

Jinja Honchō and the Politics of Constitutional Reform in Japan

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Since early January 2016 Jinja Honchō has participated in a campaign led by Nippon Kaigi to establish popular support for constitutional reform. In this essay, I seek to understand Jinja Honchō's involvement in this campaign through a reading of the postwar Supreme Court cases related to the separation of religion from the state. I argue that amendment of Articles 20 and 89 was never considered a priority for most of this period, since the prevalent paradigm in the Supreme Court was that Shinto was something *other* than a religion; but following the break with this paradigm in the Ehime Tamagushiryō case in 1997, and the subsequent confirmation of the validity of this precedent through the ruling on the Sunagawa I case in 2010, those seeking a closer relationship between the Shinto establishment and the state have had to find new routes. The rise of Nippon Kaigi as one of Japan's largest conservative lobby groups coincides with this development in the Supreme Court, and the organization's focus on constitutional reform can therefore partly be understood in this light. Should Nippon Kaigi eventually produce a draft for their vision of a new constitution, it is likely that the idea of Shinto as something other than a religion will be reflected in this draft.

Keywords: Shinto, Supreme Court of Japan, Nippon Kaigi, Jinja Honchō, Japanese secularism, Liberal Democratic Party (LDP), constitutional reform

Petitioning for Constitutional Reform: Why Religion Matters

When people in Japan flocked to their local shrines for their first visits of the New Year in early January 2016, many were surprised to find there a petition for constitutional reform. On large white banners decorated with orange cherry blossoms, under the heading “aim for a proud Japan” (*hokori aru Nippon o mezashite 誇りある日本をめざして*), visitors were encouraged to offer their support for the project of amending Japan's postwar constitution. Although the banners were signed Jinjachō 神社庁 (local branch of the Jinja Honchō 神社本庁, the Association of Shinto Shrines), the campaign—*Kenpō kaisei o jitsugen suru 1000 mannin nettowāku 憲法改正を実現する1000万人ネットワーク* (Network of 10 million people to realize constitutional reform, henceforth “Kenpō1000”)—was in fact run by Utsukushii Nippon no Kenpō o Tsukuru Kokumin no Kai 美しい日本の憲法をつくる国民の会 (Citizens' Association for the Creation of a Constitution for a Beautiful Japan), a Nippon Kaigi



Figure 1. Banners calling for constitutional reform, under the heading “aim for a proud Japan.” The banners in this picture were seen in June 2016 at the Akasaka Hikawa Shrine 赤坂氷川神社 in Tokyo. Photo by the author.

日本会議 workgroup for constitutional reform.¹ Considering the fact that a number of prominent officials from Jinja Honchō hold leadership positions in Nippon Kaigi, it is hardly surprising that this association would also participate in a campaign sponsored by Nippon Kaigi, but it does serve as an inroad to a broader question about the postwar secular order in Japan.² Why would Jinja Honchō invest in the question of constitutional reform? What does Jinja Honchō have to gain from participating in this project? Why is this happening in 2016?

One key to answering these questions can be found in the debates about state-religion relations in postwar Japan. Through the Directive for the Disestablishment of State Shinto, issued by the Supreme Commander for the Allied Powers (SCAP) on 15 December 1945, “State Shinto”—defined in the document as “that branch of Shinto which by official acts of the Japanese Government has been differentiated from the religion of Shrine Shinto

and has been classified as a nonreligious national cult”—was disestablished and replaced solely by “Shrine Shinto (jinja shintō 神社神道),” which would be “recognized as a religion if its adherents so desire and will be granted the same protection as any other religion in so far as it may in fact be the philosophy or religion of Japanese individuals.”³ Through this distinction, the form of Shinto which had previously been defined by the Japanese state in terms of ideology and which had been excluded from the legal category of religion from the Meiji period and up until the end of the war, was disestablished and replaced by (Shrine) Shinto, a religion. After 1945 much of what had previously been included in the national ideology of “State Shinto,” described by Isomae Jun’ichi as “an ambiguous system, clearly classifiable as neither ‘religion’ nor ‘secular,’ born out of trial and error and adopted as a means by the native elite in Japan to unify the people,” came to be considered aspects of one religion, with the same legal rights and privileges as other religions enjoyed.⁴ Major institutions that had enjoyed substantial patronage from the state throughout the modern period, including the shrine complex at Ise and Meiji Shrine in Tokyo, had their official ties to the state cut and were forced to find new ways of surviving without public support.

Jinja Honchō was established as a response to the forced disestablishment of Shinto. Originally founded in 1946, following the promulgation of the Religious Juridical

1 Kenpō1000 2016. For details on the organization, see also Tsukada 2015, pp. 57–67.

2 According to the Nippon Kaigi homepage, Jinja Honchō leaders currently acting as officials in the organization include Takatsukasa Naotake 鷹司尚武, chief priest of the Ise Shrines, Kitashirakawa Michihisa 北白川道久, representative (*tōri* 統理) of Jinja Honchō, and Hattori Sadahiro 服部貞弘, chairman of the Shinto Association of Spiritual Leadership (Shintō Seiji Renmei 神道政治連盟). Nippon Kaigi 2016a.

3 The Shinto Directive 1945.

4 Isomae 2007, pp. 93–102.

Persons Act (*shūkyō hōjin hō* 宗教法人法) in April 1951, Jinja Honchō was registered as a Comprehensive Religious Juridical Person (*hōkatsu shūkyō hōjin* 包括宗教法人).⁵ Acting as an umbrella organization for around 80,000 of Japan's shrines, the organization was intended to maintain Shinto institutions across the country after state patronage had been cut, but it also resulted in a new form of institutionalized Shinto centered on the Ise Shrines. Although the Ise Shrines, like all other shrines, were registered as a Religious Juridical Person, under Jinja Honchō they enjoyed the position of *primi inter pares* as the *honsō* 本宗—"supreme sanctuary"—of Japan.⁶ Jinja Honchō is also a central actor tied to what John Breen and Mark Teeuwen in various publications have referred to as "the Shinto establishment."⁷ The Shinto establishment can be used to describe a number of "self-consciously 'Shinto'" actors devoted to the idea that Shinto is a vital part of Japanese identity. Reproducing a view of Shinto based in the state-sanctioned Shinto of the prewar era, many of the actors connected to the Shinto establishment also have a high degree of interest in reinstating state sponsorship of key Shinto institutions, in particular the Ise Shrines and Yasukuni Shrine in Tokyo. According to Breen and Teeuwen, the Shinto establishment lays claim to "some 110 million Shinto practitioners," yet it is uncertain to what extent the often nationalistic agenda of this establishment is actually supported by those ordinary people in Japan who worship at shrines.⁸

One key issue of constitutional reform where Jinja Honchō is involved regards Articles 20 and 89, the two articles that together establish the legal framework for the postwar secular order in Japan. Written with the specific purpose of raising a wall of separation between religion and the state, and thus preventing a return to Shinto as the national ideology of the Japanese state, Paragraph 3 of Article 20 establishes that "the State and its organs shall refrain from religious education or any other religious activity."⁹ Although the question of how Articles 20 and 89 have been interpreted throughout the postwar period has been explored by numerous scholars, this essay will offer a condensed analysis of key legal cases in order to better illustrate those legal developments that have contributed to the active participation of Jinja Honchō in the current attempts at constitutional reform.¹⁰ The focus of this analysis will be on discourses of religion and Shinto and how these concepts are used in court, and what the consequences are for the relationship between state and religion in postwar Japan. As has been argued by Winnifred Sullivan, disestablishment and freedom of religion require clearly distinguishable categories of religion in order to work, but at

5 Although the Religious Juridical Persons Act was established following the enactment of the postwar constitution, it built on the *Shūkyō hōjin rei* 宗教法人令 of 28 December 1945. Under this directive, Jinja Honchō was registered as a Religious Juridical Person in 1946.

6 Teeuwen and Breen 2017, p. 214.

7 Although Breen and Teeuwen have used a number of different definitions for the Shinto establishment in earlier publications (c.f. Breen and Teeuwen 2009, 2010, or Breen 2010), in their latest work they define it, within the specific context of the Ise Shrines, as a set of three "distinct but related agents": The priest administrators of the Ise Shrines, the functionaries of Jinja Honchō, and the members of the Ise Supporters' Association (*Ise Jingū shikinen sengū* 伊勢神宮式年遷宮). See also Teeuwen and Breen 2017, p. 211.

