

COMMENTS

RELIGIOUS RIGHTS IN CHINA: A COMPARISON OF INTERNATIONAL HUMAN RIGHTS LAW AND CHINESE DOMESTIC LEGISLATION

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INTRODUCTION

Analyses of human rights in the People's Republic of China ("PRC") tend to focus upon the specific abuses which the Chinese government visits upon its citizens. For example, governments and nongovernmental organizations charge that China violates international human rights law when it shuts down newspapers, bans political parties, arbitrarily detains criminal suspects, jails political protesters, tortures prisoners, and refuses to allow its citizens to leave the country.

Comparing China's domestic practices with international norms, however, is not the only way to assess PRC compliance with international human rights law. From a legal perspective, it is also important to compare such international law with China's domestic legislation covering such areas as freedom of expression, freedom of movement, the rights of the accused, and the right to be free from cruel and unusual punishment.

This comparative legal perspective possesses three primary advantages. First, where domestic law facially provides certain protections, it helps to expose the inadequacy of human rights critiques which focus solely on governmental actions. While such reports are invaluable in publicizing abuses and raising international awareness, they often fail to acknowledge that violations of rights contain both political and legal components. By neglecting the domestic legal perspective, these reports relinquish the opportunity to criticize governments for violating their

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own law. This tactic can be especially useful against governments such as the Chinese which might not have signed a relevant human rights treaty but purport to adhere to international norms through enforcement of domestic law. It can also be useful against governments such as the Chinese that assert the international community is infringing on their sovereignty and attempting to illegitimately impose its own norms on others. If domestic law provides protection, governmental defenses regarding cultural imperialism ring hollow.

Second, where domestic law does not provide adequate protection, this comparative legal approach can help the international community advise governments considering ratification of international human rights treaties. This analysis can be useful with China, for example, which has recently begun debating ratification of the International Covenant on Civil and Political Rights ("ICCPR").¹ Such ratification would require the Chinese to undertake various obligations and would necessitate altering domestic law where it was incompatible with international norms. A comparative legal analysis could, therefore, assist the Chinese in understanding the specific legal ramifications of signing this instrument. Furthermore, the international community might want to require the Chinese to repeal domestic law inconsistent with the ICCPR before ratifying this Covenant. Such abrogation could reassure the international community that the Chinese were not signing the treaty as a public relations stunt.

Third, there are additional functional advantages to the comparative legal approach. On an international level, the comparative legal approach also helps promote and legitimize international human rights law, which is still in its incipient stages. This approach underscores the reality that human rights abuses contain both legal and political components. Such violations stem not only from the corruption of political power, but also from politicians' refusal to recognize the rule of law, and from the judiciary's inability to enforce protections often provided under domestic constitutional or statutory legislation. By facilitating legally-oriented consultation with countries considering ratification of human rights treaties, the comparative approach can help the international community assess the sincerity of the potential signatory. When governments ratify a treaty merely to bolster their public image and have no intention of enforcing its provisions, they undermine the international human rights regime.

1. International Covenant on Civil and Political Rights (ICCPR), G.A. Res. 2200A, U.N. GAOR 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6136 (1966).

A comparative approach can also be instructive for organizations and governments attempting to affect positive change in other countries' domestic human rights conditions. By helping to expose the legal nature of human rights abuses, this approach counsels such organizations and governments not only to pressure offending countries to alter their practices, but also to implement the rule of law and to establish an independent judiciary. Without these two preconditions, citizens' rights will never be guaranteed. As one commentator summarized:

Only when the gap between internationally prescribed ideals and national legislation has been explored should the second step be initiated [comparing international norms with domestic practice]. This approach has the virtue of accurately reflecting the dynamic relationship between international norms, national norms, and empirical reality.²

This Comment will employ the comparative legal approach in analyzing religious rights in China. Religion in the PRC is an especially interesting subject because it implicates tenets of Daoism, Buddhism, Confucianism, Catholicism, and Marxism, as well as political movements in Tibet and Xinjiang. While religious believers today certainly enjoy greater freedoms than they did in earlier communist periods, the Chinese government continues to receive criticism regarding its religion policies.

Part I of this Comment examines the international human rights regime regarding religious freedom. Part II discusses the extent to which the Chinese Constitution and domestic legislation protect religious rights. It specifically examines regulations promulgated recently in Kunming, Guangdong, Hunan, Baoding, and Xinjiang; discusses various central government policy documents; and explains the methods by which the Chinese government maintains control over religious activities. Part III then analyzes whether Chinese domestic legislation comports with international norms regarding religious freedom, and whether China is violating any of its international legal obligations.

I. FREEDOM OF RELIGION IN INTERNATIONAL LAW

A. PRIOR TO THE UNITED NATIONS

Conceptions of international human rights originated in the religious arena, and were initially linked to the protection of minorities in European nation-states following the Treaty of Westphalia in 1648.³ As one commentator noted:

2. Ann Kent, *Waiting for Rights: China's Human Rights and China's Constitutions: 1949-1989*, 13 HUM. RTS. Q. 170, 176 (1991).

3. Asbjorn Eide, *Minority Situations: In Search of Peaceful and Constructive Solutions*, 66 NOTRE DAME L. REV. 1311, 1316 (1991); Hurst Hannum, *Contempo-*

Religion was certainly the most significant distinction among most groups until at least the eighteenth century, and most of the early provisions for the protection of minorities were concerned with what today might be viewed as freedom of religion.⁴

The issue first arose between Catholics and Protestants in the seventeenth century.⁵ During the eighteenth and early nineteenth centuries, religious conflict ensued between Christians and the Islamic world of the Ottoman Empire.⁶

The Treaty of Westphalia was the first international agreement to provide protection to religious minorities, although it did not guarantee such freedoms to all minority groups.⁷ For the next few centuries, the international community signed various bilateral and multilateral treaties which protected the religious rights of minorities.⁸ The watershed period in the protection of such rights, however, occurred following World War I. The dissolution of the Ottoman and Austro-Hungarian Empires fueled nationalism, and minorities were trapped within new legal and political boundaries.⁹ In order to mitigate the adverse effects of nationalism, post-WWI treaties granted religious liberties to minorities in Austria, Hungary, Bulgaria, Turkey, Greece, Poland, Romania, Yugoslavia, Upper Silesia, and Danzig.¹⁰ Such agreements entitled minorities "to the free exercise, whether public, or private, of any creed, religion, or belief whose practices were not inconsistent with public order or morals."¹¹ They also included clauses prohibiting discrimination on the basis of religious affiliation.¹²

B. SINCE THE ESTABLISHMENT OF THE UNITED NATIONS

The language in post-WWI religious minority agreements formed the basis of international human rights treaties promulgated since World War II. Article 1 of the U.N. Charter enunciates the goals of the United Nations and inherits the principle of

rary Developments in the International Protection of the Rights of Minorities, 66 NOTRE DAME L. REV. 1431 (1991).

