



3-29-2024

Juristic Consideration on the Separation of Religion and Politics and Civil Religion

Hiroshi Nitta

Takasaki City University of Economics, nitta.h@jcom.home.ne.jp

Follow this and additional works at: <https://gensoken.toyo.ac.jp/japanese-society-and-culture>



Part of the [Administrative Law Commons](#), and the [Constitutional Law Commons](#)

Recommended Citation

Nitta, Hiroshi (2024) "Juristic Consideration on the Separation of Religion and Politics and Civil Religion," *Japanese Society and Culture*: Vol. 6, Article 4.

Available at: <https://gensoken.toyo.ac.jp/japanese-society-and-culture/vol6/iss1/4>

This Article is brought to you for free and open access by Institute of Social Sciences. It has been accepted for inclusion in Japanese Society and Culture by an authorized editor of Institute of Social Sciences.

Juristic Consideration on the Separation of Religion and Politics and Civil Religion

Abstract

The separation of church and state is the separation of state power from religion. It prohibits the establishment of a state religion and the suppression of other religions. Whereas the First Amendment to the US Constitution prohibits the establishment of a state religion, the Japanese Constitution does not stipulate the separation of church and state in the clear terms. The second sentence of Article 20, Paragraph 1, Article 20, Paragraph 3, and Article 89 are the basis for this provision.

The separation of church and state means a division between the church and state, or the abolition of a state religion, and not the separation of politics and religion. The main purpose of these provisions in Japan was to deny the de facto state religion of prewar Japan, the state Shinto. This paper introduces and examines the concept of civil religion, and discusses the permissibility of the separation of church and state.

Keywords

Religion Shinto Politics Civil Japan

Creative Commons License



This work is licensed under a [Creative Commons Attribution-NonCommercial-No Derivative Works 4.0 License](https://creativecommons.org/licenses/by-nc-nd/4.0/).

[Received 30 September 2023 / Revised 1 October 2023 / Accepted 14 November 2023]

Juristic Consideration on the Separation of Religion and Politics and Civil Religion

Hiroshi Nitta[※]

Abstract

The separation of church and state is the separation of state power from religion. It prohibits the establishment of a state religion and the suppression of other religions. Whereas the First Amendment to the US Constitution prohibits the establishment of a state religion, the Japanese Constitution does not stipulate the separation of church and state in the clear terms. The second sentence of Article 20, Paragraph 1, Article 20, Paragraph 3, and Article 89 are the basis for this provision.

The separation of church and state means a division between the church and state, or the abolition of a state religion, and not the separation of politics and religion. The main purpose of these provisions in Japan was to deny the de facto state religion of prewar Japan, the state Shinto.

This paper introduces and examines the concept of civil religion, and discusses the permissibility of the separation of church and state.

Keywords: Separation of Church and State, Civil Religion

Introduction

In Japan, as in Europe, there is no history of struggle between religious and political powers. It is said that “the (Japanese) people have low religious awareness and are indifferent to religion because they have not experienced serious religious struggles to any great extent”.¹

However, although there has been no history of conflict, such as the suppression of Christianity during the Edo period, there has been no history of religious power growing to a massive scale and confronting political power in Japan.

The Constitution of Japan guarantees the freedom of religion under Article 20 and, in conjunction with Article 89, stipulates the separation of church and state.

Whereas the freedom of religion is naturally guaranteed to imbued with state power, is it possible to completely separate state and religion? The Emperor is now the symbol of the unity of the nation of Japan and the Japanese people in the current Constitution, but the Constitution of Japan, which stipulates the Emperor System within itself, which also serves as an apologist for rituals, has from the beginning been a symbol of religious beliefs. However, the Constitution of Japan, which stipulates the Emperor System, which is also the author of rituals, has from the very beginning contained provisions concerning

※ Takasaki City University of Economics emeritus professor

¹ Yutaro KAWAKITA. ‘Nation and religion’, *Kenpounosouten* 2008 p.90.

religion, and there has been room for contradiction between the separation of church and state as stipulated in the Constitution and the Emperor System from the inception.

The separation of church and state, which had been developed in Europe and the US, was not introduced into Japan's Constitution. It is unreasonable to introduce a constitutional idea from a country with a different history and diverse religious viewpoints.

The separation of church and state in Japan is based on the Shinto Directive (commonly known as SCAPIN-448, "Concerning the Abolition of Government Guarantee, Support, Preservation, Supervision and Supervision of state Shinto and Shrine Shinto"), a memorandum issued to the government by the Supreme Headquarters of the Allied Powers (GHQ) during the occupation, which was the spiritual foundation for militarism. It began with the view that the abolition of national Shinto was "intended to create a clear separation between the state and national Shinto".² In this regard, Takashi Ebashi states, "The separation of church and state in the Constitution of Japan does not merely mean the separation of state and religion in the abstract, but more concretely means the denial of all ties between the state and Shinto shrines".³ The separation of church and state in Japan is not so much a separation of state and religion as it is a separation of state and Shinto, or state and Emperor.

The fact that the separation of church and state was advocated to eliminate the state Shinto religion must be considered oriented toward the separation of the state and the Emperor.

