Cults, Religion, and China: Policy Frameworks for the Regulation of Religious and Quasireligious Groups

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Preamble

I am pleased to have been invited to attend what is now the Fifth International Symposium of Cultic Studies, this year cohosted by the Shanghai Academy of Social Sciences (SASS) and the Assumption University of Thailand (ABAC). I extend thanks to the conference hosts Yan Kejia, the Director of Religious Studies of SASS, and Warayuth Sriwarakuel, Dean of the Graduate School of Philosophy and Religion at ABAC.

The invitation has encouraged me to think more about how policy prescriptions in the field of cultic studies might be shared among countries with very different social, cultural, and political backgrounds. I am encouraged in this by the "can do" attitude of Richard Rose, who avers that "the only condition limiting where to look for lessons is the existence of a common problem" and that "'go where you can learn something useful' is a rule that underscores the instrumental character of lesson-drawing."[1] The theme of this symposium, "Globalisation and Destructive Cult Groups," underlines the fact that countries do share a common problem in dealing with cultic groups, and they indeed share problems with many of the same groups that are organized globally.

Abstract

Situated in the field of comparative public policy, this paper explores the relevance of various models involving the regulation of cultic groups and religion to the People's Republic of China, a country governed by the atheistic Chinese Communist Party (CCP), but which has constitutional protections for religious belief, as well as disbelief. It examines different conceptual frameworks relating to the regulation of the relationship between cultic groups, religion and the state; and explores policy applications under various philosophical approaches. In conclusion, for various contextual, philosophical and practical reasons, it is noted that the French secular model might provide the best policy fit for China.

Introduction

In March 2008, "the Communist Party changed its own charter to make room for the concept of religion in the pursuit of social harmony" (Ching, 2008, p. 36). In a plenary address to the opening session of the National Committee of the Chinese People's Political Consultative Conference, Jia Qingling, fourth ranking leader, instructed that the Chinese Communist Party (CCP) "should fully follow the policy on freedom of religious belief, implement the regulations on religious affairs, and conduct thorough research on important and difficult issues related to religion."[2] This commendable attitude toward research has encouraged Chinese officials and academics to examine what scholars from abroad have to contribute to their understanding of the relationship between cultic religious groups and the state.

Knowledge of the legal, political, and cultural history of a nation is a necessary precondition to the successful application of public policy programs borrowed from abroad. Even within nation states (most obviously those of a federal nature where valuable horizontal comparisons are readily made), there is a need to be aware of the particular characteristics of local context. Therefore, any regulatory ideas emanating from the West and embraced by the ruling CCP must be tailored to suit conditions in China, perhaps even to suit localised conditions in parts of China.

[1] Richard Rose, *Learning from Comparative Public Policy: A Practical Guide* (London: Routledge, 2005), pp. 41–42.

[2] Frank Ching, *China: The Truth About Its Human Rights Record* (London: Rider, 2008), p. 36.

But before we get to the stage of cherry picking ideas about the regulation of cults that might be successfully transplanted, in whole or in part, to all or part of China, it is important to understand some of the conceptual and practical difficulties in dealing with this issue. As part of the difficult process of issue identification, and in this case the *prima facie* need to locate the parameters of the subject itself, it is appropriate to look briefly at what we mean by *cult,* and why a proper working definition of the term for public policy purposes most often involves an understanding that there is a religious element involved. In addition, countries operate under very different philosophical or conceptual frameworks when they are dealing with religious or quasireligious groups, and so it is important to understand how different regulatory regimes might flow from a particular understanding or worldview.

With reference to some practical considerations, cults might come under regulatory regimes for religious groups (as part of the Third Sector, but possibly as a distinct category requiring specific regulation). It is also possible that some cultic groups might be categorized as political parties, or even as terrorist groups, and others might be properly categorized as commercial, for-profit operations. This is why I have called for a broadly based oversight mechanism in Australia.[3]

It is also important to note that scholars are hotly divided on what regulatory regimes are appropriate, with some finding the very idea of religious regulation anathema to their concept of religious freedom. They hold this view despite their often having both a very liberal understanding of the types of groups that constitute religions and a *laissez-faire* view of the range of activities that groups should be allowed to engage in.

Cults and Religion

Cult is a word that is used widely and loosely, to such an extent that Ian Frekelton argues that

> ...the description "cult" for at least three decades has generally been employed judgementally, signifying little more than that the group concerned is said to be dominated by an influential figure and is dangerous or ideologically distasteful.[4]

However, while there are literally hundreds of definitions of the word *cult,* I will outline a few here because I believe we can pinpoint certain characteristics that give us a good idea of what we are talking about and the policy problems we face.

Hence the International Cultic Studies Association (ICSA), which includes among its membership a multidisciplinary network of scholars, notes:

> Although there is no agreed-upon definition of *cult,* one proposed by Rutgers sociologist Benjamin Zablocki seems to highlight key elements of high-influence group situations: "An ideological organization held together by charismatic relationships and demanding total commitment." Charisma refers to a spiritual power or personal qualify that gives an individual considerable influence or authority over large numbers of people. Hence, a cult is characterized by an ideology, strong demands issuing from that ideology, and powerful processes of social-psychological influence to induce group members to meet those demands. This high-demand, leader-centered social climate places such groups at risk of exploiting and injuring members, although they may remain benign, if leadership doesn't abuse its power.
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> The social-psychological manipulation and control associated with some cultic groups may sometimes be found in other organizations and movements, including those in the mainstream. However, unlike new groups focused on a living leader who answers to nobody, mainstream movements may be

[3] Stephen Mutch, "Cults and Public Policy: Protecting the Victims of Cultic Abuse in Australia," in *Cults in Australia: Facing the Realities* (Cult Information & Family Support (CIFS) Conference: Old Parliament House & Parliament House, Canberra. Hosted by Senators Sue Boyce and Nick Xenophon. 2nd November, 2011).

