


EDITORIAL

The Special Issue: “Separate and Unequal in Unsettling Territories of Asia and Beyond”

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I. Introduction

The Law and Society Association (LSA), a leading international socio-legal organisation, held its 2024 annual meeting in Denver, Colorado, with the theme “Unsettling Territories: Tradition and Revolution in Law and Society.” In his plenary address, renowned indigenous scholar and professor Ned Blackhawk delved into the legacy of settler colonialism, the dispossession of indigenous peoples, and impacts of law on native communities in Colorado. This year’s gathering also marked the 60th anniversary, returning to the same location as the Association’s first meeting in 1964. This venue holds historical significance, situated near the site of the 1864 Sand Creek Massacre, where, exactly a century earlier, Union Army General John Milton Chivington led an unprovoked and brutal attack, resulting in the deaths of over 200 indigenous women, elderly, children, and unborn infants (Scott, 1994).¹ Participants at the conference reflected on the significance of holding the meeting to this original site, which, despite ongoing indigenous movements and persistent struggles for sovereignty, remains as unceded and unrecognised territory belonging to Arapaho, Cheyenne, Ute, and other indigenous nations of Colorado. Professor Blackhawk’s address served as a powerful reminder of the enduring impact of Anglo-Saxon settler colonialism, underscoring the histories of indigenous genocide and territorial displacement that continue to affect native communities and peoples in Colorado and across North America.²

The 2023 LSA conference in San Juan, Puerto Rico, explored a similar theme, “Separate and Unequal,” shedding light on the Euro-American colonial history of indigenous genocide and African enslavement across the Caribbean. The wealth accumulated by Europe and American colonies through the production of cash crops such as sugar, tobacco, coffee, and others, had been made possible by the forced labour of enslaved indigenous and African peoples in the Caribbean and North America (Horne, 2015). The Republic of Texas, once an independent country in the nineteenth century, profited substantially from its slave trade with Cuba and Brazil, exporting “U.S.-bred Africans” from

¹ For an analysis of General John Chivington and the indigenous massacres in Colorado, see Blackhawk (2023), pp. 323–327.

² U.S. settler colonial policies in Colorado culminated in the UTE Removal Act of 1880 that forced the Ute and other indigenous peoples to move from their ancestral lands in Colorado to reservations in Utah, while the resistance and opposition to government policies by Colorado’s multiple indigenous nations has continued to the present. For a broader exploration of indigenous struggles and genocide in North America, see also Churchill (1996).

Virginia-based breeding farms.³ The concentration of African and indigenous labourers in Caribbean plantations, however, posed significant challenges for colonial powers, as the harsh conditions and systematic exploitation of enslaved people sparked frequent uprisings and rebellions against colonial rulers. On the island of Hispaniola, for example, enslaved Africans rebelled against French colonial rulers in 1791.⁴ This revolution culminated in Haiti's independence in 1804, marking the establishment of the first successful Black republic in the Caribbean. Through 13 years of conflict, hundreds of thousands of enslaved Africans in Hispaniola overcame French forces, as well as Spanish and British colonial armies. Significantly, the Haitian revolution embodied a large-scale uprising of "unpaid" labourers and came to represent one of the earliest and most significant working-class revolutions in modern history (Horne, 2015).

The impact of anti-colonial revolution and resistance extended to the Pacific and Asia, where U.S. colonial expansion into this region was driven by economic ambitions and strategic interests. U.S. settlers began arriving in Hawaii in the early nineteenth century as missionaries and merchants. By the mid-nineteenth century, these settlers had established lucrative sugar plantations. In 1842, President John Tyler issued a warning that the U.S. would not tolerate foreign interference in Hawaii, asserting American dominance over the islands in the Pacific, as it previously had when declaring the 1823 Monroe Doctrine in Latin America (Horne, 2007). Turning its attention towards Asia, the U.S. sent Commodore Matthew Perry to pressure Japan into opening trade relations in 1853, marking a critical step in ending the two centuries of Japan's isolationist policies. Meanwhile, U.S. economic interests in Hawaii deepened, culminating with the overthrow of Queen Lili'uokalani in 1893, accomplished with the backing of U.S. Marines and American political elites, such as U.S. Minister to the Kingdom of Hawaii John Stevens and pineapple plantation owner Sanford B. Dole (Horne, 2007). A descendant of missionaries, Dole became the first President of the Republic of Hawaii in 1894 (Horne, 2007). In 1898, during the Spanish-American War, the U.S. formally annexed Hawaii. During this conflict, the U.S. also invaded and seized control of strategic territories, including the Philippines, Samoa, Guam, and other islands in the Pacific and Southeast Asia. The U.S. annexation and occupation of these islands provided key strategic military outposts in which the U.S. quickly established military bases to facilitate colonial expansion and influence in Asia.⁵ In 1900, the U.S. participated in the suppression of the Boxer Rebellion in northern China, resulting in territorial concessions, indemnities, and extraterritorial privileges for the U.S. and other foreign powers in Asia.⁶