If Article 1 of the Constitution were amended to abolish the Emperor System, the purpose of the Shinto Directive of GHQ would be achieved. However, the Emperor System has not been abolished, and Article 1 of the Constitution provides for it. The Emperor System follows the example of the Statute of Westminster (1931) in the UK.⁴

Even before the Emperor System was stipulated under Article 1 of the Constitution, the existence of the Emperor is the very *raison d'être* of the nation. In other words, "kokutai" is the state of the nation with the emperor at its center.

The Potsdam Declaration was accepted unconditionally, but the Japanese government that accepted the Potsdam Declaration was the one that made the preservation of the national polity a condition. The government thought that if the national polity was preserved, the surrender would be accepted. The Japanese government accepted the surrender on the condition that the Emperor's system be upheld.

The US adopted a strict separation of church and state, and yet, for example, at the presidential inauguration ceremony, the President is sworn in with his hand on the Bible in front of a clergyman, something that cannot be interpreted from the standpoint of the separation of church and state. This is an attempt to explain away the situation with the concept of "civil religion".

The US also pays respect to the flag as a symbol of national unity and pledges allegiance to it. In Japan, the symbol is the Emperor. The flag is also a symbol, but paying respect and pledging allegiance to the Emperor are not inconsistent with the separation of church and state in the Japanese Constitution.

Although the Constitution differed between the prewar and postwar periods, there is room to

² Naoki KOBAYASHI. *Constitution law lecture I* rev. ed. Tokyo University Press 1973.p.325.

³ Takashi EBASHI. *Constitutional Theory classroom completely revised 2nd ed.* Nihon Hyouron Sha. 2006.p.137.

⁴ Article 1 of the Constitution is said to be based on the preamble to the Westminster Ordinance, which states, "The Crown is the symbol of the free association of the members of the British Commonwealth of Nations." However, this symbol was later changed in the Royal Titles Act of 1953., is sometimes referred to as the head of the British Commonwealth of Nations. By the way, the United Kingdom has the Church of England, and the British King, who is the ruling ruler, is the head of the Church (Defender of the Faith).

reconsider Shinto as a civil religion.

According to Kawakita, “Shinto is recognized as an ideology and precept, as a religion (*kami issanha*), and as an ideology of ultranationalism (*kokka Shinto*), while at the same time it is recognized as the totality of the customs of daily life unique to the Japanese people.”⁵ This “totality of the unique customs and practices of the Japanese people” can be called a civil religion. Shrines across Japan are objects of faith for many people, and are deeply rooted in our daily lives. It is impossible to eliminate them completely from the political arena, as well.

Separating state and religion is not easy. The principle of separation of church and state has been an issue in many countries. In Japan, since the Supreme Court decision in the *Tsu Jichinsai* (Supreme Court decision on July 13, 1977, *Minshu* Vol. 31, No. 4, p. 533), and *Ehime Tamagushi* (Supreme Court decision on April 2, 1997, *Minshu* Vol. 51, No. 4, p. 1673) lawsuits, and the law suit concerning the Prime Minister’s official visit to Yasukuni Shrine (Osaka High Court decision on July 30, 1992, *Suigetsu* Vol. 39, No. 5, p. 827), legal analysis has focus on the separation of church and state.

In Japan, Shinto was treated as the state religion before World War II, and other religions were suppressed. After WWII GHQ issued the “Shinto Directive”⁶ The main objectives were to establish the freedom of religion, eliminate militarism, and to deny state Shinto through the separation of church and state.

Religion is necessary for the people which is why there are so many different religions in the world. Article 18 in both the Universal Declaration of Human Rights and Covenant B of the International Covenant on Human Rights guarantee the freedom of religion. In Japan, Article 20 of the Constitution guarantees the freedom of religion.⁷

On occasion, the freedom of religion has so powerful that it has overtaken the king. In some countries, certain religions became the state religion while others were suppressed as heresy. Religion used to be an important tool to unify people, However, today, the state and religion differ greatly from country to country. In some countries, state and religion have become one. This is especially true in Muslim countries. Christian countries like the UK also established a state religion. The separation of church and state has been achieved in Western nations “through a process that has taken hundreds of years”, and “the separation of church and state, which has been formed over a long period of time, has been more or less a product of compromise in every nation”.⁸ A perfect separation of church and state is

⁵ KAWAKITA *ibid.* p.90.

⁶ “Shinto Directive”; Abolition of Governmental Sponsorship, Support, Perpetuation, Control, and Dissemination of State Shinto (*Kokka Shinto*, *Jinja Shinto*), Memorandum for Imperial Japanese Government by GHQ; General Headquarters, the Supreme Commander for the Allied Powers in 15 December 1945.

⁷ Universal Declaration of Human Rights Art.18 Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

International Covenant in Civil and Political Rights. Art.18 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

⁸ Katsuhiro OBARA. Diversity of separation of church and state that Japanese people do not know about. *RONZA* :10 2001. P.85.

difficult to achieve.

