

Religious Legislation in China: Historical Evolution and Recent Developments

LIU PENG*

ABSTRACT: The paper addresses the continuing evolution of China's legislative management of religion and state. After sharing several insights from practical experience and current research, and offering some general background regarding China's major religions and current models for religion governance, the author moves to represent a specific description of recent legislative developments within China.

This paper addresses the continuing evolution of China's legislative management of religion and state. Just as a close understanding of Chinese history will yield examples where religion and the public square have been mutually beneficial, a close understanding of recent developments in Chinese legislative life will yield that the Chinese system is still evolving in its relationship to religion. Within the context of socialism's continual development in China, religious legislation is also developing.

Here I would like to share several insights from my practical experience and current research, first offering some general background regarding China's major religions and current models for religion governance before moving to a more specific description of recent legislative developments within China.

Brief Background of Major Religious Groups in China

There are 100 million religious believers in China. The Chinese government has recognized or approved an estimated 3,000 religious groups, 85,000 religious venues,

*. **Liu Peng** is a professor at the Institute of American Studies in the Chinese Academy of Social Sciences. He is also the director of the Beijing Pu Shi Institute for Social Sciences. Professor Liu graduated in 1986 from the Chinese Academy of Social Sciences, holding the highest degree in the field of World Religion Research, and shortly after served in official capacity as Deputy Chief of the Religion Section of the United Front Work Department (UFW) under the Central Committee of the Communist Party. An expert on religion in America, Professor Liu has spoken internationally and written extensively on issues related to religion and American politics. He is currently a Fellow in Law at Emory Law School. In addition, in the past, he has served as a Visiting Scholar at Rutgers University, Georgetown University, and Notre Dame University.

300,000 clergy men and women and 74 clergy training schools. The government of China has officially recognized five religions capable of legal existence in Mainland China. These five recognized religions are Buddhism, Taoism, Islam, Catholicism and Protestantism.

Buddhism is a Nepalese and Indian invention introduced to China 2000 years ago. China hosts more than 13,000 Buddhist temples and 200,000 monks and nuns. There are three major denominations of Buddhism in China: Chinese Buddhism, Tibetan Buddhism, and Hinayana Buddhism. Within Chinese Buddhism (Mahayana Buddhism) there are 70,000 monks and nuns and 8,300 temples located throughout China's coastal area and inland. Tibetan Buddhism (Lamaism) has 120,000 monks and nuns, and among these 1,700 "living Buddhas", as well as 3,000 temples, mostly in Tibet, Qinghai, Gansu, west Sichuan and part of Yunnan. Finally, Hinayana Buddhism (Pali Buddhism) claims 10,000 Bhiksus, Bhiksunis and elders, 1,600 temples, mostly in Yunnan.

Taoism is a Chinese invention and has a 1,700 year history within China. China has 1,500 Taoist temples, called *dao guan* and Taoist clergy include 25,000 men and women priests. Like Buddhism, Taoism's presence is spread throughout China.

Islam is the common faith for 10 of the 55 officially recognized ethnic minority groups in China (Uyghur, Hui, Kazakh being the most noteworthy of these 10 groups). These 10 ethnic groups have a combined population of 18 million. Overall, there are 40 million Muslims in China, 30,000 Mosques, and 40,000 imams.

Catholicism started its full scale expansion in China after the First Opium War (from 1839 to 1842). Currently Catholicism attracts 5 million followers, with 4,000 government-ordained priests, and 4,600 Catholic church venues.

Protestantism also started full evangelistic expansion in China after the First Opium War, due to Western missionary efforts. Currently, China recognizes 18,000 pastors, 12,000 church venues, 25,000 congregations. There are 10 million recognized Protestant followers in China.

Legislative and Security Issues

Regarding Protestant Christianity, the greatest issue for the government is the co-existence of unregistered "house churches" alongside the official Three-Self church. House churches are isolated grass-root small cells without a centrally organized structure, hierarchy, and affiliation between house churches. The rise of the house church started during China's Cultural Revolution in the 1960s. However, the house church movement did not experience widespread growth until after 1978, when it became a nationwide phenomenon. Today, house churches are distributed throughout China, mostly concentrated in China's coastal and Northeastern regions, specifically in Henan,

Zhejiang, Anhui, Shandong provinces. However, other provinces with substantial house church populations are Jiangsu, Hubei, Guangdong, Fujian, Beijing, Shanghai as well as Jilin province where house churches are prevalent among ethnic Korean communities.

