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Understanding Chinese-U.S. Conflict Over Freedom of Religion: The Wolf-Specter Freedom From Religious Persecution Acts of 1997 and 1998

China does persecute its' people because of religious beliefs. There are Catholic bishops in jail. . . . There are Protestant pastors in jail. They are persecuting the people of Tibet. They are persecuting the Moslem population in the north west portion of the country. . . . They are oppressing the people in China.

— ~~Representative Erank Wolf (R-Va)~~
~~October 28, 1997~~

China's religious community has maintained stability and harmony in a world filled with national discord and religious conflicts. All nationalities, religious bodies, and citizens who believe or disbelieve in any religion respect each other, coexist harmoniously, and work jointly to ensure the prosperity of the motherland.

. . . .
. . . Claims that China practices "religious persecution" are totally groundless and are quite simply based on ulterior motives.

— ~~Ye Xigowen, Director, Bureau of Religious Affairs,~~
~~People's Republic of China, September 1, 1997~~

I. INTRODUCTION

Religious freedom in the People's Republic of China is a topic that has generated much discussion in the United States in recent months. While U.S. dissatisfaction with China's human rights record has been fairly consistent over the past twenty-five years, only recently has attention been turned to

* *Human Rights in China: Hearing Before the House Int'l Relations Subcomm. on Int'l Operations and Human Rights*, 105th Cong. (1997) [hereinafter *Human Rights in China Hearing*], available in 1997 WL 676600, at *9.

** *Religious Affairs in China*, BEIJING REV., Sept. 1-7, 1997, at 12, 14, available in 1997 WL 10063439.

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reported human rights violations in China which may be described as including violations of religious freedom rights.

Congressional response to this concern precipitated on May 20, 1997, in the form of a proposed "Freedom from Religious Persecution Act,"¹ offered in the U.S. House of Representatives by Frank Wolf (R-VA) and in the U.S. Senate by Arlen Specter (R-PA). The Wolf-Specter bill would create an Office of Religious Persecution Monitoring in the White House and mandate certain export sanctions against nations found to be involved in "religious persecution" under the defined terms of the bill.² At the time of this writing, the bill's sponsors are preparing to introduce a substantial amendment to the bill. The proposed amendment attempts to respond to some of the criticisms of the bill raised by the administration, certain members of Congress, and some churches and human rights organizations.³ The bill as amended will be titled the Freedom From Religious Persecution Act of 1998.⁴

In addition to the Wolf-Specter bill, in early November, 1997, the House passed, by overwhelming majorities, nine bills which can be fairly described as "anti-China" legislation.⁵ During the debate surrounding these bills, China was characterized "as the world's leading human rights violator, and its regime compared to Nazi Germany and Stalin's Soviet Union."⁶

While anti-China sentiment was building in Congress, the Clinton administration pursued a policy of "engagement" with China's leadership, which culminated in the summit meeting between President Clinton and Chinese President Jiang Zemin in late October, 1997. Many in Congress saw the administration's actions as unacceptable "appeasement"⁷ of a government that has consistently ignored human rights and religious free-

1. Freedom from Religious Persecution Act of 1997, H.R. 2431, S. 772, 105th Cong.

2. See *infra* note 99 and accompanying text.

3. For an outline of the criticisms that have been leveled at the bill by these groups, see *infra* notes 113-118 and accompanying text.

4. For a summary of the significant changes to be offered in the amendment, see *infra* note 122 and accompanying text.

5. See *infra* note 87 and accompanying text.

6. *US House Adopts Anti-China Bills*, BUS. TIMES, Nov. 8, 1997, at 6, available in 1997 WL 7773707.

7. See *infra* note 92 and accompanying text.

dom standards urged by the international community.⁸ At the same time, the Chinese government has continued to express outrage at what it sees as an impermissible affront to its sovereignty—U.S. interference with China's internal affairs. China also continues to hold itself out as committed to international human rights law and global efforts to protect religious freedom.⁹

This Comment will explain some of the historical, philosophical, and geopolitical reasons for China's failure to respond to U.S. pressure for religious freedom reform. Part II of the Comment describes the current state of religious activity and religious persecution in China today and explains the government structure responsible for regulating religious activity. Part III gives an overview of the U.S. response to the issue of religious rights abuses in China. It briefly discusses the Clinton administration's policy of "engagement," as well as the administration's professed "strategic partnership" with China. It also discusses the congressional backlash against the President's approach, namely, the measures contemplated by the Wolf-Specter bill and other recent anti-China legislation. Part IV looks at the religious freedom (or lack of it) in Chinese history, as well as the nationalist, anti-imperialism, and anti-Christian movements that took place in nineteenth and early twentieth century China, and at some of the differences between U.S. and Chinese views of law and proper conduct. Part V gives suggestions for a better U.S. response to the problem. It argues that the Wolf-Specter bill, if passed, will not improve China's enforcement of religious freedom and may actually foreclose possibilities for future improvement. This Part argues that a better way to increase the level of religious freedom in China is to promote change from within by expanding opportunities for

8. See Eric Kolodner, *Religious Rights in China: A Comparison of International Human Rights Law and Chinese Domestic Legislation*, 12 UCLA PAC. BASIN L.J. 407, 409-14 (1994).

9. See, e.g., Andrew Pau & Nathan J. Diament, Recent Development, *Narrowing "Political Opinion" As Grounds for Asylum—I.N.S. v. Elias-Zacarias*, 33 HARV. INT'L L.J. 610, 627 (1992) ("[T]he Chinese government insists that it protects individual human rights to the greatest extent possible at this stage of its economic development"); Ren Yan Shi, *China Helps Improve Intl Human Rights Undertakings*, BEIJING REV., Nov. 17-23, 1997, at 24, available in 1997 WL 14325135 ("The Chinese government has always respected the principles laid down in the UN Charter to promote human rights and fundamental freedoms.").

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interaction with the outside world, helping establish the rule of law through increased business contacts and greater integration of China into the global economy, and backing off from the use of economic force as a means of coercing China to expand its recognition of religious freedom. While the remedies suggested here are somewhat aligned with the Clinton administration's policy of "engagement" and the free trade arguments of various U.S. business groups, the significance of the approach outlined in this Comment is that it does not proceed on the basis of U.S. business interests but on the basis of a genuine U.S. interest in freedom of religion abroad. While the motivations behind U.S. business interests and U.S. religious freedom interests may be very different, the policies that would promote each of them, in this setting, are complementary. Thus, opposition to the Wolf-Specter bill does not have to mean appeasement of China, or selling out to U.S. business interests, but instead may represent a long-term commitment to fostering political, economic, and social trust with a country that is slowly moving in the direction the sponsors of the bill would like to see it take.

II. RELIGION AND RELIGIOUS PERSECUTION IN CHINA TODAY

The current Chinese government tolerates some forms of religious activity, but clearly does not encourage religious belief.¹⁰ Religion is protected to the extent that it contributes to China's progress on the socialist path,¹¹ but no further. Although the official policy of the Chinese Communist Party (CCP) toward religion is one of freedom of belief, the motivation

10. See ASIA WATCH, HUMAN RIGHTS WATCH, FREEDOM OF RELIGION IN CHINA 5 (1992) [hereinafter ASIA WATCH '92].

11. The most comprehensive and authoritative recent statement of the Chinese Communist Party (CCP) on religious policy is set forth in *Document No. 19: The Basic Viewpoint and Policy on the Religious Question During Our Country's Socialist Period* (1982) [hereinafter *Document No. 19*], reprinted in ASIA WATCH '92, *supra* note 10, app. at 36. This CCP internal document was originally considered confidential but was soon widely leaked. See ALAN HUNTER & KIM-KWONG CHAN, PROTESTANTISM IN CONTEMPORARY CHINA 49 (1993).

Document No. 19 states that "the Party's and government's basic task in its religious work will be to firmly implement and carry out its policy of freedom of religious belief . . . to build a modern and powerful Socialist state and complete the great task of unifying the country." ASIA WATCH '92, *supra* note 10, app. at 39; see also *id.* at 40 ("[T]he Party's basic task is to unite all the people . . . believers and non-believers alike[] in order that all may strive to construct a modern, powerful socialist state.").

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behind that policy is the idea that safeguarding religious freedom will facilitate religion's natural demise.¹² According to Chinese theorists, until the time when religion naturally dies out, it should be tolerated by the state in order to prevent its being driven underground.¹³ In sum, the policy of the CCP is to protect religious activity to the extent necessary to promote its extinction,¹⁴ with the caveat that religion must never be allowed to disrupt the harmony and progress of the state.¹⁵

The long list of restrictions that China places on religious freedom includes the following: restrictions on the number of officially recognized religions, restrictions on registration of meeting places, restrictions on fiscal management of religious institutions and activities, restrictions on the recruiting and training of religious "professionals," restrictions on distribution of religious literature, restrictions on proselytization, and restrictions on religious practices deemed "superstitious."¹⁶ Each of these is discussed in more detail below.