With so many people moving around the world in large numbers, and people of various religions living within a single country, “There is no single nation on earth that can solve its problems by formally applying the principle of separation of church and state”.⁹

It is said that Japanese people have little faith. Many citizens have claimed not to have any special religious beliefs. However, Japanese people conduct various religious ceremonies, including Hatsumoude (a visit to a shrine on New Year’s Day). Even Christmas is celebrated without any pedantry. It is not that they have little faith. According to government data, as of December 31, 2008, there were 207,183,223 people of faith, nearly twice the population of Japan.¹⁰

According to a 2008 survey conducted by the NHK Broadcasting Public Opinion Research Center, 39% of the respondents followed a religion, whereas 49% did not.¹¹

Even if a person does not believe in a particular religion during his or her lifetime, after death, the bereaved family members give the deceased a Buddhist name and place him or her in an ancestral grave.

Religion is not only in the private sphere of the individual but also in the public sphere, and because “politics itself has a religious dimension,” there are many problems related to the separation of church and state. Even if one tries to separate politics and religion, there are areas where they cannot be separated.

In the US, at the presidential inauguration ceremony, the President takes the oath of office in front of a pastor (or priest) with his hand on a Bible. He ends his inaugural address with the words “So help me God”. The oath of office is also administered at the inauguration ceremonies of members of Congress.

A lawsuit was before in the US District Court in Washington, DC, seeking to stop the use of the phrase.¹²

This appeal was rejected. The First Amendment to the US Constitution separates religion and state, but does not eliminate all religious color from state events. The First Amendment states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”. The First Amendment provides for the separation of church and state, but it is the separation of church and state, not the separation of religion and state, and religion’s involvement in politics is not an issue.

The US comprises a diverse range of ethnic groups with diverse faiths. President Obama, in his inaugural address, stated: “Our diverse origins are our strength, not our weakness. For we know that our patchwork heritage is a strength, not a weakness. We are a nation of Christians and Muslims, Jews and Hindus - and non-believers.”¹³

This diversity is what makes the US what it is.

The people of the US do not adhere to a religion unique to the US, but are free to believe a religion of their choice (no religion, atheism).

Aside from individual religions, there is a “civil religion” that binds the people of the US. The President is the central figure in the sharing of the sense of national identity. Sociologist R. Beller named

⁹ OBARA *ibid.* p.91.

¹⁰ Number of religious organizations, teachers, and believers such as shrines, temples, and churches nationwide in 2009. <http://www.e-stat.go.jp/SG1/estat/Xlsdl.do?sinfid=000006877837>

¹¹ NHK Broadcasting Public Opinion Research Institute. “Japanese people are attracted to religious things- From ISSP International Comparative Survey (Religion)”. *Broadcast research and investigation* 5 2009.p.66-.

http://www.nhk.or.jp/bunken/summary/research/report/2009_05/090505.pdf

¹² *Case:08-cv-02248-RBW Document 1 Filed 12/30/2008*

<http://www.restorethepledge.com/live/litigation/inaugural/docs/2008-12-30%20Original%20Complaint.pdf>

¹³ from President Barack Obama’s Inaugural Address in 20 June 2009.

the system of values that unifies the multiethnic US “civil religion”.¹⁴ R Beller understood the term “civil religion” as a specific religious or value system that gives identity and meaning to a nation or ethnic group, which Koichi Mori called “invisible religion”.¹⁵ Some researchers use the term “public religion”, derived from B. Franklin, to describe civil religion.¹⁶

In the US, “civil religion” is key, and it is necessary to view the presidential inauguration in this context. The phrase “civil religion” (religion civile), which appears in Rousseau’s “Theory of the Social Contract,”¹⁷ is defined in one particular country and gives that country its gods, each with its own specific guardian deity. This religion has an external worship prescribed by its doctrines, rituals, and laws. Except for the only nation that believes in it, all are, he says, unbelievers, aliens, and barbarians to this religion. According to Beller, Americans have, along with their own religion, a general civil religion with certain basic beliefs, values, holidays, and rituals that are unique. This system was historically used to attack non-conformists and liberal (tolerant) thinkers and groups.¹⁸ Civil religion is not a concrete or positive religion, but a systematic methodology that links public religious sentiment to political mobilization and stability while minimizing sectarian claims. It is an American principle of the “separation of church and stat”, and there seems to be no problem with the no problem with the US President laying hands on a Bible at his inauguration.¹⁹

Some have pointed out that the prewar state Shinto religion is a civil religion. In Japan, a mature civil religion called kokka Shinto emerged at the beginning of the 20th century. It exuded a sense of unity and patriotism among the people, spurred them to modernization, and became the driving force behind their expansion into Asia, sanctifying national consciousness through the worship of “kami” (gods) at shrines. In Japan, the Emperor historically played an important role in the duties of citizens, but no longer does so. In the US, however, the President has played and will continue to play a leading role in public faith.²⁰

Whereas civil religion exists in the US today, in Japan, state Shinto was rejected after the war and lost its ties to the people. Although state Shinto was interpreted as a civil religion in Japan, it is significant to examine American civil religion in order to reconsider its spiritual props after the war and to consider civil religion as the totality of life customs unique to the Japanese people.

