

The South Korean Controversy Over the Comfort Women, Justice and Academic Freedom: The Case of Park Yuha

Maeda Akira

Caroline Norma, translation and commentary

Introduction

Maeda Akira is a law professor at Tokyo Zokei University. He recently edited a volume of writing on theories of 'hate speech',¹ and has been an active participant in the activist and scholarly 'justice for comfort women' movement since its inception in Japan in the early 1990s. In December 2015, Maeda published a series of blog posts criticising a public statement issued, initially, by 54 mostly Japanese and American academics in November 2015.² This public statement was introduced at a press conference on the 26th, and published in the Asahi Shimbun on the 27th. Among its signatories were Oe Kenzaburo, Kono Yohei, Andrew Gordon, Peter Duus, and Ueno Chizuko.³ The group maintains a multilingual website as a show of ongoing protest.⁴



Maeda Akira

Their protest was at the decision of South Korean prosecutors in November 2015 to criminally indict Sejong University's professor Park Yuha for libel. Park in 2013 published a

Korean-language history of the so-called wartime military 'comfort women' that the court judged libelous of survivors. It was subject to a civil claim brought in 2014 by nine former victims with the support of House of Sharing. A temporary injunction on the book's sale was lifted only after the Seoul Eastern District Court ordered the deletion of a number of its passages. The passages included the sentence: 'Korean comfort women were victims, but they were also collaborators as people from a colony'.⁵ Park's criminal indictment by Korean prosecutors in November 2015 followed this initial successful civil claim.

Maeda's withering critique of the protest statement reflects an analysis of 'hate speech' that has emerged among some Japanese progressives since the Zaitokukai hate campaigns against zainichi Koreans of a few years ago.⁶ This analysis moves away from traditionally American conceptions prioritizing 'free speech', and toward an approach frequently adopted in the legal systems of Europe and elsewhere. This 'group libel' approach is most recently described in a book by Jeremy Waldron that was translated into Japanese in 2015.⁷ It is the approach that is best known for prohibiting Holocaust denialism in Europe. The following translation excerpts parts of Maeda's 7-part blog post series from December 2015.⁸ Maeda is critical in his discussion of the view of statement signatories that 'free speech' and 'academic freedom' are threatened by Park's indictment. Signatories in their statement do not necessarily defend the content of Park's book, nor does the statement in any way endorse the wartime military prostitution scheme itself. Instead, the signatories hold that the indictment inhibits their ability to 'fight bad speech with good' and maintain a 'robust marketplace of ideas', and could be chilling of cross-country debate about ways to resolve outstanding issues over the history of the comfort women. CN

The indictment of Park Yuha for Comfort

women of the empire and Japan's enduring colonialist mindset

植民地主義を払拭できない日本 —— 朴裕河『帝国の慰安婦』訴追問題を考える

Groundless judgments are currently being made in Japan about the decision of South Korean prosecutors to indict Comfort women of the empire author Park Yuha for criminal libel. The 54 people who signed the November 2015 public statement criticising Korean prosecutors without factual basis follow Park's lead: after all, she wrote her book on the basis of scandal mongering by a third party.⁹ Indubitably, birds of a feather will flock together.¹⁰

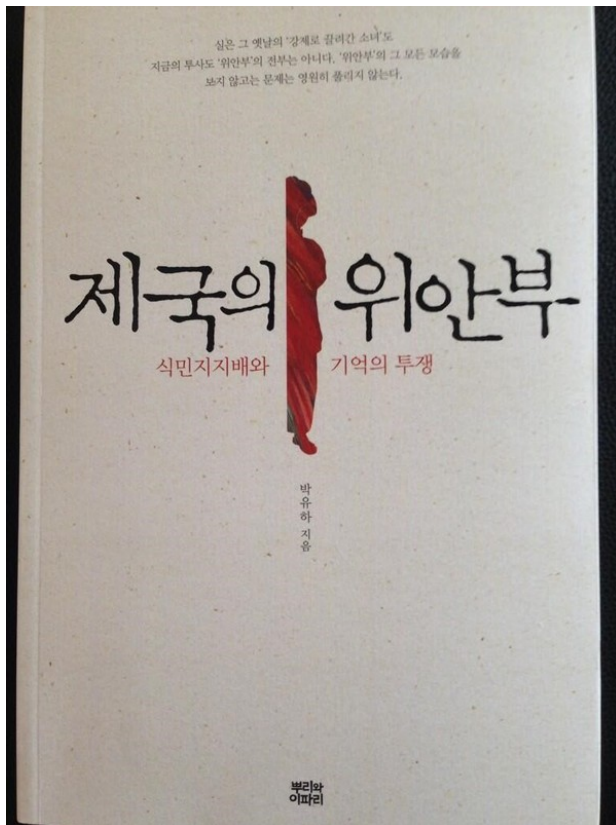
The large number of falsehoods identified in Park's book do not arise because of any sloppiness on the part of the author. Rather, they arise systematically on the basis of a methodology that structurally relies on mistaken claims as data, and then cites these claims to develop a form of historical interpretation that promotes falsehoods. These falsehoods make the book libelous of former Korean 'comfort women' who are characterised as having maintained relationships of equality with Japanese troops during the war and as having been collaborators of an occupying military.

