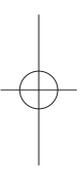




YUKI Hideo*

Problems with the Revisions to the Religions Corporations Law**

Introduction



Last year (1995) the Religious Corporations Law (*shūkyō hōjin-hō* 宗教法人法) was revised. Because this came straight after the Aum Incident¹ and was also related to the fierce political battle between the Liberal Democratic Party (LDP) and Shin-shintō (“New Frontier Party”) concerning Sōka Gakkai 創価学会, the issue was taken up by the mass media day after day. There were also various moves within the religious world related to the issue of freedom of religion. Eventually the government-sponsored bill was passed; and now, as if firing on an already defeated enemy, it seems that moves are afoot to consider bills for a “Fundamental Law on Religion” (*shūkyō kihon-hō* 宗教基本法) or a “Law on the Separation of Politics and Religion” (*seikyo bunri-ho* 政教分離法). In addition, the idea of a government-sponsored Information Center on Religions has emerged. It is therefore necessary to put into some sort of order the arguments concerning the relationship of religion to the state or politics.

Since the end of World War II, under the present Constitution, the issue of religion and state has been dealt with primarily as the “Yasukuni Shrine issue” or the “Emperor issue.” We must pay attention to the fact that now the issue of state and religion has surfaced at a different angle, entangled in the issue of religious corporations. In this paper I begin with a study of the contents of the revisions to the Religious Corporations Law and the points at issue, then give a number of analyses of the dynamics that underlie these revisions. Finally, I would like to discuss how religions should exist under the present structure of the state.

* Professor Emeritus, Dōshisha University, and former Director, NCC Center for the Study of Japanese Religions.

** First published in *Japanese Religions* Vol. 22 (No. 1) 1997: 75-86. A synopsis of the revisions to the Religious Corporations Law (1995) and the respective passages of the original Religious Corporations Law (1951) in English translation is printed on pp. 50-59.

1. See also Yuki's article on Aum Shinrikyō in this issue of *Japanese Religions*.

The points at issue in the revisions

According to the explanation given by the bill's proposers, the Aum Incident clearly demonstrated that there were problems with the previous Religious Corporations Law, and the revisions proposed were the minimum necessary. The three main points of these revisions were: the issue of who has jurisdictional authority over a religious corporation; financial openness and transparency; and the right of the jurisdictional authority to question a religious corporation. I would like to look briefly at each of these issues.

1. The authority having jurisdiction over a religious corporation

Aum Shinrikyō obtained its certification (*ninshō* 認証) as a religious corporation from the Tokyo Metropolitan Government, but carried out activities and owned property and buildings nationwide. Under the previous Religious Corporations Law, individual temples, shrines or churches were certified in the prefecture (*to, dō, fu, ken* 都道府県) in which they are located, whereas umbrella organizations such as Christian denominations and Buddhist sects obtained certification from the central government (the Ministry of Education, *Mombushō* 文部省). We may say that Aum was atypical in being certified only in Tokyo, but its actions were not illegal. According to the revisions, a religion that carries out activities in more than one prefecture now falls under the jurisdiction of the central government.²

It is said that the villagers of Kamikuishiki, Yamanashi Prefecture, had complained to the prefectural government about Aum, but that the matter was never taken up because Aum only came under the jurisdiction of the metropolitan government in Tokyo. This has been amended under the revisions, which in a sense have set out that all groups without exception must do what most have in fact already been doing. In one sense, this revision is appropriate, but from the opposite perspective it is not something that necessarily had to be revised; it is conceivable that it would have been possible to deal adequately with the situation by applying existing laws. If Aum's criminal misdeeds could have been dealt with under the Penal Code, we can say that this should have borne no relation to where the competent authority was located.

However, under the revisions even individual churches, temples and shrines that happen to straddle two prefectures, or that have a sub-temple or mission in a neighbouring prefecture, will come under the jurisdiction of the central government. With today's increasing urbanization, especially around Tokyo and Osaka, there

2. See Article 5 of the revised law, translated by John LoBreglio in *Japanese Religions* Vol. 22 (No. 1): 51.

are not a few towns that cross prefectural boundaries. Such cases will be very troublesome for the office administering them; so even if the law should be revised, is it really necessary to take the revisions to such lengths?