1. Separation of church and state in Japan

The principle of separation of church and state generally refers to the principle of separation of state and religion.²¹ The degree of separation varies from country to country. Some countries have strict forms of separation where state rules do not allow religion to influence the state or the state to influence religion; in other countries, such as Iran, religion and the state are strongly linked. The US and Japanese Constitutions provide for the separation of church and state.

¹⁴ R.N.Bellah. *Social change and religious ethics* Miraisha 1973.p.343-. This book is a translation of the following book Robert N.Bellah “*Civil Religion in America*” Daedalus 96 [Winter] 1967.

¹⁵ Koichi MORI. *America from the perspective of religion*. Kodansyamechie 1996.p.37.

¹⁶ Ryuuji FUJIMOTO. *American public religion-Spirituality in a pluralistic society*. NTTPublishing 2009.p.29.

¹⁷ Rousseau. *Social Contract*. Iwanamibunko p.185-186.

¹⁸ American civil religion - Wikipedia, the free encyclopedia

¹⁹ <http://blog.goo.ne.jp/william1787/e/4d71a16e3dcf3e9b56d1505d44d74c53/>

²⁰ Richard V. Pierard, Robert D. Linder *Civil Religion and the Presidency*. Zondervan 1988. The following book is a translation of this book.translated by Kazufumi HORIUCHI.Takao INUKAI.Naoyuki HIKAGE. Retaku University Press.2003.p.2.

²¹ Nobuyoshi ASHIBE.*Constitution 4th ed.* Iwanamisyoten.2007.p.147.

The relationship between politics and religion in each country can be categorized as follows: First, (strict separation is adopted in the US, France (Laïcité), Turkey (Raikurikki), Mexico, Estonia, Slovakia, Slovenia, Hungary, and Japan.

Next, the hybrid form of the state-church system is adopted by Malta (Catholic, 1964 Constitution, Article 2), England (Anglican Church / Anglican Communion, Scotland (Presbyterian Church), Denmark (Lutheran Church, 1953 Constitution, Article 4), Norway (Lutheran Church, 1814 Constitution, Article 2), Iceland (Lutheran Church, 1944 Constitution, Article 62), Finland (Lutheran Church), Greece (Orthodox Church (Greek Orthodox Church)), Tunisia (Islam), and Saudi Arabia (Islamic Wahhabism, Article 1 of the Basic Ruling Law stipulates that the Constitution is the Qur'an and Sunnah)

The concordat type is adopted by the Netherlands, Belgium (1994 Constitution, Article 24), Luxembourg, Germany (1949 Basic Law, Article 140), Austria, Italy (1947 Constitution, Articles 7 and 8), Ireland (1937 Constitution, Article 44), Spain (1978 Constitution, Article 16), and Portugal (article 41, paragraph 4 of the 1976 Constitution).²²

The separation of church and state is “disestablishment”, that is, the separation of church and state or the abolition of the state-church system altogether, and not “the separation of religion and publics”.

The separation of church and state was originally intended to separate the church from state power, that is, the state power's cozy relationship with a particular religious power. It aims to further institutional guarantees of religious freedom.²³

In a narrow sense, the separation of church and state refers to strict separation that does not allow the exercise of religious privileges or power, as in Japan and France. In Japan, the state prohibits religious activities and aid to religion, and does not recognize the privileges of religion or the exercise of political power. Article 2 of the French Constitution stipulates that “France is an indivisible, non-religious, democratic, and social republic”, and notes that France adheres to the principle of non-religion (laïcité, independence from religion), abolishes state religion, and does not allow religious organizations to exercise political power. It also eliminates religious colors from the public sphere. It separates the religious and political spheres by abolishing state religion and not allowing religious organizations to exercise political power, but also by eliminating religious colors from the public sphere.²⁴

It also includes loose separation, such as the fusion and concordat types.

The fusion type, as in the UK, establishes a state religion, while also practicing tolerance to religions other than the state religion, effectively guaranteeing religious freedom. In the concordat type, the state and church are independent in their respective spheres, with the church enjoying constitutional status as a public corporation, and each dealing with issues in its own sphere independently. However, matters of conflict are handled based on mutual agreement through the conclusion of a political agreement (concordat), and in some cases, privileges such as the right to levy taxes are granted.

In the prewar Meiji Constitution, the freedom of religion was guaranteed (Article 28, “Japanese subjects shall have the freedom of religion to the extent that they do not disturb peace and order and do not disobey their duty as subjects”), but it was restrictive, and state Shinto was virtually a state religion. Under the current Japanese Constitution, the establishment of state religion is prohibited. (“Tsu

²² Miyoko TSUJIMURA. *Constitution 2nd ed.* Nihonhyouronsya 2004.p.226.Miyoko TSUJIMURA. *comparative constitution*. Iwanamisyoten.2003.p.94.

²³ Mitsunori TAKEHANA. *Constitutional law essentials*. Seibundou 1995.p.303.

