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"Cutting Up a Chicken with a Cow-Cleaver"—Confucianism as a Religion in Japan's Courts of Law

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Abstract: This paper explores the Naha Confucius Temple case, resolved by the Supreme Court in February 2021, in light of postwar decisions on Articles 20 and 89 of the Japanese constitution. *Religion* is a contested category in Japanese legislation, appearing both in the constitution and in laws regulating the freedoms and restrictions of legally registered religious organizations. While the organization behind the Confucius Temple in Naha was registered as a general corporate juridical person, the majority opinion sided with the plaintiffs' argument that the free lease granted to the temple by the municipality of Naha constituted a violence of the ban on public sponsorship of religious institutions and activities. In order to reach their decision, the Supreme Court and the lower courts not only had to decide on whether Confucianism was a religion or not, but also on whether the organization behind the temple—a group dedicated to the history and memory of the Chinese immigrant community in Naha—should in fact be considered a religious organization. The outcome of the case is a good example of religion-making in courts of law, with a central institution of power employing notions of *sui generis* religion to regulate and define civil actors.

Keywords: secularism; religious freedom; Japanese Confucianism; Ryukyu kingdom; religion and law; religion-making; Okinawa

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1. Introduction

In a ruling on the Naha Confucius Temple case[1] which was handed down by the Japanese Supreme Court on 24 February 2021, the justices behind the majority ruling concluded that by allowing a religious institution to stand on public land without paying rent, the mayor of Naha in Okinawa had violated the principle of secularism in the 1947 constitution. Although many aspects of the lawsuit are familiar from earlier postwar cases on state–religion relations, this was the first time that the highest court in Japan's judiciary ruled on a Confucian institution. Whereas most cases on state–religion relations tend to involve actors representing various political, religious, or ethnic minorities suing public actors for their involvement with Shrine Shinto institutions (Larsson 2017), in this case, a regular citizen of the prefectural capital of Okinawa sued the mayor for his generous treatment of an institution of exclusively local relevance, even within a context of contemporary Ryukyuan identity. Although fourteen of the justices signed off on the grand bench ruling, one justice, the former diplomat and ambassador to the United Kingdom, Hayashi Kei'ichi, filed a dissenting opinion. Basing his argument on the extensive cultural influence of Chinese Confucianism in the Ryukyu Kingdom since the 14th century and noting the rather vague connections to "religiousness" (*shūkyōsei* 宗教性) present in the activities carried out at the Naha Confucius Temple, he suggested that to consider "this a violation of the principle of secularism must be described as 'cutting up a chicken with a cow-cleaver' [*gyūtō o motte niwatori o saku* 牛刀をもって鶏を割く]".[2]

This paper will explore the Naha Confucius Temple case in relation to the history of "religion-making" in Japan's postwar judiciary. As is the case in almost every legal system today, regardless of whether the state in question is "secular" or not, "religion"

is a legal category in contemporary Japan. The constitution regulates religion in several ways, including through stipulations on "freedom of religion" (*shinkyō no jiyū* 信教の自由) and a ban on state actors carrying out "religious education" (*shūkyō-kyōiku* 宗教教育) and partaking in "religious activity" (*shūkyōteki katsudō* 宗教的活動), and religion is further regulated through a number of other laws, most significantly the Religious Juridical Persons Law (*shūkyō hōjin-hō* 宗教法人法) of 1951. "Religious organization" (*shūkyō dantai* 宗教団体) is a legally specified type of organization in Japan, with its own privileges and restrictions, but the exact criteria for when an organization is to be considered "religious" remain somewhat ambiguous (Larsson 2022). Religion, then, is a concept of great importance in Japan's courts of law, but it should be emphasized from the outset that the concept itself has never been conclusively defined. This is not a problem that is unique to Japan. In the introduction to a major work questioning the viability of religious freedom, Winnifred Sullivan has asked: "How can courts determine what counts as religious for the many laws all over the world that give persons whose actions are religiously motivated special privileges in law?" (Sullivan 2005, p. 3). Sullivan's concern is with the risk inherent in religious freedom legislation—that it will only aid certain orthodoxies while heterodoxies are left unprotected—yet her study is focused on one type of religious legislation: the positive extension of rights to groups classified as *religious*.[3] The Japanese case presents a different type of legislation, as the law specifically prohibits the state from sponsoring "religious organizations". How can courts determine what organizations are religious? Who decides whether an act or activity is religious?

The problem faced by courts of law becomes even more complex when we consider the critique of *religion* as a cross-cultural category that has become prevalent over the last couple of decades. While critiquing religion is nothing new, with Jonathan Z. Smith observing in 1988 that "religion is solely the creation of the scholar's study" (Smith [1982] 1988, p. xi), the field of critical religion studies has grown in influence since the late 1990s. Timothy Fitzgerald's 1997 article "A critique of 'religion' as a cross-cultural category" and the later book-length study, *The Ideology of Religious Studies* (Fitzgerald 2000), have become particularly influential in the field, yet today he is joined by numerous scholars who support the basic idea that "the category 'religion' should be the object, not the tool, of analysis" (Fitzgerald 2000, p. 106. See also Fitzgerald 1997). One astute observation of particular use for those working on legal material has been made by Brent Nongbri, who suggests that "a good focus for those who study 'religion' in the modern day is keeping a close eye on the *activity* of defining religion and the *act* of saying that some things are 'religious' and others are not" (Nongbri 2013, p. 155) This is what I set out to do in this paper. I will begin by offering a short introduction to how *religion* became a legal category in modern Japan. After this, I will give a brief overview of how courts of law have attempted to interpret this legal concept in the postwar period, in particular in relation to Shrine Shinto. Finally, I will show how definitions of religion were used in the Naha District Court, the Fukuoka High Court, and the Supreme Court to establish that under Japanese law, Confucianism should be considered a *religion*.

2. Religion as a Legal Category in Japan

Since its invention as a category in the Japanese language in the second half of the 19th century, the term "religion" has been used to demarcate a social sphere regulated under specific laws. The Constitution of the Empire of Japan (the Meiji constitution) articulated the basic principle of religious freedom in Article 28, which states that "Japanese subjects shall, within limits not prejudicial to peace and order, and not antagonistic to their duties as subjects, enjoy freedom of religious belief".[4] Although the constitution was written at a time when *shūkyō* 宗教 had already been established as the equivalent of Western *religion*, the legal text instead used the compound *shinkyō* 信教, "belief in teachings", when specifying what sort of freedom imperial subjects would enjoy. The use of terminology privileged religious *belief* over practice, and "followed an interpretive division between private belief and public duty" (Maxey 2014, p. 186. See also Josephson 2012, pp. 232–33).

Religious freedom under the Meiji constitutional regime, to borrow Jolyon Thomas's useful term (Thomas 2019, pp. 25–28), was not an unconditional freedom to believe and practice in any manner the subject (*shinmin* 臣民) saw fit, but was a boon granted by the imperial state through the emperor. Subjects were allowed to believe in certain teachings existing as "paradoxically optional [sets] of beliefs between state truths and banned delusions" (Josephson 2012, p. 260).

While the Meiji constitution reflected an attempt to create a "secular, religiously neutral state" (Maxey 2014, p. 183) and contained no provisions establishing a "state religion", this did not prevent the state from utilizing shrines and Shinto myth in constructing the ideological foundation of the nation. This built on earlier developments in the relationship between the Meiji state and the shrine world, including an 1882 directive from the Home Ministry (*naimushō* 内務省) ordering the separation of shrine ritual (*saishi* 祭祀) from teachings (*kyō*/*oshie* 教). Essentially, shrine priests were prohibited from promulgating *teachings*, which were now understood to be more or less synonymous to *religion*, but were instead expected to focus on *ritual* as a means for teaching moral and loyalty to the population (Teeuwen 2017, pp. 50–54). This system became known as *saisei-itchi* 祭政一致, or "unity between ritual and government", and became a central aspect of the non-religious sphere of national ideology and morals during the Meiji constitutional regime. By 1900, the Japanese government responded to petitions to reinstitute the Department of Divinity (*jingikan* 神祇官), which had briefly existed in the early years of the Meiji period, by establishing a separate Shrine Bureau (*jinja-kyoku* 神社局) under the Home Ministry. While the Shrine Bureau had little influence when compared to its institutional predecessor, it contributed to solidifying the distinction between shrines and *religion*, as it stood in contrast to the contemporaneously reorganized Religion Bureau (*shūkyō-kyoku* 宗教局) (Hardacre 1991, pp. 36–37; Maxey 2014, pp. 230–32).

