

# The Imperial Succession and Japanese Democracy: Citizens Court Challenge Denied

Nobumasa Tanaka

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By Tanaka Nobumasa

Translation by Julie Higashi

Only two minutes were allowed for the court photographs by the television and newspaper media before the verdict was delivered. The decision, read by Judge Shimada Niro, took just four seconds. The lawsuit questioning the imperial system from a democratic perspective was a landmark event challenging the emperor's accession to the throne from the viewpoint of perspective of thought and conscience, the sovereignty of the people, and the separation of religion and politics. However, the Supreme Court's response was inadequate.



Judge Shimada Niro

### The argument of "social ritual" undermines the principle of secularism

The "enthronement ceremony" for the current emperor held as a ceremonial act of state in November 1990, was based on the myths of tenson korin (the Sun goddess' descent to earth), with the new emperor ascending to the spiritual Takamikura seat. It was a deeply religious ceremony, involving the use of the sacred sword and jewels. Moreover, the three top state officials (the Lower House Speaker, the Prime Minister, and the Chief Justice of the Supreme Court) literally looked up at the new

emperor from 1.3 meters below, shouting “banzai” three times. It was as if the idea of democracy and the principle of sovereignty of the people had been totally abandoned.



The Investiture of the Emperor

The more religious ceremony of the daijosai (Great Feast of Enthronement) is a private ceremony held by the Imperial Household. However, reflecting the government’s unvoiced but nevertheless official position, it was treated as an important “public” ceremony for the emperor’s succession to the throne with expenses covered by the court budget. Clearly, then, the ceremonies were public.



The Heisei Emperor in ceremonial dress

Tokyo’s then Governor Suzuki Shunichi attended the two religious ceremonies related to the new emperor’s enthronement as a public figure. In January 1992, citizens of Tokyo filed a lawsuit, demanding the return of the public funds used for both the daijosai and the enthronement ceremony. They argued that the ceremonies violated the principles of the sovereignty of the people, freedom of thought, and the separation of religion and state.

However, in March 1999 the Tokyo District Court, and again in September 2004 the Tokyo High Court, found no ground to accept the appeal brought by the thirty-four residents. The Supreme Court has now dismissed their appeal, accepting the High Court’s ruling that the ceremony of enthronement and the daijosai

were constitutional, and the leaders' attendance at the ceremonies was also constitutional.

The reasons the Supreme Court gave for the ruling are written up in about a thousand letters. Simply stated, the governor attended the "traditional ceremony" as a "social ritual" in celebration of the enthronement of the emperor. Thus their attendance does not violate the principle of secularism. How brusque can a legal response get? It failed to grapple with the citizens' argument or the core of the issue, which is whether the sovereignty of the people and freedom of thought and conscience were violated. If only to persuade and convince the plaintiffs, the Supreme Court Judge could at least have made the effort to say more.

The Supreme Court decision rests on *shakai gireiron* (discourse of social ritual). But the argument risks blurring the line between state and religion. The principle of secularism, born out of past experiences in which other religions were oppressed, with the establishment of state Shinto and the emperor at the center, can easily be violated. That is why precision is called for. That is why treating the enthronement ceremony and *daijosai* as a state ceremony paid for out of the court budget, is controversial, and why the plaintiffs charge that it is unconstitutional.

The Supreme Court has given similar rulings related to the succession to the throne on three previous occasions. Rulings in the Kagoshima *daijosai* lawsuit and Oita Rice Transplanting Rite (*nukihonogi*) in July 2002 were based on the discourse of social ritual. In addition, the Supreme Court has also applied the principle of social ritual in the lawsuit brought by Kanagawa prefecture citizens, who sued their governor and chairman of the prefectural assembly for attending the *daijosai* and enthronement ceremony. This, the court also accepted as constitutional.

## The LDP plan for constitutional revision

The LDP announced a constitutional revision plan called "the New Draft Constitution" on October 28th, 2005. It includes a proposal to revise paragraph 3 of article 20 as follows:

"When engaging in religious education or religious acts, the state and its organs cannot support any specific religion beyond social rituals or social customs, and cannot aid, encourage, promote, oppress, or interfere with any specific religion."

