

‘Ghostly Entanglements’: Reconsidering Colonial Justice through Hauntology and Feminist Temporalities

Victoria Allen Stainsby
v.allenstainsby@gmail.com

Author Bio

Victoria Allen Stainsby came to SOAS in 2017 for her MA in Social Anthropology followed by an LLB (SS). She is currently a doctoral researcher at SOAS's law department. Her thesis explores the relationship of law to colonial injustice using anthropology and feminist approaches. Victoria looks at the legacy of cases where justice has been pursued over many decades and their impacts on contemporary society, with a specific focus on Malaysia.

Abstract

What if “the dead are never really dead” but come back again to remind us of justice denied?¹ Recently, ghosts from the violent legacy of British colonialism have appeared, seeking justice. Legal cases such as *Mutua* and *Keyu* invite us to reconsider our entanglement with our history and to reconceptualise it as a haunting and a continuation of post-colonial present.² No doubt ‘ghosts’ function as figurative witnesses, seeking justice for past transgressions. Yet, they also act as harbingers for future justice and encourage action from the living. In Southeast Asia, ghosts co-exist with the living in popular imagination, merging past and present time. Not only do these hauntings disturb our conscience, but also our conception of time - collapsing past into present. A feminist reconsideration of time as ‘polytemporal’ further disturbs the linear norm and allows us to form a different relationship with the past and engage more fully with the possibility of justice in the future.

¹ Victoria Harrison, “The Dead Are Never Really Dead,” *The Monist* 104 (2021): 337–51. Harrison examines Chinese cultural values around death as an ethical imperative.

² *Ndiku Mutua and 4 Others v Foreign and Commonwealth Office [2011] EWHC 1913 (QB)*, [1]. This case marked the first time victims of colonialism were granted the right to claim compensation.

Keyu and Others v Secretary of State for Foreign and Commonwealth Affairs and Another [2015] UKSC 69. The judgment held that the UK government was not obligated to hold a public inquiry into the 1948 massacre of 24 unarmed Chinese rubber plantation workers in Malaysia.

Key Words: Colonial Justice, Law, Southeast Asia, Hauntology. Ethnography, Feminist Temporality

Introduction

This article is a consideration of how we might reconceptualise post-colonial justice in law. Part one conceives of the post-colonial legal space imbued with a spectral quality, inhabited by the victims of colonial violence who re-emerge from the shadows of the past at certain junctures to pursue their quest for justice. The legal arrangements which enabled decolonisation also relieved the departing colonial powers of their many of their liabilities for crimes committed, whilst keeping in place much economic and political influence. Forgetting was a brokered convenience.³ The theme of ‘unfinished business’ for the victims of the late imperial wars is familiar. The French philosopher, Jacques Derrida, developed the term ‘hauntology’ to describe our troubled relationship with “... politics of memory, of inheritance and of generations”.⁴ When the past becomes conflated with the present in legal spaces, we are presented with an opportunity to address it. Hauntology helps give a persona to the victims of atrocities in the present, allowing them to be acknowledged and vindicated. In Southeast Asia, where Malaysia is situated, ethnographers, Lincoln and Lincoln, have identified a vernacular ghost culture which embeds a relationship between the living and the dead as a way to cope with past trauma, allowing the victims to exist in the present whilst continuing to seek justice.⁵ Such contemporaneous existence with the past is unsettling, and I address this in part two. Often a barrier to justice, law relies on linear time to qualify the validity of claims for past injustices as the UK Supreme Court did in *Keyu*. However, a feminist intervention allows us to conceptualise time differently, to see

³ Mathew Craven, “Colonial Fragments: Decolonization, Concessions, and Acquired Rights,” in *The Battle for International Law: South-North Perspectives on the Decolonization Era*, ed. Jochen von Bernstorff and Philipp Dann (Oxford: Oxford University Press, 2019). Craven provides insight into neocolonial legal structures which reflect the postcolonial world order.

⁴ Jacques Derrida, *Specters of Marx: The State of the Debt, the Work of Mourning, and the New International* (New York: Routledge, 1994), xvii.

⁵ Martha Lincoln and Bruce Lincoln, “Toward a Critical Hauntology: Bare Afterlife and the Ghosts of Ba Chúc,” *Comparative Studies in Society and History* 57, no. 1 (January 2015): 191–220.

it as fluid and polytemporal, and to apply this new perspective to law in order to understand that the past is *always* in the present and must be addressed.

Part One

The Violence of Colonialism is Not Forgotten

In 2012, history was made when a group of elderly Kenyans won a High Court case in London, securing compensation from the British government for the brutal torture they endured during detention in the Kenyan Emergency of 1952-60.⁶ The Appellants were the few remaining of a group known as the ‘Mau Mau’, who fought for independence from Britain, and were imprisoned in their thousands. The Appellants eyewitness testimony in court evidenced the decades long suffering of the victims. Their counternarratives both British brutality and post trauma and revealed the true nature of the official British colonial archive, which was deliberately and heavily censored.⁷ However, viable evidence emerged which corroborated the victims’ testimony. The proverbial skeletons in the closet re-emerged in the official archives themselves, by chance, when the research of Oxford Professor, David Andersen, discovered a cache of forgotten colonial office records, known the Hanslope Park Disclosure.⁸ They revealed that the appalling treatment of the detainees had been sanctioned at the top levels of the British government at the time; the documented evidence by the British authorities, themselves, was irrefutable. Unwilling to risk further exposure, the government offered to settle the case out of Court. William Hague, UK Foreign Secretary, expressed sincere regret in Parliament, and the British government agreed to pay just under 20 million pounds in compensation and funded a permanent memorial in Nairobi to the victims of colonialism.⁹ *Mutua* is a significant case; it

⁶ The Kenyan Emergency, also known as the Mau Mau Uprising (1952–60), was a brutal guerilla war against British colonialism. It was co-terminus with the Malayan Emergency.

