

## SYMPOSIUM: DEBATING RELIGION AND PUBLIC LIFE IN CONTEMPORARY CHINA

# LAW, RELIGION, AND SOCIETY IN CHINA: A CONTESTED TERRAIN

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### ABSTRACT

The tumult of the twentieth century had a great impact on the role of religion in Chinese society. Antipathy toward religion reached its height in China during the Cultural Revolution, one of the few times in history when religion was almost completely wiped out in a single country. Religion in China has experienced a resurgence since the beginning of the Reform and Opening Up period in 1978. With the renewal of religious practice, new proposals have been put forward for the role of religious ideas in public life. In addition to the endurance of Marxist and liberal conceptions of the place of religion in society, new voices have emerged, arguing for return to Confucianism as the source of moral vitality in public life, or advancing Christian public theology as a moral resource for individuals adrift and alienated by the rapid changes of a modernizing economy. These realities have reshaped debates about the protection of religious freedom in China. This article introduces these new social and discursive realities and sets the stage for the articles that follow.

**KEYWORDS:** religion in China, religious freedom, church and state, law and religion

The articles that follow originated in a July 2016 symposium held at the Institute for Sino-Christian Studies in Hong Kong, convened by Daniel Yeung, director of the institute, and Zhibin Xie, of Tongji University in Shanghai. The theme of the conference was an examination of various debates and proposals surrounding the relationship between religion and the state in China today. Based on the work of that conference, the articles that follow aim to address questions of religion and state in China from the perspective of multiple disciplines and multiple religious and philosophical traditions. This symposium combines descriptive and normative approaches, not only engaging questions of what is going on in China today, but also intervening in debates about how to proceed on questions of religion and state in a rapidly changing society.

A professor at the Chinese University of Hong Kong, Pan-Chiu Lai<sup>1</sup> examines the relationship between church and state in China in historical perspective, concluding with an argument about how this relationship should proceed in the future. The article combines historical description

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1 Pan-Chiu Lai, “Subordination, Separation, and Autonomy: Chinese Protestant Approaches to the Relationship between Religion and State,” *Journal of Law and Religion* 35, no. 1 (2020) (this issue).

and interpretation with a normative appraisal of future trajectories and possibilities. The second article, by political scientist Lei Sun, a professor at Tongji University, likewise combines a historical understanding of China's Confucian tradition with a normative argument about how Confucianism can shape China's political future.<sup>2</sup>

Recent crackdowns on Christians in China and the increased persecution of ethnic minority Muslims in Xinjiang province have put the question of religious freedom in China at center stage in the Western media. While this symposium does not include an in-depth analysis of Islam in China, Matthew Erie's 2018 article published in the *Journal of Law and Religion* provides an important resource for understanding how religion and ethnicity intersect in the Chinese government's understanding and response to Islam.<sup>3</sup> Unpacking the question of what religious freedom means in the Chinese context, in the final article of this symposium, Beijing-based legal scholar Songfeng Li analyzes the protection accorded to religious belief and practice under the Chinese Constitution.<sup>4</sup> Read together, these articles provide a helpful window into contemporary understandings of religion and state in China, as well as normative arguments about how religion and state should be configured.

#### RELIGION IN CHINA TODAY

Neither this introduction nor these articles as a whole are intended to provide anything close to a comprehensive account of the vastly complex terrain of religion and state relations in China today. They are instead an entry point for Western thinkers interested in law and religion to see what these kinds of debates look like in the Chinese context. This article is meant to provide some of the background of understanding that is assumed in the articles that follow.

I begin with the changing realities of religious practice in Chinese society, where an economic model of religion can be useful. While some object to the use of such a model for interpreting religious practice,<sup>5</sup> it allows one to make sense of the dramatic shifts that have taken place in religious participation in China since the early 1980s. Sociologist Fenggang Yang notes that about 100 million Chinese are in the "red" market of religion, by which he means the officially sanctioned religions in China.<sup>6</sup> By contrast, another 100 to 200 million are in the "black" religious market, referring to illegal religious organizations. This leaves around one billion Chinese unaccounted for. Some have wrongly assumed that this means that China remains a largely non-religious society. Yang contends on the contrary that a great many of these one billion persons partake in what he calls the "gray" market, somewhere between the officially sanctioned red market and the illegal black market. While many Chinese will deny that they belong to a *zongjiao* (religion), sociological data found in the "Chinese Spiritual Life Survey" undertaken by Horizon Consultancy Group in 2007 suggest that 85 percent of Chinese respondents "either held some religious beliefs or had

2 Lei Sun, "The Relation between Confucianism and Chinese Politics: History, Actuality, and Future," *Journal of Law and Religion* 35, no. 1 (2020) (this issue).

3 Matthew S. Erie, "Shari'a as Taboo of Modern Law: Halal Food, Islamophobia, and China," *Journal of Law and Religion* 33, no. 3 (2018): 390–420.