[4] Ian Freckelton, "'Cults,' Calamities and Psychological Consequences," *Psychiatry, Psychology and Law*, Vol. 5, No. 1 (1998), pp. 3–4.

> restrained or corrected by higher authorities to whom they are accountable.[5]

Robert Jay Lifton uses another definition, but he also notes the loaded connotations of the word as used by protagonists in the debate. He says,

> I am aware of the controversy surrounding the use of the word *cult* because of its pejorative connotation, as opposed to the more neutral *new religion*. I use both terms in this book, but as in past work I confine the use of *cult* to groups that display three characteristics: totalistic or thought-reform-like practices, a shift from worship of spiritual principles to worship of the guru or leader, and a combination of spiritual quest from below and exploitation, usually economic or sexual, from above.[6]

In addition, I note that recent parliamentary and departmental inquiries in Australia and Israel have offered two working definitions of the word *cult*. The Australian Senate Economics Legislation Committee applied a Macquarie Dictionary definition, so that *cult* is defined in its report as

> A religious or pseudo-religious movement, characterized by the extreme devotion of members who usually form a relatively small, tightly controlled group under an authoritarian and charismatic leader.[7]

A Ministry team from the Israeli Ministry of Welfare and Social Services offers the following definition in its recent report on cults in Israel, utilizing the term *harmful cults:*

> Harmful cults are groups that are united around a person or idea, by the exercise of methods of control of thought processes and patterns of behavior, for the purpose of creating an identity that is distinct from society and by the use of false representations. For the most part these groups encourage mental dependence, fidelity, obedience and subservience to the leader of the cult and his objectives, exploit their members with a view to promoting the objectives of the cult, and cause mental, physical, economic and social damage (in one or more of these fields), to members of the groups, their families and the surrounding community.[8]

So a group most familiarly described as a cult is a tightly controlled group of obedient followers who are cut off either physically or psychologically, or, to be most effective, both, from mainstream society, and are controlled by a charismatic individual claiming "unique" insights. When these groups explode, implode, or cause public scandal, the attention of policy makers is focussed for a time, although most often the response is inadequate to the task.[9] However, there are also concerns about ongoing harm allegedly caused by a broader range of allegedly cultic groups.

Psychologist Louise Samways differentiates between "closed" cults, in which "members live physically isolated from mainstream society," and "open" cults, those groups "who have all the characteristics of cults but are very open about their activities in the community"; she submits the latter have been facilitated by the development of "more sophisticated indoctrination techniques."[10] She describes Scientology as an example of an open cult.

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[5] International Cultic Studies Association, *Psychological Manipulation, Cultic Groups, and Other Alternative Movements, Conference Handbook 2006* (ICSA Annual International Conference, Denver, Colorado, June 22–24, 2006), p. 68.

[6] Robert Jay Lifton, *Destroying the World to Save It: Aum Shinrikyo, Apocalyptic Violence, and the New Global Terrorism* (New York: Metropolitan Books, 1999), p. 11.

[7] Senate Economics Legislation Committee, "Report on the Tax Laws Amendment (Public Benefit Test) Bill 2010" (Canberra: Senate, 2010), Glossary, vii.

[8] Ministry of Welfare and Social Services, "An Examination of the Phenomenon of Cults in Israel: Report of the Ministry of Welfare and Social Services Team," (State of Israel, 2011), p. 16, Part I, para. 2.3.

[9] The Director of Public Prosecutions in South Australia has recently acknowledged that "the sorts of mental damage and mental harm that we're hearing about from these people are not easily coped with by the laws we've got, not only in our state, but across Australia." Catherine Hockley, "Create Special Laws for Cults: DPP," *The Advertiser*, 3 November 2011 (http://www.adelaidenow.com.au/create-special-laws-for-cults-dpp/story-e6frea6u-1226184076536).

[10] Louise Samways, *Dangerous Persuaders: An Expose of Gurus, Personal Development Courses and Cults, and How They Operate in Australia* (Penguin Australia, 1994), p. 3.

So some groups that no longer have a living founder (or founding prophet) sometimes continue to be described as cults, generally with the implication that they are harmful in some ways. Scholar and journalist Rachael Kohn notes that the term *cult* is most often used with reference to groups with a dominant leader who has emerged from obscurity with a syncretistic array of ideas that are claimed to be unique. However, she describes Scientology (whose original leader departed his earthly manifestation in 1986) as an example of a "larger, more organized" cult. Scientology provides "an outer circle of less committed followers with some of the 'low level' teachings or products," while maintaining "highly protected upper levels of experience and teaching for those prepared to be obedient to the organization's dictates and to pay considerable sums of money for the stream of courses they offer."[11]

Scientology seizes upon the lack of a living founder to claim that it "shares none of the characteristics of a cult." Spokeswoman Virginia Stewart claims, "We do not have a messianic leader ... our members are urged to think for themselves and are not subject to 'coercive persuasion or mind control.'"[12] Some critics beg to differ and perhaps point to the control of the organization by the founding leader's successor. They would certainly allege that Scientology has been a pioneer in the types of allegedly harmful psychological practices attributed to cults.[13] Scientology has been popularly characterized as a cult throughout its short history and understands full well the utility of being recharacterized and recategorized as a religion.[14] The Church of Scientology International has explicitly acknowledged the material benefits sought:

> Government officials regularly must determine whether a particular group is religious and therefore qualifies for some privilege accorded only to religious organizations. This privilege may be a special zoning variance, exemption from taxes, the authorization to perform marriages, or in some localities just the simple right to provide spiritual healing to the ill or distressed.[15]

People talk about commercial cults, therapy cults, and political cults (even "one-on-one" cults!); but at the heart of groups most convincingly described as cults is an element of blind obedience by a group of followers to the instructions of a leader (reinforced by social/psychological manipulation) because of a belief that the leader has access to some supernatural power or knowledge beyond the ken of others, or is in communication with supernatural forces.