⁷ Shohei Sato, “‘Operation Legacy’: Britain’s Destruction and Concealment of Colonial Records Worldwide,” *Journal of Imperial and Commonwealth History* 45, no. 4 (2017): 697–719.

⁸ The Hanslope Park disclosure characterized as a cache of hidden colonial records. Ian Cobain, “Foreign Office Hoarding 1m Historic Files in Secret Archive,” *The Guardian*, October 18, 2013, accessed June 20, 2024, <https://www.theguardian.com/politics/2013/oct/18/foreign-office-historic-files-secret-archive>.

⁹ For a summary of the case and its significance, see Alex Wessely, “The Mau Mau Case Five Years On,” *Leigh Day Blog*, October 6, 2017, accessed July 1, 2024, <https://www.leighday.co.uk/news/blog/2017-blogs/the-mau-mau-case-five-years-on/>.

demonstrated that when confronted with the ghosts of past atrocities, the British government can be accountable in law for colonial injustices.

The longevity of such a campaign for justice attests to the persistence of memories of colonial violence and the continuing need for catharsis in the post-colonial present. The so-called ‘Mau Mau Case’ sparked a renewed interest in the late colonial period and a recognition that there was a need to revisit and revise. Yet, only three years later in 2015 the UK Supreme Court issued a judgment that the British government was not required to hold a public inquiry, which would have been the first step to redress, into the 1948 Batang Kali Massacre of 24 innocent ethnic Chinese plantation workers by British troops, during the Malayan Emergency (1948-1957), a Communist insurgency in Southeast Asia.¹⁰ The colonial government claimed the men were Communists and were shot whilst trying to escape. This narrative was vigorously contested by the families who decades later sought public inquiry, correction of the official truth and compensation through the British Courts under the Article 2 of the European Convention of Human Rights, the Right to Life incorporates ‘States’ Duty to Investigate’.¹¹ Although the case failed in the British courts the campaign for recognition and redress is ongoing. In December 2023, the relatives of the victims marked the 75th anniversary of the Batang Kali massacre with renewed calls for justice in Kuala Lumpur, Malaysia.¹²

Legal cases such as *Mutua* and *Keyu* provide a critical focal point to examine our relationship with the colonial past. In the space of the courtroom we return to the past, and become aware of the ghosts for whom justice has not come.¹³ The past exists in people and places, a visceral presence, and a reminder which emerges at certain junctures, confusing time and disrupting the

¹⁰ Souchou Yao, *The Malayan Emergency: A Small, Distant War* (Copenhagen: NIAS Press, 2016).

¹¹ The European Convention of Human Rights (ECHR) was ratified by Britain in 1951 and came into force in 1953.

¹² Lynell Tham and David Pillai, “75 Years On, Batang Kali Massacre Families Still Fighting for Justice,” *Daily Express*, December 12, 2023, accessed July 3, 2024, <https://www.dailyexpress.com.my/news/225222/75-years-on-batang-kali-massacre-families-still-fighting-for-justice/>.

¹³ Derrida, “Specters of Marx,” viii

notion that time follows a linear pattern, allowing us to turn the page on history.¹⁴ Rather, we are confronted with a notion of returning time, suggesting that from a different view point time is cyclical. With this awareness of a presence, it is necessary for us to consider the ways in which we deal with past injustices and our notions of time. In law we require a different way to consider the ongoing impact of colonialism in the present. As Lord Kerr said, the failure to address the historic injustice of what happened at Batang Kali in 1948 in international law “may reflect a deficiency in our system of law”.¹⁵ Lord Kerr’s words echo other numerous campaigns for historic justice from state sponsored killings in Northern Ireland to the lasting effects of the transatlantic slave trade where there are often no clear routes to justice or accountability.¹⁶ Undoubtedly, the trauma of effects of the colonial encounter remain for the relatives of the survivors of the Batang Kali tragedy, even though, in 1957 *Merdeka* (Independence) was declared and Malaysia became an independent state. What we did and what we left unfinished over ‘there’ is not forgotten, and it will continue to reappear as a revenant, as the victims of colonial injustice return to confront us, as the relatives of Batang Kali have done over 75 years later. *Keyu* is further complicated by the fact that the claim was brought by a group of ethnic minority Chinese who do not share equal rights in the modern Malaysian state and received no support from their own government.¹⁷ Their campaign for recognition of a historic wrong is embedded in their shared history of colonialism which has shaped their identity and has ramifications for their community’s history and current status in contemporary Malaysia.

