

# THE CONSTITUTION INVESTIGATION COUNCIL

(The 38th General Meeting, December 2, 1958)

In the following we bring in translation part of the session of the Constitution Investigation Council held on December 2, 1958. The central figure is the late Dr. Kishimoto, who as a scholar of religious science had been asked to testify before the Committee.

*Chairman Takayanagi* May I now call upon Dr. Kishimoto, whom I introduced to you a little while ago.

*Kishimoto* I am asked my view as to the problems risen between the new Constitution and Japanese religions as a result of the implementation of the Constitution. I am a complete amateur in the field of law, but I am going to say something from the standpoint of a scholar of the science of religion.

I think it is necessary to begin with a consideration of the state of religious problems at the time the new Constitution was enacted. Before or after the enactment of the new Constitution, the religious leaders concerned paid amazingly increasing attention to the guarantee of religious freedom. This was seen not only among those thinkers who advocated the fundamental human rights in general. There was a very ardent desire, especially among people related to the new religions created before or after the Meiji Era and in Christian circles, to have religious freedom guaranteed by all means in connection with the fundamental human rights. This is a problem concerning the first part of Article 20 of the Constitution, "Freedom of religion is guaranteed to all." In this connection, it should be considered

first of all why one part of the people had such a very unusual interest in this problem. In the old Constitution also, to say the truth, complete religious freedom was guaranteed by the letter of the law. In Article 28, the old Constitution reads, "Japanese subjects shall, within limits not prejudicial to peace and order, and not antagonistic to their duties as subjects, enjoy freedom of religious belief." The problem here lies in the fact that this was not literally observed. For this reason, such a request was made concerning the new Constitution. A consideration of a few points where religious freedom was not respected under the old Constitution will throw some light on the relationship between the present Constitution and religion. There may be many more, but I think that we can indicate roughly three points.

In the first place, under the old Constitution, many new religions arose in Japan. These new religions, however, underwent continuous prohibition and oppression. According to the history of religion since the Meiji Era, there were so many prohibitions and oppressions that the Japanese government seemed to have adopted the policy of not allowing new religions to grow. The sufferers naturally were the religions which had been founded recently and were growing in Japan at that time and Christianity which had been introduced to this country at the same time. There were especially some groups of Sectarian Shinto which had undergone painful experiences since their foundation in the latter half of the Tokugawa Shogunate. Tenri-kyō would be a good example here. Also, Ōmoto-kyō and Hitonomichi-kyōdan were sufferers. In many cases, they were charged with the crime of *lèse majesté*. Christianity also suffered from various oppressions. That this should not happen again was the enthusiastic demand

arising from religious circles.

In the second place, there was a problem of religious freedom in connection with State Shinto. Under the Meiji Constitution, religious freedom being guaranteed on the one hand, shrines were put under state control on the other. Shrines were bound to the State. Concretely speaking, the State supervised and helped the main shrines economically, appointment and dismissal of shrine priests were influenced by government opinion, and obeisance to shrines was made a duty of the people in general. Especially this last point was considered to be against the idea of religious freedom. Among the people, there were some who did not want to visit shrines. When shrine worship became a duty for the whole population difficulties were bound to arise. For instance, when a primary school teacher took pupils to a shrine and a pupil of a Christian family was in the group, trouble involving religious freedom might occur.

Here one may ask why only Shrine Shinto could be the state religion although religious freedom was guaranteed for the people in accordance with Article 28 of the old Constitution. If Shrine Shinto was regarded a religion, a very difficult question would arise. With regard to this matter, the Japanese government gave an interpretation. They could not easily reach a conclusion as to whether or not Shrine Shinto was a religion because there were various theories and discussions. Therefore, as a rule they did not deal with it as a religion in the field of administration. This was said to be the interpretation at that time. According to this rule, State Shinto was given a treatment different from that of other religions. This was the second problem which was raised when this discrimination became in-

volved in the problem of religious freedom.

In the third place, there was the problem of the fundamental attitude of the State toward religion. The principle at the time of the old Constitution seemed to be that the State should lead religions. Religious organizations were not only always supervised concerning their management by the government but were also utilized with more or less pressure when major national policies were to be carried out. Since this tendency was very strong, some religious organizations felt troubled and resisted while others took a flattering attitude toward the State. As religious organizations appeared which were subservient to the government, thoughtful religious leaders knit their brows. This evil became stronger in the last years of the old Constitution, especially during the war. This went so far, for example, that unless the Imperial Rescript on Education was recited first at church, no Sunday service was permitted. At last the defeat in the war led to the enactment of a new Constitution which would truly guarantee religious freedom.

In order to make a constitution which could truly protect religious freedom, it was not enough to only emphasize religious freedom. In addition to religious freedom, distinct separation of state and religion was required. The present Constitution prescribes both.

