

# The Temple/Juridical Person: Law and the Temple in Japan

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Temples are organizations with histories often centuries old. Most local parish temples (*danka dera*) were established well before the end of the Edo period (1603–1868). Edo, Meiji, Taisho, and Showa laws and legal ordinances codified the general patterns of organization that developed within temples during the Edo period. After World War II, however, new legal perspectives regarding religion were thrust upon Japan together with new laws. These perspectives, embodied in the 1951 Religious Juridical Persons Law (*shūkyō hōjin hō*), often ran contrary to traditional views of temple management and prewar laws regarding temple organization. This paper serves as an introduction to law, especially the Religious Juridical Persons Law, as it regards the temple. It also introduces local temple organizational, especially management, structures. Tensions that occur within those structures because of the affect of laws such as the Religious Juridical Persons Law, often reveal themselves in court and law advice columns. In particular, this paper focuses on the following temple management roles: the abbot (*jūshoku*) — chief responsible officer (*daihyō sekinin yakuin*) and parishioner representative (*sōdai*) — responsible officer (*sekinin yakuin*). These roles reflect the dual nature of the temple under the Religious Juridical Persons Law. It is at once temple, and juridical person.

## **Background: Religious Juridical Persons Law (*shūkyō hōjin hō*)**

The Religious Juridical Persons Law stands at the end of a long line of laws, bills, and ordinances passed or issued since the turn of the century and before, each of which sought to regulate religious organizations. During the Edo period the government (*bakufu*) issued ordinances (*hatto*) that shaped the future development of Japanese Buddhism. The 1615 Temple Ordinance (*jiin hatto*) required all sects to establish a *honzan*, or head temple. Accordingly, the main temple-branch temple (*honji-matsuji*) system of the previous period became systematized. *Honzan* affirmed their role as the center of learning for the sect, and controlled the appointment of abbots and the assets of branch temples.<sup>1)</sup> Through this system *honzan* realized control of priest and temple ranks, and the power to give temple names, to determine the main object of worship (*honzon*) enshrined at temples, and to tax the temples under them.<sup>2)</sup> The financial burden for much of this passed down the line, eventually falling on the shoulders of the parishioners of local temples.<sup>3)</sup> In the Meiji period the Grand Council of State (*Dajōkan*) Law 133 (promulgated in 1872) permitted meat eating and marriage for

priests and caused an uproar in Buddhist circles that reverberates today. It was popularly termed the *nikujikisaitai* (eat meat and marry) law.<sup>4)</sup> In the prewar period there were three major attempts at passing bills to regulate religious organizations (once each in 1899, 1927, and 1929). Each attempt died in the House of Peers. The government, however, implemented portions of the bills by issuing ordinances.<sup>5)</sup> These bills were not the sole effort of the government, but reflected input from the very organizations that were to be controlled. This is especially so for Buddhist sects which sought to use the legal process to centralize control over their organizations and to keep the growing tide of new religions at bay.<sup>6)</sup> These bills culminated in the 1939 Religious Organizations Law (*shūkyō dantaihō*) which strictly regulated religious organizations, and remained in effect until 1945 when Occupation authorities imposed the Religious Organizations Ordinance (*shūkyō hōjinrei*).<sup>7)</sup> This ordinance was very similar in content to the previous laws but greatly enhanced the ability of groups to incorporate as religious organizations. It was replaced in 1951 by the Religious Juridical Persons Law, which is discussed in detail below.

### **The Temple/Juridical Person**

The average parish temple today consists of, in addition to properties, the abbot (*jūshoku*), his wife (*jiteifujin* or *jizoku*) and family, a board of directors (*sekinin yakuinkai*), parishioner representatives (*sōdai*), parishioners (*danka* or *danto*), and adherents (*shinja*). It is generally seen as a site for ancestor worship related rituals and practices. According to a survey published by the Soto sect in 1984, over 60 percent of respondents said they go to the temple primarily for funerary and memorial services.<sup>8)</sup> It is also often seen as a tourist attraction and an important cultural heritage. For example, many temples figure prominently in advertisements at local tourist offices. The temple is thus both a site for ritual practices and a tourist site. But, those temples that incorporate under the Religious Juridical Persons Law are also juridical persons.

What is a juridical person? In Japan today there are two fundamental units granted rights and responsibilities under law, natural persons (*shizenjin*) and juridical persons (*hōjin*). ‘Natural persons’ refers to human beings. ‘Juridical persons’ refers to entities established under law to which rights and responsibilities are attributed.<sup>9)</sup> Juridical persons may be further categorized as incorporated foundations (*zaidanhōjin*) and corporate persons (*shadanhōjin*). Simply put, incorporated foundations are for gathering funds for a set purpose, and corporate persons are for gathering people together for a set purpose. Religious juridical persons fall between these two types and represent a special case. The Religious Juridical Persons Law was designed this way, in part, to reflect the varied nature of religious organizations and local custom. Religious juridical persons are granted maximum freedom to organize their own administrative structures.<sup>10)</sup> Most temples are registered as religious juridical persons and, therefore, must be understood not simply as “temples” but as temple/juridical persons.<sup>11)</sup>

All religious juridical persons must meet three requirements to be certified. They must promulgate religious teachings, perform rituals and observances, and educate

and nurture adherents. The designers of the law considered these acts as fundamental characteristics of a religion. Besides the three requirements, there must be a place of worship open to traffic. A household shrine (*kamidana*) in a private home, for example, will not suffice.<sup>12)</sup>

Religious juridical persons are granted rights and responsibilities similar to those of natural persons. However, these rights are limited to actions falling within the boundaries of the three requirements described above. Furthermore, each religious juridical person is bound by its stated purpose, which must be made clear in its bylaws. For example, the Tendai sect's rules of incorporation (*shūsei*) state the following:

This juridical person is established based on the teachings of Dengyō Daishi who founded this school. With the marvelous thought of the Lotus Sutra One Vehicle teachings as its base, it will strive to make the True Law flourish, and devote itself to the sacred task of saving humankind. It will hold in an inclusive relationship temples and teaching centers, and labor to educate and nurture the priests, parishioners, and adherents of these. It will contribute to the building of a Buddha land and to everyone's realization of Buddhahood. In addition, it will undertake the administrative and operative duties necessary to bring to fruition the goals of this sect.<sup>13)</sup>

Bylaws also serve as contracts between a religious juridical person and its constituent members (i.e., parishioners)<sup>14)</sup> or with other religious juridical persons with which it has relations, such as the sect in the case of local parish temples (as seen in the statement of purpose cited above).<sup>15)</sup>

In addition to the three requirements, there are three aspects of the law which are often called the three pillars of Religious Juridical Persons Law. These are the certification system (*ninshō seido*), public announcement system (*kōkoku seido*), and the responsible officer position (*sekinin yakuin*). The certification system is designed to promote freedom of religion. The system previous to the certification system was a permission based system.<sup>16)</sup> In a permission based system an applicant must receive permission directly from government authorities in order to incorporate as a legally recognized religion. Under the certification system an applicant need only meet the basic standards for incorporation required by law in order to receive legal status as a religious juridical person. The public announcement system requires that attempts be made to make adherents and other concerned third parties aware of certain actions taken by the religious juridical person. These actions include its establishment, amalgamation with another organization, the establishment or disestablishment of an inclusive relationship with another organization, and bankruptcy, disposal of assets, or rule changes associated with any of these actions. The third pillar of Religious Juridical Persons Law is the responsible officer position. The responsible officer positions are: chief responsible officer (*daihyō yakuin*), responsible officer (*sekinin yakuin*), short term substitute chief officer (*daimusha*), and temporary responsible officer (*karisekinin yakuin/karidaihyō yakuin*). The law requires that religious juridical persons have

a minimum of three responsible officers, one of whom is the chief responsible officer. The chief responsible officer represents and carries out the decisions of the responsible officer committee (hereafter board of directors). In cases where the bylaws do not stipulate voting procedure, the chief responsible officer is to be elected by a majority vote of the board of directors. The officers are responsible for all nonreligious functions of the juridical person. The law does not specify how the officers are appointed. In the case of temple/juridical persons they are often appointed by the abbot. Bylaws of temple/juridical persons regularly state that the chief responsible officer must be the abbot. The position of responsible officer cordons off a secular governing body from the nonsecular body of the organization in order that the religious juridical person may be held accountable for its actions through its secular representatives. However, the following examples of abbot/chief responsible officer and *sōdai*/responsible officer demonstrate that the secular and non-secular roles of the temple/juridical person are not easily separated.

### **Management Roles and the Temple/Juridical Person**

In the following pages, the main actors in temple/juridical person management are examined as they appear in law, in the bylaws of the Tendai sect, and in court cases and legal advice columns.<sup>17)</sup> First the position of abbot is examined against the chief responsible officer (*daihyō yakuin*) position. Then the parishioner representatives, or *sōdai*, are examined against the board of directors (*sekinin yakuinkai*).

#### **The Abbot-Chief Responsible Officer**

The abbot (*jūshoku*) of the local parish temple is in many ways the most important actor in temple Buddhism.<sup>18)</sup> His actions reflect directly on the temple and create the image of temple Buddhism today. Different sects have different requirements but, generally speaking, in order to become abbot of a temple one must undergo a period of practice at a training center operated by the sect and undergo certain initiations. The abbot today is not only responsible for conducting funerals, memorial services, and other religious services, but is also in charge of the financial management of the temple. Moreover, he is often active in local community affairs. Most temples are staffed by just one priest and his family. This means that all of the temple duties, from sweeping the grounds, to balancing the books, to performing rituals, fall on the shoulders of the abbot to do himself or to relegate to someone else.<sup>19)</sup> In this mix of secular and non-secular activities conflict often arises regarding the legality of certain actions, duties, or rights of the abbot. Such conflict exposes for examination the roles and activities of the abbot and other temple actors, as well as the role of law in shaping those roles. The trade journal *Gekkan jūshoku* (*Monthly Abbot*) and the Tendai sect's monthly journal for priests, the *Kōhō Tendai* (*Tendai Bulletin*) feature regular columns offering law advice to help priests resolve the many problems that might arise in managing a temple/juridical person.<sup>20)</sup>

The position of abbot has involved management duties for centuries, but in the

modern period especially temple abbots have had to become business managers as well as ritual masters. In the Meiji period, state support for Buddhism was cut off, directly affecting the financial resources of temples. Later, postwar land reform (*nōchi kaihō*, 1946) stripped productive land holdings away from temples. Temples were forced to convert from landlord derived income to relying almost exclusively on funerals and other ritual based sources of income. Many priests took outside jobs as school teachers or public administrators in order to support themselves and their families.<sup>21)</sup> Postwar urbanization further affected temple management. Constrictions on time and space in the urban setting often radically altered the way in which ceremonies could be performed and the connections people maintained with temples.<sup>22)</sup> Temples in the postwar period, thus shorn of state support and large land holdings, have come to rely increasingly on rituals for income as well as on incorporating new income sources. For example, many temples now manage parking lots, apartment buildings, or non-denominational graveyards. The priest, in his role as temple manager, is usually deeply involved in the design and implementation of such resources.

Throughout the modern period abbots have held both religious and legal status. Their duties, secular and non-secular, were accounted for in legal codes. In the 1899 Religion Bill (*shūkyō hōan*) temple abbots were made legally accountable for secular temple affairs (Article 23). In the Religion Bill of 1927, the rights and qualifications of abbots were defined. For example, Article 66 says the following.

