The Dead Must Not Be Abused: Yasukuni Shrine, the Prime Minister and the Constitution

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by Tanaka Nobumasa

Approximately 6,000 people in Japan and overseas have filed lawsuits in six district courts, charging that Prime Minister Koizumi Junichiro's repeated visits to Yasukuni Shrine in his capacity as Prime Minister violates principles of freedom of religion and the separation of politics and religion enshrined in Japan's Constitution. Plaintiffs include Korean residents of Japan, whose fathers died in the Asia-Pacific War and who the Japanese state has enshrined as gods at Yasukuni Shrine, in violation of their families' wishes. On 27 February, the Osaka District Court ruled that the Prime Minister's visit was made not as a private citizen but in his official capacity. A ruling by the Fukuoka District Court on April 16 declared the visits unconstitutional for violating the separation of religion and state. Both courts rejected payment of damages to the plaintiffs. The Prime Minister responded that he would continue his visits to the shrine in violation of the court judgments and despite (or perhaps because of) protests by the Chinese, Korean and other Asian governments. This article analyses the Yasukuni visits in relation to the Koizumi administration's decision to send Japanese troops to Iraq. It also inquires into the cultural and political meaning of enshrining Korean and Taiwanese soldiers in Japan's imperial army as gods at Yasukuni.

The First Judgment in the Lawsuit Against Prime Minister Koizumi's Visit to Yasukuni

Approximately 6,000 people in Japan and overseas have filed lawsuits in six district courts charging that Prime Minister Koizumi Junichiro's visit to Yasukuni Shrine is in breach of the principles of freedom of religion and the separation of politics and religion. The Osaka District Court hands down its judgment on 27 February, the first in this series of 'Yasukuni Visit is Unconstitutional Lawsuits.' In the wake of the dispatch of the Self-Defense Force to Iraq, will the judiciary have the good sense to stem the slide towards the 'war state,' or will they simply go with the flow?

Focussing on the lawsuit in Osaka, known as the "Asia lawsuit" because of the identity of the plaintiffs, and the "Shikoku lawsuit" which makes almost the same claim, I consider what is being called into question by these charges of unconstitutionality in the context of the times.

The "Asia Lawsuit"

The "Asia lawsuit" was brought in the Osaka District Court on 1 November 2001 (the Shikoku, Kyushu and Yamaguchi actions commenced on the same day). Naming the Japanese state, Mr Koizumi, Prime Minister Koizumi, and the religious corporation Yasukuni Shrine as defendants, it demanded: first, recognition of the unconstitutionality of Koizumi's visits to the shrine; second, compensation for damages; and third an injunction against future visits. One feature of these actions, the first since the legality of prime ministerial visits to Yasukuni Shrine was called into question following the "official visit" in 1985 of then-Prime Minister Nakasone Yasuhiro, is the regional spread of the plaintiffs. Among the 639 plaintiffs in the "Asia lawsuit,"

one hundred or so are South Koreans, or South Korean-residents-in-Japan, and Chinese who have joined with Japanese citizens. In addition, in the second action brought on 7 February 2003, more than half of the 236 plaintiffs (124) are Taiwanese. The "Asia lawsuit," which crosses national borders, is the first case relating to the separation of politics and religion since the 1965 Tsu "Earth Appeasing Ceremony" lawsuit.

The regional spread of the plaintiffs is the most significant feature of this lawsuit: people from across Asia, including Korean and Taiwanese victims of Japan's colonial rule and war of invasion, have joined with those from the aggressor nation, Japanese citizens (including bereaved families), to become plaintiffs in a lawsuit against the postwar Japanese government. This reflects the popular wish no longer to be aggressors or victims, and no longer to allow Japan to become a country that wages war.

The Human Rights of Korean Victims Violated by Prime Ministerial Visit

Let's hear the testimony (mainly court testimony from 6 October 2003) of Korean Lee Hija (b. 1942), who, as a plaintiff in the "Asian lawsuit," has boldly continued to call Japan to account.

With the outbreak of the Korean War in 1950, Ms Lee's birthplace, Ganghwa Island, became the site of fierce battle, and soldiers, bombs and gunshots blasted their way into the young girl's life. Seeing soldiers with guns, the girl, not yet ten years old, remembered her father (Lee Sahyun), who had not returned home since being forcibly drafted into the Japanese army as a civilian employee when she was a one-year old.

'When the Korean War came, I began to think that my father must have died on the battlefield, but even now I don't want to accept his death.'

In 1992, almost a half a century after the event, Ms Lee, the current president of the Conference to Promote Compensation of Asia Pacific War Victims, learnt that her father died in June of the year after he was drafted. Until 1992, there had been no contact at all from the Japanese government. Five years later, in 1997, Ms Lee learnt that her father had been enshrined at Yasukuni.