²⁴ Toshihiko NONAKA.Mutsuo NAKAMURA.Kazuyuki TAKAHASHI.*Constitution 4th ed.* Yuuhikaku 2005

Groundbreaking ceremony litigation”, Supreme Court, July 13, 1977, Minshu Vol. 31, No. 4, p. 533)

The prevailing view is that the legal nature of the principle of separation of church and state is an institutional guarantee.²⁵ It is not a direct guarantee of the freedom of the religion itself, but an indirect guarantee by ensuring the separation of state and religion as an institution.

The Supreme Court used the purpose-effect standard in the “Tsu Groundbreaking ceremony litigation”, and said “Although this principle requires the state to be religiously neutral, it does not mean that the state is not allowed to have relations with religion at all, but rather that the state must be able to maintain religious freedom in view of the purpose and effect of the acts that bring about religious relations, and in consideration of the fact that such relations are not in accordance with the right of the state. However, this does not mean that the state is not allowed to have relations with religion at all, but rather that it is not allowed to have relations with religion if such relations are deemed to go beyond what is reasonable in light of the various social and cultural conditions of the state.”

According to the purpose-effect standard, an act is a religious activity within the meaning of Article 20(3) of the Constitution if “the purpose of such act has religious significance and its effect is to aid, abet, promote, or oppress or interfere with religion.

The purpose of the land-breaking ceremony in this case was found to be solely secular, to perform a ritual in accordance with the general customs of society, and its effect was not found to aid, encourage, or promote Shinto, or to oppress or interfere with any other religion.

However, there is some criticism of the Supreme Court’s recognition of Shinto as a religion. There is no clear provision on the separation of church and state. In Japan, the separation of church and state is a concept established by judicial precedents.

In the history of Western political thought, the separation of church and state refers to the separation of church and state. It is the prohibition of a particular official religion (establishment church) from politically and socially oppressing those who do not belong to it. It prohibits religious oppression, and the existence of an official religion does not necessarily constitute a violation of the principle of separation of church and state.

For example, England is a country of separation of church and state even though it has an Anglican Church, or the President of the United States placing his hand on a Bible and taking an oath before a minister at his inauguration does not violate the principle of separation of church and state.

A rather mechanistic and rigid adherence to the separation of church and state can lead to unrealistic results that contradict common sense and that do not respect the religious freedom of the individual, which can be problematic.²⁶ The purpose-effect criterion is a meaningful criterion for judging religious acts that have become generalized and less specific in their religious nature.²⁷

2. Separation of church and state in the US

The First Amendment to the US Constitution states that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”. There are two interpretations of this provision;

²⁵ Koji SATOU. *Constitution 3rd ed.* Seirinshoin. 2004.p.499.

²⁶ SATO. *ibid.*p.500.

²⁷ SATO. *ibid.*p.500.

First the provision prohibits the establishment of a state religion and provision of preferential treatment for a particular religion, and second the state may not have a vested interest in religion per se.

In the US, the separation of church and state is not the separation of religion and state, but the separation of church and state, which is meant to prevent the cozy relationship between the church and public authorities. It has been interpreted to prohibit state-religion ties beyond a certain limit (see, e.g., *School District of Abington v. Shempp*, 374 U.S. 203 (1963), which held that state action must “have a secular legislative purpose and its primary effect is neither to promote nor inhibit religion”); the Supreme Court in *Abington v. Shempp*, 374 US 425 (1964), which held that a state action must “be of a secular nature” and must not “promote or inhibit religion”. 203 (1963), and *Walz v. Tax Commission of the City of New York*, 397 US 663 (1970), which suggested that it must not result in “excessive governmental involvement with religion”.²⁸

The phrase “In God We Trust” is inscribed on the US dollar bill and coins, and each house of Congress has a chaplain who prays daily for the Congress, and an oath or affirmation is required while testifying before Congress or when a President assumes public office. This oath is to God, but God is not based on any particular church or denomination.

In his first interpretation of the separation of church and state, Justice Douglas wrote: “We are a religious people, whose institutions are predicated upon a Supreme Being. We find no constitutional requirement that the state respect religion or oppose efforts to expand the effective reach of religious influence.” and affirms state involvement in religion.²⁹

This common element of Christianity in the US, which is not biased toward any particular church, is called civil religion by sociologist of religion R. Beller, who asks how the use of the word “God” by the President of the US is legitimate in the first place in terms of the separation of church and state. The separation of church and state does not mean that the political sphere has no religious dimension. While individual religious belief, worship, and association may be considered strictly private matters, there are some common elements in the religious orientation shared by the majority of Americans. It played a decisive role in the development of American institutions and still gives a religious dimension to the entire framework of American life, including the political realm. The public religious dimension is expressed in a series of beliefs, symbols, and rituals that I call “American civil religion”. The presidential inauguration is an important ceremonial event in this religion. It reaffirms, among other things, the religious legitimacy of the highest political authority. The following is an example of this.³⁰

The separation of church and state, the main objective of which is the separation of church and state in the US, states that it is a violation of the Constitution for the state to spend public funds on behalf of a particular church or denomination or to give preferential treatment to members of a particular church or denomination in terms of employment, suffrage, and so on. Religious scholar Katsuhiko Obara pointed out that “to put it in terms of the actual situation in the United States, it is the separation of a particular church or denomination from the state, not the separation of Christianity from the state.”³¹ “In the US, the separation of church and state” focuses on providing a framework in which no particular denomination

²⁸ Shigeki MATSUI. *Introduction to the American Constitution 2nd ed.* Yuhikaku.1992.p.207.

