

RELIGIOUS FREEDOM UNDER THE MEIJI CONSTITUTION

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IV

Religious Freedom and The Yamagata Religions Bill

The making of a religions law was a task for the cabinets from the first abortive attempt in 1899 until the enactment of the Religious Organizations Law in 1940. Yamagata and the ministry of Home Affairs in 1899 and in the late 1920,s Okada Ryohei and the Ministry of Education, to which the jurisdiction of religious administration was transferred from the former ministry in 1913, pushed the project forward. The promoters drafted bills, asked for the cooperation of the members of parliament, representatives of religions and authorities on law and religions, and submitted bills to the Diet. The bills, however, were blocked by the opposition of the legislature. The struggle to enact a religions bill continued for forty years.

The history of the making of a religions law contributed to the elaboration of the ideas of religious freedom, because both the proponents and the opponents of the bill acknowledged that the bill concerned itself with the government control of religions

and examined the religions bill's relation to the freedom of religious belief as provided in Article 28 of the Meiji Constitution.

The present and the next chapters will observe the history of the abortive attempts of making a religions law as a case of conflict between the different interpretations of religious freedom. The present chapter will deal with the Yamagata Religions Bill of 1899 and its impact, and the next chapter, the Okada Religions Bill of 1927 including a third attempt of 1929 and the related questions.

The first religions bill, prepared by the second Yamagata Cabinet, was presented to the House of Peers on December 14, 1899 during the fourteenth diet session.¹ It was a relatively succinct document, consisting of fifty-three articles. The articles were divided into five categorical chapters and a section for transitional provisions.

The first chapter, titled General Provisions, defined the conditions of the incorporation of religious organizations (Article 1 through Article 6) and the authority of the government to order the alteration or cancellation or prohibition of the propagation and the practice of religion (Article 9), accompanied by provisions that granted the religious organizations such privileges as exemption from taxation and the distraintment of property (Article 11) and that required religious leaders to submit an advance report to the government authorities when public religious practice was planned (Article 8). The second chapter, regulating the administrative particulars on churches and temples, demanded the obtainment of governmental approval in

1. Japan. *Dainihon teikoku*, V, p. 39.

establishing churches and temples (Article 16) and in making or altering church and temple regulations (Article 17), and further provided that the government would regard such temples dissolved that failed to build their edifice within the designated period after approval or to reconstruct the same within five years after the structure was destroyed (Article 25), or to apply for government approval of the change of the temple regulation within three months after the sect or the denomination with which a temple was affiliated lost its governmental authorization (Article 26). It also required the government's approval before disposing of temple property (Article 27). In the third chapter, the bill required the sects and denominations to obtain the government's authorization and to have their representatives authorized by the government authorities (Article 28 and Article 29). The same chapter established a special court for the settlement of religious conflicts in the Ministry of Education (Article 30 and Article 31). The fourth chapter consisted of regulations of teachers of religion, providing that the qualification of teachers of religion should be specified by an Imperial Order (Article 38), that those persons who were deprived of or suspended from civil rights could not become teachers of religion (Article 34), and that the government should suspend or prohibit the practice of those teachers whom the government judged to harm peace and order (Article 36). It also prohibited teachers of religion from expressing political views and participating in political activities (Article 37). Penal provisions were given in the fifth chapter. The violation of the regulations of this law was made punishable with detention or im-

prisonment and with fine (Article 36 through Article 42).² Simultaneously with the Religions Law, the government proposed the amendment of the Compulsory Military Service Law, to the effect that the teachers of religion should be exempted from the duty of military service.

The Yamagata Religions Bill thus attempted to give the government the legal foundation to control religious organizations and teachers of religion. Not only was the government to distinguish the favored religions by the authorization and approval of those sects, denominations, temples, and churches from the unauthorized and unapproved religious bodies, but also it was arranged so as to define the qualification of the teachers of religion by an Imperial Order. Further it set forth the provisions of punishment in order to reinforce the control. The bill was to provide the government with the legal foundation of controlling religious organizations and religious leaders.

The objective of the bill was made clearer by Yamagata himself when he delivered a speech introducing the bill to the House of Peers. He asserted that religion had significant influence upon the customs and morality of the society so that, in his opinion, the government should grant religions an appropriate position in the state structure. He defined the purpose of the religions bill as legally fixing the relation between the state and religion and as establishing the standard according to which the government should protect and control the rights and duties of religious bodies. Yamagata was careful to observe that he was cognizant of the constitutional guarantee of the freedom of religious belief, but rigidly insisted that the expressions of

2. Complete translation of the bill in Appendix C, pp. 270-279.

religious belief such as public practice were within the jurisdiction of the governmental surveillance in terms of peace and order of the state, and were not unconditionally guaranteed by the constitution.³ Thus Yamagata himself confirmed that the bill was geared at legalizing the basis for governmental control of religions.

The bill and the explanatory speech alone, however, do not sufficiently reveal the position of Yamagata's religious policy in his general scheme of politics. Besides, this has received so little attention that neither the most comprehensive biographical source by Tokutomi Ichiro, *Biography of Prince Yamagata Aritomo (Koshaku Yamagata Aritomo Den)*, nor the only exhaustive biographical study in English, Roger Hackett's "Yamagata Aritomo: A Political Biography," refer to this abortive attempt. Therefore it is deemed necessary to describe Yamagata's general political stand in order to clarify the significance of the bill in the historical perspective.

The following paragraphs, therefore, attempt to depict Yamagata's political philosophy from the measures he used in building Japan's modern army, police, and bureaucracy, since his major achievements consisted of the construction of these systems.

As historians agree, Yamagata's first major contribution to the making of Meiji Japan was the construction of a modern Westernized army based on a system of nation-wide conscription. The immediate objective of this new conscription army was the organizing of a national military force devoted to and loyal to the Emperor and serving to reinforce the strength of the cent-

3. Japan. *Dainihon teikoku*, V, p. 41.

ral government. The original idea of a conscription army, however, came from the earlier revolutionary movement of Choshu and it was another Choshu man, Omura Masujiro who recommended the adoption of this system to the new government.⁴ Yamagata's credit lies not in the invention of the conscription army but in the building and discipling of that system.

Yamagata had the army issue a handbook of regulations and duties and deliver a copy to each soldier as early as 1872. At the beginning of the handbook was entered a statement which read: "The army is established for the purpose of executing the will of the Emperor, to strengthen the foundations of the country and protect the people and the nation. Thus Those who become soldiers must make loyalty to the Emperor their guiding principle." He had this principle authorized further in 1882 by incorporating these words into the Imperial Rescript for Soldiers (*Gunjin Chokuyu*).⁵ Yamagata's first target for disciplining the military men was the indoctrination of the devotional loyalty to the Emperor.

Yamagata's idea of unilateral indoctrination of the devotional loyalty to the Emperor into the military men consequently developed the separation of the military personnel from political affairs which would invite diversion from this basic principle. In 1878, after the mutiny of the Imperial Guards which was one of the outbreaks of the dissatisfaction of ex-samurai who had contact with political parties that represented another anti-government force, he issued the Instruction for the Military Personnel (*Gunjin Kunkai*) which prohibited the soldiers and offi-

4. Hackett, "Yamagata," p. 90.

5. *Ibid.*, p. 127.

cers from discussing politics and participating in political parties. Another tactic in this line was formed into the Imperial Ordinances No. 193 and No. 194, in 1900, which limited the qualification of the Minister of War and the Minister of the Navy to the generals on active duty. By limiting the qualification of service ministers to the generals on active duty, Yamagata intentionally prevented retired or reserved generals such as Soga Sukenori and Tani Kanjo, who held relatively liberal opinions regarding the diversity of political views, demanded a larger share of authority for the legislature which represented diverse views of the people and nonconforming aristocrats, and formed an anti-Yamagata force in the House of Peers,⁶ from assuming a ministerial position as a friend or as a member of a political party.⁷

Through these means Yamagata succeeded, on the one hand, in depriving the military men of their civil right of nurturing and expressing political opinions, and, on the other, raised the barrier against the possibility of having the people's opinions represented in the government. His was an attempt to establish an autocratic military bureaucracy responsible to the Emperor only and irresponsible to the people represented in the legislature.

During his six years as Home Minister, 1882-1889, Yamagata built a police system and remodeled the local governments. He established a system of central control extending into local villages through the reorganized police system and the prefectural governments subordinated to the Home Ministry.