'Everything went dark and my blood boiled. It was a feeling that only those people who had the same experience would understand.'

Not only had Ms Lee's father been taken from her, he had also, without a word of consent from his family and without Ms Lee even being informed of his death, been enshrined at Yasukuni where all those who died on the battlefield 'for the Emperor and Japan' were glorified as 'the spirits of the war dead.' He was thus implicated in Japan's war of invasion. The humiliation was no doubt intense. Ms Lee is pursuing a separate action to have the enshrinement nullified. About 49 000 Taiwanese and Koreans (from both North and South) who were mobilised and died in Japan's war of aggression are enshrined at Yasukuni.

Prime Minister Koizumi has repeatedly visited Yasukuni Shrine to express 'respect and appreciation.' Ms Lee's feelings of love and respect for her father (her moral rights) are being repeatedly thrown into turmoil. Furthermore, Ms Lee, who does not believe in any specific religion, says that her moral right not to believe has been violated by Prime Minister Koizumi's visit to Yasukuni Shrine. How to mourn and remember a deceased relative, including through religious acts, is a decision for the bereaved family (a right of personal choice), and no one else, let alone the state authority of another country, has the right to impose their meaning of 'respect' or 'appreciation.' The wish of the Korean plaintiffs who have had their relatives taken from them is that 'the dead be returned.'

At the seventh plea session of the "Asia lawsuit" on 6 October, witnesses for the plaintiffs, including Ryukoku University professor Hirano Takeshi (Constitutional Law) testified that the right of privacy in relation to religion, stemming from article 13 (respect for the individual) and paragraphs 1 and 3 of article 20 (freedom of religion and prohibition of religious activity by the State) of the Constitution, 'is expanding and becoming enriched.' According to Hirano's

testimony, Prime Minister Koizumi's visit to Yasukuni Shrine violated Ms Lee's privacy rights in relation to religion.

Furthermore, in her testimony, Ms Lee said that, in Korea if you are enshrined at Yasukuni and 'if you support enshrinement at Yasukuni, you are taken to be a collaborator who supported the war of invasion.' Therefore, even Ms Lee's moral rights (national moral rights) were being violated by the visit.

'War is Bad': A Shared Will

Even though it is called the "Asia lawsuit," in the legal action that was brought by the Japanese aggressors (including bereaved families) together with the Taiwanese, Korean and Chinese victims, an effort was nevertheless required to reach out across 'borders.' In her testimony Ms Lee used the word 'exchange.'

'Conscientious Japanese people are trying to overcome the pain of the past through exchange with citizens' groups, but Prime Minister Koizumi's visit is obstructing such exchange. [...] I want him to reflect upon the effect of his visit and pledge not to visit the Shrine again. If he did, this exchange would become more lively.'

Religious scholar and professor at Nishiyama Junior College, Hishiki Masaharu, appraises the "Asia lawsuit" highly.

'Actually, that aggressors and victims should join forces against the Japanese state raises serious issues. For example, it is possible that the father of one of the Japanese plaintiffs might have killed Ms Lee's father. However, what transcends this is people's shared antiwar sentiment.'

The title of the newsletter produced by the "Asia lawsuit" plaintiffs, We will not kill, we will not be killed, we will not allow killing, is an expression of the people's hope for peace that transcends borders.

Suh Chwijin (b. 1947) says, 'My starting point is that war is always bad.' Ms Suh followed closely the unconstitutionality action brought by 6 Japanese bereaved families against Prime Minister Nakasone's official visit (1986). 'Until part way through the lawsuit, somewhere inside of me was the thought "Aren't the Japanese, even you, the aggressors."' But when she heard the testimony of one of the bereaved family plaintiffs about 'Our relatives who died in the war died for no purpose,' something changed inside of Ms Suh.

'I thought that nothing would change until Japanese bereaved families said that these deaths were in vain, so when I heard that testimony I was really impressed.'

But as the examination continued, Ms Suh was overwhelmed by the power of the testimony of the Taiwanese and Koreans and became dissatisfied with the tiny voices of the Japanese plaintiffs -- the people who bore the greatest responsibility for stopping the war. This comes from an impatience at Japan's rush to assist in the current Iraq war and at not being able to stop it. Ms Suh also directs this irritation at herself.

'I call myself zainichi, but it's more than half a century since I, a Korean, was born in Kobe. If we continue silently to accept prime ministerial visits to Yasukuni then I also end up becoming an aggressor.'

Ms Lee and Ms Suh share the same hope: that the significance of Prime Minister Koizumi's visit to Yasukuni Shrine be recognised not as a statement of peace but as an affirmation of war.

