1970s (Kang and Lee 2017). In order to make way for road construction or residential development, cemeteries were often bulldozed and corpses were relocated to the periphery of a city. The property owners were compensated for the relocation insofar as their land ownership was recognized as ‘legal’. While the cemetery reforms themselves applied in theory to the general public, Chinese immigrants were among those hardest hit in the land politics surrounding cemeteries, given that their land ownership had long remained unrecognized in legal terms, especially after the 1961 Alien Landownership Act came into effect.⁶

⁵ For instance, the Nationality Law, which was enacted after the Republic of Korea was established in August 1948, was actually based upon colonial legislation.

⁶ This Alien Landownership Act was repealed in 1998. It had long restricted the landownership of foreigners, namely ethnic Chinese. For the implications of this legal transition in the 1990s, see Eom (2019).

As is often the case with Jews in the Middle East (Schreier 2017) and other 'in-between subjects' (Mawani 2009) in the colonial context, Chinese migrants brought another layer to the already complicated contours of the colonial encounter that cannot be glossed over by a dichotomy of colonizer and colonized. Having had ambiguous, and often embattled, positions during colonial rule, overseas Chinese often became the target of physical and symbolic violence in post-colonial Asia, from Malaysia to Indonesia. What can be termed 'a political death' (Mawani 2009) distills the essence of various legal restrictions imposed on overseas Chinese across Asia, especially with regard to their political participation and land ownership.

The lawsuits pertaining to the Chinese cemeteries in Korea show that the rationality of the modern state is achieved and realized through the government of 'sentiments'. As Ann Stoler has pointed out, 'pathos and statistics', however antagonistic they might seem, are 'at the political heart of state inquiries' (Stoler 2009: 30). The rational mind of the modern state that won control of the national space was in effect engaged in a conscious effort to demonstrate its mastery of the domain of feelings, harnessing pathos to achieve its own ends. Not only is this modern state defined by rationalities or institutional forms, it also acquires its legitimacy with 'vital mythological dimensions that give its authority both historical aura and weight' (Hansen and Stepputat 2001: 14).

The genre of litigation outlined above illuminates three important aspects of the complex relationship between law and post-coloniality surrounding deathscapes in South Korea. First, as was the case with the Fenghuangshan cemetery, the unfolding legal drama speaks to the ambiguity and confusion inherent in the post-colonial legal structure, which in turn created a legal loophole to be exploited for the purpose of discriminating against people outside of the reconstituted national citizenry. Despite the post-colonial state's apparent attempt to distance itself from the colonial polity, a number of its legal decisions and interpretations relied heavily on legislation enacted under colonial rule. This contradiction was acutely felt in the disputes over what to include in the purview of national land and people, often producing conflicting policy actions and thus revealing the vulnerability and contingency of the post-colonial regime. Legal reforms and disputes surrounding the Chinese cemetery were reflective of this messy reality after decolonization. Especially when administrative infrastructures were ill-developed, political motivations further exploited such conceptual confusion to determine who and what would be included in a national geography (Cho 2014: 144). The act of identifying Japanese property only through names was a convoluted process, as evidenced in the case above, and this ambiguity was instrumental in the displacement of the Chinese cemetery, resulting in a large number of unclaimed graves (*muyŏnpunmyo*) as a consequence. Projects of national development were particularly exploitative of these marginalized deathscapes.

Second, the litigation reflects the post-colonial state's mission to establish (or re-establish) a legal system of property rights and national membership to legitimize its regime. In the case of the Incheon's Chinese cemetery, the Chinese community turned to 'the rule of law', expecting the court to justly

rule against 'illegitimate' construction undertaken by the school authority as it continued to erect its buildings on the Chinese-owned property. However, the rule of law, despite its universal valence, was applied only to select people. The Association's appeal to the rule of law was merely an exercise in futility when the law itself was mounted against them as a political tool of exclusive national membership. A series of legal decisions, from the Nationality Law to the Alien Landownership Act, delimited social and juridical categories of people in order to reserve a set of rights for those whom the state had recognized as legitimate members of the national community. With this power play, the government was granted the right to dispossess certain groups of people in a lawful manner. As was the case with the colonial context under which the conquest and control of indigenous peoples was made possible by the exercise of aggressive *legal* means (Comaroff 2001: 306), such a marriage of law and geography opened another way for the post-colonial state to exercise 'coercive uses of law to dispossess' (Mahmud 2010: 71) those who were not considered rightful members of a new nation, or outside of what was imagined to be a national geography.