By the time the Meiji constitution came into effect on 29 November 1890, religion as a category was broadly understood to include Christianity, Buddhism, and Sect Shinto (*kyōha-shintō* 教派神道).[5] In the 1890s, a bill was debated in the Japanese Diet that would formally place all religions on equal footing, but this bill was conclusively defeated in 1900 (Maxey 2014, pp. 224–32). Still, since they were all organized under the Religion Bureau, there existed an informal equality between the tolerated religions in Japan even prior to 1939, when the Religious Organizations Law (*shūkyō dantai-hō* 宗教団体法) was finally passed.[6] The 1939 law was created as a compliment to Article 28 in the constitution, creating the general framework for how religion could be the basis for organizations rather than just expressed as the belief of individual subjects. Registering under the law did not necessarily grant any specific advantages, but it provided a degree of legitimacy to those organizations that were formally registered as churches (*kyōkai* 教会) or temples (*jiin* 寺院) (Larsson 2022). Recognized religious organizations were expected to adhere to state directives and to conform to "normal" behavior, including participation in all those rites of state that were carried out at shrines across the empire, as well as publicly acknowledging the emperor's divine origins through recitation of the Imperial Rescript on Education (*kyōiku chokugo* 教育勅語) or celebrating the National Foundation Day (*kigensetsu* 起源説). Reverence for the imperial institution was of particular importance, as the emperor consolidated in his office the role of "military leader, 'father' of the Japanese 'family-state' and the 'head' of the national organism" (Kim 2011, p. 75).

Despite the control exercised by the imperial state and the increasingly draconian laws which were implemented to keep the population under control—most significantly the Peace Preservation Law (*chian iji-hō* 治安維持法) of 1925, which was used not only against communists, socialists, and other political adversaries of the state, but also against religious organizations that failed to comply with state ideology, including Sōka Kyōiku Gakkai 創価教育学会 and Jehovah's Witnesses (Gotō 2018, pp. 10–12; Thomas 2019, pp. 124–28)—the principle of religious freedom outlined in the Meiji Constitution ensured that a number of religious organizations could remain active in Japan throughout the war. Members of religious organizations were expected to participate in such compulsory activities as the state

deemed non-religious or risk facing charges of lèse-majesté or superstition (Larsson 2022). Yet it is important to note that in many ways, the Meiji constitutional regime was a "normal" secularist system, as it "determined ideologically and physically coercive distinctions between religion and not-religion". While religious freedom nominally guarantees the freedom of religious communities, "in practice policy makers and police prioritize the rights and privileges of some groups over others" (Thomas 2019, pp. 45–47). As long as the state maintains the right to define religion, legal guarantees for religious freedom do not need to stand in opposition to crackdowns on certain communities. Organizations that failed to adhere to state regulations could simply be redesignated as not-religion, for instance by referring to them as "evil teachings" (*jakyō* 邪教), at which point they would lose the freedoms provided by the constitution (Baffelli 2017, pp. 131–32; McLaughlin 2012, pp. 54–56).

After Japan's defeat in World War II, the country was occupied by the victorious Allied powers. Yet, as John Dower has suggested, "this was a misnomer", as "from start to finish, the United States alone determined basic policy and exercised decisive command over all aspects of the occupation" (Dower 2000, p. 73). Under the leadership of the Supreme Commander for the Allied Powers (SCAP), General Douglas MacArthur, the Empire of Japan was to be radically transformed into a democratic state aligned with American-style liberalism. While this included a reform of the nation's government structure, it also brought with it the complete demilitarization of the country as well as the disestablishment of "State Shinto" (Hardacre 1991, pp. 133–37). It should be emphasized here that while the term "State Shinto" was widely used in occupation directives, it was a concept that had primarily been used by outside observers prior to 1945. Tracking the origins of the term, Kate Wildman Nakai has suggested that it was used by non-Japanese scholars such as D.C. Holtom to describe what they considered a de facto "state religion" in Japan, and she notes that the term *kokka shintō* 国家神道 entered the Japanese vocabulary mainly as a response to the Directive for the Disestablishment of State Shinto ("Shinto Directive") (Wildman Nakai 2017, pp. 147–48. Cf. Mullins 2021, pp. 11–12). Jolyon Thomas has argued that "State Shinto" was used during the occupation to denote the former secularist system of the Meiji constitutional regime, which was perceived as a "heretical secularism", and that it essentially "had to be created [as a national religion] to be destroyed" (Thomas 2019, p. 150).

The first step towards disestablishing State Shinto as the "national religion" of Imperial Japan and remolding the country into a "normal" secular regime was taken on 15 December 1945, through the Shinto Directive (Mullins 2021, pp. 39–49). While there had been voices at the time of the Japanese surrender arguing for the complete eradication of the forms of Shinto promoted under the Meiji constitutional regime, William P. Woodard, who served as head of the Religious Research Unit during the occupation, has argued that these ideas relied on an "oversimplification of the situation" in which shrines were seen solely as tools of the state. While he acknowledged that "the shrines had been controlled and to a certain extent shrine worship had been enforced by the government", this did not depreciate the fact that for millions of ordinary people, "shrine worship was as natural as breathing" (Woodard 1972, p. 56). Thus, while Shinto was to be separated from the state, it simply could not be banned, as this would violate the key principle of religious freedom that the occupation was to institute in Japan (Woodard 1972, pp. 62–72). Consequently, the Directive ended up making a careful distinction between "State Shinto", a "perversion of Shinto theory and beliefs into militaristic and ultra-nationalistic propaganda", and "Shrine Shinto", which following its separation from the state and the military 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".[7] Essentially, the Directive transformed much of what had served as the ideological and moral foundation of the prewar state—what Jason Josephson has called "the Shinto secular" (Josephson 2012, pp. 137–39)—into a religion, "Shrine Shinto" (*jinja-shintō* 神社神道).

The process of dismantling the "heretical secularism" of the Meiji constitutional regime continued in the drafting of the new constitution. While the initiative to propose revision originally rested with Japanese lawmakers, SCAP eventually grew tired of what he considered a lack of willingness to reform the nation along liberal democratic lines, and in February 1946 a group of twenty-four primarily American individuals—sixteen officers and eight civilians—was convened. The group was tasked by SCAP with turning three basic principles outlined by General MacArthur—the introduction of a symbolic emperor as head of state, renunciation of war as a sovereign right, and the cessation of the feudal system—into a full-fledged national charter (Dower 2000, pp. 360–65). The committee was given one week to complete a draft, after which it was presented to the government of Prime Minister Yoshida Shigeru on February 13. Following some negotiations on the contents of the new charter, it was translated into Japanese and passed by both houses of the Diet. The new constitution was promulgated by Emperor Hirohito on November 3 and came into effect on 3 May 1947 (Dower 2000, pp. 374–404). Unlike the Meiji Constitution, in which the emperor conveyed a number of rights to his imperial subjects pending their proper behavior, the new constitution inscribed the rights of the citizens (*kokumin* 国民) as "fundamental human rights" (Articles 11 and 97). This included the right to religious freedom, which is outlined in Article 20:

> I. Freedom of religion is guaranteed to all. No religious organization shall receive any privileges from the State, nor exercise any political authority. II. No person shall be compelled to take part in any religious act, celebration, rite or practice. III. The State and its organs shall refrain from religious education or any other religious activity.[8]

Although freedom of religion in the 1947 constitution relies on the same term as in the Meiji Constitution, *shinkyō*, it should be emphasized that this right is not interpreted narrowly in terms only of individual belief, but also covers the right to practice as well as the right to assemble and to disseminate teachings. This freedom also confers the freedom to not believe, and the second paragraph ensures that no person can be compelled to participate in any religious practices (Gotō 2018, pp. 23–24). Article 20 also establishes the foundation for the principle of secularism (*seikyō-bunri gensoku* 政教分離原則) in Japan, together with 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.[9]

In his retrospective study of religion during the Allied occupation, Woodard noted that "no member of the group [drafting the constitution] was professionally informed on religion in Japan and none had any clear ideas as to how the principles enunciated would affect religious organizations". Rather, they were motivated primarily by "their special concern [...] to prevent Shinto from ever again becoming entrenched in the government and the educational system". In short, they "intended to Purge Shinto from the state and they hewed to the line of complete separation without much regard to what would happen as a result of such a policy" (Woodard 1972, p. 78). Essentially, concern about a return to "State Shinto" amongst SCAP and the members of the drafting committee is the primary reason for why this strict separation of religion from the public was written into the constitution. That being said, the principle of secularism in the constitution is generally interpreted as having four main purposes: to prevent the privileging of specific religious organizations, to ensure that religious organizations do not carry political influence, to prevent public actors from carrying out religious activities, and to prohibit the use of public money to fund specific religious organizations (Gotō 2018, p. 98).

The constitution relies heavily on the term "religion"/"religious" (*shūkyō*/*shūkyōteki*), using it to denote religious activity, religious education, religious organization, religious act/celebration/rite/practice, and religious institution/association. As Horii Mitsutoshi

has argued, by doing so, the constitution also "constructs the categories of the 'non-religious' (*hi-shūkyō*) or the 'secular' (*sezoku*), while reifying 'religion' or *shūkyō* as something essentially distinguishable from these" (Horii 2018, p. 62). Having said that, the constitution does not offer any definition of "religion", nor does it explain what constitutes a "religious organization". While the former of these issues remains unresolved and much contested to this day, as will be explored in the next section, the latter has been somewhat elaborated on in the Religious Juridical Persons Law of 1951. The law replaced the Religious Organizations Law from 1939 and was drafted by Japanese lawmakers over a period of eighteen months (Larsson 2022; Woodard 1972, pp. 93–102). Like the constitution, the Law does not offer a definition of "religion", but provides a definition of "religious organization" as "an organization with the principal objective of spreading a religious teaching, conducting ceremonial events, and promoting the indoctrination of believers" in Article 2.[10] It also makes clear in Article 4 that the term "religious juridical person" (*shūkyō hōjin* 宗教法人) is to be used for any "religious organization" registered under the law, thus essentially establishing that any institution or association legally recognized as a religion will count as a "religious organization" under the constitution.

