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

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

This dissertation traces the historical trajectory of changing approaches towards the adjudication of sex crimes from the Sino-Japanese War in differing legal, political, and social settings. Departing from previous scholarship in the field, it delves into the treatment of wartime sexual violence against Chinese women in both war crimes trails and civil litigations. In addition to its comprehensive scope, the transnational framework of this study demonstrates historical links between the war crimes trials in Tokyo, Nanjing and other Chinese cities during the 1940s and 1950s, reparation lawsuits of the 1990s, and a people's court called the Women's Tribunal held in the year 2000.

The first half of this dissertation examines the adjudication of sexual violence in war crimes trials, beginning with Chapter 1 on the Tokyo Trial. Given the fact that Chinese authorities were limited by the dearth of evidentiary materials in most parts of the country, with the exceptional case of Nanjing, this chapter argues that pragmatism guided the Chinese prosecutorial effort. Adding more nuance to conventional interpretations of the Tokyo Trial's disregard towards sexual violence, the findings of this chapter point to the complexities of participating in tribunals that entail international cooperation combined with domestic coordination in post-conflict societies. Chapter 2 focuses on the Nationalist Chinese government's treatment of wartime sexual violence in the "Class B/C" war crimes trials conducted in ten Chinese cities. This chapter situates this legal treatment in the larger context of the KMT's attitudes towards women in the Republican era (1912—1949). The legal decision to incorporate rape and enforced prostitution in war crimes investigation and prosecution reflected the KMT's adherence to international legal norms, while the actual practice of legal negligence regarding crimes against women mirrored the influence of domestic judicial conventions. These trials were thus caught between international law and domestic legal traditions in their legal deliberation on sexual violence. Chapter 3 examines the written confessions of Japanese war crimes suspects, considering to what extent they were used by the Communist Chinese government to prosecute sexual violence during the CCP trials of 1956. The historical analysis is contextualized and interpreted by an in-depth analysis into how the CCP represented sexual violence in articles from the *People's Daily*. It also considers the extent to which the CCP's adjudication of

sexual violence reflected its gender policy and the promise to emancipate women.

Introducing the key concept of "legal derivatives," the first part of this dissertation demonstrate that the war crimes trials conducted by the Allied countries, the KMT, and the CCP all derivatized victims of sexual violence, thus reducing the suffering of women to that of men. This legal derivatization not only led to the marginalization of female victims in the discursive configuration, but also erased their suffering from collective memory.

The flourishing of feminist movements and the rise of new approaches towards transitional justice each contributed to transforming world opinion on violence against women as well as the role of victims in judicial proceedings. It was against this backdrop that victims of the Japanese comfort women system came out, and concerned global citizens demanded an official apology and proper compensation for their suffering. With this eruption of the "comfort women" issue, Chinese comfort women – with the help of lawyers and activists – instigated four class-action lawsuits against the Japanese government. However, how these lawyers represented the personal stories of comfort women and what actually happened in the courtroom have remained obscure, an academic gap that Chapter 4 fills. Unlike conventional verdict-centered approaches to civilian trials involving comfort women, this chapter adopts a procedural approach of analysis by delving into the court transcripts, legal briefs, and other evidentiary materials tendered to the court. It argues that the female victims and their lawyers expanded the meaning of the courtroom by turning it into a site for knowledge transmission and recognition. The findings suggest that these proceedings have the potential to serve as an exemplary model for future civil trials adjudicating historical injustices of sexual and gender-based violence, while restoring respect and agency to female victims. Chapter 5 focuses on how the Chinese prosecution team contributed to the 2000 Women's International War Crimes Tribunal on Japan's Military Sexual Slavery, through an examination into the prosecution documents submitted by the Chinese delegation. This chapter argues that a divergent gap emerged between the transnational pursuit of justice for a wide range of female victims on the international stage and the Chinese prosecution team's narrow pursuit of justice for rape victims. Ultimately, the judicial discourse of transnational gender justice exhibited in the court ruling did not quite reflect the Chinese delegation's contribution to the international judicial endeavor.

This dissertation finds that while the war crimes trials subsumed women's pain into national suffering, the reparation lawsuits and the Women's Tribunal resurrected it in order to address it squarely. During the reparation lawsuits and the Women's Tribunal, lawyers, feminists, and other activists aimed to attain the legal recognition of sexual violence inflicted upon women as a gender-specific crime to be prosecuted. The Women's Tribunal, in particular, achieved this legal recognition of women's suffering, thereby restoring what Shoshana Felman calls the "legal subjectivity" of victims. This shift during the civil trials reflected the remarkable change in the judicial treatment of female victims from legal derivatives to legal subjects; and, by extension, the adjudication of sexual violence from a generalized reflection of men's suffering to gender-specific crimes. Such key findings of this dissertation contribute towards a better understanding of the significance of gender justice, and is therefore deemed worthy of conferring the degree of Doctor of Philosophy (Ph.D.).