6. Teters, pp. 259-376.

7. Hackett, "Yamagata," pp. 127-131, 314-315.

The best documentary record that represents Yamagata's approach to the use of police and the civil administration is the Peace Preservation Ordinance (*Chian Jōrei*) of December 25, 1887, which Yamagata had the government issue when the anti-government clamour relating to treaty revision and the constitutional issue increased in the autumn and winter of 1887. The ordinance forbade secret societies and political meetings, authorized the police to disband the latter at their own discretion, and empowered the police to banish those whom the police deemed dangerous to the public peace. On the following day, Yamagata's police ordered five hundred and seventy persons, including Nakajima Nobuyuki, a former *Genrōin* committee member for drawing up the *Genrōin* draft constitution, and Ozaki Yukio, Okuma's protege and a proponent of liberal British style parliamentaryism, to leave the city immediately. Also Yamagata had the Press Code (*Shimbun Jōrei*) and the Publication Ordinance (*Shuppan Jōrei*) revised on December 28, 1887, so that these ordinances should authorize the police to exercise pre-publication surveillance and to prohibit the issuance of anti-government articles.⁸

Yamagata's administration in the Home Ministry thus established the police control system of the expressed will of the people, based upon the belief of bureaucratic omnipotence. This fact endorses the observation that Yamagata did not at all respect freedom of thought and of expression as civil rights of the people.

After Yamagata assumed premiership in 1889 until his death in 1922, he remained the most powerful promoter of conserva-

8. *Ibid.*, pp. 155-159.

tism among the oligarchs. Soon after he assumed the premiership, on March 25, 1901, in a message to the Emperor, he asserted:

My interpretation of the constitution differs from that of Ito and Okuma. I am absolutely opposed to a party cabinet. My only hope is that Imperial authority will be extended and Imperial prestige will not decline.⁹

Yamagata thus clarified in his own words that he opposed Ito's and Okuma's constitutionalism which, as proved by their becoming party leaders by themselves, expected that the constitutional government should reflect the representative will of the people, and that he would promote the Imperial authority which he observed to be separate from the representation in the parliament. For Yamagata the force that should uphold the Imperial prestige was the powerful bureaucracy, which was impartial to party interests and should devotedly serve the Emperor. Hence Yamagata endeavored to build up a bureaucracy uninfected by party politics as the body of the Imperial government.

Yamagata most effectively consolidated the independence of bureaucracy from the party men by three ordinances of March 28, 1899. These were the Civil Service Appointment Ordinance (*Bunkan Ninyo Rei*), the Civil Service Limitation Ordinance (*Bunkan Bungen Rei*), and the Civil Service Discipline Ordinance (*Bunkan Chōkai Rei*). The appointment ordinance revised an ordinance of 1893 and abolished the free appointment of the higher ranks of civil servants by requiring them to pass an examination required already for the lower ranks. The limitation ordinance governed the qualifications for each rank and guaranteed status and security. The discipline ordinance outlined the regulations governing discipline and conduct of civil servants

9. *Ibid.*, pp. 307-308.

and punishment for misconduct. Further in April, 1900, Yamagata secretly requested the Emperor to increase the authority of the Privy Council. His request was granted and Yamagata raised the Privy Council from an advisory body to a supervisory body.

By requiring difficult examinations for all ranks of the civil service, Yamagata in effect closed the bureaucracy to political party members, who, as a rule, were ill-trained for taking examinations. The bureaucracy developed into the real drafters of legislation and administrators of government, and became completely hostile to the liberal parties and were in full alliance with the conservative oligarchs. Further, Yamagata reinforced the Privy Council as a bureaucratic stronghold protecting the government from the represented voice of the people at the legislature, by the elevation of its authority and by virtue of the conservative character of its members.¹⁰ Yamagata thus nurtured the bureaucratic omnipotence and shut off the reflection of the popular will into the administration through the participation of the representatives of the people. This was the outgrowth of Yamagata's constitutional view which in opposition to Itō's and Okuma's rejected the basic definition of the constitutional government that it should limit the prerogatives and it should reflect the people's will in the government.

In view of Yamagata's policies regarding the military, police, and bureaucracy, which unilaterally emphasized their independence from the popular will, it ought to be concluded that Yamagata had the least respect for the will of the people. It consequently implies that he did not esteem the rights and freedom

10. *Ibid.*, pp. 308-313.

of the people either. In fact the achievements of Yamagata in the military, police, and bureaucratic establishments were the completion of the bureaucratic system of control responsible solely to the Emperor and irresponsible to the people and to the organizations representing the people such as political parties. Provided that Yamagata himself confirmed that his view of the constitution differed from that of Itō, it also implied that he interpreted civil rights guarantees differently from Itō. With the understanding that the strengthening of the Imperial authority was the absolute and sole objective of the constitution, Yamagata could acknowledge the constitutional freedom of religious belief only as the freedom to be incorporated into the Imperial bureaucratic control system. In this context, whereas Yamagata asserted that he honored constitutional freedom of religious belief, what he truly meant was this specifically defined freedom which in essence was contradictory to the concept of the civil rights as intended by the drafter of the Meiji Constitution. The Yamagata Religions Bill, therefore, was an attempt at gravely modifying the constitutional guarantee of the freedom of religious belief. This question he presented before the legislative body for approval.

For the initial presentation of the religions bill, Yamagata's government chose the more conservative House of Peers, with the expectation of an easier passage. When the floor was open to discussion, number of members of the House of Peers gave heated and critical responses. Their arguments are traced below with citations from their questions and comments on the bill.

Ozaki Saburō, formerly a member of the *Sain* and then *Gen-*

rōin with the experience of study in England,¹¹ discredited the provisions on the special court for religious disputes and the qualification of the teachers of religion on the ground that they conflicted with the autonomy of religious organizations. He further stated that, in view of the fact that international religious organizations maintained the foreign source of authority for the organization and the teachers of religion by treaties, the onesided regulation of the standard thereof would necessarily cause a conflict with the religious authorities of foreign background. He cited British experience in which the state authority failed to control the Catholic clergy by the Catholic church. Conclusively Ozaki recommended the removal of these provisions. Kodama Jun'ichiro, former Supreme Court Justice, found that the provision of the penalties on religions propaganda which would use such means to obstruct the good customs of society would invoke the governmental intrusion in religious affairs because it meant that the government would decide the content of the religious practice which would be eliminated. Kaneko Arisato, a Shinto priest of the Mononobe Shrine of Shimane prefecture, claimed the inappropriateness of the punishment of those who would slander and defame other temples, churches, and religious dogmas, because the nature of religion was inseparable from the propaganda of their own position and rejective of other religions, and maintained that the punishment of such activities would curtail the essential part of religious practice.¹²

11. *Dai jinmei jiten*, I, p. 602; Brief bibliographical explanation hereafter is taken from *Dai jinmei jiten* unless otherwise specified.

12. Japan. *Dainihon teikoku*, V, pp. 41-48.

Ozaki, Kodama, and Kaneko, thus, detected that the bill interfered with religious freedom by its provisions for a special court on religion, the governmental qualification of the teachers of religion, the governmental determination of the extent of religious practice, and the governmental suppression of free religious arguments. Their comments then, were based upon the recognition that freedom of religious association, practice, and propaganda should be left to the autonomy of religious bodies.

Such an extensive and positive notion of religious freedom as theirs was in direct confrontation with the narrow and limited notion of religious freedom that prevailed in the Yamagata Religions Bill. In consequence, their criticism of the bill was the fundamental attack on the core of the bill.

Another noteworthy statement was issued by Hozumi Yatsuka, professor of constitutional law at Tokyo Imperial University and an advocate of the absolutist interpretation of the constitution. Hozumi questioned whether the government intended to extend the privilege of exempting teachers of religion from military service to those of such religions that by doctrine objected to any warfare such as the Mennonites, with the implication that the granting of privileges had better be repealed for the sake of maintaining the universal application of law. He, however, did not object to the government's strengthening the control of religions.¹³ Hozumi thought along the same line as the bill.

At the session, Hirata Tosuke, President of the Legislative Bureau, and Shiba Junrokurō, Superintendent of the Religions

13. *Ibid.*, p. 49.

Bureau of the Ministry of Home Affairs, defended the bill for the government. Hirata stated that the regulations on the qualification of the teachers were necessary in order to balance out the privileges the bill granted to teachers of religion, such as the exemption from military service, and that the government should enforce its practice even against the opposition of foreign religious organizations as enforcement of the law was the responsibility of the administrative authorities. Hirata also stated that in his estimation the special court for religious disputes should include specialists in religion and representatives of religious organizations, and could become more efficient than the courts of justice. Hirata, in answer to Kodama, asserted that the bill did not aim at interfering with the content of religion but at the supervision of the social practice lest it should obstruct the good customs of society, and that the prevention of such obstruction, whether it stemmed from religious doctrine or not, was the responsibility vested in the government by Article 9 of the Meiji Constitution. Shiba stated that the religious disputed would not be regarded as slander and diffamation. Shiba also affirmed that the religions bill would prohibit such religious doctrines as would forbid the believers to participate in war because that would run counter to their duties as subjects.¹⁴ Hirata and Shiba thus presented the position to give the government maximum authority and to interpret the religious freedom guarantee in the minimum.

