

RELIGION, LEGAL PLURALISM AND ORDER IN A MULTIETHNIC SOCIETY: A LEGAL-ANTHROPOLOGICAL STUDY IN CONTEMPORARY CHINA¹

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I. Question and Methodology

Religion is sociologically interesting not because, as vulgar positivism would have it, it describes the social order ..., but because, like environment, political power, wealth, jural obligation, personal affection, and a sense of beauty, it shapes it. (Gertz 1993: 119)

Actually, the function of religion in ‘shaping social order’ also gets the attention of legal researchers. In legal study, religion refers to “belief and belief group” (Luo Li 2005: 58). And, more important, “law may exist in religion”(Rüthers 2008). If in thus defining ‘law’ we go beyond strict law-centered positivism, we would say that religion itself is law, or religion could make law.² Therefore, for any society

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² According to the legal history of China by Liang Zhiping, religious folk law was an element in legal pluralism in ancient China (Liang Zhiping 2003).

in which religion is separated from politics or in which plural religions exist, religion inevitably generates legal pluralism. (On legal pluralism generally, see Merry 1988.)

As a country that carries out a strict separation of religion from politics, China acknowledges and protects in state law the civil freedom of religious belief (People's Daily (China) Commentator 2004). However, the values and doctrines of religion have no place in the formal legal systems of the state. Thus, a discussion on how religion influences law and how this causes legal pluralism in China, must focus on the observation of the basic level in society. This essay will explore certain aspects of the interactions between religion, the state law and the other social controls in grass-roots society. The materials used come from anthropological investigations in grass-roots society in China.

Religions in China are primarily the “Five Main Religions”, namely Christianity, Catholicism,³ Buddhism, Islam and Chinese Taoism. There are over 100m believers, 3,000 religious organizations, and 300,000 clergy in the country (Bureau of State Department 2000). However, in reality, as China is a multiethnic society, the picture of religions is more complicated. On the one hand, we can find various followers of the Five Main Religions in all 56 ethnic groups of China. On the other hand, the Han People (who comprise the largest ethnic group) have a traditional folk religion (Zhou Xing 1998) and the other 55 minorities usually have their own ethnic or primitive religions except for those who belong to the Islamic faith (Yang Xuezheng 1991). Furthermore, the Five Main Religions have experienced the process of localization to different degrees in different areas of China. Every religion necessarily developed certain connections and interaction with local ethnic religions and folk custom, which has caused the Five Main Religions to develop local characteristics (Mou Zhongjian 2005: 7-10). Accordingly, the diverse situations of religion in China have made discussion of the relationship between religion and the state law more intricate.

This essay aims, with the perspective of legal anthropology, to examine the reality of legal pluralism caused by religion in dynamic relations, based on specific cases and ethnographic materials; and to discuss how religion, as one form of social

³ In China it is usual to use the word “Christianity” to refer to Protestant Christianity, and to refer to Catholic Christianity as Catholicism. That terminology is retained here since it is used in numerous reports and other documents which are relied upon.

control, shapes or influences the formation of social order, and how it plays a role in the legal practice of China against the background of legal pluralism. The essay will also consider whether the legal pluralism generated by religion will destroy or complicate the process of legal unification in China.

II. Religion as Social Control

Religion and the formation of local legal culture

It will be helpful to understand the basic function of religion for human life before we discuss how religion can shape or influence the formation of local legal culture. According to R. Keesing:

Humans not only weave intricate webs of custom that regulate and order their social lives. They also spin out wider designs of the universe, the forces that govern it, and their place in it. Religious beliefs and rituals are basic in these designs. (Keesing 1976: 385)

In this sense, religion brings a way for its followers to know, to understand and to grasp the world.

As we know, the core issue of law is to make people live and behave in a correct and just manner. However, “what should be ‘correct’ or ‘just’ is decided by people’s belief or Weltanschauung”(Rüthers 2008). Religion, with its functions in cognition and interpretation, is able to provide its followers some appropriate attitudes to facing nature, society and the other, which generates the correct and just style of living and behavior. In other words, religion defines what are the sacred/mundane, correct/wrong, legitimate/illegal, just/unjust, etc. Given that a legal culture can be regarded as a kind of tendency for human beings, in the course of arranging a social order, to ponder over what should be correct and just, religion then acts as a decisive factor in the formation of this tendency. Religion, hence, could be a basic element in forming local legal culture. Certainly, the extent to which religion can influence the formation of local legal culture depends on the status of religion in people’s life, since human beings also grasp other methods (such as art, theory and science) to understand the world (Niu Shulin 2005: 135-41). In the village of the *Hui* people in Yunnan, China, where Islam

deeply affects the social life and the spirit world of believers, religion plays a dominant role in the formation of local legal culture. For example, the family education of the *Hui* people includes ‘faith’, ‘conduct’ and ‘living skill’, which link closely to Islam. Especially education in ‘conduct’, which guides people’s lives and requires them to behave in correct and just manner, acquires its standards directly from the Koran (Na Qi 2001: 172-74). This kind of standard of conduct thus composes the core of local legal culture.

In general, religion’s contribution to the construction of the social order of grass-roots society and to the formation of the pattern of legal pluralism lies mainly in the fact that religion can create a certain religious legal culture which dominates every aspect of religious social control. More important, as religious social control has developed into a part of local social control, religious legal culture also has an important influence on the formation of local legal culture. According to the diversity of both ethnicity and religion, however, the local legal culture shaped by religion bears a plural characteristic: on the one hand, different religions create different religious legal cultures; on the other hand, even the same religion can generate distinctive legal cultures with reference to different places or ethnic groups. In this sense, people can arrange social order in terms of different patterns.