The number of officially recognized (or "legal") religions in China is limited to five: Buddhism, Catholicism, Protestantism, Daoism, and Islam.¹⁷ The CCP exercises strict control over the

12. See *Document No. 19*, reprinted in *ASIA WATCH '92*, *supra* note 10, app. at 37 ("Religion will eventually disappear from human history. But it will disappear naturally only through the long-term development of Socialism and Communism Those who think that . . . religion will die out within a short period, are not being realistic.").

13. The CCP reasons that when religion is driven underground by excessive coercion, it then becomes difficult to control, and it also ceases to contribute to the economic growth of the state. See *ASIA WATCH '92*, *supra* note 10, at 6 (summarizing China's view that religion "should be harnessed to serve the interests of the state").

14. See *Document No. 19*, reprinted in *ASIA WATCH '92*, *supra* note 10, app. at 44 ("[U]nder socialism, the only correct fundamental way to solve the religious question lies precisely in safeguarding the freedom of religious belief.").

15. See *id.* at 40 ("Religion will not be permitted to . . . oppose the Party's leadership or the socialist system, or to destroy national or ethnic unity."). For the constitutional embodiment of the same restriction on religious freedom, see *ZHONGHUA RENMIN GONGHEGUO XIANFA* [Constitution] [Xianfa], art 36 (1982) (P.R.C.), *translated in* *THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF CHINA* 32 (1st ed. 1983) [hereinafter *CONSTITUTION OF CHINA*] (prohibiting citizens from participating in religious activities that "disrupt public order, impair the health of citizens or interfere with the educational system."). Similarly, Article 51 declares that "[t]he exercise by citizens . . . of their freedoms and rights may not infringe upon the interests of the state, of society and of the collective." *Id.* at 39.

16. See *ASIA WATCH '92*, *supra* note 10, at 6, 11-16 (listing categories of restrictions on religion).

17. See *id.* at 6.

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institutions and leaders of these religions by means of “patriotic associations,” which purportedly act as “liaisons” between the government and the particular church.¹⁸ The five national associations are the Chinese Buddhist Association, the Chinese Catholic Patriotic Association (CPA), the Three-Self Patriotic Movement (TSPM), the Chinese Daoist Association, and the Chinese Islamic Association.¹⁹ The patriotic associations are accountable to the government through the Religious Affairs Bureau (RAB).²⁰ The purpose of the associations is to “transmit directives and policies to the official churches, keep the government informed of the needs and activities of these institutions, and regulate their internal affairs.”²¹ CCP Central Committee and State Council Document No. 6 describes the patriotic associations as “a bridge by which the Party and government unite with and educate religious personages.”²² It is clear, however, that in practice the patriotic associations are a tool of the CCP for controlling “every minute detail of religious activity in China.”²³

Congregations meeting under the aegis of the relevant patriotic association are considered “open,” “official,” or “affiliated” churches.²⁴ All other religious activity is automatically illegal. In spite of that fact, many Protestants and Catholics in China reject the restrictions imposed by the patriotic associations and practice their religion within an

18. *See id.*

19. *See id.* These associations, organized in the 1950s on the national, provincial, and county levels, were disbanded during the Cultural Revolution but later revived. *See id.*

20. *See* ASIA WATCH, HUMAN RIGHTS WATCH, CONTINUING RELIGIOUS REPRESSION IN CHINA 2 (1993) [hereinafter ASIA WATCH ‘93].

21. *Id.*

22. *Document No. 6: Circular Issued by the Central Committee of the Chinese Communist Party and the State Council On Some Problems Concerning Further Improving Work on Religion* (1991) [hereinafter *Document No. 6*], reprinted in ASIA WATCH ‘92, *supra* note 10, app. at 33.

23. Kolodner, *supra* note 8, at 425; *see also id.* (quoting the statement of Reverend Lin Xiangao, a Baptist Minister who spent more than 20 years in prison for his religious beliefs, that the Three-Self Patriotic Movement was “a tool used by the Government to destroy Christianity”); ASIA WATCH ‘92, *supra* note 10, at 6 (“The patriotic associations are not voluntary organizations of clergy and laity as the government maintains, but a key part of the state bureaucracy staffed by government and/or party functionaries.”).

24. *See* ASIA WATCH ‘93, *supra* note 20, at 2.

underground (or “illegal”) church movement.²⁵ The difficulty that many Protestants and Catholics face in accepting the authority of the patriotic associations stems from the government’s “three-self” policy.²⁶ The “three-self” policy provides that all official religions must meet the requirements of self-administration, self-support, and self-propagation.²⁷ For Catholics in China, the central concern is that the relevant government-approved patriotic association, the CPA, is not permitted to recognize the authority of the Vatican.²⁸ For Protestants, the concern is over the fact that their government-approved patriotic association, the TSPM, oversees a “post-denominational Protestantism,” which consolidates all Protestant denominations into one church, “ignoring differences in doctrine and liturgy.”²⁹ These factors have led to the proliferation in China of a significant religious underground movement.³⁰

Like restrictions on the number of officially recognized religions, restrictions on registration of religious meeting places

25. See ASIA WATCH 92, *supra* note 10, at 6.

26. The policy is largely a reaction against the foreign missions that were once active in China and the historical “humiliation” China experienced in its dealings with the imperialist West, which it associated with the presence of foreign missionaries. For discussion of the anti-imperialism, anti-Christian movements of the 19th and early 20th centuries, see *infra* Part IV.B.

27. See ASIA WATCH 92, *supra* note 10, at 6.

28. See *id.* (“[T]he ‘three-self’ policy requires severance of all links with the Vatican and local election of bishops rather than appointment by the Pope. For believers . . . [this] is not a political matter, as Chinese authorities view it, but goes to the heart of what it means to be Catholic.”).

29. See ASIA WATCH 93, *supra* note 20, at 2.

30. For Protestants in China, underground religious activity has taken the form of “house churches,” congregations ranging in size from a handful of people to over 1,000 who meet in individual homes rather than registered meeting places. See ASIA WATCH 92, *supra* note 10, at 7. It is estimated that there are around 20,000 such groups. See *id.* For Catholics, there are approximately 25 bishops in China who have been illegally consecrated by Rome, and who in turn have ordained about two hundred underground priests. See *id.* at 6-7. These Catholic congregations meet secretly and conduct church affairs independently of government regulation. See *id.* at 7. Raids on these “unofficial” religions are frequent and may have increased significantly since 1990. See *id.* According to Xi Qui Fu, a Chinese man who successfully fled religious persecution in China, “[t]housands of house church leaders got arrested and tortured in a brutal way, such as being hanged three days and nights, forced to drink salty water, burned with hot water, shocked by electric stick and being sexually abused.” Mary Klaus, *Support for Religious Freedom Abroad Sought, Goodling-Specter Hearing Designed to Raise Awareness*, HARRISBURG PATRIOT, Dec. 5, 1997, available in 1997 WL 7540264.

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have a significant impact on religious freedom in China. The effect of these restrictions is to suppress religious activity. The Religious Affairs Bureau (RAB) maintains strict administrative control over all churches, mosques, temples, and other "meeting points."³¹ All places of worship must be registered with the RAB and must comply with official standards.³² As a result, congregations that espouse principles deemed to be "propaganda" by the state will be denied registration, and both its leaders and members may face arrest and detention.³³ Furthermore, unofficial congregations are sometimes reluctant to apply for registration because of the intense scrutiny by local authorities that such an application often provokes.³⁴ Unregistered meeting places are frequently the target of police raids, and those attending such services may be physically assaulted, arrested, interrogated, and/or have their property confiscated.³⁵

Restrictions on recruitment and training of religious personnel constitute another significant limitation on religious freedom in China. Many regional and local laws provide that only registered religious personnel may conduct religious services or hold office.³⁶ Other regional and local laws prohibit religious leaders from traveling to proselytize or preach without government approval, restrict the freedom of religious leaders to train novices, and prevent citizens under the age of eighteen from joining religious institutions.³⁷ This legislation also allows government officials to limit the number of religious personnel available to a denomination through a system of quotas.³⁸ These regional and local laws are in response to policy directives from the central government. In Document No. 19, the CCP states its policy with respect to "religious professionals:"

31. See ASIA WATCH '92, *supra* note 10, at 11.

32. See *id.*

33. See *id.* (citing the biblical teaching of a "second coming" as an example of a subject that if preached in a sermon, would deny the congregation official registration of its meeting place).

34. See *id.* (noting that such an application may result in the congregation's being "restricted or even disbanded").

35. See *id.* at 11-12 (citing examples of unregistered Catholic seminaries and convents and Protestant house churches that were the subject of police raids).

36. See Kolodner, *supra* note 8, at 428.

37. See *id.*

38. See *id.*

We must unrelentingly yet patiently *forward their education in patriotism*, upholding the law, supporting socialism, and upholding national . . . unity. . . .