The abbot must be a priest who is a Religion Instructor (*shūkyō kyōshi*). In cases where this is not possible, one who has obtained the appropriate qualifications according to sect rules and is a priest who is an Associate Religion Instructor (*jun shūkyō kyōshi*) can be appointed.<sup>23)</sup>

Such regulations were carried forward to the 1929 Religious Organizations Bill (*shūkyō dantai hōan*) and the 1935 Comprehensive Draft of the Religious Organizations Bill (*shūkyō dantai hō sōan*). The Religious Organizations Law (*shūkyō dantai hō*) of 1939 followed along these lines but left qualifications for the abbacy up to the bylaws of individual organizations.<sup>24)</sup>

The 1945 Religious Corporations Ordinance (*shūkyō hōjin rei*) eliminated reference to the abbacy, listing instead the office of supervisor (*shukansha*) (Articles 3 and 8). This new position opened the possibility for someone other than the abbot to become the chief legal representative for temple/juridical persons. This was the first attempt to split the secular roles from the nonsecular roles of the leaders of religious organizations.<sup>25)</sup> As Woodard notes, however, the Religious Corporations Ordinance was doomed to failure because it was a hybrid between past and present, neither rooting out traditional “religious” positions from the law entirely, nor providing qualifications for incorporation.<sup>26)</sup> It was soon replaced by the Religious Juridical Persons Law.

The Religious Juridical Persons Law was passed in 1951. Reference to religious positions such as the abbacy were no longer included. The stated goals of the new law were separation of church and state, and freedom of religion. In accordance with these

goals, the law was designed to be applied to the secular affairs of the religious juridical person and not to activities which might be considered religious in nature. However, in the attempt to separate the nonsecular from the secular functions of religious organizations, the combined role of the abbot was overlooked. That combined role was legally recognized until the end of World War II. This change generated many disagreements and misunderstandings and has required the court to shape the boundaries of the new roles.

Each sect, in its bylaws (*shūki*), rules (*shūsei*), and constitution (*shūken*), defines the qualifications, rights and responsibilities of priests and abbots. The Tendai sect, for example, clearly defines the qualifications and duties of an abbot in its constitution and bylaws. The constitution states that all temples must have an abbot (Article 32), and that abbots must meet the requirements in the sect's bylaws (Article 33). Priests must take refuge in the Tendai sect, undergo precept ordination, and have their name entered in the priest register (Article 37).<sup>27)</sup> The rights and responsibilities of priests are also defined (Articles 43 and 44). One right is to be appointed abbot of a temple. Responsibilities include preaching to parishioners, performing ceremonies, upholding the bylaws of the sect, and shouldering the financial needs of the sect. There are a further twenty pages of details concerning ranks, duties, and terms of being a priest in the bylaws governing appointment as an instructor (*kyōshi*) which is the minimum rank required of abbots.<sup>28)</sup> The bylaws also clearly detail how an abbot is to be chosen.<sup>29)</sup> One is appointed to the position by the *zasu*, the religious head of the sect, but the appointee is chosen by the temple's current abbot, parishioner representatives, or dharma relatives (*hōru*).<sup>30)</sup> Of particular interest here is the duty of shouldering the financial needs of the sect and the involvement of the parishioner representatives. Priests must pay an annual fee to the sect based on their rank. They must also pay for various initiations and licenses. In addition, abbots must forward to the sect a sum of money based on the ranking of their temple and the number of households in their parish.<sup>31)</sup> Furthermore, priests are responsible for encouraging parishioners to donate to the sect's various social welfare activities (such as support for the victims of the Kobe earthquake). In all of these functions the board of elders can play an important management role. They are discussed further in the next section.

The abbot's duties thus include obvious "religious" functions such as the performance of rituals, and preaching to parishioners, but also include managerial functions that may, or may not be, obviously secular in nature. According to Hara Hideo, the attorney for the Tendai sect, most Tendai temples include in their bylaws the stipulation that the chief responsible officer position be filled by the abbot.<sup>32)</sup> This is generally the case in observed practice. According to an Agency of Cultural Affairs survey cited in *Gekkan Jūshoku*, fully ninety-eight percent of chief responsible officers are abbots.<sup>33)</sup> This means that the abbot is both the religious and secular, or legally responsible, head of the temple/juridical person. Therefore, in addition to their ritual duties, abbots must also concern themselves with mundane affairs such as preparing tax statements, deciding what type of insurance to buy for the temple, and making sure the

temple stocks of everything from incense to charms do not run low. The abbot is also responsible for raising funds for temple repairs and construction projects.

The combined role of the abbot has its roots in the past as discussed above, but under the Religious Juridical Persons Law that role is artificially split into secular and non-secular roles. In some cases the split can be easily maintained. For example, the abbot of Enryakuji, the headquarters of the Tendai sect, is responsible for “religious” activities at the temple such as the conducting of rituals and preaching, whereas the chief responsible officer of the juridical person is in charge of managing financial and administrative matters. Enryakuji is large enough that the roles can be separately held and a clear division made. However, this split role, as it occurs at the local parish temple level, is often a point of confusion for abbot and parishioner alike. This confusion provides us with a window onto the life of the abbot today. Below, three cases in which the court attempted to clarify the combined roles are introduced.

#### Case #1: Fired

This case was heard before the courts in 1956.<sup>34)</sup> A certain priest, Tanaka, was appointed by his sect to serve as abbot of a local parish temple.<sup>35)</sup> Not long after his appointment he began to disappear for long periods of time, failed to show up for funerals and memorial services, was caught cheating on his wife, and went into debt. The parishioners eventually petitioned the sect to have him removed as abbot. The sect complied and Tanaka soon filed suit. He claimed that the sect failed to carry out proper procedures in his dismissal and, therefore, his position as chief responsible officer of the temple/juridical person should still be recognized. He was, in short, suing not over his religious status as abbot but over his secular status as the head of the juridical person’s board of directors. The court dismissed the case on the grounds that temple and sect were separate juridical persons so any claim found against the sect could not be enforced against the temple. In other words, even if the sect was forced to recognize his position as chief responsible officer, it had no legal power over the temple to enforce such recognition since they were separate juridical persons.<sup>36)</sup>

