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A Brief Overview of Law and Religion in the People's Republic of China

*Dr. Chen Huanzhong**

I. CURRENT RELIGIOUS POLICY IN CHINA

The current state of religious freedom in China can be compared to the proverbial half glass of water; while some people see the glass as half full, others view it as half empty. How one views the situation largely depends on the position and political orientation of the viewer. Most would likely agree that given the almost complete absence of religious freedom twenty years ago in China, to have the glass half full today demonstrates remarkable progress. Perhaps more importantly, the water continues to rise.

Throughout its long history, China has had an interesting and sometimes tumultuous relationship with organized religions, both domestic and foreign. Because this conflict has appeared throughout Chinese history and across many different governments, it may appear to some to be an inherent feature of Chinese culture. Indeed, unlike most Western societies, China was primarily and officially dominated for more than two thousand years by the semi-religious influence of Confucian philosophy.

The principal religions currently registered in China are Buddhism, Taoism, Islam, Catholicism, and Protestantism. Currently citizens of China are free to express their religious beliefs and may choose a religious affiliation within these five major religions. According to official statistics, China has over one hundred million followers of various religious faiths. There are more than eighty-five thousand sites for religious activities, most of which were built prior to 1949, when the Communists took over China.¹

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1. INFORMATION OFFICE OF THE STATE COUNCIL OF THE PEOPLE'S REPUBLIC OF CHINA, WHITE PAPER: FREEDOM OF RELIGIOUS BELIEF IN CHINA (Oct. 1997), *available at* <http://www.china-un.org/eng/7321.html> [hereinafter WHITE PAPER: FREEDOM OF RELIGIOUS BELIEF].

Buddhism has a two thousand year history in China. China currently has approximately sixteen thousand Buddhist temples and about 320,000 Buddhist monks and nuns.²

Taoism was founded in China more than seventeen hundred years ago. China now has over one thousand Taoist temples and more than ten thousand Taoist priests and nuns.³

Islam was introduced in China in the seventh century. China currently has ten national minorities, including the Hui and Uygur, with a total population of twenty million adherents to Islam.⁴

Catholicism was introduced in China intermittently in the seventh century, but it did not spread widely until after the Opium War in 1840. At present, China has five million Catholics, five thousand clergy members, and more than five thousand Catholic churches and meeting houses.⁵

Protestantism was first brought to China in the early nineteenth century, and it also spread widely after the Opium War. There are now about fifteen million Protestants, more than twenty thousand Protestant clergy members, more than twelve thousand churches, and roughly twenty-five thousand Protestant meeting places throughout China.⁶

Recent archeological discoveries in eastern China suggest that Christianity may have been introduced to China hundreds of years earlier than historians have traditionally believed. Early Christian relics have been found that date back to the time of China's East-Han Dynasty, which was in power during the second century A.D., or about the same time as the Roman Empire.⁷

II. THE HISTORY OF RELIGIOUS POLICY IN CHINA

Today's religious policy in China largely reflects and extends a historical pattern inherited from previous regimes and dynasties, which has remained relatively unchanged. However, for several reasons, changes in China's religious policies now occur faster than

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. See *Christian Carvings Found*, CHINA DAILY, Aug. 17, 2002, available at <http://www1.chinadaily.com.cn/cndy/2002-08-17/82523.html>.

ever before. We are fortunately living at a great time of two revolutions: the information revolution, which is peaked by the massive application of internet, as well as the great globalization of economy that is reshaping and relocating wealth, ideas, jobs, and people. The most unexpected byproduct of these two revolutions is the social and cultural revolution, or evolution, that is taking place with those developing countries and is evident in a growing group of intellectuals and white-collared professionals. With China topping the list of these developing nations, massive changes are flooding every corner of this vast land, ranging from the outlook of the cities to the personal ideologies of the people, from the terms of laws to the languages of traffic signs. Such a revolutionary change will inevitably involve China's religion sectors, sooner or later, willingly or unwillingly.