We must foster a large number of *fervent patriots* in every religion who accept the leadership of the Party and government, [and] firmly support the socialist path

Marxism is incompatible with any theistic world view. But in terms of political action, Marxists and *patriotic believers* can, indeed must, form a United Front in the common effort for socialist modernization.³⁹

Further, in Document No. 6, the directive is given that “[p]reaching and missionary work by self-styled preachers and other illegal missionary work must be firmly curbed.”⁴⁰ The only religious professionals permitted to perform religious duties are those who, upon examination, are found to be “‘politically reliable, patriotic and law-abiding,’ who have been approved by a patriotic association and who are registered with the appropriate level of the [RAB].”⁴¹ Education and training of religious personnel is also strictly regulated.⁴²

These restrictions on recruitment and training of religious personnel have had, and will continue to have, a devastating impact on religion in China. As noted by one commentator,

Without leaders from the younger generations, the various religious denominations are threatened with extinction. By screening applicants, establishing quotas, and censoring religious training materials, the CPC can gut traditional religious belief and practice, and replace them with versions more subordinate to the state. While the older religious personnel might object, the younger generation, reared on Party ideology, will almost certainly be more acquiescent.⁴³

Most of the clergy in China are old, and government restrictions limit the possibility for upward social and economic progress within the religious professions.⁴⁴ As a result, China is

39. *Document No. 19*, reprinted in ASIA WATCH '92, *supra* note 10, app. at 41 (emphasis added).

40. *Document No. 6*, reprinted in ASIA WATCH '92, *supra* note 10, app. at 32.

41. ASIA WATCH '92, *supra* note 10, at 14 (quoting from Document No. 19).

42. *See id.* (citing examples of restrictions placed on official seminaries in China).

43. Kolodner, *supra* note 8, at 429.

44. *See id.*

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experiencing "a pressing shortage of priests, ministers, monks, imams, and other religious leaders."⁴⁵

Other governmental restrictions on the practice of religion,⁴⁶ which ostensibly have the purpose of promoting national unity and thus progress on the socialist path, have had and continue to have a similar stifling effect on religious activity in China.⁴⁷

In addition to the regulations mentioned here, which arguably constitute repression because of the burdens they place on religion, there are literally thousands of examples of outright religious persecution in China. Sometimes this persecution occurs at the direction of the party/government, sometimes with its acquiescence, and sometimes in spite of its best efforts. From a Western perspective, the examples range from the merely ridiculous to the disturbingly brutal. A few brief accounts will illustrate the spectrum.

In November 1991, a circular was issued by the United Front, the Propaganda Department, and the Religious Affairs Bureau in the Guangdong province, restricting Christmas celebrations:⁴⁸

[A]ll outward manifestations of the holiday, such as lanterns, festive lights and playing recordings of Christmas carols in public, were banned. School authorities were exhorted to dissuade students from organizing or taking part in festivities, and government agencies were told to draw up measures discouraging church attendance or the exchange of cards.⁴⁹

45. W. Gary Vause, *Tibet to Tienanmen: Chinese Human Rights and the United States Foreign Policy*, 42 VAND. L. REV. 1575, 1600 (1989) (noting, however, that since 1981 "the government has relaxed controls somewhat on access to the clergy").

46. See *supra* note 16 and accompanying text.

47. See generally ASIA WATCH '92, *supra* note 10, at 12-16 (discussing restrictions on fiscal management, distribution of religious literature, proselytization, and superstitious activities); ASIA WATCH '93, *supra* note 20, at 5-6 (discussing restrictions on freedom of expression, religious literature, and religious training); R. Lanier Britsch, *The Current Legal Status of Christianity in China*, 1995 BYU L. REV. 347, 359-60 (discussing restrictions on religious activities of foreigners in China); Kolodner, *supra* note 8, at 428-430 (discussing restrictions on religious personnel, places of worship, and religious association); Vause, *supra* note 45, at 1600-02 (discussing restrictions on religious personnel, contact with foreign religious organizations and leaders, and suppression of Tibet's "feudal" society).

48. See ASIA WATCH '92, *supra* note 10, at 5.

49. *Id.*

It must be noted, however, that at least in some places in China restrictions on celebration of Christmas seem to have markedly diminished in recent years.⁵⁰

Other examples of religious persecution in China are more serious. In July of 1992, Bishop Ding Guangxun, leader of China's official Protestant church, spoke at a National People's Congress (NPC) meeting, calling for an end to the "wind of suppression" which had "wrongly" blown up in some places against unregistered Protestant churches.⁵¹ Bishop Ding described some of the methods used to suppress religious activity:

They mobilize cadres, PS B [the Public Security Bureau, or police,] and People's Militia to use electric batons, tear up religious pictures, confiscate Bibles and religious publications, imprison the believers, fine them, cut off their electricity, water and social security grain supplies, demolish houses and other such activities. . . .

[T]his wind of suppression is against the Party's policy, and the harm it is causing is serious.⁵²

Although Bishop Ding attempted to show only that the regional and local governments were straying from party/government policy, his appeal was ignored. In early 1993, shortly after his speech to the NPC, Bishop Ding conspicuously was not reelected to the Eighth National People's Congress, though he had been a delegate since 1964.⁵³

Bishop Ding pointed out that the international repercussions of China's suppression of religion "are very

50. In December 1997, it was reported that "Rudolf the [Red-Nosed] Reindeer, blow-up Santas, . . . and Christmas trees of all sizes adorned hotel lobbies, shop windows and even private homes as Shanghai's largely atheist population embraced the festive season." *Fun-loving Chinese Join the Faithful to Embrace Christmas*, AGENCE FRANCE-PRESSE, Dec. 25, 1997, available in 1997 WL 13460747. It was also reported that "the main Xujiahui Catholic cathedral . . . held a Christmas Eve mass, with several masses scheduled for Christmas day," that "[s]ome 1,500 worshipers packed the pews while hundreds of other curious non-believers milled around them," that there were Protestant services held Christmas Eve and Christmas Day, and that in Beijing the municipal government "threw a party for the city's clergy." *Id.*

51. See ASIA WATCH '93, *supra* note 20, at 2-3.

52. DING GUANGXUN, A SPEECH TO THE NATIONAL PEOPLE'S CONGRESS, ON CORRECTLY DEALING WITH THE RELIGIOUS ISSUE (1992) [hereinafter DING], *reprinted in* ASIA WATCH '93, *supra* note 20, at 36.

53. See ASIA WATCH '93, *supra* note 20, at 2-3.

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great.⁵⁴ The Chinese government seems to have reached the same conclusion, as evidenced by the fact that the lengthy prison terms which used to be common for those found violating religious regulations have been replaced by other, less visible means of persecution.⁵⁵ The following is a representative list:

[S]ome of the techniques now regularly employed against

religious believers include raids on churches, often coupled with violence, and short periods of detention combined with psychological and physical intimidation of those detained. . . . Other techniques include constant surveillance of former religious prisoners, outside visitors to church compounds, and clergy going about their routine work; forced relocations of influential clergy; disruptions by local [police] of religious services and meetings; prohibitive fines and charges for "room and board" before jailed believers may return home; arbitrary church closings; destruction of some church buildings; confiscation of property of believers, including everything from animals and tools to Bibles and hymnals; forced attendance at "political study" classes; and general harassment.⁵⁶

An example of the most brutal repression that sometimes occurs in China is recorded in the testimony of Rizvangul Uighur, an ethnic Uygur refugee from the Xianjiang Uygur Autonomous Region of China (formerly Eastern Turkistan), before a subcommittee hearing of the U.S. House of Representatives held in October 1997.⁵⁷ Ms. Uighur's testimony describes the Chinese government's February 1997 crackdown

54. DING, *reprinted in ASIA WATCH* 93, *supra* note 20, at 36.

55. Recently, China has tried to assuage the heat of Western disapproval by releasing key religious and political dissidents, on the condition that they will never be allowed to return to China. One recent example is the release of Wei Jingsheng, who was generally regarded as China's "top dissident." See Jim Mann, *China's Champion of Democracy, U.S. Effort Led China to Release Dissident*, L.A. TIMES, Nov. 17, 1997, available in 1997 WL 14001390. China expects that this approach will appease delicate Western sensibilities and at the same time serve the purpose of exiling dissident voices overseas. See *id.* ("China's Communist Party leadership again succeeded in shipping a dissenter abroad and preventing any serious political opposition from taking root on Chinese soil."). While some in the West may conclude that the release of Wei Jingsheng signals a victory for U.S. policy, it must be remembered that his release is consistent with China's policy of silencing those who would "disrupt public order," XIANFA, art 32 (1982), translated in CONSTITUTION OF CHINA, *supra* note 15, at 32, or "destroy national . . . unity." *Document No. 19, reprinted in ASIA WATCH* 92, *supra* note 10, app. at 40.

