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## Religious Freedom and Its Legal Restrictions in China

Zhang Qianfan\* and Zhu Yingping\*\*

### I. INTRODUCTION

In her concurring opinion in *McCreary County v. ACLU of Kentucky*,<sup>1</sup> Justice O'Connor observes:

By enforcing the [Religion] Clauses, we have kept religion a matter for the individual conscience, not for the prosecutor or bureaucrat. At a time when we see around the world the violent consequences of the assumption of religious authority by government, Americans may count themselves fortunate: Our regard for constitutional boundaries has protected us from similar travails, while allowing private religious exercise to flourish.<sup>2</sup>

Americans are fortunate indeed in comparison to the Chinese, whose religious matters are in the hands of prosecutors and bureaucrats. The State's interference with religion has not only restricted the individual freedom of conscience, but also contributed to "violent consequences" in China's ethnic relations.<sup>3</sup>

Yet, like the First Amendment of the United States Constitution, Article 36 of the Chinese Constitution, enacted in 1982, also explicitly confirms the freedom of religious belief, albeit with a limiting clause:

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

The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state.

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1. 545 U.S. 844 (2005).

2. *Id.* at 882.

3. See, e.g., Austin Ramzy, *Failed Government Policies Sparked Tibet Riots*, TIME, May 26, 2009, available at <http://www.time.com/time/world/article/0,8599,1900899,00.html>; Austin Ramzy, *A Year After Xinjiang Riots, Ethnic Tensions Remain*, TIME, July 5, 2010, available at <http://www.time.com/time/world/article/0,8599,2001311,00.html>.

Religious bodies and religious affairs are not subject to any foreign domination.<sup>4</sup>

In China, a critical question is the extent to which the state may legitimately restrict religion without violating the principle of religious freedom articulated in Article 36. After 1949, Marxist ideology predominated in China, treating religion as “superstition” and the “opium of the people” for soothing the pain of individual souls.<sup>5</sup> Atheists’ animosity toward religion reached its climax during the Great Cultural Revolution (1966–76), when religious sanctuaries were damaged by mobs or taken by governments on a massive scale.<sup>6</sup> Since economic reforms began in the late 1970s, China’s attitude toward religion has considerably softened, yet its religious policies are still influenced by the remnants of the atheist mindset and the fear of the organizational capacity of churches and sects, rendering religion a sensitive political issue.<sup>7</sup> As a result, religious freedom is carefully limited by laws and regulations, which have substantially reduced the scope and effectiveness of the constitutional protection of religious freedom.<sup>8</sup> Indeed, even “normal” and lawful religious activities are not effectively protected given the absence of legal remedies for official violations of religious freedom. Administrative litigations, for example, are rather strictly limited to the scope of “legal interests”—interests defined explicitly in laws, *not* including the Constitution.<sup>9</sup>

This Article shows that effective judicial remedies, legislation and administrative acts can and, in reality, do impose a variety of stringent restrictions upon the freedom of religious belief. Part II of this Article discusses the Chinese attitude toward religious belief, showing that the Chinese tend to view religious faith as superstition. Part III demonstrates how Chinese laws and regulations tend to limit the freedom of religion in China, and Part IV shows the limited nature of religious privileges in China, suggesting ways in which these privileges can be improved. Part

4. XIANFA art. 36 (1982) (China).

5. Karl Marx, *Contribution to Critique of Hegel’s Philosophy of Right*, in THE MARX-ENGELS READER 54 (Robert C. Tucker ed., 2d ed. 1978).

6. Lawrence Cox, *Freedom of Religion in China: Religious, Economic and Social Disenfranchisement for China’s Internal Migrant Workers*, 8 ASIAN-PAC. L. & POL’Y J. 370, 374 (2007).

7. Mickey Spiegel, *Control and Containment in the Reform Era*, in GOD AND CEASAR IN CHINA: POLICY IMPLICATIONS OF CHURCH-STATE TENSIONS 40–41 (Jason Kindopp & Carol Lee Hamrin eds., 2004).

8. *Id.* at 40–46.

9. See Eric R. Carlson, *China’s New Regulations on Religion: A Small Step, Not a Great Leap*, *Forward*, 2005 BYU L. REV. 747, 747–48.

V discusses ways in which Chinese governments have become entangled with religious organizations. Part VI concludes.

## II. GENERAL ATTITUDE TOWARD RELIGIOUS BELIEF

Although the Chinese government has paid careful attention to limiting offensive comments about religions in order to avoid religious agitation and maintain social stability,<sup>10</sup> the official atheist ideology and previous political movements have accustomed government officials and society at large to view religion as a mere superstition—a product of ignorance—or as an unstable force in society.<sup>11</sup> In particular, while in the United States there is an established constitutional principle that belief in a supernatural being is not subject to secular judgment,<sup>12</sup> China's government officials customarily judge whether particular religions are “right” or “wrong” based on whether the religions' political or social impact is “good” or “bad.”<sup>13</sup> Chinese governments at various levels are particularly nervous about the prospect of social or ethnic agitations created by religious gatherings and often restrict normal religious activities in the name of social stability. This antireligious stance opens doors to local officials' heedless contempt for, rough treatment of, and misuse of power against religions, contributing to the deterioration of religious and ethnic relations.<sup>14</sup> The following examples illustrate China's contemporary understanding of religion.

### A. *Religious Faith as a Superstition?*

As a result of the atheist education Chinese nationals receive, religious faiths are often treated as mere feudal superstitions. On February 7, 1998, the front page of the *Workers' Daily (Gongren Ribao)* carried the headline “Flaming Incense and Crowded Worshippers in

10. See *infra* Part IV.

11. See Cox, *supra* note 6, at 397 n.85 (noting that Article 300 of the PRC's Criminal Law imposes a mandatory minimum sentence of three years on anyone who “uses superstition to undermine the implementation of the laws and administrative rules and regulations of the State”).

12. Justice Jackson went so far as to insist that the government is not even authorized to examine the veracity of a belief in order to prevent religious fraud. See *United States v. Ballard*, 322 U.S. 78, 93 (1944) (Jackson, J., dissenting) (“If we try religious sincerity severed from religious verity, we isolate the dispute from the very considerations which in common experience provide its most reliable answer.”).

13. Anne S.Y. Cheung, *In Search of a Theory of Cult and Freedom of Religion in China: The Case of Falun Gong*, 13 PAC. RIM L. & POL'Y J. 1, 24 (2004).

14. Qianfan Zhang, *A Constitutional Bridge Between China and the West: Brief Review of the Constitutional Issues in the Religious Administration in China*, in INTERNATIONAL SYMPOSIUM ON LAW AND RELIGION 23 (CASS ed., Inst. of World Religion Study 2004).

Temples,” with the subtitle “Modern Superstition is Coming Back.”<sup>15</sup> The paper reported that during the spring festival great numbers of worshippers and believers visited various temples in Beijing and knelt down before the images of various gods or goddesses, a phenomenon indicating the overwhelming resurgence of modern superstition.<sup>16</sup> In short, the report simply classified religious activity as “superstition,” necessarily a serious insult against religion, which caused broad protest in the religious communities and sharp criticism from Alan Ruo of the Chinese Buddhist Association.<sup>17</sup>

Since China is a predominantly secular society, the people are inclined to evaluate religions by an official secular standard. For example, it was asserted in an article that:

We should note that some religions rooted in Chinese traditional culture conflict with society in many aspects in trying to get adapted to and assorted with the modern and contemporary society; as an ideology, they appear upside-down in outlook, providing illusory reflection of the world with an obvious adverse effect upon society. Religion attributes the force that dominates nature and human beings to a god, which undoubtedly will restrain the working people from pursuing their ideals aggressively. In addition, a thick religious ambience may be created after the example of family believers, which will undoubtedly hinder the implementation of decrees and policies. It is absolute[ly] wrong to use religious belief to supplement the behavioral code of socialism in an attempt to conciliate the conflicts between religion and socialism.<sup>18</sup>

Some local party and government officials are seriously disturbed by the rapid increase of religious followers. For example, the United Front Work Department of a local party committee wrote that “according to investigation, various religions have expanded all over the county, with rapid development in some places.”<sup>19</sup> The committee further stated that

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15. Sansi (三思), *Simiao Xianghuo Sheng, Shaoxiang Baifo Duo, Xiandai Mixin Zhengzai Juantu Chonglai* (寺庙香火盛, 烧香拜佛多, 现代迷信正在卷土重来) [*Flaming Incense and Crowded Worshippers in Temples—Modern Superstition is Coming Back*], WORKERS’ DAILY, Feb. 7, 1998.

16. *Id.*

17. Alan Ruo (阿澜若), *Yipian Vanzhong Weifan Zongjiao Xinyang Ziyou Zhengce de Baodao* (一篇严重违反宗教信仰自由政策的报道) [*A Report That Seriously Contravened the Policy on Religious Freedom*], 2 DYNAMIC STUDY (1998).

18. Long Liyun (龙立云), *Zongjiao Huichao yu Jiaqiang Nongcun Wenhua Jianshe* (宗教回潮与加强农村文化建设) [*Resurgence of Religions and the Cultural Construction in Rural Areas*], 2 J. YIYANG NORMAL C. (1994).

19. Yanjin Xian Tongzhanbu (延津县统战部) [United Front Work Department of Yanjin County], *Nongcun Zongjiao Guanli Gongzuo Jidai Jiaqiang* (农村宗教管理工作亟待加强) [*Urgent*

“since 1991, the number of Christians in some cities of southern Henan province has almost doubled . . . having even surpassed the number of the party members.”<sup>20</sup> These passages obviously reflect the fears of some political leaders, who rushed to conclude that “the religious administration in rural areas should be reinforced urgently.”<sup>21</sup> In other countries, the increase in the number of religious followers may well be seen as a positive sign of social morals and stability, but it certainly is not seen as such in China.