Building on the LSA conference themes of "Unsettling Territories" in North America and the "Separate and Unequal" treatment of enslaved indigenous and African peoples in the Caribbean, which provided foundations for further U.S. colonial actions in the Pacific and Asia, the Collaborative Research Network (CRN33) of the East Asian Law and Society organised a thematic session titled, "Separate and Unequal in Asia and Beyond." This session aimed to explore the colonial legacies of policies and practices throughout Asia and neighbouring regions. Researchers were invited to submit papers that critically analysed

³ The constitution of the Republic of Texas explicitly protected slavery. The term "breeding farms" refers to the practice of enslavers intentionally increasing their enslaved populations through forced reproduction, particularly in Virginia. Additionally, the location of Texas between the U.S. and Latin America positioned it as a significant transit point for the slave trade. For a broader history of the Republic of Texas and its involvement in the slave trade, see Horne (2022).

⁴ Among many slave uprisings in the Caribbean, Tacky's Revolt stands out as a major insurrection which occurred in the British colony of Jamaica prior to the Haitian revolution. See Brown (2020).

⁵ For a detailed history of U.S. military bases constructed in the Philippines at the end of the nineteenth century, see McCoy (2009).

⁶ Specifically, the U.S. was involved in the rebellion in Beijing, Tianjin, and Shandong in Northern China, as part of the Eight-Nation Alliance to suppress the uprising. See Glickert (1962).

the colonial legacies of racial, ethnic, gender, and national segregation, as well as the remnants of apartheid ideologies and socio-legal discrimination in various Asian contexts.⁷ This special edition features three research papers that delved into these significant dimensions of colonial legacies, which continue to affect various regions across Asia and beyond.

2. The structure of the special issue

The first two sections of this special edition delve into the history of U.S. colonial initiatives in the Pacific and Asia, highlighting the parallels between indigenous resistance and struggles in North America and the Caribbean. The first section specifically focuses on the Hawaiian monarchy's efforts to oppose U.S. practices of "blackbirding"—a form of enslaved labour prevalent in the Pacific and Oceania—in hopes of safeguarding Hawaii's sovereignty and independence amidst rising U.S. colonial pressure.⁸ In the aftermath of the U.S. Civil War, Confederate expatriates and former enslavers directed their efforts towards the Pacific, abducting and enslaving Polynesians and Melanesians for forced labour in European colonies such as Queensland and New South Wales in Australia, Fiji, New Caledonia, Vanuatu, Solomon Islands, and Peru.⁹ These "blackbirding" operations extended racial hierarchies by enforcing "separate and unequal" legal frameworks, mirroring colonial policies from North America and the Caribbean, and institutionalising systems of racial and ethnic segregation against indigenous populations throughout the Pacific. This section also focuses on the Hawaiian monarchy's efforts to fight these operations and to promote Asian immigration by signing formal treaties with rising Asian powers, including Japan and China. In further efforts to assert and maintain Hawaii's sovereignty amidst growing U.S. economic and political ambitions, King Kalakaua undertook a global tour in 1881 in order to build a coalition of international forces to fight against U.S. efforts to impose a new constitution and discriminatory socio-legal systems in Hawaii.

The second section examines U.S. extraterritorial policies and military presence in the islands of Hawaii and Puerto Rico—territories acquired during the 1898 Spanish-American War, while exposing how extraterritorial rights allowed the establishment of "separate and unequal" privileges in circumventing the application of local rules and customs. The islanders' political resistance and struggles against U.S. rulers had long been manifest, either through seeking to attain sovereign nationhood outside the U.S. territorial jurisdiction or acquiring the status of independent statehood within the U.S. federal system. While growing support for statehood led to Hawaii's admission to the Union in 1959 as the 50th state, Puerto Rico continued to suffer from unequal political status and lack of full electoral representation in the U.S. Congress. Puerto Ricans are still not allowed to participate in the U.S. Presidential Election. Their political struggle for rights to sovereignty and independence continues today, as it does in many regions in Asia and throughout the world.

The third section provides a synopsis and highlights of the three papers included in this special issue, which explore the complex interplay between law and society, focusing on the "separate and unequal" application of legal frameworks and socioeconomic

⁷ This session was created with the support of CRN33 organising committee members, including Takeshi Akiba, Yance Arizona, Yuyong Choe, Matthew Erie, Denis de Castro Halis, Jonathan Liljeblad, Bashir Mobasher, and Amy Shee.

⁸ For colonial histories of Hawaii, see Ing (2019); Lilli'uokalani (1898); Silva (2004).