4. Hannum, *supra* note 3, at 1431.

5. Eide, *supra* note 3, at 1316.

6. *Id.*

7. Hannum, *supra* note 3, at 1431.

8. The Treaty of Berlin, signed in 1876, provides one such example. This agreement provided protection for "the 'traditional rights and liberties' enjoyed by the religious community of Mount Athos in Greece." *Id.*

9. Eide, *supra* note 3, at 1316.

10. These agreements also provided minorities with rights to nationality, life, personal property, and equality of treatment under the laws. *Id.* at 1316-18; Hannum, *supra* note 3, at 1432.

11. Eide, *supra* note 3, at 1316-18 n. 30.

12. *Id.* at 1318 n. 31.

nondiscrimination from earlier agreements. The Charter asserts that one such goal is to "achieve international cooperation . . . in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion."¹³ It is important to note that the U.N. Charter altered the scope of human rights protections. Whereas the League of Nations emphasized the rights of minorities, the United Nations began to universalize human rights "for all." Such liberties now accrued to individuals, who started to replace minorities as the relevant entity for the purpose of human rights analyses.¹⁴

While the U.N. Charter protected individuals from discrimination on religious grounds, it did not enunciate substantive religious freedoms. The international community rectified this shortcoming three years later in the Universal Declaration of Human Rights.¹⁵ Article 18 of this document expanded the religious freedoms granted in post-WWI minority agreements:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.¹⁶

Article 2 of the Universal Declaration of Human Rights additionally prohibited discrimination on the basis of religion.

While the Universal Declaration of Human Rights echoed previous antidiscrimination principles and expanded substantive religious freedoms, it also inherited earlier conceptions of the conditions under which governments could legitimately restrict such rights. As Article 29 explained:

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.¹⁷

The ambiguity of these permissible restraints inherently raises difficulties. If a State is authorized to define "morality," "public order," and "general welfare," religious rights protected in theory can become worthless in practice. Because religions are often intricately intertwined with morality, a category of le-

13. U.N. CHARTER, art. 1, ¶ 3, signed June 26, 1945, entered into force Oct. 24, 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153 (1969).

14. Eide, *supra* note 3, at 1319.

15. Universal Declaration of Human Rights, G.A. Res. 217A U.N. GAOR, 3rd Sess., pt. 1, at 71, U.N. Doc. A/810 (1948).

16. *Id.* at 74, art. 18.

17. *Id.* at 77, art. 29, ¶ 2.

gitimate restrictions based on public morals is especially problematic. This restriction potentially licenses a government to prohibit any religious system whose moral tenets diverge from majoritarian values. If interpreted broadly, therefore, "morality restrictions" can legitimize discrimination against minority views, and ultimately undermine the stated goals of the Declaration. "Analyses of specific restrictions must guard against interpretations that would eviscerate safeguards created and magnify uncertainties concerning the resolution of conflicts."¹⁸ A difficult task which still confronts the international community is the explication and limitation of such derogation clauses.

The ICCPR¹⁹ constitutes another important agreement which protects religious liberties. Adopted and opened for signature in 1966, the ICCPR, unlike the Universal Declaration of Human Rights, is legally binding on parties who accede to it. While the binding nature of these two agreements might vary, their substantive provisions regarding religion are similar. Article 26 of the ICCPR mirrors the prohibition on religious discrimination, found in Article 2 of the Universal Declaration of Human Rights. Meanwhile, Article 18 of the ICCPR essentially echoes Article 18 of the Universal Declaration, and grants all individuals the right "to have or to adopt a religion or belief of his choice" and "to manifest one's religion or beliefs."²⁰ Similar to the Universal Declaration of Human Rights, the ICCPR also permits derogations "necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."²¹

Article 27 of the ICCPR includes an interesting additional protection for certain religious believers. While Article 18 enunciates religious rights for the individual, Article 27 resurrects a pre-WWII tradition, and explicitly guarantees religious rights for minorities. It asserts that "[i]n those States in which . . . religious minorities exist, persons belonging to such minorities shall not be denied the right . . . to profess and practice their own religion."²² Importantly, this article does not enunciate permissible derogations.

Article 27 compels two important conclusions. First, minority religions enjoy a particularly protected status—assuming that Article 27 is more than just a redundant enunciation of the individual religious liberties protected under Article 18 and the prin-

18. Donna Sullivan, *Advancing the Freedom of Religion or Belief through the U.N. Declaration on the Elimination of Religious Intolerance and Discrimination*, 82 AM. J. INT'L. L. 487, 496 (1988).

19. International Covenant on Civil and Political Rights, *supra* note 1.

20. *Id.* at 55, art 18, ¶¶ 2-3.

21. *Id.* ¶ 3.

22. *Id.* at 56, art. 27.

ciples of nondiscrimination in Article 26. The absence of permissible derogations further suggests this elevated status. While it is unlikely that many governments would adhere to a strictly literal reading of Article 27 and relinquish *all* authority to regulate minority religions, Article 27's silence on legitimate restrictions implies that governments have less leeway under this provision than they do under Article 18. Second, by explicitly proclaiming the right of minorities to have and practice "their own religion," Article 27 prohibits governments from establishing officially recognized religious organizations while banning all others which conflict with government-sponsored belief systems.

While the International Covenant on Civil and Political Rights protects a broad scope of liberties, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief,²³ constitutes the "first United Nations instrument proclaiming, in comprehensive form, a catalogue of rights, freedoms, and principles related" only to religion.²⁴ Adopted by consensus in 1981,²⁵ the Declaration contains general provisions for religious freedom and a prohibition on religious discrimination similar to the ICCPR and the Universal Declaration of Human Rights.²⁶ Article 1 of the Declaration on Religious Intolerance and Discrimination also enunciates "general welfare" limitations. Unlike the ICCPR and the Universal Declaration, however, it authorizes derogation only from the manifestation of religion, not from freedom of religious belief.