Colonial Trauma and Post Colonial Hauntings

It is undeniable that the effects of colonialism are profoundly emotional and psychological entanglements, whose impacts are deep rooted and intergenerational. Franz Fanon, one of the early pioneers of post-colonial theory understood, firsthand, the effects of colonial violence as he

¹⁴ Victoria Browne, *Feminism, Time and Non-Linear History* (New York: Palgrave Macmillan, 2014).

¹⁵ Lord Kerr in *Keyu and others v Secretary of State for Foreign and Commonwealth Affairs and another* [2015] UKSC 69, para. 285.

¹⁶ See *Re McKerr*. (In the matter of an application by Brigid McCaughey and another for Judicial Review (Northern Ireland) [2011] UKSC 20). Article 2 was used as a ground for a case calling for an investigation of state sponsored killings in N. Ireland.

¹⁷ For an explanation of Bumiputra see “CIFORB Country Profile - Malaysia,” n.d., <https://www.birmingham.ac.uk/Documents/college-artslaw/ptr/ciforb/resources/Malaysia.pdf> (accessed August 25, 2024).

treated patients at an Algerian psychiatric hospital.¹⁸ Patients from both sides of the war for independence of Algeria from France (1954-1962) were cared for at the hospital where he worked. Fanon witnessed how the victims of the conflict were deeply traumatised by the violence to them and also as perpetrators of those episodes. In his book, *Black Skin, White Masks* he writes of ‘the hauntings’ his patients were tormented by.¹⁹ To them, the murdered victims’ apparitions were both real and persistent in their demands. They aroused strong reactions including terror, dread, shame and remorse. These hauntings, Fanon recognised, reconnected the living and the dead for a purpose. He believed by experiencing such overwhelming emotions, releasing them and validating them, and even finding justice, his patients would find compassion for themselves, and their victims and they would be able to form different relationships in the present and future. But without such acknowledgement, they would be perpetually ‘haunted’ by their experiences.²⁰ There needs to be mutual acknowledgement between perpetrators and victims of colonial injustices, or the trauma remains unresolved, passing from one haunted generation to another.

Courtrooms as Places of Haunting

When we think of the true scope of colonial violence, then, the post-colonial world is certainly a place full of hauntings which will return. Ghosts continue to move from generation to generation, such as the relatives of the victims of the Batang Kali massacre, trying to gain redress for long forgotten crimes. We should harness this spectrality as a way to form a better relationship with our ghosts. Acknowledging them in legal spaces, we give them recognition, something akin to a legal personality. Cases such as *Mutua* and *Keyu* are opportunities to validate what has been done, to finally be made accountable. Post-colonial theorist, Achille Mbembe, said that the contemporary world is as much entangled as the colonial world was. Perhaps not a world of overt subjugation, but *our* world is certainly one of mutual dependence and entirely unequal. Moreover, the material exploitation of colonised people and places was undeniably “underlain by a discursive infrastructure, a symbolic economy and an entire

¹⁸ Franz Fanon was *chef de service* at the Blida-Joinville, a psychiatric hospital in Algeria, (1953-57).

¹⁹ Franz Fanon, *Black Skin, White Masks*, 1952; reprint, (New York: Grove Press, 2008).

²⁰ Fanon, “Black Skin, White Masks,” 204-209.

apparatus of knowledge whose violence was epistemic”.²¹ Its specter remains and leaves a subtle and lasting legacy, a presence in law and economic relations. The experience of colonialism also persists on a deep psychological level within decolonised nations, resulting in political and racial tensions, as in modern Malaysia. The return of victims to the very courts which originated the violence of colonialism constitutes a cyclical haunting evoking remembered violence. When cases of historical injustice come to the British courts, the hegemonic ‘discursive apparatus’ known as law, takes control. What is admissible or allowed to be considered is guided by hegemonic legal rules and conventions. Still, the space of law also reveals different contested truths. Whether the courtroom is the appropriate place for the correction of the historical truth, in light of victim’s testimony or lost official records, is debatable, according to Lord Neuberger.²² Certainly, the courtroom can be the place where truth can emerge and unsettle accepted knowledge. For the relatives of the victims in *Keyu* the very act of speaking truth to power and having it acknowledged as the judges did, was a powerful affirmation.²³

In a positive treatment of the case, the UK Supreme Court ruled unequivocally that Britain had geographic jurisdiction at the time of the killings in 1948. This set an important precedent for other claims to colonial injustices which, not only move across time, but jurisdictions as well. Ghosts are free to move across time and place, their otherworldliness does not obey the man-made boundaries put upon them. To acknowledge their presence in the courtroom is to revisit both time and place, to acknowledge our presence over there. In the original investigation into the Batang Kali Massacre in 1949 the relatives of the victims who were eyewitnesses were never interviewed. They were ignored in life, but to be acknowledged in death is a small justice. Viewing the present as a post-colonial twilight where historical crimes wait to be addressed, we may come to acknowledge our colonial past as a perpetual ‘haunting’. Derrida developed the idea of hauntology in a relational way, almost in a physical sense, to intergenerational justice in his seminal text, *The Specters of Marx*, where he spoke of the need to embrace the presence of ghosts, because we are inseparable from them. In order to move toward a more utopic future, we

²¹ Achille Mbembe, *Out of the Dark Night: Essays on Decolonization* (New York: Columbia University Press, 2021), 20.