8 Breen and Teeuwen 2009, pp. 1–3.

9 For a more detailed account of the process of disestablishment in the new constitution, see Dower 2000. For a contrasting view further emphasizing the Japanese contribution to the process, see Beer and Maki 2002.

10 See for instance Forfar 2003; Takahata 2007; Van Winkle 2012; Ravitch 2014.

the same time the courts play a key role in establishing normative understandings of these categories.¹¹

Before we turn our attention to the question of how the Supreme Court has argued with regards to the categories of Shinto and religion, we must first clarify these categories in a Japanese context. Regardless of whether the idea that the world can be divided into a religious and a secular sphere existed in Japan before the encounter with Western modernity, the Japanese term *shūkyō* 宗教 was not agreed upon as the equivalent of the Western concept of religion until the latter half of the nineteenth century.¹² At the same time, the adoption of the term *shūkyō* was not simply a matter of importing a foreign idea. As Jason Josephson has argued, the category of religion in Japan was produced through a process of negotiation by Japanese intellectuals, policymakers, and leaders, which resulted in the idea of religion as the negotiated middle ground between the secular/the real and superstition/delusion. This process resulted in a number of “religions,” but it also resulted in the conceptualization of certain forms of Shinto as “secular,” and hence was excluded from the legal category of religion.¹³ Thus despite the fact that the Constitution of the Empire of Japan (1890) had a provision for “freedom to believe in religion” (*shinkyō no jiyū* 信教の自由), this was still conditioned by adherence to the official ideology of the state. Imperial subjects were free to believe in religions—or teachings (*kyō* 教)—but they also had to adhere to the secular order of the state, which included many elements of Shinto.

Since Kuroda Toshio in his 1981 article “Shinto in the History of Japanese Religion” began questioning the paradigm of Shinto as the ancient and native—sometimes referred to as racial—religion of Japan, arguing that Shinto through much of Japanese history should rather be seen as an aspect of *kenmitsu* 顕密 Buddhism, a critical school of Shinto studies has gained much ground in academic circles.¹⁴ Through the work of scholars like Helen Hardacre (1991), Mark Teeuwen (2002), Shimazono Susumu (2005, 2010), and Isomae Jun’ichi (2007, 2012), the genealogy of Shinto in Japanese history has been further explored. Parallel to this development has been the rise of critical religion theory, headed by scholars including Russell T. McCutcheon, Talal Asad, and Timothy Fitzgerald. Arguing that the categories of religion and the secular are closely connected to the process of Western modernity, scholars within this tradition suggest that the uncritical application of these concepts—indicating a binary view of society as easily divided into two spheres—to a non-European context is highly problematic. Rather than assuming normative understandings of what religion is and is not, critical religion seeks to establish contextually founded genealogies of these concepts. As Asad has put it, “the secular is neither singular in origin nor stable in its historical identity, although it works through a series of particular oppositions.”¹⁵

11 Sullivan 2005.

12 See for instance Christoph Kleine’s criticism of critical religion theory in Kleine 2013.

13 Josephson 2012, pp. 251–62.

14 For instance, Ono Sokyō of Kokugakuin University wrote in an English-language monograph on Shinto that is still widely available: “Shinto is a racial religion. It is inextricably interwoven with the fabric of Japanese customs and ways of thinking. It is impossible to separate it from the communal and national life of the people. Among the kami of Shrine Shinto many have a special claim to worship from the Japanese people alone and are not such as can be venerated by the peoples of the world in the sense that the Japanese people do” (Ono 2004, p. 111).

15 Asad 2003, p. 25.

In her study, *The Impossibility of Religious Freedom*, Winnifred Sullivan uses critical religion theory to problematize legal discourses on religion in the United States. In her view, the major problem with laws regulating religion—regardless of whether they concern freedom of religion or the relationship between religion and state—is that they require stable and essentialized religion. The problem is that religion is an unstable category.¹⁶ Asad has argued along the same lines: “The nation-state requires clearly demarcated spaces that it can classify and regulate,” and yet “the space that religion may properly occupy in society has to be continually redefined by the law because the reproduction of secular life within and beyond the nation-state continually affects the discursive clarity of that space.”¹⁷ Disestablishment requires the category of religion, but the category can never be essentialized beyond the normative viewpoint of those seeking to define it. In a Japanese context, where religion is part of the vocabulary of the constitution, it falls on the individual justices of the Supreme Court to define and interpret legally which acts are restricted under Articles 20 and 89 of the constitution. Before moving on to the subject of constitutional reform, it is therefore essential to understand what interpretations the Supreme Court has so far produced on the subject of Shinto and religion.

1952–1997: Defining Shinto and Religion in Court

Although it was not the first Supreme Court ruling to involve Articles 20 and 89, the 1977 ruling in the Tsu groundbreaking case was to set a precedent with regards to the separation of religion and state in Japan.¹⁸ The case concerned a groundbreaking ceremony (*kikōshiki* 起工式) in January 1965 at the site of a new public gymnasium in the city of Tsu in Mie Prefecture. Commissioned by the local city council, the ceremony was officiated by priests from the local Ōichi Shrine 大市神社 and their fees (¥4000) as well as the offerings (*kumotsuryō* 供物料) made by members of the city council (¥3663) were paid from public funds.¹⁹ The original complaint was brought by Sekiguchi Sei'ichi 関口精一, a city counselor who, together with more than a hundred other local officials, had participated in the ceremony. Sekiguchi, born in 1915 and a survivor of the war, was a member of the Japanese Communist Party, which throughout the postwar period has remained strongly opposed to renewed ties between the state and religion. In his lawsuit, Sekiguchi argued that using public funds for the groundbreaking ceremony not only violated the ban in Article 89 against state support for religious organizations, but that it was also a clear violation of the Article 20 ban against “religious activities.”

16 Sullivan 2005.

17 Asad 2003, p. 201.

18 The first time the Supreme Court produced a ruling concerning Article 20 was on 5 May 1963, when the Shōwa 36 (*a*) 485 was resolved. The case concerned a female priest who during an exorcism on a mentally ill girl caused her patient to suffer a fatal heart attack. This became a leading ruling with regards to freedom of religion, but since the case is not of immediate concern for the current discussion, I will not discuss it further here. For a brief discussion of rulings on religious accommodation in Japan, see Takahata 2007. It should also be noted that Japan does not hold precedents to be legally binding and that each court is at liberty to independently interpret the text of the constitution in order to solve a dispute. However, Supreme Court rulings still hold a “tremendous amount of influence” over the lower courts, and it is in fact rare for lower courts to disregard a clear Supreme Court precedent. See Matsui 2011, pp. 22–24.

19 Shōwa 46 (*gyō-tsu*) 69, p. 2; all court cases are listed at the end of the references.



Figure 2. Entrance to Ōichi Shrine in Tsu City. In January 1965, four priests from this shrine conducted the groundbreaking rites at the sites of the new public gymnasium. Photo by the author.



Figure 3. The Tsu City public gymnasium. Photo by the author.

