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## Introduction

Appealing, as it is, to sources beyond easy human understanding and verification and having the capacity to evoke intense conviction that can overcome even the fear of death, religion<sup>1</sup> has always been a difficult—and often passionate—subject matter for law. Driven by the bloody lessons of past and present religious conflicts and compelled by the reality of continuing and increasing religious diversity, the dominant legal discourse in law and religion, especially under E.U. and U.S. jurisprudence, is premised on two related normative principles.

First, the state should be neutral between religions (or, for some, between religion and non-religion).<sup>2</sup> This neutrality does not necessitate

<sup>1</sup> What religion is, of course, is itself a controversial issue with no general consensus, starting with whether a theistic component is necessary: see Jianlin Chen, *Deconstructing the Religious Free Market*, 3 J. L. RELIG. & STATE 1, 17–19 (2014); Nelson Tebbe, *Nonbelievers*, 97 VA. L. REV. 1111, 1133–1135 (2011); Lori G. Beaman, *Defining Religion: The Promise and the Peril of Legal Interpretation*, in LAW AND RELIGIOUS PLURALISM IN CANADA 192, 193–195 (Richard Moon ed., UBC Press 2008). In addition, from an individual perspective, there are different dimensions of religion as a belief, an identity and/or manifested behaviors. There is also the difficult issue of what constitutes a religion in the evaluation of whether a law/policy is beneficial or harmful to the religion—should it be evaluated at the level of the religious organization, the religious community, the individual adherents, and/or the “true” understanding of the religion? For the purpose of this book, religion is defined as the commonly accepted world religions (e.g., Christianity, Islam, Buddhism) or belief systems that include a theistic component. This is to facilitate critical discussion about the role of secular beliefs in the religious market. Religion is also considered primarily a community identity (whether self- or externally identified), with the recognition that intra-religious competition can be equally considered inter-religious competition (the latter is a more narrowly defined community identifier) without affecting the analytical and normative thrust of the Law & Religious Market theory presented in this book.

<sup>2</sup> E.g., RESEARCH DIVISION, OVERVIEW OF THE COURT’S CASE-LAW ON FREEDOM OF RELIGION 6–7 (Council of Europe/European Courts of Human Rights 2013); Nicholas Gibson, *Faith in the Courts: Religious Dress and Human Rights*, 2007 CAMBRIDGE L.J. 657, 681–682 & 686–691 (2007); William Marshall, *What Is the Matter with Equality?: An Assessment of the Equal Treatment of Religion and Nonreligion in First Amendment Jurisprudence*, 75 INDIANA L.J. 193, 194–202 (2000). See JANE CALDERWOOD NORTON, FREEDOM OF RELIGIOUS

strict separation of church and state, and it may involve a commitment to multiculturalism and even weak forms of religious establishment on account of the polity's cultural and historical heritage.<sup>3</sup> Nonetheless, this requirement has often found manifestations in the common constitutional prescription of religious equality such that explicit and substantial promotion or discrimination of selected religions by the state would often attract criticisms of religious bias and legal challenges.<sup>4</sup>

Second, connected with normative and legal concerns underpinning the neutrality requirement, there is an aversion to consciously shaping religious practices and doctrines via state instruments.<sup>5</sup> The state is not precluded from imposing restrictions on religious practices; however, those restrictions should be kept to a minimum and applied only when they are sufficiently justified by public interests.<sup>6</sup> Notably, overt theological/doctrinal concerns and/or religious animosity are considered undesirable and often unconstitutional justifications for restrictions of religious practices.<sup>7</sup>

These two principles are underpinned by the laudable recognition of the limitation of states' capabilities in assessing the spiritual realm and

ORGANIZATIONS 19–20 (Oxford University Press 2016) (discusses how the principle of neutrality is inherent to the principle of autonomy).

<sup>3</sup> For a discussion of the various constitutional models for law and religion, see RAN HIRSCHL, *CONSTITUTIONAL THEOCRACY* 36–40 (Harvard University Press 2010). See Rex Ahdar & Ian Leigh, *Is Establishment Consistent with Religious Freedom?*, 32 MCGILL L.J. 635 (2004) (arguing that religious freedom does not necessary requires religious equality and that mild establishment is compatible with religious freedom).

