

Freedom without slavery? The Case of the *Maria Luz* and the Question of Emancipation in Nineteenth Century Japan

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On New Year's Day 1863, when Abraham Lincoln issued his famous Emancipation Proclamation granting freedom to four million slaves in the rebel states of America's Confederate South, the vile institution that had stood at the heart of the Atlantic trading system for the better part of two centuries at last entered the final phase of its history.<sup>1</sup> Thousands of pages have been devoted to the task of explaining the complex processes and chains of events that led to the demise of Atlantic slavery, but one of the key starting points historians often refer to in their accounts of the "abolition" movement is a court case that took place in London in 1772.<sup>2</sup> The case centered on a single African slave, named James Somerset, who had managed to escape from his Virginian master after being brought to England en route to the slave markets of Jamaica. Although he was soon recaptured Somerset was given the opportunity to sue for his freedom in the English courts and was eventually restored to his rights on the grounds that, "England was too pure an air for slaves to breathe in." In addition to Somerset himself, the court's decision simultaneously gave freedom to the fifteen thousand other Africans who were

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<sup>1</sup> For a recent account of the Proclamation and its impact, see Allen C. Guelzo, *Lincoln's Emancipation Proclamation*.

<sup>2</sup> *The English Reports*, XCVIII, pp.499-510. David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770-1823*, pp. 469-501; Steven M. Wise, *Though the Heavens May Fall: The Landmark Trial that Led to the End of Human Slavery*; Adam Hochschild, *Bury the Chains: Prophets and Rebels in the Fight to Free an Empire's Slaves*.

being held as slaves in England at the time, and in the years that followed it would also provide an important precedent for challenges to the legality of slavery throughout the English-speaking world.

Exactly one hundred years after this landmark decision, a similar case was to unfold, on the other side of the globe, in Yokohama, Japan. As we shall see, this case too was triggered by the actions of a single, desperate human being. It too can be directly linked to several significant acts of emancipation. And, although the long-term consequences were perhaps not as great of those of the Somerset case, it too was to hinge on the great question of slavery.

## I.

Slavery, of course, is not an issue that we tend to associate very closely with the history of Japan in the nineteenth century. Maki Hidemasa, professor emeritus at Osaka City University, reminds us in his important work on the history of slavery that the practice of buying and selling people was known in Japan from at least as early as the 8<sup>th</sup> century.<sup>3</sup> He also notes that by the 12<sup>th</sup> century the Imperial court had begun issuing decrees complaining that Kyoto was “full” (*jūman suru*) of unscrupulous “people merchants” (*hito akindo; hito akibito*), who were in the habit of stealing slaves from their masters and then selling them off to the highest bidder. During the 16<sup>th</sup> century, the collapse of central authority and the rapid spread of warfare and instability created ideal conditions

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<sup>3</sup> Maki Hidemasa, *Jinshin baibai*; Maki, *Nihon hōshi ni okeru jinshin baibai no kenkyū*; idem, *Kinsei Nihon no jinshin baibai no keifu*.

for the slave trade to flourish, and in spite of the strong objections of some Jesuits, the Portugese traders who reached Japan at this time were quick to take advantage of the plentiful supply of cheap human beings they found on sale here. In the late 1570s Japanese slaves could be found throughout the Portugese trading empire and in 1582, when the first embassy of Japanese Catholics traveled to Europe to meet the Pope, they reported that even in the great city of Rome they had encountered the pitiful sight of their enslaved compatriots wherever they went.

Fortunately, the conditions that facilitated Japan's early incorporation into the European slave trade were not long lived. By the middle of the 1580s, Toyotomi Hideyoshi was already well on his way to re-unifying the country, and when he led his armies to Kyūshū, he is said to have been visibly shocked by the sight of large groups of Japanese men and women being led away in chains and locked in the hulls of the Portugese and Spanish ships anchored at Nagasaki and Hirado. At first Hideyoshi seems to have been willing to turn a blind eye to this practice, but later, when he began his infamous crack down on the Iberian traders and missionaries, he pointed specifically to their involvement in the slave trade as justification for his actions – and in 1587 he issued the first of a series of strict bans on the sale of human beings. Initially these bans were directed at foreign slave traders, but it was not long before they also came to apply domestically. This, I should emphasize, was as much a matter of economics as morality. In addition to conquest and pacification, one of Hideyoshi's primary goals as a "state builder" was, after all, to establish a stable tax base – and for him this basically meant ensuring that peasants stayed on the land and produced a regular crop. The slave trade, as it was

