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*Religion in China-Historical and Legal Context*  
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**Abstract:**

The complex and quite rich discourse centered on the three “Abrahamic” religions does not suggest the *only* way in which one can approach the issue of religious “liberty” or understand the relation among religion and the state. China offers an important and distinctive path that is in its own way more difficult to square with the Western focused discourse that has now become a global standard. Thus is it necessary, before exploring the technical legal details about the interaction of religion and the state in China. It is perhaps not too much of an exaggeration to say that “religion” signifies the character of the entire Western Civilization-- from the Council of Nicaea to the Crusades, and unto the 17th century Enlightenment and the rise of capitalism, Judeo-Christian religions have always played dominant role in the evolution (and devolution) of what is known as the “West”. China provides a substantially different “story” and that difference is foundational to China’s approach to the legitimacy of the boundaries for religious regulation. This essay offers a brief glimpse at a complex problem, and suggests the basis for the quite substantial difficulties of communicating between systems.



COALITION FOR  
PEACE AND ETHICS

## **Religion in China – Historical and Legal Context**

### **Keren Wang**

#### ***I. Historical Background.***

The historical unfolding of Chinese civilization, on the other hand, has been going on for millenniums with minimal Western influence. This is indeed the case at least up till the 19th century. As Judeo-Christianity played very little impact in the shaping of Chinese history, the term “religion” likewise is perceived very differently in the Chinese context. Whereas “religion” represents a unified body of values relating to or deriving from Judeo-Christian thoughts, and therefore carries a special significance in Western legal consciousness, we can hardly apply the same logic for China. There is no unified concept of “religion” (as understood in the West) in much of the Chinese history. In pre-Qin China, before Confucianist ethics became the defining element of Chinese ethos, there has been a general conception of the omnipresent “Heaven” or “Tian” in Sinic civilization. But the role of “Heaven” in Chinese society is more of a metaphysical concept rather than a religious one. The idea merely signifies the absolute knowledge that ultimately dictates the ordering of all living under the heaven (天下)。 This metaphysical conception of the absolute “Heaven” is signified with the term “Tianming 天命”, commonly known in the West as “the Mandate of Heaven”.

The rise of Confucianism in China more or less formalized this “Mandate of Heaven” through the dual emphasis of “ancestors” and “teaching”. Please note that the Chinese word for “ancestor” is “Zong / 宗”, and the Chinese term for “teaching” is “Jiao / 教”. Subsequently, when Buddhism was introduced into China, the Chinese used the phrase “teachings of the ancestor Shakyamuni” to signify the “religion” of Buddhism. Unsurprisingly, in modernity, starting from the late 19th century, when Western understanding of “religion” was finally introduced in China, the term “religion” has been translated into Chinese as the familiar phrase “Zong Jiao (宗教)” -- “teachings of ancestors”. While the appropriation of the phrase “Zong Jiao” to signify the Western notion of “religion” is perhaps a great way to sinicize an otherwise entirely foreign concept, the Chinese word for “religion” of course cannot carry over all these Judeo-Christian socio-political connotations that provided the substantive meaning of the term “religion” in Western civilization.<sup>1</sup>

#### ***II. Constitutional Analysis:***

Now let's turn to the constitutional texts concerning religion in China. Below are passages concerning religion from the 1954 Constitution, 1982 Constitution, and the CCP

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<sup>1</sup> Cf. Vincent Groossaert, The Concept of Religion in China and the West, *Diogenes* 52(1): 13-20 (2005).

Constitution. First, let's take look at the 1954 Constitution, specifically Article 86 and Art. 88 under the "Fundamental Rights and Duties of Citizens" chapter:

**1954 CONSTITUTION,**

**Chapter Three: Fundamental Rights And Duties Of Citizens:**

*(Adopted on September 20, 1954 by the First National People's Congress of the People's Republic of China at its First Session <http://e-chaupak.net/database/chicon/1954/1954bilingual.htm>)*

... ..

**Article 86** All citizens of the People's Republic of China, who have reached the age of eighteen, have the right to vote and stand for election, irrespective of their nationality, race, sex, occupation, social origin, religious belief, education, property status, or length of residence, except insane persons and persons deprived by law of the right to vote and stand for election.

Women have equal rights with men to vote and stand for election.

... ..

**Article 88** Citizens of the People's Republic of China enjoy freedom of religious belief.

As one can see, the 1954 Constitution framed religious protections quite differently than the U.S. Constitution. Unlike the Bill of Rights, where religion is featured prominently in the very beginning of the First Amendment, and that the 1st Amendment explicitly religion from government interference ("Congress shall make no law..."), Article 86 of the 1952 Constitution merely included "religion" as one among many other factors (nationality, race, sex, occupation...) that have the right to vote. Furthermore, Article 88 framed the protection of religious freedom in extremely vague terms, without explicitly prohibiting the government from making laws that regulate religion. When it comes to religious protections, whereas the U.S. Constitution focuses on "non-interference", the 1954 PRC Constitution instead emphasizes the element of "equality".