In any case, as a result of this manufacturing of the need for religious corporations that have been certified at a regional level to transfer their certification to the central government, the volume of work for the bureaucracy will greatly increase, and this trend opposes the current demands for administrative reform (*gyōsei kaikaku* 行政改革). In addition, the administrative work will not simply increase in volume; there is the strong possibility of a qualitative expansion of the bureaucracy's powers. Now, therefore, when the revisions have already come into force, I think it is important that we do not allow this trend to go any further.

2. Financial openness and transparency

Aum collected large amounts of donations (*fuse* 布施) and held huge assets, but its financial situation was completely opaque. Aum is an extreme example, but the problem is in no way restricted to that group. Formerly, in the name of respecting the independence of religions, the Religious Corporations Law had left the matter of financial accounts entirely in the hands of the religious groups themselves. However, as a religious corporation, should not a group as a matter of course prepare financial documents and be open about them? And, in order to impose the obligation to prepare these documents, should not they be required to report regularly to the jurisdictional authority? On the basis of such arguments, the current revisions set out that religious corporations must prepare statements of accounts, report them to the authorities, and make them available to persons with related concerns.³

Whatever the organization, financial openness and transparency are important. Even before the revisions, many religious corporations were already open in their financial accounting without any legal regulation, and expected to hold set meetings to decide properly on their budgets and accounts. Most Christian churches hold annual general meetings to approve their budgets and review their accounts. Members can ask questions at the general meeting and also at other times. Not to carry out this procedure properly would be odd; so in this sense we can say that the current revisions have set out something that is entirely normal.

However, that is not to say that there are no problems with the revisions. For one, they stipulate openness to persons with related concerns, but what are the limits that define such persons? In Christianity, there is the clearly defined general concept of "communicant members" (*baisan kaiin* 陪餐会員), but this is not always strictly applied. Moreover, for traditional Buddhist temples the definition of who are supporting families (*danka* 檀家) or believers (*monto* 門徒), and in Shinto the

3. See Article 25 of the revised law in *Japanese Religions* Vol. 22 (No. 1): 51-53.

definition of who are the parishioners (*ujiko* 氏子), are very ambiguous. In addition, on the question of reports to the authorities, there is the issue of the uses to which the documents will be put. Are there any guarantees that having looked at the financial figures, the authorities will not go on to scrutinize the internal workings of the religious group, and possibly overstep the bounds of religious freedom by criticizing doctrines or religious practices?

There is a general sense that it is wrong to interfere with people concerning money matters, especially in the case of religion. Because the money is donated, it is easy to think that one must not talk critically. On the contrary, such an atmosphere is conducive to scandal. The general way of thinking among ordinary believers is that because money is something that has been given as an offering, to ask questions about its use would be to betray a lack of faith. In the context of religion, perhaps we can say that people think money matters should be left in the hands of people with special status or that the founder is infallible. Let us agree that this is a part of the freedom of religion. It must be said, however, that given the legal status of a religious corporation, all the members of a religious group are responsible for keeping an eye on whether the organization to which they belong is using its money correctly. If there is not this exercise of rights and responsibilities on the part of its members, it must be said that a group lacks the qualifications to be a religious corporation.

3. *The right of the jurisdictional authority to question a religious corporation*

Of all the current revisions, the one about which I have read the most arguments is the new provision that has been added to Article 78.⁴ This sets out that if there are suspicions concerning a religious corporation, the jurisdictional authority can request a report and ask questions. However important the freedom of religion may be, the argument runs, it is not right that the local government should not be able to investigate religions such as Aum, and this provision was therefore added. Voices were raised loudly in opposition to this within the religious world, which sees it as opening the door to interference by the government in the affairs of religious corporations.

Although within the original law there was no clear wording setting out plainly the right of the authorities to question a religious corporation, it was set out that in the case of impropriety certification could be withdrawn within a year of its issue and that the authorities had the right to dissolve a religious corporation. As a natural prerequisite to this, it is to be expected that the authorities should ask questions and request reports. Within these limits, perhaps we can say that the revisions have clearly set out what was already possible, and have also clearly set limits in case the government by some faint chance should go too far.