56. ASIA WATCH 93, *supra* note 20, at 3-4.

57. See *Human Rights in China Hearing*, *supra* note * at *30-*33.

on religious and cultural activities of the ethnic minority Uygurs in her home town of Wu Jia. She explains that Uygurs are “born Muslim” and that it is their religious tradition to meet together to pray during the Holy Ramadan.⁵⁸ On February 5, the eve of Ramadan, thirty “prestigious religious leaders” were arrested in Wu Jia by the Chinese police.⁵⁹ “Offended” by the arrests, 600 young people gathered in the streets and began walking toward the city government to demand release of the religious leaders.⁶⁰ On their way, they were met by Chinese police and paramilitary forces, who “violently dispersed [the] crowd using electric clubs, water canon, and tear gas in the freezing day.”⁶¹ The next day an even larger demonstration was held by the Uygurs. The Chinese police and paramilitary forces followed orders to shoot into the crowd, and 167 people were killed.⁶² The police then arrested over 5,000 demonstrators, including the elderly, young women, and children.⁶³ During questioning, some of them were ridiculed and tortured because of their religion.⁶⁴ After the demonstrations, the Uygurs were surprised by the “patience” of the Chinese in carrying out the expected executions. Then it dawned on them that the Chinese government was waiting for the United States to extend Most Favored Nation status to China.⁶⁵ After MFN status was approved by Congress, the local Chinese government openly executed seven Uygurs and sentenced twenty-three others to terms ranging from five years to life imprisonment.⁶⁶ Those sentenced to imprisonment were put on an open truck and driven through town. Family and friends followed close behind to “say goodbye,” and the Chinese soldiers opened fire, killing nine Uygurs in the crowd and injuring over twenty-five.⁶⁷ Ms. Uighur concluded her testimony by explaining that, as a consequence of her employment, she was not allowed to pray, to

58. *See id.* at *31.

59. *See id.*

60. *See id.*

61. *Id.*

62. *See id.*

63. *See id.*

64. *See id.*

65. *See id.* at *32.

66. *See id.*

67. *See id.*

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attend religious school, or to go to mosques openly, and was forced to pray secretly at home.⁶⁸

Whether the above accounts are examples of religious persecution directed by or tolerated by the central government, or are instead instances of the regional and local governments failing to follow the policy directives of the CCP,⁶⁹ there is no question that in China the term "religious freedom" carries little if any of the meaning attributed to it in the West. Furthermore, it is disturbing that Chinese officials continue to deny that religious persecution exists in China.⁷⁰ It is common for Chinese officials to explain away reports of religious rights violations as the product of U.S. imperialist objectives.⁷¹ The view the Chinese government expresses publically is that the United States is (1) ignorant of the true situation of religious freedom in China and/or (2) willing to distort the facts in order to gain political advantage.⁷² It is not the purpose of this

68. *See id.* at *33.

69. In Document No. 6, the CCP and the State Council admit that "there are quite a few problems in the implementation of the policy of freedom of religious belief. *Certain local authorities violate the citizens' right to freedom of religious belief.*" Document No. 6, reprinted in ASIA WATCH '92, *supra* note 10, app. at 31 (emphasis added).

70. A Chinese representative at the February 7, 1992, meeting of the UN Human Rights Commission stated:

[Y]es, there were a very small number of religious followers in China who have received punishment for committing criminal and administrative offenses. . . . But this is not a question concerning religion or religious belief. Their punishment is a judicial question but absolutely not a persecution against dissent. Their offenses included activities that jeopardized national security, fraud, rape and activities that damaged the physical and psychological health of the people.

ASIA WATCH '93, *supra* note 20, at 4 n.8; *see also supra* note ** and accompanying text.

71. For example, a recent article in the Beijing Review claims that anti-China motions supported by the United States in the last seven sessions of the UN Human Rights Commission are "wanton interference in China's internal affairs in an attempt to disrupt China's stability and contain China's development and further change China's development path and social system on the pretext of human rights." Yanshi, *supra* note 9, at 25.

72. On August 6, 1997, Chinese religious figures attended a forum in Beijing to respond to allegations of religious suppression made in a U.S. State Department report. The consensus of the forum was that the conditions outlined in the report were both "groundless and a ruthless interference in China's internal affairs." *Forum on China's Religious Conditions*, BEIJING REV., Sept. 1, 1997, at 15, available in 1997 WL 10063438. Bishop Ding Guangxun wrote that the State Department report exhibits "America's mentality to pose as global policeman and world leader." *Id.* at 16. Wu Yungui, research fellow with the Institute of Religion under the Chinese

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Comment to argue that the official Chinese version of the facts is correct. It should be clear to anyone outside information-impooverished China itself that, in nearly all matters involving international conflict, the Chinese government paints a public facade that bears little resemblance to reality as seen by the Western world.⁷³ Instead, the Comment attempts to show that there are important reasons⁷⁴ underlying the ways in which China distorts evidence of religious freedom when confronted by U.S. pressure.⁷⁵

It should be remembered that religious activity in China is an issue of great importance to the Chinese government.⁷⁶ Despite official statistics, religious activity in China is growing at a significant rate.⁷⁷ There is no way of accurately knowing how many religious believers there are in China today.⁷⁸ In

Academy of Social Sciences, argued that the claims made in the report "show[] a lack of basic knowledge." *Id.* at 18. Zhao Kuangwei, director of the Center for Religion Research, claimed that "in China no individual has been arrested or sentenced because of religious belief." *Id.* Zhao explained that "[t]he persons involved in cases which certain Americans made use of to accuse China of 'persecuting religion' are, in fact, criminal offenders. Punishing criminals has nothing to do with religious belief." *Id.*

73. A vivid example of China's need to create a "false face" when confronted by embarrassment or irreconcilable differences with other countries is the way it attempted to cover up the events at Tiananmen Square. *See* Vause, *supra* note 45, at 1604-05 ("The Chinese Government boldly denied the essential facts of the confrontation, despite the fact that they had been recorded and publicized in graphic detail by the world's news media.").

74. *See infra* Part IV.

75. If those responsible for U.S. policy are to respond appropriately to the problem of freedom of religion in China, they must understand the reasons for China's behavior. Misunderstandings (of motive and character) on both sides of the Pacific have caused much of the current impasse.

76. *See, e.g., Document No. 6, reprinted in ASIA WATCH '92, supra* note 10, *supp.* at 31 ("Party committees and governments at all levels must soberly realize the complexity and seriousness of these problems and attach great importance to work on religion."); *Document No. 19, reprinted in ASIA WATCH '92, supra* note 10, *supp.* at 37 ("Those who expect to rely on administrative decrees or other coercive measures to wipe out religious thinking and practices with one blow are . . . entirely wrong and will do no small harm.").

77. *See ASIA WATCH '93, supra* note 20, at 1 ("[T]he Chinese government has steadily tightened and expanded its control over all religious activity, out of concern with the seemingly explosive growth of Christianity within its borders, especially among its youth."); HUNTER & CHAN, *supra* note 11, at 71 ("According to the most conservative estimates Christians have increased around sixfold [since 1949], while population has slightly more than doubled.").

78. *See ASIA WATCH '93, supra* note 20, at 1 n.1 ("Chinese statistics are notoriously inaccurate and there appear to be no precise definitions for identifying religious believers."); HUNTER & CHAN, *supra* note 11, at 66-71 (discussing difficulties

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1990, a senior church official in China reported that there are instructions from the CCP leadership that published assessments of the number of Christians must be kept low.⁷⁹ He maintained that statistics made public were on average around twenty-five percent of known figures.⁸⁰ In a recent speech by “a responsible member of the State Council’s Bureau of Religious Affairs,” it was reported that China has “over 100 million people claiming belief in religion, with the majority believing in Buddhism and Taoism,”⁸¹ and that currently there are over four million Catholics and ten million Protestants in China.⁸² At least with respect to the portion of Christian believers, it is safe to assume that the real number is three to four times that many.⁸³ In sum, there is a significant and growing religious presence in ideologically atheist China. The U.S. concern is that these individuals are suffering repression, sometimes brutal, at the hand of the government. China’s concern is that the “unruly growth”⁸⁴ of foreign religions must be halted, without dividing the people so much that it hinders China’s progress on the socialist path.

III. THE UNITED STATES’ RESPONSE

In the United States, popular and congressional anti-China sentiment stemming from these and other human rights abuses in China came to a head in 1996 with the introduction in Congress of several resolutions directed at the problem of religious persecution abroad,⁸⁵ and in 1997 with the

involved in obtaining accurate statistics concerning the number of Christians in China).

79. See HUNTER & CHAN, *supra* note 11, at 67.

80. See *id.* at 69.

81. *Religious Affairs in China*, *supra* note **, at 9-10.

82. See *id.*

83. In 1993, Asia Watch put the number of Catholics in China at 12 million, and the number of Protestants at 63 million. See ASIA WATCH ’93, *supra* note 20, at 1 n.1.

84. See ASIA WATCH ’93, *supra* note 20, at 4 (outlining some of the local measures that are being taken to “stop the ‘unruly growth’ in conversions”).

