Hammering Down Nails

The Freedom of Fringe Religious Groups in Japan and the United States—Aum Shinrikyo and the Branch Davidians

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The Freedom of Fringe Religious Groups in Japan and the United States—Aum Shinrikyō and the Branch Davidians

Religious liberty in a democracy is a right that may not be submitted to vote and depends on the outcome of no election. A society is only as just and free as it is respectful of this right, especially toward the beliefs of its smallest minorities and least popular communities.1

I. INTRODUCTION

The true test of a country’s freedom is how that country protects the rights of its weakest and most unpopular minorities. A balance, however, between public safety and protection of individual rights must be established. In most countries, fringe religious groups often face prohibition and stigmatization by those who practice the majority religion. Often, governments prevent the abolition of religious intolerance and promote discrimination either overtly or covertly.2 Ultimately, many fringe religious groups will confront that which has been articulated in a Japanese proverb: “The nail that sticks up gets hammered down.”3

While both the United States and Japan constitutionally grant religious freedom, both countries have experienced recent tragic events surrounding fringe religious groups that caused lawmakers in both nations to reconsider that freedom. Nevertheless, each country’s response to those startling incidents was quite different despite similarities in religious freedom. Although Japan’s Constitution was modeled after that of the United States, Japan’s guarantees of free exercise and separation of religion and state are strict and detailed. Yet, the Japanese government responded to Aum

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2 See International Religious Freedom Act of 1998, 22 U.S.C.A. § 6401 (1998) (finding that “[m]ore than one-half of the world’s population lives under regimes that severely restrict or prohibit the freedom of their citizens to study, believe, observe, and freely practice the religious faith of their choice.”).

Shinrikyō’s sarin gas attack of a Tokyo subway with laws that increase the power of the police and severely limit religious practices.

Paradoxically, since the 1993 confrontation with the Branch Davidians outside of Waco, Texas, the United States federal government and the legislatures of many states have been attempting to pass bills that expand the freedom granted in the First Amendment and limit police power. The conflicting reactions are due to differences between (1) Japan’s relatively recent granting of religious freedom and its communal tradition and (2) the United States’ long history as a haven from religious persecution and a tradition that favors individualism.

II. THE RELIGIOUS FRINGE OF THE UNITED STATES AND JAPAN

Aum Shinrikyō is the fanatical religious group that on March 20, 1995, released sarin, a deadly nerve gas, in a busy Tokyo subway. The incident killed eleven people and injured thousands. The members of Aum who released the gas were acting on behalf of the group’s guru, Shoko Asahara, to bring about his apocalyptic vision. To date, Aum Shinrikyō is the only religion under active Japanese government surveillance, while the United States State Department has designated the group as a terrorist organization. After this violent act, Japan reacted with a wave of governmental legislation, police arrests, and the expansion of law enforcement’s ability to wiretap and utilize other surveillance techniques. Similarly, an anti-cult sentiment pervades in the country. The aggregate effect is a clamping down on the freedom of fringe religious groups in Japan.

While citizens of the United States are quick to point out what they view as infringement on religious freedom in other countries, the same distrust, fear,
and intolerance exists within the United States causing most people to have little sympathy for fringe religions. Doomsday philosophy is hardly a Japanese phenomenon, as is evidenced by America's more sensational cults: the Charles Manson Family, Jim Jones' Peoples' Temple, Marshall Herff Applewhite's Heaven's Gate, and the Branch Davidians in Waco, Texas. The sensational circumstances surrounding these groups may have bolstered an anti-cult sentiment within the American mind that may stigmatize religious organizations outside mainstream Judeo-Christian practices.

The media coverage of incidents involving the religious fringe in both America and Japan portrayed these new movements in a similar light. Discussions of new religions characterize such practices in terms of deviance from the mainstream or as breaches of social norms. The basic public assumption by the mainstream is that groups like the Branch Davidians and Aum are not real religions. Labeling such groups as "cults" (Japanese: karuto) further marginalizes them from "legitimate" religions. In both America and Japan, the term "cult" suggests "a deviant, fanatical group led by a charismatic person who postures as a religious leader but who is in fact a self-serving individual who beguiles people into following him or her, and who manipulates and uses them for his or her own purposes."

The initial Bureau of Alcohol, Tobacco and Firearms (ATF) raid on the Branch Davidian compound known as Mount Carmel was a concrete action against a nebulous philosophy that deviated from the beliefs of the majority. Controversy rages on as to whether the FBI used pyrotechnic tear gas to cause the fire that resulted in the deaths of eighty Branch Davidians within the compound. Contrary to Japan, the United States has not enacted new laws to control the activities of religious groups. Religious intolerance, however, does exist through mainstream alignment with Christianity that cultivates fear of unfamiliar philosophies, especially philosophies that encompass apocalyptic beliefs that lead to an expectation of violence by the suspect group. Recent

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9 See LIFTON, supra note 5, at 4.
11 See id.
12 Id. at 226; see also AMERICAN HERITAGE DICTIONARY 209 (3d ed. 1992) (defining "cult" in terms of "obsessive devotion" to a sect considered "extremist" or "false").
legislation proposed by federal and state governments attempts to address that imbedded intolerance and protect fringe religious groups.

III. INTERNATIONAL RELIGIOUS FREEDOM

A. United Nations Resolutions

As an expression of international law concerning the freedom of religion, the United Nations ratified the Universal Declaration of Human Rights Article 18 in 1948.\(^\text{14}\) The Universal Declaration has been since expanded to include the International Covenant on Civil and Political Rights Article 18\(^\text{15}\) and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.\(^\text{16}\) Article 2, section 2 of the Declaration defines “intolerance and discrimination based on religion or belief” as “any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.”\(^\text{17}\)

\(^\text{14}\) See Universal Declaration of Human Rights, G.A. Res., 217A(III), U.N. Doc. A/810, at 71 (1948) (stating “[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”) [hereinafter Universal Declaration].


1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one’s religion or beliefs may be subject only to such limitation as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

\(^\text{16}\) See Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, G.A. Res. 36/55 (1981) (restating article 18 of International Covenant) [hereinafter Declaration on Religion or Belief].

\(^\text{17}\) Id.
The United States recently enacted these international agreements in the International Religious Freedom Act of 1998. Noting that religious freedom "undergirds the very origin and existence of the United States" and is a "fundamental right," Congress restated article 18 in its findings. The act also provides for an annual report prepared by the secretary of the State Department to detail the status of religious freedom around the world and violations thereof. Violations of religious freedom "means violations of the internationally recognized right to freedom of religion and religious belief and practice, as set forth in the international instruments referred to in section 6401(a)(2) of this title . . . ." This freedom to practice one's religion is subject to limitations that "are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others."

B. The 2000 State Department Report

In accordance with the International Religious Freedom Act, the United States State Department annually examines the condition of religious freedom throughout the world. In the 2000 report, the State Department divided various countries' responses to religious freedom into five groups. They

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19 Id. § 6401(a)(1).
20 Id.
22 See id. § 6412(a).
24 Id. at § 6402(13). It includes the following violations:
(A) arbitrary prohibitions on, restrictions of, or punishment for—(i) assembling for peaceful religious activities such as worship, preaching, and prayer, including arbitrary registration requirements; (ii) speaking freely about one's religious beliefs; (iii) changing one's religious beliefs and affiliation; (iv) possession and distribution of religious literature, including Bibles; or (v) raising one's children in the religious teachings and practices of one's choice.

Id.
25 International Covenant, supra note 15, at art. 1, § 3; Declaration on Religion and Belief, supra note 16, at art. 12, § 3.
include the following: (1) totalitarian or authoritarian attempts to control religious belief or practice; 27 (2) state hostility toward minority or non-approved religions; 28 (3) state neglect of the problem of discriminating against, or persecution of, minority or non-approved religions; 29 (4) discriminatory legislation or policies disadvantaging certain religions; 30 and (5) stigmatization of certain religions by wrongful linking them with dangerous “sects” or “cults.” 31 The last category regards governments that stigmatize new religions through “sect lists” and governmental reports in order to control and monitor them. 32 It does not include overt religious intolerance such as the Taliban movement’s persecution and killing of Afghan Shi’as due to their religious beliefs. 33 Nor can this last category be likened to China’s intolerance of unregistered religious activity 34 or the jailing of members of the Falun Gong, a meditative practice drawn from Buddhism and Taoism to promote health and morality. 35 This is, however, how world governments with constitutionally granted religious freedoms block the promulgation and practice of fringe religious groups.