After these discussions the House of Peers decided to transfer the bill to a special committee for investigation and if necessary, revision. A committee of fifteen members from the House

14. *Ibid.*, pp. 43-45.

of Peers was nominated by the Chairman of the House. Thereafter the special committee of the House of Peers chose among themselves a five men sub-committee for the revision of the bill. Members were Matsuoka Yasutake, Director of Public Prosecutions (*Kenji Socho*), Kikkawa Chokichi, a leading member of the Study Association (*Kenkyu Kai*) which was the group in the House of Peers to promote conservatism in government. Hozumi Yatsuka, Soga Sukenori, former president of the Army Officers School (*Rikugun Shikan Gakko*), and Tsuzuki Keiroku, Inoue Kaoru's son-in-law and a founding committee of Seiyukai when Itō organized that party.¹⁵

Matsuoka headed the sub-committee and drafted a revised bill with the support of Hozumi and Kikkawa and the consent of the government but with opposition from Soga and Tsuzuki.¹⁶ The revised bill added an article that provided for compelling the religious associations to receive the approval of the competent authorities (Article 4), changed the prohibition of religious practice that violated the duties as subjects to the prohibition of whatever might run counter to the duties as subjects (Article 10), and changed the provision on tax-exemption of religious properties to the provision on the possibility of tax-exemption of religious properties in accordance with the specified conditions of special Imperial ordinances (Article 13). It also added the provision of limiting foreign teachers of religion to Japanese subjects to those foreigners who would receive special authorization from the

15. *Ibid.*, p. 50.

16. *Ibid.*, pp. 281-283; The procedure and the opposition in the committee were testified by Kuroda Osanari, Chairman of the investigation committee, The author, however, could not locate the records of discussions of the investigation committee and the revision sub-committee.

government (Article 27) and expanded the article on the special court for religious disputed into a chapter (Chapter 5).¹⁷ By incorporating all the religious organization into the system of governmental approval, by widening the object of governmental surveillance on the public peace cause from religious practice to whatever religious phenomena which should include religious belief itself, by reducing the privilege of tax-exemption from a general provision to a specified government order, by adding a measure of governmental control on alien teachers of religion, and by expanding the administrative court's jurisdiction, the Matsuoka amendments strengthened the state control of religions.

The revised bill was presented to the general session for discussion on February 17, 1900. The members of the House of Peers criticized the revised bill as harshly as the original bill.

Again Kodama gave a coarse comment on the revised bill. He declared that the provisions of the bill would deprive religious organizations of the fundamental elements of self-government, that they violated the religious freedom provision in the treaties with the Western powers if the word religion in the bill included foreign religions, that the bill would neither protect nor control all religions equally, and that the bill contradicted the spirit of religious freedom provided by Article 28 of the Meiji Constitution. Mayahara Akira, formerly a secretary of the Genrōin and translator of the Dutch Parliamentary Election Law and author of *International Public Law (Bankoku kōhō ryaku)*, noted that the arrangement for the approval of churches and temples automatically with the revocation of the

17. Japan. *Dainihon teikoku*, V, pp. 280-201.

authorization of sects or denominations of their affiliation and Article 4 that stipulated the approval of religious associations only when the request was submitted via the head of the organization would undermine the autonomy of religious associations. This would occur because the interests of the central officers of religious organizations might conflict with those of local churches and temples and those of their members. Such an arrangement would suppress the freedom of the believers, local churches and temples, and dissenting groups.¹⁸

Kodama and Mayahara determined that the basic intention of the revised draft was contrary to the constitutional principle of religious freedom as interpreted by them. Consequently they opposed the bill on constitutional grounds and therefore induced the promoters of the bill to give a clearer explanation of the constitutional guarantee of religious freedom.

In reply to the questions of Kodama and Mayahara, Matsuoka stated that the bill carefully tried to avoid curtailing the constitutional guarantee of religious freedom, and that it would not conflict with the treaties as the co-participation of Japanese and foreigners in an association was permissible under the bill. He further stated that the hierarchy of a denomination was spiritual as well as administrative, and that the authority of the church ought to be recognized within any religion. Matsuoka, however, affirmed that the primary aim of the bill was legally establishing the basis for the control of religions and was not to give privileges and rights to religions. Then, Hozumi argued that the constitutional guarantee of religious freedom needed a legal substantiation inasmuch as the treaties with Western powers

18. *Ibid.*, pp. 285-287.

providing the mutual esteem of religious freedom took it for granted that Japanese government should legally control Japan's religious affairs. The qualification for religious organizations to become juridical persons was necessary, he contended, for Buddhist and Shinto organizations in order to remove the handicap they love from Article 28 of the Civil Procedure Code according to which Christian organizations alone could incorporate while Buddhist and Shinto institutions could not do so. Hozumi classified the churchstate relation into three types: the system of state religion or theocracy, the system of separation or the independence of the church authority from the control of the civil government, and the system of juridical control of religions or the equal protection and control of religious organizations by the state law and administration. He judged the first the practice of the past, the second undesirable because of its antagonism to the integrity of the nation, and the third commendable for the modern state. He argued that the religions bill represented the third approach and was suitable for Japan as a modern nation, and urged the passage of the bill.¹⁹

The position of Matsuoka and Hozumi admitted the governmental control of religious affairs to be in conformity with the constitutional provision on religious freedom by emphasizing the government's function and authority to keep peace and order. Along with the government position, these men interpreted the limitation of freedom emphatically and recognized the constitution's freedom guarantee only within the system the government would specify. This viewpoint fundamentally opposed the concept of the autonomy of religious organization.

19. *Ibid.*, pp. 284-285, 292-293.

In addition to these two sharply opposing positions, Soga and Tsuzuki expressed the dissident views of the revising committee. Soga observed that the exemption of religious property from taxation stipulated in Article 13 would undermine the healthy taxation system in the future because this would grant religions an unlimited amount of tax exemption when the growth of Christianity and sectarian Shinto appeared promising and when the government could not even assess the actual acreage of the land owned by Christian churches and Shinto establishments. He further argued that the governmental qualification of the teachers of religion would be useless because the definition of teachers of religion itself was impossible when the practice in various religions so differed that even a secular leadership was the case in some religious communities and that an enactment of such an impracticable regulation would simply decrease the authority of the state's law. Tsuzuki charged that the bill was so ambiguous that the jurisdiction on the disputes over sect and denomination regulations was impossible to clarify in spite of the institution of a special court for the solution of religious disputes of public nature because whether the sect and denomination regulations were a private contract or a public trust was not agreed upon among the revision committee and bureaucrats. He warned that an institution with such a vague foundation would give much trouble to religious leaders and would not operate efficiently. He then claimed that the bill was so incoherent that privileges, penalties and qualifications did not counterbalance one another. Tsuzuki finally declared that by the enforcement of the bill the state would prejudice the established religious communities. He referred to such existing prac-

tices as the denomination consisting of one temple only, the temple belonging to two or more denominations at the same time, the associations of sectarian Shinto (*Kōsha*) having affiliations with various provincial, perfectual and national orders, and the bishopric of Catholicism, none of which fitted the bill's categories for incorporation as religious organizations. Both Soga and Tsuzuki advised the House to disapprove the bill.²⁰

Soga and Tsuzuki thus presented a third position which focused on the public interest and the legal efficiency and did not develop the thinking starting from the interpretation of the constitutional guarantee of religious freedom. However, provided that Soga's view claiming the impossibility of the governmental qualification of teachers of religion was based upon appreciation of the various practices among different religious communities and that Tsuzuki's view negating the enforced alteration of the organization of religious communities by virtue of this bill on the ground of its contradiction to the public interest was derived from the standpoint of respect for the established practice of religious communities, this third position must be recognized as the one to admit the principle of the autonomy of religions. Therefore, if the views of Soga and Tsuzuki were to be compared with the two opposing positions described before, they were similar to the attitude of refusing the governmental control of religions and contradicted the claim of the legitimacy of the governmental control of religions.

While the House of Peers was deliberating the bill, the religious world reacted to the bill. It divided itself into suppor-

20. *Ibid.*, pp. 291-295.

ters and objectors who expressed their positions through petitions, newspapers, and pamphlets.

