

Introduction

One of the difficulties of doing historical research is the relentless temptation to endow the past with the inevitability of the present. The temptation manifests itself in a desire to identify the origins or prime agency of history. In the context of Meiji Japan, this aspiration finds expression in seeing the Meiji Restoration as an epochal event heralding the origins of new institutions grounded in rights claims. The primacy of individual interest, rights guaranteed by the rule of law, and the emergence of civil society are anticipated as the markers of Japan's modernization makeover. This has been the preferred approach by recent scholarship on the *Maria Luz* Incident which has linked the freeing of Japanese licensed prostitutes to a "shared global culture of modernity" "within the great 'master narrative' of nineteenth-century liberalism" – culminating with the Japanese drawing up a constitution guaranteeing individual rights.¹

But this approach leaves us with a methodological quandary. Are institutions reflective of the transitions brought in by a distinct epoch? Or do the institutions compose what it means to be free and generate the meaning of autonomy? In the context of the Meiji Restoration and its afterlives this question goes against the grain as the dominant scholarly convention is to see the rule of law and rights as a gauge of progress and as an index marker of modernization. But as Foucault pointed out some forty years ago, to see law and rights in this way blinds us to the "dissymmetries and injustices of domination under cover of general law."² But we would be blind to what? In the case of the *Maria Luz* Incident, it is the way evaluations and actions that differentiate "free labor" from slavery simultaneously produce specific, modern contractual forms of subjection. It is through this line of inquiry that we revisit the *Maria Luz* Incident. This will be done by redirecting focus to the compatibility of narrower ideas of freedom (the freedom to enter into contacts) with seemingly "traditional" relationships of subordination, in this case women engaged in licensed prostitution.

The *Maria Luz* Incident

The *Maria Luz* Incident (1872) involved a criminal hearing and a civil suit brought in front of a hastily arranged court in the Kanagawa Prefectural Office. The court was created to adjudicate the captain's ill-treatment of his Chinese "passengers" while the *Maria Luz* was anchored for repairs in Yokohama Port.³ Because the Kanagawa court faced intense agitation concerning its legitimacy from various European consulates, the proceedings strictly followed international legal norms. Japanese authorities and their foreign advisers were highly vigilant in ensuring that the court paid obeisance to a key tenet in nineteenth century international law disputes. The principle of *nullum crimen sine lege*: a person should not face punishment by an act not prohibited by existing law.

The criminal hearing involving Hereira was presided over by Ōe Taku the acting governor of Kanagawa Prefecture. This was not the first time Hereira had carried indentured laborers as his cargo. He had been involved in the transport of Chinese laborers from Macao to Peru for five-and-a-half-years.⁴ The trial investigated claims that Hereira subjected the men to beatings and chains; forced them to travel in overcrowded conditions with insufficient food; and that a significant number were kidnapped and forced to sign indentured contracts after the ship had sailed from Macao. The civil suit was by Hereira. He petitioned the Kanagawa Court to enforce the indenture contracts and compel the Chinese laborers to continue their journey to Peru.

The *Maria Luz* may have found its way to Yokohama by happenstance, but its live cargo was not a chance occurrence. The Chinese men onboard the *Maria Luz* were part of an industrial-scale international labor migration that began around the 1830s, when Asian, African, and Pacific peoples were recruited to work the tropical plantations and mines of the colonial new world. The trade in Chinese labor emerged in the 1840s despite being banned by the Qing Empire. From 1849 to 1874, when the large-scale trade in Chinese laborers ended in Macao, an estimated 100,000 Chinese migrated to Peru as indentured laborers.⁵

Indentured labor migration to European colonies and the new world was founded on a contractual exchange that allowed the migrant laborer to rent out his person. The indentured labor contracts conceived the laborer as the owner of skills and capacities that could be hired out for service for a set number of years in exchange for the employer agreeing to provide a stipulated wage, food and shelter. The contract bound the parties in very different ways, however. For the laborer, the contract specified the length of service, the hours and work to

be performed, and the terms of remuneration. For the employer, the contract granted legal rights to enforce the performance of service. The contractual agreement gave the employer the “freedom” to discipline the laborer for refusing to work. The “freedoms” accorded to the employer included the right to dispense corporal punishment, mete out fines, and, in extreme instances, the right to imprison.⁶

