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**CHRISTIANITY IN
CHINESE PUBLIC LIFE**

Religion, Society, and
the Rule of Law

**Joel A. Carpenter and
Kevin R. den Dulk**





Christianity in Chinese Public Life

Palgrave Studies in Religion, Politics, and Policy

Series Editors: **Ted G. Jelen** and **Mark J. Rozell**

A generation ago, many social scientists regarded religion as an anachronism, whose social, economic, and political importance would inevitably wane and disappear in the face of the inexorable forces of modernity. Of course, nothing of the sort has occurred; indeed, the public role of religion is resurgent in US domestic politics, in other nations, and in the international arena. Today, religion is widely acknowledged to be a key variable in candidate nominations, platforms, and elections; it is recognized as a major influence on domestic and foreign policies. National religious movements as diverse as the Christian Right in the United States and the Taliban in Afghanistan are important factors in the internal politics of particular nations. Moreover, such transnational religious actors as Al-Qaida, Falun Gong, and the Vatican have had important effects on the politics and policies of nations around the world.

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CHRISTIANITY IN CHINESE PUBLIC LIFE: RELIGION, SOCIETY, AND THE RULE OF LAW

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Edited by

Joel A. Carpenter

and

Kevin R. den Dulk

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CHRISTIANITY IN CHINESE PUBLIC LIFE

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*To Bob and Alice Evans
Wonderful mentors*

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Introduction

Joel A. Carpenter and Kevin R. den Dulk

Abstract: *In this chapter, the editors introduce the purpose of the volume: to examine how the dynamic growth of religion, coupled with dramatic social and economic change, is reshaping the place of religion in Chinese public life. The editors give special attention to the broad themes of religion in civil society, religion as a force for social capital development and democratization, and the emerging tensions between religion and the state that have led to increasing calls for rule-of-law reform to foster religious freedom.*

Keywords: China; civil society; democratization; religious growth; rule of law; state regulation

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In a mere 30 years, China has emerged from pervasive poverty to become a world economic power. Along the way, Chinese society has experienced fundamental changes, notably a major migration from rural to urban environs, the rise of a well-educated and assertive urban middle class, and a remarkable resurgence of religious interest. Conventional wisdom is that the modern Chinese are very this-worldly and pragmatic people who are not generally interested in religion. But new social surveys and other demographic analyses in China show that at least a quarter of Chinese claim an affiliation with a major religious tradition. This would amount to over 300 million people.¹ Given the fairly recent political history of China, which saw the official promotion of atheism and the active suppression of religion, this is a very surprising news. It confirms what careful students of contemporary China have been saying for the past 25 years—that there has been a major revival of religious interest. There is a growing sense among national leaders that widespread religious adherence—among Buddhists, Daoists, Catholic and Protestant Christians, and Muslims—is in China to stay.

Yet Chinese officials have been quite conservative in regard to social and religious policies. They have an abiding concern for social harmony and a deep apprehension of social or political fragmentation. So at the same time that Chinese leaders determinedly welcome foreign business investments and homegrown entrepreneurship, they are deeply resistant to the inroads of foreign influence in the communication of ideas and issues, and to homegrown religious initiatives. The government still exerts major efforts to control the flow of ideas and religious activity, basically for the same reason that it punishes political dissidents. It sees organized religion as a potential threat to its authority.

Therefore the Chinese government continues in its aim of actively managing the nation's religious affairs. Three times since the era of reform began in 1979 the Chinese government has issued detailed administrative guidelines for the control of religion, the latest being the 2004 document titled "Regulation of Religious Affairs." This document declares that the national policy is to protect freedom of belief, but the reason for doing so is "to unite all people, regardless of their faith or lack of faith in religions, to better exert their will and energy toward the common goal of building up a powerful modern socialist nation."² Thus the document continues all of the limitations and requirements of the past, notably daunting registration procedures; bans on public

assemblies, new buildings, and religious training for children; control of clergy and doctrine; and tight limits on religious publishing and international exchanges.³

One of the major problems with these regulations, claims Prof. Liu Peng, a senior researcher at the Chinese Academy of Social Sciences, is that they come in the form of administrative directives, and they do not have the same status as enacted law. He claims that there never has been a law enacting the protection of religious belief, as declared in the national Constitution. Because the terms used in the regulations, such as “normal religious activities” and “dangerous cults,” are not defined, Liu argues, “they can be broadly and unpredictably interpreted by the State.”⁴ In an interview to the *China Daily*, Liu proposed comprehensive legislation that would allow all religious groups to register easily with the government, be guaranteed of freedom of religious belief, and then “compete freely—in a way similar to the market economy—with the government intervening only when a law-breaking attempt occurs.”⁵

Can China achieve legal reform for the sake of religious freedom? One would think that Americans, both in government and in freedom-promoting nongovernmental groups, would want to do all they could to encourage such reforms. But according to many experts of US-Chinese affairs, American postures toward China and its religious affairs have been an important part of the problem. Chinese fears of foreign intrusion in religious affairs are based on experience with Western missions, which were protected by imperial power and coercive treaties.⁶ When American religious groups raise alarms about religious persecution in China, or try to bring in Bible or money, they summon up memories of this foreign imposition of Christianity. When the American government raises concerns about religious human rights issues, again the Chinese government’s counter-charge is meddling in domestic affairs.⁷ Chinese leaders need not look far to see religion’s power to subvert social harmony. They recall the Catholic-inspired labor uprisings in Poland in the 1980s, and even closer at hand are the religiously inspired nationalist movements in two Chinese-controlled lands: Buddhist Tibet and Muslim Xinjiang. Officially sanctioned atheism has little force or power in China these days, but Chinese leaders with a sense of history still worry about foreign intervention and religiously inspired revolts. Even so, there are now increasing calls from Chinese scholars, including those working in government institutes, for a reform of the relationship among religion, society, and the state.

From the West, we hear about the ferment of ideas and values regarding Chinese public life mostly in terms of two dynamics: dissidents' resistance and the government's restriction and repression. The dominant image we have of religious life is of the unregistered "house churches," and we turn our attention to them particularly when, as in the case of the government's reaction to the Shouwang Church's public meetings in Beijing, they are being suppressed. Likewise the circulation of ideas about government reform: we hear of them chiefly in news of dissident intellectuals who feel the heat of government repression, such as with Chen Guangcheng, the blind lawyer and civil rights activist who escaped house arrest and fled to the US Embassy in April 2012; or in the case of Liu Xiaobo, the outspoken, frequently arrested literary critic and advocate for multi-party democracy, who was awarded the Nobel Peace Prize in 2010.

What we want to show in this book, however, is that the interaction of religion, society, and governance in China is much more subtle and complex than these common tropes and images would suggest. Likewise, the scenarios for change on this front are likely to be gradual and to come from less-dramatic sources. Beyond the well-publicized dissidents and public protests are many creative intellectuals and get-it-done pragmatists who are seeking uniquely Chinese ways to address Chinese problems. Rather than dissidents, who continually push the envelope and provoke government reaction in order to publicize their concerns, we find pragmatic doers and more thoughtful reformers, working both inside of and beyond governmental organizations. Some are consciously aiming for change, others simply trying to find the ways and means to lead fuller lives. Their activity at the intersection of religion, society, and governance in China is no less fascinating for being low key and subtle.

Religion, democratization, and civil society

Whatever the form of advocacy in China, whether from headline-grabbing dissidents or from behind-the-scenes reformers, there is much at stake. Most obviously the work of reform matters to individuals who desire greater space and stability for the practice of their religious faith or the expression of other ideas and values. But reform on this front also has broader implications for Chinese political development. One key

question about religious freedom in China circles around the prospects for democratization. Does the denial of religious freedom exact a price on this process? Brian Grim and Roger Finke, in their groundbreaking study of religious freedom and global governance, suggest there is a high price indeed. They show that freedom to practice religion is highly correlated with other indicators of a healthy democracy, or at least the possibility that such a democracy will emerge.⁸ Conversely, repression of religion is a marker of a stalled or downright moribund democratic movement.

Of course, such findings hinge on how one understands the concept of “democracy,” one of the most contested concepts in the entire sweep of political history. In China’s case, undoubtedly, party stalwarts would insist that the Chinese model of democracy—a “people’s democracy”—means a single party rules on behalf of the people, even when the people themselves have little input into how they are ruled. Clearly this is not merely the position of a few Maoist throwbacks; the Chinese Communist Party (CCP) remains pervasively intertwined with China’s political institutions at all levels, and national party leaders have no incentive—and have expressed little interest in public—for moving away from the model of one-party rule. During these past three decades of economic openness, the CCP has proven remarkably adaptive in maintaining its exclusive status as the political vanguard of the People’s Republic.⁹

But even reformers who wish to break the CCP’s hold might contest assumptions that make religious liberty a condition of democratization. They could point to examples of China’s slow movement toward electoral democracy, especially at the local level. Such reforms emphasize the input of the people through open and competitive elections, but they do not commit the Chinese state to a liberal model of democracy that couples inclusive political institutions with a wide array of substantive rights against the state. Democracy, in this minimalist electoral sense, need not imply a liberal idea of religious freedom.

Not only are basic definitions of democracy sharply contested, but so too is the sequencing of democratization. One school of thought suggests there is an “East Asian Model” of democratization. According to this view, in places such as South Korea, Taiwan, or Japan, a time of substantial economic growth overseen by an authoritarian regime generally precedes the development of rule of law and civic and political rights.¹⁰ The theory is that a wealthier regime will have both the capacity and

perhaps the motivation to invest in the rule of law, particularly by establishing relatively independent legal systems. Nascent constitutionalism and political rights will flow out of that investment. So even if religious freedom is a key goal in China, achieving it requires patience while the wheels of economic and institutional development slowly turn.

No doubt such institutional development is a necessary ingredient of the freedom to practice religion. But it is also insufficient, according to recent work in comparative politics. The contemporary version of modernization theory presented by Ronald Inglehart and his colleagues suggests that economic development has a cultural effect that pushes institutions to act on behalf of the mass population's emergent values.¹¹ The process is not deterministic; it is shaped by a host of country-specific variables. But it does move in a general trajectory: first, economic development gives more people a piece of the pie, which enables them to move beyond an overriding focus on basic needs to an emphasis on self-expression (e.g., religious practice). They seek "emancipation" from structures that inhibit their newfound freedom, and these emancipatory values are often directed at the state in the form of calls for greater rights and participation. The state, in turn, recognizes that it is costly to fight the mass public in its demands for greater freedom, so political leaders relent at least to the point that they placate their constituents.¹²

Collective action is a vital tool for achieving this shift from survival to self-expression. Individuals, acting on their own, can do little to assert their rights and freedoms over against the state. But groups of individuals, brought together by common interests and buoyed by their newly acquired resources, have great political potential. Put another way, as people develop emancipatory values, they also cultivate the associations and organizations of civil society that foster collective action to manifest those values. As they work within civil society, they begin to acquire skills and dispositions—that is, "social capital"—that are crucial to democratic participation.¹³ More specifically, they develop a preference for widespread participation that "engenders a culture of trust and tolerance in which people cherish individual freedom and self-expression and have activist political orientations."¹⁴

Religion, of course, is a central player in civil society in every corner of the globe. It also often plays a vital role in helping citizens "mediate" between their own interests and the competing interests of the state.¹⁵ Under some circumstances, religion can also establish key conditions

for democracy to surface and thrive.¹⁶ Indeed, the democratic potential for religion's role in contemporary civil societies may be unprecedented. As a recent global study of religion and politics suggests, “[M]ajor religious actors throughout the world enjoy greater capacity for political influence today than at any time in modern history—and perhaps ever.”¹⁷ One of the important themes of this book, then, is the various ways in which religion has played a role in an emergent Chinese civil society, notably its fostering of countless congregations and social service organizations.

The processes of economic change, then, have profound implications for understanding religion-state relations in China. The state's own priority of economic growth has already increased the capacities of religious believers, in some unanticipated ways. The enhanced legal basis for transacting commercial real estate, for example, has made it far easier for unregistered churches to acquire larger meeting places. Given their increased scope of activity and public visibility, it is no surprise that advocates both within China and transnationally have mobilized for greater religious autonomy and freedom of self-expression. But this development poses a dilemma for the state. On the one hand, if the state grants greater autonomy by easing its restrictive posture, religion will likely become a competing locus of power. On the other hand, if the Chinese state responds to faith-based mobilization with repression, it risks stiff resistance and public incidents, which undermine the Chinese desire to maintain “social harmony.”

One way out is to develop a strategy between the horns of the dilemma. While the government has a legal framework for sanctioning religious practice, officials often look the other way when religious groups refuse to submit to the framework. This “gray” market for religion exists in technical defiance of government decrees, but the state's pragmatic toleration of the market maintains social harmony.¹⁸ Chinese officials rarely push religious groups into the black market until they become large, organized, and in some way aggrieved—that is, a potential threat to the government itself.

In addition to tolerating gray religious markets, the government might attempt to co-opt civil society itself. The sociologist Fenggang Yang describes such efforts as the dynamics of religious “oligopoly.”¹⁹ By supporting a few select religious traditions, the state provides options within civil society for religious self-expression, thereby accommodating one of the key results of economic and social development. At the same time,

the state can shape the types of religious expressions most amenable to its own interests.

It remains to be seen whether Chinese officials can successfully maintain this posture of limited toleration and co-optation of civil society. Certainly many of the chapters in this volume suggest that the state faces a considerable challenge. For one thing, it is an immense cost in terms of money and time to monitor religious activity of such vast scope and diversity. But it is also an open question whether the people themselves, as they develop their own civic skills and social capital, will tolerate the government's efforts to channelize religious beliefs and practices.

What is becoming clear is that more or less quietly, Chinese people are finding ways to practice religious faith. The current state provisions for religious self-expression are inadequate to the demand, and in many instances they too have become hosts to "gray market" activities that skirt state controls. How long will the Chinese people and the Chinese government make do with a broken system for addressing the religious sector? Chinese people are adept at finding provisional ways and means to do what they most want to do. And their would-be reformers have learned to be patient. "Think of this as a thirty-year project," one of them said. But we do not mistake patience with passivity. Indeed, the chapters that follow show a variety of energetic approaches all around. Do these activities amount to a nudging forward of democratization? We take a summary look at that question as well. Therefore we invite you to come and explore these matters with us.

Notes

- 1 Conrad Hackett and Brian J. Grim, *The Global Religious Landscape* (Washington, DC: Pew Research Center, 2012), 46. This number does not include an additional 20 percent of the population that practices some form of folk religion.
- 2 Quoted in Liu Peng, "Religious Legislation in China: Historical Evolution and Recent Developments," *Religious Studies Review* 1:1 (January 2007): 63.
- 3 Carol Lee Hamrin, "New State Regulations on Religion: The Bargaining Begins," presentation at conference, "Religion and Cultural Change in China," February 1, 2005, The Brookings Institution, Washington, DC. For additional background, see Pitman B. Potter, "Belief in Control: Regulation of Religion in China," *The China Quarterly* 174 (June 2003): 317–337; and

- Mickey Spiegel, "Control and Containment in the Reform Era," in Jason Kindopp and Carol Lee Hamrin, eds, *God and Caesar in China: Policy Implications of Church-State Relations* (Washington, DC: The Brookings Institution, 2004), 40–57.
- 4 Liu Peng, "A Crisis of Faith," *China Security* 4:4 (Autumn 2008): 30.
 - 5 Liu Peng, "Rule of Law Best Help to Freedom of Faith," *China Daily*, December 12, 2009.
 - 6 Daniel H. Bays, "A Tradition of State Dominance," in *God and Caesar in China*, 25–39.
 - 7 Carol Lee Hamrin, "Advancing Religious Freedom in a Global China," in *God and Caesar in China*, 165–185.
 - 8 Brian J. Grim and Roger Finke, *The Price of Freedom Denied: Religious Persecution and Conflict in the Twenty-First Century* (Cambridge: Cambridge University Press, 2011), ch. 7.
 - 9 Bruce Dickson, "Dilemmas of Party Adaptation: The CCP's Strategies for Survival," in Peter Hays Gries and Stanely Rosen, eds, *Chinese Politics: State, Society, and the Market* (London: Routledge, 2010), 22–40. For a journalistic account of the party leadership, see Richard McGregor, *The Party: The Secret Work of China's Communist Rulers* (New York: Harper, 2011).
 - 10 See the summary of this position in Randall Peerenboom, *China Modernizes: Threat to the West or Model for the Rest?* (New York: Oxford University Press, 2007), 31–32.
 - 11 Ronald Inglehart and Christian Welzel, "How Development Leads to Democracy: What We Know About Modernization," *Foreign Affairs* 88:2 (March/April 2009): 38.
 - 12 Inglehart and Welzel give a fuller treatment of this sequence in *Modernization, Cultural Change, and Democracy* (Cambridge: Cambridge University Press, 2005).
 - 13 Robert Putnam, the most important contemporary scholar of social capital, developed his ideas through comparative analysis of political cooperation and conflict. See Robert Putnam, *Making Democracy Work: Civic Traditions in Modern Italy* (Princeton, NJ: Princeton University Press, 1993).
 - 14 Inglehart and Welzel, "How Development Leads to Democracy," 40.
 - 15 A classic statement of civil society as a set of "mediating structures" is Peter L. Berger and Richard John Neuhaus, *To Empower People: The Role of Mediating Structures in Public Policy* (Washington, DC: American Enterprise Institute, 1977).
 - 16 Robert D. Woodberry, "The Missionary Roots of Liberal Democracy," *American Political Science Review* 106:2 (May 2012): 244–274.
 - 17 Monica Duffy Toft, Daniel Philpott, and Timothy Samuel Shah, *God's Century: Resurgent Religion and Global Politics* (New York: W.W. Norton, 2011), 49.

- 18 Fenggang Yang, "Red, Black, and Gray Markets of Religion in China," *Sociological Quarterly* 47 (2006): 93–122.
- 19 Fenggang Yang, "Oligopoly Dynamics and the Triple Religious Markets in China," in Allen Hertzke, ed., *The Future of Religious Freedom: Global Challenges* (New York: Oxford University Press, 2013), 128–156.

1

Remaking the Civic Space: The Rise of Unregistered Protestantism and Civic Engagement in Urban China

Li Ma and Jin Li

Abstract: *Two waves of social change converge in contemporary China: the growth of an educated upper middle class in urban areas, and the growth of Christianity, especially Protestant Christianity. Among Chinese Protestants, the great majority appear to be in unregistered “house churches.” Since the mid-2000s, this religious movement has been attracting urban professionals, technicians, and intellectuals. And this change, in turn, has redirected the house church movement more into the public sphere. This study examines the views and actions of urban, house church Protestants and explores how their faith shapes their engagement in public life. The authors find that unlike the quiet, privatized faith of earlier house church people, the new urban house churches encourage public assertiveness and may help build civil society in China.*

Keywords: Chinese Protestants; civil society; house church; public life

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Unregistered Protestantism: numbers surging but still illegitimate

Since the mid-1990s, Protestantism in mainland China has become a prominent part of religious revival in this post-communist country.¹ The majority of these Chinese Protestants attend the non-state unregistered churches (also known as “house churches”), which have outnumbered the state-sponsored Three-Self Patriotic Church by an estimated ratio of ten to one.² To explain the growth of unregistered Protestantism, sociologists of religion have proposed a few causes: search for purpose after the ideological bankruptcy of communism since the 1989 crisis; rampant moral decay during marketization; mass conversion in rural China through healing miracles; and reliance on high-trust, closely knit social networks in recruiting.³

Following the waves of “rural revivals” since the mid-1990s, the rise of urban unregistered Protestantism since the mid-2000s has become a new phenomenon and awaits further explanation. In urban China since 2004, two recent macro-institutional changes have facilitated this development: the passing of private property rights legislation in 2004 and the real estate market boom since 2005. With these structural possibilities and with the number of believers dramatically increasing in cities, more and more unregistered churches began to move out of private housing units and to lease commercial apartments or office buildings, which led to more social visibility and in turn to an even larger scale of conversion. We observe a regular pattern for these church groups: an increase from roughly a dozen home-gathering believers to over a hundred attendees in just two–three years. The inclusion of newly converted urban elites, including professionals, technicians, and intellectuals, also marks a significant demographic change in the membership in the unregistered churches, a change with socio-political significance.

With increasing numbers of educated, upper middle class people in metropolitan areas converting to Protestant Christianity, it is more likely that personal faith will become integrated with social and political affairs, because this social and economic group is more actively engaged with the public sphere. Their active presence in public space and their more explicit expressions of faith are helping to diffuse Christian values into civic discourse and to provide an alternative to the official ideology. These elite-led Protestant groups have also reoriented the unregistered churches on an organizational level toward more openness and more

active social engagement. This change marks an interesting shift in Christianity's role among elites. In the late 1980s it was more of a mere "cultural phenomenon" that piqued interest among Chinese intellectuals. More recently, we observe, these urban religious groups are putting more emphasis on social engagement and are becoming more adept in applying their theology to societal concerns.

Another interesting factor in the growth of these groups is internet use. Internet communications have accelerated the rate of spread of religious basics and testimonies, even including church contacts and program information. Since the early 2000s, despite internet censorship, such internet-mediated outlets as personal blogs, online forum networks, and public figures' conversion testimonials have powerfully facilitated the spread of the Protestant faith to the more general public. Now in urban China, if someone becomes interested in Christianity, it is easy for him or her to find a group of believers through online resources, which is a situation unimaginable even a decade ago when close personal referrals were required. Furthermore, the popularity of anti-censorship software has also reshaped young people's perceptions of the official ideology delivered through state-controlled media. A huge gap now exists between the internet-savvy and those who mainly access information through state-controlled media. The more informed younger generation tends to use Twitter, Facebook, and Gmail accounts with the help of anti-censorship software to access outside information. Even the most popular Sina Weibo site (micro-blogs on Sina.com, China's equivalent to Twitter) has become a convening venue for internet activism.⁴ Many of these cyber spaces have become sites of evangelism.

Comparatively speaking, the emerging urban Protestant groups have become agents of change in all walks of life amid an otherwise stagnant political scene. For example, a newly converted Protestant journalist Shen Ying wrote a news story titled "Little Does Anyone Expect That More People Are Becoming Christians" on *Southern Weekend*, the newspaper with the largest readership and popularity in China, with a picture of the later evicted Shouwang Church, one of the largest unregistered churches in Beijing. News stories like this have not been seen since 1949. Like Shen, many educated believing journalists, actors, lawyers, and businessmen are making their religious convictions known in all areas of public life. Their faith compels them to do things differently than what the post-communist state requires, and their independent actions are attracting increasing attention from the public.

Our fieldwork discovers that the general public now has a better awareness of Christianity compared to a decade ago. Before the 1980s, the communist state had deliberately erased traces of Christianity from people's daily life, so an average Chinese may not have had the faintest idea of what a church is, or where to buy a Bible²; but today many Chinese hear about the presence of house churches, once an invisible population. Most urban residential communities host a few hymn-singing groups on Sundays. But unregistered Protestants are still perceived as having a kind of alien identity. Culturally speaking, to the modern Chinese, Christianity has always been an alien culture, a representation of Western-ness. So to convert to Christianity means turning away from one's Chinese roots. Chinese Protestants are viewed as converts to a foreign religion. Politically, this sentiment is due to decades of atheist education and political indoctrination by the state.

During the recent rise of urban Protestantism, state restrictions that discourage the forming of independent associations, either religious or non-religious, have remained in place. The word "unregistered" reflects the fact that this part of Protestantism remains beyond the acceptable boundary drawn by the state. Although many of these groups do not gather in private houses to be properly named "house churches" anymore, they still remain illegitimate in legal status. However, these religious groups no longer experience the same level of persecution that their predecessors endured in earlier decades, including both harsh imprisonment and even some no-trial executions. We observe that reported conflicts between the unregistered congregations and government officials now mainly involve the use of worship space. Police harassment or evictions from worshippers' leased facilities are very common experiences. A number of these ousted congregations then engaged in outdoor worship, a forbidden activity, as a form of disobedience. The events took place in various regions, from rural Shanxi to major cities such as Beijing, Shanghai, and Chengdu, and they gained local and global publicity, with the unintended effect of promoting the visibility of Protestant groups among urbanites. Given the heritage of secrecy or at least discretion among house church people, such activity is a remarkable departure. So what does all this mean for religion and public life in China?

In this chapter we examine these actions by unregistered Protestants in urban China and ask how their engagements with the civic space are motivated by their faith. It is the result of a three-year ethnographic study (from 2010 to 2013) that was designed to focus on how religious

belief relates to identity formation and action motivation in the context of China's current dynamic transformation. Over the course of the study, we examined how new institutions come into being and become involved in collective action. We seek to understand the relationship among individual spirituality, collective action, and social change.

Our analysis is based on participant observation and in-depth interviews in a few Chinese cities. The hidden nature of these religious networks makes it difficult to get a random sample for quantitative analysis, so we adopted a qualitative approach by trying to get a diversified group of believers from all walks of life and age groups. We believe that in-depth interviews can better reveal these micro processes of social change, as our individual case studies will later show. Over 90 in-depth life-history interviews were conducted in two cities (one highly marketized coastal metropolitan area and one less-developed inland city) and among over 40 unregistered church groups. These interviews were taped and ranged from one to four hours. We used a semi-structured interview outline, including life history, conversion and spirituality, and church and civic involvement. In theorizing, we draw on prior research, institutional theories, and sociology of religion to develop an explanatory framework in understanding how religion motivates other-oriented social action and collective action, which would potentially accumulate to foster macro-level social change. What we have found is that the religious activities undertaken and values transmitted by Christian individuals, congregations, and faith-based associations have reshaped the local civil space in significant ways. Our analysis here uses data from interview transcripts translated from Chinese into English. To ensure anonymity, we use pseudonyms for all our interviewees.