3. Religion-Making in Japan's Courts of Law

The fact that "religion" as a concept is not defined under law has not been a major issue in lawsuits on religious freedom, since these tend to either focus on the legal status of a given organization or on beliefs of individuals that might also be guaranteed under other articles in the constitution. While the question of whether juridical persons should enjoy the same protection as natural persons has not been decisively concluded, with a 1970 Supreme Court ruling suggesting that "private corporations enjoy human rights so long as these rights are not inappropriate for corporations" (Matsui 2011, p. 159), there is legal precedence suggesting that religious juridical persons enjoy the same freedom of religion as natural persons. In a 1988 Supreme Court ruling on the Self Defense Forces (SDF) Enshrinement case, the justices argued that for religious freedom to work, all concerned parties would need to be tolerant of the practices of others, as long as these do not harm one's own freedom of practice or belief. They extended this freedom both to the plaintiff, the widow of a deceased serviceman, and to the defendants, including Yamaguchi Gokoku Shrine, a religious juridical person, and the SDF Friendship Association (*taiyūkai* 隊友会), a public interest corporate juridical person (*kōeki shadan hōjin* 公益社団法人) (Hardacre 2017, pp. 470–72; Larsson 2022).

Since the 1947 constitution also guarantees freedom of thought and conscience (Article 19) as well as freedom of assembly, association, and expression (Article 21), in cases involving natural persons, freedom of religion mostly becomes relevant when an individual claims to base their actions on the established beliefs of a religious organization (Sullivan et al. 2015, pp. 109–15). In such instances, the outcome is rarely dependent on a normative definition of religion, but cases can be strengthened through reference to the orthodox beliefs of an organization of which the individual plaintiff is a member. This was the case in the 1996 Supreme Court ruling on the Kendo Refusal case, in which a college student argued that his unwillingness to participate in Japanese fencing (*kendō* 剣道) during physical education class, based on his faith as a Jehovah's Witness, should not prevent him from graduating from a public school. While the justices considered various aspects of Jehovah's Witnesses' beliefs in their ruling, the fact that Jehovah's Witnesses is a legally recognized religious organization meant that they did not have to consider whether the student's professed beliefs should be *defined* as religious or not (Gotō 2018, pp. 295–97; Takahata 2007, pp. 742–45).

The question of how to define religion becomes more prominent in lawsuits that explore the principle of secularism in the constitution, i.e., such lawsuits that deal primarily with the third paragraph of Article 20 and with Article 89. Of particular importance is the concept of "religious activity", which has stood at the center of a number of significant lawsuits throughout the postwar decades. Unlike in many Western countries, where reli-

gious freedom legislation often requires normative definitions of religion, in Japan it has mostly been in response to secularism lawsuits that "courts and legislatures [have been] required to decide when a particular practice is religious and when a practice is 'cultural'" (Sullivan 2005, p. 149). Prior to the Naha Confucius Temple lawsuit, these cases have primarily focused on the relationship between Shrine Shinto institutions and the state. Following the Shinto Directive, all shrines throughout Japan lost their public funding, and in response to this new and precarious legal situation representatives of various shrines and organizations came together in early 1946 to form the National Association of Shinto Shrines (NASS or *Jinja Honchō* 神社本庁) (Hardacre 2017, pp. 451–55; Mullins 2021, pp. 62–63). Once the Religious Juridical Persons Law was enacted in 1951, NASS registered as a comprehensive religious juridical person (*hōkatsu shūkyō hōjin* 包括宗教法人), acting as an umbrella organization for more than 80,000 shrines throughout the country (Larsson 2017, pp. 228–29). While this could have marked a new start for Shrine Shinto in Japan, NASS instead "opted to hold on to many elements of the Meiji state cult", including retaining the leadership position of the Ise shrines as *primi inter pares*, the imperial rituals instituted during the Meiji period, and "the Meiji view of Shinto as a non-religion" (Breen and Teeuwen 2010, p. 13. See also Seraphim 2006, pp. 35–59). Since its founding, NASS has grown to become a massively influential political organization, whose members today includes a majority of all shrines not affiliated with Sect Shinto (Breen and Teeuwen 2010, pp. 199–210; Mullins 2021, pp. 62–63).

Despite the intentions of the occupation authorities to situate Shrine Shinto firmly within the boundaries of the category of religion, through the work of conservative actors such as NASS and its ideological allies, the idea that what is done at shrines is something *other* than religion has survived throughout the postwar decades (Mullins 2021, pp. 74–82). While the ideological battle between those who favor NASS' position and those who consider Shrine Shinto a religion like all others has been most visible in the debates surrounding political visits to Yasukuni Shrine in Tokyo, numerous conflicts between these positions have taken place on a more local level. One such local conflict rose to the fore in the 1960s and 1970s and, through a Supreme Court ruling in 1977, placed Ōichi Shrine in the city of Tsu in the center of national debate.[11] The original complaint was filed in 1965 by Sekiguchi Sei'ichi, an elected representative for the Japan Communist Party (JCP) in the Tsu city council. Sekiguchi's complaint concerned the mayor of Tsu's decision to use public money to pay priests from the local shrine to carry out a groundbreaking ceremony (*jichinsai* 地鎮祭) at the start of the construction of a new public gymnasium. While the mayor argued that this was simply a case of "social ritual" (*shakaiteki-girei* 社会的儀礼) or "customary events" (*shūzokuteki-gyōji* 習俗的行事), and that although they were carried out by shrine priests, they had nothing to do with religion, to the plaintiff there was no doubt that this was a case of "religious activity" being carried out by representatives of a religious organization.[12]

The outcome of the Supreme Court ruling in the Tsu case illustrates the judicial paradigm that Frank Ravitch has referred to as "Shinto as religion" (Ravitch 2013, pp. 510–12), yet the road there was not a straight one. The first instance court in Tsu accepted the arguments posited by the defense fully in its ruling on 16 March 1967. Arguing based on a normative definition of religion which corresponds to the division between what Ama Toshimaro has referred to as "revealed religion" (*sōshō shūkyō* 創唱宗教) and "nature religion" (*shizen shūkyō* 自然宗教) (Ama [1996] 2017, pp. 8–13), the judges postulated that groundbreaking ceremonies clearly belonged to the latter category and should be understood as prime examples of "primitive beliefs [*genshi shinkō* 原始信仰] [...] that seem to have disappeared from view [but traces of which] have been discovered within various events that have become part of folk custom [*sezokuka sareta shogyōji* 世俗化された諸行事]". The judges argued that rites such as *jichinsai* were carried out by "our people" (*waga-kokumin* わが国民) solely "as a formal practice without the accompaniment of any religious consciousness [*shūkyōteki ishiki* 宗教的意識]", and that consequently it should be deemed a customary event rather than a religious activity. While this decision would be overturned by the

Nagoya High Court four years later, it stands as the first example of a postwar court supporting the idea that shrine rites exist beyond the pale of religion.

Although the ruling by the Nagoya court has become a parenthesis in the history of rulings on the principle of secularism, it is noteworthy for how the judges, having noted that both the constitution and the Religious Juridical Persons Law "avoided defining religion", chose to base their argument on a clear definition of religion. Referencing the work of scholar of religion Cornelis Petrus Tiele, they posited that in the context of the constitution, religion "can be said to be 'believing in the existence of supernatural and superhuman essence [...] as well as reverently worshipping in one's heart and actions". Significantly, they suggested that as a legal category, religion "should not be understood by applying a restrictive interpretation, such as it only points to individual religion [*kojinteki shūkyō* 個人的宗教] or to established religion [*seiritsu shūkyō* 成立宗教] with a specific founder, doctrine, and scriptures".[13] The outcome of the ruling by the High Court rested on this normative definition, which they also used to unambiguously argue that Shrine Shinto was a religion:

> When thinking about it from this point of view, even if Shrine Shinto is a religion centered upon rituals [*saishi chūshin* 祭祀中心] or a nature religion with the characteristics of ethnic religion, since the enshrined deities [...] of shrines become the object of the religious beliefs of individuals, it is clear that according to religious studies and of course according to our constitution, it is religion.[14]

The Nagoya ruling, which concluded that the mayor of Tsu had violated the constitution by using public funds for what was judged to be *religious* shrine rituals, led to strong reactions from the Shinto establishment. In an opinion piece published in NASS' biweekly newspaper *Jinja Shinpō* 神社新報 on 24 May 1971, ten days after the ruling was handed down, the ruling was described as having "ignored the consciousness of the people" by neglecting the will of common people and favoring those who worked against the "natural revival of Shinto customs", such as "the JCP and Christians" (Jinja Shinpō 1971). The opinion piece also called for the case to be brought before the Supreme Court. The High Court ruling was appealed, and through a grand bench of fifteen justices, the Supreme Court handed down their decision on the Tsu Groundbreaking case on 13 July 1977. The Supreme Court chose to again reverse the decision of the preceding instance court, by presenting a ruling which, while more elaborate, essentially reached the same conclusions as the Tsu District Court had ten years earlier. In their ruling, the justices also introduced the object and effects standard (*mokuteki-kōka kijun* 目的効果基準), which has since become the primary tool used by courts of law in Japan when interpreting the principle of secularism (Gotō 2018, pp. 117–35). The standard came about due to the justices' argument that while it was important for the state to remain neutral vis-à-vis all religious organizations, including Shrine Shinto, it would be "close to impossible" to fully separate the state from all forms of religion. Consequently, the object and effects standard established guidelines for when and to what degree public actors can interact with religion:

> With regards to the evaluation of whether an act corresponds to [...] religious activity or not, this cannot be fully understood [by asking] whether the host of the act is a religionist or not, whether the procedure of the act [...] conformed to rules decided by a religion, or [by examining] the external aspects of the act, but must be decided objectively and in accordance with common sense [*shakai-tsūnen ni shitagatte* 社会通念に従って] by taking into account various circumstances, [including] the place where the act is carried out, the religious assessment [*shūkyōteki hyōka* 宗教的評価] of the act by common people, the intention and object of the actor in carrying out the acts as well as whether and to what extent there existed a religious consciousness, and whether the act would have any effect or influence on common people.[15]

The purpose of the object and effects standard is to find a way for the state and public actors to interact with religious organizations without violating the constitution, but as

can be seen from this oft-quoted passage, it continues to rely on agents of the judiciary to decide what constitutes religion and what does not. The standard also favors a majority perspective, by relying both on "common sense" and "common people" when deciding whether or not an act should be understood as religion under the law. In the Tsu case, the justices applied the standard to the *jichinsai* carried out by priests from Ōichi Shrine and concluded that the *object* of the ceremony was to host a customary event and that its *effects* would not be the public sponsorship or propagation of a specific religion. Without denying that shrine rites could be perceived as religious or that Shrine Shinto was a religion, the justices behind the majority opinion argued that it would be inconceivable that, as a consequence of the mayor funding a *jichinsai* at the start of a public construction project, an "especially intimate relationship would be created between the state and Shrine Shinto [which] would lead to results such as Shinto once more gaining the position of national doctrine or that freedom of religion would be jeopardized".[16]

The object and effects standard has been referenced in almost all rulings involving religion since 1977, yet it does little to amend the central problems inherent in *religion* as a legal category: "modern law wants an essentialized religion" (Sullivan 2005, p. 155). Having said that, the Tsu ruling created a legal precedent whereby it was generally assumed that certain rites, ceremonies, and other activities, in particular those associated with Shrine Shinto, could be interpreted as something *other* than religion.[17] While this general paradigm was not really challenged by the outcome of the Ehime Tamagushiryō case, resolved by the Supreme Court in 1997, the Ehime case introduced a somewhat different method for deciding when an act should be considered *religious* (Larsson 2017, pp. 236–38; Ravitch 2013, pp. 513–15). The original lawsuit was filed against the governor of Ehime Prefecture by a group of plaintiffs representing different religious organizations, led by the Shin Buddhist priest Anzai Kenjō. The plaintiffs argued that the governor's recurring use of public funds to pay for offerings, including *tamagushi* 玉串—branches of the evergreen *sakaki*-tree decorated with strips of paper—at the local Gokoku Shrine in Matsuyama and at Yasukuni Shrine in Tokyo, constituted a clear violation of Articles 20 and 89. Their key argument focused on the legal status of these shrines as religious juridical persons and the legal precedent for Shrine Shinto to be counted as a religion. The defense opted to emphasize various aspects from the Tsu precedent, seeking to base their argument in an assumed understanding of "common people", in line with the object and effects standard. While the defense affirmed the shrines' status as religious organizations, they denied that the act of paying for an offering would constitute "religious activity" or support for a religious organization. Rather than being religious in nature, "the expenses for *tamagushi* and other offerings were accompanied by neither religious consciousness nor awareness, but were made as a social ritual".[18]

The primary importance of the Ehime Tamagushiryō case comes from the Supreme Court ruling, in which the justices reversed the ruling of the Takamatsu High Court in favor of the plaintiffs. This ruling is significant for two reasons. First, it showed that the object and effects standard remains essentially unchallenged as the primary method used to interpret secularism in postwar Japan. Although several of the justices filed separate opinions supporting the outcome of the ruling but disagreeing with the methods, including Justice Takahashi Hisako, who argued that since the ideal present in the constitution was the total separation (*kanzen-bunri* 完全分離) of state and religion, "the restrictions established on religious activities by the object and effects standard [...] are not in line with the intentions of the constitution"[19], the ruling still relied on an interpretation of facts based on the standard. Second, it shifted the focus of interpretation from normative definitions of *sui generis* religion presented by the judges or justices to the legal status of the institutions involved. Since both the Ehime Gokoku Shrine and Yasukuni Shrine were registered as religious juridical persons, they should, in accordance with the Religious Juridical Persons Law, be considered "religious organizations" under the constitution. Article 89 clearly prohibits the state from expending public money for use by religious organizations, and consequently the use of prefectural funds to pay for the offerings was a violation of the

constitution. The justices still considered the "religious meaning" of the offerings, but the outcome largely rested on the legal status of the shrines rather than on normative definitions of religion (Gotō 2018, pp. 170–75).

The Ehime ruling has to some extent worked as a complementary precedent to the 1977 Tsu ruling, ensuring a continued reliance on the object and effects standard combined with a focus on the legal status of the institutions involved. While I believe that Frank Ravitch's characterization of the post-Ehime period as "Shinto as religion" reads too much into the precedent (Ravitch 2013, pp. 519–20), a case can be made that rulings after 1997 have tended to place Shrine Shinto actors on more equal footing with other legally registered religious institutions. The Sunagawa cases, resolved by the Supreme Court in 2010, are interesting in that they to some degree conform to this precedent, even though neither of the two minor shrines involved was registered as a religious juridical person in its own right.[20] Instead, the justices looked to the Religious Juridical Persons Law and concluded that the local parishioners' group (*ujiko-shūdan* 氏子集団) constituted a religious organization, and that since they benefited from the fact that the shrines stood on public land without paying lease, this was a violation of the constitution. At the same time, however, the court agreed with the local government in its assessment that removal of the shrines from the public land would risk harming the religious freedom of the parishioners' group. Consequently, the shrines were allowed to remain on parcels of land that were leased to the group at market value (Ravitch 2013, pp. 515–18). The Sunagawa cases illustrate that despite the increased focus on the legal status of the institutions involved, normative ideas about what constitutes religion or not-religion still make their way into the Japanese judiciary. This is relevant to keep in mind when considering the Naha Confucius Temple case.

4. The Naha Confucius Temple Case

The Naha Confucius Temple case centered on a decision made on 28 March 2014, by the mayor of Naha in Okinawa, Onaga Takeshi,[21] to allow a Confucius Temple (*kōshibyō* 孔子廟) to stand rent-free on public land in the municipal Matsuyama Park. To understand this decision, it is important to consider the specific history of this part of Okinawa Island. Matsuyama Park occupies what was once Kume village (*Kume-mura* 久米村), south-west of the Chūzan 中山 capital of Shuri, where a community of immigrants from China settled in 1393. The families had been invited by the king of Chūzan, the middle kingdom of Okinawa at this time, as a sign of the goodwill he sought to foster with the Ming emperor. In his classic account of the history of the Ryukyu Islands, George H. Kerr has described how the immigrant community was presented as "a gesture of benevolent interest in the welfare of the Okinawans, an extension of imperial grace" from the Ming side, and that the newcomers were "given social privileges at the Shuri court and enjoyed great prestige and special position among the common people" (Kerr [1958] 2000, p. 75). These early immigrants are traditionally described as the thirty-six families of Kume (*Kume sanjūroku-sei* 久米三十六性), and they played an important role in spreading Chinese cultural influence to the early kingdoms of Okinawa. Although Kerr attests that the community erected a Confucius Temple in Kume as soon as they settled there, which served as an educational institution for immigrant youths as well as for those Okinawans who sought a Confucian education in order to enter the king's service (Kerr [1958] 2000, p. 110), the temple at the center of the lawsuit was based on a later building, originally constructed in 1676, after Chūzan had consolidated the Okinawan states into the Ryukyu Kingdom (*Ryūkyū-ōkoku* 琉球王国, 1429–1879).