The supporters of the bill among the Buddhists were led by the Nishi-Honganji faction of the Jōdo-Shin sect, followed by the Tendai sect, the Jōdo sect, the Sōtō(Zen) sect, and the Rinzai (Zen) sect. Akamatsu Renjo, the executive director of the Nishi-Honganji faction, asserted that the bill would generally improve the status of religions through their incorporation and that equality among religions conformed to the trend of modernization and the spirit of the Meiji Constitution. He insisted that the objection to the bill on the grounds of the equal treatment of Christianity with Buddhism was a biased and archaic view, and judged the bill to be desirable.²¹ Kozaki Hiromichi, a Congregational Minister and president of Dōshisha University, observed that whereas society was in need of religious guidance the policy of Westernization tended to neglect this need and to encourage contempt for religions. He believed the bill would help society to pay more attention to religious matters and consequently increase the prestige of religions in general. Specifically for Christianity, he estimated, the bill would be advantageous because Christianity, which had never been officially approved or authorized by the government in spite of the repeal of open prohibition in 1873, would for the first time obtain an official position in the nation by virtue of the proposed regulations. He concluded that the bill's arrangements to deal equally with Buddhism, Christianity, and Shinto were a significant sign of an advancement of the position of Christianity and

21. *Shinbun*, X, p. 472.

commended the passage of the bill.²²

The Buddhist opposition to the religions bill was led by the Higashi-Honganji faction of the Jōdo-shin sect with the Nichiren sect and the Shingon sect joining them. Ishikawa Shuntai, the executive director of the Higashi-Honganji group, declared that the bill provided equal treatment for Buddhism, Christianity and Shinto, and that the equality of Buddhism with Christianity was a shame for Buddhism because it meant the degradation of the traditional privileges and the negligence of the contributions of Buddhism. He believed that the bill was a menace intended to improve the position of Christianity at the expense of Buddhism and demanded that all the Buddhists should be united in order to defeat the bill. Ishikawa, organizing the Great Japan Federation of Buddhists (*Dainihon Bukkyō Dōmei*) as a liaison organization of the Buddhist denominations' headquarters for the anti-bill movement, led an anti-bill campaign, which in effect was an anti-Christian operation.²³ Among the Christians, Uemura Masahisa, a Presbyterian minister, was a rare opponent of the bill. He found that the bill handicapped the men who made teaching religion their vocation by denying them the civil right of participating in political activities, that the bill conflicted with the rights and autonomy of the church, and that the bill interfered with the freedom of religious association. He concluded that the enactment of a religions law was not only unnecessary but also harmful to the freedom of religion, and repeatedly expressed these views in a weekly paper he

22. Kozaki, pp. 71-72.

23. "Shukyo hoan," *Asahi*, and "Shukyo hoan," *Nippon*, in *Shinbun*, X, pp. 472-473; Taya, p. 166.

published.²⁴

The majority of the responses from the religious leaders to the religions bill paid attention primarily to the comparative position of various religious bodies as stipulated in the bill, irrespective of their supporting or opposing positions. The supporters of the bill approved the equal treatment of Buddhism, Christianity and Shinto and welcomed the governmental attention to religious affairs and the governmental authorization through incorporation, while the opponents did not reject the governmental authorization of religions, but did demand a more favorable treatment of Buddhism than that of Christianity. In their narrow perspective, most religious leaders failed to realize the character of the bill as a governmental challenge to the autonomy of religious associations. Therefore even among the opponents of the bill, Buddhist leaders could not consciously defend the freedom of their religion from the intervention by the government. It was only Uemura who clearly realized the true meaning of the bill in terms of religious freedom. The arguments of religious leaders except that of Uemura did not contribute at all to the deepening and the defending of the concept of religious freedom.

The House of Peers finally took the vote on February 17, 1900, and turned down the bill by 121 to 100.²⁵ In so far as the discussions were crystalized to the bill's constitutionality regarding the guarantee of religious freedom, this result was indicative of the viable competition between the view to acknowledge the autonomy of religions and the view to place religions

²⁴. Saba, II, pp. 483-499.

²⁵. Japan. *Dainihon teikoku*, V, p. 298.

under governmental control in substantiating the constitutional guarantee of religious freedom. That the bill was refused by the House of Peers also indicated that the political and intellectual elite of the nation chose to approve the autonomy of religions and revoked the attempt to legitimize the governmental control of religions.

Facing the defeat of the religions bill, Yamagata delayed his reaction until the diet session was over. Thereafter he took advantage of Article 9 of the Meiji Constitution which gave the government the competence to issue ordinances.²⁶ On August 1, 1900, Yamagata had the Home Ministry issue Ordinance No. 39, which read as follows:

The associations or the foundations that aim at the propaganda of religions and the practice of religious rites shall acquire the juridical personality in accordance with the present ordinance. Specifications are regulated below:

Article 1: An association or a foundation that aims at the propaganda of religion or the performance of religious rituals and that wills to become a juridical person shall submit a document with the following informations together with the articles of the association or the contributions of the foundation.

1. Name of the religion and the sect or denomination with which the religion is affiliated.
2. The method of performing the rites and the propaganda.
3. The qualification of the teachers of religion and the method of their

26. Article 9 of the Meiji Constitution provided: The Emperor issues or causes to be issued the ordinances necessary for the carrying out of laws, or for the maintenance of the public peace and order, and for the promotion of the welfare of the subjects. But no ordinance shall in any way alter any of the existing laws; Hackett observes, regarding Yamagata's handling of civil service examination bill, "Yamagata waited until the Diet session was completed before adopting measures to offset the Diet's legislation and maintaining the balance of power in the hands of bureaucracy." He further notes that the most important laws in Meiji Japan were effected not by legislation but by ordinance prepared by the government and promulgated by the Emperor (Hackett, "Yamagata," p. 312.). Yamagata used a similar tactic on the religions bill.

Religious Freedom under the Meiji Constitution

appointment.

4. The relation between the juridical person and its members.
5. The number of members and officers.
6. The name, the location, and the official establishment date of the temple, church, hall, preaching point, or lecture hall.

Article 2. The religious juridical person shall immediately report the changes that it plans in the matters relating to the item 1 or 4 of the above article.

Article 3. The religious juridical person shall obtain permission before it changes the matters relating to the items 1, part 2 and 3. If it fails to obtain permission before these changes, the Ministry may repeal the juridical personality of the religion.

Article 4. The religious juridical person that is affiliated with a Shinto sect or a Buddhist denomination shall obtain the countersignature of the chief abbot of the sect or the denomination on the document submitted in accordance with the regulations of the present ordinance.²⁷

The ordinance thus regulated the specifications for the attainment of juridical personality for religious organizations. Further on September 29, 1908, during Yamagata's protege, Katsura's cabinet, the Home Ministry issued Ordinance No. 16, which included the following provisions.

Article 2. Any person who falls within the purview of the following descriptions shall be amenable to imprisonment not to exceed thirty days or a fine not to exceed twenty yen:

17. Any person who preaches superstitious fortunes or conducts magical prayers and sorceries, or bewilders the public by awarding such implements of superstition as charms.
18. Any person who practices magic, theurgy, or other faith healing devices on a sick person or gives him a talisman or a false panacea, thereby obstructing medical treatment.²⁸

This ordinance overcame the arbitrariness of the early Meiji government's control of religious activities as indicated by the fact that, whereas in January, 1870, the Grand Council of State had ordered the prohibition of magic and sorcery and in October of the same year the New Penal Regulation (*Shin Ritsu*

27. Japan. *Horei*, Meiji 33, pp. 441-442.

28. *Ibid.*, Meiji 41, pp. 317-320.

Kōryō) stipulated that any person who would practice divination, produce bewildering documents, and conduct black magic for customers was subject to the punishment of imprisonment with hard labor and/or beheading. The Ministry of Religious Education instructed the prefectural governors in 1874 that magical practices were a matter for individuals to choose and the public authorities did not need to concern themselves with their control.²⁹ By this renewed regulation of 1908, the government authorized the police to exercise broad surveillance over the faith healing devices which comprised a major source of the growth of the newly emerging religions. The police were empowered by this ordinance to suspend and punish the religious practices which in its own discretion it adjudged to be superstitious and harmful to the welfare of society, and these ordinances in practice embodied much of what was planned to be enacted by the religions bill. Yamagata thus bypassed the legislature and substantially obtained his objective.

In conclusion, the Yamagata Religions Bill was a serious challenge to the constitutional guarantee of religious freedom in that it was an attempt at establishing the system of bureaucratic control of religious communities. When the bill was submitted to the House of Peers, the problem of the challenge to the constitutional discipline was well understood by some members of the House. The result of the vote taken after the clarification of the opposition in the interpretation of constitutional guarantee of religious freedom indicated that the interpretation which would support the positive appraisal of religious freedom was slightly stronger than that which would empha-

29. Takagi, p. 16.

size the provision of the limitation of the guarantee of freedom and would approve the state control of religious organizations.

The response of religious leaders, however, generally lacked an understanding of the nature of the bill which contradicted the concept of a positive guarantee of religious freedom. Most religious leaders, with a few exceptions, were concerned about the competition among the religions and failed to realize that the bill was truly an issue of religion versus government. This lack of understanding among religious leaders made them incapable of contributing by themselves to the establishment of religious freedom.