practiced in 16<sup>th</sup> century Japan, with samurai armies and predatory traders taking peasants captive so they could be sold off later, was hardly compatible with this – and in this regard, it is not surprising that the Tokugawa shoguns, whose dynasty was effectively built on the foundations laid by Hideyoshi, continued to reiterate the ban on the slave trade throughout their two and a half centuries of rule. Banning the slave *trade* and banning *slavery* are, of course, not quite the same thing and it is well known that in the early Tokugawa period “hereditary servants” (*fudai no genin*) – who were effectively slaves – remained a common presence in most parts of the country. Over the course of the first century of Tokugawa rule, however, a combination of political changes and the rapid growth of a commercial economy are thought to have led to a steady decline in this form of labor. And, as a result, most historians agree that by the end of the seventeenth century slavery, as such, had more or less ceased to exist in Japan.<sup>4</sup>

This, of course, would logically lead us to expect that in the 19<sup>th</sup> century too slavery must have been a non-issue. In fact, however, things were not so straightforward. The collapse of the South’s slave economy during the Civil War, together with the rapid expansion of Western capital and commercial interests into the Pacific region soon stimulated the search for alternative sources of cheap, easily exploitable labor, and in early 1868, just a few months after the Meiji Restoration, an American businessman named Van Reid, created an uproar by arranging for a shipload of Japanese laborers to be sent to work as “coolies” in the plantations of Hawaii, in spite of the objections of the Japanese authorities. Japan, it seemed to some, was on the verge of being pulled into a

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<sup>4</sup> Asao Naohiro essay. T. C. Smith, *The Agrarian Origins of Modern Japan*.

new kind of European slave trade.<sup>5</sup> So, what could be done to prevent such an outcome?

It was, I suspect, in direct response to this question that Hosokawa Junjirō (1834-1923), the then head of the *Kaisei gakkō* (forerunner of Tokyo University) decided in 1869 to submit a radical, some might even say shocking, proposal to the early Meiji government's experimental parliament, the *Kōgisho*.<sup>6</sup> After centuries of domination by feudal overlords, Hosokawa wrote, the people of Japan had become obsequious and weak - they refused to embrace bold ambition for fear of angering their superiors, and as a result now knew nothing other than how to serve and obey. This, he noted, was not the case in the "civilized countries" of the West. By importing slaves from China, India and Africa to do all forms of menial labor, the people of Europe had made themselves the world's "nobility" (*ryōjin*), used to commanding others, and free to dedicate all of their energies to the higher tasks of civilization. The clear solution to Japan's problem then was simply to follow the European example: The Meiji government, Hosokawa urged, should allow the importation of foreign slaves (*gaikoku no hito o motte, dorei to suru koto o yurusu beshi*): "Chinamen" (*shinajin*) were clever and would make ideal household servants, while "negro slaves" (*kokudo*), with their strong physiques, could be used to perform the hard physical labor required for agriculture and shipping. The use of foreign slaves would also help spur the development of the economy, and over time, as

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<sup>5</sup> For sources on Van Reid and the shipment of Japanese laborers to Hawaii, see *Nihon gaikō monjo*, Vols. 1-4. Maki notes that in early 1868 newspapers began reporting that the departure of laborers for Hawaii was no different from the "trade in black slaves" (*kokudo baibai*). See his *Jinshin baibai*, p. 185.

<sup>6</sup> For the full text of the proposal, see *Meiji bunka zenshū 4 (Kensei-hen)*, pp. 146-7.

more and more Japanese became “independent, unfettered people of nobility” (*dokuritsu fuki no ryōjin*), they would surely come to regard being made into “slaves” of the Europeans as a matter of shame (*Yōroppa jin no iwayuru “sureibu” taru koto o, hajiru mono ōku naru beshi*).

Hosokawa, I should point out, was no minor figure. The son of one of Tosa domain’s leading Confucian scholars, he made a name for himself as a student of the West in the 1860s, and would continue to hold a series of important positions over the course of the Meiji period serving, for example, as deputy president of the House of Peers, chief secretary of the Privy Council, headmaster of the elite Girl’s Higher Normal School, and tutor to the Taishō emperor. Fortunately though, his 1869 proposal to introduce slavery to Japan was, in the end, never taken up! Instead, after consulting with the Western powers, the Meiji authorities decided that the best way to deal with the problem posed by the illegal shipment of Japanese laborers to Hawaii was to send an official representative to investigate and bring them home to Japan – and from this point on the Meiji government was to become extremely vigilant about limiting the movement of workers outside the country.<sup>7</sup>

In 1872, however, just a few years after the problem of the laborers sent to Hawaii had been resolved the issue of slavery was once again to find its way to Japanese shores, this time in the form of a ship called the *Maria Luz*.