⁹ Melanesians generally inhabited the southwestern Pacific islands, including Papua New Guinea, Solomon Islands, Vanuatu, Fiji, while Polynesians historically occupied a vast triangle in the Pacific, including Hawaii, New Zealand, Samoa, Tonga, Easter Island, and French Polynesia. For a broader history of Melanesians and Polynesians in the Pacific, see Kirch (2002).

opportunities across various Asian regions. The papers examine state policies and government programmes in South Korea, People's Republic of China, and the former Soviet republics in Central and West Asia, analysing how “unequal and separate” policies shaped differential access to legal freedom and civil rights. The collection investigates the multifaceted nature of legal systems and their societal impacts, highlighting disparities in the provision of rights and opportunities. It also scrutinises how historical legacies, including colonial laws and discriminatory policies, continue to influence contemporary legal and social structures.

The final section synthesises findings on the enduring effects of colonial legal frameworks and provides insights into the complex socio-legal identities and categories that persist in these regions, offering nuanced understandings of the “separate and unequal” dynamics characterising law and society in Asia and its neighbouring regions.

2.1 U.S. “Blackbirding” in the Pacific and the Hawaiian monarchy’s resistance

After the U.S. Civil War, Confederate expatriates and sympathisers sought opportunities abroad, due to the South’s economic devastation, political disenfranchisement, and social upheaval (Horne, 2022). They hoped to rebuild their wealth and privileges in such places as Mexico, the Caribbean, Central and South America, as well as the Pacific, particularly Hawaii and Fiji (Horne, 2007). They also played a significant role in spreading labour exploitation practices, including “blackbirding” in the Pacific, so as to recreate economies based on racial hierarchies of forced labour (Horne, 2007). In collaboration with other European colonial powers, U.S. enslavers were involved in the trafficking of “blackbirded” peoples from Vanuatu, the Solomon archipelagos, Gilbert Islands, and other South Pacific Islands, to plantations in British Queensland in Australia, Fiji, Samoa, Tahiti, New Caledonia, and other European colonies. Indigenous peoples from the Marquesas Islands and Easter Island in Polynesia were also trafficked to Peru in South America, where they were forced to harvest a valuable guano fertiliser under extreme and brutal conditions (Maude, 1981).

The Hawaiian monarchy actively opposed the Pacific labour trafficking trade, denouncing the inhumane treatment of those enslaved islanders and refusing to allow Hawaii to become a refuge and lucrative market for “blackbirders” and their captives from Pacific Islands (Horne, 2007). To combat the “blackbirding” trade and to strengthen protections for labourers, Kamehameha III passed the Masters and Servants Act of 1850, which established formal contract labour systems in Hawaii.¹⁰ It also authorised Chinese labourers as apprentices under contract, thus offering better wages and working conditions than those on the U.S. mainland. The Hawaiian monarchy also sought to collaborate with other rising powers in Asia, serving as a counterbalance to U.S. influence and to help combat practices of “blackbirding.” In 1881, King Kalakaua embarked on a global diplomatic tour, including visits to Japan, China, and other Asian countries. He became the first reigning monarch and incumbent chief of state to visit Japan (Marumoto, 1976). Kalakaua’s visit presented significant diplomatic opportunities to Japan, as in 1881, the Hawaiian Kingdom was still an independent nation and had a treaty relation with Japan which contained the most favoured nation clause, meaning that Hawaii had extraterritorial jurisdiction in Japanese ports (Marumoto, 1975, p. 62). Hawaii soon secured a treaty with Japan to promote Japanese immigration to support the kingdom’s expanding plantation economy. In a further diplomatic move, Kalakaua proposed a royal marriage between Princess Victoria Kaiulani and Japanese Prince Sadamaro Yamashiro of Japan,

¹⁰ Chinese workers began arriving in Hawaii in the 1830s, predating the Masters and Servants Act. This law formerly authorised them as contract labourers. For a comprehensive account of Chinese migrant histories in Hawaii, see Glick (1980).

aiming to strengthen ties and seek Japanese protection for the Hawaiian Kingdom (Marumoto, 1975, p. 58).¹¹ Kalakaua also extended an offer to abolish extraterritorial rights, a long-sought treaty revision which Japan had been pursuing with major world powers.¹² While Japan ultimately declined the offer because of the risk of creating international complications, there was “no doubt that the offer was appreciated by the Japanese government (Marumoto, 1975).” In the following year, Hawaii signed an agreement with China to further encourage Chinese immigration, at a time when the U.S. mainland was witnessing pronounced violence against Chinese immigrants and communities, including lynchings in California, Nevada, Washington, and Wyoming, and ultimately the enactment of the Chinese Exclusion Act of 1882.¹³ Hawaii’s immigration efforts were part of a broader strategy to strengthen its position in the Pacific, to preserve its sovereignty, and to manage its economy, particularly by promoting Asian immigration while opposing the exploitation of labour and “blackbirding” practices prevalent in the Pacific. Moreover, Hawaii sought to forge international alliances and establish strategic ties with rising Asian powers as a counterbalance to the growing U.S. influence in both Hawaii and the broader Pacific region.

