

## THE LAW AND RELIGIOUS MARKET THEORY

With comparative case studies from China, Taiwan and Hong Kong, Jianlin Chen's new work offers a fresh, descriptive and normative perspective on law and religion. This presentation of the original Law and Religious Market Theory employs an interdisciplinary approach that sheds light on this subject for scholars in legal and sociological disciplines. It sets out the precise nature of religious competition envisaged by the current legal regimes in the three jurisdictions and analyses how certain restrictions on religious practices may facilitate normatively desirable market dynamics. This updated and invaluable resource provides a new and insightful investigation into this fascinating area of law and religion in Greater China today.

JIANLIN CHEN grew up in Singapore and Taiwan. He obtained his LLB from the National University of Singapore, and his LLM and JSD from the University of Chicago. He is qualified to practice in Singapore and New York. Bilingual in English and Chinese, Jianlin has nearly thirty scholarly publications in journals such as *Columbia Journal of Asian Law*, *Law & Social Inquiry*, *Oxford Journal of Law and Religion*, and *北大法律评论* (*Peking University Law Review*), among many others. He is Associate Professor at Melbourne Law School, after having started his academic career at the University of Hong Kong.

# THE LAW AND RELIGIOUS MARKET THEORY

China, Taiwan and Hong Kong

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*The University of Melbourne*



**CAMBRIDGE**  
UNIVERSITY PRESS

Cambridge University Press  
978-1-108-79618-7 — The Law and Religious Market Theory  
Jianlin Chen  
Frontmatter  
[More Information](#)

**CAMBRIDGE**  
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom  
One Liberty Plaza, 20th Floor, New York, NY 10006, USA  
477 Williamstown Road, Port Melbourne, VIC 3207, Australia  
314-321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi - 110025, India  
79 Anson Road, #06-04/06, Singapore 079906

Cambridge University Press is part of the University of Cambridge.

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[www.cambridge.org](http://www.cambridge.org)

Information on this title: [www.cambridge.org/9781108796187](http://www.cambridge.org/9781108796187)

DOI: 10.1017/9781316756089

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First published 2018

First paperback edition 2019

*A catalogue record for this publication is available from the British Library*

*Library of Congress Cataloging in Publication data*

Names: Chen, Jianlin, author.

Title: The Law and Religious Market Theory : China, Taiwan and Hong Kong / Jianlin Chen, The University of Melbourne.

Description: Cambridge [UK] ; New York : Cambridge University Press, 2017.

Identifiers: LCCN 2017018752 | ISBN 9781107170179 (Hardback)

Subjects: LCSH: Religious law and legislation—China. | Religious law and legislation—Taiwan. | Religious law and legislation—China—Hong Kong. | Religion and state—China. | Religion and state—Taiwan. | Religion and state—China—Hong Kong.

Classification: LCC KNQ2688 .C44 2017 | DDC 342.5108/52—dc23 LC record available at <https://lcn.loc.gov/2017018752>

ISBN 978-1-107-17017-9 Hardback

ISBN 978-1-108-79618-7 Paperback

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Cambridge University Press  
978-1-108-79618-7 — The Law and Religious Market Theory  
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Frontmatter  
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*For  
My father, Donyan, and my mother, Yen Yen*

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## PREFACE

The nature of a narrative often is contingent on the selected perspective and starting point.

As someone who teaches primarily commercial law courses (i.e., *Business Associations*, *Contract* and, of course, *Commercial Law*<sup>1</sup>), the topic of my book always raises eyebrows and quite a few questions. Yet, looking back, the inspiration for this book can be traced to over fifteen years ago when I stumbled upon Karen Armstrong's *A History of God: the 4,000-Year Quest of Judaism, Christianity and Islam* while browsing in the public library. It was a thick book (for the pre-university me), and the details about the intertwining and complex histories of these three religions have long eluded me. Yet one key takeaway has stuck: namely that the manifestations and the practices of each religion are much more affected by the prevailing social, economic and political circumstances, and less attributable to some innate features of the respective religion. A religion (or more precisely, its adherents) tend to be magnanimous and tolerant of both other religions and internal dissents when it is in a position of strength and security, but will often revert to fundamentalist dogmas and regressive exclusivity amidst vulnerability and threats. There is thus no inherently "violent" or "intolerant" religion as such. It was a timely and important reminder in the then immediate aftermath of the September 11 attacks, and its timeliness and importance remain—quite unfortunately—till today. But the broader implication is also that the choices and behaviors of religious adherents do track secular concerns and can be comprehensible even to non-adherents of that faith.