The life and death of civil society in China

Before 1949, both governmental and social organizations coexisted in Chinese society along with a primitive civil society. Local governments in the Republic of China had a relaxed policy toward social organizations (commercial guilds, churches, and even gangs in cities, and the rural gentry class, etc.). For example, in the cities, urban residents enjoyed some political and religious freedom because the Republican government was not very hostile to religion. Individual memoirs show that many of their military and other officials were baptized Christians.⁶

Despite the Anti-Christianity Movement in 1920s, the nationalist government had less hostility toward Christianity than the succeeding regime. Evangelism and church-planting were allowed, and it was a time of missionary expansion. In the countryside, the rural gentry class historically acted as governing entities in coordinating local affairs, in providing for the public good, and governing either through local customs or moral norms within their own religious traditions. Thus there was an active civil society before the 1950s.

After 1949, the civil space was compressed to a minimum through a wave of violent communist revolution. The communists sought to destroy the “old China” and rebuilt a new social order through the nationalization of key resources, such as land, capital, and labor allocation. The *hukou* (household registration) system was installed to forbid residential mobility even during famine years. The new regime also eradicated free market enterprises such as commercial guilds and private businesses. In the countryside, the gentry class, a pillar force of the civil society there, was completely wiped out through violent executions. The communist rule directly penetrated into rural villages by staffing the most politically loyal cadres as watchdogs for any social activity outside of their direct control. From the 1950s to the 1970s, self-governance in urban and rural communities was not allowed. Most importantly, social trust and interpersonal networks were undermined after a wave of radical political movements. This period also nurtured a political culture which rewarded informing on dissidents and giving political loyalty to the Communist Party.

The communist rulers also utilized the US-Korean War to propagate patriotic fervor against “imperialist infiltration.” It was also during the Maoist reforms in the 1950s that Christian groups became the targets of suppression due to their connections with foreigners. A few pro-communist religious leaders were selected into a committee which later became the Three-Self Patriotic Movement. It was an effort to nationalize Christianity, both Protestantism and Catholicism, under the control of communist rulers. Those who refused to join became targets of public denunciations and state enemies. The imprisonment of two religious leaders marked the state’s determination to eradicate Christianity: Watchman Nee, leader of the Protestant group Little Flock, and Kung Pin-mei, bishop of Shanghai. Numerous Christian leaders were imprisoned or sent for “re-education” in harsh labor camps for 20 years. It is important to note that this whole process of communist campaign was assisted by a powerful propaganda machine. The media was strictly controlled

by the state, so Christianity disappeared from public discourse. The non-conforming believers formed into small secretive groups gathering at private homes, for there was no public space in which to gather and worship. The adverse political context thus conditioned house churches to embrace quietism and to limit their influence to personal spiritual growth in small groups.

Since 1978, international competition forced the Chinese communist rulers to “open up” to a market economy. Systems of control in urban and rural communities were loosened after the disintegration of urban work units and rural communes. Private economy re-emerged and became the engine of China’s rising GDP. However, the average Chinese has lived a paradoxical reality—one can enjoy the major comforts and conveniences of modern capitalism economically, but is not able to form into independent social associations. Take non-governmental organizations, for example. Unlike civil society organizations in other parts of the world where they vie for recognition as authentic representatives of their constituencies, these groups in China struggle to survive, sometimes at the expense of sacrificing their mission goals in order to win favor, or at least to avoid disapproval, from the government. Like unregistered churches, most Chinese NGOs are not considered legally legitimate entities. In times of political tension, local governments retain the right to close them down. Cyber associations and networks are under strict state censorship too, as discussed earlier. Since the Beijing Olympics in 2008, the state has installed many more “internet police” to control the cyber space. It has now become the most contentious civic sphere where citizen activism vies with state control.

Remaking the civic space: Protestant believers as institution builders

When interviewed by the *Economist*, Dr. Zhao Xiao, an economist and former Communist Party member, comments on being a Christian in mainland China:

Christians are willing to stay within the system [of the communist state]. Christianity is also the basis for good citizenship in China. Most Christians say that theirs is not a political organization and they are not seeking to challenge the Party. But they also say that clashes with public policies are

inevitable: for example, no Christian, one argues, would accept the one-child policy.⁷

As a young intellectual, Zhao (who is 38) is among the many elites who have lately been converted to Protestantism. These “clashes with public policies,” as he mentions, have given birth to groups of people who regularly engage in various disobedient practices. These informal groups, over time, become “institutions,” in that they have a shared line of thinking or body of thought, observable structures, and implicit or even explicit norms.

Through our three-year ethnographic study of unregistered Protestant groups in urban China, we discovered a few prominent practices by these Christians that are in fact acts of civil disobedience (Table 1.1). From the organization of unregistered churches, they have moved on to these other actions, such as quitting party membership as an open testimonial of conversion and breaking the one-child policy. Unregistered Protestant churches find support for these actions in their faith content or theology.

Like Zhao, many young believers mention the “one-child policy” as an example of disobedience after converting to Christianity. To 27-year-old Yuan,⁸ conversion brings a sudden realization of former “wrong” beliefs:

[The one-child family planning policy] never occurred to me as definitely wrong, until I became a Christian. ... Looking back, many things we took for granted are actually, by God’s standards, wrong. ... My belief taught me to think things through.

Conversion brings an ideological shift to many who personally experience such changes. Another informant, Du, a 29-year-old white-collar worker, also recalls his conversion as a “turn-around” from 20 years of communist education:

What faith brings me is a complete turn-around of my value system. I remember discussing with my classmates in college about whether communism could eventually come true. What you hear and read are all ambiguous, things like “the way [to communism] is bright yet it is also full of ups and downs.” When I look back on these, I know they result from media propaganda and, more broadly, the type of education we have received for so long.

This kind of ideological shift can shape how Christians understand their own nationalist sentiments. These sentiments can be triggered by

TABLE 1.1 Protestant practices that contradict public policies in China

Public policies and rationale	Disobedient practices by Protestants	Driving beliefs
Blocking information on Christianity in major state-controlled media	Cyber activism, by spreading personal testimony or Bible basics through personal blogs or micro-blogs (<i>weibo</i>)	Every Christian should follow the Great Commission
One-child family planning (to limit births by imposing contraception or abortion)	Having more children	God's command and blessing for multiplication in families
<i>Hukou</i> (to control mobility by classifying individuals into differential categories of citizenship rights)	Advocate for equal citizenship rights	All are created as equals before God our Creator
Atheist education (compulsory entry into the state-run education system with atheist-socialism curriculum)	Homeschooling, and unregistered (underground) Christian schools	Children ought to be brought up according to God's commands and standards in scripture
Nationalistic education (to impose political loyalty by educating school-aged children to take pride in wearing red ties and in singing "red" communist songs, tools of ideological indoctrination in the 1960s)	Refusing to wear red ties and sing red songs	Nationalism and pledging loyalty to a political party through quasi-religious rituals is idolatry
Communist party membership (a symbol of political loyalty to the regime)	Quitting the communist party membership by open announcement	Christians should only serve one Lord; they should not deny and always confess the name of Jesus
Three-self church structures (worship and evangelism are only allowed within the assigned meeting locations)	Establishing or joining unregistered churches (or "house churches")	Only Christ is the head of the church; the Great Commission, to worship and preach God's Word anywhere, everywhere
Harmonization strategies (silencing dissenters)	Speaking up against social injustice (especially in legal professions)	God calls Christians to defend the weak and oppressed

any combination of myriad characteristics including language, cultural values, shared history, and even songs. Around the sixtieth anniversary of the Communist Party of China in 2011, the state launched a “singing red songs” movement to cultivate political loyalty. Even primary school students are required to put on some public shows singing revolutionary songs, a way of demonstrating their “revolutionary descendent” identity. The five major religions also joined. It was quite a scene to see Buddhists, Three-Self Protestants, Catholics, and Muslims singing revolutionary songs on the stage. Some unregistered churches openly protested this blatant intrusion of communist ideology into individuals’ religious life.

Song, a 60-year-old who became a Christian after 1989, illustrates the effect of Christianity on ideological commitment. Once serving in a Three-Self Church choir, an incident made Song determined to leave the Three-Self and join an unregistered church.

Once when we were practicing singing, the pastor’s wife suggested that we sing the well-known revolutionary song, “Without the Communist Party, There Is No New China.” I was simply disgusted! I said to her, we are Christians, and we cannot sing this song. She said, well then you can leave here. I suddenly realized that there is something wrong with this church. But they elected me to be a committee member.... Later I joined an open house church, and it was a sensitive time. The Three-Self people came to talk to me. I responded, “While I was at Three-Self, I was safe, but my soul was not at peace. Now, although I am not safe ..., I have peace.”

In most cities, there has been a clear-cut boundary separating the Three-Self churches from unregistered churches. With the latter groups becoming more open since the 2000s, however, believers in the Three-Self system, even including pastors, can easily switch to the latter groups. The atheist state officials are concerned about a growing group that claims that there is a God. The new unregistered churches tend to be well organized, equipped with a coherent value system and often led by charismatic and unyielding leaders. Over time, these churches seem to organize more formally, with staffing structures and positions such as pastors, elders, deacons, and even name cards.

Before joining an unregistered church, 61-year-old Wang was a university professor and a Communist Party member. After her conversion, she decided to quit party membership by posting a declaration on the department bulletin board. She thought it a good way to give a testimony too. But her university cadres came to persuade her to “believe secretly.”

She showed them verses in the Bible saying that to be a Christian means publicly announcing one's faith. The cadres responded, "You Christians are strange; why can't you learn from other Buddhists and Muslim comrades?" Their persuasion efforts ended in vain, and soon Wang's home opened up for Bible study.

Sixty-five-year-old Meng has been leading an unregistered church, while holding a position in the city's Political Consultative Committee, an important political structure within the party system. Since he became a believer, every year he would submit a proposal for unregistered churches in the locality to get legal status. Meng says that since God placed him in this position, it is his basic duty to speak out for the church, although his proposal was turned down every time. During our three-hour taped interview, Meng says that "I could not act as an atheist in politics, while keeping my faith as a Christian. It should be one holistic thing, because our faith requires a coherent worldview."

Twenty-year-old college student Liu echoes this view concerning the holistic nature of one's faith. Since high school, she has been reading for a contending worldview other than what is taught in the state-controlled education system. She converted in her third year of high school. After joining a college in the Southwest, she soon became a part of an unregistered church there. At church she is taught to become a good citizen who actively cares for the local community, so she volunteers every Saturday at a faith-based NGO. Liu explains the strong impact of this kind of coherency:

The first time I read a book written by a Christian scholar, I realized that I have never found such a complete and coherent outlook on the world and human thinking. The book used a lot of verses from the Bible. I have never read these in any Chinese book. So I was curious and looked up more on the internet, including some sermons....Christian faith differs from all other theories and thought systems I was taught, mainly in that it is not separated from your life. At school, you may talk about morality the first second, and the next thing you do is to cheat in an exam....After I join this church, I learned that faith is not separated from everything else....A church has to be open....China has never seen anything like the house church, a special kind of NGO, but it also oversees all areas of one's life, which cannot be suppressed.

Although still in her junior year of college, Liu is waiting on God's calling for her career, hopefully in Christian education, as she says. She

sees “many possibilities in building Christian institutes, schools and curriculum.” This wider vision is shared by many house church believers in the Southwest. We find that many churches are experimenting with homeschooling or small-size kindergartens and primary schools—all unregistered, of course. Since most unregistered church members are first-generation believers, reflection on Christian education for their second generation and refusal to enroll their children into atheist public schools have become widely discussed issues in many different cities.

China’s political authorities still equate citizens’ participation in matters of public concern with potential social instability and unrest. The political ideal of a harmonious society essentially assumes a dissent-free state. Based on statistics released by the Finance Ministry, reported Leslie Hook of the *Financial Times*, the state’s internal security expenses, which have been increasing each year, have outpaced national defense, an alarming signal of the state’s determinedness to push down any grassroots feedbacks.⁹ Meanwhile, corruption remains endemic, especially in state-dominated sectors such as construction, land procurement, and banking. It is in this society of moral decline that Christian individuals and groups, who are living out what they believe, unavoidably form a stream of disobedience against the secular authority. As one informant, 35-year-old Qian, who has always been a keen observer of social problems, comments: “Our faith is a return to God’s granting men their lawful rights, but this [communist] ideology is claiming the opposite. Our faith requires us to worship God, but this system requires you to bow to men or something else.” Christian groups are characterized by regular gatherings, the communal learning of sacred texts, and close-knit fellowship networks. Their organized forms of worship on a regular basis have external implications for a country where freedom of assembly is only promised on paper. Since the mid-2000s, a few church groups that are highly visible and growing in size underwent turbulent interferences by the authorities, including Shouwang Church (Beijing), Wanbang Church (Shanghai), Golden Lamp (Shanghai), Liangren Church (Guangzhou), and the Linfen-Fushan Church (Shanxi). Being a member of the unregistered church itself means challenging the unwritten law of “no assembly” in this country. And being an evangelizing believer makes one even more culpable, for he or she becomes an active diffuser of an alternative ideology. So the Protestant faith with its core concern to spread the message poses a boundary-breaking action against government prohibitions.

In 2008, Sichuan earthquake gave faith-based groups that engaged in quake-relief more visibility and a positive impression among the general public; and this was particularly true for house church groups. For the first time in post-1949 history, the legitimacy of house churches was brought up in an academic conference in Beijing. Intellectuals at the conference were hopeful for positive changes in the state's perception and regulation of house churches. But soon afterward, a few house churches' property purchases and legal registration were interrupted by political authorities, leading to a few globally reported outdoor worship events. Despite the post-earthquake goodwill, some political boundaries remain unchanged. Thirty-six-year-old Chen, a young professional and member of a white-collar, unregistered church, comments:

[The state] imposed an impression on the public that [unregistered] house churches are unwilling to register, but the real problem is, once they register, the state still wants to impose the Three-Self umbrella on them. This trick is still unchanged. I know many house churches who went to apply [for legal status], but none succeeded. In other words, China's house churches have always been driving on the road, but they never got their driver's license. Other social organizations experience just the same. ... A Three-Self pastor told me himself that Deng Xiaoping's reform has redressed "the leftist" tendency in all areas except the Three-Self.

A few legal specialists in some unregistered churches attempted to follow the registration procedures but their efforts turned out futile. Thirty-year-old Sun explains it well:

They wished to follow the procedures set by the authorities, to experiment if this road goes through, and it turned out to be a dead end. This shows that it is not because that church does not qualify [for registration], but rather the legislative party has not yet made [registration] a possibility at all. ... The case of Shouwang has made this obvious. They are a large church, whether economically, politically or in terms of other [resource] preparations. But even with their capacity and publicity, [they have] not succeeded. ... I personally favor a nonviolent approach, but if this turns out a dead end, maybe we should better discuss whether this legislation is just or unjust.

Quite a number of interviewees make an association of the current dilemma of church registration and the long-term dilemma of democratization. As 32-year-old Cai neatly summarizes:

The key of the problem is that this governing party is not only a political party—it has made itself into an “almighty” party that manages almost everything. Of course the party has given back some privacy to the people now compared to the past. But still, if we expect the party to change its orientation, dispositions and the ways it governs, that requires a big move, not only in religious affairs but in every aspect of the civic sphere.

Underpinning these organizing efforts against government prohibitions is a transcendent interpretation of authority among Chinese Protestants. As 28-year-old Wu offers his interpretation of God’s authority versus secular authority:

Only if more and more people come to realize that it is God who is sovereign in all nations, rather than seeing things only in the political sense or as national issues. Because any human political regime is only temporary; today one party is in power, and tomorrow it will probably change to another party. So is ideology. But the only unchanging thing is God, His righteousness and principles. And it is God who is coming to judge all nations eventually. What man is obligated to see is the more durable, more righteous and the much better type [of authority] rather than merely following the [secular] regime.

Restrictive regulations toward religious practices in post-communist China has created differing religious sectors in terms of their legitimate statuses, defined as the “red,” “black,” and “gray” markets.¹⁰ They respectively represent the officially permitted groups, the legally forbidden groups, and the informal and implicit groups. Counter-intuitively, sociologists of religion observe that the more restrictive the regulation, the larger the black and gray markets may grow. The post-communist state has created a dilemma for itself—its low-tolerance ideology forbids other competing value systems to diffuse, but restrictions have only led to the unintended growth of a non-legitimized Protestant population and to lots of rule-bending behavior among officially legitimized religious groups.

Concluding discussions: Protestantism and social change

In recent times, there has often been a religious dimension to civic engagement during periods of social transformation and peacemaking in various countries. Christian groups in particular have frequently been

advocates for social reform and conflict resolution based on their religious convictions.¹¹ This claim is not new. In his classic work *Democracy in America*, Alexis de Tocqueville observed a causal relationship between the “mediating institutions” of Protestant groups and the development of improvement-minded civil society in the United States.¹² Social theorist Max Weber’s famous thesis on the Protestant ethic makes the causal connection between religion and social change much clearer, but the outcome is not civil society but rather rational capitalism.¹³ Following these classical social theorists, both sociologists and political scientists continue to be fascinated by this causal inquiry.¹⁴ As an unintended consequence, we see in contemporary China that the emergence of urban Protestant house churches and their increasing scale of civic engagement are challenging the status quo (i.e., a system of bureaucratic domination by one-party rule).

The state’s refusal to include these emerging Protestant groups into its legal boundaries has not deterred the growth of this religious sector. These groups have obtained a strong moral basis for their associational existence and acts of civil disobedience. The theological rationale behind their actions has disintegrated the fear which is so prevalent in a post-totalitarian society.¹⁵ Their faith content provides a rich repertoire for disobeying the “law,” for embracing their alien identity, and for creating new institutions. Furthermore, as legitimation is a signal or a stage of institutionalization,¹⁶ we argue that unregistered Protestantism can no longer be defined as “non-institutionalized religiosity,”¹⁷ for it is a sector undergoing re-institutionalization with far-reaching significance for transitional China.

Notes

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2

Belief, Ethnicity, and State: Christianity of Koreans in Northeastern China and Their Ethnic and National Identities

Juhong Ai

Abstract: *How do ethnic groups in multi-ethnic states construct a common national identity? Undoubtedly, religion is one of the main factors that make up ethnic identity. So this case study, featuring the religious life of Chinese Korean Christians in Yanbian, Northeast China, offers a careful look at the complex relationship among religion, ethnicity, and state. It finds that Yanbian Korean Christians have a complex identity, with church life at its center. Yet they still identify as Chinese citizens. The author concludes that the difficulties they encounter as members of mostly unregistered churches further complicate their loyalties. Fuller freedom of religious expression would, she anticipates, make them even more proud and grateful to be Chinese citizens.*

Keywords: China; Christianity; citizenship; ethnic minorities; Koreans; Yanbian Province

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The issues of religious belief and national and ethnic identities, as the roots of many intra- and international conflicts, are being heatedly discussed all over the world. It is generally believed that ethnic identity is based on the same grounds, such as kinship, culture, customs, language, historical memory, and so on. The concept of national identity, however, came into existence along with the appearance of modern political states. It has been based on the premise of ethnic identity, plus citizenship and modern political identification. The state thus represents a new cultural complex beyond traditional culture, religion, and other factors. It introduces the issue of how to deal with the relationship between ethnic and national identities. For a state that has only one ethnicity, the ethnic identity coincides with national identity. The primordial factors of ethnic identity, such as religion, culture, and language, would transfer to national identity. However, very few modern states in the world are mono-ethnic in nature. Most states are internally diverse ethnically.

Then how do the ethnic groups in multi-ethnic states construct a common national identity? The notions of ethnicity must change; the identities of race and culture must become subordinate to a collective will shared by all citizens. Members of ethnic groups become “citizens” who enjoy equal power and rights with all other citizens.¹ Citizenship emphasizes that people who have different ethnicity, beliefs, and culture develop a common national identity and political belief, and they bear equal political responsibilities and social obligations. Meanwhile, citizenship is not just about power and rights. It’s an identity as well. When we consider citizenship, the differences among different social groups (e.g., genders, races, regions, ethnic groups) must somehow factor in.² In order to construct a national identity, varied ethnic groups need to develop a sense of citizenship. Undoubtedly, religion is one of the main factors which construct the common ethnic cultural awareness. It inevitably intertwines with ethnic identity and national identity. In fact, the so-called ethnic characteristics and traditions in modern society are very often the results of interactions among ethnicity, the state, and religion. So this case study, featuring the religious life of Chinese Koreans, offers a careful look at the complex relationship among religion, ethnicity, and state.

Most of the Chinese Koreans³ immigrated to northeastern China from the Korean Peninsula in the nineteenth century. Yanbian Korean Autonomous Prefecture, Jilin Province, is their main habitat. Christianity was introduced into Yanbian by the Korean immigrants. In the 1920s,

Christianity developed rapidly in Yanbian, followed by a lot of ups and downs afterward. After the 1980s, however, it developed to such a degree that people there frequently said that “there is a church in each village and a Christian in every family,” and it attracted a lot of attention. This development was of course in keeping with the Chinese national situation at the time, when churches were being reopened. It was also closely related to the rapid development of Christianity in South Korea in the 1970s and 1980s.

Christianity is often regarded as a Western religion that is universally practiced. Currently there is a very high proportion of Christians—about 30 percent—in South Korea. Have the Koreans who were converted to Christianity changed their ethnic culture and ethnic identity as a result of their belief? How do they practice their Korean identity? Then follows a more complex question: what is the national identity of the Korean Christians as an ethnic minority in China? This is a very interesting and sensitive issue and this chapter attempts to address it.

Christianity of Yanbian Koreans and their ethnic identity

Christianity served to consolidate Korean national identity when the Korean Peninsula was occupied and colonized by the Japanese. They forced the Koreans to accept Japanese Shinto, worshipping the emperor of Japan. They also forbade speaking in the Korean language. At that time, in protest of the assimilation and invasion, many Korean Christians refused to worship at the Japanese Shrine and the emperor of Japan. Many anti-Japanese activities were associated with Christianity, and indeed, many pastors and ministers of churches were anti-Japanese resistance leaders. Although their motivation was more religious than political, their actions strengthened Korean identity. Now, as an ethnic minority in China, the Koreans are influenced by the Han majority. And as Christians, they have to give up some traditional Korean culture, such as practices associated with Shamanism and Buddhism. However, the Korean Christians are aware of their difference from both Han Chinese and from Western Christians. By choosing some symbols to show their Korean identity consciously and unconsciously, such as language, custom, costume, and historical memory, they try to adjust and turn their belief into something with distinctive Korean features.

Koreans in China use their own language and characters, but they can also speak Chinese after living among the Han for a long time. Those living in towns can speak Chinese very fluently. Most Korean parents encourage their children to receive Chinese education so that they can be more competitive in the future. Korean schools in Yanbian have been diminishing in recent years, losing a large number of students, so fewer and fewer Koreans speak the Korean language.⁴ However, Yanbian Korean Christians seldom go to Chinese congregations, regardless of their age or fluency in Chinese. Most of them go to the Korean congregations and read the Bible and sing hymns in Korean. As many Christians from the ethnic minorities in China don't have a version of the Bible in their own written language, they have to read the Chinese version, hear preaching in Chinese, and sing hymns in Chinese.⁵ It is quite different with Koreans, who began to have the Gospel in Korean and books on Christian doctrines in Korean, dating back to the 1780s. They also had Catholic hymns in Korean by around 1800.⁶ Today, many Korean language hymns and spiritual books are shipped from South Korea. So Korean Christians go to Korean congregations that are well supplied with Korean materials. Due to the language barrier, the Han Chinese Christians in Yanbian go to their own Chinese congregations and never to the Korean ones, and vice-versa. It is almost without exception that the Korean congregations are exclusively Korean, which naturally strengthens their members' ethnic identity. I asked a Korean Christian who speaks Chinese as her second language why she only goes to the Korean congregations. She said that she is more inspired and her spiritual life grows faster that way.⁷ Insisting on the use of their own language, Korean Chinese distinguish themselves from the Han majority and other minorities. The Korean language is one of the most noticeable symbols of the Korean ethnic community, and its use is greatly reinforced by Korean church life.

Korean society is deeply patriarchal. As the head of the family, the senior male will take charge of all important matters while the female is the subordinate partner and is not supposed to go outside the home to work. This pattern is projected into Korean congregations. The Presbyterian denomination played a dominant role in Yanbian in the early stage, and therefore many Korean churches claim to follow the same tradition. Generally in Presbyterian and other Protestant churches, a male senior pastor takes charge of the church, and male lay officers (elders and/or deacons) are responsible for different departments of the church. When

important matters come up, the lay officers will meet and discuss how to deal with them. Although elders and deacons are very important to churches, it is the male clergy who make the decisions, as is typical in a patriarchal system. If a church is a family, the male senior clergyman is the head of the church, taking charge of its operation and development. Usually, they preach every Sunday while other pastoral leaders are responsible for other fellowship duties.

