BPJS, 2018, **II**, **4**, 77-99

"SERVITUTEM LEVEM ET MODICI TEMPORIS ESSE ARBITRANTES: JESUIT *SCHEDULAE* AND JAPANESE LIMITED-TERM SERVITUDE IN GOMES VAZ'S *DE MANCIPIIS INDICIS"*

Stuart M. McManus[1]
Chinese University of Hong Kong

Abstract

In 1599, Gaspar Fernandes, a Japanese slave from Bungo, petitioned for his freedom in Mexico City. During the course of the trial, it was revealed that his master's claim to him rested on a limited-term servitude certificate issued by a Jesuit missionary in Nagasaki, a type of legal instrument that remains poorly understood by historians of slavery. This article discusses contemporary understandings of this controversial system with reference to a new source on slavery in Iberian Asia, Gomes Vaz's *De mancipiis Indicis* (*c.* 1610). While admitting that it was an usual arrangement and that the edicts of Dom Sebastião and Hideyoshi in combination with a decree of excommunication by the Bishop of Japan had since rendered all Japanese slavery unlawful, Vaz accepted the system in principle as compatable with Japanese law, the *ius commune*, Portuguese law, Castilian law and the wide-ranging thought of the School of Salamanca, sources that he cites as part of his larger comparative legal project. In the end, Vaz concludes that the *schedulae* issued in early modern Nagasaki were an entirely explicable, if at the time of writing no longer acceptable, legal instrument that also served the pragmatic function of lessening the burden of slavery in an important missionary context by regulating it bureaucratically and limiting it in time. He also saw it as a creating an intermediate condition between slavery and freedom that was analogous, but not quite identical to that of servants and indentured youths in the Iberian World.

Resumo

Em 1599, Gaspar Fernandes, um escravo japonês de Bungo, requereu a sua liberdade na Cidade do México. Durante o processo de julgamento foi revelado que a reivindicação do seu mestre pela sua posse se baseava num certificado de servidão por prazo limitado, emitido por um missionário jesuíta em Nagasaki, um tipo de instrumento jurídico ainda pouco apreciado pelos historiadores da escravatura. Este artigo discute os entendimentos contemporâneos desse sistema controverso, tendo como referência uma nova fonte sobre a escravatura na Ásia Ibérica, De mancipiis Indicis*, de Gomes Vaz (c. 1610). Embora admitisse que era um arranjo usual e que os decretos de D.Sebastião e de Hideyoshi em combinação com um decreto de excomunhão do Bispo do Japão haviam tornado ilegal toda a escratura de japoneses, Vaz aceitou o sistema em princípio, enquanto compatível com*

1 ORCID iD: https://orcid.org/0000-0002-3874-0253

a lei japonesa, a ius commune*, o direito português, o direito castelhano e o amplo pensamento da Escola de Salamanca, fontes que ele cita como parte do seu projeto jurídico comparativo mais amplo. No final, Vaz concluia que, muito embora no momento em que escrevia não fossem mais aceitáveis, os* schedulae *emitidos em Nagasaki no período moderno eram um instrumento legal inteiramente explicável, que cumpria a função pragmática de diminuir o peso da escravatura num importante contexto missionário, regulando-a burocraticamente e limitando-a no tempo. Considerava ainda que criava uma condição intermediária entre a escravidão e a liberdade, que era análoga, mas não exactamente idêntica, à dos servos e escravos no mundo ibérico.*

要旨

1599年、豊後出身の日本人奴隷、ガスパル・フェルナンデスは、メキシコシティで自由を請願した。　裁判の過程で、彼の主人による主張の陳述により、奴隷の保有権利は、長崎のイエズス会宣教師によって発行された期間限定役務証明書に基づいていることが明らかとなった。この制度は合法的手段の一種であるが、奴隷制度の歴史家の間でも十分理解されないままとなっている。本稿では、イベリアン・アジアの奴隷制に関する新しい情報源であるゴメス・ヴァス（Gomes　Vaz）著のデ・マンシピス・インディシス（De　mancipiis　Indicis）（c.1610）を検証し、論争の的となっているシステムに関する現代的な理解を考察する。ドン・セバスティアンと秀吉の禁令、さらに日本の司教による破門令が組み合わされた時点で、日本の全ての奴隷制度を違法であると認めながらも、その制度が通常の取り決めであったことから、法的な比較をするプロジェクトの中で、情報源として引用する日本の法律、ius（権利＝法）コミューン、ポルトガルの法律、カスティーリャの法律、サラマンカ学派の幅広い考えとの互換性を認め、ヴァス（Vaz）は、原則的にはこの奴隷システムを受け入れた。最終的に、ヴァス（Vaz）は、自分の執筆の時点では、もはや受け入れがたい法的手段であったとしても、近世初期という時代に鑑み、長崎で発行された付則は完全に説明可能な法的手段であり、官僚的に規制し、時間的に制限することが、布教活動の文脈においては重要であり、そうすることで奴隷の負担を軽減するという実用的な機能も果たしたと結論付ける。実際には似ても似つかぬものだったが、彼は、日本人奴隷をイベリア世界に存在していた使用人または年季奉公の若者と同じようなもので、奴隷制と自由の身との中間条件を作り出すものとも捉えた。

Keywords:
Escravatura, Japão, Ásia Ibéria, Direito, Servos, Escola de Salamanca
Slavery; Japan; Iberian Asia; Law; Servants; School of Salamanca.
奴隷制。 日本；イベリアン・アジア；法律；使用人；サラマンカ学派。

Introduction

In 1599, a case came before the Inquisition in Mexico City that has recently attracted the attention of the small but growing number of historians interested in the Ibero-Japanese slave trade.[2] This centred on a "slave" named Gaspar Fernandes who had once belonged to the Portuguese *converso* merchant Rui Perez and had been seized along with the goods of his recently deceased master. Born in Bungo in around 1577, Gaspar was somehow separated from his family around the age of eight and taken to Nagasaki by a Japanese people-trafficker who sold him to Perez, a sale that was validated by a limited-term servitude certificate issued by a local Jesuit. Gaspar was subsequently baptized and joined the other Asian slaves (Japanese, Bengali, Cambodian and Javanese) in the Perez household, first in Nagasaki and then in Manila. Soon after, however, his master was denounced for Judaizing and sent to Mexico City to be tried by the Inquisition. It was during this long transpacific voyage that Perez died and his estate was impounded, including Gaspar who was falsely deemed a slave "in perpetuity."

Fortunately for Gaspar, things would take an unexpected turn for the better. While living as a slave in Mexico City, he had a chance encounter with Perez's sons, including António Rodrigues, who testified before the Inquisition that:

> The Japanese seller did not supply the father of this witness any title or documentation about the said Gaspar because in that country they usually sell Japanese people to others without giving any documentation, and as far as he can remember the said purchase of the said Gaspar of Japan was not for life, rather it was for a limited time, the period of which he however does not remember and nor does he remember what its stipulations were. And he said that Rui Perez, the father of the witness, after he had bought the said Gaspar of Japan, as has been mentioned, took him to the Jesuits who reside in that town or city of Nagasaki and after a Jesuit father named Antonio Lopez had seen and examined him, the said Father Antonio Lopez declared that the said Japanese slave should serve for 12 years more or less, although he does not remember whether it was more or less than this, and the Father gave a document signed by him to the said Rui Perez, father of the witness who received it and kept it among his possessions. This is what he is referring to and he understands it should be among the papers which they took and impounded from the said father [of the witness]. Nonetheless, the witness does not consider Gaspar Fernandes of Japan a slave, rather a free person, and if he still has

2 A large part of the research for this article was undertaken in Lisbon thanks to a Humboldt Yale History Network Travel Grant <https://avh.yale.edu>. During the author's stay in Lisbon, Drs Paulo Jorge de Sousa Pinto, Miguel Rodrigues Lourenço, Pedro Pinto and other members of CHAM provided much-appreciated advice and companionship. The author also wishes to express his gratitude to Rômulo da Silva Ehalt and Lúcio de Sousa for sharing their work with him ahead of publication. Anyone wishing a more general introduction to the topic of Ibero-Japanese slavery should consult the wide-ranging accounts of Ehalt and de Sousa.
The testimony of António Rodrigues is transcribed in: Sousa 2015, 212-223.

> some time to serve, as assumed and stated in the document of the said Jesuit father Antonio Lopez, it is very little.[3]

As Tatiana Seijas has taught us, most freedom suits brought by Asian slaves in Mexico City resulted in exactly that, freedom, and this was no less the case for Gaspar who was deemed by the tribunal not to be a slave "in perpetuity."[4] As a result, he was entrusted to Perez's sons to serve out the remainder of his term. In the end, however, freedom was to come even earlier for Gaspar: probably fearful of the Inquisition themselves on account of their Jewish ancestry, the Perez brothers did not appear, and so Gaspar was released, never to be heard of again.

