

# THE SHINTO DIRECTIVE AND THE CONSTITUTION\*

— from the standpoint of a Shintoist —

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## I

Today, I am going to discuss some very controversial questions regarding the Shinto Directive issued by the General Headquarters of the Allied Occupation and the Constitution of Japan from the standpoint of a Shintoist.

The relationship between religion and state in Japan should be regulated by the Constitution. Nevertheless, it seems correct to say that it is actually regulated by the Shinto Directive, which was issued prior to the promulgation of the present Constitution.

The Shinto Directive, an order intended to apply to “all religions, faiths, and creeds,” including State Shinto which existed in this country at the end of World War II, ordered a reform of the existing legal system and religious customs of this country. It is a serious question, however, whether or not such a directive was lawful from the viewpoint of international law.

### **International Law**

According to international law, especially the Hague Conven-

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\* For the contents of the Shinto Directive see p. 85.

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tion, Occupation authorities should respect the current laws of an occupied area, and the existing laws should not be changed or abolished "as long as there is no serious obstacle." In particular, occupation forces should not intervene in the religious faith or customs of an occupied area.

The expression, "as long as there is no serious obstacle," has reference to cases in which an occupation force is confronted with obstacles that threaten the safety of their military positions, and under such circumstances they can act without legal restriction. Therefore, it is understood that intervention in the religious customs of a country is permitted in order to maintain military safety, but when such conditions do not exist they should not intervene in domestic affairs.

In the case of the Allied Forces that occupied Japan, it can not be said that either the Japanese legal system or the religious customs of the country constituted "a serious obstacle" which had to be eliminated in order to maintain the Occupation. Nevertheless, immediately after the occupation took place, all Shinto shrines throughout the country were searched and all sorts of swords, including those that were ancient art objects, were confiscated. Of course, it might be explained that, since these were arms, this was done because of military necessity, but in ordering a reform of the religious system of the country and giving instructions regarding doctrines and teachings, even granting its good intentions, it must be said that the Occupation overstepped its authority. This is not to say that the contents of the Shinto Directive itself were either good or bad. Quite apart from the contents of the Directive itself, the legality of the enforcement of such a policy by the General

Headquarters is called in question from the standpoint of international law.

### **Religion and State Separated**

Be this as it may, with the termination of the Occupation and the effectuation of the peace treaty, the Shinto Directive became invalid. Nevertheless, the illusion persists that the Directive is still effective; and this has resulted in the Japanese people failing to establish their own interpretation of the present Constitution. Consequently, in order to understand the contemporary situation, it is necessary to carefully examine the contents of the Directive.

The Shinto Directive clearly states that “the *purpose of this Directive is to separate religion from the state*” and “to prevent misuse of religion for political ends . . . .”<sup>\*</sup> In other words, the sphere of the Directive was not limited to the *separation of church and state*, that is, the *separation of religious organizations from the state*; it aimed at the *separation of religion and state*. Therefore, the Directive stated that “The provisions of this directive will apply with equal force to all rites, practices, ceremonies, observances, beliefs, teachings, mythology, legends, philosophy, shrines, and physical symbols associated with Shinto.” Thus, the Directive was not satisfied to simply separate the state and shrines. It was intended to completely expel from all public places in Japan all Shinto usages and ceremonies which had spontaneously permeated the racial community.

The following examples will show how this *separation of*

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\* The italics here and elsewhere are the author's.

*religion and state* is different from the *separation of church and state* in America.

### **Church and State Separate in America**

In America,\* *church and state are separated*, and no church enjoys any privileges as a state church. However, there is no separation of Christianity as a religion from the state. Therefore, when the President and others are inaugurated, they take an oath in a Christian manner. In their addresses they publicly appeal to the people as Christians. Christian ceremonies are observed at state and official funerals, and the armed forces have a chaplain system. This is because "religion and state" are not necessarily separated. In official life, the real religious condition that has naturally permeated the community is fully respected.

