

SECULARIZATION AND RELIGIOUS LAW IN JAPAN

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1. Religion and secularization in Japan

Japan has many religious groups and denominations. At present in Japan, many forms of religion co-exist, such as Shinto, Buddhism, Roman Catholic, Protestant groups, other Christian denominations and various types of new religions. Confucianism has made a significant impact on Japanese ethical and political life and Taoism has influenced the way of life of ordinary people. More than 100,000 Moslems live in Japan now, but many of them are foreigners.

Japan is a secular country and no religious law is used as the State legal basis. Japanese legal system is quite secular. The Japanese Constitution prescribes that no religious organization shall exercise any political authority (Article 20). There is no official religious court in Japan and no official enforcement of religious law.

Many people of Japan seem to live in a society where religion plays very little public part, yet the secularization of Japanese society is rather complicated.

According to a number of opinion polls, fewer than 30% of respondents have a positive attitude towards religion, and approximately 50% take a negative view. One reason for this is a tendency to think religion as a cause of social conflicts.

On the other hand, at the beginning of the New Year, a large number of the Japanese visit shrines and temples to pray the health or happiness of their families. They visit the temple where their family grave is maintained and they call upon its priest to conduct family funeral services. Many families have ancestral tablets, which they place on small Buddhist altars at home. Some Shinto rituals are concerned with the different stages of a person's life, among them the first shrine visit of a newborn baby and "Shichi-go-san Festival" shrine visits for boys aged 3 and 5 and girls aged 3 and 7.

Religious apathy appears widespread in urban life, but books on spiritualism are very popular and sell well. So-called "invisible religions" prevail in Japan and meditation center, Qigong, Yoga, the spiritual alternative treatment such as Ayurveda, and the various types of spiritual healing are accepted to some extent. The popular magazines publish a variety of articles on fortune-telling and horoscopes.

Because of difficulty of obtaining a plot in a graveyard at a reasonable price, city dwellers try to carry out so-called natural funerals in which the bereaved family scatters remains in the forest and the sea, with no traditional religious ceremony. On the other hand, Bon Festival is the most important summer ceremony calling people back to their home town in order to worship their ancestors.

The role of religion appears to differ considerably in the city and in the country. Religion is gradually losing power in the city, but traditional religion

is still strong in the country. Rapidly advancing urbanization and migration to the city will accelerate the secularization of the whole country.

For a long time, most ordinary Japanese followed the pattern of belonging to Shinto and Buddhism. While wedding are often performed with a Shinto ceremony, most funerals are conducted by Buddhist priests. Most Japanese are in what is called a Shinto/Buddhism syncretism. They may belong to a family temple of Buddhism and also be a member of parish of Shinto shrine in their neighborhood. Government statistics show that Shinto groups claim more than 105,000,000 followers and Buddhism groups are estimated to have about 90,000,000 believers. Total number of people belonging to all branches of Japanese religions amounts to nearly 170% of the total population of Japan.

Shinto has neither founder nor scripture. Generally Shinto is based on the worship for spirits of nature such as water, fire, thunder, deified emperors and heroes of Japanese history or mythology. Shinto shrines (Jinja) in countryside are sustained by the people of local communities worshipping common ancestor gods. There are many Shinto shirines scattered throughout Japan. These are sacred places for reverence and ritualistic prayers, the form of which may be distinct from region to region and from community to community. Shinto shrines have many characteristics and local diversity.

Among the many Shinto shrines, Yasukuni shrine (which means “Pacifying the State”) has caused a political problem because it venerates the war dead including war criminals. At present, more than 2,400,000 soldiers of Imperial Army and Navy have, after their death, been worshiped as deities at Yasukuni shrine.

Yasukuni shrine was controlled by Military Ministry before World War
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II, and although it is now separated from the State, Japanese Prime Ministers still visit it on occasion to venerate the war dead. The Yasukuni problem is a very contentious issue which causes much division in Japanese society. Many Buddhist groups and Christian groups take a negative attitude and oppose governmental supports of Yasukuni shrine. Shinto groups, however, are positive.