The Declaration on Religious Intolerance and Discrimination is also unique in the specificity with which it enunciates religious rights. Article 5 announces that "[e]very child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents."²⁷ It also declares that children should be free from discrimination based on religious grounds. Article 6 is particularly explicit in the protections which it affords. It states:

[T]he right to freedom of thought, conscience, religion or belief shall include, *inter alia*, the following freedoms:

23. G.A. Res. 36/55, U.N. GAOR, 36th Sess., Supp. No. 51, at 171, U.N. Doc. A/36/51 (1981) [hereinafter Declaration on Religious Intolerance and Discrimination].

24. Natan Lerner, *Toward a Draft Declaration Against Religious Intolerance and Discrimination*, 11 ISR. Y.B. ON HUM. RTS. 82 (1981).

25. Sullivan, *supra* note 18, at 487.

26. Article 1 affirms the right to "freedom of thought, conscience, and religion," and the right to "manifest . . . religion or belief." Article 2 prohibits discrimination on the grounds of religion. Declaration on Religious Intolerance and Discrimination, *supra* note 23.

27. Declaration on Religious Intolerance and Discrimination, *supra* note 23, at 172, art. 5, ¶ 2.

- (a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for these purposes;
- (b) To establish and maintain appropriate charitable or humanitarian institutions;
- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d) To write, issue and disseminate relevant publications in these areas;
- (e) To teach a religion or belief in places suitable for these purposes;
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief; [and]
- (i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.²⁸

Although the Declaration on Religious Intolerance and Discrimination announces various specific religious rights, it is unclear what legal force the Declaration possesses and what obligations signatories undertake. On the one hand, it can be argued that international declarations are traditionally nonbinding. On the other hand, the U.N. General Assembly unanimously adopted this Declaration, and it does contain strong language requiring governments "to enact or rescind legislation" which fosters discrimination or restricts religious liberties.²⁹ The legal nature of this Declaration will be discussed in more detail later, when this Comment assesses China's international legal obligations to protect its citizens' religious rights.³⁰

II. FREEDOM OF RELIGION IN CHINESE CONSTITUTIONAL AND STATUTORY LAW

A. HISTORICAL BACKGROUND

Throughout history, religion has flourished in China. Traditionally, Confucianism has been considered the most influential philosophical or religious movement within the country.³¹ While

28. *Id.* at 172, art. 6.

29. *Id.* art. 4, ¶ 2.

30. *See infra* part III.

31. There is significant debate over whether Confucianism is a religion or a humanistic philosophy. More recently, scholars have begun to identify the "religious"

Confucius lived from 551-479 B.C.E., many of the beliefs and practices which are ascribed to him, however, had existed since Yu the Great founded the Xia Dynasty around 2200 B.C.E.³² While this belief system permeated Chinese society for hundreds of years following the death of Confucius, not until the second century B.C.E. did Confucianism become state orthodox.³³ "It was the events of this era [the Former Han Dynasty] that gave the religious dimension of the Chinese state the form it would have for nearly two thousand years."³⁴

While Confucianism undoubtedly constitutes the most important philosophical and religious movement in Chinese history, two other religions were particularly influential in ancient China—Daoism and Buddhism. Divided into two branches—philosophical and religious³⁵—Daoism derives its tenets from the *Tao Te Ching* and *Chuang Tzu*, books compiled sometime in the latter part of the Chou Dynasty (ca. 1050 B.C.E.-256 B.C.E.).³⁶ Whereas Confucianism and Daoism are indigenous Chinese religions, Buddhism constitutes the first foreign religion to enter China. Introduced by Buddhist merchants from India in the first century A.D., this religious tradition soon became the state religion of Northern China during the Period of Disunity (220 A.D.-589 A.D.).³⁷ State patronage of Buddhism reached its apex during the Tang Dynasty (618 A.D.-907 A.D.), when the Chinese transformed the more ascetic form of Indian Buddhism into their own traditions of Pure Land and Chan Buddhism, which the Japanese later adapted into Zen.³⁸

Two other ancient religious events have significant import for understanding the political situation in contemporary China. First, in the seventh century A.D., Buddhism arrived in Tibet.³⁹ Introduced by an Indian monk, Buddhism merged with the native animist tradition known as Bon, and developed into a very

components of Confucianist thought and practice. While this debate is interesting, it is not particularly important for the purposes of this paper. For a more complete discussion of these issues, see RODNEY L. TAYLOR, *THE RELIGIOUS DIMENSIONS OF CONFUCIANISM*, (Robert Cummings Neville ed., 1990); C.K. YANG, *RELIGION IN CHINESE SOCIETY* 4-8 (1961).

32. CHRISTIAN JOCHIM, *CHINESE RELIGIONS: A CULTURAL PERSPECTIVE* 6 (Robert S. Ellwood, Jr. ed., 1986).

33. TAYLOR, *supra* note 31, at 29.

34. JOCHIM, *supra* note 32, at 7.

35. While philosophical Daoism is associated with mysticism and The Way (Dao), religious Daoism involves deity worship and shamanism. *Id.* at 8-9.

36. *Id.*

37. *Id.* at 42; DANIEL L. OVERMYER, *RELIGIONS OF CHINA* 43 (H. Byron Earhart ed., 1986).

38. JOCHIM, *supra* note 32, at 44-50; OVERMYER, *supra* note 37, at 44.

39. JOHN AVEDON, *IN EXILE FROM THE LAND OF THE SNOWS* 202 (1986).

different religion from Chinese Buddhism.⁴⁰ By the ninth century, a majority of Tibetans had become followers of this new form of Tantric Buddhism, and they have remained devout Buddhists ever since.⁴¹ Second, merchants along the Silk Road introduced Islam into Central Asia. Because of shifting national boundaries, it is difficult to determine exactly when Islam entered China's Xinjiang region, but scholars estimate it arrived around the mid-eighth century A.D.⁴² The Uighur people of Xinjiang converted to Islam, and their Muslim faith continues to conflict with the requirements of Chinese communism and the communist State.⁴³

While Confucianism, Daoism, Buddhism, and Islam became rooted in China, Tibet, and Central Asia long ago, Christianity did not become a major religious force until much later. Although the Nestorian Church first introduced Christianity into China during the early Tang Dynasty (618 A.D.-907 A.D.), and although the Catholic Church was strongly established in Hangzhou and Zaitun in the fourteenth century, this religion did not find permanent roots until the Jesuits arrived in the late sixteenth century.⁴⁴ Protestants did not arrive until 1807, settling primarily in the Treaty Ports created after the Opium Wars.⁴⁵

While these religious belief systems have attracted numerous adherents throughout Chinese history, there has often simultaneously existed an official antipathy towards religion. "An antireligious attitude has a long tradition in China, dating from the fourth century B.C., when many of the learned equated religion with superstition."⁴⁶ Biases against such "superstitious" tenets were rooted in Confucian philosophy, which emphasized earthly existence, the structure of society, and filial obligations.⁴⁷

When conflicts arose between Confucianists, Buddhists, and Daoists, the problems revolved more around politics than religion.⁴⁸ The ruling elite, primarily Confucianists since the end of the Tang Dynasty in 907 A.D., developed an intricate system for

40. *Id.*

41. *Id.* at 14-15, 191-217.