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<sup>7</sup> In fact, as it turned out, things were not nearly as bad in Hawaii as had been feared, and in the end less than half of the laborers decided to take up the offer of free passage back to Japan. For re-write include discussion of incident of children sold to Chinese families.

## II.

The *Maria Luz* was a 370-ton barque, or cargo ship, which at the end of May 1872, had set out from Macao, on the south China coast, to make the long journey back across the Pacific Ocean to its home port of Callao, Peru.<sup>8</sup> After a month at sea, she was caught in a severe storm, and in early July, with her foremast missing she limped into the port of Yokohama, where her captain, a man named Ricardo Herreira, promptly requested permission to weigh anchor while the crew made repairs. Yokohama was, of course, one of the so-called “treaty ports” that Commodore Perry’s gunboats had convinced the old Tokugawa Bakufu to open for foreign trade and settlement in the 1850s—and by 1872, the authorities had been dealing with ships from various parts of the globe for more than a decade. But this was not to be a routine visit.

Within just a few days of the *Maria Luz*’ arrival in Yokohama, a man listed in the ship’s official log as being one of 231 “Chinese passengers,” threw himself overboard and managed somehow to swim his way to the next ship in the harbor, a British warship called the *Iron Duke*. After pulling him from the water, the British crew questioned the

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<sup>8</sup> An official Japanese government account can be found in the *Gaimusho chōsabu, ed., Dai Nihon gaikō monjo* 5 (M5.1–M5.12) (Tokyo: Nihon kokusai kyōkai, 1939), pp. 412–540. See also Osatake Takeki et. al., ed., *Meiji bunka zenshū: Gaikōhen* (Tokyo: Nihon hyōron shinsha, 1928), pp. 25-60. For the purposes of this paper I have also examined G. W. Hill’s official account, published in both Japanese and English on behalf of the Kanagawa kenchō (*The Peruvian Barque “Maria Luz”, A short account of the cases tried in the Kanagawa kenchō* (Kanagawa: Kangawa kenchō, 1874), other versions of the same material held in the Tokyo University library, the Shiryō Hensanjo collection at Tokyo University, and the Kyoto University library, 8 bound volumes of original documents relating to the case held in the Foreign Ministry archives in Tokyo, and relevant materials from the British Foreign Ministry and Public Record Office in London.

man (whose name is listed in the official documents as Mo Hing (=木慶)) and eventually decided to hand him over to the local Japanese authorities who, after gaining assurances from Captain Herreira that he would not be ill treated or punished for his actions, returned him to the *Maria Luz*. By this point, however, it had become quite clear that the so-called “passengers” on the *Maria Luz* were, in fact, “coolie” laborers, on their way to long years of toil in Peru’s plantations and mines. And a few days later, when the acting British consul, R. G. Watson, was informed by the captain of the *Iron Duke* that a second escapee had been pulled from the water, and that the moans and cries of those who remained on board the *Maria Luz* could be heard day and night, he decided it was time to take action.

After first visiting the *Maria Luz* to inspect conditions on board, Watson wrote a long, dramatically worded letter to the Japanese Foreign Minister, Soejima Taneomi, urging him to order an official enquiry:

The coolie trade between Macao and the western ports of South America, particularly the Peruvian, has been characterized by such barbarity and such disregard to the rights of the Chinese government, that it has most justly excited the strongest feeling in Europe and all civilized countries... Hitherto the shores of Japan have been free from the scandal of this abominable traffic... but in the present case there is grave reason to believe that more than one person on board has been treated in a manner, which no law could sanction...<sup>9</sup>

The question of what motivated Watson to lodge such a strongly worded appeal for action at this time is not as straightforward as it may at first seem. In spite of his suggestion that the Peruvian “coolie” trade had invoked outrage in “all civilized

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<sup>9</sup> Hill, *Short Account*, pp. 5–6.



countries,” many Westerners in Yokohama, including the official representatives of Germany, Italy, Denmark, and France, were far from enthusiastic about the idea of encouraging the Japanese to interfere in foreign commerce and later expressed grave doubts about the action taken by the Meiji authorities. Perhaps Watson had been genuinely moved by the plight of the laborers on board; perhaps he was angry at the rough treatment he himself had received from the crew of the *Maria Luz* when he tried to make his inspection of conditions on board; perhaps he was inspired by the end of slavery in the US, or perhaps even by some recollection of the Somerset trial. In any case, whatever the reasons behind his appeal, it very quickly prompted Foreign Minister Soejima to order an official investigation – and this, in turn, was to lead to two separate trials. Before discussing what happened in these trials, however, I should pause very briefly to say something about a couple of basic legal issues.