Unlike rulers in the West, for more than two thousand years, most Chinese rulers were pantheist or atheist, particularly those of the Han ethnic group, which consistently accounted for nearly ninety percent of the Chinese population throughout that time period. These leaders laid the foundation for China's modern policies and attitudes toward religion. Consequently, superstitious beliefs and the Confucian philosophy, rather than religion, dominated China for thousands of years.

Throughout most of China's history, government policies towards foreign religions have been inconsistent. Sometimes the state has been more restrictive and at other times more open, but the dominating theme has been restrictive. The major reason for this alternating policy is that during the long history of China, most major uprisings against the government involved religion, semi-religion, or superstition. Some of those religions or semi-religions were entirely indigenous to China; examples include the Yellow Flag Uprising during the time of the East-Han Dynasty and the White Lotus Uprising during the Qing Dynasty.⁸ Uprisings in the mid-nineteenth century, such as the Tai Ping Heaven, were incited by hybrid religious groups that merged indigenous superstition with Christianity.⁹

8. See PHILIP A. KUHN, *REBELLION AND ITS ENEMIES IN LATE IMPERIAL CHINA* 37–39 (1980).

9. See WHITE PAPER: FREEDOM OF RELIGIOUS BELIEF, *supra* note 1, pt. IV (noting that European missionaries played roles in several attacks on the Qing government); JACK GRAY, *REBELLIONS AND REVOLUTIONS: CHINA FROM THE 1800S TO THE 1980S*, at 52–59 (1990).

In pre-modern eras of warfare, the sheer number of hands decided a war and therefore decided the fate of government. That is why for centuries, rulers of China, including kings, queens, emperors, and presidents, have all been suspicious of those religions or cults that appeared capable of gathering and influencing large numbers of people with their ideas.

As a result of this distrust, religion in China has always been dealt with via political or military means rather than through legal norms. With respect to religion, Chinese law has typically been little more than a vehicle for punishment and restriction. Historically speaking, the religious policies in China have generally consisted of strategies to pacify specific groups or forces or to ally with certain racial or ethnic groups to achieve social or military stability.

III. THE REASONS FOR WEAK CONSTITUTIONAL PROTECTION OF RELIGIOUS LIBERTIES AND RECENT IMPROVEMENTS

The Constitution of China provides that citizens have freedom of religion.¹⁰ However, the problem is that there has been no real heritage or tradition of a constitution in China, despite the huge progress achieved in the most recent twenty years. The first constitution in China's history was drafted by a Japanese scholar in 1908, near the end of the Qing Dynasty.¹¹ Bearing in mind China's inexperience with constitutions, the limited role of China's current constitution is reasonably understandable, perhaps even predictable.

An important structural and technical reason for China's weak protection of religion is the lack of judicialization of the constitution in China. The constitution has not yet been judicialized by China's court systems, meaning that a Chinese plaintiff cannot sue based on

10. The Constitution of 1982 provides:

Citizens of the People's Republic of China enjoy freedom of religious belief.

No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion.

The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state.

Religious bodies and religious affairs are not subject to any foreign domination.

XIANFA [Constitution] art. 36 (1982), *translated in* LIN FENG, CONSTITUTIONAL LAW IN CHINA 340 (2000).

11. LIN FENG, *supra* note 10, at 11.

the text of the constitution, nor can the court base its judgments or rulings upon the constitution.¹² Judicialization is a common legal practice in the West and has indeed proven to be modern society's most effective legal means for protecting civil rights, including religious rights. Without a strong tradition and deep respect for the constitution, and with constitutional rights not yet operative within the court system, violations of religious rights by low-level government agencies, particularly the police, are expected.