42. E.R. HUGHES, RELIGION IN CHINA 100-01 (1950).

43. See *Xinjiang Conducts Clergy 'Discipline' Campaign*, *Foreign Broadcast Information Service ("FBIS")*, Apr. 17, 1990, CHI, 90-074, at 50.

44. HUGHES, *supra* note 42, at 112-15.

45. *Id.* at 125.

46. THOMAS HEBERER, CHINA AND ITS NATIONAL MINORITIES 102 (1989).

47. TAYLOR, *supra* note 31, at 7-30. Despite Confucianism's refusal to explicitly entertain other worldly matters, some scholars assert that Confucianism, in fact, does promulgate a coherent metaphysical theory. They deny that Confucianism is merely a humanistic philosophy, although it certainly regulates society more than Buddhism or Daoism. For a discussion of these themes, see HERBERT FINGARETTE, CONFUCIUS-THE SECULAR AS SACRED (1972); TAYLOR, *supra* note 31.

48. YANG, *supra* note 31, at 180-91.

maintaining political control through religious restrictions. Until the end of the Qing Dynasty in 1912, the Confucianists exercised political power over religious forces through the Ministry of Rites (*libu*).⁴⁹ This Ministry was organized into several departments which dealt separately with the religious denominations operating in China at the time.⁵⁰ It "imposed a monopoly over . . . interpretations of religious matters," and was responsible for "suppress[ing] the development of heterodox religious movements."⁵¹

During the Qing Dynasty (1644-1912), the Ministry of Rites ensured compliance with legislation which restricted religious liberties. One such law stipulated that anyone who "make[s] private appeal to Heaven [i.e., worships outside of officially recognized channels]. . . shall be punished with eighty strokes of the stick"; offending Buddhist and Daoist monks were additionally relegated to a secular status.⁵² These laws also restricted the number of monks and nuns who could legally engage in religious activities, prohibited private construction of temples (offending nuns being punished with slavery in official families), and called for decapitation of anyone who created or distributed heretical religious literature.⁵³ Neither the government's attitude towards heresy nor the brutality with which it punished religious offenders is particularly unusual when placed in a historical context. As Buddhists and Daoists were suffering persecution in China, Christian and Muslim "heretics" were hardly receiving more humane treatment at the hands of Western kings, emperors, popes, and moguls. It is interesting to note, however, that the various methods the Confucianist elite employed to repress religion are precisely the tactics that the communist elite use today.⁵⁴

B. RELIGION IN COMMUNIST CHINA

The rulers of contemporary China have inherited the bias against religion that their Confucianist predecessors possessed. As one commentator noted:

China was as religious for the scholars of ancient China as it is for the educated in the China of today. This must be kept in mind when discussing today's religious policy. China's supreme power has always endeavored to keep religious activ-

49. *Id.* at 187; JOCHIM, *supra* note 32, at 143-49.

50. YANG, *supra* note 31, at 190-91.

51. *Id.* at 180.

52. *Id.* at 183.

53. *Id.* at 183-87.

54. For a discussion of contemporary methods of restricting religious rights in China, see *infra* part III.

ity under control so as not to jeopardize the unity and stability of the state.⁵⁵

In addition to these traditional Confucian perspectives, for the past forty-four years another factor has militated against religious freedom in China: Marxism. Whereas religion has historically been subordinated to the demands of a Confucian society and its established power structure, today it is subservient to the needs of the socialist state.⁵⁶ "Religion, even more than nationalism, is a natural antagonist of Marxism-Leninism, whose doctrine of dialectic materialism is in direct opposition to all religious teachings."⁵⁷ During earlier periods in communist China, Marxist ideology presented an especially formidable obstacle to religious rights. Emphasizing class struggle, the Party leaders coined such terms as "landlord religion," "reactionary religion," and "religion that eats people."⁵⁸ During the Cultural Revolution, religious believers and leaders were "swept away" as "ghosts and monsters."⁵⁹

In addition to Marxist ideology, religious adherents in China today also confront a deep-rooted historical obstacle—Chinese emphasis on the collective over the individual. "China begins with the society, the collectivity, and concentrates on general (not individual) welfare."⁶⁰ To the extent religious freedom is viewed as an *individual* liberty, the rights of the religious believer will always be subordinate to the interests of society as a whole. While this is true for any individual right in China such as the right to free speech or freedom of movement, it is especially ironic in the religious realm. As one commentator has noted, the "key underlying principle of Chinese religion as a whole" is that "the universe is an organismic whole whose essential structure and energy abide in every constituent part."⁶¹ Unity and harmony are the metaphysical teleologies of China's Buddhism, Daoism, and Confucianism.⁶² As the ideological emphasis on the collective descends from the metaphysical realm into the political, however, these underpinnings of Chinese religion are used

55. HEBERER, *supra* note 46, at 105.

56. Louis Henkin, *The Human Rights Idea in Contemporary China: A Comparative Perspective*, in *HUMAN RIGHTS IN CONTEMPORARY CHINA* (R. Randle Edwards ed., 1986).

57. Franz Michael, *Non-Chinese Nationalities and Religious Communities*, in *HUMAN RIGHTS IN THE PEOPLE'S REPUBLIC OF CHINA* 281-82 (Wu Yuan Li ed., 1988).

58. *Religious Issues in Socialism Discussed*, *Foreign Broadcast Information Service (FBIS)*, June 2, 1988, CHI 88-106, at 33.

59. *Id.*

60. Henkin, *supra* note 56, at 27.

61. JOCHIM, *supra* note 32, at 8.

62. As noted above, there is a debate over the extent to which Confucianism contains metaphysical elements. See *supra* note 47 and accompanying text.

to suppress religious freedom. In the name of maintaining *social* harmony and unity, China's leaders assert the privilege of restricting individual religious freedom which allegedly portends disharmony. The tenets advanced by Chinese religion are precisely those being used against it; Chinese religion ironically sows the seeds of its own demise.