<sup>4</sup> See HEINER BIELEFELDT, NAZILA GHANEA & MICHAEL WIENER, *FREEDOM OF RELIGION OR BELIEF: AN INTERNATIONAL LAW COMMENTARY* 350–354 (Oxford University Press 2016) (discussing how state religion, while not prohibited under international human rights law, does raise critical questions as to compatibility with human right obligations).

<sup>5</sup> E.g., Peter Smith, *The Problem of the Non-Justiciability of Religious Defamations*, 18(1) ECC. L.J. 36, 37 (2016); Andrew Koppelman, *And I Don't Care What It Is*, 39 PEPP. L. REV. 1115, 1120 (2013); RESEARCH DIVISION, *supra* note 2, at 19; Marshall, *supra* note 2, at 208.

<sup>6</sup> Ofrit Liviatan, *Faith in the Law: The Role of Legal Arrangements in Religion-Based Conflicts Involving Minorities*, 34 B.C. INT'L & COMP. L. REV. 53, 58–59 (2011); ROBIN C A WHITE & CLARE OVERY, *THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 315–332, 409–418 (Oxford University Press 5th ed. 2010). See also R. George Wright, *Can We Make Sense of "Neutrality" in the Religion Cases?: Seven Rescue Attempts and a Viable Alternative*, 65 SMU L. REV. 877, 906–908 (2012) (proposing, as an alternative to religious neutrality, an approach akin to the Takings doctrines that allows better illumination of the factors affecting the burdens on religions and the underlying justifications).

<sup>7</sup> Daniel O. Conkle, *Religious Truth, Pluralism, and Secularization: The Shaking Foundations of American Religious Liberty*, 32 CARDOZO L. REV. 1755, 1755–1756 (2011); PAUL M. TAYLOR, *FREEDOM OF RELIGION: UN AND EUROPEAN RIGHTS LAW AND PRACTICE* 182–198 (Cambridge University Press 2005).

the potential harm to both state and religions arising from state entanglement with religion.<sup>8</sup> Yet, such simultaneous aversion to state interference and adherence to state neutrality is unheard of in other areas of laws. Regulations abound for all aspects of commercial and social activities on the grounds of internalizing externalities or outright redistribution for a “fairer” marketplace.<sup>9</sup> The unimpeded expression and exchange of ideas under even the most stringent constitutional safeguard of free speech requires only the absence of censorship without limiting state advocacy of a particular position or ideology.<sup>10</sup> Even in the realm of sex, marriage and family, where paternalistic state regulations have substantially rescinded since the sexual revolution beginning in the second half of the twentieth century, ostensible state intervention remains common even among purportedly liberal societies, usually in the form of active advocacy, subsidy and/or legal support for the particular family arrangement consisting of marriage with children.<sup>11</sup>

But, is religion really so different from other forms of human activities to warrant this unique approach to law? Or, to put it another way, can a person’s decision to join a religion and participate in its religious activities be analogized to a consumer’s consumption decision, with the consequential implication that a successful religious organization is—like a successful business—one that is simply better able to attract and retain

<sup>8</sup> Andrew Koppelman, *Corruption of Religion and the Establishment Clause*, 50 WM. & MARY L. REV. 1831, 1835 (2009); M. D. Litonjua, *Religious Zealotry and Political Violence in Christianity and Islam*, 35(2) INTERNATIONAL REVIEW OF MODERN SOCIOLOGY 307, 308–311 (2009); Steven H. Shiffrin, *The Pluralistic Foundations of the Religion Clauses*, 90 CORNELL L. REV. 9, 44–45 (2004). See also Raymond Firth, *Spiritual Aroma: Religion and Politics*, 83(3) AMERICAN ANTHROPOLOGIST 582 (1981) (discussing from an anthropological perspective the dynamic and mutual impact—both good and bad—in the inevitable religious engagement with politics).

<sup>9</sup> For discussion about the advent of the modern regulatory state, see Jason M. Solomon, *Law and Governance in the 21st Century Regulatory State*, 86 TEX. L. REV. 819, 821–837 (2008); Craig Bradley, *The Rule of Law in an Unruly Age*, 71 IND. L.J. 949 (1996); John Kay et al., *Regulatory Reform in Britain*, 3(7) ECONOMIC POLICY 285, 289–301 (1988).