In the first instance ruling, presented in Tsu District Court, the court ruled against the plaintiff, arguing that while to the outside viewer the groundbreaking ceremony might appear to be a “religious event” (*shūkyōteki gyōji* 宗教的行事), it was in fact a “secular event” (*sezokuteki gyōji* 世俗的行事) devoid of religious purpose, and was therefore allowed under Article 20. The court also claimed that the compensation paid to the shrine priests was too low to carry any real meaning, and that it was therefore not in violation of Article 89. The second instance court did not share this view, and in their 1971 ruling they argued that the groundbreaking ceremony did surpass the limits of “simple social ritual (*shakaiteki girei* 社会的儀礼) or secular event” and that it should be viewed as a “religious ceremony characteristic of Shrine Shinto.” According to the court, the purpose of the postwar constitution was to enforce the “nonreligious nature” (*hishūkyōsei* 非宗教性) of the Japanese state, and therefore the ceremony—as conducted by shrine priests—was a clear violation of this principle and should be viewed as unconstitutional under Articles 20 and 89.²⁰

The Supreme Court reversed the second instance ruling, arguing that although the state has to remain “religiously neutral,” a “total separation of religion from the state is in practice close to impossible” and the state may therefore still maintain some degree of connection with religion.²¹ Although this reasoning might seem contradictory to the phrasing in the constitution, which states that the state must “refrain” (*shite wa naranai* してはならない) from religious activities, the justices might simply have been attempting to establish a workable relationship between political and religious actors in Japan. As has been argued by Andrew B. Van Winkle, a hardline interpretation of Article 20 forcing the complete separation of religion and state would also necessitate a “repeal of the Religious

20 Shōwa 46 (*gyō-tsu*) 69, p. 2.

21 Shōwa 46 (*gyō-tsu*) 69, pp. 5–6.

Juridical Persons Law, because the Law contains numerous privileges conferred by the state on religions.”²²

Based on the majority view that a complete separation of religion from the state is impossible, the ruling in the Tsu groundbreaking case also established a “purpose and effect” standard (*mokuteki kōka kijun* 目的効果基準) which has been used in all subsequent cases concerning Articles 20 and 89. In short, the standard aims to decide “whether the government purpose behind the challenged conduct was to advance religion or whether it had that effect.”²³ The court argued that the phrasing “religious activity” should not be understood as including “all activities by the state and its organs which bring them into contact with religion,” but rather those activities that exceed certain limits. These limits include the promotion and subsidizing of specific religions, or any attempt at “oppression or interference.” Consequently, when deciding whether an act constitutes a proscribed “religious activity,” it is not enough for it to be officiated by a religious professional. Rather,

the place of the activity, the religious evaluation of common people with regards to the activity, the actor’s intent and purpose with the activity as well as whether and to what degree there exists a religious consciousness, and the effect and influence on common people, are all circumstances that should be considered to reach an objective judgment based on socially accepted ideas.²⁴

Besides clarifying the position of the state as religiously neutral, the Supreme Court also argued that “for the people of our country, many citizens believe in Shinto as members of a local community, and in Buddhism as individuals.” Despite this, they also agreed that in general people in Japan do not have a very high “degree of religious interest” (*shūkyōteki kanshindo* 宗教の関心度). This apparent contradiction was solved by suggesting that Japanese religiosity, in particular with regards to Shrine Shinto, was different from other forms of religiosity in that it was more focused on ritual (*saishi girei* 祭祀儀礼) than on “international activities such as active propagation and missionary work.” In their conclusion, the justices conceded that the groundbreaking ceremony was “conducted by priests who were religious specialists, wearing prescribed garments, in a ceremony conforming to Shrine Shinto” and this made it “impossible to deny that it has a connection to religion.” However, despite the fact that the “groundbreaking ceremony is a ceremony with a religious source in a festival to pacify the kami of the land,” common people do not perceive the ceremony as having a “religious meaning” (*shūkyōteki igi* 宗教の意義). Rather, to people in general a groundbreaking ceremony is “a completely secular ritual conducted in accordance with general social customs.”²⁵

Through their use of the views of common people as an objective measure for the nature of Shinto, the justices rely on the assumption that the views they present correspond to the conventions through which people interact linguistically; that is, when Japanese people *in general* speak of Shinto, they do not understand it to be *a religion*.

22 Van Winkle 2012, p. 381.

23 Kobayashi 2005, p. 698.

24 Shōwa 46 (*gyō-tsu*) 69, p. 6.

25 Shōwa 46 (*gyō-tsu*) 69, p. 9.

Norman Fairclough has referred to such assumptions as ideologies, defined as “a means of legitimizing existing social relations and differences of power, simply through the recurrence of ordinary, familiar ways of behaving which take these relations and power differences for granted.”²⁶ The assumption that most Japanese people do not consider Shinto to be a religion is the essence of the ideology of Shinto as something beyond the discourse of religion, as something connected to the Japanese ethnos in a way that religions are not. This ideology is what I refer to as the “Shinto normative,” the idea that to be Japanese is also to be Shinto.

The paradigm of the Shinto normative came to dominate in Supreme Court rulings on the separation of religion and state for two decades after the Tsu ruling. The first ruling to use this case as a precedent was the June 1988 ruling on the SDF enshrinement case. The case concerned the enshrinement in Yamaguchi Prefecture’s Gokoku Shrine (*gokoku jinja* 護国神社) of the spirit of Nakaya Takafumi 中谷孝文, an officer in the Japan Self-Defense Forces (SDF) who died in an accident while on duty.²⁷ The enshrinement (*chinzasai* 鎮座祭), which was carried out as a joint ceremony enshrining the spirits of a total of twenty-seven service members of the SDF from Yamaguchi Prefecture between 19 and 20 April 1972, was administered by the Yamaguchi branch of the SDF Friendship Association (Taiyūkai 隊友会) in accordance with the wishes of Nakaya’s father. The controversy arose because while Nakaya himself had not been religious, his wife Nakaya Yasuko 中谷康子 was a Protestant Christian belonging to the United Church of Christ in Japan (Nihon Kirisuto Kyōdan 日本基督教団).²⁸ Following her husband’s death, Yasuko attempted to stop the enshrinement ceremony from taking place, but failing to do so she eventually filed a lawsuit against the SDF Friendship Association and the local liaison office of the SDF.²⁹

Both rulings in the SDF enshrinement case concluded that enshrinement at the Gokoku Shrine carried a “fundamentally religious meaning,” and that the actions taken by the SDF Friendship Association therefore constituted a crime against the constitutional guarantee on the freedom of religious belief and hence infringed upon Nakaya Yasuko’s personal religious rights.³⁰ However, through a strict reading of the Tsu precedent the Supreme Court completely overturned this ruling, arguing that the enshrinement ceremony would not be restricted by Article 20, because the *purpose* of the ceremony was not to promote religion but to “increase the social position and to raise the morale of the SDF servicemen.” Furthermore, the court argued that Article 20 “does not directly guarantee freedom of religion itself to individuals, but rather it is an attempt to indirectly guarantee

26 Fairclough 2001, p. 2.

27 A Gokoku shrine is a shrine that before the Allied occupation of Japan served as a sort of “branch shrine” to Yasukuni Shrine. Although many of these shrines originated in the Meiji Restoration, they were not designated as Gokoku (“nation-protecting”) shrines before 1939. The establishment of such shrines, as well as local-level shrines for the war dead (*shōkonsha* 招魂社) and monuments dedicated to the spirits of the war dead (*chūkonbi* 忠魂碑), was part of “a concerted and sustained effort to promote a cult of the war dead and historic loyalists.” (Hardacre 1991, pp. 90–93.)

28 Shōwa 57 (o) 902, pp. 1–3.

29 Based on their conversations with Mrs. Nakaya, O’Brien and Ohkoshi write the following on her motivations: “[She] was a Christian, a religious minority. She faced a certain uphill battle, against virtually insurmountable odds. Yet Mrs. Nakaya claims not to feel put upon because she is a Christian minority in Japan, for, as she points out, all ‘Christians don’t think alike.’ Instead, she feels set apart because she thinks differently from most Japanese.” (O’Brien and Ohkoshi 1996, p. 143.)