In treating Gaspar's story, historians have concentrated on a number of related issues, including the role of *converso* merchants in the slave trade, the ways Jesuits in Nagasaki used limited-term servitude as a hedge against unjust enslavement, the frequency with which limited-time servitude became perpetual bondage and the ability of Japanese slaves to regain their freedom through the Iberian World's overlapping legal systems. Drawing on Japanese scholarship, they have also rightly noted similarities between Ibero-Japanese limited-term servitude and the Japanese concept of *nenkihōkō* (年季奉公), which some have plausibly argued inspired the Jesuits to write term limits into slave contracts in the first place.[5] This said, we know much less about the legal underpinnings of limited-term servitude certificates (*schedulae*). While common in Nagasaki, this Ibero-Japanese phenomenon (which also appeared roughly simultaneously in Macau) did not arise *ex nihilo*. Rather, it drew on elements common to slave law throughout the Iberian World in Asia, Europe and the Americas. This is apparent from the small but sophisticated body of

3 Transcribed in Sousa 2015, 216: "el Xapon vendedor no entrego a su padre deste testigo ningun titulo ni rrecaudo del dicho Gaspar porque en aquella tierra se usa vender unos xapones a otros sin dar rrecaudo alguno e que alo que se quiere acordar la dicha compra del dicho Gaspar Xpon no fue por tiempo perpetuo sino por tiempo limitado e tiempo por el aunque no se acuerda quanto fue el dicho tiempo e trato y que el dicho Rrui Perez su padre deste testigo despues de aver comprado como dicho tiene al dicho Gaspar Xapon lo llevo a los padres teatinos que rresiden en el dicho pueblo o çiudad de nangasaque y aviendole visto e esaminado un padre teatino de la compañia de Jesus nombrado António Lopez dixo el dicho padre Antonio Lopez que se sirviesen del dicho xapon doce años poço mas o menos que no se acuerda bien al justo si fue mas o menos y dello dio una çedula firmada de su nombre quel dicho Rrui Perez padre deste testigo rreçibio e tiene en su poder al qual se rremite y que entende que la dicha çedula estaria entre los papeles que le thomaron y secrestaron al dicho padre y que al dicho Gaspar Ffernandes xapon este testigo no lo tiene por esclavo sino por persona libre y que si alguno tiempo le queda por server del que asento e puso en la çedula del dicho padre teatino Antonio Lopez hera mui poco."

4 Seijas 2014.

5 The case of Gaspar Fernandes is discussed by Seijas 2014, 224; Ehalt 2017, 223; Sousa 2018, 317-327. Gaspar also argued that there was no slavery in Japan, that Iberians could not capture Japanese in just wars and that he was a Christian vassal of the Habsburgs, although these arguments seem to have played a less decisive role in the outcome of his case, despite being largely true. In this period in Japan, there is generally considered to have been a switch towards an economy based on wage-labour: Nagata 2004.

Church Council legislation and Jesuit jurisprudence produced when controversies arose, which combined contract law with legal and theological ideas about slavery and freedom.[6]

In attempting to understand the intellectual framework that undergirded limited-term servitude, a particularly useful starting point is a casuistic treatise, entitled *De mancipiis Indicis, manumissionibus et libertis libri IV* ("Four Books on Slaves, Manumissions and Freedmen in the Indies").[7] This extensive and as-yet-unpublished Latin treatise was written sometime before 1610 by a Portuguese Jesuit named Gomes Vaz (1542-1610) who intended it as a guide for Jesuit confessors in Asia.[8] As this article will argue, this treatise offers one of the few extended and systematic accounts of the ways the doctrines of Portuguese and Spanish law, the *ius commune* and the School of Salamanca regarding slavery could be applied to the Asian context in general, and the case of Japanese limited-term servitude in particular. While concluding that no Japanese slaves could be held in good conscience, Vaz offers a summary of the Jesuit position on slavery in Iberian Asia and its relationship to contemporary Japanese civil and customary law. In this way, Vaz inadvertently engages in what we today might call East-West comparative law.

This article will lay out Vaz's basic principles as they relate to the Ibero-Japanese slave trade before addressing Vaz's conclusions regarding the validity of the kind of limited-term servitude certificate issued to Perez for Gaspar. While noting that it was an unusual arrangement, Vaz saw the system of limited-term servitude certificates as being in principle entirely compatible with the larger theological-legal framework in which he and his fellow Jesuits worked. This said, in the end he condemns it both due to the abuses it enabled and his view that the edicts of Hideyoshi and Dom Sebastião had rendered the holding of Japanese slaves illegal from the perspective of both Portuguese and Japanese civil law. As will become clear, Vaz's conclusions on this topic are important not only because of his own leading role in the regulation of slavery in Iberian Asia and the influence of his treatise on later Jesuit thinkers, but also because he offers one of the few detailed discussions of limited-term servitude certificates (*schedulae*), a controversial practice that remains poorly understood due to a relatively limited evidentiary base.

6 Limited-term bondage is treated in Sousa 2018, 283-4; Ehalt 2017, 426. For more general treatments of the Ibero-Japanese slave trade in English, see Nelson 2004; Kitahara 2013, although the latter is addressed to a more popular audience. Sousa 2018 refers to these certificates (variously referred to in Portuguese as *cédulas*, *certidões, licenças* and *títulos*, and in Latin as *schedulae*) as "ballots."

7 Vaz 1610. An abbreviated and reorganized version of the treatise is preserved in Rome, Biblioteca Nazionale Centrale Vittorio Emanuele II, Gesuitico, Ges. 1441. The Roman copy is divided into eight disputationes in the manner of a confessorial handbook, with the section on Japanese slaves being found in the third disputatio. Here, I cite from Vaz's more extensive treatment.

8 Vaz does not seem to have aware of Philip III's 1605 decree on Japanese slavery, which suggests that at least this section of the treatise was completed before or not long after this date: Nelson 2004, 464.

1. Vaz's Vision of Slavery in Iberian Asia

In his voluminous reference work for Jesuit missionaries and confessors in Asia, Vaz provides a unique account of the legal and theological frameworks that undergirded Iberian slavery in Asia. Indeed, the treatise includes both a general account of the laws surrounding slavery, manumission and freedom, as well as detailed outlines of the legal-moral responsibilities and property rights of both slaves and masters. Vaz also takes care to address in turn each of the groups of slaves who found their way into Portuguese and other slave trading networks in Asia. These include Ethiopian, Abyssinian, Bengali, Konkani, Malay, Chinese and Japanese slaves among others. In order to understand whether slaves from each of these areas had been justly enslaved, in each instance he spends several pages discussing *local* military conflicts and *local* laws and customs surrounding warfare, self-sale and debt-slavery that characterized these disparate but deeply connected slave regimes. All this he then funnels through widely-accepted norms taken from civil law, canon law, Portuguese law, Castilian law, Catholic theology, and most importantly the natural law theories of the famous School of Salamanca, which united all these strands of thought into a universalizing Christian vision. In building up this Salamantine vision of slavery in Asia, Vaz was observing a longstanding practice widely followed since at least the First Council of Goa (1567), which recognized that slaves bought from local markets had to be judged according to local norms, as long as they did not infringe on natural law.[9] Indeed, as Vaz notes in his "Preface to the Reader," he was not trying to redefine the terms by which slavery in Asia was understood, but to synthesize and systematize the common wisdom, an approach which led him frequently to quote previous opinions verbatim. In so doing, he probably relied on an extensive personal library, which is now unfortunately largely lost to us.[10]

One of the books in this library, however, was almost certainly *De iustitia et iure* (1593, etc.), by one of the leading Jesuit thinkers on slavery, Luis de Molina (1535-1600). This influential work included a passage on Japanese slavery that given its brevity and other limitations Vaz understandably wanted to build on:

> Again, although among the princes of Japan civil wars are very common, there can be reasonable doubt about the justice of these wars, since there do not seem to be any good reasons given by those non-Christians for waging these wars. Rather, their primary motivation seems to be either a belief that they can win, or the simple desire to attack others with force of arms and subject such people to themselves. Therefore, whoever has been attacked in an unjust war, of

9 Vaz 1610, fol. 42v. Cf. Ehalt 2017, 146-153.

10 Vaz 1610, fol. 7r: "Secundum quod velim observes hoc est sic in toto opere aliorum referre sententias, ut ab eorum etiam verbis non discrepem." From his quotations and references, it is clear that Vaz had direct access to a wide array of theological and legal books and documents, and may even have been the compiler of Various s.d. On the manuscript, see inter alia: Sousa 1999; Lobato 2002.

> course, protects themselves in a just war. It is even to be presumed and believed that the wars that the Christian princes of Japan wage with certain non-Christians are to be considered just. Besides, the Jesuit missionaries among them preach and hear their confessions, in which they do not condone anything unjust to be done to others. However, I am not entirely sure whether the Portuguese merchants who buy men and women as slaves take care to investigate whether these have been captured in a just war and if they have been legitimately reduced to servitude or not.[11]

In other words, there was both a precedent for a normative text that treated the Ibero-Japanese and other Iberian Asian slave trades and a desperate need for one that did so with the same degree of rigour that Molina had treated the Mediterranean and Atlantic contexts, and it was Vaz who rose to this challenge.