The process of marginalization of religious minorities is particularly prevalent when a fringe group believes in a doomsday philosophy—for instance, the Branch Davidians in Waco, Texas, and Aum Shinrikyō in Japan. In Japan and the United States, the process whereby minority religious groups are denied religious freedom is (1) an unintentional governmental alignment with majority religions, which results in (2) stigmatization of minority religious groups and labeling as “sects,” meaning (3) that there exists a subversive impairment of religious freedom despite affirmative constitutional protection. This conclusion stands in contrast to the United

27 Examples include Afghanistan, Burma, China, Cuba, Laos, North Korea, and Vietnam. See id.
28 Examples include Iran, Iraq, Pakistan, Saudi Arabia, Serbia, Sudan, Turkmenistan, and Uzbekistan. See id.
29 Examples include Egypt, India, Indonesia, and Nigeria. See id.
30 Examples include Armenia, Belarus, Bulgaria, Eritrea, Israel, Jordan, Malaysia, Romania, Russia and Turkey. See id.
31 Examples include Austria, Belgium, Czech Republic, France, and Germany. See id.
32 See id. (citing Belgium, France, and Germany’s parliamentary reports on new religious groups).
35 See China Reportedly to Start Trial of Four Sect Leaders Tomorrow, N.Y. TIMES, Dec. 25, 1999, at A5 (noting that government action was due to the threat the group poses to China’s Communist Party rule, especially in its members’ practice of forgoing medical treatment).
States and Japanese constitutions and to the United Nations declarations of religious freedom. As a result, the governments of both countries need to ensure that legislation does not interfere with the freedom of religion.

IV. RELIGIOUS FREEDOM IN THE UNITED STATES

Religious freedom in the United States is granted by the First Amendment of the United States Constitution. The First Amendment requires that Congress "make no law respecting an establishment of religion" or "prohibiting the free exercise thereof." These two provisions are commonly known as the Establishment Clause and the Free Exercise Clause. While the Establishment Clause has come to address government neutrality with regard to religion and the prevention of apparent endorsement of or aid to a particular religious activity, cases involving the Free Exercise Clause ask whether the government has prevented free exercise of religious belief or can excuse religious practices from the general law.

A. The Establishment Clause

In hearing cases under the Establishment Clause, the Supreme Court frequently addresses the issue of school prayer. In Lemon v. Kurtzman, the Court established a three part test to determine whether government action interferes with the establishment of religion. First, state legislation must have a "secular legislative purpose," second, the principle effect of the legislation must not advance or inhibit religion; and third, "the state must not foster 'an excessive government entanglement with religion.'"

36 U.S. CONST. amend. I.
37 Lemon v. Kurtzman, 403 U.S. 602 (1971) (holding state aid to nonpublic schools under the control of religious groups unconstitutional).
38 Id. at 612.
39 See id. (citing Bd. of Educ. v. Allen, 392 U.S. 236, 243 (1968) (validating a statute requiring school districts to purchase and loan textbooks to students enrolled in parochial as well as public and private schools)).
40 Lemon, 403 U.S. at 612 (quoting Walz v. Tax Comm'n, 397 U.S. 664, 674 (1970) (upholding a law that exempted an association organized and used for religious purposes from property tax because it was not an attempt to establish, sponsor or support religion or an interference with free exercise of religion)).
The issue over school prayer began with *Engle v. Vitale*, which declared state-composed school prayer unconstitutional. The Court stated:

When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain. But the purposes underlying the Establishment Clause go much further than that. Its first and most immediate purpose rested on the belief that a union of government and religion tends to destroy government and to degrade religion. The history of governmentally established religion, both in England and in this country, showed that whenever government had allied itself with one particular form of religion, the inevitable result had been that it had incurred the hatred, disrespect and even contempt of those who held contrary beliefs.

One year later, the Court extended its ruling in *Engle* by holding Bible reading over the school intercom as unconstitutional. Moments of silence in schools have also been found to have a religious purpose and are therefore unconstitutional. The Court held that a school official may not invite clergy members to give prayer at school graduation ceremonies; however, prayer at graduation may be permitted if it is student-initiated and student-led.

Most recently, the Supreme Court considered the issue of whether student-led, student-initiated invocations prior to public high school football games violated the Establishment Clause. While the Court of Appeals for the Fifth Circuit examined the case, President George W. Bush, then Governor of Texas, joined the appeal of the lower court’s ruling that the prayer was unconstitutional. Following the appellate ruling, which affirmed that the

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41 *Engle v. Vitale*, 370 U.S. 421 (1962); *see*, e.g., *id.*, at 440 n.3 (Douglas, J., concurring) (noting that from 1954 to 1956, the legislature appeared to blur the division between a true separation of church and state as exhibited by the addition of a recognition of God to the Pledge of Allegiance, currency and coins, and the national motto although such recognition had been absent since the creation of this country).

42 *Engle*, 370 U.S. at 431.


practice violated the Establishment Clause, the House of Representatives passed a resolution on November 7, 1999 to pressure the Supreme Court to overturn the lower court ruling and allow voluntary prayer at high school sporting events. Nevertheless, the Court affirmed the ruling of the lower court as the policy lacked a valid secular purpose and was impermissibly coercive.

In contrast to the Court’s efforts to prevent state endorsement of a particular religion, religion returned to the forefront of presidential politics. In the hotly contested 2000 presidential campaign, the candidates’ religious alignment came into the spotlight as candidates openly proclaimed their Christian faith in the political arena. Three of the six Republican candidates in an Iowa debate named Jesus Christ as their favorite philosopher-thinker. Furthermore, John McCain ran an advertisement in South Carolina publicizing his composition of a Christmas sermon while in captivity in Vietnam. Vice President Al Gore proclaimed in commercials that he studied religion at Vanderbilt, and in a “60 Minutes” interview, he announced he was a born-again Christian. Republican candidate Steve Forbes called for the posting of the Ten Commandments in every classroom in direct conflict with the Supreme Court ruling holding such practice unconstitutional. Finally, Gore, like President Bush, proposed that faith-based organizations might assist in the distribution of government assistance to the needy. Either as a candidate’s attempt to mirror the view of the majority of the voting public or as an expression of their personal views, religion’s inter-involvement with presidential politics may be further evidence of a dulling of the line between religion and state. This alignment unquestionably demonstrates what the courts and the Constitution have been attempting to prevent, namely government identifying itself with a particular religion.

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48 See id.
49 See Santa Fe Indep. Sch. Dist., 530 U.S. at 290.
51 See id.
52 See id.
53 See Greenhouse, supra note 47.
55 See Berke, supra note 50.
B. Free Exercise Clause

The Free Exercise Clause of the United States Constitution guarantees that people may believe in anything, but religious conduct may be limited if it violates general laws. In 1963, the Court announced that strict scrutiny was to be the standard of review for laws that interfered with the First Amendment right to free exercise of religion. In Sherbert v. Verner and Wisconsin v. Yoder, the United States Supreme Court applied a “compelling interest” test to determine whether a governmental regulation violated the Federal Constitution's First Amendment Free Exercise Clause. Strict scrutiny involves a two-part balancing test. It first demands that the individual show that compliance with the condition imposed a substantial burden on the person's ability to participate in religious observances. If so, the government then is required to show it has a compelling governmental interest that justifies the First Amendment infringement. Finally, the government is also required to show "that no alternative forms of regulation would combat such abuses without infringing the First Amendment right."

Nevertheless, in Employment Division v. Smith, the Supreme Court expressly abandoned Sherbert's strict scrutiny test that afforded safeguards to non-mainstream faiths. The Court, in a 5-4 opinion, held that strict scrutiny was inappropriate when examining the validity of a religion-neutral law and when the result would constitute "a constitutional anomaly." Thus, the Court held that under the free exercise clause, neutral laws of general applicability might be applied to religious practices even if they are not supported by a compelling governmental interest.

57 Sherbert v. Verner, 374 U.S. 398 (1963) (holding that the state could not justify the severe burden it imposed by denying unemployment benefits to an employee who was fired because she refused to accept a job that required her to work on Saturdays, the day she observed Sabbath).
59 See Sherbert, 374 U.S. at 403-06.
60 Id. at 407.
63 Smith, 494 U.S. at 886.
64 See id. at 872.
C. Waco: U.S. Response to Cultist Activity

In the 1930s, a religious group splintered from the Seventh Day Adventist Church, settled in Waco, Texas and became known as the Branch Davidians. Joining the group in 1984, David Koresh soon became involved in a struggle for control over the community, ultimately gaining power in 1988. Koresh began recruiting new members and consolidated the group’s operations into a fort-style compound outside of Waco, Texas, known as Mount Carmel. He later renamed the compound “Ranch Apocalypse” in 1992. Central to his teaching was the dogma that the end of the world would be brought by “the Beast,” which he identified as agents of the government. In addition, Koresh claimed to be a new Messiah and that all women belonged to him, as he believed his role as a messiah made him the perfect mate of all female followers.

In contrast to Japan’s response to concrete acts of terrorism by Aum Shinrikyō, the Branch Davidians had not been charged with killing anyone prior to the federal assault on their compound. Nevertheless, Japan’s response to Aum paled in comparison to the use of force against the Branch Davidians at Mount Carmel. While Aum’s sarin gas attack was an outward expression of this doomsday philosophy, the members of the Branch Davidians had not acted out their beliefs regarding Armageddon until confronted by the ATF agents.

