

Justice and International Law in Meiji Japan: The María Luz Incident and the Dawn of Modernity

By Giorgio Fabio Colombo. Routledge, 2023, 124 pages. Hardcover, £120.00 BGP, ISBN: 9781032249025. Ebook, £35.09, ISBN: 9781003280637.

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Justice and International Law in in Meiji Japan by Giorgio Fabio Colombo is the first comprehensive legal analysis of the *María Luz* Incident (1872), a colourful episode in the history of early Meiji Japan. It offers a fresh look at the technical issues Japan faced as it embarked on transforming its legal system, in which rulers combined the functions of legislator and judge. This concise, understated book will appeal to students and scholars of Meiji Japan, comparative law and international dispute resolution.

On 11 July 1872, the Peruvian Barque *María Luz* hobbled into Yokohama port for repairs to its foremast and main mast damaged in stormy open waters three weeks earlier. The captain of the vessel reported to the customs officer that the *María Luz* carried 230 free emigrants (*colonos asiáticos* – Asian settlers) from China in passage to Peru to undertake labour contracts. The so-called *María Luz* Incident that followed was made up of three acts: (i) criminal proceedings by Japanese authorities on whether there was cause to indict the captain for slave trafficking; (ii) civil proceedings involving two suits brought by the captain against the Chinese labourers for breach of contract; and (iii) Japan and Peru delegates engaging in dispute resolution mediated by the Czar of Russia that herald the entry of Japan onto the stage of international arbitration. Colombo's analysis of the incident offers the reader a rare insight into the many procedural and substantive legal issues “Japan faced in its transition from legal pre-modernity to modernity, and in its interface with international law” (p. 1).

Colombo finds the legal context in which the incident unfolded beguiling. In 1872, the Japanese legal system was shrouded in uncertainty. The Meiji legal codes were under construction and the pre-existing Tokugawa codes were no longer enforced. Moreover, treaty powers assumed the fledgling Meiji government lacked capacity to manage complex legal issues, especially when a non-Japanese entity was involved. Yet, in its handling of the incident, the Meiji government used the most refined tools of domestic and international law cumulating in “a brilliant legal victory in one of the first cases of international arbitration” (p. 7). The book examines how that came to be.

Chapter two introduces us to the facts and the major legal issues faced by the Kanagawa *Kenchō* (the state administrative apparatus under the control of the governor of Kanagawa prefecture) in adjudicating the criminal and legal proceedings that followed. The major issues were: (i) which sovereign power held legal jurisdiction; (ii) how the court should be composed; and (iii) what the rules were regarding due process when there were no procedural guarantees in place. Colombo sees the handling of these complex legal issues as the most fascinating part of the incident for comparative lawyers such as himself. The hastily arranged ad-hoc Kanagawa Court relied on legal principles that “had never been applied in before” in Japan (p. 16). In short, the Kanagawa Court invented the legal rules as the case proceeded.

Chapter three deals with the criminal proceedings brought against the Herrera, captain of the *María Luz*, for the ill treatment and forcible detention of his passengers while the vessel was anchored in Yokohama. Colombo acknowledges that the criminal proceedings led by the Kanagawa *Kenchō* had the desired effect of asserting Japanese jurisdiction and sovereignty. However, when seen through the lens of substantive law, notes Colombo, the Kanagawa *Kenchō* ruling against Herrera was highly

irregular. It did not refer to any specific domestic statute violated by Herrera or the specific crime of which he was found guilty. The Japanese success in handling the criminal proceeding was due to the Japanese *Kenchō* creating the impression that the inquiry followed clear international (read European/American/Russian) legal standards and procedures that papered over the weakness of Japanese law in deciding cases which contained a foreign element.

Chapter four focuses on the civil proceedings and offers a counterbalance to scholarship that sees the *María Luz* Incident as the moment that human rights talk reached Japanese shores. The civil proceedings were a direct result of action taken by the Kanagawa authorities when they began their investigation whether to indict Herrera for mistreatment and acts of cruelty in Japanese waters. While Herrera was arraigned on the charge, the Japanese government relocated the 230-odd male Chinese passengers to shore. The civil proceedings were convened to adjudicate two civil suits brought to the Kanagawa court by Herrera against the Chinese men seeking their return to the vessel and resumption of the voyage to Peru to fulfil their contracts to perform manual labour for eight years. Colombo, to my knowledge, is the first to clearly determine that the civil proceedings followed the mid-nineteenth-century British common law understanding of service contracts as embodying voluntary and consenting labour.