During the past year, there were a number of cases regarding the separation of religion and state. Foremost among these cases were a line of lawsuits involving Prime Minister Junichiro Koizumi's obeisance visits to Yasukuni Shrine. Plaintiffs insisted that the Prime Minister's obeisance visit violated the constitutional law and ruined the secularity of the state. Some of Japanese district courts went as far as to declare the visits to be unconstitutional.

The Yasukuni problem is also a diplomatic problem in East Asia. China and Korea are critical of Yasukuni shrine for being a symbol of Japanese militarism and ultra-nationalism.

Formerly, Buddhism exerted great influence on Japanese culture, thought, people's mentality and life-style. Now, however, almost all Buddhist monks are married and many Buddhist temples are passed down, so that Buddhist temple management is a form of family business, with many Buddhist priests following the civil servants and the public school teachers. Buddhist priests normally wear civilian dress and only put on special robes when they hold religious ceremonies. Except for some monks of Zen schools, Many Buddhist priests now eat meat and many are married. Much of the life of Buddhist priest is secularized.

Beside of Shinto and Buddhism, there are many different new religious

groups and sects. One such is Sect Shinto (“Kyouha Shinto” or “Shuha Shinto”) including Tenrikyo, Konkoukyo, Kurozumikyo and so on, which have a founder and scripture. Another is a new sect of Buddhism, such as Soka Gakkai, Rissho Kosei Kai, Kofuku-no-Kagaku (Happy Science) and so on. Soka Gakkai (a new religious movement derived from Nichiren Buddhism) is one of the most successful religious groups with SGI (Soka Gakkai International) as its umbrella organization. Soka Gakkai has more than 8 million members. Soka Gakkai is closely associated with Komeito, an influential political party.

Christianity is minor religion in Japan, with about 2% of the population as members. Roman Catholic and various denominations of Protestants have established a number of kindergartens and schools, so their influence is felt in education, but the numbers of practicing Christians have been constant for many years. Moslem people in Japan are almost only foreigners such as Indonesian, Pakistani and Iranian etc.

There are at present more than 182,000 religious corporations in Japan. The largest group is Jinja-honcho (Association of Shinto Shrines) uniting about 80,000 Shinto shrines. Buddhist groups are diverse with 13 main traditional schools co-existing with other small groups. The largest group is Shin Buddhism. Among Shin Buddhist schools, Jodoshin-shu Hongwanji-ha includes more than 10,000 temples, while Shin-shu Ohtani-ha comprises nearly 9,000.

There are some little sects or cults which pretend to be unique or to integrate several religions. Unification Church (the Holly Spirit Association for Unification of World Christianity) founded by Sun-Myung Moon, has caused a great deal of troubles. Some of other sects have also been accused of fraud and illegality.

2. The historical background of Japanese religions

Shinto is an indigenous religion and has no systematic doctrine. Originally Shinto had no religious commandment, but when it became associated with nationalism and militarism, it required people to live and die for the State and the Emperor. For a long time Shinto was combined with Buddhism, which was introduced in the 6th century. The *Meiji* government separated Shinto from Buddhism to create State Shinto.

Buddhism was introduced to Japan about 1,500 years ago via China and Korea and was first adopted by the Imperial Family and the aristocracy for shake of State security. Prince Shotoku was the first imperial patron of Buddhism. Japan dispatched numerous missions to China and constructed many temples. In the 9th century (in the Heian era, 794-1185), two great priests, Saicho and Kukai came on the scene and founded two Buddhist denominations usually referred to jointly as Heian-Buddhisim. They founded the respective monasteries on the mountains.

During the three hundred years after their founding, until the Kamakura period (1185-1333), these two esoteric denominations, Tendai and Shingon, prospered chiefly among the aristocrats and Imperial court. During the Kamakura Period, new movements by Honen, Shinran, Nichiren, Eisai, Dogen and their followers changed the nature of Japanese Buddhism. They established the purely Japanese Buddhism. Honen took the unprecedented step of systematizing the Buddhist doctrine looking straight at the problem of relief of ordinary people, and Honen's disciple Shinran practiced the doctrine by openly marrying and having children. Nichiren emphasized the chanting of the title of Lotus Sutra, and Eisai and Dogen expanded Zen schools.