<sup>10</sup> John D. Inazu, *The First Amendment’s Public Forum*, 56(4) WM. & MARY L. REV. 1159, 1182–1186 (2015); JOEL BAKAN, JUST WORDS: CONSTITUTIONAL RIGHTS AND SOCIAL WRONGS 68–73 (University of Toronto Press 1997).

<sup>11</sup> See Bruce C. Hafen, *The Family as an Entity*, 22 U.C. DAVIS L. REV. 865, 878–889 (1989) (discussing how regulations on family have simultaneously reduced for certain aspects, such as those relating to morality and reproduction, while increasing in others, such as those issues involving minors). See also Dayna K. Shah, *Defense of Marriage Act: Update to Prior Report*, Jan. 23, 2004 (observing that are easily over 1,000 “federal statutory provisions . . . in which marital status is a factor in determining or receiving benefits, rights, and privileges”).

adherents relative to competing religious organizations? And, if so, what will the legal implications be?

This book presents the Law and Religious Market Theory as an original perspective from which to examine critically the normative considerations associated with laws/policies that affect religion. The theory draws on the religious economic model, an interdisciplinary approach of sociology and economics to religion that provides a resounding “yes” to the first question of whether religious choices can be analogized to decisions in other realms of human activities. Rather than viewing religion as a somewhat elusive and mystifying phenomenon or treating it as an irrational cultural relic in decline in the face of rampant secularization,<sup>12</sup> the model treats religious adherents as individual actors who make decisions about their choice of religion and level of religious participation in a manner akin to other decisions, namely, to maximize their utility.<sup>13</sup> The choices of religious adherents in turn account for the success or failure of a religion—a religion will grow and prosper if it is more successful in attracting and retaining adherents than other religions or belief systems (including non-belief), whether owing to superior theological teaching, compelling religious experiences, or more pragmatic considerations.<sup>14</sup>

If the religious economic model is accurate—and this book argues that a proper understanding of its various assumptions will produce a persuasive factual account that is compatible with the possibility of divine intervention—the key question becomes how laws related to religion should be designed. The Law and Religious Market Theory recognizes the profound effects that law and other state instruments exert on the contours of religious competition and the consequential winners and

<sup>12</sup> James A. Beckford, *The Insulation and Isolation of the Sociology of Religion*, 46(4) *SOCIOLOGICAL ANALYSIS* 347, 348, 350 (1985); Walter Houston Clark, *The Mystical Consciousness and World Understanding*, 4(2) *JOURNAL FOR THE SCIENTIFIC STUDY OF RELIGION* 152 (1965).

<sup>13</sup> Keith N. Hylton et al., *Church and State: An Economic Analysis*, 13(2) *AM. L. ECON. REV.* 402, 407 (2011); R. ANDREW CHESNUT, *COMPETITIVE SPIRITS: LATIN AMERICA'S NEW RELIGIOUS ECONOMY* 6–8 (Oxford University Press 2003); RODNEY START & ROGER FINKE, *ACTS OF FAITH: EXPLAINING THE HUMAN SIDE OF RELIGION* 27–41 (University of California Press 2000); Laurence R. Iannaccone, *Introduction to the Economics of Religion*, 36 *JOURNAL OF ECONOMIC LITERATURE* 1465, 1489–1492 (1998). See *infra* Chapter 2.I.

<sup>14</sup> Paul Harvey, *Proselytization*, in *RELIGION AND AMERICAN CULTURE* 39, 44 (Philip Goff & Paul Harvey eds., University of North Carolina Press 2004); Grace Y. Kao, *The Logic of Anti-Proselytization, Revisited*, in *PROSELYTIZATION REVISITED: RIGHTS TALK, FREE MARKETS AND CULTURE WARS* 76, 79 (Rosalind I.J. Hackett ed., Equinox 2008).

losers in the religious market. Thus, instead of providing a dichotomous assessment of whether religious liberty is violated, the theory focuses on identifying the pressures and incentives created by law (or, often as importantly, the absence of law) on different religions to appreciate fully the nature of religious competition that would be produced under the legal regime. This approach can generate new and surprising insights, such as the finding that religious competition that is conducive to the emergence of religions associated with normatively desirable characteristics may actually be fostered by restrictions on religious practices that otherwise attract instinctive criticisms.<sup>15</sup> More fundamentally, the theory reorients the discourse from the prevailing emphasis of state neutrality and state minimalism in the realm of religion to confront head-on the difficult but inevitable question of the nature of religious competition—and the consequential religious winner—that the law should foster.