²² Lord Neuberger in *Keyu*, para 110.

²³ Lord Kerr in *Keyu*, para 204 acknowledges the seriousness of the crime committed.

must bring the past with us.²⁴ Derrida's exhortation to learn to live with our ghosts speaks to a view where time collapses - the past is in the present. In other words, those revenants of the past are reminders of what has not yet been done and by doing so become harbingers of the future.²⁵ Accepting the past as a companion, as it were, frees us to move towards justice in the future. Hauntology appears widely in Western literature, film and theatre, yet is rarely contemplated within law. For example, Shakespeare's Hamlet is haunted by the ghost of his dead father, Old Hamlet, and seeks the truth of his murder.²⁶ Such narratives provide a familiar, affective tool to speak of conceptually difficult things. 'Ghosts' give a presence and personality to the dead, as if bringing them back to life. Such interactions allow us to interact with the past in the present in order to find closure.

*The ghosts represent both the material and the immaterial, the visible and the invisible, and the Spectre consequently represents the potential to disturb temporality as both an experiential and conceptual phenomenon. The ghost appears when and where it is required in the present to demand Justice in the future.*²⁷

Do You Believe in Ghosts?

The ways in which we deal with colonial violence and its lingering trauma need to be given serious consideration in order to move into a different future. Contemporary historical anthropologists, such as Heonik Kwon incorporate a culturally mediated venularisation of the concept of hauntology, which has a uniquely cross-cultural resonance, as a way to deal with past trauma. Much ethnographic work has particularly focused on Southeast Asia, where violent history and a vibrant vernacular ghost culture merge to become a method to narrate and deal with lingering individual and collective trauma.²⁸ Ghost culture pervades the fabric of society in Southeast Asia. In Malaysia, many traditional Chinese homes have a family altar to their dead ancestors, and on the street corners of Bangkok in Thailand, beautifully crafted spirit houses

²⁴ Derrida, "Specters of Marx," xvii-xix.

²⁵ Brydie Kosmina, "Feminist Temporalities: Memory, Ghosts, and the Collapse of Time," *Journal of Media & Cultural Studies* 34, no. 6 (2020): 901-13, 902.

²⁶ William Shakespeare, *Hamlet*, 1603; reprint, (Oxford: Oxford University Press, 1992).

²⁷ Kosmina, "Feminist Temporalities," 908.

²⁸ Heonik Kwon, *Ghosts of War in Vietnam* (Cambridge; New York: Cambridge University Press, 2008).

ward off hurtful ghosts. Ghost culture and its existence in daily life is connected with concepts of *animism*, a belief that the spirits of the dead must go somewhere. The idea that the dead co-exist with the living pervades many cultures. Moreover, in many Asian cultures there is also a strong intergenerational connection rooted in religion, such that the dead are never really dead, but remain in a relationship with the living and demand ongoing filial piety.²⁹ We can garner such ethnographic explorations to discern how we might mindfully embrace the plurality of time and create a new relationship with the dead in the present *and* in the future.

Countries such as Vietnam and Cambodia, with a colonial past, have an especially challenging history of mass killings, but they are by no means exceptional. Any attempts by their governments to memorialise or confine these events to the past is impossible. No family was unaffected by the violence in the Cold War years (1955-1975), and ghosts and ghost culture remain part of the everyday. The effects of historical violence are deeply personal. In their fieldwork in Vietnam, Lincoln and Lincoln, encountered a vibrant and pervasive ghost culture, where the dead were metaphorically brought back to demand justice and remind the living of their obligation in the aftermath of a violent shared history.³⁰ The gravitas with which ghosts are imbued is respected by both political and legal mechanisms. Remembering and, most importantly honoring, the dead through ritual and in culturally familiar ways, provides some sort of comfort to the living. However, 'ghost' culture acts as not only as a refuge, but a persistent rather than static memorial in and of itself.

Like Fanon, Lincoln and Lincoln found encounters with ghosts have effects on the living which are quite remarkable producing many feelings from compassion to regret to hypervigilance. Most importantly with relevance to justice, "the ghost becomes an exceptional moral agent who serves as a constant goading to the living, while permanently deferring their redemption".³¹ Ghosts are a reminder of past entanglements; they serve as the representations of shared history with its violence, allowing us "to adopt an analysis that pushes back against the historicization of law

²⁹ Harrison, "The Dead Are Never Really Dead," 339.

³⁰ Lincoln and Lincoln, "Toward a Critical Hauntology," 200.

³¹ *Ibid*, 202.

that fixes events and their affects in time, and depoliticizes mechanisms by which these events were produced”.³²

Part Two

Can Ghost Help Us Reconceive our Relationship with Time?

