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On the Function, Subject, and Capacity of the Religious Property System in China

Hou Shuiping, Wang Mingcheng*

Abstract: To construct our religious property system, we must first define its purpose and function, and then clarify the connotation, subject, and capacity of religious property, the premise of which is to scientifically understand the nature, purpose and function of religions. The “religious purpose” of the religious property system is different in its appeal to different subjects: The state, religious groups and believers. For different types of property, religious purposes differ in directness and indirectness, but they are unified in the realization of the basic religious policy of the Party and the state.

Keywords: Religion; Religious Property; Institutional Norm; Religious Organization; Religious Group; Religious Policy

Freedom of religious belief is the basic starting point and basic policy for the Party and the state to correctly comprehend and deal with religious issues.^① Religion is not only a subjective understanding, a belief, but also an objective existence, with its “material shell” (Lv, 1987). Religious property is the material carrier of religious existence and dissemination, and the material base for all religions to carry out their religious activities. It is difficult for a religion to exist without

① The Basic Opinions and Policies of Religious Issues in the Socialist Period issued by the CPC on March 31, 1982 indicated that respecting and protecting freedom of religious belief is the basic policies of the Party to the religious issues. This is a long-term policy, and a policy which will be executed until the religions disappear naturally.

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religious property. The practice has proved that the absence of religious property will lead to the fact that “the central government’s policy on religious work cannot be effectively implemented.”^① Consequently, the restoration and protection of religious property became an important initiative for the Party and the state to practice the freedom of religious belief after the “Cultural Revolution.” However, in terms of regulation, the norms of religious property in China initially stipulated just operational rules required in practice, namely “Policy orientation, supplemented by law.” Subsequently, though a series of relevant regulations have been introduced, they are scattered in various legal documents with rare systematic and general regulations which, if any, have numerous problems.^② Along with the development of the economy and society, a variety of new problems and chaotic phenomena related to religious property have appeared in practice; e.g. the Shaolin and Famen Temples seeking listings, “inheritance” disputes of Shi Yongxiu, the Buddhist abbot of Lingzhao Temple, Yuxi City, Yunnan Province,^③ “burning joss sticks” at a high price, businessmen contracting the temple, the government investing in temples and religious statues for “economy on the platform of religion,” and lawless persons illegally aggregating assets in the name of religion. All of these reflect the regulatory inconsistency of the religious property system in subject, object, management and capacity. Therefore, it is of important theoretical significance and practical value to standardize the religious property system and specify the legal means. Through the objective facts of religion in economy,

society, culture and history in the primary stage of socialism and on the basis of knowing the nature, purpose and functions of Chinese religions, this paper will explore the religious property system in basic concept, function, subject, capacity.

1. The definition of the nature and function of religion

All laws are the normative reflection of the essence and regulations of the regulated object, which is interpreted by the legislators’ value orientation. Without definite and scientific understandings of religious property, it would be impossible to reasonably understand and regulate religious property. It is self-evident that the fundamental difference between religious property and other properties lies in the religious nature of the property. Therefore, without the definition of the nature and the function of religions, there is no definition of religious property.

1.1 Debate on the nature and function of religion

The essence of religion has been a hot topic for a long time. There have been dozens, even hundreds of definitions of religion or the nature of religion, and they are “growing with each passing day” (Xu & Qin, 2009). However, the controversy about the nature of religion mainly focuses on ideology and the objective existence of religion and religious functions.^④

The proposition that the essence of religions is consciousness arises from the “Theory of Reflection”

① The State Council approved and forwarded the Report about Implementing Real Estate Policies of Religious Group to Bureau of Religious Affairs, National Construction Committee and other departments (July 16, 1980).

② The General Principles of Civil Law of our country regulates the property right of religious group, while the New Property Right Law has no regulation about this, and there are 8 terms in the Rules of Religious Affairs to regulate religious property, but there are still many blurs and omissions (see the text below).

③ Disputes on Huge Heritage Between the Dependent of Dead Buddhist Abbot and the Temple [EB/OL]. <http://www.ahtv.cn/news/jrgz/2012/06/2012-06-30863410.html>.

④ Considering the classical works about religious nature and its development and core influence in the current time, the religious ideology and existing problems and the religious function problems are the fundamental problem in the religious nature, so this paper will omit the discussion on other disputes .

proposed by Frederick Engels in *Anti-Dühring*, namely “All religion, however, is nothing but the fantastic reflection in men’s minds of those external forces which control their daily life, a reflection in which the terrestrial forces assume the form of supernatural forces.” That is, the nature of religion is the reflection of human subjective consciousness on external objective things, belonging to the category of consciousness. The characteristic of this consciousness is the illusion of “hyper human.” But some scholars have suggested that religion is both an illusory belief, a concept of “God,” and a realistic social force with a “material shell.” It is biased to merely think “Notion is the nature of religion.” Moreover, the so-called “illusion” has a strong value judgment, which is difficult for the theist to accept (Xu & Qin, 2009). The theory of essential elements is put forward in the process of reviewing religious epistemology and opium theory. There is a view that the essence of religion is the “four elements of religion:” Religious ideas, religious experiences, religious practices, and religious organizations and institutions. There is a logical relationship between the four elements from the inside out (Lv, 1987). The “element” here focuses on the objective formation, which we tentatively call an objective ontology. There are views that this definition may better enable people to grasp the essence of religion (Wang, 2007, p. 86), and it is worthy of affirmation that the social entity of religion is highlighted in this definition (Xu & Qin, 2009). But opponents argue that “element theory” is only a grasp of religious identity, rather than a definition of religion (Li, 1999). Instead of the Theory of Reflection, the Theory of Essential Elements will change the definition of essence to the definition of abstract generality and change the definition of highlighting essence relationships to the sum of abstract characteristics without essential relationships, thus changing the position that embodies Marx’s critique of religion to a so-

called objective description that stands on the central position (Xi, 2002).

The core controversy of religious function focuses on Marx’s assertion, “Religion is the opium of the people.” Some scholars believe that this judgment reveals the fundamental nature of religion, and scientifically expounds the nature and social function of religion (Zhang, 1981), and it still is the cornerstone of Marx’s view of the world on religious issues. This judgment is not out of date in socialist society (Lv, 1981). However, there are scholars who believe that “the Theory of Religious Opium” is a metaphor of religious function in a specific historical context, and can’t be regarded as a scientific definition of the nature of religion (Xu & Qin, 2009). It means that if the social history is different, the religious functions will be different. In the socialist period, the role of religion can’t be explained as opium (Ding & Wang, 1989). Moreover, the “Teleology” believe that religion is man-made. Therefore, starting from the purpose of behavior, they believe that religion is a social phenomenon that uses nonrealistic forces or uses nonrealistic means to solve real problems (Li, 1999). But the opponents argue that such “Teleology” has the suspicion that religion will be generalized (Xu & Qin, 2009). According to the “Theory of Caring,” religion is a spiritual and ultimate concern (Chen, 2008, p. 675). But some people think studying religion from the perspective of religious culture has its limitation (Xu & Qin, 2009). The “Exchange Theory” holds that religion is a special form of spiritual currency, originating from the special exchange activities between human beings and alien forces to meet their material and spiritual needs (Zhao, 1995). That is, religion has the function of communicating with human and alien forces.