With such a mentality, local governments in China find interfering with and restraining religious activities irresistible. On July 10, 1995, after being informed that followers of Buddhism would hold a ceremony at Jie-Jie Temple to deliver commodities such as wood and rice, the United Front Work Department of the Party Committee of Muchuan County panicked and immediately contacted the local Public Security Bureau and the Party Committee.<sup>22</sup> The leaders of the county government worked out an emergency plan and schedule of actions to interrupt the religious event.<sup>23</sup> The leaders planned to send personnel to toll stations to intercept transportation and prevent the vehicles from passing through the county, and to dispatch officials from the county’s Religious Affairs Office to the Jie-Jie Temple to persuade worshippers to dismiss the ceremony, warning that a riot could break out.<sup>24</sup> At 9:00 a.m., outside the county coal construction company, hundreds of Buddhists gathered, some carrying firecrackers, some beating drums, and others wearing Buddhist costumes; all of them were cheerful and full of expectation, ready to parade on the street, without the slightest intention to riot.<sup>25</sup> Nevertheless, the Undersecretary of the United Front Work Department, the Deputy Director of the Religious Affairs Office, and the Muxi town party secretary, accompanied by a pack of policemen, came up to the crowd and explained the state’s restrictive policies on religious activities.<sup>26</sup> The followers obeyed the order and abandoned the event.<sup>27</sup>

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*Situations in the Management of Religious Affairs in Rural Areas*], ZHONGZHOU UNITED FRONT WORK (1996).

20. *Id.*

21. *Id.*

22. Luo Shan (罗杉), *Muchuan Shudao Vigi Xinjiao Qunzhong Huodong* (沐川疏导一起信教群众活动) [A Religious Activity Has Been Dismissed in Muchuan], 9 UNITED FRONT WORK IN SICHUAN (1995).

23. *Id.*

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

Another case involved similar local efforts to interfere with religious activities. On January 2, 2005, Long Jianwen and Li Guangyi, two principal members of the Xiaozhong sect (a sect of Christianity in China) in Wuding County, attempted to hold a gathering of ninety-five people from seven towns in Wande County to read the commemoration speech “Millennium Kingdom.” The Religious Affairs Office of Wuding County dispatched personnel to the scene and prevented the event from taking place.<sup>28</sup>

### B. *Litigation Against a Defamatory Textbook*

In September 2004, attorney Qiu Jiandong in the Fujian province filed a civil action against the Network Education School of Sichuan University in Wuhou District Court, Chengdu, claiming that his right to religious freedom was infringed by a passage in *The Philosophical Principle of Marxism*, a textbook which states that “religion is, in nature, spiritual opium for the working people.”<sup>29</sup> He alleged that the description violated Article 36 of the Constitution, which prohibits discrimination against religious believers, and demanded correction of the content as well as nominal damages in the amount of one yuan (RMB).<sup>30</sup> The court declined to review the case and rejected the claims.<sup>31</sup> Qiu Jiandong appealed the decision to the superior court, which at the end of 2004 sustained the original ruling.<sup>32</sup> Finally, he turned to the Ministry of Education for administrative reconsideration,<sup>33</sup> but without success.

The above case illustrates the potential conflicts between religious freedom and freedom of speech. According to the generally accepted constitutional principle governing this area, whether the content of the textbook constitutes infringement upon religious freedom should depend on two factors. The first factor is the type of students who would use the

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28. See Wang Aiguo (王爱国), *Yunnan Jidujiao Tebie Wenti Yanjiu* (云南基督教特殊问题研究——云南基督教特殊问题研究——“小众教”产生、演变历史及其治理) [*Studies on Special Problems of Christianity in Yunnan: The Creation, Evolutionary History, and Governance of the Xiaozhong Sect*], 3 RELIGION AND NATIONALITY (2004).

29. Qiu Jiandong (丘建东), Gongyi Susong San Anli Vinfa de Xianzheng Sikao (公益诉讼三案例引发的宪政思考) [Three Public Interest Litigation Cases Bring Us Some Thoughts About Constitutionalism], (Apr. 19, 2010), <http://www.edwinsky.cn/article/view/1109>.

30. Wang, *supra* note 28.

31. *Id.*

32. *Id.*

33. An “administrative reconsideration” (or xingzheng fuyi) is an administrative appeal mechanism established by China’s Administrative Reconsideration Law enacted in 1999. Xingzheng Fuyi, (中华人民共和国行政复议法) [Administrative Reconsideration Law of the People’s Republic of China] (promulgated by the Standing Comm. Ninth Nat’l People’s Cong., Apr. 29, 1999, effective Oct. 1, 1999), <http://www.asianlii.org/cn/legis/cen/laws/arl337/>.

textbook. Since the textbook concerned is not to be used by religious believers, the risk of infringing religious believers' rights is somewhat reduced. Second is the nature of the textbook. If the content of the textbook represents official government views, it is obviously unconstitutional. It is unconstitutional for the state to take any position on religious matters, particularly when it constitutes denigration of religion. On the other hand, if the textbook only represents the personal opinion of the editor, it is not unconstitutional. Any individual should be free to express their own opinions because Article 36 of the Chinese Constitution explicitly requires respect for the rights of believers and nonbelievers.<sup>34</sup> However, all textbooks in China are subject to the approval and censorship of the General Administration of Press and Publication (*Xinwen Chuban Zongshu*), so even ordinary textbooks carry a certain degree of state approval.

Even if actions like the publication of the textbook were unconstitutional, China provides no effective legal remedy to address the legal disputes arising from religious issues; once religious freedoms are violated the victims can only lodge their complaints with the local governments via administrative reconsideration, thus placing religious matters in the hands of bureaucrats. In reality, religious freedom issues are widespread in the Chinese education system. In Xinjiang, for example, it is very common for students to go on fasts, attend spiritual services, wear religious costumes, and read religious books at school.<sup>35</sup> The constitutionality of these practices should be resolved through legal procedures rather than administrative orders.<sup>36</sup>

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34. XIANFA art. 36 (1982).

35. Ren Xinli (任新丽), *Guanyu Dizhi Zongjiao Dui Jiaoyu Shentou de Duice Vanjiu* (关于抵制宗教对教育渗透的对策研究) [*The Study on the Countermeasures Against the Penetration of Religion into Education*], 3 J. XINJIANG NORMAL U. (Soc. Sci. Ed.) (2000) (China).

36. One instance that had substantial influence in this area is the dispute over the New Testament Church in Taiwan. In 1997, New Testament believers in Xi'anshan, Gaoxiong County withdrew all their children in the whole province from their regular schools and enrolled them in their church-sponsored school. They believed the public school was dominated by atheism, which is against their creed. Also, the church-sponsored school provided secular classes like Chinese, English, Mathematics, and Physics, as well as practical courses like vegetable planting, carpentry, cooking, and architecture, all taught by qualified believers. More importantly, children in religious schools would be brought closer to God through religious teachings. See Huang Jintang (黄锦堂), *Lun Zongjiao Ziyou: Jianlun Taibei Shi de Xiangguan Lunti* (论宗教自由——兼论台北市的相关论题) [*On Religious Freedom: Also on Relevant Topics About Taipei City*], in TAIBEI SHIZHENGFU FAGUI WEIYUANHUI (台北市政府法规委员会) [HUMAN RIGHTS PROTECTION: THEORY AND PRACTICE] 77–113 (2005); Xu Zhixiong et al (许志雄), *Xiandai Xianfa Lun* (现代宪法论) [*Modern Constitutionalism*], 1999 YUANZHAO PRESS 116 n.10 (China).

### III. LAWS AND REGULATIONS ON RELIGIOUS PRACTICE

Although Article 36 of the Constitution explicitly protects religious freedom, it also stipulates limitations on such freedom. In practice, both central and local authorities have enacted laws and regulations imposing restrictions on religious freedom.

#### A. *Regulations Enacted by the Central Government*

The Religious Affairs Regulations enacted by the State Council in 2005 are major legislation setting forth many restrictions on religious rights. The basic principle of the Regulations is set out in Article 3:

The state, according to law, protects normal religious activities and upholds the lawful rights and interests of religious groups, places of religious activity, and religious citizens. Religious groups, places of religious activity, and religious citizens shall observe the constitution, laws, rules and regulations and uphold national unity, inter-ethnic cooperation, and social stability. No organization or individual shall use religion to upset social order, harm the health of citizens, or obstruct the state education system, or to engage in other activities that harm national interests, social welfare, or the lawful rights and interests of citizens.<sup>37</sup>

The initial question is, of course, how “normal” religious activities are defined. If what constitutes “normal” is to be determined by administrative agencies, then what remedies are available if their determinations are challenged by unsatisfied believers? Further, the obligation imposed on religions to “uphold . . . social stability” seems to be beyond the range defined in Article 52 of the Constitution, which requires citizens to uphold “the unity of the country and ethnic cooperation,” but does not mention “social stability.”<sup>38</sup> The additional obligation imposed on religious believers by the Regulations may cause arbitrary administrative interference with religious freedom in the name of maintaining “social stability.” Finally, to the list of prohibitions on religious activities provided in Article 36 of the Constitution, namely that “[n]o organization or individual shall use religion to upset social order, harm the health of citizens, or obstruct the state education system,” the

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37. Zongjiao Shiwu Tiaoli (宗教事务条例) [Religious Affairs Regulations], (promulgated by the State Council of the People’s Republic of China, Nov. 4, 2004, effective Mar. 1, 2005) art. 3, <http://chinesejil.oxfordjournals.org/content/5/2/475.full#fn-1>.

38. XIANFA art. 52 (1982).

Regulation adds the catchall phrase “or to engage in other activities that harm national interests, social welfare, or the lawful rights and interests of citizens.”<sup>39</sup> These provisions substantially expand administrative power to regulate religious activities.

Further, Article 6 of the Regulations stipulates:

When religious groups are founded, changed, or disbanded, they shall register such events pursuant to the provisions of *Regulations Governing the Registration of Social Organizations*. The articles of association of religious groups shall conform to the relevant provisions in *Regulations Governing the Registration of Social Organizations*. Religious groups shall conduct activities and receive legal protection in accordance with the articles of association.<sup>40</sup>

As discussed above,<sup>41</sup> strict conditions for the establishment of social organizations have been set forth in *Regulations Governing the Registration of Social Organizations*, according to which citizens may be deprived of their freedom to establish organizations. Thus, applying the same regulation to religious affairs will impose serious restrictions on the establishment as well as the alteration and cancellation of the religious organization.