Religion and the formation of local norms

As mentioned above, the conduct tendency (preference) that religion provides in the formation of local legal culture can also produce corresponding specific norms which guide, encourage or restrict people’s behavior. Religion would, at least, promote or influence the formation of two sorts of local norms: one is the rule with the function of maintaining the religious doctrine, ceremony, organization and purity of belief in the community, the other is the rule for daily life.

(a) Norms relevant to religion

The reason why we discuss religion together with law and social order is that “religion is one kind of social activity” (Liang Hongfei 2003: 138). Religion involves the ways of thinking and living of a community. In order to safeguard the doctrine held by the religious community, to perform the religious ritual process, to guarantee the purity of the religion, a set of norms has been produced from

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within the community.

The following is a case from my fieldwork in *Mann village* of the Dai People. *Mann village* has faith in both Hinayana (a branch of Buddhism) and traditional ethnic religion. On the one hand, some local norms are generated based on Hinayana doctrine:

Norms of conduct in the temple: (1) Male must take off shoes outside the hall of *Mian* temple; (2) Female must take off both shoes and socks at the gate of *Mian* temple; (3) Seculars cannot die in the temple.

Norms of maintenance of monks and temples: The maintenance of the *Mian* Temples and the living expenses of monks are dependent on money collected from villagers. In addition to multiple "Offerings to the Buddha" by villagers consisting of money and material for maintenance and sustenance, there are offerings of food by villagers, who are divided into groups according to which Villagers Commission they belong to. In Village Mann, once a monk decides to devote himself to the Buddha, his livelihood, from his youth to old age, through illness, to death, will be paid for by money donated by villagers.

Norms for behaviour of monks: (1) The "Ten Commandments", prescribing no killing, no stealing, no communications with girls (including not being in love with girls, not entertaining girls), no lies, no drinking, no lunch after noon, no gambling, no make-up, no dressing in clothes with long sleeves or wearing of high-heeled shoes, no wearing of watches, bracelets or necklaces. (2) Loss of any of the temple's possessions will be paid for by Buddhist monks. (3) No interference in village business. (4) A monk is not allowed to die in his home. Otherwise, his parents must invite monks to dispel demons, and pay the fees. (5) Monks should not sleep overnight at home.

Norms for ordinary villagers toward monks: (1) No touching of a monk's head. (2) Parents are not allowed to beat or criticize a son who is monk. When it is really necessary for parents to punish a son who is a monk, they must wrap the stick with

yellow clothes and then beat him.

On the other hand, some local norms come from the traditional ethnic religion of the *Dai* people.

Maintenance of the symbol and ceremony of sacredness: (1) The wood in the Village Centre is not allowed to be touched. (2) The Protection of the Village Center is paid for with money contributed by the villagers at the rate of RMB 100 every year, to cover the activities and repair of Zhao Mann. (3) In the ceremony of *Nin Mann* (meaning sacrifices to the god of the village), no members of other villages are allowed to enter the village. During the ceremony, the village is cordoned off by bamboo leaves and grass barring the gate. An intruder will have to pay RMB 15, and give a pack of glutinous rice and two wax sticks to the god of the village as punishment, for the purpose of getting forgiveness.

In the *Mann* village, some regulations dealing with the relationship between the two kinds of religions cited above also arise since they interweave in the villagers' social and spiritual world. For example, leaders in Buddhism and the main figures of local primitive religion are well distinguished and also cooperate.

(b) Norms relevant to daily life

Religion, as a way to cognizing and interpreting the world, becomes a resource pool of information for its followers. People use this resource to react to incidents and phenomenon, and to direct their behavior. These directions will penetrate into people's daily life and become norms in daily life. Here I will discuss the case from my fieldwork in *Mann* village of the *Dai* People.

Norms of family life: (1) when building a house, both a front and a back door are necessary so that the soul of ancestors can come home. (2) Never put firewood in front of the slate tripod, and only elderly men can sit there. (3) Others may not enter the host's bedroom. (4) The domestic house should have two poles, a "princess pillar" and a "prince pillar", where ancestors' souls live. People may not turn their backs on them due to their sacred

meaning. (5) The ceremony of "live in new house" (the couple's new house) must be carried out before 12:00 noon. (6) The body of a deceased must not go to cremation before 12:00 noon (the moon taboo being an exception). If the people 'die badly' (meaning by an accident), they must go to cremation on the same day. If they die well, their body can stay for one more day before cremation. And these two kinds of cremations take place in different 'Ann forests'.

Norms of village public life: (1) Villagers may not work or go to other villages until a cremation is completed. It is *Zhaoman* who will take the responsibility for settling any dispute occurring as a result of a breach of this rule. (*Zhaoman* is regarded as the head of the village, his authority being derived from primitive religion.) (2) When a person in a village dies, people from other villages cannot enter this village until the cremation of the body is completed. When somebody violates this rule and affronts God, *Zhaoman* will punish him by requiring him to pay 15 yuan, a chicken, 10 packets of glutinous rice and two pieces of wax to offer a sacrifice to God. (3) The people of another village may not pull firewood through this village. It is considered to 'burn people' (cremate them). *Zhaoman* will punish an offender by requiring him to give 1 jin oil, 1 jin rice and two pieces of wax to offer a sacrifice to God. (4) In a year when too many people in other villages die, villagers from those villages may not enter this village lest they affront God. Otherwise *Zhaoman* will punish them at his discretion.