It is the suspension of independent thought among disciples and their obedience to the commands of the leader (precisely because the leader supposedly has this otherworldly access) that constitutes the core element of a cult, and which attracts calls for governmental interventions when these commands are seen to be detrimental to the individuals concerned or to the wider community. This pejorative connotation is mostly inherent in the label *cult* when it is applied contemporaneously to groups. I am yet to have my attention directed favorably to a good cult, although some countercultists use the word to describe some possibly benign groups on the basis of theological differences.

So there is usually, sociologically and increasingly in the policy sphere, seen to be a religious element to a cultic group. This seems implicit in another Macquarie Dictionary definition, which describes a cult as "a particular system of religious worship, especially with

[11] Rachael Kohn, "Cults and the New Age in Australia," in *Many Religions, All Australians: Religious Settlement, Identity and Cultural Diversity*, edited by Gary Bouma (Adelaide: Christian Research Association, 1996), pp. 151–152.

[12] Michael Bachelard, "Scientologists Threaten to Sue Cult Victim Group," *The Age*, 10 July 2011. Retrieved from http://www.theage.com.au/victoria/scientologists-threaten-to-sue-cult-victim-group-20110709-1h85b.html#ixzz1ReSLI2op

[13] See Kevin Victor Anderson, "Report of the Board of Inquiry into Scientology," (Melbourne: State of Victoria, 1965).

[14] Scientology has long campaigned to achieve legal recognition as a religion and consequently social respectability. See Stephen Mutch, "Scientologists in Australia," in *The Encyclopedia of Religion in Australia*, edited by James Jupp (Cambridge University Press, 2009), pp. 561–563.

[15] Church of Scientology International, *Scientology: Theology & Practice of a Contemporary Religion* (Los Angeles: Bridge Publications Inc, 1998), p. 9.

reference to its rites and ceremonies."[16] Because a common feature of various policy definitions of religion is belief in something supernatural (with the word *spiritual* increasingly being used as an alternative, with the effect of extending the definition to further groups), it seems that for the most part groups sociologically described as cults categorically form part of the religious spectrum for policy purposes (even when the group itself claims otherwise, and sometimes when the group is described otherwise by critics). Even if a group is seen as a personal-development or therapeutic cult, there is potential for it to slide into a religious category for policy purposes.

Therefore, if we want to address the policy ramifications presented by cults in those countries where cults are located on the spectrum of religious organizations (or where groups can easily slide into the spectrum), we are drawn inexorably to the field of regulating religion. To expand upon the list above provided by Scientology (wherein religions benefit from government largesse), this field includes exemptions from elements of charitable collections legislation; the right to perform officially recognized marriage ceremonies; taxation and rating exemptions at all governmental levels; exemptions from nondiscrimination and other laws relating to employment; clergy privileges; funding of faith-based schools (including chaplaincy funding); privilege to proselytize in public schools (special religious instruction); exemption from national service; and the benefit of the protection of religious vilification laws. This list is by no means exhaustive.

Religions also benefit from overarching constitutional provisions that provide various levels of protection and support for freedom of religious belief and practice. I argue that fundamental law protections, while well intentioned, can potentially stymie governmental attempts to effectively regulate religions to ensure genuine freedom of religion for all.

[16] *The Macquarie Dictionary* (Sydney: Macquarie Library Pty Ltd, 1981), p. 455.

Fundamental Laws

Various attempts have been made in the policy sphere to separate cults from "authentic" religion, to prevent them from gaining access to privileges and exemptions afforded to religious groups generally.[17] Governments also have tried to impose sanctions on a particular group because it is considered to be problematic (seen as probably a cult but certainly not a religion).[18]

Sometimes religions are given a class privilege or exemption on the basis of a perceived constitutional obligation for a state to be neutral between religions, or not to discriminate against any particular "religion" (including, in particular, new groups). Sometimes all religions are afforded a class exemption or privilege on the basis that a government has taken a policy decision not to be seen to favor any particular group.

When privileges and exemptions are granted on the basis of a category or class, historically devices have been found to disqualify problematic groups. One mechanism is that of "definitional disqualification." An example of this is the dexterous manner in which the Charity Commission for England and Wales ruled that Scientology did not fit the extant definition of religion for charity-law purposes. The Commission ruled that Scientology failed the second prong of a two-pronged definition—belief in God, and worship. Scientology auditing was ruled to be akin to counseling rather than worship. So the term *religion* may be defined differently for different statutory purposes, and groups may be disqualified on the basis of a definition.[19]

Vague constitutional rights provisions found in fundamental laws sometimes make it difficult to maintain this type of definitional distinction and

[17] Hence, it has been claimed, for example, that "Falon Gong is not a religion but a cult that brings harm to society and an illegal organization that engages in law-breaking activities," Ji Shi, *Li Hongzhi & His "Falon Gong": Deceiving the Public and Ruining Lives* (Beijing: New Star Publishers, 1999), pp. 1–2.