One question that I think might occur to anyone with a sense of Japan’s legal standing in the middle of the 19th century is why the British consul would have considered this a matter to refer to the Japanese government in the first place. After all, one of the things that the “unequal treaties” imposed on Japan in the 1850s were supposed to ensure was that foreigners in the treaty ports were not subject to Japanese laws and tribunals. This, however, was only true for the citizens of countries that had actually concluded treaties with Japan – and because Peru had not done so, the *Maria Luz* was understood to have come under direct Japanese legal authority as soon as it entered Japanese territory. The other thing that should be noted here is that in 1872, the Meiji government had, of course, only just begun the process of building Japan’s modern legal system. And because there

was as yet no clear separation of administrative and judicial officials, all of the legal proceedings related to the *Maria Luz* fell under the authority of the then acting governor of Kanagawa prefecture, Ōe Taku (1847-1921).<sup>10</sup>

As I mentioned a moment ago, the fact that Peru did not have a treaty with Japan at this time meant, in theory, that Ōe was free to examine the case independently of the “great powers”, and solely in accordance with the dictates of established Japanese law. The reality, however, was rather more complex. Throughout the proceedings, Ōe was flanked on the bench by his American legal advisor, a man named G. S. Hill, and during the preliminary hearings the British consul, Watson, was also invited to participate in the questioning of Captain Herreira. To make matters even more complicated, during the trials both Herreira and the “coolie” laborers were represented in court by English barristers. In the end, therefore, in spite of the fact that none of the actual parties to the case, nor even the judge, were English-speaking, most of the legal proceedings seem to have been conducted first in that language, and only later translated back into Japanese, Portugese, and presumably also Chinese (Cantonese?).<sup>11</sup>

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<sup>10</sup> The issue of jurisdiction did not go uncontested. Justice Minister Etō Shimpei, was initially keen for his newly created ministry to have control over the case, but was unable to sway the other Meiji leaders.

<sup>11</sup> Ōe reputedly asked Hamada Hikozō (= Joseph Hiko, “Amerika” Hikozō), a famous shipwreck survivor, who was rescued by an American ship in 1850 and taken to live in the U.S. for 8 years, to serve as his personal interpreter during the case. For Hamada’s (suspiciously inaccurate) account of the trial and his role in it, see Hamada Hikozō, *Amerika Hikozō jiden 2*, trans. Nakagawa Tsutomu and Yamaguchi Osamu (Tokyo: Heibonsha, 1964), pp. 190-98.

As all of this suggests, the procedures followed in the case tended to be somewhat makeshift and irregular, but to sum things up as simply as possible, the main focus of the initial trial was not the coolie trade itself, but rather Captain Herreira's treatment of the coolies in his charge. Specifically, Herreira was accused and found guilty of having illegally punished a number of the coolies, by beating them and cutting off their cues – i.e. the long ponytails in which male subjects of the Qing empire were required to keep their hair. In his judgment on the case, Ōe explained that under Japanese law the captain's punishment would ordinarily have been one hundred lashes, but because it wanted to treat him leniently, the court had decided that he would instead “be pardoned his offence and...permitted to depart with his vessel.”

On the face of it, this would appear to be a rather anti-climactic outcome and a far cry from the landmark Somerset case. This would, indeed, have been the case, except that during the course of the first trial Ōe had arranged for all 230 of the remaining coolies to be safely removed from the ship and brought ashore “for questioning.” Although he was free to leave the country, Herreira for his part did not want to leave Yokohama without his valuable “cargo,” but when he requested that the “coolies” be returned to the ship, Ōe informed him that his “passengers” had expressed their desire to remain on shore. If the captain believed they were legally obligated to complete the voyage to Peru, therefore, he would have to bring suit against them. As a result of this exchange, a second trial was soon underway, and this time the focus was specifically on the contracts, which supposedly bound the “coolies” on board the *Maria Luz* to work for their Peruvian masters for a period of at least eight years.