It is noteworthy that there are no female pastors in all the Korean churches in my study. Females just undertake the position of “deacons” or assistant and never give sermons. This pattern is in sharp contrast with the Chinese churches in Yanbian. All 3 Chinese churches among the 28 registered ones in Yanji city (the capital of Yanbian) are taken charge of by females.⁸ The Chinese section of most Korean churches is also run by a female. The only female pastor also belongs to the Han majority. It is clear that Koreans’ male patriarchy is embodied in the choice of male pastors and clergies as the head of the churches.

Chinese Korean churches reinforce Korean norms and customs in other ways as well. They build their church buildings in the same style as South Korean churches, with a cross on the building roof which can be seen from very far away. Especially at night the cross becomes even more eye-catching, due to the ornamental neon lights on it. Koreans are generally good at dancing and singing, and this special trait is reflected in their worship, which is very lively and cheerful. The traditional Korean costume is another important symbol of their Korean identity. Most Korean Christians will wear their Korean costumes during festivals or important ceremonies.

The Korean Christians not only show their Korean identity by observing their Korean holidays, but also adding some Korean characteristics to some aspects of Christianity. For example, Thanksgiving Day is the day that Puritans who immigrated to America give thanks for the harvest granted by God and the help given them by the Native Americans. It is celebrated on the fourth Thursday of November. Yanbian Korean Christians also observe Thanksgiving Day but change the date to the second-to-last Friday in October. They too thank God for the autumn harvest. On that day, every church in Yanbian holds a grand ceremony, with Korean Christians, adorned in their Korean costumes, worshipping God by dancing and singing. The Chinese churches nearby also hold a ceremony due to the influence of the Korean churches. Another grand festival for Yanbian Koreans is Christmas, which lasts three days.

Nowadays, Christmas is a festival for all people in Yanbian, except that non-Christians have different ways to celebrate.

It is very interesting to see how Korean Christians “Koreanize” Bible stories. For example, there is a picture story from the Bible about Jesus’s life painted in the Korean style in the training center for Yanbian churches. The figures and the costumes are both in the Korean style, and the background of the story was set in the Korean Peninsula. The pictures illustrate that the Korean Christians accept and identify with the stories. Adjusting the biblical stories with non-doctrinal factors makes these universal beliefs feature noticeably Korean characteristics.

As believers, Yanbian Korean Christians have a clear religious identity. However, they stress their ethnic identity instead of losing it as they practice their beliefs. Korean churches provide a purely Korean environment, which encourages regular gatherings and speaking of the Korean language. Korean Christians have found a balance between their belief and their cultural tradition, which enables them to retain more Korean cultural traits and Korean identity. In fact, Korean ethnic identity is of a very complicated nature. For one thing, Koreans have been deeply influenced by Chinese culture throughout their national history. Most recently, the 1949 revolution in China was a major factor in the separation of North Korea and South Korea. As a result, the Koreans in these nations underwent different development. For example, in recent years South Korea has deliberately kept its distance with China, stressing the differences with China such as historical memory and cultures. The Koreans who live in China, however, have a closer relationship with the Han Chinese majority and receive more influence from them than from other fellow Koreans. But the Koreans who live in China would like to keep their distinctiveness under the national policy of China, so they can also stress their Korean identity.

Korean churches and Christians’ Chinese identity

Most of Yanbian Koreans moved from the Korean Peninsula to take refuge and seek a better life in the nineteenth century. Most of them are clearly aware of their origin in North Korea and South Korea, and they have many relatives in the both countries. They think of North Korea or South Korea as their mother country. But they also have Chinese nationality in the political sense; they are Chinese citizens. So the national

identity for Yanbian Koreans involves three countries: China, North Korea, and South Korea.

Living on the border between North Korea and China, Yanbian Koreans and North Koreans could choose to live on either side of the border until the 1960s. Yanbian Koreans were often confused about their national identity because of this situation, hence, a slogan “North Korea is my ethnic motherland, China is my political motherland,” which showed the ambiguity of their ethnic identity and national identity, appeared during the “anti-rightist” campaign against local nationalism in 1957.⁹ After the reform and opening-up policy in China, the economy has developed rapidly there, while the living conditions in North Korea were much poorer because it was still closed to the rest of the world. Although Yanbian Koreans emotionally identified themselves with North Korean people, and they helped North Koreans seeking refuge in China, they did not consider North Korea as their home state. At present, nobody knows much about Christianity in North Korea because of limited exposure, but neither Christians nor non-Christians among the Yanbian Koreans identify North Korea as their home state.

In comparison, Yanbian Koreans have a different attitude toward South Korea. The Korean minority in China seldom communicated with South Koreans until the reform and opening-up policy because the two countries have two different kinds of ideology. After the reform and opening up, the two countries established a closer relationship. The (South) Korean style is prevalent in Yanbian, with lots of Korean goods sold in shops, Korean TV series shown on Yanbian TV channels, and everybody talking about job-hunting in South Korea. Many Yanbian Koreans have moved to South Korea to work. Almost every family has members in South Korea. In 2004, a total of 125,000 Yanbian Koreans worked abroad, mainly in South Korea, with an annual increase of 20,000 in the following five years.¹⁰ Many Yanbian Korean women who work in South Korea end up marrying South Koreans. From 1991 to 2001, there were 13,881 international marriages between Yanbian Koreans and South Koreans. Later on, although the number of international marriages decreased, there were still many Yanbian Korean women who married South Koreans. Yanbian Korean students prefer to attend South Korean universities, because they belong to the same ethnic group and speak the same language. Although South Korea has a very strict policy toward immigration, almost all the university students from Yanbian want to stay in South Korea and live there permanently. Many Yanbian Koreans

choose work in South Korea to support their family because the economy is underdeveloped in Yanbian. In spite of the difficulties they experience in South Korea, they seem to find that they belong there because they are of the same ethnic group. Therefore, they tend to stay in South Korea.

Despite these trends, Yanbian Koreans don't strongly identify South Korea as their state. One study shows that before reform and opening up in China, many Yanbian Koreans were not sure which country they belonged to, China or South Korea. But when Yanbian Koreans went to work in South Korea, they found that South Korea is not their homeland. They don't feel at home there, although they and South Koreans are of the same ethnic group, have the same blood, language, costumes, and even the same food and customs. Although South Korea is their "root," it is not their "home."¹¹ Due to an underdeveloped economy and education, many Yanbian Koreans can only take low-paying jobs in South Korea. They are discriminated against by South Koreans, which makes them tend to identify China as their state. After the reform and opening up, many Yanbian Koreans also migrated to major Chinese cities to work, such as Beijing, Tianjin, Shanghai, and the coastal cities. They don't manifest much difference with the Han majority who live in urban areas. Many of them don't feel any difference if they don't mention their ethnic background. After all, they are all Chinese citizens.

Yanbian Korean Christians and non-Christians have the same national identity and ethnicity, but there are still some clear differences. Christianity in South Korea is developing rapidly, with the second largest number of missionaries sent abroad preceded only by the United States. Moreover, since there is much more religious freedom in South Korea than in China many Yanbian Korean Christians pay much more attention to South Korea and this attention is manifested in several ways.

First because many South Korean missionaries have come to Yanbian, many Korean churches are sub-churches of South Korean ones, with a close relationship.

Second, there isn't any Korean-language Christian book or other material published in China except one Korean journal, "*Heavenly Wind*," which is not sufficient for Korean Christians, so they have sought South Korean published church materials. Now almost all the Korean Bible study and worship materials in Yanbian Korean churches come from South Korea. Although these foreign religious materials are forbidden and may be confiscated by the Chinese government, they are continuously brought in nonetheless.

Third, theological education in Korean became available in 1992 at Northeast Seminary in Shenyang. But after training three cohorts of Korean seminarians, the training center was banned in 2001. With no Korean theological education in China, the seminarians of the Korean minority could only go to study in South Korea. Yanbian church officials reported many times to the government that this situation will only serve to make Korean Christians head for South Korea, but this inadequate situation still remains.

Fourth, the biggest problem for the Religious Affairs Committee and the Public Security Bureau of Yanbian is that many preachers are ordained by South Korean churches, which makes it hard for the government to exercise control and supervision. According to the requirements of the Christian Association of Jilin, only seminarians from the Jinling Seminary and Northeast Seminary can become ordained pastors whereas those educated by other seminaries or foreign ones will not be qualified to do so. Even if these requirements are met, it is still very hard to actually receive ordination. As a result, many pastors are ordained by South Korean churches and sent as their missionaries to Yanbian. Consequently their churches end up becoming unregistered underground churches, and even the sub-churches of South Korean churches. Also, as I learned from my interviews with Religious Affairs Committee officials in Yanbian, some pastors of registered churches there are ordained by South Korean churches. At least six pastors were ordained by South Korean churches among the 28 registered churches in Yanji, the capital of Yanbian.¹² In addition, an unknown number of preachers were ordained in unregistered Yanbian Korean churches. At one ordination ceremony of Korean Baptist churches at the beginning of 2006, eight preachers were ordained. Although the ceremony was banned by the government, the ordained pastors are still recognized by churches and believers.¹³ Finally, almost all Yanbian Korean churches, especially the unregistered ones, accept funds from South Korean churches. I learned from the Religious Affairs Committee of Yanbian that one Korean church accepted four million Yuan from several South Korean churches for its building. This is a very sensitive topic, for it is illegal to receive money from South Korean or any other overseas churches. Many pastors kept it a secret when I interviewed them. Some emphasized that they just borrowed money from South Korean churches when they built their church building, and so it's not a donation. They claimed again that they firmly refused to accept money from South Korean churches for their daily operations.

Yet it is this very restrictive religious environment that makes the Yanbian Korean Christians seek help from South Korean churches. Through this experience they feel emotionally closer to South Korea. On the other hand, the Chinese government is constantly concerned that the Yanbian Christians are being “penetrated” by a foreign influence, that is, South Korean churches. National identity and loyalty thus become very sensitive issues for Yanbian Korean churches and Christians. Some will go very far to manifest their national identity as Chinese. Most Yanbian Korean churches actually want to register with the Religious Affairs Committee to become legal. Some Korean Chinese pastors deliberately avoid any contact with South Koreans in public for fear of the “penetrating” assumption. Seemingly, Yanbian Korean churches and Christians strongly identify China as their state, despite all of these ethnic and religious ties with South Korea.

So we see that national identity is a really sensitive and perplexing issue for Yanbian Korean churches and Christians. Yanbian Korean Christians prefer South Korea for two main reasons apart from their kinship: the advanced economy in South Korea, and its religious freedom. One Korean Chinese Christian told me that South Korea is so good that people can even worship God on the street. Yet even though they like South Korea, Yanbian Korean Christians clearly affirm that they are Chinese.

This complex sense of national identity is actually challenging. A Yanbian Korean Christian whom I am quite familiar with gives me a metaphor:

If South Korea is white, and China is red, then we are orange. When we say we are Chinese, we feel rather uncomfortable. Obviously South Korea is our mother country; but it still doesn't sound right when we say we are South Koreans. After all, South Koreans do not consider us their country fellows. We live in China, so we have Chinese nationality. I feel I am caught in between, neither South Korean nor Chinese.¹⁴

Thanks to this dilemma, a new concept, “Yanbian people,” came into existence, which manifests cross-border ethnic characteristics. It is “entwined with the nationalism discourse of China and South Korea, but it also provides space for us to deconstruct this problem.”¹⁵

For Yanbian Korean Christians, their identity is not confined to being “Yanbian people.” Rather, they are Christians beyond their ethnic and national identities. For example, most pastors whom I interviewed say they don't care much about their ethnic or national belonging. Instead,

they care more about how to preach the Gospel and let more people, whether Korean or Han, accept that belief. They usually come back to China as missionaries as soon as they finish theological education in South Korea. In their eyes, the kingdom of God is more important than the issue of ethical or national belonging. I interviewed a Korean pastor who was sent by a South Korean church. He came back to China and preached to the Han people. He said there is such a large number of Han that preaching to them will save more souls than preaching to the Korean Chinese.¹⁶

Conclusion and reflections

Most Yanbian Koreans emigrated from the Korean Peninsula and became an ethnic minority in China. After they became Christians, they didn't change their ethnic identity because of their beliefs. On the contrary, their ethnic identity is enhanced through practicing their beliefs. As a minority group in China, although they have some reservations about their Chinese identity, most Yanbian Korean Christians relate themselves to China and affirm Chinese citizenship.

The development of Yanbian Korean churches is nonetheless closely related to South Korean churches, which makes Yanbian Korean Christians feel a close bond with South Korea. But this close relationship does not go beyond their Korean ethnic identity. Above all, Yanbian Korean Christians place their Christian identity on top of their explicit ethnic identity and implicit national identity. They draw an analogy between themselves and the ancient Jewish diaspora. They were dispersed from the Korean Peninsula to China and became a minority in China, but they still are people of God. When it comes to the identity issue, they are very similar to immigrants who became Christians in other parts of the world.

According to sociologist Fenggang Yang's study, Chinese American Christians, for example, have multiple identities: Chinese, Christian, and American. Christian identity forms the base for these immigrant Chinese. They choose to accept or refuse some Chinese or American elements, as filtered through their Christian beliefs and values.¹⁷ After the Chinese convert to Christianity, they do not simply forsake their Chinese identity; instead, they try to observe even more Chinese traditional culture in its non-religious aspects to keep their Chinese identity.

Simultaneously, they gradually free themselves of their Chinese political identity while stressing their Chinese cultural identity and promoting Chinese kinship. This tendency prompts Chinese American Christians to develop a common Chinese culture beyond particular political attachment, taking the role of Christian identity beyond political, cultural, race, and blood identity.¹⁸

After being converted to Christianity, most Yanbian Korean Christians have the same multiple identities: Christian, Korean, and Chinese. As immigrants from the Korean Peninsula to China, they have selectively accepted parts of Chinese culture and integrated it into Korean culture, then within the modern political context, those immigrants gradually became a minority group in China—the Korean minority, as opposed to North Koreans and South Koreans. This Korean minority in China went to work in South Korea with the hope of returning to their home country after the Chinese reform and opening up. They found to their disappointment that South Korea was not their mother country and they were not accepted by South Koreans, and so they couldn't mix with the society there. South Korea became instead the mother country in their memory.

Comparing Yanbian Korean Christians with Chinese American Christians, we can also find some differences. Chinese American Christians have more social space to practice their beliefs, so the relationship between their Christian identity and national policy is very relaxed. However, Chinese citizens have less religious freedom under China's Constitution due to the unsound legal system and human factors in its administration. So the religious beliefs of Yanbian Korean Christians are practiced within a restrictive situation, which intensifies their sense of ethnic and national identity.

Yanbian Korean Christians identify themselves with North and South Koreans as the same ethnic group, whether they are Christians or non-Christians. Apparently, this involves the fundamental attachment based on the same language and traditions. But their acts of immigration mean that their sense of national identity will be strongly affected by local politics and economy. Yanbian Koreans first emigrated from the Korean Peninsula for a better life and to escape Japan's colonization. Later, Koreans living on the border between China and North Korea went to and fro many times. For example, when North Korea had a better economy than China in the 1960s, many Koreans who lived in China immigrated to North Korea. Nobody immigrated to South Korea at that time because there was a large political and economic gap between

China and South Korea. Now, however, the situation has reversed, and Yanbian Korean Christians don't identify North Korea as their home state because of political and economic issues.

As stated earlier, because of the good economy many Yanbian Koreans are attracted to work in South Korea. The free religious environment in South Korea also attracts Yanbian Korean Christians, and many of them who attend seminaries in South Korea will definitely come back to China, but the majority of these immigrants will decide to stay in South Korea. When Yanbian Korean churches face difficulties, they often receive help from South Korean churches with the same ethnic and cultural grounds. They try to learn from or imitate the organizational structure, management methods, and other resources of South Korean churches. The unfortunate religious policies in China push Yanbian Korean churches and Christians into a closer relationship with South Korea. In this case, after being converted to Christianity, Yanbian Koreans establish a religious link, besides the blood and cultural links, with South Korea.

In sum, the national identity of Yanbian Korean Christians should be considered more carefully and their needs explored further, because they reveals important dynamics in the relationship between citizenship and ethnic identity, and national identity under religious circumstances. Developing awareness of citizenship among ethno-religious groups such as Yanbian Korean Christians is a key issue for building a harmonious socialist society, for three reasons.

First, all minority groups, regardless of their ethnic or religious background, have Chinese nationality and Chinese citizenship. All citizens should be entitled to their rights under the Constitution; these rights should be satisfied and respected. This involves state administration. The aim is not to make people passively obey the authority of the state, but to achieve multiple human objectives. Therefore, Yanbian Korean Christians' religious practice should be fully respected so that they feel they are true Chinese citizens, enjoying their rights.

Second, Yanbian Koreans' differences as a minority and their cultural identity, involving the relationship with South Korea and North Korea, should be respected. The rights of the Yanbian Koreans who work in South Korea or elsewhere in China to be a distinctive group of people should be protected.

Third, Yanbian Korean Christians as Chinese citizens should not remain at the receiving end of the state administration and passively wait for the rights to be bestowed upon them in this process. Instead, they should

actively practice their citizenship in a mutual interaction process. Through taking part, for example, in public services, charity, disaster relief, education, medical services, Christians will feel they are members of the state and have a sense of belonging to others who are their fellow citizens.

Unfortunately, Yanbian Korean Christians don't feel they are Chinese citizens in every sense because of the unsound religious policies and man-made issues that restrict their religious practice. This struggle over worship and belief has negatively influenced their sense of national identity and belonging. Michel Foucault pointed out that state administration is about "defining the possibilities of individuals' actions Power is only exercised on free subjects and only works in the sphere where they have freedom."¹⁹ When people, regardless of their ethnic background, develop a sense of citizenship and identify themselves as citizens, a solid foundation is laid for national identity.

Notes

This chapter is based on the author's fieldwork on the Christianity of Koreans in northeastern China for two months in 2006 and 2007. She found that Christianity has shaped the ethnic, national identity of Koreans in northeastern China. She also discovered that religion has a very strong practical significance for the study of ethnic and national identities.

- 1 T. H. Marshall, "Citizenship and Social Class," in T. H. Marshall, eds, *Class, Citizenship, and Social Development: Essays* (Garden City, NY: Doubleday, 1964), 92.
- 2 Will Kymlicka and Wayne Norman, "Citizenship in Culturally Diverse Societies: Issues, Contexts, Concepts," in Will Kymlicka and Wayne Norman, ed., *Citizenship in Diverse Societies* (Oxford: Oxford University Press, 2000), 1–16.
- 3 Many ethnic Koreans live near the border between China and North Korea. Koreans who live in China are one of 56 ethnic minorities.
- 4 The two main reasons for the shrinkage of Korean schools in Yanbian are: the decline of the Korean population; and many Korean students choosing Chinese schools.
- 5 Many minorities in China have their own spoken language, but not the script.
- 6 Daniel H. Bays and James H. Grayson, "Christianity in East Asia; China, Korea, Japan," in Sheridan Gilley and Brian Stanley, eds, *Cambridge History of Christianity, v. 8, World Christianities: 1815–1914* (Cambridge: Cambridge University Press, 2006), 505–507.

- 7 Interview with “Miss Kim,” July 7, 2007. Interviewees’ identity is kept confidential.
- 8 These statistics came from the internal records of the ethnic affairs commission of Yanbian for the beginning of 2008.
- 9 Thanks are due to Xibin Yu, who works in the national press and offered this information.
- 10 Meilan Piao, “Population Problem of Yanbian Koreans under the Ethnological Site,” PhD dissertation, Central University of Nationalities, 2009, 86.
- 11 Jimang Wang, “Ethnic Identity and National Identity of Chinese Koreans in Globalization: A Case Study on Koreans Who Are Living on the Border of China,” *Journal of Hubei Institute for Nationalities* 4 (2008): 49–55.
- 12 This data came from my interviews. When I interviewed pastors, I always asked them where and when they were ordained and by whom. Some of them told me they were ordained by South Korean churches, and some wouldn’t say. According my interview notes, I got six pastors of the 28 registered churches to state that they were ordained by South Korean churches, three Pastors Kim, two Pastors Lee, and Pastor Low (their true names are not used in order to honor their confidentiality).
- 13 Interview with Pastor Lee in his office, Yanji, Yanbian Korean Autonomous Prefecture, Jilin province, China, January 10, 2008.
- 14 Interviewed with Miss Kim by telephone, November 4, 2009.
- 15 Jiwoon Baik, “Diaspora and Cultural Nationalism: ‘Yanbian People,’ Crossing Border Identity,” posted December 7, 2005, at China Academic Forum, <http://www.frchina.net/data/detail.php?id=7411>.
- 16 Interview with Pastor Kim by the author and her colleague in a restaurant in Beijing, China, July 7, 2008.
- 17 Fenggang Yang, *Chinese Christians in America: Conversion, Assimilation, and Adhesive Identities* (State College, PA: Pennsylvania State University Press, 1999), 239–240.
- 18 Ibid., 233–234.
- 19 Michel Foucault, *Beyond Structuralism and Hermeneutics* (Chicago: University of Chicago Press, 1992), 267–289.

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3

The Rise of a Human Rights Studies and Education Movement in China

Zhang Wei



Abstract: *Chinese leaders once thought that “human rights” was created to embarrass socialist societies and to mask oppression in capitalist societies. Human rights consciousness did not grow until after the government issued a call in 1991 for its development. The movement gained momentum especially via partnerships with several Scandinavian institutes. A graduate-level textbook was published in 2001, the China University of Political Science and Law established a Human Rights Institute in 2002, and the government amended the constitution in 2004 to include basic human rights. Centers propagating the idea that human rights are universal now exist in one hundred university campuses. Beginning in 2008, Chinese judges began training; over three hundred have participated to date. China’s advance owes much to Western agencies’ hospitality and partnership.*

Keywords: human rights; human rights studies, in China; rule of law

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In all Chinese international law textbooks today, there is always one chapter on either the international protection of human rights, or the international human rights law. Some 15 years ago, most professors would regard it as unimportant content, and tell students to read it on their own if they wanted to. For this reason, most students would not even bother reading it. At the same time, most law professors would talk in their classes about rule of law, democracy, and the fight against corruption without any reference to international human rights law. With the rise of human rights awareness around the globe, the situation in People's Republic of China is changing as well. Officials and legal scholars are moving away from being hostile to the idea of universal human rights and toward embracing the idea.

In this whole process, the Western academy and governments, the United Nations, and international law and justice NGOs are playing an important role in promoting human rights studies and education. In particular, many young Chinese scholars have gained their understandings and knowledge about human rights through Western writings in the fields of social science, history, and the humanities. The scholarly study of religion has also grown in interest in Chinese universities. This natural development in Chinese scholarship allows us to further refine our impressions of Western society and find relevant resolutions for Chinese social problems.

The rise of a human rights studies movement in China

From 1949 to 1978, the idea of human rights was regarded firmly as a Western concept to overthrow the newly born socialist China. Human rights were thought to be a new way for the capitalists to govern their people and keep their minority rule.¹ Even though certain rights were protected under the laws, such as civil, political rights, women's rights, and children's rights, they were not equally enjoyed by all people due to the categorizing of people into various undesirable classes. Those who were not identified as "the people" would not enjoy the same rights. This is even true for the Chinese president Xiaoping Liu.² When he was identified as a "blackleg of workers" during the Cultural Revolution, President Liu, holding a copy of the Chinese Constitution in his hands and claiming his immunity from torture as the president, was beaten up by some young students. Nobody listened to him. He then claimed his

personal rights as a citizen of China, which was again ignored. When we look back, it is quite clear that the universality of human rights was not recognized, and the understanding of human rights was very political.

When the open door policy came into the picture in 1978, some scholars who were treated badly during the Cultural Revolution began to challenge the old class theory. One of them was Professor Buyun Li,³ who published an article titled “Upholding the Equal Protection of Law for Citizens.” In this article, he openly suggested equal legal protection for the so-called hostile class. This was later regarded as a great breakthrough in the field of human rights protection in China. Still, the Chinese government firmly believed that rights in China were largely different from those according to the Western concept. The majority of scholars in China claimed that human rights were the slogan of capitalism, and there were no human rights under the banner of Marxism.⁴ As a result, most Chinese scholars did not think there were human rights problems in China. The protection of human rights was not largely considered in the process of legislative and judicial work. Even in the 1989 student movement, when Chinese students asked for rule of law and fought against corruption, very few of them related these causes to basic human rights.

This ignorance of human rights started fading after the publication of the first Chinese *Human Rights White Paper* in 1991.⁵ This government document proclaimed that the protection of human rights would be a long-term task for the Chinese government and people. In 1993, the China Society for Human Rights Studies was established to boost research in the field of human rights. Also in the same year, for the first time in history, the Chinese government, together with all members of the United Nations, recognized that all human rights should be equal and universal at the World Conference on Human Rights in Vienna. That same year, the Chinese government delivered its first government report to the Committee against Torture.⁶ In response, the committee made some recommendations to the Chinese government, in particular, a revision of Chinese Criminal Procedure Law. This recommendation received the attention of the highest decision-making body in China, and it asked a group of Chinese scholars to conduct a comprehensive study of the Chinese Criminal Law System. Professor Guangzhong Chen, who was then the president of the China University of Political Science and Law, was chosen to be the first chairman of this working group under the Chinese National Legislature. This was one of the first steps taken

by the Chinese National People's Congress to review and revise Chinese laws according to the international human rights treaties which China ratified or accessed.