This treatise, which Vaz probably compiled over several years, is essential for understanding the theological and jurisprudential frameworks at play in Iberian Asia for several reasons. First, it offers the only focused and synthetic treatment of slavery and bondage in Asia, which tries to take into account all the slave regimes and enslaved ethnic groups that a Christian might encounter between the Cape of Good Hope and Korea. Second, its author was one of the most learned and influential Jesuit missionaries in Asia in this period. Indeed, during the over three decades Vaz spent as a missionary in the region, he served variously as rector of the Jesuit College in Malacca, Chair of Theology at the Goan College and as "father of the Christians" (*pai dos cristãos*) in Goa, where he was charged with overseeing the spiritual lives of new converts and slaves.[12] It was in this last role that Vaz probably both formulated and applied the theories contained in the treatise, and in so doing set precedents for contemporary and later Jesuits, many of whom probably also encountered Japanese slaves subject to limited-term servitude certificates. Third and finally, Vaz's treatise was highly influential among later Jesuit writers on the topic. Indeed, it would be later quoted at length and verbatim by another influential Jesuit, Sebastião de Amaya (1599-1664), the author of a vast collection of moral questions from Asia, who served as rector of the colleges of Macau and Jaffna, as well as Provincial of Japan in exile.[13]

11 Molina 1593, col. 265: "Porro quamvis inter Japponenses principes intestina bella frequentissima sint, de eorum tamen bellorum iustitia merito dubitari potest. Eo quod nulla ab infidelibus illis iustitiae ratio haberi videatur in bellis inferendis, sed potentior est, aut in maiorem spem victoriae erigitur, alios vi et armis aggrediatur ac sibi subiicere conetur; quo posito is, qui iniusto bello appetitur, iusto sane bello se tuetur. Illud etiam praesumendum ac credendum est, bella, quae principes Japponenses Christiani hodie cum aliquibus infidelibus habent iusta esse; quodquidem patres ex nostra Societate apud illos concionantur, eorumque confessiones audiunt, neque permitterent quicquam iniustum adversus alios moliri. Haud tamen scio, an mercatores Lusitani, dum Japponenses aliquos in servos et ancillas emunt, examen efficere curent, bello ne iusto sint capti, ligitimeque redacti sint in servitutem, an non."

12 On the *pai dos cristãos*, see Ames 2008; Araújo 1993.

13 Vaz's treatise is quoted extensively in Book IX of Amaya 1645.

In terms of its actual contents, the treatise begins by addressing head-on the issue that continues to bedevil the study of slavery across multiple disciplines, namely its definition and relationship to other forms of dependency and bondage. Like almost all contemporary European thinkers, Vaz quickly rejects Aristotle's idea of "slaves by nature," with the exception of the lowest-born country folk and simpletons (*rustici et hebetes*), whom he mentions only in passing. More relevant for understanding the world were varieties of servitude that arose not through nature, but out of defined social and legal situations. In parsing the various power relationships known to him, Vaz follows the framework offered by the School of Salamanca, which presents a binary distinction between, on the one hand, natural hierarchies of dominance (*servitus personalis*), e.g. the relationship between a father and child or a king and subject, and legal slavery (*servitus legalis*) on the other. The latter and primary focus of his treatise, he defines as an artificial and circumscribed "lack of liberty" (*carentia libertatis*) created by one of four factors: 1) birth, 2) just war, 3) sale or 4) punishment. In addition, he views servants with contracts and salaries (i.e. *criados* and *gente de soldada* in Portuguese) as free people (*sui iuris*) effectively occupying an intermediate position between natural and legal slaves in terms of the alienation of their labour for a fixed period, usually of several years. In common with slaves, however, this group could be seized and forced to complete their service if they ran away from their masters.[14]

Of the four points of origin for legal slavery, the first and last were relatively straightforward. While liberty was the default condition of humanity, some people, Vaz explains, were born into slavery. Following the Roman convention, in the Catholic world this status was inherited from the mother, following the maxim "the birth follows the womb" (*partus sequitur ventrem*), which applied in all cases except that of feudal servitude (*adscriptitia*). Vaz also notes that this practice was followed in Asia, although deviations from the widely-accepted norm were acceptable because the heritability of slavery was a function of human (i.e. civil), rather than natural law. In the particular case of Japan, while there was some awareness among missionaries that certain servile statuses were hereditary in this period, Vaz does not explicitly refer to them in his treatise.[15] He does, however, underline that no perpetual slave status, whether ascribed at the moment of birth rather than acquired later, should be considered more binding or more severe than any other form.[16]

14 Vaz 1610, fol. 17v: "Momento tamen nos hic non loqui de quodam servitutis genere quod est quasi medium inter servitutem legalem et naturalem, qualis est servitus famulorum et aliorum mercede conductorum ad aliquas operas et obsequia praestanda, quos vocamus *criados*, ou *gente de soldata*. Hi namque possunt seipsos iusto locationis contractu in servitutem tradere quippe qua non comparatur dominium proprietatis, sed solum ius ad operas et famulatum exhibendum, praeter quam quod istius modi famuli ob causam et pro pretio se locant, quamvis sic locati per certum et designatum tempus si intra illud aufugiant non liberantur quo ad usque totum locationis tempus redintegretur."

15 Nelson 2004, 472.

16 Vaz 1610, fols 20v-24v.

Similarly, penal slavery was different from the other types of slavery only in its origin, not in its character. As a punishment, this followed the principles set out in the Roman law of obligations, which saw penal slavery as an almost contractual arrangement that was entered into implicitly when a person committed a delict that otherwise might result in capital punishment, but which mirroring the principle of "your freedom or your life" in just war slavery could also result in either limited-term or perpetual servitude. This was, of course, conditional on a prince or judge handing down a sentence to that effect.[17] This sentence was, however, to be restricted to the criminal and was not to be extended to any of his relatives. This was because no one, Vaz maintains, should have to pay for the misdeeds of another. Indeed, Vaz explicityly rejects the practice he ascribes to both Japan and China of enslaving the family members of criminals.[18]

This said, the most important cause of slavery for Vaz was capture in a "just war," of which there were various examples in Asia. Here, the "justice" of any war was again to be judged according to the norms made famous by the School of Salamanca, and in particular its founder, Francisco de Vitoria in his *Relectio de iure belli*. These stated that there were three prerequisites for a just war: an official declaration by a state or community, a just cause, and the correct motivations for fighting.[19] Of the various "just wars" in Asia that might justify slavery, some involved the Portuguese, such as the ongoing conflicts with the Kingdom of Kandy in Sri Lanka.[20] Most of the conflicts in Asia that resulted in slaving, however, involved only Asian powers. Some of these Vaz considers just, others not, and in the case of a significant minority their justice was debatable. For instance, many war captives were sold to the Portuguese in Chittagong in the Bay of Bengal following one of the many battles in the ongoing war between the Mughals and the Burmese Kingdom of Arakan, the justice of which was unclear.[21]

Although Japan too was wracked by war during the late Sengoku Period, the principles espoused by the School of Salamanca dictated that not all war captives sold in Japan should be automatically considered slaves. For instance, Christians should not buy slaves taken in Hideyoshi's invasion of the Korean Peninsula, as the war was undertaken without just cause. Indeed, as Vaz argues, it was hard to find any justice at all in a war against Josean Korea undertaken merely because Hideyoshi's army had had to pass through the peninsula on its way to invade Ming China.[22] Furthermore, since there had

17 *Ibidem*, fols 49v-50r.

18 *Ibidem*, fol. 89r.

19 *Ibidem*, fol. 30v.

20 *Ibidem*, fols 75v-76v. On Portugal and the Kingdom of Kandy, see Biedermann 2018 and Flores 1998.

21 Vaz 1610, fols 83v-84v

22 *Ibidem*, fols 87v-88r: "Detriserit nobis sermo prolixior, quia horum est maior copia apud Luistanos, qui apud Nangasaiqum emptos onustis singulis annis navibus in Sinas exinde in Indiam traducunt, idque a paucis annis inolevit. Caeterum quia de hac re extat lex Lusitana Japoniorum servitutem interdicens. Decretum item episcopi Japoniensis sub excommunicatione latae sentiae eandem stricte

never been a tradition of just war slavery in "Upper Japan" (Honshū) and it had ceased to exist in "Lower Japan" (Kyūshū) following Hideyoshi's 1587 conquest, the holding of war captives as slaves was also severely restricted. To complicate matters futher, Vaz concludes that Japanese captured in Kyūshū before 1587 were technically not slaves either, since the practice had only arisen because the recently arrived Portuguese were willing to buy captives, thereby fundamentally changing the longstanding local custom. Those who possessed certificates of ownership given before 1587 for slaves captured in Kyūshū's wars should therefore err on side of liberty and manumit them. Conversely, those who owned slaves captured after 1587 should respect Hideyoshi's post-conquest law that banned the slave trade both within Japan and in the outside world (including Ibero-Asia and Southeast Asia), as they had to do with all civil laws that were not in conflict with natural law.[23] In other words, no matter what any certificate of ownership might say, Vaz was certain that no Christian could rightfully own a Japanese slave captured in war, although