The details of the trial are, again, complex, but in the end, 'e's judgment constituted a complete and thorough rejection of Herreira's claims. Pointing specifically to the actions of the Meiji government with regard the Japanese workers who had been taken to Hawaii in 1868, and to several other such incidents, Ōe began by explaining that it is "the settled policy of this empire *that no labourers or other persons subject to this Government or enjoying its protection shall be taken beyond its jurisdiction against their free and voluntary consent*" (Hill, p. 54). Next, he noted that, although the contracts in question made provision for the payment of nominal wages and were to remain in force only for a fixed period of time, they were nonetheless clearly intended to impose a form of slavery on the defendants – "a state," he wrote, "which is so repugnant to all sense of natural justice that it has ever [sic] been held that it can exist or be recognized *only* by force of express law, and which there is no obligation on the part of a sovereign state either in the law or comity of nations to in any manner assist or countenance" (Hill, p. 56).<sup>12</sup> Finally, he pointed out that the contracts themselves were irregular in form, that the "coolies" seemed to have been either tricked or coerced into accepting them, and that conditions on board the *Maria Luz* were well below acceptable standards for the transportation of human beings. For all of these reasons he found in favor of the defendants and refused to issue any order requiring them to return to the *Maria Luz* against their will.

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<sup>12</sup> This was the key principle established in the Somerset case.

Within a few days of receiving this judgment, Herreira skipped the country on an American steamer, abandoning his ship and crew, but taking with him a 13 year-old Chinese girl whom he had apparently bought in Macao before setting sail. The Japanese authorities were never able to determine what happened to the girl, but they did arrange for the 230 laborers who had been freed from the *Maria Luz* to be escorted back to China by an official representative of the Qing government.

This did not mark the end of the incident, however. A few months after the conclusion of the second trial the Peruvian government sent a high level envoy to Japan, in part to conclude a formal treaty, but also to protest the “irregularity” of the legal proceedings in the *Maria Luz* case and demand the payment of damages. The Japanese government naturally refused to comply, but the two parties did agree to call on the sovereign ruler of a neutral nation to resolve their dispute – and eventually the case was submitted to Tsar Alexander II of Russia for final judgment. Alexander II was, of course, the same Tsar who, in 1861, issued the famous “emancipation edict” freeing the serfs, and in this regard it is perhaps not surprising that, in 1875, more than three years after the *Maria Luz* first appeared in Yokohama, he found in favor of the Japanese government, fully upholding Oe’s initial judgment.

This outcome is said to have played a key role in bringing a rapid end to Peru’s involvement in the “coolie” trade and, as you can imagine it also provided wonderful PR for the Meiji government. Already, by the end of 1872, British and American newspapers had begun to run articles praising “Judge Oye Tak” (=Oe Taku) for his

humanitarianism, and pointing to the case as evidence of the remarkable “civilizing progress” being made by the Japanese – who had clearly chosen to stand on the side of liberty and freedom against the tyranny of the coolie trade.<sup>13</sup>

Yet, in spite of all of this, when the *Maria Luz* incident when mentioned in Japan today, it is not usually in conjunction with any of these things, but instead with an unexpected twist that took place during the course of the second trial.

### III.

As I mentioned briefly a moment ago, early on in the trials, Captain Herreira had hired an English barrister, whose name was Frederick Victor Dickins (1838-1915), to represent him. Dickins was, in fact, an important figure in the early development of Japanese literary studies.<sup>14</sup> But he had come to Japan in the 1850s as a British naval lawyer - and in the course of the second trial, when the legality and nature of the coolies’ contracts were being questioned, he made use of his impressive Japanese language skills to read aloud to the court the text of a local Japanese contract that he argued came just as close to constituting a form of slavery as those that bound the coolies. The contract in question provided for the “sale” of a woman into service as a prostitute in Yokohama’s licensed quarter – and Dickins’ point, of course, was to suggest that the Japanese authorities had

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<sup>13</sup> See, for example, “Progress in Japan,” *New York Times*, Nov. 11, 1872.

<sup>14</sup> Dickins was the first to produce English translations of the *Hyakunin isshū*, *Chūshingura*, and together with the famous Japanese folklorist, Minakata Kumakusa, the *Hōjōki*. He also wrote the first English-language study of the famous painter, Katsushika Hokusai. After his return to England he took a post at the University of London, and later the University of Bristol. See Peter F. Kornicki, ed., *Collected Works of Frederick Victor Dickins* (7 volumes), (London: Ganesha Publishing, 1999).

no right to question the validity of the coolies' contracts on moral grounds when they themselves clearly tolerated an equally deplorable form of servitude in their own "pleasure quarters."