The Hawaiian monarchy’s political strategies increasingly clashed with U.S. economic interests and colonial ambitions in Hawaii, thus contributing to the erosion of the monarchy’s political and diplomatic standing with U.S. authorities, who began to view the Hawaiian royal government as an impediment to their economic and political objectives. These tensions culminated in the event known as the “Rebellion of 1887” or the “Bayonet Constitution,” a significant turning point that marked the beginning of the monarchy’s decline under U.S. pressure. This political upheaval was orchestrated by a coalition of U.S. plantation owners and local business elites, with implicit support from the U.S. government. Under threat from the Hawaiian Rifles militia, led by American Civil War veteran Volney V. Ashford and composed primarily of Euro-American settlers, King Kalakaua was forced to sign a new constitution (Kam, 2009). This constitution significantly curtailed monarchical power, transferring authority to a legislature and cabinet dominated by U.S.-aligned interests, and effectively restructuring the government to reflect a more republican model. Furthermore, the new constitution established a system of “Separate and Unequal,” extending voting rights to Euro-American settlers while disenfranchising indigenous Hawaiians and Asian communities through restrictive property and literacy requirements. This shift in voting demographics further undermined the monarchy’s traditional power base (Kam, 2009).

Upon succeeding King Kalakaua, Queen Lili’uokalani sought to strengthen Hawaiian sovereignty by drafting a new constitution to counter the 1887 “Bayonet Constitution.” Her aim was to restore monarchical authority and expand political participation for indigenous Hawaiians. However, these efforts were met with strong opposition from a coalition of plantation owners, business interests, and descendants of missionaries, who organised the Committee of Safety (Kam, 2009). This group sought to preserve their economic and political dominance, resisting attempts to restore Hawaiian governance. The subsequent overthrow of the Hawaiian monarchy in 1893, followed by the 1898 annexation of Hawaii, occurred during a period of U.S. imperial expansion. With support from the Hawaiian Rifles militia and U.S. Minister John Stevens, who ordered U.S. Marines to land

¹¹ Japan sincerely rejected the proposal on 10 February 1882.

¹² Kalakaua’s voluntary offer to eliminate the extraterritorial rights, a treaty revision that Japan had long sought from major powers, was conveyed to Japan’s Foreign Minister Inouye Kaoru by Hawaii’s Attorney General William N. Armstrong on 6 March 1881. Kalakaua strongly recommended this revision to Hawaii’s Foreign Minister W.L. Green in a letter dated 10 March 1881. For a more detailed analysis, see Marumoto (1975), p. 63.

¹³ The doctrine of racial segregation was ultimately challenged by the U.S. Supreme Court’s ruling in *Brown v. Board of Education* 347 U.S. 483 (1954).

from the USS *Boston*, the Committee of Safety orchestrated the coup that deposed Queen Lili'uokalani (Ireland, 2011). Sanford B. Dole, a descendant of prominent missionaries and a leader within the Committee, was installed as the head of the provisional government, paving the way for eventual U.S. annexation. Hawaii's strategic location also proved crucial for U.S. naval operations during the 1898 Spanish-American War, serving as a Pacific forward base for further U.S. colonial expansion, particularly in the Philippines. This military significance, combined with U.S. commercial interests in plantations and growing concerns about rival imperial powers in the Pacific, fuelled U.S. determination to secure "separate and unequal" control through annexation. The sequence of U.S. political manoeuvres and interventions, from the Bayonet Constitution to the overthrow and annexation, represented a crucial expansion of U.S. military and economic power in the Pacific and Asia, fundamentally transforming the nature of Hawaii's sovereignty and quashing its people's aspirations for self-determination and independence.

2.2 "Separate and Unequal" systems of socio-legal segregation

As with the 1898 annexation of Hawaii, Puerto Rico was also incorporated into the U.S.'s political and legal framework during the 1898 Spanish-American War. Both islands were treated as "separate and unequal" unincorporated territories, positioned on opposite sides of the North American continent. The doctrine of "Separate and Unequal" is closely tied to the 1896 U.S. Supreme Court decision in *Plessey v. Ferguson*, which upheld racially-designated public accommodations in the Jim Crow South. The case arose from Louisiana's 1890 Separate Car Act, which mandated separate railway cars for white and black passengers. Homer Plessey, a black man who had passed as white for much of his life, was forced by a train conductor to exit his seat in a white-only section of the East Louisiana Railroad train (Davis, 2004). A similar incident had taken place four decades earlier in 1850, in Washington, D.C., involving Prince Alexander Liholiho, the heir to the Hawaiian monarchy who later became King Kamehameha IV. While on a diplomatic mission to meet with U.S. government officials eager to establish trade relations with Hawaii, the prince was asked to leave a train car reserved for white passengers due to his race. This episode highlighted the pervasive "separate and unequal" nature of racial segregation in American society long before the *Plessey v. Ferguson* decision formalised it into law (Adler, 1968).