Regarding, Roman Catholicism, the government faces a similar unregistered church situation with “Underground Roman Catholic” (URC) churches. URC churches are in communion with the Pope and co-exist with the government-supported “Chinese Patriotic Catholic Association” churches (which are not in communion with Rome). While URC churches do have similar features to Protestant house churches, they differ in that URC churches are extensively networked in China. In the case of the Catholic Church, the desire of certain Catholic practitioners to engage other Catholics outside of China’s territorial borders is the main motivation driving some Catholics to eschew legitimate registered status for personal devotion. Here, issues of territorial integrity are intertwined with the management of religion within China, a tension that will again be addressed below.

With Buddhism, the most significant religious issues are with Tibetan Buddhism. Specifically, there is conflict between Tibetan Buddhist leadership (Panchen Lama), which is approved by China’s State Council (the government), and privately held belief and loyalty to religious authorities outside China (i.e., the Dalai Lama and living Buddhas in India and Switzerland). Tibetan Buddhism has also been frequently associated with Tibetan separatist movements which causes any Tibetan religious problems to assume the nature of a territorial integrity issue.

The threat of Islamic separatist movements and Islamic extremists pose major problems to the Chinese Government. Eastern Turkestan separatist movement groups based in Xinjiang, China, Central Asia, and the Middle East are the actors behind this threat. Additionally, the number of Islamic training centers and Arabic language schools not registered with the Chinese government is increasing in inland China’s Ningxia, Gansu, and Yunnan provinces.

Finally, though Buddhism is the most powerful of these five major religions in society and is the most visible in public, Buddhism and its weaker Chinese brother, Taoism, also provide a challenge to the state from a governmental point of view. Uncontrolled and unapproved establishment of temples and religious sculptures by Buddhist and Taoist believers often engenders financial conflict with local regulators thereby providing a challenge to local-level religious policies.

From a non-governmental point of view, there are also issues raised by China’s current governance structure for religion. One problem is the issue of legal status. Religious groups are often deprived of legal status because they are not permitted to register with the government. Unable to register, these groups cannot legally and openly

hold meetings, proselytize, distribute religious literature or participate in religious education and international exchanges.

Another non-governmental problem is an equal access problem. For example, Judaism, Eastern Orthodox churches (except in one province), Mormon churches, and Baha'i are a few of the major religions not recognized by Chinese government even though they have millions of followers worldwide. The government has shown no sign of changing its long standing policy on the status of these unrecognized religions' access to China.

Finally, even for lesser-known Chinese indigenous folk beliefs, the current management structure fails to clarify the legal status of popular rural religions such as the cult of the folk deity, Ma Zhu.

Historical Evolution of Religion Governance in the Chinese Communist Party (CCP)

To understand recent progress, address current issues, and understand future areas for growth in religion's governance, we must understand the historic context for models employed by China's government.

From 1949-1990, religion's management was driven by a combination of policy and administrative control. The Party set policies to handle religious affairs and the government's State Administration for Religious Affairs (SARA, formerly named, "Religious Affairs Bureau") exercised administrative power over religious affairs in China at central and local government levels.

Specifically, in 1982 the CCP first raised the issue of drafting an officially-documented, functional regulation for religious affairs management. In 1986, the State Council approved local drafting of regulations on religion applicable within their administrative areas.

At the 13th National Party Congress (NPC) in 1987, the CCP resolved to empower the judicial sector. As a result, SARA was formed as a committee authorized by the State Council to draft national regulation with regards to religious affairs. In the same year, the religion committee of the Chinese People's Political Consultative Conference held a meeting to discuss draft regulations on religion as proposed by religious leaders.

Subsequently, in 1989, officially recognized religious leaders Zhao Puchu and Ding Guangxun submitted their draft of "Law of Religion" to the standing committee of the NPC, and urged earlier NPC legislation on religion. This draft was rejected because it did not match the Party line, and had no support from government, legislative power, non-governmental organizations or academic circles.