To illustrate the novel factual and normative contributions that can be derived from the Law and Religious Market Theory, this book engages in comparative case studies of China, Taiwan and Hong Kong.<sup>16</sup> These three jurisdictions are selected given that the dominant religious worldview of the population in all three was largely identical just a century ago, but that they are now subjected to ostensibly different legal and political circumstances (i.e., Nationalist followed by Communist rule in China; British colonization of Hong Kong followed by handover to China; Nationalist martial law followed by democratization in Taiwan). By analyzing the religious competition sanctioned by the underlying legal regimes with the resulting religious landscape, this book advances the understanding of the factual dynamic between law and the religious market. In this regard, this book presents the precise nature of religious competition as envisaged by the current legal regimes in the three jurisdictions. Instead of providing a typical mere identification of how religious practices are restricted—and there are undoubtedly many restrictions, especially for China—this novel factual account engages in

<sup>15</sup> Jianlin Chen, *Money and Power in Religious Competition: A Critique of the Religious Free Market*, 3(2) OXFORD J. L. & RELIG. 212, 223–224, 220–223 (2014). See *infra* Chapter 7.

<sup>16</sup> There is intense sensitivity in some quarters as to how the choice of names for the respective jurisdictions are indicative of one's political opinion regarding the hot-button issue of independence and reunification. This book does not take any position in the issue, and simply adopts geographical indicators to describe the jurisdictions (i.e., China, Taiwan, and Hong Kong) rather than their official titles (i.e., People's Republic of China, Republic of China, and the Hong Kong Special Administrative Region) unless necessary for clarity (e.g., discussing the historical background).

the holistic assessment of the treatment of religion across the entire spectrum of laws and regulation beyond those national laws and regulations that specifically address religion.

In terms of actual mechanics, this assessment examines *all* references to “religion” and related terms (e.g., church, temple, worship, faith, cult) in the laws, national regulations and policy documents by using keyword searches via the widely used online database of primary legal materials. These laws are then categorized—with the aid of academic literature from law and other social science disciplines and also secondary sources such as newspapers—according to the impact on each of the different aspects of religious competition, particularly the baseline of competition and the dimensions of religious competition. This analysis reveals a more nuanced regulatory landscape, which not only identifies the winners and losers explicitly envisaged by the various deferential treatments of religions in *all* three jurisdictions, but also fleshes out the role that money, political power, and foreign connection should play in religious competition.

Normatively, the case studies demonstrate that apparent restrictions on religious practices can sometime foster religious competition that promotes normatively desirable characteristics among religions, while at other times, they are useful for moderating religious competition during transitions in the religious market. This is of particular relevance for China. As the most populous nation under authoritarian rule by an ostensibly atheistic regime, China unsurprisingly has received copious scholarly attention with regard to its status of religious liberty. The first category of literature focuses on persecutions, typically of Tibetan Buddhists, Uighur Muslims, Christians, and the Chinese religious sect Falun Gong, and decries religious liberty violations in China.<sup>17</sup> The second

<sup>17</sup> E.g., Richard Klein, *An Analysis of China's Human Rights Policies in Tibet: China's Compliance with the Mandates of International Law Regarding Civil and Political Rights*, 18 ILSA J. INT'L & COMP. L. 115 (2011) (discussing the various forms of human rights violation in Tibet); Evan Mascagni, *The Legal Process of Cultural Genocide: Chinese Destruction of Tibetan Culture v. U.S. Destruction of Native American Culture*, U. D.C. L. REV. 241 (2011) (comparing the Tibetan situation with the destruction of Native American culture in the U.S.); Lawrence Cox, *Freedom of Religion in China: Religious, Economic and Social Disenfranchisement for China's Internal Migrant Workers*, 8 ASIAN-PAC. L. & POL'Y J. 370 (2007) (highlighting how China's law and policy are incompatible with Christian doctrines, and thus infringing of their religious freedom); Ellen S. Reinstein, *Turn the Other Cheek, or Demand an Eye for an Eye? Religious Persecution in China and Western Response*, 20 CONN. J. INT'L L. 1 (2004) (discussing religious oppression of those four groups in the context of appropriate Western responses); Sonia M. Kim, *Old*