Similar to Hawaii's long resistance to U.S. colonial rule in defence of their sovereignty, Puerto Rico has also long struggled for independence. Puerto Rico was first encountered during Cristobal Colon's second voyage in 1493, and it remained under Spanish colonial rule until 1897, when Spain finally granted the Autonomous Constitution (*Carta Autonómica*), establishing Puerto Rico's self-government with its own legislature, judiciary, and cabinet. The new constitution provided civil liberties such as freedom of speech, freedom of the press, the right to vote, and the authority to manage internal affairs in such areas as education, public works, and local trades (Denny, 1968). However, Puerto Ricans' self-governance was short-lived, for the U.S. invaded Puerto Rico following the 1898 Spanish-American War, establishing military rules and placing the island under the control of the U.S.-appointed governor, effectively ending Puerto Rico's brief autonomy.

While the Jones-Shafroth Act of 1917 granted U.S. citizenship to Puerto Rican residents, it still allowed significant control over the island by the U.S. President, who continued to appoint the governor and key officials. The Act also made Puerto Ricans eligible for the military draft, leading to the enlistment of a large proportion of islanders in the U.S. armed forces, with 20,000 drafted during World War I, 65,000 serving in World War II, and 50,000 participating in the Vietnam War (Yarrow, 2024). Puerto Rico also became a popular "Rest and Recreation" (R&R) destination for military personnel, leading to the establishment of

brothels and organised prostitution (Yarrow, 2024, p. 2).¹⁴ Puerto Rican women were also subjected to forced sterilisations, with 7% of all Puerto Rican women sterilised between 1947 and 1948. By 1956, one in three Puerto Rican women had undergone sterilisation procedures (Arce, 2021). Birth control methods, including sterilisation without informed consent or carried out under coercive conditions involving misinformation and threats, were promoted by the government as a solution to poverty and overpopulation. Medical experiments by pharmaceutical firms were also conducted in Puerto Rico, and in the 1950s, over 1,500 Puerto Rican women were subjected to the first large-scale human trial of birth control pills (Vargas, 2017).

Puerto Rico has also faced “separate and unequal” treatment in federal programmes, receiving less funding for Medicaid and Medicare as compared to U.S. states, and lacking access to Supplemental Security Income (SSI) benefits, which provide financial assistance to low-income, elderly, blind, and disabled individuals (Schwartz, 2022). Furthermore, Puerto Ricans are unable to vote in U.S. presidential elections and have no voting representation in Congress. While the island has a Resident Commissioner who can participate in debates, they cannot vote on the House floor. These political and legal disparities continue to limit Puerto Rico’s political influence and ability to advocate for equal treatment (Hudiburg, 2022).

The “separate and unequal” policies in Puerto Rico also extend to environmental well-being and health disparities. Environmental contamination and ecological destruction have been reported not only in Puerto Rico but also in former colonies such as Hawaii, as well as in territories under U.S. military jurisdiction across Asia and throughout the globe (Newkirk, 2017). The U.S. constructed military forts, bases, and other armed installations on land expropriated from local residents and peasants, which now occupy nearly 13% of Puerto Rico’s land and 21% of Oahu’s total area (Kennedy, 2022). Similar instances of environmental contamination and ecological destruction due to U.S. military presence have been observed in Hawaii (Kennedy, 2022). The U.S. military has operated without sufficient accountability or remediation efforts, despite the fact that military training exercises, weapons testing, and bombing ranges have led to soil and water contamination with toxic chemicals, along with industrial discharges into rivers and coastal areas, causing severe ecological damage and destruction (Kennedy, 2022). Similar patterns of environmental contamination and ecological destruction have been reported in other overseas U.S. military bases in East Asia, including those in the Philippines (Chanbonpin, 2003), Jeju Island in South Korea (Savejejunow.org, 2013), and Okinawa in Japan (Mitchell, 2021).

2.3 Research papers on the “separate and unequal” realities in Asia and beyond

Under the theme, “Separate and Unequal in Asia and Beyond,” socio-legal scholars and researchers submitted research papers that reflect on the ways that law has been mobilised to normalise discrimination, colonisation, and disenfranchisement of peoples and groups across various Asian regions, many of which were formerly colonised by Euro-American powers. The following three papers help to powerfully deconstruct the ways in which the law has historically normalised such practices across Asia and neighbouring regions, providing cross-national perspectives and cross-cultural analyses of inequities and discrimination pertaining to gender, race, ethnicity, and national origin, while tracing their historical roots to colonialism and imperialism. They also explore potential

¹⁴ See also Moon (2009). The U.S. also established military bases to facilitate armed ventures and brothels to support military personnel in Puerto Rico, post-World War II Japan, South Korea, Vietnam, and the Philippines in East and Southeast Asia. For a more in-depth exploration of this “Military-Prostitution Complex (MPC)” and its historical context, see Kinzer (2017).

correlations among legal strategies, oppressive forces, and liberatory perspectives to address and overcome these inequities and disenfranchisements across multiple regions in Asia and beyond.