Additionally, Article 7 of the Regulation provides:

Religious groups may, in accordance with relevant state regulations, compile and print publications for internal religious use. The publication of publicly distributed religious publications shall be subject to state regulations governing publications. Published materials that contain religious information shall comply with the Regulations Governing Publication and shall not contain the following: 1) that which would upset harmonious relations between religious citizens and non-religious citizens; 2) that which would upset harmony between different religions or within a religion; 3) that which discriminates against or insults religious citizens or non-religious citizens; 4) that which propagates religious extremism; 5) that which violates the principle of religious autonomy and independence.<sup>42</sup>

This provision constitutes a strict restraint on freedom of the press. It seems that “relevant state regulations” refers to the *Regulation on the Publication of Internal Information* promulgated in 1997 by the General Administration of Press and Publication (Order No. 10 of the CAPP).

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39. Religious Affairs Regulations, *supra* note 37.

40. *Id.*

41. See *supra* notes 37–40 and accompanying text.

42. Religious Affairs Regulation, *supra* note 37.

According to Article 3 of that Regulation, an approval certificate for print (*zhunyin zheng*) must be granted for both the contracting and undertaking of publishing internal information, regardless of whether such internal information concerns national interests or private interests.<sup>43</sup> Thus, it seems that religious societies are required to obtain a certificate prior to the publication of any religiously related internal information. Although this Regulation should not have this effect because of the promulgation of the Administrative License Law, which dictates that a departmental regulation lacks the power to require an administrative license,<sup>44</sup> the Religious Affairs Regulation still assumes the validity of the Regulation on the Publication of Internal Information and the resulting burden on religious publications.

Regulations of these fundamental rights may also have failed to satisfy the requirement of prior legislative authorization according to Article 8 of the Law on Legislation enacted in 2000.<sup>45</sup> It is true that religious freedom is not expressly included as one of the matters to be regulated only by the National People's Congress (NPC) or its Standing Committee (NPCSC), but since religious freedom is no less important than political rights, personal freedom, and non-state-owned property rights, which are specifically mentioned in Article 8, religion should be covered by the catchall phrase "other matters" for which laws must be enacted by the NPC or NPCSC.<sup>46</sup> In other words, any administrative regulations limiting religious freedom without authorization of laws should be seen as violating the principle of *ultra vires*.

Articles 8 and 9 of the Regulation also set forth rigid restrictive conditions against the establishment of religious colleges and the qualification requirements for such schools.<sup>47</sup> Articles 12 through 19 lay down strict restrictions on the venues, the conditions, the procedures, and the manner of internal management of religious activities, which may be detrimentally inconvenient to religious practices.<sup>48</sup>

Last, but by no means least, the Regulation specifically provides for

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43. *Id.*

44. Zhonghua Renmin Gongheguo Xingzheng Xuke Fa (中华人民共和国行政许可法) [Administrative License Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong. Aug. 27, 2003, effective July 1, 2004), <http://www.lawinfochina.com/law/display.asp?id=3076>.

45. Zhongguo Renmin Gongheguo Lifa Fa (中华人民共和国立法法) [Legislation Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong. Mar. 15, 2000, effective July 1, 2000), [http://www.gov.cn/english/laws/2005-08/20/content\\_29724.htm](http://www.gov.cn/english/laws/2005-08/20/content_29724.htm).

46. *Id.*

47. Religious Affairs Regulation, *supra* note 37.

48. *Id.*

several legal penalties for violations of its prohibitions. First, according to the second paragraph of Article 40, “Large-scale religious activities that harm public security or seriously upset the social order shall be penalized on site in accordance with the laws and administrative regulations on assemblies, parades, and demonstrations. The registering authority shall rescind the registration of the organizing religious group or church/temple that is responsible.”<sup>49</sup> A repeal of registration is obviously a severe penalty that imposes serious restriction on religious practices. Second, certain provisions encourage the state to intervene improperly in religious activities. For example, the third paragraph of Article 40 provides that “religious affairs departments shall order a halt to large-scale religious activities that are held without authorization.”<sup>50</sup> Third, the same paragraph stipulates that religious affairs departments

can impose fines of between 100% and 300% of illicit income. If such a large-scale religious activity is held without authorization by a religious group or a place of religious activity, the registering authority can also order that the religious group or place of religious activity replace the personnel who were directly responsible for the activity.<sup>51</sup>

Likewise, Article 41 states,

[I]n the event of any of the following acts by a religious group or a place of religious activity, the department of religious affairs shall demand correction. If the matter is serious, the registering authority shall order that the religious group or place of religious activity replace the personnel who were directly responsible for the activity.<sup>52</sup>

In both articles, the authority to replace religious personnel may violate the right of a religious group to control its internal management.

Fourth, Article 45 provides that if a religious instructor violates a law, regulation, or rule while engaged in a religious educational activity, he shall be prosecuted according to the law, and the Department of Religious Affairs shall recommend that the relevant religious group rescind his instructor status.<sup>53</sup> This provision constitutes a direct infringement on the right to religious education generally and on the right of religious groups to manage their internal affairs. Fifth, in cases where religious believers or other groups disagree with the official

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49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

sanctions, the Regulation does provide for a judicial remedy, but only after the exhaustion of administrative remedies. Article 46 stipulates that, if one does not accept a specific administrative action by a department of religious affairs, one may apply for administrative reconsideration according to law; only if one does not accept the administrative decision may one bring an administrative litigation, while ordinary administrative litigation is not preconditioned on such a requirement.<sup>54</sup>

Overall, the Regulation authorizes many restrictions on—and in some cases, even deprivations of—the freedom of religious belief and practice protected by Article 36 of the Constitution without providing for sufficient remedies to check against potential abuse of power.

### 1. *Local statutes*

In addition to the central Regulation, certain local regulations and rules also contain strict limitations on religious activities and thus share the same constitutional problems. A typical example is the Zhejiang Provincial Regulation on Religious Affairs (Zhejiang Regulation).<sup>55</sup>

To begin with, Article 7 of the Zhejiang Regulation stipulates that governments at all levels shall protect the legal rights and interests of religious groups and shall coordinate the work of managing religious affairs and guide religions to adapt to the socialist society.<sup>56</sup> In comparison to the superior law, Article 5 of the Regulation, the Zhejiang Regulation's clause allowing government to guide the religions to adapt to the socialist society can easily be interpreted as authorizing local governments to use secular socialist guidelines to intervene in religious practice.

Further, Article 15 of the Zhejiang Regulation provides that religious groups may, in accordance with relevant central regulations, compile and print publications for internal religious use.<sup>57</sup> This article also requires that publicly distributed religious publications be subject to the approval of provincial religious affairs departments and obtain the print approval certificate issued by the provincial administration of press and publication.<sup>58</sup> This article adds two extra requirements to the approval

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54. *Id.*

55. Zhejiang Sheng Zongjiao Shiwu Tiaoli (浙江省宗教事务条例) [Zhejiang Provincial Regulation on Religious Affairs] (promulgated by the Standing Comm. of Zhejiang People's Cong., Dec. 6, 1997, revised by the Standing Comm. of Zhejiang, 2006, effective Mar. 29, 2006), [http://www.chinacourt.org/flwk/show1.php?file\\_id=109328](http://www.chinacourt.org/flwk/show1.php?file_id=109328).

56. *Id.*

57. *Id.*

58. *Id.*

and issuance procedure already existing in Article 7 of the Regulation and is inconsistent with the Administrative License Law.

Article 19 also provides that if verified and registered religious staff from outside the province move to Zhejiang, they must assume a religious status in the province for at least three years and be recommended by relevant religious groups to obtain their household registration.<sup>59</sup> Further, their application is subject to the examination and approval of the provincial religious affairs authority, and they must satisfy the formalities of the requirement of relevant household control.<sup>60</sup> The same applies to in-province religious personnel who need to transfer their household registration out of the province.<sup>61</sup> This provision on household matters does not exist in the Regulation and highlights how religious personnel receive differential treatment based on the household system by introducing Chinese household-related prejudice, such as the “three year” restrictive condition for nonprovincial religious personnel, in possible contradiction of the provisions of Article 33 and 36 of the Constitution.

Last, Article 25 of the Zhejiang Regulation requires religious activity venues to establish administrative organs and implement democratic governance.<sup>62</sup> An administrative organ is comprised of democratically elected religious personnel and religious believers who are elected under the direction of relevant religious groups and then registered at the registration authority of the venue for a term of five years. Any member of the organ in default of her duty is subject to replacement, though the method of replacement is not specified.<sup>63</sup> This article, in essence, argues that a secular government should be allowed to interfere with matters that should be determined solely by religious groups, such as their internal organization and operation.<sup>64</sup>

## 2. *Religion-related provisions in the Military Service Law of the PRC*

According to the Military Service Law, all citizens have the

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59. *Id.* The household registration (*huzi*) used to be a strict requirement for anyone intending to establish regular residence in a particular locality. Since Chinese society has been increasingly mobile in the last three decades, it is no longer strictly required for residential or work purposes, but it is still a precondition for receiving such local public benefits as medical insurance, social welfare, and free education for the children.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

obligation to perform military service regardless of ethnic status, race, occupation, family background, religious belief, or education.<sup>65</sup> This provision reflects the equality principle stipulated by Article 33 of the Constitution, which provides that “all citizens . . . are equal before the law”<sup>66</sup> but fails to accommodate the special needs of those religious believers who have religious reasons for objecting to military service.<sup>67</sup> The Military Service Law establishes a number of penalties for failure to perform military service.

Article 61 of the Military Service Law provides that “if any citizen who . . . has the duty to perform military service refuses to register for military service or evades such registration,” or “if any citizen who is eligible for enlistment refuses to be enlisted or evades enlistment,” or “if a reservist refuses to undergo military training or evades such training, and if any such person [continues to refuse] . . . in spite of persuasion,” the government shall compel him to fulfill his duty of performing military service and punish him with a fine.<sup>68</sup> If any citizen who is eligible for enlistment refuses to be enlisted or evades enlistment, and continues to refuse, he cannot be employed as a public servant or staff or worker of state owned enterprises, and he cannot go abroad or enter a higher school for two years. In wartime, if a reservist refuses to be called into active service or evades such service, or if he refuses to undergo military training or evades such training, and if the case is “serious in nature,” he is required to be punished.<sup>69</sup> This Article imposes an onerous burden on those who fail to perform military service duty, a burden made all the more onerous by the inherent vagueness in the condition that triggers punishment. The second paragraph not only infringes upon religious freedom of conscientious objectors but also violates Articles 42 and 46 of the Constitution with respect to the right to work and to receive education.<sup>70</sup> Particularly, the criminal liability clause of the third paragraph imposes a heavy burden on conscientious objectors of military service.