Tanaka appealed, this time also seeking recognition of his status as abbot. He emphasized that the two positions, abbot and chief responsible officer, were inextricably intertwined. According to the bylaws of both the sect and the temple, abbot status was required for appointment as chief responsible officer. And, since the sect controlled the administration of abbot status, that status should be seen not simply as religious in nature but also as a legally contestable status. The court ruled that, according to the bylaws of the sect, the abbot was responsible for religious functions. Therefore, because the Religious Juridical Person Law clearly states that action to regulate religious juridical persons can only be taken in cases concerning material assets and mundane functions, Tanaka’s suit could not be adjudicated.<sup>37)</sup>

The court sees the two positions of abbot and chief responsible officer as clearly separable, but in practice the chief responsible officer and abbot are frequently one and the same person. In the case just described, Tanaka lost his chief responsible

officer status when he lost his abbot status. With the loss of his chief responsible officer status, he lost his job, his place of residence, and his income.<sup>38)</sup> This case demonstrates not only the court's desire to make a clear secular/non-secular split, but also the fact that such a split is, in practice, almost impossible to discern. It also shows the types of problems related to the position of abbot that can arise at temples, and the active role that parishioners can play in temple management.

#### Case #2: The abbot as an individual

In addition to being a priest and chief responsible officer, the abbot is also an individual. Courts are called upon to decide which of his actions can be attributed to him as an individual and which must be attributed to him as the representative of the temple/juridical person.

For example, when the abbot offers the temple as collateral on a personal loan, can the temple be lost to debt collectors? In 1982, such a case appeared before the courts in Shizuoka Prefecture.<sup>39)</sup> The abbot lost 20,000,000 yen in a deal to build a graveyard on land in a neighboring city. He used the temple/juridical person's name when he took out the loan, which meant that the assets of the juridical person, i.e. the temple, could be used as collateral. When the project fell through, the debt collectors sued the temple/juridical person for their money. The court ruled in the debt collectors' favor. The temple/juridical person, represented by its board of directors and a temporary chief representative appointed by the sect headquarters, appealed the decision, but on the advice of the court agreed to a mediated settlement. In the end, the parishioners were allowed to pay the debt out of their own pockets in return for saving their temple from collection. The courts ruled that, even though he was acting on his own, the abbot did so as the chief responsible officer of the temple/juridical person, and the loan providers had every reason to believe he was acting in good faith, so the temple/juridical person could be held responsible for his debt.

#### Case #3: Politics

In the early nineties a case came before the courts regarding an abbot who ran for mayor.<sup>40)</sup> As noted above, priests are often involved in community affairs. It is not uncommon for them to serve on PTA boards, local councils, or even as mayor. But, politics can engender conflict. In this case, the abbot concerned was running for mayor, a post he had successfully held in the past. However, this time four members of his parish actively worked against his reelection. Shortly after losing by a narrow margin, the hostile parishioners were expelled from the parish. They refused the order, stating that they wished to be buried in the same community as their ancestors. When mediation failed, they took their case to court. The abbot claimed politics had nothing to do with their expulsion, they were expelled because they spread vicious rumors regarding him and caused disharmony in the parish.

The temple bylaws did not have a provision for expulsion, but the bylaws of the sect to which it belonged did. The court was left to decide if proper procedure had been

followed, but before that it had to determine if the parishioners could use the courts for redress. The abbot argued that status as a parishioner is a religious matter and, therefore, out of the realm of the court's power. After a long court case that involved repeals of earlier decisions, the high court ruled that parishioners could use the courts for redress, because they can become *sōdai* and, thereby, play a role in managing the temple/juridical person. This is now the standard view.

This case shows the legal status parishioners have vis-a-vis the temple. It also shows the manner in which law can limit not only the power of the secular position of chief responsible officer but also the power of the abbacy. The abbot's power over parishioners was nearly absolute in the Edo period when failure to register at a temple could lead to severe punishment. Although it waned after the repeal of the temple registration system, the abbot's power remained strong until the postwar period. With the promulgation of the Religious Juridical Persons Law, parishioners were given a method for seeking recourse, and the power of the abbot, even over "religious" affairs, was weakened.

This case also allows a look into the daily life of parish temples: priests run for elective office, and conflicts of interest arise between priest and parishioner. Many more such cases appear in legal advice columns. For example, who determines the priest's salary? An abbot writes to *Gekkan jūshoku*, worried that he did not follow proper procedures as the chief responsible officer. He states that he worked as a public servant and, therefore, did not feel it necessary to draw a salary at the temple. But, the tax office instructed him to do so, claiming it otherwise creates the image of skimming unreported income from temple activities. The abbot writes that he selected what he felt was an appropriate salary and began to pay himself. Any such action, however, is not the responsibility of the temple abbot, but of the board of directors of the juridical person. He should have called a meeting and had the abbot (himself) granted a salary. This demonstrates the confusion that often arises in the management of a temple as a juridical person. It also permits a view into the workings of temple management. In most cases priests draw a salary from the temple/juridical person. Their salary, despite common assumption, is taxed. They must take a salary in order to maintain clear tax records, and they cannot legally pocket income from services performed; that is the property of the temple/juridical person.

### ***Sōdai* and Responsible Officers**

Though the abbot is the person most often associated with the temple, parish temples are managed by a variety of people. The *sōdai*, or parishioner representatives, for example, traditionally play a managerial role. As shown above, they can even play a role in determining who becomes the abbot. Their management role was legally recognized until the promulgation of the Religious Juridical Persons Law, which eliminated reference to the them.<sup>41</sup> In their place the post of responsible officer, or *sekinin yakuin*, was created. The secular affairs of the temple/juridical person are managed by the officers. By law, a minimum of three persons must be appointed, one of whom is

the chief responsible officer. In the draft for the law, the chief representative officer was originally to be elected from among the responsible officers. But, religious groups fought against the word “from” to assure that the religious leader of the organization (i.e., the abbot or minister) could take the position.<sup>42)</sup> The board of directors is legally responsible for the so-called secular operations of the temple/juridical person. The role of a responsible officer is described in the law advice corner of *Kōhō Tendai* as follows: to determine budgets, survey properties, purchase and sell properties, negotiate loans for the temple/juridical person, plan construction, general administrative duties, establish and change bylaws, and enter into contracts with other juridical persons.<sup>43)</sup> Although not required by law, the bylaws of many temples mandate that responsible officers be adherents of the sect to which the temple belongs. Furthermore, most temples require the position of *sōdai* as a prerequisite for the responsible officer position. This means that, much as in the case of the chief responsible officer where holding the position of abbot is a prerequisite for appointment, the position of responsible officer usually has as a requirement a religious obligation. The Religious Juridical Persons Law in effect split the religious from the management functions of the *sōdai* just as it split those of the abbot. The *sōdai* represent the temple and the responsible officers represent the juridical person.