85. See S. Res. 283, 104th Cong. (1996) (“To express the sense of the Senate concerning creation of a new position in the White House as Senior Advisor on Religious Persecution.”); S. Con. Res. 71, 104th Cong. (1996) (“Expressing the Sense of the Senate with respect to the persecution of Christians worldwide.”). For a brief discussion of the nature and purpose of these resolutions, see 143 CONG. REC. S4879, S4882 (daily ed. May 21, 1997) (statement of Sen. Specter).

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introduction of the Freedom From Religious Persecution Act⁸⁶ and passage in the House of nine bills that can be fairly termed “anti-China” legislation.⁸⁷ The Freedom From Religious Persecution Act was introduced in Congress on May 20 and 21, 1997, by Representative Frank Wolf and Senator Arlen Specter.⁸⁸ Representative Wolf has described the bill as “an approach that says we will no longer be silent when regimes terrorize or allow terror against its religious believers.”⁸⁹ Senator Specter has said: “It is serious and it is tough. This legislation commits the United States to real action. There is no more time for talk.”⁹⁰ The bill is a clear sign of congressional dissatisfaction with the Clinton administration’s policy of

86. H.R. 2431, S. 772, 105th Cong. (1997).

87. *See* Radio Free Asia Act of 1997, H.R. 2232, 105th Cong.; H.R. 2195, 105th Cong. (1997) (providing for certain measures to increase monitoring of products that are made with forced labor); H.R. 967, 105th Cong. (1997) (prohibiting the use of United States funds to provide for the participation of certain Chinese officials in international conferences, programs, and activities and providing that certain Chinese officials shall be ineligible to receive visas and excluded from admission to the United States); Forced Abortion Condemnation Act, H.R. 2570, 105th Cong. (1997); United States-Taiwan Anti-Ballistic Missile Defense Cooperation Act, H.R. 2386, 105th Cong. (1997); Communist China Subsidy Reduction Act of 1997, H.R. 2605, 105th Cong.; H.R. 2647, 105th Cong. (1997) (ensuring that commercial activities of the People’s Liberation Army of China or any communist Chinese military company in the United States are monitored and are subject to the authorities under the International Emergency Economic Powers Act); Political Freedom in China Act of 1997, H.R. 2358, 105th Cong.; China Human Rights and Democracy Act of 1997, H.R. 2095, 105th Cong.

88. *See* 143 CONG. REC. S4879, S4882 (daily ed. May 21, 1997) (introduction of bill in Senate by Sen. Specter); 143 CONG. REC. E996, E996-97 (daily ed. May 21, 1997) (introduction of bill in House by Rep. Wolf).

89. 143 CONG. REC. H3434, H3434 (daily ed. June 4, 1997).

90. 143 CONG. REC. S4879, S4882 (daily ed. May 21, 1997).

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“engagement” with China,⁹¹ which is seen by many in Congress as *appeasement* of a ruthless authoritarian regime.⁹²

The following summarization of the purpose and terms of the Freedom From Religious Persecution Act of 1997 is taken largely from comments of Representative Wolf made before Congress on July 10, 1997.⁹³ The Freedom From Religious Persecution Act of 1998 will differ from the 1997 Act in some respects, but the differences do not significantly affect the conclusions of this Comment.⁹⁴

The Act creates a new White House position—the Director of the Office of Religious Persecution Monitoring.⁹⁵ The Director would be responsible for issuing an annual report determining whether either Category One or Category Two religious

91. See Randall Mikkelsen, *Clinton to Meet Leaders of China, Japan* (visited Feb. 17, 1998) <<http://nt.excite.com/webcrawler/reuters/971124/04.NEWS-CLINTON.html>> (reporting a conversation between President Clinton and Canada's Prime Minister in which Clinton indicated that “there was no guarantee that we would ever see in China what we hope to see in terms of human rights, but that the best way to promote that was through engagement”).

During the summit meetings in late October 1997, between President Clinton and Chinese President Jiang Zemin, the two leaders proclaimed a “strategic partnership” between the United States and China. See James Przystup & Robert A. Manning, *Clinton's Inscrutable China Policy*, NAT'L REV., Dec. 8, 1997, available in 1997 WL 8767358 (discussing problems with the announced “strategic partnership,” and with the issue of engagement). That partnership is an example of the administration's policy of engagement with the Chinese government. As evidence of the policy's success, proponents of engagement point to the recent release of China's top dissident, Wei Jingsheng. See Mann, *supra* note 55 (reporting the administration's claim that the release was “the culmination of an intensive although largely secret four-month campaign by the Clinton administration”).

92. See, e.g., *Human Rights in China Hearing*, *supra* note *, at *3 (statement of Representative Christopher H. Smith (R-NJ), Chairman, Subcommittee on International Operations and Human Rights) (“[T]he Clinton administration has coddled dictators as few have coddled before.”); 143 CONG. REC. H10054, H10056 (daily ed. Nov. 5, 1997) (statement of Rep. Gilman) (“Many of us in the Congress, and many of the American people, believe that the administration is soft-peddling issues which we as Americans feel strongly about”); *Id.* (statement of Rep. Solomon) (“[T]he President of the United States fell all over himself last week rolling out the red carpet for this Chinese dictator, and offering him a bag of goodies in return for a couple of empty promises.”); Andrea Stone, *Religious Persecution Bill Opposed*, USA TODAY, Sept. 10, 1997, available in 1997 WL 7013210 (quoting the statement of Arne Owens, Christian Coalition spokesman, that “the White House is ‘following a policy of appeasement’ toward trade and political partners, like China”).

93. See 143 CONG. REC. H5129 (daily ed. July 10, 1997).

94. For a summary of the major changes to be offered in the forthcoming amendment to the bill, see *infra* note 122 and accompanying text.

95. See 143 CONG. REC. H5129 (daily ed. July 10, 1997).

persecution (as defined by the bill) exists in a country.⁹⁶ Category One persecution involves those cases in which persecution is “ongoing and widespread” and is carried out “by the government or with the government’s support.”⁹⁷ Category Two encompasses those cases in which persecution is not carried out with government support, but the government “fails to take serious and sustained efforts to eliminate the persecution.”⁹⁸ For both categories, persecution is defined as including “killing, rape, imprisonment, abduction, torture, enslavement or forced mass resettlement.”⁹⁹ Upon a finding of religious persecution by the Director, imposition of economic sanctions would be automatic.¹⁰⁰ The sanctions could be waived by the President, with a detailed written explanation to Congress and forty-five days notice.¹⁰¹ Immediate sanctions banning all exports to foreign government entities would be imposed on Category One countries.¹⁰² There would also be a ban on all goods, products, and services being used to facilitate religious persecution.¹⁰³

Other provisions of the bill include the following:¹⁰⁴ the United States would cut off all nonhumanitarian aid to the persecuting country; U.S. representatives would be instructed to vote against any multilateral bank loans to the persecuting country; the President would be instructed to consider religious persecution as a significant factor in deciding whether to support a country’s membership in the World Trade Organization; a ban would be placed on visas for all individuals who carry out, order, or oversee religious persecution; victims of religious persecution would receive priority consideration in asylum and refugee proceedings; and “immediate and tough” sanctions would be imposed against Sudan.¹⁰⁵ Proposed

96. *See id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *See id.*

101. *See id.*

102. *See id.*

103. *See id.*

104. *See id.*

105. Of Sudan, Representative Wolf stated that “the persecution occurring there is some of the worst I’ve ever seen. Slavery, forcible conversion, the use of food as a weapon, torture, kidnapping of children.” 143 CONG. REC. E996, E996-97 (daily ed.

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amendments to the bill that would alter the structure just described are mentioned below.¹⁰⁶

The Freedom From Religious Persecution Act has received considerable attention and initial support in Congress.¹⁰⁷ The bipartisan bill has eighty-seven cosponsors.¹⁰⁸ Members of the International Relations Human Rights subcommittee voted unanimously for a favorable report to the full International Relations committee.¹⁰⁹ Public support for the bill has also been strong.¹¹⁰ In fact, the sponsors of the bill have counted on public awareness and support to help push the bill forward.¹¹¹ Senator Specter told about two hundred people at a public “hearing” on the issue of religious persecution that “[w]hen we tell the American public what’s going on, . . . there will be a wave of anger that will propel this bill right through Congress.”¹¹²

However, the approach taken by the bill has not been universally received, and there is considerable opposition to its

May 21, 1997).

106. See *infra* note 122 and accompanying text.

107. See Jana Byron, *Regulatory Inquisition: Congress Wants to Punish Trading Partners for Religious Persecution*, THE EXPORT PRACTITIONER, Oct. 15, 1997, available in 1997 WL 8530721 (“For the past few months, the feel-good bill has been making its way through Congress at a good clip with strong bi-partisan support.”).

108. See Peter Hardin, *Religious Persecution Bill Puts Wolf into Spotlight: Politicians, Church Groups Split Over His Legislation*, RICHMOND TIMES-DISPATCH, Oct. 12, 1997, available in 1997 WL 7631763.