The Confucius Temple in Kume played a central role as an educational institution for the entirety of the history of the Ryukyu Kingdom. In the 18th century, the first public school, Meirindō 明倫道, was constructed on the temple grounds, where it contributed to the fostering of Confucian values and ethics amongst the people of Okinawa Island.[22] By the time Japan assimilated the island kingdom in the 1870s, "Confucian moral precepts and codes of behavior" were well established amongst the educated elite (Kerr [1958] 2000, pp. 449–50). The formal occupation of the kingdom by the Empire of Japan began in 1872,

when Japanese military forces occupied the islands and transformed the kingdom into Ryukyu domain (*han* 藩), under Japanese sovereignty. In March of 1879, a Japanese Home Ministry official, Matsuda Michiyuki, occupied the royal castle in Shuri and despatched that last Ryukyu king, Shō Tai, after which the domain was formally turned into Okinawa prefecture (McCormack 2017, pp. 121–22). At this time, all shrines and temples (*shaji* 社寺) were transferred to the central government and their land became designated as national (*kokuyū* 国有). This included the Confucius Temple in Kume. However, ownership of the temple was then transferred to Naha City in 1902, and in 1915, it was transferred into the hands of the foundation *Kume sōsei-kai* 久米崇聖会 (KSK), which had been founded in the preceding year.[23] KSK maintained control of the temple and continued to carry out rites to Confucius and his four associates (*shihai* 四配),[24] and to the ancestors (*senzo* 先祖) of the thirty-six families of Kume.[25] This continued up until the Battle of Okinawa in 1945, when the temple and all affiliated buildings were destroyed during the fighting.[26]

After twenty-seven years of American rule, Okinawa reversed to Japanese control on 15 May 1972 (McCormack 2017, pp. 124–25). A couple of years later, KSK reorganized as a general corporate juridical person (*ippan shadan hōjin* 一般社団法人).[27] The organization is dedicated to the memory of the thirty-six families and to commemorating six-hundred years of Chinese influence on the Ryukyu Islands, as well as to promoting morals (*dōtoku* 道徳) and competence (*jinzai* 人材) (Kume sōsei-kai 2022). According to the findings presented in the Naha District Court ruling on the case, KSK also has the goal to spread "Eastern culture" (*tōyō-bunka* 東洋文化), which should be understood as "the spiritual culture found in the teachings of Confucius and centered upon the realization of '*rén*, *yì*, *lǐ*, *zhī*, and *xìn*'"[28] After they reorganized, KSK began to rebuild a number of buildings on plots of land which they owned, including Tenson-byō 天尊廟, a Daoist institution in the vicinity of Asahigaoka Park, where Heaven (Ch. *Tiān* 天) is worshipped along with Guāndì 関帝 and the Dragon King (*Lóngwáng* 竜王).[29] In the late 1990s, the municipal government in Naha set in motion plans to expand Matsuyama Park. Since the municipality had the intention of connecting the park to the history of the area, including the strong Chinese heritage present in Kume, KSK began lobbying for the reconstruction of the Confucius Temple as a part of this move. In 2003, the city of Naha presented its plans to use the park to increase the appeal of the area, by creating a "sentiment and atmosphere of visiting another world, another time", with the park and local society reflecting "the history, culture, and spirit of Kume as a place of interaction with China".[30]

In 2005, the municipal government was granted permission from the prefectural governor to initiate construction work in accordance with the city's new masterplan. In February of the following year, the city expended public funds to buy a tract of land of approximately 4500 m^2 from the national government to use for the expansion of the park. In March 2011, Mayor Onaga finally gave KSK permission to construct the new Confucius Temple on a plot of land in the park, at which point he also decided to waver the rent for the land used by the institution.[31] It should be emphasized at this point that local governments are not required to request rent from institutions housed in public parks. Japanese parks are regulated under the Municipal Park Law (*toshi kōen-hō* 都市公園法). Besides establishing the general framework for what constitutes a park, the law also stipulates what kind of facilities (*shisetsu* 施設) are allowed in public parks, with Article 2.2.6 allowing the establishment of "educational facilities" (*kyōyō-shisetsu*教養施設).[32] Article 11 of the Naha Municipal Park Regulations (*Naha-shi kōen jōrei* 那覇市公園条例) presents the circumstances under which a mayor is allowed to waver "all or parts of the rent". This includes "instances of public organizations [*kōkyōteki dantai* 公共的団体] using [the park] with the public interest in mind".[33] In Mayor Onaga's opinion, the institution promoted by KSK was an "educational facility", and since KSK was registered as a public organization, there was no formal obstacle to this plan. Soon after, construction began on the temple and its affiliated buildings, including the new Meirindō Library, and in April 2013, the project was completed. In June of the same year, a ceremony (*gishiki* 儀式) was

held during which statues of Confucius and the four associates were brought to the new main temple (*shiseibyō* 至聖廟) to be installed.[34]

The lawsuit was filed against Mayor Onaga by Kinjō Teru, a private citizen in Naha. Unlike the plaintiffs in many other high-profile cases on state–religion relations, despite making a number of statements in different media, Kinjō has been quiet with regard to what motivated her to sue the local government. In a statement made for the news agency Jiji on 24 February 2021, just after the Supreme Court handed down their ruling on the case, Kinjō stated that "I want the city to really understand secularism, to reach a clear solution" (Jiji.com 2021). Kinjō first raised her concerns about the legality of the arrangement in July 2014 and after receiving an inadequate response from the city council, she opted to file two lawsuits at the Naha District Court, the first in September and the second in June the following year. Both lawsuits sought clarification on the legality of how the city used public money vis-à-vis KSK.[35] As will be further discussed below, the plaintiff's case was clearly focused on the notion that wavering rent for the Confucius Temple was a violation of the principle of secularism, but it is worth noting that the defendant, Mayor Onaga, was also a somewhat controversial figure in Japanese politics. While originally a conservative member of the Liberal Democratic Party (LDP), Onaga has also been described as a having had a sense of "Okinawan patriotism" and as being aware from a young age of discriminatory practices against Okinawans in mainland Japan. He was originally elected mayor of Naha as a representative of the LDP, but when he decided to run for the post of governor in November 2014 he did so as an independent, with a clear focus on the question of base closure in Okinawa and supported by a broad coalition of liberals and left-wing parties (New York Times 2018). After winning the election by a large margin, Onaga swore to do everything in his power to close the U.S. Military base in Futenma instead of moving it to an area of reclaimed land in Henoko, in north-east Okinawa Island. Gavan McCormack has described his struggle with Prime Minister Abe Shinzō over the base issue as the "Abe-Onaga 'War'" (McCormack 2017, pp. 126–28), a conflict which only ended with Governor Onaga's untimely death in August 2018.

The central question of the lawsuit concerned whether or not Mayor Onaga's decision to allow KSK to use land in Matsuyama Park without paying rent was a violation of the principle of secularism. If the institutions run by KSK could be considered educational and in service of the public good, the municipality's decisions would have been in line with Japanese law, but if KSK and the buildings were *religious*, it would not. Since KSK was *not* registered as a religious juridical person, the simple precedent introduced in the Ehime Tamagushiryō case would not work, and so the plaintiff had to rely on normative definitions of religion in order to posit KSK and the Confucius Temple as religious. The plaintiff's argument is most clearly outlined in the proceedings from the first instance ruling, handed down on 13 April 2018. Countering the argument made by the defense that KSK and their buildings were examples of "educational facilities", the plaintiff based her argument on the idea that Confucianism is a religion:

> Confucianism [*jukyō* 儒教] is based on belief in the spirits and souls of ancestors and on the supernatural existence of Heaven as an Absolute [*zettaisha* 絶対者] or as a super-human essence, and clearly corresponds to religion. The Confucianism which was brought by the thirty-sex families [of Kume] from [Fujian] to the Ryukyu Kingdom was not the academic Confucianism accepted in the Edo Period, but a religious Confucianism deeply connected to worship of the ancestors of the thirty-six families and to belief and worship of the founder of Confucianism, Confucius. This does not disavow the fact that Confucianism has an academic [*gakumon* 学問] and a moral [*dōtoku* 道徳] side.[36]

In presenting Confucianism, in particular *Chinese* Confucianism, as a *religion*, the plaintiff coheres with a long history of debates in Western, Chinese, and Japanese academia and politics. It can be argued that the origin of these debates coincides with the first Western encounter with the Ru tradition of Ming dynasty China,[37] as Jesuit missionaries had to decide whether rites (*lǐ* 禮) and ritual worship (*jìsì* 祭祀) of ancestors were compatible with

the Christian religion. The Jesuits eventually concluded that these acts should be seen as expressions of love for one's family and country, but other Catholic orders opposed this view, arguing that the rites of the Ru clearly constituted *religion* and were therefore not compatible with orthodox Christianity (Sun 2013, pp. 32–38). Although the vocabulary of *Confucianism* began to enter various European languages after this initial encounter, it was only through the dawn of the science of religion in the late 19th century that Confucianism came to be firmly entrenched in the new paradigm of "World Religions". Anna Sun has argued that this development was largely due to the collaboration between the renowned sinologist James Legge and Max Müller, professor of comparative philology at Oxford University. Partly as a result of their discussions about the *religious* nature of both Confucianism and Daoism, by the time Müller in the 1870s began to plan for his magnum opus, the ambitious translation project *Sacred Books of the East*, it was already decided that Confucianism would be included.[38] By the turn of the 20th century, the modern discipline of *Religionswissenschaft* had ensured that, in European languages, Confucianism was included amongst the *religions* of the World.[39]