4 Songfeng Li, "Freedom in Handcuffs: Religious Freedom in the Constitution of China," *Journal of Law and Religion* 35, no. 1 (2020) (this issue).

5 Vincent Goossaert and David Palmer, *The Religious Question in Modern China* (Chicago: University of Chicago Press, 2011), 12.

6 Fenggang Yang, *Religion in China: Survival and Renewal under Communist Rule* (Oxford: Oxford University Press, 2012), 119–20.

some religious practices in the last twelve months, even though most of them did not identify with a religion.”<sup>7</sup> When the question is properly framed (and not forced into a Western conceptualization of religion), it turns out that China remains a highly religious society.

The endurance of a gray market for religion in China, serving millions of Chinese who identify neither with officially sanctioned religions nor with their illegal counterparts, can be interpreted differently, however. In a thorough account of the religious history of modern China, Vincent Goossaert and David Palmer emphasize the continuity and fluidity of religion throughout the twentieth century and into the twenty-first.<sup>8</sup> Their project is helpfully read in light of C. K. Yang’s famous study from 1961, *Religion in Chinese Society*, which underlined the ways in which traditional Chinese religion permeated all areas of life, destabilizing the neat Western categories of sacred and secular, religious and political.<sup>9</sup> Goossaert and Palmer’s work brings such an analysis forward to the Communist period and beyond, deploying the critique of secularism articulated perhaps most famously by Talal Asad,<sup>10</sup> as well as the criticism of Western constructions of religion found in thinkers like Tomoko Masuzawa.<sup>11</sup>

The economic model looks at religion in terms of supply and demand. There are religious suppliers (religious organizations, churches, mosques, temples) as well as religious demand on the part of groups and individuals. The near eradication of all religion, or at least of all religious “supply” during the Cultural Revolution in China is noteworthy.<sup>12</sup> The attempted elimination of religion in the Cultural Revolution as well as the continuing suppression of religion today help explain why religious supply and demand are out of sync in contemporary China; religious demand greatly out-runs supply. Countless churches experience overflow crowds at countless worship services many days per week, with many worshippers standing outdoors, even in the blazing heat of summer in Nanjing and the icy winter in Beijing. There simply are not enough religious organizations and not enough clergy to meet the demand for religious goods and services. This has been spoken of as a “shortage economy” of religion.<sup>13</sup>

The tumult of twentieth-century Chinese history had a great impact on the role of religion in Chinese society. Marxist antipathy toward religion reached its height in China during the Cultural Revolution, one of the few times in history when religion was almost completely wiped out in a single country. With the reform and opening policy after 1978, things began to change. Representative of the change—and the fundamental modesty of the change—is the document known simply as “Document 19,” from 1982. Officially titled “The Basic Viewpoint and Policy on the Religious Question during Our Country’s Socialist Period,” this directive of the Chinese Communist Party adheres to the Marxist principle that “Religion will eventually disappear from human history.”<sup>14</sup> Rejecting historical attempts to violently eradicate religion from society (presumably a veiled critique of the Cultural Revolution), the document presents itself as retrieving a

7 Yang, *Religion in China*, 117.

8 Goossaert and Palmer, *The Religious Question in Modern China*, 2–4.

9 C. K. Yang, *Religion in Chinese Society: A Study of Contemporary Social Functions of Religion and Some of their Historical Factors* (Prospect Heights: Waveland Press, 1991).

10 Talal Asad, *Formations of the Secular: Christianity, Islam, Modernity* (Stanford: Stanford University Press, 2003).

11 Tomoko Masuzawa, *The Invention of World Religions* (Chicago: University of Chicago Press, 2005).

12 Jiping Zuo contends that a form of “political religion” continued during the Cultural Revolution in the form of the cult of Mao, so that “China has never been an atheist country.” Jiping Zuo, “Political Religion: The Case of the Cultural Revolution in China,” *Sociological Analysis* 52, no. 1 (1991): 99–110.

13 Yang, “Religion in China under Communism.”

14 “Document 19” [in English], accessed March 12, 2020, [https://www.purdue.edu/crcs/wp-content/uploads/2014/08/Document\\_no\\_19\\_1982.pdf](https://www.purdue.edu/crcs/wp-content/uploads/2014/08/Document_no_19_1982.pdf).

more authentic reading of Marxism, in which the demise of religion is seen as an inevitable law of history, not something that needs to be actively brought about by force. While Document 19 presents a shift away from the policy of the Cultural Revolution, Fenggang Yang rightly notes that “the shift of position” in Document 19 “is merely from militant atheism to enlightenment atheism, while the religious policy is still firmly based on atheism.”<sup>15</sup>

There is a certain paradox in China regarding religious practice and religious belief.<sup>16</sup> Despite the continuing repression of certain forms of religion by the Chinese government, religion continues to grow. Indeed, it seems the demand for religion in China is directly proportional to the attempt of the government to suppress it. This has led sociologists to consider how limitations on religious freedom can actually strengthen religious vitality. “Ironically, the hurdles for becoming a church member may serve as a mechanism for selecting the most knowledgeable and most committed believers and disparaging freeriders who only want to take advantage of the church, consequently resulting in, on average, a higher level of commitment among the church members.”<sup>17</sup> This reality, Yang suggests, can then inspire and attract others to the religion.<sup>18</sup>