[18] This strategy was employed by various Australian governments in the late '60s and early '70s in an attempt to deal with Scientology.

[19] Stephen Mutch, *Cults, Religion and Public Policy: A Comparison of Official Responses to Scientology in Australia and the United Kingdom* (PhD thesis, University of New South Wales, 2004).

public policy flexibility. Policy contests turning on a definition of the word 'religion', a word found in many fundamental laws, provide many illuminating examples. Just as we encounter definitional vagueness at the cultic end of the spectrum, defining the word 'religion' is also bedeviled with vagueness (to the extent that it might be argued that it cannot be defined satisfactorily at all) – yet despite this imprecision it can have profound constitutional, and hence policy, ramifications.

Australia

While it may suit some groups for recruitment purposes to eschew a religious label, when tactically desirable they can appeal to the courts to obtain recognition of their latent potential for religious status. This process has been pioneered by the Church of Scientology, which sought very early in its short history to assert claims for religious status. In Australia Scientology was able to achieve a landmark ruling by the High Court in 1983 supporting its claim for religious status for administrative purposes, even though the case was heard in the appellate rather than the constitutional jurisdiction of the Court.[20]

Although Australia does not have a Bill of Rights on the American model, there are a few arguably anomalous provisions in the Commonwealth of Australia Constitution Act 1900 that pertain to rights. Section 116 is a provision that prevents the Commonwealth (not the Australian states)[21] from making laws that infringe freedom of religion or establishing a religion.

In 1983, the Church of Scientology successfully appealed to the High Court to gain legal recognition as a religion in order to avoid payroll tax in the state of Victoria. Even though the case was not supposed to be a test of the constitutional meaning of the word *religion* as it appeared in section 116, but rather the meaning of the words "religious or public benevolent institution" in a Victorian state government statute pertaining to payroll tax, the judges in their wisdom decided to be helpful— by taking the opportunity to clarify what *religion* meant in s. 116, as a guide for other contexts. They then applied that necessarily expansive meaning to the Victorian statute, apparently without ascertaining what they thought the Victorian legislature intended the relevant words to mean.[22]

This example of judicial activism has had the administrative consequence of expanding the meaning of the word religion to a one-size-fits-all definition, applicable across all jurisdictions and in all circumstances. Of course, the matter might be tested by a determined government (or possibly a private litigant who could establish standing) from somewhere around Australia; but it is interesting that administrators have adopted what they have deduced to be the two-pronged definition of the word emanating from the majority of the judges (belief in the supernatural, and canons of conduct giving effect to that belief) as though it were holy writ rather than an excursion by judges arguably ill-equipped to make such a consequential public policy decision. Ill-equipped because the Australian High Court operates on a system whereby determinations are largely framed by the pleadings presented by the parties; research capacity is limited; and the Court is not so experienced in the types of "rights" determinations made by the US Supreme Court—made necessary by their Bill of Rights.

The problem with the Australian definition of the word *religion* is that it is difficult to exclude from it any of the groups that we might identify as *cults*, and which are deserving of a pejorative connotation. So the useful policy tool of

[20] *Ibid.*; Stephen Mutch, *From "Cult" to "Religion"—Claims for Religious Freedom Enabled the "Cult" of Scientology to Overcome Government Suppression, Win Legal Recognition and Gain Tax Exempt Status as a Religious Institution in Australia.* [Graduate Diploma in Arts (by research), University of New South Wales, 2000]; Mutch, "Scientologists in Australia." In James Jupp (Ed.), *The Encyclopedia of Religion in Australia,* Cambridge University Press.

[21] In September 1988 a referendum proposal to amend the Australian Constitution to extend the limited protection for freedom of religion in s. 116 to the Australian states was not carried. House of Representatives Standing Committee on Legal and Constitutional Affairs, *Constitutional Change: Select Sources on Constitutional Change in Australia 1901–1997* (Canberra: The Parliament of the Commonwealth of Australia, 1997), pp. 110–114.

[22] The judges would argue that any oversights can be put down to insufficient pleadings on the issue—as Australian cases are decided on the evidence presented by the parties.

"disqualification by definition" is made redundant, particularly if no inherent distinction between ethical and unethical groups is read into the definition. This point has been tellingly made by the Church of Scientology, which claims that,

> Despite the specific cultural differences among countries, contemporary court decisions are adopting expansive definitions of religion that appear to fit perfectly within the "ethically neutral" approach taken by scholars of comparative religion. In fact, the definition of religion adopted by the High Court of Australia ... could well have been written by a scholar of religion.[23]

Although an expansive, ethically neutral, sociological definition might be useful for academics who wish to study religions (as an entomologist studies insects), it is probably not the nuanced approach that might be required in a variety of public-policy applications. For example, one legal scholar has suggested that to make sense of the two basic components of s. 116, free exercise and nonestablishment, a bifurcated definition of the word *religion* might be required to achieve the underlying objectives of the provision.[24]

If we are to apply a one-size-fits-all definition to the word *religion* found in fundamental laws and ordinary legislation, then we need to find compelling rationales to exclude problematic groups from privileges afforded to all those "religious" groups that qualify by definition. Legislative regimes based on these rationales then have to run the gauntlet of potentially overriding judicial interpretation.

