

Religion and the New Chinese Constitution

ARVAN GORDON

The Constitution of 1982 is the fourth to be promulgated during the lifetime of the Chinese People's Republic. The 1975 Constitution was adopted during the regime of the so-called "Gang of Four"; the 1978 revision still reflected some aspects of the Cultural Revolution, and within two or three years was already thought unsuitable to the new conditions. A further revision was obviously needed. The ruling circles evidently felt that the 1954 Constitution had a great deal to recommend it,¹ and the slogan "Back to the fifties" was often heard, but a return to the formulations of the previous generation was not considered practicable. An entirely new Constitution was decided upon. The draft was finalised at the 23rd Session of the Fifth National People's Congress Standing Committee on 22 April 1982.²

Several developments had made the 1978 article defining religious freedom appear unsatisfactory. (This article had simply proclaimed the right to profess, or not to profess, any religion, and the right to propagate atheism.)³ Briefly, they were as follows. At the end of the Cultural Revolution some religious believers, noting that active religious persecution had ceased, began — hesitantly — to resume prayer and worship. During the late 1970s a few churches, mosques, temples and other places of worship were officially opened (or re-opened). By the early 1980s there were several hundred of them. During 1979 various officially-recognised co-ordinating bodies resumed activity: the Catholic Patriotic Association, the Three-Self Patriotic Movement (claiming to represent all streams of Protestantism), the Buddhist Association, the Islamic Association and the Daoist Association.

In or about 1979, after a twenty-year period during which the criminal law had virtually ceased to function, new draft statutes began to appear. Some of these regulated religion. Article 99 laid down penalties for organising feudal superstitious beliefs, secret societies or sects to carry out counter-revolutionary activities. ("Counter-revolutionary" offences were defined as "those for the purpose of overthrowing the political power of the dictatorship of the proletariat and the socialist system and

jeopardising the People's Republic of China".) Article 147 penalised State functionaries who "unlawfully deprive others of their freedom of religious belief". Article 165 penalised those who practised witchcraft for the purpose of spreading rumours or swindling people out of money or property.⁴ Moreover, on 1 January 1980, a complete new code of criminal law came into force.

New religious bodies were set up during 1980: the China Christian Council for the Protestants, and the National Administrative Commission and the China Catholic Bishops' College for the Catholics. It was said that these bodies were charged with spiritual and pastoral tasks.

During 1981 the relationship between the Vatican and the Catholic Church in China became even more strained. One reason for this was the Pope's appointment of Bishop Deng Yiming (recently released from prison after 22 years of "re-education") as Archbishop of the Province of Guangdong — an appointment vigorously condemned by the Patriotic authorities. On the Protestant side, the controversy over Bible-smuggling was exacerbated by the carrying out, in June, of "Operation Pearl".⁵

During 1980-81 there was more and more evidence of Protestant groups meeting in homes for Bible-study, prayer and worship; most of these were in the rural areas, but not a few in cities. There were rumours — hotly denied by Three-Self spokesmen — of serious schism. Itinerant preachers spread the Gospel, and there were reports of very large numbers of converts in some areas. At the same time, evidence emerged of Roman Catholic communities in many different parts of China — communities which remained fiercely loyal to the Pope and looked askance at the Patriotic Association; though it is clear that many Catholics (however strong their loyalty to Rome) attend Patriotic services and accept the sacraments from Patriotic priests. As Chinese Churchmen began to make visits to foreign countries, the problem of Chinese Christianity's relationship with the world-wide Church became more of a problem.

In such a difficult and sometimes confused situation, it was felt that the draft of the new Constitution should give some clear guide-lines. The relevant draft article (article 35) read as follows:

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

No organisations, public organisations or individuals shall compel citizens to believe in religion or disbelieve in religion, nor shall they discriminate against citizens who believe, or do not believe, in religion.

The state protects legitimate religious activities. No one may use religion to carry out counter-revolutionary activities or activities that disrupt public order, harm the health of citizens or obstruct the educational system of the state.

No religious affairs may be dominated by any foreign country.⁶ Clearly, the first two clauses of the draft article constitute a favourable answer to those who believe that the 1978 Constitution discriminated in favour of atheists. The words are absolutely even-handed. The third and fourth clauses, however, are quite different. Some observers take the view that they impute crimes in advance to religious believers. It is the view, however, of leading members of the Three-Self Movement that the interests of believers are safeguarded by the definition of illegal "religious" activities; in other words, activities that do not fall within the forbidden zone are clearly legitimate.⁷

For some six months the new draft was, in theory at least, open to criticism and amendment by the public. It appears that practice did not, on the whole, correspond to theory.⁸ In December 1982, however, it became clear that the Fifth National People's Congress would not merely rubber-stamp the labours of the Standing Committee. The text of the Constitution adopted on 4 December differs in a number of respects from the earlier draft. Even the article defining religious freedom (now article 36) emerged in a modified form. The first two clauses were as already quoted, but the rest of the article was as follows:

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.⁹

We have already commented upon the first two clauses of the new Constitution. In the third, the restriction on religion being used to "carry out revolutionary activities" has been omitted. No doubt authors of the final text recalled that article 28 makes clear that the State suppresses counter-revolutionary activities, so that this point did not need repetition in the "freedom of religion" clause. (Though article 28 also declares that the State maintains public order!) Possibly, however, the omission of any reference to "counter-revolutionary activities" reflects the prevailing official view that religious convictions do *not* necessarily predispose citizens to counter-revolutionary activities. Other restrictions remain. Like all Marxist States, the Chinese jealously watch over both the physical welfare and the appropriate education of all their citizens. As for the fourth clause, there is a change in wording which might be significant: instead of the term "any foreign country", it declares that "religious bodies and religious affairs are not subject to any foreign domination". It may well be that the original phrase was aimed specifically at the Vatican (a "foreign country"), whereas the new formula might include such authorities as the Archbishop of Canterbury, the World Council of Churches, the

Lutheran World Federation or indeed any ecumenical body with a coordinating role. Thus the "Three-Self" and "Patriotic" principles are more clearly defined.