As has been widely acknowledged, religion is a powerful force in Chinese society today.<sup>19</sup> Debates continue as to whether this amounts to a “return” to religion after the communist period, or whether instead the emphasis should instead be placed on religious continuity throughout the modern period in China. In any case, religion is playing an increasingly important role in Chinese public life today.<sup>20</sup>

These realities are important not only for religious persons or for those interested in the academic study of religion. The “religious question” in China is deeply intertwined with broader questions about the very shape of social and political life in Chinese society today. Many basic questions about how Chinese society is to be ordered remain open, and whatever the answers turn out to be, it is likely that religion will play a role, both in the questions that are asked and in the answers that are provided. The next section turns to the question of religion’s role in contemporary debates about the shape of public life in China.

15 Yang, *Religion in China*, 128. Philip Wickeri argues persuasively that the basic stance of Document 19 can be traced to Li Wiehan’s conception of “five characteristics” for working with religion that was put forward in the 1950s. Philip Wickeri, *Seeking the Common Ground: Protestant Christianity, the Three-Self Movement, and China’s United Front* (Maryknoll: Orbis Books, 1988), 83–89.

16 For more on the dilemma faced by the Chinese state in its relations particularly with Protestantism, see David C. Schak, “Protestantism in China: A Dilemma for the Party-State,” *Journal of Current Chinese Affairs* 40, no. 2 (2011): 71–106.

17 Yang, *Religion in China*, 148–49.

18 Yang concludes *Religion in China* with the suggestion that “the Chinese religious economy is a shortage economy, where religious supply is heavily regulated, religious demand is vivaciously dynamic, and religious regulations are rendered ineffective because of the ‘invisible hand’ of market forces or economic laws.” Yang, 159.

19 See Yoshiko Ashiwa and David L. Wank, *Making Religion, Making the State: The Politics of Religion in China* (Stanford: Stanford University Press, 2009); Mayfair Mei-Hui Yang, ed., *Chinese Religiosities: Afflictions of Modernity and State Formation* (Berkeley: University of California Press, 2008); Fenggang Yang and Joseph B. Tamney, *State, Market, and Religions in Chinese Societies* (Leiden: Brill, 2005); Luo Zhufeng, ed., *Religion under Socialism in China*, trans. Donald E. MacInnis and Zheng Xi’an (Armonk: M. E. Sharp, 1991).

20 See Carsten T. Vala, *The Politics of Protestant Churches and the Party-State in China: God above Party?* (London: Routledge, 2018); Fenggang Yang, “What about China? Religious Vitality in the Most Secular and Rapidly Modernizing Society,” *Sociology of Religion* 75, no. 4 (2014): 564–78.

## RELIGION AND PUBLIC LIFE IN CHINA

Around the time of the founding of the Republic of China, some put forward the idea of establishing Confucianism as the state religion (*guo jiao*). It was decided instead to opt for something more like an American model of separation of church and state. The result was that a broadly Protestant Christian conception of religion (focused on belief over against practice) was superimposed on the context of Chinese society.<sup>21</sup> This helps explain why the majority of Chinese today deny that they have a religion (*zongjiao*), leading some to conclude that China remains a deeply secular and atheistic society. More nuanced studies have shown, however, that upon closer examination the majority of Chinese hold a variety of beliefs about the supernatural and engage in practices that are rightly understood as religious in nature. Chinese who deny that they hold a religion are often denying that they believe in a religion in the Western, largely Protestant sense. The political history of modern China and understandings of religion are thus deeply implicated and interlocking.

Since the beginning of the Republican period, and even more drastically after the Communists came to power in 1949, religion was relegated to the private sphere, cordoned off from public political philosophy in China. After 1949, this public political philosophy was monopolized by Marxist thought. Since the period of reform and opening began under the leadership of Deng Xiaoping in 1978, and despite the continuing official adherence to Marxist ideology, the most basic conceptions of religion and politics are once again being contested and reshaped today. Some argue for a return to Confucianism as a kind of national public philosophy or state religion. Others point to Protestant Christianity as a source of the moral foundations Chinese society requires. Still others advocate for various forms of liberal democracy, whether on secular grounds or in connection with appeals to the Christian tradition, variously understood.<sup>22</sup> The diversity of options is evident in the articles that follow.

