

## EDITORIAL

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As the *Journal of Law and Religion* publishes this issue, the centerpiece of which is the article symposium “Debating Religion and Public Life in Contemporary China,” the eyes of the world are once again on China, from its persecution of its Uighur Muslim minority in the northwestern autonomous region of Xinjiang to its repression of democracy movements in the southeastern special administrative region of Hong Kong. China is locus to several of the world’s axial religions and philosophical systems, including Buddhism, Confucianism, Daoism, Christianity, and Islam, along with Chinese folk religions and spiritual sects, such as Falun Gong. The relationship of religion and state has undergone many shifts over China’s millennia of existence, particularly under the Communist political system that governs China to this day. In recent decades, this relationship has been characterized by repression of minority religions, including the Uighur Muslims whose plight has been making international headlines of late.

Targeted by the Chinese state for decades for allegedly representing a terrorist threat, the Uighurs, a mostly Muslim Turkic people in Xinjiang, have in recent years been subjected to mass detention in internment camps in their home region for anti-Islamic and pro-Communist indoctrination. The Chinese government has referred to the internment camps as job training centers, and many of the internees have subsequently been forcibly relocated to China’s urban areas, reportedly to serve as a cheap labor force in China’s factories. Nearly half a million Uighur children have been separated from their families, the parents sent to labor camps and the children to state-run boarding schools to be educated in loyalty to China and the Communist Party. On December 3, 2019, the United States House of Representatives passed the Uighur Intervention and Global Humanitarian Unified Response Act of 2019 to impose sanctions on Chinese officials responsible for the persecution of Uighurs and other Muslim groups in China.<sup>1</sup> (An earlier version of the bill had passed unanimously in the Senate.) On December 20, 2019, at the recommendation of the United States Commission for International Religious Freedom, the United States State Department once again, as in previous years, declared China to be a Country of Particular Concern on issues of religious freedom.

The essays in this volume’s symposium, focused on the Confucian tradition and Calvinist Christian groups in China, as well as the overall status of religion in the Chinese Constitution, point to persistent patterns in the relocation of law and religion to the Chinese state. Guest editor and symposium contributor Joshua Mauldin situates the articles in the context of what has been a resurgence of religion in China in recent decades, despite the state atheism that is the official Chinese policy. The surprising result, Mauldin maintains, is that China, despite decades of official antipathy toward religion, can now be considered a “highly religious society,”<sup>2</sup> particularly when it comes to religious practice, if not overt confessions of religious belief. Indeed, Mauldin argues that the conception of belief as more fundamental than practice is a Western superimposition that obscures the range of religious practices present across the Chinese landscape, even under state

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<sup>1</sup> S. 178, 116th Congress, 165 Congressional Record H9201 (daily ed. Dec. 3, 2019).

<sup>2</sup> Joshua Mauldin, “Law, Religion, and Society in China: A Contested Terrain,” *Journal of Law and Religion* 35, no. 1 (2020) (this issue).

atheism. The rise of Confucianism and of Calvinist forms of Protestant Christianity among China's bureaucratic and intellectual elites is, as other articles in the symposium point out, one of the more intriguing developments of China's current religious landscape.

Songfeng Li's article analyzes the way in which the Chinese Constitution, particularly Article 36, guaranteeing religious freedom to Buddhism, Daoism, Islam, Catholicism, and Protestantism, as groups officially recognized by the Chinese government, operates as a "dead letter" or "sham constitution." While the Chinese Communist Party is nominally subject to the Chinese Constitution, the constitution was largely drafted by the Party, in a manner that, Li argues, has resulted in a system of "legislative supremacy."<sup>3</sup> The constitutional establishment of state atheism as an official ideology has privatized religion and offers little protection for religious practice. When coupled with the Chinese government's extension of the state ideology to religious and nonreligious citizens through programs of censorship and reeducation, such as those currently being imposed on Uighur Muslims in Xinjiang and other Muslim groups in China, this results in a system prone to religious persecution.

Variouly categorized as a philosophical system or a religion, in what has become an ongoing subject of debate in China, Confucianism has enjoyed a more secure position in the Chinese state system, including the constitutional system, according to symposium contributor Lei Sun. The philosophy or religion debate divides New Confucians in mainland China who argue that Confucianism is a religion from those in Hong Kong and Taiwan, who see it as a philosophy. Scholars have further debated whether Confucianism operates as a state religion or a civil religion. Against the backdrop of these largely academic debates and the history of Confucianism in China, Sun argues for a "Confucian Renaissance"<sup>4</sup> in Chinese politics and for Confucianism as an ethical resource for Chinese constitutionalism. Still, one can wonder whether Confucianism's status in China comes from its philosophical and religious value or its status as traditionally Chinese.

In his article on Chinese Protestants, Pan-Chiu Lai argues for a middle way between the subordination of church and state that has been the insistence of the Chinese government and the separation of church and state called for by Protestant groups, advocating instead a model of religion-state autonomy. Lai notes that much of the growth in Chinese Protestantism has occurred not in the Three Self churches, which are recognized by the state, but at universities and among house churches, particularly Calvinist Protestant, that attract an urban and intellectual following and have been key proponents of the separation model.<sup>5</sup> The model Lai proposes would allow officially recognized churches to continue that status and privilege, while affording a higher level of autonomy to churches that resist official recognition.<sup>6</sup>

The articles in this symposium were conceived and written before much of the recent attention to the plight of the Uighurs and other Chinese Muslim groups. Still, it is worth considering what the ascendancy of these relatively favored Confucian and Calvinist groups augurs for religious human rights in China. After all, the retrieval of the Confucian tradition could be taken as an indicator of resurgent national identity and of a tradition that has had a long association with the Chinese state. Likewise, the rise of Calvinist Protestantism among China's urban intellectual and economic

3 Songfeng Li, "Freedom in Handcuffs: Religious Freedom in the Constitution of China," *Journal of Law and Religion* 5, no. 1 (2020) (this issue).