109. See Byron, *supra* note 107.

110. Senator Specter reported to the Senate that “[t]he public response to these programs and my legislative efforts to combat religious persecution has been overwhelming. People from across the country have contacted me to urge me to continue the fight” 143 CONG. REC. S4879, S4882 (daily ed. May 21, 1997). See also 143 CONG. REC. H10054, H10056 (daily ed. Nov. 5, 1997) (statement of Rep. Gilman) (“The American people are deeply concerned about our relationship with China—all of our colleagues receive letters, phone calls, and other communications about it.”); 143 CONG. REC. E1757, E1758 (daily ed. Sept. 16, 1997) (statement of Rep. Lee H. Hamilton) (“The long list of witnesses heard by the committee is a reflection of the strong interest generated by this legislation among human rights groups and religious and public policy organizations nationwide.”).

111. The sponsors of the bill have organized several public “hearings” to raise awareness of the religious persecution issue. Generally, several religious leaders and/or human rights experts are present to testify of persecution around the globe. See, e.g., Ron Devlin, *Specter, McHale Battle Religious Persecution in Allentown Churches, Legislators Back Bill That Would Punish Nations Practicing Intolerance*, ALLENTOWN MORNING CALL, Nov. 18, 1997, available in 1997 WL 15100404 (hearing held at Cedar Crest Bible Fellowship Church); Klaus, *supra* note 30 (hearing held at Camp Hill United Methodist Church).

112. Devlin, *supra* note 111 (quoting Sen. Specter).

passage from several fronts.¹¹³ The Clinton administration is opposed to the bill,¹¹⁴ as are some members of Congress.¹¹⁵ Other groups opposed to the bill include human rights organizations,¹¹⁶ churches,¹¹⁷ and the public.¹¹⁸ Although no one

113. See Hardin, *supra* note 108 (“On the surface, the goal of punishing foreign tyrants for religious persecution seems to be one that could unite liberals and conservatives in Washington. But the means for accomplishing the goal have stirred controversy among politicians from both parties, business leaders and church groups.”).

114. John Shattuck, Assistant Secretary of State for Democracy, Human Rights and Labor, came before the Committee on International Relations on September 9, 1997 to give the administration’s views on the bill. See 143 CONG. REC. E1755, E1755 (daily ed. Sept. 16, 1997) (excerpt of statement placed in the Record by Rep. Hamilton). Shattuck called the bill a “blunt instrument that is more likely to harm, rather than aid, victims of religious persecution.” *Id.* He gave nine reasons, which fall into three major categories. First, the bill “runs the risk of harming vital bilateral relations with key allies and regional powers.” *Id.* Second, it “creates a confusing bureaucratic structure,” *id.*, which would “marginalize” rather than “mainstream” the religious freedom issue. See *id.* at E1756. Third, it “establishes a de facto hierarchy of human rights violations,” *id.* at E1755, that would compromise efforts “to promote the full range of basic rights and fundamental freedoms.” *Id.*

115. See, e.g., Lawrence Goodrich, *Congress Moves to Punish Religious Persecution Worldwide*, CHRISTIAN SCIENCE MONITOR, Sept. 25, 1997, available in 1997 WL 2804206 (quoting the statements of Rep. Matt Salmon (R-AZ), “I wonder . . . how political this office can become . . . [F]oreign-policy concerns are best [left] with the secretary of State,” and Sen. Craig Thomas (R-WY), “We have to be honest and say it’s a statute that’s likely to create more problems than it solves.”).

116. For criticisms of the bill by six prominent human rights organizations, see the letter to Hon. Ben Gilman, Chairman, International Relations Committee, reprinted in 143 CONG. REC. E1757, E1758 (daily ed. Sept. 16, 1997). The letter was sent by Human Rights Watch, Physicians for Human Rights, Minnesota Advocates for Human Rights, Amnesty International/USA, the Robert F. Kennedy Center, and the Jacob Blaustein Institute for the Advancement of Human Rights. See *id.* at E1759. The letter supports the overall purpose of the legislation but outlines several criticisms having to do with the findings of the bill being too narrow, the separate standards of persecution established by the bill as creating a preference for certain religious groups, the definition of persecution being too narrow, the creation of a “new bureaucracy,” and deficiencies in the asylum and refugee provisions. See *id.* at E1758-59.

117. For criticisms of the bill by the National Council of the Churches of Christ in the USA (NCCC), a group of 33 Protestant and Orthodox denominations, see the letter from Oliver Thomas, NCCC Special Counsel, to Members of the House International Relations Committee, reprinted in 143 CONG. REC. E1760, E1760-61 (daily ed. Sept. 16, 1997). Among other reasons, the NCCC opposes the bill because of its belief that putting the Office of Persecution Monitoring in the White House would make it susceptible to partisan political pressure; that sanctions “should not be an automatic or first option”; that religious persecution should not be singled out as more important than other forms of persecution for purposes of U.S. refugee law; and that stopping religious persecution in another country requires “some measure of humility,” or consideration for differing cultural values. *Id.* at E1761.

Religious groups that have endorsed the Wolf-Specter bill include Pat Robertson’s

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in any of the groups just mentioned wants to be seen as opposing freedom of religion, several "flaws" have been pointed out in the legislation. One repeated concern is that the bill may actually do more harm than good. Assistant Secretary of State John Shattuck has stated that "the bill could seriously harm the very people it seeks to help . . . [W]e fear reprisals by repressive governments against victims, as well as an end to any dialogue on religious freedom, in retaliation for the sanctions that the bill would automatically impose."¹¹⁹ The National Council of Churches of Christ in the USA (NCCC) has said that, based on its experience working with persecuted religious groups, it believes the bill "would do more harm than good to the very people it is designed to help."¹²⁰ Another commentator has pointed out that "[t]ypically, governments that are authoritarian enough to engage in religious persecution are the least politically sensitive to outside economic pressure. The most likely result is that sanctions will stoke the zeal of anti-Western, anti-Judeo-Christian militants."¹²¹

In response to these and other concerns about the bill's effectiveness, the sponsors have agreed to a set of changes which it is expected will be introduced during the House International Relations Committee full committee markup, due to occur March 25, 1998.¹²² While the changes that are proposed

Virginia-based Christian Coalition, the U.S. Catholic Conference, the Archdiocese of New York, the National Association of Evangelicals, and the Southern Baptist Convention. See Hardin, *supra* note 108.

118. See, e.g., Daniel Griswold, *Opinion: Trade Cuts Can't Fight Persecution*, SALT LAKE TRIBUNE, Sept. 28, 1997, available in 1997 WL 3427880 (offering various arguments for why the Wolf-Specter bill will fail) (Mr. Griswold is director of Trade and Immigration studies at the Cato Institute); Philip Peters, *Persecution and Redemption*, WASHINGTON TIMES, Sept. 25, 1997, available in 1997 WL 3684592 (noting that the Wolf-Specter bill "is so laden with new economic sanctions and foreign policy prescriptions that it has drawn . . . opposition . . . and is destined for prolonged debate").

119. 143 CONG. REC. E1755, E1755 (daily ed. Sept. 16, 1997) (excerpt of statement placed in the Record by Rep. Hamilton).

120. Hardin, *supra* note 108.

121. Griswold, *supra* note 118.

122. See *How You Can Help Pass H.R. 2431* (visited Mar. 24, 1998) <<http://www.house.gov/wolf/free/youcan.htm>>. The significant changes to be offered in the amendment include the following:

Movement of the Office of Religious Persecution Monitoring from the White House to the State Department. Broadening of the President's authority to

address some important concerns and undoubtedly improve the overall effectiveness of the bill, the changes do little, if anything, to reduce the negative impact that the bill will have on Chinese-U.S. relations in general and religious freedom dialogue specifically.

While criticisms of the bill's operation or application can be addressed by amendments of the type contemplated by its sponsors, those concerns which point to the *fundamental inadvisability* of imposing U.S. religious policy on other nations cannot be answered by an amendment to the bill. These fundamental concerns are particularly distressing when viewed in light of the unique cultural, historical, and political realities in China that affect its perception of the West.¹²³

As will be shown in more detail below, if the Wolf-Specter bill (in either 1997 or 1998 iteration) and the nine pieces of anti-China legislation¹²⁴ are enacted, they will almost surely damage an already strained relationship between the United States and China, foreclose meaningful dialogue on religious freedom issues between the two countries, and cause China, if anything, to tighten its grip on the meager freedom of religion that currently exists.

IV. UNDERSTANDING CHINA

Before turning to a better U.S. response to the problem of religious freedom in China, it is first necessary to lay out in some detail the historical reasons underlying China's inevitable resistance to a Wolf-Specter-type approach.¹²⁵ The premise of

waive the sanctions if it can be certified that doing so would "advance the objectives of the act." Narrowing of the provision which bans the export of persecution-facilitating products. Authorization of the Director of the Office of Religious Persecution Monitoring to hold public hearings. Citation of the Declaration of Independence and U.S. Constitution in the "Findings" section of the bill.