The State "protects *normal* religious activities", according to the Constitution (not *legitimate*, as in the draft). Normality is nowhere defined. However, various recent semi-official publications suggest that the main clue is the distinction between normal religion and *superstition*. One article¹⁰ does define the characteristics of "normal religious activities" which appear to be two: they must be patriotic and law-abiding (interference with politics, education, production and the social order are singled out) and support communist leadership and the socialist system; secondly, they must have an identifiable leadership structure which can be recognised and controlled by the government. Spiritual beliefs which do not pass these tests are lumped together as "superstition", examples of which are "witchcraft, sorcery, use of elixirs, fortune-telling, astrological practices, invocation to avert calamities, rain-making, supplication for offspring, treating disease with exorcism, practice of physiognomy, practice of geomancy, building village temples and so forth. . ." Such a conception of superstition was no doubt in the minds of the authors of the Constitution. Most revealing, perhaps, is the definition of "normal religious activities". The fact remains that the close supervision of religious practices by the central authority, far from being an innovation, belongs to the traditional pattern of Chinese government.

The new Constitution contains another article which, though not formally mentioning religion, cannot but affect believers: this is article 24, devoted to "socialist spiritual civilisation". Though not to be found in any shape or form in the May draft, it is considered so vital that Peng Zhen, the Vice-Chairman for the Revision of the Constitution, devoted a whole section of his opening speech to its terms. The article reads:

The State strengthens the building of socialist spiritual civilisation through spreading education in high ideals and morality, general education and education in discipline and the legal system, and through promoting the formulation and observance of rules of conduct and common pledges by different sections of the people in urban and rural areas.

The State advocates the civic virtues of love for the motherland, for the people, for labour, for science and socialism; it educates the people in patriotism, collectivism, internationalism and communism and in dialectical and historical materialism; it combats capitalist, feudalist and other decadent ideas.

There have been many recent reports¹¹ of social evils such as corruption, street violence, thieving and banditry (all supposedly wiped out root and branch during the 1950s) returning to worry the Chinese. Article 24 represents a confirmation of and a campaign against these trends.

Religious believers are bound to draw various conclusions. Firstly, as Marxist theorists never tire of asserting that “spiritual” values are merely the outcome of social conditions, a special campaign to spread high ideals and morality sounds like communist heresy. Secondly, the reference to “high ideals and morality” seems to suggest that these things are a state monopoly, and therefore lie outside the realm of *normal religion*. This article must be seen in conjunction with article 36, which excludes religious believers from interfering in education. (“Education”, it should be pointed out, covers a wide range of activities. Some observers distinguish general education from the formal education system, pointing out that Christian agencies — in particular the YMCA and YWCA — have some part in the former.) The mention of “dialectical and historical materialism” in article 24 appears to guarantee the State the right to teach doctrines wholly contradictory to faith in God. It is not surprising, therefore, that some religious believers have welcomed the new Constitution with something less than rapture. They should have, it seems, no King but Caesar.

Nevertheless, there remains a vital consideration which western commentators on the Constitution should not leave out of account. The concept of an almighty personal God, who created all things visible and invisible and in whose hands lies the outcome of history, is one that always has been foreign to the great majority of Chinese people; almost certainly it is barely, if at all, taken into account by present-day Chinese legislators. They no doubt feel that the reasonable aspirations of religious people can be satisfied in an ecclesiastical or heavenly sphere, leaving the day-to-day business of government to political and party men. There is, they think, no need to declare war on an almighty God who has had, up to now, precious few disciples among Chinese people; their war is against “religion” and “theism” (and of course “superstition”). Such is the struggle for which the terms of the 1982 Constitution are drawn up. Whether such legislation remains appropriate to the pattern of religious belief in the 1990s (to say nothing of the twenty-first century) remains to be seen.

¹ Peng Zhen (Vice-chairman for the revision of the Constitution), *Beijing Review* Vol. 25 No. 19.

² *Beijing Review* Vol. 25 No. 19 (unofficial English translation).

³ 1978 Constitution, official version.

⁴ Operation carried out by the Dutch-based missionary organisation “Open Doors” to deliver a million Bibles to the Chinese coast.

⁵ China Study Project (CSP) Documentation quoting the *People's Daily*, 7.7.79.

⁶ Draft article 35, *Beijing Review* Vol. 25, No. 19.

⁷ Comments made by Chinese Delegation to Britain, October 1982.

⁸ Reports from travellers, October 1982.

⁹ Official translation. *Beijing Review* Vol. 25 No. 52.

¹⁰ *Fujian Ribao* 13.1.82 (quoted by CSP Documentation 7).

¹¹ *People's Daily* and other Chinese newspapers.