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

5 See Andrew Brown, "Chinese Calvinism flourishes," *Guardian*, May 27, 2009.

6 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 (2019) (this issue).

classes, particularly ascription to the Protestant work ethic, could similarly signal more the emergence of a status elite than a site of religious resistance.

Still, in light of the current state of affairs with respect to China's Uighur and other Muslim groups and coming on the heels of decades of repression of Tibetan Buddhists under the leadership of the internationally revered Dalai Lama, concerns about religious freedom are ongoing. Tibet, of course, is the other western Chinese region that, besides Xinjiang, has come to be synonymous with gross violations of religious human rights and claims to regional autonomy in a way that, like the situation of the Uighurs, has also drawn international attention, including the recent passage by the US House of Representatives of the Tibetan Policy and Support Act of 2019.<sup>7</sup> China has certainly been a concern for religious freedom since its origins as a modern Communist state and through subsequent debates about whether so-called Asian values are compatible with human rights. But it is worth noting that China was once a key player in the development of the modern human rights regime and might be called upon to retrieve and honor that legacy.

In fact, the Chinese philosopher Chung-Shu Lo was a participant in the original 1947 roundtable of philosophers and theologians asked to consult on the draft Universal Declaration of Human Rights, where he provided reflections on human rights from the perspective of the Confucian tradition. While arguing that there was "no open declaration of human rights in China, either by individual thinkers or by political constitutions, until this concept was introduced from the West," Lo also emphasized that this "does not mean that the Chinese never claimed human rights" and that "the idea of human rights developed very early in China, and the right of the people to revolt against oppressive rulers was very early established."<sup>8</sup> In fact, Lo argued, "'Revolution' is not regarded as a dangerous word to use, but as a word to which high ideals are attached, and it was constantly used to indicate a justifiable claim by the people to overthrow bad rulers; the Will of the People is even considered to be the Will of Heaven."<sup>9</sup> "So far as the relation between the individual and state is concerned," Lo continued, "the moral code is stated thus: 'The people are the root of the country. When the root is firm, the country will be at peace.'"<sup>10</sup>

Flash forward to 2019, when even as the Chinese state exerts power in Xinjiang, it is threatened with revolution from Hong Kong, to the extent that *Time* magazine announced, the day after the global Human Rights Day 2019, that its readers had selected Hong Kong's democracy protestors as the "people's choice" for 2019 Person of the Year.<sup>11</sup> Former US ambassador at large for international religious freedom Thomas Farr has recently noted, "What many don't realize is that religion is a significant factor in the current conflict. The Beijing government, long a source of religious persecution within the Chinese mainland, is now posing a grave threat to religious freedom in Hong Kong, long a beacon of greater democracy in Asia. . . . Should China move into Hong Kong, one of the first freedoms to be eliminated will be religious freedom. Indeed, religious freedom's very existence poses a threat to Chinese power."<sup>12</sup> The recent protests in Hong Kong stem from a proposed bill permitting extradition to the mainland of legal offenders, including religious leaders whose religious rights are currently protected by Hong Kong law, but are nonexistent in mainland China.

7 H.R. 4331, 116th Congress, 166 Congressional Record H594 (daily ed. January 28, 2020).

8 Chung-Shu Lo, "Human Rights in the Chinese Tradition," in UNESCO, ed., *Human Rights: Comments and Interpretations* (Paris: UNESCO, 1948), 185–90, at 185.

9 Lo, "Human Rights in the Chinese Tradition," 185–86.

10 Lo, 187.

11 "Hong Kong Protestors Win *Time's* 2019 Person of the Year Reader Poll," *Time*, December 11, 2019.

12 Thomas Farr, "China in Hong Kong: Why Religious 'the First Freedom' Will Be the First to Disappear," *National Catholic Reporter*, December 30, 2019.

Farr also notes that China's persecution has not been limited to Uighur Muslims and Tibetan Buddhists but has also notably targeted Chinese Catholics and Protestants, as well as homegrown religious movements such as Falun Gong.

Against this past and present backdrop the rising status of Confucianism and Calvinist Protestantism among China's bureaucratic, intellectual, and economic elites on the mainland is something to watch, but it should not obscure the more difficult circumstances faced by interned Muslims in Xinjiang, Buddhists in Tibet, or Christian democracy protesters in Hong Kong, who continue to experience persecution. From the perspective of the Chinese state, religion remains a threat. This is a perception that seems unlikely to go away anytime soon. And it is very interesting that both Confucianism, in philosopher Lo's 1947 interpretation, and Calvinism, in the democracy protests of 2019, are associated not with state power, but with resistance.

The symposium on religion in China is far from the only offering in this issue, which continues to demonstrate the *Journal of Law and Religion's* topical and geographic reach. Two excellent essays on justice and mercy, by distinguished philosopher of law and religion Jeffrie G. Murphy and leading scholar of criminal law Albert Alschuler, along with articles on topics ranging geographically from Lithuania to Nigeria and covering international blasphemy laws and the political theology of a US Supreme Court justice bookend the symposium. These are followed by reviews of books on Calvinist political theology, sharia and Muslim ethics, and the religious proclivities of the American founders. There is a rich swath of the field of law and religion in these pages to advance our thinking and expand our international, interreligious, and interdisciplinary terrain.

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