Additionally, Article 62 of the Military Service Law stipulates that any active serviceman who refuses to perform duties or escapes from the

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65. Zhonghua Renmin Gongheguo Bingyi Fa (中华人民共和国兵役法) [Military Service Law of the People's Republic of China] (promulgated by the President of the People's Republic of China, May 31, 1984, effective Oct. 1, 1984), [http://www.novexc.com/military\\_service\\_law.html](http://www.novexc.com/military_service_law.html).

66. XIANFA art. 33 (1982).

67. *Id.*

68. Military Service Law of the People's Republic of China, *supra* note 65.

69. *Id.*

70. XIANFA arts. 42, 46 (1982).

army for the purpose of evading military service shall be given an administrative sanction according to the regulations of the Central Military Committee, and anyone who escapes from the army in wartime shall be investigated for criminal responsibility.<sup>71</sup> Additionally, anyone who knowingly hires or employs an army deserter shall be ordered not to employ such a person by the county government and be fined.<sup>72</sup> If the misconduct constitutes a crime, criminal liability will be investigated and imposed.<sup>73</sup> The first paragraph in this provision imposes the serious burden of active service on conscientious objectors, while the second paragraph's imposition of administrative and criminal sanctions on the employer who employs an army deserter could lead to employment discrimination with respect to conscientious objectors. Measured by Article 36 of the Constitution, these provisions seem to be seriously flawed.

### 3. *Evil cult as a crime and other restrictions*

The criminal law also imposes many potential burdens on religious people. For example, confined in prison and isolated from the rest of the world, a criminal in China can hardly find an opportunity for practicing religion.<sup>74</sup> Additionally Article 300 of China's Criminal Law, which was amended by the NPC in 1997, provides that "[w]hoever organizes or utilizes superstitious sects, secret societies . . . or sabotages the implementation of the state's laws and executive regulations" shall be sentenced to imprisonment of a fixed term between three and seven years.<sup>75</sup> If the circumstances are especially serious, he can be sentenced to more than seven years.<sup>76</sup> China's Criminal Law also provides that whoever forms or uses superstitious sects or secret societies, or uses superstition to rape a woman or swindle money or property shall be convicted and punished according to Articles 236 and 266, respectively.<sup>77</sup> Additionally, Article 376 of the Criminal Law stipulates

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71. Military Service Law of the People's Republic of China, *supra* note 65.

72. *Id.*

73. *Id.*

74. Geng Guangming & Li Baichao (耿光明、李百超), *Zuifan de Zongjiao Xinyang Chuyi Lvelun* (罪犯的宗教信仰处遇略论) [*Brief Discussion on the Criminal's Religious Belief*], 4 MODERN LAW 53 (2000).

75. Zhongguo Renmin Gongheguo Xingfa (中华人民共和国刑法), [Criminal Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., July 6, 1979, effective Jan. 1, 1980), <http://www.lawinfochina.com/display.aspx?lib=law&id=3>.

76. *Id.*

77. *Id.*

that any reservist who refuses or escapes from enlistment or military training in wartime shall be sentenced to criminal detention or a fixed-term imprisonment of a maximum of three years.<sup>78</sup> Similarly, any citizen who refuses or escapes from military service in wartime shall be sentenced to criminal detention or a fixed-term imprisonment of not more than two years. These provisions are likely to infringe upon the religious freedom of the believers.<sup>79</sup>

More importantly, the NPCSC amended the Criminal Law in 1999 to punish “evil cults,”<sup>80</sup> but this amendment raises more questions than it answers. For example, how is an “evil cult” defined? Who is authorized to interpret this perhaps indefinable phrase? How should abuse of power be prevented in the process of defining and prosecuting an “evil cult”? The Supreme People’s Court (SPC) and Supreme People’s Procuratorate (SPP) jointly passed judicial interpretations twice, in October 1999 and June 2001, for the purpose of setting up judicial guidelines for trying religious cases.<sup>81</sup> Article 1 of the 1999 Explanation defines “evil cults” as

illegal organizations that have been established under the guise of religion, qigong or other forms, deifying their leading members, enchanting and deceiving others by concocting and spreading superstitious fallacies, recruiting and controlling their members, and endangering society.<sup>82</sup>

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78. *Id.*

79. The Taiwan Conference of Justices ruled that military service does not violate religious freedom provided in the Constitution. See *J.Y. Interpretation No. 490*, JUSTICES OF THE CONSTITUTIONAL COURT, JUDICIAL YUAN, [http://www.judicial.gov.tw/constitutionalcourt/en/p03\\_01.asp?expno=490](http://www.judicial.gov.tw/constitutionalcourt/en/p03_01.asp?expno=490) (last updated 2004).

80. Zhonghua Renmin Gongheguo Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Guanyu Qudi Xiejiao Zuzhi, Fangfan He Chengzhi Xiejiao Huodong de Jueding (中华人民共和国全国人民代表大会常务委员会关于取缔邪教组织、防范和惩治邪教活动的决定) [Decision of the Standing Committee of the National People’s Congress on Banning Heretical Cult Organizations, Preventing and Punishing Cult Activities] (promulgated by the Standing Comm. Nat’l People’s Cong., Oct. 30, 1999, effective Oct. 30, 1999), [http://www.novexcn.com/stand\\_comit\\_cult\\_activ.html](http://www.novexcn.com/stand_comit_cult_activ.html) (China).

81. Zuigao Renmin Fayuan Zuigao Renmin Jianchayuan Guanyu Banli Zuzhi He Liyong Xiejiao Zuzhi Fanzui Anjian Juti Vingyong Falv Ruogan Wenti de Jieshi (最高人民法院最高人民检察院关于办理组织和利用邪教组织犯罪案件具体应用法律若干问题的解释) [Explanations of the Supreme People’s Court and Supreme People’s Procuratorate Concerning Laws Applicable to Handling Cases of Organizations and Employing Heretical Cult Organizations to Commit Crimes] (promulgated by the Judicial Comm. Sup. People’s Ct. and the Ninth Procuratorial Comm. Sup. People’s Proc., Oct. 8, 1999, effective Oct. 8 1999), [http://www.novexcn.com/sup\\_peop\\_ct\\_heretical\\_cult.html](http://www.novexcn.com/sup_peop_ct_heretical_cult.html) (China).

82. *Id.*

Articles 2 and 3 of the Explanation also delineate cases that shall be regarded as “especially serious” in Article 300 of the Criminal Law. Punishment shall be determined, according to Article 300, Item 1 of the Criminal Law, for the organizers and employers of an evil cult and the participants of the following activities:

1) assembling crowds to besiege and [attack] State organs, enterprises or institutions, and disrupt their work, production, operation, teaching, or research activities; 2) holding illegal assemblies, parades and demonstrations, or inciting, deceiving and organizing their members or others to gather together to besiege, charge, seize or disrupt public places or venues for religious activities, or disrupt social order; 3) resisting departments concerned to ban their organizations, or resuming the banned organizations or establishing other evil cult organizations, or continuing their evil cult activities; 4) instigating, deceiving and organizing their members or others to refuse to fulfill their legal obligations, with [serious consequences]; 5) publishing, printing, duplicating and distributing publications spreading cult fallacies, and printing symbols of evil cult organizations; 6) other activities that violate the State laws and administrative regulations.<sup>83</sup>

Although the judicial definition of “evil cults” and its sanctions may help to narrow such a problematic phrase and reduce the abuse of public power, its vague, broad, and loaded terms, such as “superstitious fallacies” and “endangering . . . society,” may be easily manipulated to suppress particular religions.<sup>84</sup>

#### IV. RELIGIOUS PRIVILEGES AND SPECIAL TREATMENTS

Article 36 of the 1982 Constitution requires equal treatment of believers and nonbelievers, but in practice, several laws offer religious believers and other groups a variety of privileges and immunities. The Law on Ethnicity Autonomous Regions, the Law on the Protection of Consumer’s Rights, and the Prison Law all require that various ethnicities learn from and help each other and respect each other’s language, customs, and religious beliefs.<sup>85</sup> According to Article 251 of

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83. *Id.*

84. *Id.*

85. Zhonghua Renmin Gongheguo Minzu Quyu Zizhi Fa (中华人民共和国民族区域自治法) [The People’s Republic of China Regional Ethnic Autonomy Law] (promulgated by the Sixth Nat’l People’s Cong., May 31, 1984, effective Oct. 1, 1984), <http://www.cecc.gov/pages/virtualAcad/index.phpd?showsingle=9507> (China); Zhonghua Renmin Gongheguo Xiaofeizhe Quanyi Baohu Fa (中华人民共和国消费者权益保护法 法律对照) [Law of the People’s Republic of China on Protection of the Rights and Interests of the Consumers]

China's Criminal Law, any state functionary that unlawfully deprives a citizen of his religious freedom or infringes upon the customs and habits of ethnic minorities shall, if the circumstances are serious, be sentenced to criminal detention or imprisonment for up to two years.<sup>86</sup>

#### A. Criminal Law

Ethnic customary laws are often inconsistent with the current criminal law system. Specifically, behaviors regarded as criminal under the current penal system are sometimes regarded as normal practices in ethnic customary laws. Such behaviors mostly stem from the economic activities, lifestyles, and religious cultures of ethnic minority groups. China's basic ethnic policy requires that the enforcement of the Criminal Law take into account ethnic customs, especially those involving religious beliefs.<sup>87</sup> As a result, many minority autonomous localities modify provisions of laws or administrative regulations to adapt them to local customs. For example, conduct that constitutes a criminal act under the Criminal Law may be given lenient treatment or even be exempted from legal penalty.<sup>88</sup> According to a policy of the Central Party Committee enacted in 1984, the courts pursue fewer arrests, apply fewer death penalties, and are more lenient when crimes involve ethnic minorities.<sup>89</sup> This policy includes giving more lenient sentences for such crimes.<sup>90</sup> Such considerations are relevant to a number of specific

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(promulgated by Order No. 11 of the President of the People's Republic of China, Oct. 31, 1993, effective Jan. 1, 1994), <http://www.lehmanlaw.com/resource-centre/laws-and-regulations/consumer-protection/law-of-the-peoples-republic-of-china-on-protection-of-the-rights-and-interests-of-the-consumers-1994.html>; Zhongguo Renmin Gongheguo Jianyu Fa (中华人民共和国监狱法) [Prison Law of the People's Republic of China] (promulgated by Order No. 35 of the President of the People's Republic of China, Dec. 29, 1994, effective Dec. 29, 1994), [http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content\\_1383784.htm](http://www.npc.gov.cn/englishnpc/Law/2007-12/12/content_1383784.htm).