In the paper entitled “Ambivalent Identity: Incorporated but Unequal – A Postcolonial Review of ‘Japanese Comfort Women’ Problem with the Korean Court Judgments Regarding State Immunity,” Seonwha Kim examines Korean courts’ two recent contradictory rulings on “comfort women” litigation brought by the victims of sexual exploitation by the Japanese forces during World War II, beginning with a critical analysis of the perplexity of dealing with colonial issues within the framework of international law. Specifically, this paper deconstructs the legal principle of state sovereign immunity as applied to the case of “comfort women” and of victims of sexual exploitation under Japan’s colonial rule during World War II. The application of this immunity principle underlies relations between two equivalent, sovereign state systems, while the issue of “comfort women” is seen to belie the inequitable relations of the powerful imperial state, on one side, and its colonial subjects, on the other. The problem was accentuated by the bifurcated identity of Korea’s “comfort women.” First, these women remained Japanese nationals following the 1910 annexation of the Korean Peninsula by the Empire of Japan. Second, while they were neither combatants nor foreign soldiers of the enemy state, they continued to remain, in effect, constituent members of Japan’s military establishment. The paper thus examines the deficiency of current jurisprudence regarding how to properly address the coloniality of Korea and the status of “comfort women” under international law. The paper also explores a potential path to establishing the proper state response to Japan’s predatory sexual violence against Korean women in its former colonial jurisdiction, arguing the necessity of equitable remedial measures of redress and reparation for the victims of sexual violence and exploitation in Korea and beyond.

In the second paper, entitled “Divorce Petitions by Trafficked Women Denied: Legal Consciousness, Circuit of Commerce, and the State,” Xiangning Xu presents historical examinations of marriage discrimination in China and provides an empirical analysis of survey results related to China’s divorce petitions and court rulings in relation to “trafficked” rural girls and women in China. After enduring a “century of humiliation” inflicted by Euro-American and Japanese colonial powers, China established its independence in 1949 under communist leadership, overseeing a multi-ethnic and multi-cultural population.¹⁵ China subsequently underwent extensive government reforms and economic transformation, which brought about complex challenges related to ethnicity, gender, and socio-legal issues. Some women in rural regions argued that they had endured years of domestic abuse and sexual violence. Drawing on the information on public verdicts from the “China Judgments Online” and 110 verdicts on divorce cases filed by women petitioners for marriage annulment, the paper analyses the court rationales and legal grounds upon which many of the divorce petitions were denied by the Chinese courts. The author further provides a critical overview of socio-legal literature related to institutional constraints of the Chinese court system as extended to women, especially in rural regions, indicating how court decisions and rulings on divorce petitions tend to reflect and reinforce informal assumptions within certain legal communities in China’s rural regions. The author also discusses the necessity of preventing the perpetuation of domestic abuse and gender discrimination in rural China, offering sets of proposals designed to accomplish that end.

¹⁵ The “century of humiliation” refers to the period from the First Opium War in 1839 to the founding of the People’s Republic of China (PRC) in 1949, in which China experienced foreign invasions, unequal treaties, and loss of sovereignty to Euro-American and Japanese colonial powers. For an in-depth exploration of China’s “Century of Humiliation” and its impacts on U.S.–China relations, see Kaufman (2011).

In the third paper, “Struggles of Original Nations in EuroAsia: Historical Impacts of the Mongol-Tatar Invasion, Russian Empire and Post-Soviet States on the Original Nations of Belarus and Latvia,” the authors attempt to unravel the colonial impacts of multiple correlations of forces upon the formation on Belarus and Latvia. These included the Mongol-Tatar invasions, which extended from Northeast Asian to Central and West Asia and into Europe, impacting regions such as Prussian and Polish territories; Russian imperialism, whose influence spanned from Western Europe to Eastern and Northern Asia; and the formation of the Soviet Union in 1917. The Soviet Union eventually dissolved in 1991 into 15 independent republics, including Belarus and Latvia, and gave rise to the Russian Federation, whose territory extends from Central Europe to Northeast Asia. The paper explores the impact of Asiatic influences from the Mongol-Tatar invasions and their transformative effect on indigenous communities prior to their Christianisation following the Crusade. These sacred missions extended not only southward, targeting the Muslim-occupied Iberian Peninsula and various Southern European regions, but also northward, reaching Baltic areas such as those inhabited by the Original Nations of Belarus and Latvia. With Belarus becoming a full member of China’s Shanghai Cooperation Organization (SCO) in 2024, alongside Russia and other former Soviet republics, this geo-political development highlights the ongoing shift in global power structure and the increasing interconnectedness of Asian and European socio-legal interests (Xie, 2024).