It is also important to note that the 1952 Constitution's treatment of religion bears striking similarity to the 1936 USSR Constitution. Please take a look at Articles 124 and 135 of the 1936 USSR Constitution:

**1936 CONSTITUTION OF THE USSR** (Adopted December 1936, available: <http://www.departments.bucknell.edu/russian/const/36cons04.html#chap10>):

**Chapter X - Fundamental Rights and Duties of Citizens:**

... ..

**ARTICLE 124.** In order to ensure to citizens freedom of conscience, the church in the U.S.S.R. is separated from the state, and the school from the church. Freedom of religious worship and freedom of antireligious propaganda is recognized for all citizens.

... ..

## Chapter XI - The Electoral System:

... ..

**ARTICLE 135.** Elections of deputies are universal: all citizens of the U.S.S.R. who have reached the age of eighteen, irrespective of race or nationality, religion, educational and residential qualifications, social origin, property status or past activities, have the right to vote in the election of deputies and to be elected, with the exception of insane persons and persons who have been convicted by a court of law and whose sentences include deprivation of electoral rights.

Again, as seen from above, Art. 86 of the 1954 PRC Constitution basically just rephrased Article 135 of the 1936 USSR Constitution. Even that “insane persons” exception is present in both articles. Where as Article 88 of the 1954 PRC Constitution did not explicitly provide for the separation of the church and the state stated in Art. 124 of the 1936 USSR Constitution, neither articles (Article 88 of PRC and Article 124 of USSR) explicitly prohibited the government from regulating the religion. Likewise, contrasting to the U.S. model, both the 1932 USSR Constitution and the 1954 PRC Constitution emphasized “equality” instead of “non-interference” when it comes to religion protections.

Of course it is no secret that the 1954 Constitution was heavily influenced by its USSR counterpart. Now fast forward to the 1982 Constitution, it is interesting to see that the textual treatment of religion for the current PRC constitution has departed significantly from the old soviet framework:

### **1982 PRC CONSTITUTION: CHAPTER II. THE FUNDAMENTAL RIGHTS AND DUTIES OF CITIZENS** **(<http://english.people.com.cn/constitution/constitution.html>):**

... ..

**Article 34.** All citizens of the People's Republic of China who have reached the age of 18 have the right to vote and stand for election, regardless of nationality, race, sex, occupation, family background, religious belief, education, property status, or length of residence, except persons deprived of political rights according to law.

...

**Article 36.** 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.

Whereas the content of Art. 86 of the 1954 Constitution largely remained same in

Article 34 of the 1982 Constitution, the current PRC Constitution provided a much more detailed elaboration on the issue of “freedom of religious belief”. For easier visual comparison, let’s juxtapose the “religious freedom” articles from the U.S. Bill of Rights, 1936 USSR Constitution, 1954 PRC Constitution, 1977 USSR Constitution, and the 1982 PRC Constitution together, in chronological order:

<p><b>1791 U.S. Bill of Rights, Amendment I:</b></p>	<p>“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”</p>
<p><b>1936 Constitution of the USSR, Art. 124:</b></p>	<p>“In order to ensure to citizens freedom of conscience, the church in the U.S.S.R. is separated from the state, and the school from the church. Freedom of religious worship and freedom of antireligious propaganda is recognized for all citizens.”</p>
<p><b>1954 Constitution of the PRC, Art. 88</b></p>	<p>“Citizens of the People's Republic of China enjoy freedom of religious belief.”</p>
<p><b>1977 Constitution of the USSR, Art 52</b>          (Available <a href="http://thepeoplescube.com/peoples-tools/topic6428.html">http://thepeoplescube.com/peoples-tools/topic6428.html</a>):</p>	<p>“(1) Citizens of the USSR are guaranteed freedom of conscience, that is, the right to profess or not to profess any religion, and to conduct religious worship or atheistic propaganda. Incitement of hostility or hatred on religious grounds is prohibited.          (2) In the USSR, the church is separated from the state, and the school from the church.”</p>
<p><b>1982 Constitution of the PRC, Art. 36:</b></p>	<p>“<b>Citizens of the People's Republic of China enjoy freedom of religious belief.</b> 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.”</p>

As shown from above, the USSR’s religious freedom articles remained largely the same between their 1936 and 1977 constitution. The updated Article 36 from the 1982 PRC Constitution, however, presented something quite different from both the USSR and the U.S. frameworks. Art. 36 of the 1982 Constitution not only protects religion from the state and citizens ([n]o state organ, public organization or individual may compel citizens...), but also protects citizens and the state from religion ([n]o one may make use of religion to engage in activities that disrupt public order...) In this case, the “freedom of religious belief” is presented as a social contract rather than a natural right--that religious activities are protected as long as those activities do not “disrupt public order, impair the

health of citizens or interfere with the educational system of the state.” In other words, "freedom of religious belief" is understood as balancing the needs of both the "freedom to practice religion" and the "freedom from religious practices".