Examples of post-colonial conflicts reflected in the histories of and Vietnam and Cambodia, with their mass killings, along with the older colonial cases of *Keyu* and *Mutua* highlight the commensurability of history and its continuing trauma. An acceptance of plurality in the conceptualisation of historic justice within institutions is also necessary. The experiences, memories and life worlds that are created by such lived experiences, supported by ethnographic work demonstrates a need to be sensitive and allow a wide scope of varying social practices. This is not limited to but should include an acceptance of ‘ghost culture’ and other religious and ethnically appropriate forms of remembrance and ritual. Such approaches could transform our acceptance with the past and its ghosts, but it could also transform our relationship with time itself. Utilizing a feminist intervention in our understanding of time as multi-dimensional further expands the possibilities of hauntology as a conceptual tool to approach historical injustice. A feminist viewpoint conceives of history in the fluidity of time, harnessing the power of memory to merge past with present. It conceives of time as “...past, present and future are all interconnected dimensions of each other”.³³ By contrast, in the Supreme Court case of *Keyu*, the refusal to hold a public inquiry and to ‘close the chapter on history’ was an acceptance of a linear notion of history. It was based on a premise that imperial entanglements could be consigned to the past and forgotten in the present. Linear history encourages what Ann Laura Stoler terms “colonial amnesia”, actively choosing not to acknowledge the past as a form of denial. This conceptualisation of forgetting selects “what is not over but rendered forgettable-what is disregarded as irrelevant for the future...”³⁴ Yet, when the past keeps re-emerging, how do we

³² Kay Laylor, “Gender Temporality and International Human Rights Law: From Hidden Histories to Feminist Futures,” in *The Times and Temporalities of International Human Rights Law*, ed. K. McNeilly and B. Warwick (London: Bloomsbury Publishing, 2022), 108.

³³ Laylor, “Gender Temporality and International Human Rights Law,” 104.

³⁴ Laura Ann Stoler, *Interior Frontiers: Essays on the Entrails of Inequality* (New York: Oxford University Press, 2022), xxxii.

deal with it in terms which seek solutions and closure? Feminist historian, Victoria Browne, proposes that historical time should be understood as *polytemporal*.

*“...historical time should be understood as **polytemporal**. It is an internally complex, “composite” time, generated through the interweaving of different temporal layers and strands. As such, there is no “one” historical time or temporal structure within which diverse histories are all embroiled. On the contrary, there will always be multiple, shifting patterns of historical time, as different histories have their own mixes of time and their own temporalities.”*³⁵

Feminist Legal Temporalities

The key issue in *Keyu* was time and how temporal jurisdiction constrains obligations within the human rights framework under international law. Put simply, “the claims of the victims were out of time”. Therefore, Britain was not obligated under the European Convention of Human Rights to investigate. The law must always start with a conceptualisation of time: “The law’s clock starts, runs, stops and restarts differently in different places. The very first move a court must make.... in analysis is to notice legal time across space.”³⁶ We must trouble the notion of time in the law in order to begin to question the ways in which law constrains justice for the colonial past. If we take legal temporalities as uncontested norms, we can clearly see they are the fabrications of convenience and political will which underpinned the case. For example, although there had been a brief ‘official’ inquiry into the Batang Kali massacre in early 1949 by the then Malayan Attorney General, Sir Foster Stafford Sutton, the report, lodged at the Colonial Office, had been destroyed in 1967. A 1970 investigation by the Scotland Yard War Crimes Unit following up on the signed confessions by some of the former soldiers involved in the massacre, and assisted by the Malaysian Police, was abruptly stopped overnight as the UK government changed. Such political machinations were engineered to prevent a truth that might be

Commented [MOU1]: Citation?

³⁵ Victoria Browne, in Karen Knop and Annalise Riles, “Space, Time, and Historical Injustice: A Feminist Conflict of Laws Approach to the ‘Comfort Women’ Settlement,” *Cornell Law Review* 102, no. 3 (2017): 902.

³⁶ Knop and Riles, “Space, Time, and Historical Injustice,” 902.

uncomfortable or even damaging to the government.³⁷ Such examples demonstrate the governments will to keep the past firmly in the past, using the law to do so.

The case of *Keyu* was ultimately dismissed on grounds of lack of temporal jurisdiction, highlighting the need to reconsider the linear notion of time in legal spaces, particularly in cases of colonial injustice and to perhaps adopt a feminist intervention to deliver justice when it comes to such cases.³⁸ Among the four judges on the case of *Keyu*, there was a single dissent, by Lady Brenda Hale, perhaps the best known ‘feminist’ judge in Britain. A ‘feminist perspective’ might be said to engender a different more nuanced understanding of cases allowing for a more equitable outcome. Her dissent on the grounds of *unreasonableness* of the government decision not to hold a public inquiry which might allow the victims' families to achieve *catharsis* echoes Fanon’s understanding of the impact of the original trauma, and shows an interpretation of the case reflecting the values of the Feminist Judgments Project.³⁹ Some key concepts of such an approach include situating the legal actors in social, historical and political context, and incorporating plurality in legal interpretation and privileging the victims experience. The Feminist Judgments Project (FJP) may be described as a hauntology, whereby feminist scholars go back in time to revive and rewrite legal cases. Moreover, it is a feminist intervention, “a revisionist historiography or recovery, which brings to the fore what has been hidden, lost or forgotten on purpose”.⁴⁰ Such an approach asks for accountability for issues not resolved and seeks redress within the law. In doing so, the feminist scholars engage in a modelling or prefigurative exercise which portends a future justice. Their work represents their desire for

³⁷Richard Norton-Taylor, “UK Government Blocked Investigations into Malaysian Massacre Cover-Up,” *The Guardian*, November 26, 2013, accessed August 24, 2024, <https://www.theguardian.com/uk-news/2013/nov/26/governments-blocked-investigations-malaysian-massacre-cover-up>.