1.2 The definition of the nature and function of religion

What is religion? In the *Britannica Concise*

Encyclopedia, religion is the relationship between man and God, gods, or whatever sacred objects, and sometimes it is relationships with sheer supernatural beings. It is generally shared by a society and expresses common culture and values through myths, doctrines, and ceremonies. Worship can be said to be the most basic element of religion, but moral behavior, right faith and participation in religious organizations are also elements of religious life (American Encyclopedia Britannica Company, 2011, p.2058). In the *Grand Chinese Dictionary*, religion is a social ideology, including the corresponding worship activities (Luo, 2008, p.1355). The idea is that religion is subjective and objective. More explanations are shown in the *Encyclopedia of China (Philosophy)*. It holds that religion is the illusory and reverse reflection in people's minds of natural and social forces dominating humans. The specialized organization believing in and disseminating these ideas is one of the forms of social ideology. The mature religions include the religious beliefs, organizations, facilities, doctrine, canon, ceremony and special religious staff (Editorial Department of Encyclopedia of China Publishing House, 1987, p.1270). It can be seen that religion itself is a complex social phenomenon.

It is because religion is a mixture of subjective and objective that its nature is multiple. From the subjective point of view, religion is a consciousness, an understanding of the relationship between man and supernatural power. What distinguishes it from any other consciousness is faith and the worship of supernatural powers. Material determines consciousness. The material base of this understanding is only found in the ready-made material world at every stage of the development of religion (Marx & Engels, 1972, p.84). When the conditions of this consciousness exist in the material world, the religious consciousness exists,

and it cannot be forcibly eliminated. Therefore, Deng Xiaoping stressed that religion should not be eliminated by administrative order (CCCPC Party Literature Research Office, 1998). Ultimately, the demise of religion is bound to be a long process, perhaps more remote than the demise of class and state (CCCPC Party Literature Research Office, 2002, p.371). From the objective point of view, religion is the unification of the normative system and the organizational system. Its aim and function are to embody the belief, practice faith and worship of supernatural power, distinguishing itself from other normative systems and organizational systems.

On the basis of the multiplicity and historicity of the nature of religion, the religious function is its inherent function, and is the function under specific historical conditions. In the regard of belief and worship in supernatural powers, as for the believers, the function of religion is first the soul and the spirit, and it is their spirit that is the ultimate concern. This kind of concern is sacred and inalienable to the believers, and it is the reason for their survival, development and spiritual support. For religious organizations and their operations, the basic function is to ensure that believers believe in and worship supernatural powers, and maintain the common religious culture, values and experiences of the believers. The historical role of religion is in line with its specific historical stages and conditions, and is the influence of the inner function of religion on the historical environment. Therefore, religion under different historical conditions has different functions. The role of religion in the socialist stage is both positive and negative (CCCPC Party Literature Research Office, 1998). The scientific standard of socialist religious policy and regulations lies in the ability to guide religion, to promote the unification of the country and the unity of all its nationalities, develop economy and culture, and enhance social harmony and social progress.

2. The purpose and function of the religious property system

2.1 The purpose of the religious property system

From the legal point of view, according to Regulations on Religious Affairs (hereinafter referred to as “Regulations”) the purpose of the religious property system is to protect the freedom of religious belief, maintain religion harmony and social harmony, and regulate the administration of religious affairs (Dieter Medicus, 2001, p.889). From the policy document, whether The Basic Views and Basic Policies on Religious Issues during the Socialist Period of China or the regulations for implementing and standardizing religious property, religious property is an important material condition for the implementation of the Party’s religious policy and for normalizing religious activities. Scholars believe that the protection of religious property is an important content of the legitimate rights of

the citizens’ freedom of religious belief, which is conducive to the protection of the normal religious activities of the masses,^① and it is the material basis for the religious beliefs and the existence and operation of religious organizations. Therefore, the purpose of religious property is to fundamentally ensure the implementation of the religious policy of the Party and the state. Obviously, the purpose of religious property is to “serve” the religion rather than serve politics or economy, that is, the so-called religious purposes and uses.

It is argued that the religious purpose and use mean that the purpose or the conduct is of religious nature, that is, “associated with religion” (Teaching and Research Office of Civil Law of CUPL, 1986, p.137). Or “religion” is for the purposes of worship, funerals, supporting priests, helping poor people, etc. (Zhang, 2012). It is self-evident that religious purposes are related to religion, which means engaging in Buddha worship, chanting, incense burning, prayer, sermon, preaching, mass, baptism,



Buddha worship

① Refer to Article 1 of Regulations of Religious Affairs.

ordination, fasting, religious festivals, anointing, memorial and other religious activities, and the sales of a certain number of religious books, religious supplies, religious works of art and other activities that have a “religious purpose.” But this religious nature is viewed more from the private perspective of religious believers or organizations, than from the state. In fact, any property system serves the purpose of the state, that is, not only religious subjects have religious purposes for religious property, but also the state has the purpose of dealing with religious affairs for religious property. Moreover, the former must meet the requirements of the latter. For example, in the history of the United States, religious property was restricted for a long time in terms of subject, quantity and disposition. The purpose of religious property system is to protect individual’s freedom of religious belief (Gordon, 2013, pp.1-54).

Since religion involving religious believers, religious organizations and the state and society, we believe that the purpose of the religious property system can be considered in three dimensions. First, at the level of believers, the religious property system exists for the purpose of religious belief and religious activities, but religious property does not guarantee the personal survival of the ordinary believers (excluding religious staff) because believers are not only believers, but also ordinary laborers who have the rights and obligations to work and live. Second, at the level of religious organizations, the purpose of the religious property system is to provide material conditions for religious existence, development and the normal religious activities of the believers. Third, at the level of the state, recognizing and standardizing religious property is to implement religious policy, ensure freedom of religious beliefs, safeguard religious and social harmony, and ultimately achieve the purpose that the religion adapts to the socialist society.

Three purposes lie in the religious property

system. From the perspective of the system, the former two belong to the objective and realistic foundation, and is the factual basis for making the system. The latter is the subjective requirement and the value basis of the system. Defining the ownership of religious property should be adapted to the constitutional policy and legislative system of the state, so as not to be contrary to the existing legal system. Therefore, the state has the power of institutional regulation of religious property, and the power of regulation does not deny that the religious subject conforms to the religious purpose of the Constitution and its realization. In view of the existence and development of religion itself, the purpose of the religious property system can be divided into a direct religious purpose and an indirect religious purpose. The use of religious property in religious activities embodies the direct religious purpose. When religious property is not used in the religious activities but the demand for guaranteeing religious activities, it embodies the indirect religious purpose. Religious organizations, for example, engage in certain business activities permitted by the state, which are not religious activities in themselves. However, based on the religious characteristics of our country, the state adopts the policy of self-support. These kinds of activities indirectly serve the religious purpose of religious subjects.

2.2 The function of the religious property system

In sociology, functions are used to describe institutions, roles, and norms which are used to serve a purpose (Jin, 2007, p.951). The function of a particular system is the characteristics and capabilities that are embodied in the purpose of achieving that system. The state of religious property institution, religious organization and believers’ purpose can be unified to guarantee the realization of the religious policies and laws of

the Party and the state. Religious property is the necessary material basis for religious subjects to carry out religious activities. Therefore, the basic function of religious property system is for religious purposes, and it can guarantee the possession, use and income of religious property by religious subjects. In this regard, it is not controversial in the academic field. But whether religious property has a trading function is controversial: The first is the absolutely prohibited transaction theory that religious property cannot be used for profit and enjoyment or other purposes (Encyclopedia of China Publishing House Britannica Concise Encyclopedia Editorial Department, 1985, p.432). The second is the conditional trading theory that religious property can be used for profit only under certain conditions or approved by specific procedures (Yang, 2008, pp. 385-386), or the investment activities, the objects of the investment and the income purpose are restricted (Zhang, 2012). Both are based on the existence, purpose and value of religious property. The third is that we should recognize that the existence of religious property is “profitable” in some sense (Liang, 2008). They even put forward the secular management of the monastery economy, namely “religion accepts the market laws” (Dongcang · Cairangjia, 1997).