4. See the English translation in *Japanese Religions* Vol. 22 (No. 1): 53-57.

Nevertheless, the addition of such a long and precisely worded provision has profound implications. At root the government has the desire to run everything, to rule everything, so the fact that it is taking these steps with regard to religious corporations is cause for concern. It seems this provision was decided on as one that should be used with great discretion, but I would like to hope for even more judicious discretion.

The dynamics of the struggle over the revisions

The occasion for the revisions to the Religious Corporations Law was the Aum Incident. The actual Diet discussions on the bill concerning the revisions, however, demonstrated that they are not actually about measures to counter Aum, rather a variety of advantages and disadvantages are mutually entwined and complicated power relationships are at work. We can divide these in outline into three main aspects: first, the dynamics of the political parties; secondly, the dynamics of the bureaucracy; and thirdly, the dynamics of a consumer society.

1. The dynamics of the political parties

It is common knowledge in Japan that the revisions have the flavour of an anti-Sōka Gakkai measure on the part of the ruling coalition. As a result, the debate about the laws concerning religion has become a vehicle for political struggle. Why is it that the issue of Sōka Gakkai has only now become the center of political controversy, even though the organization has been politically active as the Kōmeitō (the political party founded by Sōka Gakkai) for many years?

For a long time the Diet had been orientated to the opposition between the overwhelmingly strong LDP and the numerically weak Social Democratic Party of Japan (SDP). The position of prime minister was rotated by the LDP among its members, and the SDP was in constant opposition. Then there were the Kōmeitō, the Democratic Socialist Party, the Communist Party, etc. The Kōmeitō had gradually increased the number of seats in the Diet, but was a very long way from gaining a majority. In 1993, however, the LDP split, and its offshoot formed the new conservative party Shin-shintō. Neither the LDP nor Shin-shintō was able to gain a majority in the Diet, so the only way for either party to take power was to form a coalition. The activities of the parties that held the casting votes therefore became a determining factor in deciding political direction.

In 1994 Sōka Gakkai officially withdrew from Kōmeitō and aligned itself with Shin-shintō. This pointed to the strong probability that in an election Shin-shintō candidates, supported by Sōka Gakkai, would beat LDP candidates. This was just after the Aum poison gas attack in Tokyo, when revising the Religious Corporations Law had become a hot topic. In a sense, it is hardly surprising that some members

of the LDP started saying that the Aum Incident could provide clues to finding ways to reduce Sōka Gakkai's political influence. On the other hand, Sōka Gakkai mobilized Shin-shintō to do everything it could to obstruct the revisions.

If we look at the contents of the revised articles, it is doubtful that Sōka Gakkai's power will be seriously weakened as a result of these revisions. I have the feeling that rather than the content of the law, it is the basic posture concerning the revisions that has become the point of contention.

One issue is the certification of religious corporations by the central government (the Ministry of Education) that function on a national level. This is because the fact that Aum was registered only with the metropolitan government in Tokyo became a problem; but Sōka Gakkai also is active nation-wide while only being registered in Tokyo, so it had no choice but to interpret this as an attack on itself.

Another reason that the LDP proposed the revisions was that it views Sōka Gakkai as being secretive about its financial affairs. From the Sōka Gakkai side, however, imposition of the obligation to submit financial reports is perceived as a means for the LDP to find ways of controlling Sōka Gakkai.

Tax exemption for the precincts or worship facilities of religious corporations is an issue that concerns tax law and is not directly related to the Religious Corporations Law, but this too has become a large bone of contention. The argument has been put forward that the facilities run by religious corporations gain tax exemption because they are carrying out religious activities; that if such a religious facility is used for election campaigning then this gives one party an unfair advantage; and that political activities in such tax-exempt establishments should be prohibited. Sōka Gakkai, which had used its facilities to campaign for Kōmeitō, interpreted this as an indisputable attack on the freedom of religion.