Despite the theoretical conflict between Marxism and religion, however, contemporary Chinese leaders do not advocate the immediate abolition of religious practices. The present Communist Party of China ("CPC") has taken a more gradual approach to the issue, and stresses that religion is a historical product which will disappear only when socioeconomic and cultural conditions have improved to the extent that people no longer require this "opiate."⁶³ As a confidential central government document proclaimed, "those who expect to rely on administrative decrees or other coercive measures to wipe out religious thinking and practice . . . are entirely wrong and will do no small harm."⁶⁴

This long-term historical perspective dictates present policy in China towards religion. Religion is tolerated, but not encouraged; it is protected to the extent that it does not obstruct China's progress along the socialist road. As an internal Party document asserted:

[T]he basic starting point and firm foundation for our handling of the religious question . . . lies in our desire to unite the mass of believers and non-believers and enable them to center all their will and strength on the common goal of building a modernized, powerful socialist state.⁶⁵

This document then summarized the Orwellian strategy the CPC has undertaken towards religion: "[u]nder socialism, the only correct fundamental way to solve the religious question lies precisely in safeguarding the freedom of religious belief."⁶⁶

This ideological permissiveness, however, extends only to citizens who have not joined the CPC. For instance, one internal government document asserted, "[t]he fact that our Party proclaims and implements a policy of freedom of religious belief does not, of course, mean that [the] Communist Party members can freely believe in religion . . . There can be no doubt at all that

63. HEBERER, *supra* note 46, at 111; Document No. 19, The Basic Viewpoint and Policy on the Religious Question During Our Country's Socialist Period (1982), reprinted in *Freedom of Religion in China* ASIA WATCH at 44 (1992) [hereinafter Document No. 19]. This document was considered *neibu* (restricted circulation) but was widely leaked. *Freedom in Religion in China* ASIA WATCH 2 n.5 (1992).

64. *Freedom of Religion in China*, *supra* note 63, at 34.

65. *Id.* at 37.

66. *Id.* at 44.

[they] must be . . . atheist[s]."⁶⁷ The government, on the other hand, is more lenient towards Party members who are also ethnic minorities. Such individuals often cannot "shake off all religious influence," and therefore, other Party members must help them to "gradually . . . acquire a dialectical and historical materialist world-view and to gradually shake off the fetters of a religious ideology."⁶⁸

This more tolerant historical perspective has expanded religious liberties for Chinese citizens. "While public religious services had all but disappeared by the late 1970s, by the early 1980s many churches, temples, and mosques had reopened."⁶⁹ The government is even acknowledging infringements on citizens' religious liberties and exhorting officials to respect such rights. As a 1991 government document admitted:

We must . . . realize that there are quite a few problems in the implementation of the policy of freedom of religious belief. Certain local authorities violate the citizens' right to freedom of religious belief, the legitimate rights and interests of the monasteries . . . interfere with normal religious activities of religious groups, and procrastinate in restoring religious real estate . . . to their rightful owners.⁷⁰

Another government document underscored the importance of reconstructing some of the religious sites in large areas.⁷¹ The Chinese press has begun celebrating religious diversity and activity within the PRC. According to one report, over 200 million Chinese adhere to some religious faith, including Buddhism, Daoism, Islam, Protestantism, and Catholicism.⁷² According to another article, in the 1980s, the government allocated 140 million yuan (over \$20 million) to restore religious facilities destroyed during the Cultural Revolution.⁷³ Furthermore, it has established forty-six religious schools, including the Higher Institute of Tibetan Buddhism and the Institute of Islam Theology.⁷⁴

67. *Id.* at 41.

68. *Id.*

69. R. Randle Edwards, *Civil and Social Rights: Theory and Practice in Chinese Law Today*, in HUMAN RIGHTS IN CONTEMPORARY CHINA 41, 59 (R. Randle Edwards ed., 1986).

70. Document No. 6, Some Problems Concerning Further Improving Work on Religion, Central Committee of the Chinese Communist Party and the State Council (1991), reprinted in *Freedom of Religion in China*, ASIA WATCH 32 (1992) [hereinafter Document No. 6].

71. Document No. 19, *supra* note 63, at 39.

72. Religion in China, *Xinhua*, Aug. 1, 1990. Official figures do not include the millions in the underground Catholic Church movement. *Freedom of Religion in China*, *supra* note 63, at 2 (1992).

73. *Id.*

74. *China Sticks to Freedom of Religious Belief*, 1990-91 P.R.C. Y.B. 468-69.

While citizens in China today certainly enjoy more religious liberty than during any period of communist rule, the Chinese government still strictly controls religious belief and activity. "Deng's policy of somewhat greater permissiveness has not changed and cannot change the basic communist goal."⁷⁵

C. THE CHINESE CONSTITUTION AND RELIGIOUS FREEDOM

Constitutional and statutory law provide a lens through which to view the limits of Communist Party tolerance. Article 36 of the Chinese Constitution addresses religious rights:

Citizens . . . enjoy freedom of religious belief. No state organ, public organization or individual may compel citizens to believe in, or not believe in any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion.

However, this article guarantees protection only to "normal" religious activities. Additionally, it declares that citizens cannot engage in religious practices that "disrupt public order, impair the health of the citizens or interfere with the educational system." Other articles within the Constitution further permit derogation from religious rights. Article 51 announces that "the exercise by citizens . . . of their rights may not infringe upon the interests of the state, of society, and of the collective." Furthermore, "every right allowed Chinese citizens is matched by a corresponding duty."⁷⁶ For example, Articles 52-54 announce that "it is the duty of citizens . . . to safeguard the unity of the country . . . observe public order and respect social ethics . . . and to [refrain from] acts detrimental to the security, honor and interests of the motherland."

Religious rights protected in Article 36 are additionally subject to the Four Cardinal Principles, included in the Constitution's Preamble. "Equally immutable and superior even to the Constitution,"⁷⁷ they exhort citizens and officials to adhere to the socialist road, support the people's democratic dictatorship, follow the leadership of the Communist Party, and take Marxism-Leninism-Mao Zedong Thought as the guiding ideology. First announced by Deng Xiaoping in 1980, these principles "formed the backbone of the . . . new Constitution and were frequently invoked to restrain subsequent moves towards the informal expansion of civil and political rights."⁷⁸

75. Michael, *supra* note 57, at 281.

76. Kent, *supra* note 2, at 179.

77. Henkin, *supra* note 56, n.11.

78. Kent, *supra* note 2, at 187-88.

The vagueness of these constitutional protections and derogation clauses provides further obstacles for religious adherents. The elasticity of these articles allows officials to "drastically restrict religious freedom in political and ideological campaigns such as the campaign against spiritual pollution (1983) or against bourgeois liberation (1987)."⁷⁹ The vagueness of the term "normal religious activities" in Article 36 presents especially difficult problems. During a 1988 conference on religion and socialism, government officials attempted to define what constitutes "normal" religious practice:

The so-called normal religious activities . . . refer to the religious activities other than the religious activities that are abnormal and illegal . . . It is in itself abnormal to put forward the term "normal religious activities." The emergence of such an abnormal phenomenon is due to the fact that in carrying out religious activities, a small number of people, as actuated by some abnormal purposes, conduct religious activities in an excessively frequent and long manner . . .⁸⁰

It is unclear how even a well-intentioned local official could interpret this garble to confidently determine that any particular religious activity was "normal" and therefore, protected under the Constitution.