²⁹ *Zorach v. Clauson*, 343 U.S. 306(1952). Toshiyoshi MIYAZAWA. *Constitution II* new ed.Yuhikaku.1979.p.359.

³⁰ R.N.Bellah. Translated by Hidekazu KAWAI. *Social change and religious ethics*. Miraisya.1981.p.348.

³¹ Katsuhiko OBARA. Diversity of separation of church and state that Japanese people do not know about. *Ronza*10 2001.p.85.

can exercise prominent political power so that diverse church traditions can actively participate in the formation of the state".³² As long as "the separation of church and state is understood in the U.S. way, there is no unconstitutionality in the participation of a particular church or religion in political activities".³³

In 1971, in *Lemon v. Kurtzman*, 403 US 602 (1971), the US Supreme Court held that to be constitutional vis-à-vis First Amendment, a law must have a secular legislative purpose and not promote "excessive government involvement with religion" (the so-called "Lemon test").³⁴ This standard "was developed primarily in cases involving the constitutionality of government subsidies to religion, but the Supreme Court has now broadly applied this standard to all cases in which the prohibition of establishment of a state religion is at issue".³⁵

In the US, the endorsement test tends to be used as the standard for the separation of church and state. According to this standard, the objective test is whether the government action has the intent to convey a message of endorsement or rejection of a religion, or whether the government action has the effect of endorsing or rejecting religion.³⁶

3. Civil Religion

Rousseau's "On Civil Religion" is found in Chapter 8 of Book IV of Rousseau's *Theory of the Social Contract*. There, he explains the introduction of this civil religion in place of the priestly religion. Later, American sociologist of religion R Beller, presented it as an analytical concept, by relying mainly on American cases.

R Beller described the American concept of civil religion as (1) a collection of beliefs, symbols, and rituals performed in honor of sacred objects and institutionalized within the community; (2) not opposed to Christianity, and indeed in many respects common to it, but not sectarian, and (3) not a religion that is not a Christian religion; (3) however, civil religion is not merely a general religion, but has a special and sufficient significance for the topic of America, and this particularity has saved it from empty formalism and given it religious force; and; (4) on the other hand, civil religion is definitely not a substitute for Christianity, that there is an implicit but quite clear functional distinction between civil religion and Christianity, and that the Church neither controls nor is controlled by the state; (5) that the regent of the state, whatever his personal religious views, has performed his duties according to the norms of civil religion while holding his office.

Civil religion is "a way of doing politics rooted in the American climate that has a Christian flavor but is itself distinct from Christianity", and "this is not a positive religion. It is the American way of separating church and state. It is the way politics exists in America".³⁷

Civil religion in the US is not a specific religion, but rather exists as a cord of national unity, that keeps the religious sentiments of the people to a minimum of specific sectarian claims. It does not infringe on

³² OBARA *ibid.* p.85.

³³ OBARA. *ibid.* p.85.

³⁴ MATSUI *ibid.* 207.

³⁵ MATSUI. *ibid.* p.207-208.

³⁶ Nobuyoshi ASHIBE. revised by Kazuyuki TAKAHASHI *Constitution 3rd ed.* Iwanamisyoten 2002.p.155. Yasuji NOSAKA. Memorial and worship-The Constitution and the Yasukuni Shrine issue. *Jurist* 1222.p.73.

³⁷ Keishi ISHIKAWA. "Ownership Society" and "America is becoming desecular(2) complete"
<http://blog.goo.ne.jp/william1787/e/be54999d3ae0f06deb845247ac87e989>

the religious freedom of individual citizens. At the presidential inauguration ceremony, an individual's religious beliefs are guaranteed, as a Christian may lay hands on a Bible or Buddhist President may lay hands on a Buddhist scripture and take an oath based on his or her faith.

R Beller classified Japanese state Shinto as a mature civil religion. It is said to have “exuded a sense of unity and patriotism among the people that drove them to modernize and eventually to expand into Asia, sanctifying national consciousness through the worship of “kami” at shrines”.³⁸

A. Tocqueville said: “What is most important for society is not only that every citizen believes in a true religion, but that society as a whole has one religion”.³⁹ This is a truly a civil religion. This idea of civil religion is unique to American religion and politics (and, according to R. Beller, to prewar Japan as well), and differs from the European principle of separation of church and state, which was conceived after the conflict between state and religion, and from that in the US. The theory of desecularization, which is being newly proposed in response to this, argues that Europe's separization (the process of declining religious influence) was an anomaly and an exception, and that the world was one in which religion was the center and politics was legitimized with it as the authority. He argued that the separation of church and state is a unique culture in Europe, considering that communism is a form of religion. Secularization has been going on throughout history. (It is only one phenomenon among several in history. What we see happening in the US today can be considered de-secularization.)

