RELIGIOUS FREEDOM UNDER THE MEIJI CONSTITUTION

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VI
Religious Freedom and the Judiciary

A constitutional guarantee of religious freedom becomes effective only when the judiciary so implements it as to protect the people in the enjoyment of their freedom of religious belief. Therefore, an examination of court decisions in cases dealing with the constitutional provision on religious freedom is indispensable to a study of religious freedom under the Meiji constitution.

Appropriate material for this study, however, is extremely scarce. The dearth of court cases of this type appears to be closely related to the fact that judicial protection of religious freedom under the prewar arrangement was severely limited by two conditions. One was the general orientation of the courts of justice regarding the relation between the government and religion. The other was the handicapped legal position of the newly emerging religious organizations.

A Supreme Court decision of 1918 on the legitimacy of a dismissal of a teacher of religion by the chief abbot of a Buddhist

denomination points up the limitation stemming from the court's general orientation regarding church-state relationships. As noted in part two of this article, the Grand Council of State in 1884 abandoned the program whereby teachers of religion came under governmental administration. It returned the administrative function to the various religious organizations, charging the chief abbot of each body with responsibility for appointing and dismissing teachers of religion. With the promulgation of the Meiji constitution in 1889, the principle of religious freedom was established on the basis of the idea of separation of religion from government. The constitution required, therefore, that the relationship between a chief abbot and the teachers of religion under him be regarded as an intramural matter unrelated to government. This was the interpretation given by such respected juridical scholars as Minobe Tatsukichi* of Tokyo Imperial University, Sasaki Sōichi of Kyoto Imperial University, and Date Mitsuyoshi of Waseda University. The Supreme Court, however, took the view that appointing and dismissing teachers of religion was a function the government had entrusted to chief abbots, further defining this function as a de facto governmentally recognized administrative action. On this ground the court onesidedly sanctioned an abbot's action in dismissing a certain teacher of religion and judged the appealing teacher of religion unqualified to file suit. By this decision the Supreme Court on the one hand blurred the boundary between government and religion and on the other legally authorized arbitrary and even domineering actions by heads of religious organizations

* Japanese names are given in Japanese order: first the family name, then the personal name. Ed.

as over against individual followers.[1] The orientation reflected in this judgment is one ready to twist the constitutional guarantee of religious freedom in the interest of administrative convenience. Such bias on the part of the court discouraged individual believers from seeking help from the courts when their religious freedom came under attack.

The second reason for the scarcity of court cases relating to religious freedom under the Meiji constitution is connected with the de jure status of the newly emerging popular sects. Though such groups received enthusiastic support from peasants and artisans and often exerted immense influence on them, they were, so to speak, bastards in the eyes of the law. From the time of their emergence in the late Tokugawa period they were never viewed as equals of the recognized religions. Tenrikyō and Konkōkyō in the early Meiji era, Ōmoto in the Taishō era, and Hito no Michi and Reiyūkai in the early Shōwa period gained many followers, but the successive governments treated them as suspect organizations. The police kept them under surveillance on the ground that they would disturb the peace and order of society. Particularly well-known cases of police interference with their activities include the measures taken against Tenrikyō in the early Meiji era, against Honmon Butsuryūkō in the mid-Meiji era, and against Ōmoto in the Taishō and Shōwa periods. According to the police, the faith-healing practices of Tenrikyō and Honmon Butsuryūkō constituted a threat to public health, while the publications of Ōmoto bewildered the public with false and unscientific information. Yet no matter what the official reason, the fact was that conspicuous growth in the

1. Haseyama, pp. 154–156.

number of followers was itself taken as a threat by the government. The police automatically defined all growing groups as potentially subversive organizations. The government permitted them to exist only if they affiliated themselves with an established religion and presented themselves as semi-autonomous, subordinate associations.[2] Newly emerging religions without such protection experienced frequent police interference and either were denied the right to bring before a court of law their protest against such intervention as a governmental violation of their religious freedom, or chose to go under the umbrella of an established religious body and comply with government regulations.

Meanwhile, the intellectuals of the time did not consider the activities of such groups as religious practices but as examples of magic and superstition. Police surveillance of the new religions, therefore, attracted little attention from those interested in the protection of religious freedom at a more sophisticated level. Even a man like Minobe wrote that while "respectable" religions such as Buddhism, Christianity, and Shinto deserved the protection of the constitution, the government was constitutionally authorized to suppress "pseudo-religions" with magico-superstitious beliefs for the sake of public welfare and the peace and order of society.[3]

One attorney, however, came to doubt the constitutionality

2. Takagi, pp. 29–30. Home Ministry Instruction No. 48 (1881) provided that sects which established an affiliation with an authorized religious organization could exist within the law, while Ministry of Religious Education Instruction No. 2 (1873) prohibited leaders of new religious organizations from practicing faith-healing.
3. Ienaga, *Minobe*, p. 331.

of the police ordinances for the control of practices which could be regarded as religious. In 1931, when the police had arrested the leader of a certain new religious organization on the occasion of his changing of its meeting place and when the local court, having found the accused guilty of heading an unpermitted sect, Matsumoto Shigetoshi, a graduate of Meiji University and a disciple of the noted humanist Uzawa Sōmei, demanded that the Supreme Court review the constitutionality of the police ordinances in the name of which the police exercised surveillance over religious activities. This was the first and last instance, under the Meiji constitution, of a direct challenge to governmental interference with religious practices on the ground of the constitutional guarantee of religious freedom at the nation's highest court of justice.[4]

The story of this incident is as follows. Watanabe Mitsugorō, a practitioner of magico-superstitious religion belonging to the Hitonomichi Tokumitsu Kai [Way of man association][5] built a branch center at Inarichō in the city of Kagoshima. In May 1930 the headquarters of the association appointed Akiyoshi Jūkichi head of this branch church. On July 20, 1930 Akiyoshi changed its location to Shimotatsuochō in the same city, and on February 28, 1931 he changed its name to the Kagoshima branch of Hitonomichi Kyōdan [Way of man foundation]. From the time of his appointment in May 1930 until June 1931, Akiyoshi regularly conducted public worship but failed to obtain the permission of the governor of Kagoshima Prefecture for these activi-

4. Takagi, p. 30; Inoue Egyo, p. 26.
5. Offner and van Straelen, pp. 84–85.
6. Japan. *Daishin'in*, X, p. 447; Inoue Egyo, pp. 25–26.

ties.[6]

The police, learning that Akiyoshi was leading a religious group and that he did so without the permission of the governor, submitted a report on him to the district attorney. On receiving the police report, the district attorney prosecuted Akiyoshi for violation of the Kagoshima Prefectural Police Ordinance (*Kagoshima-ken keisatsuhan shobatsu rei*), which prescribed that teachers of religion were required to report to, and obtain permission from, the governor of the prefecture when they established churches, temples, or preaching points.

The Kagoshima Local Court (*Kagoshima-ku saibansho*) and later the Kagoshima District Court (*Kagoshima chihō saibansho*) judged the accused guilty and sentenced him to ten days' detention in accordance with the provisions of Kagoshima Prefectural Police Ordinance, Article 1, Section 17,[7] which stated:

> Article 1: Any person who falls within the purview of any of the following is to be punished with detention or a fine:
> Section 17: Any person who, without permission from the governor, establishes a shrine, temple, or church for public worship or who has secretly established a chapel, preaching point, lecture hall, or anything of this kind for religious use.[8]

At this point Matsumoto became involved in the issue. Matsumoto held a brief for Akiyoshi and appealed the case to the Supreme Court. He wrote a statement of reasons for appeal consisting of six sections, of which the first discussed the unconstitutionality of the local government's ordinance requiring governmental approval for the practice of religion.