This tendency had, in fact, appeared already earlier. After the termination of the war, several important directives were issued by the General Headquarters of the Occupation. One of them was the Shinto Directive issued in December, 1945. This directive contained some information about the actual circumstances. Prior to the Shinto Directive, they had already established

the principle to abolish or improve all state organs which had something to do with conduct provocative of general war. The General Headquarters believed that State Shinto was strongly related to provocation to war. The aim of the Shinto Directive was that if State Shinto was a simple state organ similar to the ordinary secular state organs, it should be abolished, but if State Shinto was a religion called Shinto, it should not be destroyed because such an attempt would have involved the problem of religious freedom and the fundamental human rights of the nation. This was the basic idea of the directive. Therefore, if Shinto could be separated from the State to become Shrine Shinto as a religion, it was to be allowed to continue as it had been. This seems to have been the General Headquarters' logic. Consequently, Shinto decided to continue as a religion separated from the State in the form of today's Shrine Shinto. I think that here the idea of separating state and religion is clearly seen. The same spirit is also found in the new Constitution. When we read the new Constitution, we find that the separation of state and religion is very carefully emphasized. Article 20 of the Constitution, the part following that which I read a little while ago, says, "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 feeling that one does not like to be compelled to worship at a shrine seems to be reflected here. I will come back to this matter later. Next, concerning school education the Constitution says, "The State and its organs shall refrain from religious education or any other religious activity." This is a very distinct statement.

There are very many modern countries where religious freedom is guaranteed. Countries where state and religion are distinctly separated, however, seem not to be so many. I don't know it well, because I am an outsider. These two are different problems. There are countries which have a state religion along with guaranteeing religious freedom. England is an example. Also all Scandinavian countries belong to this group. In this sense, the Japanese Constitution has two principles, namely, religious freedom and separation of state and religion. This is a very important point when we consider the problem of the Constitution and religion.

Now, let us see how this new Constitution has been applied in postwar Japan. Taking a wide view of things, I think that here the spirit of the Constitution has been followed obediently. The government entirely abandoned the standpoint of supervisor of religions taken before. It almost ceased to touch religion. There is a small section called Religious Affairs Section in the Ministry of Education. This section is embarrassed because of the scantiness of work. In other words, religions are left free from the standpoint of the government. From the historical viewpoint, this can be of great help to religions. That a religious organization enters into relation either with authority or with wealth is always taboo from the viewpoint of the proper spirit of religions. When a religious organization comes in connection with authority or wealth, its management becomes easy but its religious spirit is usually weakened. I think, therefore, that as a result of being left free, even established religions with a long history and a large organization, if they have no real activity, become remarkably weak. On

the contrary, those with a lively strength largely develop. Generally speaking, this would be very good but there are still several problems. From among these I should like to take up three problems for your information.

The first point is the fact that many new religions originated under the new Constitution. Because governmental supervision and oppression were removed and all hindrances to the development of new religions had disappeared, new religions sprang up like mushrooms after the rain. Under the old Constitution, if a new religion tried to raise its head, it could not do so because of governmental oppression. Therefore, new religions borrowed roofs of various old ones pretending to be one of their branches. There was a sect named Shinto-Honkyoku which had many such so-called branches. There were also branches pretending to belong to the Nichiren or Shingon sects. Today they are sects in their own right, entirely independent from another sect. According to statistics, there are about six hundred new religions. It is, indeed, an astonishingly great number. Among them there are excellent and refined religions but also not a few suspicious ones. There are some that are too superstitious to deserve the name of religion, others that are harmful to society because of their magical practices. Religions of this type cause major social problems. In other words, there is more or less a tendency that religious freedom becomes a freedom to establish a new religion without any control. A law called Religious Juridical Persons Law was enacted giving special favors to religious organizations. They received various privileges including that of tax exemption. There are about 180,000 religious juridical persons at present. Among them there are,

of course, many fine organizations but also some where it is doubtful whether they are true religious organizations or not. It may be somewhat questionable to leave them free. I don't think, however, that it is so grave a question as some persons believe. A natural selection will certainly result in the survival of the best ones. As a rule, however, there should be no interference from government authority. I think that one method of selection is to see whether they enjoy the estimation of the people and contribute to the enhancement of the religious culture of the nation. If nobody visits a superstitious popular shrine or consults fortunetellers, such shrines would soon cease to exist and fortunetellers would disappear from the streets. However, when we look at today's Japan, we find that the situation is not necessarily satisfactory. Newspapers and magazines often report the world's destructive criticisms of religions but rarely a constructive one. This is because modern Japan is low in religious culture and lacks the ability of making constructive criticism. There are many ideas about religion, but we may safely say that it is of the nature of religion to give man a spiritual ideal. Few Japanese in general, however, know the history of the old religions. Few persons also know what modern religions are aiming at. Doesn't this show the weakness of all criticisms? If culture is generally hightened, it might become different. Japanese religious organizations including Buddhism are weak with regard to the function of hightening the religious culture of the nation or believers. In this respect they differ from the religious organizations in the Western countries. Institutions like Sunday schools are not fully developed in this country. The society is not so organized as to



highten Japanese religious culture by these institutions. Japanese school education is complete, the duty of social education being mainly entrusted to the schools. In regard to whether the schools could be of any help here, there appears the second problem relating to the Constitution.