Norms concerning the purchase of livestock and going outside the village: (1) When the villagers buy livestock or poultry, *Zhaoman* will determine whether it has diseases. Then *Zhaoman* will tell God and pray for safety. Only then can villagers breed from them. (2) When the villagers go outside the village, they pray for God's protection.

Norms on reproduction: (1) A married woman cannot return to her mother's home to give birth. (2) When a pregnant woman dies, the fetus must be removed through matrix and be minced. Then the mother and the fetus respectively are cremated. (3)

During the month after giving birth, a mother may not pass out of the door or enter other people's homes. If she has to, she must take a sickle with her on her waist. (4) If a baby dies before it is half a year old, it must be thrown in the river and drift away downstream.

Taboo on the moon: (1) During a lunar eclipse villagers set off firecrackers. If you have a pillar, you must hit it with a sword or water it with wine. (2) During full Moon, when you drink, you must save some wine to water the pillar at the time of the lunar eclipse. (3) If a couple are at a girl's home during a lunar eclipse and she is at home, her parents will ask them to stay there for the night. That means they are married. (4) When somebody dies during Full Moon on January 15, they should immediately hold the funeral. (5) If somebody dies at home during a lunar eclipse, his body cannot be taken out through the door. The family must break the roof and pass the body through the hole and then down to the ground. If the body has edema, it must go to cremation at once. (6) From July 15 (the date of the closing door ceremony) to October 15 (the date of the opening door ceremony), activities such as lovemaking, building new houses and moving to a new house are forbidden.

In the *Mann* village, religion holds a crucial position in people's spiritual world. Religion has not only produced norms in relation to religious doctrine, articles of creed, sacred places, ceremonies and religious authority, but has also produced norms to regulate people's daily life. The quantity, scale and range of this kind of local norms, however, are decided by the actual status of religion in people's life, which differ between different villages and communities. Generally, the religions which have been highly rationalized, such as Christianity, or Catholicism, generate fewer daily norms than the ethnic traditional ones. Nevertheless, there is no doubt that religion always produces some local norms, more or fewer, in the grass-roots society.

Religion and the emergence of local social control

Religion's influence on the social order could also be attributed to its "nature of organization" (Liang Hongfei 2003: 139). Every religion has a certain

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organization, no matter what may be its developmental stage. Some have a high level of organization, but others may just have some persons temporarily in charge and loose organization. There must be some religious authority, no matter what the organization of the religion. Other than a simple faith organization or a mere guide to belief, religious groups and their authority figures always become local social controllers and take responsibility for realizing the social function of religion.

To what extent this kind of social controller can play its roles, and how it gets along with other kinds of social controllers, are determined by different factors, such as its scope of influence and the number of believers. For example, in a village of *Lahu* People, the authority figures from both Hinayana and primitive religion have all become key persons in the administration of the local village. They are mainly in charge of implementing rules and settling disputes, and act as social controllers in keeping village order (Wang Xiaozhu 2000 112-53). In another case of a *Hani* village, “*Migu*”, the authority in the traditional religion of the *Hani* people, takes responsibility for arranging local religious activities and ensuring the observance of many norms about daily life (He Siquang 2000: 219-30). Even highly rationalized religions will usually expand their functions and become powers of social control once they enter a village. So, for example, in a village where Christianity is widespread, the follower’s behaviour is regulated by religious norms. A clergyman takes charge of admonishing persons who violate religious law and has the right to expel a person from the Church (Xiao Ying 2000: 229). Another case shows that the believers in Christianity in *Zala* village need to get permission from the priest of local church before getting married (Zhao Mei 2000: 105).

Religion and the settlement of disputes

As a kind of social control, religion itself can develop the means to settle disputes or to influence the process of settlements. Parties in a dispute may turn to God or faith to resolve their problems if both parties share the same belief and one trusts the genuineness of the other’s religious belief. A very typical case is the submission to various forms of God’s judgment to settle disputes in some societies (Deng Minwen 1991). It is not true that God’s judgments have disappeared from our lives. Even today, the *Yi* people community in *Liangshan* of China still uses the method of taking an oath to settle disputes. Some religious rites are conducted for the person who claims to be innocent. In the rite the person is required to

recite words of an oath invoking the *pneuma* of the ancestors, swearing that he/she will die just like an ox, goat or chicken if he/she told a lie, and then killing an ox, goat or chicken. To swear on one's own life is regarded as unlucky but is enough to testify to one's innocence so that the opposite party believes them. (See Qumuyuzhi and Liu Yaohan 1998: 39-41. Also see Zhang Yonghe 2006, arguing that the reason why norms such as swearing oaths can play roles in social control is always that these norms exist in the specific belief system.) Swearing becomes an effective way to settle disputes because of the worship of the ancestors of the *Yi* people. The people believe that the *pneuma* of ancestors can control all disasters and blessings on earth and also can be the judge of the person taking the oath.

Though religion itself can be the origin of disputes, it also can provide particular means to promote the settlement of disputes. For example, there is a customary norm in *Mann* village, where I did fieldwork, and the nearby villages of the *Dai* people, according to which, if a person of A village has died, the people of A village should not enter other villages until the cremation of the deceased has been completed. This customary norm originated from religious belief. Case 1 below demonstrates how a dispute was caused because of a violation of this customary norm between *Mann* village and a nearby village in 2000 and how it was finally settled successfully by the religious customary law (Wang Qiliang 2004).