In the period of the Tokugawa regime (the Edo period, 1600~1868), Buddhism was formally incorporated into the feudal administrative institution known as Danka system, which affiliated every household with a particular Buddhist temple. Christianity was brought to Japan by a Jesuit missionary in the middle of 16th century. The Tokugawa regime closed country to outsiders and used the Danka system to detect and persecute Christians, who were suspected of being influenced by Spanish or Portugal priests and of being more loyal to their religion than to the regime. Christians were treated cruelly and enforced to be Buddhists.

The Tokugawa regime was overthrown by the Meiji Restoration and that time the relationship between State and religion changed dramatically. The Meiji government formally abolished Danka system, although it is still alive de facto, and many families feel a special obligation to the temple with which their ancestors were registered. The Meiji government forcibly separated Buddhism and Shintoism and gave serious damage to Buddhism sustained by the Tokugawa feudal system.

The Meiji government leaders attempted to carry out the modernization and the restoration of Japan simultaneously. They established State Shinto, which united the Shinto of the Imperial House with the worship at local Shinto shrines. Emperor-centered Shinto beliefs were integrated into the power structure giving priests and institutions privileged statute and financial support. All Shinto shrines were incorporated into State Shinto system, overseen by Ise Shrine which venerates Amaterasu Ohmikami, the original ancestor of the Emperor of Japan according to the Japanese mythology. State Shinto became a governmental institution. This system defined Shinto shrine as a public corporation. Shinto shrines were regarded

as non-religion and prohibited from practicing religious activities such as funeral rites. All people were required to participate in State Shinto.

Some Shinto sects which had founders and scriptures were separated from State Shinto. They were not institutionalized, but approved as “Kyoha Shinto”, also known as “Shuha Shinto” meaning “Sect Shinto” or “Religious Shinto”.

On the other hand, the Meiji government tried to establish the modern legal system by enacting a constitution, civil code, criminal law based on the European, particularly the German, model. State Shinto authorized the status of the Emperor but offered no legal backing. Japan had no religious court.

The Meiji Constitution (Constitution of Japanese Empire, promulgated in 1889) had no provision for relationship between State and religion, but it contained an article dealing with religious freedom under which everyone had freedom to choose their religion in the State Shinto system. Conflict with this article was sidestepped by claiming that State Shinto was not a religion but a national ritual. State Shinto was imposed on the Japanese people as well as on the people living in Japan’s colonies. Emperor was assumed to be descended from the gods, or a living god, and he was assumed to possess a divine prerogative. Japan was considered to be the land of gods and believed to everlasting. Some new religious movements such as Omoto and Hitonomichi (both were unrecognized sects of religious Shinto), and some minor groups were attacked by police for undermining the mythological Imperial system.

In 1939, the “Religious Organizations Law” was enacted to control all religious groups except State Shinto. Many sects of Buddhism accepted the government policy of war. In 1941, Protestant churches merged to form a

government-sponsored United Church of Christ in Japan. The Vatican told Japanese Catholics that they could consider the gesture to worship the State Shinto shrine

After World War II, radical changes took place in Shinto and in its relation to the State. The Allied Occupation demanded the democratization of Japanese society and General Head Quarter (GHQ) proclaimed the “Liberty Directive” abolishing State control of religions and the “Shinto Directive” ordering the Japanese government to separate Shinto from the State and to put all religions, faiths and creeds upon exactly the same basis. GHQ wanted to prevent religion from becoming a tool of nationalism. State Shinto was abolished and Shinto was accepted as a private religious group of Jinja. In 1946, the Emperor declared that he was not divine but human.

On the demand from GHQ, the Japanese government abolished the “Religious Organizations Law” and enacted the “Religious Corporations Ordinance” which concerned all the religions including Shinto. Shinto became just one of many religions together with Buddhism, Christianity and other denominations.

3. Japanese legal system and religious law

The demand of GHQ abolishing State Shinto was adopted into the Japanese Constitution which provides for freedom of religion and the strict separation of religion and State. Article 20 of the Japanese Constitution states that freedom of religion is guaranteed to all, no religious organization shall receive privileges from the State, nor exercise any political authority, no person shall be compelled to take part in any religious acts, celebration,

rite or practice. The State and its organs shall refrain from education or any other religious activity. Article 89 of the Japanese Constitution describes that no public money or other property should be expended or appropriated for the use, benefit or maintenance of any religious institution or association.