30 Shōwa 57 (o) 902, pp. 4–5.

the freedom of religion through the guarantee on the separation of state and religion which sets the confines of actions which the state and its organs may not carry out.” Consequently, unless an act *directly* infringes upon a person’s constitutionally guaranteed freedom of religion, for instance by compelling the individual to take part in a religious service, the actions of the state need not be deemed unconstitutional under Article 20.³¹

One significant turn in the SDF enshrinement case came with regards to Nakaya Yasuko’s argument that the enshrinement was a violation of her personal freedom of religion. The court turned this argument around, claiming that it was in fact Yasuko who was attempting to restrict the freedom of religion enjoyed not only by her late husband, but also by the Gokoku Shrine where the rites were being conducted. This argument is partly grounded in the fifth fact established early in the ruling: “Nakaya Takafumi did not believe in *religion* during his life.”³² The court established this position as opposed to the religiousness of Yasuko, who (actively) had faith in *one religion* (Christianity). Yasuko had originally kept her husband’s ashes in a small Buddhist altar (*butsudan* 仏壇) in her house, partly to appease her father-in-law, but after some reflection she removed the altar and instead placed her husband’s ashes in a crypt at her church, in accordance with her own Christian faith.³³ This form of religious activity was perceived as exclusionary by the justices, who argued that “the guarantee of freedom of religion requires tolerance of the religious actions of others, whose beliefs might be inconsistent with one’s own beliefs, as long as they do not interfere with one’s own freedom of religion through compulsion or by conferring disadvantages.” As far as the justices were concerned, no one had attempted to coerce Yasuko to participate in any “religious events at the Gokoku Shrine,” and in turn they expected her to respect the enshrinement of her husband’s spirit at the Gokoku Shrine as protected by the shrine’s freedom of religion.³⁴

The justices’ normative interpretation of what a religion *should* be like included tolerance (*kan’yō* 寛容) in order to enjoy the constitutional freedom of religion, religion must be inclusive and open rather than exclusionary and closed. Wendy Brown has argued that tolerance cannot be understood as a “transcendent and universal concept,” but should be seen as “a political discourse and practice of *governmentality* that is historically and geographically variable in purpose, content, agents, and objects.” Tolerance, she writes,

is exemplary of Foucault’s account of governmentality as that which organizes “the conduct of conduct” at a variety of sites and through rationalities not limited to those formally countenanced as political. Absent the precise dictates, articulations, and prohibitions associated with the force of law, tolerance nevertheless produces and positions subjects, orchestrates meanings and practices of identity, marks bodies, and conditions political subjectivities.³⁵

In the SDF enshrinement case ruling, the justices in effect position a foreign, intolerant, and exclusionary, religion—Christianity—against the tolerance professed by the religion

31 Shōwa 57 (o) 902, pp. 7–8.

32 Shōwa 57 (o) 902, p. 1.

33 Forfar 2003, pp. 257–58.

34 Shōwa 57 (o) 902, p. 9.

35 Brown 2006, p. 4.

of the Gokoku Shrine. Through this ruling, a Shinto subject is produced which stands as a representative of the tolerant Japanese majority, pitted against the intolerance of the religious minority. Yet the Shinto subject is not only tolerant, it is also the norm with which other religions must comply, should they wish to enjoy equal freedom of religion.

The second time the Tsu precedent was used in a Supreme Court ruling was in the Minoo memorial case, resolved in 1993. The case was initiated through a series of suits filed in the mid-1970s by Kamisaka Reiko 神坂玲子 and Satoshi 哲, local citizens of the city of Minoo in Osaka Prefecture, against a plan by the local government to relocate the local *chūkonhi* memorial using public money, as well as providing a new location for the memorial free of charge. The Minoo *chūkonhi* was originally constructed in 1916 and was restored in 1950, having been taken down immediately after the war. Although it was originally connected to the state-sponsored cult of the war dead, since 1955 rites to console the spirits (*ireisai* 慰霊祭) have been conducted here by representatives of Shinto as well as Buddhist and nonreligious groups.³⁶ The fact that Buddhist priests conducted some of these rites is significant, in that it makes the Minoo case the first Supreme Court case in which Buddhist rites fall under the category of “social ritual”—a category which otherwise appears to be reserved for Shinto rites.³⁷

The justices in the Minoo case followed the Tsu precedent and used the purpose and effects test to reach their final conclusion: the purpose of a *chūkonhi* memorial was to honor and remember those who died in war, and therefore it was not religious. Since the group responsible for organizing the *ireisai* rites, the Nippon Izokukai 日本遺族会 (Japan War-Bereaved Families Association), was not a religious organization, the justices concluded that for public officials to participate in these rites was nothing more than “a social ritual for the families of those who died in war” and that it could therefore not be seen as restricted by the constitution. Furthermore, given the secular purpose of the rites, it was reasonable that the mayor of the city of Minoo had used public funds.³⁸ Through their dismissal of the plaintiffs’ claim that ceremonies connected to prewar state-sponsored Shinto should be considered religious, the justices in their ruling on the Minoo case confirmed the Supreme Court position that although it might at times *appear* religious, Shinto was in fact something *other* than religion and that it was therefore not restricted by Articles 20 and 89 of the constitution.

The Ehime Tamagushiryō Ruling of 1997: A Change in Paradigm?

In 1997 the Supreme Court introduced a line of argument that has since come to form a new precedent in the legal interpretation of Articles 20 and 89. The Ehime Tamagushiryō case concerned the offerings paid to Yasukuni Shrine in Tokyo and the local Gokoku Shrine in Ehime Prefecture between 1981 and 1986 by members of the Ehime prefectural government, including Governor Shiraishi Haruki 白石春樹 and the head of the Ehime prefectural office in Tokyo, Nakagawa Tomotada 中川友忠. The contributions to the shrines included nine offerings of *tamagushiryō* 玉串料 at Yasukuni Shrine during the spring and autumn festivals, for the total sum of ¥45,000, and four separate offerings of

36 Shōwa 62 (*gyō-tsu*) 148, p. 2.

37 Shōwa 62 (*gyō-tsu*) 148, pp. 11–12.

38 Shōwa 62 (*gyō-tsu*) 148, pp. 12–13.

kentōryō 献灯料 during the Mitama Festival みたままつり in July, as well as nine offerings of *kumotsuryō* at the local Gokoku Shrine in Ehime Prefecture during festivals in spring and autumn dedicated to the spirits of local citizens who died in battle.³⁹ The case was filed by a group of twenty-four plaintiffs headed by Anzai Kenji 安西賢二, a Shin Buddhist priest. Shin Buddhism has remained critical of the state sponsorship of religion—in particular the cult of the war dead—throughout the postwar era, from the first LDP bills on renewed state sponsorship for Yasukuni Shrine in the 1960s to the visits by former Prime Minister Koizumi Jun'ichirō 小泉純一郎 to the shrine between 2001 and 2006. During the fifteen years between filing the Ehime suit in 1982 and its resolution in 1997, Anzai and the other plaintiffs received continuous support from Shin Buddhism.⁴⁰

The district court producing the first instance ruling argued that the actions of the Ehime prefectural government, even when seen in light of the cultural and social conditions of Japan, did in fact supersede the limits on state interaction with religion imposed by Articles 20 and 89 of the constitution. Not only was it impossible to deny the religious meaning of the offerings paid to the shrine, but the public funds used to pay for these offerings were considered substantial enough to count as “support and promotion of the religious activities of Yasukuni Shrine and the Gokoku Shrine” and they were subsequently considered a violation of Article 20 as well as Article 89. The second instance court overturned this ruling, arguing that although the offerings might be said to have religious meaning, “for common people, making offerings such as *tamagushiryō* when worshiping at shrines can—if not overly excessive—be accepted as social ritual.” Furthermore, the court argued that “the effect and influence of these actions on common people would not awaken any special concern or spirit to revive the legal status that Yasukuni Shrine had during World War II or to support and promote Shinto.” In short, the second instance court considered the sum of money to be too small to count as “support” and viewed the rites as “social ritual” rather than “religious activity,” meaning that the actions of the prefectural government were not prohibited under Articles 20 and 89.⁴¹

In the majority ruling on the Ehime case, the Supreme Court focused on Yasukuni Shrine's status as a Religious Juridical Person—that is, as one of a large number of corporations equal before the law. Although Yasukuni Shrine has close ties to Jinja Honchō, it is not incorporated under this Comprehensive Religious Juridical Person. Rather, Yasukuni was established as an Individual Religious Juridical Person (*tanritsu shūkyō hōjin* 単立宗教法人), under Shrine Shinto.⁴² The justices in the Ehime ruling retained many of the arguments from the Tsu groundbreaking case, including the idea that Article 20 should be interpreted as promoting a position of religious neutrality for the state as well as

39 Heisei 4 (*gyō-tsu*) 156, p. 1. *Tamagushiryō* is a special offering of branches of the evergreen *sakaki* tree with paper strips tied to them. *Kentōryō* are offerings dedicated specifically to funding the lanterns that are lit at shrines and temples during specific events, such as the Mitama Festival. The ceremony at the Gokoku Shrine was an *irei taisai* 慰霊大祭, a “great festival for the comfort of spirits.” The “modern” custom of festivals dedicated to spirits of the war dead (*irei* 英霊, “heroic spirits”) goes back to 1862, when the leaders of the anti-shogunate forces requested that Emperor Kōmei sponsor a ritual for those soldiers who died during the campaign against the Tokugawa shogunate. The first *irei no saigi* 慰霊の祭儀 was conducted in Kyoto by Buddhist and Shinto priests. See Nelson 2003.