These positive movements witnessed another high point when Zemin Jiang, the former president of the People's Republic of China, publicly accepted the universality of human rights. He did so in a letter to the China Society for Human Rights Research on the occasion of the fiftieth anniversary celebration of the Universal Declaration of Human Rights in 1998.⁷ This letter opened up a new era. With the blessings of the president, the attitude toward human rights in the media and academia started moving in a more friendly direction. Cooperation with international civil society agencies in the field of human rights became more and more common. In Sweden, the Raoul Wallenberg Institute of Human Rights (Wallenberg Institute) and the Law Faculty of Lund University recruited Chinese government officials into their human rights training programs, and accepted Chinese students in their human rights master's degree program starting from 1994.

Since 1998, such international interaction appears to be increasing. The Norwegian Institute for Human Rights (Norwegian Institute) started its first book project in collaboration with Chinese scholars after the Sino-Norwegian Human Rights Round Table Discussion in the spring of 1998. During this discussion, the China program director at the Norwegian Institute discussed her interest in editing the first textbook on international human rights law with Chinese scholars with the vice president of China University of Political Science and Law (CUPL). This idea was immediately welcomed and encouraged by her Chinese counterpart. A group of Chinese and Nordic scholars were invited to work on this project over two years, with several working group meetings in China and Norway. Everyone regarded the project as a deep and direct learning process. Under the strong leadership and commitment of the China program director, this book was published on time in China with great success in 2001.⁸ Before the publication of the book, the group tested it with a pilot teaching program for master's degree students from Chinese universities. Based on this experience, CUPL and other universities in China carried out a series of university teacher training programs with the support of Nordic human rights institutes. Even today, the Wallenberg Institute and Norwegian Institute together with the Danish Center for Human Rights actively operate programs in China. The Chinese government publicly welcomes their efforts.

In the meantime, the language of “human rights” began to appear in Chinese media from time to time, due to the fights between China and the United States in the UN Commission on Human Rights.⁹ The Chinese government claimed to be a victim of US interference in her domestic politics. Human rights were then regarded as a political weapon by the United States, which enabled Western allies to damage or even destroy the great socialist system in China. This picture is complicated, however, by China’s strong efforts to enter the World Trade Organization. The relationship with the West looked like two separate spheres, the political and the economical. When talking about human rights, China and the West looked like big enemies. In terms of economy, however, they became good friends.

Of course, in reality, these two issues are dealt with by different government agencies. The policies are not made by the same group of people with the same understanding of the world. People dealing with international economic affairs travel more frequently to foreign countries, and they have better opportunities to explore the world and shape their own understandings within a relatively short period of time. Except for diplomats, the rest of people in the government have much fewer opportunities to visit foreign countries. They heavily rely on descriptions in the media to establish their opinion of the world. Unfortunately, most people in the Chinese media also have few chances to go abroad. Their information about foreign countries may lead people to wrong conclusions. For this reason, people dealing with political issues appear to be very critical about human rights and the rule of law in Western countries. For many of them, US human rights and rule of law leave people in very bad situations.

Fortunately, with increasing international exchanges, more and more people have started revising their impressions of the United States and other Western countries. Many of these nations’ governments have entered into human rights dialogues with the Chinese government. Through this channel, a high number of Chinese government officials and scholars have been able to go and look at the real situations in many other countries, such as the United States, Canada, Norway, Japan, and some member states of the European Union. Through these travels, they have learned to appreciate the many social advantages of protecting human rights and the rule of law. All these efforts by the international community have gradually helped generate some positive thinking over human rights in China.

This may explain why when human rights were being written into a Chinese Constitution amendment in 2004, collections of writings and interviews were made throughout these countries for several months.¹⁰ Some scholars think that it shows human rights in China were transformed from a political concept into a legal one. It also provided a legal tool for ordinary people to protect their personal interests. The development of human rights started working hand in hand with the construction of a rule-of-law society. More and more scholars are applying Western theories and UN standards to Chinese society and seeking legal resolutions for social problems.

The human rights Work at CUPL

In recent years, CUPL has emerged as an important center for human rights work. This work was initially carried out in different forms by individual scholars at CUPL. After the university's reopening in 1979, some scholars were sent to study in the United States through different government programs. One professor chose to learn how international human rights law was taught in a US law school. Another studied refugee law, and she carries her interest in this field to this day. Nevertheless, human rights seldom appeared in the public sphere until the textbook project with the Norwegian Institute was completed. This team of scholars prepared a pilot training course for the master's degree students at CUPL. Soon after that, an optional course on international human rights was offered to undergraduate students in the fall of 2001.

In the early summer of 2002, a human rights institute, the first of its kind with full staff members, was established at CUPL.¹¹ This institute was designed after the model of the Wallenberg Institute. It was called the Institute of Human Rights and Humanitarian Law. In its first six years, the institute established the first master's and PhD programs in human rights law in China. Some ten students were enrolled each year in these two programs. Most graduates now serve widely in public services, like the National People's Congress, the Ministry of Public Security, the Ministry of Foreign Affairs, the Ministry of Justice, and local courts, universities, or business companies. This reality tells people that there are many jobs available for human rights students in China. The problem now is that there are too few graduates for the market. For the institute, the first human rights program, the competition is low in China.

This situation also explains why the quality of teaching may be a problem. There is a lack of competent professors on this subject. But the problem is being addressed in three ways. First, the particular location of CUPL in Beijing, the capital city and a university center, can help redress this problem. We have been able to invite other scholars in Beijing to act as our visiting professors and participate in our teachings. Some diplomats in Beijing are also invited to give talks on various topics. And for now, on-job trainings at foreign universities are encouraged for academic staff.

A second approach is to increase students' engagement in their learning. Some students with good English skills are encouraged to take a second degree at foreign universities, intern with international agencies, or join in faculty research projects. These opportunities are growing in favor among students. In my opinion, this overseas academic experience is very important for human rights scholars from non-Western countries. Domestic and international internships in governmental institutions, NGOs, or companies are also effective means of improving students' learning. This is particularly important for the majority of students who have no work experience. Through these practices, they can not only get to learn some new practical skills at school, but also have a better understanding of which job best suits their interests. Last but not least, it is valuable to have graduate students join in faculty research programs in terms of administrative and academic research. This is particularly true for those students who intend to be academics.

As a third measure to improve teaching and learning, the institute organized several training programs for university teachers with support from the Norwegian Institute, the Wallenberg Institute, and the European Union. These programs were mostly led by Nordic scholars. They managed to reach some 80 university teachers with human rights knowledge, experience, and skills. Afterward, many teachers continued their interest in human rights research and teaching at their home universities. This "trainings for teachers" approach has proven to be an effective way to promote human rights education in China.

In 2005, in cooperation with the Georgetown Law Center, a Sino-US conference on Human Rights was conducted in Beijing under the sponsorship of this institute. Even though the Chinese and US governments have been confronting each other in the Commission on Human Rights for many years, their actual academic exchange in the field of human rights is still very rare. For this reason, the conference attracted lots of

attention from both sides. Scholars were hoping that this exchange would be able to continue producing more results. In fact, the conference did not become a sustained reality, despite the goodwill of many people. It is a very unfortunate situation where we all lose the opportunity to listen and learn from each other.

Starting in 2008, our institute took a small step to celebrate International Human Rights Days with other universities in Beijing. Music meant to touch people's souls was played; and pictures presenting the development of international human rights movements and the heartbreaking war crimes in history were shown. Speeches were made to call upon the awareness of protection of human rights among faculties and students. In 2011, this activity was expanded to include EU member states' diplomats in Beijing. Several news reports were made afterward. More and more people get to know how important it is for China to uphold and develop human rights at home and abroad.

The institute leads a landmark national project

The partnership between the institute and its Nordic counterparts came into being in 2004. During an academic tour that year to the Wallenberg Institute, Professor Xianming Xu met with Professor Gudmundur Alfredsson, the then director of the institute. He expressed his willingness to carry out research on how better to improve domestic human rights mechanism in China. In his response, Professor Alfredsson suggested that the National Human Rights Institution model based on the UN "Paris Principles" might be a good example to follow, and offered his willingness to help. As a result of this talk, Professor Xu made a suggestion to the National People's Congress as one of the deputies during the annual meeting of the Congress in March 2004. He was then asked by the Congress to conduct a detailed study on this issue. With the blessing of the Congress and generous financial support from the Wallenberg Institute, the first international conference on National Human Rights Institutions was held in October 2004 in Qingdao, a port city on the east coast of China.¹² Several experts from Australia, Canada, and South Africa were invited to present the mandates and powers of such institutions. To the surprise of the organizers, after the foreign experts' introductions, all Chinese participants from the National People's Congress, Supreme Court, Ministry of Justice, State Council, Information Office,

universities, and other agencies reached a common understanding that there was a need for China to establish such an institution. The need is particularly timely in China during this period of leadership transition. Many social problems arise from the daily operation of the government, due to its traditional unwillingness to accept international remedies provided by the international human rights treaties. The main solutions for sorting out such disputes have rested on domestic resolutions.

To test the reactions from various stakeholders, seven other international conferences were hosted at CUPL. Different people from the Congress, government, judicial bodies, Chinese NGOs, and universities were invited. In conjunction with this project, a series of human rights lectures were conducted in several other Chinese universities from 2008 to 2011. More than 300 Chinese judges participated in three special training sessions in three cities. CUPL also established a human rights summer school in 2009.¹³ To date, four sessions have been organized for around 500 university students from across the world. Some 30 professors from China, the United States, Sweden, Australia, Iceland, France, Italy, Spain, Poland, and Tanzania took part in the teaching. This whole cluster of activities clearly shows that a National Human Rights Institution will be a powerful instrument to help improve the human rights situation in China as such institutes are doing in over 100 countries around the world.

After over ten years of promotion by foreign donors and various governments, including the Chinese government, we see a remarkable development of human rights studies across the nation. Over 100 human rights centers or institutes have been established in Chinese universities and research academies. Three of these human rights educational institutions were named as National Human Rights Education Bases in October 2011 by the central government, with a mandate to further enhance and encourage more development to come. CUPL's Institute for Human Rights is one of them.¹⁴ The CUPL president became the first director of the institute. Under his leadership, human rights are recognized as one of the core values of CUPL. This is not only a public recognition of what had been done in the past by the institute, but also a positive sign for Chinese society that human rights research and study are not as sensitive as some people think. On top of that, these three human rights institutes have been given broad mandates to carry out human rights education for the society and conduct relevant researches. In the second Chinese Human Rights Action Plan, five more similar kinds of institutes

will be named by the central government. Driven by this human rights education campaign, more and more Chinese universities are taking steps to improve their activities in human rights education programs. This provides another opportunity for CUPL Institute for Human Rights to come up with more cooperation at national and international levels. One new area which needs more international cooperation and help is relevant international internship programs in foreign and international human rights organizations.

The future ahead

International cooperation and exchange will continue to play a key role in the promotion of human rights in China. By these means, more and more people will be able to understand why international society cares so much about the human rights situations in other countries. The more we engage in international cooperation and exchange the less political misunderstanding we have. At a time when the awareness of human rights grows higher, more people start to recognize some social issues as violations of their personal rights. This is a critical period of time in China. If more and more people become equipped with the right knowledge of human rights, they may learn to settle their own problems through peaceful ways. For the Chinese people, constructing a rule-of-law society is only a start. As we normally say, this is only a little step over the long march. Where will this long march take China? That will depend on how better we are able to understand the importance of promoting and protecting human rights. When the basic human rights values are deep into people's minds, China will be a stronger partner in maintaining world peace and security.

Chinese national legislation will need to be examined against international human rights standards. Relevant human rights mechanisms should be put in place to help protect individual interests from wrongful doings by the government. One of the key institutions would be a version of the National Human Rights Institution model, established in line with the 1991 Paris Principles. Furthermore, the careful examination of Chinese legislation under international human rights treaties needs to be continual. A general education of international human rights standards should be provided for Chinese judges, prosecutors, and lawyers. Those key players in Chinese legal system should be allowed to argue their

cases according to international human rights standards. By doing so, China will be able to move human rights from a long-standing disputed political issue into a more predictable legal channel.

History proves to us that without the guarantees of freedoms of expression, religion, and consciousness, no society can move ahead with a peaceful development. During World War II, the German Nazi regime killed or imprisoned anyone who opposed the war. Not long ago in China, many intellectuals were deported to labor camps because of what they expressed in their opinions. Religious people were forced to give up their beliefs in the period of the Cultural Revolution. When Chinese universities once again started entrance exams in 1978, millions of young students took these exams with hope and eagerness to learn from the once-closed world of learning.

Thanks to the student exchange agreement between President Jimmy Carter and Xiaoping Deng, Chinese students were able to study in the United States. Thousands of Chinese students went to learn about the capitalist world in the United States. Christianity played an important if unexpected role in this process. American churches showed their warm helpfulness to Chinese students when help was needed. It became common knowledge among overseas Chinese students that you meet good people and receive help in the American churches. Many Chinese students began to believe in God in this process. In China, many American exchange students or scholars with religious beliefs came to Chinese universities. Chinese students learned about the US lifestyle through their acquaintance with American people, including the ways they worship God. During this process, many people found it very natural to talk to God without fear. They also felt free to speak whatever they wished, right from their minds. They said that they greatly enjoyed being honest to themselves and with other people. These natural feelings have been discouraged among the Chinese people as contrary to modern secular theories that maintain peace and development, but growing numbers of intellectuals have been exploring them. So at the same time that the formal study of human rights was advancing in China, there was also a growing consciousness, especially among Chinese who had studied overseas, of the goodness of human rights. In my own observation, China will not be able to take further steps forward without truly guaranteeing the freedom of expression, religion, and consciousness.

Notes

- 1 Xiangfei Qu, "A Retrospect of Main Theories of Human Rights since the Open Policy," *Human Rights* 4 (1999): 43–49. This and all following references are English translated titles of texts that are in Chinese.
- 2 Yintai Dong, "The Two Public Arguments of Shaoqi Liu in the Cultural Revolution," *General Review of the Communist Party of China* 1 (2012): 13–17.
- 3 Buyun Li, "Upholding the Equal Protection of Law for Citizens," *People's Daily*, December 6, 1999.
- 4 Linxia Wang, "A Brief Introduction about the History and Development of Human Rights in China," *Theoretical Front in Higher Education* 3 (2004): 49–52.
- 5 See the original document of Chinese government: *Chinese Human Rights White Paper*, www.gov.cn/zwgk/2005-05/24/content_488.htm; see also the official news report: *White Paper—The Progress of Human Rights in China*, www.china-embassy.org/eng/zt/ppflg/t36621.htm.
- 6 See the original document of Chinese government in UN database: CAT/ C/ 7 / Add.5 and 14.
- 7 Zhuji Jiang, "On the Congratulation of 50 Anniversary of Universal Declaration in Beijing," *People's Daily*, August 11, 1998.
- 8 Huawen Liu, "Comments on the Textbook of International Human Rights Law," *Tribune of Political Science and Law* 22 (2004): 189–191.
- 9 Yunhu Dong, "Comments on the Fights between China and America: Arguments against the 'Recession of Human Rights in China,'" *People's Daily*, April 1, 2004.
- 10 See the official news report: *Amendment to the Constitution of the People's Republic of China (2004)*, www.china.org.cn/china/LegislationsForm2001-2010/2011-02/12/content_21907119.htm. See also Yunhu Dong, "Human Rights into the Constitution: The Important Milestone in the Development of Human Rights in China," *Human Rights* 2 (2004): 31–35.
- 11 "An Introduction of the Institute of Human Rights and Humanitarian Law at CUPL," www.humanrights.cn/cn/rqzz/zgrqzzyjg/yjzz/t20060920_152405.htm.
- 12 Xianming Xu, Liwei Zhang, and Wei Zhang, "A Summary from the International Conference on National Human Rights Institutions," *Human Rights* 6 (2004): 57–58.
- 13 See the news report, "The First Human Rights Summer School at CUPL," www.nhri-ifo.cn/projectevents/items/0265/.
- 14 See the news report, "The 63rd Anniversary of Universal Declaration and the Establishment of Human Rights Institution at CUPL," www.ihr.cupl.edu.cn/news/0852/.

4

The Importance of Gathering Together: Religious Land Use in the United States and China

Jennifer E. Walsh



Abstract: *Both China and the United States constitutionally affirm religious freedom. While these two states have developed radically different relationships with their religious communities, they have one concern in common: land and buildings. Local authorities tend to allocate land in ways that maximize profits, jobs, and revenue. Despite constitutional protections, congregations often feel vulnerable when local officials have the authority to deny their requests to meet in a particular location, lease or buy property, or expand their facilities. In the United States, both statutory and case law in recent years have provided more protection for religious property rights, but not yet in China. Might addressing these land use issues provide some breakthroughs that religious freedom advocates are seeking, within and beyond China?*

Keywords: China and United States; church buildings; land use; property rights; religious freedom

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In the United States each year, hundreds of thousands of Christian worshippers gather to celebrate Easter Sunday with outdoor sunrise services. Many of these celebrations take place in local parks, schools, or public arenas, while others are intentionally staged at historic sites, such as the Hollywood Bowl in Los Angeles, the Red Rocks Amphitheatre in Colorado, Mt. Rushmore in South Dakota, and the Lincoln Memorial in Washington, DC. Such gatherings are considered constitutionally permissible according to the language of the First Amendment to the US Constitution, which declares that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.” While this liberty is not without limits, both religious belief and religious activity are protected, and churches are generally free to hold services without undue interference from the government.

In contrast, church gatherings in China are subject to strict government regulations, and failure to abide by the rules can have serious consequences. For example, on Easter Sunday in 2011, Chinese officials intentionally sealed off a public plaza in Beijing and arrested more than three dozen church members in order to prevent Shouwang, an unregistered church, from holding outdoor services. The previous week, more than 150 members were arrested, and 7 of the church leaders, including Pastor Jin Tianming, were placed under indefinite house arrest.¹ Unregistered churches operate outside the boundaries of government regulations, so their activities are often viewed with suspicion by local officials—and this scrutiny only intensifies when their activities garner public attention.² Nevertheless, religious freedom in China is limited for everyone, so even authorized churches find that their daily activities can be encumbered by the government’s regulatory control.

The right to freely practice religion is considered a universal right under most international norms and legal conventions; therefore, international human rights advocates have closely followed the conflict in China between government officials and religious leaders over religious freedom and the right to worship. In addition, the US State Department monitors ongoing global threats to religious freedom and frequently provides public updates about developments from around the world.³ Although China has tried to improve its international reputation regarding the protection of human rights, the State Department has consistently identified it as a “Country of Concern” because of its outward persecution of religious believers.⁴ Specifically, the State Department noted that while China acknowledges a constitutional freedom of religious belief,

the officially atheistic government sanctions just a few institutional religions—Buddhism, Taoism, Islam, Protestant Christianity, and Catholicism—and imposes strict regulatory controls on religious organizations, religious activities, and the use of land by religious leaders.⁵ To comply with government mandates, churches belonging to one of the permitted religions must register with government authorities; failure to do so can result in severe consequences.⁶

In China, there is ongoing confusion and conflict over how people are permitted to act regarding their religious beliefs. Solitary activities conducted in private are presumably permitted, but many corporate and public activities have been restricted or banned. For example, Chinese officials have fined, arrested, and sentenced religious leaders for religious activities, such as illegal publication of religious literature and prohibited proselytization.⁷ On other occasions, government leaders have suppressed religious activities that violate land use regulations. In some recent cases, Chinese officials have arrested and imprisoned religious congregants for unauthorized assembly in private homes; in other cases, they have confiscated and demolished unregistered church buildings.

For Christians, the conflict over religious activities often involves an aspect of land use. This is because the gathering together in one location for corporate worship is considered an essential component of the faith. Researchers who have studied Protestant worship services note that the services in China include components that are “standard... across time and space worldwide.”⁸ In addition to public teaching, services include several communal rituals, such as the singing of hymns, collective responses, public recitation of prayers (e.g., the Lord’s Prayer), and the taking of communion. In comparison, other religions, such as Buddhism, feature activities done individually or in solitude; even in a temple setting, activities are performed individually—not corporately.⁹ While Christians also engage in individual activities, such as solitary Bible reading and prayer, these forms of personal devotion are complementary to communal worship services. As a result, group worship—and the corollary requirement of physical space—is vitally important to adherents.

In both China and the United States, churches must interact with political officials in order to secure permission to use land for religious purposes. Chinese churches, operating in a regime openly hostile to religion, have had a more difficult time securing land use permission than American churches, which enjoy considerable constitutional protections.

However, in both countries, churches have experienced recent difficulties in occupying, owning, building, and/or expanding religious sites. Sometimes, conflicts with local officials over religious land use occur because of ideological or political prejudices. In other cases, local officials discriminate against religious organizations for financial reasons. Both China and the United States now feature market-based economies that generally treat land and buildings as high-value commodities, especially in urban areas where land is scarce. In turn, this increases pressure on local authorities to limit land use to those enterprises that can maximize profits and increase wealth.¹⁰ As a result, both nations have supported the seizure of private property, including church buildings, in order to promote income-generating businesses that benefit the economic well-being of the collective whole.¹¹

As these recent political and economic conflicts have shown, religious organizations have few legal protections when it comes to asserting their land use interests. Despite constitutional protections, church leaders in China and the United States often find themselves in a vulnerable position when local officials have the authority to curtail their worship activities by denying their requests to meet in a particular location, lease or buy church property, or expand the existing church infrastructure. As a result, the ability to freely exercise religion in both countries may depend less on constitutional protections than on practical safeguards that allow church members to gather together for religious activities without prior approval or fear of reprisal.

Brief history of religious freedom in China

Religion was not a primary concern in China's communist revolution of 1949, so while many high-ranking members of the Chinese Communist Party (CCP) were atheistic and even openly hostile to religion, the People's Republic of China (PRC) chose not to target church members despite the Marxist-Leninist tenet that religion was "opium for the masses."¹² In fact, the first PRC constitution, ratified in 1954, included a section that guaranteed religious freedom. According to Article 88, "[e]very citizen of the PRC has the freedom of religious belief."¹³ Rather, high-ranking leaders were more concerned with eliminating the potential for political interference by foreign church leaders than they were with curtailing native religious demand. This led party officials to expel

all foreign missionaries from the country and confiscate their property and financial assets in order to cleanse the church and the nation of undesirable “imperialist” influences.¹⁴

In the 1950s, the CCP implemented other measures designed to eliminate political threats posed by foreign sponsorship of religious organizations. Catholic churches were required to separate legally, organizationally, and theologically from the Vatican as a condition of their continued existence. Additionally, various Protestant denominations were consolidated into a “patriotic” Protestant church that was controlled by the Religious Affairs Bureau—an official arm of the state. The resulting “Three-Self Patriotic Movement” (TSPM) emphasized “self-support, self-governance, and self-propagation” and, consequently, church leaders were ordered to sever ties with foreign missionaries and turn over foreign assets, including church buildings and property, to TSPM officials.¹⁵ The TSPM also assumed oversight of theological education and training, composition of the congregations, and control of all aspects of the church service—including oversight of church rituals and approval of songs included in the official church hymnal.¹⁶ Even more significantly, it exerted control over church properties confiscated by the government for collective use. Some church buildings continued to house religious congregations, but by the late 1950s, the number of active churches had diminished dramatically. In Beijing, the number of church properties serving congregants decreased from sixty-five to four, and in Shanghai, the number of active churches declined from more than two hundred to less than two dozen.¹⁷ By the early 1960s, fewer than 10 percent of church buildings remained in active use, and vacant properties were re-purposed to serve other interests of the state.¹⁸

Although the Three-Self Church was sanctioned by the CCP and populated by government leaders, it could not escape persecution during Mao Zedong’s Great Proletariat Cultural Revolution (1966–1976). Mao, who assumed control in the 1950s, viewed religion as an historical instrument of economic oppression. His zealous Red Guards used violence and terror to instigate class warfare, and in the process, all religious organizations were prohibited from meeting and remaining church properties were sold or destroyed.¹⁹ Mao largely succeeded in eradicating public expression of religion, but church leaders, aided by an extensive underground network, continued to hold services in secret.²⁰ With Mao’s death in 1976, the CCP reverted to its previous policy on religion, reiterating in Article 36 of the 1982 Constitution the principle

of “freedom of religious belief” and declaring that “the state protects legitimate religious activities.”²¹ However, because very few church sites survived the Cultural Revolution, church leaders put pressure on local officials to help find suitable meeting space to house these authorized “legitimate religious activities.”

Subsequently, the government issued Document No. 19, which committed the CCP to helping religious organizations recover their lost property and rebuild and/or reopen their houses of worship.²² Additionally, Document No. 19 empowered the State Administration for Religious Affairs (SARA) to grant (or deny) permits for religious activities.²³ While this action was a welcome development for religious believers, there was no forthcoming instruction for local officials on how to appropriately implement this requirement. Some officials, for example, insisted that Christian church leaders receive approval from SARA officials before they could meet, whereas others allowed unregistered “house church” congregations to meet openly and publicly.