Even with the opposition of the legislature, Yamagata partially forwarded his aim of establishing a system of bureaucratic control of religions through a measure which trampled the spirit of the constitutional principle. By the issuance of ordinances, he legalized a system which was practically identical with the proposition of the bill that was rejected by the legislature. He set forth the example of overruling the legislature by autocratically issued ordinances with equally legal binding power as law, and thus revived the pre-constitutional governmental principle of unlimited and autocratic exercise of power by bureaucracy over the people.

In the final analysis, there was the force that could still defend religious freedom positively interpreted. It, however, was impaired first by the fundamentally archaic and unconstitutional conduct of the Yamagata bureaucracy and second by the lack of the realization of the leaders of religions of the concept of religious freedom.

V

**Religious Freedom and The Okada
Religions Bill**

After the failure of the Yamagata Religions Bill in 1899, the question of making a religions law fell into oblivion. The competent authorities did not even produce a single draft religions bill for twenty-five years, although the government asserted that a religions bill question was being studied whenever it was questioned by some members of the parliament.¹ The primary reason why the issue died must be the fact that the authorities in charge did not need religious legislation for practical purposes, primarily because the ordinances served as satisfactory means of religious administration and partly because religious leaders were mostly so inactive and obedient that usually acquiesced in any administrative order.

Meanwhile in 1913 the government transferred the administrative jurisdiction on religious affairs from the Home Ministry to the Ministry of Education. The main purpose of this action was to clarify the difference between religions and Shinto, the jurisdiction of which was left with Home Ministry.² In January, 1914, by Imperial Ordinances, the government authorized the Shinto rituals as a state function, thus giving a legitimiza-

1. Japan. Dainihon teikoku, V, pp. 787, 797-804, VI, pp. 440-441, 484, VIII, pp. 1013, 1015, 1684, 1691, 1707, IX, pp. 695, 701, 784, X, pp. 360, 365, 773, XI, pp. 1248, 1307, XV, p. 355. Questions, proposals, and government's answers were made in 1900, 1905, 1912, 1913 1914, 1915, 1919, and 1924.

2. Ikado, p. 291.

tion to the growing view that the reverence of Shinto was a civic duty. Then in August, 1914, the Ministry of Education regulated the forms of the reports from religions to the ministry by a ministerial instruction.³ The Ministry of Education thus became responsible for issues relating to religious administration.

In connection with the transformation of the jurisdiction of religious administration to the Ministry of Education, it is necessary briefly to review the development of the different interpretations of the Meiji Constitution and the Ministry of Education's approach to the constitution.

Among the authoritative scholars on constitutional law, on one extreme was Hozumi Yatsuka, who held the chair of constitutional law at the Tokyo Imperial University from 1889 to 1910. He propounded that the Meiji Constitution stipulated the unlimited prerogative of the Emperor and the absolute obedience of the subjects to the sovereign. He went so far as to assert that the Emperor might even abolish the constitution at His personal will and that the subjects should obey all the laws and ordinances as well as all the orders of the administration, even, when they were unconstitutional, because the laws and ordinances issued in the name of the Emperor were absolute and the application of them by administrative authorities on behalf of the Emperor was irrefutable.⁴ Thus Hozumi fundamentally contradicted constitutionalism and practically denied the constitutional guarantee of civil rights.

Hozumi's theses were radically challenged by Minobe Tatsu-

3. Umeda, p. 597.

4. Hozumi, *passim*.

kichi, who was appointed professor of administrative law at Tokyo Imperial University in 1902. Examining the Meiji Constitution, Minobe defined that the state alone was the subject of governmental power and that the Emperor was an organ of the state. He maintained that the constitution limited the Imperial prerogatives to a certain extent and that this limitation on the sovereign distinguished Japan as a constitutional state from a despotic government. He also maintained that the constitutional and other laws did not demand the absolute subordination of the subjects to the state but did set limitations on the power of government vis-a-vis the subjects. He further claimed that the constitution prohibited the Emperor from amending or abolishing the constitution by his personal will and that it guaranteed to the subjects the enjoyment of life, freedom, and property as their right with which even the sovereign could not interfere without specific legal provisions to the contrary.⁵ Not only did Minobe publish his views in academic journals, but also he gave voice to them at a lecture to the middle school teachers in 1911 and released them for popular circulation in 1912.⁶

At this point Uesugi Shinkichi, who succeeded Hozumi's chair in 1910, started to attack Minobe. Uesugi charged that Minobe violated the principle of national polity in asserting that the state was the corporate body of the whole people, possessed of a juristic personality which was the subject of government power, which was exercised by the Emperor not in His own right but as an organ of the state. In Uesugi's view, Mino-

5. Minobe, *Kenpo kowa*, pp. 1-6; Ienaga, *Minobe*, pp. 5-22; Miller, Frank, p. 27.

6. Minobe, *Kenpo kowa*.

be's theory was equivalent to a proclamation of popular sovereignty, and to say that the Emperor exercised the power of government as an organ of the state was the same as to say that He was the servant of the people or the functionary of the state. This was subversive of Japan's national polity as expressed in the constitution. Whereat Minobe protested that the corporate theory of state together with the theory of the state as a juristic personality and the corollary organ theory were necessary to understanding the legal nature of the state and had nothing to do with the issue between monarchy and republic. He claimed that Uesugi erred when he said that the Emperor under the organ theory was analogous to a servant or functionary and that the proper analogy was the brain in the human body.⁷

As both argued the position of the Emperor and the sovereignty, their arguments became known as the Theory of the Emperor as Sovereign (*Tennō Shuken Setsu*) and the Theory of the Emperor as a Organ (*Tennō Kikan Setsu*), and the debate was usually explained in terms of the argument on sovereignty. However, provided that the constitution explicitly stipulated the Imperial sovereignty and that both parties admitted the monarchical principle, to delineate the details of the arguments on the sovereignty issue would not distinguish their basic contentions. It appears that what they really argued for was in relation to the objective of the Meiji Constitution; whether the constitution authorized the governmental control of the people with minimal guarantee of the civil rights, or whether it limited

7. Miller, Frank, pp. 30-34.

the power of government and protected the people's rights.⁸

The immediate response of the intellectuals of the day was onesidedly favorable to Minobe's position. Minobe and his disciples were invited to open lectureships at colleges and universities all over the nation and his theory was the established orthodoxy for the elite of either political parties or bureaucracy. Minobe was appointed councilor to the cabinet legislative bureau in 1911 (Saionji cabinet), and in 1917 (Terauchi cabinet) and in 1920 (Hara cabinet), served on cabinet commissions dealing with the review of general legislation. Uesugi, on the other hand, was completely isolated, and he himself confessed his defeat, saying that it was beyond his power to prevail over Minobe's strong argumentation in the debates, but that he had faith in the correctness of his views.⁹ Minobe's theory met the requirements of the new leadership while the absolutist theory of Hozumi and Uesugi proved too archaic, at a time when the oligarchs' unchallengeable power was waning and the diverse elite groups such as the political parties, bureaucracy, and economic magnates were rising to power as a modern bourgeois leadership.

The Ministry of Education, however went the opposite course. In dealing with the instruction on constitutional matters, the ministry incorporated in the first government-edited elementary school textbook of 1903 the entire text of the constitution's provision on the rights and duties of the subjects and gave some explanations which conveyed the basic constitutional principle of the guarantee of civil rights. Then, when the ministry revised

8. Ienaga, *Minobe*, p. 1.

9. Miller, Frank, pp. 35-36, 39.

the textbooks in 1910, it appointed Hozumi chief of the committee for editing textbooks. In the second edition, the citation of the articles on the rights of the subjects was eliminated and, in its stead, a new chapter titled "The Constitution and the Laws of the Nation" which emphasized the subjects' duty of observing the laws and respecting the government was added. In 1918, the ministry again revised the textbooks. This edition, reflecting the period of party government, included an instruction on voting as a right and duty of people, and yet maintained the Hozumi thesis that the constitution regulated the right of the state and the duty of the subjects. Volume three of the moral textbook for higher elementary school compactly summarized the basic viewpoint, saying that the constitution gave rights but not power to the people, that people could enjoy their rights only under the power of the state, and that, therefore, people ought not forget their obligation to the state. In the area of middle school textbooks which were privately drafted and reviewed by the Ministry of Education, all of them emphasized the absolute power of the state and the absolute obedience of the subjects and none adopted Minobe's theory, indicating that the ministry encouraged the adoption of the Hozumi thesis and screened off those drafts that adopted Minobe's position. In addition, after the debates between Minobe and Uesugi, the ministry ceased inviting Minobe for lectures to middle school teachers and shelved the draft of a textbook which Minobe had written and submitted to the Ministry at its request.¹⁰ The Ministry of Education thus obstinately promoted such interpretation of the constitution as emphasized the

10. Ienaga, *Nihon kindai*, pp. 227-262.

absolute duty of the people to the state and the absolute obedience of the people to the government.

