

40 *The Treatment of ‘Religion’ in the Constitutions of Japan (1889, 1947) and Proposed Revisions to Articles 20 and 89 of the Postwar Constitution by the Liberal Democratic Party (2012)*

Introduced by Mark R. Mullins

Introduction

The selections presented here are from the legal documents that define religion, its place in society, and the ‘official’ boundary demarcations of what constitutes “religion” and the “secular,” in three distinct periods. While these documents provide the official terms for regulating the possibilities of religious belief and practice in modern Japan, it is important to recognise at the outset that there is no consensus in either scholarly or popular discourse on the meaning or use of the term “religion” (*shūkyō* 宗教), or how it might relate to the “secular” (*sezoku* 世俗) sphere.

The first text, Article 28, is from the 1889 constitution, produced within the first three decades of the Meiji period; it reflects the foreign diplomatic pressure from Western governments on Japan to include a provision for religious freedom, which would allow the Christian missionary enterprise in modern Japan. Some context is required to understand its meaning and significance, including reference to some earlier developments, as well as subsequent administrative decisions and laws, which defined and controlled religion until the Allied occupation instituted fundamental reforms in late 1945.

As early as 1871, the Council of State had issued an official notice that “rituals at shrines are fundamental rites of the state (*kokka no sōshi*) that should not be privatised by anyone nor any family.”¹ Considerable debate surrounded how Shinto would be handled in relation to the category of religion, but, in the end, it was decided that shrine Shinto and its rituals would be categorised as “non-religious,” and treated separately from other religions.

The clause in Article 28 guaranteeing Japanese subjects this freedom is defined somewhat narrowly in terms of “belief” (*shinkyō no jiyū* 信教の自由), and does not mention the institutional or ritual dimensions of religion. Such beliefs are regarded as personal and private, and distinguished from the moral values that are to define peace and order in the public sphere. This personal freedom, furthermore, is allowed

¹ Mark W. MacWilliams and Okuyama Michiaki, *Defining Shinto: A Reader* (London: Routledge, 2020), 46.

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only if subjects fulfil their duties to the state. As Trent Maxey explains, “the article codified the subjectified construct of religion, placing the self-articulation of belief beneath and after the public and political demands of the state.”^{II}

In contrast to religion, which was viewed as sectarian and confined to the private sphere, Shinto shrines became sites for all subjects to participate in public rituals – understood as civic duty rather than religion – which followed a new national calendar that was overlaid upon the traditional customary festivals and practices of local shrines (*ujigamisha*). This understanding was reinforced by how the government’s administrative offices were organised. From 1900, a Bureau of Shrines (*Jinja Kyoku*) was established in the Ministry of Home Affairs, to oversee and manage Shinto shrines separately from other religious institutions. Buddhist temples, Christian churches, and new religions were all under the administration of the Bureau of Religion (*Shūkyō Kyoku*). This solidified the government’s position on, and understanding of, non-religious Shinto – or what Josephson identified as the “Shinto secular”^{III} – and their assumption that shrines would constitute the base institutions for the ritual support of public life and national morality, as defined by the Imperial Rescript on Education (1890).

Although the government’s official position remained that Shinto was non-religious, there were Japanese scholars, as well as some priests, who, in the decades that followed, considered Shinto to be a religion alongside other religions. While Shinto was never designated as the state religion by the Meiji constitution, or, indeed, any other legislation, Isomae Jun’ichi^{IV} and other scholars have noted that it functioned as a de facto state religion, through the administrative structures and policies put in place to regulate religion.

The treatment of religious minorities in the last decade of the Pacific War reveals that “religious freedom was insufficiently guaranteed by the Meiji Constitution.”^V The wartime state’s interpretation of what was required by the clause in Article 28 regarding the “duties of subjects” in relation to public “peace and order” became increasingly strict, and the Religious Organisations Law passed by the Diet in 1939 required all organised religions to ensure their teachings and practices supported the Imperial myth and cult of the emperor. The new law empowered the state to disband any organised religion in conflict with the state-defined orthodoxy, which was identified as propagating subversive thought (*kiken shisō*) inconsistent with the Imperial Way.^{VI}

II Trent Maxey, *The ‘Greatest Problem’: Religion and State Formation in Meiji Japan* (Cambridge, MA: Harvard University Asia Centre, 2014), 186.

III Jason Ānanda Josephson, *The Invention of Religion in Japan* (Chicago, IL: University of Chicago Press, 2012), 19, 137–39.

IV Isomae Jun’ichi, *Religious Discourse in Modern Japan: Religion, State, and Shinto* (Leiden: Brill, 2014), 272.