category of literature examines the domineering state control over religious affairs and the risks that this state interference poses to religious freedom, typically without an outright condemnation of the deprivation of religious freedom,<sup>18</sup> and at times with reflection on a positive outlook moving forward.<sup>19</sup> Notwithstanding their differing assessment of the current stage of religious liberty in China, both categories of literature retain the conventional premise of the dominant legal discourse in law and religion, namely, neutrality and non-interference. Indeed, the general consensus regarding legal form in China is the desirability of reducing state control and religion regulation.<sup>20</sup>

*World Religious Persecution in a New World Setting: How International Relationships Can Affect China's Treatment towards Its Religious People*, 2 RUGERS J. L. & RELIGION 2 (2000) (discussing how the international community should respond to the religious persecution in China); Eleftherios Georgiou, *China: Where the Failure to Adhere to Domestic Political Laws Often Leads to Religious Oppression*, 20 N.Y.L. SCH. J. INT'L & COMP. L. 355, 374–382 (2000) (religious oppressions of religious activities not sanctioned by the state).

<sup>18</sup> E.g., Ping Xiong, *Freedom of Religion in China under the Current Legal Framework and Foreign Religious Bodies*, 2013 B.Y.U. L. REV. 605, 610–616 (2013) (examining both the general regulatory framework and the particular control over foreign religious bodies); Zhang Qianfan & Zhu Yingping, *Religious Freedom and Its Legal Restrictions in China*, 2011 B.Y.U. L. REV. 783 (2011) (discussing the various legal restrictions on religious activities); Eric R. Carlson, *China's New Regulations on Religion: A Small Step, Not a Great Leap, Forward*, 2005 B.Y.U. L. REV. 747, 765–781 (2005) (discussing the continued maintenance of strong state control over religion under the Regulations on Religious Affairs); Kim-Kwong Chan, *China's Socioeconomic Changes and the Implications for the Religion-State Dynamic in China*, 2004 B.Y.U. L. REV. 325 (2004) (discussing the evolution of China's church-state policy in light of globalization under the WTO accession). See also Zeng Chuanhui, *Coalition and Hegemony: Religions' Role in the Progress of Modernization in Reformed China*, 2011 B.Y.U. L. REV. 759, 59 (2011) (discussing the control and co-opting of religion in governance).

<sup>19</sup> E.g., James W. Tong, *The New Religious Policy in China: Catching up with Systemic Reforms*, 50(5) ASIAN SURVEY 859, 884–887 (2010) (arguing that the recent reform in China's policies on religion, together with general reform toward more limited and accountable government, represent a "clear" "overall direction" toward religious liberty for the polity, notwithstanding the acknowledged continued heavy state interference of the state); Chen Huanzhong, *A Brief Overview of Law and Religion in the People's Republic of China*, 2003 B.Y.U. L. REV. 465 (2003) (a descriptive overview of law and religion that is ended with a positive future outlook consequential of greater international exposure of China's younger generation).

<sup>20</sup> E.g., Guobin Zhu, *Prosecuting "Evil Cults": A Critical Examination of Law Regarding Freedom of Religious Belief in Mainland China*, 32 HUM. RTS. Q. 471, 498–501 (2010); ZHIEBIN XIE, RELIGIOUS DIVERSITY AND PUBLIC RELIGION IN CHINA 87–90, 94–103 (Ashgate 2006). See Cox, *supra* note 17, at 427–430 (prescribing a list of specific and "immediate" reform measures, including the adoption of a nondiscriminatory and broad definition of religion, abolishing the requirement of registration, granting full access to non-local religious communities, etc.); Eric Kolodner, *Religious Rights in China: A Comparison of*



This widespread critique of China can be contrasted with that of Taiwan and Hong Kong. Despite inevitable flaws in their regime on law and religion (whether from the conventional viewpoint or under the Law and Religious Market Theory), the small size of the jurisdictions coupled with the relatively liberal environment compared with more egregious violations around the world has engendered many fewer mentions—let alone critiques—in the literature.