If proponents of liberalism on the one hand and Marxism (often called “New Leftism” in speaking of Marxist intellectuals in China today) on the other represent two well-known political philosophies in China today, two other influential proposals for public life in China remain less well known. One, mentioned already, is the contemporary retrieval of Confucianism, represented especially by Jiang Qing, who calls for a “Confucian Constitutionalism” as an alternative to both Marxism and liberalism, grounded in Chinese Confucian tradition and culture. Another prominent movement centers on various forms of Protestant Christianity, especially varieties of Calvinism.<sup>23</sup>

The Christian population in China has increased rapidly since the early 1980s. The most explosive growth has been among Protestants, who now number somewhere between 50 million

21 Goossaert and Palmer, *The Religious Question in Modern China*, 10.

22 See, for example, Wang Yi, “The Possibility of Political Theology: Christianity and Liberalism,” *Chinese Law and Religion Monitor* 8, no. 1 (2012): 96–118.

23 The predominance of Calvinism among Protestant groups has led Frederick Fällman to speak of a “New Calvinist” movement: Frederick Fällman, “Calvin, Culture, and Christ? Developments of Faith among Chinese Intellectuals,” in *Christianity in Contemporary China: Sociocultural Perspectives*, ed. Francis Khok Gee Lim (New York: Routledge, 2012), 153–68, at 159–60. Alexander Chow resists this term for describing the broader urban house church movement: Alexander Chow, *Chinese Public Theology: Generational Shifts and Confucian Imagination in Chinese Christianity* (Oxford: Oxford University Press, 2018), 109–11. Also see Frederick Fällman, *Salvation and Modernity: Intellectuals and Faith in Contemporary China* (Lanham: University Press of America, 2008); Chloë Starr, *Chinese Theology: Text and Context* (New Haven: Yale University Press, 2016); Gerda Wielander, *Christian Values in Communist China* (London: Routledge, 2013); Alexander Chow, “Calvinist Public Theology in Urban China Today,” *International Journal of Public Theology* 8, no. 2 (2014): 158–75.

and 80 million in China today, across both registered and unregistered churches.<sup>24</sup> Until recently, the Christian population in China was seen (not least by the Chinese government) as limited to impoverished rural people, known pejoratively as the “four manys” (*Si duo*): many old, many women, many illiterate, many ill.<sup>25</sup> The Christian population in China is increasingly an urban phenomenon. In recent years, a new group of urban, elite Christians have gained prominence in the coastal cities and in universities.<sup>26</sup>

The pastors and intellectuals associated with the urban house churches mark a third generation of public theology in China since the middle of the twentieth century.<sup>27</sup> The first generation of public religious statesmen was closely associated with the officially sanctioned Three-Self Patriotic Movement Church. The second generation called themselves “Cultural Christians.” A literal translation of *wenhua jidutu*, the term “Cultural Christians” refers to intellectuals who are interested in the Christian faith as individuals and for cultural and scholarly reasons, but who refrain from joining or attending a church.<sup>28</sup> Rather than joining a church as people of faith, *wenhua jidutu* in the 1980s and 1990s focused on the intellectual and moral resources Christianity could provide to public life in China, such as cultivating a work ethic in a modern capitalist economy, nurturing public virtue and limiting corruption, and giving meaning to individuals who would otherwise be alienated by the realities of life in an urbanizing, modernizing, rapidly changing society. The *wenjia jidutu* were often influenced by Max Weber’s theory of Protestantism’s role in the rise of capitalism.

The third generation, from the late 1990s and rising in the new century, is urban house church intellectuals who provide a public voice for Christianity from within the church. Important examples include Wang Yi, former human rights lawyer and pastor of Early Rain Church in Chengdu; Jin Tianming, senior pastor of Beijing Shouwang Church; and Sun Yi, a professor at Renmin University who is also an elder in the Beijing Shouwang Church.<sup>29</sup> The rise of the urban house church intellectuals represents a step beyond the “cultural Christians,” but one that builds on the earlier movement.<sup>30</sup> What connects the house church intellectuals with the cultural Christians is the belief that Protestant Christianity provides moral resources that China requires

24 Fenggang Yang, “Lost in the Market, Saved at McDonald’s: Conversion to Christianity in Urban China,” *Journal for the Scientific Study of Religion* 44, no. 4 (2005): 423–41, at 427.

25 Chow, *Chinese Public Theology*, 94–96.

26 For more on participation in unregistered churches see Lauren B. Homer, “Registration of Chinese Protestant House Churches under China’s 2005 Regulation on Religious Affairs: Resolving the Implementation Impasse,” *Journal of Church and State* 52, no. 1 (2010): 50–73.

27 Chow deploys a model of generational cohorts to organize three basic generations of Protestant public intellectuals in China in the twentieth century and into the beginning of the twenty-first. Chow, *Chinese Public Theology*, chapters 2–4.

28 In English, the term “Cultural Christian” can be misleading. In English it connotes individuals who are shaped by the religious culture of their society but who themselves do not practice the religion or go to church. *Wenhua jidutu*, by contrast, are scholars who are interested in the intellectual and culture resources of Christianity.