To enable policy flexibility, some broad public-policy discretion is written into the European Convention on Human Rights and Fundamental Freedoms 1950[25]—discretion that is not found in the US First Amendment or s. 116 of the Australian Constitution Act 1901. It is also worth pointing out that s. 116, while modeled on the fairly equivalent provision in the US Bill of Rights, has been interpreted entirely differently, such that in Australia majority judicial opinion has thus far eschewed the US notion of separation embedded in the almost identical provision. This brings us to the observation that

> Rights determination processes ... depend on the precise constitutional circumstances of particular policy systems ... [and] different constitutional arrangements shape the political process for making and determining competing claims.[26]

In light of the preceding discussion, one might suggest that not only do different constitutional arrangements shape different processes and hence outcomes, but similar provisions might also result in very different processes and outcomes.

France

Interpretations of provisions in fundamental laws often serve to reinforce prevailing ideological assumptions. Hence the commitment in French society today to the doctrine of *laïcité* is a continuation of a commitment to secularism that predates the "secular republic" found in the first article of the 1958 French Constitution.[27] To the French, there is no doubt that "secular," or *laic*, means a relatively strictly enforced separation between church and state—the explicit nature of the policy being set out in the famous law of 1905, whereby some explicit rules were set down intended to ensure that "no religion could be supported financially or politically by the

[23] Church of Scientology International, *Scientology: Theology and Practice*, pp. 9–10.

[24] Wojciech Sadurski, "Last among Equals: Minorities and Australian Judge-Made Law," *ALJ* 63 (1989), p. 842.

[25] Article 9 (2) includes the following: "Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others." European Convention on Human Rights, Council of Europe Treaty Series, No. 5, p. 11.

[26] John Uhr, "Constitutions and Rights," in *Handbook of Public Policy*, edited by B. Guy Peters and Jon Pierre (London: SAGE Publications, 2006), pp. 170, 172.

[27] France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs. It shall be organized on a decentralized basis. *The French National Assembly Constitution of 4 October, 1958.* <http://www.assemblee-nationale.fr/english/8ab.asp>

state."[28] While political expediency has somewhat diluted this injunction, in theory the French government retains a "neutral" approach to religion by remaining detached—not favoring any particular religion and not favoring religion *per se*.

The United States

The US Courts also interpret their First Amendment provision to require separation of church and state. Although the faith-based initiatives of the Bush II administration may lead to the observation that the doctrine is much observed in the breach, the nonestablishment provision has been interpreted to mean that public monies are not supposed to be channeled by government to religious organizations for the promotion of religious objectives. However, religious groups have easy access to tax-exempt charitable status, and the Americans have interpreted the companion free-exercise provision to entail an avoidance of state interference in the internal workings of religious organizations.

There is a *quid pro quo* involved in the combined concepts of separation plus free exercise in the United States that is not so evident in the French version of separation, or state secularism. In the United States, much credence is given to the biblical expression "Render unto Caesar what is Caesar's, and to God what is God's." In France, Caesar indisputably rules. I argue that in an age of burgeoning religious pluralism, the latter position becomes a practical imperative—not in an anticlerical tradition, but to ensure genuine freedom of religion for all.

China

The provision in the Chinese constitution that relates to religion and disbelief might also be expected to play a role in policy responses in this field. For example, the strong policy commitment of the Chinese government today to excluding foreign influence from religion also reflects the injunction contained in Article 36 of the December 4, 1982, constitution that *"religious bodies and religious affairs are not subject to any foreign domination."*[29] The implications of the Chinese implementation of laws that give effect to this constitutional edict might be lamented by Western advocates of "religious freedom" (who might plausibly argue for restrictions to be eased). However, the rationale behind the provision can be understood. Indeed, an analogy can be made with occasional calls in Australia to impose restrictions on foreign political donations—both being efforts to protect the national right to self-determination.

The Chinese are concerned that religious organizations funded and directed from abroad may be subversive of domestic political stability. Their concern is something that Western countries also have confronted. To use an obvious historical example, one has only to note the way in which Henry VIII and successors nationalized the Church in England so as to eradicate the offshore Papal threat to their sovereignty. Once the concern had abated, an incremental policy of toleration was implemented—over a very long period.

In contemporary times, the way in which the Charity Commission for England and Wales was able to expel an imam from the East Finsbury Mosque is an example of a discretionary level of political control exercised over religious authority in England.[30] The tradition of the Archbishop of Canterbury being selected by the British Prime Minister, from a list of two submitted by the Church of England, is an historical remnant of this propensity.[31] The Chinese authorities exemplify the propensity in their efforts to endorse their preferred choice of religious authority (as in the case of the Panchen Lama, but also apparent in the authorization of the five official religious groupings).[32]

[28] R. Murray Thomas, *Religion in Schools: Controversies Around the World*, 2006, p. 31.

[29] R. Murray Thomas, Religion in Schools: Controversies around the World, 2006, p. 96.

[30] Vikram Dodd, "Controversial Cleric Vows to Defy Mosque Ban," *Guardian Unlimited*, 18 January 2003. Retrieved online at http://www.guardian.co.uk/uk/2003/jan/18/voluntarysector.terrorism

[31] Andrew Lynch, "The Constitutional Significance of the Church of England," in *Law and Religion*, edited by Peter Radan, Denise Meyerson, and Rosalind F Croucher (NY: Routledge, 2005), pp. 180–181.

[32] R. Murray Thomas, *Religion in Schools: Controversies Around the World* (Westport, Connecticut; London: Praeger, 2006), pp. 96–97.