Section one of Matsumoto's statement of reasons for appeal

7. Japan. *Daishin'in*, X, p. 447.
8. Haseyama, pp. 230–231.

charged that Kagoshima Prefectural Police Ordinance, Article 1, Section 17 was unconstitutional and consequently invalid. Matsumoto declared that this article and section of the ordinance conflicted with Articles 28, 23, and 9 of the Meiji constitution. In support of this contention he presented the following reasons: (1) Article 28 of the Meiji constitution guarantees freedom of religious belief except when the practice is prejudicial to peace and order or antagonistic to the duties of subject. Article 1, Section 17 of the police ordinance prohibits the establishment of churches, etc. unless accompanied by the governor's approval, i.e., it prohibits a religious practice that is not prejudicial to peace and order or antagonistic to citizens' duties as subjects. (2) Article 23 of the Meiji constitution guarantees that Japanese citizens will not be punished by the competent authorities except in accordance with what is prescribed by laws. The provision at issue prescribes the imposition of punishment for violators of an ordinance, an ad hoc arrangement worked out to cover the lack of a law providing for the punishment of violators of ordinances. (3) Article 9 of the Meiji constitution requires an Imperial order for the issuance of ordinances, whereas the Kagoshima Prefectural Police Ordinance does not rest on the authority of any Imperial order. To these reasons Matsumoto added certain points alleging inconsistency in the language of the ordinance.[9] On these grounds he defended the view that the judgment of the lower courts applying an unconstitutional and invalid ordinance was itself void. He demanded that it be reversed.

The appeal was recognized and examined by the Supreme

9. Japan, *Daishin'in*, X, pp. 447–454.

Court's Second Bench for Penal Cases (*Keiji dai ni hōtei*), consisting of Chief Justice Hayashi Raisaburō and Associate Justices Yokomura Yonetarō, Ezaki Teijirō, and Osatake Takeki. The court handed down its judgment concerning the appeal on October 12, 1931.[10]

The Supreme Court judged that Kagoshima Prefectural Police Ordinance, Article 1, Section 17 was in agreement with Articles 23, 23, and 9 of the Meiji constitution. In support of this judgment the following reasons were set forth: (1) Article 28 of the Meiji constitution guarantees freedom of religious belief only within certain limits, namely, that it not be prejudicial to peace and order or antagonistic to citizens' duties as subjects. Therefore, Article 1, Section 17 of the Kagoshima Prefectural Police Ordinance, which aims at the preservation of peace and order, is constitutional and valid. (2) Article 23 of the Meiji constitution stipulates due process of law for the arrest, trial, and punishment of citizens, but it does not prohibit the translation of principles established by law into ordinances. Consequently, the provision of Article 1, Section 17 establishing punishments for violators is constitutional and valid by virtue of Law 84 (1890), which authorizes punishment by ordinances. (3) Article 9 of the Meiji constitution authorizes the issuance of ordinances for the maintenance of public peace and order, and the Local Officer System Law (*Chihō kan sei*) authorizes governors of prefectures to take measures for the maintenance of public peace and order. Since the governors of prefectures are thus constitutionally authorized to issue ordinances necessary for the maintenance of peace and order, the Kagoshima Prefectural

10. "Fuken rei," p. 147.

Police Ordinance is constitutional and valid. The Supreme Court, arguing thus, confirmed the judgment of the lower courts and dismissed the appeal for lack of convincing reasons.[11]

Though Matsumoto had thus challenged the government by contending that the Kagoshima Prefectural Police Ordinance, Article 1, Section 17 was unconstitutional and invalid, the Supreme Court defended the government by finding it constitutional and valid. These antithetical views stemmed from different understandings of the provisions of the Meiji constitution.

In his interpretation of Article 28 Matsumoto emphasized its guarantee of freedom of religious practice. He read the phrase "within limits not prejudicial to peace and order, and not antagonistic to their duties as subjects" to mean that laws intended to control religious freedom could be applied only to the extent of controlling practices that directly obstructed peace and order and led people to violate their duties as subjects. The Supreme Court, on the other hand, emphasized the implications of the limitation. It maintained that the above-cited phrase sanctioned all laws intended to control religious freedom on the assumption that these laws and ordinances were needed for the maintenance of peace and order and for the disciplining of citizens in their duties as subjects.[12]

In his interpretation of Article 23 Matsumoto stressed its protection of citizens from arbitrary punishment by government authorities. He demanded that government authorities not punish citizens unless some provision of a specific law had been violated, and he further reasoned that Article 23 of the constitu-

11. Japan. *Daishin'in*, X, pp. 450–451.
12. Ibid., pp. 447–448, 450.

tion prohibited administrative authorities from issuing ordinances that regulated the punishment of citizens in the absence of laws. The Supreme Court, on the other hand, emphasized the legal competence of ordinances issued on the basis of appropriate laws. It interpreted Article 23 as endorsing the issuance of administrative ordinances, including provisions for the punishment of violators, provided the action was in conformity with the intention of laws and ordinances of a superior order.[13]

In interpreting Article 9 Matsumoto took the view that it specified the occasions on which administrative ordinances could be issued. He read the article to mean that it prohibited the issuance of ordinances without the authorization of a previous Imperial ordinance. The Supreme Court, on the contrary, read the article as authorizing the issuance of administrative orders whenever legally competent administrators deemed it necessary. The Supreme Court confirmed the competence of administrative authorities to issue ordinances at their own discretion.[14]

The Supreme Court judgment in this Hitonomichi case elicited a spirited public discussion on the essential character of the judiciary. The disputes started when Matsumoto presented his criticisms of the Supreme Court, particularly in its attitude toward the Meiji constitution, through a newspaper with a wide circulation, the *Yomiuri shinbun*, beginning November 18, 1931.

Matsumoto's article, appearing in installments between November 18 and November 22, 1931, summarized his statement of reasons for appeal and presented further arguments against the Supreme Court, particularly as regards its failure to act in

13. Ibid., pp. 448–450.
14. Ibid., pp. 449–451.

accordance with the authority it had to conduct a judicial review of this case. Matsumoto maintained that the Supreme Court in the Hitonomichi Kyōdan case took it for granted that compliance with the provisions of all ordinances was needed for the maintenance of peace and order, and contended that the court uncritically avoided examining the content of ordinances, assuming that they regulated only practices that really were prejudicial to the peace and order of society. The moving of a church, he asserted, was not prejudicial to social peace and order, yet because an ordinance required that such a move be reported to the authorities, this act was punished as one that had to be judged a violation of public peace and order by reason of a failure to file the report. The relation between this act and the peace and order of society, however, was not changed by the enforcing of an ordinance; so an ordinance like this must be judged devoid of substance. The failure of the Supreme Court to recognize this simple fact constituted, he urged, a negligence of the responsibility invested in a court to examine the validity of laws.

Matsumoto further criticized the Supreme Court for the lack of precision with which it applied regulations in this judgment. Noting that the court had treated the moving and establishing of a church as identical and had applied the regulation regarding establishment of a church to a case that involved moving one, Matsumoto argued that the court should not have enlarged the application of the regulation. He gave it as his opinion that the court did so simply to give advantage to the administrative authorities but in so doing had diminished the universality of law.[15]

15. Matsumoto, "Daishin'in no iken saiban," p. 4.

Furthermore, Matsumoto argued that the action of the Supreme Court in the Hitonomichi Kyōdan case implied a forfeiture of the responsibility for judicial review assigned to the courts of justice by the Meiji constitution. He charged that the decision of the Supreme Court was defective with reference to how the Meiji constitution should be applied.