Article 14 of the Japanese Constitution prohibits discrimination of creed. The "Fundamental Law of Education" (Article 9) provides for tolerance with respect to religion or one's position in society, and forbids religious education in public institutions. Religious education in private institutions is not proscribed.

The judgment by the Supreme Court in the lawsuit concerning a Shinto ceremony purifying a building site (in 1977) took the position of the limited separation. This judgment is often criticized by those who claim the secularism of the State, however Japanese government generally respects the freedom of religion in practice. Of course, when religious freedom is exercised through external activities, it is limited by considerations of "public welfare", such as the protection of public safety, public order and so on.

Separation of State and religion means State neutrality in religious matters. Japan has no state religion or established church. Religion is by no means public matter but private and personal. The Japanese legal system has no connection with religion. The civil code is secular, and family law contains no religious element. Marriage, divorce and inheritance are secular matters. Many Japanese celebrate marriage with religious rituals but marriage itself is what is called a civil marriage and valid only when registered by public office. Religious education is excluded from schools established by central and local government. In the event of a dispute over religion between a school and an accuser, there is no recourse to the Japanese courts. Priests

have the right to refuse testimony at trial court under the Code of Civil Procedure and the Code of Criminal procedure.

There are many State laws regarding religion in Japan. As mentioned above, the Japanese Constitution contains provisions regarding freedom of religion and the separation of State and religion. Beside the Constitution above mentioned, Religious Corporations Law is a main religion-related State law. Its purpose is to provide religious organizations with legal capability to own facilities for worship, as well as other properties, and to maintain and operate the same while engaging in profit-making enterprises. The Government does not require that religious groups be registered or licensed; however, in order to receive official recognition as a religious organization, which brings tax benefits and other advantages, a group must register with local or national authorities as a “corporation in public interest”

Those wishing to establish a religious juridical person must provide regulations and receive authentication of the competent authority.

Article 84 of the “Religious Corporations Law” prohibits the Government from interfering in the traditions and customs of religious corporations. Article 85 provides that:

No provision of this law shall be construed to give the government or the court of justice competence to mediate or interfere in any form in regard to religious matters such as faith, discipline, usages, etc. of religious organizations, or to give competence to recommend, induce or interfere with appointment and dismissal or other changes of religious personnel.

Religious corporations have autonomy of administration. However, article 86 provides:

No provisions of this Law shall be construed to prevent application of the provisions of other laws and ordinances in case a religious organization has

committed acts contrary to public welfare

The court may order the religious organization to be dissolved at the demand of the competent authority, interested parties or the public procurator in the case that it has committed acts in violation of laws and ordinances as being clearly recognized to be harmful to the public welfare.

Religious juridical corporations (persons) are requested to have three or more responsible officers, one of whom is the official representative. The official representative represents a religious juridical person and presides over its business. Responsible officers decide the business of a religious juridical person in accordance with the provisions of its regulations.

Religious juridical persons are permitted to have hospitals, schools, kindergartens etc. under their missions. In these enterprises religious juridical persons are free from obligation to pay taxes by tax laws.

In December 1995, part of the Religious Corporations Law was revised, despite opposition from major religious groups including Buddhist, Christian and new religious groups such as Soka Gakkai, Rissho Kosei Kai and so on, to increase to some extent governmental powers of supervision. For example, the Government imposes on religious juridical organizations an obligation to publish their financial records. The Government asserted that this revision was part of an effort to prevent criminal activities such as that of Aum Shinrikyo (Aum truth school) which killed many people by a poison gas attack on the Tokyo metropolitan subway in 1995.

At the same time, the law regulating organizations engaged in acts of indiscriminate mass murder was enacted to regulate Aum Shinrikyo. The purpose of this law is to secure guarantees of public safety and peace keeping and to establish requisite policy measures to protect against the recurrence of indiscriminate mass murder. Alefh which is the succession

group of Aum Shinrikyo is now under investigation of police. Japanese court repeated to address that the law was not in violation of Article 20 of the Constitution. In reaching its conclusion the court focused on the fact that the stated purpose for the surveillance was “not to regulate the religious activities of either the organization or its members, or to weaken the members’ spiritual or religious views.”