prohibens, ut in quo consitat aequitas, tum legis regiae, tum etiam decreti intelligatur examinemus istorum servorum titulus et de singulis dicamus quid sentiendum sit. Et primum quidem Corii cum solo iure belli in servitutem adigantur, et bellum adversus a Japoniorum rege Taicosama ante duodecim annos illatum; sit iniustum; profecto iniquo est Coriorum servitus. Esse autem bellum illud iniustum, quod Taicosama Coriis indixit ex defectu causae manifestum est; nam ea sola causa extitit, quia scilicet Corii transitum negarunt Japoniis per suas terras cum copias inferrent ad debellandos iniuste Sinas. Dixi iniuste quia nulla iniuria lacessiti, sed propagandi tantum imperii causa Sinis bellum moliebantur Japonii, quod iniquum et iniustum esse docet Vict. *De iure belli* n. ii. Porro iuste negatum fuisse illis transitum, ex eo patet, quia Corri sunt regis Sinarum vassali et contra debitam regi fidem facerent, si iter hostibus pacificum praeberent. Praeterea Corii timebant merito, ne forte Japonii transitum simulate praetendentes totam Coriam occuparent; aut certe in transsitu penitus eam debastarent. Bellum autem filiorum Israel adversus habitatores deserti, eo quod transitum in terram promissionis denegarunt, iustum fuit quia pacifice transire pollicebantur absque ullo damno, neque erat ulla ratio, cur sibi timerent malum aliquod periginis autem denegare transitum, iniquum est, et contra ius gentium. Quin etiam permulti Iaponii in locis quibusdam Corii sibi iam bello subactis et peccatis Coriis armata manu per insidias et latrocinia eos arripiunt, vendendosque cum ingenti lucro Lusitanis Nangasaiqum inferunt; quod etiam iniquum esse nemo non videt. Et haec quidem de Coriis, ex quibus illud habeto tamquam indubitatum. Corium nullum posse tamquam servum possideri et posessores quid imittere eos noluerint, esse in statu damnationis; neque posse a confessariis absolvi."

23 *Ibidem*, fol. 88r-88v: "De Japponiis autem nota res est iure belli non posse fieri servos, eos qui in superibus regnis habitant quippe quibus in more positum est captos in bello non fieri mancipia capientium, sed demitti liberos, ut regrediantur ad propria; pro aliis vero inferiorum regnorum, quas vocant Doximo, idem dicendum est, tum quia ante hos duodecim annos, subactis omnibus provinciis inditionem Taicosamae, nullus amplius bellicus tumultus excitatus est, et regia eiusdem Taecosamae lege stricte sub poena mortis cautum est, ne ullus Japonicus alteri sive extero sive indigenae tradatur in servum. Tum etiam quia si qui Japponii ante hos annos capiebantur in praeliis, quae frequentissima erant inter eos non potuerunt pro mancipiis haberi, quia nunquam constitit sed neque constare potuit, utra ex parte iuste pugnaretur, quia a trecentis hinc annis consuevere reguli hinc inde sibi bellum inferre, et insidias parare ad redigendam sine iure, sine iniuria inditionem provinciam. Nos autem in praecedenti capite docuimus in decima conclusione. In huiusmodi bellis captos non fieri servos capientium, quia dum de neutrius partis iustitia constat; ex utraque parte bellum iniuste inferri praesimitur."

the fact that in the mid-1590s we have accounts of enslaved war captives being loaded onto ships in the hundreds shows that this was not the reality on the ground.[24]

The final acceptable origin for enslavement was sale, either instigated by the individual themselves (i.e. self-sale), or their families in the case of minors.[25] This may have been effectively forbidden and in the case of selling children sometimes even punished in Iberia, if not by Portuguese and Castilian written law then by custom.[26] However, thanks to its prominence in Roman law and its continuing acceptance in the civil law tradition, Vaz does not consider it against natural law, as long as a reasonable degree of "exigency" (*necessitas*) could be proven. This was best exemplified for Vaz by the cases of the gaunt figures he describes arriving in Goa from the famine-stricken Deccan Plain in such a state of distress that they were willing to exchange their liberty, or that of their children, for food. In contrast to just war slavery, for which according to Vaz the law of nations prescribed permanent slavery (although with the possibility of manumission), servitude on the basis of sale could be either in perpetuity or for shorter periods, if the circumstances did not warrant the former.[27] Indeed, Vaz underlines that short-term servitude (*ad tempus*) was preferable if the person being sold could not reasonable expect to be able to buy him- or herself out of slavery at some point in the future, or if the sale price did not reach the value associated with permanent bondage. Vaz, however, does not explain what sort of prices he had in mind, mentioning only that they varied from place to place. Here, he was

24 *Ibidem*, fols 88v-89r: "Quapropter ex causa existimo non animadvertisse eos, qui elapsis annis servitutem eorum approbabant, quos in bello iusto captos fuisse noverant quod quidem praeterquam quod fiebat iniuste contra debitam illis hominibus libertatem malecessit, nam ad eos, qui bello iusto capti erant adnumerabantur alii servi furtivi, qui nimis et territoribus cogebantur mentientes fateri se fuisse in illo bello iusto captos, unde pro his dabant suas approbationis schedulas; quo factum est, ut praeter iniustitiam, dubia semper manserit eorum fides sub his schedulis firmata pro Japponiis in bello captis, et eorum servitute et probabiliter existimo quotquot sub ea fide possidentur fore necessario manumittendos, neque nocere miserrimis hominibus suam confessionem nam cum liberantur a metu, sua sponte veritatem detegunt et se non bello captos sed furto proclamant, tum etiam quia confessio facta contra libertatem non valet etiam in foro exteriori, et hoc favore libertatis, ut docet Cassen *de consuet rub* q. § 2 bi 17 fol. 11 q. 1 quemadmodum favore libertatis potest quis venire contra […]." On the loading of slaves at Nagasaki, see Lopez 1594. This is not to mention the slaves bought by Cambodian and Siamese merchants, whose role remains to be investigated.

25 On self-sale in Japan and Brazil, see Ehalt 2019.

26 *Ibidem*, fols 48v-49r: "Nam si loquamur de nostris legibus Lusitanis, sicut nulla est, quae in specie venditionem istam admittat, ita nulla omnino est quae obstet servanda, tamen est consuetudo et usus receptus, qui vendere filios inter Christianos non solum non permittit, sed ut rem inhumanam abhorret, qua in re ego vidi hominem in Lusitania publico decreto iudicis verberare, quod filium vendidisset...existimo autem quod corroborat ex quadam lege Castellae, cuius verba refert colligitque in hunc modum. Itaque pater non potest vel vendere, vel commutare, vel donare filios suos, et venditio et commutatio et donatio est apud notrates nulla. Ego autem subinde colligo quasi pro summa et compendio omnium, quae hactenus diximis praesetem emptionis titulum et venditionis, nec habere locum apud Lusitanos, sed neque apud indigenas, quos nostrae ditioni subegimus et nostris legibus gubernamus."

27 Vaz seems unaware that in Japan capture in war did not necessarily result in perpetual slavery: Nelson 2004.

following almost to the letter Molina's treatment of the issue of price and the term lengths of bondage of Morisco children following the War of the Alpujarras (1568-1571).[28]

Although self-sale servitude is less well-known to historians of slavery than just war slavery, a useful *comparandum* here is the common law concept of indentured labour, which has been extensively studied in the case of the British Atlantic. This took on many forms but was often closely tied to either apprenticeships in trades, or (in the case of Southern England, the point of origin for most of the early immigrants to British America) agricultural labour. Originally, indenture contracts stipulated a period of labour upwards of one year in exchange for food, shelter and employment that in the case of apprenticeships involved (at least in principle) learning skills. These were repurposed in the seventeenth-century British Atlantic as a means to provide the North American colonies with labour. In this system, indigent children and young adults effectively borrowed against their future labour in exchange for transport across the Atlantic, spending several years working in the nascent planation economy, often with fatal results. During this time, indentured servants were subject to the will of the master with abuses not uncommon. Most importantly, however, their labour could be sold on during the period of indenture, since indentured servants were part of the master's "goods and chattels."