In addition to these textual difficulties, two related systemic issues also inhibit the establishment of a broad scope of constitutionally protected religious rights. First, laws are always subject to political fiat and ideology. "In China, which has had four constitutions since 1949, each promulgated in a distinctive social and political policy environment, constitutions tend to be more like political programs."⁸¹ Furthermore, the rights protected under the Constitution can be modified or canceled at the whim of the Party;⁸² political organs can amend or suspend the Constitution without any democratic checks on their actions.⁸³

Second, the absence of an independent judiciary further ensures the Party's monopoly over constitutional interpretation. Because no entity can enforce the Constitution against high political authority, the government is under no pressure to respect citizens' constitutional liberties.⁸⁴ The nonjusticiability of the Constitution allows government officials to violate citizens' religious rights with impunity.⁸⁵ Finally, unlike earlier Constitutions, the most recent 1982 Constitution does not even allow citizens to

79. HEBERER, *supra* note 46, at 105.

80. *Religious Issues in Socialism Discussed*, *supra* note 58, at 33.

81. Kent, *supra* note 2, at 177.

82. *Id.* at 179.

83. Henkin, *supra* note 56, at 27.

84. *Id.*

85. Kent, *supra* note 2, at 178-79.

appeal to the Procurate for alleged violations of their rights by the bureaucracy.⁸⁶

D. STATUTORY PROTECTION OF RELIGIOUS FREEDOM

As discussed above, the language in the Chinese Constitution concerning rights and freedoms is vague, and sometimes contradictory. It is important, therefore, to also examine national and regional law, because such legislation often further defines the scope of citizens' rights. For example, although the Constitution does not mention the issue of torture, China's criminal law and criminal procedure law forbid the use of torture to obtain confessions.⁸⁷

In the religious arena, recently passed legislation regulates belief and practice on a variety of governmental levels. As a 1992 Human Rights Watch report explained:

In early 1989, well aware of the role of the Church in Eastern Europe, the monasteries in Tibet, and mosques in Xinjiang in fostering nationalist sentiment, Chinese authorities undertook a campaign to tighten control over religious practice. The campaign . . . has led to a proliferation of new regulations at the national, provincial, and local levels.⁸⁸

The national government issued a number of reports on the religious situation in China. Distributed to regional and local governments, these documents included the *Circular on Stepping up Control over the Catholic Church to Meet the New Situation* (1989),⁸⁹ *Vigilance Against Infiltration by Religious Forces from Abroad* (1990),⁹⁰ *Notice on the Prevention of Some Places Using Religious Activities to Hinder School Education* (1991),⁹¹ and the *Circular on Some Problems Concerning Further Improving Work on Religion* (1991).⁹² Furthermore, top Party leaders have been participating in "Religion Work Conferences" throughout China to advise local officials on implementation of religious policies.⁹³

Regional and local governments subsequently enacted legislation codifying the suggestions enumerated in these Party docu-

86. Henkin, *supra* note 56, at 32.

87. Kent, *supra* note 2, at 178.

88. *Freedom of Religion in China*, *supra* note 63, at 1.

89. Document No. 3, reprinted in *Freedom of Religion in China*, ASIA WATCH 46 (1992).

90. *Freedom of Religion in China*, *supra* note 63, at 52.

91. *Id.* at 68.

92. Document No. 6, *supra* note 70, at 27.

93. Such conferences have been held in Gansu, Heilongjiang, and Inner Mongolia. *Gu Jinchu Attends Gansu Religion Conference*, *Foreign Broadcast Information Service (FBIS)*, May 14, 1991, CHI 91-093; *Heilongjiang Holds Religion Work Conference*, *Foreign Broadcast Information Service (FBIS)*, May 30, 1991, CHI 91-104; *Inner Mongolia Religion Work Conference Held*, *Foreign Broadcast Information Service (FBIS)*, May 9, 1991, CHI 91-090.

ments. Guangdong Province,⁹⁴ Hunan Province,⁹⁵ Fujian Province,⁹⁶ the Xinjiang Uighur Autonomous Region,⁹⁷ Daishan County,⁹⁸ the city of Kunming,⁹⁹ and a village in the Baoding district of Hebei Province¹⁰⁰—all issued laws governing religious belief and practice.¹⁰¹ When religious adherents challenged the legitimacy of this legislation, the national office of the Religious Affairs Bureau (“RAB”) confirmed that regional and local governments have the legal authority to issue their own regulations and to supervise conditions in their own areas.¹⁰² Through regional, local, and national laws, the Party maintains control over religion.¹⁰³ The Party has passed legislation regulating activities of religious adherents, places of worship, the construction of new religious sites, contacts with foreign organizations, religious

94. Guangdong Regulation No. 44: Regulations on the Administrative Supervision of Places of Religious Activity in Guangdong Province (1988), *reprinted in Freedom of Religion in China*, ASIA WATCH 60 (1992) [hereinafter Guangdong Religious Regulations].

95. A Regulation Concerning the Protection of Normal Religious Activities in Hunan Christian Church (1990), *reprinted in Freedom of Religion in China*, ASIA WATCH 74 (1992) [hereinafter Hunan Religious Regulations].

96. Provisional Regulations for the Registration and Management of Places of Religious Activity in Fujian Province (1992), *reprinted in Continuing Religious Repression in China*, ASIA WATCH 50 (1993) [hereinafter Fujian Religious Regulations].

97. Provisional Regulations on the Administration of Religious Activities in the Xinjiang Uighur Autonomous Region (1990), *reprinted in Freedom of Religion in China*, ASIA WATCH 64 (1992) [hereinafter Xinjiang Religious Regulations].

98. Public Notice Concerning the Strengthening of Control of Religious Activities in the Whole Country (1991), *reprinted in Continuing Religious Repression in China*, ASIA WATCH 48 (1993) [hereinafter Daishan Religious Regulations].

