

Religion and the Secular State in Korea

I. INTRODUCTION

Korea is a religiously heterogeneous state. The total population of Korea amounts to about 47 million, of which 22 percent are Buddhists, 18 percent are Protestants, and 10.9 percent are Catholics. Today, there is no state religion in Korea, and various religions co-exist peacefully. Historically, however, Korea has been a religious state, with the state-dominated religion changing from Buddhism to Confucianism to Christianity. Over time, the secular governments of Korea, i.e. kingdoms or dynasties, have been deeply influenced by teachings of the historically dominant religions. State philosophies, social morals, and social integrations, for example, have largely been created by and built on the teachings of these religions.

Judicially, lawsuits have never occurred between religions until now. But there have been some legal cases occurring within religions. Most of them have been concerned with conflicts of property between factions of a church. Until recent times, courts have been slightly passive in these internal conflicts, but these days the courts have changed their attitudes from passive, non-intervention into religious conflicts to active intervention. In the field of intra-religion property disputes, courts have become slightly active, but in other fields the courts have always kept a slightly passive attitude of non-intervention.

Even though Korea is a religiously heterogeneous state, peaceful coexistence between religions has continued without serious problems. Further, Korea keeps the principle of separation of politics and religion. But through the religiously biased behavior of public officials, who believe that their religions are absolute and other's religions are worthless, conflicts between religions have indirectly happened and have created social problems.

In Korea, the historically changed religions have created unique Korean cultures and social morals and have shaped the various laws of kingdoms and dynasties. Historically, Korean society and religion have intermingled. Also, these days religion supports the secular state of Korea with religious teachings and prayers for Korea, and conversely, the Korean government supports religion, even if Korea keeps the legal principle of separation between politics and religion. Formally, religion and the secular state are separated, but in reality religion and the secular state are interrelated. The Reformationist Martin Luther said that the two kingdoms of the heavenly God and the secular Crown are separate and independent of each other. But the theologian Karl Barth said that the two kingdoms are intermingled and interrelated, such that there is only one kingdom, not two kingdoms, on the earth.¹ It is more believable and valuable that there is only one kingdom on the earth, which God and His created peoples administer and cultivate together.

II. HISTORICAL DEVELOPMENT OF RELATIONS BETWEEN RELIGION AND THE SECULAR STATE IN KOREA

A. *Combination of Shamanistic Religion and the Secular State in Ancient Korea*

According to Korean history, ancient Korea was established in BC 2333 and lasted for about 2,000 years. In the period of the first century BC, ancient Korea was separated into three kingdoms: Ko-Ku-Ryeo (BC 37 – AD 668), Baek-Je (BC 18 - AD 660), and Shilla (BC 57 – AD 935). Before the introduction of Buddhism into Ko-Ku-Ryeo in AD

Prof. Dr. SANG YONG KIM of Yonsei University Law School is a Member of the National Academy of Sciences, Republic of Korea.

1. Adalbert Erler, *Kirchenrecht*, 5. Aufl. (C. H. Beck, München, 1983), S. 165.

372, Baek-Je in AD 384, and finally Shilla after martyrdom for Buddhism in AD 527,² ancient Korea was dominated by shamanism. Ancient Korea was likely a theocratic state. Therefore, kings might have served at the same time as shamanistic priests. But ancient Korea gradually developed into a law-ruled state with the adoption of law from China, even though ancient Korea was administered and guided by shamanism. It is thought that shamanistic religion and the secular state in ancient Korea were not separated.

B. Development of Buddhist Secular States after the Adoption of Buddhism

After the adoption of Buddhism, the old Korean states were administered, ruled, and guided by the teachings of Buddhism. Buddhism had evolved into a state religion. Therefore, high level Buddhist monks were nominated to be teachers of the Kings. With the financial support of the state, many large Buddhist temples were built. Educated monks set up behavioral guidelines for the people, which united the people into a strong community. The behavioral guidelines evolved into customary law in the three old kingdoms.

The most important behavioral guidelines were created by the great monk Weon-Kwang-Beob-Sa in the Shilla dynasty. These guidelines were as follows: People shall respect and obey the king with loyalty. People shall serve and follow their parents with filial piety. People shall become friends with sincerity and trust. People shall not retreat in a war. People shall kill living beings selectively. These guidelines are known as the Five Commandments of people living in the secular world. The spirit of the guidelines has not disappeared, but has been transmitted vibrantly to the present day.