In this way, revising the Religious Corporations Law has clearly become a vehicle for political struggle. Other religious groups have become embroiled in this political controversy. Until this issue emerged, there were almost no other religious organizations that had entertained good relations with Sōka Gakkai. From this perspective, it might have been expected that many groups would be pleased with the LDP's attack. But when the issue became the Religious Corporations Law, this state of affairs changed considerably. The same rope that binds Sōka Gakkai will bind other religious organizations as well. So in opposing the revision of the law, they necessarily appeared to be helping, or at least cooperating with, Sōka Gakkai.

2. Dynamics of the bureaucracy

The present revisions have their roots in the Aum Incident, but a variety of political dynamics are at work. One of these is the aforementioned dynamic between the political parties concerning Sōka Gakkai; another is that of the bureaucracy.

There is a fundamental trend for the bureaucracy continually to seek to widen its powers and enlarge its organization. For the Ministry of Education, the Aum Incident offered a splendid opportunity for expansion. After Aum committed its appalling crimes, voices were loudly raised asking what the government was doing about religious corporations. In answer to this, the bureaucrats asserted: "Because the Religious Corporations law is inadequate, we cannot do anything. Therefore, we need to revise the law." Then, by requiring that various documents be submitted to the Ministry, at a stroke they were able greatly to increase their staff.

Today, at a time when voices criticizing the waste of taxpayers' money are growing louder and demands are being made for a reduction in the size of government organizations, I think the enlargement of the Ministry of Education is a problem in itself; but I would like to look at how this affects religions.

It is a fact that the government, which loves to poke its nose into anything and everything, had until last year more or less refrained from doing so with religions. This stemmed from reflection on the pre-war and wartime oppression of religions. After the war freedom of religious belief (*shinkyō no jiyū* 信教の自由) and the separation of politics and religion (*seikyō no bunri* 政教の分離) were very strongly emphasized. As a result, it is a fact that the government showed considerable hesitation in dealing with Aum. At the same time the bureaucracy has done anything but reduce its dealings with religion. For example, at the time of the certification (*ninshō*) of a religious corporation, bureaucrats give a large amount of detailed guidance, and rather than being limited to "certification," we can say that the process is closer to being given "permission" (*ninka* 認可).

What allows such a bureaucracy to exist is the high degree of faith in government offices among Japanese people. Most Japanese consider that they can feel secure if they are protected by officialdom. After the Aum Incident, there were demands for government offices to keep a closer watch on religions. Taking advantage of this, the bureaucracy is trying to strengthen the powers of local government offices, even if only by a little. Rather than viewing this dynamic solely as concerning the bureaucracy, perhaps we should therefore see it as a dynamic involving the relationship between the bureaucracy and citizens.

Officially, the legislation or revision of a law is the responsibility of the Diet. In reality, in most cases it is bureaucrats who draft the bills, which pass virtually automatically through the Diet. This was also the case with the revisions to the Religious Corporations Law. Usually the bureaucrats, to make it appear that they have the support of the parties concerned, hold meetings of supposedly advisory committees. In this case, the Religious Corporations Council (*shukyō shingi-kai* 宗教審議会) was assembled and several meetings were held. The council's chair, however, was the former Vice Minister of Education, and his report was written by the Ministry's staff. There were several representatives of religious groups on the council, but it seems they were there only as window-dressing.

3. Dynamics of a consumer society

Most religious leaders have opposed the revisions of the law from the standpoint that they violate freedom of religion, whereas among ordinary people the atmosphere is favourable to the revisions. This is not only because of Aum. There also is the issue of the Unification Church as well as reports of other questionable spiritual business methods (*reikan shōhō* 靈感商法), and it is undeniable that ordinary people want the laws concerning religious groups to be made somewhat stricter. There are also many opinions expressed concerning established Buddhist temples and clergy. After the Aum Incident, it became common to overhear conversations on the train such as, “It may be separate from the issue of Aum’s religious offerings (*fuse*), but what temples charge for a posthumous name (*kaimyō* 戒名) is appalling,” or “They’re running a car park, but they don’t pay any tax.” Ordinary people view religion from the standpoint of consumers, in such terms as whether the cost is high or low, or whether methods of proselytizing and recruiting are intrusive. The issue is that just as the government has a duty to protect consumers from unscrupulous businesses, so it also has a duty to protect an individual’s freedom of religion from unscrupulous religious organizations.