The Kanagawa Court may have been arranged off the cuff, but court procedures followed the well-established legal tenets of the nineteenth century mixed commissions, a system of courts established via bi-national treaties to adjudicate slave ship captures.⁷ Since the 1830s, British efforts to police pirates and slave traders entailed attempts to subordinate the authority of ships’ captains to municipal (domestic) courts via the establishment of mixed-commission courts. They believed the mixed courts was the legal remedy that would give the British navy and judiciary the authority to confiscate vessels suspected of being involved in the slave trade, and to release captives. The *Maria Luz* hearings were based almost entirely on English legal principles, commentaries and maritime Acts, and the Acting Kanagawa Governor, Ōe Taku, who presided over the trial, relied heavily on the judgment and expertise of the British consular judges who often sat with him on the bench.⁸ However, there were juridical limitations to British efforts to curb the international slave trade, and reforms were piecemeal and limited. British law by itself could not give local courts the authority to pursue criminal action against the captain, crew or owners of suspected slave traders because they were only accountable to the authority of the flag the ships travelled under. Moreover, the mixed commissions were based on British prize law. What this meant was that the mixed courts primarily focused on settling property rights – who had ownership of the cargo – rather than recognizing the rights of the rescued slaves/laborers.⁹ As we shall see, the *Maria Luz* hearing in the Kanagawa Prefectural Office followed suit.

The criminal trial, held from 17 to 24 August 1873, centered on the accusations brought against Captain Hereira by a number of the Chinese laborers. John Davidson, the English barrister representing the men, focused on Hereira’s systematic use of excessive force aboard ship, which he argued was evidence that the *Maria Luz* was a slave ship. He presented argument that Hereira had flogged and shackled a score of Chinese men who attempted to escape to make an example of them, and had confined the rest of his live cargo in the hold of the ship using iron gratings over the opening despite the searing summer heat.¹⁰ In retort, Hereira’s counsel, Frederick Dickins, also a British barrister, called upon the principles of the

British Mercantile Marine Act (1850) to argue that the captain had the right to discipline the Chinese laborers on his ship if they did not follow his orders.¹¹ He also emphasized the illegality of seizure. The gist of his argument, “conveniently” summarized in a letter to the editor of the English language *Japan Weekly Mail*, was that Japan did not have the authority to seize the *Maria Luz* or to transport the Chinese laborers onshore as it was tantamount to the “total confiscation of the ship and cargo.”¹²

The first trial concluded with the court finding the claims of “mistreatment and acts of cruelty” against Hereira substantiated. Hereira was let off with a severe reprimand; the cost and delay caused by his enforced stay in Yokohama harbor was considered apt punishment. The Court ruled that Hereira was free to continue his journey to Callao, along with any of the Chinese men who still sought work in Peru.

The civil trial was held almost a month later, from 18 to 27 September. This time Hereira petitioned the Kanagawa Court to enforce the indenture contracts and have all the Chinese men return to the *Maria Luz* so that he could complete his commission. In this hearing, Dickins made the claim that the indenture contracts were legal and enforceable in Japan. Dickins pointed to the fact that the indenture contracts for female performers (*geisha*) and licensed prostitutes (*shōgi*) for six to eight years of service were recognized by the Japanese government. The terms of service were no different from the contracts signed by the Chinese laborers.¹³ Dickins noted that the contracts women entered into as licensed prostitutes gave the brothel owner not only the authority to order women to perform a service, but power over all aspects of their lives: their place of abode, the food they ate, the hours and tasks they were to work, when they could sleep, the scope of their movements, and the right to punish them if they refused work or did not follow orders. The most common forms of punishment were beatings, confinement, and deprivation of sleep or food.¹⁴ The brothel owner also had the power to sell the contract to a third party. Dickins concluded that the indentured contracts of licensed prostitutes and the indentured contracts of the Chinese laborers travelling to Peru were one and the same.

Despite Dickins’s protestations, the court ruled once more in favor of the Chinese laborers. The ruling *was not* based on any legal judgment declaring the contracts a violation of any inherent freedom held by the Chinese laborer or Japanese licensed prostitute. Rather, the court found the contractual arrangements invalid and unenforceable for the following

procedural reasons: i) the contracts were based on deception – the laborers became aware of the nature of the work they were to perform after they signed the contract; and, ii) the contracts were rendered void by the captain’s cruel treatment of the indentured men onboard the *Maria Luz*. The court also stated it was additionally reluctant to enforce the contracts because they had “features of personal servitude” that were open to abuse once the laborers left Japanese jurisdiction.¹⁵ The court, drawing on the precedent set by the Japanese government for the return of Japanese workers taken to Hawai’i in 1868 and the banning of Japanese children being sold by their parents to Chinese merchants (1870), highlighted the fact that “it was [the] well settled policy” of the Japanese government to ensure laborers “enjoying its protection” were not “taken beyond its jurisdiction against their free and voluntary consent, nor without the express consent of the Government.”¹⁶ In the wake of the trial, Hereira deserted ship. The Chinese laborers returned to China.