Case 1: the incident in which Yan offended Duan village

On the early morning of January 20, 2000, an elder of *Mann* village died and the village head broadcast the news within the village. The family members of the deceased hurried to inform their relatives. *Yan*, the grandson-in-law of the deceased, was on his way to deliver a message to *Menhun* village, 20 kilometers from *Mann* village, by motorcycle. Having no driving license, to avoid a police check *Yan* made a detour and passed through *Duan* village. The villagers of *Duan* village blocked the way and were ready to amerce *Yan* 12 yuan. However, *Yan* fled, which angered the villagers of *Duan* village. As a result, the incident became a dispute between the two villages and *Duan* village demanded that *Mann* village pay a penalty of 500 yuan. Thereupon, the head of *Mann* village called in *Yan*, *Zhaoman*, *Buzhang* (the supervisor of the Buddhist monks in the local Mian temple and also the village magician), cadres of the Villagers' Committee, and some CCP members, and conducted a negotiation with *Duan* village with lasted over two hours. On the failure to reach agreement, *Mann* village then brought a counterclaim: if the deceased of *Duan* village was to be buried in the "Dragon

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Forest” (the common graveyard shared by *Mann*, *Duan* and *Man'en* villages), which was located exactly on the boundary of *Mann* village, a charge of 1,000 yuan would be levied by *Mann* village. Furthermore, if a *Duan* villager entered *Mann* village to deliver a message to relatives, *Mann* village would fine that person 1,000 yuan. These propositions worked and both parties finally went back the customary rule: *Duan* village punished *Yan* with a fine of 15 yuan, a chicken, 10 packets of glutinous rice, and two candles to offer sacrifice to the god of village.

In this case the dispute was caused by the breach of a customary norm based on the traditional ethnic religion. It is religion that links the separated items - the death of a non-native villager, prohibition on entering a village, *Zhaoman*, a fine, a chicken, the offering of a sacrifice to the god of a village, and Dragon Forest - and forms a coherent system which both creates norms and also generates disputes. The rule of not entering a village is closely related to the local knowledge and imagination. In the ethnic religion of the *Dai* People, if non-native villagers enter a village before the deceased of another village has been buried, the native god of this village will be insulted and the native villagers will lose the protection of the god. So the punishment of 15 yuan, a chicken, 10 packets of glutinous rice, and two candles is to pray for the renewal of god's blessing on this village. Viewing this case, it is found that both the occurrence and the settlement of a dispute are processes full of local characteristics in which religious customary rules and religious authority have strong influence.

Even those religions which lack designated clergymen and systematic doctrines can work in the settlement of disputes. In the folk belief of the *Han* people, the memorial tablet of an ancestor is regarded as the symbol of the *pneuma* of that ancestor, and bears the social meanings of a comforting emotion and mentality, of the settling of disputes among family members, and of the affirmation of identity recognition (Li Yiyuan 1997: 279). The memorial tablet of ancestor has been used as a legitimate symbol of status and identity in dispute settlement. Accordingly, religion can have an influence on the settlement of disputes in various ways.

Religious social control and legal pluralism

To sum up, religion has been making or influencing the formation of local legal culture, creating various norms, producing social control, and playing roles in dispute settlement. The interaction among these four aspects causes religion to

have a function of producing general social control. How can religion work in these four aspects? What kind of effectiveness does religion have in constructing, keeping and affecting social order? The answers to these questions will depend on the status of religion in the community, its influence in people's spiritual world and its permeability in daily life. That is why religion could act as a key factor in keeping social order in some villages (Hou Junsheng and Tan Jianghua 2004), but would have less effect in other villages (Feng Liangfang 2000). There is no doubt, however, that religion will always have some influence on the social order if only religious belief exists (Zhang Xiaohui and Wang Qiliang 2005) And more important, the coexistence of religious social control and the other social controls will create patterns of legal pluralism whose complexity in a certain society will be determined by a balancing of all forces of various social controls. In this sense, religion has become a necessary factor in the discussion of the construction of legal systems in China.

III. Encounter of Plural Laws

Religious social control and other unofficial social controls

Unofficial norms, such as rules in the family, taboos in the community, and regulations in a social group, are ubiquitous in social life at a basic level (Wang Qiliang 2006). Thus numerous interactions will necessarily occur between religious social control and the other unofficial social controls.

The first such situation appears in a community where people keep to traditional ethnic religion alone. Given that the culture of the village has never been broken down, or it has been restored after a breakdown, religion itself will naturally and usually interweave with folk life. Religious social control, as a result, may develop a high level of integration with the other unofficial social controls, and this will give positive support to the actual social order. (See also: Yao Jide 2000; He Siqiang 2000; Zhang Xiaohui 2000.) If, however, the local culture has been broken down, both religious social control and the other unofficial social controls way as a necessary consequence decline within the cultural system. In this circumstance, religious social control may fail to well integrate with the other social controls and the different controls may fail to develop a stable relationship between each other. This can easily cause social conflicts in some sense (Wang Qiliang 2001).