First, the function of the religious property system should endow the religious subjects with the ability to possess, use, and benefit from religious property in accordance with law, but shall not enjoy the profitability of the transaction in principle. Religion is essentially the faith and worship of supernatural forces and is the behavior of meeting spiritual requirements through the external material practice. Religious property is the material base for religious spiritual consumption, not the means of obtaining wealth. Therefore, the legislative system should ensure that the religious subjects possess, use and benefit from religious

property in accordance with the law, while adhering to the principle that religious property should not be used for business activities. Second, religious subjects should be empowered to make profitable transactions on specific religious property. Because in theory, institutional functions are the result of the interaction of a series of systems. It is cognitively biased to assume that there should be no profit-making function based solely on the religious purpose or purpose of religious property. From the specific religious policy, China has abolished the religious feudal privileges and oppression and exploitation systems, and has implemented the policy of religious self-governance. If religious donations are the only source of supplementary religious property, it will be difficult to secure the material conditions required in religious activities and the lives of the religious staff. Therefore, to ensure the normal operation and continuation of religious activities, religious property, to a certain degree, still needs limited tradability to maintain and increase in value. As far as viability is concerned, religious property includes general religious property. This provides the possibility of trading religious property (see “religious property rights restrictions” below). Therefore, the religious property cannot include the freedom of profit-making trade in principle, but there are exceptions. The aim of this exception is to serve the religious purpose and not to endanger the religious activities themselves. This principle has also been adopted by some states and regions. For example, Article 117 (1) of Russian Civil Code provides “Religious groups are nonprofit organizations. They have the right to engage in business activities, but only to the extent that their purposes are established and are in conformity with these purposes” (Zhou, 2008). As specified in Austria Federal Law Relating to the Legal Status of Religious Groups in 1998, religious organizations are eligible for corporation, and “income and capital

are for religious purposes (benefits and charities included)” (Huang & Li, 1999).

3. The connotation of religious property

3.1 Differences in the connotation of religious property

Existing regulations generally do not cover abstract provisions on religious property. For example, all provisions of the Regulations do not contain the provisions of “religious property.” 7 in 28 laws at the local level specify the definitions of religious property. The subjects of religious property are regulated as religious groups or sites for religious activities in such places as Guangdong Province, Jiangsu Province, Wuhan City, Zhejiang Province and the subjects are regulated as religious organizations in Hunan Province and Shanghai City. The subjects are regulated as religious groups, religious colleges and sites for religious activities in Sichuan Province. Local legislation is consistent in the type of property rights, including properties in possession and properties which are managed and used. The property objects are consistent broadly and “other lawful properties” reveal all the details.

Scholars have written about the scope of religious property, but have avoided its connotations (Religious Research Center of State Administration for Religious Affairs, 2002, p. 203). The definition of religious property has functional definitions and non-functional definitions. The former, functional definitions mean religious property is a kind of property used for religious purposes (Liang, 2004, p.114). Religious property is the material guarantee for religious believers to carry out normal religious activities, as well as religious groups and religious staff to achieve economic self-support (Zhang, 2011). This definition is characterized by the clarification of the function of religious property as guaranteeing

religious activities and serving religious purposes. Because the religious activities of believers are guaranteed, their religious property may include the believer’s own property; but the legal attribution of religious property is ignored. The latter, non-functional definitions means religious property includes legally-owned properties and incomes obtained by the religious corporations in owning or managing the building property, land, mountains, grassland and monuments, towers, forest, tombs and other religion facilities, religious instruments, religious income, religious donations and its public service undertakings (Liang, 2008). The special characteristic of this definition is that the subject and object of property are clarified, but the subject is limited to a religious corporation, excluding the possibility for non-corporation subject in possession of religious property. Moreover, the function of religious property is not defined, leaving the use of religious property controversial.

3.2 Definition of the connotation of religious property

We believe that the definition of religious property should combine functional definitions with subject definitions. Because, on the one hand, Marx said, “The essence of wealth lies in the existence of the subject of wealth” (Marx, 2000, p.76). Therefore, the definition of religious property must define its subject. Religion itself is the unity of subjectivity and objectivity. The subjective aspect of religion cannot be the subject of property. Only the followers and their relevant organizations may become the subjects of religious property, “For religious purposes” is not only the state’s restrictions on the purpose of religious property, but also the characteristics of religion itself. The general property subject (such as the natural person, the collective, the state) is not fundamentally different under market conditions, but the religious subject is a special subject. According to the nature of religion, it is not the

market subject, but it's the subject that exists for the purpose of religion based on historical and realistic reasons. Based on the nature of religion, the nature of religious property lies in the religious purpose it bears and the religious purposes it determines. It is the particularity of the subject of religious property that determines its purpose. On the other hand, we cannot assume that only the subject definition is sufficient. Because the religious purpose of the religious subject is completed through religious self-discipline, it does not objectively make religious property necessarily limited to religious purposes. Heteronomy is also needed. The contradiction between religion and the state's guiding ideology is subjective, and there is an objective possibility of negative influence. Their existence is allowed by policies and laws due to historical and practical reasons. Therefore, it can be argued that this kind of existence is restrictive to the religious purpose sphere of the religious followers and religious organizations. The property rights given by the state to religious subjects shall be subject to the scope of religious purposes. Therefore, the definition of religious property should also clarify it is the legally existent property for religious purposes.

Accordingly, we can define that religious property is property legitimately owned or used by religious subjects for legitimate religious purposes. This definition makes it clear that the purpose of religious property legislation is to safeguard the legitimate religious purposes (direct or indirect). The property owned or used by a religious subject shall be prescribed by law. The religious subject shall use its property in conformity with the provisions

of the law. Also, religious property is the property owned or used by the religious subject, identifying the property that is owned, or property, though not owned, but used according to law, as religious property.

4. The subject of religious property

There are differences in legislation and academic circles about the subject of religious property. As mentioned above, the subjects of religious property include religious group or sites for religious activities, religious organizations, religious groups, religious universities, while excluding the personal believers and the state. In the past policies, the subjects of religious property included the church, the private and the collective religious masses,^① or the religious association.^② Some scholars believe that the subject of religious property is a religious corporation,^③ or a religious group, temple and other religious organizations (Karma Degi, 2008), and in principle, it belongs to a religious corporation, but the buildings, censer table and censer are owned by the temple user (Wang, 2004, p.114), or it belongs to the juridical person of temples instead of the religious association (Liang, 2004, p.72). In combination with the foregoing differences, we believe that it is necessary to discuss whether the private and the state can be the subject of religious property, whether group religious property shall adopt a religious group, a religious corporation or a religious organization as the subject and whether it shall be corporatized?

4.1 Private and the state

① For example, in the Registration of Land Use Rights of the Christian church in Sunzhen Town, Pucheng County, items such as type of use right, expiration time, and records for origins of right are all in blank.

② Report on the Issues of Implementing the Housing Policies for Religious Groups approved by the State Council and forwarded to State Administration for Religious Affairs and Ministry of Housing and Urban-Rural Development of the People's Republic of China, July 16, 1980.

③ Request for Instructions about the Ownership Problems on House Property of Temples and Taoist Temple proposed by Shanghai Supreme People's Court and Administration for Religious Affairs on November 11, 1980, which was issued by the Supreme People's Court of the People's Republic of China and the State Administration for Religious Affairs.