86. Criminal Law of the People's Republic of China, *supra* note 75.

87. See Yin Jushu (尹巨书), *Qianxi Bianjiang Shaoshu Minzu Diqu Chonghun Zui de Shiyong* (浅析边疆少数民族地区重婚罪的适用) [*Preliminary Analysis of the Bigamy Crime as Applied to the Minority Boarder Regions*], (May 11, 2010), <http://www.gy.yn.gov.cn/Article/spsw/fajx/201005/21374.html> (China).

88. Wu Dahua (吴大华), *Lun Woguo Xingfa Zai Shaoshu Minzu Diqu de Shiyong* (论我国刑法在少数民族地区的适用) [*On the Applicability of Chinese Criminal Law in Ethnic Minority Areas*], 1989 PRESS OF PEOPLE'S PUBLIC SECURITY UNIVERSITY OF CHINA, at 56 (China); Yao Benmo (姚本模), *Banli Shaoshu Minzu Diqu de Teshu Anjian Yao Tebie Zhuzhong Shehui Xiaoguo* (办理少数民族地区的特殊案件要特别注重社会效果) [*Pay More Attention to the Social Effect in Handling Special Cases in Ethnic Minority Regions*], 8 PEOPLE'S PROCURATORATE (1987) (China).

89. See Zheng Qimeng (郑齐猛), *Dute de Minzu Xingshi Zhengce* (独特的民族刑事政策) [*On a Unique Criminal Policy Toward Minorities*], <http://www.56-china.com.cn/china2010%201-12/10-10q/10-10mz23.htm> (China).

90. Dahua, *supra* note 88, at 20.

criminal provisions.

First, Article 125 prohibits illegal manufacturing and trading of firearms.<sup>91</sup> This provision should be interpreted to accommodate several minorities in Southern China, such as the Miao and Tong ethnicities in Congjiang, Liping, Rongjiang of Guizhou Province, where almost every young man carries a homemade gun for the purpose of decoration.<sup>92</sup> The same applies to the remote northern pasturing areas, where ethnic minorities live on hunting and animal husbandry. In these cases, the manufacturing and selling of guns should not be regarded as criminal offenses. Only those who sell large amounts of guns to other ethnicities (e.g., to the Han people) for profit, thereby causing more serious problems, should be punished by law.

Second, Article 236 of the Criminal Law defines statutory rape with respect to underage girls.<sup>93</sup> The current criminal law regards a girl under 14 as a minor, and any sexual conduct with her would constitute statutory rape.<sup>94</sup> However, it is entirely normal for girls of that age or younger to marry under the early marriage system of the Miao ethnic minority in Yunnan province.<sup>95</sup> Indeed a number of ethnic minority groups have long regarded it proper for thirteen-year-old girls to hold adulthood ceremonies and take part in social activities with the opposite sex (e.g. the custom of “daitiantou” in Tibet, which involves changing a young girl’s hair-dress style), after which marriage and sexual conduct are allowed by the local conventions.<sup>96</sup> While society’s interests in avoiding underage marriage are certainly legitimate, imposing criminal sanctions in this cultural context might seem harsh in the absence of physical harm or other serious consequences.

Third, Article 237 of the Criminal Law punishes indecent conduct, including insults by force, toward women.<sup>97</sup> This provision may need to be modified as it applies to some minority regions where traditional festivals or social events countenanced by local customs might otherwise run afoul of criminal norms. Although some of this conduct is

91. Criminal Law of the People’s Republic of China, *supra* note 75, art. 125.

92. See Hu Yinan, *Writing on the Wall for Guns*, CHINA DAILY (Aug. 18, 2010, 7:10 AM), [http://www.chinadaily.com.cn/china/2010-08/18/content\\_11167140.htm](http://www.chinadaily.com.cn/china/2010-08/18/content_11167140.htm).

93. Military Service Law of the People’s Republic of China, *supra* note 65, at art. 236.

94. *Id.*

95. Jeffrey Hays, *Miao Minority: History, Religion, Men, Women, Facts and Details*, FACTS AND DETAILS, <http://factsanddetails.com/china.php?itemid=174&catid=5&subcatid=31#12> (last visited Sept. 6, 2011).

96. *Id.*

97. Military Service Law of the People’s Republic of China, *supra* note 65, art. 237.

inconsistent with modern laws and morals, criminal liability would be seen as excessive in the cultural context to the extent that the conduct stops short of causing harm to the individuals involved or to the social order in general.

Last, Article 258 of the Criminal Law, which concerns bigamy,<sup>98</sup> may be problematic when applied to certain minority regions where religious beliefs and local customs allow some variations from stable monogamous relationships. It is quite common in some regions for brothers to marry the same woman, for sisters to share the same husband, or for a man or woman to have many spouses. More often than not, marriages or divorces are authorized by religious or customary practices rather than by legal procedures. While the state in general has compelling reasons to discourage bigamy, rigid application of normal criminal sanctions in this cultural setting, particularly when those concerned assume they are not acting in an antisocial manner, would be unduly harsh.

### B. Tax Exemptions

Article 36 of the Religious Affairs Regulation provides that religious groups and places of religious activity shall implement state policies on finances and receive tax exemptions and deductions according to the relevant state tax code provisions.<sup>99</sup> In 1986, the National Tax Bureau promulgated the Provisional Regulations on Property Tax. Article 5 of the regulations provides that self-use houses in religious churches, gardens, and historic relics are exempted from property tax.<sup>100</sup> In 1987, the same bureau enacted the Provisional Regulations on Land Use Tax in Cities and Towns, which provides that the self-use lands in religious churches, gardens, and historic relics are exempted from land-use tax. “Self-use” property of a church or temple is the abode of religious personnel or the houses or rooms where religious ceremonies or rituals are held.<sup>101</sup> Also in 1987, the Administration of Religious Affairs under

98. Criminal Law of the People’s Republic of China, *supra* note 75, art. 258.

99. Religious Affairs Regulations, *supra* note 37, art. 36.

100. Zhonghua Renmin Gongheguo Fangdichan Shui Zanxing Tiaoli (中华人民共和国房地产税暂行条例) [Provisional Regulations of the People’s Republic of China on Real Estate Tax] (promulgated by the State Council of China, Sep. 15, 1986, effective Oct. 1, 1986), art. 5, [http://www.novexc.com/provis\\_real\\_prop\\_tax\\_94.html](http://www.novexc.com/provis_real_prop_tax_94.html).

101. *Xingzheng Fagui Xuanbian* (行政法规选编) [*Select Compilation of Administrative Statutes*] 1 LAW PRESS 948–49, 957–58 (1991).

the State Council decreed that both Buddhist and Taoist churches and temples are exempted from paying taxes on income from entrance tickets.<sup>102</sup> Likewise, religious income from donations, disciples' contributions, and religious activities are tax-free. Finally, the Central Office of CCP Committee issued a normative document in 1985 that exempted from taxes many religious affiliated expenses, including foodstuffs, vegetables, tea, fruits, and livestock produced by religious groups, and incomes from providing services, manufacturing, or business for self-reliance purposes.<sup>103</sup>

### *C. Regulations on Food and Hygiene Management*

In 1978, the Ministry of Finance, the National Ethnicity Committee, and the State General Administration of Labor jointly issued the Notice on Proper Settlement of the Catering for Hui Nationality Employees,<sup>104</sup> which requires respect for the habits of minorities formed through long history and prohibits any prejudice thereof. In 1980 the Ministry of Commerce circulated the Notice About Butcher and Processing of Beef and Mutton for Hui and Other Nationalities, which requires respect for minority conventions and observance of the national policies of ethnicity and religions. This notice states that beef or mutton for Hui people shall be prepared by mullahs only.<sup>105</sup> In 1989, China Airlines and the Ministry of Communication successively promulgated notices to cater for Islamic passengers.<sup>106</sup> In 2000, the Ministry of Education and the National

102. See *Fojiao Siyuan de Guanli yu Jianshe Ruogan Wenda* (佛教寺院的管理与建设若干问答) [Several Q & A for the Management and Construction of Buddhist Temples], [http://www.nyfj.org.cn/fagui/FoJiaoSiYuanDeGuanLiYuJianSheRuoGanWenDa\\_\(1\)](http://www.nyfj.org.cn/fagui/FoJiaoSiYuanDeGuanLiYuJianSheRuoGanWenDa_(1)) (last visited Sept. 3, 2011).

103. *Zhuanfa Zhongyang Bangongting Diaochazu Guanyu Luoshi Dang de Zongjiao Zhengce Ji Youguan Wenti de Diaocha Baogao de Tongzhi* (转发中央办公厅调查组关于落实党的宗教政策及有关问题的调查报告的通知) [The Central Office's Notice About Distributing the Investigation Report on Implementing the Party's Religious Policies and Related Problems] (promulgated by the Office of the Central Committee of the CCP and the Office of the State Council, 1985), <http://www.zxtlaw.com/indexb/indexb6.htm>.

104. *Guanyu Tuoshan Jiejue Huizu Deng Zhigong de Huoshi Wenti de Tongzhi* (关于妥善解决回族等职工的伙食问题的通知) [Notice Regarding Proper Resolution of the Food Problems for the Muslim Workers] (promulgated by the Ministry of Finance, the State Commission of Ethnic Affairs, and the State Bureau of Labor, July 14, 1978), <http://law.lawtime.cn/d550659555753.html>.

105. *Guanyu Huizu Deng Shiyong de Niuyang Tuzai Jiagong Wenti de Tongzhi* (关于回族等食用的牛羊屠宰加工问题的通知) [Notice Regarding the Slaughtering and Processing of Cow and Sheep for Muslim Food] (promulgated by the Ministry of Commerce, Oct. 4, 1980, effective Oct. 4, 1980), <http://www.foodqs.cn/news/zcfg04/20038111506.htm>.