### *The Sōdai*

The *sōdai* system predates the responsible officer system, and there is often a great deal of overlap in their actual duties. In the past, the *sōdai* held the position of assistant to the abbot, aiding in the daily running and financing of the temple, a role in many ways similar to the responsible officer role today. The ambiguous nature of the *sōdai* position, caused by the split between traditional roles and the new position of responsible officer, has been a source of conflict.

Untangling a religious role from a secular role is difficult because the split is artificial and ignores hundreds of years of history in which the *sōdai* played an important role in temple management. The *sōdai* system in its current form can be traced back to the Edo period. Families were required to register at temples under the temple registration system (*terauke seido*). The temple registration system was designed to root out hidden Christian, and later banned Buddhist, groups. It was soon recognized as an efficient administrative tool for monitoring the public and was in effect across the country by 1643.<sup>44)</sup> Temples took advantage of the powerful position this granted them and developed the parishioner system (*danka seido*). The parishioner system was standard throughout Japan by 1700,<sup>45)</sup> lasted officially until the beginning of the Meiji period, and unofficially continues today. It required families registered at the temple under the temple registration system to become parish members and perform all their ritual services at the temple. This created a stable financial base for temples. The *sōdai* system grew, in part, out of the need felt by parishioners to have representation at the temple which their funds supported. *Sōdai* thus represented the parishioners at the temple and often played an active role in administering temple finances.<sup>46)</sup>

The *sōdai*'s temple management role enjoyed legal status well into the modern period. For example, although the *sōdai* were not mentioned in the 1899 Religions Bill, they were mentioned in other regulations during the Meiji period such as Ministry of Home Affairs (*Naimushō*) directives. These directives required *sōdai* to register at the local government office, and described their rights and duties at the temple. For example, in Ministry of Home Affairs Ordinance 33, *sōdai* were allowed an important role in managing temple assets.<sup>47)</sup> However, in the Taisho period (1912–1925) the legal rights of the *sōdai* diminished from active management roles to more passive advisory roles. The 1927 Religions Bill required only that the role of the *sōdai* be written into the bylaws of the temple and mandated a unanimous *sōdai* vote for dispersal of temple assets.

The *sōdai* position continued to enjoy legal standing in the 1939 Religious Organizations Law. Their status, as well as that of all adherents, was required to be defined in the religious organization's bylaws. The *sōdai* were required to register at the town office, and defined as assistants to the abbot in temple affairs. For example, their agreement was necessary for any rule changes or dispersal of property (Article 6). However, if the *sōdai* did not agree with the abbot, local officials could decide in their place.<sup>48)</sup>

The Religious Organizations Ordinance of 1945 kept many of the features of the prewar Religious Organizations Law. *Sōdai* status was clearly demarcated. They were designated as assistants to the abbot, their agreement was necessary for rule changes and disposal of assets, and their status had to be written into the organization's bylaws (Articles 9, 11, and 12). Unlike the Religious Organizations Law, however, in cases where the abbot and *sōdai* disagreed, the state could not be called in to override the vote.<sup>49)</sup>

The Religious Juridical Persons Law marked a major change with the past. Reference to the *sōdai* was completely eliminated. Article 12, however, stipulates that where there were previously functionary offices other than those covered by the Religious Juridical Persons Law, the role of those offices had to be defined in the bylaws of the juridical person. This meant, in most cases, that the *sōdai* were relegated in temple bylaws to an advisory role to the board of directors or abbot.

In the Tendai sect today the role of the *sōdai* is defined within the sect's bylaws, and is also defined within the bylaws of individual temples. According to sect bylaws governing parishioners and adherents, temples may make provisions for *sōdai* but are not required to do so (Article 4). *Sōdai* must be drawn from among registered parishioners or adherents, must be of exceptional faith, and must command the respect of their fellow parishioners (Article 5).<sup>50)</sup> Their duty is to cooperate in the support and management of the temple (Article 6). The method of their selection is left up to the bylaws of the temple. In addition to these duties and requirements they must first, by definition, meet the requirements and fulfill the duties of a parishioner or registered adherent. These duties include supporting the expansion of the Tendai sect and financially supporting their temple (Tendai Constitution Article 50),<sup>51)</sup> supporting the Light

Up A Corner Campaign (*ichigū wo terasu undō*, the social welfare program of the Tendai sect), and conducting all the ritual needs of their whole family at their temple (Article 2 of the sect bylaws governing parishioners and adherents).<sup>52)</sup> This last requirement shows the continuing effect of the Edo period parishioner system.

After the promulgation of the Religious Juridical Persons Law in 1951, the *sōdai* no longer were recognized as legally accountable functionaries of the temple/juridical person because of the religious nature of their qualifications. In their place the law established the responsible officer position. The *sōdai*, nevertheless, continue to perform at least advisory roles at many temples. They represent the temple to the community and use their social ties and status to benefit the temple, thus playing what Sugiyama calls a “buffer” role.<sup>53)</sup> Moreover, the position of *sōdai* is often a prerequisite for appointment as a responsible officer, making it a key position in temple management.

Despite the powerful position of the abbot in his dual role as religious and secular leader of the temple/juridical person, legally he is not able to manage the temple/juridical person without the consensus of the responsible officers. As the chief responsible officer he is required to represent the board of directors and to carry out their decisions, but it is the board as a whole that must make the decisions.<sup>54)</sup> Nonetheless, the abbot/chief responsible officer is frequently capable of acting on his own because the board of directors is often made up of himself, his wife or son, and *sōdai* who are his appointees. However, an examination of court cases and legal advice columns shows that the *sōdai* and responsible officers can be very powerful actors and, at times, play a dominant role in temple management.