The situation is somewhat more complicated in East Asia. *Religion* became part of the Japanese vocabulary through the compound *shūkyō* in the 1880s, after which the translation was introduced in China as *zōngjiào* (Ama [1996] 2017, pp. 73–76; Swain 2017, p. 14). While the Ru tradition had at this point been present in Japan for centuries, morals and ethics with their origin in Confucian thought had throughout the Edo period been incorporated into what Helen Hardacre calls "Confucian Shinto" (Hardacre 2017, pp. 245–55), and rather than being organized as a tolerated religion under the Meiji constitutional system, much of Japan's Confucian heritage was integrated into the nation's foundation of non-religious Shinto. Although the "nativist" school of *kokugaku* 国学 ("national learning") had sidelined more openly Confucian schools of thought by the time of the Meiji restoration, the Confucian influence was still there.[40] This can be seen with particular clarity in the Imperial Rescript on Education, which includes the line: "Ye, Our subjects, be filial to your parents, affectionate to your brothers and sisters; as husbands and wives be harmonious, as friends true". As Sekiguchi Sumiko has argued, "clearly, the Confucian five ethical relations as listed in *Mencius* had served as its model" (Sekiguchi 2010, p. 101. See also Paramore 2015, pp. 272–75). That being said, the Western academic narrative of Confucianism as a religion was also picked up by scholars of religious studies (*shūkyōgaku* 宗教学) in Japan, a trend which has become clearer in the postwar period. Scholars of different disciplinary backgrounds publishing on Confucianism in Japanese often do so from an understanding that it is indeed a religion.[41] For instance, in his work *Jukyō to wa nani ka?* 儒教とは何か ("What is Confucianism?"), the Japanese scholar of Chinese classics Kaji Nobuyuki spends the first chapter discussing the "religiousness" (*shūkyōsei* 宗教性) of Confucianism. Although Kaji sees problems with defining Confucianism as a religion based on definitions found in "Western religious studies" (*ōbei shūkyōgaku* 欧米宗教学), he still considers Confucianism to have a clearly religious side, in particular with regard to practices and beliefs surrounding death. Essentially, while he avoids likening Confucianism to Christianity, he still relies on a normative *sui generis* definition of religion in his work.[42]

In the passage from the plaintiff's argument above, a clear distinction is made between the "religious" Confucianism of China on the one side, and the "academic Confucianism" (*gakumon toshite no jukyō* 学問としての儒教) of Edo-period Japan on the other. Essentially, while acknowledging that Confucianism *can* be a matter of moral or education, the argument is made that in the case of the Naha Confucius Temple, this was a form of religious Confucianism imported from abroad. These supposed religious elements are emphasized in the plaintiff's argument, where linguistic tropes are used to emphasize that despite its legal status, KSK and the temple are de facto religious actors. This includes referring to the four associates as "divinities" (*shin'i* 神位), describing visitors to the temple as "believers" (*shinja* 信者), and referring to the rites at *sekiten* 釋奠 and other ceremonies as "religious acts" (*shūkyōjō no kōi* 宗教上の行為). The plaintiff also takes issue with the presence of *yuta* ユタ, a form of Okinawan spirit mediums, who are also said to have carried out divinations

(*kitō* 祈祷) on the temple grounds [43]. By emphasizing these *religious* elements in the form of Confucianism expressed by KSK at the facilities in Matsuyama Park, the plaintiff argued that KSK should be considered a "religious organization" despite its legal status:

> [KSK] is an organization centered on the ownership of [the Naha Confucius Temple] as well as other religious institutions such as facilities where Daoist gods [*kami* 神] are worshipped, carrying out religious acts such as *sekiten*, and conducting religious activities such as believing, worshipping, and promulgating the specific religions [*tokutei no shūkyō* 特定の宗教] of Confucianism and Daoism. When taking into consideration that it has the characteristics of an organization of blood lines [...] made up of descendants from one clan from China and that it is hard to say that it is a public organization [*kōkyō-dantai* 公共団体] open for the general population, it is clear that [KSK] matches [the constitutional term] 'religious institution or association'.[44]

The defense focused their argument on countering the idea that the institution and KSK had anything to do with religion, instead highlighting other aspects of the Naha Confucius Temple that would make it an "educational facility" under the Municipal Park Law. They emphasized that the institution had the purpose of "teaching and researching the teachings of Confucius academically", that it sought to disseminate the history and culture (*bunka* 文化) of Kume village and its Chinese heritage, and that all of the facilities were "open to the general public free of charge". The mayor's decision to grant permission for building the institution was explained in part by the fact that it was rebuilt (*saiken shita mono* 再建したもの), as the original had been destroyed in the war, but also through its close connection to the culture and customs (*fūshū* 風習) of Okinawa and the Ryukyu Kingdom: "with the purpose [*mokuteki* 目的] of protecting the unique culture and history of Okinawa and of transmitting the Eastern culture which permeates Okinawa, [the rites at the temple] do not constitute religious acts"[45]. According to the defense, everything that took place in the facilities in Matsuyama Park served educational functions, because they taught the population as well as visitors from other parts of Japan and from abroad about significant aspects of Okinawa's cultural heritage. Naturally, the defense also emphasized the fact that KSK was a general corporate juridical person and not a religious one, and that it therefore should not be interpreted as a religious organization under the constitution.

Unlike many earlier lawsuits on state–religion relations, the Naha Confucius Temple case was resolved in relatively swift order, with the Naha District Court handing down its decision in April 2018, the Fukuoka High Court in April 2019, and the Supreme Court in February 2021. All three instances ruled fully in favor of the plaintiff, essentially concluding that Mayor Onaga's decision to waver rent for the period from 1 April to 24 July 2014, was a violation of the principle of secularism in the constitution. There is little difference in the reasoning between the three instance courts, with the High Court ruling simply clarifying a number of minor points from the District Court ruling, and the Supreme Court accepting the general outcome in the previous instances [46]. All three instances also relied heavily on the object and effects standard in reaching their decisions, concluding that in "the eyes of common people", the municipality had used public money to sponsor and aid a "specific religion". As the District Court concluded:

> When deciding comprehensively in light of common sense and in light of the social and cultural conditions of our country, it is proper to interpret the exemption [from rent] included in the institution's permission and the relationship between [Naha] City and this institution as something which oversteps the boundaries for what is proper in relation to the fundamental purpose of the system guaranteeing the protection of religious freedom, and as falling under the prohibition in Article 89 of the constitution on the use and supply of public assets, as well as under the prohibition on granting privileges to religious organizations under Article 20 Paragraph 1 of the constitution [47].

However, in order to reach this conclusion, the courts first had to establish that the institutions aided by the government—KSK and indirectly the temple and its affiliated facilities—were *religious* in nature. While all three instances eventually agreed that the organization was religious, they did not dismiss the arguments made by the defendants in their entirety. The District Court ruling is particularly nuanced in its discussion, with the judges accepting the idea that the institution "had historical and cultural value, and that it also had social value as a tourism resource, and as a place of communal amity and learning", and that "consequently, it can be said to be an educational facility under the Municipal Park Law".[48] However, this did not take away from the fact that the institution was also deemed to carry significant religious meaning. The ruling emphasized the rites and prayers carried out before the spirits of Confucius and the four associates at *shiseibyō*, noting that such acts "could hardly be said to take place simply as tourism or as social ritual". Similarly to the plaintiffs, the judges also took issue with the *sekiten* festival which takes place once per year, concluding that the various offerings [*kumotsu* 供物] carried out before the spirit of Confucius [*kōshi no rei* 孔子の霊] at this time were "nothing other than ceremonies carrying a religious meaning". Despite acknowledging the historical and cultural significance of the annual festival as well as its importance for local tourism, "the religious side [of the festival] cannot be denied".[49] What can be seen in this ruling is a line of argument similar to that in many cases involving Shrine Shinto institutions, in which it is argued that even if they are ultimately deemed *religious* in nature, they can still have other functions as well, as expressions of culture, tradition, or folk custom. In their conclusion, the judges argued that "regardless of conclusions about the applicability of religion [*shūkyō gaitōsei* 宗教該当性] to Confucianism in general, [the Confucius Temple] is an institution with a profound religious character".[50]

After establishing that based on the judges' interpretation of facts, the temple facilities were religious in nature, the court also had to consider the status of KSK. After all, since the agreement was made between the municipal government under Mayor Onaga and KSK, a general corporate juridical person, no formal "religious organization" took part in the deal. While this is similar to the situation in the Sunagawa Secularism lawsuits, where the parishioners' organization had been responsible for maintenance of the shrines and for arranging certain festivals,[51] in this case, KSK also had a formal ownership of the buildings in question. The District Court therefore made an effort to decide whether the organization should be considered religious, regardless of how they were legally registered. The judges considered the purpose of KSK, noting that besides an interest in researching the history of the thirty-six families of Kume they also sought to "spread an Eastern culture centered on the Analects [Jp. *Rongo*, Ch. *Lúnyǔ* 論語]". They also emphasized KSK's goals to propagate a "spiritual culture centered on the realization of the teachings of Confucius" and to "spread Confucianism [*jukyō no fukyū* 儒教の普及]", concluding that these goals clearly had "religious characteristics" (*shūkyōteki seikaku* 宗教的性格).[52] Because of this, the court decided that:

> In light of the degree of religiousness of the institution and acts of this case as well as [KSK's] organizational statute and the contents of their actual work, [KSK] must be deemed an organization with the primary objective of carrying out religious activities at [the Naha Confucius Temple], and so it meets the conditions of 'religious institution or association' under Article 89 as well as 'religious organization' under Article 20 Paragraph 1.[53]

The judges of the District Court evaluated the various practices carried out at the facilities in Matsuyama Park, weighed the arguments made by the plaintiff and the defendants, and reached the conclusion that these were in fact religious in nature. Because of this, the organization responsible for the activities was also deemed religious, and the court concluded that under Japanese law, Confucianism, at least in the form that is practiced in Kume, is to be considered a religion. The rest of the ruling proceeded from this conclusion. The mayor had promoted one "specific religion" and had therefore given the impression of

a particular bond between the state and this religious organization, something which is clearly prohibited under the constitution: "it is unavoidable that in the eyes of common people, the city of Naha is deemed to specifically benefit, promote, and aid a specific religion".[54] By relying on the object and effects standard, the judges then concluded that this act on the mayor's part was a violation of Articles 20 and 89. By the time the Supreme Court confirmed this decision in February 2021, however, Mayor Onaga had already departed this world.