As Orphans of 'Siberian Internees'

Nevertheless, Japanese plaintiffs have earnestly tried to relate the transgression of Prime Minister Koizumi's visit to their own experience and history. One of them is the plaintiff in the "Shikoku lawsuit," Yoshida Takako (b. 1935).

In 1991, following the collapse of the Soviet Union, the Russian government began to release the names of the 60,000 or so Siberian internees who had died. At that time, Takako continued to scour the list of names reported in the newspaper and finally discovered her misspelt father's name, Ine Osamu,* 'Ine Hagatake.' Takako stared at these two words in the newspaper. 'It's Father!' The surname 'Ine' was rather rare and Takako was convinced that it must be him. But there was no information about where he died.

Takako remembered that the official report of her father's death delivered in 1947 had stated 'Died

of illness in the area of Siberia.' At the time, Takako, a 6th grader in primary school, went with her mother to the repatriation support office in Maizuru, Kyoto Prefecture, to collect his remains. But inside 'the plain wooden box' that they were given were not his remains, 'only a piece of board' on which was written 'the spirit of Ine Osamu.' Since then, Takako continued to think that her 'Father was alive.' After being made to wait half a century, Takako's whole body convulsed with anger at the two word report of a dead internee, 'Ine Hagatake,' made, as if throwing away a scrap of paper, by the state which thrice drafted her father.

Takako wrote letters of protest every day to the Russian government, to the then-Ministry of Health and Welfare, and the Ministry of Foreign Affairs. She wrote: 'Do you think that you can settle an individual's life in such a slapdash manner? The state has a responsibility to find a witness to my father's death.'

When Takako, born in Osaka, was in the third grade at primary school, she was evacuated to Takamatsu, and in the meantime her family moved to 'Manchuria.' The combined effects of losing two older brothers and her grandfather in the war, the destruction by aerial bombardment of the house where she was evacuated, and the remarriage of her mother after the end of the war, shattered her "family within." Takako continued to search for her father from whom she was separated as a nine-year old, and every year between 1992 and 1996 went alone to Siberia in search of his grave and to bring him home. At night she worked in a noodle shop near Osaka Hokko, and during the day attended Russian language classes. But she still did not find her father's grave. Even though she was an orphan, her mother's remarriage meant that she was ineligible for support under the Law for the Relief of the Families of War Victims and Survivors and could not receive any state support for her trips to Siberia in search of the grave. Although categorised as a member of a bereaved family by state policy, the absurd situation of not being treated as such continued.

When she learned of Prime Minister Koizumi's visit to Yasukuni Shrine, Takako felt 'used.' 'The issue of my father is a personal matter so when a complete outsider visits, I feel as if they are somehow using the issue. Even though I'm a member of a bereaved family I've not once been treated as such. For a while, I've thought that if someone at Yasukuni Shrine -- what category of people do they enshrine? -- was treating my father as a god, surely that would be overstepping their authority.' Takako truly does not want her dear father to be used by the state. This is not just an issue for bereaved families. In the past, the state praised the dead while it mobilised the living for war.

On 3 October 2002, Takako stated to the Matsuyama District Court:

'Just as the war that Japan started is still a fresh wound for the war victims of various Asian nations, so for me it is not an old wound still to heal. When a new signal linked to war is sent, the memory of that time when we lined up and saw off the young men returns, and the pain is unbearable. The children, who we only assume to be victims, also bear some responsibility for the war of invasion. Children must never again be made the aggressors or victims of war.'

The range of Takako's experience as a victim of war, along with that of other Asian victims, is an admirable statement of the coming together of the hope that the past will never be repeated.

Just after Takako made her statement to the court, she expressed her thoughts in the following composition:

Not the orphan of the "heroic spirit" of the deceased
I make this statement on behalf
Of my father in Siberia
Hazarding One's Calling as a Teacher

Another of the "Asia lawsuit" plaintiffs, Teramoto Tsutomu (b. 1950), interpreted Prime Minister Koizumi's visit to Yasukuni Shrine from the standpoint of an education worker. From the time he was a junior high school student, Teramoto heard about the evacuation experience

of his mother, a primary school teacher, and at the high school where he was first appointed as a teacher he tackled antidiscrimination and human rights education for thirteen years.

'Prime Minister Koizumi's visit to Yasukuni Shrine came on top of the raising of the Japanese flag, the Hinomaru, and the singing of the national anthem, Kimigayo, during school ceremonies that were then being made compulsory. Also in the 1980s, I learned of the role of the Education Tower at Osaka Castle park, once known as the '"sukuni of Education," in the war of invasion and colonial rule. That's why I felt that the Prime Minister's visit to Yasukuni as a means of mobilising the nation for war must be stopped.'