40 Dessi 2007, pp. 149–55.

41 Heisei 4 (*gyō-tsu*) 156, p. 2.

42 Bunkachō 2015, p. 2.

the general outline of the purpose and effects standard, yet at the same time they sought to evaluate whether donations paid for using public funds would infringe the relationship between state and religion—this time interpreted as the relationship between the state and *any* Religious Juridical Person.⁴³

Even though the justices acknowledged that some offerings at a shrine, such as throwing small coins before praying, might be considered cultural acts, the fact that the prefectural government chose to offer *tamagushiryō* at Yasukuni and *kumotsuryō* at the local Gokoku shrine would “give common people the impression that these religious groups were something different from other religious groups.” The justices interpreted Article 20 in light of the close relationship between Shinto and the state established during the Meiji period, and concluded that regardless of whether “a considerable number of people might wish for it,” the state is still not allowed to interact with a specific religious organization.⁴⁴ Justice Ōno Masao 大野正男 also stressed the central role of Yasukuni Shrine in “State Shinto,” and stated that the argument that “shrines are not religion” is tied to the prewar ideology whereby Shinto rites and ceremonies were considered “secular customs” and therefore “duties of the subjects,” regardless of the subject’s individual creed. In concluding his statement, he wrote that “it is a fact that there are people in our society who have a sense of reverence with regards to Yasukuni Shrine, and this is something that is guaranteed by the freedom of religion.” However, in this case it was clear that “public organs had a special relationship with a specific religious organization,” and such a relationship was prohibited under the constitution.⁴⁵

In concluding the Ehime ruling, the justices argued that the fact that the offerings paid to these shrines “could not escape their religious significance” meant that the prefectural government had overstepped the limits of the “cultural and social conditions of our country” as established in the Tsu framework, and that hence the actions were in violation of the Article 20 ban on “religious activity.”⁴⁶ In his review of the Supreme Court cases related to Articles 20 and 89, Frank Ravitch has called the Ehime ruling a “landmark case” that together with the Tsu case served to divide the postwar era into two distinct periods—“Shinto as culture” from 1977 to 1997, and “Shinto as religion” following the Ehime ruling. Commenting on the new precedent set with the Ehime ruling, he writes that this was a “vast improvement” over the previous approach, not least since the Ehime justices “addressed the historical reasons for [their] decision going back to the problems created by State Shinto,” but also because the approach was “far more consistent with the actual language of Articles 20 and 89” than was the previous Tsu precedent.⁴⁷

1997 and Beyond: Is the Ehime Precedent Valid?

Since 1997, the Supreme Court has ruled on Articles 20 and 89 with regards to two sets of cases, but with quite different results. The first of these, with rulings presented in 2002 and 2004, is a set of three similar cases related to the enthronement rites of the current emperor

43 Heisei 4 (*gyō-tsu*) 156, pp. 4–5.

44 Heisei 4 (*gyō-tsu*) 156, pp. 6–7.

45 Heisei 4 (*gyō-tsu*) 156, pp. 14–16.

46 Heisei 4 (*gyō-tsu*) 156, p. 8.

47 Ravitch 2014, pp. 519–20.

after the death of Hirohito 裕仁, the Shōwa emperor, in 1989.⁴⁸ These rites, which took place between 1989 and 1990, contained many elements of Shinto and were the subject of much criticism from the more vocal minorities in Japan—in particular Christians, but also some Buddhists and others. Eventually the criticism of government sponsorship of the rites resulted in three court cases—which I will refer to as the Daijōsai cases—filed by local citizens in Ōita, Kagoshima, and Kanagawa Prefectures. The cases concern the visits made and offerings paid by their respective prefectural governors at the time of the enthronement of Akihito 明仁, the Heisei emperor, in 1990. It is important to note that the cases did not concern the constitutionality of the role of the emperor in these rites, but that they focused exclusively on the participation of public officials.

The rulings in these cases—those concerning the Ōita and Kagoshima prefectural governors served as precedents for the Kanagawa case two years later—were produced several years after the Ehime case, but contain no references to this case. Instead, they begin by offering the Tsu purpose and effects test as a framework for interpreting Articles 20 and 89. Following this, the Ōita and Kagoshima rulings present a short discussion on the nature of the *daijōsai* 大嘗祭, in which the justices acknowledged that the rites included the emperor praying to and giving thanks to “the imperial ancestors and the gods of heaven and earth (*tenjin chigi* 天神地祇)” and that they were conducted “according to Shinto rites in a ritual space (*saijō* 齋場) with shrine (*shinden* 神殿) installations.” Although this meant that they clearly had some “connection to religion,” the justices concluded that they did not favor any one “specific religion.” Since the *daijōsai* were viewed as “traditional rites that commonly take place at the time of imperial succession,” participation in these rites should be considered “a social ritual to the emperor, symbol of the Japanese state and of the unity of the Japanese people.” Consequently, “in light of the social and cultural conditions of our country,” participation in the *daijōsai* rites did not go against the principles of Japanese secularism as stipulated in Articles 20 and 89.⁴⁹

It is possible that the Daijōsai cases should be considered an anomaly in the post-Ehime legal history in Japan. Frank Ravitch omits the cases from his review;⁵⁰ Andrew B. Van Winkle, although summarizing the cases, suggests that they simply show the continued vitality of the purpose and effects test in Japan.⁵¹ It is also worth noting that three of the justices supporting the majority ruling in the Ehime case—Ijima Kazutomo 井嶋一友, Fujii Masao 藤井正雄, and Fukuda Hiroshi 福田博—took part in or presided over the petty benches ruling on two of the Daijōsai cases, while still referring back to the Tsu precedent in their interpretation of Articles 20 and 89 rather than to the Ehime ruling. Perhaps the best explanation for this can be found in the sensitive subject of the emperor, main actor of the ceremony. The justices in the Daijōsai cases—although not explicitly—do refer to those articles of the constitution which define the role of the emperor in the postwar Japanese state. Referring to the emperor as the “symbol of the Japanese state and of the unity of the Japanese people” relates directly to Article 1 of the constitution, and their descriptions of the *daijōsai* as traditional ceremonies (*dentō gishiki* 伝統儀式) support the constitutionality

48 The three cases are Heisei 11 (*gyō-tsu*) 77, Heisei 11 (*gyō-tsu*) 93, and Heisei 14 (*gyō-tsu*) 279. For a more detailed discussion on the rites in question, see Breen and Teeuwen 2010, pp. 168–98.

49 Heisei 11 (*gyō-tsu*) 77, p. 1–3.

50 Ravitch 2014.

51 Van Winkle 2012, p. 377.

of the claim by referring to Article 7:10.⁵² If anything, these three cases show the problems inherent in having a monarch ideologically rooted in the prewar Shinto order conducting ceremonial functions in the strictly secular society of postwar Japan.⁵³ During the modernization process of the nineteenth century the emperor might have been transformed “from a deity ... in the pantheon whom people had traditionally manipulated, into *the* Deity endowed with sacredness and inviolability” who presided over the Japanese nation, yet it would seem that the emperor’s modern role retains much of its validity in postwar Japan, decades after the Shōwa emperor declared his humanity.⁵⁴

The rulings that would eventually cement the Ehime line of argument as legal precedent were handed down by the Supreme Court in January 2010, and concluded two cases that had been initiated by private citizens Taniuchi Sakae 谷内栄 and Takahashi Masayoshi 高橋政義 in 2004.⁵⁵ The cases related to two shrines, the first to Sorachibuto Shrine 空知太神社 (“Sunagawa I”) and the second to Tomihira Shrine 富平神社 (“Sunagawa II”), and they had been initiated in 2004 after the two plaintiffs had tried for years to reach an out of court agreement with the local city council. The two shrines were constructed on government-owned land in the city of Sunagawa in Hokkaido, and the cases actually originate in the attempts made by the local Sunagawa city council to comply with Articles 20 and 89. Tomihira Shrine had originally been erected by local citizens in 1894 as a small shrine dedicated to Ōkuninushi no Mikoto 大国主命 in order to pray for a good harvest. In 1935, the land on which this shrine was located had been transferred from the local citizens to the city council to erect an apartment complex for teachers at the local school. The Sunagawa II case concerned the attempt by Sunagawa City Council in 2004 to transfer the shrine grounds back to local citizens. The transfer was conducted in 2005, when the shrine grounds were handed over as a grant to the Tomihira Neighborhood Association (*chōnaikai* 町内会), on condition that the association also became responsible for the administration of the shrine. This was done, as the Supreme Court ruling makes clear, “in order to solve a situation where city-owned grounds were used as the site of the shrine.”⁵⁶