Nonetheless, there is currently an encouraging momentum behind the protection of civil rights in China. At the recent National Conference of Court System held in Beijing on December 22, 2002, Xiao Yang, Chief Justice of the Supreme People's Court of China, instructed the Chinese court system to pay attention to human rights protection and ensure that innocent citizens are not prosecuted. He also emphasized the fact that China has signed both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Chief Justice Xiao Yang also pointed out that better protection of civil rights is required.¹³ The Chief Justice's message presents a new and uncommon position for the Chinese judiciary, but it is a message becoming more common as China becomes integrated into the World Trade Organization. There are also open discussions of the judicialization of the constitution in China, although most of them are still at an academic and scholarly level. Such a momentum and development suggests that a new stage in the protection of human rights is approaching.

IV. FACTORS SUGGESTING THAT MAJOR DEVELOPMENTS IN RELIGIOUS LIBERTIES ARE EMERGING

A consistent pattern runs through the history of religious development in China: internal development of religious liberties has required a highly stable and confident regime that would take an open policy toward foreign and native religions. This rule is reflected by the ups and downs of Buddhism in China.¹⁴ Otherwise, the major

12. *Id.* at 303-04.

13. See <http://www.xinhuanet.com> (last visited Dec. 22, 2002).

14. Buddhist theology was often at odds with Imperial policy. See RELIGION UNDER SOCIALISM IN CHINA 31-32 (Luo Zhufeng ed., Donald E. MacInnis & Zheng Xi'an trans., 1991).

development of foreign religions in China has always been a direct result of military conquest, such as the development of Christianity following the Opium War in the mid-nineteenth century and the introduction of Islam to minorities in northwestern China several centuries ago.¹⁵

Chinese scholars agree that China is now at the economic peak of its known five thousand year history. This presents a unique historical opportunity for a major breakthrough in religious policy in general, but it cannot be taken for granted that this economic prosperity will bring with it cultural openness and religious freedom.¹⁶ For example, the Qing Dynasty achieved enormous economic prosperity and productivity throughout the eighteenth century and the first half of the nineteenth century, but the Qing regime made no political or cultural progress due to its repressive and feudal heritage. The Qing Dynasty was notorious for the imprisonment or execution of intellectuals for their writings. The result was the quick degeneration and fall of the empire in the face of advanced Western military weapons and tactics, as well as under the combined fires of modern revolution and old style uprising that characterized the last two decades of the Qing Dynasty rule. This was a contrast to what happened during the same period in Japan, where cultural and political reforms were in step with the country's economic progress.

Current factors and developments that signify an impending major breakthrough in religious development in China include the following:

1) The tide of Chinese students studying abroad, which began in the early 1980s, has exposed the most highly educated group of Chinese adults to the modern religions of the world.¹⁷ Some of these

15. See Chan Hoiman & Ambrose Y.C. King, *Religion, in* UNDERSTANDING CONTEMPORARY CHINA 343-45 (Robert E. Gamer ed., 1999) (noting that Christianity did not take root in China until supported by the military presence of Britain, Germany, France, and the United States); RELIGION UNDER SOCIALISM IN CHINA, *supra* note 14, at 20 (stating that ten ethnic nationalities had converted to Islam by the seventeenth century).

16. See INFORMATION OFFICE OF THE STATE COUNCIL OF THE PEOPLE'S REPUBLIC OF CHINA, WHITE PAPER: THE PROGRESS OF HUMAN RIGHTS IN CHINA pt. X (Dec. 1995), available at <http://www.china-un.org/eng/7247.html> (emphasizing that "world peace and development . . . [are the] indispensable prerequisites for the universal realization of human rights and basic freedoms").

17. The Chinese Ministries of Education and Personnel report that some 460,000 Chinese students are currently studying in 103 countries. Approximately 150,000 of these students attend schools in the United States, while significant numbers are also studying in the

Chinese students have been baptized abroad and have brought their chosen religions back to China. Even though the majority of Chinese students abroad would not and have not converted to a new religion, they return to China much more open and knowledgeable about world religions than Chinese people have been at any other time in China's history.

