

THE CONSTITUTION AND RELIGION

Note: The Constitution Investigation Council, which is currently studying the manner in which the Constitution was drafted and adopted and is considering whether it should be revised, has devoted two sessions (December 2, 1959 and March 9, 1960) to the subject of religion. In this issue we are presenting another installment of a slightly abridged and edited translation of the statements made before the Council by the officials and scholars who were asked to relate their experiences and express their opinions in regard to the above subject. Editor.

Meeting on March 9, 1960

(Continued)

Tetsuji Tate^a

I am a responsible officer of (religious juridical person) Yasukuni^b Shrine. This shrine was founded in 1869 as a Spirit Invoking Shrine (*Shōkon-sha^c*) at the special request of Emperor Meiji. Yasukuni Shrine, as it was later called, was constructed entirely at national expense in 1872, and after that was under the control of the army. As the army was abolished just prior to the promulgation of the Shinto Directive, shrine authorities seem to have intended to transfer control to the Imperial Household Ministry.

However, the Shinto Directive was soon promulgated, followed by the Religious Corporations Ordinance; and since Yasukuni Shrine, as well as the Grand Shrine of Ise, was regarded as a religious organization, it has existed until now as a corporation under the Religious Corporations Ordinance till

a. 館 哲二 b. 靖國 c. 招魂社

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today.* Speaking from the standpoint of Yasukuni Shrine, as it was founded by the special desire of the Emperor in order that the names of those who gave their lives for the sake of the country might long remain in the field of Musashi^a and be consoled for ages to come, we sometimes think that it is not a religious organization in accordance with the provisions of the Religious Juridical Persons Law. However, if it had not become so, it could not have continued to exist. Therefore, we were obliged to recognize it as a religious juridical person.

However, in reference to the three items specified in the Religious Juridical Persons Law for a religious organization, we do not find that they are exactly applicable, and we are now carrying on a movement to have the shrine given a special status by the state. Today, however, it is being managed entirely as a private religious juridical person.

After the termination of the war the General Headquarters strictly forbade it to enshrine new spirits and collective enshrinements were suspended.* After independence the Supporters Association (*Hōsan Kai*^b) promoted a nation-wide movement to enshrine new spirits and the spirits of nearly two million victims have been enshrined.

Chairman:

Mr. Maeda and Mr. Fujigashi, who had something to do with the New Year's Day (1946) Imperial Rescript, which is

a. 武蔵 b. 奉讃会

* The Religious Corporations Ordinance was rescinded in 1951 and replaced by the Religious Juridical Persons Law. Ed.

† See note at the end of this article.

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popularly called the "Declaration of Humanity by the Emperor," are present. Have you any question you would like to ask them?

Sadakichi Hitotsumatsu

I was very sorry to hear what you frankly stated regarding your experiences at the time. From the standpoint of the old education which we received, or education on the "Emperor first" principle, I was thinking, when I have heard your statement that, because the shrines distributed amulets and collected contributions, there was a possibility of all the property under the control of the Grand Shrine and Yasukuni Shrine being taken away, in case they did not become religious juridical persons, — that this might have meant that the Americans were trying in every way possible to weaken the characteristic spirit of the Japanese. Today, however, when our country has become independent and the idea of the people has become different from what it was at the time Article 20 of the Constitution was drafted, this matter should be reconsidered in revising the Constitution. I am sorry to learn that you did not take an attitude of resistance when you were forbidden to observe festivals unless the shrines were made religious juridical persons; but I know that this was impossible just after defeat. Today, however, we should not hesitate. I think that it is necessary to make it clear that Ise is the place where the Imperial ancestress is enshrined and Yasukuni is where the people who have sacrificed themselves for the sake of the motherland are enshrined, and clearly separate them from re-

a. 一松定吉

ligion. If it is definitely decided that the Grand Shrine of Ise and Yasukuni Shrine are not religious juridical persons, they will then be excluded from the application of Article 20 of the Constitution. I wish to realize this and I would like to hear your opinions regarding this subject. I am of the opinion that under today's condition there is no longer any necessity of maintaining them as religious juridical persons. I should like to hear your frank opinion as an important consultant.