Religion and Politics

We may differ about the degree to which any government should restrict the ability of religious organizations to receive funding from abroad. We may object to the idea that governments should have a role in the appointment of religious leadership (whether homegrown or imported). However, Western democracies also attempt to influence events, arguably in the national (sometimes international) interest.

The Australian government recently deported an imam, presumably because the government thought his teachings were subversive.[33] The US government has actively supported attempts by the Pakistan government to prohibit the influx of Saudi money into Pakistan for the funding of Wahabi-based madrassas (which severely restrict or eschew the teaching of secular subjects); try to influence the religious curriculum away from teaching fundamental interpretations of the *Quran* and the Sunnah's *hadiths*; and prohibit the propagation of politically and religiously inflammatory statements from schools and mosques. These efforts have been relatively unsuccessful, countered effectively by cries for religious freedom (paradoxically, in light of the US global championing of religious liberty).[34]

The UK (and other countries which adopted the common law of charity), and France, settled on different ways of keeping religion out of politics—or at least containing the political dimensions of religious activity. The English policy of establishment and privilege for the Church of England segued into toleration for other religious groups and a policy of plural religious accommodation including financial privileges, but with a system of discretionary control built into the common law system of charity – in recent decades presided over by the Charity Commission for England and Wales, which is armed with a carrot and a stick.

The common law of charity (now refined by statute in England) has long contained an injunction against political activity. A recognized charitable purpose, including advancement of religion, which is a ticket to financial privileges, is not charitable if the dominant purpose of an organization is deemed to be political. Charitable groups are free to make political comment on matters ancillary to their charitable activities, but they are cautious not to transgress the line into political debate, and particularly political partisanship, lest the gatekeeper of privilege rules them ineligible.

Even though the United Kingdom has no written constitution *per se*, upon joining Europe it has come under the influence of human rights provisions found in European fundamental laws. In the Scientology case referred to above, the Charity Commissioners felt obliged to consider the ramifications of Articles 9 and 14 of the European Convention on Human Rights and Fundamental Freedoms 1950. These include the religious freedom to worship, teach, practice and observe, and a right of non-discrimination on the ground of religion.

So the Charity Commission picked a path through this minefield of imprecise ideas (which are loaded with any number of potential future meanings). The Europeans recognize the impediments that vaguely worded fundamental laws can place in the way of good policy, and allow laws necessary for the protection of public order, health or morals, or for the protection of the rights or freedoms of others. In other words, the continental Europeans wrote into their fundamental law similar policy flexibility enjoyed by the English for centuries.[35]

The objective of keeping religion out of politics in the United States works on similar lines to the UK in the field of charity. At the federal level, tax-exempt status is available to charitable organizations, including those "organized and operated exclusively for religious … purposes."

[33] Jodie Minus, "Deported Cleric Mansour Leghaei Returns to Iran," *The Australian*, 28 June 2010. Retrieved online at http://www.theaustralian.com.au/news/nation/deported-cleric-mansour-leghaei-returns-to-iran/story-e6frg6nf-1225884951184

[34] Thomas, *Religion in Schools: Controversies Around the World*, pp. 121–134.

[35] The nondiscrimination provision also can be avoided if laws are made for a legitimate aim, or there is a reasonable relationship of proportionality between the means employed and the aims sought to be realised. Mutch, "Cults, Religion and Public Policy: A Comparison of Official Responses to Scientology in Australia and the United Kingdom," p. 297.

The proviso is that "no substantial part of the activities" of the charity is

> ...for propaganda, or otherwise attempting, to influence legislation ... and [that the charity] does not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.[36]

In France, the strategy dealing with the question of the role permitted religion in the public arena is enshrined in the official all-of-government policy of secularism or *laïcité* noted above. Theoretically, by not providing financial privileges to religious groups (apart from tax-exempt status for places of worship), the political influence of religion is not artificially enhanced by government largesse, although there has been some erosion of the principle in practice.[37]

The regulatory frameworks adopted in most countries are generally aimed at social control of religion (an irksome thought to most faith groups, which would rather not be regulated at all). In addition, an underlying objective of political actors is to keep religion out of the political sphere. Various examples of this have been noted above. Toft, Philpott, and Shah argue that strategies to keep religion out of politics fall into two main tendencies. On the "Left" is the 'radical secularization of life through the coercive expulsion [of religion] from politics and containment within the private sphere. China and Cuba are given as proponents of this tendency. On the "Right" is the "controlled sacralization of political life through state-managed support of religious symbols, legislation, and institutions." Examples given of this strategy include the Salazar regime in Portugal and the Franco regime in Spain, as well as contemporary authoritarian governments in the Arab world.[38]

It is said by Toft et al. that neither of these approaches has been entirely successful, which has led the authors to advocate "strategies that accommodate the political presence of religious actors in ways that maximize the likelihood that their activism will yield positive rather than negative political outcomes."[39] However, this is easier said than done, and, before any strategy is considered redundant, it might be worth considering why different strategies have been devised and why it has been felt necessary to keep religion out of the political sphere.