2) The continued inflow of foreign investment,¹⁸ along with foreign investors who bring their own religions to China, has tremendously influenced religious development in China in the same way that foreign capital is reshaping the pattern and structure of China's economy.¹⁹

Both the Chinese students that have studied abroad and the white-collar employees of foreign companies in China are elite groups in today's China. These individuals typically have higher incomes, are spiritual pioneers, and are highly educated. These facts explain why Christianity in particular no longer fills its historical role as merely a religion of the poor. It is now becoming popular among those who represent the future of Chinese society. It is important to remember that the first president and father of modern China, Sun Zhongshan, was himself a Christian, as was his successor, Jiang Jieshi. In fact, among this young and elite group in China, Christianity is now more of a new lifestyle than a serious religious commitment. For many Chinese Christians, attending church is just a part of the lifestyle combination that includes going to McDonald's and having a Coke.

3) Most of the foreigners coming to work in China hold managerial or professional positions and generally qualify as a role-model class (although there are naturally a few drunkards and troublemakers). The religions and beliefs of these foreigners are respected and protected, and they attract local curiosity. These foreign individuals exert extensive influence over local Chinese

United Kingdom, Australia, Canada, New Zealand, the Netherlands, Singapore, Germany, and France. See *Chinese Studying Abroad Top the World*, XINHUA GEN. NEWS SERVICE, June 18, 2002.

18. Recent data show that in the year 2002, China surpassed the United States as the largest capital inflow market in the world. See *China: Foreign Investment Grows*, N.Y. TIMES, Jan. 15, 2003, at W1.

19. See INFORMATION OFFICE OF THE STATE COUNCIL OF THE PEOPLE'S REPUBLIC OF CHINA, WHITE PAPER: FIFTY YEARS OF PROGRESS IN CHINA'S HUMAN RIGHTS § 2 (Feb. 2000), available at <http://www.chinesehumanrightsreader.org/governments/2000wp.html>.

employees of the foreign companies and joint ventures so prevalent in China.

V. THE SOCIAL NEED FOR HEALTHY RELIGIOUS BELIEFS

More and more intellectuals in China believe that a healthy religious community not only meets the spiritual needs of the people but is in the interests of the nation as well.

Following the cultural revolution that haunted China during the 1960s and 1970s, social values and ethics in China deteriorated and have not yet recovered.²⁰ This is a grave concern for the society. China's departure from Soviet-style ideology, along with the introduction of the market economy two decades ago, has left a vast spiritual void of belief and faith. Such a historical mess of emptiness and faithlessness has resulted in degenerated values and moral standards, and society feels the pain. Social needs and human nature are now calling for those with healthy beliefs to fill this void. A recent survey taken in Shanghai reported that those young people with prevalent religious beliefs record a much lower rate of criminal activity or security violations than do those individuals with no religious beliefs.

All of the above-mentioned factors, both internal and external, suggest and forecast a major breakthrough in the development of religion in mainland China.

VI. FALUN GONG IS AN EXCEPTION

The government's treatment of Falun Gong should be regarded as an exception to the general direction of religious policy in China. Indeed, some people in China have questioned the way government agencies have handled Falun Gong on several occasions, with some of them believing that the agencies may have overreacted, just as many Americans question the way the FBI handled the Branch Davidians in Waco, Texas, ten years ago. However, most intellectuals in China regard Falun Gong as a dangerous and manipulative superstition rather than a religion. Falun Gong's curious doctrine has resulted in several cases of insanity, suicide, and homicide among its

20. See WHITE PAPER: FREEDOM OF RELIGIOUS BELIEF, *supra* note 1, ¶ 10.

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followers.²¹ Few governments would likely tolerate a confrontational force like the one presented by Falun Gong, regardless of its depiction as a religion.

VII. CONCLUSION

We in China reasonably believe that as the younger and modernized generation steps to the forefront in China, and as the economic structure of China becomes more internationalized, healthy religions will continue to develop, which will benefit both the adherents to these religions and the nation as a whole.

21. See the official website for the Chinese Mission to the United Nations at <http://china-un.org/eng/c3220.html>, which lists criminal activities carried out by Falun Gong.