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67 See id. at 37-38.


69 See Andrade, 65 F. Supp. 2d at 442.

70 See Bromley & Silver, supra note 68, at 58-59.

71 For a detailed outline of the events at Waco, see Andrade, 65 F. Supp. 2d at 441-46; see also Jason Sullum, The Crackdown on Waco Impels a Self-Fulfilling Prophecy, SEATTLE POST-INTELLIGENCER, Sept. 1, 1999, available in LEXIS, News Library, Seapin File.
Federal officials did, however, receive reports of child abuse arising from the Branch Davidians' custom of marrying girls as young as twelve and news that the group was manufacturing and stockpiling weapons. Consequently, the ATF initiated a raid on February 28, 1993, which ended in the deaths of four federal agents and six Branch members. The subsequent fifty-one day standoff orchestrated by the Federal Bureau of Investigation (FBI) resulted in the deaths of an additional eighty Branch members and children from a fire that consumed the compound.

Following the arrests surrounding the events in Waco, a United States District Court dismissed the claim by several members of the Branch Davidians that the government violated their First Amendment rights to religious freedom by enforcing various gun control laws against them. The court applied the ruling in Smith to hold that the enforcement of gun control laws applies to all individuals equally, regardless of their religious practices. Thus, because the law is not aimed specifically at a particular religion or religions, "the fact that an investigation incidentally targets a specific religious group does not render the investigation violative of the [F]irst [A]mendment."

America's social and legal history grants special protection of religious diversity. What occurred at Waco was an attempt by the government to balance freedom of religious expression with the government's duty to maintain social order; however, the events may have constituted an example of the state interfering with the liberty of individuals to practice a particular religion. The Davidians' status as a marginal religious group living in a communal setting under a charismatic leader made them a more likely target for investigation. Because members voluntarily relinquished personal freedom to a leader who put forth apocalyptic beliefs, the Branch Davidians were viewed as irrational and dangerous. The regulation of firearms in society is an important state interest, and any illegality by religious groups in the owning

72 See Andrade, 65 F. Supp. 2d at 442-43.
73 Id.
74 Id. at 445-46.
75 See id.
76 See id.
77 See Smith, 494 U.S. 872.
78 United States v. Allibhai, 939 F.2d 244, 250 (5th Cir. 1991).
79 See Rhys H. Williams, Beaching the "Wall of Separation": The Balance between Religious Freedom and Social Order, in ARMAGEDDON IN WACO: CRITICAL PERSPECTIVES ON THE BRANCH DAVIDIAN CONFLICT 299, 300 (Stuart A. Wright, ed. 1995).
80 See id. at 315.
and operation of firearms should not be granted special protection merely because a religious group is involved. Nevertheless, the Davidians' status as a liminal religious group exacerbated the situation and contributed to the ATF's decision to investigate in the first place. Therefore, the state's concern was not merely motivated by the desire to regulate firearms but was abetted by the group's status as a cult. Because the initial investigation may have been facilitated by religious prejudice, the ATF action may have violated the First Amendment's absolute prohibition of the government's targeting of vulnerable and unpopular religious minorities in a way contrary to how it would react to dominant religious groups.

In contrast to the burden of the state to show a "compelling interest," the burden under Smith has shifted to the religious group to show that the government action was directed at specific practices or groups with discriminatory intent. The argument exists that a group of religious nonconformists, a group which the Constitution specifically protects, were subject to harassment by the state because of religion. As the ruling of Andrade demonstrates, however, this may be very difficult to prove. In Smith, Justice Antonin Scalia prophetically noted that fringe religions may have to turn to the legislative process for protection of their practices.

D. The Post-Waco Battle Between Congress and the Courts

Ironically, during the same year as the Waco incident and in direct response to the ruling of Smith, Congress enacted the Religious Freedom Restoration Act of 1993 (RFRA). Scholars and religious groups became enraged when the United States Supreme Court delivered its ruling in Smith. They argued that this ruling would permit the government to infringe upon the religious liberty of minority groups under the guise of representing the interests of the majority and accused the Court of disregarding what many believed to be the
most important rights protected by the Constitution. Following Smith’s rejection of strict scrutiny, mainstream religions would not suffer an erosion of religious liberty due to their political clout to prevent legislation that offends their religious practices; however, minority faiths would be disadvantaged and victimized by laws not sensitive to their particular religious tenets. “Religious minorities would be destroyed . . . [and] the devout would be forced to choose between fidelity to their beliefs and bowing to Caesar.”

Passing the RFRA in 1993 with near-unanimity, Congress directly opposed the Court’s holding in Smith. RFRA (1) had a purpose to “restore” the compelling-interest test in Sherbert v. Verner and Wisconsin v. Yoder; (2) prohibited government from substantially burdening a person’s exercise of religion unless the government could demonstrate that the burden was in furtherance of a compelling governmental interest and was the least restrictive means of furthering that interest; and (3) made the RFRA applicable to all federal or state law.

The United States Supreme Court struck down RFRA less than four years after its passage. In City of Boerne v. Flores, a Texas Archbishop used RFRA to challenge a zoning ordinance that prohibited him from expanding his church. The Court dismissed the RFRA claim and declared the Act unconstitutional, holding that Congress had exceeded the scope of its enforcement power under the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The Court stated that Congress’s power under section 5 is “to enforce” the Fourteenth Amendment but “not the power to determine what constitutes a constitutional violation.” The Court saw RFRA as an expansion of the scope of rights under the First Amendment and not merely an “enforcement” or “remedial” measure. Taken together, Smith and Boerne may constitute the greatest threat to the survival of non-mainstream

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89 See Smith, 494 U.S. at 890; Gildin, supra note 62, at 416-17.
90 Crane, supra note 87, at 235.
92 See id. at 2523.
95 See id. at 512-12.
96 See id. at 519-20.
97 Id. at 519.
98 See id. at 532.
religious groups, as they permit government intervention in religion without demonstrating a compelling governmental interest.

The overruling of RFRA by the United States Supreme Court has initiated two legislative responses that attempt to codify religious liberty: (1) individual state RFRA's and (2) the federal Religious Liberty Protection Act ("RLPA"). A number of states have passed RFRA-like legislation in response to Smith. Arizona, Florida, Connecticut, Idaho, Illinois, Rhode Island, South Carolina, and Texas have enacted state RFRA's and many additional states have introduced similar bills for consideration. In California and New Mexico, the legislature passed acts, but the governors vetoed the legislation. As such acts contain the same "compelling interest" test as RFRA, they are favored by a diverse array of groups, from the American Civil Liberties Union to the Christian Coalition. Nevertheless, the states' religious freedom laws exempting religious objectors from generally applicable laws unless the state demonstrates a compelling interest cannot be obtained through less restrictive means. On one hand, it appears that such acts impose the strict scrutiny standard without the reliance on the Fourteenth Amendment that doomed RFRA. On the other hand, although these statutes have not been tested, the Court's language in both Smith and Boerne seems to indicate the Court's

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99 See Gildin, supra note 62, at 413.

100 See id. at 433; Mary Jean Dolan, The Constitutional Flaws in the New Illinois Religious Freedom Restoration Act: Why RFRA's Don't Work, 31 LOY. U. CHI. L.J. 153, 155 (2000) (noting that 16 states had bills under consideration in the 1999 legislative session, and in 1998, 23 states had RFRA bills pending or in place); Steve Strunsky, In the Religious Wars, New Jersey is Exhibit A, N.Y. TIMES, Jan. 16, 2000, § 14NJ at 6 (noting that the New Jersey legislature is presently considering one of their own); see, e.g., TEX. CIV. PRAC. & REM. CODE ANN. § 110.003 (West 1999). It states:

(a) Subject to subsection (b), a government agency may not substantially burden a person's free exercise of religion. (b) Subsection (a) does not apply if the government agency demonstrates that the application of the burden to the person: (1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that interest.

Id.

101 See Gildin, supra note 62, at 433-34.

102 See Polly Ross Hughes, State Senate Gives Overwhelming Approval to Religious Freedom Bill, HOUSTON CHRON., Mar. 16, 1999, at 1, 9 (restating the language of the RFRA); see also Scott Baldauf, Bolstering the Right to Worship, CHRISTIAN SCIENCE MONITOR, Jan. 26, 1999, at 1, 9 (noting that "[s]trengthening individual rights to worship would seem a no-brainer in Texas, a place that folks like to call the 'buckle of the Bible belt.'").