In contrast to this, the Shinto Directive, which ordered the separation of "religion and state," prohibited the observance of religious ceremonies even in the case of state or government funerals. It did not recognize the chaplain system. In ordering the removal of customary Shinto practices, it made the people take away not only the Shinto altar shelves but also the sacred amulets from all public offices. This was clearly unreasonable. The Allied Forces may have thought that such a strong oppression of Shinto would be useful in the promotion of Christianity but, instead, it only benefited atheists and gave no

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\* In the American constitutional structure *separation of "church" and state* is clear and distinct, but it does not mean *separation of religion and state*. This is made apparent in many judicial precedents of the Supreme Court. Prof. Peter Drakker's (Phonetic) theory in regard to this point is especially appropriate. See American Magazine: December, 1956.

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advantage to Christianity.

The Shinto Directive in trying to enforce not only a common principle, that is, the *separation of "church" and state*, but also the *separation of religion and state* raised a second problem, which mainly concerns the interpretation and application of the Constitution of Japan.

### **Shinto Directive Invalid**

The principal provisions concerning religion in the Constitution are in articles 20 and 89, and during the Occupation these provisions were usually interpreted according to the Shinto Directive — a point of view that is still strong even today. However, the Shinto Directive was an order of a foreign military power occupying Japan and it became null and void with the effectuation of the peace treaty in 1952. Therefore, while it is perfectly proper to discuss in the light of the Directive the historical intent with which the present Japanese Constitution was established, it is improper to conclude that the correct interpretation of the Constitution is in accordance with the Directive. The Constitution of Japan should be interpreted as an independent constitution, and it is not unnatural that a tendency is appearing, which demands a reform of the interpretation that prevailed during the Occupation.

## II

The people who interpret the Constitution in accordance with the Shinto Directive take the position that the Directive, which ordered the *separation of religion and state*, was entirely replaced by articles 20 and 89 of the Constitution. Therefore,

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they persistently insist that the only ceremonies possible for the government and public entities are those that are non-religious.

### **Constitutional Provisions : Article 20**

Our position on this point is different. The Constitution of Japan reads as follows :

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

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

The State and its organs shall refrain from religious education or any other religious activity.

Those people, who insist in accordance with paragraph 2 of Article 20 that the state or its organs shall in no case perform any religious rite, understand "religious rite" as naturally included in the "religious activity" referred to in Paragraph 3. We think, however, that the term "religious activity" has a clear meaning and does not necessarily include all kinds of religious rites, that is, rites which originate in a religion, or ceremonies which possess a religious coloring. We do not think that the performance of religious rites, which have been naturally merged into the racial social life of the Japanese, are necessarily included in "religious activity," which is prohibited. It is a natural and normal matter for the Japanese to perform religious rites in the case of funerals or memorial services, to perform the ceremony of purification of a building site at the beginning of construction, and to perform a religious rite at a wedding ceremony. This is also the case in using New

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Year's pines or Christmas trees. We think that religious rites which have permeated the Japanese social life and customs are outside the category of the "religious activity" forbidden by the Constitution.

It goes without saying that, even though a rite has become very general and is in a social custom, if it is a rite originating in a religion, no one should be compelled to participate in it. This is clearly stated in the Constitution. The provision of the second paragraph forbidding compulsion is necessary in order to guarantee religious freedom. However, this is only intended to forbid compulsory participation, and does not prohibit the performance of religious rites.

A similar provision is to be found in foreign constitutions. Article 136 of the Weimar Constitution, for example, reads in part :

No one may be compelled to take part in any meeting or ceremony of a church or to participate in any religious exercises or to use a religious form of oath.\*

This mention of a "meeting or ceremony of a church" is probably because the German churches may still have the character of a public corporation. Furthermore, there are many examples in various countries of constitutional provisions to the effect that no religious oath shall be required; but such a prohibitive clause is not aimed at forbidding the state to perform any religious rites or ceremonies using a religious oath. On the contrary, it is expected that the state may naturally perform religious rites\* or have a ceremony using an oath. It is

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\* See note at end of article on p. 34.