From a point of view for the protection of consumers, Japanese courts allow the claim for damages caused by activities of sects such as Unification Church to ask people for excessive amounts of money.

Under Religious Corporations Law, many religious organizations have a dual system. The religious leader has the power to decide on religious matters such as doctrine or ritual; while, the responsible officers and the official representative rule on the administration of organization. Questions of doctrine and certification (or qualification) of monks or nuns are considered religious matters and are determined by the religious leader or authority.

Every religious group has its own religious law. Shinto has neither scripture nor systematic doctrine. Shinto Gods do not hand out rules for people to obey. Instead of emphasizing moral commandments, Shinto focuses on ritual purity and cleanliness in people’s dealing with the gods. Almost all Shinto shrines in Japan are incorporated into Jinja-honcho, the regulations and by-laws of which guide member shrines in the way of preserving traditional Shinto rituals and festivals as well as promoting traditional way of life.

Buddhism has no divine law. Buddhism teaches achievement of enlightenment. “Law” in Buddhism, (Dharma in Sanskrit, Dhamma in Pali)

originally means “truth”, “norm”, or a way in which to interpret the rule of the world in order to achieve enlightenment. “Religious law” exists in Buddhists thought but this is not the law of the State but a guide to a life of faith for its followers.

Buddhist schools are basically based on the idea of Shakya, but their religious laws vary because of different interpretation of sutra. Zen, Hokke, Jodo, Jodoshin-shu and many other denominations have their own doctrines. The followers of Buddhism should hold to five precepts: not to kill, steal, commit adultery, lie or deceive, or to use intoxicant. These precepts may be common to Buddhist but compliance with them is different from school to school.

Every Buddhist school has its own constitution and regulations which are administered by the corporation. The Constitution of Jodoshin-shu Hongwanji-ha provides the aim of the school and orders the monks and adherents to worship Amida and to live free from superstition and self-centered temporal benefits.

The by-laws of Jodoshin-shu Hongwanji-ha prescribe the symbolic status of Monshu (the head priest of school) as the same as that of the Emperor in the Constitution of Japan. The Monshu has no power to rule except in the performance of ceremonial, and must act in co-operation with Socho (the Governor General) who is a chief of Sokyoku (the Cabinet). The Monshu is the symbol of the unity of the school or group, and heirs to his position succeed in accordance with the House Law of Monshu passed by the Shukai (Hongwanji General Assembly). The General Assembly, which is the highest organ of the corporation, is composed of elected members, representatives of all the abbots and believers. It has legislative and budgetary powers similar to the Diet (the Japanese Parliament). Executive power is vested in

the Cabinet which is responsible to the General Assembly, a body composed of parish representative. The so-called parliamentary cabinet system has been adopted.

The House of Justice (the court of justice) decides disputes among monks, and the competence of judicial review. The system of separation of powers is introduced.

The by-laws of Jodoshin-shu Hongwanji-ha are very similar to the Japanese Constitution, but the Monshu is given power to take decisions on doctrinal questions, assisted by the House of Academicians which consists of scholars in the school.

The Roman Catholic Church in Japan follows Canon Law controlled by the Vatican. Japanese Catholicism is run by the Catholic Bishops' Conference of Japan which is registered to the Japanese Government under Religious Corporation Law as the Catholic Central Conference of Japan.

Many Protestant churches and denominations have their own regulations. For instance, the largest Protestant denomination, the United Church of Christ in Japan, states in its constitution that it conducts the administration of affairs by means of an assembly system. The highest administrative organ of this church is the United Church General Assembly consisting of the representatives of ministers and lay members.

Kyoha Shinto and other religious Shinto groups have their own regulations. The nature of Kyoha Shinto groups varies a great deal, so their by-laws, too, are varied. In some cases the head priest has the absolute power in a school.

4. Conflict between State law and religious law

Japan has no religious law as legal basis, so there is apparently no direct conflict between the State law and religious law. It is considered natural to punish a religious act resulting in the violation of State law. There are occasions, however, when the court is requested to take a tolerant view of a person who is faithfully following religious law.