103 See Hughes, supra note 102.

104 See Gildin, supra note 62, at 433.
desire to even strike down religious freedom legislation originating from states.105

Because recent incidents involving fringe religious groups have been horrifying, one would expect the United States Congress to react with legislation constricting the liberties of such groups. Nevertheless, in keeping with the ideals of America's founding, Congress, prompted by states passing RFRA-like statutes, has recently proposed another religious freedom bill. In response to Boerne, the United States House of Representatives recently passed the Religious Liberty Protection Act of 1999 ("RLPA").106

The Senate considered RLPA,107 which sailed through the House by a vote of 306 to 118.108 President Clinton promised to sign the bill,109 but it stalled in the Senate due to the same constitutional considerations that killed RFRA in the Supreme Court.110 The legislation enhances the protection of religious exercise against the burdens of neutral state or local laws.111 As Smith lowered the standard of review for religious exercise claims, House Bill 1691 seeks to replace the standard previously rejected by the Court in Boerne. Like the state measures, the bill requires state and local officials, before imposing a "substantial burden" on a religious practice, to prove "compelling government interest" providing the burden is the "least restrictive means of furthering" the government interest.112 The bill, if passed, will certainly be challenged in the courts due to its similarity to the 1993 law. While the Court deemed the 1993 measure over-broad, supporters claim that this bill is more focused. Conservatives, however, hold that this legislation interferes with state and local authority.113 Surprisingly, under the strict scrutiny standard sought by Congress, religious groups such as the Branch Davidians would find it easier to get around religiously neutral laws as the burden would be on the government to show a compelling interest.

105 See Austin, supra note 88, at 1197.
108 See Paul Leavitt, Religious Freedom Bill wins Approval in House, USA TODAY, July 16, 1999, at 5A.
110 See Baldauf, supra note 102.
112 S. 2148, supra note 107, at § 2(A) & (B).
113 See Glen Elsasser, House OKs bill restricting interference with religion, CHI. TRIB., July 16, 1999, § 1, at 6.
V. RELIGIOUS FREEDOM IN JAPAN

An examination of Japan's policy toward religion is incomplete without some treatment of Japan's unique history, culture, and people. In contrast to the West, in Japan, public rights of the group predominate over individual rights.\textsuperscript{114} To illustrate the communal nature of the Japanese, a story is useful. Toward the end of World War II, in the city of Numazu, just south of Tokyo, people emerged from bomb shelters to find their entire city flattened by American planes. One house near the water remained and the lucky family began to help others who were not so fortunate. Instead of accepting this assistance, everyone gathered around the single standing house and began throwing rocks at it until it was rubble like the rest—as if to say if one was to suffer, all were to suffer.\textsuperscript{115}

Additionally, "despite constitutional provisions for individual civil rights and liberties, such as freedom of speech and religion, such measures have largely failed to take hold in postwar Japan."\textsuperscript{116} Religious intolerance arises from a majority practice of a combination of Shintoism and Buddhism that is equated with "Japaneseness" and a belief that other religious practices are foreign. The Japanese religious tradition developed with the major sociological and political changes in that country. Four major eras were instrumental in Japan's religious evolution: the Tokugawa Shogunate, the Meiji Restoration, the War Years, and the Modern Era.\textsuperscript{117}

A. The Tokugawa Shogunate: The Solidification of "Japaneseness"

For over two hundred years (1600-1867) under the Tokugawa shoguns, all doors to and from Japan were closed. In that time, the people of Japan, living in relative peace, were able to cultivate and mold a culture that continues to remain under every Japanese businessman's Western suit.\textsuperscript{118} The Tokugawa

\textsuperscript{114} For a complete examination of the communal nature of the Japanese people, see TAKEO DOI, M.D., \textit{THE ANATOMY OF dependence} (John Bester, trans., 1973).
\textsuperscript{115} Interview with Yukiko Ishikawa, Student at Numazu Higashi High School, in Shizuokaken, Japan (1998) (speaking about her grandmother's house).
\textsuperscript{116} O'BRIEN, \textit{supra} note 3, at 30.
\textsuperscript{118} Hired by the Department of War to report on Japanese culture, Ruth Benedict interviewed hundreds of Japanese-Americans forced to live away from the West Coast in camps during the war. She was able, without ever setting foot in Japan, to write one of the most influential studies of the Japanese people. See RUTH BENEDICT, \textit{THE CHRYSANTHEMUM AND THE SWORD} 70 (1946) (noting that Tokugawa Japan has left a strong impression on modern Japanese). For a detailed examination of the Tokugawa Period see REISCHAUER, \textit{supra} note 117, at 74-105.
shoguns established a system whereby the emperor reigned but remained isolated and removed from power. There was no religious freedom. Buddhism was the established religion while Shinto, Japan’s ancient, indigenous folk religion meaning “kami way” or “way of the gods,” was assimilated into it.\footnote{See O’Brien, supra note 3, at 33 (noting Buddhism priest prayed to Shinto “kami,” or gods under Buddhist names, while Buddhist rites were performed in Shinto shrines).}

The Tokugawa ruled with an iron hand, maintaining control, safety, and security through a meticulously plotted hierarchical system. During this period, the motto of Japan took shape: “Everything in its place.”\footnote{Benedict, supra note 118, at 87 (noting that “[s]o long as [the Japanese] stayed within known boundaries, and so long as they fulfilled known obligations, they could trust the world.” at 70).}

Japanese feudal society was based on an elaborate caste system that regulated all parts of life including the clothes one could wear and the kind of house one could live in. Below the Imperial family and nobles, the hierarchical order progressed from the warriors (samurai), to the farmers, to the artisans, to the merchants, and finally to the outcasts.\footnote{See id. at 61.}

\subsection*{B. The Meiji Restoration}

During the Meiji Restoration of 1868, not only was the emperor brought back into power, Japan underwent a massive religious revolution as Shinto, which had been assimilated into Buddhist practices during the Tokugawa Period, separated and developed distinct practices.\footnote{See id. at 51.} During the Meiji Restoration, the Japanese embraced Shinto’s myths and practices in an effort to unite a people who had been fractionalized during the feudal Shogunate and to legitimize the new Meiji emperor.\footnote{See O’Brien, supra note 3, at 35.} As the divine descendent of the Shinto sun goddess herself, the emperor represented the union of Shinto and the state.\footnote{See id.} State-sponsored Shinto, or State Shinto, predominated as an upholding of the symbols of national unity and superiority.\footnote{See id.} In this respect, State Shinto was beyond a Western notion of religious freedom. Because “it was concerned with proper respect to national symbols, as saluting the flag is in the United States, State Shinto was, they said, ‘no religion.’”\footnote{See Benedict, supra note 118, at 87.} Additionally, during the
final years of the nineteenth century, government support of Shinto waned and State Shinto was designated "nonreligious." This downplaying resulted in a degree of religious freedom as the government promoted Shinto as "patriotism and civic responsibility."

C. The War Years

In the years that followed, however, Shinto gained in significance, and "for a brief and very oppressive period (from 1930 to 1945), State Shinto became so pervasive that it became known as the "emperor system." By the time Japan entered into war with the West, Buddhism had been completely replaced by State Shinto. There was no religious freedom in pre-occupation Japan. Emperor worship and State Shinto were "rigorously taught in schools, perpetuated in propaganda films, and glorified in public ceremonies for the cult of the war dead at Yasukuni, regional gokoku shrines, and local chūkonhi war memorials." Indoctrination started early as schools taught "The Basic Meaning of the National Policy (Kokutai no Hongi)." Teachers instructed children that "[t]o give up one’s life for the sake of the Emperor cannot be called self-sacrifice. It is rather discarding one’s lesser self to live in the great Imperial Virtue, and exalting one’s truer life as a national subject." One fought and died for the emperor, for each soldier was both a "shinka," or vassal, and a "sekishi," or a baby of the emperor, as both servant and biological extension.

In reaction to the pre-World War II period in which belief in Shintoism and the divinity of the emperor influenced and increased feelings of militarism and nationalism, the post-war Japanese Constitution of 1947 declared freedom of religion to all. After the war, occupation powers demanded that the

127 See O'BRIEN, supra note 3, at 33.
128 Id. at 46.
129 Id.
130 See id.
131 Id. at 33. Gokoku jinja means "country-protecting shrines, or shrines to defenders of the country." Id. at 2. 'Chūkonhi' literally means 'memorial for loyal souls' or, more precisely, 'village memorial for the loyal souls of those who died fighting for the emperor.' Id. at 5.
133 See id.
134 See LIFTON, supra note 5, at 249.
135 See KENPO, art. 20, para. 1, reprinted in CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Japan) (Albert P. Blaustein & Gisbert H. Flanz eds., 1990) (declaring "freedom of religion is guaranteed to all.").
Japanese government abolish State Shinto, the national religion, due to its connection with the Emperor, the government, and the nationalistic fervor of the war. As sociologist Ruth Benedict noted, however, Emperor Worship had not been what the occupation force envisioned: “It is said that when it was suggested to the Emperor that he disavow his divinity, he protested that it would be a personal embarrassment to strip himself of something he did not have. The Japanese, he said truthfully, did not consider him a god in the Western sense.” Supreme Commander for Allied Powers, General Douglas MacArthur, however, convinced the Emperor to do so in order to satisfy international repute. On August 15, 1945, in a radio broadcast, Emperor Hirohito announced the end of the war. It was the first time the Japanese people had ever heard his voice. This signaled a new era of religious observance for the Japanese people.