29 For more on these figures, see the appendix in Chow, *Chinese Public Theology*, 169–74. As Pan-Chiu Lai underscores in his article, the Shouwang Church in Beijing has engaged in forms of protest against governmental interference in their religious practice. Pan-Chiu Lai, “Subordination, Separation, and Autonomy.” The Early Rain Church led by Wang Yi has also come into conflict with the government. See “A Letter from Autumn Rain Church,” *Chinese Law and Religion Monitor* 5, no. 2 (2009): 17–22; Wang Yi, “The Ban on the Autumn Rain Church: Q&A with Radio Free Asia Correspondent,” *Chinese Law and Religion Monitor* 5, no. 2 (2009): 23–29; Liu Tongsu, “Significance of Nine Sundays: Analysis of the Autumn Rain Church Incident,” *Chinese Law and Religion Monitor* 5, no. 2 (2009): 93–98.

30 In the case of Sun Yi, an individual person exemplifies this shift, as Sun early on identified as a cultural Christian but has in recent years come to exemplify the emphasis on the church characteristic of the new generation of urban house church intellectuals. For details, see Chow, *Chinese Public Theology*, 171.

to flourish as a modern economic society. This third generation of public intellectuals differs in that they represent intellectuals who have found a place for themselves in Christian congregations (usually in unregistered churches as opposed to the officially sanctioned Three-Self Patriotic Movement). These Protestant leaders tend to be intellectual elites, many of whom have risen in status after having grown up in lower class families in the countryside.<sup>31</sup> While the cultural Christians were typically university professors who studied Christianity as an academic subject and taught it as a kind of philosophy, the new generation of Protestant intellectuals attend, lead, and even start new churches.

Several of these urban Christians have become public intellectuals with a wide audience beyond the walls of the church, largely through the effective use of social media platforms such as Sina-Weibo and Wechat. Carsten Vala and Huang Jianbo have examined how Protestant microbloggers have become influential public intellectuals in China through their use of social media.<sup>32</sup> They highlight individuals like Zhao Xiao, an economist who became an NGO leader, and Wang Yi, pastor of Early Rain Church in Chengdu. Recently profiled in Ian Johnson's book *The Souls of China*,<sup>33</sup> Wang made a name for himself in the early 2000s as a human rights lawyer; after a crackdown on human rights attorneys Wang founded an unregistered Protestant church in Chengdu.<sup>34</sup> Invoking the bold action of Martin Luther, representatives of the Early Rain Reformed Church in Chengdu published a document in 2015 titled "Reaffirming our Stance on the House Churches 95 Theses."<sup>35</sup> This statement serves as an audacious example of public theology on the part of a congregation that is strictly speaking an illegal organization.<sup>36</sup> The audacity of their witness was not lost on the Chinese government, which closed the church in 2018, detaining Pastor Yi and 100 congregants. Yi has since been sentenced to nine years in prison.<sup>37</sup>

Public theology is thus flourishing in China, within considerable legal and political constraints. This public theology takes place not only in traditional religious organizations but also online. Until his arrest in December 2018, Wang Yi had an influence on the members of Early Rain Church in Chengdu, to be sure, but he also had a wider influence through his online presence.<sup>38</sup> Alexander Chow, who is a lecturer at the University of Edinburgh, notes that the Christian intellectual Zhao Xiao's followers on Weibo (six million) outnumber the entire population of Scotland.<sup>39</sup>

31 Fällman, "Calvin, Culture, and Christ?," 159–60.

32 Carsten Vala and Huang Jianbo, "Three High-Profile Protestant Microbloggers in Contemporary China: Expanding Public Discourse or Burrowing into Religious Niches on Weibo (China's Twitter)?," in *Religion and Media in China: Insights and Case Studies from the Mainland, Taiwan and Hong Kong*, ed. Stefania Travagnin (New York: Routledge, 2016), 167–86.

33 Ian Johnson, *The Souls of China: The Return of Religion after Mao* (New York: Pantheon Books, 2017).

34 For an example of Wang's work in English, see Yi, "The Possibility of Political Theology," 113–14.

35 For a thorough analysis of the theological claims made in the 95 Theses, see Chloë Starr, "Wang Yi and the 95 Theses of the Chinese Reformed Church," *Religions* 7, no. 12 (2016) (article 142), <https://doi.org/10.3390/rel7120142>.

36 The 95 Theses of Early Rain Reformed Church are discussed in more depth in Pan-Chiu Lai's article. Pan-Chiu Lai, "Subordination, Separation, and Autonomy."

37 Paul Mozur and Ian Johnson, "China Sentences Wang Yi, Christian Pastor, to 9 Years in Prison," *New York Times*, December 30, 2019 <https://www.nytimes.com/2019/12/30/world/asia/china-wang-yi-christian-sentence.html>.

38 As Vala and Jianbo conclude, "until a 2014 crackdown began, the rapid expansion of Sina Weibo, alongside other microblogging services, and the active engagement of these three prominent Protestant personalities ... had been unsettling party-state boundaries on religious discourse, exposing millions of Chinese to Protestant Christianity, and also challenging simplistic ideas about faith and biblical understanding among existing Christians." Carsten Vala and Huang Jianbo, "Three High-Profile Protestant Microbloggers in Contemporary China," 185.