The Law and Religious Market Theory challenges this prevailing view in the literature and argues that the existing conscious differentiation of religions under the Chinese regulatory regime, which is primarily based on the practical impact on society rather than theological content, is actually the proper inquiry that should be preserved in any legal reform. The fact that the current normative assessment by the Chinese government of what constitutes a “desirable” or “acceptable” practical impact is admittedly clouded by compulsive concerns over the maintenance of political control should not distract from the necessity and desirability of recognizing that law will shape the characteristics of religions, whether intentionally or unintentionally and whether actively or in absentia. On the other hand, the collective overlooking of actual preference for, and discrimination against, specific religions in Hong Kong amidst the official adherence to liberal notions of religious freedom is more problematic as a matter of principle given the underlying hypocrisy and disingenuousness.

Furthermore, several of the current restrictions on religious activities, such as those that limit the impact of economic, political and foreign advantages on religious competition, are normatively useful to moderate religious competition in the context of China. This remains true even if the religious free market—however it is defined<sup>21</sup>—is the normative benchmark for reform. The transitional nature of China’s religious

*International Human Rights Law and Chinese Domestic Legislation*, 16(3) HUM. RTS. Q. 455, 483–489 (1994) (discussing the incompatibility of China’s regime on religious freedom with relevant international law, and advocating reform to bring it up to international law standard). See also Richard Klein, *An Analysis of China’s Human Rights Policies in Tibet: China’s Compliance with the Mandates of International Law Regarding Civil and Political Rights*, 18 ILSA J. INT’L & COMP. L. 115, 120–135 & 164–165 (2011) (urging greater united action by human rights advocates to remedy the violation of religious freedom, among other alleged human rights violations, by the Chinese government in Tibet).

<sup>21</sup> See Chapter 2.IV. See also generally Chen, *supra* note 1.



market, which is still recovering from the wanton destruction of all things religious during the decade-long Cultural Revolution,<sup>22</sup> necessitates a carefully calibrated pace of market liberalization. On the other hand, the lack of such restrictions in Taiwan and Hong Kong—while purportedly consistent with liberal notions of minimal state interference in religion—is not only promoting religious competition of more temporal dimensions but also perpetuating a disparity of normatively suspect legacy.

This book is organized into nine chapters (this Introduction being Chapter 1).

Chapter 2 presents the Law and Religious Market Theory by examining the sociological concept of the religious economic model and the dynamics between laws and religious competition, highlighting the redistributive and behavior-changing pressure created through both the presence and absence of law, consciously intended or otherwise. The chapter proceeds to critique the religious free market as a normative constitutional principle by deconstructing the ambiguity and bias imbedded in the concept. This chapter then lays out the factual inquiry that should be undertaken under the Law and Religious Market Theory, an inquiry that can broadly be categorized into two components: first, the baseline of competition vis-à-vis the various competitors—whether between religions and secular beliefs or among the different religions—stipulated in the law; second, how the law regulates the different aspects of religious competition, namely, direct, economic, political and foreign. This inquiry will form the basis of the subsequent three chapters on each of China, Taiwan and Hong Kong.

Chapter 3 investigates the religious market envisaged by the current legal regime in China by utilizing the inquiry framework of the Law & Religious Market. This investigation finds that beneath the infamous persecution of certain religious minorities and sects and the domineering presence of the state which strives to impose the socialist ideology on the whole society, there is a more nuanced regulatory landscape in which harmonious, apolitical, and indigenized religious competition is permitted and indeed promoted.

<sup>22</sup> Liu Peng, Brett G. Scharffs & Carl Hollan, *Constitutional, Legislative and Regulatory Change Regarding Religion in China*, in *LAW, RELIGION, CONSTITUTION* 247, 251 (W. Cole Durham et al. eds., Ashgate 2013); Fenggang Yang, *The Red, Black, and Gray Markets of Religion in China*, *THE SOCIOLOGICAL QUARTERLY* 93, 100 (2006).