D. The Modern Era

Although the majority of today’s Japanese do not consider themselves followers of any religion, Shintoism is still an important characteristic of the Japanese cultural identity. Their lives “are intertwined with religious observances—shrine festivals, ‘god shelves’ and Buddhist altars in the homes, and Shinto or Christian marriages, Buddhists funerals, and other religious rites of passage.” Japanese religious observances still pivot around Shintoism, which has now become a ritualized practice of celebrating all “things Japanese.” In this respect, Shintoism in Japan today represents the “patriotism and civic responsibility” that it did at the end of the nineteenth century. Shinto rituals still center around the unique character of the Japanese

136 See O'BRIEN, supra note 3, at 51 (noting that from the beginning of the Allied Occupation, dismantling State Shinto was a primary objective).
137 BENEDICT, supra note 118, at 309.
138 See id. at 309-10; see also O'BRIEN, supra note 3, at 51 (recognizing MacArthur considered Shinto “to be the main obstacle to establishing popular sovereignty, democracy, and religious freedom”).
139 See O'BRIEN, supra note 3, at 50.
140 See id.
143 See O'BRIEN, supra note 3, at 16 (noting that Shinto has been described as a celebration of “Japaneseness” or “Japanese uniqueness” (Nihonjin-ron)).
and centuries-old myths and legends about natural phenomena such as beautiful mountains, rivers, and trees.\textsuperscript{144}

Japanese engage in Shinto rites when they are participating in activities particularly Japanese, such as Karate, Sumo, national holidays, and local festivals. While most Japanese are cremated after death in Buddhist funeral rites,\textsuperscript{145} Shinto rites are usually performed for worldly benefits and good luck for activities such as passage of high school entrance examinations or for prosperous businesses.\textsuperscript{146} Babies are taken to local Shinto shrines for blessings, kami shelves still exist in school martial arts gymnasiums, marriages and coming of age ceremonies are also Shinto celebrations, and Shinto ceremonies are still used to bless the construction of new civic buildings.\textsuperscript{147} Every city, town, and neighborhood has Shinto shrines and festivals for the kami or gods within those shrines. Consequently, it is undeniable that Shintoism plays an important role in the lives of most modern Japanese.\textsuperscript{148}

\textbf{E. The Rise of Post-War "New Religions"}

Thus, Japan has aligned itself with a particular form of religion, Shinto, and as people have recently become dissatisfied with the state, their ties to the dominant religion have weakened. As a result, some Japanese have begun to look to fringe religious groups such as Aum Shinrikyō.\textsuperscript{149} This trend has continued and developed from the social, political, economic, and cultural collapse of Japan at the end of World War II.\textsuperscript{150} Catering not to a Western need for individual strength with God, new religions satisfy “the typical Japanese need for a supportive social environment.”\textsuperscript{151} The result is that new religions like Aum have flourished in times of social disruption. Even in times of relative calm, many Japanese who have a strong religious need today look somewhere beyond mainstream religion. While Shinto and Buddhism are more a matter of custom than religious belief, people moving away from those established religions turn “instead to superstitious folk beliefs, prevalent

\textsuperscript{144} See Reischauer, \textit{supra} note 142, at 207-08.

\textsuperscript{145} See O'Brien, \textit{supra} note 3, at 16.

\textsuperscript{146} See id. at 19.

\textsuperscript{147} See supra note 141, at 492.

\textsuperscript{148} See Reischauer, \textit{supra} note 142.

\textsuperscript{149} See Lifton, \textit{supra} note 5, at 234 (discussing many commentators’ blaming the rise of Aum on the alienation and lack of meaning in the lives of Japan’s youth, the legacy of the emperor system, the strict educational system, or lack of personal autonomy in business).

\textsuperscript{150} See id. at 236.

\textsuperscript{151} Reischauer, \textit{supra} note 142, at 214.
especially in rural Japan and among the less educated, or to a great variety of popular religious movements, which are normally lumped together under the name of ‘new religions.’”

The most prevalent religions in Japan are Buddhism and Shintoism. According to the Agency for Cultural Affairs in 1998, 49.2% of Japanese citizens adhere to Buddhism, 44.7% to Shintoism, 5.3% to “new” religions, and 0.8% to Christianity. Nevertheless, these statistics are not mutually exclusive as many Japanese will observe a combination of religious practices. Despite these statistics, participation in religious activities in Japan is generally low by international standards. Edwin O. Reischauer, former United States ambassador to Japan, concluded “religion in contemporary Japan is not central to society and culture.” A 1996 Jiji Press Service poll showed that 46.6% identified themselves with no religion, and a 1994 poll indicated that less than seven percent of the population regularly attend religious services. This lack of participation in religion shapes the Japanese attitude toward organized religion. The religious ambivalence evidenced by the results of these polls suggests that many Japanese today are caught in a wave of indifference toward religion; perhaps this indifference even inculcates intolerance toward those who do profess strong religious beliefs.

Conversely, the current apparent religious ambivalence in Japan might be due to the fact that the only available word for religion represents notions of non-Japaneseness. Questionnaires use the word “shūkyō” for religion. As Japanese scholar Ian Reader points out, “shūkyō” “implies a separation of that which is religious from other aspects of society and culture, ... [and] conjure[s] up notions of narrow commitment to a particular teaching to the implicit exclusion and denial of others—something which goes against the general complementary nature of the Japanese religious tradition.”

152 See id.
154 Id.
155 See FREEDOM OF RELIGION AND BELIEF: A WORLD REPORT 209 (Kevin Boyle & Juliet Sheen eds., 1997).
156 REISCHAUER, supra note 142, at 215.
157 Id.
158 See O’BRIEN, supra note 3, at 21.
F. Religious Homogeneity Versus Heterogeneity

While the United States has been a country of religious and racial diversity since its settlement by the British in the seventeenth century, Japan has experienced centuries-old homogeneity and uniformity as one race with one language living on one group of islands that has never been subject to invasion. Many early Americans were religious dissidents escaping the religious upheaval caused by the Reformation and Counter-Reformation, whereas Japan lay in deep isolation under the Tokugawa shoguns, solidifying notions of Japanese distinctiveness. While several colonies in the New World were established as havens for specific sects and denominations, other colonies were experiments in establishing a new form of governance based upon religious ideals. This tradition of religious freedom and diversity in the United States remains the foundation of current variations on religious belief. On the other hand, although most Japanese have historically followed many religious practices, they ultimately expect that others will worship in the same ways and have the same attitude toward religion.

Because strong religious beliefs appear to most Japanese as foreign and abnormal, people who abide by strong religious convictions stand out when they refuse to contribute to local Shinto festivals and shrines. To the Japanese, this refusal to take part in a communal activity is looked upon as strange, uncivil, and non-Japanese. Believers of Christianity and Islam, both monotheistic religions, often face harsh intolerance in Japan: "[I]f [monotheistic religions] come into Japan without modification, and if the believers in these religions refuse to show respect to the Buddhas and kami worshiped by...

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160 Use of the term "invasion" would exclude the brief U.S. occupation following World War II that restored Japanese sovereignty. It is interesting to note that although "kamikaze" or "divine wind" had been the term designated for suicide pilots during the closing years of the war, the word originated from the only serious threat of invasion that Japan experienced. Genghis Khan amassed the largest naval armada in history to invade Japan; however, Japan was saved by a "divine wind" in the form of a typhoon that destroyed the entire fleet.


162 See id. (citing examples of British separatists' founding of Plymouth Colony; Massachusetts and New Haven (Connecticut) by Puritans favoring a reform of the Church of England; William Penn's Quaker experiment in Pennsylvania; and Maryland as a Catholic sanctuary from Protestant England).


164 See id. at 207-08.
others, [they] will encounter an extremely oppressive atmosphere." The atmosphere that results is similar to what the United States State Department describes as the promulgation of religious intolerance by social stigmatization. In summary, unbending religions, especially non-mainstream religions, equals "non-Japanese" in Japan, a virtual death sentence for an individual in such a group-oriented culture.

VI. JAPAN'S CONSTITUTION

A. Separation of Religion and State

Japan is a democratic country with a modern constitution modeled after that of the United States. The Japanese Constitution (*Nihonkoku Kenpō*), in part drafted by United States occupying forces after World War II, provided a firm foundation for freedom of religion as well as for the separation of religion and the state. Four clauses make up the constitutional separation of religion and state. The Japanese Constitution of 1947 states that: (1) "[n]o religious organization shall receive any privileges from the State, nor exercise any political authority"; (2) "[n]o person shall be compelled to take part in any religious acts, celebration, rite or practice", (3) "[t]he State and its organs shall refrain from religious education or any other religious activity", and (4) "[n]o public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association."