Because of the principle of separation of state and religion in the Constitution, Japanese school education, especially public school education, can scarcely touch religion. In other words, the problem here is a problem between school education and religion in relation to be Constitution. As I mentioned already, the Constitution states, "The State and its organs shall refrain from religious education or any other religious activity." Public institutions like primary schools, junior high schools and senior high schools which are supported by people's taxes, fall under "the State and its organs" referred to here. Therefore they cannot do any religious activity. This is natural on one side. When a doctrine of a certain specific sect is to be taught in a public school, it concerns the problem of religious freedom. I understand that religion gives an ultimate solution to human problems as a fundamental idea. Existence of many religions means that each of them is offering a different solution. A religion, laying too much stress on its own method, often comes to insist that only its own method is the unique solution. This tendency manifests itself as an attitude of religious intolerance. Therefore, to admit the teaching of the doctrine of a certain specific sect in a school carried on by the people's tax money means that a certain specific interpretation and solution is exclusively authorized by the State. This cannot be. It is natural for a public school to be forbidden to conduct

religious education according to a certain religion or sect. Nevertheless, the idea that one specific religion should not be taught is quite different from the idea that at school teachers and pupils should not try to acquire a wide knowledge about various religions. The text of the Constitution I have read before means that religious education based on a certain religion or sect should be prohibited, although the wording expresses only prohibition of religious education in general. The latter part of the article of the Constitution states, "The State and its organs shall refrain from religious education or any other religious activity." This may look like nothing special to outsiders, but in reality religious education is greatly different from sectarian education. What the General Headquarters was thinking of was the prohibition of "sectarian education" which in the text of the Constitution became "religious education." This expression, "religious education," was taken at its face value with the result that a tendency appeared to develop an education which purposely ignored religion and insisted on the exclusion of religious discussions at any public school. Teachers tended to fear religion to the detriment of spiritual education at public schools. I think that here lies one of major reasons why the level of the religious education has not become better among the postwar Japanese. The Ministry of Education also seemed soon to become aware of this and tried to give an interpretation as wide as possible with regard to the Fundamental Law of Education which was enacted half a year after the Constitution. Article 9 of this law, with special reference to the problem of religious education, states, "A tolerant attitude toward religion and its status in social life shall be respected

in education." Furthermore, it says, "Schools established by the State or the local public entities shall not conduct religious education for the benefit of a certain specific religion and other religious activities." It purposely adds the words, "for the benefit of a certain specific religion," after the words, "religious education." This implies that a general religious education not for the benefit of a certain specific religion is not forbidden by the law. This, however, is not clear unless it is explained. As the words, "religious education," are contained in the Constitution, it is felt that their more comprehensive meaning is stronger and that therefore to touch religion is taboo. If by any chance the Constitution should be revised, I should like to ask to take this point into consideration. From the standpoint of scholars of the science of religion, the words, "religious education," should be replaced by the words, "sectarian education." I think that even without that part there should be no difficulty. As only the sentence, "The State and its organs shall refrain from any religious activity," can sufficiently exclude sectarian education, I think that these words may be dropped, but if they are not to be dropped they should be replaced by the words, "sectarian education." If not, it is feared that all spiritual education through religion should become taboo.

The last and third problem is concerning Shrine Shinto. I referred to this problem when speaking about the situation prior to the enactment of the new Constitution. Under the old Constitution, Shrine Shinto was directly connected with the State but was separated from the State to become the present Shrine Shinto. The Shrine Association (*Jinja Honchō*) is an organization of Shinto shrines. Not all shrines necessarily

belong to it, but 80,000 shrines are organized in this way. They had, however, a history connecting them with the State in the past so that there is still a hope that shrines should again try to be tied up with the State. Such movements are taking place here and there. This seems to be another problem which the new Constitution has produced. The most remarkable problem is how the Grand Shrine of Ise and Yasukuni Shrine should be treated, i.e., whether or not they could be connected with the State. Shortage of time preventing me to present in detail the various opinions concerning this problem, I should like to consider the problem only in connection with the Constitution.

It is true that Shrine Shinto is different in character from Buddhism, Christianity or Sectarian Shinto including Tenri-kyō. Difference in character means that Christianity or Buddhism, for example, were created by one person, that is, they have a founder. They are religious groups of people who gradually gathered around the founder's personality. Religious science often calls them religions with a founder. On the contrary, Shinto is a religion which sprung up spontaneously among the Japanese people. This kind of religion is called natural religion. It is relatively rare to find this type of religion among people with a highly developed culture. The ultimate reason for this is the insular character of Japan. In this our country we have developed a culture under the same geographical condition since the primitive era. Therefore, the primitive aspect of the religion has remained from ancient times to the present, at least as viewed from outside. In other words, the mountains, rocks and seas which ancient people worshipped have remained as

they were, and with them the faith of the people has remained. The only change was one of graduation, i.e., as the culture of the people became refined, the primitive Japanese religion also adopted some of this refinement. Therefore, although Shinto has many primitive aspects, they have become refined in the course of the centuries. This accounts for the fact that Shinto is a religion quite different in its character from the other religions in Japan.