Agreed Changes to H.R. 2431 (visited Mar. 24, 1998) <<http://www.house.gov/wolf/free/changes.htm>>. More information about the proposed amendments to the bill, as well as the most recent text available, can be found on Representative Wolf's website at *Congressman Frank R. Wolf: Proudly Serving Virginia's 10th District* (visited Mar. 30, 1998) <<http://www.house.gov/wolf/>>.

123. See *infra* Part IV.

124. See *supra* note 87 and accompanying text.

125. On the importance of understanding China's political, philosophical, and religious history, one noted Sinologist of almost a century ago wrote:

China is not an empire of a day. . . . It is therefore impossible thoroughly

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this discussion is that a correct understanding of China's view of the problem must precede formulation of U.S. policy.

Representative Lee Hamilton (R-IN), has said:

[T]he relationship with China . . . is a terribly complex relationship. It is one of the most difficult foreign policy relationships in the world to manage, even in the best of times. The relationship often makes us uncomfortable. China as a country has many faults and does many things we do not like. The two countries have vastly different perspectives on a whole host of problems¹²⁶

This part of the Comment outlines some of the "vastly different perspectives" held by the Chinese government, which will impact the success of the Wolf-Specter bill, if it is enacted. It discusses the history of religion in China, the anti-imperialism/anti-Christian movements of the nineteenth and early twentieth centuries, and the Chinese view of law and proper conduct. This discussion will show that the Wolf-Specter bill can only serve to weaken U.S.-Chinese relations, with little hope of improving religious freedom.

A. The History of Religious Freedom in China

The role of religion in China's long history has been much debated. The fact that there has been no "strong, centrally organized religion" in most periods of Chinese history, no "social and political dominance by a religious doctrine and a powerful priesthood," and instead a "seemingly agnostic Confucian tradition of secular orthodoxy,"¹²⁷ has led many Western scholars to view religion as a relatively unimportant factor in Chinese society.¹²⁸ But the truth is that the

to comprehend her polity, laws and institutions, and to appraise them at their right value, unless one can consider them in the light of their classical origin and historical development[,] . . . and this truth applies to her political principles on the point of religions.

J. J. M. DE GROOT, *SECTARIANISM AND RELIGIOUS PERSECUTION IN CHINA* 4 (1903).

126. 143 CONG. REC. H10054, H10059 (daily ed. Nov. 5, 1997). Rep. Hamilton opposed the nine pieces of anti-China legislation mentioned *supra*, note 87, saying that passage would set "back U.S.-China relations and do harm to important American interests." *Id.* at H10058.

127. C. K. YANG, *RELIGION IN CHINESE SOCIETY* 3-4 (1961).

128. *See id.* at 4 (citing a China scholar who stated that "[t]he Chinese . . . are not a people for whom religious ideas and activities constitute an all-important and

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development of religion in China, although dissimilar in some ways to religion in the West, has been a significant factor throughout Chinese history.¹²⁹

During China's prehistory, it appears that the Chinese "already venerated their ancestors, tried to discover their [ancestors'] will through divination, and made offerings to powers of nature."¹³⁰ This practice of the indigenous religion continued and expanded throughout the Shang (B.C.E. 1500-1040) and Zhou (B.C.E. 1040-256) periods.¹³¹ Then, as a result of the long period of civil war that began in the eighth century B.C.E., some of the intellectuals began to doubt the power of the gods and spirits.¹³² Confucius (B.C.E. 551-479) was the first well-known representative of the new philosophy which concentrated more on human beings and less on the world of spirits.¹³³ Confucian beliefs permeated Chinese society for hundreds of years following Confucius' death, and in the second century B.C.E. Confucianism became state orthodoxy.¹³⁴ While the focus of Confucian thought is on the earth rather than the heavens, there are significant religious aspects to Confucian thought and practice.¹³⁵

The two other religious movements of major impact in ancient China were Daoism and Buddhism. Daoism, an indigenous Chinese religion that developed along both philosophical and religious lines, is based on the teachings of the *Tao Te Ching* and *Chuang Tzu*—books compiled sometime in the latter part of the Chou Dynasty (ca. 1050-256 B.C.E.).¹³⁶ Confucianism and Daoism represent the two surviving embodiments of China's "own" religious and philosophical

absorbing part of life" (quoting DERK BODDE, CHINA 18-21 (1951)); see also *id.* at 5 (citing a China scholar who stated that "China is a country without religion and the Chinese are a people who are not bound by religious superstitions" (quoting Hu Shih, *Ming Chiao* (The Doctrine of Names), in HU SHIH WEN TS'UN 91 (1928))).

129. For one scholar who has conclusively shown the "strong and pervasive influence of religion in Chinese society," see the authoritative work of C. K. Yang. YANG, *supra* note 127, at 1-27.

130. DANIEL L. OVERMYER, RELIGIONS OF CHINA 25 (1986).

131. See *id.* at 25-27.

132. See *id.* at 27.

133. See *id.*

134. See Kolodner, *supra* note 8, at 415.

135. See *id.* at 415 n.34 (indicating the debate over the religious/philosophical elements of Confucianism).

136. See *id.* at 415.

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heritage. However, as one author has noted, “[s]ince ancient times, but particularly since the Tang Dynasty (A.D. 618-906), China has played host to many religions.”¹³⁷ Buddhism was the first foreign religion to become established in China.¹³⁸ It was introduced by Buddhist merchants from India in the first century A.D., and soon became the state religion of Northern China during the Period of Disunity (220-589 A.D.), reaching its apex in the Tang Dynasty (618-907 A.D.).¹³⁹ In the seventh century A.D., Buddhism was introduced into Tibet by an Indian monk.¹⁴⁰ There, Buddhism merged with a native animist tradition known as Bon, and developed into Tantric Buddhism, a very different religion from Chinese Buddhism.¹⁴¹

Around the mid-eighth century A.D., Islam was introduced into Central Asia by merchants along the Silk Road.¹⁴² The ethnic Uygur people of the Xinjiang Uygur Autonomous Region of China remain converted to the Muslim faith to this day.¹⁴³

Christianity, the other major religion in China today, did not reach China’s shores until much later,¹⁴⁴ and despite its long history there, it has never been “naturalized” as Buddhism has.¹⁴⁵ Christianity was first introduced to China by Nestorian missionaries in 635 A.D.,¹⁴⁶ but it did not last long.¹⁴⁷ Later, a small number of Italian Catholic missionaries established churches in China in the thirteenth and fourteenth centuries, but they soon disappeared as well.¹⁴⁸ The first Christian activity in China with any permanence began with the Jesuits in the late sixteenth century,¹⁴⁹ but they were driven out when a pope ordered them to condemn ancestor worship.¹⁵⁰ The Protestants did not arrive until 1807 and settled mostly in the

137. Britsch, *supra* note 47, at 348.

138. See Kolodner, *supra* note 8, at 415.

139. See *id.*

140. See *id.*

141. See *id.* at 415-16.

142. See *id.* at 416.

143. See *Human Rights in China Hearing*, *supra* note *, at *30-*33 (testimony of Rizvangul Uighur).

144. See Kolodner, *supra* note 8, at 416.

145. See Britsch, *supra* note 47, at 348-49.

146. See *id.* at 348.

147. See OVERMEYER, *supra* note 130, at 55.

148. See *id.*

149. See Kolodner, *supra* note 8, at 416.

150. See OVERMEYER, *supra* note 130, at 55.

Treaty Ports.¹⁵¹ China's long history of involvement with these foreign religions has had a huge impact on its attitudes toward religion today.

Restrictions on religious liberty did not begin with the founding of the People's Republic of China (what the CCP calls "Liberation") in 1949.¹⁵² Religious affairs have been controlled by the Chinese authorities since the Tang Dynasty (618-906 A.D.).¹⁵³ Historically, the traditional government "tried to demonstrate its mastery over supernatural forces, . . . imposed a monopoly over certain rituals and interpretations of religious matters, . . . exerted administrative control over religious organizations and the priesthood, and . . . tried to prevent and suppress the development of herodox religious movements."¹⁵⁴ As one commentator has noted, "In imperial China, the state assumed a right of sovereignty over all aspects of its subjects' lives. There was no separation of religion and state as understood in the West, neither in theory nor in practice, and the Chinese people have never questioned the sovereignty of the state."¹⁵⁵

The modern CCP restrictions on religion mentioned earlier in this Comment¹⁵⁶ have long been used by the Confucianist elite to repress religion.¹⁵⁷ For example, during the Qing Dynasty (A.D. 1644-1912), the Confucianists regulated religion through the Ministry of Rites (Li Bu), which was organized into several departments to deal separately with the various religious denominations operating in China at the time.¹⁵⁸ One

151. See Kolodner, *supra* note 8, at 416.

152. See Britsch, *supra* note 47, at 348 ("It is common for outsiders [erroneously] to view this state of affairs as representing a significant change from earlier times, the implication being that some form of modern, Western-style religious freedom existed prior to 1949.").