Reaction to Matsumoto's argument was immediate. Shimomura Ju'ichi of the Ministry of Education, supporting the Supreme Court decision, wrote an article in refutation of Matsumoto and published it in the same newspaper, the *Yomiuri shinbun*, between November 28 and December 2, 1931.

Shimomura, disagreeing with Matsumoto's opinion as to the responsibility of the judiciary and what the constitution required, insisted that Matsumoto's statement alleging that the constitution assigned responsibility to courts of justice to review the content of laws and ordinances was a disputed academic theory, not generally accepted either academically or institutionally, and that the introduction of this dubious theory itself constituted a weakness in Matsumoto's reasoning. Shimomura, thus tactfully evading the central question, substituted for it a phraseological and formalistic argument on the interpretation of the constitution. According to Shimomura, Article 9 fully authorized the competent authorities to issue ordinances for the maintenance and preservation of peace and order at their own discretion, and the ordinances authorized by Article 9 should not, on account of the religious freedom clause of Article 28, treat religious practices as outside their authority, for this would follow only if Article 9 were modified. Shimomura argued that the application of Matsumoto's line of thought would require the amendment of

Article 9 to exempt its application to religious practices. Thereupon Shimomura accused Matsumoto of trying to change the constitution under teh guise of interpreting it, and affirmed that the judgment the Supreme Court had made in this case was the proper response in the light of the provisions of the Meiji constitution.[16]

In response to Shimomura's criticism Matsumoto published another article in the *Yomiuri shinbun* on December 3 and 4, 1931. He pointed out that the guarantee of religious freedom in Article 28 as well as in other articles was inviolable, and that Article 9 permitted the issuance of ordinances only as regards matters that did not require the stipulation of laws. He declared that no ordinance could modify the constitutional and legal rights of citizens unless the practice of these rights involved an immediate and present violation of public peace and order.[17]

To refute the second Matsumoto article, Shimomura too wrote a second article. It appeared in the *Yomiuri shinbun* on December 11–13, 1931. Shimomura contended that if Matsumoto's interpretation of Article 9 were to become normative, as a result of which the competent authorities would be unable to issue ordinances except on matters involving present and immediate threats to peace and order and violations of citizens' duties as subjects, the way in which religious organizations were contemporarily being administered would have to be drastically changed. He acknowledged that the majority of existing ordinances did not regulate immediate and present dangers to the peace and order of society but regulated instead practices that

16. Shimomura, "Matsumoto," p. 4.
17. Matsumoto, "Shinkyō," p. 4.

could become harmful to public peace and order if preventive measures were not taken in advance. Ordinances for the prevention of anticipated threats to peace and order would become logically incompatible with the principle Matsumoto advocated. Shimomura stated that if all these ordinances were to be revoked, chaotic relations between the religious world and the governmental authorities charged with religious administration would be inevitable—and that such confusion would itself be harmful to the peace and order of the nation. In view of the fact that ordinances with preventive regulations had survived for decades since the promulgation of the constitution, they should be regarded as established orders of society.[18] Arguing thus, Shimomura claimed that the Matsumoto interpretation should be rejected both in order to preserve order in the world of religions and in order to make possible the continued administration of religious affairs by the government.

In January 1932 Matsumoto answered Shimomura's criticism. He denounced Shimomura's arguments, alleging that Shimomura used a frame of reference that would approve any act of the authorities as constitutional without inquiring into its content. Matsumoto reminded his opponent that the Meiji constitution provided that the judiciary should act as an independent organ of the state and not become subordinate to the executive branch of government. He insisted that the constitutional role assigned to the judiciary consisted in the interpretation and evaluation of laws and ordinances in the context established by the constitution, and not in some other, more pliable context, however convenient to the administration. Matsumoto thereupon re-

18. Shimomura, "Iken saiban," p. 4.

peated his charge that the Supreme Court had failed to perform this duty in its review of the Hitonomichi decision.[19]

Matsumoto and Shimomura relied on two antithetical intellectual traditions of modern Japan. Matsumoto was concerned with the protection of freedom by the judiciary in the belief that the constitutional role of the judiciary included protection of the constitutional right of religious freedom. He inherited this orientation from the intellectual tradition that brought the Meiji constitution into being and opposed any infringement of the principle of religious freedom in the form of a legal enactment for the control of religions. Shimomura, who labored to legitimize civil control over religious activities and argued that the role of the judiciary was to give judicial endorsement to the acts of the administration, followed the traditional political ideal. This tradition regarded control over a peaceful and orderly nation as the primary objective of government, supported and promoted national thought control, and brought about the "deification" of the Imperial Rescript on Education. Law in this context was merely one of many means by which the administration kept the nation in order, and civil rights were definitely subordinate to public peace and order.

Jurists and religious leaders alike reacted to this controversy, some arguing one side and some the other. Imaizumi Genkichi, an attorney-at-law and a disciple of Hanai Takuzō, contributed an article to the *Yomiuri shinbun* which appeared in installments between December 5 and December 10, 1931. Imaizumi first defined the effect of the Hitonomichi decision as the working out of a law for the suppression of religions by prefectural police

19. Matsumoto, "Daishin'in o ronzu," pp. 4–7.

who could now demean the constitutional guarantee of religious freedom without reference to the nation's legislature. Then analyzing the history of the interpretation of the constitutional guarantee of religious freedom, he linked the arguments of Matsumoto and Shimomura to traditions whose representatives had in previous years fought against, or conversely promoted, bills for the administration of religious organizations. He also called to mind Hanai's argument that the religious organizations bills as a whole contradicted the constitutional principle of religious freedom. Realization of the constitutional guarantee of religious freedom, Imaizumi argued, depended on judicial protection of the citizens from infringements on their freedom by governmental administrators. Yet the Administrative Law lacked any provision which would enable citizens to bring suit in religious matters against a wrongful administration because of the obstinate opposition of the Ministry of Education to inclusion of religious matters in the list of items concerning which citizens could appeal to the courts. Furthermore, Imaizumi insisted, the competent authorities exercised administration over religious affairs on the basis of unconstitutional ordinances, for example, Ministry of Education Ordinance No. 32, 1923, which required that an application be submitted to, and approval received from, the appropriate prefectural governor in order to establish Buddhist or Shinto shrines, temples, or churches,[20] and Home Ministry Ordinance No. 41, 1899, which specified that a report be submitted to the appropriate prefectural governor before establishing Christian shrines, chapels, or churches.[21]

20. Japan. *Shūkyō hōrei*, pp. 192–195.
21. Ibid., pp. 223–233; Japan. *Hōrei*. Meiji 32, pp. 541–543.

Imaizumi concluded that the task for the future was to bring religious leaders to a realization of the significance of religious freedom and to force the Supreme Court to reverse this decision.[22]