Nevertheless, it is undeniable that it is a religion. More than hundred different definitions of religion have been given which could be roughly classified into three groups. The first group defines religion as the relationship between god and man. The second group stresses the sacredness of human emotions, while for the third group religion is a means to solve problems of life. Taking these various definitions into consideration and viewing Shinto from various angles, it seems most appropriate to regard Shinto as a religion. If it were not a religion, the social group called Shrine Shinto should be any one of a moral group, a ceremonial group, a culture group, a recreational group or a professional group. But all these do not fully express its nature. Therefore, to regard it as a religious organization seems to be most appropriate.

Now let me consider the problem tentatively on the basis that Shinto is a religion. If it is admitted to be a religion, the question is relatively clear. The new Constitution of Japan lays down the principles of freedom of religion and of separation of State and religion. If any religion were linked with the State, it would get involved here. Therefore, unless the Constitution is revised, if Shinto as a religion were linked with the

State again to become State Shinto, it would violate the Constitution.

The next problem would be whether it is necessary to connect Shrine Shinto with the State again at the cost of revising the principle of the Constitution, or whether it is more important to revise the Constitution in order to recognize State Shinto, or to respect the spirit of the current Constitution which stresses religious freedom and insists upon the separation of State and religion. The tendency of the time which is gradually developing should be taken into consideration here. In culturally more advanced countries the tendency certainly is to separate State and religion. Therefore, concerning Shrine Shinto, it should be fully recognized as a religion. I think that there is some way to recognize the special character of Shinto without touching the provisions of the Constitution; for it is desirable to respect the spirit of the Constitution, that is, the freedom of religion and the separation of State and religion.

The cultural condition of Japan, however, is different from that of the West from a general viewpoint. Especially with regard to religion, it is quite different from Western culture with the Christian tradition as the center. In Japan, Shinto and Buddhism are predominant, and besides them, there is a host of other religions. Understanding religion in the Western way is not sufficient to deal with the Japanese situation satisfactorily.

*Takayanagi* Thank you. Are there any questions?

*Vice Chairman Yamazaki* As you know, the Grand Shrine of Ise falls under the concept of religion about which the

Constitution speaks in Article 20, so that the Religious Juridical Persons Law is applicable to it under the current legal system. At present, it is under the control of the Governor of Mie Prefecture where the Shrine is located. Now, with regard to the Grand Shrine of Ise there are people who find it strange in the light of racial sentiment as well as the long historical tradition of our country that the Shrine is under the control of the governor of a prefecture. Therefore, the opinion has become strong to divide the Shrine into two parts, a First Shrine containing the object of worship which should be excluded from the concept of religion, and a Second Shrine where religious acts are performed, to which the Religious Juridical Persons Law should be applicable. As Prof. Kishimoto just said, the Constitution would be better left as it is and the so-called State Shinto regulated by some other law. I should like to ask him whether such a method is possible in the case of the Grand Shrine of Ise. Moreover, as was said already, it is quite inconceivable for us that the Grand Shrine of Ise is under the control of the Mie Prefectural Governor. I should like to ask his opinion also about this point. Concerning the definition of religion, Prof. Kishimoto gave us three patterns, and I think I heard that the Grand Shrine of Ise falls under these three. In this regard, I should like to have some more information.

*Kishimoto* I think that we can safely call the Grand Shrine of Ise a special religion called Shrine Shinto, a natural religion which is different from Buddhism and Christianity. The fact that it is a religion in a specific form must be recognized first of all. This is difficult because of the vague tendency to under-

stand the word, religion, in the same way as in the case of Christianity. I know that here some questions remain unsolved.

There is one problem about *Yata-no-kagami* or the sacred mirror which is enshrined as the object of worship in the Grand Shrine of Ise. This is one of the emblems of the succession to the Imperial throne and should not be in the hand of the Grand Shrine of Ise which was separated from the State and became a non-official shrine under the new Constitution. From the legal standpoint, it could be sold or abandoned if the representatives of the Shrine agree. This, of course, is considered preposterous, and therefore the movement to connect the Shrine with the State has become very strong. The problem here arises from the simple thought that the Ise Shrine is one unit. In fact, however, it is more complicated. For example, the relation between the Japanese people and the Grand Shrine of Ise is nothing but a religion from the standpoint of the science of religion. If it were possible to make a research about all the visitors to the Shrine with questionnaires, it would be undeniably found that almost all of them fit into the definition of religious believers. Therefore, unless the Constitution is revised, the Shrine cannot be connected with the State. However, if the problem is limited to the object of worship instead of extending it to the Shrine as a whole, further consideration may find another solution. The object of worship should not be the property of the Grand Shrine of Ise in a "private" capacity. I think that could be transferred to the Imperial household, with the Grand Shrine of Ise borrowing and controlling it. Under such conditions, there would be no fear that only the persons of the Shrine might deal with it one-sidedly. However, the function of



the Grand Shrine of Ise with regard to the people can be conceived only as that of a religion. Here lies the fundamental problem where Shrine Shinto begins to be different from other religions.