106. *Guanyu Zuohao Dui Xinfeng Visilanjiao Ge Shaoshu Minzu Lvke Huoshi Gongying de Tongzhi* (关于做好对信奉伊斯兰教各少数民族旅客伙食供应的通知) [Notice Regarding the Proper Provision of Food for Passengers of All Islamic Minorities] (promulgated by the Bureau of

Ethnicity Committee circulated a notice to establish mosques and kitchens for Muslims in various schools.<sup>107</sup> In addition, all provinces, autonomous regions, and municipalities have formulated regulations regarding Islamic food in their individual jurisdictions.<sup>108</sup> At present, laws, regulations, and other rules regarding the management of food for mosques require special provisions: occupational qualifications, regulations on the internal and external conditions of businesses involving food for Muslims, regulations on the source of food for Muslims, and certificate requirements for Islamic food production and trade.<sup>109</sup>

#### *D. Media Regulation and Banning of The Da Vinci Code*

Since religion in China is a sensitive issue affecting social stability, the Chinese government maintains an extremely cautious and protective attitude toward potential religious conflicts. In particular, the state has regulated the media tightly, requiring that “all news reports relating to religions show respect to minority customs and religious beliefs, and refrain from anything that smears, insults, or discriminates the image of minorities or distorts religious creeds.” The state has also said that “in propaganda, we must pay sufficient understanding and respect to

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Transport Administration under the Ministry of Transportation, May 13, 1989), <http://www.seac.gov.cn/lSNSJG/jiandujiancha/2010-07-01/1277858116063062.htm>.

107. Edward Wong, *Wary of Islam, China Tightens a Vise of Rules*, N.Y. TIMES, Oct. 18, 2008, <http://www.nytimes.com/2008/10/19/world/asia/19xinjiang.html>.

108. See, e.g., Shanghai Shi Qingzhen Shipin Guanli Tiaoli (上海市清真食品管理条例) [Regulation for Muslim Food of Shanghai Municipality] (promulgated by Shanghai People's Congress Standing Comm., Aug. 11, 2000), <http://www.shanghai.gov.cn/shanghai/node2314/node3124/node3125/node3126/userobject6ai425.html> (China); Henan Sheng Qingzhen Shipin Guanli Banfa (河南省清真食品管理办法) [Regulation for Muslim Food of Henan Province] (promulgated by Henan Provincial People's Government, Oct. 18, 1998), [http://www.law-lib.com/law/law\\_view.asp?id=30716](http://www.law-lib.com/law/law_view.asp?id=30716).

109. For instance, the City Ethnic Work Regulation states that

Muslim catering service enterprises, food production and processing enterprises must have a certain proportion of minority Muslim employees and administrators. Muslim food transportation vehicles, measurement equipment, storage containers, and processing and selling areas have exclusive use from other kinds of food. When Muslim catering service enterprises and food production, processing enterprises implement contracting or leasing, the contractor or tenants should be minorities. When two or more Muslim catering service enterprises, food production and processing enterprises merge, they cannot change the content of their services without obtaining the consent from the Department of Ethnic Affairs of local governments.

Chengshi Minzu Gongzuo Tiaoli (城市民族工作条例) (promulgated by the State Council, Oct. 23, 1993), [http://www.china.com.cn/law/flfg/txt/2006-08/08/content\\_7060307.htm](http://www.china.com.cn/law/flfg/txt/2006-08/08/content_7060307.htm).

minority customs and religious beliefs, and . . . shall not deface, insult, or fabricate. When it comes to sensitive issues, more attention shall be paid to avoid hurting the feelings of minorities and providing excuses for hostilities.”<sup>110</sup>

According to the provisions of the State Administration of Radio, Film, and Television, propaganda on important issues related to ethnic minorities and religions shall be conducted prudently and strictly, pursuant to the central government’s unified arrangement and standard. Any report regarding religious ceremonies should be moderate and prudent. In 2006, the Tentative Regulation on Celestial Burial enacted by the government of the Tibet Autonomous Region emphasized that celestial burial is a Tibetan custom protected by national law which prohibits the watching, photographing, and video recording of such occasions.<sup>111</sup> No words, pictures, or reports on celestial burial are allowed to appear in newspapers, magazines, radio programs, films, televisions, or websites.<sup>112</sup>

In 2006, the film *The Da Vinci Code* was prohibited for fear that the film would offend the Christian community. The film told the story of a renowned Harvard symbolist summoned to the Louvre Museum to examine a series of cryptic symbols relating to Da Vinci’s artwork. In decrypting the code, the symbolist uncovered the key to one of the greatest mysteries of all time—that Jesus is not God, but only a mortal man, who married and had a daughter with Mary Magdalene. Angered by the film’s blasphemous implications, four major Christian groups in Thailand demanded that the film be banned,<sup>113</sup> hundreds of Catholics demonstrated in India,<sup>114</sup> and China’s Catholic Patriotic Association issued a notice claiming that “both the film and novel are fabrication and nonsense, which distorted Catholic creeds and history, generated confusion and misunderstandings among readers and believers, and caused enormous damage to Christian beliefs. Many communities, religious groups and Catholics have sharply criticized and condemned

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110. Shen Zhengfu (沈正赋), *Yanlun Ziyou Buneng Jianta Zongjiao Ganqing* (言论自由不能践踏宗教感情) [*Free Speech Should Not Be Allowed to Harm Religious Feelings*], 3 MEDIA TODAY (2006).

111. The Australian Nat’l Univ., *Heritage and Archaeological News Briefs*, CHINA HERITAGE NEWSL. (March 13, 2011, 14:46:34), [http://www.chinaheritagenewsletter.org/briefs.php?searchterm=005\\_arch\\_her.inc&issue=005](http://www.chinaheritagenewsletter.org/briefs.php?searchterm=005_arch_her.inc&issue=005).

112. Shen Zhengfu, *supra* note 110.

113. ‘*Da Vinci*’ *Provokes Widespread Protests*, ASSOCIATED PRESS, May 17, 2006, available at [http://meta-religion.com/World\\_Religions/Christianity/Articles/Da\\_Vinci/da\\_vinci\\_provokes.htm](http://meta-religion.com/World_Religions/Christianity/Articles/Da_Vinci/da_vinci_provokes.htm).

114. *Id.*

the film and the novel.”<sup>115</sup> The notice called for a boycott of the film and “conscious maintenance of the sanctity and authority of the Bible.”<sup>116</sup> Under pressure from the Christian community, the Chinese government prohibited all cinemas from showing the film.

From a legal perspective, if the film was really based on fabrications it could be banned for committing libel. However, any governmental intervention in the incident may violate the principle of separation of church and state. In fact, in the United States, where the film was produced and first exhibited, most Christians and their churches remained calm and silent; they did not watch the movie, but neither did they vehemently protest on the streets or demand the banning of the film. Only when the state remains neutral on religious matters will people of different beliefs be tolerant and respectful of each other.

## V. CHURCH AND STATE RELATIONS

By providing special treatment for religions, Chinese governments project themselves into religious affairs, producing entanglement between churches and the secular state. Indeed, by providing funds to religious schools and religious construction, establishing religious associations, and evaluating religious personnel, governments at various levels are deeply involved in matters that more properly belong to religious organizations.

### A. Governmental Support for Religious Construction

The southwest of Sanya City, Hainan Province, is believed to be where Buddha Guanyin began his visit to the South Sea. It was also part of the east journey of Monk Jianzhen during the Tang Dynasty. In order to exploit tourism and to spread Buddhist culture, an enterprise called Sanya Nanshan Guanyin Garden Construction Development Co. invested 800 million yuan (CNY) to construct Nanshan Guanyin Holy Image on the Sea, a religious statue 108 meters in height, and the Nanshan Guanyin Cultural Garden. Beginning in 1994, the project went through the proposal, planning, and construction stages, and was approved by the State Development and Reform Committee, State Administration of Religious Affairs, and the Hainan local government. In 2005, the project

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115. Wei Wu (魏武), *Zhongguo Tianzhujiào Haozhào Jiāozhōng Jiānjue Dìzhì Dà Vinci Mima* (中国天主教号召教众坚决抵制“达-芬奇密码”) [*The Chinese Catholic Association Appealed to the Believers to Firmly Boycott the “Da Vinci Code”*] (May 19, 2006), <http://news.sohu.com/20060519/n243319512.shtml>.

116. *Id.*

was completed and opened to the public. The scope of the project includes sightseeing, hotels, travel agencies, real estate construction and management, and the design and development of gifts, souvenirs, and other cultural products. The project was centered on the Buddha statue and was originally approved by the state as a religious place, but ultimately became a commercial center with “good profitability and prospect.”<sup>117</sup>

During the six-year construction period, leaders from the central government visited the construction site, where they were briefed about the project’s progress and expressed their support.<sup>118</sup> In 2004, at the press conference for the Opening Ceremony of the Holy Image, a leader from the Sanya City government even expressed that “the completion of the project owed a lot to the support and effort of the State Administration of Religious Affairs, the Hainan Provincial Government, the Party’s Committee of Hainan Province . . . and the government of Sanya City.” The leader also stated that “the government of Sanya [would] concentrate all city resources [to cooperate] with the Chinese Buddhist Association and Nanshan Temple in the opening ceremony.”<sup>119</sup> Later, it was reported that the local government insisted that Guanyin Company transfer to the government the property rights of Guanyin Open Copper Image and the relevant assets of the Nanshan Guanyin Garden Project. A municipal authority issued a decree and took over all the property rights of the project. The city government only paid 40 million yuan to the company, leaving almost 800 million yuan unpaid. Furthermore, the National Assets Committee, the Civil Administration, and the Public Security Bureau sent personnel to clean and renovate the site, and the Guanyin Company had to stop its business. As a result, the government took over the enterprise and now directly runs a religious site.<sup>120</sup> In both instances, the government transformed a religious facility into a government project.

This incident illustrates that Chinese government may be involved in the construction and operation of places of religious activity. Although

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117. See Tong Zhiwei (童之伟整理), *Difang Zhengfu Touzi Zongjiao Xiangmu Sheji de Falv Wenti* (地方政府投资宗教项目涉及的法律问题) [*Legal Issues Involved in Local Government Investment in Religious Projects*], 11 LEGAL SCI. MONTHLY 13 (2005) (China).