At the opposite pole was the argument of Tanaka Jigohei, founder and head of a minor new sect named Mujō Shintō [The way of absolute truth]. He wrote an article to refute Matsumoto's position and to support the Supreme Court decision, this article appearing in the *Yomiuri shinbun* on November 26–27, 1931. Tanaka stated that religious jurisprudence in practice made a distinction between government-related religions (*hikan kyō*) or authorized religions (*kōnin kyō*), such as the fifty-six denominations of Buddhism, the Catholic and some forms of Protestant Christianity, and the thirteen groups of Sect Shinto, and the independent religious groups (*dokuritsu kyō*), which included such religious associations as his own organization, Ōmoto, and the Association of Worshipers of the Grand Shrine of Ise (*Jingū hōsan kai*). He maintained that since the government-related religions received special privileges and benefits from the government, e.g., tax exemptions, while these privileges and benefits were not extended to the independent religions, the government-related religions were under obligation to fulfill every requirement made of them by the competent authorities. He concluded that as long as the Hitonomichi Kyōdan was affiliated with the government-related religious group known as Fusōkyō, one of the Sect Shinto groups, the organization was obliged to meet the requirements established by governmental authorities, that their failure to do so was

22. Imaizumi, p. 4.

legally punishable, and that the Supreme Court decision was acceptable.[23]

Tanaka's argument was correct insofar as he recognized that the government of that day, in its administration of religious organizations, grouped religions into two different categories. He failed to acknowledge, however, the fundamental problem, namely, that this administrative control of religions was not in accord with the constitutional guarantee of religious freedom. He also ignored the fact that, according to the government administrators, only what Tanaka had called government-related religions were considered respectable while what he called independent religions were regarded as magic and superstition. This leader of a new religious group took the side of those who denounced arguments on behalf of protecting the principle of religious freedom. He argued for the condemnation of the rival new religion and acquiesced in the current arrangement without examining whether the religious jurisprudence of his day was in harmony with the constitution. Most leaders of established religions supported the official position even more strongly and encouraged the government to suppress magical and superstitious practices more vigorously.[24] This failure among the leaders of the religious world to realize the significance of religious freedom undermined the struggle for the establishment of judicial support for this principle as promoted by a handful of jurists such as Matsumoto and Imaizumi.

Despite opposition from several jurists, the Supreme Court decision in the Hitonomichi Kyōdan case established the governors'

23. Tanaka Jigohei, p. 4.
24. "Matsuda," p. 87.

competence to exercise surveillance over religious organizations. Newspapers reported the decision with this kind of headline: "A New Precedent: Governors May Restrict Religious Freedom for the Preservation of Peace and Order."[25] The *Shūkyō gyōsei* [Religious administration], journal of the Religions Bureau in the Ministry of Education, took note of the new decision and emphasized that it legitimized police action undertaken in the name of the governor to exercise control over religious practices and associations in the interest of preserving public peace and order.[26]

The court's decision produced a significant increase in the number of cases of police intervention in religious associations. For example, in December 1935 the police raided the offices of Ōmoto, which had been prosecuted on the charge of violating the Press Code in February 1925 and had already been acquitted. The police arrested and imprisoned its president, Deguchi Onisaburō (1871–1948) and 987 of its leaders. Without awaiting the verdict of the court they literally destroyed the Ōmoto sanctuaries and sacred places on the pretext that its teachings conflicted with the basic principles of the Japanese nation.[27] In December 1938 the police attacked Tenri Honmichi, which had earlier been prosecuted on the charge of publishing literature that denied the divine origin of the Emperor—concerning which a Supreme Court decision of "not guilty" had already been rendered in December 1930. The police imprisoned its founder, Ōnishi Aijirō, and 400 of its leaders, confiscated the property of

25. *Yomiuri shinbun*, Nov. 22, 1931, p. 4.
26. "Fuken rei," p. 137.
27. Murakami Shigeyoshi, *Kindai minshū*, pp. 236–243.

the organization, and banned gatherings of its followers.[28] Characteristic of these incidents is the fact that the police did not wait for the judgment of a court before literally destroying religious associations. The competence of the administrative authorities to take measures to preserve peace and order in society, as confirmed in the Hitonomichi Kyōdan judgment, permitted the rationalization of these violent actions by the police.

The Hitonomichi Kyōdan decision also had an effect on the attitude of administrators of religious affairs in the Ministry of Education. Inoue Egyō, an officer in the Religions Bureau of the Ministry of Education, wrote in 1937 that the decision confirmed the viewpoint that the church-state relation was not the object of the religious freedom guarantee in the Meiji constitution but was an item of religious administration. He argued that ministerial and prefectural ordinances should therefore not be discussed as constitutional matters.[29] His argument expressed the attitude of administrative authorities who did not consider that the constitution protected the freedom of religious organizations.

The breach of religious freedom by police action which increased after the Hitonomichi Kyōdan decision of 1931 was exacerbated further by the growth of the concept that Shinto worship was a duty owed by Japanese subjects and by an increase in the number of religious leaders who acquiesced in the idea that Shinto worship was part of the civil responsibilities of citizens. As over against the statement of Sasaki Takayuki, one of the most conservative Meiji leaders, at the Privy Council in 1888 to

28. Murakami Shigeyoshi, *Kindai Nihon*, pp. 118–123.
29. Inoue Egyo, p. 48.

the effect that even if government officials neglected to participate in Shinto worship conducted by the Emperor himself, this would not constitute an action prejudicial to peace and order or be a violation of their duty as subjects,[30] two statements made in 1939 show how much the climate had changed. One is the pronouncement of Prime Minister Hiranuma Ki'ichirō that the primary responsibility of the religions of Japan was to give spiritual support to the Japanese body politic and promote reverence for the Emperor. The other is the statement of Matsuo Chōzō, Superintendent of the Religions Bureau of the Ministry of Education, that any religious group or any teacher of religion preaching that followers of their faith should not worship at Shinto shrines must be adjudged as having violated the peace and order of society and threatened the public welfare and must be punished accordingly.[31] These two statements, particularly when contrasted with that of Sasaki in 1888, demonstrate how strong the feeling had grown that Shinto worship was obligatory.

The idea that worship at Shinto shrines was a duty for Japanese subjects was accepted by leaders of most religious organizations. After receiving a letter from the Minister of Education confirming that the government regarded Shinto worship not as a religious matter but as an expression of patriotism, the Tokyo diocese of the Roman Catholic Church issued an instruction in 1932 that teachers in schools under its auspices should take their pupils in groups to worship at Shinto shrines.[32] A leading figure in the Protestant United Church of Christ in Japan, Tagawa

30. Cf. above, Vol. X, Nos. 1-2 (March-June 1969), pp. 94-95.
31. Takagi, pp. 33-34.
32. Ikado, pp. 295-296.

Daikichirō, endeavored to explain that Shinto worship was compatible with Christian dogmas and encouraged reverence for the Emperor and the *kami* of Japan. He went so far as to accuse the Hitonomichi Kyōdan and Ōmoto of lack of respect for the Emperor because of the use they made of Shinto architecture, rites, and images.[33] A Shinto priest, Okada Kanenori, writing in 1936, defined Shinto worship as a responsibility of Japanese subjects. He declared that if there were religious teachings which rejected Shinto worship, such religions were liable to punishment by the state because rejection of Shinto worship would have a deleterious effect on Japanese national morality which was based on reverence for the *kami* and ancestors, would harm the peace and order of persons and communities and thus do injury to the Japanese body politic, thereby violating the spirit of the constitution—which itself derived from the Great Way of Shinto.[34] After the nineteen-thirties, not only the originally eclectic Shinto and Buddhist leaders but also monotheistic Christians thus became enthusiastic promoters of the idea that Shinto worship was a civic responsibility of all Japanese subjects.