*Shūten Ōishi*: I, too, think that it was by the Shinto Directive of December 15, 1945, that shrines were legally disconnected from the State. Under the old Constitution, the scholars of constitutional law did not regard shrines as a religion from the legal viewpoint. Religious leaders and others except scholars of constitutional law had disputes about whether or not shrines were religious institutions, and seemed not to be able to find a definite answer. No scholars of constitutional law, however, recognized shrines as religious institutions although religious freedom was recognized as a constitutional right of the people under the old Constitution. After the change of the Constitution, it was said that shrines were without doubt religious. Even among the scholars of constitutional law this viewpoint can be seen now. In my opinion, this was not decided voluntarily by the Japanese but had been imposed on them by the Shinto Directive issued by the General Headquarters. In the Constitution, however, it is not important whether or not shrines are, in an abstract sense, religious institutions, but whether or not shrines are included in the concept of religion referred to in the Constitution. Whether or not they are a religion apart from the Constitution is, indeed, a question, but I attach more importance to whether or not shrines in our country are included in the concept of religion referred to in the Constitution. We think that the Grand Shrine of Ise and Yasukuni Shrine are

essentially related to the spiritual foundation of our country. Therefore, this does not concern the problem whether or not apart from the State *kami* exists as an absolute being, in whom man can put his trust. The true character of religion has nothing to do with a state. On the contrary, the Grand Shrine of Ise or Yasukuni Shrine cannot exist apart from the country of Japan. Because the state-nature of those shrines is essential, we don't think that they are included in the institutions of religion referred to in the Constitution. Although under the old Constitution many discussions took place in the world of learning, shrines were excluded from religions in general by disposition of the State. My first question now is what does Prof. Kishimoto think was the reason that shrines were treated apart from the religious institutions in general despite the fact that religious freedom was guaranteed under the old Constitution.

The second point is that while in the cities of Japan the living basis is frequently changing, in the countryside it is often observed even today that a Buddhist has a household Shinto shrine as well as a household Buddhist altar. Nobody feels any inconsistency here. If for one's personal peace of mind, one had need of an absolute *kami*, one *kami* would be sufficient. However, in old farm villages in Japan there are many cases in which a small Shinto shrine and a small Buddhist altar are kept at the same time in one house. My second question concerns the origin of this situation.

Another problem is that of the spiritual bond seen in every country which unifies the people as a common society. In the Soviet Union Marxism is such a bond whether it is a religion or not. The shrines hitherto protected by the Japanese govern-

ment, possessed such a character of a bond spiritually uniting the nation in such a way that the State could not but have relations with them. Does Prof. Kishimoto think that the state-nature of shrines, whatever the Constitution may stipulate, remains in the same way even today? A rough explanation will do.

*Kishimoto* In regard to the point that in the age of the Meiji Constitution scholars of constitutional law did not regard shrines as a religion, I think that this may be the very point of parting between the scholars of constitutional law and those of the science of religion. Let us assume that we have here a mysterious living being and the question is raised as to how it should be dealt with legally. Suppose the question is raised whether a thing is a monkey or a man. In this case, the fundamental decision whether it is a monkey or a man should be made by a biologist but not by a scholar of constitutional law. When a biologist answers that it is a man, all people should deal with it as a man. I think that the problem whether or not Shrine Shinto is a religion, too, is a matter which scholars of science of religion should decide but not scholars of constitutional law. Respect of the opinion of scholars of the science of religion in this case would be true scholarship. This may answer your first question. Scholars of constitutional law may think in a different way, but this is how we understand the problem.

The second question concerns the reason why Shrine Shinto could become State Shinto in the Meiji era. This problem touches the ambiguous character of Shinto and the situation of

the State at that time. The most important factor, however, is that the Meiji Constitution emphasized the freedom of religion but not the separation of State and religion. I am a layman in law questions, but I hear that the constitutions of Norway and Sweden, for example, guarantee the freedom of religion but at the same time stipulate that the Reformed Lutheran Church is the State religion. Every national of these countries is presumed to belong to this Church unless he declares his contrary opinion. Because of the religious freedom, each national can separate himself from the Church if he makes a declaration to this effect. It is in this sense that religious freedom is guaranteed. The Meiji Constitution was similar. Therefore, it seems to me not to be necessarily inconsistent that the Meiji Constitution guaranteed freedom of religion on the one hand and admitted a State religion on the other, regardless of the problem whether Shinto was a religion or not. On the contrary, the new Constitution strongly states the separation of State and religion. Therefore, in order to link Shrine Shinto to the State, it should definitely be stated that Shrine Shinto is not a religion, or the Constitution must be revised. Logically speaking, only one way is open. I do not insist upon the revision of the Constitution, because I am not a scholar of constitutional law. I only think that if Shrine Shinto were to be linked with the State, the revision of the Constitution should be the first problem to be solved.