In spite of centuries of official bans on the sale of people, it had been common practice throughout the Tokugawa period for poor peasants in Japan to send their daughters to serve in brothels or tea-houses, in return for a large upfront "loan" of money, which the daughter was, in theory, supposed to pay off with her labor over an indefinite period of years. In reality, of course, this was at very best a form of debt peonage – but the Tokugawa authorities had long tolerated it, in large part because it provided a way for desperately poor peasants to remain on the land (and therefore keep paying their taxes) during difficult times.<sup>15</sup>

In the course of the actual trial, Ōe formally denied the relevance of Dickens' analogy between Japanese prostitutes and the "coolies" on the *Maria Luz* by arguing that there was a clear difference between allowing forms of servitude to exist in a domestic context and permitting the export of human beings to other countries (he pointed specifically to the example of the U.S. during the first half of the 19<sup>th</sup> century in support of this argument.) The key point with regards the coolies on the *Maria Luz*, he argued, was not just that they were being subjected to a form of slavery, but also that they were being sent

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<sup>15</sup> The standard account in Japanese is Maki Hidemasa, *Kinsei Nihon no jinshi baibai no keifu* (Tokyo: Sōbunsha, 1970). For a more popular version of his arguments, see also his, *Jinshin baibai* (Tokyo: Iwanami shinsho, 1971). For a provocative study in English, which emphasizes the rationality of markets and rejects any notion of exploitation, see J. Mark Ramseyer, *Odd Markets in Japanese History: Law and Economic Growth* (Cambridge: Cambridge University Press, 1996), pp. 54-79, 109-134.

to a “foreign country” where they would not be able to draw on the “protection and care” of their own government – and this was something that was clearly prohibited by Japanese law.<sup>16</sup>

As a result of this rather deft piece of legal hair-splitting, Oe was able to ignore the question of domestic prostitution during the trial. *The standard interpretation of these events, however,* is that the embarrassment that Dickins’ comments about the situation of prostitutes in Japan caused the Meiji government was the primary reason for a remarkable edict, issued in 1872, about a month after the conclusion of the *Maria Luz* trials. “The Emancipation Decree for Female Performers and Prostitutes” (芸娼妓解放令), as the edict came to be known, reiterated the old bans on the sale of human beings, established new rules for apprenticeships and the employment of servants, and, most importantly, ordered that all prostitutes and others bound by similar kinds of service contracts, were to be released from their obligations and “set free” (一切解放致すべし).

Historians in both Japan and the West these days generally take a fairly skeptical view of this “emancipation order” and its significance: They rightly note that under the Meiji government licensed prostitution was, if anything, to become even more widespread than it had been during the Tokugawa period. And they also point to the fact that the “emancipation decree” was issued only in response to the embarrassing comments made by Dickins during the *Maria Luz* trial to suggest that the Meiji government was never particularly interested in bringing about a genuine “liberation” of the prostitutes – or

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<sup>16</sup> There were a number of precedents and laws prohibiting the exportation of Japanese children and laborers by foreigners. [Detailed explanation needs to be inserted here]



protecting their “human rights”. Instead, they suggest, the government’s real concern was simply to protect Japan’s image in the eyes of the West so that Foreign Minister Soejima could more easily pursue his well-known strategy of “national rights” diplomacy (*kokken gaikō*).

No doubt there is some truth to this standard view. There is certainly no denying the fact that the Meiji leaders were, from the outset, conscious of how Japan was viewed by the Western powers and keen to assert a degree of national autonomy. Yet, on reflection, there is also good reason to question the view that the “Emancipation Decree for Prostitutes” was issued solely, or even primarily, in order to “save face” in front of the foreigners. Most importantly, there is clear evidence that the issue of prostitution was already being discussed within the ranks of the Meiji government prior to the *Maria Luz*’ arrival in Yokohama.