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The second situation, occurring in a community where plural religious beliefs spread widely, would be more complicated. On the one hand, some obvious cases from the ethnic villages in Yunnan, China, where people believe in both Hinayana and traditional ethnic religion, demonstrate that, by experiencing a long period of interaction, plural religions have actually developed certain inter-recognition and some harmonious relationship (Zhang Xiaohui 2000; Wang Xiaozhu 2000; Tan Xiaojian 2000). In this case, conflicts among different religions rarely happen, and a set of rules for settling conflicts could be found even if it did happen. In the meantime, a general religious social control generated from plural religions could have a high level of integration with other unofficial social controls. On the other hand, the situation in which traditional ethnic religion exists with Christianity or Catholicism becomes complex. In the case of *Dengga village* of the *Jingpo* people, who believe in traditional ethnic religion, Christianity and Catholicism, plural religious social controls keep a balance between each other and accord with folk life, so that social conflicts are seldom caused (Wang Jiao 2000: 224-27). However, in the case of *Zhala* village of the *Nu* people, where Christianity, Catholicism, Lamaism and traditional ethnic religion all exist, differences between the regulations and doctrines of the various religions have caused some problems. For example, controversies have occurred among family members whose beliefs differ; Lamaist has looked down upon Catholic; Christians have been forbidden to engage in ethnic dancing which is a traditional form of communication in the village (Zhao Mei 2000). These problems, although they do not yet extend to the point of endangering the stability of the village order, show that plural religious social controls may fail to keep a balance and to form a favorable integration with folk life. Generally speaking, in a society where plural religions exist, the relationship among different religious social controls depends on the extent to which the religions can tolerate each other and also on the existence of a single effective negotiating mechanism between the religions.

Based on the ethnographic materials, it can be said that the complex relations between religious social control and other unofficial social controls vary according to the specific situation of each village.

Religious social control and the implementation of state law

In contemporary China, it is difficult to find an area where state law has no influence at all, even in remote ethnic border districts. Therefore, religious social

control, as one kind of unofficial social control, has also interacted with state law. To examine the connection between religious social control and state law, the paper will discuss how religion affects the implementation of state law in the following three ways.

(a) Religion as a support to state law

Whether state law can be put into effect successfully does not simply depend on the mandatory force of the government. Beyond the limited power and administrative resources which the government has at its disposal, a large number of laws seek support from local society to achieve their goals. In the multiethnic and multi-religious society of China, religion, as a social control, holds an important position in maintaining the stability of the social order. In some sense, to return to religion for support means to acquire support from secular society. Many ethnographic materials reveal that religion usually plays a positive role in advancing the implementation of law and sustaining social order in most communities.⁴ However, such a positive effect may be directly or indirectly linked to each specific situation.

On the one hand, religion, as a social control power sustaining or producing a micro social order, may have the capacity to create a certain order which law will recognize or pursue. Then state law, with the help of religion, can achieve its goal of keeping social stability without using mandatory measures. This is the universal situation in which religion implicitly supports law. In the case of the village of the *Hui* people, numerous religious regulations regarding people's morality and conduct are consistent with the requirements of law, so that the cost of legal implementation becomes low (Na Qi 2001: 197-211). We also find that many religious disciplines, for example those of Christianity, Catholicism and Buddhism, are in accord with the goal of implementation of law (Lv Zhaoyi and Hong Mei 2004; Xiao Ying 2000). Religious social control in some villages has even developed, with the emergence of new social problems, to cope with social crimes and problems by coordinating with the secular norms of the village and with state law. For example, in a village of the *A'chang* people, taking or

⁴ This is shown, for example, by a series of ethnographic materials generated from two large-scale investigations in ethnic villages of China by Yunnan University in 2000 and 2003. These produced 55 ethnographies for 55 ethnic minorities in China.

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trafficking in drugs is forbidden by religious norms (Wang Zhiliang 2000).

On the other hand, religion can also respond to state law in an explicitly positive way. This kind of contribution usually relies on a religious authority. As the interpreter of religious doctrine and the guide to followers with respect to their conduct, the religious authority frequently obtains high respect from the government in China (e.g. GUANGXI CPPCC Review Group 2002, a report on an investigation in Hainan Province). Local government often inclines to seek support from such authorities in dealing with affairs relevant to religion, including the implementation of law and dispute settlement. For example, in the Tibet Area of Qinghai Province, China, if in a case of homicide judgment in a judicial procedure has failed to settle the dispute between the two parties, the religious authority may step in to mediate (Zhang Gimin 1993: 202-32). Another case from ethnographic material also illustrates that, in a village of the *Bao'an* people, who believe in Islam, local government has to seek help from the Imam of the local mosque to carry out the regulations for marriage registration (Du Xian and Peng Qingshen 2004: 105).

(b) Legal conflict and legal failure resulting from religion

Religion, however, still holds its own value and controlling style. The differences between this form of social control and legal rationality inevitably produce conflicts between religion and state law in certain circumstances, which can lead to high costs in implementation of state law or even to its failure.

The following case indicates a sharp conflict between religious social control and state policy. Family planning work in *Stone po* village began in 1983. The *Sala* people there, who believe in Islam, consider family planning an unreasonable thing. According to their canon, for a woman over four months pregnant to have an abortion can be regarded as serious as committing murder. It is very difficult for the local women to follow the administrative regulations. This kind of religious belief has played a negative role in attempts to carry out family planning policy (Zhu Heshuang and Xie Zuo 2004: 103).

In this case, family planning policy has met with social resistance because of the huge differences existing in religious norms and the official system. Although family planning policy is implemented ultimately with mandatory force, the local government is subject to high costs as a result (Zhu Heshuang and Xie Zuo 2004:

103). In another case from my fieldwork in a village of the *Dai* people, religious social control caused the local villagers to expel a person who was regarded as \ ‘Pipa Ghost’, an act which violated the criminal law (Wang Qiliang 2004: 100-1). The case is described below.