These three papers offer historically informed, socio-legal analyses of colonial legacies and their impact on populations across different state systems. They explore the transformation of gender roles, patterns of discrimination, and the political and policy responses of governments. They also examine court rulings on issues of social inequities, human trafficking, forced marriage, ethnic conflicts, and sexual violence against women across Asia and neighbouring regions. The authors also critically deconstruct how the law has historically normalised discrimination and political disenfranchisement and offer vital insights into the “separate and unequal” relationship between law and society in Asia and in its connection to Europe. They skilfully explore the interplay between social forces, legal strategies, and government actions in addressing and overcoming inequities and disenfranchisements across multiple regions in Asia and beyond.

3. Conclusions

The LSA conference committees adopted the themes of “Separate and Unequal” and “Unsettling Territories: Tradition and Revolution in Law and Society” to explore how Euro-American colonialism has shaped the experiences of indigenous peoples and enslaved Africans. These themes highlighted the ongoing socio-legal inequalities faced by these communities in North America and the Caribbean. CRN33 extended this inquiry with a thematic session, “Separate and Unequal in Asia and Beyond,” encouraging scholars to critically engage with colonial legacies in Asia and neighbouring regions and to reflect on the ways that the law normalises discrimination and inequalities of distinct groups and communities through state policies and government programmes in their respective countries and homelands.

The three papers in this special edition explored the socio-legal significance of “separate and unequal” realities in contemporary Asia and neighbouring regions. The first article examined South Korean court rulings on “comfort women” cases, addressing Japan’s sexual exploitation of Korean women during World War II. The systemic denial of divorce petitions filed by trafficked women in rural China was discussed in the second paper, focusing on the judicial rationale behind these rejections, highlighting how informal legal practices reinforced gender discrimination and the perpetuation of domestic abuse in rural Chinese communities. Asiatic impacts of the Mongol-Tatar

invasions on Russian imperialism in shaping Belarus and Latvia were explored in the third paper. It examined how indigenous communities were affected by foreign invasions from Asia and the Crusades and the imperial ambitions of Russia.

Unsettling “separate and unequal” territories continued to manifest deep-rooted discriminatory policies and systematic institutional practices across multiple regions in Asia and beyond. These legacies have been seen in entrenched inequalities in legal frameworks, social norms, and governance structures, which serve to reinforce divisions based on race, ethnicity, gender, class, and nationality. Further research is needed to uncover the nuanced historical impact of colonial policies and imperial ambitions, tracing how these forces have shaped political and socio-legal systems. Such studies will contribute to a deeper understanding of the ongoing serious global repercussions of these legacies, revealing their influences on contemporary governance, justice, and legal equity in Asia and across the globe.

References

- Adler, J. (1968). ‘King Kamehameha IV’s attitude towards the United States’, *Journal of Pacific History*, 3(1), pp. 107–115.
- Arce, J. (2021). *The long history of forced sterilization of Latinos*. Available at: <https://unidosus.org/blog/2021/12/16/the-long-history-of-forced-sterilization-of-latinas/> (Accessed: 8 November 2024).
- Blackhawk, N. (2023). *The Rediscovery of America: Native Peoples and the Unmarking of U.S. History*. New Haven: Yale University Press.
- Brown, V. (2020). *Tacky’s Revolt: The Story of an Atlantic Slave War*. Cambridge: Harvard University Press.
- Chanbonpin, K. D. (2003). ‘Holding the United States accountable for environmental damages caused by the U.S. military in the Philippines: A plan for the future’, *Asian-Pacific Law & Policy Journal*, 4(2), pp. 321–381.
- Churchill, W. (1996). *From a Native Son: Selected Essays in Indigenism, 1985–1995*. Boston: South End Press.
- Davis, T. J. (2004). ‘More than segregation, racial identity: The neglected question in *Plessy v. Ferguson*’, *Washington and Lee Journal of Civil Rights and Social Justice*, 10(1), pp. 1–41.
- Denny, B. C. (1968). ‘The United States and Puerto Rico: A century of success 1898–2000’, *Howard Law Journal*, 15(1), pp. 70–87.
- Glick, C. E. (1980). *Sojourners and Settlers: Chinese Migrants in Hawaii*. Honolulu: University of Hawaii Press.
- Glickert, R. W. (1962). *The role of the United States Marine Corps in the Boxer Rebellion*, M.A. Diss. College of Arts and Sciences, American University.
- Horne, G. (2007). *The White Pacific: U.S. imperialism and Black Slavery in the South Seas after the Civil War*. Honolulu: University of Hawaii Press.
- Horne, G. (2015). *Confronting Black Jacobins: The U.S., the Haitian Revolution, and Origins of Dominican Republic*. New York: Monthly Review Press.
- Horne, G. (2022). *The Counter-Revolution of 1836: Texas Slavery & Jim Crow and the Roots of American Fascism*. New York: International Publishers.
- Hudiburg J. A. (2022). *Parliamentary rights of the delegates and resident commissioner from Puerto Rico*. Available at: <https://crsreports.congress.gov/product/pdf/R/R40170> (Accessed: 4 December 2024).
- Ing, T. L. (2019). *Reclaiming Kalākaua: Nineteenth-Century Perspectives on a Hawaiian Sovereign*. Honolulu: University of Hawaii Press.
- Ireland, B. (2011). *The US Military in Hawaii: Colonialism, Memory and Resistance*. Houndmills: Palgrave Macmillan.
- Kam, R. T. (2009). ‘Commemorating the Grand Army of the Republic in Hawaii: 1882–1930’, *The Hawaiian Journal of History*, 43, pp. 125–151.
- Kaufman, A. A. (2011). *Testimony before the U.S.-China Economic and Security Review Commission hearing on ‘China’s narratives regarding national security policy’: The “Century of Humiliation” and China’s national narratives*. Available at: <https://www.uscc.gov/sites/default/files/3.10.11Kaufman.pdf> (Accessed: 4 December 2024).
- Kennedy, S. (2022). *Environmental impact of military experiments in Hawaii*. Available at: <https://registerforum.org/15919/news/the-environmental-impact-of-military-experiments-in-hawaii/> (Accessed: 4 December 2024).
- Kinzer, S. (2017). *The True Flag: Theodore Roosevelt, Mark Twain, and the Birth of American Empire*. New York: Henry Holt and Company.
- Kirch, P. V. (2002). *On the Road of the Winds: An Archaeological History of the Pacific Islands before European Contact*. Oakland: University of California Press.
- Lili’uokalani (1898). *Hawaii’s Story by Hawaii’s Queen*. Boston: Lee and Shepard Publishers.
- Marumoto, M. (1976). ‘Vignette of early Hawaii–Japan relations: Highlights of King Kalakaua’s sojourn in Japan on his trip around the world as recorded in his personal diary’, *Hawaiian Journal of History*, 10, pp. 52–63.