Despite the fact that both the United States and Japanese constitutions provide for freedom of religion, the separation of religion and state under the 1947 Japanese Constitution is relatively narrowly defined compared to the interpretative breadth provided by the First Amendment of the United States Constitution. Nevertheless, Japanese courts have taken a lenient stance on state involvement with religion. For example, public funds are used to preserve Buddhist temples and Shinto shrines as historic or cultural sites.

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165 Id. at 207.
167 KENPO, art. 20, para. 1.
168 Id. art. 20, para. 2.
169 Id. art. 20, para. 3.
170 Id. art. 89.
171 See U.S. CONSt. amend. I; KENPO, arts. 20, 89.
172 See Yokota, *supra* note 163, at 205.
The Supreme Court of Japan examined the separation of church and state in a case in which a city used public money on a Shinto groundbreaking ceremony for a public gymnasium. The court held that "an actual system of government that attempts a total separation of religion and the State is virtually impossible." The court also held that while the Constitution does not bar all connection with religion, "it should be interpreted as prohibiting conduct which leads to collusion between the State and religion only when such activity exceeds reasonable bounds as determined with reference to the conduct's purpose and effects." Additionally, although the court found that the Shinto groundbreaking ceremony was "undoubtedly a ceremony of religious nature," it noted that its religious significance had weakened over time so that people now saw it as a "secularized ritual without religious meaning" and one of common practice in the construction industry.

In 1997, Japan's Supreme Court redefined and limited this broad interpretation. The court held that articles 20(3) and 89 did not prevent a relationship between religion and state that violates sociological and cultural norms. The articles, however, did prohibit government actions, such as the contribution of public funds to only one religious organization, if the action supported, promoted, or interfered with religious activity. In that case, the court found that a prefectural government's donation of funds for offerings to a shrine dedicated to fallen soldiers gave the impression that the government was favoring one religious group over others and therefore was unconstitutional.

Following that ruling, other cases arose that tested the limits of the relationship between a religious group and the state. In one case, a prefectural
governor and two other government officials attended a similar ritual ceremony. The Fukuoka High Court found that the activity did not promote Shintoism and was a social courtesy within the realm of everyday life. Therefore, the conduct did not violate the constitution. In contrast, the Kochi District Court ruled in July 1998 that the use of government funds to repair Shinto shrines was equal to allocating public money to a religious group and therefore unconstitutional. Additionally, in 1998, the Osaka High Court ruled that the use of public funds by a municipal government in a grain-offering rite in 1985 infringed the constitutional separation of state and religion. Presiding Judge Masahiro Iseki held that the payment of 4.88 million yen ($40,000) "gives to the general public an impression that the city gives special support to the Shinto religion. [The city's] relationship with Shinto exceeds the justifiable limit in view of Japan's social and cultural conditions." In an even more recent case, however, the Supreme Court of Japan in 1999 upheld the constitutionality of a municipal government's donation of 445,000 yen ($3,640) in public money to an association of bereaved families of war dead. Unlike the 1997 Supreme Court ruling that state allocation of funds directly to a shrine for war dead is unconstitutional, Presiding Judge Moto Ono stated that although the association worships at Tokyo's Yasukuni Shrine, the main Shinto shrine for Japan's war dead, "[t]he group cannot be considered a religious organization because specific religious activities are not part of its original founding tenet." Ono found the group not to be a religious group because it was not one organized to pray, worship, and spread its beliefs.

As a result of the above rulings, the Japanese Supreme Court permits a relationship between religion and state if it meets a two prong test: (1) the relationship does not violate social and cultural norms, and (2) the state's

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185 City Violated Constitution in Funding Rites, supra note 184.


187 Court Declares Funding of War-dead Group Legal, supra note 186.

188 Id.
involvement does not have the effect of promoting or interfering with a religious purpose. The court will most likely have difficulty determining what is permissible state involvement with religion due to the inter-relationship of mainstream religions, Buddhism and Shintoism, with sociological and cultural norms. For example, the court appears to permit some government sponsorship of Shinto activities provided there is not the impression of state support of a single religion. The state, however, rarely supports any religion other than Shintoism and Buddhism.

B. Religious Corporation Law of 1951

Article 20 of Japan’s constitution was modified with the passing of the Religious Corporation Law of 1951, which requires religious groups to register with the Ministry of Education (Monbusho), allowing them to obtain the status of “religious corporation” (shukyō hojin) and qualify for tax exemption. A religious corporation is defined as “a group or denomination possessing facilities of worship whose objectives are to spread religious doctrine, perform rites and religious ceremonies, and foster spiritual enlightenment in its followers.” The Ministry can refuse certification if it finds the group to be involved in illegalities. Article 81(1) of the law also empowers a judicial court to dissolve a religious corporation that has clearly violated the

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190 See Thomas Leo Madden, The Dissolution of Aum Shinri Kyo as a Religious Corporation, 6 PAC. RIM L. & POL’y J. 327, 330-32 (1997) (noting that the law’s purpose is secular as stated in Religious Corporation Law § 1(1): “to accord legal capacity to religious groups in order to help such groups maintain and operate institutions of worship and other property, or to allow such groups to manage business affairs in order to achieve their objective of owning such institutions and other property”).

191 Id. at 331 n.26 (quoting Religious Corporation Law § 2).

192 See Religious Corporation Law, supra note 189, § 81(1), which reads as follows: When the court recognizes one of the following conditions fulfilled by a religious corporation, . . . the court may order to dissolve that corporation:
1. when there is clear evidence that a corporation has given serious harms to the public welfare by violating law.
2. when a corporation has behaved itself considerably inimical to the purpose of a religious organization as provide in Article 2 of this law, or when a corporation has done nothing with respect to the said purpose for more than one year.
law, conspicuously injured the public, and exceedingly deviated from its religious purpose.\(^{193}\)

**C. The Religious Corporation Law Used to Disband Aum**

Immediately following the sarin gas attack, Japan applied the Anti-Subversive Activities Law of 1952\(^ {194}\) and the Religious Corporation Law of 1951\(^ {195}\) to strengthen governmental control of religious organizations. Aum escaped being outlawed under the Anti-Subversive Activities Law because a panel ruled that there was no reason to believe the cult could still be a threat to society.\(^ {196}\) The Japanese Supreme Court formally dissolved Aum Shinrikyō under Section 81 of the Religious Corporations Law due to its role in the production and dissemination of the sarin gas used in the Tokyo subway attack.\(^ {197}\) Even considering the spiritual and religious impact on the rights of innocent followers, Aum Shinrikyō “clearly violated the law in a way that profoundly endangered the public welfare and engaged in behavior significantly deviating from the objectives of a religious organization.”\(^ {198}\) As a result, their actions violated sections 81(1) (i) and 81(1)(ii-first half) and therefore constituted grounds for dissolution.\(^ {199}\)

The court found that the purpose of the Religious Corporation Law “deals exclusively with the secular side of the organization and in no way deals with the spiritual or religious side. It does not purport to interfere with any exercise of the right to freedom of religion, such as the religious activities of believers.”\(^ {200}\) Therefore, even if the court dissolves a religious corporation, followers can continue their participation in the religious organization absent its corporate status.\(^ {201}\) As a result, Aum officially renamed itself “Aleph” in February 2000 and continued to exist as an organization without keeping its distinction as a religious corporation.\(^ {202}\)

\(^{193}\) See Madden, supra note 190, at 333 (citing Religious Corporation Law § 81(1)); Okudaira, supra note 189, at 132-33.

\(^{194}\) HAKAI KATSUDO BOSHIHO, Law No. 240 of 1951 [hereinafter Anti-Subversive Activities Law].

\(^{195}\) Religious Corporation Law, supra note 189.

\(^{196}\) See Madden, supra note 190, at 333.

\(^{197}\) Id. at 327.


\(^{199}\) See Religious Corporation Law, supra note 189.

\(^{200}\) Id. at 352.

\(^{201}\) See id.