³⁸ *Ratione temporis*-literally means ‘by reason of time’. <https://www.oxfordreference.com>

³⁹ The Feminist Judgments Project began in Canada in 2008; see background in Rosemary Hunter, "The Feminist Judgments Project," UKSC Blog, January 17, 2010, accessed July 15, 2024, <https://uksblog.com/the-feminist-judgments-project/>.

⁴⁰ Kosmina, “Feminist Temporalities,” 903.

continuing accountability, for past injustice does not remain fixed, it merges and dissipates with other injustices and legal cases across time and space.⁴¹

Resurrecting Ghosts at Specific Junctures

The feminist legal scholar Annalise Riles, explores the issue of the Korean Comfort Women seeking redress for their enslavement by the occupying Japanese army in the second world war. Decades later the historic issue became a focal point for feminist campaigns globally.⁴² This revival constituted a contemporary example of expansive hauntology where: “Experiences of historical injustice are multiplied, accelerated, slowed down, revived, and continually transformed by global circulations of persons, resources, media, documentation, and forms of legal argumentation.” There are specific junctures within claims of historic injustice which emerge across time and jurisdictions. (In *Keyu*, this was observed as the case revived at specific political junctures and anniversaries.) The Korean Comfort Women issue garnered worldwide attention and sparked protests outside many Japanese embassies. It also engendered symbolic memorials in California and Michigan, Germany and Australia to show solidarity in the recognition of the continuing injustices suffered globally by women who are exploited and victimized, and who have yet to receive justice. Through the concept of ‘global diffusion’ we understand that certain cases and causes give resonance and rise to others, moreover, such cases highlight the experience of intergenerational trauma in the present. Old issues, even when they are in the process of being resolved, give rise to new issues that resonate with contemporary generations. Riles suggested the conflict of laws approach to deal with the difficulty of time in law and historical injustice, and that the concept of temporal *sequencing* could be used in order to address past injustices. Even if past injustices are never fully resolved, they are in the process of being resolved in appropriate ways at appropriate junctions. Feminist polytemporal forms of remembering in history and politics can blend recollection and expectation and become multi-directive.⁴³ Sequencing would adopt an ‘engagement style’ using techniques and methods of ritual to address political problems and set them within the context of mourning practices and

⁴¹ *Feminist Judgments: From Theory to Practice*, eds. Rosemary Hunter, Clare McGlynn, and Erika Rackley (Oxford: Hart Publishing, 2010).

⁴² Knop and Riles, “Space, Time, and Historical Injustice,” 859.

⁴³ *Ibid*, 902.

other new variants. This might be understood as a series of closures rather than one final closure which aligns with the concept of hauntology and that the past is in the present. It suggests the possibility that history is far more fluid and multi-dimensional than we imagine it to be. Ritualised observance, as seen in Southeast Asia, aligns with culturally appropriate forms of remembrance as part of that sequencing. Moreover, the plural conception of time as more open ended rather than linear would allow for revisiting the past, not shying away from it. It would provide an avenue for the collective trauma of historical injustice to be reconsidered from moment to moment as it returns and comes up again, and to what meaning it has for each generation.⁴⁴

Expanding on the work of Riles, we might suggest and incorporate a more ethnically appropriate and useful understanding of time and ghost culture into *law* as a form of ethical responsibility. The Malaysian Chinese community which seeks justice and recognition for the massacre at Batang Kali in 1948 does so out a deeply ingrained system of Confucian values. The concept of filial piety, and a belief that ancestors remain present in their descendants' lives pervades this view, which is dominant within diaspora Chinese communities.⁴⁵ Never recognised by the courts, it may have perhaps explained the longevity of the justice campaign. The culturally mediated notion of obligations and the responsibility for future generations rests firmly on those living in the present to put the wrongs of the past right. Yet, we all have a responsibility to correct the past injustices, "It is the role of the courts generally to correct injustice and hold governments to account," Lady Hale said. This is a fundamental purpose of our justice system.⁴⁶ *Our* dead become a proxy for *the* dead and even history itself. If we reconceptualise this relationship as fluid and ongoing we strengthen bonds between past, present and future. Victoria Harrison suggests that by exploring the animistic folk religion of traditional Chinese religion we may find a hermeneutical tool for thinking about intergenerational justice. If the dead are always with us, as the Chinese believe, then it is imperative to have a good relationship with them.⁴⁷

⁴⁴ Knop and Riles, "Space, Time, and Historical Injustice," 923.

⁴⁵ Harrison, "The Dead Are Never Really Dead," 345.

⁴⁶ The author's correspondence with Lady Brenda Hale, 23.03.2024 ref. (1) (vii)

⁴⁷ Harrison, "The Dead Are Never Really Dead," 337, 341.