Park Yuha's book in Japanese and Korean editions about here

I am not a Korean law specialist,¹¹ so will not comment on the November 2015 indictment itself, but the groundless claims now circulating in Japanese media as a result of the publication of the 54-signature protest statement require a response. Signatories to the statement claim that:

The Korean office of public prosecutions alleges that the Korean-language version of Comfort women of the empire

contains falsehoods, and cites examples of these. However, no sincere attempt is made to understand the intent with which Park wrote these statements. Prosecutors appear to pre-judge the case on the basis of misunderstanding and presupposition.



This passage is difficult to comprehend. In libel law, judgments as to the falsity of author statements in publications like Comfort women of the empire are made with absolutely no regard to author intent. Meiji University Associate Professor Chong Yong-hwan has analysed in detail the falsehoods in Park's book,¹² and concluded in a 29 November 2015 Asahi Shinbun article that 'the book's discussion reflects a misapprehension of fact, and there are many examples of selective interpretation of historical evidence'. Similarly, Professor Kim Puja of Tokyo University of Foreign Studies at a 28 November 2015 Violence Against Women in War Research Action Center (VAWW-RAC) workshop commented in relation to the 54-signature protest statement that, 'historical interpretation might be a matter of academic freedom, but at issue in this case is whether or not the book contains falsehoods'.

One of my concerns with Park's book is its persistent reliance on the novel of a Japanese male writer [Senda Kako] whenever it seeks to make important statements of historical fact. Park claims she wrote the book on the basis of 'historical materials', but there is no evidence of this being the case. The only historical

evidence that can be gleaned from the novel of a Japanese male writer is his views on the wartime 'comfort women' system. But Park takes these views to suggest they convey historical information not only about the comfort women, but also about the thoughts of these women. In no respect is this a recognised historical research method.

The 54-signature statement expresses the view that 'we feel that this book does not harm the honor of the former comfort women: on the contrary, this book is successful in delicately conveying the deep sorrow of these women to Korean and Japanese readers'. In expressing this view, signatories ignore former comfort women who claim to be harmed by the book. Worse still, they offer no reason for ignoring their claims, and nowhere in their statement do they attempt to acknowledge harms claimed by victims. It is worth noting that the events the statement addresses arose originally with a civil action for libel brought by former comfort women against Park's book. This claim was upheld in a Korean court. Despite this history, the 54-signature statement acknowledges no harm accruing to survivors, nor offers any reason for overlooking even their legally acknowledged harm. The libel the book inflicts on survivors has been recognised within Korea for a number of years; it was confirmed by a domestic court in 2014 and reiterated by academics today such as Chong Yong-hwan.

Signatories to the statement are effectively telling survivors they are not the arbiters of their own experience of harm and that, instead, it is they, the signatories, who must judge. Their conceit in asserting this while forgetting that they (in many cases) belong to the side of the former perpetrators of war against Korea is truly astonishing.

There is nothing strange about public prosecutors bringing a criminal indictment in cases like this, especially following a successful civil action, and where there are still grounds

for examination of possible libel. Of course, as is similarly the case in Japanese law, court protection is not awarded claimants on the basis of self-perceived experiences of harm. Questions as to an individual's victimisation or victim status are decided by a court. But, it must be remembered, judgments like this are made by courts all the time.

Probably similar to Korea, the libel provisions in Japan's penal code require three elements to be established: publicness, broadcast, and diminishment of social standing. In the case of the former comfort women, it is not the fact of their being victims of human rights violations, or former victims of military sexual enslavement, that is at issue with regard to libel. Rather, at issue is the diminishment of their social standing through the broadcast of claims about their having had relationships of equality with Japanese military men and having been prostitutes during wartime. What should be further at issue in the Park Yuha case, moreover, is not just the diminishment of the social standing of survivors, but also respect for their human dignity. Survivors have, after all, for more than twenty years now, been campaigning for the restoration of this dignity.

Signatories to the statement further express the view that they were

shocked by the [Park Yuha] indictment in which public authority in the form of the procurator's office has moved to confine academic freedom and freedom of speech based on a particular view of history. What to certify as fact and how to interpret history are issues that should be left up to academic freedom. Apart from such a work that discriminates a particular individual or incites violence, matters related to speech should be countered through speech, and

according to the basic principle of modern democracy, public authority should never encroach into that arena. We firmly believe that only invigorated academism would offer precious opportunities for the formation of healthy public opinion and nourish society at large.