28 *Ibidem*, fol. 39v: "Quarta Conclusio. Si non haberet facultatem ad solvendum neque vires ad laborandum et pretium dandum pro eo non attingeret valorem perpetuae servitutis, nefas esset pro eo pretio eum in perpetuum servum emere sed ervendus esset a morte ut vel ad tempus serviret quousque pretium et lucrum cessans si quod forte emptor passus est compensaret, vel certe ut operaretur constitutus in sua libertate et pretium persolveret it Molina disp 33 sed si pretium esset aequale perpetuae servituti et posset per operas post ea satisfacere et per servitia. Idem Molina consentiens cum Navarro docet neque ex iustitia neque ex charitate teneri quempiam misero homini gratis succurrere exhibendo pretium gratis tyranno, sed possit eum per mutuum redimere mutuando illi pretium vel emendo eum e manu tyranni in perpetuam servitutem." Cf. Molina 1593, cols 237-248 (245-6): "Tertium est, si non haberet et pretium, habita ratione valoris rerum in ea regione, non attingeret valorem perpetuae servitutis, nefas esset pro eo pretio redigere illum in perpetuam servitutem, sed ervendus esset a morte, vel ut ad tempus serviret, quousque pretium compensaret et lucrum cessans, si quod forte ei, qui talem pretium exhiberet, tunc cessaret, vel ut constitutus in sua libertate operaretur, illudque persolveret. Cum enim in hoc eventu totum ius vitae huius sit penes ipsum et nihil penes eos, qui iniuste volunt eam ipsi eripere, sane pro illo pretio non emitur vita, ut mors (quocumque pretio vita comparata) commutari illi iuste posset in perpetuam servitutem, ut in casu in quo vita iuste foret auferenda, paulo antea dicebamus, sed dumtaxat agendo utiliter negotium huius, pretium loco huius offertur, ne iniustitia adversus eum committatur /col. 246/ eaque de causa solum fas est exigere ab hoc quantum valet pretium in bonum ipsius oblatum; non vero quantum valet vita idve quod in mortis commutationem poterat ab eo exigi. Quartum est, si pretium esset aequale servituti, emere illum posset in servum perpetuum. Ita Navar in manual cap 23 n. 95. Ratio est, quoniam non censetur simpliciter pauper, qui vires habet ad laborandum, aptusve est ad serviendum, ut mere gratis eleemosynae praecepto teneamur illi exibere valorem quemcumque quo ad evandendam extremam aut gravem necessitate indiguerit; quare sicut fas est pacisci cum huiusmodi hominibus, ut serviant tanto tempore, quanto fuerit opus, ut et pretium et lucrum, si quod ea de causa cessaverit, compensetur sic etiam fas erit pacisci, ut perpetuo serviant, si pretium perpetuae servituti sit aequale. Confirmatur, quoniam quando parentes in gravi sunt necessitate, fas est emere ab eis filios, parentibusque ipsis fas est eos vendere, ut ab ea ervantur, idque non solum quando filii et parentes barbari sunt, sed etiam quando tam illi, quam ementes, subiecti sunt legibus Caesareis, ut ex l. 2 C. *de patribus qui filios suos distraxerunt* [*Codex* 4.43], est manifestum ergo stando in solo iure naturae, fas erit illum emere pretio iusto, qui eo pretio extreme indigent; cum non sit de illius servitute, quam de servitute filiorum maior ratio."

Although this system was unknown to Vaz, it exhibited many of the features of limited-term servitude, which in both the North Atlantic and Iberian Asia had a basis in contract law. It was also open to the same type of abuses. This said, the main difference between the common law system of indenture in the Atlantic and Ibero-Japanese limited-term servitude was that in Nagasaki it seems that self-sale was rarely, if ever, the origin of the contractual arrangement. Rather, the certificates were post hoc justifications of sales by people traffickers to Portuguese merchants issued by Jesuits attempting to follow the spirit, if not the letter of Dom Sebastião's ban on Japanese slavery and to improve the lot of slaves.[29]

Such a system of contract-based slavery (sometimes limited-term, sometimes perpetual) also developed independently in Japan. From reading Jesuit missionary accounts, Vaz was aware of sale into slavery in Japan, which he accepts as long as it meets the criterion of exigency or is such an established feature of the society that it could be considered a "custom." This, he believes, frequently originated in an inability to pay off debts, which resulted in parents selling their children. He also mentions recent instances of landlords demanding the payment in full of rents from their serfs (*coloni*) during a famine, which resulted in the selling of children. This was further driven by the fact that the punishment for not paying at least half the rent was death. Although the behaviour of the landlords was open to moral criticism, these events generally reflected natural law principles. The idea that parents could sell children, Vaz thought, was first articulated by the (mythical) Romulus and later codified in Roman law as *patria potestas*, although, borrowing from Bartolus de Saxoferrato (1313-1357) Vaz admitted that the Romans later restricted the absolute power of the father over this children (*in favorem filiorum*).[30] In Japan, if there was no pressing necessity, the sale of children was still permitted if the child was an infant. If the child was old enough to be held responsible for his actions (*doli capax*), the child also had to assent.[31] This was <however> only the case if the parents were non-Christians. Japanese Christians still had to adhere to the exigency (*necessitas*) stipulation.[32]

A further prerequisite was that self-sale had to take place within the context of a mutual understanding of the contract. This was, however, not always the case <in practice>:

> Furthermore, some Japanese sell themselves entirely ignorant and unaware of what they are doing and bring upon themselves a heavy and perpetual servitude while believing it to be a light and short-term period of service, having in mind and judging that if they are not set free when they want, they can take flight from unjust masters. Others are forced against their will by other powerful or crafty Japanese to sell themselves, or have little say in the price with

29 Tomlins 2010, 32-34, 80-82; Donoghue 2013.

30 On the long shadow of *patria potestas*, see Vial-Dumas 2014.

31 On the concept of *capax doli* that was originally used in reference to being held responsible for crimes committed, see *Digest* 16.3.1.15, 47.2.23, etc.

32 Vaz 1610, fols 90r-91r.

> everything going to these double-dealing and treacherous men. In their case, therefore, we said firstly for those who are unaware and oblivious of the fate that awaits them, their sale is invalid, even if the price agreed with the buyers is equitable. This is proven because in this contract he is considered to have sold his servitude and consequently an error occurs in this sale as regards the "thing" (*res*) sold. An error in the thing, regarding which the contract is made affects the contract not only in the domain of conscience, but also in practical affairs, as we find in the Roman law on sales, "On making purchases" [*Digest* 18.1.19]. Indeed, as the jurists say, error with ignorance does not justice make.[33]

Here, Vaz's main point of reference is the *Digest* of Roman Law, which states unequivocally that the both the purchaser and seller must agree on the price and the exact item to be sold, otherwise the transaction was invalid from the perspective of contract law.

Indeed, the importance of contract law to Jesuit understandings of slavery in Iberian Asia cannot be underestimated. This is not only because sale into slavery was considered as analogous to other transactions by jurists and theologians, but also because contract law was a particular area of expertise for Vaz, as it was for many Jesuits in Asia. Indeed, riding on the coattails of Iberian expansion members of the Society of Jesus frequently acted as middlemen and arbiters in commercial and other sorts of disputes, in which the legality and morality of exchanges were tightly intertwined. This was not only the case in Japan, where the Jesuits were involved in registering goods that arrived in Nagasaki and brokered deals between local daimyō and Portuguese merchants, but was also common in Goa and Malacca, where Vaz himself oiled the wheels of Christian commerce by helping Portuguese merchants resolve commercial disputes.[34] It was for this reason that Vaz's treatise was intended as part of a larger work (left incomplete at his death) that would have also included a treatise on contracts in Asia (*liber de usitatioribus in India contractibus*).[35]

It is exactly this legal tradition that Vaz draws on in his treatise to condemn slave contracts entered into on fraudulent premises. Here, he follows the precepts codified in the *Codex* of Justinian that considered contracts void if they have been entered into on the

33 *Ibidem*, fols 90v-91r: "Porro alii Japonii se vendunt omnino rudes et ignari, quid agant, et quod sibi onus assumant duram et perpetuam servitutem famulatum quendem levem et modici temporis esse arbitrantes; habentes in animo et existimantes posse se, si non dimittantur cum volent, insalutatis dominis fugam arripere. Alii ab aliis Japponibus vel potentioribus vel versutioribus inviti minis adiguntur, ut se vendant nihil aut perparum participantes de pretio cum totum sibi assumant homines versipelles et proditores. Pro his ergo diximus et primum pro ignaris et insciis, sortis, quam assumunt invalidam esse suam venditionem, esto in pretio etiam aequivalente conveniat cum suis emptoribus. Probatur quia in hoc contractu censetur iste vendidisse suam servitutem, et consequenter intervenit in hac venditione error in substantia rei venditae; error autem rei, super qua contrahitur, irritat contractum non solum in foro conscientiae, sed etiam in exteriori ut habetur l. in venditionibus ff. *de contrahenda emptione* [*Digest* 18.1.19]. Enimvero, ut loquuntur iurisconsulti, error et ignorantia non ratificant."