The difference in whether the private should be the subject of religious property is rooted in the understanding of religious property. We believe that the essence of religion is the spirit and consciousness of a supernatural force and belief and worship as the essence, and various forms of objective existence and behavior that fulfill this subjective need. There is no religion without the individual's faith and worship, and the religious activities of believers are not confined to religious sites alone. In practice, religious activities can be carried out in personal space in accordance with doctrines and rituals. The instruments and objects believed in or adored by the individual believers undoubtedly have religious purposes, and should belong to the scope of religious property. Therefore, believers should not be excluded from the scope of the subject of religious property. Of course, due to freedom of religious belief and the fact that private religious property belongs to the category of private property, the legislation should not exceed the restrictions on the use of general property or restrict the exercise of rights by the practitioners of the religion. In particular, it is important to note that in some religions, the property with religious purpose in sites for religious activities may belong to the individual, such as the monks' domiciles in Tibetan Buddhist temples. For a religious purpose, the religious staff are entitled to possess and utilize the property owned or possessed by the religious organizations in accordance with the religion's doctrines, regulations and their duties, which is the right of members in the religious organization.

Our state itself does not have any religious features nor holds property for religious purposes. In this sense, the state is not the subject of religious property. But there is religious property that is only used or managed by the religious subject. The owners of these properties may be the state, such as the cultural relics used and managed by the religious

subjects authorized by the state. In this sense, the state can become the subject of religious property. To avoid "official religion" while protecting the rights and interests of the state to particular religious property, the concept of "religious property" may be avoided in legislation, and the concept of "cultural relics" can be applied directly.

4.2 Religious group, religious corporation and religious organization

(1) Concept analysis

Religious group is a legal concept. Article 77 of General Principles of the Civil Law of People's Republic of China provides, "The lawful property of social organizations, including religious organizations, shall be protected by law." In Regulations, the establishment, alteration and cancellation of religious organizations shall be registered in accordance with Regulations on Registration and Administration of Social Organizations. Therefore, a religious organization is a social organization registered in accordance with the law. A social organization is a non-profit organization composed of citizens voluntarily and to realize the common will of members and to carry out activities in accordance with their regulations. It should have the corporation conditions. Accordingly, religious organizations have the following legal characteristics: Firstly, a religious group is a corporation, which can be also called religious corporation, with the general legal characteristics of corporation; secondly, a religious group is established on the basis of members (believers or its organizational units), so it should be an aggregate corporation, instead of an incorporated foundation, and the members are entitled to a series of member rights; thirdly, a religious group is a non-profit corporation, which is the common practice in most countries.

A religious corporation is a jurisprudence concept that does not appear in Chinese laws or regulations, and it has rare relevant definitions in

the academic circles for whom it seems to be self-evident. Article 2 of Japanese Law of Religious Corporation provides, "A religious corporation aims at advocating the religious doctrines, conducting the ceremonies, and teaching believers" (Sun, 1991). Article 29 (1) of Germany Bavaria State Consortium Act provides that, "The term of church consortia as mentioned in this Law refers to a consortium dedicated to or serving primarily the Catholicism, Lutheran Protestantism, Protestant Reformers for the purposes of reform and other religious purposes;" Article 17.07 of American Model Nonprofit Corporation Act provides" ① Any corporation designated by statute as a public benefit corporation, a mutual benefit corporation or a religious corporation is the type of corporation designated by statute; ② Any corporation that... is organized primarily or exclusively for religious purposes is a religious corporation (Religious Research Center of State Administration for Religious Affairs, 2002). Therefore, a religious corporation is a juridical

person established primarily or exclusively for religious purposes. In the continental law system, a corporation is divided into a juridical association and consortium juridical person. The former is based on members, with the right of membership; the latter is based on property, without the right of membership. As shown in regulations in different countries and regions, the religious corporation is specified as a juridical association, such as in Japan or Russia and the religious corporation is specified as a juridical person, such as in Germany. The religious corporation is specified as both juridical associations and juridical persons, such as in Taiwan (Jin & Ge, 2006). As a result, our religious organizations belong to one of these legal entities, and they are mass religious corporations.

It should be noted that our country has the legal concept of "sites for religious activities," but the national laws and regulations have no definition of its connotation, nor do they have the nature of the status of a legal subject. Local religious affairs regulations and the like specified it as the "temples, palaces,



mosques

mosques, churches, and other fixed places where the religious believers carry out religious activities,” but there are differences. First, the vast majority have the restrictions of “legally established and registered,” such as: Regulations on religious affairs of Guangdong, Hunan, Jilin, Shanghai and other provinces and cities while some provinces and cities do not have such restrictions eg Beijing and Hebei. Second, only a small number of provinces and cities provide that sites for religious activities can obtain civil subject qualifications, and shall participate in civil activities (such as Hunan Province), but it does not define whether the qualifications are juridical persons. Article 12 of the Regulations provides, “Collective religious activities of religious citizens may be conducted in the registered sites for religious activities (temples, mosques, churches, and other fixed sites.” Therefore, we may hold that the sites for religious activities which are not registered may exist and that individual religious activities are allowed in the unregistered sites for religious activities. We hold that according to Article 22 (convene large-scale religious activities in non-religious sites). Article 20 (Non-religious sites shall not organize or conduct religious activities) or Article 43 (Unauthorized establishment of sites for religious activities is prohibited), the sites for religious activities should be applied for approval. It is illegal if the sites for religious activities are not registered. No religious activities may be organized or held outside the sites for religious activities, but individual religious activities are not prohibited. This is in conformity with the basis of religious

belief characterized by individual beliefs. Therefore, in the existing rules, the sites for religious activities are not equal to religious corporations, nor do they belong to religious groups. In practice, the sites for religious activities are only one type of religious organizations. But in theory, scholars hold that the sites for religious activities should be designed as a religious corporation (Jin & Ge, 2006, p.68).

The term “religious organization” exists in many relevant policy documents in our country, such as Basic Views and Basic Policies on Religious Issues During the Socialist Period of China. The term is mainly used to refer to the religious group; in some documents, religious groups and religious organizations are used interchangeably, such as The Status of Freedom of Religious Belief in China (2010). At the national level, the term is not available, but in the local codes and regulations, there is the term “religious organization.” It is used to define religious groups and to show that religious groups belong to religious organizations, such as the relevant legislation in Anhui Province. It is also used for the establishment of sites for religious activities, the establishment of religious facilities, and the holding of religious activities, the subject of all of which shall be religious organizations, such as the relevant legislation in Guangdong Province. But what they have in common is that religious organizations are not defined in legislation. In religionology, the religious organization is deemed as the organization, group, society or other forms of groups where the religion believers live religious life and conduct religious activities,^① or the combination and structure of

① Article 1 of Japanese Law of Religious Corporation stipulates that this law is applicable for maintaining the usage of facilities and properties of religious group for worship, facilitating its management of business and career, and granting the legal capacity of religious group. (Edited by the religious research center of the State Administration for Religious Affairs, Collections of Foreign Religious Laws and Rules, Beijing: Religious Culture Press, 2002, P132): Paragraph 3, Article 48 of Russian Civil Code regulates that “social group and religious group (joint organization) are its initiator (participates), who are the corporation not entitled to property right” (translated by Huang Daoixu, Li Yongjun, Jun Yimei, Russian Civil Code, Beijing: Encyclopedia of China Publishing House, 1999, P25). These two terms regulate that the religious corporation should be juridical association based on the social group. Some religious organizations in Taiwan are registered as a consortium corporation according to Monitoring Rules for Business Consortium Corporation, Temple Monitoring Rules and other related laws, but some others are registered as juridical association according to civil law and Civil Organizations Act. (Karma Degi: On Subject Position of Religious Group, Master’s thesis of CUPL, 2008) .

religious groups, a specialized religious groups that perform specific religious tasks under specific religious objectives. It includes religious institutions, groups, societies, communities and other forms of religious activities in which religious people perform religious activities (Sun,1991). Religious organizations are divided into three categories by certain scholars. The first category is a variety of religions and their sects; the second category is the sites of various religious activities, and the third category is a variety of religious associations and religious social groups. Obviously, a religious organization, whose necessary (but not sufficient) element is religious person, and whose aim is religious objective, is a group concept with a broad extension far greater than the concept of a religious group, religious corporation or religious activity sites.