Case 2: the ‘Pipa Ghost’

An old woman of *Mann* village who had long been a widow was regarded as a ‘Pipa Ghost’. According to local rumor that she could call up monsters and had harmed many people in the nearby villages. In 1998, a person of a nearby village fell ill and died. This incident led dozens of villagers to enter *Mann* village, destroy the house of the ‘Pipa Ghost’, and injure the old woman. The local villagers of *Mann* did not stop the neighbors, and indeed thought the ‘Pipa Ghost’ deserved a worse fate. Finally, the cadre of *Mann* village had to build a simple bamboo room for the woman in a roadside bamboo forest outside the village. Thereafter the 80-year-old woman had an isolated life.

A similar incident happened in 2002 when I did my last fieldwork in *Mann* village. The people of a neighboring village expelled a ‘Pipa Ghost’ and her husband, and strongly opposed any proposal that they could come back. Ultimately, the local government of the township had to arrange for the couple to become caretakers of a reservoir far away from the village.

This kind of conflict also occurred in a case from my fieldwork in which certain religious customs of the *Hani* people made villagers violate the provisions of the Forest Protection Law (Wang Qiliang 2004: 100-1).

The cases mentioned can be classed as instances of ‘open’ resistance to state law or policy caused by religion. However, religion can also result in the failure of law in an indirect way. For example, in some villages, the canons of Christianity or Catholicism forbid follower to marry pagans (Zheng Weichuan 2000: 255-56). These constrain people’s freedom of religious belief and freedom of marriage indirectly. To some extent, such restrictions have reduced the effectiveness of law in protecting the civic rights of freedom of belief freedom and of marriage.

Nevertheless, religions which have been diffused widely and which have developed well in villages for long periods, such as the traditional ethnic religions, primitive religions or Christianity, Catholicism and Buddhism, are less likely to

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have conflicts with state law. In contrast to newly developed or undercover religions conflicts between the former and state law are partial or minor as those religions have historically experienced the process of integrating with politics and social life. Conflict between the latter and state law can have more serious consequences, given that the latter are less well developed in their religious doctrines and are highly secret (Deng Fei 2006; Liu Zhiming and Deng Fei 2006a, 2006b).

(c) Transformation of religious social control rooted in law

The case described below argues that the relationship between religious social control and state institutions is not a simple relation of complementarity or confrontation. The state institution also can reshape and influence religious social control.

Case 3 Temple education or school education?

According to the custom of *Mann* village and other nearby *Dai* villages, boys around the age of seven should become boy *bonzes* in the local temples, where they will learn Sutra and the *Dai* language. In general, the historical transmission and development of the *Dai* language and culture is attributed mainly to temple education, as temples acted as essential loci for religious and ethnic cultural activities before the emergence of state-run schools. However, the age for becoming a *bonze* is the same as the school starting age for children under the compulsory education system in China. To solve the conflict between national education and temple education, the government of *Meng* township used to set up special '*bonze* classes' in schools, where students learnt both Chinese and the *Dai* language, in order to ensure that boy *bonzes* could receive formal education at school. The schools also tried their best to satisfy the *bonzes*' special study and living needs, and some boy *bonzes* went to these schools at that time. However, the results of the measures were far from satisfactory. The enrolment rate of boys of school-going age at the *Mann* village school was 98% in 1998, but the rate was not sustained since there was a high drop-out rate for *bonze* students. At the same time, educational facilities in *Dai* temples became better, with for example televisions and DVDs becoming available, and these distracted boy *bonzes* from school. Even if they did not leave school, it was common for them to skip classes. Because of the special status of boy *bonzes* in *Dai* areas, parents could not

discipline their own *bonze* children and teachers in schools could not punish *bonze* students. Thus it was difficult to get the boys to receive formal full-time education once they became boy *bonzes*.

People in the *Mann* village took different attitudes towards the issue of whether boys should become *bonzes*. Some elders argued that boys should become *bonzes* so as to receive temple education, which they thought was better than school education. Many middle-aged parents had no preference between the two, but let their children become *bonzes* as that was ‘what other parents do’. Parents were also afraid of being thought poor if they did not send their children to the temple, as the cost of becoming a *bonze* was several thousand yuan. A minority of villagers, however, insisted that becoming a *bonze* was not good for a child’s formal education, because the child became slack and lazy once he became a *bonze*. One of the villagers who had a daughter of 14 years and a son of 11, for example, had his son removed from his religious status one year after the boy became a *bonze* to ensure that he received a good school education and higher education for the sake of his future.

From the year 2000, the government of the township in which the *Dai* village lies began to enforce strictly the *Measures of Implementation of Compulsory Education in Meng Township (Provisional), 1999*. The rules provide:

Religion is not allowed to interfere with school education. Those temples which accept students of school attendance age to become *bonzes*, along with the student’s guardian and head of the village are subject to a penalty of RMB 3000-5000 respectively.

The rules guarantee that among the *Dai* people boys can only become *bonzes* after finishing their compulsory education. When the author went back to the *Mann* village in 2001, there were no boy *bonzes* in the temples, as all boys of the appropriate age went to school. As a result, the village has had to ‘borrow’ three boy *bonzes* from the neighboring village.