118. *Id.*

119. *Id.*

120. *Id.*; see also Tong Zhiwei (童之伟), *Women Bu Yinggai Ba Zhengquan Vu Mouzhong Zongjiao Jiehe Zai Viqi* (我们不应该把政权与某种宗教结合在一起) [*We Should Not Integrate Politics into Religion: A Brief Note on the Academic Symposium on Sanya Nanshan Guanyin Holy Image Construction and the Relationship Between Church and State*], 2 SCI. & ANTITHEISM (2006).

Article 36 of the Constitution does not explicitly require the separation of church and state, both the government and the academic community agree that separation of church and state is a principle implicit in the Constitution.<sup>121</sup> In 1999, at the Central Ethnicity Work Conference, the General Secretary of the CCP and the State President Jiang Zemin openly expressed that the principle of separation of church and state should be upheld, implying that no religion should have any privilege over the Constitution and laws, and no religion should be allowed to interfere with the state's administration, judiciary, or educational system.<sup>122</sup> Article 36 of the Constitution should be interpreted to prohibit the state from interfering with religious affairs. The preceding cases illustrate that the government was involved too deeply in religious affairs, thus creating the impression that the government favored a certain religion or sect. In countries committed to the separation of church and state, such governmental involvement would be deemed unconstitutional.

The preceding cases also illustrate the obvious difference between tourist construction and religious construction. If the purpose was to develop tourism, it would not be unconstitutional for the government to invest in the project. But if the government invests a large amount of money, time, and energy in the construction and opening ceremony of a religious image, then it is natural to suspect that the government has engaged in the construction of religious facilities, which constitutes involvement in religious affairs. In spending tax money to construct a holy image, the government may have infringed upon the rights of secular taxpayers, who constitute the vast majority of China.

The principle of separation of church and state not only prohibits religions from intervening in secular affairs, but also prohibits state functionaries from intervening in and taking over religious affairs. While the former is partially emphasized in China, the latter seems to be easily neglected. To make things worse, many party and government officials view their religious involvement as an important achievement in their careers.

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121. See Wang Xiuzhe, *Constitutional Protection of the Right to Freedom of Religion or Belief in China—From Constitution to “National Human Rights Action Plan,”* INSTITUTO DE INVESTIGACIONES JURÍDICAS, <https://www.juridicas.unam.mx/wcc/ponencias/11/193.pdf> (last visited Mar. 19, 2011).

122. Han Dayuan, *Tentative Discussion on the Constitutional Value of the Principle of Separation of Church and State*, 10 LEGAL SCI. (2005); Guo Yanjun (郭延军), *Woguo Chuli Zhengjiao Guanxi Ying Bingchi Shenme Vuanze* (我国处理政教关系应秉持什么原则) [*The Principle of Handling Church-State Relations*], 6 LEGAL SCI. (2005).

*B. Religious Schools*

The principle of separation of church and state does not mean, of course, that the state has nothing to do with religion. In fact, every government is more or less involved in religious activities. The key question is the purpose and consequences of such involvement. Public funding of religious schools is one example. In China, the prospect for obtaining a private endowment is not as promising as in some other countries, and the lack of funds is a prominent issue for all religious academies. To cope with this issue, government assistance is inevitable.

In 1996, the State Administration of Religious Affairs issued the Suggestion on the Enhancement and Improvement of the Work of Religious Academy, which required various channels to be available for religious education fundraising. Places of religious activity (i.e., churches and temples) earning good profits are encouraged to donate certain funds to support the religious academies. In addition, the religious academies can charge tuition to places of religious activity for sending students to the academies. In recent years investments and funds from overseas have also helped finance religious education. Overall, any donations can be accepted if they have no additional conditions and do not threaten the establishments' independence. Large donations must be reported and approved according to central government rules.<sup>123</sup>

In reality, both central and local governments have invested directly in religious academies. Take the Buddhist academies as an example. Their funds come mainly from the following three sources: (1) government support for academies that are organized by religious groups, such as the Chinese Buddhist Academy and its Qixiashan Branch; (2) appropriations by the provincial Buddhist associations for academies, such as the Buddhism academies in Fujian and Shanghai; and (3) self-financing from the Buddhist temples for academies, such as Minnan Buddhism Academy and its Lingyanshan Branch, and the Buddhism academies in Caixi, Yunmen, Putuoshan, and Ermeishan. Funds from the first avenue are guaranteed, but insufficient, while the funds from the second avenue are not guaranteed to be available, and

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123. Zhonggong Zhongyang, Guowuyuan Guanyu Jinyibu Zuohao Zongjiao Gongzuo Ruogan Wenti de Tongzhi (中共中央、国务院关于进一步做好宗教工作若干问题的通知) [Notice Regarding the Improvement of Religious Works on Several Issues] (promulgated by the Central Committee of the CCP and the State Council, Feb. 5, 1991), [http://www.chinadaily.com.cn/dfpd/xizang\\_zjzc/2011-04-12/content\\_2278754.html](http://www.chinadaily.com.cn/dfpd/xizang_zjzc/2011-04-12/content_2278754.html); see also Zongjiao Yuanxiao Nengfou Yinjin Waizi Banxue (宗教院校能否引进外资办学) [*May Religious Schools Introduce Foreign Investment for Education?*], CHINA BUDDHISM INFO. NETWORK, <http://www.buddhism.com.cn/zcfg/zcdw/zc7.htm> (last visited Aug. 31, 2011).

those from the third avenue are guaranteed, but only to an extent.<sup>124</sup> Added together, these funds are not sufficient even to improve the conditions of Buddhist teaching, let alone to expand the scale of the academy. Over the years, the central government has provided considerable funding to the Chinese Buddhist Academy and its Qixiashan Branch in Nanjing, particularly for improving teaching conditions. These donations have reportedly encouraged the Buddhist community and enhanced the confidence and strength of Buddhist academies.<sup>125</sup> Under China's current circumstances, if government support is struck down for violating the constitutional principle of separation of church and state, the Buddhist academies across the country may suffer so severely from the shortage of funds as to threaten their subsistence. With this in mind, public investment should at least be made more transparent, focusing on the principle that religious education should be primarily self-reliant and that government should gradually withdraw from religious funding.

### *C. The Appraisal System for Religious Personnel*

The Chinese governments have set up appraisal systems for religious personnel. The following has been reported:

[A]s one of the key counties in Chongqing Municipality, Liangpin County currently has Buddhism, Catholicism and Christianity, with nine churches, 41 religious personnel and 85,000 believers. To enhance the moral and political education of religious personnel, continuously improve their personal qualities, and implement orderly management of religious activity places, the United Front Work Department of Liangpin Party Committee formulated the Implementation method for the Performance Appraisal of Religious Personnel, which uses a quantitative appraisal method, and adopts a spot-test-and-concentrative-inspection measure in conducting an integrated appraisal of legally registered religious personnel in the county in seven aspects, i.e., patriotism and religious love, religious activity, service to the believers, observance of laws, contribution to society, political life, and personal work summary. These seven aspects should be examined by the end of each year. Anyone who scores 85 or above will be classified as "excellent" and will be praised by the county's religious administrative

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124. SHENG HUI (圣辉), ZAI FOJIAO JIAOYU HE WENHUA GONGZUO WEIYUANHUI SHANG DE GONGZUO BAOGAO (在佛教教育和文化工作委员会上的工作报告) [WORK REPORT ON THE WORKING COMMITTEE OF THE BUDDHIST EDUCATION AND CULTURE] (2005), available at <http://lsbbs.lingshan.cn/Article/ShowArticle.asp?ArticleID=52>.

125. *Id.*

department. Anyone who scores below 60 shall be regarded as a failure and be subject to remonstrance by his associates according to the command of the county's religious affairs department. Anyone fails the appraisal for a cumulative two years shall be deprived of his religious status by relevant religious groups under the recommendation of the county religious affair department.<sup>126</sup>

This report reveals that the governments at various levels pervasively intervene in religious affairs and evaluate religious activities on the basis of secular standards, which may result in severe prejudice against religious freedom.

Authorizing the Government Religious Affairs Department to recommend the deprivation of an organization's or instructor's religious status amounts to a serious intervention in religious affairs. In November 2005, the Hangzhou Buddhist Association asked the Zhejiang Provincial Buddhist Association for direction by submitting a Report about the Cancellation of Shi Yuezhao's Religious Status. This report concerned a religious person, Shi Yuezhao, who was in the Qinglian Temple, Leqing County, Zhejiang Province in 1988. In May 2000, Shi Yuezhao was invited to be the abbot of Mount Tianmu Temple. In October 2004, he was detained and arrested by the Beijing Public Security Bureau for committing fraud, and was sentenced to two years imprisonment for illegally accessing national secrets. Article 45 of the Religious Affairs Regulations of the State Council provides that, "if a religious instructor violates a law, regulation, or rule while engaging in a religious educational activity, he shall be prosecuted according to law, and the department of religious affairs shall recommend that the relevant religious group rescind his instructor status."<sup>127</sup> The report submitted by the Lin'an City Buddhist Association recommended the rescission of Shi Yuezhao's Buddhist instructor status. In December 2005, the Zhejiang Buddhist Association approved the report, and the decision was later affirmed by the Buddhist Association of China.<sup>128</sup> In this case, Buddhist associations were acting on the recommendations of local government

126. Liang Ping (梁平), *Jianli Zongjiao Jiaozhi Renyuan Gongzuo Kaoping Zhidu* (建立宗教教职人员工作考评制度) [*Establishing the Examination and Evaluation System for the Works of Religious Personnel*] (July 4, 2005, 11:27 AM), <http://liangping.mofcom.gov.cn/aarticle/dongtai/200507/20050700145691.html>.