5. Conclusions

The plaintiff in the Naha Confucius Temple case, Kinjō Teru, has made relatively few public appearances, giving only brief statements in most newspapers. There is one notable exception to this, however. On 18 April 2019, as the ruling by the Fukuoka High Court was handed down, Kinjō appeared together with one of her legal counsellors, Tokunaga Shin'ichi, in a special episode of the right-wing political broadcasting network Channel Sakura series *Okinawa no koe* 沖縄の声.[55] She maintains a relatively low profile and lets Tokunaga do most of the talking in the episode,[56] with Kinjō saying little besides reiterating her fundamental grievances concerning how Mayor Onaga violated the principle of secularism by supporting KSK, which in her eyes is clearly a "religious organization". However, she makes one point in particular that is worth noting. After Tokunaga suggests that the sponsorship of the Confucius Temple is related to attempts by Okinawa prefecture to build better ties with the People's Republic of China (PRC), Kinjō picks up on this thread:

> Those who have taken this course are the JCP and the Japan Socialist Party, you know, the worst political parties. Also, as for the JCP, they have used secularism to relentlessly condemn the LDP. But now, with Okinawa, when it concerns themselves, the same JCP says that with regards to Confucius, it is not really a violation of [the principle of] secularism. (Channel Sakura 2018)

In the plaintiff's opinion, there exists a clear connection between communism in present-day Japan and the PRC on the one hand, and Chinese Confucianism, including in the form it is expressed in Kume village, on the other. What Mayor Onaga and the members of KSK presented as an institution representing a specific part of Naha's cultural heritage, reflecting the Ryukyu Kingdom's close relations to the Chinese cultural sphere, became in the eyes of Kinjō and her supporters a sign of Chinese political influence in contemporary Japan. When seeking to understand the conflict behind the Naha Confucius Temple lawsuit, associations made by the concerned parties become just as important as they are when studying lawsuits on the interactions between public actors and Shrine Shinto, where the memory of "State Shinto" serves as a constant driving force for those who bring these cases to court. Supported by their allies within Japan's conservative political parties, the Shinto establishment has worked for the better part of the postwar era to reconnect Shrine Shinto to the national identity, yet they have been opposed in this endeavor by a broad range of religious and non-religious actors and organizations (Mullins 2021, pp. 177–85). This conflict becomes apparent in lawsuits on state–religion interactions, where those who bring public representatives to court for violating the constitutional principle of secularism are often deeply motivated by their own beliefs and ideals. As can be glanced through the few statements made by the plaintiff in the Naha Confucius Temple lawsuit, she too understood this incident as playing a part in a larger political debate. Thus, much like how a *jichinsai* held in the city of Tsu could be seen by Sekiguchi Sei'ichi as a reminder of the former system of compulsory shrine rites, or how the rent-free use of public land to house two small shrines in Hokkaido could drive Taniuchi Sakae and Takahashi Masayoshi to sue their local municipality in the Sunagawa Secularism cases, so too does Kinjō Teru appear to have considered the Confucius Temple in Naha to be a sign of a larger and more serious issue. To her, the temples administered by KSK represented Chinese encroachment in present-day Japan.

Court cases on state–religion relations do not take place in a vacuum. Those cases that center upon the relationship between public actors and Shrine Shinto institutions

also reflect political debates about contemporary national identity in Japan, about what it means to be Japanese. While this can be seen in the Tsu Groundbreaking Ceremony case, which pitted ideas about the beliefs and practices of "common people"—an assumed national norm—against the strict interpretation of the principle of secularism maintained by the plaintiff, it becomes even more apparent when considering the Ehime Tamagushiryō case. The latter concerned Yasukuni Shrine, a contested site central to postwar debates on national identity and historical memory, and much like in the numerous lawsuits on prime ministerial visits to the shrine, it pitted supporters of the 1947 constitution against its opponents (Mullins 2021, pp. 129–43; Takahashi 2005, pp. 97–148). While the plaintiffs who took the governor of Ehime prefecture to court had clear ideas about how the local Gokoku Shrine in Matsuyama and Yasukuni Shrine in Tokyo were both religious institutions with clear links not only to the prewar system of State Shinto, but also to Japanese militarism and fascism, to the defendants and their supporters, these shrines were symbols of a healthy Japanese patriotism. Few have expressed this sentiment more clearly than Chief Justice Miyoshi Tōru, who after stepping down from the Supreme Court in 1997 went on to enjoy a two-decade career as spokesman for the nationalist lobby-group *Nippon Kaigi* 日本会議 ("Japan Conference"). Miyoshi argued in his dissenting opinion that the rites that took place at Yasukuni were something ultimately *different* from religion, as they constituted expressions of respect for the heroic spirits (*eirei* 英霊) that united all Japanese people. As he wrote in his dissenting opinion:

> Mourning those fallen soldiers who offered their lives in defense of the fatherland or of their parents, wives and children, and fellow countrymen, as well as consoling their spirits [*irei* 慰霊], can be said to be acts which are not restricted to bereaved families or comrades in arms but are natural for all the people of the nation. That is because this form of mourning and consoling of spirits [...] is a universal feeling of human nature, transcending the confines of religion and religious denomination [*shūkyō, shūha* 宗教、宗派] as well as ethnicity and nation. Besides all this, the cordial and everlasting mourning and consoling of the spirits of those who sacrificed themselves for the nation is not only a natural courtesy for the nation or local public organizations, as well as for those who stand as their representatives, but from a moral standpoint it should be considered a duty.[57]

Chief Justice Miyoshi's lengthy dissenting opinion in the 1997 lawsuit illustrates how important it is to understand lawsuits on religion within their social and political context. While many judges and justices have clearly struggled with the question of how to "properly" define religion, this endeavor always reflects diverging ideas about how to understand Japan as a cultural, social, and political entity. Significantly, these cases are also about power. They concern the right to define, the right to decide what is normal and what is not. While not necessarily clear from how Articles 20 and 89 were written, it becomes apparent when we consider the phrasing of the object and effects standard. Courts are supposed to rely on "common sense" (*shakai-tsūnen* 社会通念), to consider the opinions of "common people" (*ippanjin* 一般人), and to view the facts of a case in light of the social and cultural conditions of "our country" (*wagakuni* わが国). It becomes a way of regulating religion that premiers assumed majority positions, that allows judges to base their arguments on how they believe *normal* Japanese people think. Importantly, it also privileges a *Japanese* understanding of religion.

Studying the discourse surrounding the Naha Confucius Temple case, it becomes apparent that one element is often missing from the discussions. The Supreme Court in Tokyo, in affirming the ruling of the lower instance courts, based their decision on the line: "in light of the social and cultural conditions of our country".[58] The ruling relies on the social and cultural conditions of Japan, not on those of the Ryukyu Kingdom, or of an Okinawa that for twenty-seven years was governed by the United States. There is no room in the ruling for Okinawan narratives about Okinawan society and culture, but these are simply understood within a framework of hegemonic dominance by Japan, a former colonial empire that ended Ryukyuan independence less than 150 years ago. Although it is

reasonable that those working within the Japanese judiciary would consider it imperative to rely on an interpretation of legal categories common for all citizens, regardless of where in the country they live, by doing so, they also obscure the fact that Okinawa is, in many ways, different from other Japanese prefectures. While Japanese governments have carried out an aggressive policy of assimilation since the Ryukyuan territories were incorporated into the Empire as a prefecture in 1879, this does not negate the prevalence of a vigorous local identity that survives to this day.[59]

In his dissenting opinion, Justice Hayashi Kei'ichi used the expression "cutting up a chicken with a cow-cleaver" to illustrate his view of the majority ruling as somewhat exaggerated in its implementation of the principle of secularism. Considering how Articles 20 and 89 were introduced during the American occupation as a way to restrict the influence of state ideology in a defeated imperial power, and how the same principle has now been used to strike down on an expression of local identity in what is in many ways the last colonial holding of that former empire, the expression becomes even more applicable. In the Naha Confucius Temple case, the Supreme Court did not use the 1947 constitution as a cow-cleaver against the large beast that is contemporary Japanese nationalism, or to ensure that formerly mandatory shrine rites are kept at a principled distance from the state and public organs. Instead, it was used to strike down in force on one of the vestiges of Ryukyuan local identity. In doing so, the Japanese judiciary illustrated how, through their reliance on normative definitions of *sui generis* religion, courts of law continue to serve as powerful institutions of religion-making.