This broad base of acceptance for the idea that Shinto worship was a civic duty provided ideological endorsement for the police in their suppression of non-conforming religions—an endorsement they could rely on in addition to the legal authorization provided by the Supreme Court decision in the Hitonomichi Kyōdan case. Thus furnished with both legal and ideological support for the suppression of religious organizations,

33. Tagawa, pp. 73–75, 173–196.
34. Okada, pp. 23, 27.

the police during the thirties and forties expanded the scope of their attacks. In addition to the magico-superstitious new religions they now began to draw their nets around some of the non-conformist Christian and Buddhist groups. The police forced the Holiness Church of Japan to disband and imprisoned about fifty leaders of the group because of their belief in a post-resurrection last judgment on earth which in effect denied the absolute authority of the Emperor.[35] Several factions of the Nichiren sect were accused of describing the Emperor as subordinate to their chief object of worship in the hierarchy of divine beings, and they too were ordered to disband.[36] In this kind of atmosphere the Religious Organizations Law was finally enacted in 1939, including a provision in Article 16 to the effect that the Minister of Education could order the dissolution of such religious organizations as he might deem harmful to the peace and order of society.

The increase of police intervention into religious organizations in the late 1930s and early 1940s substantially diminished the religious freedom established under the Meiji constitution. The basic reason for this diminution is to be sought in the totalitarian trend of the times. The Hitonomichi Kyōdan decision of 1931, however, foreshadowed the subsequent collapse of the constitutional guarantee of religious freedom.

The significance of Matsumoto's undertaking lay in his awareness that religious freedom was incomplete unless the judiciary enforced the constitutional ideals. Matsumoto's appeal was an attempt to attest and substantiate the legal and judicial protec-

35. Ozawa, *Nihon*, pp. 137–140.
36. Togoro, p. 259.

tion of religious freedom against infringement by administrative authorities. He sought through the action of the Supreme Court to have an unconstitutional administrative ordinance suspended so that the constitutional ideal of religious freedom could be legally confirmed.

In dismissing Matsumoto's appeal the Supreme Court renounced its role of guarding the ideal held out by the Meiji constitution and distorted the constitution for the convenience of the administration. The decision of the Supreme Court in the Hitonomichi Kyōdan case made freedom of religion a matter subject to the discretion of prefectural governors, and consequently of the police, and encouraged police intervention in religious organizations and practices.

The decision, approving the punishment of practices that might be construed as interfering with the peace and order of society in that they did not meet the requirements of ordinances issued at the discretion of prefectural governors, rejected the principle of due process and gave a pretext to the police for destroying religious organizations without the support of law. The Supreme Court decision in the Hitonomichi Kyōdan case prepared the way for the collapse of the principle of religious freedom which the Meiji constitution had established.

VII
Conclusion

This article has sought to trace the historical development and deterioration of religious freedom under the Meiji constitution. Judging that previous studies of this subject have paid insufficient attention to historical data and that available research materials

have been and remain limited, the author has employed an objective case study approach and presented six topics in the preceding sections. This concluding essay is an attempt to interpret historically the results thus attained. It first re-examines current arguments and establishes an operational definition of religious freedom and second, using this frame of reference, draws from the preceding case studies a portrait of religious freedom under the Meiji constitution.

The introductory section examined current arguments on religious freedom. It was shown that the movement to revive state support for Shinto and the movement to maintain absolute separation between the state and Shinto collide in their interpretation of religious freedom. It was also demonstrated that the academic studies most closely linked with both movements tend to evaluate the issue in accordance with the perspective of the movement with which they are affiliated.

The movement for the revival of State Shinto, promoted by organizations of families of the war dead, Shinto priests, and conservative politicians, has three aspects: the demand for state support of Yasukuni Shrine, the demand for governmental recognition of the Grand Shrine of Ise as a public institution, and the promotion of governmental encouragement of nationalism with a Shintoistic commitment. These arrangements, they argue, are not prohibited by the constitution because Shinto is not a religion: consequently its establishment does not conflict with religious freedom or violate separation of church and state. Opponents, including associations of Christians, new religious movements, and liberal politicians and intellectuals, demand the maintenance and enforcement of those articles in the new consti-

tution which strictly prohibit the government from supporting and authorizing religious juridical persons and from using religious myths, tenets, and institutions in public education for inculcating nationalism. These opponents contend that Shinto is a religion: consequently it is essential to observe the strict separation of Shinto from the state prescribed by the constitution as a guarantee of religious freedom.

Since both the proponents and opponents acknowledge that the movement for state support of Shinto aims at the reinstitution of the prewar relation between Shinto and the state, they differ in their evaluation of the prewar situation as regards religious freedom under the Meiji constitution. The latter believe the facts to be that the prewar government treated Shinto as a de facto state church, that it specified limitations on religious freedom in the Meiji constitution in order to establish Shinto worship as a duty of subjects and a condition of peace and order. They conclude that the Meiji constitution's limited guarantee of religious freedom and the false definition that Shinto was not a religion were intentional tactics whereby the prewar government sought to corrupt the principle of separation of church and state and to disintegrate freedom of religion. The former, on the contrary, claim that the prewar government was right when it treated Shinto as a symbol of patriotism and not as a religion. They insist that since Shinto worship was a legitimate duty of subjects and a necessary condition of peace and order, support for and administration of Shinto was a clear responsibility of government and had nothing to do with separation of church and state or religious freedom.[1]

The statement that Shinto is a religion and that Shinto is not a religion flatly contradict each other. An examination of the substance of these statements is therefore essential to the analysis. Materials on which to base this examination may be found both in testimonies at the Constitution Investigation Commission (*Kenpō chōsa kai*) and in discussions at the Second International Congress of Shinto Studies (*Dai ni-kai shintō kokusai kaigi*).

At the hearings of the commission, Kishimoto Hideo, professor of comparative religions at the University of Tokyo, testified that Shinto is a religion according to any of the scholarly definitions of religion, which he classified as theological (God-Man Relation), psychological (Sacred-Awe Response), and functional (Ultimate problems-Human solutions Dynamics). He also showed that the larger portion of the income of Yasukuni Shrine and of the Grand Shrine of Ise came from the sales of talismans, calendars, and the performance of rituals at the request of individuals, all of which he defined as ostensively religious. He concluded that the statement that Shinto is not a religion contradicted the scientific definitions of religion.[2] At the Shinto congress, several Japanese scholars trained in the history and psychology of religions in the West, men such as Hirai Naofusa and Ueda Kenji of Kokugakuin University, presented opinions emphasizing the experiential, devotional, and problem-solving aspects as intrinsic to Shinto.[3] Floyd H. Ross, professor of comparative religions of Southern California School of Theology at Claremont, endorsed this view and recognized

1. See section I of this article, *Contemporary Religions in Japan*, Vol. IX, No. 4 (December 1968).
2. "Constitution," III-2, pp. 110–111; VIII-2, pp. 145–158.
3. Hirai; Ueda.

the qualities of mystic communion and introspective morality found in other individualistic and universalistic religions as forming the core of Shinto.[4]