The situation of women sold into prostitution had, in fact, first been raised as an issue in the Kōgisho as early as 1869, but as Obinata Sumio and Abe Yasushi have pointed out, the real turning point seems to have come in the spring of 1872, when the government received two petitions (*kempakusho*) complaining about children of poor families being sold or “adopted” solely so that they could be put to work as “entertainers” and prostitutes.<sup>17</sup>

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<sup>17</sup> Obinata Sumio, *Nihon kindai kokka no seiritsu to keisatsu* (Tokyo: Azekura shobō, 1992), pp. 281–85. Abe Yasushi, “Meiji go-nen Inoue Kaoru no yūjō ‘kaihō’ kengi kōsatsu—kindai teki kōshōsei e no shikō—,” *Shiryū* 36 (June 1996), p. 74. For a discussion of the vibrant culture of popular petitions that developed in the early Meiji

In direct response to these petitions, the newly created Ministry of Justice quickly prepared a draft proposal for a ban on all forms of “indefinite labor service” (*naganenkihōkō*). The proposal also specifically noted that, under current practices, dancers, prostitutes and other performers, were being denied their “rights to freedom and autonomy” (自由自主ノ権) and “coerced into performing hard labor just as if they were horses or oxen” (牛馬ニ等シク抑制苦役セラルル).<sup>18</sup> The government’s executive branch, the *Sei’in* (正院), praised the spirit of the Justice Ministry’s proposal, but in the end also recommended that implementation should be postponed until a system of orphanages could be established – because otherwise peasants would have nowhere to send unwanted daughters and this would lead to an increase in abortions!<sup>19</sup> This, however, did not mark the end of the matter. Soon after the Justice Ministry’s initial proposal had been rejected, Inoue Kaoru, the powerful Minister of Finance, issued a strongly worded follow up proposal of his own. In it he specifically described the situation of women who were sold into prostitution as “hardly different from that of the slaves in America”(亜米利加州ニ有之賣奴ト殆ト大同小異) – and he urged the government to “liberate them from their shackles and allow them to claim their human right to freedom” (其束縛ヲ解放セシメ其人権ノ自由ヲ得セシメ).<sup>20</sup> By this point, I should note, the first phase of the *Maria Luz* trials was just getting under way – and yet,

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years, see Makihara Norio, *Meiji nana-nen no daironsō: Kenpakusho kara mita kindai kokka to minshū* (Tokyo: Nihon keizai hyōronsha, 1990).

<sup>18</sup> For the full text, see “Naga nen ki hōkō ni tsuki ukagai,” in *Kōbunroku* (Kokuritsu kōbunshokan), Shihōsho no bu, Jinshin jūgatsu. See also Abe, “Meiji go-nen”, pp. 74–5.

<sup>19</sup> Obinata, p. 282. See Kogisho proposal to create orphanage.

<sup>20</sup> For the full text see *Kōbunroku*. See also Abe, p. 75.

in spite of the fact it was still several weeks before Dickins' famous statement to the court, Inoue also specifically argued that at a time when the benefits of the Emperor's "great benevolence" were being extended to a group of foreigners (i.e. the "coolies"), it was a matter of "great shame" (皇国人民ノ大恥) that there were still some people *within the country* who were being treated "as slaves" (売奴同様). Inoue had, in other words, already anticipated the link that Dickins would later draw between domestic prostitutes and the coolies on board the *Maria Luz* and was, in effect, drawing on the metaphor of slavery and emancipation in the US to situate the question of prostitution within a much larger 19<sup>th</sup> century discourse of Progress and historical change.

Needless to say, when Dickins did actually make his statement in the *Maria Luz* case it was immediately reported in the newspapers and undoubtedly helped add weight to the case that both the Ministry of Justice and the Ministry of Finance had been building within the ranks of the government. From what we have seen, however, I think it is safe to say that Dickins' statement did not so much force the government to address the situation of prostitutes, as give it an extra reason to hurry the process along and, at the same time, further embrace the discourse of "emancipation".

What, though, was the actual impact of all of this? And what of the claim that the "Emancipation Decree" did not actually bring about a *real* "emancipation" of prostitutes in modern Japan?

Well, there is, I think, no question that the subjugation and exploitation of prostitutes continued in Japan long after the Emancipation Decree. But this is not the same as saying that it had no impact or significance. At the time, the Emancipation Decree was clearly viewed as an important change – especially in cities like Tokyo, where within just a few days of its announcement, newspapers were reporting that all of the brothels and tea houses in the old “licensed quarter” of Yoshiwara had closed their doors and that from morning to night a stream of thousands of prostitutes, of every possible rank and type, had been seen flowing out of area with their possessions loaded on carts, pallenquins and rickshaws.<sup>21</sup> Some of these newly “freed” women may have been able to take advantage of this situation. Most, no doubt, had no other means to support themselves and soon found themselves back under the effective control of the brothel keepers.