There is no factual basis to the assertions made in this paragraph. The degree to which the statement's drafters have set aside common sense in order to generate this kind of written misunderstanding is surely a feat of wonderment. The fact is, group libel and group defamation provisions are utterly commonplace in European law. Further, 'freedom of speech' is no defence against charges of libel or actions injurious of the human dignity of former 'comfort women' when these are established through the broadcast of falsehoods.

The signatories assert that '[a]part from such a work that discriminates [against] a particular individual or incites violence, matters related to speech should be countered through speech, and according to the basic principle of modern democracy, public authority should never encroach into that arena'. Certainly, in Japanese law, provisions under Article 230 allow for libel to be established only when there is a named individual. However, in European legal systems, libel can be established not only in the case of individuals but also for whole groups. Actually, technically, both the German and Japanese penal codes allow for libel to be established on a group basis, but Japanese libel provisions have never historically been used in this way, so they are currently applicable only in cases of named individuals. The resulting peculiarly Japanese belief that libel provisions cannot be used to pursue group claims, and that actions for libel can be brought only when there is a named individual, has no basis in the 'basic principles

of modern democracy' that the signed statement refers to. After all, group libel and group defamation clauses are found in the 'hate speech' provisions of most European countries. These clauses are on a par with other criminal law provisions such as those relating to murder, arson and robbery.

The signatories concern themselves with 'freedom of speech', but not with its responsible exercise. While all citizens have rights of speech and obligations to use speech responsibly, the responsible exercise of speech by academics and publicly-known writers warrants particular scrutiny. But, in the publication of the 54-signature statement, this principal has been violated, and the statement represents, in fact, the complete disregard of obligations of responsible exercise of speech.

The signatories advocate 'freedom of expression' even when this expression comprises falsehoods about an identifiable group. This kind of 'free speech' advocacy paves the way for the defence of claims developed within all sorts of academic disciplines, including Nazi eugenics and Japanese imperial colonialist planning. The signatories commend 'invigorated academism' as offering 'precious opportunities for the formation of healthy public opinion and [to] nourish society at large', but this logic would equally permit the development and deployment of nuclear weaponry under the guise of 'military studies', and the measurement of the harm of these deployed nuclear weapons under the guise of medical studies. We can never say that the mere pursuit of academic endeavour for its own sake inevitably 'nourishes society at large'.

In the 54-signature statement, who is addressing whom in issuing a warning against violation of academic freedom? We might say the statement directly addresses South Korean prosecutors, but it surely also reaches the ears of the former comfort women who brought the

original libel claim. These women, because of Japanese colonisation, did not receive a comprehensive education. Not only that, but colonisation took away their very language and culture. This is in addition to the historical fact of their sexual enslavement. These women having been living lives of hardship for the past half-century, and all the while have been desperately appealing for the restoration of their personal rights and dignity. It is these women who the signatories address in their statement defending 'academic freedom'. Most of the signatories are Japanese academics or well-known writers, and they make up the privileged elite of this society. How far should the claim of 'academic freedom' for these people be allowed to harm others? It doesn't bear thinking about. There is surely no other word for their public statement than to describe it as an act of recklessness. There seems to be no limit to the degraded depths academia can plunge to in this country.

As mentioned, the signatories claim that 'matters related to speech should be countered through speech, and according to the basic principle of modern democracy, public authority should never encroach into that arena'. But the fact is that 'public authority' already does encroach upon this area--hate speech laws against group libel and group defamation are common in Europe. In these countries, the responsibilities that come with freedom of speech are not forgotten.

We might expect the signatories to the statement to be opponents of colonialism and racism. However, reading their statement, it appears that many have not yet extricated themselves from the clutches of colonialism. We might think about the concept of 'internalised colonialism' and suggest that the signatories to the statement have neither confronted their own internalised colonialism nor sought to overcome it. We can make this assessment, firstly, on the basis of their having overlooked the subjectivity of the former

comfort women in ignoring the women's claims of having been harmed by Park's book. Secondly, the signatories in their statement attempt to laud elite principles of privilege like 'academic freedom' and 'freedom of speech' over women who seek restoration of their human rights and dignity, of which they were robbed during the colonial period. There will of course be many explanations as to why the signatories took the path of action they did in releasing their statement, but one reason we might point to is their internalised colonialist mindset.