39 Chow, "Calvinist Public Theology in Urban China Today," 173.

Zhao discusses Calvinism and China daily on his Weibo account, engaging in a form of public theology with a broad public that theologians in the West could scarcely imagine today. The article by Pan-Chiu Lai is itself an example of this new form of Chinese public theology being undertaken at a scholarly level.<sup>40</sup>

No longer relegated to the periphery of Chinese society, Christianity is beginning to play an important role in public discourse in China, and not least because of what are seen as Christianity's political implications. The political thought of John Calvin is of particular interest among Protestants in China. "One attraction of Calvinism in contemporary China," one scholar explains, "is the view that Calvin inspired modern democracy, both through his theological writings and also through the social order and system set up in Geneva during his time there."<sup>41</sup> Chinese Calvinist intellectuals contend that pursuant with Weber's thesis about the Protestant ethic and the spirit of capitalism, Protestant Christianity is the answer to the social ills plaguing Chinese society. While not usually hostile to the Chinese government, Reformed Protestantism has been seen as a source of political resistance in China, "both to a morally fragmenting society and to the undemocratic state and party."<sup>42</sup> Often in surprising and unexpected ways, advocacy for democracy in China and interest in Christianity go hand in hand.

These realities are reshaping the conception of religion that has been operative in China since early in the twentieth century. The modern concept of religion arrived in China through interaction with Western nations, whereby the concept of *zongjiao*, a term borrowed from Japan, was adopted in reference to religion.<sup>43</sup> As mentioned above, in the early twentieth century, and through Western influence, Chinese intellectuals came to the conclusion that all nations possessed a national religion, so China needed one, too.<sup>44</sup> Sociologist Richard Madsen writes, "Protestant Christianity was thus identified in the Chinese mind with modern Western culture, for better or worse. For worse, because it was part of the West's imperial aggression. For better, because it embodied the scientific spirit and rationalized organization that might enable China to improve its economy and defend itself against the West."<sup>45</sup> While acknowledging that each religion should have content distinctive to its particular nation, Chinese intellectuals early in the twentieth century concluded that for any religion to be a real religion "it should have a particular form, which was in fact the form taken by Protestant Christianity in the West."<sup>46</sup> Along these lines, Confucianism was declared to be the public religion of China, though Confucianism so understood was more focused on a set of beliefs and much less on the traditional practices of Confucianism in China. The Confucian Jiang Qing seeks to recover an older form of Confucianism, and to restore its ethical, social, and practical influence

40 Pan-Chiu Lai, "Subordination, Separation, and Autonomy." See also, Zhibin Xie, *Religious Diversity and Public Religion in China* (Burlington: Ashgate, 2006); Alexander Chow, *Theosis, Sino-Christian Theology and the Second Chinese Enlightenment: Heaven and Humanity in Unity* (New York: Palgrave-Macmillan, 2013); Joel A. Carpenter and Kevin R. den Dulk, eds., *Christianity in Chinese Public Life: Religion, Society, and the Rule of Law* (New York: Palgrave-Macmillan, 2014).

41 Fällman, "Calvin, Culture, and Christ?," 160.

42 Fällman, 161.

43 Richard Madsen, "Signs and Wonders: Christianity and Hybrid Modernity in China," in Lim, *Christianity in Contemporary China*, 17–30, at 19. See also, Anna Sun, *Confucianism as a World Religion: Contested Histories and Contemporary Realities* (Princeton: Princeton University Press, 2013); more broadly, see Masuzawa, *The Invention of World Religions*.

44 Madsen, "Signs and Wonders," 20.

45 Madsen, 19.

46 Madsen, 20.



across Chinese society. For Jiang, Confucianism should no longer be relegated to a private sphere of individual belief.

If the urban Protestant intellectuals represent one important option for religion and public life in China today, Jiang Qing thus represents an alternative movement toward a Confucian renaissance in Chinese public life. He has been called “the most prominent Confucian political thinker of our day.”<sup>47</sup> Initially a Marxist, Jiang was disillusioned with Marxist orthodoxy around 1989, sometime before the Tiananmen incident. He now sees both Marxism and liberalism as Western ideologies that were imposed on China to its detriment. Jiang seeks to revive a “political Confucianism” as an alternative to the focus on “self-cultivation” among the modern “Neo-Confucians,” which, because aimed at private virtue rather than public philosophy, was seen as compatible with liberalism.<sup>48</sup> Shanghai-based political theorist Sun Lei’s article provides an illuminating account of Jiang Qing’s proposal, reading it alongside another contemporary Confucian intellectual, Chen Ming. She argues that Chen’s conception of Confucianism as civil religion resolves some of the problems inherent in Jiang’s interpretation of Confucianism as state religion.<sup>49</sup>

## RELIGIOUS FREEDOM IN CHINA

Discussions of religion and state in China often turn quickly to debate over whether China protects religious freedom. Article 36 of China’s Constitution declares, “Citizens of the People’s Republic of China enjoy freedom of religious belief.”<sup>50</sup> It later adds the qualifications: “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.”<sup>51</sup> Debates persist as to whether these qualifications abrogate the stated claim that Chinese citizens enjoy freedom of religious belief.<sup>52</sup> Songfeng Li’s article provides a criticism of not only the Chinese government’s use (or misuse) of the Constitution but also the Constitution itself.<sup>53</sup> While China certainly does not adhere to a Western, liberal conception of the right to religious freedom, it is important to note that the Chinese Constitution claims that Chinese citizens possess religious freedom.