The indoctrination of absolutism by the Ministry of Education was severely attacked by the intellectuals of the day. For example, soon after the release of the second edition, on May 3, 1911, the editorial of the *Daily Miscellaneous News* (*Yorozu Chōhō*), commenting on volume three of the moral textbook for higher elementary schools, stated that the textbook attempted to rationalize the unreasonable suppression of the people by the government, preaching that the power of the state could limit the constitutionally guaranteed freedom of citizens while not explaining why citizens should enjoy the right of voting and the freedom of speech, etc., nor how they should use them. The editorial concluded that the entire textbook must be defined as a propaganda pamphlet of the government in the disguise of a textbook, which, being led by the understanding that the intellectuals of the day were all subversive, attempted to indoctrinate the absolute obedience of the people to whatever suppressive measures the government would enforce.¹¹

Those criticisms, however, merely hardened the position of the Ministry of Education, and led the ministry to enlarge the areas of indoctrination. On the defensive, the ministry found the use of religions as the functionary to propagate the absolute obedience of the people. The second attempt to enact a religions law emerged in such an ideological confrontation.

However, the renewal of the attempt to enact a religions law did not materialize for many years, as, according to a confession of an officer of the ministry, the ministry was afraid of touching

11. *Ibid.*, p. 256.

upon this delicate question and losing its prestige by a failure.¹² Finally, around 1924, the Okada Ryōhei ministry under the Katō Kōmei Cabinet began to investigate the drawing up of a comprehensive religions bill, and completed a rough draft by the end of 1925. Upon Okada's reappointment to the Ministry of Education by the Wakatsuki Reijirō Cabinet in 1926, Okada set up the Religions Legislation Investigation Commission (*Shūkyō Seido Chūsa Kai*) on May 12, 1926. Okada, as Minister of Education, appointed forty members to the Commission. It comprised three Shintoists, eight Buddhists, two Christians, eight administrative officers, six scholars, and six members of Parliament from each House. Hiranuma Kiichirō, vice chairman of Privy Council and a reputed ultra-nationalist who later became prime Minister between January and August, 1939, was appointed, by Okada, chairman of the commission.¹³ Okada sent the religions bill to the commission, which after a brief discussion, unaimously approved the draft bill.¹⁴

The advancement of the second project for enacting a religions law seems to have much to do with Okada's personality and his appointment as Minister of Education. Okada, born in the family of a Confucian moralist and social reformer who organized farmers' associations which expressed their loyalty to the feudal prince in such a way as to pay extra above the regulated

12. Matsuo, p. 2.

13. Miyazaki, p. 267.

14. Japan. *Dainihon teikoku*, XVII, pp. 64-65; Japan, *Shūkyō horei*, pp. 6-7, Matsuo, pp. 2-3; The commission continued its activities until March 30, 1940, when its task was completed with the enactment of the Religious Organizations Law, 1939. Its reports laid the foundation for the religious administration for the following years. Ikado, p. 293. Cf. Appendix D, p. 291.

tax, was deeply imbued with the conviction of loyalty as the highest value. Graduating from the philosophy department of the Tokyo Imperial University, Okada became a professor of the First Higher Preparatory School, and, during his service there, ignited the Uchimura Kanzō *lèse majesté* incident. He joined the Ministry of Education as an Inspector (*Shigakkan*) in 1893. In 1901, he was promoted to Director of General Affairs (Sōmuchōkan), and, in 1907, was appointed President of Kyoto Imperial University. In 1908, he became Vice-Minister of Education in the Katsura Tarō Cabinet and, in 1916, Minister of Education in the Terauchi Masatake Cabinet. Then, in 1924, he was again appointed Minister of Education by the Katō Kōmei Cabinet.¹⁵ In 1924, when ultra-nationalists attacked Inoue Tetsujiro for his publishing a statement which did not sufficiently emphasize the absolute obedience of the subjects to the Emperor, Okada made an announcement as Minister of Education that the matter was very grave and forced Inoue to resign from his professorship as well as from the House of Peers.¹⁶ Thus Okada was a genuine bureaucrat of the Ministry of Education, who held leading positions in that ministry for so long a time that his service included a ministerial post in the military as well as party cabinets. This background attests that Okada possessed, on the one hand, a mission to propagate the philosophy of absolute obedience of the subjects to the sovereign, which, as observed above, was the principle of the Ministry of Education, and, on the other hand, power strong enough to mobilize the ministry and to push his program through the

15. Shimomura, *Okada*, pp. 1-84, 213-215.

16. Ozawa, *Uchimura*, pp. 100-101.

cabinet.

On January 29, 1927, Okada presented the Religions Bill as a government proposition to the fifty-second session of the House of Peers. The bill, twice the size of the first bill, set the definitions and regulations of Shinto sects and Buddhist denominations (Chapter 2, Articles 30 through 52) separately from those of Christian associations (Chapter 3, Articles 53 through 58). It provided for governmental control and prohibition of religious practices which ran counter to the peace and order of society and defined the duties as subjects (Article 3), while granting tax-exemption of religious properties (Article 5) and the income of religious bodies (Article 6). It defined the qualifications of the teachers of religion in terms of the amount of education and the legal standing as citizens (Article 16), prohibited religious propaganda by those who did not hold the qualification of teachers of religion (Article 110), and ordered the representatives of the sects, denominations, and foundations to file the register of teachers of religion with the competent authorities (Articles 17 and 18). Finally it set penal provisions for those men and organizations of religion that did not observe the regulations of this law (Chapter 6, Articles 105 through 112).¹⁷ The provisions of control were more specific than those of the Yamagata bill, but the principles of government control of religious practice and religious organizations remained the same.

Introducing the bill to the House of Peers, Okada delivered an explanatory address. He defined the objective of the bill as the legal provision for appropriate protection and supervision

17. Japan. *Dainihon teikoku*, XVIII, pp. 59-64; *Shukyo gyosei*, XIII, pp. 105-132; Full translation of the text in Appendix E, pp. 292-323.

of religious practices and organizations by the government. He stated that the government needed to control religious practices and organizations for the advantage of the state in view of the fact that religion exercised much influence on the spiritual life of the citizens.¹⁸ The objective of the bill as explained by Okada thus inherited the objective of the Yamagata Religions Bill that aimed at state control and use of religions.

The discussion in the House of Peers, again, was severely critical of the bill. Sakatani Yoshio, ex-Minister of Finance and one of the six men who formed the committee to edit Itō Hirobumi's *Commentaries on the Constitution of the Empire of Japan* (*Kempō Gikai*) in 1889, argued that the bill's provisions of the conditions by which religious bodies should legally incorporate were an intrusion of law into the content of religions, because the bill by specifying the qualification of the teachers of religion by the amount of their education, for example, interfered with the religious ideal of the Salvation Army which aimed at the spiritual salvation of the lower classes and the less educated and whose policy of recruiting its teachers of religion was directed toward the less educated people. Fujisawa Rikitarō, professor of physics at the Tokyo Imperial University and a member of the Imperial Academy (*Teikoku Gakushūin*), argued that the Meiji Constitution did not permit a law to authorize the government to control the inner affairs of religions, that the essence of religion was beyond the reach of the secular state, and that the idea of enacting a law for the control of religions by the civil authorities was in itself contrary to the spirit of freedom that the constitution encouraged. He criticized the government for its taking

18. Japan. *Dainihon teikoku*, XVII, p. 59.

over the essence of the spiritual world in exchange for a small role in the secular world.¹⁹ Sakatani and Fujisawa both argued for the autonomy of the religious dimension from interference by the state.

Okada responded to these questions to the effect that the fears of the interrogators were unnecessary because the administrative modifications would be regulated by common sense and would exempt such desirable organizations as the Salvation Army from the coercion of the educational prerequisite for their teachers by acknowledging their teacher training as equivalent to regular education, and that the bill would deal only with the organizational aspects of religions that had direct relationship with the civil administration and would not interfere with the content of religions.²⁰ Okada evaded discussion of the principle in view of the subtlety of the bill's relation to the constitutional principle, and yet tactfully maintained the position not to agree with the argument for the autonomy of religious organizations.

After these discussions, the bill was entrusted for examination to a special committee composed of fifteen members of the House of Peers nominated by the chairman of the House. Before the committee returned the report, however, the cabinet fell in April, 1927, and Okada lost his position as Minister of Education. During this confusion, the bill was again shelved.²¹

The succeeding cabinet appointed Shōda Kazue, a bureaucrat brought up in the Ministry of Finance, as Minister of Education. Shōda pursued Okada's effort to enact a religions law. He had

19. *Ibid.*, pp. 65-66, 69-70.

20. *Ibid.*, pp. 67, 70.