Japanese officials within the justice and foreign ministries, however, were perturbed by the judgment handed down by the Kanagawa Prefectural Court. They feared the ruling left Japan open to the censure of the “civilized world” if contracts binding young women to serve in tea-houses and licensed brothels continued to be enforced.¹⁷ In response, the Council of State (*Dajōkan*) issued the *Shōgi Kaihōrei* (Edict for the Release of Female Performers and Prostitutes), 2 October 1872.

The *Shōgi Kaihōrei* edict is best understood in tandem with the ordinance issued on 9 October by the Ministry of Justice infamously known as the *Gyūba Kirihodokirei* (Ordinance for the Release of Oxen and Horses). The *Shōgi Kaihōrei* and *Gyūba Kirihodokirei* were aimed at limiting the authority of the household head. The target of the reforms was the existing custom amongst poor household heads (male) to treat his wife and children as tangible material things whose ownership could be transferred from one household to another, a practice which blurred the distinction between person and things. Customary licensed prostitution contracts (*nenki hōkō* aka *miuri hōkō*) involved the household head transferring their patriarchal authority, rights and obligations over a family member to a brothel owner for a set number of years in exchange for an advance sum of money. The Japanese government’s efforts to curtail the authority of the household head to treat his wife and children as tangible and transferable material things had begun a few years earlier. As previously mentioned, in 1870, two years prior the *Maria Luz* Incident, the Meiji government issued decrees prohibiting children from travelling abroad to prevent trafficking and abuse.

These decrees linked the children “abducted” to China after being sold by their parents to a Chinese merchant into a state of slavery, because the children were denied the capacity to consent to the work they would do in the future.¹⁸

The Shōgi Kaihōrei annuled all apprenticeships and agricultural laborers indentured to service for seven years or longer. The ordinance also stipulated that all licensed prostitutes bound to a fixed term of service were henceforth released, and that the courts would not entertain suits by brothel owners on their debts.¹⁹

The Gyūba Kirihodokirei aimed at curtailing the use of excessive and arbitrary use of force by the employer to ensure Japanese employment contracts fell in line with the tenets of the *Maria Luz* ruling. Article Two of the ordinance read as follows:

The aforementioned prostitutes and geisha are people deprived of their rights. [Indentured contracts] reduce them to horses and oxen. As one cannot demand that horses and oxen repay their debts, neither can one demand that prostitutes and geisha repay their acquired loans.²⁰

The legal premise of the ordinance is highly instructive. The release of licensed prostitutes from any outstanding loans acknowledged that the existing service type *nenki hōkō* contracts treated the women as chattel. The *nenki hōkō* contracts gave the brothel owner unhindered control over the women’s lives, along with the right to transfer the service contract to another party without the consent of the women involved.²¹ The analogy to beasts of burden is also highly significant in terms of introducing the notions of voluntaryism (free will) and consent into the workings of a contract. The ordinance directives were clear. One did not expect compensation from beasts of burden for not carrying out a service because they lack the capacity to consent to the work they are asked to perform. Likewise, one cannot expect licensed prostitutes to be liable for any outstanding debt as the contracts were made without their acknowledged consent. Existing licensed prostitutions contracts were invalid because the contractual arrangements were not a consensual exchange of services.