The Sunagawa I case is similar to the Sunagawa II case in that it concerns an attempt by the city of Sunagawa to relocate a shrine from public grounds. Sorachibuto Shrine was erected at around the same time as the Tomihira Shrine, with the oldest building—a small shrine (*hokora* 祠)—constructed in 1892 in order to pray for a bountiful harvest. In 1897, local citizens applied for the lease of land to build a larger shrine, and after gaining such a permit they erected a shrine dedicated to Amaterasu Ōmikami 天照大御神. A few years later,

52 It is interesting to note that the adjective used to describe the ceremonies has shifted to “traditional” in the Supreme Court ruling. In the lower instance court, which considered participation in the rites prohibited under the constitution via references to Ehime, the ceremonies were referred to as “religious ceremonies of the emperor” (*tennō no shūkyō gishiki* 天皇の宗教儀式). See the Fukuoka High Court ruling on the Ōita case for further details; Heisei 6 (*gyō-ko*) 12.

53 For details on the process of turning the Shōwa emperor into the constitutional head of state under the postwar constitution, see Dower 2000, chapters 9, 10, and 11.

54 Ohnuki-Tierney 2002, p. 89.

55 All documents detailing the plaintiffs’ side of this case were collected and published in 2013 under the title “*Shiyūchi ni jinja wa iken!*” *Sunagawa seikyō bunri soshō no kiseki* (Sōma 2013). My discussion on the motivations of the two plaintiffs is based partly on their own statements in this publication (pp. 28–41), and partly on interviews conducted with Taniuchi Sakae in June 2016. For an English-language discussion on the Sunagawa rulings, see Breen 2010.

56 Heisei 19 (*gyō-tsu*) 334, pp. 3–4.

Sorachibuto Primary School was built on adjacent grounds, and when the school buildings were to be extended in the years after World War II, the need to relocate the shrine arose. In 1950, Sorachibuto Shrine was relocated to neighboring lands belonging to a private citizen, but in an attempt to avoid paying tax for this land, the grounds were donated to the Sunagawa City Council in 1953. Although the maintenance of the shrine has been the responsibility of the local Sorachibuto Neighborhood Association, the grounds remained the property of the city council and were offered as the site of the shrine buildings without compensation.⁵⁷



Figure 4. Taniuchi Sakae, plaintiff in the Sunagawa cases, and the Reverend Katō Masakatsu at Tomihira Shrine. Photo by the author.

Taniuchi and Takahashi were Christian members of the same Presbyterian church in the city of Takigawa, and having both experienced the war they shared the concern that state patronage of Shinto shrines might lead to a return to the militaristic regime in which they grew up. Takahashi was a soldier in the Japanese army fighting in China and, after he returned from the war, fourteen years after leaving Japan at the age of twenty-one, he began reflecting critically on his own actions during the war. Before he became involved in the Sunagawa cases, Takahashi spent much of his spare time giving lectures about his experiences in China, speaking openly about not only the horrors he had seen but also about what he himself had done. Taniuchi, born in 1930, was too young to be drafted into the imperial army, but had been working in the military factories in Hokkaido. One of his older brothers had been fighting in Manchuria and was killed after the Japanese surrender, and his spirit was later enshrined in Yasukuni Shrine. After the war, Taniuchi became a Christian and for many years he was the chairman of the Association of War Bereaved Families Opposed to War and Praying for Peace (*Heiwa o negai sensō ni hantai suru senbotsusha izoku no kai* 平和を願い戦争に反対する戦没者遺族の会), formed as an alternative to the Nippon Izokukai by the bereaved who are opposed to state support for the cult of the war dead. Taniuchi and Takahashi considered the imperial Shinto of prewar Japan to have been a key factor contributing to the war, and their involvement in the Sunagawa case was rooted both in their ideology of pacifism and in their identity as members of a minority religion. Although Taniuchi and Takahashi were the only plaintiffs in the Sunagawa cases, it is important to note that they did have a substantial group of supporters, both locally and throughout Japan. Katō Masakatsu 加藤正勝, the minister of their congregation, states that many people informally backing the two plaintiffs were worried about their relationship to the local community, and that this was why only two senior citizens initiated the case.⁵⁸

⁵⁷ Heisei 19 (*gyō-tsu*) 260, pp. 3–5.

⁵⁸ Sōma 2013, pp. 11–12.

Although the justices of the same grand bench reached different verdicts in the two cases—in Sunagawa II they deemed the acts of the city council constitutional, whereas in Sunagawa I they concluded that the acts were prohibited under Articles 20 and 89—it is worth noting that both rulings are clear on the religious nature of the shrines. In the Sunagawa II ruling, the justices agreed that Tomihira Shrine and the festivals conducted there should be seen as having “religious functions,” but they argued that the neighborhood association responsible for the administration of the shrine was not to be considered a religious organization. In granting the neighborhood association the land, the Supreme Court concluded that the city council navigated between their obligation to uphold the religious freedom of the local parishioners (*ujiko* 氏子), which might have been infringed upon by the relocation of the shrine, and at the same time ensuring that the city did not own religious property. The *purpose* of the grant was not to support a specific religious organization, and the justices did not consider the *effect* of such a grant—based along Tsu lines of the “view of common people”—to be the promotion of a specific religion.⁵⁹

In the Sunagawa I case, the court concluded that the buildings on the government land should be considered a Shinto shrine, and that the events taking place there contained too many elements of Shinto to consider them “simple secular events with a weak religious meaning.” The court then emphasized the fact that the group responsible for conducting these festivals was not the neighborhood association, but the local parishioners organized in an “*ujiko* group” (*ujiko shūdan* 氏子集団) under the neighborhood association. Because the primary purpose of this group was “religious activity,” the justices concluded that the group was a “religious institution or association” under Article 89 of the constitution. Consequently, in lending the land free of use to the neighborhood association and thereby the *ujiko* group, the Sunagawa City Council was in fact aiding one specific religion.⁶⁰ An interesting aspect of this ruling is how the justices evaluated the options available to the city council, and essentially ruled on the city councilors’ inability to comply with Articles 20 and 89 of the constitution.⁶¹

In the Sunagawa I ruling, the justices tasked the city council with finding an alternative solution that would better comply with Articles 20 and 89 of the constitution. Just days after the Supreme Court ruling, on 22 January 2010, members of the city council met with representatives for the *ujiko* group and the Sorachibuto Neighborhood Association in order to discuss such a solution. By 16 July, the city council announced that a compromise had been agreed upon, according to which the *ujiko* group would lease the patch of land on which the *torii* 鳥居 gate was located for a reasonable rent, and that the other shrine buildings would be relocated to this patch. This land would be enclosed by a rope, to make it clear that it was distinguished from the surrounding public grounds. Further measures included the removal of the name of the shrine from a public building on the grounds as well as changing the inscription on a stone monument from *jijingū* 地神宮 (“shrine to kami of the land”) to *kaitaku kinenbi* 開拓記念碑 (“memorial stone for the clearing [of the land]”). All of the expenses involved would be covered by the shrine.⁶² Two

59 Heisei 19 (*gyō-tsu*) 334, pp. 4–5.

60 Heisei 19 (*gyō-tsu*) 260, pp. 8–9.

61 Heisei 19 (*gyō-tsu*) 260, pp. 10–11.

62 Heisei 23 (*gyō-tsu*) 122, pp. 3–4.

years after the Sunagawa I ruling, on 16 February 2012, a minor bench of the Supreme Court, containing three justices from the 2010 grand bench, presented a ruling on an appeal that the measures agreed upon in July 2010 would in fact benefit one specific religious group—the *ujiko* group responsible for the shrine—and that the implementation of these measures was therefore unconstitutional.⁶³ The Supreme Court opted to dismiss this appeal, on grounds similar to the Sunagawa II ruling. Following the agreement of July 2010, the shrine had become the responsibility of the *ujiko* group, and the justices considered the rent agreed upon for use of the land—¥35,000 per year for the fifty-two square meters on which the shrine was now located—to be a reasonable compromise between the religious freedom of the *ujiko* group and the disestablishment clause of the constitution. Without denying the religious nature of the shrine or of the festivals that might take place there, the justices argued that the measures implemented were substantial enough to ensure that, “in the eyes of the common people,” Shinto did not receive special privileges from the state.⁶⁴ Like in the Sunagawa II case, the purpose and effects test proved its continued validity.