In 1991, after the draft Law of Religion's rejection, Document 6 of the Party circulation urged an acceleration of the religious legislation draft process. As a result, in April 1991, the Religious Affairs Bureau (now known as the State Administration for Religious Affairs, or SARA) proposed new legislation on religion. Since this time, China's religion policy has consisted of a mixture of law and regulations and administrative control.

In 1994, the State Council issued a regulation on religious venue which has since expired, and also issued a regulation on foreigners' religious activities in China. (This 1994 regulation also had an accompanying 2000 implementing supplement.) However, it was not until July 2004, that the State Council passed the current "Regulation of Religious Affairs". Finally, in April 2005, SARA issued implementing rules for the July 2004 regulations: "Rules for Establishing and Registering Religious Venues".

Today, the declared purpose of China's policy for protecting the freedom of religious belief is "to unite all people, regardless of their faith or lack of faith in religions, to better exert their will and energy towards the common goal of building up a powerful modern socialist nation." This declared purpose is the product of the aforementioned histories - of China's major religions and China's current legislation - histories that have given birth to several philosophical and practical challenges that lie at the foundation of China's religious policy and governance structure, and still beg further resolution:

First, religion is a phenomenon that falls under idealist philosophy. As a result, it is in direct conflict with the officially upheld philosophy of materialism and Marxism. Accordingly, a government guided by Marxism should promote materialism and Marxism world view, rather than encourage the expansion of religions in China. Second, the nature of certain religions determines that they have a close connection with foreign religious groups. This is especially true in the case of religions that have traditionally played an integral role in Western politics. Chinese religious groups connected to these religions are therefore feared to be religious agents, assisting in Western attempts to interfere in China's internal affairs. Third, religion has always been present in Chinese culture involving a large number of religious believers. Religion predates many of today's political conventions. Fourth, most of China's ethnic minority groups are religious and as a result sensitive ethnic minority issues become intermingled with religious affairs issues. Both compete for attention and impede clarification. Fifth, religious affairs are viewed by government as necessarily being political and public affairs, rather than cultural affairs or private matters.

Diverse Views on Current Legislation

Current sources for religious law in China are: the Constitution (specifically Article 36), laws drafted by the National Party Congress, administrative regulations and agency rules,

administrative regulations and rules at provincial levels, and regulations and rules on religious affairs issued in ethnic minority regions.

Examples of NPC laws touching on religion include the Criminal Law, Civil Law Principles, and Mandatory Education Law. Criminal Law, Article 251 provides up to two years of imprisonment for any serious violation of citizens' freedom of religious belief by government workers. Civil Law Principles, Article 77 declares religious groups' properties to be protected under law. The Mandatory Education Law provides that the state practice the separation of education and religion, and declares that religion must not be used to hinder the educational system.

There are also numerous laws on preserving cultural relics, land use and city zoning covering religious affairs.

Across China's 30 provinces there are 55 separate regulations governing religious affairs. In addition, the basic legislation of China's ethnic minority autonomous regions usually contains chapters on the rights of religious belief.

Suffice to say, these sources for legislation all contain their particular complexities. However, it would lie outside the scope of this general survey to illustrate these significant but numerous complexities. In general, though, in China, there is broad support for the idea of rule of law on religious affairs, but there is some variance as to how this should be implemented and accomplished.

SARA's view is that legislation of religion is for the purpose of more effective management of religious affairs. In addition, it holds that religion is not merely an idealistic belief, and therefore state power is justified to be used to regulate and control it. As such, the internal affairs of religious groups are also not free from the government's administrative power.

The view of many scholars, however, is that protecting the citizen's right to freedom of religious belief and practice is the focus of legislation on religion. In other words, to many scholars, legislation is not merely another restraint on rights of religious believers but a means of enabling the individual. Furthermore, many scholars believe China needs a comprehensive law on religion issued by NPC. In China's contemporary legal context, the Chinese Constitution cannot be used as a court trial or appeal authority, and as a result, the right of religious freedom has to be gained from other laws drafted under the constitution.