Then there is the problem of double or triple faiths held by one person. The combinations are of many types, the most common one being to have the wedding ceremony performed by a Shinto priest, while funerals are handled by Buddhists. This

may be regarded as characteristic of Japanese religions. Christianity, Islam, Judaism and others strongly emphasize that their own religion should be exclusively believed in. On the contrary, Oriental religions including Buddhism are quite tolerant in this regard. Therefore, many things are fused into one system. Helped by the Japanese long tradition based upon her cultural historic circumstances, a strange situation seems to have been developed. This does not concern the problem of the Constitution, but because the question was raised . . . .

*Ōishi* As for us, the provisions concerning religion in the Constitution of Japan clearly take shrines into consideration. According to the view of Mr. Woodard, Director of the International Institute for the Study of Religions, the Occupation authorities did not aim at destroying shrines but made efforts to find a way to keep shrines alive. For this purpose, they made the Japanese deal with shrines in the same way as with other religions. Otherwise, shrines would have been thoroughly destroyed as the spiritual foundation of the war had been in the shrines. It was intended to have shrines survive if they were a religion. From the Japanese viewpoint, however, the occupation policy seemed to intend to break the spiritual foundation which had unified the Japanese people besides destroying the country economically. The policy which tried to separate the shrines from the State in the name of religious freedom under the Constitution seemed to us to demonstrate the powerful intention to weaken Japan. Concerning the question whether shrines are a religion or not, Mr. Woodard said that to regard shrines as a religion was a means to make them survive. These provisions are aiming

at cutting off the spiritual bond uniting the Japanese people. The Occupation authorities seemed to regard shrines as the spiritual source of the war. We think that the problems whether the cause driving Japan to war was good or not, and whether or not shrines should be respected even after the defeat as the spiritual bond uniting the nation seem very confused. I should be glad to hear Prof. Kishimoto's critical opinion on this matter.

*Kishimoto* I think that I know a little about those circumstances. There were various complicated conditions. Among the important things I remember well still now is that the Occupation authorities discussed much about the Grand Shrine of Ise, and the question was focussed on the Japanese opinion of this Shrine. I didn't know about the highest policy carried on by the General Headquarters. I knew well, however, the ideas of the persons who were actually in charge of the religious policy. They intended seriously to protect freedom of religion as a fundamental human right that had nothing to do with the war between the two countries. They thought that there were two ways of thinking, one of which should have been taken by Japan. One way was to regard Shrine Shinto as a religion. Another idea understandable to Westerners was that the Grand Shrine of Ise was a mausoleum of the Imperial ancestors. However, if it were a genuine mausoleum, services should be held there. If it takes part in any religious activity though it calls itself a mausoleum, it at once becomes a religion. After clarifying the character of the Shrine, it was to remain in a suitable form. There was at that time on the Japanese side a committee assisting the Shrine

Bureau (*Jingi-in*). This committee asked me to make the Shrine survive by all means as a mausoleum. I made every effort to interpret the meaning of the Shrine along this line. Before long, however, the Japanese committee informed me to the effect that after an examination in detail the Shrine was financially supported mainly through the revenue from religious activity and that I therefore should change my line of interpretation and make the Shrine a religion. Such being the circumstances, it is not necessarily true that the Shrine was made a religion through one-sided oppression. Of course, if they had insisted on maintaining the Shrine as a State organ, they would have faced destruction. Anyway, through the initiative of the Japanese shrines were declared a religion. As we, scholars of religious science of religion, had thought so right from the beginning, we made no objections.

*Hirose* I should like to ask Prof. Kishimoto a question. Do you think that it is proper to say that shrines are a religion and that as such they are a specific feature of Japan. He said that Japanese shrines are something special. Does this mean that Japanese shrines have special characteristics?

*Kishimoto* I don't understand what you mean with the expression, "special feature of Japan."

*Hirose* In my view, Japanese shrines are a special feature of this country. All the shrines including the Grand Shrine of Ise, Yasukuni Shrine and village shrines are a special Japanese feature. I think that Japan and shrines are one and the same.

What I should like to say is that Japan has a life. The life of Japan is in the shrines. Here lies the problem. It is certainly good that religion is free under the Constitution. Furthermore, as you have mentioned, the Constitution of Japan recognizes the separation of religion from the State. As for me the question comes to this. On the one hand, I believe that shrines are a religion. On the other hand, however, I also believe that shrines are the life of the Japanese State. I, therefore, think that it is unreasonable to separate in the provisions of the Constitution the shrines, which are a religion, from the State. I should like to hear your opinion about this.