To give an example, a Christian priest was accused for concealing some students who had blocked out a high school classroom for political purpose. In 1975, the court declared him not guilty on the ground that he was carrying out his religious duty to care for people in trouble and ordered the State to refrain the power of punishment to respect the Christian tradition of stewardship. The court considered his conduct as one of "Justifiable Acts" in the Penal Code of Japan.

In a second example, Jehovah's Witnesses, basing themselves on the Bible, reject practice of martial arts (Japanese fencing) and refuse blood transfusions. In 1996, the Supreme Court of Japan re-instated a student who had been expelled from public school for refusing to take part in martial arts on account of his beliefs. In 2000, the same Court upheld the rejection of blood transfusion by a Jehovah's Witness and ordered a hospital to pay compensation to a patient who was given a blood transfusion without informed consent.

Japan has adopted the citizen judge system. Any Japanese has the duty to be a citizen judge when he is elected. The Catholic Bishops' Conference of Japan announced to the clergy, religious and members of the apostolic institutes, according to the prescription of the Code of Canon Law,

can.285 § 3. “Clerics are forbidden to assume public offices which entail a participation in the exercise of civil power” (concerning the religious, see can.672; concerning the members of the apostolic institutes, see can.739).

The Catholic Bishops’ Conference of Japan indicated that;

1. If the clergy, religious and members of the apostolic institutes are informed that they are elected as candidates of the citizen judges, we recommend them to write expressly their will of resignation in the inquiry form and send it.
2. If the clergy, religious and members of the apostolic institutes are elected as the citizen judges in spite of their resignation of becoming the candidates of the citizen judges, we recommend them not to participate in the trial paying the fine.

Japan has death penalty, and Catholic Bishops’ Conference of Japan and some Shin Buddhism groups request respect for the view of conscientious objectors who want to reject a citizen judge on the grounds that he might participate in passing a death sentence. It is paid attention very much whether the court allows the priest to refuse the citizen judge assumption by the reason in the religion.

There are other problems with the religious laws. Some groups reject the transplantation of organs from the brain-dead on religious grounds. Omoto is well-known for radical criticism of organ transplantation. Some are against euthanasia and reproductive medical treatments. Not only Catholic but others such as Seicho-no-Ie (one of the nationalistic religious denominations founded before World War II) consider abortion as murder. Some Moslems claim they require religious consideration concerning food, especially halal meat, in the public school and the prison.

There is an increase in the number of people having different religious backgrounds in Japan. Conflict of State law and religious law may become a serious problem in the Japan of the future.

References

Article 28 of the Constitution of the Empire of Japan. Japanese subjects shall, within limits not prejudicial to peace and order, not antagonistic to their duties as subjects, enjoy freedom of religious belief.

The Constitution of Japan provides for religious freedom and the separation of state and religion as follows;

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

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

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

Article 89. No public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprises not under the control of public authority

Article 35 (Justifiable Acts) of the Penal Code of Japan provides "An act performed in accordance with laws and regulations or in the pursuit of lawful business is not punishable". And Article 103 (Harboring of Criminals) describes "A person who harbors or enables the escape of another person who has either committed a crime punishable with a fine or greater punishment or has escaped from confinement shall be punished by imprisonment with work for not more than 2 years or a fine of not more than 200,000 yen."

Religious corporation law

Article 16. A religious juridical person shall have three or more responsible officers, one of whom shall be the official representative.

2. Unless otherwise stipulated by the regulations, the official representative shall be appointed by mutual vote among the responsible officers.

3. The official representative shall represent a religious juridical person and preside over its business.

4. Responsible officers shall decide the business of a religious juridical person in accordance with the provisions of its regulations.

5. The official representative and responsible officers, shall endeavor to appropriately carry out the business affaire and enterprise of the religious juridical person concerned, always conforming to laws and orders, the regulations and rules, if any, established by a religious organization comprising religious juridical persons upon consultation with the religious juridical person concerned, and fully considering religious covenants, discipline, usages and tradition in so far as they do not violate these laws and orders, regulations or rules and as to the property safeguarded only administered, they shall be precluded from using it for other purpose or misusing it at the least.

6. The powers of the official representative and responsible officers concerning the business of a religious juridical person shall not include any power of control or other powers of the officers concerned over religious functions.