Adding to this confusion was the status of collective property in the post-Mao era. In Marxist thought, land cannot be privately owned. But, as Deng Xiaoping, Mao’s successor, led efforts to transform China’s faltering socialist economy into a market-based system, private use of land became more common. Technically, property was still owned by the collective, but individuals could negotiate with local authorities on a case-by-case basis to use the land to advance private interests. In agricultural sectors, local officials were authorized to sign lease contracts for use of the land, but most lease arrangements were for short-term durations of less than ten years.²⁴ Policy changes in 1988 stipulated that urban land could be leased for commercial and private purposes—for a fee. However, only individuals and corporate interests would pay the tax; government agencies and charitable organizations, which presumably included official churches, would be exempt.²⁵

Recent developments in China

In this new, more permissive political and economic environment, the Chinese Protestant church grew dramatically. By the 1990s, the number of people regularly attending TSPM church services grew from 3 million in 1982 to approximately 15 million. Most estimates suggest that attendance at unregistered churches, including “house churches,” swelled to

40–60 million, with some scholars suggesting that the number could be as high as 100 million.²⁶ However, in the aftermath of the 1989 Tiananmen Square uprising and the collapse of the Soviet Union, CCP leaders tightened their control of religious affairs. This led to fewer permits granted for religious gatherings and prompted a crackdown on house churches. Leaders were arrested and charged with planning illegal gatherings and promoting illegal organizations.²⁷ In some cases, the sentences were severe. In the 2009 Linfen Church case, for example, government officials seized church property and bulldozed nearby homes, while church leaders were sentenced to several years in prison for “illegal occupation of agricultural land” and involvement in “illegal religious activities.”²⁸

In general, the government has been unwilling to expand property holdings and enlarge church buildings to meet the dramatic increase in church congregants since the Cultural Revolution.²⁹ Existing buildings are too small, and the number of church properties—particularly in the growing urban areas—are too few to meet even a fraction of the current need. The problems created by this chronic land shortage are not insignificant. There are too few church buildings to accommodate additional “registered” church congregations, and Chinese believers who worship in “unregistered” churches or who practice forms of popular (folk) religion cannot legally occupy or rent property, collect tithes, pay salaries, or contract for services.³⁰ This tenuous legal status compromises their ability to live out the tenets of their faith and leaves them vulnerable to targeted abuse and manipulation by local officials.

As noted earlier, some local officials have allowed unregistered Protestant churches to meet in private homes because they cannot formally lease government property for religious purposes. This may be due to ambiguity in the meaning of Document 19, Section 6, which states that

[n]ormal religious practices should be protected, whether they are conducted in designated religious buildings or in the homes of believers. With respect to Protestants gathering in homes for religious activities, in principle this should not be allowed. But instead of using coercive means, they should be persuaded by the patriotic religious personnel to make appropriate arrangements.³¹

Subsequent decrees, namely, Decree Nos. 144 and 145 issued in 1994, further requires that all religious venues be registered with the government.³² Although the language of the regulations suggests that churches

could legally meet in homes, implementation of these provisions has varied from region to region. This is because local officials do not have a clear way of distinguishing between general political documents issued by party members and actual laws that necessitate enforcement.³³ The disparities in interpretation and variations in enforcement have resulted in a system whereby Protestant churches that are similar in their ideological configuration have markedly different experiences when they try to gather together for worship. Some church congregations meet openly with full legitimacy, others operate with “tacit approval” from local officials, and still others are banned from meeting altogether.³⁴

In the past, a uniform crackdown may have succeeded in curtailing (or at least lessening) unauthorized religious land use activity, but the increasing number of Beijing house churches attended by public intellectuals has recently called attention to their plight. Two house church publications, *Aiyan* and *Fangzhou*, feature writings by intellectual house church members who have used this forum to call for political action and change.³⁵ This helps to explain why in 2011, after the crackdown on churches in Shanghai, Guangzhou, Chengdu, Linfen, and the public confrontation between police and leaders of Shouwang, 17 house church pastors banded together to deliver a petition to the Chinese parliament, calling on the government to enact legislation that would ease the burdensome registration and regulation requirements and offer greater legal protection for their religious activities. Specifically, signatories to the petition accused the government of ignoring their constitutional right to religious liberty, which they defined as including the “freedoms of assembly, association, speech, education, and evangelism.” They also charged officials with violating individual freedoms guaranteed to the people under the Universal Declaration of Human Rights, and called on officials to investigate abuses of power in cases involving unregistered house churches. A spokesperson for the government rejected the allegations, arguing that China “safeguards the right of Chinese citizens to religious freedom and freedom of faith in accordance of the law.” Moreover, the government warned that citizens “must respect their legal rights and obligations and cannot harm the public interest.”³⁶

While some argue that these disputes appropriately call attention to the need for religious land use, others believe that the recent clashes between local government officials and house churches can be interpreted more correctly as a dispute over the government’s overarching role in regulating ideology and freedom of belief. The underlying conflict may, in

fact, be ideological; however, the more high-profile religious disputes all involve arguments over land use, space, and the right to assemble on private (or public) property.³⁷ The frequency at which these disputes are occurring also suggests that the CCP cannot continue to operate much longer under the existing administrative policy. Just within the last five years, there have been a number of related high-profile conflicts, including the 2006 destruction of a church building as an “illegal structure” in Zhejiang, the termination of the Early Rain Reformed Church lease agreement due to government pressure in 2009, the imprisonment of several pastors associated with the Linfen Church for “illegal occupation of the land” in 2010, and the public confrontations with the Beijing Shouwang Church due to lost lease agreements and confiscated property in 2011.³⁸ All of these cases suggest that the government needs to offer greater legal land use protection to churches so that they can operate more freely or else risk alienating an increasingly large percentage of its population.

Religious land use in the United States

The political climate in the United States is generally favorable to church-related activities. Unlike the Chinese constitution that emphasizes protection for religious belief, the federal Constitution offers protection to religious adherents who wish to engage in activities related to their faith. Although not stated explicitly, the “free exercise” mentioned in the First Amendment includes the right of church members to gather together for worship, for ritualistic observances, and for celebratory ceremonies. For most faith traditions, this necessitates some combination of land use and building use, both of which may be regulated by the government. Typically, regulations regarding land use are issued by local community officials, who are allowed to consider what is reasonably necessary for the purpose of preserving public health, safety, and morals.³⁹

In the vast majority of cases, local officials are eager to grant permits to churches, and the relationship between church leaders and city planners is marked by cooperation—not conflict.⁴⁰ However, scholars have pointed out that city officials sometimes use zoning laws to intentionally discriminate against churches. Sometimes the reasons are market-driven: local officials want to maximize the economic value of property, and because religious organizations are constitutionally

exempt from property taxes, they generate little income for the city. Less often, churches are denied permits because of racial, ethnic, or religious biases.⁴¹ In one notable case, Cleveland officials denied the land use permit for a Jewish orphanage, indicating in the written record that it would be a tax loss for the community and that it would be deleterious for the public welfare to have a home populated only by Jewish children.⁴² More recently, experts testified in a House subcommittee hearing about Chicago officials denying land use permits to two black churches before granting permission to a white one; the practice of denying permits to Jewish leaders to establish synagogues or to hold prayer meetings in their homes; and the willingness of local officials to use zoning laws to prevent certain denominations, such as Pentecostals, from establishing churches in town.⁴³

While in the United States churches may challenge these decisions in court, many religious organizations do not have the financial means to litigate unfavorable outcomes. In many cases, churches have a limited financial window of opportunity in which to purchase or develop land for its congregants' use, so opposition by local officials will cause them to drop the project altogether.⁴⁴ Moreover, trying to establish a pattern of discrimination, which is the standard of proof required by the courts, can be difficult. In some cases, city officials have purposefully rezoned an area to exclude a church from qualifying for use—and justified the exclusion on seemingly neutral grounds.⁴⁵ Other times, when questioned in legal proceedings, local officials have justified their decisions by citing concerns specific to the proposal that may be difficult to dispute, such as traffic congestion, parking restrictions, noise, or pedestrian safety.⁴⁶

After hearing about difficult encounters with local officials, Congress sought to enact legislative protection for religious individuals and groups, particularly with regard to religious land use. The first such effort was enacted in response to the 1990 US Supreme Court decision in the case *Employment Division, Department of Human Resources of Oregon v. Smith*.⁴⁷ In this case, two employees were denied unemployment benefits when they were discharged for illegally smoking sacramental peyote. In reviewing the employees' claim that they had been denied their constitutional rights, the court declared that states need not grant religious exemptions from neutral, generally applicable laws. Under this revised standard, Oregon was no longer constitutionally required to consider the impact of a law on an individual's right to exercise his or her religious beliefs. For many observers, the decision dealt a stunning

blow to religious liberty. In effect, the court reversed its own previously held position, which declared that free exercise rights were to be given priority over governmental regulation unless the government could prove that it had a “compelling interest” that made the action necessary. In practical terms, this meant that government officials were not allowed to impose on a person’s religious freedom unless it could provide an exceedingly persuasive reason for doing so. In *Employment Division... v. Smith*, however, the court indicated this type of justification was no longer necessary.

As a result of this ruling, many in Congress believed that the court was no longer willing to vigorously defend religious freedom, and, therefore, Congress would have to act instead. Consequently, in 1993, it enacted the Religious Freedom Restoration Act (RFRA), which provided broad legal protection for religious activities by reinstating the “compelling interest” standard that the court struck down in *Employment Division... v. Smith*.⁴⁸ The legislative correction was short-lived, however, as the US Supreme Court took exception to parts of the RFRA and struck it down just a few years later in *City of Boerne v. Flores* (1997).⁴⁹ In this case, an archbishop claimed that his right to free exercise of religion was infringed when he was denied permission by city authorities to expand his church facility. The zoning board for Boerne, Texas, refused permission to build because the church was located in an historic district that prohibited new construction. City officials asserted that they had the right to deny permission to build to any organization, and stated that they were operating within the bounds of the Constitution because they were not singling out the church for inequitable treatment. The Supreme Court agreed with the city, and the decision to deny the church’s request for expansion was upheld.

Undaunted by the court’s rebuke, Congress remained convinced that legislative action was still needed. In his opening remarks for the Senate Judiciary Committee’s June 1999 hearings on the issue, Senator Orrin Hatch (R-UT), noted that

[w]hile it seems odd that we would need legislation to protect the first freedom guaranteed by the Bill of Rights... we must do our best to ensure that in our communities Bible study will not be zoned out of believers’ own homes, to ensure that Americans’ places of worship will not be zoned out of their neighborhoods, and ultimately to ensure that the Founders’ free exercise guarantee will demand that government have a good reason before it prohibits a religious practice.⁵⁰

The law enacted at the conclusion of these hearings reflects this concern. Signed into law by President Clinton in 2000, the “Religious Land Use and Institutionalized Persons Act” (RLUIPA) identifies two main protections.⁵¹ The first protection relates to religious land use: the government cannot place a “substantial burden” on any individual, church, or religious organization who seeks permission to use land or property for religious purposes. Churches are not exempt from zoning laws, but if state or local officials deny an organization permission to use the land for a religious reason, they must be prepared to defend this decision by demonstrating that the denial is necessary to accomplish a “compelling government interest.” They must also be prepared to show that their denial of the request is not based on discriminatory grounds. Finally, officials must demonstrate that the reasons that prompted the denial cannot be satisfied with a less onerous burden. The second protection extends to institutionalized persons—namely, prisoners—seeking government accommodation for the exercise of their religious beliefs.

Legislation may help secure religious rights

Generally, Americans prefer to have their fundamental rights safeguarded by constitutional principles rather than statutory provisions because the former are perceived as superior in nature and longer lasting in duration. In some cases, however, constitutional protections may be too vague to offer practical guidance to local lawmakers who are responsible for implementing regulatory controls. Congressional laws, such as RLUIPA, provide additional guidance for lawmakers who are trying to balance their oft-competing responsibilities of enforcing the laws at the state and local levels, while simultaneously upholding federal constitutional protections. By expanding the zone of protection around issues that affect day-to-day activities, Congress intended RLUIPA to ease the regulatory burden on churches and other religious organizations while offering lawmakers specific guidance on how to appropriately balance competing rights.

It is important to note that RLUIPA has not been a panacea for all religious discrimination. Legal challenges by religious groups to land use decisions still occur, but success in those challenges can be limited by judicial interpretation. In some jurisdictions, courts have limited the legal definition of RLUIPA’s “land use” regulation so that it only applies

to cases involving zoning or landmarking; other property-related controversies, such as the taking of land under eminent domain, are not protected.⁵² As a result, under this limited definition, churches have been unsuccessful in their challenges to laws requiring them to connect to a city sewer line, pay an association fee, or prevent the city from developing a road on its property.⁵³ Additionally, RLUIPA protects only the “free exercise of religion,” which suggests that only those activities that are motivated by religious conviction or belief are covered by the law. Non-religious activities performed by religious individuals or organizations are not covered by RLUIPA.⁵⁴

Because the US Supreme Court has yet to weigh in on the issue, establishing a definition for the “substantial burden” criteria has been left to the lower courts. To date, there have been a variety of judicial responses, ranging from the very restrictive standard adopted by the Seventh Circuit Court of Appeals—that churches must demonstrate that religious exercise has been rendered “effectively impracticable”—to the Ninth Circuit’s requirement that religious organizations demonstrate that the land use regulation is “significantly oppressive” to its free exercise activities.⁵⁵ Elsewhere, courts have imposed a lesser standard, which states that individuals must demonstrate the government regulation has coerced or unduly interfered with their religious activities.⁵⁶

On the other hand, hundreds of religious organizations have employed RLUIPA to successfully fight discriminatory regulations that interfered with their land use and/or religious activities. In its ten-year review, the US Department of Justice noted that RLUIPA has been effective at shielding a wide range of religious groups from discriminatory treatment as they sought to construct religious buildings, expand existing facilities, or alter the use of church-owned property.⁵⁷ Specifically, the federal Department of Justice reported having investigated 51 RLUIPA claims, litigated 7 cases involving land use, and assisted in dozens of private lawsuits involving land use claims.⁵⁸ According to the Department of Justice, these cases have involved charges of discriminatory treatment based on religious or racial biases; charges of discrimination because churches have been “barred in zones where secular assemblies such as clubs, lodges, or community centers are permitted”; and claims that local officials have placed “substantial burdens on the religious exercise of congregations, religious schools, or faith-based service providers.”⁵⁹ An example of this occurred in Florida, where city officials were barred from imposing on churches costly zoning requirements that were not required

on other businesses or community organizations.⁶⁰ Additionally, a court in California ruled that local officials violated RLUIPA when it told a church that it would only issue a five-year occupancy permit for a building located in an industrial park where the average permit was for more than ten years. City officials denied discriminating against the church, but instead argued that it had a “compelling interest” to reserve industrial land for industrial uses. The court disagreed and ordered the city to compensate the church for legal costs and to extend the permit for another ten years.⁶¹

Such successes may not be possible in China, where constitutional protections for religious freedoms are weaker. Granted, conditions are better today than they once were, and provisions, such as Article 36 of the PRC, have generated nominal support from ruling Party members. However, these protections are not well-defined, and they are neither self-interpreting nor self-executing. Additionally, because the judicial branch functions more like an administrative agency within the Communist Party, courts are reluctant to walk into unknown legal territory and rule against the government. As a result, local officials, who often have monopolistic powers and little accountability to the people, are free to ignore residents’ constitutional rights when imposing their decrees. The economic reforms of the last three decades have magnified this power because local officials have the authority to drive out enterprises that do not contribute to the financial well-being of the community.⁶²

Nonetheless, a number of Chinese scholars have begun calling for a “rule of law” (or basic legislation) to help normalize decision-making by local officials. They argue that this is necessary because an understanding of citizens’ rights is “guided first by the constitution and then by the regulations, and furthermore in detailed local regulations, notes and measures. These lower level rules often contradict each other and also the constitution.”⁶³ For religious Chinese citizens, regulatory legislation is thought to be more helpful than constitutional protection: it can be specific and it can be enforced by the courts, which is why religious leaders are eager to see the government clarify the rights and responsibilities of religious organizations through supplemental legislation. Efforts to see this change have been ongoing since the 1980s, and although the CCP agreed to “accelerate the process of legislation of religion,” religious leaders continue to lobby party members to make good on its promise.⁶⁴

Furthermore, many prominent Chinese scholars have called for the government to enact legislative solutions to the house church problem.

For the most part, house church leaders consider themselves to be patriotic and loyal to the CCP. According to the published “Confession of the Chinese House Church,” congregants are “against the church’s participation in activities which will undermine the integrity of the country and the unity of ethnic groups.”⁶⁵ One idea has been to grant provisional legal status to unregistered churches in exchange for their participation in the administration of social services.⁶⁶ Another has proposed that the government “regard the non-government sanctioned church as an ordinary member of the civic society instead of regarding it as the enemy of the ‘harmonious society.’”⁶⁷

Support for legislation that would specifically safeguard the land use rights of religious organizations also appears to be widespread. In a survey conducted by the Pushi Institute in 2007–2008, 57.9 percent of Protestants and 50 percent from other religions favor independence for religious organizations.⁶⁸ Additionally, more than three-fourths of respondents indicated that churches should cover the construction costs of new worship sites.⁶⁹ Yet, Chinese citizens do not seem ready for the strict separation of church and state found in the United States. In the 2009 Empirical Study of Values in China conducted by Baylor University, three out of five respondents stated that the government should assume some responsibility for the costs incurred by religious organizations.⁷⁰

Conclusion

In 2007, former CCP president Hu Jintao asserted that China should “implement the policy of religious freedom, administer religious affairs under the law, but respect their independence and self-governance.”⁷¹ Freedom of religion is conceptualized differently in China than it is in the United States, but a closer examination of successful legislative strategies in the United States could nonetheless be instructive for political reformers in China who wish to minimize the ongoing conflict over land-related religious activities. In the United States, support for legislation such as RLUIPA has helped churches and other religious organizations secure government approval to use land for prayer meetings, religious services, and informal gatherings and events, and a similar “rule of law” would likely assist churches in China, too. Additionally, a law that allowed current unregistered house churches to register with the government without sacrificing their independent

identities would give meaning to the freedom of religious belief articulated in the PRC constitution. It would also clarify religious freedom for local officials who are primarily responsible for applying and enforcing the law. Moreover, bestowing legal status on house churches and other unregistered organizations would help to alleviate anxiety over lease agreements and other property rights issues, so that landlords do not have to fear government reprisals and church leaders can have confidence that their property interests will be acknowledged and respected under the law. Finally, a supporting law will help to minimize future public showdowns between unofficial religious groups and government officials, which would engender national support by house church members and facilitate greater trust between government leaders and the people.

Notes

- 1 “Tear Gas Scatters Christmas Worship,” *States News Service*, December 26, 2011; “Christmas Cancelled after Beijing Police Crackdown,” *The Times (London)*, December 26, 2011, 32.
- 2 Gerda Wielander, “Bridging the Gap? An Investigation of Beijing Intellectual House Church Activities and Their Implications for China’s Democratization,” *Journal of Contemporary China* 18:62 (2009): 855–857.
- 3 Orrin G. Hatch, “Religious Liberty at Home and Abroad: Reflections on Protecting This Fundamental Freedom,” *Brigham Young University Law Review* no. 2 (2001): 417–421.
- 4 US Department of State, “July–December, 2010 International Religious Freedom Report” (2011), 1–32.
- 5 In the United States, Protestants and Catholics are considered to be under the umbrella of Christianity; however, in China, Protestantism and Catholicism are identified as separate religions.
- 6 State, “July–December, 2010 International Religious Freedom Report,” 1–26.
- 7 *Ibid.*, 1–32.
- 8 Kurt D. Selles, “Protestant Worship with Chinese Characteristics: Reflections on a Chinese Worship Service,” *Exchange* 41 (2012): 4.
- 9 Alan Hunter and Kim-Kwong Chan, *Protestantism in Contemporary China* (New York: Cambridge University Press, 1993), 233–234.
- 10 Yan Zhang and Ke Fang, “Is History Repeating Itself? From Urban Renewal in the United States to Inner-City Redevelopment in China,” *Journal of Planning Education and Research* 23 (2004): 290.
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- 12 Fredrik Fallman, "Useful Opium? 'Adapted Religion' and 'Harmony' in Contemporary China," *Journal of Contemporary China* 19:67 (2010): 952–953.
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- 25 Xing Quan Zhang, "Urban Land Reform in China," *Land Use Policy* 14:3 (1997): 192.
- 26 Vala, "Protestant Christianity and Civil Society in Authoritarian China," 47.
- 27 Zheng Leguo, "A General Interpretation of Religious Policy and Tactics in China—Defense of Rights through Legal Means against Religious Persecution," *Chinese Law & Religion Monitor* 7:1 (2011): 24–27.
- 28 State, "July–December, 2010 International Religious Freedom Report," 10.
- 29 Fenggang Yang, "Religion in China under Communism: A Shortage Economy Explanation," *Journal of Church and State* 52:1 (2010): 26–30. Yang suggests that CCP officials are intentionally creating a "shortage economy" so that people will substitute communist ideology for religious theology. This, in turn, would further the atheistic mission of the government, which is to eventually eradicate institutionalized religion. It is becoming obvious, as Yang and others point out, that the policy isn't working.
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- 31 Cheng, "House Church Movements and Religious Freedom in China," 22.
- 32 Ibid., 25–27.
- 33 Stanley B. Lubman, *Bird in a Cage: Legal Reform in China after Mao* (Stanford University: Stanford University Press, 1999), 138–172.

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- 35 Wielander, "Bridging the Gap?," 855–857.
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- 45 *Ibid.*, 21.
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- 51 42 U.S.C. §2000cc.
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5

Political Constitution and the Protection of Religious Freedom: A Jurisprudential Reading of Article 36 of the Chinese Constitution



Zheng Yushuang

Abstract: *The Chinese Constitution of 1982, Article 36, calls for the protection of religious freedom. But Westerners should understand that constitutionalism in China reflects a very different political context. There is a hierarchy of values in the Chinese Constitution, the author argues, which ranks the supremacy of the Communist Party and the construction of a modern socialist society above the protection of personal freedoms. Indeed, the term “protection” is transformed into something more akin to management and control in the Chinese context. Political reforms in China, including the new protections for property rights, all reflect this hierarchy of values. Even so, says the author, the growing body of case law on property disputes shows potential for gradual movement toward liberty in religion as well.*

Keywords: China; Constitution; political liberties; political reform; religious freedom

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Introduction

A constitution establishes basic rules for a nation's politics and governance, which means that both are subject to the constitution. This would seem to be a commonsense understanding of the relationship between a constitution and a political system. However, this basic relationship is a source of much confusion in the Chinese context. Constitutional law scholars today seem to have reached agreement upon the basic values of the Chinese Constitution: to protect freedom and restrain public power. Unfortunately, this is a superficial agreement, because there are still deep disagreements on the role and status of the Chinese Constitution in the nation's complex political and social environment. Many theoretical issues, even after heated discussion, remain controversial and thus complicate consensus. For example, scholars differ sharply over whether constitutional norms can be applied in the course of judicial judgment, or whether the newly enacted "Real Right Law" violates the Constitution.¹

The status of freedom of religious belief under the Chinese Constitution illustrates the problem. While Article 36 promises that citizens will "enjoy freedom for religious belief," the application of the article has been contentious. In this chapter I offer a jurisprudential analysis of the article, reflect on the basic principles of the Chinese Constitution, and provide some alternative answers to the complex issues mentioned earlier. As Rawls observes in his *Justice as Fairness*, one of the goals of political philosophy is to "narrow the divergence of philosophical and moral opinion so that social cooperation on a footing of mutual respect among citizens can still be maintained."² This chapter pursues that goal, which applies in China as well as in the West, although in a drastically different political context and cultural landscape. By exploring the moral status of religious belief within Chinese constitutionalism, I argue that we gain a better understanding of rule of law in general. Religious freedom is one of the moral signatures of our society that can be used to measure to what extent we can tolerate others, even when they violate other political values.

Constitutionalism in China since 1949

The nature of the constitutional order in any country is structured by the nation's legal and political practice. This means that the interpretation of

the constitution should take a country's cultural, historical, and political dimensions into account. This is particularly true in China, with its long history of cultural and political development. But this context raises a question: To what extent are these civilizational elements related to the core principles or values of a constitution, especially on the issue of the limitation of freedom?

We can get some perspective on this question by examining how constitutionalism has developed in China. Ever since the Opium War in 1840s, the seed of Western constitutionalism has been sown in the earth of China. Both the late Qing Dynasty and the Republic of China (1911–1949) conducted some constitutional experiments,³ but here I will focus on the development that followed the establishment of the new China since 1949. Simply speaking, the political process of the communist government has a thoroughly distinct view of law and politics, and it has undergone three stages. After a brief view of these stages, we can have a general notion of the development of constitutionalism in modern China.

The first stage (1949–1966). After the Communist Party came to power, it abandoned the legal system of the Nationalist government. At this stage, all the basic laws had not been enacted, for the party's main aims at this point were to stabilize the regime and develop the economy. Although the first constitution was enacted, political logic was mainly founded on the "class struggle" theory, which eventually led to the suppression of intellectuals. The legal practice of this period was dominated by ideology and susceptible to political aims.