As a general methodological principle, however, I also believe that it is ultimately not enough for us to ask whether a purported act of “liberation” actually made it possible for a group of people to realize “true” freedom or not. What we must also consider are the kinds of changes that *the idea of liberation* and *the idea of freedom* made possible within a specific context. This is undoubtedly a topic for another lecture, but let me nevertheless state my belief that the “Emancipation Decree” of 1872 was actually a much more important document than it is generally given credit for. It may not have led to a true “liberation” of prostitutes, but it did put an end to a range of older forms of labor relationship, and it paved the way for a sweeping re-organization of the way in which prostitution was managed in the modern era.

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<sup>21</sup> On this see Maki, *Jinshin baibai*, pp. 196-7.

## IV

If the Emancipation Decree for Prostitutes has tended to be dismissed as little more than a cynical PR stunt carried out by the Meiji leaders in order to impress the Western powers, then the same is also true, more generally, of the *Maria Luz* case. At one level, it is not difficult to understand the reasons for this. As we have seen, the initial impetus for the *Maria Luz* investigation actually came from R.G. Watson, the British consul in Yokohama, and although the court that heard the case was, in theory, “independently” Japanese it was, in fact, dominated by the presence of British and American “advisers” and lawyers. In this sense, it was in reality quite close to the so-called “mixed courts” that the British established in places like Egypt, so that they could “supervise” the judgments of “native judges”, and which were also later considered by the Meiji government as a possible solution to the problem of the “unequal treaties.”

In the end though, I think it is a mistake to try and understand the *Maria Luz* case solely in terms of the imposition of foreign ideas by the imperial powers, or the cynical manipulation of those ideas by clever Japanese politicians and bureaucrats in order to improve Japan’s image in the West. Rather, what is important to note is that it was through concrete events like the *Maria Luz* incident that the language of 19<sup>th</sup> century liberalism first began to take on concrete meaning in Meiji Japan, often intermingling with other processes of social change that were already in motion. We have seen how this happened with regard to the question of prostitutes, but by way of conclusion it is also worth mentioning one other important act of Meiji period “liberation.”

In 1871, a full year before the arrival of the *Maria Luz*, Ōe Taku, the man who would serve as judge in the case, submitted a formal petition to the Meiji government, calling for the abolition of the outcast status designations, “eta” and “hinin”, which had, for centuries, marked certain groups of people in the Japanese population as lowly and impure, and given rise to various forms of discrimination against them. This tells us something significant about Ōe himself - but it is also important for us to note that neither Ōe’s original petition, nor the government decree that it helped give rise to, were written in the language of “freedom” or “emancipation.” They simply called for the outcast status designations to be abolished, and stated that outcasts should, in future, be treated “in the same manner as commoners” (自今身分・職業共平民同様たるべきこと).

At one level, this is not surprising: Tokugawa outcasts, after all, were not slaves, nor were they bound as individuals by any kind of legal contracts. They were simply members of a lowly status group. And yet, in Japan today, if you mention the Meiji period “Emancipation Decree” (解放令) people will almost certainly assume that it is the Order to Abolish the Outcast Status Designations (賤称廃止令) that you are referring to. Indeed, if you look up the phrase “Kaihōrei” in *Kōjien*, the most widely used reference dictionary in Japan today, you will find that it refers only to this order, and makes no mention at all of the decree for the emancipation of prostitutes!

The question of how this came about is a complex one and can really only be understood in relation to the efforts of outcast communities themselves to use the decree as a tool for

asserting their basic rights. Nevertheless, I think it is telling that already, in 1872, when the Finance Minister, Inoue Kaoru, wrote his petition calling for the emancipation of prostitutes, he pointed squarely to the government's abolition of outcast status designations the previous year as an important precedent. (今ヤ時世文明ニ趣キ人權愈々自由ヲ得、已に華士族ノ特許特權ヲ被為除、穢多ヲ平民ニ列セラルル等、數百年ノ弊習ヲ一洗シ千古ノ美事喋々論ヲ持タズ) By 1872, in other words, it was already being re-interpreted in terms of the language of liberation.

In the end, then, although there were no acts of “liberation” in Meiji Japan that compare in scale to Lincoln’s Emancipation Proclamation, or Alexander II’s Emancipation Edict, we have seen tonight that from very early on, the paradigm of “freedom” and “emancipation” began being used to explain and justify a range of social reforms. Events like the *Maria Luz* incident played a key role in this process, helping to situate Meiji Japan squarely within the great “master narrative” of nineteenth century liberalism.