34 Hesselink 2016, 80-81.

35 It is likely that the book on contracts would have represented to some degree an expansion and translation into Latin of Vaz's collection of problems in contract law, entitled *En que consiste a justiça de todos os contractos e como se ha de averiguar* (Rodrigues s.d., fols 190r-279r).

basis of either "fraud" (*dolus*) or "fear" (*metus*). For a contract to be valid there had to be agreement on the 1) object (e.g. freedom and labour for a period of time or in perpetuity) and 2) the price. If it was likely that with full knowledge available to both parties the contract would still have been entered into but with different stipulations, then the contract was void. Here, Vaz was speaking specifically of contracts that in the civil law tradition were described as having been entered into in "good faith" (*bonae fidei*), since those entered into under "strict law" (*stricti iuris*) (i.e. with narrowly legal rather than moral considerations at the forefront) would not be void per se in the circumstance. Rather, the deceived party could be compensated some other way (*exceptio doli*). In so doing, Vaz was following what he suggests was the consensus among jurists or at least a practically useful summary of a common position, although the reality was more complicated.[36]

This said, Vaz urges Jesuit confessors never to lose sight of the local Japanese context, and in particular any relevant Japanese customary law. For instance, in Japan if a wife, child or slave left home to escape domestic abuse and took refuge in the house of a local noble, the convention was that they became the domestic slaves of that noble. Since it was an example of customary law, Vaz concludes this had to be tolerated, if not endorsed, as long as they were indeed only treated like domestic servants and not sold on, regardless of what any Portuguese slavery certificate might say.[37] Here, the integrity of customary law was especially important for Vaz who was again concerned about the Portuguese presence affecting longstanding practices:

> I would therefore caution in all cases of Japanese servitude, which we accepted in Chapter 5 [on the origins of slavery] due to longstanding custom, that they are not to be extended by any means, but only to be admitted as far as the customs that supports them demand. Since, if before the arrival of the Portuguese those who served under these titles were not transferred to new master or they alone were considered to be slaves, not their children or descendants, these same circumstances must remain in place.[38]

36 Vaz 1610, fol. 91v: "Praeterea dolus in hoc eventu videtur dedisse causam contractui, ergo contractus fuit nullus antecedens patet, quia emptor sciens aut scire debens quod venditor se non vendisset, si servitutis onus aestimaret profecto dolose et fraudulenter se habet emendo, dum non commone facit venditiorem consequentia... quando dolus dedit causam contractui contractum esse ipso iure nullum, observa tamen nos hic loqui in contractu bonae fidei, qualis est iste emptionis et venditionis de quo loquimus, nam si contractus sit stricti iuris, etiam si dolus det causam contractui, non propter ea erit ipso iure nullus sed veniet rescindendus per actionem vel exceptionem doli." Cf. *Codex* 8.38.5. For the larger legal context, see: *Institutes* 4.6.28-31; Decock 2013, 274-280; Ehalt 2017, 446-463.

37 Vaz 1610, fols 89v-90r.

38 *Ibidem*, fol. 90v: "Illud igitur admonuerim in omnibus Japoniorum servitutibus, quas ob immemorialem consuetudinem admissimus cap 5 non esse extendendas ullo modo, sed eatenus tantum approbandas quatenus consuetudo cui inituntur, obtinuit, nam si ante adventum Lusitanorum, qui sub his titulis serviebant non transferebantur in alios dominos, aut illi tantum pro servis habebantur, non filii aut posteri eodem profecto iure etiam nunc gaudere debent."

Here Vaz adheres to the typical civil law doctrine that custom was a valid source of law that got its legitimacy from its usage since "time immemorial" and its embeddedness in particular societies.[39] Alongside local civil law, the *ius commune*, Portuguese law, Castilian law and the wide-ranging thought of the School of Salamanca <this> formed the basis of Vaz's understanding of slavery in Asia, which he then applied to the particular case of the short-term certificates issued in Nagasaki in the late sixteenth century, as we will now see.

2. *Schedulae* and Limited-Term Servitude

As António Rodrigues described in his testimony on behalf of Gaspar Fernandes, the Jesuits in Nagasaki were responsible for a particular innovation in the Ibero-Japanese slave trade, namely the large-scale production of certificates of ownership that stipulated limited-term servitude. These, Vaz believed, were produced in response to the 1570-71 law of Dom Sebastião, which on the face of it banned the trade in Japanese slaves by Portuguese subjects.[40] This law, which had many parallels with the transatlantic New Laws (1542) that nominally banned, but in reality spurred the regulation of indigenous slavery in the Americas, was then bolstered by Pedro Martins (1542-1598), Bishop of Japan, who ordered the excommunication of those who traded in Japanese and Korean slaves without permission.[41] As in the case of the New Laws in the Americas, both royal and ecclesiastical policy were designed to protect the growing number of Christians in the archipelago who in the late sixteenth century numbered several-hundred-thousand, as well as to make a clear statement to Hideyoshi about the intentions of the Portuguese and the Jesuits in Japan.[42] However, this did not result in the end of the Ibero-Japanese slave trade. Rather, the consequence of these geopolitical and missionary manoeuvres was to encourage the Jesuits in Nagasaki to regulate it, and to make their certificates of short-term ownership (*schedulae*) the legal basis for owning Japanese slaves throughout Asia and beyond.[43] In other words, it focused official attention on the origins (*causa*) and legal title (*titulus*) of slaves, the two requirements for just slaveholding according to Vaz.[44] These were in theory required throughout the Iberian World to prove just possession of a slave, as Tatiana Seijas

39 This ultimately had its origins in the idea of *ius non scriptum*: *Institutes* 1.2.9.

40 In fact, these seems to have arisen about a decade before, either as a response to Japanese practices (Sousa 2018, 278) or as an expression of a larger process of bureaucratization of the slave trade in Asia (Ehalt 2017, 525). Both views are probably at least partly correct and are not necessarily in conflict.

41 Vaz 1610, fol. 101r. This view of Portuguese Crown policy in Japan was pioneered by Ehalt 2017, 190-222.

42 There are considerable parallels between the laws of Dom Sebastião and the "New Laws" (1542) in the Americas: Van Deusen 2015.

43 The origins of the system are treated in Ehalt 2017, 190-193. Although none of the licenses from Nagasaki survive, a contemporary *schedula* from Macau is discussed in Sousa 2018, 281-2.

44 Vaz 1610, fol. 19v.

has shown in the case of the titles for Asian slaves held in Mexico, but took on particular importance in the East Asian context.[45]

This said, the certificates issued in Nagasaki (and, as we shall see, in Macau) differed from the majority of those in the rest of the Iberian World in that they often stipulated servitude for a limited time only. From the perspective of the Jesuits, the main advantage of this system, in addition to mirroring contemporary Japanese customs surrounding limited-term bondage, was that it served to lessen the burden of slavery in a context where it was difficult to assess the justice of enslavements with any certainty. As Vaz explained:

> Furthermore, because in these respects there is no great certainty or evidence as regards the cases of Japanese servitude that we both approve and reject, and notwithstanding very many [merchants] have transported large numbers of slaves to India over the last forty years, and because it seems that a way cannot be found whereby they will desist from what they have begun, a plan was entered into by the Bishop of China who was at the time head of the Christians in Japan, after having heard the opinions of the confessors, to find a good way to solve the problem of slaves, the justice of whose enslavement was in doubt. He therefore promulgated a decree that, under pain of excommunication, forbade anyone from transporting a slave from Japan that was not approved by the father confessors. Then again, the very serious and learned confessors resident at Nagasaki permitted slaves whose servitude was in doubt to be removed with certificates that stipulated limited-term servitude.[46]

Indeed, the pragmatic decision to regulate a trade that was hardly going to be stopped by royal decree allowed them to uphold the guiding principle of "favouring liberty" (*favor libertatis*). This was an idea that had been circulating in Roman law since at least the time of Livy and was echoed in the Neo-Roman principles of the natural law theorists of the School of Salamanca who saw liberty as the default state of humanity with slavery representing an "interruption" to this state.[47]

It is also important to note that around the same time or a little later an analogous system arose in Macau for Chinese slaves, where it appears short-term slavery contracts were a response to essentially the same set of problems, including a local system of

45 Seijas 2014, 68, 223.

46 Vaz 1610, fol. 92v: "Caeterum quia in his modis servitutum Iaponiensium quos vel approbavimus vel reprobavimus non est tanta certitudo aut evidentia et nihilominus permulti per integros quadraginta retro annos ingentem mancipiorum copiam in Indiam transferebant et non videbatur dari posse modus, quo ab incepto desisterent illud consilium Sinensis Episcopus qui pro eo tempore Japoniensibus Christianis praeerat, auditis confessariorum sententiis, iniit; quod pro tunc videbatur expedire pro servis de quibus dubitatur iuste, an iniuste essent in servitutem redacti nempe decretum sub excommunicatione ipso facto incurrenda promulgavit nequis e Japponia efferret servum, quem confessarii patres non approbarent; at vero confessarii graviores et peritiores Nangasaiquio degentes eos servos de quorum servitute non constabat sub limitatis annis in sua schedula Lusitanis data efferre permittebant."