Setting aside the question whether the measures enacted by the *Meng* township government were appropriate or not, it can be seen clearly that the official practice in law implementation has aimed to transform a certain aspect of religious social control, that is, the time at which a boy might enter the temple and become a *bonze*. The measure proved to be effective in the end. From the case we can see that, if some effort is made in terms of state law (including legal implementation),

there exists a possibility to regulate and integrate religion into state law. In other words, religion as a type of social control can be transformed towards the target set by the law, through the law's influence.

IV. Conclusion: Religion, Social Harmony and Legal Unity under Legal Pluralism in China

To sum up, religious social control objectively intensifies the character of legal pluralism. However, does it therefore present a challenge to social harmony and legal unity? To answer this question, we have to make clear first that religion, as an essential part of the explanation of the ultimate meaning of human life, will continue to exist as a universal social cultural phenomenon in long term. Therefore, state law should choose a realistic attitude in dealing with matters related to religion.

As mentioned above, some conflicts between religious social control and other social controls (including state law) are inevitable. However, these conflicts may also be resolvable. In practice, in those highly rationalized religions which have attained the "highest reaches of philosophical sophistication" (Geertz 1993: 174-175) the rules and norms of religion seldom get directly involved with the secular life. Those traditional ethnic religions which have greatly permeated mundane life and which regulate daily life in obvious ways on the other hand also keep the "means-ends" feature. The factor of superstition or witchcraft in the ethnic religions usually finds its cause in the realities of that life or has direct links with the difficult situations in which people find themselves (Lu Qun 2006). In the absence of these practical conditions superstition or witchcraft would lose its base of existence. The case of 'Pipa Ghost' cited above is a good example.

I was puzzled by the incidents of the expulsion of 'Pipa Ghost' in *Mann* village and other *Dai* people's villages in Xishuangbanna, Yunnan. Generally the friendly and kindly characters of these people and the profound *Dai* culture have always impressed me deeply during my fieldwork. I was shocked by their merciless and cruel behavior in expelling 'Pipa Ghost'. This kind of contradiction forced me to seek deep reasons. The expulsion of the 'Pipa Ghost' is closely related to ethnic religious belief. The *Dai* people in *Mann* village believe in the common existence of ghosts and gods and hold that seven main kinds of ghosts exist in their living world: Piya, Pipa, Piga, Pisha, Pihong, Piwang, and Pimeng. Of these the Pipa ghost is the hardest to expel. Buzhang of *Mann* village admitted that he was able to

expel the other four ghosts, but not Piya, Pipa and Piga. Firmly holding this faith in ethnic religion, *Dai* people naturally consider that people who become Pipa ghosts cease to be human beings. Actions such as isolating them, damaging their property, and causing them physical harm are therefore just parts of the ceremony of expelling a ghost in this specific cultural logic. According to the system of classification in *Dai* culture, the person declared to be a Pipa ghost has been placed in the category of ‘ghost’, and to treat ghosts in a merciless and cruel way is not in any way inhuman. For *Dai* people, expelling a Pipa ghost successfully means the victory of justice against evil, according to a ‘natural rule’. From this point of view, the conduct of expelling a Pipa ghost has a reasonable basis in the cultural premises of the *Dai* people.

More important, this paper argues that the view of humans as clearly differentiated from ghosts is deeply rooted in specific social reasons. My further research shows that the reclassification of some humans as ghosts is directly linked to difficult situations that the local villagers face in real life.

According to the recollection of Mr. Wang Lianfang, an experienced researcher on racial problems in China:

Expelling ‘the Pipa Ghost’ is a method of expelling diseases in Dai minority regions. ... the Pipa Ghost seems to be a natural disaster but is in fact a man-made calamity. Since medical groups have entered ethnic areas, they have met many incidents of expelling Pipa Ghosts. The members of medical groups had to take every opportunity to persuade the people, while at the same time they gave patients medical treatment till they recovered. Then the news spread fast that the Communist Party could cure those who were bitten by the Pipa Ghosts. Even some people who used to turn to Buddhism to cure their diseases came to us for medical treatment. The film *Moyadai*, which was shot in the 1960s, was a true reflection of these cases. (Wang Lianfang 1998)

In fact, the expulsion of the Pipa Ghost usually happened when patients failed to get effective medical treatment. This action, as a type of exorcism, performs the function of relieving both the worries of the sick and the panic of local people, and confirms the fact that everything in life is still under control. In other words, the act of expelling the Pipa Ghost originates from lack of knowledge of illness and

medical treatment, and is a method of dealing with this problem of living and life. Consequently, the expulsion of ghosts was popular among minorities like the *Dai* before medical treatment networks were built up in 1960s⁵ and it has happened less and less since the improvement of medical facilities. However, in the last two decades incidents of expelling Pipa Ghost have resumed in some minority villages where medical facilities were in extremely short supply. This kind of phenomenon illustrates exactly that people have clear idea of when to seek help from witchcraft and when to abandon it (Liang Yongjia and Lee Shaomin 2002: 340-67. For discussion of public health situation in ethnic minorities areas also see: Wang Qiliang et al. 2003).