127. Religious Affairs Regulations, *supra* note 37.

128. See Zhongguo Fojiao Xiehui (中国佛教协会) [Buddhist Association of China], *Guanyu Quxiao Shi Yuezhao Jiaozhi Renyuan Shenfen Wenti de Fuhun* (关于取消释月照教职人员身份问题的复函) [*Reply to the Issue of Rescinding the Religious Instructor Status of Shi Yuezhao*], 3 FAYIN (2006), available at <http://www.dlib.cnki.net/kns50/detail.aspx?dbname=CJFD2006&filename=FYZZ200603006>.

officials. Such a practice is likely to encourage religious associations to assume quasi-official power and subsequently carry out the decisions made by administrative agencies. As a result, the religious associations become a channel by which the government can administer and restrict religious activities, inevitably creating entanglements between church and state as well as encouraging religious reliance on government appointments.

#### *D. Religious Association in China*

In recent years the religious associations in China have increasingly become quasi-state organizations, with their independence continually declining. The official and political traits are unmistakable in their Articles of Association. The central tenets of these Articles, like the articles of the Chinese People's Political Consultative Conference, bear obvious political characteristics. In 2002, for example, the Seventh National Congress of the Buddhist Association approved the Articles of the Chinese Buddhist Association, in which Article 2 stipulates that it is the duty of the Association "to assist the people's government with implementing the policy on religious freedom, to uphold the legal rights and interests of the Buddhist societies, [and] to actively participate in the construction of the socialist material and spiritual civilization."<sup>129</sup> Likewise, the Seventh National Congress of the Taoist Association passed in 2005 the Articles of Chinese Taoist Association, in which Article 4 states that "the tenet of this association is to abide by the Constitution, laws, regulations and rules, uphold the peace of religions and social harmony, assist the people's government in implementing the policy on religious freedom, protect the legal rights and interests of Taoist society, [and] promote the adaptability of Taoism to socialist society."<sup>130</sup> Perhaps the most prominent reflection of the official nature of religious associations can be found in the Articles of Chinese Islamic Association passed at the Sixth National Congress of the Islamic Association in 2006, which is almost identical to a party or government document. Article 3 provides that the tenets of this association include

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129. Zhongguo Fojiao Xiehui Zhangcheng (中国佛教协会章程), Zhongguo fojiao xiehui (中国佛教协会) [The Chinese Buddhist Association Regulation], (promulgated by the Chinese Buddhist Association, Nov. 2, 2006), available at <http://www.116.com.cn/116/fjxh/zcfg/fils/387260.shtml>.

130. Guojia Zongjiao Shiwu Ju (国家宗教事务局) [National Bureau of Religious Affairs], Zhongguo Daojiao Xiehui Zhangcheng (中国道教协会章程) [Chinese Daoist Association Regulation], <http://www.sara.gov.cn/zcfg/qgxzjtxg/jgzd/6494.htm>.

the following: to assist government in propagandizing and implementing Chinese policies on religious freedom; represent the legal rights and interests of the Muslims of different nationalities in the country; exert the function as a bridge and ligament (that would supposedly help to bind the people of different beliefs); uphold the banner of patriotism; spread Islam's basic tenets and excellent traditions; independently handle religious affairs and support various Islamic careers; actively direct Islam in order to adapt to the socialist society; support the leadership of the Chinese Communist Party and socialist system; follow the guidance of Deng Xiaoping Theory and the important thought of "Three Represents";<sup>131</sup> uphold ideals of scientific development; encourage Muslims of various ethnicities to participate in the construction of socialist material, as well as political and spiritual civilizations; strive for the realization of a harmonious and wealthy society; uphold religious harmony; abide by the socialist moral standard; enhance ethnic solidification; maintain social stability; promote and uphold the unification of China; and uphold world peace.<sup>132</sup>

Additionally, all religious associations are explicitly subordinate to the administrative organs. Article 3 of the Taoist Articles stipulates that "the superior organ of the association is the State Administration of Religious Affairs."<sup>133</sup> Similarly, Article 4 of the Islamic Articles prescribes that "this association is subject to the guidance and supervision of the State Administration of Religious Affairs and the Ministry of Civil Affairs."<sup>134</sup>

The missions of these religious associations also overlap considerably with those of a state organ. Article 6 of the Taoist Articles defines its ten purposes or missions, the first few being to

assist the Party and government in implementing the policies on religious freedom; strengthen the study of the Constitution, laws, regulations, rules, current affairs and policies; improve Taoist patriotic

131. The theory of "Three Represents" was proposed by former General Secretary of the CCP, Jiang Zemin, as a political doctrine that requires the CCP to represent, among other things, the most fundamental interest of the most numerous people. See *On the Three Represents*, INT'L DEP'T CENTR. COMMITTEE CPC, <http://www.idcpc.org.cn/english/policy/3represents.htm> (last visited Sept. 3, 2011).

132. Zhongguo Visilanjiao Xiehui Zhangcheng (中国伊斯兰教协会章程), Zhongguo Visilan Xiehui (中国伊斯兰教协会) [Islamic Association of China Regulation], (promulgated by the Islamic Association of China, Nov. 14, 2007), [http://www.muslim.net.cn/baike/2007/1114/article\\_466.html](http://www.muslim.net.cn/baike/2007/1114/article_466.html).

133. Chinese Daoist Association Regulation, *supra* note 130.

134. Islamic Association of China Regulation, *supra* note 132.

awareness and the initiative to adapt to the socialist society; and uphold the dignity of laws, solidification of peoples, and unification of China.<sup>135</sup>

The same missions are listed in Article 3, paragraph 2, of the Buddhist Articles. These mission statements of religious associations conflate religious matters with secular tasks properly belonging to a civil government. In comparison, Article 6 of the Islamic Articles seems to be more pertinent to religious matters, with its major missions being confined to Islam:

the major work and missions of the association are (1) conduct Islamist activities within the range as provided in the Constitution, laws, regulations, rules and policies; (2) as to religious problems concerned by Muslims, give explanations that comply with the requirements of the social development based on the script; (3) conduct Islamic education, and cultivate Islamic instructors; (4) find out and sort out the excellent historical cultural heritage of Islamism, develop study of Islamic academic culture, and compile and publish books and scriptures; (5) establish and perfect various internal management regulations and systems of Islamism; (6) direct the work of the associations in various places and exchange experiences; (7) encourage Islamic Associations and mosques in various places to set up public utilities and self-support undertakings; (8) take charge of organizing Muslims all over the country in pilgrimage to Mecca; and (9) launch friendly exchanges with Muslims and Islamist organizations<sup>136</sup> in various countries, promote intercommunication and cooperation.

Similarly, the tenure of the religious associations is affected deeply by state administration. According to Article 10 of the Islamic Articles, its National Congress will be held every five years, while prior to 2000, the term was four years.<sup>137</sup> The reason for alteration was provided in Several Explanations on the Amendment to Articles of Chinese Islamic Association in 2000: “[T]he purpose of this alteration is to be adaptive to the schedule of the NPC and the PCC, so as to duly and properly consider personnel arrangement as well as the arrangement of our association’s work and conferences.” It seems that even the term “religious association” is made to better serve the state administration of religion.

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135. Chinese Daoist Association Regulation, *supra* note 130.

136. *Id.*

137. *Id.*

Further, for some associations, the qualifications of religious personnel include a state position as a prerequisite. For example, Article 16 of the Islamic Articles stipulates that “the Chairman, vice Chairman, and secretary general of the association must satisfy the following requirements: (1) uphold the leadership of Chinese Communist Party, uphold the socialist system, and excel in political quality; (2) have substantial influence in the association in terms of practical operation; (3) be healthy and able to stay on regular work; and (4) have full civil capacity.”<sup>138</sup>

Sixth, funds appropriated by the governments have become an important part of the activity outlay of religious associations. Article 30 of the Taoist Articles stipulates that “the sources of the funds for the association come from: (1) government funding; (2) local Taoist groups, temples and contributions made by disciples; (3) social donations; (4) self-support incomes; (5) interests; and (6) other legal incomes.”<sup>139</sup> Similarly, Article 23 of the Islamic Articles states that “the sources of funds for the association come from (1) funds raised by the standing committee; (2) voluntary contributions of Muslims; (3) incomes of self-support undertakings; (4) government supports; and (5) other legal incomes.”<sup>140</sup> Similar phrases are found in Article 30, paragraph 1, of the Buddhist Articles.<sup>141</sup> As religious associations in China are becoming more identified with the state with respect to tenets, missions, tenures, and post qualifications, religious associations also become more reliant on the government provisions of funding, without which the religions find it increasingly more difficult to sustain their activities.

## VI. CONCLUSION

It is difficult to talk about religious issues, much less to compare religious freedom in China with that of the Western countries in light of the significant cultural differences between China and the West. Although religious conflicts have threatened serious social disruption in modern China, they have failed to arouse extensive attention until recently. Since, when compared with Western history, Chinese history is not replete with religious conflicts that would suggest the need for truce, tolerance, and mutual accommodation, it is difficult for the Chinese to understand the paramount importance of religious freedom. From the

138. Islamic Association of China Regulation, *supra* note 132.

139. Chinese Daoist Association Regulation, *supra* note 130.

140. Islamic Association of China Regulation, *supra* note 132.

141. The Chinese Buddhist Association Regulation, *supra* note 129.

Chinese perspective, Western cases dealing with the nitty-gritty of school financing, for example, are trifling and seemingly insignificant; by contrast, the Chinese establishment of quasi-official religious associations may strike a Westerner as barbarous state intervention in religion. China seems so different from the West that meaningful dialogue on this subject can hardly proceed. While the Chinese may not understand why Western countries spend so many precious judicial resources on seemingly insignificant issues, Westerners may feel aghast with the Chinese government's tough treatment of and heavy involvement in religious matters. The discrepancy between the oriental and Western cultures can be found in the attitude toward the Falun Gong incident, which led to serious ideological and political confrontations between China and Western states. While the Chinese government took for granted the right to suppress any "evil cult," Westerners viewed that very notion as an infringement upon the constitutional freedom of religious belief. There is still hope, however, of bridging the gap in the understandings of religious freedom between the two cultures through dialogue. After all, Article 36 of the Chinese Constitution, just as its Western counterparts, does provide for religious freedom, and serious dialogue about the normative meaning of this provision is the very first step toward taking religious freedom seriously. Failure to take seriously such vital freedom has produced, and will continue to produce, what Justice O'Connor described as "violent consequences" to Chinese society.<sup>142</sup>

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142. *McCreary Cnty. v. ACLU*, 545 U.S. 844, 882 (2005) (O'Connor, J., concurring).