The Past is Never Over

The past is always in the present, whether we choose to acknowledge it or not. Sometimes victims remain in the post-colonial twilight stuck in time. For the victims of the Batang Kali massacre it was as if time stood still. Their lives, documented by more unofficial or oral history more recently, appear stymied, and they remained on the fringes of the newly emergent nation-state of Malaysia.⁴⁸ Britain was triumphant in its defeat of Communism in Southeast Asia. If the legal routes for redress for the Batang Kali are now deceased in a legal sense, the ghosts are still with us and will reappear as if the past were only yesterday, to disrupt and dissemble the present. In their principal decision letter of 29 November 2010, the British government gave its reasons for the decision not to hold a public inquiry into the 1948 Batang Kali Massacre by G Company of the Second Battalion of the Scots Guards. Second among these was: (b) “The Killings took place against a different legal backdrop, both domestically and internationally, and any conclusions about the training and command structure of the Scots Guards in 1948 were unlikely to be of practical value today, unlike other recent public inquiries into suspicious deaths”.⁴⁹ But still, our post-colonial entanglements mirror those of the violent past in both place and time. In 2012, a young Kenyan woman was brutally raped and murdered by a serving British officer.⁵⁰ Kenya, no longer a British colony, still hosts British troops for training exercises. The poverty of the local economy of Nanyuki encourages young women into prostitution. Agnes had a young son, and her death was particularly horrific; she was raped and murdered. Her family have been seeking justice for her death, now supported by the Kenyan government. Details of the story were uncovered by *Times* journalists.⁵¹ The guilty soldier had boasted to his comrades, some of whom brought this very disturbing issue to their commanding officers. Their officers did not take their claims seriously. We are reminded that in 1948 the soldiers carried out the Batang Kali

⁴⁸ K. S. Loh, E. Koh, and S. Dobbs, *Oral History in Southeast Asia: Memories and Fragments* (London: Palgrave Macmillan, 2013).

⁴⁹ *Keyu*, para 124 (b).

⁵⁰ About the murder of Agnes Wanjiru in 2012 see Ferdinand Omondi, “Agnes Wanjiru Murder: Kenya Family’s Anger over UK Army ‘Cover-Up,’” *BBC News*, October 26, 2021, accessed June 15, 2024, <https://www.bbc.co.uk/news/world-africa-59051789>.

⁵¹ “The Murder of Agnes Wanjiru,” *The Sunday Times*, 2024, accessed June 20, 2024, <https://www.thepressawards.com/finalists/the-murder-of-agnes-wanjiru-r0012>.

massacre and killed 24 unarmed plantation workers, shooting them in the back. *They* were told by their commanding officers to say that the workers were trying to escape. Decades later several of the former Scots Guards confessed to this fabrication.⁵² But the army always stood by their story and the official MOD reports went missing long ago. The ‘ghosts of empire’ will always return in some way to haunt the present, because the injustices of subjugation and conflict continue. The case of Agnes Wanjiru represents this cyclical haunting, and her claim is going through the UK courts. The Labour government has promised a full inquiry.⁵³ The notion that Agnes has not been forgotten and that justice *might* be possible speaks to the possibility of justice in the future for the past.

Conclusion

The British are forever entangled in their shared experience of colonial history; it has shaped the present world. The past will continue to emerge in legal spaces unsettling linear time with a ghostly persistence. Harnessing hauntology as a conceptual idea can be effective because it enables temporal and geographic fluidity, whilst providing a cross-cultural tool for understand the need for justice in different societies. Looking at *Mutua* and *Keyu* it appears that ghosts from the colonial past will continue to arise at certain junctures, conflating past and present. Using the feminist notion of polytemporality to envision how we can understand the relational position of the past in the present we may approach calls for justice in a more flexible and cyclical way. Most cultures believe that ghosts are a reminder of the past, of unfinished business. They can also be a harbinger for a better future in which we come to accept our entangled worlds and reshape them in mutually beneficial ways. By adopting different feminist approaches to time and justice within law, we heed the imperative to form better relationships with our ghosts.

⁵² Richard Norton-Taylor, “UK Government Blocked Investigations into Malaysian Massacre Cover-Up.”

⁵³ “Kenya Begins Public Hearings into Alleged Abuses by UK Troops,” *Agence France-Presse* in *The Guardian Online*, May 28, 2024, accessed August 25, 2024, <https://www.theguardian.com/world/article/2024/may/28/kenya-begins-public-hearings-into-alleged-abuses-by-uk->.