Tamon Maeda^a

I too think that it would be a very good thing if the two shrines were to become as you have suggested. However, after they have once been placed in the category of religious juridical persons, there will be great difficulty on this point. It is my opinion that their religious color may have been enriched. For example, if such things as amulets imply more an element of prayer than of mere respect, they would seem to incline toward being religious organizations, though I don't know much about this subject. If so, however strongly it may be emphasized that they are non-religious and are state institutions, there would arise much controversy. Therefore, if the religious content is totally eliminated from them and they become completely establishments of the state — I doubt the propriety of the word — such as a place where the Imperial ancestress is enshrined or, in regard to Yasukuni Shrine, a pantheon so to speak, I think that it would be most reasonable. In view of the present situation and the history of the past decade more or less, I fear that there may be much difficulty

a. 前田多門

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because they have become religious juridical persons. I would be very grateful if I could hear from Professor Kishimoto from a scientific viewpoint.

Sadakichi Hitotsumatsu

The purport of my question is that unless we provide for exceptions, when the Constitution is revised it will be impossible from a legal standpoint to exclude the two shrines from the application of Article 20 of the Constitution simply because we say they should not be religious juridical persons. Since the Diet is the supreme organ of the state, if, for example, we make a law providing for exceptions and make the historical background clear that we reluctantly accepted this article because of our defeat in war, revising the Constitution to provide for an exception in Article 20 will be easier after public opinion has been greatly enlightened. It is in this sense that I am asking the question.

Tamon Maeda

I understand. However, I can say nothing about revision of the Constitution, because I have not studied it carefully.

Hideo Kishimoto

To tell the truth, I touched upon this problem at the general meeting on December 12th. I am afraid of repeating myself, but I will mention it again.

Because of the problem of revising the Constitution, the subject seems to be divided into two parts. Leaving aside the question of revision for a moment, I will discuss whether

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Shinto is a religion. In regard to the General Headquarters it was said that, although Shinto was not a religion, because this country was defeated, Shinto was said to be a religion. If this is the problem it is rather simple. I think, however, that the problem is not so simple. Take for a moment the altogether different example which was mentioned once before. Imagine that there is an animal which cannot be positively identified as either a human being or a monkey. Decision as to the biological problem of which of these two categories this natural phenomenon belongs has priority over the constitutional interpretation. After first hearing the opinion of biologists, it should be decided from a constitutional viewpoint whether it is better to regard it as a human being or as a monkey. I think that same question arises in regard to Shinto and religion.

Long discussions were conducted by the Shrine System Investigation Board (*Jinja Seido Chōsa Kai*^a) and the Committee on the Religious System (*Shakyō Seido In Kai*^b) concerning whether or not Shinto was a religion. The most important reason why, despite their efforts, it was not made clear would seem to lie in the problem of the definition of religion. Without a definition of what constitutes a religion, it was not possible to decide whether or not it was a religion. I suppose that at that time they studied this problem without proceeding to clarify the definition. I think that even in the Meiji era there were many scholars who recognized the strong religious character in Shinto. Even such a committee as the Shrine System Investigation Board, which was supposed to answer

a. 神社制度調査会 b. 宗教制度委員会

that shrines were not religion, left the problem unsettled. This may be ascribable to the fact that rather strong opposition was latent in whatever reply was made. Otherwise the committee very likely would have decided at an early stage that the shrines were not religion.

Concerning the definition of what is religion, the many divergent views of scholars can be roughly classified into three groups. The most popular definition of religion is, in plain words, the relationship between God and man. If this is readily accepted, shrines become a religion as they are. No problem remains. However, if a religion is limited to the relationship between gods (*kamigami*) and man, things sometimes go wrong. For example, Buddhism, especially Zen Buddhism, is a religion which has no god (*kami*). Therefore, taking into account the existence of such a religion, modern scholars are of the opinion that such a general definition is not necessarily appropriate.