Buddhism was the spiritual basis for unifying the three old kingdoms into the unified Shilla dynasty (AD 676 - AD 935). In this period, Korean society was wholly covered by Buddhist culture. However, the unified Shilla Dynasty of Korea was a strong hierarchical class society. The intelligent bureaucratic officials could not ascend to even the lowest positions of the royal families. Therefore, powerful local leaders fought against the incompetence of the royal families.

Finally the unified Shilla Dynasty was replaced by Ko-Ryeo Dynasty, which had been established by one of local leaders. The Ko-Ryeo Dynasty was also dominated by Buddhism. High ranking Buddhist monks were nominated to be the teachers of kings. But in the end the Ko-Ryeo Dynasty became corrupt and was conquered by the Mongolian Empire, which had been established in China. The then state-religion of Buddhism was not able to unify the people. The teachings of Buddhism were not suitable for the politics and public administration of that period.

In the end, intelligent new scholars who had learnt the teachings of Confucianism criticized the royal family, the bureaucratic public officials and the then state-religion, Buddhism. Through the revolution of these intelligent Confucian scholars, the Buddhist Ko-Ryeo Dynasty collapsed and was replaced by the new Confucian dynasty, known as the Jo-Seon Dynasty.

C. Introduction of Confucianism and the Creation of the Confucian State

Confucianism was known to Korea at the same time Buddhism was introduced. Because Buddhism had been the state religion of the old kingdoms and the influence of Buddhism was very strong in every aspect of peoples' lives, Confucianism could not function effectively.

At the end of the Buddhist Ko-Ryeo dynasty, the Buddhist kingdom was very corrupt: Buddhist temples owned very large amounts of land. High ranking Buddhist monks had power to replace the Ko-Ryeo kings. Life was very hard for the people. The

2. Into Shilla Dynasty the Buddhism had been introduced during AD 417-457. In Ko-Ku-Ryeo and Baek-Je, high level royal families had received the Buddhism, but in Shilla, the lower class people had received the Buddhism and believed it. Therefore, there was no martyrdom for the Buddhism in the Ko-Ku-Ryeo and Baek-Je, but martyrdom had happened in Shilla.

teachings of Buddhism could not heal the miserable lives of the people and rescue the corrupt kingdom.

Some fresh-minded progressive scholars who had learnt Confucian teachings began to criticize the Buddhist kingdom of Ko-Ryeo, and became public officials in the Ko-Ryeo Dynasty. Ultimately, they committed a coup d'état against the weak and corrupt Buddhist Ko-Ryeo Dynasty and created a new Confucian dynasty known as the Jo-Seon Dynasty, which lasted from 1392 until 1910.

Confucianism was the state religion of the Jo-Seon Dynasty. The Jo-Seon Dynasty cracked down on Buddhism, and the Buddhist monks and temples were forced to move from cities to the mountains. The amount of land that the Buddhist monasteries could own was regulated, as was the number of monks living in monasteries.

The most important and highest ideals of Confucianism lie in the virtuousness of man and harmonization of the world. In order to realize the above ideals in the secular state, practical principles of Confucianism were formulated, known as the "Three Fundamental Principles and the Five Moral Disciplines" in human relations. The Three Fundamental Principles consisted of the following programs: The King shall be an exemplary person to his subjects. A father shall be an exemplary person to his sons and daughters. A husband shall be an exemplary person to his wife. Further, the Five Moral Disciplines consisted of the following: The King and His subjects shall be trustworthy and loyal to each other. A father and his sons and daughters shall respect and confide in each other. A husband and his wife shall love and be abstemious toward each other. Old persons and young persons shall be act toward each other with proper respect due to age. Friends shall be reliable for each other.

The politics were guided by the teachings and doctrines of Confucianism. People's lives were also guided by detailed regulations based on the teachings of Confucianism. Buddhism was wholly replaced by Confucianism. Many state statutes were enacted in accordance with the teachings of Confucianism. The acts were understood as a compulsive instrument or tool for implementing morals and ethics formulated from the teachings of Confucianism. Due to the effects of Confucianism, Korean society of the Jo-Seon Dynasty was stable and peaceful for a long time. But the Confucian bureaucrats became corrupt and fractioned as well. Therefore, peoples' lives became very miserable again.