V Abe Yoshiya, “Religious Freedom Under the Meiji Constitution (Part 1).” *Contemporary Religions in Japan* 9, no. 4 (1968): 282.

VI Sheldon M. Garon, “State and Religion in Imperial Japan, 1912–1945,” *Journal of Japanese Studies*, 12, no. 2 (1986): 300–301.

The Japanese Special Higher Police (*Tokubetsu Kōtō Keisatsu*) actively investigated a number of new religious movements and Christian churches for violating this law, which led to arrests, imprisonments, and the closure of a number of organised religions until the end of the war.

The next official documents that concern us here are Articles 20 and 89 of the post-war constitution (1947), which was passed by the National Diet during the Allied occupation of Japan (1945–1952). This relatively brief period may be seen as a critical juncture brought on by the shock of defeat, and the foreign occupation.^{VII} It is widely acknowledged that the notions of religious freedom and religion-state separation in *The Shinto Directive* (15 December 1945; see entry no. 44) issued by the Supreme Commander for the Allied Powers (SCAP) expanded the understanding of religious freedom beyond what had been guaranteed by the Meiji constitution, but it also implemented reforms that particularly impacted shrine Shinto and its role in public life and institutions. The key policy decisions made by these foreign actors (SCAP's Religions Division) were approved by the Japanese Diet in a new constitution, in Articles 20 and 89. These articles pertaining to religion have continued to exert long-lasting influence on the courts and organised religions, and framed the recurring debates concerning the proper relationship between religions and the state throughout the post-war period. The “unity of rites and government” (*saisei itchi* 祭政一致) tradition, which had been revived and dominated religion-state relations since the Meiji period, was replaced by the strict application of the separation of religion from the state (*seikyō bunri* 政教分離).

SCAP ordered the Japanese government to end all financial support for Shinto shrines, and remove Shinto symbols and rituals from public schools and offices. These Shinto elements were redefined as “religious,” and shrines were essentially forced to embrace a religious identity or be closed. The Religious Organisations Law (*shūkyō dantai hō*, 1939), which had allowed the state to interfere with and disband organised religions deemed problematic due to their deviation from the Imperial Way, was replaced by a new Religious Corporation Ordinance (*shūkyō hōjin rei*) in 1946. Shinto shrines were required to register, along with Buddhist temples, Christian churches, and New Religions, to survive during the occupation and post-war period. There was a fair amount of disagreement between SCAP's Religions Division and the Japanese government's Religious Affairs Office (*Shūmuka*) over this redefinition of Shinto practices as “religious,” but it was eventually adopted, and shaped the interpretation of Articles 20 and 89.

In sum, the occupation authorities fundamentally reframed the boundaries demarcating religion and the secular, redefined what constituted religion in the post-war period, and, through the forced privatisation of Shinto, replaced the ‘Shinto secular’ with a secular public sphere.

VII On the utility of the theoretical concepts of critical juncture and path dependences for making sense of the earlier periods of Japanese religious history, see Christoph Kleine's “Formations of Secularity in Ancient Japan: On Cultural Encounters, Critical Junctions, and Path-Dependences,” *Journal of Religion in Japan* 8 (2019), 9–45, which I extend here to the Occupation period.

The last document considered here is the Liberal Democratic Party's 2012 draft proposal for revisions to Articles 20 and 89 of the post-war Constitution of Japan (1947). Conservative religious and political leaders have been keen to revise the constitution since the end of the foreign occupation. In fact, constitutional revision was one of the key goals mentioned in the charter of the Liberal Democratic Party when it was launched in 1955. The 1947 constitution was regarded as a "foreign imposition," which should be replaced by an autonomous one that truly reflects Japanese values. This stance was emphasised by the late Prime Minister Abe Shinzō (1954–2022), a concern and policy agenda he inherited from his maternal grandfather, Kishi Nobusuke (1896–1987).

In addition to these political leaders, both Shinto critics (see text no. 42) and Shinto Seiji Renmei, the political arm of the National Association of Shrines (Jinja Honchō), also support revision, as they regard the occupation's forced incorporation of Shinto into the category of "religion" and the exclusion of Shinto from public life to be misguided, and based on an unfairly strict interpretation of religion-state separation. In a Nagoya Higher Court testimony on 7 October 1970, the legal scholar Ōishi Yoshio pointed out that such interpretations of the constitution may have been legally binding during the occupation, but are no longer valid: "The authority to interpret the Constitution inheres in Japan's national sovereignty. No longer are we bound by the Occupation interpretation. We have now returned to the interpretation that prevailed prior to the Occupation."^{VIII} This interpretation provides the rationale for the proposed revisions.