Scholarly opinion supports that such legislation would resolve the prejudicial clauses describing religious believers scattered in various laws and regulations. If such legislative adjustments were enacted, the legislation should also avoid allowing excessive local discretion in exercise religious control, as this will weaken the overall strength of any national protection of religious belief.

Finally, in regards to the Constitution, there is a need to explicitly declare in the Constitution that China practices the separation of church and state.

Likewise, there are diverse views on the most recent religious regulations in China, the “Regulation of Religious Affairs”. On November 30, 2004 the State Council issued the controversial “Regulation of Religious Affairs”. SARA called it a “milestone” in the development of China’s legal system. However, many outside of SARA hold that the Regulation does not resolve long standing issues regarding religious affairs. These longstanding issues include: religious group registration, the property rights of religious venues, and the overall relationship between the state and religious groups.

Nor have the Regulation's conflicts with other laws in China been ignored. Some clauses in the Regulations violate the general legal principle of “duties requiring corresponding rights”. Moreover, the 2004 Regulations contradict China’s “Law of Legislation”, issued in 2000, which states that the rights of religious freedom should not be restrained by an administrative regulation. In addition, the 2004 Regulations fail to preserve the legal principle of legislative rights reserved by NPC on some of the most important human rights, such as the right to religious freedom.

Discussion of Legislative Reform within China

Within China in recent years there have been conferences to address reforms in religious legislation, among them a 2005 Conference on Religion and Rule of Law in Chongqing, China, 2004 International Symposium on Religion and Rule of Law in Beijing, 2004 Conference on Religion and Politics in Shanghai, 2003 Constitution Amendment Conference in Qingdao City, China, and 2002 Conference on Religion and Politics in Beijing

The most recent of these conferences was the October 2005, “Religion and Rule of Law” conference held in Chongqing-based Southwest University of Law and Politics. This conference marked the first time the 2004 Regulations were openly discussed in an academic conference in China.

Government officials in charge of religious affairs, experts on religious law and religious representatives have regularly and actively participated in these conferences on religion and rule of law.

These forums and the associated discussions demonstrate that the Chinese government is starting to open to reform of religious regulations. For example, Communist Party Deputy Secretary Huang of the Chinese Academy of Social Sciences (CASS) provided the opening speech at the 2004 international symposium. Government think-tank Chinese Academy Social Sciences recently sponsored an international

symposium on religion and rule of law in Beijing. In addition the *People's Daily*, China's leading newspaper, among other domestic media outlets have covered these discussions.

Conclusion

In conclusion, any religious problems within China are natural products of the socio-political context. All of China's recent progress in religious legislation and problems has to be analyzed in this larger structural context. As a society, China has achieved major successes in its economic reform, and is now virtually a complete market driven-economy, a major departure from its planned economy roots. However, economic reform poses new legislative and political questions. Similarly, resolution of religious problems, and reformation of religious policies requires more than economic success; it also requires requisite legislative and political development.

However, as in economic matters, greater promotion of the rule of law is a tested route that will also apply to ease the religious problems in China. Accordingly, legislating a comprehensive law on religion is necessary, though consensus has yet to be reached as to the nature of an eventual law on religion. Religious legislation inevitably has to take public order and public interest into consideration, but what is the proper balance between religion and the state? What mode of state and religion relationship should China adopt, as there are many sustainable global examples?

As one of the great shareholders in our global civilization, China faces the 21st century's challenge of religious extremism and terrorism. However, greater rule of law is also the remedy to this challenge. Extremism results from a lack of fair competition in the marketplace of ideas. When legalization of belief expression doesn't result from what is deemed acceptable, but instead from free expression that is guaranteed by the state, the need to combat extreme ideas is eliminated. In this context, differing ideas do not necessary need to be viewed as a threat. Rather, actual threats are identified more quickly and accurately, as security threats no longer are able to hide under the guise of ideology.

Ultimately, solving these challenges calls for rule of law. Rule of law in religious affairs is not achieved by merely upgrading regulations and rules to the status of national law, but it requires a deeper, sustained analysis of the foundations of religious policy. However, one lesson learned from a close examination of the historical development of rule of law in the context of Chinese religion is that establishing and implementing rule of law on religious affairs is a long process, requiring careful dialogue and thoughtful action.