47 Daniel Bell, introduction to Jiang Qing, *A Confucian Constitutional Order: How China’s Past Can Shape its Political Future*, ed. Daniel A. Bell and Ruiping Fan, trans. Edmund Ryden (Princeton: Princeton University Press, 2012), 1–24, at 1.

48 Bell, introduction, 4–5.

49 Sun Lei, “The Relation between Confucianism and Chinese Politics.” For more on this movement, see Stephen C. Angle *Contemporary Confucian Political Philosophy* (Cambridge: Polity Press, 2012); Stephen C. Angle, *Sagehood: The Contemporary Significance of Neo-Confucian Philosophy* (Oxford: Oxford University Press, 2009); Chen Lai, *Tradition and Modernity: A Humanist View*, trans. Edmund Ryden (Leiden: Brill, 2009).

50 Xianfa article 36 (1982) (as amended), [http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/node\\_2825.htm](http://www.npc.gov.cn/zgrdw/englishnpc/Constitution/node_2825.htm). All quotations are to the official English language translation.

51 Xianfa article 36.

52 As I discuss later in this section, the debate also hinges on the distinction in Chinese between freedom of religion and freedom of religious belief. The Chinese government protects freedom of religious belief (*zongjiao xinyang ziyou*), not freedom of religion (*zongjiao ziyou*).

53 Songfeng Li, “Freedom in Handcuffs.” This raises larger questions about the legal status of the Constitution in the governance of China and about whether China adheres to the rule of law, as opposed to rule *by* law. For more, see Randall Peerenboom, *China’s Long March toward Rule of Law* (Cambridge: Cambridge University Press, 2002). Chow observes that rule by law (*fazhi* 法制) and rule of law (*fazhi* 法治) are “homophones and a pun in the Chinese language.” Chow, *Chinese Public Theology*, 101–02.

The point is made even more strongly in Document 19, the 1982 policy document of the Communist Party mentioned at the beginning of this article. This statement strongly defends the claim that citizens in China enjoy freedom to believe in any religion they choose, as well as the freedom to believe in no religion. While affirming the Marxist commitment to atheism and the erroneous nature of religion, Document 19 contends that authentic Marxism accepts the religious nature of human beings as a necessary stage of the historical process. Document 19 maintains that while religion will eventually die out, this should be allowed to happen on its own rather than be brought about by governmental coercion. The document repudiates the attempt to eradicate religion during the Cultural Revolution, claiming that this was a departure from authentic Mao Zedong Thought perpetrated by Mao's political rivals against his will.

Two further elements about religious freedom protection in China are important to highlight. The first is that the Constitution of China claims to protect freedom of religious *belief* (*zongjiao xinyang ziyou*), as opposed to religious freedom (*zongjiao ziyou*) more broadly. Document 19 repeatedly emphasizes that citizens of China enjoy the freedom to “believe in a religion.” However, while citizens may believe whatever they want, the protection of religious *practice* comes with limitations. This leads to a second important point to highlight, which is that the Constitution claims to protect “normal” religious activities. This is often the source of sideways glances among those who wonder what criteria are used to determine which religious practices are “normal” and which are “abnormal.” It is important to recognize that this framework is grounded in a longstanding assumption going back centuries in the Chinese Confucian tradition that there is a reasonable distinction between orthodox and heterodox religion, or legitimate and illegitimate religion, and that the government has the authority and the capacity to make such a distinction.<sup>54</sup> The Chinese government thus sees it as its responsibility to suppress and even eradicate “religions” it deems to be not real religions at all, but rather *xiejiao*, or “evil cults.”

From the perspective of US jurisprudence, of course, such discrimination on the part of the government between orthodox and heterodox religion (or legitimate and illegitimate religion) amounts to unconstitutional governmental intrusion into ecclesiastical matters.<sup>55</sup> US jurisprudence has thus sought, on the basis of the establishment clause as well as on the basis of free exercise, to create a zone of religious or ecclesiastical concern into which the government may not venture. Governance in China is based on entirely different assumptions. It is simply assumed that the government will inevitably have to make discriminations about which religious practices to protect and which not to protect. For the government not to suppress “evil cults” would be for it to shirk its responsibility to govern society.