On the contrary, Tate Tetsuji, chief priest of Yasukuni Shrine, testified before the commission that he believed the shrine was not a private religious organization because it was created by imperial order and with state funds and commemorated those who gave their lives for the sake of the nation.[5] Iinuma Kazumi, ex-superintendent of the Shinto Board (*Jingi In*) of the prewar Home Ministry, attested that the essential character of the Grand Shrine of Ise was governmental, first because the shrine's primary functions were concerned with the destiny of the nation rather than with the problems of individuals, and second, because the shrine was the depository of the symbols of imperial legitimacy.[6] Ōishi Yoshio, professor of constitutional law at Kyoto University, affirmed that since Shinto was historically related to the Emperor and rendered special services to the state, the constitution legally permitted defining Shinto as a governmental institution and supporting it with state funds, regardless of whether Shinto included religious elements.[7] Also at the Shinto congress a number of scholars emphasized the special relation between Shinto and national tradition. Ashizu Uzuhiko, editor of the *Jinja shinpō* [Shrine newspaper], defined Shinto as the foundation of Japanese religious syncretism which invariably transformed universal religions of foreign origin. He also drew attention to the inseparability of Shintoistic traditions from customary, social,

4. Ross.
5. "Constitution," III-4, pp. 314–315.
6. "Constitution," III-3, pp. 220–225; III-4, pp. 331–333.
7. "Constitution," III 4, pp. 328–329.

and governmental practices.[8] Robert N. Bellah, professor of sociology at the University of California at Berkeley, stating that there was obviously a deep connection between Shinto and the most fundamental level of the native Japanese tradition, made the following suggestion:

> Why not better return frankly to the hallowed tradition of Japanese syncretism? ...Shinto should not try to become a "private religion," but should rather...try to fulfill the function of a "civil religion" for Japan, a religious dimension in the national sphere of life but one which does not exclude commitment to private and more universalistic religious positions.

He concluded that as long as Shinto could live tolerantly side by side with more prophetic private religious associations, it could maintain fully its own function of symbolizing the unity of the Japanese people.[9]

These testimonies and discussions demonstrate that the dichotomy as to whether Shinto is a religion is itself inaccurate. Those who claim that Shinto is a religion are not only arguing its religiosity but also reading into it a modality of individualistic norms of universalistic religions. The statement that Shinto is not a religion, on the other hand, is a negative way of asserting that Shinto is primarily a generic expression of Japanese national tradition. It implies that individualistic religious experience is a secondary characteristic of Shinto but by no means denies its religiosity. This is a claim that Shinto is primarily, as Bellah puts it, the civil religion of the Japanese.

A more accurate representation of the dichotomy, therefore, has to be made between the individualistic and civil aspects of Shinto. The point at issue is that of civil religion relative to the

8. Ashizu, "Nihon," pp. 11–16.
9. Bellah, "Shintō."

problem of the separation of church and state and the principle of individual religious freedom.

Distinguishing between individual and civil religion opens a way through the thicket of arguments on religious freedom advanced by the status quo and revivalist positions. Religious freedom, according to the status quo position, is the freedom of individual citizens from government intervention in matters relative to the church; it is secure when complete separation between government and all forms of religious expression is maintained and deteriorates when the government involves itself in promoting the civil religion of Shinto. The revivalist position also regards religious freedom as the freedom of citizens and churches from government. This position, however, includes the acknowledgment that the ultimate responsibility of the government to keep harmony among citizens and peace and order in society makes it indispensable for people to accept the civil religion which cuts across individual religious differences [10]

10. Considering that the principle of religious freedom in terms of the separation of church and state originated in the United States and that the new constitution inherited these principles from the American experience, it appears pertinent to deliberate on American civil religion relative to the principle of religious freedom and the separation of church and state.

Religious sanctioning of American public life remained alive in spite of the First Amendment to the Constitution of the United States, which stipulates that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. Not unlike the role of the Yasukuni Shrine, the festivities of Memorial Day involve communal rituals for the war dead and serve to confirm national solidarity (Warner, pp. 1–26). Not unlike the Grand Shrine of Ise which symbolized the legitimacy of the sovereign, the "In God We Trust" inscription on American coins and the ending of the oath of office with the phrase "so help me God" or "under God" expresses the transcendental legitimation of American public life (Lawry, pp. 18–20). Not unlike the governmental promotion of shrine worship and ritualistic readings of the Imperial Rescript on Education, a daily ritual pledging allegiance to the American flag

Thus both the status quo and revivalist positions acknowledge that religious freedom is the freedom of individual citizens and associational churches from intervention by government. Dif-

has been conducted, and a governmentally fixed prayer was recited not uncommonly throughout American schools (Minersville School District v. Gobitis, 310 U.S. 586; West Virginia State Board of Education v. Barnette, 319 U.S. 624; Engel v. Vitale, 370 U.S. 421). Thus the vague but irrefutable acceptance of God and rituals of acceptance cutting across sectarian differences permeate the public institutions and social life of Americans. The totality of such practices and beliefs constitutes the civil religion of America (Bellah, "Civil Religion.").

Not a few Americans, like Japanese Christians and adherents of new religious movements who oppose the establishment of the Japanese civil religion of Shinto, regard these practices as conflicting with the separation of church and state and, consequently, with the principle of religious freedom. A proponent of rigid separation objects even to the coin inscription "In God We Trust" (Pfeffer, p. 161). A notary public who refused to make a religious oath brought the matter to the Supreme Court (Torcaso v. Watkins, 367 U.S. 488). A resident of a township where tax money was expended to cover the cost of transporting children to parochial schools deemed the practice a breach in the wall between church and state and filed suit against the educational authorities (Everson v. Board of Education, 330 U.S. 1). Some New York residents attacked the prayer fixed by the educational authorities, and Pennsylvania and Maryland residents sued against Bible reading in classrooms (Engel v. Vitale, 370 U.S. 421; Abington School District v. Schempp, 374 U.S. 203). The cases represent the demand for rigid separation of church and state as a constitutional requirement.

The Supreme Court appears generally to have admitted that the principle of religious freedom is incompatible with absolute separation of church (religion) and state (government). It appears to confirm that the separation required by the constitution is that which promotes religious freedom. The underlying thesis, as Katz' analysis shows, seems to be that the basic American principle of church-state relations is neither separation of church and state nor impartial benevolence toward religions on the part of government, but religious freedom, which requires government neutrality with respect to religion (Katz, pp. 164–176).

The American experience thus suggests, first, that religious freedom is the principal question while separation of church and state is a secondary question, and second, that civil religion is also a matter to be included in the scope of the fundamental constitutional guarantee of religious freedom.

ference between them occurs at the point of how to evaluate governmental involvement in Shinto as the Japanese civil religion and its resultant impact on the freedom of individual citizens and associational churches.

Consequently, it would appear useful, as a working procedure, to define religious freedom in strictly individualistic terms while treating factors constitutive of the civil religion of Shinto as having an impact on religious freedom and as commutable into individualistic factors. Religious freedom thus defined shall be: (1) freedom of individual citizens from government interference in church relations, and (2) freedom of churches from government in their relation to citizens. The antithesis of religious freedom shall be: (1) government control of citizens in their relation to churches, and (2) government control of churches in their relation to citizens.

Applying this working definition of religious freedom, we find that the preceding case studies permit us to form the following portrait.

First, in the early Meiji era the restoration government conducted a persecution of Christians and Buddhists. Confirming the Tokugawa ban against Christianity as an integral part of the law of the land, the government punished by deportation those citizens who revealed their affiliation with Christianity. The government next forced Buddhism and Shinto to separate and required Buddhists priests to preach governmentally prescribed Shintoistic teachings and to accept roles as government agents. The government thus controlled directly the affairs of churches. The initial actions of the Meiji government were in flat denial of religious freedom.