Indeed, this provision is long and unwieldy. This is because it draws on the Supreme Court's 1977 verdict in the *Tsujichinsai* (The Shinto Ground Purification Ceremony in Tsu City) lawsuit. The current article 20, paragraph 3 reads: "The state and its organs shall refrain from religious education or any other religious activity." It is simple and clear. Still, Prime Minister Koizumi continues to visit the Yasukuni Shrine.

The core of the LDP's constitutional revision of article 20 is the discourse of "social ritual" and "social customs." The goal is to weaken the principle of secularism, lower the wall between state and religion, and pave the way for allowing the prime minister and emperor to visit the Yasukuni Shrine. In the end, they wish to bring together "the discourse of shrines as non-religious" with the discourse of "social rituals" and "social customs," and to have the state administer the Yasukuni Shrine. Perhaps they are even hoping to revive State Shinto. What is clear is that the principle of secularism is eroded with the ambiguous discourse of social ritual and customs, which in turn makes it easier for governmental authority to violate individual freedom of faith, thought, and conscience.

The recent Supreme Court verdict based on the principle of social ritual was delivered forty days after the LDP announced its plan for

constitutional revision. Here, we find a parallel between the party that holds political power with its constitutional revision plan and the verdict handed down by the Supreme Court.

### The mass media response

However, the response of the mass media following the verdict was pitiful. For example, the headline story on page 26 of the social column in the Tokyo Shimbun's morning edition of December 9th was: "Princess Masako is forty-two years old: still in the process of recovery." The article went on for more than one hundred lines, summarizing the doctors' observations and presenting "Princess Masako's comments" on different pages. In addition there was a color photograph (provided by the Imperial Household Agency) of the three members of the crown prince's family taking a walk at the Togugosho Palace. The article on the Supreme Court verdict was placed on the same page under a small headline, "Tokyo Governor's attendance found constitutional." It occupied only twelve lines. In reporting on issues concerning the imperial family, the real nature of the mass media is revealed.

Over the last fifteen years, 2,000 citizens have filed five lawsuits challenging the imperial succession ceremony. The Osaka District Court lawsuit was filed in September 1990. Oita's Rice Transplanting Rite lawsuit followed in March 1991 together with the Kagoshima daijosai lawsuit the same month. In January 1992, Tokyo and Kanagawa followed suit. Other than the Osaka suit, all were filed by local residents and final appeals were made to the Supreme Court. In the Osaka case, 1,700 citizens throughout the country filed suit, arguing that based on Articles 1, 20, and 89, it is unconstitutional for the government to use funds from the national budget (8.1 billion yen) for enthronement ceremonies. The Osaka District Court dismissed the case. However, of all the cases pertaining to the

imperial succession, the Osaka judgment most closely examined the issues. The reasons provided for rejecting the suit were as follows.

The court clearly acknowledged that the daijosai is a Shinto rite: "the suspicion cannot be entirely erased" that it violates the principle of the separation of state and religion.

The court further explained its judgment on the enthronement ceremony:

"There is evidence that the ceremony was not appropriate in light of the current constitution. For example, the emperor uttered his okotoba (honorable words) while looking down at Prime Minister Kaifu (Toshiki) who represents the sovereignty of the people, and the prime minister read the yogoto (blessing for the continuity of the imperial reign) from a position looking up to the emperor." Based on this decision of the High Court, the Osaka plaintiffs decided not to appeal to the final court.

For the first time in history citizens have brought lawsuits challenging the imperial succession ceremony. Right after the Supreme Court's verdict was delivered, the defense lawyers evaluated the situation as follows: "Although the decision is unjustified, it is meaningful that many citizens challenged the emperor and the imperial household." The questions posed by the citizens will surely be handed down to the next generation.

*Tanaka Nobumasa is a non-fiction writer and author of the prize-winning book The People Who Recover the Constitution.*

*Julie Higashi, who translated this article, is a professor at Ritsumeikan University*

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