The second stage (1966–1976). Even judged from the whole history of China, the period of the Cultural Revolution still occupies a distinctive status in Chinese history. Though sophisticated studies of this brief period have not come out yet in mainland China, the political and economic situation of this stage was almost anarchic (or a Hobbesian natural state).⁴ Normal legal practice was destroyed and constitutionalism was obstructed at this stage.

The third stage (1976–present). Learning from past political movements, the government after the Cultural Revolution sought to build a less insulated political society and establish the foundation for national prosperity. This is the background of the reform and opening-up policy, which defines the basic framework for political decisions. After the enactment of the 1982 constitution, the ideas of rule of law and human rights were written into the constitution by virtue of amendments. Some scholars,

citing significant advances toward an adequate legal system, claim that China is experiencing the best time to build rule of law.⁵

In the following sections I will explore the principles of Chinese constitutionalism through the analysis of religious freedom. The history of the rule of law in China is entering a special age. On the one hand, Chinese academia has been increasingly drawing on Western theories and terms. On the other hand, the legal practice of China is deeply influenced by distinctive cultural characteristics, including a cultural aversion to using law to settle disputes. These conflicts between law and practice are reflected in the regulation of religious affairs, and the cause of many misunderstandings in the dialogue between China and the West. Out of this background arises a primary thesis concerning the relationship between law and religion: we must clarify the legal status of religion in China. Only by determining the constitutional nature and status of religion can we know how we can enhance our understanding of constitutionalism and its practice in China.

The Chinese Constitution is more a political framework and historical declaration than a fundamental charter of freedom.⁶ Among the values within the Constitution, which are implied in the Preamble, the power of the party is the first priority, while religious freedom, as one sort of moral right, is much lower on the list of priorities. As a result, the latter is subject to the former. I maintain that this underlying relationship undermines the value of political liberty itself.

The constitutional protection of religious freedom: the system and its limitations

Article 36 of the Chinese Constitution (Freedom of Religious Belief Clause) states:

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.

Interpretation of this clause is not an easy task, partly because in the past scholars and practitioners resisted investing judicial resources in what they perceived as trivial issues related to Religion Clause cases. They had a difficult time seeing how the discussion of religion raised any serious issues of prudential and comprehensive social concern.⁷ Therefore, there was little effort in China to clarify the relationship between religious freedom and the features of the Chinese Constitution from a lawyer's point of view. A lawyer's point of view means not merely a doctrinal perspective, but an observation of the law's norms within a wider context of social change and historical transformation. So long as lawyers, judges, and government officials in China do not recognize the religious dimensions of social change and historic transformation in that country, there will be no urgency to develop a stronger body of law to adjudicate cases dealing with religion.

When focusing on the protection of religious freedom, most public commentary focuses on problems in institutional design rather than exploring the underlying moral principles in the political actions and regulations regarding religious affairs.⁸ To understand the Freedom of Religious Belief Clause well, the first step is to explore the constitutional structure of Chinese political and social practice.

Some would simply say that the Freedom of Religious Belief Clause recognizes that believers have the moral right to have a faith in some religion and religion is treasured as a social value in a plural society. However, according to various kinds of regulations in different fields, such as education, science, and technology, religion is usually considered as merely instrumentally useful, like a fire or a gun, and should be constrained and excluded from many fields where it is deemed not useful, education especially.⁹ Whether freedom of religion should be taken as intrinsically valuable is still controversial and this social situation interacts with the prevailing political notion of religion. In modern China, religion per se is a controversial issue. In the past thousand years, various sorts of religions have played a continuous and complex part in political development. Like in the West, sometimes religions have been the source of historical conflicts. This point cannot and should not be neglected in the study of law and religion.

Despite this history—indeed, perhaps because of it—China has a multi-level system to address religious freedom, which is comprised by Article 36 of the Constitution and several criminal and administrative

regulations. As a legacy of the reform and opening-up era, this system has been established to provide institutional guarantees to religious believers, while at the same time defining a limited scope to religious freedom. To put the arrangement in other words, the constitutional protection of religious freedom is in essence a systematic control and management of religious affairs. But the imposition of controls, of course, can conflict with religious freedom.

In order to have a full view of this system, we need to consider the role that religion has played in the historical changes and the tension between religion and politics. In ancient China, generally speaking, Confucianism was taken as an official ideology in most dynasties. So we can maintain that the ancient political system was a sort of theocracy.¹⁰ However, along with official status came official domination over religion. This is a long-standing tradition, since Chinese political regimes from the Tang Dynasty to the present have required a form of registration or licensing of religious groups and assumed the right to monitor and intervene in religious affairs.¹¹ As a deep-rooted tradition within an ancient pattern of state centralization, the tight control of government on religion in different periods has made a tremendous impact on the social structure and serves as a precursor to contemporary governmental management.

Arguments for religious liberty within Chinese constitutionalism

Along with the tremendous change in Chinese political systems and international relationships since the nineteenth century, the complex relationship between religion and politics and culture has developed in new ways. The Opium War triggered a frontal clash of Chinese and Western culture, and consequently Christianity began to strike against Chinese traditional culture and thought as an alien religion. In the twentieth century, the Chinese Communist Party introduced a variant of Marxism that particularly in its most revolutionary forms was often hostile to religion. Such a historical background shapes to a large extent the constitutional framework of religion in the second half of that century.

During the years of Chinese Communist Party rule, we have witnessed some steps away from *rule by law* (in roughly the first 30 years) toward the *rule of law* (in the recent 30 years).¹² The protection of religious freedom, for example, is closely connected to the transformation from rule

by law to rule of law. Although China is a communist country, there are many religious believers and organizations. The persistence of religion has led the government to deem religious belief as a freedom worthy of constitutional protection, regardless of the conflict between religion and the political conviction of the party. So the “Basic Views and Policies on Religion in Socialist China” states that

It is unrealistic to claim that religion will perish soon after the establishment of the socialist system and the development of the economy and culture, and it violates the basic view of Marxism on religion to think that religion can be eliminated by administrative order and other coercive measures; hence [this view that religion will perish soon] is completely wrong and harmful.¹³

Except in the Cultural Revolution period, the government’s political and legal practice on religion conforms to the spirit of this document. We can see that in the 1954 Constitution, the first constitution of new-built China, there is a single article that provides for the protection of religious freedom, although without any reference to relevant rights and obligations.¹⁴ The 1982 Constitution reaffirms the political and legal system of China, and it proclaims religious freedom explicitly as well, in its Article 36.

While the constitutional norms are the fundamental basis for the protection of freedom, it is essential to interpret the administrative regulations that put the constitution into effect. Normally there are two perspectives on how to interpret those regulations. One is the technical or institutional dimension; the other is the theoretical dimension. The technical dimension is related to questions such as who has the power to interpret the constitution, how can the constitution be enforced, and how can alleged violations of the Constitution be redressed. The theoretical dimension, however, focuses on the values that are manifested or hidden in the regulations, and the methodology to solve value conflicts by institutional adjustments.

It should be noted that the technical and theoretical dimensions are related. This is indeed true in the interpretation of Article 36. To some extent, the protection of religious freedom has made dramatic improvement since the 1980s due to the management and occasional aid of government. However, reflecting the prudential characterization of religion in the “Basic Views and Policies on Religion in Socialist China,” the Constitution treats religion warily as a constructive social practice

and does not help foster a positive image of religion. The value judgment implied in the Constitution that religious activities may be inclined to “disrupt public order, impair the health of citizens or interfere with the educational system of the state” leaves too much space for public power to misuse discretion and to interfere with religious activities. This posture toward religion is reinforced by “a legislative system regarding religious affairs whose extension and provision are wide-ranging and detailed.”¹⁵

Judged in the theoretical perspective, the protection of religious freedom presents a dilemma. Since religion is both personal and public, how can we make a stringent separation between the personal dimension and the public dimension of religion? Most provincial religious affairs regulations claim to regulate religious affairs in the relevant function or scope, which are affairs related to national interest and public social interest.¹⁶ This means these regulations only aim to serve as a guarantee to the national and public social interest by preventing possible harm and destruction caused by religious activities. Given the difficulty of separating the personal and public aspects of religion, legislators should constrain themselves from exercising excessive power in trying to manage the effects of specific religious activities on the public. However, most regulations have a prejudice that collective religious activities outside a designated religious places or in public would negatively influence the public interest and thus should be confined stringently to officially recognized houses of worship, seminaries, and similar places. Bias of this kind exists in most provincial regulations on religious affairs.

A second theoretical concern has to do with the theme of Article 36, which is to protect religious freedom, in accordance with the spirit of rule of law, which is written in Article 5 of the Constitution.¹⁷ Unfortunately the third clause of Article 36, stating that the state protects “normal religious activities,” is a deviation from the ideal of rule of law and undermines the spirit of the article. The first problem with this clause is that the word “normal” is vague and left to provincial governments to define for themselves. There is no other place than Article 3 of Regulations on Religious Affairs, as we can see, that has given a standard that is close to the meaning of “normal activities,” namely, activities that do not disrupt public order or harm national interests. However, in an atheism-dominant political atmosphere, people are inclined to deem most kinds of religious practice as deviating from normal social and political life, and as potentially disrupting, thus leaving religious believers at a disadvantage.

And since it has already been proved repeatedly in practice that the government is tempted to expand the scope of “the public interest,” this clause is restrictive in effect even though its purported purpose is to bestow freedom. For example, Article 5 of Regulations on Religious Affairs states that the religious affairs departments of the people’s governments at the county level or higher shall, according to law, exercise administrative control over religious affairs that involve state interests or the social welfare. This article undoubtedly reflects the model of “dual management by law and administration,”¹⁸ which leaves no room for independent judicial remedy of administrative over-reach.

Political constitution and the sequence of values

These technical dilemmas regarding protection of the right to religious belief can be overcome by legislation and gradual improvement in social construction. Although the 2004 Regulations on Religious Affairs is just an administrative regulation, not a law,¹⁹ it symbolizes the essential transition of a governmental model from administrative policies to law and regulations. While a social consensus is still developing about the benefits of having a basic law on religion, the positive contribution of religion in social service and charity, such as the role Christians played in aiding victims of the 2008 earthquake, has been gradually recognized to varying degrees. However, the deep theoretical dilemmas we have seen earlier cannot be solved by legislation. They have to be solved in ways that correspond to the organizing ideas and political tradition in which the Constitution is grounded. So it will be helpful for us to figure out why the right to religious belief is weakened by the Chinese constitutional structure as a whole.

There are several ways in which a constitution can fail in protecting freedom. One is vagueness of regulations, such as the “normal” criterion stipulated in Article 36. Another case is value conflict, which means the value of freedom is outweighed by other values. But it is still unclear as to what kind of value sequence is in the Chinese Constitution. In this section I will focus on how the Chinese Constitution prioritizes values. Although the Constitution has enumerated various kinds of political and social freedom, the limits of these freedoms are still uncertain and need more interpretation.

Among the many debates in contemporary constitutional studies, one is about the methodology of constitutional inquiry. Two representative theories are “constitution hermeneutics,” which focuses on the normative study of a constitutional text and advocates the supremacy of constitutional norms,²⁰ and “political constitution theory,” which argues that public law is a complex product of political discourse and constitution research should pay close attention to the influence of political discourse on constitution. Space constraint does not allow me to elaborate this methodological debate in detail. I simply note that I will employ the political constitution theory, which provides insight into the deep structure of constitutional phrases and ideas.

The most prominent advocate of this approach in China is Professor Chen Duanhong. In his formidable article titled “Constitutional Law as the Fundamental Law and Higher Law of Our Country,” he regards the essential character of the Chinese Constitution as “law of survival,” which purports to be saving the nation from extinction and ensuring its existence. This sense of purpose in the text defines a characteristic national ethic, affirms the fundamental hierarchy of values implied in the Preamble of Chinese Constitution, and guides almost all the constitutional amendments of the 1982 Constitution. The main theme of his article is “the five fundamentals,” which captures the Constitution’s lively feeling of political change and justifies the political actions of the party and government:

- (a) That Chinese people are led by the Communist Party is the first fundamental.
- (b) Socialism is the second fundamental.
- (c) Democratic centralism is the third fundamental.
- (d) Modern construction of socialism in China is the fourth fundamental.
- (e) Protecting fundamental rights of individuals is the fifth fundamental.²¹

These five fundamentals manifest collectively the instrumental value of the Constitution and the inner spirit of political action—to obtain prosperity—which reflects the core points of the political constitution in Chinese context. Political action is action undertaken for the sake of the common good of a society. The common goods of a society are such ends or purposes that are intrinsically worthwhile or instrumentally desirable to other ends.²² Hence we can regard this bundle of fundamentals as

formulating a hierarchy of political ends or values. The first three fundamentals lie at the first or ultimate level of value, which is the principle of allocation of power. The fourth one lies at the second level of value, which is the historical vocation and the national ideal. The fifth one lies at the third level of value, namely, the moral autonomy and dignity of an individual human being.

We can infer from the hierarchy that the Constitution is endowed with a special political morality. It might seem that the first two kinds of values are instrumentally desirable, in that they help achieve deeper and more universal ends, say, the protection and promotion of freedom or rights. However, this is merely an illusion. The truth is that the first level of value, specifically the leadership of the party, is the trump that occupies the core of political morality and can outweigh the other two kinds of values.²³ This value hierarchy, when observed from a historically and socially dynamic point of view, would give rise to frequent conflicts between different levels of values. This is difficult to understand without looking back at the historical record of political and constitutional transition. The challenges to religious freedom illustrate the point about how these conflicts arise.

The main purpose of the 1954 Constitution is to consolidate the revolutionary achievement in the form of law, reinforcing an independent road to development and the leadership of the Communist Party. The 1982 Constitution carried on this mission and made comprehensive regulations on the fundamental institution and mission of the country. The most remarkable political action in the 1980s and 1990s was the development of policies of reform and opening up. These policies function in two ways. On one hand, they reaffirm the leadership and legitimacy of the party in the light of its economic achievement. On the other hand, they reaffirm the basic task of the nation to concentrate on socialist modernization. At the same time, the new constitution states that individuals are entitled to more political space and economic rights or freedom. The highlight of this progress is that human rights were written into the Constitution in 2004. Furthermore, the enactment of Contract Law in 1999 and the Real Right Law in 2007 serve as great strides in protecting individual autonomy.

However, this does not mean that human dignity and moral autonomy are completely advocated in the improved legal system. On the contrary, I contend that it is the higher level of value for socialist construction in the Constitution that explains recent efforts to strengthen the right

to property or basic political freedoms such as freedom of association. More specifically, the logic behind these efforts is that by means of economic freedom or the right to property, individuals can transform wealth into a social force, which can better serve the purposes of socialist construction and the party. A typical example is the enactment of the Real Right Law. The two major tasks in the first article of the law, which provides its legislative purpose, state that the present law is enacted with a view to maintaining “the basic economic system of the state,” and thus protecting “the socialist market economic order.”²⁴

Moreover, although political freedoms such as freedom of speech or press do not concern wealth directly, their implementation is thought to be one of the most significant forces to promote spiritual civilization, which is a motivator of socialist construction. Socialist construction is composed of two main tasks: to achieve material abundance, and to enhance socialist morality. By means of political freedom, people can pursue spiritual virtue, which provides motivation and intellectual support for the material construction, according to Marxist philosophy.

To sum up, the wide variety of freedoms protected in the Constitution have less to do with human dignity or intrinsic value of life than with the collective morality needed for the accumulation of national material wealth. These kinds of freedoms characteristically are neutral and morally powerless in fighting against external restriction and invasion. Thus they cannot be classified as a conception of liberty, the political value that identifies those areas of freedom that government ought not limit or invade.

Religious freedom, however, cannot be simply classified as a neutral freedom that can be directed under the guidance of the first four fundamentals. In contrast with all the political or social rights or freedoms such as the right to work (Article 42), the right to religious freedom is essentially a political liberty in two ways. First, religion is per se a coherent system of viewing life and the world, and it usually regards a transcendent entity—a divinity—as the ultimate authority for personal conviction and action. This belief directly contravenes socialism and the ideological underpinnings of the party. Second, religion as a social force can unite people together to worship and to reform the spiritual and cultural structure of the society. This force differs from the inner logic of socialist construction and may even oppose it. Religion thus is a politically independent social element that does not fit with the Constitution’s highest values. In short, the protection of the right to religious belief as

stated in the Constitution is essentially a restriction of political liberty and a reduction of religion's intrinsic value to an instrumental value that is worthy of protection only if it serves the first two levels of value in the Constitution. This interpretation, I believe, reveals the main reason why the Constitution only protects "normal" religious activities and leaves the power of judgment to administrative institutions. It implicitly recognizes the religious challenge to its hierarchy of values and authority.

Constitutionalism and the court

Political development must take into account the diverse features of a country. But this fact raises a question: Can China adapt its own conception of constitutional values to more universal principles of constitutionalism? This question raises an even more fundamental theoretical issue: What is constitutionalism? My answer to these questions is that constitutionalism is a universal political principle, but in practice it can be implemented within different institutions. This is not to propose that there is a sort of Chinese characteristic constitutionalism, but that there may be a distinctive institutional design which conforms both to the political situation of China and to broader principles of constitutionalism, such as the supervision of power and the protection of freedom.²⁵

Apparently the value hierarchy of the current Constitution conforms to the party's vision of political progress but fails to live up to principles of constitutionalism. On the one hand, people's courts in China are endowed with particular political missions. On various occasions courts should play an instrumental role to sustain the political pursuit of values such as (b) and (d) mentioned earlier. One typical example of this kind of undertaking is the seventeenth Party Congress's appeal to courts to participate in "innovative" social management.²⁶ This has transformed the role of court from neutral adjudicator to active social participant.

On the other hand, the judicial view of the protection of religious freedom demonstrates another tension. From a judicial point of view, the most prominent concerns about the Constitution are the feasibility of judicial review and the judicial application of constitutional norms. The latter is usually stimulated by social appeals to basic rights in significant cases that have occurred in recent years. Observed in constitutional perspective, almost all the basic rights cases have the potential to transform institutions and reshape social perspectives, even to change priorities of

principle and value. Those cases mostly concern the rights of equality, political rights, the abolition of traditional regulatory measures, and the right to religious freedom. They cannot be simply classified as neutral freedoms that can be directed under the guidance of the first four fundamentals.²⁷

We can see that these issues are so crucial in touching the deep life-line of political and social reformation that if the courts can undertake the project to push forward and serve as the guardians of basic rights, the pace of healthy social change will be quickened and intrinsic values other than wealth-oriented desires will be socially identified and treasured. However, this is just an ideal, not the reality. According to Article 128 of the Constitution,²⁸ the courts are deeply constrained by the five fundamentals and are not eligible to make judgments on any possible conflicts between different levels of values. The Supreme People's Court is responsible to the National People's Congress and its Standing Committee. Local people's courts at different levels are responsible to the organs of state power that created them. Courts, in other words, have little independence. So during these three decades in the new era, we have already witnessed the impotence of the courts in most crucial political cases.

As to the protection of religious freedom, the court is more embarrassed in the sense that it almost closes the door for appeals regarding religious affairs and leaves it to administrative institutions. Just as is stated in the Regulations on Religious Affairs, the religious affairs department of People's governments at the county level or higher shall, according to law, exercise administrative control over religious affairs that involve state interests or the social welfare. There is still not a basic law on religious freedom to bind governmental actions. Technically, administrative legislation can get rid of the examination by the Standing Committee of the National People's Congress, and need not publicize conflicts of different sides and get legislative consensus. So this method is transferring the possible risk and disagreement that is caused by legislation to administrative measures.²⁹

Conclusion

There are two dramatic improvements to the Chinese constitutional system in the last two decades: the provision of the rule of law and

the respect for human rights in the Constitution. However, I am not optimistic about the protection of religious freedom as a liberty in the constitutional framework. The Constitution's underlying purposes have been disguised by the positive-sounding adornments of rule of law or human rights. This problem is perfectly demonstrated in the "National Human Rights Action Plan" (2009–2010). Human rights claimed in this plan remain instrumentally valuable and lie at a lower level of importance than social development, because

the Chinese government, in the light of the basic realities of China, gives priority to the protection of the people's rights to subsistence and development, and lawfully guarantees the rights of all members of society to equal participation and development on the basis of facilitating sound and rapid economic and social development.³⁰

The true nature of religious freedom as a political liberty will remain undermined by the hierarchy of values of the Constitution and the dual management by law and administration. This is the basic theme of this article. But we should not be so pessimistic about the future role of religious freedom in the political understanding and picture of social progress. Notwithstanding the five fundamentals fixed by the written Constitution, that sequence of values will not be steady forever. Now that the protection of free trade and the right to property is confirmed in the legal system, a relatively independent civil society will continue to grow, which will reshape national ethics and complicate a simple emphasis on property rights alone. I am fairly convinced that once the social power of religion, with its ability to mold new paradigms of life and motivate in-depth social cooperation, is fully brought to bear, it can induce a culturally heterogeneous sphere in which the sequence of values can adjust organically. Most importantly, there will be ample foundation for the transformation of national ethics from prosperity to liberty, and the ideological constitution to constitutionalism as well.

Notes

- 1 The "Real Right Law," enacted in 2007, establishes the basic law for regulating and protecting private property in China. See Han Dayuan, ed., *A True Record of the Legal Debates of the PRC in Sixty Years: The Constitution Volume* (Xiamen: Xiamen University Press, 2009), chs 10 and 17.

- 2 John Rawls, *Justice as Fairness* (Cambridge, MA: Harvard University Press, 2003), 2.
- 3 Du Wenzhong, *Constitutionalism of Modern China* (Beijing: Law Press, 2009), ch. 3.
- 4 Though there was a powerful central government during that period, people were surrounded by terrors, betrayals, and cruelties. What's worse, law enforcement agencies were destroyed by mass movements. In this sense we can say that the situation resembles a Hobbesian natural state.
- 5 Hou Xinyi, "A Country Heading for Democracy and Rule of Law," *Qian Jin Forum* 3 (2011): 41.
- 6 It states in the Preamble that "This Constitution affirms the achievements of the struggles of the Chinese people of all nationalities and defines the basic system and basic tasks of the state in legal form; it is the fundamental law of the state and has supreme legal authority. The people of all nationalities, all state organs, the armed forces, all political parties and public organizations and all enterprises and undertakings in the country must take the Constitution as the basic norm of conduct, and they have the duty to uphold the dignity of the Constitution and ensure its implementation." This statement has the appearance of Western constitutionalism, but as we shall see, the matter in reality is more complicated.
- 7 See, e.g., Zhang Qianfan, *Introduction to Constitutional Law* (Beijing: Law Press, 2004), 561.
- 8 See, e.g., Ma Ling, "On Citizen's Exercise of Religious Freedom in Our Country," *Nanjing University Law Review* 2 (1999): 136–142; Yao Junkai, "On Religious Liberty and Its Protection by Rule of Law," *The Magazine of the Protestant Churches in China* 19 (2007): 32–35. Those articles mainly focus on the improvements of institutional protection of religious freedom, which are the uniform answers to problems of religion and politics.
- 9 See Du Jiwen, "A Discussion on the Problem of Incorporating Religious Theology into National Education System and Research Institutions," *Science and Atheism* 2 (2010): 25–28.
- 10 See Yang Yang, "On Confucianism and Its Theocracy Thought," *Qi Lu Journal* 1 (1999): 80–86.
- 11 Daniel H. Bays, "A Tradition of State Dominance," in Jason Kindopp and Carol Lee Hanmrin, eds, *God and Caesar in China* (Washington, DC: Brookings Institution Press, 2004), 26.
- 12 The Chinese phrases of rule by law and rule of law vividly show the different implications of the two kinds of legal ideal. Both are composed of two words. There is a character component that means knife in "rule by law," while there is one that means water in "rule of law." Knife means violence, i.e., taking law as an instrument to achieve certain political aims. Water, however, denotes supreme virtue. This implication captures the core points of rule of law,

namely, that governmental actions and legal practice should abide by some basic political ideals.