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presumed that the rite is naturally performed in general in accordance with a religious rite or the form of oath adopted by the influential majority in the community, which forms the basis of the country. Therefore, in order to guarantee religious freedom for the minority, the necessity arises for a clause forbidding "compulsory participation."\*

### **A Reasonable Interpretation**

As a matter of fact, the Constitution of Japan is very reasonable and naturally understood, if it is explained in this manner. If performance of a religious rite itself is entirely forbidden, because it is considered to be a religious activity within the meaning of the third paragraph, public religious celebrations or religious rites cannot take place in the first instance, and hence, there can be no thought of compulsory participation. The provisions of the second paragraph thus become meaningless. (It is needless to repeat here, that it is the public authority that is forbidden to compel persons to participate.)

If this is not a proper interpretation, the Constitution is not applicable to actual conditions. There are still not a few persons, however, who in interpreting the provisions of the Constitution advocate the idea of separating religion and state as it was interpreted at the time of the Shinto Directive. They insist that no religious rite is permissible in any government

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\* Article 141 of the Weimar Constitution, which is incorporated in the Bonn Constitution (Article 140) reads :

"In so far as there exists a need for religious services and spiritual care in the army, in hospitals, penal institutions, or other public institutions, the religious associations are to be given an opportunity for religious exercises, in connection with which there is to be no compulsion." (For source of translation see p. 34.)



installation.

In reality, however, this view, though persistent, is gradually becoming less prevalent. Even under the Occupation, when the speaker of the House of Representatives, the chairman of the House of Councilors, and Mr. Yukio Ozaki, senior member of the Diet, died, they received homage from both Houses in official funerals performed with religious rites. Even in the event of the construction of a railway, the construction of power stations, and other large public installations, the officials have never failed to begin with a ceremony of purifying the construction site in a Shinto manner that accorded with Japanese custom. State officials, including state ministers, invariably participate in these functions.

After the promulgation of the Shinto Directive all the festivals of the Imperial Household were deprived of their public character. However, the wedding of the Crown Prince was performed last year in a Shinto manner before the Imperial ancestral kami enshrined in the *Kashiko-dokoro*<sup>a</sup> in the palace grounds. Moreover, this ceremony was performed as a state rite, which was attended by members of the Diet, representatives of various social circles, and high government officials. The interpretation of Article 20 of the Constitution in accordance with the Shinto Directive, as was done under the Occupation, is already losing its influence. We think that this is natural.

### III

#### **Constitutional Provisions : Article 89**

A similar problem exists in respect to Article 89 of the Con-

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stitution. For example, a few years ago there was a problem concerning the establishment of a small shrine in the Self Defense Force compound at Shibata, Niigata Prefecture, which caused considerable public discussion regarding articles 20 and 89. Article 89 strictly prohibits the state from giving financial aid to a religious institution or association, a provision which is very rarely found in the constitutions of other countries.

There are more than twenty foreign countries in which there is a state-religion system and more than ten countries where a semi-state-religion system exists. In these countries, financial aid may be given if there is no clear provision for such in their constitutions. Then, there are a good many countries where the separation of religion and state is adopted, which make public grants to the religious world. The countries having separation of religion and state, which permit disbursement of public funds by clear constitutional provisions are, for example, Holland, Belgium, Bolivia, India, Indonesia, Uruguay, Yugoslavia, Albania, etc. There are very few constitutions which clearly prohibit the disbursement of public funds as Japan does.

The Constitution of Japan is regarded as a translation of the Philippine Constitution. Compare the following :

The Constitution of the Philippines : Chapter 6, Article 23, Paragraph 3

No public money or other property shall ever be appropriated, applied or used, directly or indirectly, for the use, benefit, or

The Constitution of Japan : 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

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support of any sect, church, denomination, sectarian institution, or system of religion, or the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces or to any penal institution, orphanage, or leprosarium.

any charitable, educational or benevolent enterprises not under the control of public authority.