A second view involves the sacredness of human beings and society. This view regards religion as a cultural phenomenon, especially emphasizing sanctity and dignity; and recently scholars have begun to have this idea, since it has become clear that a simple relationship between God and man cannot be accepted as a final definition of a religion. Shinto as it is, is also included in this definition. Judaism falls within this definition; but no religion emphasizes the sacredness more than Shinto. From this viewpoint, Shrine Shinto falls into the category of religion.

A third view is the more modern idea that conceives of religion from the dynamic standpoint of its function for man.

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To speak the truth, this is my view. Looking at the points that are common and fundamental to religion, my definition is that religion is "a cultural phenomenon centering in the functions which aim at the ultimate solution of human problems." This definition tries to describe or limit religion without the use of the word god.

Applying this definition to this problem, the subject becomes somewhat complicated. I think that Yasukuni Shrine and the Grand Shrine of Ise are not in the center of religious phenomenon, but are in the environs or on the periphery? In my opinion, Yasukuni Shrine is more in the environs as a religious phenomenon.

In case of the Grand Shrine, the question is how many persons pray for the solution of human problems by visiting and worshipping it. Traditionally in shrine circles there has been the idea that Shinto does not pray for private matters, but only for public affairs. Therefore, we are told, that Shinto is not a religion. This idea, however, does not seem to be held in the world of our studies. For we do not think that this is a distinguishing point in determining whether a phenomenon is religion or not. In a broad sense a public matter is also one's own private problem. For example, is it reasonable to say that some one has no religion because he only prays regarding public matters? Shrine Shinto in general of is a very specific type, but it is not conceivable that it is not a religion.

From the viewpoint of the third category, however, when special weight is given to the point of ultimately solving by some means or other the problems of human beings, a certain

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specific something of Japanese Shinto attains special existence as a religion. For Shinto attaches importance to enshrining the kami. It only enshrines. It is not inclined to interfere very much in the problems of human beings. Therefore, in a sense, it looks lightly upon the solution of human problems. In this sense Shinto is a religion with a special character. In the case of the Grand Shrine of Ise, what is the real situation? Suppose eight hundred thousand worshippers in a million have a concern for human problems in some sense or other, then it may be said that it has a rather strong religious character. We suppose that such a problem will occur in regard to Ise.

In the case of Yasukuni such an inclination may be weaker. In this case the real condition is not clarified unless the actual situation is considered in more detail. The ratio would probably be three to seven. Therefore in case of Yasukuni it is necessary to study more regarding its religious character. Many communications received by me concerning my radio speeches and my writings ask why the state does not enshrine the victims who sacrificed their lives for the sake of the country and I understand well the feelings of the bereaved. However, when we think of it theoretically apart from personal feelings, the fact that the manner of enshrinment takes the form of a certain specific religion creates a difficulty; but this is hardly understood by the bereaved. This being the case it runs counter to the Constitution. The problem should be considered fairly and scientifically. How should it be interpreted? The fundamental problem seems to be there. This is my answer to the first question.

In the second place, only a word needs be spoken about the

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relation of this to the Constitution. What I am going to say now is quite irrelevant to the discussion of whether or not the Constitution should be revised in the future. However, this is involved by its nature in the problem of revision of the Constitution. If the Grand Shrine of Ise and Yasukuni Shrine are to be more closely connected with the state, recognizing them as a religion, the principle of the separation of the state and religion should be changed. Putting aside the problem of whether or not revision itself is good, it would be possible technically, if the principle of separation of the state and religion is revised, and freedom of religion left untouched. Examples of this are to be found in Scandinavian countries. In Norway, as well as in Sweden, although Protestantism is the state religion, religious freedom is guaranteed by the Constitution.