#### Case #1: Who’s in Charge?

The following example appeared in a law advice column.<sup>55)</sup> A young priest took over a temple that had long been without an abbot. This is not an uncommon situation, especially in rural areas where temples are abandoned by priests who cannot support a family with the income derived from a shrinking parishioner base. His father was supposed to have taken over the temple but had left the temple many years prior. His grandmother, as an emergency measure, took the precepts and became a nun in order to care for the temple. When he graduated from college, he married, had a child, and took over as abbot. However, he claims a “boss” like responsible officer, along with a several *sōdai*, desired to expand the temple, took control of the temple/juridical person, and tried to remove him as abbot.

The abbot listed the following grievances in his letter. The responsible officers, not the abbot, determine donation amounts. The responsible officers inform him each month by postcard of that month’s services, and reserve the right to appoint someone else in his place if he misses a certain number. The responsible officers, of whom there are six in this case, only elect people favorable to their position. He is not allowed to be present when they calculate the yearly gross and forecasts. They sent around a letter to parishioners slandering him. When possible they ask his grandmother to perform services because she is more malleable.

The lawyer writing the advice column responded by saying he believes parishioner-temple relations weakened over the years with no abbot. The parishioners, therefore, no longer have a sense of religious connection to the temple, but some apparently have a management interest in the juridical person. The lawyer advised the abbot to restore the temple as a religious center.

The lawyer went on to say that religious acts and actions connected to them are abbot's responsibility. The responsible officer's duties are the administering of, disposal of, and maintenance of temple properties. Therefore, decisions regarding donations and services are temple matters and, thus the responsibility of the abbot. Furthermore, the lawyer wrote, responsible officers and *sōdai* are usually nominated for election by the chief responsible officer and abbot, respectively. Thus the abbot should be able to select people favorable to him. Also, in most cases the abbot retains the right to dismiss anyone conducting acts in impropriety. Finally, the lawyer states that determining budgets is the most important job of the responsible officers and, therefore, the abbot as chief responsible officer has the right to participate. Any decisions made without the knowledge of the abbot/chief responsible officer can be considered illegal.

This abbot's troubles are not uncommon. In cases where there has been no abbot for a number of years, the board of directors, in conjunction with the *sōdai*, takes over temple management. It is often very difficult for a new abbot/chief responsible officer to wrest control of the temple/juridical person away from a hostile board of directors, especially if he lacks the backing of the *sōdai*.<sup>56)</sup>

#### Case #2: Job Opening

In the Tendai sect, priests are selected to fill vacancies at temples from among those with the proper qualifications. There are many rural temples that lack abbots, but few priests apply for these positions because the income is too low to support a family. A recent trend has been to select people who became priests after the end of a successful career and, therefore, have enough personal funding to manage a rural temple.<sup>57)</sup>

However, the sect can only select applicants; the temple/juridical person, as a separate juridical person, has the right to accept or deny as it sees fit. In one case in the early 1990s, a retiree/priest, who had lived at the sect's main temple complex for nine years, sought his own temple. The first temple selected, however, turned down his application after an interview with the *sōdai*. It was not until sometime later that a second opening appeared. This time he passed the interview with the *sōdai* and, thus, obtained his own temple.<sup>58)</sup> Here, too, the *sōdai* are seen to play a powerful role in temple management.

#### Case #3: Responsible officers versus the parishioners

In 1968 in Shizuoka Prefecture, a case centering around the selection of a new abbot appeared before the courts.<sup>59)</sup> The temple in question had broken off from the main sect eight years prior and was in the process of finding a replacement for its

abbot. The bylaws did not include a section on the selection of an abbot, nor was there precedent in custom. The abbots of the temple's sub-temples met and selected from their number a qualified priest and called a general meeting of parishioners to vote on his appointment. The recommended priest was easily ratified with over two thirds of the votes. The responsible officers and acting chief responsible officer (*daimusha*) were not in attendance at the meeting and later argued against installing the new abbot. They insisted that the parishioner meeting was not properly conducted and that, moreover, parishioners have only religious rights regarding the temple/juridical person and no legal rights. Therefore, they argued, the parishioner's decision was null and void. The abbot-elect brought the case to court seeking recognition of his status as abbot.

The court ruled that where there is no precedent in custom, and where the bylaws are silent on the matter, the selection of an abbot should be made in the most logical fashion. Logic was here defined as that which best suited the purpose of the temple. The most important factor was, therefore, the majority support of the parishioners. Parishioners, are the reason for the existence of a temple/juridical person according to the court. The Religious Juridical Persons Law requires that religious juridical persons promulgate the teachings of the religion, perform ritual, and educate adherents in the teachings of their religion. In short, without adherents there can be no religious juridical person.

### **Conclusions:**

Though the temple today is popularly imagined as a place of ritual or a tourist site, it must also be understood as a juridical person. As shown above, law has shaped the organizational patterns of temples over the centuries. In particular, we have seen the effect of the Religious Juridical Persons Law on temple organization in the postwar period. Law today seeks to divide secular from non-secular management roles at temples, ignoring practices and legal arrangements well established before the postwar period. Yet, as shown in the cases cited above, the split is not easily enforced, even by the courts. Courts have intruded on the "religious" functions of the temple. For example, they curbed the power of the abbot to decide membership in the parish. The ambiguities this divided view creates are a source of conflict. However, this conflict allows a glimpse into temple management that might not otherwise be possible. Here we have seen the split roles of abbot/chief responsible officer and *sōdai*/responsible officer resolve themselves in courts and legal advice columns. Abbot salaries, *sōdai* duties, and political maneuvers for control of the temple/juridical persons's assets surface in an examination of the temple as a juridical person. This paper has been limited to an examination of temple/juridical person management roles, but similar conclusions regarding the necessity of viewing the temple today as a temple/juridical person can be drawn from examining the legal history of temple to temple relations, as well.