Although not considered to be on the "far Left," France (and Turkey) subscribe to the secularization tendency. Some critics allege that the so-called "neutral" stance of the French government (in remaining detached from any and all religious groups) has been accompanied by the adoption of a world view that competes with religion—rationalism. Hence, the ideology of secular republicanism, or *laïcité*,

> regards religion as, at best, acceptable in the private sphere although fundamentally incompatible with the institutions of a secular Republic and, at worst, antithetical to the capacity for rational free-thinking and to the primary loyalty of French citizens to their country ... It refers to a strongly positive commitment to exclude religion from State institutions and, in its place, to inculcate principles of nonreligious rationality and morality.[40]

Alternatively, governments that conform to the sacralization tendency (not necessarily to the

[36] Hon. Ian Sheppard, "Report of the Inquiry into the Definition of Charities and Related Organisations" (Canberra: The Treasury, Commonwealth of Australia, 2001), p. 349. Citing Internal Revenue Code 26 USCA s. 501 c (3).

[37] In Australia, the government directly funds religious schools (which also have exempt status). Most recently, chaplaincy funding has been made available to state and religious schools. In France, article 1 of the 1905 law states that "the Republic does not recognize, nor subsidise any religion." However, this restriction is flaunted in some instances. See Max Wallace, *The Purple Economy: Supernatural Charities, Tax and the State* (Elsternwick, Victoria: Australian National Secular Association, 2007), pp. 125, 127.

[38] Monica Duffy Toft, Daniel Philpott, and Timothy Samuel Shah, *God's Century: Resurgent Religion and Global Politics* (New York, London: W W Norton & Company, 2011), p. 211.

[39] *Ibid.*, p. 212.

[40] James A Beckford, "Laicite, Dystopia, and the Reaction to New Religious Movements in France," in *Regulating Religion: Case Studies from Around the Globe*, edited by James T. Richardson (NY: Kluwer Academic/Plenum Publishers, 2004), p. 28. To the contrary, it might be argued that governments are elected to assert principles; that rationalism is the correct principle because it underpins evidence-based decision making (based on science rather than faith).

"far Right"), such as England, have conspired to put faith on a pedestal, to provide special privileges to a mainstream faith because of a commonly held presumption that the propagation of faith is in the public interest. The *quid pro quo* has been that the faith group refrains from competition in the political sphere, and indeed works in harness with the state to achieve common objectives.

However, there are now influences working to undermine the old status quos. One is the rise of multifaith pluralism in hitherto homogenous (faith-wise) communities, which leads to a proliferation of problematic groups (cults) claiming equal religious status and privileges. Another is the increasing influence (globalization) of rights-based fundamental laws, which promote and extend vaguely defined concepts that incorporate group rights along with the rights of the individual. The United States has taken upon itself to promote worldwide its own lawyer-interpreted version of religious freedom contained in the First Amendment, with Congress passing the International Religious Freedom Act 1998, under which reports are made on the transgressions of other countries.[41] I argue that these influences undermine both strategies, of secularization and sacralization. The result might arguably end in a *laissez-faire* religious free-for-all, in which charlatans run riot and authentic freedom of religion, for all, is the casualty.

Competing Conceptual Frameworks

For several years, I have conducted a colloquium for the Macquarie University Global Leadership Programme on the topic "Religion, Secularism and the State: Comparative Perspectives from Around the Globe." The colloquium

> ...examines the intersection of religion and politics and compares different national approaches to the regulation of religion ... seeking to establish a normative approach to the role permitted religions in the public arena.[42]

While critics would say that this quest is unrealistic (on the basis that there is such a plethora of approaches in such different contexts that it is just not feasible) or wrong (on the basis that a plurality of responses provides a *smorgasbord* of choice—which is a positive thing), I would argue that, at the level of philosophically inspired frameworks, the choices can be narrowed considerably.

It seems to me there are three main choices (with a further subchoice under the third option). We might endorse the sacralization tendency, which favors a mainstream religious grouping (but which increasingly needs to recognize the "rights" of other groups). Alternatively, we might endorse the secularization tendency (which favors no particular religious perspective and supports none). Finally, we might favor an approach that attempts to support all religious groups, or multifaith promotion. Under this approach, all "faith" groups are treated as equally as possible, without "discrimination" against new or controversial groups—or even against nonreligious equivalent belief systems such as humanism.

Including disbelief generally as an equivalent worldview to religious faith (the suboption) accords with the principle of structural pluralism.[43] However, groups accepted where this suboption can be seen to be operating tend to be restricted to those who adopt a noncritical position *viz a viz* religion. Assertive atheists are unlikely to be afforded equivalent teaching time in state-supported religious education classes, whereas nonconfronting humanists already have been admitted in some places.[44]

From a policy perspective, I think the choice of secularization is the most feasible option in light

[41] Toft, Philpott, and Shah, *God's Century: Resurgent Religion and Global Politics*, p. 222.

[42] Macquarie International GLP Team, "Student's Guide to the Global Leadership Program," edited by Macquarie University (Sydney: 2008).

[43] ...which "charges the state in its dealings not to privilege or disadvantage any religious or nonreligious perspective over any other." Christian Smith, *The Secular Revolution: Power, Interests, and Conflict in the Secularization of American Public Life* (University of California Press, 2003), p. x.