When we study how these are compatible with each other, we find that the people are automatically registered as members of the Protestant church as soon as they are born. However, when the people who grow up to the age of discretion, that is, seventeen or eighteen years, if they want to convert to another religion, the only thing they need to do is to report to a competent government office that they have given up the state religion. Simultaneously they become free. In this sense there is freedom of faith in those countries. I think that this is conditional freedom of religion. If also in Japan a certain specific religion and the state are connected with each other, it would be necessary to revise the Constitution following the examples of those countries. If we would accept the idea of the present Constitution without revision, in order to make it reasonable, it would be necessary to wipe out the religious

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factor to the extent Mr. Maeda suggests. If not, a problem would remain unsolved.

Oishi

I would like to ask Dr. Kishimoto a question. You said that the Shinto Directive did not aim at weakening our country. As one of your reasons you mentioned Dr. Bunce's personal character. I too think that this is true, because you told us your impression of his character which you received by direct contact with him. However, I don't think that Dr. Bunce's personal intention relative to weakening Japan has anything to do with the question of whether or not the Directive itself did so. Even if Dr. Bunce had no intention at all of weakening Japan, if the Directive completely abolished the basis for unifying the people, the criticism that the Directive was part of a policy of weakening Japan could be formed regardless of what his personal intentions might have been. What does Mr. Kishimoto think of this? Not about Dr. Bunce's subjective intention, but the objective significance of the Shinto Directive.

Kishimoto

I think that I can answer your by dividing the problem into two parts. From one angle, you are quite right. As Mr. Fukuda said, Dr. Bunce surely had a line from which he could in no way deviate. What I wanted to say, however, was that General Headquarters' policy was not, as is often said in Japan these days, one of attacking Japan from top to bottom. That is what I said. What the supreme policy at the very top was, naturally is a different question.

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From the second angle, I may admit that there is a difference of opinion. I don't think that Japan was weakened because the state and Shinto were separated. I know that there are many such views in Japan and that it may have been weakened at some point, but there are, on the contrary, wholesome phases. This must be considered from various angles. I think this is a problem of six to four or seven to three.

Oishi

Which is six of six to four? The better part?

Kishimoto

It may be different according to each person.

Oishi

Your judgment, please.

Kishimoto

Let me put off my detailed answer until a later opportunity. This could have a great deal of influence. Let me tell you at another time after careful consideration.

Oishi

Another question to Mr. Kishimoto. I raised this question at the last general meeting. When we refer to freedom of religion in relation to the Constitution, we should consider religion as a problem of the pre-constitution period. Mr. Hitotsumatsu happened to ask this question also. In our view as constitution specialists, the problem of what constitutes re-

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ligion in the stage prior to a constitution does not necessarily accord with what is regarded as religion when it is taken up by a constitution in relation to freedom of religion. For example, in the sense that religion is spiritual, the treatment of religion in a constitution and outside a constitution stand on the same foundation. Even though it is so, however, the definition of religion dealt with in the Japanese Constitution should be considered from the standpoint of the Constitution. Then, why do modern constitutions guarantee freedom of religion as personal freedom separated from the state? From this viewpoint, isn't it because this is a personal problem and a matter of indifference to the state? Things of the state belong to the state, things of individuals belong to individuals, this must be the true character of freedom as a fundamental human right. If something has a national character, it cannot be completely separated from the state. And as Mr. Inuma said a little while ago in this regard, the Grand Shrine of Ise, which has been maintained by the Japanese people as the foundation of their unified national spirit, is such a thing. If so, then the true character of the Shrine cannot be conceived apart from the state itself. In other words, if the national character of Ise is essential to its very nature, then it should be viewed from the standpoint of its relationship with the state. In Mr. Kishimoto's view is it impossible to differentiate between religion in the Constitution and religion outside the Constitution?

Kishimoto

I think that it is a question of degree. For example, if it is a matter of degree whether a snowman is a human being

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or not, it may be all right for the Constitution to interpret it as a human being. However, if what all biologists and zoologists regard as a monkey, is interpreted by the Constitution simply as a man, this interpretation would be unreasonable and none would agree to it. I think that this problem involves such a question of degree

Oishi

It doesn't concern the question of whether it is agreeable or not. I am asking about the limitation in dealing with the problem in the state system, that is, to what extent should the state control religion and what should be regarded by the state as religion? Is this possible or impossible?