Figure 5. Sorachibuto Shrine in June 2016. The enclosed patch of land is leased to the local *ujiko* group for an annual fee of ¥35,000. Photo by the author.

Revising the Constitution in Response to a New Paradigm

The postwar cases that have dealt with the question of whether Shinto should be considered a religion or not have one thing in common that is worth emphasizing: they all deal with Shinto actors or activities that have a connection to the state-sponsored Shinto of prewar Japan. Every case from Tsu to Sunagawa has been concerned either with the prewar cult of the war dead (the SDF Enshrinement case, the Mino Memorial case, and the Ehime Tamagushiryō case) or, in the Daijōsai cases, the prewar idea of the emperor as Shinto-oriented head of state. The two exceptions to this are the Tsu groundbreaking case, where the rites were conducted by priests from Ōichi Shrine, and the Sunagawa cases. In the case of Sunagawa I and II, the question at hand was never whether Shinto was a religion or not. However, while the cases mainly concerned how the city had chosen to deal with a property situation that was considered in violation of the constitution, the motivations of the plaintiffs Taniuchi and Takahashi were clearly related to the close relationship between Shinto and the state in the 1930s and 1940s. Thus despite the fact that the shrines were not strictly speaking part of the cult of the war dead, in the eyes of the plaintiffs there existed a clear connection between any Shinto shrines and the militarism of imperial Japan.

63 Justices Miyakawa Kōji 宮川光治, Sakurai Ryūko 櫻井龍子, and Kanetsuki Seishi 金築誠志.

64 Heisei 23 (*gyō-tsu*) 122, pp. 5–7.

Since the ruling on the Ehime case in 1997, there have been a number of lower instance rulings that have involved shrines with prewar connections to the cult of the war dead. One such case is the 2004 ruling presented by the Fukuoka District Court regarding former Prime Minister Koizumi Jun'ichirō's first visit to Yasukuni Shrine during his time in office.⁶⁵ Similar to the Supreme Court rulings discussed in this essay, the case was filed by plaintiffs representing a number of minority groups opposed to renewed ties between Shinto and the Japanese state, including families of war dead, Buddhists, Christians, and Zainichi Koreans. The three judges ruling on the case found Koizumi to be at fault, using the Ehime precedent to conclude that although "in the consciousness of common people, Shinto is not perceived to be a religion as much as other religions," it was still "impossible to deny the religious meaning of Shinto" and therefore visits to Yasukuni in the official role of prime minister could not be tolerated.⁶⁶ Despite the many attempts throughout the postwar era by the Nippon Izokukai and LDP politicians to renationalize Yasukuni Shrine, the most central shrine of the national cult of the war dead in prewar Japan remains a Religious Juridical Person.⁶⁷

Matsui Shigenori has expressed doubts over whether it would be necessary to revise the postwar constitution, given that "almost every reform could be accomplished by means of constitutional interpretation."⁶⁸ Before 1997 this was apparently the case with regards to state sponsorship of Shinto; through the prevalence of the paradigm of Shinto as something other than religion, public officials were at liberty to sponsor Shinto institutions openly without the risk of legal reprimands. The Ehime ruling was the first time that this paradigm was broken in the Supreme Court, and the rulings on the two Sunagawa cases in 2010 confirmed the Ehime view that Shinto—regardless of whether "common people" consider it a religion or not—must be put on equal terms with other religions. Those who have supported official patronage of Shinto-based rites and ceremonies on the assumption that these are not religious activities have clearly suffered a major setback over the last two decades, and those actors who have a vested interest in the continued public support of Shinto have had to find new ways of reaching this goal. Since constitutional interpretation is no longer an option, the only route open to proponents of closer state-Shinto relations is constitutional reform. The Kenpō1000 campaign to gather support for constitutional reform amongst shrine visitors can be seen as a result of this development.

According to Tsukada Hotaka, three factors contributed to the establishment of Nippon Kaigi in May 1997: the debates related to the imperial succession ceremonies, the defeat of the LDP in the 1993 election, and the ruling on the Ehime Tamagushiryō case earlier the same year.⁶⁹ Through the Society for the Protection of Japan—one of the two organizations that in 1997 merged into one organization—Nippon Kaigi has a connection to the imperial system that is older than the organization itself. The Society for the

65 For a more detailed review of these cases, see Breen 2011.

66 Heisei 13 (*wa*) 3932, p. 10. In the end, the claim by the plaintiffs that the Koizumi visits had interfered with their own constitutional rights was completely dismissed by the court, and therefore, despite it being ruled that visiting the shrine in the official role of prime minister was a violation of the constitution, there were no further legal ramifications for Koizumi himself.

67 Breen 2007.

68 Matsui 2011, p. 273.

69 Tsukada 2015, pp. 57–62.

Protection of Japan, originally formed in 1974 as a union of religious groups opposed to Sōka Gakkai 創価学会, participated actively in the debates preceding the implementation of the Era Name Law (*Gengō hō* 元号法) in 1979.⁷⁰ In fact, in his recent book on Nippon Kaigi, Sugano Tamotsu has argued that the movement supporting the *gengō* system can be seen as the very origin of Nippon Kaigi.⁷¹ After the death of the Shōwa emperor in 1989, the inherent problems of the emperor's close connections to Shinto even as he served as secular head of Japanese state again rose to the surface, in particular through the legal cases related to the public finances used in connection to the funeral and succession rites. Most of these cases had been filed soon after the Heisei emperor ascended the throne, and by 1997 they had been resolved in the first instance courts and were being processed by the second instance courts. Although the Daijōsai cases would not be finally resolved until 2002 and 2004, the role of the emperor in the postwar Japanese state was a topic for debate at the time of the establishment of Nippon Kaigi.

Nippon Kaigi, described by Tsukada as “currently the largest conservative joint movement in the country,” is an organization of people from a wide range of backgrounds with a few common goals.⁷² For instance, although the five-member advisory board of Nippon Kaigi includes Kitashirakawa Michihisa, representative of Jinja Honchō, Takatsukasa Naotake, head priest of the Ise Shrines, and Hattori Sadahiro, permanent advisor of the Shinto Association of Spiritual Leadership, the current president is Takubo Tadae 田久保忠衛, professor emeritus of international politics at Kyorin University. The organization's own list of officials includes persons from religious and Shinto organizations, politicians, scholars, and businessmen. Although the members of the organization might have their internal differences, the central issues that keep this diverse group together are essentially three: the position of the emperor, the protection of Japan's borders, and revision of the postwar constitution.⁷³ On their homepage, Nippon Kaigi write with regards to the emperor that:

The hearts of the Japanese people, filled with love and respect for the imperial family, have remained unchanged through all ages.... The existence of the imperial family, unbroken through an eternal history of 125 generations, must be called a treasure, without parallel in the world, of which our nation should be proud. We Japanese have endeavored to create a nation embracing a sense of unity as one ethnicity with the imperial family at the center.⁷⁴

70 Mizohata 2016. For further details on the involvement of Jinja Honchō and the Shinto Association of Spiritual Leadership in this process, see Breen 2010.

71 Sugano 2016, pp. 40–41. This view is supported by Nippon Kaigi, who on their homepage describe their progress from the founding of Nihon o Mamoru Kai in April 1974. Up until the establishment of the Era Name Law in June 1979 this progress was closely tied to the movement supporting this law. Nippon Kaigi 2016c.