(2) The religious organizations registered in accordance with law are the subjects of religious property.

It is partially thought that religious property belongs to religious groups, temples and other religious organizations (Shi & Wang, 1994). However, we believe that not all religious properties are owned by religious organizations, because its definition describes that, "Religious properties are such properties legally owned or used by religious subjects for a legal religious purpose." Thus, religious believers also have religious properties that constitute the subject of properties. From the view of rights of the objects of religious property, religious property also concerns rights of the state. Therefore, the fact that religious property belongs to religious organizations denies the possibility and reality that individuals and states become the subject of religious property. As mentioned earlier, the extension of the concept of religious organizations in China is larger than that of religious groups, religious corporations or sites for religious activities. Whether the religious

group or site for religious activities is only a type of group religious subject and cannot be used as the generic concept of group religious subjects: The definition of religious corporation does not cover the legal definition of "other organizations" while other organizations corresponding to religious organizations actually exist and should also exist. We believe that they not only actually exist, but also should exist (see the next paragraph). Therefore, the organization between individual and state as the subject of religious property should adopt the concept of "religious organization." It should be noted that the non-religious group or non-sites for religious activities should not organize or convene the religious activities or adopt the religion donations according to the national regulations. This means that, in space, the sites for non-religious activities where religious activities are held are the private space of believers. In the view of members, many believers carry out the religious activities, mostly in private. From the view of procedure, the organization that has not been registered according to law cannot exist in the form of independent subject. Therefore, these religious organizations are not organizations in a legal sense and should be regarded as believers' personal behavior. The religious property possessed and used by believers shall be understood as personal property and shall be governed by the general rules of civil affairs. Therefore, the group subject of religious property can only be a religious organization registered in accordance with the law to obtain the qualifications of the corresponding legal entity, including but not limited to religious groups and sites for religious activities.

The group subject of religious property is a religious organization. Hence, is the organization a corporation? Should it be a corporation? Religious groups have the qualifications for corporation. There is no doubt about it, but the law does not indicate that the sites for religious activities are corporations.

From the perspective of legislation, the ability to bear civil liability independently is the corporation condition stipulated in the General Principles of Civil Law, but Measures for the Examination and Approval of the Establishment of Sites for Religious Activities and the Administration of Registration provides the condition to set up sites for religious activities is not “independent of civil liability.” It doesn’t mean the sites for religious activities will not bear civil liability, but the sites for religious activities can choose to establish a corporation or unincorporated organization. In practice, not all religious organizations are registered as religious groups or sites for religious activities, and other unincorporated religious organizations exist objectively. From the view of legislation of other countries or regions, the religious groups in Russia are non-profit religious corporations in nature of association; religious groups in the USA and the UK are either non-profit corporation or not; religious groups in Japan are religious corporations, general juridical person, or unincorporated society. Buddhism organizations in Taiwan of China are the consortium corporation. Thus, it can be seen that many countries and regions all over the world adopt the dual-track system, and which track will be followed depends on the choice of the religious group. Since the scales of sites for religious activities are greatly different, so we believe that there is no need to enforce the sites for religious activities with fewer religious staff and small scale of religious property to register as corporations, which otherwise will cause additional cost. Hence, the coexistence mode of “conditionally enforced corporation system” and “unincorporated system” can be adopted following the concept of classified management. The “conditionally enforced corporation” means that the sites for religious activities which meet certain conditions must be registered as social entity organizations to acquire

the corporate capacity. The additional condition for registration is that the number of religious staff or the scale of properties reaches a certain standard. The purpose is to legally manage the sites for religious activities with a large scale of properties, wide business scope, various types, high income, great influence, complex financial management and powerful demonstrativeness. The sites for religious activities failing to reach the above standard can exist as unincorporated, but they should strengthen the internal financial management.

There are views that all religious properties, including the real estate, belong to the temple as the consortium corporation. They are against the view that the subject of religious property is the religious group (Wang & Huare Dorjee, 2005). The reason is that it goes against the wish of the religious believers who donate properties to the “god” in their minds instead of the religious association organized by “believers”. All religious creeds regulate that monks and Taoist priests can’t be the owner of religious properties. Religious associations are divided into many levels and classes by region, so another challenge is to which level the religious properties should be allocated (Wang, 1990). We think that religious associations are important religious organizations existing in China. The related policies and regulations of the Party and the state also admit that there are properties for religious purpose, which must be protected. We think there are no grounds for the reasons of the opponent because, first, laws do not prohibit the religious associations becoming the subject of religious donation. Second, the proposition that believers themselves cannot own the religious properties has no ground, because the individual as a religious believer certainly enjoys the property right on their properties for religious purposes, while for the religious properties of religious groups, the religious group system has regulated

that they can't be owned by an individual believer, also, what the hierarchical religious associations need is just the clarification of property rights. Shi Shangkuan ever put that religious corporations have the nature of both associations and consortia, such as temple, church, monastery, religion, united church, etc. , which actually deems religious groups as the subject of religious properties. On the other hand, from the view of foreign legislation, many countries recognize that the religious group is the subject of religious properties, and not limited to the sites for religious activities. For example, Russian Civil Code, Federal Law for Corporation Status of Religious Groups in Austria and Law of Religious Corporation in Japan all recognize the religious groups in form of religious association, church and united church are religious subjects, who enjoy the rights of religious properties. Therefore, the religious group, as a religious corporation, should be entitled to the corresponding property rights of corporation.

(3) Religious organizations and religious faculties from the perspective of property

The property relationship between religious organizations and religious faculties is unclear, which causes some serious disputes such as the "heritage" dispute of Shi Yongxiu (Sun, 1990). This relationship is explicit in law, which regulates that the religious organization and its "staff" (i.e. religious faculties) are independent. Therefore, in theory, the properties of religious organizations are separate from those of religious faculties. The religious faculties are citizens first, enjoying the right of individual property. All properties before they act as religious faculties are personal properties, of course. After they act as religious faculties, on one hand, some religions believe its religious faculties can have their own properties, such as Christianity. On the other hand, as citizens, they are entitled to the right of receiving material assistance.

In accordance with the Notice about Further Solving Social Guarantee Issues of Religious Staff, the state ensures the basic living security of eligible religious staff in many places. Therefore, as regulated by laws and rules, national policies and religious creeds, the religious faculty can be entitled to the related individual property rights. The essential problem of property relationship between religious organization and religious staff is who owns the proceeds from the religious activities held and carried out by the religious faculties, such as arrangement of religious classics and research of religious culture.