R Beller said that with the advent of Christianity, religion and politics became divided and opposed, but that civil religion is a “set of religious symbols and practices” that mediates the relationship between religion and politics, which are in conflict, while making the members of a secular state religiously love their civic duties.

Civil religion became deeply entangled with nationalism in its attempt to sanctify the history and mission of the US and to unite the people under a single religion, civil religion.⁴⁰

The modern concept of civil religion, from its first appearance in Rousseau's writings until its refinement by Beller, is inextricably linked to the tradition of classical republican virtue and its distrust of the modern liberal political tradition. In Beller's theory of American civil religion, this republican tradition merges with the Calvinist tradition of covenantal religious and political community, and with the normative functionalist tradition of the Durkheimian school and its moral concepts—selfish and utilitarian, functional individualism as opposed to utilitarian, non-functional individualism.⁴¹

4. The Inaugural Oath of Office of the President of the United States

Following the reading by the Chief Justice of the Supreme Court before Congress, the President takes oath by raising his right hand and reciting it.

³⁸ Richard V. Pierard, Robert D. Linder. *ibid.* p.3.

³⁹ A. Tocqueville. translated by Gentaaru II. *American democracy*. Kodansha. 1987.

⁴⁰ Norihiro OKUBO. A mission that crosses borders—Mexican Revolution and Protestantism
<http://www.l.u-tokyo.ac.jp/cgi-bin/thesis.cgi?mode=2&id=230>

⁴¹ José Casanova. translated by Hirofumi TSUSHIRO. *Public Religions in the Modern World*. Tamagawa University Press. 1997. p.79. Calvinism refers to a theological system and practice of Christian life that emphasizes the sovereignty of God above all things. There is an important doctrine called predestination, which means that humans cannot know what the Lord will do, much less manipulate the Lord through prayer or confession. Furthermore, no evidence is given to know whether or not one is a person who can fulfill the Lord's wishes. That's why the idea is to live every day to the fullest based on solid ethics, and to be ready for the Lord to see you at any time. (Quoted from “Success Philosophy Dictionary”)
<http://sugaihi.ld.infoseek.co.jp/success/subject.htm>

The President's name is placed between the words I and do solemnly, the word swear is used, and the oath concludes with the words "So help me God".

Article II, Section 1(8) of the US Constitution requires the President, before beginning the discharge of his duties, to take an oath or affirmation as follows: "I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability preserve, protect, and defend the Constitution of the United States".

On December 30, 2008, New Dow attorneys presiding over an atheist church and ten atheist organizations filed a lawsuit in the US District Court in Washington, D.C., demanding that the following points be changed in the inauguration ceremony: (1) that President Obama cease and desist from saying "God help me" at the end of the oath of office; (2) that the prayer of the Rev. (1) cancel President Obama's prayer "God help me" at the end of the oath of office, (2) cancel the prayer by Rev. Warren, an evangelical Protestant pastor, and (3) cancel the prayer of thanksgiving by Rev.

The plaintiffs argued that the above three points violated the principle of separation of church and state. On January 15, the district court dismissed their lawsuit on the grounds that it did not violate constitutional principles.⁴²

President Barack Obama took the oath of office as scheduled, and said "So help me God". The ceremony was established by the first President Washington when he took office in 1789 and has been followed by every President since.

The district court ruled that it was constitutional, in line with President Barack Obama's freedom of expression. The presidential inauguration is a constitutional event, as mentioned above, and the content of the oath of office is also prescribed by the Constitution. However, the phrase "So help me God" was added to the oath of office by the first President, Washington DC, at his own discretion, and has been followed by many presidents since then. Barack Obama also nominated two pastors to participate in the inauguration ceremony and added a prayer after the oath of office.

The district court ruled that the inauguration prayer did not violate the principle of separation of church and state because it was an expression of President Obama's personal opinion. While there have been many such cases involving the separation of church and state, none have been found to violate the Constitution by the Supreme Court.

However, in the case of the Pawtucket, Rhode Island, Nativity exhibit, the Supreme Court barely ruled that it was constitutional, even though it was found to violate the Constitution by the first and second courts. (*Lynch v. Donnelly*, 465 US 668 (1984))

In this case, the town authorities participated in decorating the shopping district for Christmas in 1984, and when they added a Nativity figure to the decorations, the town residents sued them for violating the principle of separation of church and state. The first and second courts ruled that it violated the Constitution. However, the Supreme Court reversed the lower court's decision by a narrow margin of 5 to 4, rejecting the lower court's unconstitutional ruling and holding that the town authorities' purpose in displaying the Nativity was not to support a particular religious sect but to participate in the festival. In a concurring opinion, Judge O'Connor advocated an endorsement test as the standard of review for excessive engagement. That is, whether "the government sends a message endorsing or disapproving of religion" that is "sends a message to those who do not believe in that religion that they are strangers and

⁴² <https://legaltimes.typepad.com/blt/2009/01/newdow-wont-challenge-denial-of-injunction-on-inaugural-oath.html>

not full members of the governmental community, and sends a message to the faithful that they are fellow citizens and favored members of the community. is the standard for determining whether the principle of separation of church and state has been violated". The same standard was developed in the *Wallace v. Jaffree*, 472 US 38 (1985) decision.