There should have been laws enacted in East Asia after the war criminalising the broadcast of reckless speech that denies aspects of wartime history, such as the sexual enslavement of comfort women or the Nanjing massacre, similar to laws enacted in Europe against Holocaust denial. The social dominance of war criminals in Japan after the war meant these kinds of laws were never enacted. I have long advocated their enactment in countries like Korea and China. As I've mentioned, these kinds of laws do not exist in Japan because libel claims can be brought only in the case of a defamed individual. This is different from countries like Germany where 'group libel' claims can be brought on behalf of whole groups.

The argumentation of the 54-signature protest statement effectively follows the same logic as that of neo-Nazis. It is not that the signatories are neo-Nazi supporters, but the content of their claims replicates exactly those of that group. The signatories appear to be completely unaware of the global debate over the fact that speech by neo-Nazi holocaust deniers is criminalised in Europe. As a result, they are extremely cavalier and dismissive in their approach to speech that makes historical claims about wartime issues. Given how well known in Japan are these approaches taken in Germany and France in particular toward denialist claims about the war, it is difficult to

imagine that the signatories were unaware of the existence of group libel laws in Europe. But, if it really was the case that the signatories did not have even this basic level of knowledge about issues of democracy and freedom of speech, then they had no right to publish their public statement of November 2015.

Afterword

Maeda wrote these blog posts prior to Park's case being heard but, soon after his public statements, in January 2016, Park was convicted for libel and ordered to pay damages of more than \$100,000 to eight survivors. Notwithstanding, from 31 January 2016, Park made her Korean-language book freely available for download through her personal website. At the time of writing, Maeda has not made subsequent comment on the libel conviction, but Meiji University's Chong Yonghwan is scheduled to address the issues at a seminar in Tokyo on 27 February. News of Park's conviction has attracted perhaps less attention than might have been otherwise the case because of an 'agreement' that was signed between Japan and South Korea on 28 December 2015. This document commits the two governments to no further diplomatic engagement over the history of Japanese military sexual slavery in return for a Japanese transfer of funds to the Korean government for distribution to survivors. This agreement has been opposed by Korean survivors and their representative organization, the Korean Council, and also by Japan-based groups like the Violence Against Women in War Research Action Center (VAWW-RAC) who have issued a public statement criticising it, not least because of the failure to consult with the women or their organization in drafting it. University students in Seoul have been waging ongoing protests against the agreement in sub-zero temperatures at the memorial statue to the comfort women outside the Japanese embassy, and some have been arrested for their efforts. Tension over the issue further

escalated in early February when the Japanese government responded to questions from the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) about Japanese efforts toward observance of the CEDAW Convention. The Japanese government appended the 28 December agreement to its responses, which included the statement that the "[f]orceful taking away of comfort women by the military and government authorities could not be confirmed in any of the documents that the [Japanese government] was able to identify." Appending the December agreement to this kind of statement was seen as offensive in part because of the agreement's declaration that it comprises a "final and irreversible solution" to the historical issue of the comfort women. In this escalating context of outrage and opposition to the 28 December agreement, outspoken Japanese support for Park and Comfort women of the empire has quieted somewhat, and updates to the supporter website with news of Park's conviction have not been made. Notably, signatories to the statement that Maeda criticises have issued no similar statement commenting on the 28 December agreement, despite the agreement's gag on the 'free speech' of the South Korean government in raising the wartime history of the comfort women in international diplomatic settings. Maeda's intervention and the 28 December Japan-ROK agreement, make clear that the debate will continue on multiple fronts including the nature of the comfort women system, Japanese apology, nationalisms, and free speech issues. CN

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Notes

¹ Maeda, Akira. (2013). *Naze ima heito supīchi nanoka: sabetsu bōryoku kyōhaku hakugai*. Tōkyō: Kabushiki Kaisha San'ichi Shobō.

² These are to be published as an article in the *Journal of Japan War Responsibility*. See Maeda Akira, 'Shokuminchi shugi wo fusshoku dekinai Nihon: Park Yuha 'Teikoku no ianfu' sotsui mondai wo kangaeru,' *Kikan Sensou Sekinin Kenkyuu*, Vol. 86, June 2016.

³ See [here](#).

⁴ [This multilingual website](#) (Japanese, Korean and English) appears to be managed by Kyoto Sangyo University's Togo Kazuhiko, a former foreign ministry official and Ambassador to the Netherlands, as per a [recent email-list posting](#).

⁵ See [here](#).

⁶ See, for example, [here](#).

⁷ See [here](#).

⁸ See [here](#).

⁹ Maeda refers here to the writing of Senda Kako, which Park relies on heavily in the narrative of her book.

¹⁰ The initial number of signatories was 54, but this has risen to 67 at time of writing.

¹¹ Maeda is, however, a comparative international law specialist, and has written extensively on the legal systems of EU countries.

¹² See [here](#).

¹³ See [here](#).

¹⁴ See [here](#).

¹⁵ See [here](#).

¹⁶ See [here](#).

¹⁷ See [here](#).