This interest in religion took a backseat upon my entry to the undergraduate law degree program at the National University of Singapore. It was not that religion ceased to be relevant or interesting. Far from it, as religion has emerged as a hot-button social, legal and political topic in

<sup>1</sup> The course consists of topics from Personal Property, Credit & Security and Agency.

Singapore since the 2000s, with issues ranging from accommodation of religious practices in public institutions (e.g., *hijab* in schools), role of religiously inspired moral values in public policy making (e.g., casino, stem-cell research), and religious mobilization in the public sphere (e.g., AWARE incident).<sup>2</sup> Nonetheless, the deeply passionate and seemingly ideological nature of the debate is inhibiting. I opted for commercial and corporate law as my primary research interests as I embarked on my pursuit of legal academia, attracted by the seemingly more “rational” nature of the discourse that is ostensibly conducted on the premise of how law might best facilitate commercial transactions and/or wealth creation.

Still, when it came to deciding on a JSD topic while pursuing graduate law studies at Chicago Law School, I could not help but succumb to the temptation of doing something which I found fascinating but which I knew little about; after all, it was going to be a scholarly pursuit for years ahead. Given the pervasive emphasis of interdisciplinary legal research at Chicago, no less economics analysis of law, it is no surprise that the religious economic model formed the basis of my foray into the area of law and religion. Indeed, the model’s comparison between religious organizations and commercial firms that preoccupied my prior academic research provided me with some solace and confidence as I navigated an otherwise daunting and challenging field. The JSD thesis developed the Law and Religious Market Theory and applied it to China. Having the privilege of starting my academic career at the University of Hong Kong, Hong Kong itself and neighboring Taiwan became ideal comparative jurisdictions to further the inquiry.

In short, this book is almost inevitable, and, “rational.”<sup>3</sup>

Nevertheless, just as with how individual religious choice operates within the constraints of the prevailing social, economic, political, and, of course—legal—environment, the preceding self-centric account hides the numerous persons that keenly contributed to the outcome. Most special thanks to Lisa Bernstein and Tom Ginsburg, my JSD supervisors, who have not only impeccably guided me along this intellectual

<sup>2</sup> The AWARE incident involved a 2009 power tussle between a predominantly conservative Christian women’s group and secular activists for the control of a key civil society on women’s rights that was perceived by the former group as promoting a “homosexual agenda”: See *THE AWARE SAGA: CIVIL SOCIETY AND PUBLIC MORALITY IN SINGAPORE* (Terence Chong ed., National University of Singapore Press 2011).

<sup>3</sup> For critical discussion about the nuances and intricacies surrounding the economic assumption of rationality, see *infra* Chapter 2.I.

expedition, but have also shown me with words and deeds the way of a true legal scholar. This book has also benefited tremendously from the insightful critiques and comments of Albert Chen, Kan-Hsueh Chiang, Te-Fang Chu, Michael Ewing-Chow, Weixia Gu, Arif Jamal, Adi Leibovitch, Chien-Chih Lin, James Lindgren, Jaclyn Neo, Panthip Pruksacholavit and the participants at workshops/conferences in the National University of Singapore, Northwestern University, the University of Chicago, the University of Hong Kong, and Washington University in St. Louis. Special shout-out to my students at the National University of Singapore and the University of Hong Kong, whether for: challenging me to further develop and better articulate the theory in my Law and Economics courses; the excellent research assistance from Manalie Chan, Cindy Ha, Nicole Ho, Tina Li, Michelle Leung, Maggie Tong, Alexis Wang, and Aki Yu; or the invaluable research collaboration with Churk Shue Sing and Loveday Liu. Indeed, I am immensely grateful for the opportunity to research and work on this book in the fantastic and inspiring intellectual environment at the University of Chicago and the University of Hong Kong, and for their generous financial support and research funding.

Finally, nothing but love and gratitude to my parents, my wife and my two children, for supporting me in my every endeavor, and for rendering my every endeavor meaningful.



## ABBREVIATIONS

C.P.C.	Communist Party of China
E.U.	European Union
I.C.C.P.R.	International Covenant on Civil and Political Rights
K.M.T.	Kuomintang (Nationalist Party of China)
LegCo	Legislative Council (Hong Kong)
P.R.C.	People's Republic of China
R.O.C.	Republic of China
U.K.	United Kingdom
U.S.	United States of America