Mr. Teramoto testified in court to a fear that the Prime Minister's visit was being taken as surety for possible deaths, in the context of the dispatch to Iraq of members of the Self Defence Forces, soldiers who, in a broad sense, were his pupils. In response, the Prime Minister's defense lawyers argued that this was nothing more than wanting to sound an alarm bell, and that no harm had been done. The existence, or otherwise, of legal damage attributable to the Prime Minister's visit therefore became an important point of contention in the lawsuit.

Antiwar sentiments, discomfort and the like are not considered to constitute a violation of any legal interest. However, Teramoto sought to argue otherwise by joining the plaintiffs in this action.

'My entire purpose as a teacher is threatened by Prime Minister Koizumi's visit to Yasukuni Shrine -- I came to question if I could really continue as a teacher.'

The premise of the plaintiffs' claim is that Prime Minister Koizumi visited 'as Prime Minister.' But the defense insisted that it was a personal visit by Mr Koizumi, who is Prime Minister. This was another important issue in the trial.

If Prime Minister Koizumi visited Yasukuni Shrine as a private citizen, just as he might go to enjoy the opera, one of his hobbies, then there would be no cause for political, social, or international controversy. But when he went to Yasukuni Shrine he used a public car, registered as the Prime Minister, donated flowers, commented at a press conference immediately after visiting, and the Chief Cabinet Secretary went so far as to announce 'the Prime Minister's comment.' In outward form, and in actuality, this was a 'prime ministerial visit,' and society generally understood it as such.

Speaking for the plaintiffs, lawyer Inoue Jiro added, 'Never once did Prime Minister Koizumi refute criticism from foreign countries by saying that it was a "visit in a private capacity."'

Will the Judiciary Arrive at a Determination of Unconstitutionality?

In the "Asia lawsuit" and the "Shikoku lawsuit," Yasukuni Shrine was named for the first time as a defendant -- a fact that attracted considerable attention. It was claimed that Yasukuni Shrine should not have received the Prime Minister's visit. In response, Yasukuni Shrine argued that before, during and after the war it was the 'central facility for mourning and comforting the spirits of the war dead,' and that as 'an appropriate place for prayers of peace' Prime Minister Koizumi's visit was in keeping with the common hopes not only of bereaved families but also of many Japanese nationals.

The principal focus of the six current lawsuits against Yasukuni Shrine, including the "Asia lawsuit," is whether or not the judiciary will enter into a judgement of unconstitutionality. Already in the unconstitutionality lawsuit against Nakasone's official visit, there was a judgement of 'unconstitutionality should it continue' (February 1992, Fukuoka High Court) and 'the possibility of unconstitutionality' (July 1992, Osaka High Court).

Lawyer Inoue Jiro points out that the 1997 Supreme Court (Grand Bench) judgement in the Ehime Tamagushiryo (an offering to the gods) lawsuit is key.

'The Supreme Court judgement determined that public authorities' relationship with Yasukuni Shrine (Shinto shrine for the war dead) must not exceed a fixed limit, but it is clear that the extent

of the relationship suggested by the Prime Minister's visit, in terms of religiosity as well as in terms of its influence, and the impression and interest it has created, is markedly greater than in the Tamagushiryo case. That is why I think that there must be a judgement of unconstitutionality.'

Moreover, Inoue Jiro stated that the fact that Prime Minister Koizumi has visited four times, including this year, in spite of the Grand Bench's judgement, 'disregards the judiciary' and strengthens the charge of unconstitutionality.

At the end of Yoshida Takako's statement of opinion given in Matsuyama District Court, there was also a question for the judiciary.

'No matter how much the fine words "peace" and "pledge not to wage war" are used to justify it, it is an undeniable fact that the Prime Minister's visit to Yasukuni Shrine is an act that violates the constitutional principle of separation of politics and religion. ... I want to ask whether the Prime Minister's twisting of the principle of separation of politics and religion laid down in the constitution can really be forgiven.'

Moreover, Lee Heeja of the "Asia lawsuit" rounded off her testimony with the following:

'I am not saying "Bring my dead father back to life!" I want to sound a warning and highlight the reasons why Yasukuni Shrine and the visit of Japan's supreme ruler, the Prime Minister, to Yasukuni Shrine are reprehensible. It really hurts ... I don't want to make the pain any worse than it already is.'

However, on 10 February in the House of Councillors Budget Committee, Prime Minister Koizumi triumphantly declared: 'We are being told what to do by other countries, but I have no intention of changing my position.'

In the midst of the dispatch of troops to Iraq and heightened interest in Asia, how will the Osaka District Court decide these lawsuits?

* In the newspaper, her father's name, which would normally be written in kanji characters, had been spelt in the katakana syllabary according to an incorrect reading of the kanji characters.

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