If the instance of the expulsion of Pipa ghost can be understood in terms of the inherent system of religious culture, it is possible to see some functional reasons for interpreting such 'illegal' or 'unreasonable' religious norms in terms of human rights. This gives clues as to ways to reduce the negative elements in religious belief and to prevent the violation of law. In the case of Pipa ghost, improving medical treatment could be a good starting-point.⁶

It is the element of superstition and witchcraft in ethnic religion that might generate conflict with state law, since such religious ideas provide problematic guides to understanding the world. In other words, legal conflict caused by religion originates from 'ideas' which could be changed in some reasonable way. Therefore, to avoid or resolve conflicts between religion and law, we should first examine whether there are any serious defects in the administrative systems of

⁵ A similar example is the disease of smallpox. The medical preservative and treatment for smallpox was unavailable in the ethnic minorities areas of Yunnan Province, China, during 1950s and '60s. Failing to find any scientific explanation of this infectious disease, local people regarded it as a phenomenon of ghosts harming humans, to counter which witchcraft became legitimate. However, people abandoned witchcraft after treatment by vaccination had been extended to these areas. ('Fighting against smallpox', a program on this subject presented in the series 'Exploration and Discovery' on CCTV 10 of China, 4 May, 2005.)

⁶ In some sense, measures for resolving the problem are determined by how people interpret the specific phenomenon. Since Mr Wang Liangfang and his colleagues of the working group at that time had no particular objective and a pragmatic attitude towards the expulsion, they were likely to fail to discern the fundamental reason for it and so to take appropriate measures against it.

law, rather than merely relying on coercive implementation of law. For example, we need to remember that people will turn to religion, and even to superstition or witchcraft, if they fail to obtain social security and medical treatment from the public health system.

From a broader perspective of development in China, religion does not necessarily threaten legal unity. Harold J. Berman illustrated the close link between law and religion in western society and tried in his research to prove that law and religion shared common elements and features (Berman 1974). What Berman worried about was that the sacredness of law could be lost and the effect of law weakened when religion declined. In that way, law could become a mere scrap of paper as people lost belief in it. However, China differs from both western societies that have experienced the demands of religious conformity, as Berman mentioned, and from countries that believe in Islam (Horn 2006). Religion as social control in China is generally separated from state law. None of the doctrine or ethics of religion is incorporated in legislation. The legality and authority of law have no necessary link with religion. In addition, the experience of plural religions in the society of China contrasts with that of the drive for religious unity in Europe of the Middle Ages. Consequently, the various religions in China do not share doctrines nor have a common advocacy. State law holds greater authority than any other form of social control including those provided by religion. Law protects freedom of religious belief but limits religious activity within the legal regime. In this way, state law can develop its function of construction and integration by regulating religious social control and the other social controls, but this is possible only if law remains neutral among all religions and avoids designating a certain morality or life style as the only legitimate one (Rüthers 2008). It can be proved that in practice religion itself, rather than a static object, has the capacity of developing and perfecting itself in the process of social transformation. In the case of *Sala* village mentioned above, local people are gradually becoming willing to accept family planning policy since the local government has kept propagating its policies in the village. The people of *Bao'an* village have come to understand the value of marriage registration. Even the conflict between the ethnic customs of the *Hani* people and forest protection has been skilfully resolved.⁷ These facts prove

⁷ According to customs of the *Hani* people, the coffin for a dead elder should be made from a single mountain osmanthus tree, which cannot then be used for any other deceased. However, the mountain osmanthus tree is one of the valuable species protected by the state, and it can be found only in remote mountains of a Nature Protection Area. Therefore, *Hani* residents living in this area broke state

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that, in the practical process of legal operation, religion will not necessarily challenge or destroy the unity of the rule of law, in spite of the existence of differences between religious social control and law.

However, a cautious attitude should be taken in fashioning the legal construction when state law attempts to integrate religious social control. As we know, for most ethnic minorities religion comprises an essential part of ethnic culture and has become a cultural expression of the group (Lv Daji and Zhang Shihui 2004). Religious social control holds a central position in the traditional social order of communities. A sudden or huge breakdown of religious tradition will lead to the discontinuance of the culture and a rupture of social control, which may result in the collapse of social order. China has had such lessons in history (Wang Qiliang 2001). Taking the perspective of legal pluralism, it is necessary to forbid conduct that seriously harms human rights and violates human nature in the name of religion, as has occurred, for example, when some illegal religious organizations appeared in the areas of ethnic minorities (Yin Yonglin 2000). But, generally speaking, it could be better for state law to adopt a prudent and tolerant attitude in responding to problems resulting from religion, especially newly rising or illegal religions. Just as the analysis of Li Yiyuan of issues of the localization of religion movement in Taiwan (Li Yiyuan 1997), we have to keep seeking support from various social resources, such as social work, and social policy adjustment, to cope with different social matters which state law fails to resolve completely.

laws and regulations every time they cut down a mountain osmanthus tree. In order to protect these trees and also to preserve the *Hani* funeral customs, the Nature Protection Bureaus in Shiswobana have since 1999 recommended *Manalen* village to work with a Nature Protection Fund in a co-operative management programme with the title: 'I am growing with little trees'. Supported by this programme, the village residents provided 60 acres of undeveloped mountain areas and organized students to plant mountain osmanthus tree, each with the planter's own name card on it. If a student dies, the tree the student planted will be used to make the student's coffin. 400 trees planted in 1999 and later survive. The participating students also gained consciousness of need for forest protection. In the longer term, the "I am growing with little trees" programme as a multi-functional activity targets the preservation of traditional ethnic customs, the resolution of the conflict between ethnic customs and forest protection, and the afforestation of remote mountains.

In conclusion, religion, is a double-bladed sword. It could on the one hand become a positive strength for shaping harmonious social order if state law deals with it appropriately. It could on the other hand cause conflicts if state law deals with it partially and unreasonably. A cautious and reasonable way of treating religion has definitely become an important requirement in the process of legal construction in China.

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