47 Huchthausen 1976.

dependency that did not map perfectly onto the Neo-Roman "slave vs. free" dichtomomy, the resistance of local officialdom to foreigners trading in their subjects, the Portuguese desire to continue to trade and spread Christianity and the impossibility of stopping the trade entirely.[48] To take one example, in September 1672 a Portuguese merchant named Lourenço de Melo Silva bought an eighteen year old female slave named Ângela from a mandarin at the Portas do Cerco in Macau. Although their agreement stipulated that the sale was in perpetuity, he requested that the *ouvidor*, Manuel Coelho da Silva, inspect the Chinese slave and issue a certificate (*certidão*) stating that she was to serve for twenty-two years only, after which she would become free (*ficara forro e livre*). This was clearly a case of short-term servitude, rather than a servant contract, as not long afterwards he sold her to the *capitão-mor* of Macau, André Pereira dos Reis.[49] In addition, it also seems to have become necessary to have certificates to transport slaves from Macau to Goa, which then had to be presented to the Inquisition in Goa. For instance, in 1671 a Portuguese merchant in Nagasaki named Diogo Barreira de Rozas bought a young Chinese bondservant (*bicho*) named Nicolau from his parents and later received permission from Father Miguel de Anjos to transport him to Goa, although Barreira would eventually sell him to another Portuguese merchant named Manuel Lopes in Malacca.[50]

This said, despite their wide-spread usage in Iberian Asia, short-term servitude contracts in Japan were considered odd by many. As the 1598 Jesuit Council of Nagasaki concluded:

> And as much as some people can say that until now they have been accustomed to giving limited-term servitude and that learned men do not reject this type of captivity, the response is that formerly this type of captivity was very little used in the world and is very strange, and was only (as far as we are aware) introduced a few years ago in this part of Japan. And if some learned men speak of this type of captivity, they do not permit it as something of general use because in this way it is possible to hold people in captivity *ad tempus* that is to say for a number of years of service and this could be applied to any and all nations of infidels, but only admit it in very rare and particular instances. And if in recent years certificates for years of servitude were given in Japan, it was partly because of a lack of experience regarding the inconveniences and evils that are mentioned above, partly because the Portuguese would buy up lots of young men and women and take them captives in perpetuity, with no opportunity for the Jesuit fathers to hinder such purchases, only leaving them the option to choose the lesser of two evils. Working in the favor of the captives they would write them certificates for years of servitude,

48 It seems that the transport of Chinese women to Goa continued until at least 1715, and probably long after that: Lisbon, Biblioteca da Ajuda, ms. av. 54-X-19 n. 1-2. On servitude in Ming and Qing China, see Chevaleyre 2013.

49 Lisbon, Biblioteca da Ajuda, cod. 51-V-49, fol. 43r-43v.

50 *Ibidem*, fols 41r-42r.

> despite not being able to do so, and also because this was recommended them by the Bishops of China as far as they hold jurisdiction over Japan.[51]

Indeed, the author was basically correct in saying that each element of limited-term servitude had precedents in the larger Catholic legal-theological system (as outlined above), while remaining something of an oddity in its particulars. Without this having been the case, it is hard to imagine the system having arisen in the first place and lasting as long as it did among the legally-minded Jesuits whose responses to the unique situation in Japan were always couched in terms of the larger tradition, as Vaz's treatise makes clear.[52]

In other words, limited-term servitude certificates were not an indiscriminate import from the Catholic legal tradition. Rather, the transplating (to borrow the famous term of Alan Watson) of these ideas into a new context gave Jesuits like Vaz a language and structure to create new and useful legal categories and instruments.[53] For instance, Vaz states unequivocally that those subject to limited-term servitude were neither truly free nor truly enslaved (*neque liberi sunt neque servi*), in contrast to António Rodrigues who seems to adhere to the binary distinction we find in basic accounts of the Roman law of persons in stating that Gaspar was free (*no lo tiene por esclavo sino por persona libre*).[54] By this, Vaz probably means that they were not subject to legal slavery (*servitus legalis*) as conventionally understood, nor feudal slavery (*servitus mixta*) per se, but to a type of servitude that was akin to some of the other forms of domination he had discussed at the beginning of the treatise, like the natural hierarchy of the family (*servitus personalis*), or contract-based domestic service (*servitus famulorum*), in which subjects were technically free while possessing a master. In other words, like servants (*famuli*), they were subject to "servitude" (*servitus*) in the technical sense, but not "ownership" (*dominium*). Furthermore, like apprentices (*famuli mechanicorum*), there was also the expectation that the Japanese

51 Ehalt 2017, 545-6 (paleographical transcription): "E q[uan]to que ao que algu[n]s podem dizer que [a]te agora se custumauão dar ãnos de seruiço e que os dd[outo]res não reprobão este catiueiro respondese que antes este catiu[eir]o he m[ui]topouco usado no mundo e estranhado de m[ui]to a som[en]te que saibamos introduzido de alguns ãnos a esta parte em Jappão. E se alguns dd[outo]res falão deste g[e]nero de catiu[eir]o não o admite p[ar]a se deuer de usar dele geralm[en]te porq desta man[ei]ra se poderão catiuar ad tempos [sic, tempus] cõ[m] ãnos de seruiço todas e quaisquer nações de infieis mas som[en]te o admitte em casos mui raros e particulares: E se estes ãnos pasados se derão em Jappão escritos de ãnos de seruiço foi parte por se não ter tanta esperiencia dos inconuenientes e males que acima se tem apontado, parte porq[ue] como os portuguezes se enchião de moços e moças e asi como asi os leuauão catiuos p[ar]a sempre sem lhe poderem empedir estas compras escolhendo os padres de dous males o menor e o que era em mor fauor dos catiuos lhe asinalauão estes ãnos de seruiço não podendo a fazer e também por assi o terem encomendado que fizesem aos ditos P[adr]es os B[is]pos da China em q[uan]to tinhão iurisdição em Jappão." Discussed in *Ibidem*, 426.

52 It did not occur to either Cerqueira or Vaz that penal slavery in Europe (galley slavery, the Inquisition's condemnation of some penitants to serve in convents, etc.) was a form of limited-term servitude: Wheat 2010.

53 The *locus classicus* for "legal transplant" is: Watson 1974.

54 *Digest*, 1.5.3: "Summa itaque de iure personarum divisio haec est, quod omnes homines aut liberi sunt aut servi."

limited-term slave might be given training in some craft, the time spent in which was to be added to the period of servitude. Indeed, this intermediate status is reflected in the regular slippages between the terms "slave" (*escravo*) and "servant" (*moço*) among earlier Jesuit writers when discussing both Japanese and Chinese limited-term slavery.[55]

Having defined the liminal position of limited-term servitude, Vaz then proceeds to describe its implications. As officially free but living in servitude, careful attention had to be paid to whom these Japanese servants-*cum*-slaves married, or indeed to any other process that might result in a slip into an adjacent but more severe form of domination, as Vaz noted. Related to matrimony was, of course, the issue of the status of those born to Japanese women in this status, a situation which, Vaz argues, arose very frequently. Here, the general principle (unless local civil or customary law dictated otherwise) was that the child's status followed that of the mother (*partus sequitur ventrem*), and therefore the children born to Japanese women possessed under limited-term servitude contracts were by definition free. There were, however, Vaz implies, frequent abuses of this system, probably exacerbated by the fact that many Portuguese many Portuguese [cut highlighted section] hid the certificates from judges hid the certificates from judges, especially in the case of women.[56]

Ultimately, however, it was not the complexities of this intermediate form of servitude that led this missionary theologian to conclude that Christians could not possess Japanese slaves in good conscience:

> It only remains <to> see whether these slaves can be possessed in good conscience with such certificates. This will be evident to us if we say something about the law of Hideyoshi, the

55 Various s.d., fols 97r-98v. On issues of terminology, see Sousa 2018, 7.

56 Vaz 1610, fols 92v-93r: "Restat inquiramus an illud fuerit expediens et an domini sub illis schedulis Japonios servos possidentes per eos annos sint tuti inconscientia. Et quidem quod modus ille non fuerit expediens eventus comprobavit. Primo quia quosdam ex his Lusitani e Japonio egressi continuo in perpetuos servos vendicarunt. Alii, ruptis prae iracundia aut prava affectione schedulis, in longius tempus servitutem differebant. Alii schedulas occultabant ne posset constare annorum finis quibusdam etiam mancipiis praesertim faeminis auferebatur facultas in libertatem proclamandi, quatenus non poterant suum ius tueri, sed neque iudicis officium implorare poterant dum schedula in qua tota sua in libertatem actio consistit in scrinio domini reservabatur. Praeterea omnes servi dum sic possidentur neque liberi sunt neque servi, neque permittuntur contrahere matrimonium nisi cum servo aut ancilla domestica ut perpetuae servituti subianceant. Item si doceant hos servos aut ancillas artem aliquam totum illud tempus, quod in adiscenda arte consumpserunt, superadditur signatis annis servitutis. Rursus aestimant valorem mancipii in fine annorum et quanto pluris aestimantur, quam aestimaretur in initio tanto, prorogantur anni servitii. Praeterea si quam artem eos docent, puta sartoris peradauctos servitii annos ea meliora menta persolvunt, quo fit ut duodecim servitii anni in chirographo confessariorum consignati saepeni viginti annos evadant et his plures. Denique gravis quaestio semper excitatur num partus istius modi ancillae temporariae liberi sint, an dominorum, quam quaetionem, seu litem quia in contentionem forensem ancillae non veniunt, neque est qui eam prosequatur pro miserrimis hominibus et foeminis domini ipsi diiudicant illud habentes pro bono et aequo, quod sibi magis libet, cum tamen illud verum sit partus huiusmodi ancillarum pro liberis habendos esse quemadmodum et matres sunt liberae. Quin etiam per hunc modum servitutis non comparant domini ius patronatus, ut notum est." For Vaz's take on *partus sequitur ventrem*, see fol. 93r-v. Vaz explains that the *servitus* of servants exists within the context of the household and should therefore be considered subject to the same *dominium politicum seu…oeconomicum* as women and children: *Ibidem* fols 4r, 17v.