Kishimoto

I am afraid that I may mistake the point of the question, but a religious juridical person or something like that may be a case in point. In other words, although freedom of religion is thoroughly recognized, when a religious organization possesses property, the state comes into relations with it. I think that this is accepted without contradiction even today when freedom of religion is recognized and the state and religion are separated.

Oishi

Therefore the point is whether from the standpoint of the Constitution religion should be viewed from a different angle than religion conceived apart from the Constitution.

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Kishimoto

When this goes too far, the idea occurs that in the Constitution it may be possible to recognize a monkey as a man. I am afraid that such a problem might arise if the Constitution were to determine what is and is not religion.

Oishi

Therefore, this may be a problem of policy. It may be a problem of policy that the Constitution should or should not recognize something as a religion

Kishimoto

As for me, it may be a problem of (deciding the) principle prior to policy.

Oishi

There may be other questions I only wanted to hear about this point. I'd like to ask another question of Mr. Fukuda. According to your statement a little while ago, I understand that in making the Shinto Directive Japan did not agreed to it voluntarily but accepted it inevitably under the condition of the unconditional surrender. Is that true? Putting this problem aside, it is true that private religious colleges in Japan are given subsidies from the national treasury?

I do not know whether since the Occupation the education administration has maintained the attitude that it does not run counter of the Constitution for religious colleges to receive a state subsidy — on the premise that the religions referred to in the Constitution include all the religions concerned — but

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if such an attitude is maintained, isn't it the same as the question as to whether the Grand Shrine should receive subsidies from the state? If, for example, a state-nature is an essential element of Ise Shrine and, even though there are also religious elements in connection with the Shrine practices, to give subsidies to the Shrine would be the same as giving funds to religious colleges from the standpoint that they carry on general education. I don't think that the social phenomenon exists in a pure form. In regard to shrines, even if something religious does exist mixed up with other elements, the important element is their national character. Therefore, in connection with school administration, it does not raise too many question when religious colleges receive state subsidies, and it is not considered to be a violation of the Constitution; but in the case of Ise Shrine this is much discussed. Of course, nothing was discussed among Japanese under the old constitution, but many discussions have taken place since the termination of the war. In this regard there are many thing which I cannot understand. What does Mr. Fukuda think about this? Does the education administration have a positive policy about the constitutionality of granting subsidies to religious colleges?

Fukuda

I don't think that I answered the question about the Shinto Directive in the sense that you said. The Directive was not issued on the basis of any agreement with Japan. I think that it was done by the Occupation in achieving the purposes of the Occupation policy. The Directive included matters concerning Ise Shrine also. Therefore, it seems to have been a primary

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American policy to regard Japanese shrines as religion. It permitted the shrines to remain as religion if they removed everything militaristic. For this reason there was no question of Japan agreeing or not agreeing to it.

The question of whether or not it is permissible to give subsidies to religious colleges seems also to concern Article 89 of the Constitution. We told General Headquarters, when the Shinto Directive came into effect, that we could do nothing if Article 89 was to be interpreted very strictly and requested them to study it further. We continued to urge them for several years to administer it so as to meet the needs of the situation. For example, in connection with the Shinto Directive they insisted that we should not give subsidies to schools which conducted religious education. This was done very strictly. On the other hand, however, Article 89 includes a provision concerning not only religious institutions and associations but also private education not under the control of public authority.

In regard to private schools strong arguments were presented as to whether or not they belonged to public authority. We told General Headquarters that we need not take the interpretation that private schools did not belong to the public authority referred to in Article 89. Private schools should have been assisted a great deal. We wished to open up a way to assist them. From this viewpoint, we drafted the Private School Law. Therefore, we regarded the Law rather as interpretative legislation because of Article 89 of the Constitution. We did not mean to help religious ceremonies at all, but to help schools which conducted religious education.