[44] Michael Bachelard, "Religion in Schools to Go God-Free," *The Age*, 14 December 2008, Thomas, *Religion in Schools: Controversies Around the World*, p. 65.

of contemporary influences, including globalization and the rise of plural-faith communities. In seminars, I illustrate my point with a simple example. In March 2006, my local newspaper reported that the Baulkham Hills Council had passed a motion to pay local clergy $250 to lead the prayer at the start of each council meeting. This report led to some controversy in the letters column, with one outraged local declaring that it "flies in the face of the constitutional separation of church and state" and sets a "dangerous precedent."[45]

The question I ask is "Who would lead the council prayer under various philosophical frameworks?" In the case of sacralization, the answer would be relatively clear—the local minister of the established church (in the UK this normally would be the Anglican vicar)[46] or mainstream faith (less clear because in Australia this might mean the largest grouping—now Catholics, or mainstream denomination—Christianity, which might mean having turns; or perhaps the largest local faith group might be invited). Under the third option listed above, multifaith promotion, the seemingly simple task of appointing a faith representative to lead the prayer gives rise to a number of questions: Would a representative of all faith groups be given a turn to lead the prayer? Must this include small groups, such as Wicca[47] or Scientology, to avoid charges of discrimination against New Religious Movements (or minority faiths)? Should the offer be based on the relative size of local congregations—so that smaller groups are represented less often?

The problem of organization becomes a logistical nightmare if the policy of structural pluralism is followed (wherein belief systems equivalent to religious faiths are granted equivalent rights). So would the humanists be given a chance to lead the prayer? Perhaps they might. Would a Jedi knight be asked to lead the prayer? Astonishingly, the answer might well be Yes![48] Even more perplexing: Would atheists be given a chance to lead a nonprayer in deference to their competing worldview? I suspect not.

To those who see tradition and heritage as important factors in the development of policy decisions that normally reflect mainstream values, these questions seem silly. Who on earth could object to a simple request to ask a local clergyman to open council meetings? The same bewildered attitude is apparent in controversies over civic display of Christmas icons—such as the crib. However, these traditionalists have not reckoned sufficiently on the promotion internationally of regimes of nondiscrimination, the elasticity of the definition of the word *religion,* the ability of lawyers to add layers of complication, and, most importantly, on the fact that in most Western democracies we now have multifaith societies.

So one answer to the question of who should be asked to lead the council prayer is "none of the above"—and there should be no religious prayer. This practical solution is in conformity with a well-considered theory of secularization, or separation of church and state.

The Best Fit for China?

I have noted above that China is seen to sit at the "far Left" of the spectrum running from secularization to sacralization. This characterization might be a little too simplistic. By endorsing a number of official religious groupings, while asserting the right of the state to regulate deviant groups as required (and at the same time requiring all Party members to be atheists), China is borrowing something from both strategies. However, because religious groups receive little (and very selective) state support and are otherwise subject to intrusive state restrictions, the official policy in China might be characterized as tending to a severe form of secularization.

Article 36 of the Constitution of the People's Republic of China (1982) states as follows:

[45] "Stop Pay for Prayer," *Hills News*, 14 March 2006.

[46] Although under a policy of extended toleration, clergy or representatives of other faith groups might be given a turn

[47] "In a court of law, taking the earlier Scientology case as a precedent, it would be virtually impossible to state that witchcraft as practiced today is not a religion." Lynne Hume, "Witchcraft and the Law in Australia," *Journal of Church and State, 37* (1995), p. 144.

[48] "...these cinema-based religious responses ... should be treated as spiritual responses." Gary Bouma, *Australian Soul: Religion and Spirituality in the Twenty-First Century* (Cambridge University Press, 2006), p. 62.

> No state organ, public organisation or individual may compel citizens to believe in, or not to believe in, any state 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.[49]

Notwithstanding the vagueness inherent in all fundamental laws (and particularly the use of the concept of discrimination), this is a well-crafted article. It contains an injunction against state religion (establishment); and by including the words "or do not believe in," it potentially protects the rights of agnostics, humanists, and indeed atheists (the latter with opposing but arguably also equivalent belief systems).[50] Whether this is a constitutional endorsement of the policy of structural pluralism, or of state secularism, or of both is open to interpretation. In my view, however, it does enable the constitutional courts to follow a policy of secularization rather than sacralization. The latter is arguably outlawed by the nonestablishment provision because supporting religious groups would tend to the establishment of religion over disbelief, potentially resulting in the marginalization of assertive disbelief.[51] In addition, Article 36 foreshadows sensible public policy limitations on religious freedom, in common with fundamental law developed in Europe.

This more balanced constitutional provision places China in an enviable position *viz a viz* the United States, which has struggled to decipher the vagaries inherent in the First Amendment and has constitutionally delegated the difficult task of regulating religions to jurists rather than legislators. As China moves to incorporate more democratic processes into its systems of governance, the policy flexibility and philosophical direction provided in Article 36 should serve it well. In negotiating the prickly field of religious and quasireligious diversity, it will find fertile ground for the cross-fertilization of ideas in governments that have already determined upon a secular path as the most pragmatic solution (based on a principled philosophy of separation) for the governance of religious diversity. While the United States and France both espouse theories of separation, it is the French perhaps who offer a secularist approach that would be better suited to China.

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[49] R. Murray Thomas, *Religion in Schools: Controversies Around the World,* p. 96.

[50] "The link with religion in the case of an atheist or agnostic is clear, as these beliefs are both responses to the same basic questions of ultimate meaning, the existence of god, and the role of the supernatural in human affairs. The rejection of the notion of god can be as fundamental to self-identity as the acceptance of the existence of god." Carolyn Evans, *Freedom of Religion under the European Convention on Human Rights* (Oxford: Oxford University Press, 2001), p. 65.

[51] Of all worldviews, it is arguable that atheists are the most vulnerable to persecution in regulatory frameworks that operate under the sacralization tendency. Atheists are also potentially vulnerable in supposedly secular countries that embrace religious vilification laws, where the right of "evangelical" atheists to assert views critical of religion is often characterized as intolerant bigotry, or even, paradoxically, antifaith "fundamentalism."

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