Some progressive scholars, exposed to teachings of Christianity in China and refreshed with the new thoughts and ideas, presented their new plans to heal the miserable lives of the people, and to restructure the malfunctioning bureaucratic dynasty. They criticized the corrupt bureaucratic administration. The fresh criticism from the Christian scholars was met with a brutal response from the Confucian Jo-Seon Dynasty. But Christianity secretly spread to whole of the Jo-Seon Dynasty. Until Christianity was legally endorsed in the Jo-Seon Dynasty, many early Christians were killed as martyrs. Due to the sacrifices and example of the early faithful Christians and Christian martyrs, the bureaucratic Confucian state of Korea developed into a multicultural state, and the everyday lives of the people gradually improved.

D. Adoption of Christianity and Improvement of Korea into a Cultural State

Christianity was introduced into Korea from China in the early 17th century. In the early period of its introduction, the progressive Korean scholars who visited China with a mission of diplomacy brought the Bible – translated into Chinese – back to Korea. The Bible was studied in Korea among scholars who had not advanced in their careers to become high ranking public officials because of defeat in power struggles. Some French missionaries of the Society of Jesus who came for missions to China came into Korea secretly to teach Christianity. As such, Christianity was thought to be revolutionary to the Confucian Jo-Seon Dynasty. Christianity spread very rapidly among the lower class people and young scholars of the middle class who could not advance to become high ranking public officials.

The Confucian Jo-Seon Dynasty therefore decided to try to halt the spread of Christianity, and many Christians were killed as martyrs. In 1866, about 8,000 Christians were killed, and many French missionaries were also killed. But Christianity nevertheless became even more widely spread. Finally, in 1886, Christianity was legally and officially endorsed in Korea at the conclusion of a diplomatic treaty between France and the Jo-Seon Dynasty. During consultations for concluding the treaty, the French government had strongly insisted that the freedom of religion should be inserted into the treaty.³ Because of the Treaty, Christianity was able to be practiced without danger of martyrdom. Together with Christianity, the Western concept of natural law was also introduced into Korea.

During the period of wrongful colonial occupation by Japan beginning in 1910, Christianity played a great role in resisting brutal imperialistic oppression. In a Constitution promulgated in 1919 by the provisional Korean Government during Japan's colonial occupation, it was asserted that Korea was created and protected by the Heavenly God. This defiant Korean spirit, based on the notions of natural law, were strengthened further even after Korea's emancipation from Japan and the establishment of the Korean Government.

Furthermore, 33 national leaders of the 1919 March First Independence against Japanese colonial occupation were religious – predominantly Christians and Buddhists. Resistance movements against the imperialistic colonial oppression of Japan were mainly carried out by religious peoples.

When the first National Assembly was opened for legislation of the Constitution of independent Korea in 1948, the provisional Christian Chairman of the National Assembly asked a Christian priest to pray to the Heavenly God. Every dictatorial military governments had been toppled down by the continual resistance of Korean peoples. With Christianity and the thoughts of natural law, the secular state of Korea developed into a more democratic and prosperous country.

Even though the secular state of Korea legally maintains the separation principle between politics and religion, Christian presidents and high ranking Christian public officials are likely to advocate and support Christianity. Today, conflicts among religions occasionally arise from biased administration by Christian public officials which benefits Christianity and neglects other religions.

III. PRINCIPLE OF SEPARATION OF RELIGION FROM POLITICS

The principle of separation between politics and religion is firmly prescribed in the constitution and acts of Korea. Article 20 of the Constitution of Korea provides that all citizens shall enjoy freedom of religion. No state religion shall be recognized, and religion and state shall be separated. Section 1 of article 11 of the Constitution of Korea prescribes that all citizens shall be equal before the law, and there shall be no discrimination in political, economic, social or cultural life on account of sex, religion or social status.

Section 2 of article 6 of the Basic Act for Education prescribes that in schools established and founded by central state or local government, religious education for a certain specific religion shall not be carried out. Therefore, general religious education is permitted in the public schools, but a certain specific religious education in the public schools is impermissible and prohibited. However, in private schools certain specific religious education is permitted.