## Notes

- 1) Tamamuro Fumio, *Sōshiki to danka* (Tokyo: Yoshikawa Kōbunkan, 1999): 72. See also Fukuma Kōchō, “Kinsei bukkyō ni okeru honmatsu seido,” in *Shūkyōhō kenkyū VI*, edited by Ryūkoku daigaku shūkyōhō kenkyūkai, 77–92, (Kyōto: Hōritsu bunkasha, 1985).
- 2) Current research has shown that although honzan could enforce their will on branch temples their power was not complete. Duncan Williams shows that objects of worship that existed before attempts at standardization by the Sōtō school remained the center of local practice even after the installation of sect-approved main objects of worship. Duncan Williams, “The Cult of Dōryō Daigongen: Daiyūzan and Sōtō Zen Prayer Temples,” (unpublished manuscript, 1999).
- 3) Tamamuro, 73.
- 4) For more on this see Richard Mark Jaffe, “Neither Monk Nor Layman: The Debate Over Clerical Marriage in Japanese Buddhism, 1868–1937,” Ph. D. dissertation, (Yale University, 1995).
- 5) Shortly following the defeat of the 1899 Religions Bill, the government issued Home Ministry Ordinance No.39. This ordinance required Religious organizations to incorporate according to its specifications. For more on this and related matters see Abe Yoshiya, “Religious Freedom Under the Meiji Constitution. Parts 1–6,” *Contemporary Religions in Japan* 9, 10, 11 (1968–70): 268–338, 57–97, 181–203, 27–53, 54–79, 223–96.
- 6) In 1915, the Federation of Buddhist Schools (*Bukkyō kakushū rengōkai*) formed a committee to draft a religion bill for presentation to the government. The draft was completed in 1920. The government saw the Buddhist draft as a demand to be met before Buddhist cooperation would be forthcoming in government campaigns to inculcate good morals in the citizenry. Among the Buddhist demands were a call for the return of land lost to the government in 1871, a strong *kanchō* system (a system for centralizing sect administration), and government recognition only for temples affiliated with established schools. Akazawa Shirō, *Kindai nihon no shisōdōin to shūkyō tōsei*, (Tokyo: Azekura shobō, 1985): 112.
- 7) The Religious Organizations Law was passed in 1939 and went into effect in 1940.
- 8) Shakuo Shunkō, “Danshintō no mita jūshokuzō — Tōhoku chihō no ishiki chōsa,” in *Shūkyō shūdan no ashita e no kadai*, edited by Sōtōshū shūsei no iinkai, (Tokyo: Sōtōshū shūmichō, 1984): 205. Hikita’s 1994 survey of Shingon sect *sōdai* also shows that most (82.8 percent) visit the temple only for ancestor worship related activities. Hikita Seijun, *Bukkyō shakaigaku kenkyū*, (Tokyo: Kokusho kankōkai, 1991): 92.
- 9) Juridical persons are further divisible into two distinct types; public corporations (*kōhōjin*) and private corporations (*shihōjin*). There are yet three categories under these two: for-profit (*erihōjin*), public interest (*kōekihōjin*), and dual purpose (*nakamahōjin*). Religious juridical persons are considered public interest organizations.
- 10) Wakahara Shigeru, “Hanrei ni arawareta shūkyōhōjin no shinja no chii,” in *Shūkyōhō kenkyū II*, edited by Ryūkoku daigaku shūkyōhō kenkyūkai (Kyoto: Hōritsu bunkasha, 1981): 55.
- 11) The Tendai sect, for example, has 3093 temples and centers registered as religious juridical persons and 250 that are not so registered. *Kōhō Tendai* (Vol. 10, 1998): back cover. There were 183,202 religious juridical persons registered as of 1998. Bunkachō, *Shūkyōnenkan* (Tokyo: Gyōsei, 1999).
- 12) Hasegawa Masahiro, *Jiin unei no hōritsu nyūmon*, (Tokyo: Dōhōsha, 1994): 31.
- 13) *Tendaishū shūkishū* (1996), 42.
- 14) Parishioners must be officially registered with the temple in order to enjoy the limited legal rights they have with the temple as “interested third parties.”
- 15) Applicants for religious juridical person status are required to provide bylaws. As long as activities fall within the broad boundaries outlined above (the three requirements), and the organization does not trespass on public welfare, then it is free to govern itself under its own bylaws. In cases of dispute in which the court rules it has the authority to decide in the matter, bylaws act as contracts guiding the court in judging the dispute (the court often rules that the dispute is beyond its authority because it is a religious matter). Most incorporated temples are in an inclusive relationship with their sect, which is also a religious juridical person (in this case the sect is called an inclusive juridical person (*hōkatsu hōjin*) and the temple a bound juridical person (*hihōkatsu*