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Therefore, we took the position that we could assist private schools in general, including religious schools, despite Article 89. So far as this problem was concerned, I think that our interpretation of Article 89 was correct. In regard to the problem of Ise Shrine, however, I think that it concerns the question of whether or not it is religion by nature, that is, a religious juridical person. Therefore, from the viewpoint of Article 89, a stronger limitation seems to be put on any religious institution or association than on private schools. In other words, no subsidy should be given to them. I think that this is inevitable under present conditions.

Iinuma

Dr. Kishimoto told us a little while ago that when the Shrine System Investigation Board (*Jinja Seido Chōsa Kai*^a) discussed the nature of shrines, they seemed to do so without considering a definition of religion. This, however, did not happen. As may be noted in the stenographic records, they made a careful investigation as to what is religion. However, as you know, nothing varies more than the definition of religion. It varies with each person. Such being the case I think that it would be impossible to adopt a scientific definition of religion directly based on history or the actual life of the people. I still believe today, that Ise Shrine and other shrines are not religion. They worship, offer money, receive amulets, or have shrines make sacred dances. Mr. Maeda said that these were religious acts. However, I question the extent to which we can safely say that these acts are necessarily religious. Is offering money

a. 神社制度調査会

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religious? Some people receive amulets only for the purpose of presenting them to their neighbors as souvenirs. Therefore, I think that it is a very difficult matter to define anything as clearly religious. It is true that some people have Ise Shrine perform a rite in the sacred dancing hall, but under the past system this was strictly distinguished from the state festivals. In other words, the public festivals of Ise Shrine were observed by the Master of Ceremonies of the Festival (*saishu*^a), the chief priest (*daigaji*^b), the vice chief priest (*shōgūji*^c) and the ordinary priests (*negi*^d) appointed by the government office of the Grand Shrine. On the other hand, the offerings, amulets, sacred dances and music in connection with the [worship] of the common people were dealt with by another office in charge of the people's worship (*Jingū Kambe Sho*^e) established in accordance with a different government system. The chief priest and vice chief priest were government officials with the rank of *chokunin*^f, that is, imperial appointees, and *sōnin*^g that is, those appointed with Emperor's approval; while the staff dealing with the people's rites received treatment corresponding to ordinary government officials. Thus, the distinction between the two was clear.

It was suggested that the religious elements such as the giving amulets at Ise Shrine, should be discontinued; but if this were done, unless the state had made up its mind to bear all the expenses for conducting the Shrine, it would have been very difficult to do so. Today, not a cent is spent by the state on the Shrine. Even in the pre-war days only ¥230,000

a. 祭主 b. 大宮司 c. 少宮司 d. 弥宜 e. 神宮神部署 f. 勅任
g. 奏任

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(about \$115,000) was paid out from the national treasury. Almost all the expenses were financed by the gifts of the people. In so far as public order and good manners are not violated, I don't think there is any reason why it is necessary to prohibit the people from receiving amulets or from observing rites by means of offering sacred dances to the Grand Shrine and other shrines.

Note : In regard to the statement on page 315 to the effect that Yasukuni Shrine was forbidden by the General Headquarters to observe any collective enshrinements, it should be noted that in November, 1945, a collective enshrinement was held at Yasukuni Shrine which enshrined all the ward ead who had died prior to September 2, 1945, and had not been enshrined. Because of the destruction of all records this was done without the actual listing names which took place later. The Emperor, many high Japanese military dignitaries, and several officers of the American Occupation were present. Subsequently there were enshrinements in a number of prefectures, but there was an understanding between Yasukuni Shrine and Religions Division, Civil Information and Education Section, that there would be no more enshrinements at Yasukuni during the Occupation. Otherwise the regular festivals proceeded without interruption. It should be obvious to any observer that, had such enshrinements been held, they would have drawn attention to the shrine, and undoubtedly created difficulties among the allies which might have resulted in some drastic action. This does not mean that Religious Division was protecting the shrine. It was not. But, pending a final decision as to its disposition, it seemed best to officials concerned that there should be no further mass enshrinements. W.P.W.

— to be continued —