Section 2 of article 4 of the "Service Regulation of the State Public Officials" provides that public officials shall conduct their affairs impartially without discrimination

3. Kim Sang Yong, *Legal History and Legal Policy: On the Focus of Korean Legal History* (Korea Legislation Research Institute, Seoul, 2006), 141.

owing to their religions. The above mentioned section of article 4 of the Service Regulations of State Public Officials was prescribed after the demonstration of Buddhists against the Government in 2008. In February 2008, a new Christian president was inaugurated. Christian public officials were appointed to important high ranking positions. National maps for public administrations were newly published and distributed to public authorities and peoples. Unfortunately, in these national maps, churches were marked and inscribed while Buddhist temples were not. Buddhists maintained that production of such a map was discrimination against Buddhism, and demonstrated against the Government for correction of such discrimination. In order to appease the angry Buddhists, section 2 of article 4 of the "Service Regulation of the State Public Officials" was promulgated.

In Korea, the separation principle of politics and religion is kept in theory, but in reality Christians are thought not to be good and fair minded to Buddhists. Despite there being no explicit conflicts between Christianity and Buddhism, uncomfortable Buddhists have spoken out against the Government. Nevertheless, the birthday of Jesus Christ – Christmas – and Buddha's birthday are designated as official national holidays.

IV. TREND OF JUDICIAL JUDGMENTS ON RELIGIOUS AFFAIRS AND RELIGIOUS CONFLICTS

Courts were in the past slightly reluctant to intervene in worldly affairs related to religion and conflicts between religions. But these days the courts have changed their attitude to actively solve even conflicts between religions.

The Constitutional Court declared that it would not be unconstitutional to hold the bar examination on a Sunday.⁴ A Christian bar examinee who would attend church on Sunday, however, would therefore not be able to attend the examination. The Constitutional Court ruled that Sunday is not a special holy holiday for Christians, but a common holiday for all peoples. Therefore, the Constitutional Court decided that it would not be against the freedom of religion, to hold the bar examination on a Sunday.

The Supreme Court declared that it is not against the constitutional freedom of religion for a private Christian university to not give a graduation certificate to students who have not completed a compulsory course on Christianity.⁵ But a local court has decided that it is against the freedom of religion for a private Christian high school to dismiss a student from the school by reason of his protest and demonstration against specific Christian education.⁶ In Korea students have no choice in selecting a high school, as middle school graduates are allotted to certain high schools by way of a lottery. Therefore, a non-Christian student might be allotted to a private Christian high school and be forced to attend a class on Christianity.

In the above mentioned case, a non-Christian student entered a private Christian high school by lottery. The student was elected chairman of the students' committee and protested against the religious education. The Christian high school tried to persuade the student to move to another high school, but the student refused to accept the proposal and behaved haughtily. Finally, the private Christian high school dismissed the student from the school. The dismissed student sued, claiming that the dismissal by the private Christian high school was unconstitutional and the school should pay damages to him. The local court decided that the private Christian high school violated Article 20 of the Constitution, providing for freedom of religion, and should pay damages for pain and sufferings.

For a long time in the past, the courts had been very reluctant to intervene in property affairs within a religion. When a church conflict between factional groups emerged, each faction sues for a piece of church-owned property. The Supreme Court had declared that the church-owned property belongs to all baptized members of the church at

4. Judgment of the Constitutional Court(full bench decision: en banc), 2000 Heon-Ma 159, 27 September 2001.

5. Judgment of the Supreme Court, 96 Da 37268, 10 November 1998.

6. Judgment of the Seoul Central Local Court, 2005 Ka-Dan 305176, 5 October 2007.

the time of the division of the church.⁷ Therefore, the Supreme Court did not actively decide the property conflict, but delegated the responsibility to all baptized members of the divided church to allocate the property autonomously by agreement.

But the Supreme Court has recently changed its passive attitude into an active one. The Supreme Court intervenes in property conflicts to allocate property to divided factions of a church. The Supreme Court declared that a faction comprising of two-thirds or more baptized members of a church could own the whole property of the divided church.⁸ The Supreme Court ruled that the church was a kind of incorporated association, and the church could change its present religious order with consent of two-thirds or more of its members. The incorporated association could alter its statutes with consent of two-thirds or more of its members (Article 42, Korean Civil Code). Owing to the revision of the Supreme Court, the minority members of a divided church could not get any piece of the church-owned property.

As explained above, the courts have gradually increased their intervention in religious conflicts in order to solve such problems with secular state laws. It is my opinion that the courts should respect canon law and try to solve such conflicts within a religion not with secular state laws, but with canon laws. The canon law is a self-administered statute within a church. The courts should respect the canon law and regard the canon law as the church's means of self-administration.