This is not the first time that Newdow has filed a lawsuit in connection with a presidential inauguration; he also filed lawsuits against President George W. Bush's inauguration in 2001 and 2005, both of which were dismissed. He has also sued public schools for forcing students to pledge allegiance to God and the flag. Some lower courts have ruled in his favor, holding that forcing students to pledge allegiance to God and the flag in public schools is a violation of the Constitution. However, the Supreme Court has yet to take up the case (a question of standing = standing), and the reference to God with respect to the Pledge of Allegiance in public schools has not been addressed by the San Francisco Court of Appeals in 2001, which held that "state religion, which is the basis for the principle of separation of church and state, is The court ruled that the reference to God in the Pledge of Allegiance" violates the First Amendment's prohibition against state religion, which is the basis for the separation of church and state principles.⁴³

In *Lynch v. Donnelly*, which was ruled constitutional by a narrow margin, federal court judges in the US are nominated by the President and appointed to their posts upon congressional approval. If there is a vacancy on the Supreme Court, a new Justice will be nominated by the new President Obama. Therefore, depending on the nominated justices, the decision on the separation of church and state could shift, and Christianity could be excluded from public events, including the inauguration ceremony.

Conclusion

The Sacred Cosmos supports the social norm "Nomos" and protects people from disorder "Anomy".⁴⁴ Japan's spiritual devastation can be attributed to the loss of civil religion (i.e., state Shinto).

As A Tocqueville noted above, "The most important thing for a society is not only that every citizen believes in a true religion, but that the society as a whole has a religion".⁴⁵

In the past, Japan had a state Shinto as a civil religion. It was denied after the war, and today Japan seems to stand on a strict separation of church and state, eliminating all religious color from the nation.

In Toyama Prefecture, there was an incident in which the prefectural board of education accepted the opinion of parents that the chanting of "Itadakimasu", which is used while eating in Japan) at school lunches was a Buddhist ritual, and eliminated it.⁴⁶ I wondered what the people of Toyama were chanting as they ate their meals, and was concerned that they would not do so silently. If we eliminate the religious aspect, it would become atheism. However, in our nation, 39% of the respondents "follow a religion," where as 49% do not.

Civic religion as a national bond. Before World War II, this was the state Shinto religion, but our people unconsciously believe in a so-called natural religion, which is not the state Shinto religion, without being aware that they are believing in it. Natural religion is "a spontaneous religion, without a founder,

⁴³ *Newdow v. United States Congress, Elk Grove Unified School District, et al.*, 542 U.S. 1 (2004). See below for details. Hiroshi NITTA. *Legal issues regarding the oath of allegiance to the national flag in the United States*. Takasaki City University of Economics Studies of Regional Policy.vol.7.no.2 2005.

⁴⁴ Richard V. Pierard Robert D. Linder. *ibid*.p.30.

⁴⁵ A. Tocqueville *ibid*.987 年

⁴⁶ Sankei Shinbun. 8th July 1996.

scripture, or cult, such as Founding religion”.⁴⁷ Religious scholar Shigeyoshi Murakami states that in the 80 years from the Meiji Restoration to the defeat of Japan in World War II, state Shinto, a state religion created by the modern Emperor System, spiritually dominated the Japanese people.⁴⁸ He saw other religions such as denominational Shinto, Buddhism, and Christianity as subordinate to the state Shinto and played a role in fulfilling its inner nature, and named the totality of these religions as the state Shinto system. However, some said that the concept of state Shinto was vague and that the reasons for this are not presented. Murakami used the term “state Shinto” narrowly, limiting it to the prewar shrine Shinto that had special ties to the state, based on the definition clearly stated in the Shinto Directive, such as a sect of Shinto distinguished from sectarian and denominational Shinto, and argued that the history of a sect of Shinto was merely a phenomenon of a period in the long history of Japan. State Shinto as a civil religion is a topic for further study.⁴⁹

Note: [This article was originally published in ‘Studies of Regional Policy, Vol.14 No.2 · 3, p.21-35 (2012) (file:///C:/Users/KH-4F420-PC-01/Downloads/KJ00007713259.pdf), and the above is the translated version.]

⁴⁷ Toshimaro AMA. *Why are Japanese people not religious?*. Chikumasyobou. 2005.p.11.

⁴⁸ Shigeyoshi MURAKAMI. *National Shinto*. Iwanamishinsyo.1970.p.1.

⁴⁹ MURAKAMI *ibid*. As a criticism of this, see the paper below.Uzuhiko ASHIZU. *What was State Shinto? (New edition)*. Jinjasinpousya.2006. Kremaru SAKAMOTO. *Research on the formation process of State Shinto*.Iwanamisyoten. 1994. Hitoshi NITTA. Basic research on modern politics and religion.Daimeidou.1997. Hitoshi NITTA. *Illusions of “living gods” and “national Shintoism”- Challenging the myths that distort modern Japan*. PHP Research Institute.2003. etc. reference.