Opposition to governmental persecution of Christians came from diplomats of the Western powers. They told the Japanese government that persecution of Christians would damage Japan's international reputation and strongly advised the government to halt such persecution. The protest against governmentally enforced separation of Shinto from Buddhism and the use of Buddhists in a Shintoistic indoctrination program were made by clergy of the Tendai and Jōdo-shin sects of Buddhism. A few Jōdo-shin laymen rioted in protest. The Jōdo-shin Buddhists denounced the governmental program as archaic and contrary to their interests, and demanded the restoration of doctrinal, personnel, and institutional autonomy for their church.

The early Meiji leaders quickly realized that the persecution of Christians jeopardized Japan's international prestige. As achieving equality with Western powers was a principal policy of the leaders, within a few years the government adopted the policy of toleration toward Christianity. The government allowed citizens to believe in Christianity and churches to perform Christian services. Also, the government gave up its persecution of Buddhists and returned institutional autonomy to the Buddhist churches.

This toleration did not establish religious freedom as a legal right of citizens and churches. It is also true that both governmental and ecclesiastical leaders failed to consider the problem primarily as an interference of government with citizens' rights. These limitations, however, do not alter the fact that the decision to extend toleration to Christianity and to restore autonomy to Buddhism in the early Meiji era was a positive step in the history of the development of religious freedom in Japan.

The second case studied the ideas of religious freedom in the constitutional movement. It examined various viewpoints on religious freedom found in the draft constitutions drawn up during the decade preceding the promulgation of the Meiji constitution. It then traced the ways religious freedom was handled in the drafting process of the Meiji constitution. It finally compared Article 28 of the Meiji constitution with articles on religious freedom in various draft constitutions.

The earliest draft article prohibited Christianity and established Buddhism as the governmental religion. A draft article by a Confucian tutor to the Emperor strongly and persistently argued that Confucianism be established as the legal, ethical, and religious foundation of government, and did not guarantee religious freedom to citizens. Conversely, draft constitutions written by theoreticians of the Movement for People's Rights included an article which guaranteed religious freedom without limitation. One of them particularly stipulated religious freedom in a group of civil rights provisions which included the right of citizens to take up arms against unreasonably oppressive government. A majority of the draft constitutions, however, included an article conditionally guaranteeing religious freedom. The norm in terms of which this freedom was limited was expressed in various ways: "the good customs of society," "the peace of the nation," "laws and civil duties," and "the laws and customs of state." The conditional guarantee of religious freedom thus involved an acknowledgment both of the right of citizens in matters of church affiliation and the authority of government to control churches and citizens.

Itō and his assistants drafted the Meiji constitution with the

help of a small number of German scholars, independently of the various constitutional movements. Among those whom the drafters consulted, many held to a view that denied the citizens' right of free belief. Others maintained that it was important to guarantee religious freedom and at the same time to provide the government with legal powers to control citizens and churches. Itō, the chief drafter of the Meiji constitution, adopted the latter recommendation.

Article 28 of the Meiji constitution differed fundamentally from the draft articles that neglected civil rights and authorized governmental autocracy. It also differed significantly from the draft articles which unconditionally guaranteed religious freedom as a civil right and absolutely rejected any governmental control. Article 28, in accordance with the majority of draft constitutions and the relatively liberal recommendations of the German advisers, guaranteed religious freedom as a civil right and at the same time stipulated limitations to this freedom on the basis of which government might legally control citizens and churches.

The third case study investigated the impact of the Imperial Rescript on Education on religious freedom. It examined the making of the rescript, described its mode of dissemination and the conflict this led to in the case of one Christian educator, and traced the arguments that treated of this conflict.

The original motivation for the issuance of the rescript came from traditionalists who opposed the Meiji constitution. In order to minimize the influence of the constitution and indoctrinate people with the idea that uncritical obedience to government was a civic and moral virtue, they planned the issuance of an

imperial pronouncement which would endorse Confucian ethics and undermine constitutionalism. The participation of a drafter of the constitution in drawing up the rescript caused the document to be significantly modified and deprived of legal power. However, the Ministry of Education, by promoting ritual recitals of the document throughout the nation's educational machinery, created a de facto state cult for the uncritical veneration of the Emperor.

The ritual of venerating the document conflicted with the religious scruples of a certain Christian teacher, who refrained from bowing before it. The educational authorities regarded his action as culpable misbehavior and punished him with dismissal. A few citizens supported the behavior of this Christian. They defended his refusal to bow before the document on the ground of the constitutional guarantee of religious freedom. These men argued not only against the characterization of the rescript as a promotion of particularistic norms but also against the institutionalization of the ritual of reading the document.

Many citizens, however, criticized this Christian teacher in the belief that the rescript embodied the venerability of the Emperor and that this educator's behavior degraded the august character of the head of the nation. A more sophisticated attack asserted that the universal morality of Christianity was incompatible with the particularistic norms of the rescript and was consequently inadmissible in Japan.

The educational ministry held the view that the rescript should be treated as a source of instruction in particularistic traditional norms. The Minister of Education, consequently, had a traditionalist philosopher write a pamphlet for the interpretation of

the rescript and had it distributed to all the schools in the nation.

Though opinions critical of the Christian educator's behavior are not to be regarded as violations of religious freedom, the government's use of its authorities to impose traditionalist cultural norms on citizens did impinge on the constitutional guarantee of religious freedom. The issuance of the Imperial Rescript on Education and the Ministry of Education's handling of it together strengthened the limitations and narrowed the guarantee of religious freedom.

The fourth case studied the abortive Yamagata religion bill in order to trace the opinions relative to religious freedom at the turn of the century. It examined the background and the content of the Yamagata religion bill, the arguments of the members of the House of Peers, and ecclesiastical leaders' reactions to the bill.

The promoter of the bill was an advocate of traditional norms. This man was Yamagata Aritomo, who had built an autocratic military bureaucracy and police system and detested political parties. He had also been instrumental in the promulgation of the Imperial Rescript to Soldiers and Sailors and the Imperial Rescript on Education. His objective in making a religion law was along the same line and lay in legalizing government control of religions. The bill consequently included articles defining the qualifications of religious teachers in accordance with the amount of public education they had received, requiring churches to register with the government, and leaving with the government the power to decide whether a church should be permitted to exist.

The presentation of the bill to the House of Peers invited

powerful opposition. Opponents included such men as a former chief justice of the Supreme Court and a founding committee member of the Seiyūkai party. Objections focused on the point that the bill would authorize the government to establish controls over citizens and churches by setting various qualifications and regulations. Its opponents attacked the bill primarily for its unconstitutionality. The opposition prevailed, and the governmental attempt to make the bill into law was defeated by a narrow margin.

Ecclesiastical leaders were evenly divided into supporters and opponents. Their concern was mainly with the comparative legal positions of Buddhism and Christianity. Supporters assumed that equality was desirable, while opponents demanded that the privileges of Buddhism should be maintained. Neither camp, except for a small number of Christians who opposed the bill on the ground of its conflict with the constitutional guarantee of religious autonomy, considered the issue as a confrontation between governmental control and civil and ecclesiastical autonomy.

The Yamagata cabinet responded to this defeat in the legislature by issuing a series of ordinances which incorporated substantial parts of the bill for controlling religious institutions. This governmental bypassing of the decision of the legislature and de facto overruling of constitutional procedures significantly weakened the constitutional guarantee of religious freedom. Also the religious leaders' failure to acknowledge and defend civil and ecclesiastical autonomy from the government contributed to the deterioration of religious freedom. Nonetheless, the fact that the bill was defeated on constitutional grounds and

by constitutional procedures clearly indicates that the Meiji constitution could function for the defense of religious freedom at the turn of the century.