21. *Ibid.*, p. 74; Matsuo, p. 2.

the Religions Bureau of the Ministry of Education reexamine the Okada bill, had the meetings of the Religions Legislation Investigation Commission continued and propagated through the mass media the third religions bill emphasizing its advantages for religions such as the facility of incorporation and the automatic official recognition of such applications as were endorsed by the heads of the sects, denominations, and foundations.²² Shōda, then, submitted the Religious Organizations Bill to the fifty-sixth session of the House of Peers as a cabinet proposition on February 12, 1929. Shōda delivered a speech at the House of Peers and explained the objectives of the bill to be the supervision and protection of religious organizations by the government.²³ The aim of the bill thus was defined identically with the preceding bills.

In the House of Peers, the bill met with strong opposition again. Sakatani Yoshio criticized the bill and Shōda's explanation for their having an intention to fix a standard for religious organizations. He stated that true religions should be distinguished from magic and superstition, that true religions were beyond the control of laws and civil administration, that magic and superstition were matters to be handled by the Penal Code and Police Ordinances, and that a law for the control of true religions was undesirable in view of the spirit of the constitution and a law for the control of magic and superstition was unnecessary in view of sufficient provisions for the actions of the police. Shirakawa Sukenaga, a Shinto priest by family tradi-

22. Ojima, p. 108.

23. Japan. *Kanpo*, February 16, 1929, pp. 176, 181-182; Text of the bill included in *ibid.*, pp. 176-181; Full translation of the text in Appendix F, pp. 324-352.

tion for over a millennium, traced the government intervention in religious affairs since the Meiji Restoration, judged it to have invited corruption and confusion among Shinto and Buddhism, and advised the government to retreat from any intervention in religious matters, including the enactment of a law for the governmental protection and control of religions.²⁴ The accusation against the government's bill was again focused on the government's attempt to intervene in the realm of religious autonomy.

Shōda meanwhile responded. He pronounced the need of a religions law for the competent authorities to execute the proper control of religions whose complications the general laws did not efficiently cover. He affirmed that true religions or the traditional religions ought to be differentiated from magical and superstitious pseudo-religions and stated that the bill gave different treatment to the true religions and pseudo-religions. He argued that the traditional religions under the bill were to officially incorporate while the pseudo-religions were to become associations or to become affiliated with the traditional religions as subordinates. He stated that the bill accordingly gave different privileges for the traditional religions and the magical and superstitious pseudo-religions. In answer to Shirakawa, Shōda explained that the bill concerned itself with the external practices and the organizational aspects of religions, and insisted that the bill was legitimate by virtue of Article 29 of the Constitution and was not bound by the guarantee of the freedom of religious belief by Article 28 of the Constitution.²⁵ Shōda's

24. Japan. *Kanpo*, February 16, 1929, pp. 182-185.

25. *Ibid.*, pp. 183-186.

contention here in essence was again not different from the position expounded by Yamagata three decades before and by Okada two years earlier.

While the administrative and the legislative departments kept struggling, the leaders of religious organization showed diverse attitudes toward the bill. Supporters of the bill included leaders of Buddhism, Christianity, and Shinto. Those leaders of religious organizations thought that the bill acknowledged and authorized the organizational structure of the respective organizations, and therefore welcomed the state's authorization of their hierarchy. Therefore the representatives of Buddhist denominations, Christian associations, and Shinto sects participated in the investigation of the bill at the Religious Legislation Investigation Commission and approved of the bill in 1927.²⁶ Confirming this position Christian denominations issued a memorandum in 1927 which stated that they would support the bill on condition that the bill would not extend the limitation on the freedom of religion beyond the provisions in the constitution and the relevant laws, that the bill would guarantee the autonomy of religious associations, and that the bill would provide the government with minimum authority for supervising religions.²⁷ All the chief abbots of fifty-six denominations of Buddhism joined in 1929 in sending a resolution to the government stating that the would-be religions law would authorize the integrity of the respective organizations and that those leaders of religious organizations would welcome and support the bill. All the leaders of the thirteen Shinto sects

26. Japan. *Dainihon teikoku*, XVII, pp. 64-65.

27. Tagawa, pp. 145-147.

also assured the government jointly that they supported the bill, on much the same ground as provided by the Buddhist abbots. Further, volunteers among the teachers of the thirteen Shinto sects formed an organization to support the passage of the bill in March, 1929.²⁸

The reaction of the Higashi-Honganji faction of the Jōdo-shin sect and its ten sub-factions was unique. They supported the bill, but demanded significant revisions. They recommended that the drafters add such provisions as those that would prohibit religious propaganda by laymen, that would suppress most rigorously, magical and superstitious religious practices such as faith cure, and that would define the qualification for teachers of religion with the college degree.²⁹ Behind this recommendation was the fact that Tenrikyō was gaining many converts from Jōdo-Shin followers by means of faith cures and the active laymen's enticement of their friends. The standard of education among the Tenrikyō leaders was minimal as Tenrikyō was a new religion of peasant origin founded only two generations before and spread among the lower strata of society.³⁰

Jōdo-Shin leaders, who were afraid of losing their parishes to this new religious movement, intended to take advantage of the government's power for their sectional interest and suppress their religious rival by the manipulation of the law for the governmental control of religions. Those Jōdo-Shin leaders lacked the respect for the spiritual need and belief of the individual peasants, the reflection on their responsibility as religious

28. Japan, *Kanpo*, February 16, 1929, p. 186; "Zen Shinto kyoshi," p. 4.

29. Ojima, pp. 111-112.

30. Murakami, Shigeyoshi, *Kindai minshu*, pp. 160-162.

leaders, and consequently the realization of the importance of the independence of religion from the state. Such a way of thinking among some religious leaders exacerbated the deterioration of religious freedom.

The opposition to the bill was not weak either. Several Presbyterian leaders deplored the stipulation that the Minister of Education could approve or not approve church rules and church personnel, the regulation that the administrative overseer should exist even in institutions where such an office had not existed, and the provisions that the government might disband religious organizations for the convenience of civil administration. These men argued that the government's bill intended to curtail the freedom of religious belief in contradiction to the constitutional guarantee. The entire sects of the Holiness Church as well as the Presbyterian Church of Japan supported the opposition and resisted the bill.³¹ Uchimura Kanzo, who did not represent any Christian sect but was accepted as influential power among the intellectuals, sent to the Minister of Education, the Superintendent of the Religious Bureau, and the members of the Houses a letter of protest. Uchimura argued that the quintessence of the question lay in the relation between the supernatural absolute and the individuals' belief in it, and that, if the government with the authority of the state should enforce certain spiritual guidelines on the citizens, an individual citizen would merely superficially conform to the order while he would in the depth of his conscience detest his twisted belief and the irrefutable order of the government. Such an order, therefore, never failed to corrupt the moral in-

31. "The Editorial," pp. 158-159.

tegrity of the citizens. As the spiritual matter was thus above the legal control and civil administration by its own nature, the best the government could do, maintained Uchimura, was to withdraw the bill.³²

This opposition tried to reject the intrusion of the state authorities into the realm of human conscience. As attested by Sakatani and Fujisawa,³³ the conscientious opposition of the Christians moved the intellectual elites in the House of Peers and thus served to protect religious freedom at this point.

While the religious organizations bill proved itself a hot issue at the House of Peers and in religious circles, a debate on the constitutionality of the bill took place between Minobe Tatsukichi and Shimomura Juichi, the Superintendent of the Religious Bureau of the Ministry of Education. The debate received special attention because the highest authority in the nation on constitutional and administrative legislation openly criticized the government and because the government's official directly involved in drafting the bill openly responded to the criticism in a commercial newspaper of two million circulation.

On February 20, 1929, the *Yomiuri Shimbun* reported that Minobe suspected the constitutionality of the Religious Bill. The report briefly stated that Minobe opposed the enactment of the Religious Bill on the ground that the bill conflicted with Article 28 of the Meiji Constitution, that the assumption that religious practice and association fell under the exclusive surveillance of Article 29 was mistaken and that the bill did not consider tradition and customs.³⁴

32. Uchimura, XVIII, pp. 601-602.

33. Japan. *Dainihon teikoku*, XVIII, pp. 65-66, 70

34. "Shukyo kessha," p. 4.