Third, at the basis of the post-colonial state under the banner of national development lies a form of thinly veiled symbolic violence. The two Chinese cemeteries were finally removed and relocated to the periphery, or the outside, of each city, a consequence of post-colonial nationalist land politics when 'the nation' was considered to be the sublime entity that had to assert dominance at any cost. The bulldozing of the Chinese burial grounds shows how the post-colonial state imagined itself in spatial and legal terms. The category of 'Chinese' often provided the scapegoated culprits that enabled the public to exert physical and symbolic attacks on Chinese property by capitalizing on the insecurity of land titles given to non-citizens. Despite its overt effort to disassociate itself from the colonial polity, the post-colonial state committed the very same violence on its own 'others'. The material space of the Chinese burial grounds informs what Renisa Mawani calls a *political* death in her discussion of British settler colonialism, in which the Chinese in British Columbia were 'subjected to a political death through restriction, deportation, and exclusion' by legal means such as the head tax and the Chinese Exclusion Act (Mawani 2009: 29). The bulldozing of the Chinese cemetery, and the displacement and, by extension, the dispossession of the Chinese residents, signify this political death of others in the *legally* sanctioned regime of exclusion and dispossession forged in the post-colonial state.

Conclusion

As the result of the repeated relocations of the two Chinese cemeteries, a number of graves were abandoned in the process, without families who could make claims to the sites. Of note here is that *muyōnpunmyo* is just a name given for administrative convenience, not an indication that the graves actually have no real connections to the outside. This arbitrary nomenclature is, rather, an act of declaring that the rights to the graves and the land belong to the state. It is also an act of declaring that the responsibility for the destruction of burial

grounds lies not with the state, but with the families of the dead who are absent even though the fact of their absence was the consequence of state violence.

Relocation involves various violent activities, such as digging up coffins and moving corpses. During the process, it is inevitable that burial grounds are destroyed. 'Death may release one from what Achille Mbembe (2003) has called necropolitics,' as Kevin O'Neill (2012: 514) has observed in the context of Guatemala City, 'but not from the politics of the necropolis.' In post-colonial South Korea, the bulldozing of the dead enacted the politics of death at the intersection of state-led developmentalism and postwar nationalism, both of which asserted themselves in the form of land politics. Through the repeated acts of displacing dead bodies, the migrants' rights to the land and to the city were nullified, legally and socially. As we have also seen through the fate of the two Chinese cemeteries in Korea, biological death could not release Chinese migrants—who held no political clout in a post-colonial polity—from state violence.

This article has explored the Chinese cemetery as a critical geography of legal governance in post-colonial South Korea. Here the Chinese cemetery stands forfeit to *kukt'o*, to national development whose progress had long been obstructed by external forces. At the crucial intersection between citizenry and development in a post-colonial polity, the bulldozing of the two Chinese cemeteries is symbolic of the post-colonial construction of national citizenry based on property rights. As a consequence of the litigation, the two Chinese cemeteries were relocated to the periphery, or the outside, of each city. Different legal rationales were employed in each case. In Incheon, it was argued that the cemetery was owned by Chinese nationals whose land rights were ambiguous and hence they were vulnerable to attack in both the colonial and post-colonial years. On the other hand, in Seoul, rights to the cemetery were obscure due to its association with the Japanese, whose property was regarded as 'enemy property' and thus liable for confiscation by the government. What is common to these two cases, more importantly, is that the Chinese cemeteries became contested sites for national belonging as they were considered to illegally occupy national soil. The lawsuits brought into sharp relief the Chinese burial grounds as the intersection of development and post-colonial violence that nullified a space and a people within the nation-state.

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