The fifth case studied the government's second and third attempts to enact a religion law in 1927 and 1929. It examined the background of the making of the bills, described the supporting and opposing arguments in the House of Peers, and investigated disputes about the bill among religious leaders and constitutional scholars.

The Ministry of Education, which sponsored these religion bills, had been backing an authoritarian interpretation of the fundamental law and was promoting through the national educational machinery a dogma which exalted authoritarian government and an obedient citizenry. The ministry, coming to reevaluate the use of governmental control of religions for blocking the growing influence of liberalism and socialism, turned to the idea of a religions law. In presenting the bill to the House of Peers, Minister of Education Okada Ryōhei did not hesitate to state that the bill was presented in consideration of the function of religion to render dangerous thoughts innocuous and that the objective of the bill was to strengthen the position of religions so they would better prevent good citizens from being contaminated by dangerous ideas.

The bill provided for governmental authorization and control of Buddhism, Christianity, and Sect Shinto, while granting privileges to the clergy and institutions of religious organizations thus authorized. Though the government carefully cultivated support, the bill met with strong opposition in the House of Peers. Opponents, including one of the editors of Itō's *Com-*

mentaries on the Constitution of the Empire of Japan and a promoter of universal suffrage and defending attorney in the 1911 High Treason Case, argued that the bill curtailed religious freedom in violation of the Meiji constitution. Opposition in the House of Peers eventually proved strong enough to cause the bill to be shelved. A government attempt to have it passed two years later met the same fate.

Meantime, opposing evaluations of the bills invited open disputes between the superintendent of the religions bureau in the Ministry of Education and a professor of constitutional and administrative law at Tokyo Imperial University. The superintendent identified the constitutional limitation of religious freedom as being within the realm of governmental administration and control, interpreted the constitutional guarantee of religious freedom as minimal, and judged the bill entirely constitutional. The professor, to the contrary, regarded the constitution's limitations on freedom as involving corresponding limitations on laws and on government when it came to controlling religious freedom, acknowledged that the constitution's guarantee of freedom extended to religious practices and associations, and concluded that the bill conflicted with the restrictions established by the constitution.

The controversy over the bills drew reactions from religious leaders also. Many of them looked favorably on the bill and encouraged the government with a pledge of support. Some attempted to take advantage of the legislation to promote sectional interests. More religious leaders than during the dispute over the Yamagata bill, however, came to realize that the bill conflicted with the principle of religious autonomy and

opposed it on that ground.

The bureaucrats who attempted to control religious organizations and practices introduced the bills for the control of religions. Members of the House of Peers, however, reasoned that such legislation would possibly develop into machinery by which the government, in contravention of the constitution, might interfere with religious freedom, and they repeatedly turned the bill down. In spite of the fact that tension resulted from this repeated proposal and rejection of religious legislation, religious leaders, associations, and followers enjoyed considerable freedom from the turn of the century until the 1930s. The delay in the enactment of the law and the deliberateness of the discussions at the Diet, together with the wide base of interests outside the legislature, revealed the solidarity of the religious freedom that existed during the first third of the twentieth century.

The last study investigated a 1931 Supreme Court case dealing with the constitutional guarantee of religious freedom relative to judicial review. It described an attorney's challenge against a governmental ordinance for the control of religious organizations and the Supreme Court's decision to validate the ordinance. It further traced the arguments supporting and opposing the Supreme Court decision, and finally depicted the influence of the decision on the deterioration of religious freedom.

In 1930 a practitioner of religion moved the location of his church, failed to report this move to the governmental authorities, and was accused and convicted on the ground that failure to report constituted a violation of a prefectural police ordinance. His attorney appealed the conviction and demanded that the

Supreme Court review the constitutionality of the prefectural police ordinance under which the accused was found guilty. The attorney argued that the ordinance was void because it conflicted with the constitutional guarantee of religious freedom in that it provided for governmental control of an act which did not violate peace and order or interfere with citizens in their duties as subjects. The Supreme Court, however, judged the appeal to be without convincing reasons and dismissed it on the ground that the government ex officio issued ordinances for the maintenance of peace and order and the implementation of the duties of subjects.

After his defeat in the court, the attorney opened a popular campaign. He argued that the ordinance was unconstitutional because it authorized the government to control religions beyond the limit specified by the constitution and that the Supreme Court's failure to examine whether the content of the ordinance was constitutional meant that it had forfeited its constitutional role of judicial review. The superintendent of the religions bureau of the Ministry of Education, in refutation, affirmed that whether or not the constitution gave the authority of judicial review to the Supreme Court was an unsettled academic problem and that an argument based on such an academic hypothesis must be dismissed. The religious administration, the superintendent contended, had the authority and responsibility not only to maintain peace and order and to implement the duties owed by citizens as subjects but also to prevent violations of peace and order and interference with the fulfilment of those duties. He also confessed that if preventive ordinances were to be judged unconstitutional, the entire administration of religions

would be paralyzed since the majority of ordinances for religious administration fell in that category.

The Supreme Court's affirmation of governmental ordinances regulated independently of the legislature confirmed the power claimed by the government to determine the content of the terms "peace and order" and "the duties of subjects." Therefore the decision was accepted by both the administration and the public as judicial authorization for the constitutionality of the government's control of religious organizations. Moreover, this happened at a time when the government came to demand commitment to Shinto as a duty of Japanese subjects. Consequently, the police on the one hand undertook, with mounting frequency, preventive destruction of the growing, popular sect groups which the government classified as quasi- or pseudo-religious, and on the other broadened the scope of their interference with Buddhist and Christian organizations as regards minor conflicts with Shintoistic principles.

The decision of the Supreme Court to abstain from examining the constitutionality of the content of governmental ordinances was thus the key to the deterioration of religious freedom under the Meiji constitution. The deterioration of religious freedom resulted not from some supposed defect in the Meiji constitution's guarantee of religious freedom but from deterioration in the constitutional function of the judicature.

Religious freedom in the Meiji constitution as a matter of principle and orientation was positive and not essentially different from the corresponding provision in the present constitution. The Meiji constitution, being a product of Japan's modernization, neutralized the relation between the government and citizens

relative to church matters and established religious freedom as a civil right as part of the model of modernization.

Moves in the direction of modernization, however, evoked the reactions of traditionalism which produced the Imperial Rescript on Education. The rescript, exalting traditional morality and communal norms, functioned to oppose the modern idea of citizens' rights as subversive of traditional identity. It was the reactionary value consciousness symbolized in the rescript that rejected religious freedom as one of the principles of modernization.

Religious freedom in modern Japanese history was brought in by the forces of modernization and challenged by the forces of traditionalism. Political modernization involved the need to emphasize civil rights, including the right to religious freedom. The tradition of communal identity, however, remained powerful. When modernization capitulated to traditionalism in view of the threat to national identity posed by encounter with the West as a result of modernization, the modernized Japanese judiciary meekly succumbed to traditionalism and subordinated itself to the administration. The judiciary lost its autonomy and thus its constitutional function. It was precisely in this situation that religious freedom collapsed.

Religious freedom under the Meiji constitution cannot be described as static in contrast with that under the new constitution. It can only rightly be described in the context of the tension between the forces of modernization and traditionalism. It is a serious mistake totally to deny the modern character and positive substance of the guarantee of religious freedom in the Meiji constitution.