The reaction to the report appeared three days later. A signed article written by Shimomura challenging the reported view of Minobe was published by the *Yomiuri Shimbun* on February 23, 1929. It explained the constitutional legitimacy of the Religious Bill and refuted Minobe's thesis as reported. Shimomura focused his argument on the interpretation of the freedom of religious belief in Article 28 and its relation to Article 29 of the Meiji Constitution. Shimomura argued that Article 28 guaranteed only the freedom of religious belief and did not guarantee the freedom of religious practice and association, first because Article 28 specified it in so many words with respect to belief, second because Itō's *Commentaries on the Constitution of the Empire of Japan* distinguished the freedom of religious belief from the freedom of religious practice and association, and third because the constitutions of Prussia and other European nations to which the drafters referred in the making of the Meiji Constitution treated the freedom of religious practice and that of religious belief separately. He judged that religious practice and religious association were regulated by Article 29 that provided for all kinds of press, speech, publication, and association to be free within the limit of law. He maintained that, provided that Article 28 excluded religious practice and religious association from its coverage and that Article 29 legitimized the legal control of religious practice and association, the Religious Bill that intended to regulate the religious practices and religious association by the civil authorities was constitutional, with the legitimation by Article 29 and with no infringement of Article 28.³⁵

35. Shimomura, "Shukyo kessha," p. 4.

Shimomura's argument was the repetition of the government's definition. It was based on the traditional Education Ministry's approach to the constitution that the document defined the government's authority to control people. The significance of Shimomura's article, however, lay in the fact that the government dared to express it to the public through the commercial press.

Minobe, answering the views presented by Shimomura, asserted that he opposed the enactment of the Religious Bill because he believed the enactment of a law for the control of religions was based on the idea which conflicted with the principle of the constitutional government. He explained that the drafters of the Meiji Constitution had recognized the freedom of religious practice and religious association as well as that of religious belief in the constitutions of the Western nations, and that they followed the principle and adopted the phrase freedom of religious belief in the place of *Religionsfreiheit* which in Prussian and other German constitutions indicated a comprehensive freedom including the freedom of religious practice, association, and belief. He stated that Ito's *Commentaries on the Constitution of the Empire of Japan* distinguished freedom of religious belief and that of religious practice and association in the manner that the former was the ultimate question that was not bound by any code and that the latter only was in contact with the state intervention so that the constitution should protect specifically the freedom of religious association and practice. Next, Minobe admitted that Article 29 ruled the religious as well as secular press, meeting, and association, but at the same time he insisted that the rule of Article 29 did not exclude the application of

Article 28. Consequently, religious press, meeting, association, etc., should conform not only with the laws ruling the press, meeting, and association in general, but also with the provision of Article 28. This meant that any law that specifically ruled the religious press, meeting, association, etc., should be so arranged that it controlled only such practices that ran counter to the limitations of peace and order and duties as subjects. The constitution did not approve, according to Minobe, the enactment of a law which applied exclusively to the religious press, meeting, association, etc., unless it regulated only such religious practices as were prejudicial to peace and order and antagonistic to the duties of subjects. Minobe judged that the Religious Organizations Bill went beyond this boundary, and concluded that the bill ought to be withdrawn.³⁶

Minobe's argument covered what had been noted by the discussants against the bill and gave the opposition a legalistic foundation. His objection to the Religious Organizations Bill in defense of the autonomy of religion was grounded upon the construction of the Meiji Constitution as a code to control governmental power and to safeguard the freedom of the people from unlimited surveillance by the government. Minobe theoretically defended the freedom of religious practice and association from legal suppression by the authorities by the construction and application of the Meiji Constitution.

The Minobe-Shimomura disputes illustrated the conflict between the supporters and opponents of the religions bill in a schematic way, revealing that the attitudes toward the bill were inseparably related to the conflicting interpretations of consti-

36. Minobe, "Shukyo kessha," p. 4 respectively.

tutionalism. The dispute clarified that the difference was not a matter of degree, but rather of basically opposing approaches to the relationship between religion and government.

Meanwhile the special committee of the House of Peers continued hearings and discussions. Various opposing and supporting opinions were introduced and examined. Among the committee, Hanai Takuzo, an attorney at law specializing in penal cases, pointed out such hazards to be incurred by the enactment as would result in punishing those practitioners of religion who otherwise would not be defined criminals, and strongly argued against the bill which would thus curtail religious freedom. Hanai's argument gained substantial support and the committee did not acquiesce in the government explanations.³⁷

By the end of March, 1929, Shōda gave up the attempt to persuade the committee, resigned as Minister of Education, and the bill was shelved again.³⁸ The program of the Ministry of Education legally to incorporate religions into the system of governmental control of people's activities relating to spiritual aspects failed for the third time.

The foregoing are an extract of the ideas on religious freedom as they appear in the discussions on the religions bills. They revealed that both the proponents and the opponents concerned themselves with the idea of religious freedom and deliberated on their contentions in terms of the provision of the Meiji Constitution.

The drafters of the religions bills maintained the same objective and kept the same attitude. The statements of the drafters,

37. Imaizumi, p. 4.

38. "Shudanho," p. 2.

Yamagata's 1899 version, Okada's 1927 version and Shōda's and Shimomura's 1929 version inclusive, indicated that the primary objective of the religions bills was the civil control of religious practices and religious associations. The texts of these bills themselves indicated that the bills tried to control the content as well as the forms and structures of religions. The civil control of religions having been closely related to the guarantee of religious freedom by Article 28 of the Meiji Constitution, the drafters drew up an explanation on the compatibility of the bills with the provision of Article 28. From Yamagata through Okada to Shoda and Shimomura, the core of the explanation was the exclusion of freedom of religious practice and religious association from the guarantee of freedom by Article 28 and the application of Article 29 for the legitimation of the bills for the control of press, publication, association, etc. Concluding that the law for the control of religious practice and religious association did not run counter to Article 28 and was legitimate in accordance with the provision of Article 29. A majority of the leaders of the institutionalized religions supported the bills primarily from sectarian reasons.

Drafters and supporters alike did not intend to make the Meiji Constitution the foundation of the autonomy and rights of people. On the contrary, they did intend to make the fundamental law a means by which the civil administration of religions should be effected. The idea of civil control of the spiritual identity of the nation as expressed in the bills and the statements of the drafters was the product of the values that were realized in the promulgation and the defication of the Imperial Rescript on Education. The overlapping of the dramatis personae,

Yamagata and Okada, is more than a mere coincidence.

The objections to the religions bills came from various circles. A considerable part of the objection was a protest against the bill's conflict with the Meiji Constitution's guarantee of religious freedom. The statements of the members of the House of Peers presented at the 14th, 52nd, and 56th sessions gave some such examples. In 1899, Kodama noted that the bill included the civil infringement in religious orders, in 1927, Fujisawa warned of the conflict of the spirit of the bill with that of the Constitution: in 1927 and 1929, Sakatani reminded his colleagues that the regulation of the outer forms and structures would infringe upon the content of religious doctrines. In 1929, Minobe argued in public that the religions bill theoretically infringed upon the religious freedom clause of the Meiji Constitution. Christian opponents, such as Uemura and Uchimura, revealed that the central question of religions lay in the autonomy of religions and not in the equal or differentiated protection of religious organizations by the civil authorities.

The opposition to enactment of a law for the control of religions contributed to the defense of religious freedom in that the opponents thought and acted in such an interpretation of the Meiji Constitution that the document was intended to limit the actions of the government and to protect people from the government. This view was a development from the spirit of enacting a constitutional law in early Meiji Japan and was so acknowledged among the intellectual elites of the early twentieth century. The Meiji Constitution and its interpretation along with its spirit thus worked to defend religious freedom.

A decade after the failure of the second and the third attempts

to enact a religions law, the Religious Law finally was enacted in 1939, when the Minobe theory on the constitutional interpretation had already been ousted for five years and when the common sense to acknowledge the right of people disappeared in the vogue of totalitarian control. Then Japan fought in World War II, was defeated, and was occupied by the Allied Powers. The occupation religious administration, 1945-1952, judged the perspective of the Religious Organizations Law anti-democratic and ordered it abolished.³⁹ Hence comes the commonly accepted characterization that the Religious Organizations Law was a law for the civil control of religions and was harmful to religious freedom, and, by implication, that the Meiji Constitution's legal system left little space for religious freedom.

The delineations of this chapter support the view that bills drafted before the Religious Organizations Law were anti-democratic and totalitarian making since its embryo at the turn of the century. At the same time they make clear that the governmental authorities could not enforce its program of establishing a legal system of controlling religions as long as forty years due to strong opposition. At the base of the opposition was Minobe's orthodox view that the Meiji Constitution was the foundation for limiting governmental power and protecting the people's autonomy from the governmental intervention. This view led the intellectuals to reject the religions bills on the ground of their contradicting the constitutional principle of religious freedom. During the years when the proponents and

39. Civil Liberties Directive of October 4, 1945 ordered the abrogation of the Religions Organizations Law. Woodard, p. 5.

opponents struggled on religious bills, the Meiji Constitution's provision on religious freedom served to defend religious freedom from governmental intervention.

The commonplace explanation that the legal control of religious freedom prevailed before the war must be much amended. The phenomenon of religious freedom in the first one-third of the twentieth century can be valued much higher than the common explanation does. The legal religious freedom under the Meiji Constitution could be more accurately observed as a history of conflict among vying forces rather than observed as a static contrast between the pre-war oppression and the post-war freedom. (to be continued)