Donations received by the religious faculties from others through non-religious activities has the same nature with the general civil donation, and the grants should be owned by individuals, except for those owned by religious subjects according to their religious doctrines, canons and habits. Article 22 of the Rules states that "non-religious group, non-sites for religious activities... shall not accept the religious donation," and the donation accepted by the religious faculties for providing religious service should be incorporated into the properties of religious subjects, even if the donator explicitly states that the grant should be owned by the religious faculties. Accordingly, the income obtained by religious staff from religious activities should be first presumed to be owned by the religious organization where the religious faculty serves, no matter whether the activities of religious faculty are carried out in the sites of such religious organizations. Second, for the traditions of some religions, the income obtained from religious rites carried out by the religious faculties in the house of believers or other designated places should not be considered as granting the religious faculty the right to obtain the religious donated properties, but should be considered as the religious organization reallocating the proceeds according to their religious doctrines, canons and traditions and internally incorporating into the

personal property of religious faculties. Its rationality lies in the following aspects: First, laws do not prohibit religious organizations from making internal allocation in terms of their properties, as long as the allocation does not violate the religious purposes of the religious organization. Second, freedom of religious belief takes the survival of religious faculties as the subjective condition, and such allocation of religious organization within a necessary limit conforms to the spirit of freedom of religious belief. Third, from the current living status of religious faculties, taking a Tibetan Buddhism temple as an example, 70% of monks and nuns live a difficult life. To maintain the survival and development of monks and nuns, it is necessary to confirm the legality and legitimacy of such allocation in religious organizations. To make it valid, first, it can be deemed as the allocation results of religious subject only with the support of religious doctrines, canons or traditions; second, the allocation of religious income by religious organizations should follow explicit rules and the principle of fairness; third, the allocation of religious income, explicitly or implicitly, by religious organizations should respect the wish of the donator. If the religious staff specializes in the arrangement, compilation and research of religious classics and references under the host of the religious subject, and the responsibility is undertaken by the religious subject, the works should be owned by the religious subject. Works created by finishing the tasks arranged by the religious subject are works made on duties. If the creation is mainly made by utilizing the material and technical conditions of a religious subject, or if it is specified in the contract that the creation belongs to the religious subject, then the copyright of these creations should be owned by the religious subject. It is important to note that if the religious doctrines, canons or traditions have defined the ownership of specific works, we believe such regulations should be followed.

5. Restrictions on capacity of religious property rights

5.1 Logical origin

The corporation is entitled to possess, use, gain revenues from and dispose of its properties, with no exception for the property rights of religious corporations. Considering the principle that “Everything which is not forbidden is allowed”, in civil law, it is necessary to regulate the various limits of religious property rights instead of its extension in legislation. First, generally, the civil right should be equipped with the following features; the content of rights is freedom in law, and the objective of rights is the realization or maintenance of specific interests of the obligee (Huang & Li, 1999). Therefore, the right is the coordination between the interests pursued by the subject and the interests allowable by the state, because the civil right is always subject to the limitations of the state. Second, the will of religious property subject and the will of the state constitute the two dimensions of religious property rights. Religious property is the property legally owned and used by the religious subject for the legal religious purposes. Thus, the “religious purposes” are the basis of the property subject possessing, using and disposing of properties, as well as the basis of the capacity restrictions of religious property. Therefore, because of the religious attributes of the religious properties, restrictions different from general property rights.

How to understand and standardize the aforementioned restrictions? First, distinguish specific property and general property according to the effect of religious properties on religions. Religious property is the property directly used for the religious purposes of the religious subject i.e. practicing belief and worshipping supernatural powers according to the religious doctrines, canons, rites and traditions, mainly including temples and

their halls, dwelling places of religious faculty, statues of a god or the Buddha, instruments, treasures and other religious facilities. Japanese temples have “special properties” and the like, including the tangible object as the worship object (giant Buddha, portrayal, etc.) and instruments (Liu, 2009), but not including real estate. We think that all properties which are “directly” used by the religious subject for religious purposes are exclusive religious properties. All properties used to realize the religious purposes at the national level do not necessarily constitute the exclusive religious property, e.g. the properties to provide social guarantee for religious staff. Those “temples” and “shrines” constructed for profits should not be considered as the religious properties for carrying out religious activities. The exclusive religious property constitutes the necessary conditional relation with religious purposes, so the religious purposes will be impossible to be achieved without the exclusive religious properties. Therefore, the exclusive religious property should be prohibited to carry out civil transfer (but can be transferred legally in an administrative manner), or be strictly limited to the civil sanction, and then should be registered to strengthen the management system. The common religious property owned or used by the religious subject is the property which is not owned by the religion and available for the transaction. The separation of such properties from the religious subject will not necessarily endanger the realization of religious purposes, such as the religious income, received donation and operating revenues, so the civil circulation is allowable for them, and the civil code is applicable during the circulation. Second, from the view of the owner of the religious properties, there are adversely possessed properties possessed and used by religious subjects and the properties owned by religious subjects. The capacity of these two kinds

of properties are different. Third, the restrictions of the capacity can be divided into physical restriction and procedural restriction. The physical restriction is the issue of rights structure, and the procedure restriction is the supervision issue of rights exercise. Therefore, this paper will discuss the restrictions of the capacity of different types of religious properties, such as right of possession, right of use, right of earnings and right of disposition.

5.2 Physical rights restriction of religious properties

(1) Physical rights restriction of adversely owned religious properties

Adversely possessed religious property is the property that is granted by the state to the religious subjects for implementing the religious policies and laws, so it is obvious that the religious subject has no right of disposition. The authorized religious subject (hereinafter referred to as religious subject) is entitled to possess, use and gain revenues from such religious properties to conform to the established purposes of the religious corporation or for the public purposes. The possession and use of such religious properties not for the above purposes are prohibited by laws, because the existence reason of religious property and religious property subjects is to achieve the religious purposes.

In the aspect of the use by a third person and incomes incurred, it has no nature of civil transaction because adversely possessed religious properties are generally exclusive properties such as various religious relics. Therefore, the religious subject is prohibited to transfer the adversely possessed religious properties to a third person for possession and use for non-religious purposes or not for public purposes (e.g. provide temples owned by the state for refugees as shelters), because this goes against the spirits of authorized use of the state. The revenue, if any, obtained by religious faculties from the using of adversely possessed religious properties for religious

purposes should be considered as the reasonable compensation for their labor, not the revenues from adversely possessed religious properties, but such compensation should be permitted by the rules and regulations of the religious subject.

(2) Physical rights restriction of independent religious properties

The religious purposiveness of religious property means that religious property transactions should not endanger the survival of religions and religious activities. The holiness and inviolability of religions and religious activities require that the transactions of religious properties should not harm the religious emotions. Therefore, in principle, the self-owned religious properties cannot be possessed or used for profits by a third person or be directly used for business. These business activities may harm the normal religious activities of believers, or desecrate the religious emotion of believers, or may cause the transfer of properties which the religion and religious activities depend on. Thus, it is reasonable to regulate that dwelling places of religious staff in temples should not be mortgaged, and temples should not be contracted by others or bundled listed. Some scholars indicate that many religious groups and sites for religious activities get involved in too many investment and operative activities, which goes against the will of most donors, desecrates religious doctrines, damages the credit of religious organizations and violates the interests of believers (Religious Research Center of State Administration for Religious Affairs, 2002). For the donation of the exclusive religious property, if the recipient is the national institution or on behalf of it, and the donor is still entitled to permanent right to use the property, then such donation should be permitted. It is because the stability of the donor and the national credit can guarantee that religious activities will not get into the unmaintainable situation due to such donations. In the aspects of use and revenues,

the free or paid possession and use of the exclusive religious property by others not for religious or public purposes, no matter whether the existence of religious property is endangered, should be prohibited by law, because these activities go against the function of the exclusive religious property, harm religious emotions and even affect the normal religious activities.