For Colombo, the most striking feature about the civil proceedings was the attempt to blend Anglo-American common law traditions into Japanese legal concepts. The legal arguments presented by the British barristers in the civil proceedings were built around the notion of enforceability of contracts provided by the norm of equity (p. 90). The Japanese court ruled that the indenture contracts the Chinese labourers travelled on were null and void because the contractual stipulations for specific performance were “unjust” and “iniquitous.” However, Colombo notes that Japanese law has never adopted a distinction between common law and equity found in Anglo-American common law. Rather, the legal rationale for the Japanese court judgement came from rulings and scholarly writings borrowed from international law.

The last chapter deals with the arbitration of the *María Luz* ruling carried out in front of the Czar of Russia, Alexander II. Colombo sees Japan’s commitment to seek arbitration as an important transition point in the development of Japanese law. The willingness of the Japanese authorities to seek arbitration without recourse to conflict, shows Japan was one of the first Asian countries to successfully use the tools of international law to assert their claims (p. 97). According to Colombo, success in the *María Luz* arbitration provided the template for Japan’s “aggressive legalism” in international disputes that continues to be observed today (p. 13).

The salience of Colombo’s research is the way he brings to light the plasticity of legal concepts in Japan’s modern legal makeover. His case study of the *María Luz* Incident demonstrates the porous boundary between domestic and international law in early Meiji Japan, a heretofore unnoticed layer of complexity.

Colombo’s analysis of the *María Luz* Incident relies heavily on an area studies template that takes the Japanese nation as the unit of analysis to the detriment of the transnational history of the legal proceedings. He points out that British representatives were the only treaty power diplomatic core to support the decision of Japanese authorities to take criminal proceedings against Herrera. But we are left with no explanation as to why the British Foreign Office would support such a move. A major reason for this is that Colombo limits his research to Japanese archives and does not seek the rationale, legal or otherwise, for British support, information on which is available in The National Archive, London.¹ British authorities and diplomatic representatives linked the *María Luz* Incident with British efforts to curtail the “slave trade” in Chinese bonded labour from Macau to Peru. This context would have been helpful in illuminating the extent the Mixed British and American Commission (1853–1855), established to compensate American slave owners for slaves

¹FO 84/1442 Fugitive Slaves Commission: Escape of coolie emigrants from the Peruvian ship *María Luz*, on board H.M.S. Iron Duke in Japan.

liberated by British officials from US merchant vessels in British waters, informed the legal argument and proceedings of the *María Luz* case.

Another shortcoming of the narrow area studies approach is that it diminishes the fact that the *María Luz* proceedings involved an undercurrent of international legal expertise working alongside Japanese statesmen. Sometimes this leads to factual errors. Colombo attributes the official English version of the *María Luz* ruling to Edward D. House, a former American journalist and abolitionist who was employed in Japan at that time as an English teacher (p. 18n88). The author was in fact Erasmus Peshine Smith, legal adviser to Japan's Foreign Ministry from 1871 to 1876. Prior to taking up his position in Tokyo, Smith was US Commissioner for Immigration in 1864. In July 1866, he left the immigration section of the state department to take up an advisory position in international law under the title of Examiner of Claims. He stayed in this position until 1871. During his tenure as immigration commissioner, Smith continued to align US immigration policy with the Anti-Coolie Act (1862), designed to prevent American plantation owners from replacing African American slaves with "unfree contract" labour from China.

Despite these reservations, *Justice and International Law in in Meiji Japan* is a valuable addition to scholarship dealing with the transformation of Japan's legal system during the Meiji period.

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Teachers as State-Builders: Education and the Making of the Modern Middle East

By Hilary Falb Kalisman. Princeton University Press, 2022. 274 pages. Hardcover, \$90.00 USD, ISBN: 9780691204338. Paperback, \$29.95, ISBN: 9780691234250. Ebook, \$29.95, ISBN: 9780691204321.

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In *Teachers as State-Builders: Education and the Making of the Modern Middle East*, Hilary Falb Kalisman, Assistant Professor of History and Endowed Professor of Israel/Palestine Studies in the Program in Jewish Studies, at the University of Colorado Boulder, follows teachers as they moved through the schools of the late Ottoman Empire, the successor British mandates, and into the era of the states' independence after World War II. By following this chronology, Kalisman interrogates the role that teachers played in the decades-long debates about state, nation, society, gender, and modernity that took place across the Levant.

At the core of this important book is the extensive research that Kalisman conducted in archives and government offices in Israel, Jordan, and Lebanon, and in relevant locales in the US and UK. Through the use of memoirs and government reports, she forefronts the voices of the teachers, above all else, alongside the inspectors and colonial and state agents charged with establishing the educational systems in their regions. I do not know of any other book on education in the Middle East with this breadth of primary sources. This remarkable collection makes the book an invaluable resource for anyone undertaking research on education across of swath of the Levant.