- 13 “Basic Views and Policies on Religion in Socialist China,” document found at the State Administration for Religious Affairs (SARA) website. <http://sara.gov.cn/gb/zcfg/zc/75352506-2bdo-11da-8858-93180af1bb1a.html>.
- 14 Article 88 of the 1954 Constitution: “Citizens of the People’s Republic of China Enjoy Freedom of Religious Belief.”
- 15 Feng Yujun, “An Investigation on the Enforcement of Religious Affairs Administrative Law in China,” *Law and Social Development* 1 (2011): 130.
- 16 See the newly promulgated *Regulations on Religious Affairs of Shandong Province* (2011), Article 48(b): “Religious affairs” refers to relevant affairs of religion that are related to national and public interests.
- 17 In the 1999 amendment of the Constitution, a new section was added to Article 5: “The People’s Republic of China practices ruling the country in accordance with the law and building a socialist country of law.”
- 18 A term given by Professor Gao Quanxi in his “Exploratory Study of Model of Duality in China’s Current Law-Based Management of Religion,” *China Law* 3 (2009): 75–78.
- 19 In China laws are typically created and enacted by National People’s Congress (NPC) and its Standing Committee. But under the empowerment of NPC, the State Council can legislate in some areas in the form of administrative regulation, such as economics, education, and culture. To some extent administrative regulations can work as specification of laws, but their legal effects are lower than laws.
- 20 See Lin Laifan, *From Constitutional to Normative Constitution* (Beijing: Law Press, 2001).
- 21 See Chen Duanhong, “Constitutional Law as the Fundamental Law and Higher Law of Our Country,” in his *Constituent Power and Fundamental Law* (Beijing: China Legal Publishing House, 2010), 283–292.
- 22 See Robert George, “Religious Liberty and Political Morality,” in his *In Defense of Natural Law* (New York: Oxford University Press, 1999), 127.
- 23 This is reaffirmed in the “Three Supremacies” thought given by the president of PRC, Hu Jintao, in a speech to chief justices and prosecutors in 2007. Three Supremacies refer to the supremacy of the leadership of the party, the supremacy of the people’s interests, and the supremacy of the constitutional law. This thought is articulated by many professors, and most notably, the president of the Supreme People’s Court, Wang Shengjun, in his “Insisting on the ‘Three Supremacies’: Guidelines for the Judicial Work Keeping Pace with the Times,” *Journal of Law Application* 10 (2008): 4–6.
- 24 See Article 1 of the Real Right Law: “For the purpose of safeguarding the basic economic system of the state, maintaining the socialist market economic order, clearly defining the attribution of the res, giving play to the

- utilities of the res and protecting the real right of the right holders, this Law has been formulated in accordance with the Constitution Law.”
- 25 This may seem like a vague political standpoint. For the limitation of space, I cannot give an in-depth explanation here as to why we need a parochial conception of constitutionalism that is suitable in a transformational society in China.
- 26 See Zhou Zhihua, “The Identification of Roles of Courts in the Innovation of Social Management,” *Legal Information* 11 (2010): 48–50; Dong Zhiliang, “Courts Are the Participants and Impellers of the Innovation of Social Management,” *Legal Information* 11 (2010): 54–56.
- 27 See Chen Duanhong, “Constitutional Law as the Fundamental Law and Higher Law of Our Country,” in his *Constituent Power and Fundamental Law* (Beijing: China Legal Publishing House, 2010), 314–315.
- 28 Article 128 of the Constitution states that the Supreme People’s Court is responsible to the National People’s Congress and its Standing Committee. Local people’s courts at different levels are responsible to the organs of state power which created them.
- 29 Liu Peng, “The Process of Rule of Law for Religion in China,” in his *Pu Shi Social Science Selected Papers* (Beijing: Pu Shi Social Science Institute, 2011), 48.
- 30 *National Human Rights Action Plan of China* (2009–2010). http://www.china.org.cn/archive/2009-04/13/content_17595407_2.htm.

6

Religion and Rights Development in China: A Cross-National Perspective

Kevin R. den Dulk



Abstract: *Religion is booming in China, but many observers insist that China has a religion problem. The state still attempts to manage and limit religion. What is needed instead, say Chinese reformers, is the rule of law, which would regularize and secure religious activity in ways similar to what has begun in Chinese business and property law. So what is the prospect for rule-of-law reform in China that would protect religious freedom? The experiences of other countries—and the findings of many of the chapters in this volume—suggest that effective change will require a long and incremental journey that includes institutional reform, the development of mass-based public opinion, and a vibrant civil society.*

Keywords: China; civil society; legal advocacy; religious freedom; rule of law

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A clear message of this volume is that religion in today's China is fervent, richly varied, and broad in scope. This spiritual vibrancy is a profound transformation from just a few decades ago, when the Cultural Revolution, in spasms of Maoist orthodoxy, left nearly all religious congregations shamed and dispersed. Westerners often marvel at China's break-neck economic development after those shattering years, but we are just beginning to understand a similarly fundamental change among communities of faith.¹ While the growth of religion in China is not as conspicuous as Chinese economic development, it is arguably no less explosive.

A corollary to Chinese religious vitality is that the official ideology of the Chinese Communist Party (CCP), which still reflects a formal commitment to atheism, has not determined the course of religion in China. Indeed, the Chinese government today tolerates a great deal of religious exercise within the legal framework of "patriotic" associations, which organize and manage the official religious expressions in the country. Ordinary Chinese citizens who exercise their faith under the auspices of the five state-sanctioned associations—Daoists, Muslims, Protestants, Catholics, and Buddhists—are usually left alone to worship. Some China observers have argued that the CCP's goal in creating these associations was to contain religion until it gradually withers and dies under the weight of scientific advancement and economic modernization.² But if that is the strategy, the CCP plainly has not achieved the goal. By some estimates, the total number of adherents within these traditions has grown to nearly half the Chinese citizenry, vastly exceeding the entire population of the United States.³ And these numbers likely underestimate the presence of religionists who gather for worship outside the patriotic associations. Elsewhere in this volume, Li Ma, Jin Li, and Juhong Ai give us a sense of that non-sanctioned religious exercise in their ethnographies of house churches and Korean Christianity in China. Accurate figures are impossible to determine, but clearly there are thousands of such unregistered congregations involving millions of people across the country on a weekly basis. Local officials generally tolerate this form of worship as well.

Yet despite this bustling activity, many observers continue to insist that China has a religion problem. To put their concern in market terms, the issue is neither supply nor demand for religion; it is whether the religious market is fully open.⁴ The state appears to play too heavily in governing supply and demand for religion, especially by undermining a

key element in any open market, namely, a robust rule of law. My primary focus in this chapter is the prospect for rule-of-law reform that protects religious freedom in China. Critics often treat the Chinese record on religious freedom as grounds for political sledge-hammering: unless China immediately changes its state institutions and political culture at the root, the instruments of international *realpolitik*—trade sanctions, military containment, and the like—should be brought to bear on the Chinese government. But the experience of other countries suggests that effective change requires a long and incremental slog to satisfy market preconditions, including institutional reform, development in mass-based opinion, and a forceful civil society. China is beginning to take steps in all three areas, but resistance has been stiff.

What is the religious freedom problem in China?

Nearly every major civil liberties organization in the West places China at the bottom of global religious freedom rankings.⁵ Even the US State Department, despite the obvious foreign policy sensitivities and much to the chagrin of Chinese officials, has formally designated China a “country of particular concern” under the reporting requirements of the International Religious Freedom Act.⁶ That designation, which has been in place since 1999 when state issued its first religious freedom report, is based on the agency’s assessment of a pattern of “particularly severe violations of religious freedom.” To provide some context, only seven other countries were given the same designation in 2011: Burma, Eritrea, Iran, North Korea, Saudi Arabia, Sudan, and Uzbekistan.

It is important to note that the subject of these rankings is governmental action, not broader social condemnation. In fact, rankings that distinguish societal conflict over religion from governmental restrictions on religion generally find a significant state-society gap in China. The Pew Forum, for example, assigns China a 7.5 on a 1–10 scale in its government restrictions index (in Pew’s terms, “very high” in comparative perspective), while a mere 2.0 in its social hostilities index (“moderate” on the same scale).⁷ For all countries taken together, the scores for these two indices are highly correlated,⁸ suggesting a causal relationship between social hostility and government restriction. Yet China is an outlier. State restrictions in China do not appear to reflect underlying societal tensions over religion.

But in what sense does the Chinese *state* have a “problem” with religious freedom? The answer is not as straightforward as noting that the Chinese government has used its power to control religiously motivated behavior. *All* governments use their power for that purpose. Consider that countries that consistently criticize the Chinese government’s treatment of religion—including the United States—routinely place restrictions on religious practice, as Jennifer Walsh discusses in her chapter on land use regulations and religion. Few would find it controversial that local governments enforce basic health and safety requirements within houses of worship, or that governments collect taxes from those religionists who sincerely believe their religion exempts them from paying those taxes, or that governments prosecute people who do violence in the name of their religion. There are more controversial examples, but the point here is the principle: Religious freedom does not mean the state is forbidden absolutely from restricting religious practice. Put another way, if any state restriction comprises a religious freedom “problem,” then every state has a problem. There is nothing *particularly* concerning about China.

What, then, suggests that recent patterns of governmental regulation and restriction in China pose a distinctive problem? A clue, I would argue, is in many of the groups that the Chinese government has recently sought to restrict through arrests of leaders, property seizures, and dispersal of worshipping communities. Some conflicts have become familiar because of their persistence and/or ferocity: the Uighur Muslims or Tibetan Buddhists in the west, some Protestant or Catholic “house” churches in urban areas of the east and south, or nationwide phenomena such as the Falun Gong. In each instance, these groups have grievances they make public, coupled with a relatively large size and ready-made organization—all of which are resources for political mobilization. Herein lies the rub: A key concern for China as a one-party state is competition, that is, effective political mobilization by oppositional groups.⁹ To the extent these large, organized, and aggrieved religious congregations or movements—like any similar social groups—present a threat of mobilization, the party-state will seek to manage the threat. The Chinese government’s actions fit this management strategy: tolerate lived expressions of religious faith, either within or outside a framework officially sanctioned by the state, until those expressions pose a challenge to party dominance.

That this party-oriented management of religion is a problem becomes clearer when we shift perspective from the party to a person.

Let us imagine, for example, a pastor in an unregistered church in a large Chinese city, one of those so-called house churches that refuse to affiliate with a patriotic association. The pastor knows that local officials and party leaders in the city have, in effect, looked the other way when most unregistered churches worship and build their faith communities in other ways. But there are those gnawing exceptions, those times when the police have shut down a church and hauled its leaders away. Those state actions seemed arbitrary, and the pastor has no reasonable way of predicting when the state might take similar action against his or her church, or what formal-legal recourse he or she might have if the state did take action. In this environment of constant doubt, the pastor would sense little freedom.

This problem of the party's management of religion can be expressed in more technical terms: The pastor's freedom is violated by undeveloped rule of law. The pastor cannot consult a set of relatively fixed, enforceable, and transparent rules that lend some predictability and clarity to his or her church's status. As a result, the pastor cannot reasonably plan for the future of the church—and without the real possibility of planning, he or she is not free. In modern Anglo-American and European legal traditions, the rule of law attempts to solve this problem by restricting arbitrary and coercive restrictions on our ability to plan. It does so by binding everyone, ruled and rulers alike, to formal processes that both empower and limit the state. The rule of law assumes that certain rules transcend the specific interests of rulers—that no one, to use the colloquialism, is “above the law.” The contrasting model is the rule of persons (or rule of “will”), which assumes that a ruler's interests *are* the law. As a result, the rule of persons invites arbitrary exercises of political power, and, practically speaking, puts the ordinary individual in a position of relying on guesses about the interests and actions of local officials and party leaders. Our imagined pastor falls prey to the rule of persons.

A Chinese model of rule of persons is deeply ingrained. By some accounts, it can be traced back for centuries, to dynastic history when the legitimacy of imperial power rested in the emperor's enlightened virtue and the “mandate of Heaven,”¹⁰ rather than formal authority vested through rule of law. While the ascendance of the Chinese Communist Party was a dramatic political shift, a version of the rule of persons persisted and is still widely perceived, as Figure 6.1 illustrates through cross-national comparison.

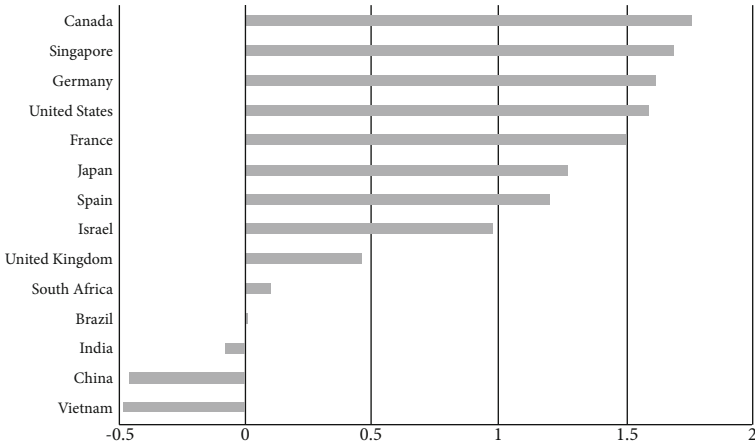


FIGURE 6.1 Rule of law ranking, selected countries (2012)

Source: Based on World Bank surveys of political and business elites. Available at www.govindicators.org. The survey measures perceptions of “the quality of contract enforcement, property rights, the police, and the courts, as well as the likelihood of crime and violence.” The range is -2.5 (weak) to 2.5 (strong) protection for the rule of law.

For several decades, observers both outside and within China have pressed a case for legal reform, insisting that the Chinese Communist Party adopt some aspects of prevailing global ideas about the rule of law.¹¹ Even China’s own leadership recognizes the normative and practical appeal of legal reform, especially to address its lack of strong rules governing property rights.¹² Others insist that strengthening property law is only part of fundamental reform. They argue that building a legal regime based in rule of law also entails transformed governance to permit political competition and guarantees for basic civil liberties such as speech, assembly, and religion.¹³

But agreement on the goals does not necessarily recommend means. How would a modern state of this sort move from a model of rule by persons to a form of the rule of law? This is a challenging—and often vexing—question. Nevertheless, the argument of the rest of this chapter is that we gain some leverage on the question by considering cross-national experience.¹⁴ This comparative approach is necessarily partial. On the one hand, legal reform efforts in other national contexts provide a useful vantage point to assess the prospects for change in China. Social scientists have found patterns in so-called rights revolutions across the globe, and these patterns suggest that certain conditions generally precede

rule-of-law reform. On the other hand, no single case—particularly a case such as China, with both its recent dynamism and its complex history spanning two millennia—fits neatly into a general model. The comparative method can tell us about typical conditions for reform, but how these conditions are met in a particular place and time are contingent on a host of factors, some predictable, some imponderable.

Developing rights through the rule of law

To identify a “path” to the rule of law suggests that the rule of law itself is a recognizable endpoint to the journey. But the rule of law as a practical matter does not have a settled meaning, and it is perhaps nowhere more sharply contested than in China. As one China scholar puts it, an entire “industry” has emerged to sort out what the rule of law in China ought to look like.¹⁵

Most scholars and practitioners agree that a “thin” vision of the rule of law carries certain very basic expectations. The legal theorist Lon Fuller illustrates this view of rule of law by arguing that law-based systems have an “inner morality” that must be honored for the system to work. He systematized this morality into a set of key requirements: “Don’t command the impossible”; “Treat similar cases similarly”; “Rules must be made available to those expected to comply”; and so on.¹⁶ By placing these basic requirements on lawmakers and other public officials, Fuller’s vision of the rule of law would diminish the threat of arbitrary exercise of power that inheres in the rule of persons.

But one can imagine many situations in which the state follows Fuller’s requirements and nevertheless violates fundamental substantive freedoms. The state might promulgate a rule, for example, that prohibits more than a dozen people worshipping together. Provided the rule was publicly accessible and officials applied the rule consistently, among a few other basic requirements, it would pass muster under a thin vision of the rule of law.

In response, others suggest that a “thick” vision of the rule of law would add robust institutional checks and balances and key substantive rights to the thinner version. For purposes of this chapter, a key idea in a thick vision is that substantive rights (e.g., religion, speech) and the rule of law are inextricable: a person’s ability to assert key rights provides a check on government that ensures that rulers are not “above the law.” Readers might detect hints of classical liberal theory here, with its emphasis on

inviolable individual rights rooted in nature, social contract, or utilitarian calculation. But this assumption is also consistent with post-war notions of human rights, that is, liberty claims that individuals can make against the state by virtue of their basic dignity.¹⁷

If we assume the rule of law is a good idea in general, then the dilemma is whether China should move in the thin or thick direction.¹⁸ The thinner version of the rule of law provides some measure of protection from arbitrary exercises of political power, and it is obviously easier to accomplish. The thicker version would carve out a greater range of both procedural and substantive freedoms for Chinese citizens, but it would cost the Chinese Communist Party in the form of fundamental change to political structures and the treatment of rights. A complicating factor is that the Chinese Communist Party has sought to institutionalize a competing “socialist conception of the rule of law,” which combines market reforms with public ownership, a privileging of social stability over individual rights, and an emphasis on the leading role of the party-state system.¹⁹ Against that backdrop, one might argue that a thick change in a liberal direction would be downright revolutionary, a supplanting of one sociopolitical model with an entirely new innovation.

A mark against a thick vision has been the difficulty of imagining such change in China, at least in the near term. This practical argument against a thick vision, however, often trips up on the language of “revolution.” Throughout the twentieth century, a thick vision for the rule of law drove a series of what scholars call “rights revolutions” in Western democracies and beyond.²⁰ These processes were dynamic and multifaceted, and they resulted in public recognition and protection of basic individual rights where they did not exist before. But they were *not* single events that occur at a discrete moment in time. A “revolution” in rights is more incremental than punctuated. Indeed, the process of change is often imperceptible until after the fact of change. Nevertheless, the result of rights development, as I will call it, are no less fundamental than if they had happened in a brief period of intense transformation.

Political scientists have identified certain systematic patterns in the process of rights development. Figure 6.2 displays a model for categorizing the patterns. By definition, a model is a simplified and stylized representation of reality. A model cannot account for every detail of the phenomenon represented, especially the complex social and legal process of innovating new rights. But this model of rights development tries to represent the most basic cross-national dimensions without denying national particularities.

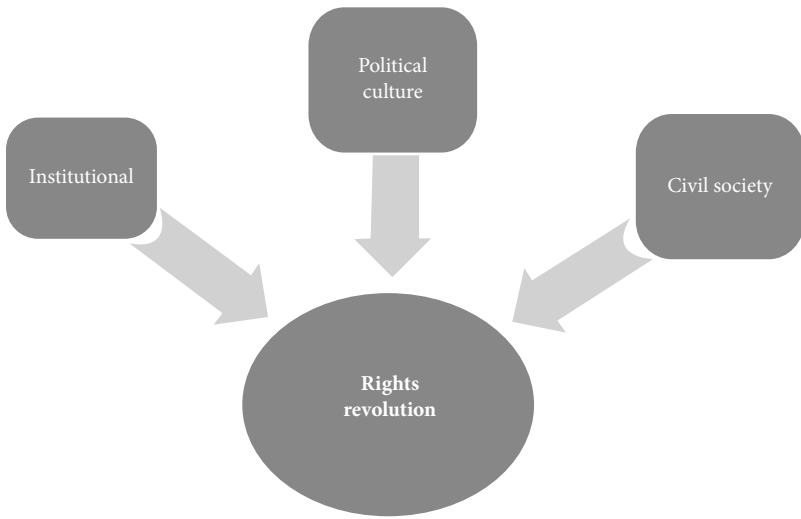


FIGURE 6.2 A simple model for rights “revolutions”

I identify three broad categories. First, state institutions themselves—and particularly courts—play a role in developing rights by lending the state’s authority to the process. Second, political culture—and particularly groups of citizens mobilized around rights—undergirds the process by organizing aggrieved groups and applying pressure on political elites. Finally, civil society—and particularly the legal profession—creates a “support structure” of expertise to link groups to government. Before moving to the case of China, I elaborate on each of these variables.

The institutional dimension

After World War II, the development of national constitutions was widespread, and the efforts at constitution-making accelerated as post-colonial and, later, post-communist states came to grips with the imperatives of governing. Nearly every nation today has a written constitution.²¹ Of course, these constitutions vary widely in the governing structures and the types of rights they enshrine. Consider the constitutional treatment of religion. Some countries in the Anglo-American tradition focus on protections of a negative right by forbidding government from prohibiting religious “exercise” (e.g., United States) or “observance” (e.g., Australia). Other national constitutions, including Germany’s and others on the European continent, might be properly categorized as

expressing a positive right to religious freedom. In this sense, citizens not only have a right to practice their faith without governmental intrusion, but they also have the rightful expectation that government will actively make space for that practice.²² Still others do not conceive of religious freedom as solely an individual right, suggesting instead that groups (e.g., ethnic or tribal) have collective rights to worship as they see fit. Sometimes these group rights are written in generic form, as in the Dutch Constitution, which declares that everyone can “manifest freely religion or belief, either individually or in community with others.”²³ In other cases, the religious freedom claims are linked to specific ethnicities, tribes, or castes (e.g., India).

But while national constitutions frequently express thick visions of the rule of law, they remain mere abstractions without institutions that articulate and enforce what the rule of law means. Any discussion of rule-of-law reform, therefore, will take into account the role of state institutions. It is also not surprising that most of those discussions focus on the role of courts. In the immediate wake of World War II, for example, most western European states established constitutional courts to act as “guardians” of emerging political, social, and economic rights found in their constitutions.²⁴ Most post-communist states in Eastern Europe followed suit in the 1990s,²⁵ as did some post-colonial states in sub-Saharan Africa and Latin America. The empirical evidence points to the decisive importance of these courts in certain regions. As Charles Epp notes in his important work on rights revolutions, rights movements would not have succeeded without “judicial attention to the new rights [and] judicial support for the new rights.”²⁶

These trends reflect what scholars call the “globalization of judicial review,” that is, the power of high courts across the world to review actions of other political institutions, usually to determine the constitutionality of those actions.²⁷ The United States was among the first modern nations to experiment with judicial review, but it has been adapted in a variety of legal systems, including those outside the Anglo-American common law tradition. The globalization of judicial review reflects the widespread belief that political power is less likely to be wielded arbitrarily when it is diffused and internally checked.

An important characteristic buttresses judicial review: judicial independence.²⁸ The theoretical connection between judicial review and judicial independence is straightforward. If a court has authority to review the constitutionality of the actions of other bodies, then presumably it ought

to be independent of pressure from those other bodies. The check of the judiciary would be toothless if judges perceived that their courts or even their persons would be under threat by the institutions under review.

It is important to note that while independent constitutional courts are common ingredients to rights revolutions, they are not necessary ones. While they generally play decisive roles in articulating and defending the rule of law, there are rare examples of state institutions that maintain rule of law without robust judicial independence.²⁹ I argued earlier that the advocates for judicial review often point to the importance of dispersed institutional powers with internal checks. In other political systems, party competition is often as effective at diffusing and fragmenting power as independent constitutional courts. Consider the United Kingdom or the Netherlands. Both have systems of legislative supremacy, which means that neither technically has an independent constitutional court. But one would be hard pressed to say they lack the rule of law, at least in comparative perspective. Their governmental structures work because they have sufficient party competition to ensure that the legislature will not take significant action that violates religious or other freedoms. Legislators have an electoral incentive to avoid the conflict that would bring. Even in a relatively weak party system like the United States, some observers argue that legislative competition is a powerful check on governmental restriction of religion.³⁰

Still, even in these countries, courts have played an active role in the process of entrenching constitutional rights. They may not have the specialized authority of judicial review, but they nevertheless serve key functions in rights development within these countries by articulating the meaning of rights. The upshot is that courts have the greatest authority when they combine judicial review and independence, but they have real authority to foster rights even when they lack these characteristics.

The cultural dimension

On its own, this institutionalist dimension of the model suggests that a rights revolution is largely an elite-driven phenomenon. But sociolegal scholars remind us that legal institutions are embedded in a “system of cultural and symbolic meanings”³¹ that may or may not be shared among the broader public. While amenable courts are usually necessary ingredients to rule-of-law reform, they are not sufficient without a broad-based culture that accepts the underlying values of the rule of law in the first place, including a commitment to rights.

Scholars and activists have often associated legal reform movements with a process of “legal mobilization,” that is, groups of citizens who are activated by a set of grievances and effectively translate those grievances into a rights claim against government.³² The paradigmatic case is the Civil Rights movement in the United States, which capitalized on broad-based activism to move both Congress and the courts to act. Similar movements exist around the globe, from Europe to Latin America.

Of course, citizens must understand themselves as rights bearers before they will seek legal redress of grievances. The basic process of legal mobilization requires that a group move from expressing grievances to claiming a right. In the context of religious freedom, for example, one can imagine an endless array of grievances that religious believers might have against the government, from incidental and trivial restrictions (e.g., health and safety requirements in a house of worship) to the most violent crackdowns and eradication efforts against religious groups. But these grievances by themselves are not the basis for legal mobilization. After all, some religionists may have grievances that they simply bear rather than contest. Other religionists might decide to contest a grievance, but through extralegal means (e.g., terrorism). In contrast, legal mobilization requires that the aggrieved perceive their circumstances as a violation of a legal right, and they use the formal-legal processes at their disposal to assert that right against the government.

If it is not inevitable that aggrieved parties would claim a right, what prompts them to do so? Scholars often refer to the key mechanism as the development of “rights consciousness,” that is, a process in which citizens come to understand their political, social, and economic interactions with others in terms of legal rights.³³ Some scholars argue that rights consciousness is “constitutive” of identity itself because it has a transformative effect on both the rights bearer’s motives and sense of empowerment.³⁴ Newly rights-conscious citizens perceive that they have a new status defined by the legal right, which entitles them to certain benefits that they previously lacked. They are therefore motivated to defend the right. They might also feel empowered to defend the right because they perceive that key institutions—e.g., the courts—are specifically tasked with addressing their petitions.

When large groups of people come to this understanding together, they are primed to be mobilized collectively around a claim of legal rights. But a rights-based movement of this sort does not simply spring out of nothing. It generally follows the consciousness-raising work of

activists who have a commitment to the cause, and those activists often operate within organizations we find in civil society.

