

Official Documents

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DISPOSITION OF STATE-OWNED LAND CURRENTLY USED BY RELIGIOUS INSTITUTIONS

THE PROBLEM

1. To determine what disposition should be made of State-owned precincts of religious institutions and of national forests in custody of Shinto shrines and Buddhist temples.

FACTS BEARING ON THE PROBLEM

Conditioning Factors

2. The principle of separation of Church and State renders undesirable the continued possession by the Government of title to lands used for religious purposes.

3. Freedom of religion would seem to require that religious institutions be given control over areas necessary to their religious functions and in which they have more possessory interest.

4. Religious institutions should not obtain from the State such land as to enable them to operate in the future regardless of popular support. Particularly, implementation of the directive abolishing governmental sponsorship and support of Shinto (SCAPIN-448) requires that the land grants be so administered as not to constitute an endowment of future Shinto activities.

5. Land grants should be sufficiently liberal so as not to mar the present scenic beauty of shrine and temple compounds.

6. The impending promulgation of the new Constitution, with its restriction in Article LXXXV [present Article 89, ed.] against the appropriation of State properties to religious purposes, demands an early settlement of the problem.

Scope of the Problem

7. All of the 110,000 classified Shinto shrines, some 40,000 Buddhist temples, and 1 Christian church are vitally concerned with the disposition to be made of the State-owned lands which they are presently using for precincts and other purposes. The area of such lands exceeds 200,000 acres, the title to all of which is vested in the State. The interest of religious institutions in the lands is a real one, in some cases founded upon claims dating back more than 1,000 years, in other cases derived from mere possession beginning in more recent times.

8. Shinto shrines number 109,862 in all (not counting many small previously unclassified shrines), with "precincts" totaling 72,280 acres (an average of 0.66 acres each). Half of this land (36,302 acres) is claimed by 206 shrines (average, 176.2 acres). The other 109,656 shrines claim 35,978 acres (average, 0.32). Buddhist temples with "State-owned precincts" number about 40,000 and claim upwards of 20,000 acres.

9. State-owned forests in the custody of shrines and temples (which have historic claims) total 62,965 acres. Of this amount, 140 shrines manage 33,070 acres (average, 195.4). The bulk of this land is entrusted to just a few shrines and temples; Kirishima Shrine has custody of 14,444 acres, Itsukushima Shrine 5,848 acres, and Kōyasan Temple 5,064 acres. Under existing regulations, shrine and temple custodians enjoy 8/10 of the income from forests planted by them, 2/3 from natural forests, and 1/3 from forests planted by the government. Natural forests constitute 70 per cent of the total; forests

planted by the Government, 20 per cent.

Historical Background

10. Shortly after the Meiji Restoration, all fiefs of the Shōgun and daimyō were returned to the State as a step in the movement to terminate feudalism and build up the imperial authority. Compensation was given to all daimyō except those who had supported the Tokugawa in the final struggle against the imperialists.

11. In the years immediately following the Meiji Restoration, Buddhism was under attack by the Government, and Shinto was about to be taken over as a State cult. Although there were some historical differences between the shrine and temple lands, on the one hand, and the fiefs of feudal lords, on the other, the Government decided to treat all shrine and temple lands, except for narrowly defined precincts, as fiefs subject to expropriation and, in 1871, expropriated them, for the most part without compensation. In 1876, it was ruled that even the previously excepted precincts were to be considered public property unless positive proof of private ownership could be demonstrated. The shrines and temples, however, were permitted to continue to use the land rent-free, so far as precincts were concerned.

12. In 1899, the Government shifted its position somewhat when it obtained the passage of two laws which restored to the shrines and temples some of their former rights. One law provided for placing expropriated forest lands under the care and maintenance of the shrines and temples to which they had formerly belonged, with the title remaining in the State. The second law provided that expropriated lands could be returned to shrines and temples in cases wherein the fact of previous ownership could be established.

13. The fact of previous ownership was difficult to prove in view of the holding by successive governments that the

tax exemption extended in feudal days demonstrated that shrine and temple lands had been fiefs and not private property. In 1910, this holding was reversed when the court of administrative litigation ruled that tax exemption was in itself proof of private ownership, that, if the lands had been public or daimyō land tax exemption would have been unnecessary, and that the religious bodies were entitled to regain title.

14. Since shrines were under State control, the question of title was not of fundamental importance to them. In the case of Buddhist temples, the government undertook no action to restore land titles until, in 1939, as an accompaniment of the Religious Bodies Law, the Law Concerning the Disposition of National Properties Leased Free of Charge to Temples was enacted. Under this law, precinct grounds previously taken over by the State but leased gratis might, upon application, be returned free of charge to the temples after an investigation by a committee to be created by the Ministry of Finance. If the application was rejected, temples were to be permitted to buy the lands at half-price.

15. The total number of State-owned temple precincts amounted to 46,216 and involved an area of 24,121 acres (an average of 0.52 acres each). Under the law, there were 33,426 applications for validation of title. Of these 9,638 applicants were successful before the committee suspended action during the war, and 378 others were permitted to purchase lands at half-price.

16. Historically and fundamentally, the shrine land question is similar to that of the Buddhist temples, the primary difference being that shrines were divested of their private character early in the Meiji period and were brought under State sponsorship and control. Another difference is that numerous shrine lands acquired by private gift or purchase since 1868 were turned over to the State to avoid payment of taxes or for other reasons.