Until recently, when religious groups considered the issue of freedom of religion, they did so from a victim’s perspective. They were restricted or oppressed by the state, and it was necessary for them to struggle against this. These days ordinary people – that is, consumers – have come to view religious organizations as aggressors, or at least potential aggressors, rather than as advocates of the individual’s freedom of religious belief.

The government is now expected to take on this role of defender of freedom of religion. This has come to resemble the framework of the argument concerning consumer protection. Primarily, this argument runs, consumers should look out for their own interests; responsibility rests with each individual. However, it is unrealistic to lay the entire burden on the shoulders of weak individuals. For this reason the government is expected to fulfil functions such as disseminating information, imposing regulations, and so on. From the standpoint of the basic principles of market capitalism, the government should not interfere at all. *Laissez-faire* is important, but it carries the risk that individuals may be seriously damaged. At this point, the argument runs, the government must step in and carry some of the responsibility. Just as in the business world the government acts to protect consumers, so regulation is necessary for religious corporations.

When the present Constitution came into effect, as a basic principle it was held that religious organizations and the government should have no relation to each other. A complete lack of communication was unfeasible, so under the Religious Corporations Law, without communicating with the government, a religion could not gain the status of a legal corporation (*hōjin* 法人). Should there be serious

problems with a corporation, the government has the power to dissolve it. This was the only relationship, but now, according to the revisions, each corporation must submit a report to the jurisdictional authority once a year. If it seems that there are problems, and there is sufficient reason for suspicion, the authority now has the right to question the religious corporation. From the perspective of religious organizations these revisions appear to be the beginning of government control, whereas from the side of ordinary people perhaps they appear to be fulfilling the function of safeguarding the individual.

That such expectations are placed on the bureaucracy stems in part from the deep-rooted faith in government among Japanese people. At the same time the great majority of people does not consider themselves adherents of any religious organization. According to the figures given for the number of religious believers, more than half the population are Buddhist. These figures, however, are reported by the religious groups themselves, in other words the temples, and most individuals would not regard themselves as belonging to a temple or Buddhist sect.

In countries other than Japan, in many cases, people perceive actions taken by the state against religious groups as being taken against themselves. In this country too, for people who regard themselves clearly as belonging to a religion the situation may be the same. For the great majority of people, however, organized religion is something completely unrelated to themselves. They are religious “consumers” who use religion only when they need to, for example for funerals or weddings. This is an important factor in the rapid progress of these revisions.

Conclusion

I have discussed the main points of the revisions to the Religious Corporations Law and the dynamics surrounding them. Finally, I would like briefly to consider anew the way in which religious groups should function and the way in which the state and its bureaucracy should deal with religious issues.

1. How religious groups should be

On the occasion of the revisions, it was repeatedly said that up until now the Religious Corporations Law has functioned on the premise of the essential goodness or infallibility of religions. If we were to assume that religious groups have accepted this premise of their infallibility as right and proper, it must be said that this would be a serious problem.

At present, within the religious world the atmosphere is strongly critical of last year’s revisions. I think that this makes it all the more necessary for each religion to scrutinize its own arguments and, each in its own way, clearly deny the theory of the

essential goodness of religions. Once this negation is seen as a matter of course, it is to be expected that it will become connected to the establishment of structures for self-government (*jichi* 自治) and self-purification (*jjjō* 自浄).

In the case of Christianity, the church sees itself as God's holy, chosen flock that has its source in God. In real life the church is a human group and is not free from errors and mistakes. For that very reason, the churches have made efforts to ensure that mistakes and errors are not left as they are, through systems such as church hierarchies and different levels of church councils. I am sure that religions other than Christianity also have similar systems for dealing with problems. What is now being asked for is the honing of such systems. Through making such efforts, religions will be able for the first time to assert their independence of the state and its bureaucracy. This independence should not only be for the sake of the religious groups themselves, but must also ensure the freedom of religious belief of individual citizens.