From the view of functions, general religious properties are not indispensable properties to maintain religions and religious activities. Hence, the religious subject, in principle, has similar rights of possession, use, revenues and disposal to the self-owned general religious properties with the property rights of other civil subjects, and has the circular function of civil property. From the policies of our country, under the policy of self-management and self-support for religions, it is necessary to put the general religious property into the market under the condition of market economy to realize asset appreciation and self-support. Therefore, the religious subject can carry out various transactions of general properties. But such transactions not only need to adapt to various legal restrictions of similar transactions of general civil subjects, but also be subject to special restrictions. Since nonrestrictive transactions of general religious properties may endanger the basic guarantee for religious subjects and religious staff carrying out religious activities against the will of donors and harm the religious emotion (Religious Research Center of State Administration for Religious Affairs, 2002), restriction of the transaction proportion and the area of general property should be considered in legislation, and the transaction revenues must be used for religious or public purposes, especially to force the religious subjects to explicitly show to believers whether the general religious properties can be traded as well as its basic transaction purpose and principles, in order to respect the religious

emotion and donation will of believers.

Obviously, the division of the range of the exclusive religious property is the core issue to clarify the restrictions to religious property rights. It is generally believed that the exclusive religious properties include temples and its halls, dwelling places of religious faculty, pictures or statues of a god or the Buddha, religious Buddhist musical apparatus, treasures and other religious facilities. We believe that the following aspects should be considered in the identification of the exclusive religious property: first, the property is existing because of religions, such as temples and its halls, pictures or statues of a god or the Buddha, religious instruments and treasures, except for the religious products, artworks and publications which can be sold according to religious traditions and habits; second, other properties which are directly used for religions and religious activities, such as houses and structures for religious activities and the auxiliary living houses of religious faculties; third, the specific titles and names of religions, religious organizations, religious sites, etc., such as Shaolin Temple. We think that the first two kinds of properties, none, including the owner should make transactions (except for the condition that such properties are owned by individuals as stipulated by religious doctrines and traditions), because such properties concern the existence of religions and religious activities. For the specific names and titles of religions, in case they are historically connected to certain commodities and services, and considering the inheritance of religious culture, they can be used for the business title or trademark application, but they cannot be used by others for business purposes considering the religious emotion. If there is no historical connotation, they are not allowed to be used for business purposes due to the holiness of religions.

(3) Improvement of the religious property regulatory system

China has no unified regulations on the regulatory institution of religious corporation properties. The internal and external regulation mode of general corporation properties can also apply to the religious corporation properties.

① Improvement of the internal regulatory system

For general religious sites, laws and regulations of our country have regulated the operation and avoidance of the management organization and the financial group, accountants and tellers related to religious property supervision. The management organization decides the significant property activities, including significant expenditure, borrowing or lending, lease, transfer and demolition of fixed assets, and transfer of intangible assets. Meanwhile, the management organization should be composed of religious faculties or other personnel who preside over religious activities conforming to the religious regulation and the representatives of the believer citizen from the location of establishment. As specified in Management Measures for Financial Supervision of Sites for Religious Activities (Trial), there is a main responsible person and a common responsible person in the management organization. The former is responsible for accounting work and materials, and the latter is responsible for approving financial expenditures of sites. In the Management Measures for Tibetan Buddhism Temple, the state regulated the functions and powers, principles of democratic management, series conditions of members, tenure and change, filing and review of management organization. In the aspect of local legislation, provinces and cities just regulate the management organization of religious sites to carry out democratic management by principle, but lack other specifications. Responsibilities of management organizations are regulated only in

Hebei Province. As specified in the Management Measures for Financial Supervision of Sites for Religious Activities (Trial), a financial management group is the financial management organization subordinated to the management organization. The general financial expenditure is agreed by the signature of a responsible person and reported to the responsible person of the organization management for approval. The financial management group is generally composed of the responsible person of site management organization, accountants, tellers, etc. Therefore, the financial group is equivalent to the financial department of a corporation. It can be seen that the state and the locals have formulated framework systems for internal supervision for properties of sites for religious activities, including democratic management, person responsible for site and sub-level management of financial management. There are some problems as shown below: first, the general powers and functions of management organizations, position setting and selection conditions of members, procedures, tenure and rules of debate are not regulated for the management organization; second, the organization mechanism of the financial group is not defined. Although the group is subject to the leadership of the management organization, the general financial expenditure is approved by the responsible person of the management organization and such person can also be the responsible person of the financial group; third, there is no internal regulatory body.

We think that the normal operation of any organization depends on sound systems, and the right balance is necessary because the organization is managed by individuals with personal desires. The first question is whether such a balance is agreed or statutory, that is, whether the state should enforce such a balance. Given that the religion is a subjective belief and worship to supernatural power, and includes objective reality such as doctrine,

canons, religious faculty, facilities, rites and organization, the essence of the religion is belief. In the meantime, the religion is a complicated social phenomenon, not just the business of believers, but also concerns national unity, social harmony and the unity and security of a country. Considering the relative chaos of religious property and various negative phenomena in our country, we think that the country should make enforceable regulations for the internal supervision systems of religious properties, but not pay much attention to details. The country should enforce the religious subjects to establish balancing institutions to exercise the right of decision-making, execution and supervision. For example, the country can regulate religious subjects to set up a Management Committee of Religious Affairs (decision-making institution), legal representatives, financial management groups (executing institutions) and supervision institutions; regulate to formulate basic organization principles and behavior rules for these institutions, define that the decision-making and supervision institutions are composed of religious staff or religious subjects, believers, related institutions such as national competent authorities, related citizen representatives and higher-level religious subjects, if any, and implement democratic management and supervision. Other specific procedures and specifications are formulated by the religious subjects, reported to the competent department for recording and published to believers and related bodies.

② Improvement of the external regulatory systems

For external supervision of religious properties, our country regulates that the religious subjects should have filed the financial system; significant expenditure should ask for opinions from believers and citizens; review annual financial report, financial income and expenditure; publish the acceptance and use of donations and the financial off-office

auditing for the main responsible person and the responsible person of financial management group,^① as well as the supervision of financial, accounting and taxing competent departments.^② In our opinions, the external supervision includes national administrative supervision, owner supervision and social public supervision. It is necessary but not comprehensive to carry out administrative supervision by the foresaid filing, review and audit, tax supervision and other systems: review and audit systems govern matters after they happen, and the cycle is too long, which is not beneficial to timely finding and solutions of problems; the religious subject sets up enterprises and public institutions (allowable in many local legislation), but when the industry and commerce, tax functional departments find behaviors which may endanger the religious purposes in their supervision, there is no correction mechanism. Therefore, we believe it is necessary to set the system regulating that the significant financial activities should be reported to the competent department for approval or filing. As for different religious properties and the property activities with different natures, the approval and filing systems should be adopted, respectively; establish an information communication system with the competent authorities of religious affairs when other national functional departments find the behaviors of religious subject which harms or may harm the religious purposes. In the aspect of owner supervision, the supervision rights of owners should be defined because the legislation of our country does not regulate how to exercise the supervision rights of owners on the properties owned by the country but possessed and used by religious subjects. In the aspect of social supervision, no provisions

are made for the financial announcement and the hearing of public opinion, so the country can enforce religious subjects to make their own regulations and implement filing and announcement.

