

David M. O'BRIEN with Yasuo OHKOSHI, *To Dream of Dreams: Religious Freedom and Constitutional Politics in Postwar Japan*. Honolulu: University of Hawai'i Press, 1996. xvi + 271pp. \$50.00 cloth, \$29.95 paper, ISBN 0-8248-1757-5, 0-8248-1166-6.

THE QUESTIONS OF THE RELATIONSHIP between religion and the state before and after World War II and the demand for their separation in the 1947 American-inspired Constitution of Japan have been the subject of heated debate among Japanese and Western scholars. The key problem stems from differing historical conceptions of the relationship between church and state. Americans have a long tradition of the separation of the two entities, but that distinction, despite the postwar constitution, does not exist in the Japanese cultural mind.

The linkage between church and state stems from a tradition in Japanese society that weaves religion into the cultural fabric of society in the form of the figure and divine authority of the Emperor. The pre-World War II imperial state system in Japan was a kind of patriarchal absolutism based on the absolute divinity of the Emperor from whom all legitimate authority emanated. Buddhism was also on occasion used both as an instrument and symbol of social control.

David M. O'Brien, Professor of Government and Foreign Affairs at the University of Virginia, bases his study of the linkage between politics and religion in Japan on the question of the extent to which the state may participate in or carry out religious activities. He focuses on the difficult issue of whether the principal of separation of religion and state is to be interpreted as absolute or relative. The study is based on a series of lawsuits having to do with a *jichinsai* and a *chūkōnhi*. A *jichinsai* is a ceremony held at the construction site before breaking ground in order to offer worship to the spirits (*kami*) of the locality and pray that construction may proceed without incident. A *chūkōnhi* is a monument to honor the souls of fallen soldiers who have been loyal to the Emperor. Whether the frequently practiced *jichinsai* ceremony or the construction of *chūkōnhi* are to be regarded as deliberately religious ceremonies or merely as social customs or conventions is difficult to ascertain in a society of religious accommodation that does not draw such clear boundaries.

O'Brien focuses on a lawsuit concerning the Japanese city of Minoo's participation in the moving and reconstruction of a *chūkōnhi* on publicly donated land in 1975. Several housewives living near the newly located monument filed a lawsuit in February 1976 charging that the *chūkōnhi* is a religious facility for ennobling the spirits of slain soldiers in accordance with the militaristic thought related to State Shinto, and that an accompanying Shinto ceremony attended by municipal authorities is a religious activity that violates the constitution. Although a lower court upheld the plaintiffs claims, a higher court and the Supreme Court overturned that judgement, ruling that the *chūkōnhi* is nothing more than a secular memorial stone to commemorate fallen soldiers and that the Shinto ceremony was a social formality that did not violate the constitution.

A lawsuit filed in 1965 by a Communist assemblyman of the city of Tsu against the mayor of the city is also discussed. The assemblyman charged that the mayor had violated the principal of the separation of religion and state when he used public funds to pay for a Shinto *jichinsai* on the occasion of constructing a municipal gym. The Supreme Court eventually ruled in favor of the mayor by determining that a *jichinsai* is not an unequivocally religious action, that it is rather a social custom of ambiguous religious significance.

Based on these and other lawsuits discussed in his work, O'Brien concludes that for the past several decades liberal and conservative forces have used the courts to encourage their respective social agendas. Progressive forces want strict adherence to constitutional provisions separating all religion from affairs of state while the conservative establishment desires the reinstatement of more traditional cultural values and norms that often link religion with the political realm. O'Brien argues that although the United States laid the foundation for an independent judiciary as a means of enhancing democracy, the Japanese judicial system lacks any tradition of independence in that it has never overturned any law or policy supported by the conservative elite that has governed since 1948. Indeed, the judiciary consistently has shown a propensity "for deferring to the government and reinforcing traditional cultural values and norms" (p. 23). "The Supreme Court and the lower courts almost invariably reinforce the government's position out of seemingly purblind deference." The courts have "ceased to function as an independent judiciary, and merely follow the dictates of the administrative judgement" (p. 135). Since conservative forces invariably win the cases, progressives often initiate suits to win publicity and new supporters. The conclusion is that "the challenge of achieving the Constitution's promise of the disestablishment of state sponsorship of religion depends on first securing judicial independence. The separation of the power of the courts from that of the government more generally appears to be a precondition for enforcing the Constitution's mandate for the separation of government from religion" (p. 135).

O'Brien argues that Japan's failure to develop a system of independent judicial review stems not only from its unitary tradition in government, but also from a highly centralized form of judicial appointment controlled by the same conservative political forces that have held power almost consistently for five decades. The pressure on judges to conform to conservative will is enormous and lower court judges who show too much independence are rarely promoted to higher posts. Typically, the Supreme Court only passes judgement on cases where it wishes to reverse occasional antiestablishment decisions by lower courts. The Supreme Court is thus the conservative establishment's chief barrier against social change. He implies that the power of the conservatives, the waning power of older liberals, and the political indifference of Japan's younger generations means that in Japan the more traditional conservative views of society will predominate and that the liberal sentiments found in the postwar constitution will fade.

*To Dream of Dreams* is a fascinating and meticulously researched study of Japan's current political and legal system that should be essential reading for

every specialist in the field. O'Brien's experience in the fields of constitutional law and politics and his ability to understand Japanese cultural values and history permit unique perspectives of the rapidly changing political scene in Japan. He also provides the best analysis available on the selection process for judges that lends strong support for his views about the role of courts in Japan. O'Brien's lack of broad training in Japanese studies, however, does lead to a number of very minor errors in his presentation on Japan. He states, for example that the Liberal Democratic Party formed a coalition government in 1994 that included the New Frontier Party (NFP) when the NFP is in fact the chief opposition party today. O'Brien suggests that the number of religious adherents is decreasing today when the opposite is true, and he notes that the Showa Emperor only ever took a decisive stand during his reign when he demanded that Japan surrender in August, 1945. He forgets that Hirohito also took a decisive step to end the military revolt in Tokyo in February, 1936. These minor flaws, however, can in no way negate what is one of the best recent books on Japanese politics and religion.

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