*Kishimoto* As I have many chances to see various religions, I recognize that Shrine Shinto, if compared with other religions, is a very special religion. The eighty thousand shrines including the Grand Shrine of Ise play a significant role as a symbol for communities or the race. However, even if the majority of the Japanese, for example, seventy or eight percent of them, consider shrines in this way, it must also be admitted that there are many Japanese who do not think so. In fact, among Buddhists or Christians there are many people who are satisfied with only Buddhism or Christianity but want no more shrines. In view of the sovereignty resting with the people, I wonder if this can be ignored. Therefore, even though Shrine Shinto exists, I doubt if we are allowed to set it up as the State religion. I have often said to people in shrine circles that it is fine for the Shintoists to regard Shinto as one of the symbols of the country and that it is quite justifiable to promote this idea further. But I think that this is something very different



from a connection between Shinto and the State in administration.

The other problem, namely, whether the Constitution should be revised in order to link Shinto to the State is more distinct. As I have said, I think that it is a matter of opinion whether religion should be administratively linked to the State or not. In early stages of culture, State authority seems to have had great influence on religion but with the development of culture the tendency appears to have the State not touch directly the spiritual element. The freedom of religion is a manifestation of this tendency. For modern countries, this seems to be quite natural. Therefore, as far as this point is concerned, the Constitution should be left as it is. I think that, even under the current Constitution, there is a way for Shinto to stay alive.

*Hirose* I think that the State and Shinto are closely related, but I know that some people do not like this. Looking at Japan, however, with its long history of one to two thousand years, we find that shrines play an important role in the life of the country. Through them flows the stream of life proper to Japan, and even Buddhists and Christians feel attracted to them. Therefore, it is unreasonable for the Constitution to separate them from the country. For the Constitution it would have been sufficient to stipulate that religion is free. Do you mean that shrines and the country should be separated even when unreasonable, and that this is more proper for Japan as a modern country?

*Kishimoto* I did not say, "even when unreasonable." You said

this.

*Hirose* Don't you recognize that a separation is unreasonable?

*Kishimoto* I do not want to comment on this.

*Hirose* I think that the shrines belong to the life of Japan. Therefore, I must conclude that it is unreasonable for the Constitution to separate shrines from the State.

*Kishimoto* As I have seen many persons of your opinion, I understand your idea very well. Therefore, I will keep it in mind.

*Hirose* You said that it is better to separate shrines and the State in order to make Japan a modern country. I'd like to ask you again about this point.

*Kishimoto* Because Japan has made great progress as a modern country, I think that so far as this point of religion is concerned, the Constitution should remain as it is.

*Hirose* I am very much dissatisfied with the Constitution. We endeavor to make Japan a modern country, but I don't think it desirable to do so at the cost of neglecting the life of Japan. For a country like Japan there are many methods to become a modern country. I think it is a very serious problem to separate the shrines from the life of the country.

*Tagami* I was of the opinion that the problem of the Grand Shrine of Ise could be solved by turning the shrine into a kind of mausoleum related to ancestor worship, but after Prof. Kishimoto's explanation I understand now that there are many difficulties involved. With regard to religious education, too, I am of the same opinion as Prof. Kishimoto, namely, that partiality favoring a certain specific sect or denomination, or, for example, Christian missionary activity, should not be admitted. To provide objective courses on religion is something quite different. If this were said to be unconstitutional, I should like to insist as a scholar of constitutional law that this interpretation is not unconstitutional. Here, too, I agree with Prof. Kishimoto.

However, I have two questions. One of them regards the definition of religion. You explained briefly three features of religion. What I am thinking is that religious organizations according to the Religious Juridical Persons Law are granted the privilege of tax exemption. This privilege is frequently misused. Even organizations which with our common sense we cannot recognize as religious can enjoy this privilege if they are registered as religious juridical persons. In other words, there is the fear that the law is misused. I am afraid, however, that it is legally difficult to do anything about this. There may be many doubtful cases, but if it were possible to exclude all organizations which are undoubtedly not religious, the evil would be removed to some extent and the present situation would become much better. Do you mean that it is difficult objectively to distinguish whether an organization is religious or not? On this point I should like to have some

further explanation.

Secondly, according to Article 89 of the Constitution, no financial aid can be given to a religious organization by the State. This is because the current Constitution stipulates the separation of State and religion. Together with Prof. Kishimoto I think that the principle of the current Constitution is all right. I doubt, however, whether the State and religion should be confused or unified to disturb the religious freedom unless it is regulated as strictly as in the provision of Article 89. Therefore, my second problem is whether the principle of separation of government and religion would be lost if the provision of Article 89 were abolished.

*Kishimoto* Your first question was concerning a method for distinguishing religious and non-religious organizations. Under the Religious Juridical Persons Law 180,000 organizations became religious juridical persons only by means of "report and subsequent authentication." Among these, there may be some which aim at availing themselves of tax exemption only. Is it possible to draw a line in such a way that those that fall under the line should not be recognized as religions? Is it possible to draw a line on the basis that the teaching or the activity is too outmoded or too injurious to the public interest? I have thought of this in various ways as a theoretical problem. However, as soon as a line is drawn, evils come out at the same time. Like a medicine producing many side-effects, it causes harm in other ways. I cannot find any good idea here. Though it looks like a roundabout way, it would be rather a short cut after all to elevate the people's religious culture. Here,

the religious education at school becomes very important. While the evil is recognized, we have nothing to hold up against it. At least as for me . . . .