These two articles show clearly that at this point the Constitution of Japan was a translation of the Philippine Constitution. It will be noted, however, that the proviso at the end of the Philippine Constitution was not included in Japan's Constitution. This proviso has the same purpose as Article 141 of the Weimar Constitution,\* and is regarded as necessary, even in countries which separate church and state, regardless of the existence of written provisions, unless they forbid religion itself. In other words, even in a state establishment, such as the armed forces, a prison, or a hospital, which require special restrictions on the life of those who live there, special provisions for religion is necessary, because without such provisions the people who have to live under such special limitations cannot enjoy their religious life. For this reason in the United States of America, which has no written provision like the Weimar Constitution, a chaplain system has been established

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\* See footnote on page 23

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at military and other government installations in order to provide for the religious life of those concerned. The drafters of the Constitution of Japan, however, purposely removed this proviso. How should we interpret this?

There may be some people who find the reason in the fact that the drafters, that is, the officials in the General Headquarters, not only intended to separate "church" and state but also to enforce an overall separation of *religion and state*. A point of view opposed to this is that, whatever may have been the intention in drafting the Constitution of Japan, an unreasonable anti-religious interpretation of this article is unnecessary. The opposition between these two views was concretely evident in an affair involving the removal of a small shrine at the Shibata<sup>a</sup> Self Defense Force's compound in Niigata Prefecture.

In 1954, with the permission of their commander, volunteers of the Shibata Self Defense Force established a small shrine in the compound to house the sacred amulets of the Grand Shrine of Ise<sup>b</sup> and Yasukuni<sup>c</sup> Shrine. This was done with voluntary contributions of money and labor service by the men themselves. The Superintendent General of the First District knew this, but he ordered the removal of the shrine on the grounds that it "ran counter to Article 89 of the Constitution." In the opinion of the Superintendent General Article 89 of the Constitution meant the "overall separation of religion and state."

In opposition to this the Jinja Shimpō\* made a strong protest, a summary which follows :

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a. 新発田 b. 伊勢 c. 靖国

\* The Jinja Shimpō 神社新報 is the semi-official organ of the Association of Shinto Shrines.

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The Self Defense Agency interpretation of Article 89 of the Constitution is unreasonable, superficial and narrow. At every American base in Japan Christian chapels have been established where worship and preaching services are observed voluntarily by the officers and soldiers. This is a general rule in countries where the principle of separation of "church" and state prevails, regardless of whether there are written or unwritten provisions regarding it.

In Japan also at public establishments such as state sanatoria, prisons, police stations and installations of the National Railways Corporation there are religious establishments of Shinto, Buddhism, and Christianity, and these are not a violation of the Constitution. On the contrary, they constitute a recognition of respect for the constitutional guarantee of freedom of religion. The same reason applies to the Self Defense Force. Freedom to have religious establishments within troop compounds should be recognized whenever many members desire them. The order for the removal of the shrine at Shibata is unreasonable.

This affair was widely reported in the newspapers and it resulted in a discussion of the Constitution. Dr. Toshiyoshi Miyazawa\* strongly supported the position of the Self Defense Agency authorities and insisted strongly that no religious establishment could be permitted to exist within the sites of state-owned property. He said: "To use property owned by the state or a public entity for the sake of religion can only mean that there is public authority to deal with religion in an

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\* Cf. Toshiyoshi Miyazawa 宮沢俊義, *Nihonkoku Kenpō* 日本国憲法 (The Constitution of Japan), *Konmentāru Sōsho* コンメンタール叢書 (Commentary Series), *Hōritsugaku Zenshū Kenpō II* 法律学全集・憲法 II (Jurisprudence: The Constitution, II), Yūhi Kaku 有斐閣

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especially favorable manner. "Therefore", averred Dr. Miyazawa, "the action of the Self Defense Agency in forbidding this was proper in the light of Article 89 of the Constitution."