V. MISSIONS AND TASKS OF RELIGION IN KOREAN SOCIETY

Korea is and has been a religious society. Historically, Korea has transitioned through the great religions of the world from Buddhism to Confucianism to Christianity. Buddhism removed shamanism in ancient times and formed a great Buddhist culture for ca. 1,000 years from the three old kingdoms to the Ko-Ryeo Dynasty. During that period, Buddhism and secular kingdoms supported each other. But at the end of the Ko-Ryeo Dynasty Buddhism fell into corruption and the Buddhist dynasty collapsed. Eventually, Buddhism was weakened and forced from the cities into the mountains and replaced by Confucianism.

Confucianism supported the creation of the new Jo-Seon Dynasty. As such, Confucianism and the secular Jo-Seon Dynasty were closely tied to each other. All statutes of the Jo-Seon Dynasty were legislated on the ideological basis of the teachings of the Confucianism, which had been derived from the "Three Fundamental Principles and the Five Moral Disciplines." However, as was the case with the Buddhist dynasty, the Confucian Jo-Seon Dynasty also became corrupt, and the Confucian Jo-Seon Dynasty was colonized by the then imperialistic Japan. The weakening of these religions in Korean history lies in their failure to evolve and improve their teachings in light of social changes. For continued existence of a religion, that religion must constantly evolve and improve toward the realization of universal values which all people would like to accept and keep. Buddhism and Confucianism failed in their efforts to improve their authoritative teachings.

Today, in practice, Christianity is the main religion in Korea. Even though the separation principle between politics and religion is kept in theory, Christians occupy high ranking-public positions. Therefore, the teachings of Christianity are able to influence politics and public administration through these Christian public officials. Religion and the secular state are indirectly but keenly interrelated through religious public officials.

It can be said that the reason for the existence of religion and the secular state lies in the safety and the happiness of the people. Therefore, religion develops its teachings for making people noble and for enhancing the culture of the secular state. Even though religion and politics are separated in principle, the successful relationship between them

7. Judgment of the Supreme Court (full bench decision: en banc), 91 Da 1226, 19 January 1993.

8. Judgment of the Supreme Court (full bench decision: en banc), 2004 Da 37775, 20 April 2006.

consists of giving and taking interrelatedly other directly or indirectly.

VI. CONCLUDING REMARKS

Historically, religion has guided and supported the secular state of Korea and the secular state of Korea has conversely protected religion. Buddhism spiritually guided and supported the ancient secular state of Korea for about 1,000 years, and Buddhism received many benefits from the secular state, especially in the form of property. Confucianism also guided and supported the secular state of Korea for about 500 years, and Confucianism was respected by the secular state of Korea and its peoples. It is true that Buddhism and Confucianism dominated the secular state of Korea and its peoples spiritually and ideologically. But the combination of religion and the secular state was the cause of corruption and the decline of both religion and the secular state. Owing to the abundant material benefits given by the secular state to these religions, these religions could not develop and progress in new philosophies to a higher and more universal level. Religion must continuously change and evolve to a higher, more advanced level. Without the evolution of religion, it becomes corrupt and weakened. Furthermore, religion must refuse to receive material benefits from the secular state. Religion must always try to make the secular state fresh and clear with new spiritual ideologies. If religion is combined with the political powers of the secular state, the life of the religion will cease. The weakening of Buddhism and Confucianism and the decline of the secular states of Korea was caused by the combination of religion and the political powers of the secular state. Buddhism and Confucianism may have a nostalgia for the respect and the material benefits from the secular state of Korea as well as in the past. Therefore, Buddhists might protest and demonstrate against the government when Christian public officials disregard them.

Today, Christianity plays a major role in changing and restructuring the secular state of Korea with its doctrines of righteousness and love. However, Christianity must not receive favoritism and material benefits from the government. Christianity must stay far from politics. Christianity must be pure and clear. Christians must not receive any benefits from the government. The leaders of Christendom must hesitate to work together with political powers. A Christian must keep himself pure and clear, condemn the corruption of the secular world, and develop and create new doctrines which will be suitable to social changes. Christianity must be continuously recreated and bettered. Furthermore, Christianity must be generous and tolerant of other religions. Religions must not combine themselves with secular states. Religion must not long for any material support from the secular state. Religions must keep and practice their doctrines and at the same time strive for social peace. Religions must continuously develop and improve their doctrines to parallel social changes. Among the religions there must be generosity and tolerance toward one another. Religion must not be tempted by secular politics.