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Notes

1 It should be emphasized from the outset that there is no institution called the Naha Confucius Temple (*Naha kōshibyō* 那覇孔子廟). The case deals with a number of separate buildings erected in an enclosed part of Matsuyama Park in Naha, including Shiseibyō 至聖廟, which is also sometimes referred to as a *kōshibyō* ("Confucius temple"). *Byō* 廟 (Ch. *miào*) is a term often used to denote places of worship within a Confucian context, and Shiseibyō is a building in which the spirits (*rei* 霊) of Confucius and the four associates are worshipped. The court case is referred to in Japanese as *Naha kōshibyō soshō* 那覇孔子廟訴訟, and for this reason I have decided to use "Naha Confucius Temple case" as a translation throughout this text. I also use the term Naha Confucius Temple to denote the various buildings that were discussed in the lawsuit.

2 Naha Confucius Temple case, S.C., p. 14.

3 This topic has been explored by other scholars in a number of articles and book-length studies. See for instance Shakman Hurd 2017; Sullivan et al. 2015; Wenger 2017.

4 The Constitution of the Empire of Japan, Article 28.

5 "Sect Shinto" is a term originating in the Meiji period and refers to the originally thirteen "sects" or "churches" (*kyōkai* 教会) of heterodox Shinto which were tolerated under the Meiji constitutional regime. It is worth emphasizing that, as Nobutaka Inoue has argued, "Sect Shinto was from the start a category of state religious policy" (Nobutaka 2002, p. 406).

6 Although there were debates about whether to include Islam under this law, in the end, it remained restricted to Christianity, Buddhism, and Sect Shinto. However, Islam was considered an equal partner in religious collaboration projects during the Pacific War, and participated on equal terms in the Religious Alliance for the Development of Asia (*kōa shūkyō dōmei* 興亜宗教同盟). See Krämer 2014.

7 Directive for the Disestablishment of State Shinto from the Supreme Commander of Allied Powers (15 December 1945).

8 The Constitution of Japan, Article 20.

9 The Constitution of Japan, Article 89.

10 Shūkyō hōjin-hō.

[11] For a thorough discussion of the ideological debates on the role of Shinto in the public sphere that took place between the 1960s and 1980s, see Tanaka 2007, Chapters 4–5.

[12] For details on this lawsuit, see Larsson 2017, pp. 231–34. See also Hardacre 2017, pp. 455–56.

[13] Tsu Groundbreaking Ceremony case, H.C., p. 26.

[14] Ibid, p. 26.

[15] Tsu Groundbreaking Ceremony case, S.C., p. 6.

[16] Ibid, p. 9.

[17] Larsson 2017, pp. 234–36; Ravitch 2013, pp. 511–12. See also the Supreme Court rulings on the SDF Enshrinement case and the Minoo Chūkonhi Memorial case.

[18] Ehime Tamagushiryō case, D.C., p. 23.

[19] Ehime Tamagushiryō case, S.C., p. 22.

[20] Larsson 2017, pp. 240–43. In fact, neither Tomihira Shrine nor Sorachibuto Shrine was registered as a juridical person at all. See Sunagawa Secularism case I and II.

[21] Onaga served as mayor of Naha from November 2000 to October 2014, after which he was elected governor of Okinawa prefecture. He served as governor from 10 December 2014, until his death on 8 August 2018.

[22] Naha Confucius Temple case, S.C., p. 3.

[23] Ibid, p. 3.

[24] Tony Swain (Swain 2017, pp. 64–65) has suggested that the four associates (Ch. *sìpeì*, Jp. *shihai*)—Zenzi, Zisi, Mengzi and Yan Hui—were generally recognized by Ru 儒 ("Confucians") in China beginning in 1267. Paintings or statues of the four commonly flank Confucius in temples throughout East and Southeast Asia.

[25] Naha Confucius Temple case, D.C., p. 8.

[26] Naha Confucius Temple case, S.C., pp. 3–4.

[27] It is worth noting in this context that a number of Confucian and Daoist temples have been constructed in Japan since the mid-19th century, often with close connections to communities of Chinese immigrants. While they have the option to register as religious juridical persons, the more famous institutions, such as Nagasaki Confucius Temple (*kōshibyō*) or Yokohama Kuan Ti Miao (*kanteibyō* 関帝廟), are run by organizations registered as general corporate juridical persons. Similarly, the 17th century Confucian institution Yushima Seidō 湯島聖堂 in Tokyo is registered as a public interest corporate juridical person, not as a religious juridical person. See Paramore 2017, pp. 180–81.

[28] Naha Confucius Temple case, D.C. These are the "five constant virtues" (Ch. *wǔcháng* 五常) which have been present in Ru thought at least since the time of Dong Zhongshu (179–104 b.c.e.). In Tony Swain's translation, they correspond to humaneness (*rén* 仁), righteousness (*yì* 義), ritual (*lǐ* 禮), wisdom (*zhī* 智), and trustworthiness (*xìn* 信). c.f. Swain 2017, pp. 108–12.

[29] Naha Confucius Temple case, D.C., p. 8. See also Kume sōsei-kai 2022.

[30] Ibid, p. 13.

[31] Ibid, pp. 13–14.

[32] Toshi Kōen-hō 2.2.6.

[33] Naha-shi kōen jōrei 11.2.4.

[34] Naha Confucius Temple case, D.C., p. 10.

[35] Ibid, pp. 4–5.

[36] Ibid, p. 5.

[37] Tony Swain has argued rather persuasively for the use of the term "Ruism" rather than "Confucianism" to denote the academic and philosophical tradition of the Ru, suggesting that while it might seem strange and ungainly, "the same could have once been said of 'Daoism.'" (Swain 2017, pp. 5–11).

[38] Sun 2013, pp. 43–76. In the original preface, composed in 1876, the two traditions were described as the "religion of the followers of Kung-fu-tze [and] Lao-tze", respectively, illustrating the clear focus on the historical person of Confucius as a founding figure in the European imagining of Confucianism.

[39] It should be noted that despite its given place in curricula on *religions* of the world, Confucianism is also commonly described as a "philosophy." While this discussion is somewhat beyond the scope of this article, one should keep in mind that there is an ideological side also to this approach to Confucianism. As Kiri Paramore writes: "Studying Confucianism as philosophy [...] is far from an innocent practice nor one without a past. It interacts deeply with the history of political modernity in East Asia. Philosophy as a peg is usually associated with ethnic or civilizational labels—Confucianism is 'Chinese philosophy' or 'Asian philosophy,' part of 'Eastern tradition,' or in the 1930s and 40s 'Japanese empire.' In other words, labeling Confucianism as philosophy reinforces is [sic] cultural-specificity and its political valency, and of course obfuscates the sociality of its ritual systems and culturally embedded practice" (Paramore 2015, pp. 278–79).

[40] As Kiri Paramore has shown, Confucianism (*jukyō*) continued to play a prominent role in intellectual discourse in Japan up until the surrender in 1945, with liberals, conservatives, and fascists endorsing various aspects of Confucian thought for their own purposes. According to Paramore, it is the close connection between Confucianism and the fascism of the 1930s and 1940s that ensured that Confucianism came to be regarded as something of a "taboo" in postwar Japan. See Paramore 2017, in particular Chapters 5 and 6.

[41] For a few examples of this, see Asano 2017; Kaji [1990] 2021; Kaji [2011] 2021.

[42] Kaji [1990] 2021, pp. 27–39. Kaji elaborates on this issue in greater detail in Kaji [2011] 2021, pp. 15–126.

[43] Naha Confucius Temple case, D.C., pp. 5–6.

[44] Naha Confucius Temple case, D.C., p. 6.

[45] Naha Confucius Temple case, D.C., p. 7.

[46] Naha Confucius Temple case, D.C., Naha Confucius Temple case, H.C., Naha Confucius Temple case, S.C. With regard to the application of the object and effects standard and the reasoning behind the temple's religiousness, the Supreme Court simply "approved the decision of the original court" (p. 9).

[47] Naha Confucius Temple case, D.C., p. 18.

[48] Ibid, p. 15.

[49] Ibid., p. 15–16.

[50] Ibid, p. 16.

[51] Larsson 2017, pp. 240–43. c.f. Sunagawa Secularism case I and II.

[52] Naha Confucius Temple case, D.C., p. 17.

[53] Ibid, p. 17.

[54] Naha Confucius Temple case, D.C., p. 18. See also Naha Confucius Temple case, S.C., p. 9.

[55] For a detailed analysis of Channel Sakura and its role in contemporary nationalist politics in Japan, see Hall 2021, in particular Chapter 3.

[56] In fact, Tokunaga returned to the show again after the Supreme Court ruling was handed down, appearing in a special episode on the case—this time without his client—that aired on 7 December 2021.

[57] Ehime Tamagushirō case, S.C., p. 35.

[58] Naha Confucius Temple case, S.C., p. 9.

[59] An example of this can be found in the Japanese government's continued refusal to acknowledge the existence of Ryukyuan languages, despite UNESCO recognizing at least five distinct languages within the Ryukyuan language family. Instead, all Ryukyuan languages are officially considered "dialects" (*hōgen* 方言) of the Japanese national language (*kokugo* 国語). See Hammine 2020.

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