Chapter 4 turns the attention to Taiwan. The survey shows that the Taiwanese religious market has been substantially liberalized in all dimensions since the advent of the democratization process in the 1980s. Nonetheless, some vestiges of the previous regime linger, particularly the state identification of certain characteristics associated with “good” religion and the corresponding nudging by the state to counsel/promote those characteristics among religions.

Chapter 5 considers the case of Hong Kong, where the limited constraints of religious competition reflect the *lassiez-faire* approach toward its economic market. Still, this chapter makes surprising findings regarding the continued existence of an overt preference for Christianity and hostility toward Chinese religions, noting how this differential treatment dates back to British colonial rule, but is largely overlooked or perceived as unproblematic by the polity despite obvious constitutional deficiencies.

Having set out the factual account of how the religious market is regulated in the three jurisdictions, Chapter 6 kicks off the normative analysis with the core theoretical prescription from the Law and Religious Market Theory, namely the need to articulate the benchmark for a desirable religion that should inform the regulation of religious competition. This chapter argues that the much-criticized Chinese requirement that religion should be compatible with socialism is correct in so far as it is explicit and upfront about the characteristics of religions that the state seeks to foster. Indeed, the Taiwan experience demonstrates the manifestation of this approach with a less draconian level of state intervention and less-contested benchmarks. On the other hand, the case study of Hong Kong reveals the greater danger of how official adherence to liberal notions of religious freedom can insidiously obscure those actual preferences and discriminations of specific religions, and argues that the differential treatment is normatively flawed for its undemocratic origin and hypocritical oblivion.

Chapter 7 goes on to discuss the specific considerations that should be taken into account when formulating appropriate regulations by separately scrutinizing the direct, economic and foreign dimensions of religious competition. Three considerations may be teased out. Echoing the discussion in the previous chapter, the first consideration is to confront and resolve the issue as to the proper role that each dimension should play in determining the winner in the religious market. The second consideration is the issue of externality—both positive and negative—that is associated with regulated activities. The third consideration

concerns the initial allocation of resources, especially where the allocation is due to normatively suspect factors, such as colonial imposition. As applied to the case studies of the three jurisdictions, this chapter explains how restrictions on religious activities, such as the much-criticized prohibition in China of religious propagation in the provision of social services by religious organizations, can be normatively justified on the grounds of either facilitating religious competition that is more geared toward the spiritual/theological dimension or providing an interim measure in a transitional religious market where there is massive disparity among the different religions vis-à-vis their capacity to compete in certain secular dimensions.

Chapter 8 analyzes the unique dilemma posed by any attempt to reform the political aspect of religious competition. Political competition among religions is the most harmful where there is significant religious plurality in the polity and where the prevailing worldview of major religions is exclusive and comprehensive. However, these are the same circumstances in which restrictions are less forthcoming, given the difficulty of forming consensus among diverse competing religions and the desire by the major religions to co-opt the state in ensuring both the compatibility of laws and policies with their religious teachings and their continued dominance over rival religions. Thus, this chapter notes that the successful democratization of Taiwan, which avoids major religiously inspired culture wars and societal divisions despite an increase in religious participation in politics, indicates that the liberalization of political participation by religion in China is arguably desirable given how the current religious landscape in China is similar to that in Taiwan. However, this chapter also forewarns that there are no available legal remedies to tackle the harms of religious participation in politics if the actual democratization process occurs in—or just as likely, because of—an intensively competitive religious landscape dominated by religions of exclusive and comprehensive outlook.

Chapter 9 concludes with observations as to the implications of the Law and Religious Market Theory for the economic analysis of more conventional markets. The successful application of economic principles, particularly the assumption of rationality, to religious activities dispels the perceived mystical shroud that has obscured the role that is and can be played by the state and law in affecting the outcome of religious competition. At the same time, that religious activities—with all their deep emotional, ethical and spiritual motivations—can be analogized to more mundane consumer decisions is a timely reminder that the latter

decisions are by no means driven by straightforward materialistic factors and are as similarly complex and nuanced as religious decisions. Proper understanding and application of economic principles must consciously avoid the assumption that the rationale actor is one simply trying to maximize one's monetary profit, even in the realm of commercial activities.