Against this Dr. Yoshio Ōishi\* expressed a completely contrary opinion. He supported the theory that from the very beginning the Grand Shrine of Ise and Yasukuni Shrine have not been religious establishments and took the position that this problem does not belong to the sphere of either Article 20 or Article 89 of the Constitution. Furthermore, he insisted that, even if it was assumed that the small shrine was a religious establishment, the building of such a shrine did not run counter to the Constitution.

His opinion in substance was as follows :

I hear that some papers stated that the existence of the shrine was counter to Article 89 of the Constitution; but it is unreasonable to apply that article to this case, because the soldiers did not make any religious association. If it were to be related to the Constitution, it should be interpreted in the light of Article 20, Paragraph 3. Since the soldiers are guaranteed religious freedom, and since their act was not a public activity of the Self Defense Force but a private act of the soldiers, for them as individuals to establish a shrine was an expression of their religious freedom. Oppression of them for the reason that the shrine was a religious installation is unconstitutional. It is possible, however, for the Self Defense Agency to refuse permission from the standpoint of administrative or control laws; but

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\* Cf. Yoshio Ōishi 大石義雄 *Religion, the State, and the Constitution in Religion and State in Japan*, International Institute for the Study of Religions, Bulletin No. 7, September, 1959. pp. 34-35.

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it is not proper to order the shrine's removal on constitutional grounds.

Professor Nobushige Ukai,\* though he was unfavorable in his attitude toward the shrine because it indicated a dangerous tendency toward the revival of State Shinto, from the legal point of view, he presented a view that was near to that of Dr. Oishi. In his opinion no violation of the Constitution had taken place since "the shrine had not been established by any state organ, but by the soldiers." He contended that this case only involved administrative laws.

As the government was hard pressed by the Jinja Shimpō, the Vice Premier, Taketora Ogata,<sup>a</sup> and the Chief of the Self Defense Agency, Shigemasa Sunada,<sup>b</sup> recognized the error of the removal order; but they could not easily make an official decision and time passed without a definite answer. Then a notification, issued in March, 1955, in the name of the Vice Chief of the Self Defense Agency, withdrew the "unconstitutional interpretation" as follows:

Such an act as newly establishing a permanent structure inside the boundary of an establishment of the Self Defense Force obviously runs counter to laws, ordinances, and related stipulations (in connection with national property), even when it has not been subsidized by the disbursement of state funds but by contributions of the soldiers.

Moreover, he clarified the removal order by utilizing Dr.

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\* Nobushige Ukai 鵜飼信成 *Religion and State: Two Absolutes in Religion and State in Japan*, International Institute for the Study of Religions, Bulletin No. 7, September, 1959, p. 57.

a. 緒方竹虎 b. 砂田重政

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Oishi's theory. This notification, however, seems to imply the following :

- (1) It is understood that the first view, that the establishment of a shrine seems to run counter to Article 89 of the Constitution, has been withdrawn.
- (2) What is forbidden should be limited to the establishment of new, permanent structures. Accordingly, anything that is not a permanent structure should be permitted. Actually at the Shibata Self Defense Force's compound the sacred amulets, which had been housed in the small shrine, were enshrined anew in the form of a "sacred shelf" (kami-dana). Furthermore, because only the establishment of new structures was forbidden, shrines which have continued to exist from the past — the existence of some shrines that had been inherited from troops previously occupying certain quarters were discussed in connection with the Shibata case — it is understood that they are not to be removed.

The case of the shrine at Shibata appears to have come to the end of the chapter, but the interpretation of Article 89 of the Constitution has not been concluded.

There still remains some antagonism between its interpretation in the sense of the *separation of "church," that is, religious organizations, and the state*, and the interpretation in the light of the spirit of the Shinto Directive as *overall separation of religion and state*.