Disposition Proposed by Japanese Government

17. The Japanese Government has proposed the following plan for disposition of precinct lands whose titles are presently held by the State but in which religious institutions have a special interest based on usage and custom.

a. Temple, shrine, and church lands shall be treated alike.

b. The provisions of the 1939 law for the disposition of national properties leased free of charge to temples (now suspended) shall be extended not only to provide for action upon applications already made under that law but also to make it possible for shrines, temples, and churches to make new applications for grants.

c. Action to be taken on individual applications shall be decided by a committee created for that specific purpose. Grants made by the committee shall fall within one or more of the following categories:

- (1) Ground used as site for necessary buildings or other structures for shrines, temples, or churches. (Worship halls, Residences of Priests, Chapels, etc.)
- (2) Grounds needed to perform religious rites or celebrations, including parts of a national forest under custody of a shrine or temple in cases where it has been used by the shrine or temple as precincts, if it is deemed necessary to incorporate it into the precincts.
- (3) Approaches.
- (4) Gardens.
- (5) Necessary area to maintain the sacredness of the shrine, temple or church.
- (6) Area directly necessary for the prevention of disasters (e.g., fire breaks).
- (7) Land whose special connection with the shrine or

temple is proved in historical facts or old documents.

(8) Land needed at the present time by the shrine, temple or church for purposes of public welfare.

(9) Trees, bamboos, and other things attached to these lands.

d. Shrines, temples, and churches shall have the right to appeal from decisions of the committee.

e. In cases where applications for grants are rejected, the shrine, temple, or church shall be given the right of purchase at half the current value.

18. The Japanese Government has further proposed that the present system of "forests in custody of shrines and temples" shall be maintained, but that the proportion of income going to the shrine or temple from collection or sale of timber shall be reduced from $\frac{2}{3}$ to $\frac{1}{3}$ of the total in the case of natural forests, such amount to be recognized as compensation for custody. In the case of planted forests, the proportion would not be changed.

CONCLUSIONS

19. The Japanese Government's proposals to restore to religious institutions title to the precincts they occupy provided validity of claim can be established and to use the committee method for dealing with the merits of individual cases are both sound in principle. The Government's plan can therefore be accepted as establishing a basis for dealing with the problem. But, to insure that actual decisions are not at variance with Occupation policy or the larger welfare interests of the Japanese people, several modifications are necessary. The principal flaw in the Government plan is that it would permit State-owned revenue-producing land to remain in the hands of shrines and temples, even though the income going to the religious institutions be termed payment for custody. Another objection is

that the criteria set up to guide the investigating committee are so loose as to give the committee virtually a free hand in dealing with the problem.

20. Land not in the possession of shrines and temples prior to 1868 and not obtained without the expenditure of public funds should not be granted to religious institutions free of charge. The religious institutions should be permitted to purchase such lands as are essential to religious functions.

21. The above distinction is necessary because not all shrines can present equally strong claims to the title of their State-owned precincts. With few exceptions, shrines originating since 1868, when the movement began to establish Shrine Shinto as a State cult, were created for definite political purposes. While for the most part possessing religious characteristics, they have neither historical claims to the land they occupy nor the connection with folk Shinto possessed by shrines of earlier origin.

22. The title to forest lands — which are primarily revenue-producing lands — should remain in the State, and the lands should be withdrawn from the custody of religious institutions.

23. Compensation should be paid to religious institutions for improvements to lands of which they are deprived.

24. One class of shrines of recent origin can lay no legitimate claim to privileges extended religious institutions. Military shrines (Yasukuni Jinja, Gokoku Jinja, Shōkonsha) were created for the purpose of glorifying the military ideal through deification of the soldier dead. Provisions set up to govern the transfer of land to religious institutions should not automatically apply to the military shrines, pending clarification of their future status.

25. It is proposed to instruct the Japanese Government as follows :

a. The title to all public lands presently utilized by religious organizations and necessary for their religious

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functions shall, upon application to the appropriate Japanese Government agency, be given to such organizations free of charge :

- (1) Provided the religious organizations were in possession of the lands prior to 1868 and the State gave no compensation to the religious organizations when it assumed title to the lands, or,
- (2) Provided the lands were obtained by the religious organization from non-governmental sources and without the expenditure of public funds.

b. Whether lands not necessary for the religious functions of religious organizations but which otherwise come within the provisions of paragraph 1 shall be given free of charge shall be determined in accordance with such criteria as may be formulated by the Japanese Government.

c. Title to forest lands in custody of religious organizations shall remain in the State, and the present custodial system shall be terminated. Compensation shall be paid to religious organizations for their custodial interest in such lands in accordance with the provisions of paragraph e. below.

d. Religious organizations shall be permitted to purchase such other lands now in their possession at one-half market value if they are essential to religious functions, but in no case if they are primarily revenue-producing lands, provided that religious organizations may exchange land of equal value in lieu of payment for land which is presently devoted to essential religious purposes.

e. Religious organizations shall be compensated for the reasonable cost of improvements made on lands of which they will be deprived of possession and custody, but only insofar as these improvements have enhanced the value of such lands.

f. The provisions for the transfer to religious institutions of land title shall not apply in the case of military shrines (Yasukuni Jinja, Gokoku Jinja, Shōkonsha).