Finally, it is also important to consider the text of the CCP Constitution in our analysis:

**CONSTITUTION OF THE COMMUNIST PARTY OF CHINA** (*Revised and adopted at the Eighteenth National Congress of the Communist Party of China on November 14, 2012*)

([http://www.china.org.cn/china/18th\\_cpc\\_congress/2012-11/16/content\\_27138030.htm](http://www.china.org.cn/china/18th_cpc_congress/2012-11/16/content_27138030.htm)), **General Program:**

... ..

The Communist Party of China upholds and promotes socialist ethnic relations based on equality, solidarity, mutual assistance and harmony, actively trains and promotes cadres from among ethnic minorities, helps ethnic minorities and ethnic autonomous areas with their economic, cultural and social development, and ensures that all ethnic groups work together for common prosperity and development. The Party strives to fully implement its basic principle for its work related to religious affairs, and rallies religious believers in making contributions to economic and social development.

... ..

Interestingly, religion is only mentioned in the “General Program” section of the CCP Constitution, and the party constitution did not explicitly prohibit or allow the practice of religious activities by its cadres. Similar to Article 36 of the 1982 Constitution, when it comes to religion, the CCP Constitution frames the role of the party as the promoter of social “equality, solidarity, mutual assistance and harmony”, as well as the vanguard party that “rallies religious believers in making contributions to economic and social development.” Both the 1982 Constitution and the CCP Constitution imposes an obligation for party and the state to maintain social harmony and development by actively managing the relationship between religious groups and the society at large. When it comes to religious freedom in China, the dominant discourse (especially from the West) tend to criticize China’s apparent gap between written law and actual practice, and many often point to the text of Chinese Constitution to highlight such discrepancies. But if we step away from the Western legal consciousness, and understand the “freedom of religious belief” expressed in Art.36 of the 1982 Constitution as the state’s duty to balance the need to both protect religion from society and society from religion, then one might able to see that many seemingly restrictive practices by the PRC government on religion may not be in direct contradiction to its constitutional texts.

### ***III. State Ethnic Affairs Commission and the Case of Xinjiang’s Ban of Religious Affairs***

The State Ethnic Affairs Commission (SEAC), established in 1978 under the State Council, is the central administrative body responsible for the implementation of the ethnic and religious policies of the CCP. The SEAC also supervises the implementation “regional ethnic autonomy systems and the handling of matters related to the protection of rights and interests of ethnic minority.”<sup>2</sup> Each provincial-level government (including autonomous regions) also have their own State Ethnic Affairs Commission, operating under the authority of the central SEAC.

On February 10 2014, Nur Bekri, the Chairman of the the Xinjiang Uygur Autonomous Region announced a sweeping campaign against “religious extremism”.<sup>3</sup> Bakri indicated that the campaign was in response to the rising terrorist threat in Xinjiang from Uyghur separatists, and he blamed Islamic extremism as the major cause for the radicalization of Uyghur minorities and the increase of ethnic tensions in Xinjiang. According to the State Ethnic Affairs Commission of Xinjiang, the campaign was implemented in accordance with the overall policy directives of Xinjiang’s Party committee, and is designed to specially target illegal religious practices, illegal religious propaganda materials, and the illegal online religious activities -- collectively known as “*Sanfei*” (or, “Three-illegals”).<sup>4</sup>

In early August, 2014, the city of Karamay in northern Xinjiang implemented a controversial temporary ban of Islamic attires and symbols on the city’s public transportations. Specifically, the city barred those wearing face-covering hijab, or bearing visible Uyghur separatist “crescent-and-star” symbol, or with long beards from riding city’s public buses. However, elderly male with long beards and elderly women wearing scarf that does not cover the entire face are exempt from the ban. The ban is said to be effective from August 5th to August 20, during which the city is scheduled to host a major athletic event.<sup>5</sup> Karamay city authority stated that the ban was implemented in response to the autonomous region wide campaign against religious extremism. Furthermore, the city defended its controversial ban by stressing that certain forms of religious attires and display of separatist symbols amount to “illegal religious propaganda” for Islamic extremism, and therefore fall outside of “normal religious practices” that are protected by law.<sup>6</sup>

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<sup>2</sup> See “State Ethnic Affairs Commission of the People’s Republic of China”, People’s Daily Online Database, available: <http://english.peopledaily.com.cn/102759/7899852.html>

<sup>3</sup> See “自治区召开依法治理非法宗教活动、打击宗教极端违法犯罪专项行动视频会议”, xjqt.gov.cn available: <http://www.xjqt.gov.cn/10014/10198/10011/2014/55400.htm>

<sup>4</sup> See “民族团结进步创建和宗教工作考核应知应会内容”, the State Ethnic Affairs Commission of Xinjiang Uygur Autonomous Region, available: <http://www.xjmzw.gov.cn/nsjg/zcfgc/gzdt/4834.htm>

<sup>5</sup> See <http://news.163.com/14/0805/21/A2TR4OHM0001124J.html> See also, <http://www.reuters.com/article/2014/08/06/us-china-xinjiang-idUSKBN0G60AA20140806>

<sup>6</sup> See <http://www.klmyq.gov.cn/zhuanti/ZT/2014ZT/2014QZLX/neirong.jsp?urltype=News.NewsContentUrl&wbtreeid=4470&wbnewsid=176529>