99. Provisional Regulations Governing Places for Religious Activities in Kunming (1990), *reprinted in Freedom of Religion in China*, ASIA WATCH 55 (1992) [hereinafter Kunming Religious Regulations].

100. Stipulations for the Villagers Regarding Normal Catholic Church Activities (1991), *reprinted in Freedom of Religion in China*, ASIA WATCH 72 (1992) [hereinafter Baoding Village Religious Regulations]. The Hebei Province Religious Affairs Bureau more recently issued a document entitled Completely Destroying the Organizations and Systems of the Underground Religious Force, *Continuing Religious Repression in China*, ASIA WATCH 3 (1993).

101. This obviously does not constitute all regional or local legislation that has recently been passed to control religious freedom. One notable omission from this list is Tibet. Although there have been official pronouncements on religion in Tibet, I am unaware of any formally enacted, relevant legislation that has been leaked by Chinese government officials. For a thorough discussion of religious freedom in Tibet, see *Defying the Dragon*, Lawasia and the Tibet Information Network (1991). As discussed previously, because this paper focuses primarily upon the Chinese legal regime covering religion, a complete discussion of the various abuses which have been documented by human rights organizations is outside the scope of this paper.

102. Daniel Kwan, *Guangdong Rules on Religion Backed*, S. CHINA MORNING POST, Mar. 10, 1990.

103. For nearly a thousand years, pre-Communist Chinese leaders employed various methods to repress the exercise of religion. These same methods are also being used by the CPC leadership today. See *supra* part I.

training for students, and the distribution of religious literature. It has also enacted laws limiting the number of religious leaders, prohibiting "superstitious activities," imposing penalties on violators, and creating government departments to administer religion laws. As a Xinjiang official summarized, these regulations "have strengthened the means to exercise administrative control over religion."¹⁰⁴

1. Administration of Legislation Governing Religion

A full understanding of recent legislation regarding religion first necessitates an examination of the methods through which the Party administers these laws and supervises every minute detail of religious activity in China. While the CPC's Central Committee formulates China's policy towards religion, the Religious Affairs Bureau ("RAB") is responsible for implementing and enforcing this policy.¹⁰⁵ With national, regional, and local offices, the RAB oversees and coordinates the activities of the eight "National Associations," which are each responsible for maintaining control over a specific religious denomination operating in China. These "patriotic" organizations include the Chinese Buddhist Association, the Chinese Islamic Association, the Chinese Daoist Association, the Three-Self Patriotic Movement (a Protestant organization), and the Chinese Catholic Patriotic Association.¹⁰⁶

According to a government document, the National Associations "serve as a bridge by which the Party and government unite with and educate religious personages All patriotic religious organizations must accept the leadership of the Party."¹⁰⁷ Reverend Lin Xiangao, a Baptist Minister who has spent more than twenty years in prison for his religious beliefs, offered a different perspective. He asserted that the Three-Self Patriotic Movement was "a tool used by the Government to destroy Christianity."¹⁰⁸

These National Associations undertake a variety of functions. According to the Kunming Religious Regulations, these associations "teach their members to be patriotic and love their church . . . organize those normal religious activities permitted . . . and maintain the principle of independent autonomous self

104. *Xinjiang Official on Management of Religion, Foreign Broadcast Information Service (FBIS)*, Jan. 10, 1991, CHI 91-007, at 58.

105. *Freedom of Religion in China, supra* note 63, at 3; *Fujian Religious Regulations, supra* note 96, (arts. 3, 9), at 50-51.

106. *Id.*

107. Document No. 6, *supra* note 70, at 30.

108. *Iron Fist Tightens Around the Church*, S. CHINA MORNING POST, Sept. 23, 1990 available in LEXIS, Nexis Library, TXTFE File.

rule over the church . . . "109 These organizations also manage the financial aspects of the religious denominations. The Chinese Buddhist Association, for example, controls the "funds provided by the state, those received from selling tickets and donations, and even the fees paid by tourists for photographing inside the places of worship."¹¹⁰

The Chinese government has been especially vigilant in its supervision of Christianity. To facilitate control over Protestants and Catholics, it has established the Chinese Christian Council, the National Administrative Council of the Catholic Church, and the Catholic Bishops College. These organizations "have different functional responsibilities and overlapping leaderships in the PRC and are convenient instruments for manipulating the Christian churches."¹¹¹ Party control over Christianity extends down to the lowest governmental level. According to regulations issued in a village in Hebei Province, "the church must . . . follow the instructions and supervision of the village religious work leadership committee . . . [and] promptly report the . . . opinions and requests of the believing masses."¹¹²

The Communist Party in Xinjiang has also imposed a comprehensive network of control over religious belief and activity:

At present, governments at and above the county (city) level throughout Xinjiang have established religious work departments at all levels. Most counties have also established Islamic Associations and other patriotic religious organizations. Townships and towns have established religious affairs agencies which have been joined by cadres, believers, and patriotic religious figures.¹¹³

2. *Protections Guaranteed Under Recent Legislation*

Although recent regional and local legislation facilitates control over religion, it also guarantees certain protections to those who behave within the confines of governmental restrictions. Echoing the Chinese Constitution, the Kunming Religious Regulations assert that "[a]ll normal religious activities carried out in those places for religious activities which have obtained permission to exist enjoy the protection of law."¹¹⁴ The Baoding Village Religious Regulations declare that those who "harm the thoughts and feelings of religious believers" will be subject to

109. Kunming Religious Regulations, *supra* note 99, item 8, at 56.

110. Michael, *supra* note 57, at 284.

111. *Id.* at 282.

112. Baoding Village Religious Regulations, *supra* note 100, ¶ 4, at 72.

113. *Xinjiang Official on Management of Religion*, *supra* note 104, at 58.

114. Kunming Religious Regulations, *supra* note 99, item 18, at 58.

“serious criticism, education and punishment.”¹¹⁵ Fujian regulations additionally protect the property and land of registered places of religious activity.¹¹⁶ The Guangdong Religious Regulations provide particularly broad protection:

Article 2: Citizens have freedom of religious belief. No one is allowed to force others to believe or not believe in religion. There should not be any discrimination against either citizens who believe or citizens who do not believe in religion.