If we review the history of the drafting of the Constitution, it is not difficult for us to imagine that this Constitution was drafted by important members of the General Headquarters



and that their attitude was the same as that of the Shinto Directive, which intended *overall separation of religion and state*. (This historical situation is causing public opinion to feel that the Constitution should be revised or that it should be declared null and void. The fundamental discussion of this is put aside for the time being.) However, when we interpret and apply the Constitution in independent Japan today, we should not be restricted by such intentions of the drafters.

We believe that we should interpret the Constitution in accordance with the principle of *separation of "church" and state*, that is, religious organizations and not the *separation of religion and state*; and that we should revive the attitude of fully respecting the religious customs, ceremonies, and sentiments which have permeated the community of the Japanese race. We think that this is the right way to apply the Constitution of a sound and free people.

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NOTE (1) In connection with the above article it has been suggested that I add two comments. First, however, I want to express my appreciation for Mr. Ashizu's interesting article and to pay tribute to his keen analysis of this and related problems. I have known Mr. Ashizu for the past fifteen years and have often found that, in spite of wide differences of opinion, we have many ideas in common.

In the first place, in regard to the question of the separation of "religion and state" versus "church and state," during the Occupation I had a number of discussions on this subject with Dr. Kenneth W. Bunce, Chief, Religions and Cultural Resources

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Division, Civil Information and Education Section. At the time I, like Mr. Ashizu today, maintained that it had been a mistake to say that the purpose of the Shinto Directive was to "separate religion from the state."

Dr. Bunce's position, however, was that since religion, particularly Shinto, had become so inextricably bound up with the Japanese state, only by the use of extreme measures could a normal condition ever be established. But he definitely did not regard the "separation of religion and state" as a permanent policy for Japan. On the contrary, several years later, I do not remember the exact date, he drew up a memorandum in which he stated that it was the policy of the Division to interpret the expression "separation of religion and state" in the sense of the "separation of church and state." Thus, it can be seen that, to this extent at least, Mr. Ashizu's position and the position of Religions and Cultural Resources Division are in general accord.

Personally, I am certain that the Division did not think that it should or could formulate a permanent policy for the Japanese people. Throughout the Occupation, it was a fundamental assumption that, while the function of the Division was to cut the Gordian Knot of Japanese official involvement in Shinto, it was the function of the Japanese people themselves, through their national legislature and the courts, as distinct from a special power group, as in the past, to implement and interpret the basic principles of religious freedom and separation of "church" and state in a manner suitable to themselves alone.

In the second place, I believe that the author has overlooked the fact that the Japanese Government accepted the Potsdam

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Declaration with its provision that "freedom of religion ..... shall be established." This was one of the fundamental terms of surrender, and it was inevitable that, in the implementation of this and other terms, the interpretation of the Supreme Commander for the Allied Powers should be determinative. If it is argued that, in view of the Hague Convention, this term itself was illegal, there is no reply except that this was Japan's Hobson's choice.

(2) In regard to the translation of the text, one comment is required. The portion of Article 136 of the Weimar Constitution given on page 22 follows the Japanese version which Mr. Ashizu took from a Japanese source. Unfortunately, there is a slight discrepancy between it and the English translation approved by the Allied high commission in Germany and printed in Appendix A of John Ford Golay's *The Founding of the Federal Republic of Germany* (Chicago: The University of Chicago Press, 1958) p. 255. The point at issue is a minor one which in no way affects the author's fundamental argument. Instead of what is printed on p. 22 the translation given in the above reference is: "No one may be compelled to perform any religious act or ceremony, to participate in religious exercises or to use a religious form of oath."

However, in place of "to take part in any meeting or ceremony of a church" (p.22) an official of the German Embassy in Tokyo informally suggests that the wording be "to take part in any act or ceremony of a church".

Incidentally, Article 136 of the Weimar Constitution was incorporated into the *Basic Law for the Federal Republic of Germany* by Article 140 thereof, and came in force May 23, 1949.

W. P. W.