By the early months of 1873, the Ministry of Finance had implemented a “room rental” licensing system, which became the model for all major cities in Japan. Under this system, the prostitute was a licensed “independent contractor” who entered into a contract with a

“room letting service” (aka a licensed brothel) to work as a prostitute.²² Highlighting the importance of consent in the terms of service, the ministry maintained that the women “chose” to work as licensed prostitutes.²³ The Ministry of Finance effectively transformed licensed prostitution into two different types of contractual arrangements based on a specific and narrow understanding of consent and choice: Firstly, a service contract between a woman and a brothel owner which outlined the agreed upon services to be provided and the terms they were to be carried out; and a further option for the woman to enter into a separate loan contract with the brothel owner, which would enable her to cover the initial costs required for her work.²⁴

The “room rental” contractual agreements were very similar to the employment contracts of indentured laborers displaced across the globe on an industrial scale. The contractual relationship was the instrument that defined the formal freedom for the women to enter the workplace as a licensed prostitute via the notion of consent. Simultaneously, the contract was also the mechanism for determining the duress that could be brought against her if she could not fulfill the terms of her service. A woman was formally free to enter into and nullify her service contract at any time. If she was unable to repay her debt, however, the brothel owner had recourse to the full power of the law to enforce her service contract. The law made a distinction between what it saw as labor “hired out” as service, and labor that was owed. Service contracts were voluntary contracts which gave the right for women to hire out the property embedded in their person, in this instance the attributes and capacities of certain parts of her body, to the brothel owner for a period of time for agreed compensation. Owed labor, on the other hand, was the property of the brothel owner, and gave him the right to use the woman’s body with or without her consent.

Conclusion

As we have seen through the example of the *Maria Luz* Incident, situating Meiji Japan in world history is a tricky business. This chapter has argued that the *Maria Luz* Incident was not a watershed moment of “rights talk” being introduced to Japan. Rather, the impounding of the *Maria Luz* by Japanese authorities and consequent procedures of arbitration demonstrate the degree to which Japan was already legally integrated in a global labor regime where contract was king. Scholarship that identifies the origins of Japanese rights discourse

in the *Maria Luz* Incident confuses abstract human rights talk with a historical specific legal discourse concerning the importance of contractual status to both regulate and extract labor from indentured workers. Situating the *Maria Luz* Incident within the broader transnational history of colonial labor regimes proves fruitful as it reveals Japan's encounter with one of the founding linkages of modern political economy: property in person and the role of consent. The "room rental" system formally embedded the idea of property in person in service type employment contracts, where a woman possessing nothing other than the property of her body could "freely" choose to subordinate parts of herself to an employer in exchange for a wage.²⁵ The event of the *Maria Luz* Incident was not rights talk, but the linking of the notion of consent to the performance of service contracts. The courts framed freedom to mean the capacity for an individual woman to enter into a contractual agreement with a licensed brothel owner, and that the primary function of the court was to preserve the legal capacity of women to enter into such arrangements.²⁶

The representation of Meiji Japan as an epochal event heralding the origins of new institutions grounded in rights claims assumes the law to be the locus of power; it both limits and gives expression to the rights of the individual. However, as this chapter suggests, this understanding of Meiji Restoration and its afterlives lags behind history because it is not equipped to register how transnational labor migration of indentured laborers, modern Japanese labor regimes and licensed prostitution developed together, were mutually reinforcing, and constitutively contractual.

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⁶ Moon-Ho Jung, “Outlawing ‘Coolies’: Race, Nation, and Empire in the Age of Emancipation,” *American Quarterly* 57, no. 3 (September 2005): 681–682.

⁷ Jenny S. Martinez, *The Slave Trade and the Origins of International Human Rights* (Oxford and New York: Oxford University Press, 2012). Testimony that the British government aligned the *Maria Luz* Incident with anti-slavery campaigns in the Atlantic via the establishment of mixed commissions is the fact that the files pertaining to the hearings found in the National Archive, Kew Gardens, were compiled by the Slave Trade and African Departments of the Foreign Office, reference number FO/48.

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¹² “*Audi Alteram Partem* (‘Listen to the Other Side’), The Case of The *Maria Luz*,” *Japan Weekly Mail*, Aug. 24, 1872, 527–528. It is highly likely that Dickins was the author of this letter.

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¹⁶ Kanagawa Kencho, *Peruvian Barque*, 54; *Gaikō Bunsho*, 505; Hornby to Watson, Sept. 22, 1872.

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²¹ Kanagawa Kencho, *Peruvian Barque*, 55; *Gaikō Bunsho*, 506.

²² Kim Il-myōn, *Nihon josei aishi—yūjo, jorō, karayuki, ianfu no keifu* (Tokyo: Gendai shuppankai, 1960), 104–105; Takemura Tamio, *Haishō undō: kuruwa no josei wa dō kaihō saretaka* (Tokyo: Chūō Kōronsha, 1982), 6–7.

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