Internal and external supervisions of religious properties are integrated with each other in the freedom of religious belief and the objective of adapting religions to the socialist society. External supervision is mainly to manage the supervisory matters enforced by the country, and internal supervision is mainly to deal with the supervisory matters authorized by the country and the freely supervisory matters of religious organizations. External supervision should become the guidance and guarantee of internal supervision, and the internal supervision should become the deepening and implementation of external supervision. Only by integrating them into the specific rule and forming a creative system, the regulatory system of religious properties can be improved and effectively executed.

6. Conclusion

The religious property system involves the nature and functions of religions as well as the religious policies of the Party and the state, and is attached by complicated historical and realistic conditions. This paper only discussed its basic framework, and there are many issues to be defined, such as the regulations and rules for the transaction of general religious properties, investment in the protection of religious relics, revenue issues, etc. But if this paper will be beneficial to the construction of a religious property system in our country, we will be honored.

(Translator: Cao Jinghao; Editor: Jia Fengrong)

① Dead Buddhist Abbot's Daughter File a Suit against Temple to Inherit 4 Million of Heritage but the Suit Was Rejected [EB/OL] <http://news.sina.com.cn/s/2012-09-25/080625246739.shtml>.

② Considering that the religious properties of believers are actually personal properties, their rights and interests should be applicable to the personal property system, so such properties mean the properties of "religious organizations" unless otherwise specified for the religious property right.



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REFERENCES

- [Germany] Dieter Medicus. (2001). *German civil law*. Shao Jiandong (trans), Beijing: Law Press China.
- American Encyclopedia Britannica Company. (2011). *Britannica Concise Encyclopedia*. Encyclopedia of China Publishing House.
- Britannica Concise Encyclopedia Editorial Department. (1985). *Britannica Concise Encyclopedia, Volume 1-10*. Beijing: Encyclopedia of China Publishing House .
- CCCPC Party Literature Research Office. (2002). *Analysis of Jiang Zemin on Socialism with Chinese characteristics (Special Excerpts)*. Beijing: Central Party Literature Press.
- CCCPC Party Literature Research Office. (1998). *Chronicle biography of Deng Xiaoping's thought (1975-1999)*. Beijing: Central Party Literature Press.
- Chen Rongfu. (2008). *Research on religious outlook of Marxism*. Chengdu: Sichuan People's Publishing House.
- Ding Guangxun & Wang Weipan. (1989). Several breakthroughs in religious researches in recent years. *Jianghai Academic Journal*, 2.
- Dongecang • Cairangjia. (1997). Economic development mode of Tibetan temple and countermeasure—Analysis on coordination between Tibetan Buddhism and socialist market economy. *Journal of Northwest University for Nationalities (philosophy & social sciences version)*, 92.
- Editorial Department of Encyclopedia of China Publishing House. (1987). *Encyclopedia of China [Philosophy]*. Encyclopedia of China Publishing House.
- Huang Xiudao & Li Yongjun. (1999). *Civil code of Russia*. Xing Yimei (trans). Encyclopedia of China Publishing House.
- Jin Binghua. (2007). *Philosophy dictionary*. Shanghai: Shanghai Lexicographical Publishing House.
- Jin Jinping & Ge Yunsong. (2006). *Collection of laws on foreign Non-profit organizations*. Beijing: Peking University Press.
- Karma Degi. (2008). *Discussion on subject position of religious group*. Master's thesis of CUPL.
- Li Shen. (1999). Thousands of considerations on religion—comments on "Four Elements Theory" about religion of Lv Dji. *Philosophical Researches*, 10.
- Liang Huixing. (2004). *Proposal draft of China's civil code, attached with reasons—Property right volume, Article 274*. Beijing: Law Press.
- Liang Yingxiu. (2008). Humble opinion on legal protection of religious property. *China Religion*, 1.
- Liu Bin. (2009). *Research on property ownership problems of Tibetan Buddhism*. Master's thesis of CUPL.
- Liu Ziping. Discussion on the Property Right of Chinese Religious Properties [EB/OL] <http://www.foyan.net/article-126914-1.html>.
- Luo Zhufeng. (2008). *Grand Chinese dictionary: Volume 3*. Shanghai: Shanghai Lexicographical Publishing House.
- Lv Daji. (1981). Scientific guide to correctly recognize religious issues: Preamble for rereading *Critique of Hegel's Philosophy of Right of Marx*. *Studies in World Religions*, 3.
- Lv Daji. (1987). Thinking about essential question of religion. *Social Sciences in China*, 5.
- Lv Daji. (1998). *New edition of general theory of science of religion*. Beijing: China Social Sciences Press.
- Marx & Engels. (1972). *Marx & Engels collected works: Volume 3*. Beijing: People's Publishing House.
- Marx & Engels. (1995). *Marx & Engels selected works, Volume 3*. Beijing: People's Publishing House.
- Marx. (2000). 1844 manuscript of philosophy of economics. Beijing: People's Publishing House.
- Religious Research Center of State Administration for Religious Affairs. (2002). *Collection of foreign religious laws*. Beijing: Religious Culture Press.
- Sarah Barringer Gordon (2013). State v. Church: Limits on church power and property from disestablishment to the Civil War, *University of Pennsylvania Law Review*.
- Shi Guang & Wang Lan. (1994). *Introduction of science of religion*. Beijing: Minzu University of China Press.
- Shi Shangkuan. (2000). *General principles of civil law*. Beijing: China University of Political Science and Law Press.

- Sun Xianzhong. (1990). Property ownership exploration of consortium corporation and attribution problem of religious properties. *China Legal Science*, 4.
- Sun Xianzhong. (1991). Property ownership of consortium corporation and attribution problem of religious properties. *China Legal Science*, 5.
- Teaching and Research Office of Civil Law of CUPL. *Address on general principles of the civil law of the People's Republic*. Beijing: China University of Political Science and Law Press, 1986.
- Wang Lianhe & Huare Dorjee. (2005). Connotation and extension of religious organizations—one of research on the property right nature and religious organization. *Qinghai Ethnics Research*, 4.
- Wang Liming. (2004). *Proposal draft of China's civil code and description*. Beijing: China Legal Publishing House.
- Wang Liming. (2004). *Proposal draft of China's Civil Code. Article 789*, Beijing: China Legal Publishing House.
- Wang Zhijun. (2007). On religious criticism of Marx. China Social Sciences Press.
- Xi Damin. (2002). Revelation of Engels to religious essence and its meaning—New questions on a question. *Qinghai Social Sciences*, 5.
- Xu Yanling & Qin qiu. (2009). Argument and its reflection on religious essence in academic circles since the reform and opening-up. *Contemporary World and Socialism*, 6.
- Yang Yuhui. (2008). *Religious management*. Beijing: People's Publishing House.
- Zhang Jian. (1981). Initial understanding on the thesis of "religion is the opium of people". *Studies in World Religions*, 2.
- Zhang Jian. (2012). The attribution of the ownership and the purposeful use of religious property. *Science of Law*, 6.
- Zhang Jianwen. (2011). On legal remedy for violating the purposeful usage of religious property—Under the perspective of profit-making behaviors of scenic spots like temples. *Science of Law*, 5.
- Zhang Jianwen. (2012). Religious property under the perspective of public law. *Journal of Northwest University of Political Science and Law*, 6.
- Zhao Zhiyi. (1995). New theory of religious essence. *Studies in World Religions*, 4.
- Zhou Xingwei. (2008). Thinking on the religious economy of Tibetan Buddhism Temples in Sichuan and Tibet. *Journal of Southwest University for Nationalities (human and social science version)*, 8.