*Tagami* How about State aids forbidden in Article 89 ?

*Kishimoto* Although the Constitution is quite clear in this respect, I feel that it makes too strict a separation. If the separation were less strict, it might be easier to find a way.

*Tagami* I understand this very well, but in my opinion, if monetary gifts or financial aid should have no strings attached and should be without any demands for cooperation with the government . . . .

*Kishimoto* By the way, Japanese religions with their long history are, to speak frankly, inclined to be at the service of the government. Although there are some exceptions, they are waiting for the government's nod. A religion, however, should not be like this. It should concern itself with saving people. Growth of a religious body is of only secondary importance. Often, however, more importance is attached to this secondary question. From this point of view, the new Constitution seems to be too strict. However, a religion that develops even under such conditions would be a true religion.

*Tagami* This is a small argument, but in a locality, a school-house of a public school or a public hall under the control

of a city, a town or a village cannot be used for religious practice. The law seems to go thus far. If so, not only receiving money is forbidden but also the use of public facilities. Therefore, a religion cannot but preach in the open air, a field or on a street. This may differ according to the place, but this seems to be too strict. This is but a small point. I understand the outline of what is in your mind. Thank you.

*Kishimoto* I have often heard the same thing. I think, too, that it is going too far. Even under the current Constitution and with the Fundamental Law of Education which states that religious education may not be based on a certain specific religion, such an overdoing has no theoretical foundation. It should be given a broader and freer interpretation on the basis of the idea that religious education not based upon a certain specific religion is different from sectarian education.

*Royama* Your interpretation of the problem of Article 20 seems to be taking into consideration the relationship between the fundamental rights and public order. In regard to this problem, as you mentioned, there is no other way but to elevate religious education. I think that there is the fundamental problem. On the assumption that even the religious freedom can be restricted by public order as the problem of the Constitution, where does public order touch religious freedom? I can think here only of some cases involving the newly-established religions where public order might require a restriction of religious freedom.

*Kishimoto* The problem involved here is a very serious one.

Personally I think that religious freedom should be recognized as a fundamental human right. Having religious freedom, however, does not mean that one may abuse this right. Although religious freedom should be unlimited, if one's actions are harmful, e. g., in the case of faith healing, or against the Minor Offense Law, they should be controlled by the Medical Treatment Law or the Minor Offense Law. In other words, although religion is free, religion may not do everything. If this distinction is clearly made, religious freedom is really unlimited. Often the mistake is being made to allow something, although it is obviously illegal from the viewpoint of the public order, because it is being done by a religious body. Here the public authorities should act in a more forceful way.

*Ōishi* I understand well your explanation that the shrines are quite different from religions in general. Nevertheless, I cannot understand that you think it better to regard the shrines as standing on the same level as the other religions. To take a concrete example in Japan, in the case of Yasukuni Shrine, one bows in front of the shrine regardless whether he is a Buddhist or a believer of Ōmoto. This is because the shrine has an essential connection with our national existence and cannot be thought of without this relationship to our national existence. Therefore, it cannot be put side by side with other religions which worship something that has nothing to do with our national existence. According to your explanation, Yasukuni Shrine should be put side by side with the other religions. If so, unless the Constitution is revised, State services at Yasukuni Shrine for persons who died for the country would be uncon-

stitutional. What is your opinion in this regard?

*Kishimoto* Frankly speaking, there remain a few doubts. If religion is defined as the relationship between god and man, Yasukuni Shrine must be said a religion because it also worships gods (*kami*) though the word, god (*kami*), has many meanings. Personally, I consider religion from a more dynamic point of view, that is, religion in its role of solving human problems. From this viewpoint, Japanese religion, especially what is called ancestor-worship, has a strange structure. In other religions, for example in Christianity, man offers all things to God, and God answers by giving happiness to man. The mutual relation between man and God is excellently established. It is so devised as to solve all human problems ultimately. On the contrary, ancestor-worship, in spite of its various aspects, looks like a one-way traffic as a whole. Man worships his ancestors, and that is all. Therefore, it is difficult to decide whether or not all Shinto could be called a value-system centering on the ultimate solution of human problems. Generally speaking, Yasukuni Shrine should be considered a religion. As a consequence, it is impossible, though regrettable, to enshrine there the war-dead at the cost of the Japanese taxpayer. An unknown soldiers' memorial tomb was built at Chidoriga-fuchi in Tokyo. The Shrine should follow this model. Few persons, however, gather at the tomb of Chidoriga-fuchi. This is again a perplexed problem.

*Takayanagi* Is there any other question? Thank you. Then, today's conference is adjourned.