- Maude, H. E. (1981). *Slavers in Paradise: The Peruvian Slave Trade in Polynesia, 1862-1864*. Canberra: The Australian National University Press.
- McCoy, A. W. (2009). *Policing America's Empire: the United States, the Philippines, and the Rise of the Surveillance State*. Madison: University of Wisconsin Press.
- Mitchell, J. (2021). *U.S. military hid fuel pipeline flaws from public in Okinawa*. Available at: <https://theintercept.com/2021/12/20/us-military-japan-okinawa-pipelines-pfas/> (Accessed: 4 December 2024).
- Moon, K. H. S. (2009). *Military prostitution and the U.S. military in Asia*. Available at: <https://apjif.org/katharine-hs-moon/3019/article> (Accessed: 4 December 2024).
- Newkirk, V. R. (2017). *Puerto Rico's environmental catastrophe*. Available at: <https://www.theatlantic.com/politics/archive/2017/10/an-unsustainable-island/543207/> (Accessed: 4 December 2024).
- SaveJejunow.org (2013). *A returned US base in Jeju, proved to be 'most oil-contaminated,' will be used again to militarize Jeju?* Available at: <https://savejejunow.org/p7989/> (Accessed: 4 December 2024).
- Schwartz, M. A. (2022). *Equal protection does not mean equal SSI benefits for Puerto Rico residents, says Supreme Court*. Available at: <https://crsreports.congress.gov/product/pdf/LSB/LSB10737> (Accessed: 4 December 2024).
- Scott, B. (1994). *Blood at Sand Creek: Massacre Revisited*. Coldwell: The Caxton Printers, Ltd.
- Silva, N. K. (2004). *Aloha Betrayed: Native Hawaiian Resistance to American Colonialism*. Durham: Duke University Press.
- Vargas, T. (2017). 'Guinea pigs or pioneers? How Puerto Rican women were used to test the birth control pill', *Washington Post*, 9 May. Available at: <https://www.washingtonpost.com/news/retropolis/wp/2017/05/09/guinea-pigs-or-pioneers-how-puerto-rican-women-were-used-to-test-the-birth-control-pill/> (Accessed: 4 December 2024).
- Xie, W. (2024). 'Belarus recognizes potential of SCO, committed to making the organization's voice lauder: FM', *Global Times*, 7 July. Available at: <https://www.globaltimes.cn/page/202407/1315568.shtml> (Accessed: 4 December 2024).
- Yarrow, M. (2024). *Colonial Legacy and Military Strategy: the U.S. Military in Puerto Rico*. [Online]. Philadelphia: American Friends Service Committee. Available at: <https://afsc.org/sites/default/files/documents/2000%20Colonial%20Legacy%20and%20Military%20Strategy%20The%20US%20Military%20in%20Puerto%20Rico.pdf> (Accessed: 23 September 2024).