\(^{202}\) See ST. DEP’T 2000 RPT: JAPAN, supra note 8.
VII. THREATS TO FREE EXERCISE OF RELIGION IN JAPAN

A. The 1996 Religious Corporation Amendment

After the repression of religions by the Japanese government in the first half of the twentieth century, the general assumption had been that religious movements need to be protected in modern society. After the Aum incident, however, governmental debate centered on whether laws needed to be amended to allow the state greater surveillance and control over religious groups. According to the 1996 and 1997 United States State Department Reports on Human Rights, until 1996, registration under the Religious Corporation Law was little more than a formality and almost all groups registered. Embarrassed, however, by the Aum Shinrikyō 1995 sarin attack coupled with a growing public distrust of religious organizations, the Japanese government passed the 1996 amendment to the Religious Corporation Law, requiring religious groups to submit lists of property, executive members, and accounts. The Religious Corporation Council suggested amendments to the law in order to bring the Religious Corporation Law in line with social developments. The legislature passed the Advisory Council on Religion's three points to be amended: "(1) modification of the Public Safety Review Commission's jurisdiction; (2) a new system of keeping records of each corporation; and (3) the right of access to

203 See Reader, supra note 10, at 225.
204 See id.
206 See Religious Bodies Need to Boost Transparency, Yomiuri Shim bun/Dail y Yomiuri, Aug. 25, 1999, available in 1999 WL 17756616 (discussing a recent Yomiuri Shimbun poll that found 40 percent of the respondents had negative images of religious groups, citing secrecy and financial problems).
207 See id.; St. Dep't 2000 Rpt: Japan, supra note 8.
208 See Madden, supra note 190, at 356 n.141 (defining The Religious Corporation Council as a "deliberative council made up of religious leaders and scholars whose role is to assist the Minister of Education in matters relating to the administration of the Religious Corporation Law"); see also Okudaira, supra note 189, at 136-38 (noting that while the usual process is the Ministry of Education submits proposed amendments to the Council of Religious Corporation, for this Amendment, Prime Minister Murayama initiated the proposed amendment, the Ministry of Education met with the Council, and only months later (contrary to the expected three year or more deliberation period), the Advisory Council submitted its final report).
209 See Okudaira, supra note 189, at 136-38.
a corporation's documents by its members.”210 This amendment places oversight of religious corporations that operate within more than one prefecture211 under the Ministry of Education (Monbusho) rather than prefectural governors.212 The result is a shift from localized to national control, as Monbusho is now able to review not only financial reports of religious organizations but also information concerning membership, programs, and activities. The most drastic change, therefore, is that authorities are empowered with more oversight of the groups:

First, a religious corporation is obligated to submit annually to the authorities a copy of the documents it is required to maintain in its office under section 25(2) of the Law. . . . Secondly, an entirely new provision was added to the Law giving the authorities the power to question members of a religious corporation and collect information from a religious corporation under certain prescribed circumstances.213

In addition, the power to disband religious corporations is in the hands of Monbusho. Finally, the amendment allows any person adversely affected by members of a religious group to request a review of financial or other documents.

B. Criticism of the Religious Corporation Amendment

With the passing of this amendment, Japan began a process of placing further restrictions on religious freedom. While the United States has experienced attempts to expand religious freedom through legislation that imposes the strict scrutiny standard, Japan has limited individual religious practices for the public good. Many Japanese are concerned about the recent policies enacted to control religious freedom in Japan in the wake of the subway gas attack. There is apprehension that the expansion of state power in

210 Id. at 138.
211 “Prefectures” are geographic and governmental entities that may be compared to “states” in the United States.
213 Madden, supra note 190, at 357. The authorities may exercise power when sufficient reason to believe that cause exists “(1) to suspend profit-making activities; (2) to rescind the certification of incorporation; or (3) to dissolve the corporation pursuant to section 81(1)(i)-(iv).” Id.
the amendment to the Religious Corporation Law may erode Japan's commitment to religious freedom. Critics believe a more appropriate response to the Aum Shinrikyō attack would have been to improve Japan's anti-terrorism security and to use provisions that already exist to handle terrorist activity. Additionally, critics have likened the recent legislation to the draconian tactics of Japan's totalitarian regime of the 1930s that led the country into war.\footnote{See Nicole Gaouette, *Japanese Suburbanites Defy Law*, Christian Science Monitor, Sept. 28, 1999, at 5.}

By late August 1999, the Japanese government expected to fine more than 1000 religious organizations for failing to submit documents to authorities as required by the revised Religious Corporation Law.\footnote{Religious Bodies Need to Boost Transparency, supra note 206 (citing that only twelve out of the total forty-seven prefectural governments received documents from all religious groups while approximately 400 refused to submit documents in Kyoto Prefecture, 300 refused in Osaka Prefecture, and more than 200 failed in Aichi Prefecture).} A fine is imposed on groups that fail to produce the required documents.\footnote{See id.} The most surprising response has come from the Kyoto Buddhist Association, comprised of about 1000 temples,\footnote{Including such national symbols as Kinkakuji, Ginkakuji, and Kyomizudera.} which requested that its members disregard the law due to perceived governmental interference with the constitutional grant of freedom of religion.\footnote{See supra note 206.}

The reason for the recent fines, according to the Cultural Affairs Agency, was that approximately 5000 religious groups appear dormant\footnote{See ST. DEP'T 2000 RPT: JAPAN, supra note 8.} and that the government felt that some of these groups may have been used for tax evasion.\footnote{See International Coalition for Religious Freedom World Report: Asia/Pacific: Japan (last modified May 5, 1999) <www.religiousfreedom.com>.
} Furthermore, the Mastuyama District Court ordered the first dissolution of a dormant religious group since the Religious Corporation Law was ratified in 1951.\footnote{See ST. DEP'T 2000 RPT: JAPAN, supra note 8.} These government actions show the immediate effectiveness of the 1996 Amendment in heightening the monitoring of religious practices within Japan.
VIII. COMMUNITY REACTION TO THE RECENT RESURGENCE OF AUM

Although the Religious Corporation Law was applied to Aum Shinrikyō to dissolve it officially in 1996, group membership has grown recently, causing the government to take an increasingly offensive position to suppress the activities of its members. The organization's principal facilities have been closed and its guru imprisoned. From October 1999 through mid-2000, the Tokyo District Court sentenced to death four of the five senior cult members involved in the sarin gas release. Cases are still pending against other Aum members, including that of Shoko Asahara. In March 2000, the Tokyo District Court ordered the cult to pay 688 million yen ($5.6 million) to survivors and the families of those killed in the attack. Despite this, Aum has earned more than seven billion yen ($64 million) in computer sales in 1998 alone and still has an estimated 2000 followers, down from 10,000 in 1995, and forty places of operation.

Recent years have seen the growth of an “anti-cult movement” in both the government and the Japanese public in reaction to Aum’s ending a period of inaction. Members of the Unification Church and Jehovah’s Witnesses have alleged that police do not enforce laws against kidnapping when church members are held against their will and forcibly deprogrammed. The Diet considered this complaint in April 2000, but the national government took no action. With regard to Aum, people who live near cult members have been growing uneasy and thousands of protesters have taken to the streets to demand the eviction of Aum members. Local governments have refused to register Aum followers as residents. Without a residency permit, a Japanese

222 See also Jonathan Watts, Cult Plans a Timely Change of Image, GUARDIAN (London), Jan. 17, 2000, at 15 (reporting that Aum has renounced its leader Asahara and claims that only senior members of the cult will retain only a skeleton organization of operation).
224 See id.
225 See id.
228 See id.
231 See ST. DEP’T 2000 RPT: JAPAN, supra note 8; Gaouette, supra note 214 (relating the
citizen cannot receive medical care, health insurance, pensions, or other public services like drivers' licenses and voting rights. In addition, public schools and parks have refused to permit entrance of children of cult members. Some Aum followers are being denied the right to enter businesses or restaurants. Furthermore, a growing number of cities in Japan are using public money to buy property owned by the cult. Additional cities are considering using tax funds to pressure Aum members to move elsewhere. Nevertheless, the Japanese national government has made some strides in attempting to counter this movement. On one hand, in February 2000, Monbusho asked Saitama prefecture officials to reverse their decision prohibiting children of Aum members from attending public elementary school. On the other hand, in 2000, the national government did not prevent local school administrators in Ibaraki and Tochigi prefectures from blocking the registration of three children of Aum leader Shoko Asahara.

IV. THE CURRENT WAR BETWEEN RELIGION AND GOVERNMENT IN JAPAN: THE WIRETAPPING BILL AND THE AMENDMENT TO THE SUBVERSIVE ACTIVITIES ACT

To counter the growth of Aum's activities, the Japanese government has reacted with a wave of legislation. Along with the passing of the amendment to the Religious Corporation Law, the Japanese government has recently passed legislation to further increase the transparency of religious groups and to expand police power in the monitoring of those groups.

example of the mayor of a Tokyo suburb and 35 other mayors who refuse to allow Aum to live in their towns, violating the constitutional guarantee of living where one likes).

232 See Gaouette, supra note 214.


234 See id.

235 See Calvin Sims, Japan Cities Buy Property to Keep Cult Member Out, SAN DIEGO UNION-TRIB., Sept. 30, 1999, available in 1999 WL 4090446 (noting a recent Kyodo, Japan's leading news service, survey that four municipalities have spent a total of approximately $1.4 million in recent month to buy property); see also 4 Municipalities Pay 153 mil. yen to Expel Aum Cult, JAPAN POL'Y & POL., Sept. 13, 1999, available in 1999 WL 22841354.