Article 21: The normal religious activities of approved and opened places of religious activity are under the protection of the law. No unit or individual is allowed to spread atheistic or anti-religious propaganda within places of religious activity.¹¹⁷

The Xinjiang Religious Regulations also provide protection of religious belief, and forbid individuals from discriminating against, slandering, oppressing, or retaliating against others on religious grounds.¹¹⁸ These regulations are even more explicit in enumerating the religious activities which enjoy legal protection:

Article 4: The masses of religious believers are permitted to conduct all normal religious activities, such as reciting scriptures, giving a sermon on scriptures, conducting religious services, practicing abstinence from meat as a religious exercise, saying prayers, burning incense, worshipping Buddha, celebrating mass, and celebrating religious festivals in their own houses and in the places for religious activities. These activities are protected by law. . .¹¹⁹

Despite these protections, however, most of this regional and local legislation is concerned with specific limitations on religious freedom. The restrictive nature of these regulations was manifested in a comment by a Xinjiang official, who observed that since the legislation was enacted:

The party's policy of freedom in religious faith has been fully implemented Religion's interference in administrative and judicial matters, marriage, education, and planned parenthood has markedly reduced. Acute problems in these areas have been dealt with severely Many places have stopped the indiscriminate building and expansion of mosques. Unauthorized private schools, classes, and sites for teaching scripture have also been basically banned.¹²⁰

115. Baoding Village Religious Regulations, *supra* note 100, ¶ 15, at 73.

116. Fujian Religious Regulations, *supra* note 96, art. 8, at 51.

117. Guangdong Religious Regulations, *supra* note 94, at 60, 62.

118. Xinjiang Religious Regulations, *supra* note 97, art. 2, at 64.

119. *Id.* art. 4.

120. *Xinjiang Official on Management of Religion*, *supra* note 104, at 58.

3. *Restrictions on Religious Leaders*

The Chinese government began licensing priests and restricting the size of the clergy in the tenth century.¹²¹ The CPC has continued this tradition. Central government documents on religious policy assert that only "those who prove to be politically reliable, patriotic and law-abiding" are permitted to become religious leaders or to conduct religious ceremonies.¹²² Furthermore, "[p]reaching and missionary work by self-styled preachers . . . must be firmly curbed."¹²³

Regional and local governments have directly incorporated these directives into their legislation. As the Xinjiang Religious Regulations assert, "[t]hose who . . . are hostile to the leadership of the CPC and socialist system must not be permitted to take charge of scripture classes and become teachers."¹²⁴ To ensure ideological compatibility, legislation requires that the relevant National Association and RAB department approve and register every religious figure in China.¹²⁵ Only registered religious personnel may conduct religious services or hold office.¹²⁶

Legislative control over religious personnel, however, extends beyond the ideological realm. Religious leaders may not travel to do missionary work or to preach without the approval of the relevant governmental department.¹²⁷ Regional and local laws also restrict the freedom of religious leaders to train and educate novices;¹²⁸ citizens under eighteen years old are not permitted to join religious institutions.¹²⁹ These laws also codify national policy in establishing seminaries to educate young generations of religious leaders who "fervently love their homeland."¹³⁰ Additionally, this legislation permits government officials to limit the number of religious personnel by establishing a quota system and by requiring religious denominations to obtain approval before exceeding their quotas.¹³¹ Finally, any religious figure "who is punished or deprived of his/her political rights because of violation of law forfeits his/her qualification . . . immediately."¹³²

121. YANG, *supra* note 31, at 188.

122. Document No. 19, *supra* note 63, at 38.

123. Document No. 6, *supra* note 70, at 29.

124. Xinjiang Religious Regulations, *supra* note 97, art 13, at 66.

125. See Kunming Religious Regulations, *supra* note 99, item 23, at 58; Daishan Religious Regulations, *supra* note 98, ¶ 5, at 49.

126. *Id.*

127. See Xinjiang Religious Regulations, *supra* note 97, art. 11, at 65.

128. See Kunming Religious Regulations, *supra* note 99, item 24, at 58.

129. *Iron Fist Tightens Around the Church*, *supra* note 108.

130. Document No. 19, *supra* note 63, at 40.

131. See Guangdong Religious Regulations, *supra* note 94, art. 18, at 62.

132. Hunan Religious Regulations, *supra* note 95, ¶ 5, at 75.

These restrictions on religious personnel and education of initiates can be devastating to the future of religion in China. Without leaders from the younger generations, the various religious denominations are threatened with extinction. By screening applicants, establishing quotas, and censoring religious training materials, the CPC can gut traditional religious belief and practice, and replace them with versions more subordinate to the state. While the older religious personnel might object, the younger generation, reared on Party ideology, will almost certainly be more acquiescent. An Asia Watch report summarized the situation for Christianity: "most of the clergy is old, and because of government restrictions and the fact that the priesthood offers no chance of upward social or economic mobility, the small pool of possible recruits is not growing."¹³³

4. *Restrictions on Places of Worship and Religious Association*

According to national policy, the RAB oversees and manages all religious facilities.¹³⁴ Denominations may not establish religious sites without the approval of government entities and registration with the RAB.¹³⁵ Similar to pre-communist laws,¹³⁶ such approval is also necessary before a religious organization may restore any temple, church, or mosque.¹³⁷ Regulations are particularly strict in Fujian where "every alteration or enlargement of a place of religious activity" must be approved.¹³⁸ The Party's general attitude towards such reconstruction, however, is unclear. According to a central government document, "we must systematically and methodically restore a number of temples and churches in large and mid-size cities . . . and in areas where there is a concentration of religious believers, especially ethnic minority areas."¹³⁹ However, this document then asserts that "[we] should also direct the voluntary contributions of the mass of religious believers for construction work, so as to build as little as possible."¹⁴⁰

Regulations covering places of worship limit citizens' freedom of religious association, because believers may conduct services and events only within the confines of officially approved and registered religious sites.¹⁴¹ According to the Xinjiang Reli-

133. *Freedom of Religion in China*, *supra* note 63, at 3.

134. Document No. 19, *supra* note 63, at 39.

135. See Kunming Religious Regulations, *supra* note 99, item 6, at 56.

136. YANG, *supra* note 31, at 187.

137. See Guangdong Religious Regulations, *supra* note 94, art. 8, at 61.

138. Fujian Religious Regulations, *supra* note 96, art. 14, at 51.

139. Document No. 19, *supra* note 63, at 39.

140. *Id.*

141. See Kunming Religious Regulations, *supra* note 99, item 22, at 5.

gious Regulations, “[n]o religious organization or believer is permitted to preach, do missionary work, or publicize theism in places other than those prescribed for religious activities.”¹⁴² Authorities routinely dissolve illegal religious seminaries, convents, and temples.¹⁴³

142. Xinjiang Religious Regulations, *supra* note 97, art. 9, at 65.

143. *Freedom of Religion in China*, Asia Watch