- hōjin*)). They have equal standing before the law. In cases where sect bylaws conflict with temple bylaws, the temple's are usually favored. The last determinative line is custom. In cases where it does not go against the law of land, and the bylaws of the temple and sect, custom can play a role in deciding court cases involving temple disputes.
- 16) Hasegawa, 18. See also Takemura Makio, "Sōdaiseido no hensen nitsuite," in *Shūkyōhō kenkyū II*, 79.
  - 17) The Tendai sect is used here because this paper is part of a larger work on the Tendai sect in modern Japan.
  - 18) Temple Buddhism refers to the sects of Buddhism established in the pre-modern period, such as the Tendai, Shingon, Jōdo, and Sōtō sects. Combined, these sects represent the largest form of Buddhism in Japan. I use "temple Buddhism" instead of the more common "established Buddhism" (*kisei bukkyō*), because the latter is regarded as discriminatory by many of the temple Buddhism sects. I also prefer it to "traditional Buddhism" (*dentō bukkyō*), which is used by many of the temple Buddhism sects, because "traditional Buddhism" can be seen as a term discriminating against the new Buddhist religions.
  - 19) In practice the abbot's wife usually manages the day-to-day operations of the temple. She greets guests, prepares the abbot's schedule, and is often a member of the temple/juridical person's board of directors.
  - 20) *Gekkan Jūshoku* stopped printing in the mid-nineties, but has since come under new management and is published as *Jimon Kōryū* (Temple Prosperity).
  - 21) School teachers and public administrators can take days off more readily than businessmen, therefore, priests, whose ritual duties require that they be able to perform on demand, often select such jobs.
  - 22) Tamamuro, 227–228. As people moved in to urban areas they lost contact with their home towns. Connections to the temple where their parents and grandparents sought ritual services weakened dramatically. Sugawara notes that it is generally branch households (*bunke*) that have weakened ties with the family temple (Sugawara Jusei, "Tōshika to danshintō no ishki ni tsuite" in *Shūkyō shūdan no ashita e no kadai*, 258.) Although this has meant a weakening of support for rural temples, it has proved a boon for urban temples which have been able to service the ritual (primarily funerary) needs of this population and which have seen the value of their land holdings increase.
  - 23) Yasutake Toshio, "Shūha ridatsu ni kansuru ruikeiteki kōsatsu (II)" *Shūkyōhō kenkyū I*, edited by Ryūkoku daigaku shūkyōhō kenkyūkai (Kyoto: Hōritsu bunkasha, 1981): 118.
  - 24) *Ibid.*, 107–108.
  - 25) *Ibid.*, 108.
  - 26) William P. Woodard, *The Allied Occupation of Japan 1945–1952 and Japanese Religions*, (Leiden, The Netherlands: E. J. Brill, 1972): 91.
  - 27) Articles 38 through 42 further detail the qualifications for priestly ranks.
  - 28) *Tendaishū shūkishū*: 501–519.
  - 29) *Ibid.*, 551–561.
  - 30) *Hōrui*, or dharma relatives, are temples or priests that have a specially recognized relationship with each other. The role each of the persons or groups mentioned above plays in the appointment of a new abbot varies depending on the strength of that position at the temple in question, and according to the temple/juridical persons's bylaws. The bylaws, however, do not always reflect the actual strength of the various positions. Those in a weak position can use the courts to implement the bylaws and thus increase the power of their own position. See below for examples. According to a 1982 Agency for Cultural Affairs survey, 56 percent of abbots were appointed by their predecessor, 17 percent by the board of directors, 15 percent by adherents, and 6 percent directly by the sect. Cited in *Gekkan Jūshoku* (March, 1983): 45.
  - 31) The manner in which the amounts are calculated varies from sect to sect. For more on how sect fees are calculated see the three part series that appeared in *Gekkan Jūshoku* in 1982 (August, September, and October issues).
  - 32) *Kōtō Tendai* (Vol. I, 1994): 26.

- 33) *Gekkan Jūshoku*, (March, 1983): 44. One fifth of these are the chief responsible officer of more than one temple, an equal number also reported being a responsible officer for another temple/juridical person.
- 34) Yasutake Toshio, “Jūshoku no hōteki chii,” in *Shūkyōhō kenkyū I*, 223–227.
- 35) Tanaka is not his real name.
- 36) This raises a number of questions regarding the law and its affect on temple to temple relations, which must await another opportunity to address.
- 37) Yasutake, “Jūshoku no hōteki chii,” 225.
- 38) Taniguchi Tomohira, “Jūshoku-daihyōyakuin no chiikakunin to saibanjō no shinpanken,” in *Shūkyōhō kenkyū II*, 222.
- 39) Hasegawa, 103–105.
- 40) This case appears in the November 1995 issue of *Gekkan Jūshoku*.
- 41) The position of *sōdai* today lacks legal status except in cases where it is defined within the bylaws of the temple/juridical person. It is otherwise considered a religious position. If their status is defined in the bylaws, *sōdai* can seek legal recourse only in so far as the problem is not considered religious in nature.
- 42) Yasutake, “Jūshoku no hōteki chii,” 165. See also Yasutake, “Shūha ridatsu”, 109–110.
- 43) *Kōhō Tendai* (Vol. II, 1995): 26.
- 44) Tamamuro, Hikita, Sugawara and others question the depth of the faith-based commitment of the *sōdai* and parishioners in general. Hikita, for example, notes that parishioners associate with the temple based on generational bonds, not as an act of personal faith. (Hikita, 73) Citing a survey of *sōdai* of Shingon sect temples, Hikita notes that the majority wanted to pass on their role not for reasons of faith, nor for their children’s faith, but for the desire to continue their ancestor’s inheritance (84). Hikita also questions the extent to which the *sōdai* are representative of the parish. The vast majority of those he surveyed were elderly male and the head of their of family. Most were at least third generation holders of the position.
- 45) Tamamuro, 28.
- 46) *Ibid.*, 177.
- 47) Takemura, 84–86.
- 48) *Ibid.*, 86–87.
- 49) *Ibid.*, 92.
- 50) *Ibid.*, 91–93.
- 51) *Tendaishū shūkishū*, 13.
- 52) *Ibid.*, 781–782.
- 53) Sugiwarara, 258.
- 54) According to the Ministry of Cultural Affairs survey cited above, 71 percent of abbots claim to clear all decisions through board of director meetings. According to an interview with an abbot in the Tokyo area, however, the power of an abbot is nearly absolute. He can fire officers almost at will. Thus, even though 71 percent is a high number, in practice the meetings may be more a perfunctory matter than anything else.
- 55) *Gekkan Jūshoku* (April, 1982): 72–74.
- 56) Similar cases are reported in other issues of the *Gekkan Jūshoku*. During fieldwork conducted between 1994 and 1995, I witnessed two such cases occurring in the countryside of Chiba prefecture.
- 57) This trend can be observed in the growing number of popular publications concerning retiring into the life of a religious. See, for example, *Shukke wo susumeru or Teinen washo*. Two popular authors, Setouchi Jakuchō and Ieda Shōko, chose to pursue life as nuns late in their careers and have drawn considerable attention to the religious life as an alternative second career.
- 58) Based on an interview conducted November 5th, 1999 with the priest in question.
- 59) Hasegawa, 98–99.