If revisions of the Religious Corporations Law were necessary, it would be desirable that the question be raised independently by religious groups themselves. This should have no connection with political interests or the ulterior motives of the bureaucracy. The demand to respect the independence of the religious world (*shukyō-kai no jishu-sei sonchō* 宗教界の自主性尊重) emerged precipitately as a pretext after the argument concerning the revisions had begun. Perhaps, however, there is no other way to interpret the term "respect for religious independence" than as an attempt by religious groups to protect their own vested interests.

2. Relationship to the bureaucracy

I have considered the importance of religious autonomy, but does this mean that the state and its bureaucracy are to have nothing at all to do with religious organizations, or does the bureaucracy have a definite role to play?

With regard to this point, Japan has suffered the painful experiences of the pre-war and wartime periods. Under the present Constitution it was decided to eliminate the role of the state in religious affairs as far as possible. I think that this is fundamentally important in the Japanese context. If, however, a religious group becomes a religious corporation, it receives a tax exemption on its fixed assets such as land and buildings and can claim a tax reduction or exemption for its enterprises as nonprofit ones. These are special measures on the part of the state; they do not mean that religious groups receive extraterritorial rights. It is a fundamental constitutional principle that the state is separate from religion. This relationship is not one of enmity, the premise being that it is friendly. Within the limits of these sorts of measures, it is incumbent on religious groups to prove that they are conforming to these measures, and on the bureaucracy to lay hold of this proof and show it to the citizens, that is to ordinary taxpayers.

If we consider the case of individuals, first their births must be registered with the government, then their addresses. The state, however, has no business to interfere with a person's personal affairs or inner life. This is what is called "freedom." In the same way, as long as a religion owns land or buildings as a religious corporation, it is impossible for it to exist with absolutely no connection to the bureaucracy.

So far I have considered the relationship between religion and the state solely with regard to the administration, but it is also necessary to look at its connection to the judiciary. Should religions be able to govern themselves completely independently, they should also resolve all their internal conflicts by themselves. In reality, there have been many cases up to now in which the judicial apparatus has been required to solve internal conflicts within religious groups, particularly conflicts involving financial assets. This situation is regrettable, but it cannot be said to be unreasonable. In other words, in contemporary society, religious groups that own land or financial assets and carry out their activities within society cannot lead an existence unconnected with the bureaucratic organs of the state. The question that must be considered is not whether the bureaucracy should have any relationship with religious groups or not, but rather what the correct relationship should be.

I think that in the debate within the religious world concerning the present revisions, the argument that any relationship is of itself inappropriate can be detected. We cannot say that this is nothing more than an over-reaction to the pre-war and wartime experience; but as the revisions have already been decided and the law has come into force, I think that from now on we have to think more carefully about the relationship between religion and the bureaucracy.

3. Problems of the bureaucracy

When we members of religious groups talk about our relations with the bureaucracy, we are apt to be passive and to think only of how to protect ourselves. Instead, we have to see the matter from a different perspective and actively criticize the bureaucracy. We should deny both the essential goodness of religious groups and the infallibility of government. It is unthinkable that some religious people should still hold the attitude of "putting government above people" (*kanson minpi* 官尊民卑). Sometimes religious groups proclaim, "We are a religious corporation" on the signs outside their worship facilities. Just because a religion has gained the legal status of a corporation, it does not mean that it has somehow become exalted above other groups.

One reason for this attitude is the method used for certifying religious corporations. Even before the revisions there was a tendency among prefectural governments to move further and further away from "certification" towards giving "permission" to religious groups. Since the Aum Incident, there have been more and

more voices raised in support of tightening the process of certification, but I believe that certification itself should be made simpler and speedier. "Certification" should mean just that, and should be granted as long as the necessary conditions are met. Should there be a serious problem it is already set out in law that certification can be revoked within a year of its issue; even so, the administrative office that carries out the process of certification already asks for an inordinate number of details.

I would like to close by touching briefly on the problem of the Ministry of Education. As mentioned above, it is this ministry that has central jurisdiction over religious groups. Would it not be better to reallocate this role to another, more neutral, department dealing with statistics? The Ministry of Education has a strongly ideological character and has tended until now to interfere overly with the contents of educational material. I think this kind of institution should not be allowed to handle the administration of religions.

Translated by Claire Debenham