The draft proposal by the LDP suggests an additional phrase of qualification to clause 3 in Article 20, which is also applied to Article 89. The highlighted changes and terminology in the proposed revisions add new language, applied to both articles, that would clearly allow for ritual activity to be redefined as non-religious, reintroduced to public institutions, and supported by public funds. The assumption here is that it is possible to identify some Shinto practices as "social rituals" (*shakaiteki girei* 社会的儀礼) or "customary practices" (*shūzokuteki kōi* 習俗の行為), which puts them in a category exempt from the strict application of religion-state separation. If such revisions are eventually passed by the Diet, and supported by the Japanese electorate in a national referendum, they will constitute the restoration of 'non-religious' Shinto, and its rituals will once again be a part of public life and institutions. While Article 20, in its present form, prohibits any state support, promotion, or coercion with respect to religious education or activities, some religious minorities and secular Japanese fear that the designation of some Shinto rituals as non-religious could eventually mean that they would be regarded as civic duties, and that participation of all citizens could be required, regardless of personal convictions.

^{VIII} Quoted in Yanagawa Keiichi and Abe Yoshiya, "Cross-Cultural Implications of a Behavioral Response," *Japanese Journal of Religious Studies*, no. 10 (1983): 294.

Bibliographical Information

The excerpt from The Constitution of the Empire of Japan (1889) is sourced from the official English translation, available online at the National Diet Library of Japan:

“The Constitution the the Empire of Japan.” Translated by Itō Miyoji. 1889. *National Diet Library online Exhibition ‘Birth of the Constitution of Japan.’* <https://www.ndl.go.jp/constitution/e/etc/c02.html>.

The excerpts from The Constitution of Japan (1947) are sourced from the official government homepage:

“The Constitution of Japan.” *Prime Minister’s Office of Japan Official Website*. https://japan.kantei.go.jp/constitution_and_government_of_japan/constitution_e.html.

For the full draft of English translation of the Liberal Democratic Party’s 2012 proposed revisions to the postwar Constitution (1947), including Articles 20 and 89, see:

“Jiyū-Minshutō: Liberal Democratic Party (2012)” *Website of the Constitutional Revision in Japan Research Project*. Reischauer Institute, Harvard University. Accessed November 1, 2024, <https://www.crjapan.org/drafts/liberal-democratic-party-april-27-2012>.

The original Japanese version is contained in the PDF available on the LDP Party home-page: <https://constitution.jimin.jp/document/draft/> [accessed 1 November 2024].

Cf. Colin P.A. Jones. “The LDP Constitution, Article by Article: A Preview of Things to Come?” *The Japan Times*, July 2, 2013. Accessed 29 May 2017. <http://www.japantimes.co.jp/community/2013/07/02/issues/the-ldp-constitution-a-preview-of-things-to-come/#.WSvu7NykjaQ>.

[Selection from] The Constitution of the Empire of Japan (1889)

Article 28. Japanese subjects shall, within limits not prejudicial to peace and order, and not antagonistic to their duties as subjects, enjoy freedom of religious belief.

[Selections from] The Constitution of Japan (1947)

Article 20. Freedom of religion^I is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority.

No person shall be compelled to take part in any religious act, celebration, rite or practice. The State and its organs shall refrain from religious education or any other religious activity.

Article 89. No public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprises not under the control of public authority.

I CK: Literally “freedom of belief in a doctrine” (*shinkyō no jiyū* 信教の自由).

[Selections from] 2012 Liberal Democratic Party's draft proposal for revisions to Articles 20 and 89 of the postwar Constitution of Japan (1947)

Article 20. Freedom of religion is guaranteed to all. The State shall not grant privileges to any religious organization (*Omitted: "No religious organization shall exercise any political authority"*).

No person shall be compelled to take part in any religious act, celebration, rite or practice.

The State, local governments and other public entities shall refrain from particular religious education and other religious activities. **However, this provision shall not apply to activities that do not exceed the scope of social rituals or customary practices.**^I [*tadashi, shakaiteki girei mata wa shūzokuteki kōi no han'i o koenai mono ni tsuite wa, kono kagiri de nai*].

Article 89. No public money or other property shall be expended or appropriated for the use, benefit or maintenance of **religious activities conducted by** any institution or association, **except for cases set forth in the proviso of the third paragraph of Article 20.**^{II}

^I MM: Emphasis mine.

^{II} MM: Emphasis mine.