236 See Sims, supra note 235.


238 See id.
A. Wire Tapping and Expansion of Police Power

In August of 1999, the Japanese government passed three bills into law, including one to allow wiretapping in certain investigations. The law allows law enforcement agencies, after obtaining a warrant from a district court judge, to wiretap private communication for the investigation of crimes involving drugs, guns, murders committed by groups, and the mass smuggling of people into Japan. Passing by a vote of 142 to 99, this controversial bill threatened to tear the legislature apart. While the government argued that this legislation would be a major weapon against organized crime, such as Aum Shinrikyō or the Japanese mafia (yakuza), there are concerns that the legislation could infringe on individual rights of privacy. One such allegation arose when, in September 1999, Jehovah’s Witnesses claimed that police were maintaining surveillance of church activities. The government, however, has denied that it monitors that group or other recognized religious groups.

B. The Anti-Subversion Act and Amendment

The Anti-Subversive Activities Law (Hakai katsudo boshiho or Haboho), a previously unused law passed in 1952, was modeled after Senator McCarthy’s United States Subversive Activities Control Act of 1950 and has the similar purpose of controlling the activities of the Japanese Communist

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239 See Diet Enacts Wiretapping Legislation, JAPAN POL’Y & POL., Aug. 16, 1999, available in 1999 WL 22841150 (the other two bills are unrelated to wiretapping: one revises criminal procedure to protect witnesses in criminal trials, and the other provides for stricter punishment for organized crime and expands penalties for money laundering); see also Editorial, Apply Wiretap Law the Right Way, YOMIURI SHIMBUN/DAILY YOMIURI, Aug. 13, 1999 available in 1999 WL 17756350 (stating that the law, passed on August 12, 1999, limits wiretapping to cases in which there is a strong suspicion that crimes will be committed and no other investigative methods are available).

240 See Diet Enacts Wiretapping Legislation, supra note 239.

241 See id.


243 See id.

244 See ST. DEP’T 2000 RPT: JAPAN, supra note 8.

245 See id.

246 See READER, supra note 10, at 224.

247 See Matthew H. James, Keeping the Peace—British, Israeli, and Japanese Legislative Responses to Terrorism, 15 DICK. J. INT’L L. 405, 443 (1997) (stating that while the act can be used to suppress any terrorist organization, the defendant must be affiliated with a subversive organization); Okudaira, supra note 189, at 146.
The predecessor of the act was the Organization and Other Activity Regulation Ordinance of 1949 that regulated "any organization which had attempted to resist or oppose the authority of the occupation powers, or to assist or justify any policies of overthrowing the governmental scheme by violence."

The act seeks to control both organizations and individuals who engage in "subversive activities by violence" as defined in article 4 of the law. The definition can be broken down into two categories: the first includes such crimes as rebellion, insurrection, or treason; and the second includes "regular crimes defined by the criminal code . . . committed with special motivations" like political intentions. Nevertheless, the language of the act limits its application to situations in which there is a danger that the group will continue to repeat subversive activity in the future.

Upon a finding of a violation of the act, the accused group would not be able to take part in any spiritual practices, produce materials advocating the group's beliefs, or actively proselytize their faith. Therefore, Aum, while stripped of it religious corporation status, would not even be allowed to continue to exist in any form whatsoever if convicted under this statute. Due to this drastic restriction on the practice of religion, the act has been enshrouded in controversy for being an infringement "upon the constitutional guarantee of freedom of speech, and critics have warned against possible infringement of the right to freedom of religion."

Aum escaped being disbanded under the pre-existing act because a legal panel ruled that the group no longer posed a threat to society. It is significant to note that the Japanese government had never invoked the control of the law before the Aur Shinrikyō incident. The investigations made by

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248 See Reader, supra note 10, at 224.
249 Okudaira, supra note 189, at 145-46 (noting that the act gave occupation powers the authority to purge militarists and ultra nationalists and "deprive communist members of their Diet seats").
250 See id. at 147.
251 Id.
252 See id.
253 See Reader, supra note 10, at 224.
254 James, supra note 247, at 444.
255 See Madden, supra note 190, at 358-60 (citing the January 31, 1997, Public Security Examination Commission's rejection of the government's request to ban the group under the Subversive Activities Prevent Act); Religious Corporation Law, supra note 189, at 147; Koichi Iitake, Japan: New Legislation to Target Aum Shinrikyo, Asahi Shimbun (Japan), Sept. 9, 1999, available in 1999 WL 17700529.
256 See Religious Corporation Law, supra note 189, at 148.
a committee set up to judge this issue found that "(1) due to a shrinkage of its personnel, material, and financial assets, Aum had been significantly weakened, and (2) the group had made the transition from a cloistered and secluded religious organization to one that is now safely dispersed throughout society."\(^\text{257}\)

Nevertheless, Aum recently ended a period of inactivity by expanding its presence nationwide. In response, the government introduced a bill as an amendment to the Anti-Subversion Law in order to limit the group’s activities and to make it easier to disband Aum and other groups.\(^\text{258}\) Although the bill does not mention Aum by name, the proposed legislation is being referred to as the “Aum control law” because Aum is the only group that currently qualifies under the legislation.\(^\text{259}\)

Both the Diet and the Cabinet approved the controversial law, which went into effect on December 27, 1999.\(^\text{260}\) With the planned law, the government hopes to conduct on-site inspections of groups that have committed indiscriminate mass murder in the past. The law gives the Public Security Investigation Agency (“PSIA”), under the Justice Ministry,\(^\text{261}\) the right to raid cult facilities without a search warrant, to unilaterally evict groups from their property, and to seize assets of members to compensate victims.\(^\text{262}\) Every three months during a three-year supervisory period, the suspect group must provide information about its members and the nature of their activities.\(^\text{263}\) In addition, law enforcement officials shall monitor the group’s activities by making them submit reports and reveal their findings to the public.\(^\text{264}\) As punishment for failure to comply through interference with inspection, members could face fines, imprisonment, and confiscation of land.\(^\text{265}\)

Although the law met opposition from religious groups including the Soka Gakkai, the nation’s largest lay Buddhist group and a strong supporter of New

\(^{257}\) Madden, supra note 190, at 360 (noting further that the commission believed the group’s movements should continue to be monitored and a plan should be implemented to integrate Aum followers back into society).


\(^{259}\) Apocalypse Tomorrow?, ECONOMIST, Dec. 18, 1999, at 37.


\(^{261}\) See Bill Set to Curb, supra note 258.

\(^{262}\) See Reitman, supra note 260.

\(^{263}\) See Bill Set to Curb, supra note 258.

\(^{264}\) See Iitake, supra note 255.

\(^{265}\) See id.
Komeito, the opposition party, legislators are confident that the bill is constitutional. In support of the bill, legislators cite the expressed limits placed on authorities not to unreasonably restrict people's basic rights guaranteed by the constitution. On the other hand, the expanding power of the PSIA to instigate surveillance of such groups has come under attack due to the revelation that three years ago, the PSIA issued orders to monitor a long list of citizen action groups and other private organizations of writers and journalists. Interestingly, amidst the current debate, Aum has reacted by dissolving itself and renouncing its leader Asahara in order to evade the legislation. The group has also changed its name to "Aleph." By changing its identity, Aum hopes to circumvent the law, but this is unlikely due to a swing of public opinion against Aum.

X. CONCLUSION

Two countries with constitutionally granted freedom of religion have had polar reactions to acts of violence surrounding two fringe religious groups, Aum Shinrikyō and the Branch Davidians. In contrast to the Japanese government's response to its own crisis with fringe groups, the government of the United States has reacted with legislation to expand individual rights of worship while limiting the power of the government to police those rights. These conflicting responses are inextricably tied to the differences in the events each country experienced. On one hand, the sarin gas attack by Aum Shinrikyō directly invaded the rights of the public, and the Japanese government reacted by sharply limiting the power of those with stronger-than-average religious views. Consequently, the legislature strengthened the state's ability to maintain public order at the expense of religious liberty. In doing so, the Japanese government is making every effort to hammer the nails that may stick up. The raid on Mount Carmel in Waco, on the other hand, was a direct invasion by the United States government on individual rights. The United States legislature and assemblies of various states sought to empower

266 See id.
267 See id.
269 See Jonathan Watts, Cult Plans a Timely Change of Image, GUARDIAN (London), Jan. 15, 2000, at 15 (noting that to be convicted under the act, the group's leader must still control his or her members).
271 See id.
religious liberty against state interference. Thus, government is attempting to preserve atypical nails.

Despite differences in how the confrontation with each religious group unfolded, a key reason for the opposing reactions by Japan and the United States is Japan’s relatively new constitutional tolerance of religion which stands in contrast to the United States’ long history of religious protectionism. Additionally, the governments of both countries appear to be making efforts to respond to what their people find important. For the Japanese, the rights of the community predominate over the freedoms of the individual; however, citizens of the United States generally hold individual rights supreme. In light of this, the Japanese legislature must ask itself whether the government has gone too far in its containment of Aum Shinrikyō’s activities. The question for the United States is whether the government has gone far enough. The United States Congress and state legislatures must consider the extent to which they are willing to take the power of the First Amendment. A final question to consider is whether it would take an Aum-like scenario in the United States for Congress to begin to retract those individual rights.