72 Tsukada 2015, p. 57.

73 The organization presents six goals on their homepage, but it can be argued that three of those are more or less related to the three key issues outlined above: reforming the education system to better support Japanese traditional values, fostering of world peace through active participation in peacekeeping operations, and the goal of friendship between nations based on mutual trust and benefit. Nippon Kaigi 2016b.

74 Nippon Kaigi 2016b.

This statement can be read as a response to those who questioned the constitutionality of public support for the participation in the Daijōsai rituals. The emperor is far more than the secular symbol of the state envisioned by the Allied occupation authorities. He is the very center of Japanese homogeneity, a treasure that has kept the Japanese nation together throughout the ages. As both Tsukada and Sugano have argued, the imperial system is central to the ideology of Nippon Kaigi—influenced by the Jinja Honchō-sanctioned view of the emperor as a descendant of Amaterasu Ōmikami, the 125th emperor in a direct line.⁷⁵ As Isomae Jun'ichi has suggested, “modern Japanese society, presupposing the dichotomy of religion/secular, can be said to uphold the façade of a society endorsing freedom of religion, but as regards the god incarnate emperor at the apex of the state, this sphere called the secular again falls under the shadow of the religious.”⁷⁶

From the outset, Nippon Kaigi has been devoted to the issue of constitutional reform.⁷⁷ Soon after handing down the ruling on the Ehime Tamagushiryō case, Chief Justice Miyoshi Tōru 三好達, the sole justice to disagree completely with the majority ruling, retired from the Supreme Court and became the president of Nippon Kaigi, a position he held from 2000 until 2015.⁷⁸ In his dissenting opinion, Justice Miyoshi argued that the majority decision was mistaken in its assumption that Yasukuni Shrine and the local Gokoku Shrine were religious sites. He emphasized the role of these shrines when mourning those who died for the nation as well as when consoling their spirits, arguing that although it was hard to say that “consoling spirits” was something completely different from religion, the wish to honor those who have fallen in battle for the nation and to console the families of the deceased is “a universal sentiment of human nature surpassing religion, religious sect, ethnicity, and nation.” Most importantly, because the spirits enshrined at the shrines were those of men who fell in service to the nation, venerating them is beyond the confines of any one religion.⁷⁹ Justice Miyoshi argued for this position partly by referring to visits by Christian prime ministers like Yoshida Shigeru 吉田茂 and Ōhira Masayoshi 大平正芳, but his key argument rested on the idea that to most people in Japan, paying respect to the deceased on days such as the Mitama Festival or *obon* お盆 is a common ritual “separate from belief in a specific religion.”⁸⁰

Venerating the emperor and paying respect to the heroic spirits (*eirei* 英霊) of those who gave their lives for the nation are, as far as Nippon Kaigi is concerned, the national duties of all Japanese citizens, and as such this should be reflected in the Japanese constitution. The

75 Jinja Honchō is open about its view on the divine origins of the emperor. See for instance its short English-language introduction to Shinto, *Soul of Japan*. Jinja Honchō 2013.

76 Isomae 2012, p. 187.

77 It should be mentioned that Nippon Kaigi is in no way unique in wanting to reform the postwar constitution. There have been numerous attempts at reform since the end of the American occupation, with the first being headed by LDP Prime Minister Hatoyama Ichirō 鳩山一郎 in 1955. In fact, were it not for the strict limits on constitutional reform stipulated in the constitution, with a two-thirds majority required in both Houses to initiate amendment, as well as for the persistent opposition to reform presented by the political left, there would have been ample opportunity throughout the postwar era for rewriting the constitution. See Matsui 2011, pp. 257–73, and Boyd and Samuels 2005.

78 Since stepping down in 2015, he now holds the title of “honorary president” (*meiyo kaichō* 名誉会長).

79 Throughout his opinion, Justice Miyoshi refers to these spirits as *kuni ni junjita hitobito no mitama* 国に殉じた人々の御霊, that is, “the spirits of people who sacrificed themselves (or ‘became martyrs’) for their country.”

80 Heisei 4 (*gyō-tsu*) 156, p. 39.

Citizens' Association for the Creation of a Constitution for Beautiful Japan was established as a workgroup by Nippon Kaigi in October 2014 and includes among its members Miyoshi Tōru as well as prominent members of a number of religious organizations, including Tanaka Tsunekiyo 田中恆清, President of Jinja Honchō, and Uchida Fumihiro 打田文博, Secretary General of the Shinto Association of Spiritual Leadership.⁸¹ The workgroup has yet to produce a draft on how they envision the new constitution, but it is clear that although revising Article 9 is a primary goal, there are other parts of the constitution that also necessitate reform. Among these we find a “separation of state and religion that has gone too far.”⁸²

Without access to Nippon Kaigi's own draft for constitutional amendment it is impossible to know exactly how they propose to solve these issues, yet given the membership overlap between Nippon Kaigi and the LDP we might assume that their draft will not deviate much from the “Draft for revision of the Constitution of Japan” (*Nihonkoku kenpō kaisei sōan* 日本国憲法改正草案) published by the LDP in April 2012. In particular the proposed amendments to Articles 20 and 89 give us an idea on how the problems arising from the strict separation of religion and state could be averted. The text in the first two paragraphs of Article 20 is more or less identical to the current constitution, yet paragraph 3 is slightly altered:

It is unacceptable for the state and the local governments as well as for other public organizations to conduct education or other religious activities for the benefit of a specific religion. However, that which does not surpass the confines of social ritual or manners and customs (*shakaiteki girei mata wa shūzokuteki kōi* 社会的儀礼又は習俗的行為) is not affected by this restriction.⁸³

The revised version of Article 89 further adds that:

Public money or other public property must not, with the exception of cases under the stipulations given in Article 20 Paragraph 3, be disbursed to or offered for the use, benefit, or support of organizations involved in religious activities or for [religious] organizations.⁸⁴

It is difficult not to read these paragraphs as a direct response to the outcome of the Ehime Tamagushiryō case. The revised constitution offers a way past the post-Ehime paradigm of Shinto as one of “the religions,” and gives the Supreme Court the opportunity to interpret Shinto as that which lies within the confines of “social ritual,” “manners,” and “customs.”

Based on the central position of the emperor in Nippon Kaigi ideology, it is likely that their ideal for a revised constitution would also reflect this. Although the LDP draft from 2012 does not attempt to increase the political power of the emperor in postwar Japanese society, two alterations to the text are worth noting. First, besides retaining his current

81 Tsukada 2015, pp. 57–62.

82 Nippon Kaigi 2016b.

83 Jiyūminshutō 2012, p. 7.

84 Jiyūminshutō 2012, p. 22.

role as “symbol of the State and of the unity of the People,” the draft would also make the emperor “the head of the Japanese state” (*Nihonkoku no genshu* 日本国の元首). Second, in line with the Era Name Law of 1979, a new article is added: “As determined by the law, the Era Name (*gengō*) shall be established at the time of succession to the imperial throne (*kōi no keishō* 皇位の継承).”⁸⁵ Both of these changes are in line with current Nippon Kaigi discourse on the emperor—as symbolic head of the state and a symbol of Japan’s unique traditions and heritage.

Following the success enjoyed by the LDP and its allies in the 2016 House of Councilors election, Prime Minister Abe Shinzō 安倍晋三—himself a member of Nippon Kaigi—is now closer than ever before to his goal of initiating constitutional reform. Although we do not yet know the extent to which the LDP will try to revise the constitution, it is likely that an attempt will be made to alter the language in Articles 20 and 89 the better to allow for state patronage of Shinto. In January, Jinja Honchō made their stance public by participating in a campaign that seeks to establish a popular base for the general effort to revise the constitution. Although the Kenpō1000 campaign is rather vague on the specifics of the new constitution, considering that the campaign is tied to Nippon Kaigi—and hence to Jinja Honchō and to the ruling faction of the LDP—it can be assumed that these reforms will reflect current discourse within these organizations. Although media discussions are likely to focus mainly on the revision of Article 9, the fact that the Shinto establishment openly supports this process of constitutional reform suggests that we should also pay attention to the implications of a revised constitution for the relationship between Shinto and the state.

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⁸⁵ Jiyūminshutō 2012, p. 2.

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