The civil society dimension

Taken together, elite institutions and mass-based culture foster mobilization around rights. But they are still insufficient to explain rights development around the world. On the one hand, courts are generally passive; they settle the disputes that come before them, and their agenda is therefore limited by those disputes. On the other hand, ordinary citizens, even when they perceive that their rights have been violated, may still be uncertain about how to address their rights-claims, especially when faced with complex judicial systems. This suggests that legal reform requires a bridge between institutions and the rights claims of ordinary citizens.

Charles Epp, in his important work on rights revolutions, calls this bridge a “support structure.”³⁵ The structure of that bridge, so to speak, is built primarily by lawyers and activists who have specialized knowledge, useful skills, and access to financial and other resources. They often work on behalf of rights-advocacy organizations, which increases the likelihood that a cause will remain on the agenda as lawyers and other activists come and go. But, in the final analysis, those lawyers and activists are the key players in the support structure for rights revolutions. Their motivations often run powerfully deep, including those “cause lawyers” who are committed to building the bridge as a moral imperative.³⁶ The primary commitment of these rights-oriented lawyers is to a cause (e.g., religious liberty) and not the clients *per se*. In a sense, clients are simply the means to pursue the cause.

We might think about this support structure as part of the broader networks of civil society. As a concept, “civil society” has meant many things to different theorists and social observers, but a common view is that civil society comprises those voluntary associations that help “mediate” between the individual and the state.³⁷ On one side of this mediator’s role, civil society shapes the norms and values of individuals by reminding them of their obligations to others. On the other side, civil society softens the power of government by putting organized interests between the state and the individual. Religious institutions, schools, labor unions, fraternal organizations, sports leagues—these are examples of the kind of associations within civil society that provide individuals with an awareness of public responsibilities and political strength in numbers.

Lawyers and their professional associations play a significant and distinctive role alongside these other groups. Clearly they shape norms and values by raising consciousness about rights among individual citizens. While that may appear to be a highly individualistic enterprise,³⁸ it often has the effect of binding people together in the shared experience of rights-based political movements. Moreover, these lawyers, backed with the resources of organized rights-advocacy groups, can provide a bulwark against the otherwise overpowering authority of the state. Researchers have demonstrated this role for lawyers all over the world in various rights arenas, including religious freedom.³⁹

Prospects for rights revolution in China

In sum, the comparative perspective suggests that rule-of-law reform should take into account a set of three interrelated factors. First, reform requires elite institutions with the independence and legitimacy to vindicate the rights claims of ordinary citizens. Second, reform involves an underlying culture that supports legal mobilization by reinforcing the idea that grievances ought to translate into rights claims. Third, reform entails a “support structure” within civil society that mediates between the state and individual. Given these dimensions of reform movements across the globe, then, what are the prospects for reform of the rule of law in China in the context of religious freedom?

The Chinese Constitution does declare protections for religious belief and “normal” religious activity. An obvious problem is that the protection is largely interior to the human person: It fully protects beliefs we carry in our minds, but, through the modifier “normal,” it leaves open the regulation of a wide swath of non-conformist behavior inspired by religious belief. Even without this modifier, however, a Chinese believer faces a problem of state accountability. As it stands, no Chinese court has authority to invalidate governmental actions under the Constitution. The power of constitutional interpretation, consistent with the “socialist rule of law,” ultimately rests with the Standing Committee of the National People’s Congress (NPC), the very same body that has plenary legislative power when the full NPC is not in session. At the highest level, then, the legislative and judicial powers are not separate, and courts are therefore not independent.⁴⁰ Not that it matters much to religious freedom, because ordinary citizens have no formal avenue to petition courts over constitutional matters anyway.

The Standing Committee has little incentive to change this arrangement. Even if the Chinese Communist Party is motivated to strengthen courts to enforce property rights, there is no necessary reason to believe they would extend a court's jurisdiction to other rights. As Zheng Yushuang argues in this volume, the CCP leadership operates with a hierarchy of preferred constitutional rights, and religion is far from the top of the list. Besides, the best social science on incentives suggests that authoritarian regimes are most likely to strengthen judicial independence when rulers see democratization and constitutional rule as inevitable.⁴¹ The reason is that parties that suspect they will lose office might seek to establish strong, independent courts as a form of political insurance to protect against unhindered opposition rule. But we see little evidence of that fundamental shift in China, at least in the near term.

A potential response is to shift focus from the national to the subnational. The emphasis on the Chinese Constitution, the Supreme People's Court as a tribunal of last resort, or party competition in the NPC is perhaps too focused on centralized power in Beijing. China is not only the earth's most populous country, but it is also third largest in physical size. In a place with such enormous demographic and geographic scale, much of the work of governing necessarily happens at local and provincial levels. Could it be that reform will come from institutions at the bottom rather than the top?

That is difficult to predict, to say the least. Still, two factors work against bottom-up institutional change. First, while Li Ma shows the remarkable diversity in local political conditions across the country, the CCP's influence continues to be pervasive. As a result, most religious believers who run afoul of the state find themselves in local criminal courts or under so-called administrative detention by local officials.⁴² These state actions usually happen under the charge of "inciting subversion of state power," which can—and has—included a host of religious activities that local officials or party leaders simply declared as threats to that paramount Chinese value of social harmony.

Moreover, the Chinese criminal justice system at the local and provincial levels is heavily weighted toward the government, with very few robust due process rights available to defendants. The police, procuracy (the legal system's prosecutorial and investigative arm), and judiciary form an "iron triangle of law enforcement" that work in close relation.⁴³ Indeed, the very notion of adversarial legalism as integral to criminal justice (e.g., in the Anglo-American system) is itself often perceived as a

threat to harmony, which helps explain why few litigants have access to effective representation.⁴⁴

These obstacles in elite institutions are also reflected in the mass population's attitude toward legal mobilization, especially the idea of translating a grievance into a rights claim. Scholars are just beginning to explore legal mobilization in China, but my reading of the preliminary evidence suggests there are stiff headwinds.⁴⁵ On the one hand, the most basic element of a rights claim exists: plenty of Chinese faithful have grievances against the government, and they are often networked together in houses of worship. On the other hand, as we see throughout East Asia, ordinary citizens traditionally have little concept of legal rights in the individualist sense in which Westerners use the term.⁴⁶ It might strike them as a threat to social harmony. And while some public intellectuals have begun to chart a "middle way" between extreme individualism and extreme communalism that focuses on various forms of group rights, the concept is in early development.⁴⁷

In addition, asserting a right in a legal process butts up against two walls, one cultural, the other political. From a cultural perspective, an adversarial approach through litigation is dissonant in a society accustomed to resolving conflict through informal mediation or simple avoidance. From a political perspective, many Chinese deduce that law does not provide justice when the legal process is rife with political interference. The irony is that activists who develop a high level of rights consciousness gain a better understanding of their prospects of vindication in court. As a result, rights consciousness might be a *disincentive* to legal engagement when activists recognize their prospects are dim. This appears to have been the case in recent land seizure disputes in rural China, when some villagers gave up their legal petitions as fruitless.⁴⁸

Perhaps these perceptions are changing with economic development and the emergence of rights-based activism. Here the priority of economic growth may drive greater rights development. If it is changing—and Zhang Wei's chapter in this volume suggests it is—the model suggests that lawyers, acting within civil society, will be at the forefront. But they, too, face some key challenges.

One challenge is simply capacity: To put it simply, there are too few lawyers in China. During the Cultural Revolution, lawyering was effectively banned as a threat to the new order. When Deng Xiaoping instituted economic reforms in the 1980s, he recognized the need for lawyers to help the process along. But that means that China has had little more than 30 years to rebuild its devastated legal profession. To

be sure, its efforts have been impressive. While it had only about 3,000 attorneys in the early years after the Revolution, today the number has grown to nearly 200,000. And since 1996, independent firms have been proliferating. While most are focused on commercial activity, a few small groups exist largely to address religious freedom claims at the local and provincial levels. These are heartening signs of organized mobilization.

But in comparative perspective the lawyer rate remains a pittance. As noted in Figure 6.3, China's lawyer rate is approximately 14 lawyers per 100,000 residents, compared to 79 in Singapore, 102 in India, 187 in Germany, or 319 in Brazil. And the profession continues to struggle mightily with problems of competence and independence. Halliday and Liu argue, for example, that the criminal bar in China faces serious obstacles to forming a coherent and autonomous identity.⁴⁹ Without more and better lawyers, Chinese civil society has a long way to go before it can effectively mediate between the individual and the state.

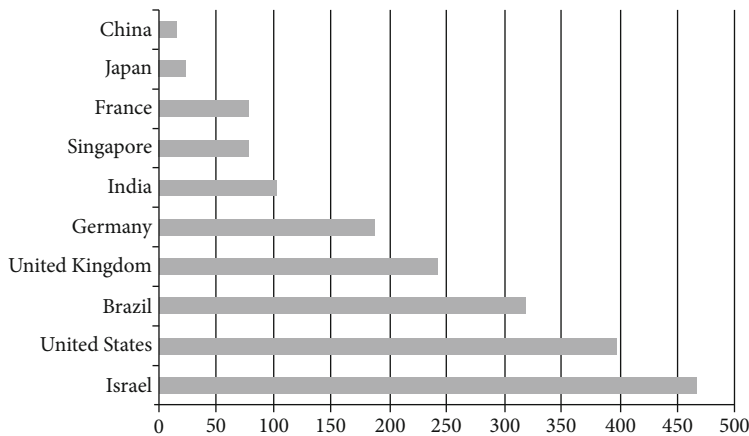


FIGURE 6.3 Attorneys per 100,000 residents, selected countries (2010/2011)

Source: Population estimates are available from the World Bank at http://info.worldbank.org/governance/wgi/sc_country.asp. Data sources for estimates of lawyers included the Israel Bar Association; Japanese Federation of Bar Associations; Bar Association of Brazil; Bar Council of India; American Bar Association; The Law Society (United Kingdom); Council of Bars and Law Societies of Europe; “Number of China’s Licensed Lawyers Reaches 200,000,” *People’s Daily Online* (English version), October 19, 2011, available at <http://english.peopledaily.com.cn/90882/7620752.html>; and Vijayan, K. C., “Number of Lawyers in Singapore Could Hit Record 4,000 this Year,” *Straits Times*, September 19, 2011. All estimates are from 2010 or 2011. Attorney estimates include licensed attorneys; estimates do not include unlicensed legal advocates, nor do they account for licensed attorneys who are no longer practicing.

A second challenge for the legal profession is the state itself. While some independent rights-advocacy groups have emerged since 1996, clearly the party leadership has not looked kindly on the efforts of these groups in recent years. This is particularly clear among the loosely networked lawyers who spearheaded the *weiquan* movement (literally, the rights-defending movement) in the early 2000s. In 2006, the Standing Committee authorized “forceful measures” against these lawyers, who were accused of using legal mobilization as a pretext to “undermine social stability.” In response to some courageous litigation efforts, officials disseminated reminders to judges across China that their responsibility was to party goals—a “socialist concept of the rule of law”—and not to individual rights or their own independence. Hu Jintao asserted that argument publicly in late 2007, and in 2008 the party placed a non-lawyer ideologue at the head of the Supreme People’s Court. As late as 2012, China’s Ministry of Justice had promulgated new rules for the management of attorneys, and particularly their public advocacy in media.⁵⁰ Throughout the 2000s China’s “cause lawyers” were imprisoned, disbarred, disappeared, and/or tortured for doing their work.⁵¹ Clearly the movement had hit a nerve, and it remains weak and dispersed partly as a result of the government’s punitive actions.

Perhaps then we should look outside of China itself for a “support structure” within civil society. Consider the phenomenon of transnational legal activism, those “activists without borders” who combine international legal norms with indigenous movements.⁵² Amnesty International and Human Rights Watch are prominent examples of transnational networks that frequently succeed in facilitating change. But scholars have noted that China has been particularly resistant to these groups’ primary tactics—agenda-setting, providing information to citizens on the ground or leaders in other countries (e.g., rankings of religious freedom), or using powerful institutions to apply pressure (e.g., the World Trade Organization).

Conclusion

In the near term, then, it would seem the prospects for rights development in China—especially relating to religious freedom—are mixed at best. On the one hand, party-controlled institutions are resistant, the mass public is generally not attuned to a thick notion of rule of law, and the legal profession is small and hampered up and down the system. On the other hand,

there is clearly more openness in the post-Mao era, there are some pockets of citizens who have developed something like “rights consciousness,” and there is a growing legal profession and culture of activism.

Perhaps the weightiest factor is the posture of the CCP toward religion. The post-Mao reform era opened the door to controlled religious expression, which marked a kind of pragmatism that belies the ideological rigidity of the past. Indeed, religion does not even seem to appear in the intellectual orbit of many CCP members, who are preoccupied with economic development and view religion largely with indifference. But Marxist-style atheism appears to take the form of outright militancy where it often counts the most: Those elites within the CCP who make the key decisions about the regulation of religion.⁵³

One might argue that obstacles to religion are diminishing. Surely the increase—by some accounts explosion—in Chinese religiosity suggests that political efforts to squelch it failed or even backfired. And some government officials have begun to recognize that religion might serve useful social purposes, especially in areas that are reeling from the social costs of massive migration and rapid urbanization. But to say that the state will loosen the reins on religion because religion is useful does not pass the test of the rule of law, which does not assume social utility as grounds for freedom.

For Westerners concerned about basic rights—and particularly the freedom of religious belief and worship—it is tempting to seek a silver bullet through strong international actions to compel China to move toward legal reform. Some prominent Christian voices, for example, have insisted for a long time that the United States link “normal” trade relations to the Chinese government’s treatment of religion. But the path to rule-of-law reform is not straightforward. If cross-national comparisons are any guide, the journey would require a complex mix of institutional and cultural change, fostered by a robust civil society. This path suggests policy tactics that are more developmental than *realpolitik*: The patient building of capacity among Chinese citizens so that they can craft their own version of a rights revolution.

Notes

- 1 In the past decade, several books appeared to introduce the English-speaking West to China’s religious transformation. See, e.g., David Aikman, *Jesus in Beijing* (Lanham, MD: Regnery, 2003); Lian Xi, *Redeemed by Fire: The Rise*

- of Popular Christianity in Modern China* (New Haven: Yale University Press, 2010); Vincent Goosaert and David A. Palmer, *The Religious Question in Modern China* (Chicago: University of Chicago Press, 2011); and Daniel H. Bays, *A New History of Christianity in China* (New York: Wiley-Blackwell, 2012).
- 2 See, e.g., Fenggang Yang, *Religion in China: Survival and Revival under Communist Rule* (New York: Oxford University Press, 2012), ch. 3.
 - 3 Estimating Chinese religiosity is an enormous social scientific challenge. Nevertheless, some of the best estimates suggest that the combined number of religionists is about half the Chinese population, particularly when Buddhist and folk religious practices are included. See, e.g., Brian Grim, *Rising Tide of Restrictions on Religion* (Washington, DC: Pew Forum on Religion and Public Life, 2012), 46.
 - 4 For a nuanced examination of China's religion "markets," see Yang, *Religion in China*, ch. 5.
 - 5 The Pew Forum's survey of governmental restrictions on religion ranks China among the top ten most restrictive countries in the world. Grim, *Rising Tide*, 10. Similarly, the Center for Religious Freedom at the Hudson Institute assigned China a 6 on a 1–7 scale in its Religious Freedom in the World Survey (7 being the most restrictive). Scores are available at <http://crf.hudson.org>.
 - 6 The State Department's International Religious Freedom Report for China in 2012 is available here: <http://www.state.gov/documents/organization/208434.pdf>.
 - 7 Grim, *Rising Tide*, 59. The Pew Report defines social hostilities as "acts of religious hostility by private individuals, organizations, and social groups" (e.g., sectarian violence, harassment over attire).
 - 8 For the statistically minded, the correlation is .621 and the bivariate *r-square* is .39, suggesting a strong association between social hostilities and government restrictions. See *ibid.*, 46.
 - 9 My discussion here fits with a broader literature on the political origins of religious liberty. See especially Anthony Gill, "Religious Pluralism, Political Incentives, and the Origins of Religious Liberty," in Allen D. Hertzke, ed., *The Future of Religious Freedom: Global Challenges* (New York: Oxford University Press, 2013), 107–127.
 - 10 Elizabeth J. Perry, *Challenging the Mandate of Heaven: Social Protest and State Power in China, Asia and the Pacific* (Armonk, NY: M.E. Sharpe, 2002).
 - 11 One of the most prominent voices is Weifang He, *In the Name of Justice: Striving for the Rule of Law in China* (Washington, DC: Brookings, 2012).
 - 12 Consider that Chinese Premier Wen Jiabao's opening speech to the 2012 annual meeting of the National People's Congress cited the property rights of individuals as a legislative priority in the coming year. His talk reflects the

pressure on the Chinese Communist Party, both at home and internationally, to toughen protections for intellectual and other types of property. Although Wen's comments were specifically focused on land rights among domestic farmers, one could argue that he was acknowledging a broader point that China needs to develop the rule of law to reflect its new status as a major economic power.

- 13 Peng Liu, "Religion as a Factor in Sino-U.S. Relations," *The Review of Faith and International Affairs* 6:8 (2008): 61–66.
- 14 My analysis relies heavily on social scientific scholarship that focuses on rights development in general, rather than religious freedom in particular. For a very fine collection of essays on religious freedom in global perspective, see Hertzke, *The Future of Religious Freedom*, particularly chapters 2–4.
- 15 Randall P. Peerenboom, ed., *Judicial Independence in China: Lessons for Global Rule of Law Promotion* (Cambridge ; New York: Cambridge University Press, 2010), 4.
- 16 Lon L. Fuller, *The Morality of Law*, Storrs Lectures on Jurisprudence (New Haven: Yale University Press, 1964).
- 17 No document illustrates this modern notion of human rights more prominently than the *Universal Declaration of Human Rights*. The Preamble begins with a forthright assertion recognizing that "inherent dignity... of all members of the human family is the foundation of freedom... in the world." On the basis of that recognition, it outlines numerous rights, including the right to religious belief and practice. A similar dignitarian approach permeates the national constitutions established by many Western democracies after World War II. See, e.g., Mary Ann Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York: Free Press, 1991); Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, 1st ed. (New York: Random House, 2001). For theoretical treatments, see Michael Perry, *Toward a Theory of Human Rights* (New York: Cambridge, 2007); and Nicholas Wolterstorff, *Justice: Rights and Wrongs* (Princeton, NJ: Princeton University Press, 2008).
- 18 For a general discussion of these arguments, see Randall P. Peerenboom, *China's Long March toward Rule of Law* (Cambridge, UK; New York: Cambridge University Press, 2002).
- 19 *Ibid.*, 3.
- 20 Charles Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (Chicago: University of Chicago Press, 1998).
- 21 The United Kingdom is among the few exceptions to the rule. One might argue, however, that the United Kingdom has a kind of "constitutionalism without a constitution," i.e., even in the absence of a written constitution, it has a set of traditions, entrenched in assorted key documents and/or judicial

- rulings, that both empower and limit governmental power in the way one would expect from a written constitution.
- 22 See, e.g., Stephen V. Monsma and J. Christopher Soper, *The Challenge of Pluralism: Church and State in Five Democracies*, 2nd ed. (Lanham, MD: Rowman & Littlefield Publishers, 2009), chs 6.
 - 23 The Constitution of the Netherlands, Article 6. Available at <http://www.government.nl/issues/constitution-and-democracy/documents-and-publications/regulations/2012/10/18/the-constitution-of-the-kingdom-of-the-netherlands-2008.html>.
 - 24 Martin Shapiro and Alec Stone Sweet, *On Law, Politics, and Judicialization* (New York: Oxford University Press, 2002).
 - 25 Herman Schwartz, *The Struggle for Constitutional Justice in Post-Communist Europe*, Constitutionalism in Eastern Europe (Chicago: University of Chicago Press, 2000); *ibid.*
 - 26 Epp, *The Rights Revolution*, 7.
 - 27 Martin Shapiro, "The Globalization of Judicial Review," in *Legal Culture and the Legal Profession*, ed. Lawrence Friedman and Harry Scheiber (Boulder, CO: Westview Press, 1996), 119–135.
 - 28 Gretchen Helmke and Frances Rosenbluth, "Regimes and the Rule of Law: Judicial Independence in Comparative Perspective," *Annual Review of Political Science* 12 (2009): 345–366.
 - 29 *Ibid.*, 347.
 - 30 This is Louis Fisher's primary argument in *Religious Liberty in America: Political Safeguards* (Lawrence, KS: University Press of Kansas, 2002).
 - 31 Marc Galanter, "The Radiating Effects of Courts," in Keith D. Boyum and Lynn Mather, eds, *Empirical Theories of Courts* (New York: Longman, 1983), 117–142.
 - 32 Frances Zemans, "Legal Mobilization: The Neglected Role of Law in the Political System," *American Political Science Review* 77 (1983): 690–703.
 - 33 Michael McCann, *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization* (Chicago: University of Chicago, 1994), 7.
 - 34 *Ibid.*, 6; see also Patricia Ewick and Susan S. Silbey, "Conformity, Contestation, Resistance: An Account of Legal Consciousness," *New England Law Review* 26 (1992): 731–749.
 - 35 Epp, *The Rights Revolution*, 3.
 - 36 A scholarly literature on this type of lawyering has developed over the past 15 years. See Austin Sarat and Stuart Scheingold, eds., *Cause Lawyering and the State in a Global Era* (New York: Oxford University Press, 2001); Austin Sarat and Stuart Scheingold, *Cause Lawyers and Social Movements* (Palo Alto, CA: Stanford University Press, 2006); Stuart A. Scheingold and Austin Sarat, *Something to Believe In: Politics, Professionalism, and Cause Lawyering* (Stanford, CA: Stanford Law and Politics, 2004). For a case study of how religion

- intersects cause lawyering, see Kevin R. den Dulk, "In Legal Culture, but Not of It: The Role of Cause Lawyers in Evangelical Legal Mobilization," in Austin Sarat and Stuart Scheingold, eds, *Cause Lawyering and Social Movements* (Stanford, CA: Stanford University Press, 2006), 197–219.
- 37 The classic argument for this "mediator" role of civil society is in Peter Berger and Richard John Neuhaus, *To Empower People: From State to Civil Society* (Washington, DC: American Enterprise Institute, 1995).
- 38 Glendon, *Rights Talk*, ch. 3.
- 39 Dennis R. Hoover and Kevin R. den Dulk, "Christian Conservatives Go to Court: Religion and Legal Mobilization in the United States and Canada," *International Political Science Review/Revue internationale de science politique* 25:1 (2004): 9–34; Jaynath Krishnan and Kevin den Dulk, "So Help Me God: Explaining the Recent Rise in Religious Group Litigation in the U.S. and Beyond," *Georgia Journal of International and Comparative Law* 30:2 (2002): 233–275.
- 40 For an in-depth examination of judicial independence in China, see Peerenboom, *Judicial Independence in China*.
- 41 Helmke and Rosenbluth, "Regimes and the Rule of Law," 357.
- 42 "Administrative detentions" enable the police, largely at their own discretion, to hold persons without trial. For a full discussion of their use in China, see Sarah Biddulph, *Legal Reform and Administrative Detention Powers in China*, Cambridge Studies in Law and Society (Cambridge, UK; New York: Cambridge University Press, 2007).
- 43 Terence C. Halliday and Sida Liu, "Birth of a Liberal Movement? Looking through a One-Way Mirror at Lawyers' Defence of Criminal Defendants in China," in Terence C. Halliday, Lucien Karpik, and Malcolm M. Feeley, eds, *Fighting for Political Freedom: Comparative Studies of the Legal Complex and Political Liberalism* (Oxford: Hart Publishing, 2007), 65–108. See also Sida Liu and Terence C. Halliday, "Recursivity in Legal Change: Lawyers and Reforms of China's Criminal Procedure Law," *Law and Social Inquiry* 34 (2009): 11–50.
- 44 Halliday and Liu detail the impediments to legal representation in "Birth of a Liberal Movement?" 83–88.
- 45 See, e.g., Neil Jeffrey Diamant, Stanley B. Lubman, and Kevin J. O'Brien, *Engaging the Law in China: State, Society, and Possibilities for Justice* (Stanford, CA: Stanford University Press, 2005). Their volume focuses on several case studies of legal conflicts throughout China, which relies heavily on in-depth observational methods. Social scientist lack good evidence about widespread perceptions of rights in China.
- 46 Joanne R. Bauer and Daniel A. Bell, *The East Asian Challenge for Human Rights* (New York: Cambridge University Press, 1999).
- 47 *Ibid.*, especially chs 9–12.

- 48 Christopher Heurlin and Susan Whiting, "Villagers against the State: The Politics of Land Disputes" (paper presented at the annual meeting of the American Political Science Association, Chicago, August 30, 2007), 31–32.
- 49 Halliday and Liu, "Birth of a Liberal Movement?" 92–95.
- 50 Edward Wong, "Chinese Lawyers Chafe at New Oath to Communist Party," *New York Times* (March 22, 2012), 8.
- 51 Human Rights Watch, "Walking on Thin Ice: Control, Intimidation, and Harassment of Lawyers in China" (April 2008), available at <http://www.hrw.org/reports/2008/china0408/>.
- 52 Margaret E. Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998).
- 53 Fenggang Yang, *Religion in China*, ch. 1.

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