Western scholars of law and religion can reflect on the Chinese framework in light of recent Western scholarship that questions whether the attempt to protect religious freedom is even possible. Coming at the issue from a variety of angles, these scholars often share Winnifred Fallers Sullivan's belief that religious freedom is finally “impossible.”<sup>56</sup> It is impossible because any

54 See David A. Palmer, “Heretical Doctrines, Reactionary Secret Societies, Evil Cults: Labeling Heterodoxy in Twentieth-Century China,” in *Chinese Religiosities: Afflictions of Modernity and State Formation*, ed. Mayfair Mei-hui Yang (Berkeley: University of California Press, 2008), 113–34. Citing Palmer, Chow refers to “Confucian binaries of ‘orthodox’ (*zheng*) and ‘heterodox’ (*xie*), the latter of which has resulted in polemics around what is a *xiejiao*—meaning ‘heterodox teaching,’ or, in modern usage, ‘evil cult.’” Chow, *Chinese Public Theology*, 151n13.

55 For an analysis of religious liberty in the United States that focuses on the secular character of government, grounded in the Establishment clause, rather than primarily on religious rights grounded in the free exercise clause, see Ira C. Lupu and Robert W. Tuttle, *Secular Government, Religious People* (Grand Rapids: Eerdmans, 2014).

56 Winnifred Fallers Sullivan, *The Impossibility of Religious Freedom* (Princeton: Princeton University Press, 2005).

attempt to protect religious freedom requires the state to define what counts as religion and what does not. This inevitably leads to courts making decisions about orthodoxy versus heterodoxy. This interference in internal religious debates violates the Establishment clause of the First Amendment to the US Constitution. Religious freedom protections thus oscillate between allowing religious exemptions to innumerable laws on the one hand, and, on the other hand, requiring the courts to determine the boundary between orthodox and unorthodox religion. Sullivan thinks there is no solution to this dilemma, and thus concludes that religious freedom is impossible.

One need not agree with Sullivan's conclusion that religious freedom is impossible to recognize that she has highlighted a basic problem of religious freedom protections in the law.<sup>57</sup> The Western liberal assumption that Western democracies have solved the issue of religious freedom, such that the only task remaining is for non-Western countries to copy the Western example, is naïve. As Chow has written, "theological arguments related to the separation of church and state and the freedom of religion, at least in the ways they are conceived in many Western societies, have little relevance to the Chinese political and religious situation."<sup>58</sup> While there is in fact a lively dialogue underway between Western liberal conceptions of religious freedom and non-Western intellectuals, not least in China, Chow is right that a Western liberal conception of separation of church and state, along with Western understandings of religious freedom, should not be unreflectively imposed on political systems with radically different histories, traditions, and conceptions of the relationship between state, religion, and law. What is more, the dialogue can go in both directions. As the work of critics such as Sullivan, Peter Danchin, and Elizabeth Shakman Hurd demonstrates,<sup>59</sup> the Western liberal conception of the religious and the secular is far from settled. Insofar as Western debates over religious freedom are increasingly irresolvable and contentious, space is created for dialogue with traditions outside the Western liberal framework. John Burgess provides an example of what this might look like in his analysis of the distinctive conception of religious freedom he finds in the Russian Orthodox tradition.<sup>60</sup> The articles in this symposium are a step toward providing a similar framework for thinking through what religious freedom might look like in the context of China today. The extent to which this conception will resemble western ideals of religious liberty and religion-state separation is contested, as the articles that follow demonstrate. As has been the case in public life in China since the early twentieth century, central to this debate is a tension between what is western and what is distinctively Chinese. These debates will not be resolved any time soon. In the meantime, scholars of law and religion living beyond the borders of China have much to gain from learning how these questions are dealt with in that context and with the unique historical, intellectual, and political resources it provides.

57 For more on Sullivan's critique of religious freedom, see Joshua T. Mauldin, "Contesting Religious Freedom: Impossibility, Normativity, and Justice," *Oxford Journal of Law and Religion* 5, no. 3 (2016): 457–81.

58 Alexander Chow, *Chinese Public Theology*, 161.

59 Important works include Winnifred Fallers Sullivan et al., eds., *Politics of Religious Freedom* (Chicago: University of Chicago Press, 2015); Elizabeth Shakman Hurd, *Beyond Religious Freedom: The New Global Politics of Religion* (Princeton: Princeton University Press, 2015); Saba Mahmood and Peter Danchin, "Politics of Religious Freedom: Contested Genealogies," in "Politics of Religious Freedom: Contested Genealogies," ed. Saba Mahmood and Peter G. Danchin, special issue, *South Atlantic Quarterly* 113, no. 1 (2014): 1–8. For a response to the new critics of religious freedom, see David Decosimo, "The New Genealogy of Religious Freedom," *Journal of Law and Religion* 33, no. 1 (2018): 3–41.

60 John P. Burgess, "Spiritual Freedom," *First Things*, February 2017, <https://www.firstthings.com/article/2017/02/spiritual-freedom>.