Bibliography

- “CIFORB Country Profile - Malaysia.” n.d. <https://www.birmingham.ac.uk/Documents/college-artslaw/ptr/ciforb/resources/Malaysia.pdf>. Accessed August 25, 2024.
- “Kenya Begins Public Hearings into Alleged Abuses by UK Troops.” *Agence France-Presse* in *The Guardian Online*. May 28, 2024. Accessed August 25, 2024. <https://www.theguardian.com/world/article/2024/may/28/kenya-begins-public-hearings-into-alleged-abuses-by-uk->
- “The Murder of Agnes Wanjiru.” *The Sunday Times*. 2024. Accessed June 20, 2024. <https://www.thepressawards.com/finalists/the-murder-of-agnes-wanjiru-r0012>.
- Browne, Victoria. *Feminism, Time and Non-Linear History*. New York: Palgrave Macmillan, 2014.
- Browne, Victoria. In Knop, Karen, and Annalise Riles. “Space, Time, and Historical Injustice: A Feminist Conflict of Laws Approach to the ‘Comfort Women’ Settlement.” *Cornell Law Review* 102, no. 3 (2017): 902.
- Cobain, Ian. “Foreign Office Hoarding 1m Historic Files in Secret Archive.” *The Guardian*. October 18, 2013. Accessed June 20, 2024. <https://www.theguardian.com/politics/2013/oct/18/foreign-office-historic-files-secret-archive>.
- Craven, Mathew. “Colonial Fragments: Decolonization, Concessions, and Acquired Rights.” In *The Battle for International Law: South-North Perspectives on the Decolonization Era*, edited by Jochen von Bernstorff and Philipp Dann. Oxford: Oxford University Press, 2019.
- Derrida, Jacques. *Specters of Marx: The State of the Debt, the Work of Mourning, and the New International*. New York: Routledge, 1994.
- Fanon, Franz. *Black Skin, White Masks*. 1952. Reprint, New York: Grove Press, 2008.
- Feminist Judgments: From Theory to Practice*. Edited by Rosemary Hunter, Clare McGlynn, and Erika Rackley. Oxford: Hart Publishing, 2010.
- Harrison, Victoria. “The Dead Are Never Really Dead.” *The Monist* 104 (2021): 337–51.
- Hunter, Rosemary. “The Feminist Judgments Project.” *UKSC Blog*. January 17, 2010. Accessed July 15, 2024. <https://ukscblog.com/the-feminist-judgments-project/>.

- Keyu and Others v Secretary of State for Foreign and Commonwealth Affairs and Another* [2015] UKSC 69.
- Knop, Karen, and Annalise Riles. "Space, Time, and Historical Injustice: A Feminist Conflict of Laws Approach to the 'Comfort Women' Settlement." *Cornell Law Review* 102, no. 3 (2017): 902.
- Kosmina, Brydie. "Feminist Temporalities: Memory, Ghosts, and the Collapse of Time." *Journal of Media & Cultural Studies* 34, no. 6 (2020): 901–13.
- Kwon, Heonik. *Ghosts of War in Vietnam*. Cambridge; New York: Cambridge University Press, 2008.
- Laylor, Kay. "Gender Temporality and International Human Rights Law: From Hidden Histories to Feminist Futures." In *The Times and Temporalities of International Human Rights Law*, edited by K. McNeilly and B. Warwick, 104–108. London: Bloomsbury Publishing, 2022.
- Lincoln, Martha, and Bruce Lincoln. "Toward a Critical Hauntology: Bare Afterlife and the Ghosts of Ba Chúc." *Comparative Studies in Society and History* 57, no. 1 (January 2015): 191–220.
- Loh, K. S., E. Koh, and S. Dobbs. *Oral History in Southeast Asia: Memories and Fragments*. London: Palgrave Macmillan, 2013.
- Mbembe, Achille. *Out of the Dark Night: Essays on Decolonization*. New York: Columbia University Press, 2021.
- Ndiku Mutua and 4 Others v Foreign and Commonwealth Office* [2011] EWHC 1913 (QB).
- Norton-Taylor, Richard. "UK Government Blocked Investigations into Malaysian Massacre Cover-Up." *The Guardian*. November 26, 2013. Accessed August 24, 2024. <https://www.theguardian.com/uk-news/2013/nov/26/governments-blocked-investigations-malaysian-massacre-cover-up>.
- Omondi, Ferdinand. "Agnes Wanjiru Murder: Kenya Family's Anger over UK Army 'Cover-Up.'" *BBC News*. October 26, 2021. Accessed June 15, 2024. <https://www.bbc.co.uk/news/world-africa-59051789>.
- Sato, Shohei. "'Operation Legacy': Britain's Destruction and Concealment of Colonial Records Worldwide." *Journal of Imperial and Commonwealth History* 45, no. 4 (2017): 697–719.
- Shakespeare, William. *Hamlet*. 1603. Reprint, Oxford: Oxford University Press, 1992.
- Stoler, Laura Ann. *Interior Frontiers: Essays on the Entrails of Inequality*. New York: Oxford University Press, 2022.

Tham, Lynell, and David Pillai. "75 Years On, Batang Kali Massacre Families Still Fighting for Justice." *Daily Express*. December 12, 2023. Accessed July 3, 2024. <https://www.dailyexpress.com.my/news/225222/75-years-on-batang-kali-massacre-families-still-fighting-for-justice/>.

Wessely, Alex. "The Mau Mau Case Five Years On." *Leigh Day Blog*. October 6, 2017. Accessed July 1, 2024. <https://www.leighday.co.uk/news/blog/2017-blogs/the-mau-mau-case-five-years-on/>.

Yao, Souchou. *The Malayan Emergency: A Small, Distant War*. Copenhagen: NIAS Press, 2016.