> decree of our King Sebastian and the sanction of the Bishop of Japan for the Japanese slaves, from which it will become clear, even taking into account those types of servitude which we accept, that no Japanese person can be held as a slave in good conscience in any circumstance, either in perpetuity or for periods of time.[57]

In the end, if there were Japanese civil laws that were not contrary to natural law, or (more compellingly for Vaz) ecclesiastical decrees issued regarding Japan that he believed banned the practice, then <all> bets were off. This was the other side of the coin of Vaz's universalizing version of international and comparative law. What was permitted by natural law and compatible with Roman contract law could nonetheless be legitimately prohibited by laws and customs, be they European or non-European.

Conclusion

In his extensive and little-known treatise, Vaz gives the most detailed available account of how mainstream Catholic ideas could be applied to slavery in Iberian Asia in general, and the case of Japanese limited-term servitude certificates in particular. This framework was largely inherited from the *ius commune*, Iberian civil law and the School of Salamanca, which provided a universalizing Christian framework that was nonetheless flexible enough to integrate and harmonize laws and customs from Japan and elsewhere. Vaz's project, which was closely modelled on that of Luis de Molina, thus necessitated not only a grounding in European law and theology, but also the careful study of non-European slavery in Asia and the ideas that underpinned them. In Vaz's case, this was facilitated by his own experience and privileged access to the works of his fellow Jesuit missionaries labouring across Asia. As such, Vaz's treatise is an early example of comparative law that places the Ibero-Japanese system of limited-term servitude in a wider legal context, while also paying careful attention to realities on the ground. This influential treatise by a prominent Jesuit is therefore essential reading for historians of slavery in early modern Ibero-Asia and beyond.

Indeed, we might conclude that *De mancipiis Indicis* highlights the importance of following in Vaz's footsteps in parsing the many and variegated forms of slavery and dependence that existed in early modern Asia, both Iberian and non-Iberian. While it is tempting to attribute to the Iberian World a sharp distinction between slavery and servitude, the reality is more complicated.[58] Similarly, while there was clearly enough commensurability between the numerous human trafficking regimes of Eurasia for Iberians

57 *Ibidem*, fol. 93v: "Reliquum est ut in subsequentibus videamus, an ea mancipia sub his schedulis tuta conscientia possideantur; quod fiet nobis evidens si de Taicosamae lege et Sebastiani regis nostri decreto et Antistitis Japonensis sanctione pro Japonicis mancipiis aliqua dicamus, ex quibus constabit, etiam stante aequitate eorum modorum servitutis quos probavimus, nullum hominem Japonem pro mancipio posse salva conscientia neque in perpetuum neque ad tempus ullatenus retineri."

58 This has recently been highlighted in another context by McKinley 2016.

and others to create global slave trading networks, this does not mean that Japanese ideas mapped comfortably onto those theorized by the School of Salamanca. To understand this complex patchwork, what is needed therefore is a better comparative legal (as well as social, cultural, etc.) understanding of slavery in the Ibero-Japanese context and beyond, a project that was begun, albeit imperfectly and partially, by Gomes Vaz.

Bibliography

Amaya, Sebastião. 1645. *India Christiana. Instructiones morales pro casibus concientiae apud Indos utriusque orbis occurrentibus.* Rome, Biblioteca nazionale centrale Vittorio Emanuele II, Gesuitico, Ges. 1549.

Ames, Glenn J. 2008. "Religious life in the colonial trenches: the role of the Pai dos Christaos in seventeenth century Portuguese India, c. 1640-1683." *Portuguese Studies Review* 16 (2): 1-23.

Araújo, Maria Benedita de. 1993. "O "Pay dos Christãos". Contribuição para o estudo da Cristianização da Índia." *Missionação Portuguesa e Encontro de Culturas. Actas do Congresso Internacional*. Braga, Universidade Católica Portuguesa, II, 305-324.

Biedermann, Zoltán. 2018. *(Dis)connected Empires: Imperial Portugal, Sri Lankan diplomacy, and the making of a Habsburg conquest in Asia*. Oxford: Oxford University Press.

Chevaleyre, Claude. 2013. "Acting as Master and Bonservant. Considerations on Status, Identites, and the Nature of 'Bondservitude' in Late Ming China". Alessandro Stanziani (ed.), Labour, Coercion and Economic Growth in Eurasia, 17th-20th Centuries. Leiden: Brill, 237-272.

Decock, Wim. 2013. *Theologians and Contract Law: The Moral Transformation of the Ius Commune (ca. 1500-1650)*. Leiden, Brill.

Donoghue, John. 2013. "Indentured Servitude in the 17th Century English Atlantic: A Brief Survey of the Literature." *History Compass* 11 (10): 893-902.

Ehalt, Rômulo da Silva. 2017. *Jesuits and the Problem of Slavery in Early Modern Japan*. PhD Dissertation: Tokyo University of Foreign Studies.

Ehalt, Rômulo da Silva. 2019. "Jesuit Arguments for Voluntary Slavery in Japan and Brazil." *Revista Brasileira de História* (39.80): 87-107.

Flores, Jorge. 1998. *Os Portugueses e o Mar de Ceilão: Trato, Diplomacia e Guerra (1498-1543)*. Lisbon: Edições Cosmos.

Hesselink, R. H. 2016. *The Dream of Christian Nagasaki: World Trade and the Clash of Cultures, 1560-1640*. Jefferson, North Carolina: McFarland & Company.

Huchthausen, Liselot. 1976. "Zum Problem Der "Freiheitsbegünstigung" ("favor Libertatis") Im Römischen Recht." *Philologus* 120 (1): 47-72

Kitahara, Michio. 2013. *Porutogaru No Shokuminchi Keisei to Nihonjin Dorei: Portuguese Colonialism and Japanese Slaves*. Tokyo: Kadensha.

Lobato, Manuel. 2002. "Notas e correccoes para uma edicao critica do Mss da Livraria n° 805 (IAN/TT), a proposito da publicacao de um tratado do Pe Manuel de Carvalho S.J.," *Anais de Historia de Alem-Mar* 3: 389-408.

Lopez, Antonio. 1594. Letter dated 18 October 1594. Rome, Archivum Romanum Societatis Jesu, Jap. Sin. 12, II, fol. 202v.

Mckinley, Michelle A. 2016. *Fractional Freedoms: Slavery, Intimacy, and Legal Mobilization in Colonial Lima, 1600-1700*. New York: Cambridge University Press.

Molina, Luis de. 1593. *De iustitia et iure*. Volume 1. Conchae: Masselini.

Nagata, Mary Louise. 2004. *Labor Contracts and Labor Relations in Early Modern Central Japan*. New York: Routledge.

Nelson, Thomas. 2004. "Slavery in Medieval Japan". *Monumenta Nipponica* 59 (4): 463-492.

Seijas, Tatiana. 2014. *Asian Slaves in Colonial Mexico: from Chinos to Indians*. Cambridge University Press.

Sousa, Ivo Carneiro De. 1999. "Comércio Oriental, Fiscalidade e Ética Económica Em Malaca: O Tratado Para a Resolução de Alguns Casos Versados Nas Partes Da Índia Do Jesuíta Manuel de Carvalho (1600)." Maria de Fátima de Marinho et al. *Miscelânea*. Oporto: Faculdade de Letras de Porto, 130-197.

Sousa, Lúcio De. 2015. *The Jewish Diaspora: And the Perez Family Case in China, Japan, the Philippines, and the Americas (16th Century)*. Macau: Fundaçao Macau.

Sousa, Lúcio De. 2018. *The Portuguese Slave Trade in Early Modern Japan: Merchants, Jesuits and Japanese, Chinese, and Korean Slaves*. Boston: Brill.

Tomlins, Christopher L. 2010. *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865*. Cambridge: Cambridge University Press.

Van Deusen, Nancy. 2015. *Global indios: The indigenous struggle for justice in sixteenth-century Spain*. Durham; London: Duke University Press.

Various. s.d. Lisbon, National Archive of the Torre do Tombo, Livraria 805.

Vaz, Gomes. 1610. *De mancipiis Indicis, manumissionibus et libertis libri IV*. Lisbon: National Library of Portugal, cod. 2577.

Vial-Dumas, Manuel. 2014. "Parents, Children, and Law: Patria Potestas and Emancipation in the Christian Mediterranean during Late Antiquity and the Early Middle Ages." *Journal of Family History*, 39(4), 307-329.

Watson, Alan. 1974. *Legal Transplants: An Approach to Comparative Law*. Charlottesville: University Press of Virginia.

Wheat, David. 2010. "Mediterranean Slavery, New World Transformations: Galley Slaves in the Spanish Caribbean, 1578-1635." *Slavery & Abolition*, 31(3), 327-344.