153. See Kim-Kwong Chan, *A Chinese Perspective on the Interpretation of the Chinese Government's Religious Policy*, in ALL UNDER HEAVEN: CHINESE TRADITION AND CHRISTIAN LIFE IN THE PEOPLE'S REPUBLIC OF CHINA 38, 38 (1992); see also YANG, *supra* note 127, at 180 ("[T]he ruling group, particularly the Confucians, tried to exert a systematic control over religious forces so that they would serve exclusively the ends of the established power structure.").

154. YANG, *supra* note 127, at 180.

155. Britsch, *supra* note 47, at 348 (quoting Jim Stewart in THE CHINA MISSION HANDBOOK: A PORTRAIT OF CHINA AND ITS CHURCH 34 (Jonathan Chao ed., 1989)).

156. See *supra* Part II.

157. See Kolodner, *supra* note 8, at 417.

158. See *id.*

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of the laws restricting religious activity at the time provided that “[t]hose who make private appeal to Heaven [i.e., worship outside of officially recognized channels] . . . shall be punished with eighty strokes of the stick.”¹⁵⁹ These laws also “restricted the number of monks and nuns who could legally engage in religious activities, prohibited private construction of temples . . . , and called for decapitation of anyone who created or distributed heretical religious literature.”¹⁶⁰

It is interesting to note that the difficulty China currently faces in trying to limit over-enforcement of its religious policy by local authorities¹⁶¹ was experienced historically by the Chinese government as far back as the mid-eighteenth century.¹⁶² But China’s difficulty in controlling local enforcement of central law notwithstanding, the central government has never been neutral, much less friendly, toward nonorthodox religions.

In sum, “official antipathy”¹⁶³ toward religion did not begin with Liberation in 1949, but has been a part of Chinese history for almost two thousand years. In 1901, De Groot, a noted China scholar, warned that “the history of religious persecution in China . . . is almost the history of her religions themselves.”¹⁶⁴

B. The Anti-Imperialism / Anti-Christian Movements

Today, one of China’s greatest concerns about “foreign” religions is the potential it perceives for foreign domination, or “infiltration.” As one commentator has noted, “[t]his concern is

159. YANG, *supra* note 127, at 183.

160. Kolodner, *supra* note 8, at 417 (summarizing YANG, *supra* note 127, at 183-87).

161. *See supra* note 69 and accompanying text.

162. On August 11, 1746, the emperor of China gave to the State Council an order calling for increased enforcement of the prohibition against the practice of Christianity. *See DE GROOT, supra* note 125, at 280-81. The order required that all European leaders of the illegal Christian groups be arrested, sent to Kwangtung, and then, within a fixed period of time, sent back to their countries of origin. *See id.* at 281. However, when the order reached local authorities in one province, the local government official, perhaps assuming that he was giving effect to the spirit of the law over its letter, promptly imprisoned five Spanish missionaries, including one Bishop, and had them cruelly tortured. The five men were then sentenced to death by the Governor of the province, and later executed. *See id.*

163. Kolodner, *supra* note 8, at 416.

164. DE GROOT, *supra* note 125, at 4.

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rooted deeply in the bitter history of China's earlier contacts with the West when the influence of foreign missionaries was viewed as an integral element in the Western domination and resulting national *humiliation* of China."¹⁶⁵

Current CCP policy directives still invoke the memory of nineteenth and early twentieth century imperialism. For China, the struggle against the imperialist West is a current, ongoing battle, complicated by the fact that the question of religion has been inextricably entwined for the Chinese with Western political domination. A CCP internal document issued February 5, 1991, states: "We must realize that *hostile* forces beyond our borders have all along been using religion as an important means to carry out their strategy of bringing about 'peaceful evolution' in our country. They have continuously engaged in *infiltration* and disruptive activities against us."¹⁶⁶ Unlike other publications meant for general dissemination to the Chinese public and the international audience, this document was issued to "Party Committees and people's governments of the various provinces" and other government bodies.¹⁶⁷ The tone of the document is frank, open, and serious. There is none of the posturing or public rhetoric (or propaganda) that pervades official statements meant to be made widely public. It seems reasonable to conclude that the CCP genuinely fears "infiltration" of foreign political powers through the means of religion. As ridiculous as that may sound to the United States, with its faith in free trade and free exchange of ideas and information, it is a real concern for the Chinese government.

Anti-Imperialism/anti-Christian sentiment first arose in China in the nineteenth century. To understand those powerful influences (still present today), some historical background is necessary:¹⁶⁸

Christianity had been officially proscribed as heterodox in 1724 and evangelism declared illegal. During the early 19th century a half dozen or so Protestant missionaries tried,

165. Vause, *supra* note 45, at 1601 (emphasis added).

166. *Document No. 6*, reprinted in ASIA WATCH '92, *supra* note 10, app. at 30 (emphasis added).

167. *See id.*

168. The history that follows is taken largely from JESSIE GREGORY LUTZ, CHINESE POLITICS AND CHRISTIAN MISSIONS: THE ANTI-CHRISTIAN MOVEMENTS OF 1920-28, at 1-26 (1988).

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nevertheless, to spread the word along the coastal fringes of China and a larger number of Catholic priests worked underground in the interior. In the mid-19th century treaties, Westerners demanded and obtained both the right to proselytize in China and a guarantee of toleration for Chinese converts. . . .

These missionary ventures met with considerable and increasing hostility. During the period between the 1860s and the 1880s, hundreds of separate and localized attacks on missions and Chinese converts erupted. . . . Chinese aimed to protect their heritage from external contamination and to deny the foreigners power in China.¹⁶⁹

The later Anti-Christian Movements of the 1920s reiterated many criticisms of the nineteenth century, with the difference that the young intellectuals responsible for the movements were now trying to destroy, rather than salvage, the old orthodoxies.¹⁷⁰ During the Anti-Christian Movements, China was reassessing both Western and Chinese traditions.¹⁷¹ “[F]ew could find a role for Christianity in modernizing China; rather, they came to view Christian missions as a deterrent to national strength and unity.”¹⁷² The campaign against Christianity was “built on a long anti-Christian tradition.”¹⁷³ A “constant theme” of the Movement was “the arrogance of the Westerner.”¹⁷⁴

In describing the reasons for the breakdown in relations between the Chinese and the foreign missionaries, Professor Lutz has said:

What has been called the law of cultural diffraction operated in the meeting of Chinese and Westerner; each was attuned to the views and values of his own nationals, but much less sensitive to the reactions of the other side. Seeing Chinese society through his own cultural prism, a missionary might not be aware that his actions offended, that his very presence could be interpreted as an insult. Even when protests brought Chinese dissatisfaction forcibly to his attention, he could find justification in the sanctity of his mission to spread the gospel. . . . Under the circumstances, the possibilities for

169. *Id.* at 1-2.

170. *See id.* at 2.

171. *See id.* at 11.

172. *Id.*

173. *Id.* at 12.

174. *Id.*

misunderstandings and hostile confrontations were almost limitless.¹⁷⁵

At the same time, the Chinese found it impossible to comprehend the motive of the foreign missionary in abandoning his homeland to preach to the uninterested Chinese.¹⁷⁶ Since they already had their own teachings, and they had not invited the foreigner, the Chinese reasoned that the motive for his coming must derive *from the missionaries' needs and the needs of the West*.¹⁷⁷

Christianity was also seen as disruptive to social harmony. An 1812 dynastic decree prohibiting evangelism had stated: "Reflecting that the said religion [Christianity], neither holds spirits in veneration nor ancestors in reverence, clearly this is to walk contrary to sound doctrine; and the common people who follow and familiarize themselves with such delusions, in what respect do they differ from a rebel mob?"¹⁷⁸ The government of China today similarly equates believers in Christianity with the "rebel mob" which poses a threat to social stability.¹⁷⁹

The growing Chinese nationalism of that period, with its resentment of imperialism and Christianity, also began to take on a personal dimension.¹⁸⁰ China was no longer the Middle Kingdom; it was only a nation-state, fighting to preserve its identity in a competitive international community.¹⁸¹ As a result of its interaction with the West, China was forced to

175. *Id.* at 12-13 (foot notes omitted).

176. *See id.* at 13.

177. *See id.* at 13-14. Some assumed that the foreigners were attracted by the "comfortable easy life" that they saw the missionaries living (in comparison with the living standard of most Chinese). *See id.* at 14. Others assumed that the missionaries found greater financial reward in China than their talents would have brought them in the West. *See id.* Today the assumption is that religion is being used as a political tool to undermine (overthrow) the Communist government. In light of the role that religion appears to have played in the dissolution of the communist governments of Poland and the former Soviet Union, this fear may not be completely unfounded.

178. *Id.* at 16.

179. *See Document No. 6, reprinted in ASIA WATCH '92, supra* note 10, app. at 30 ("In certain places, a few hostile elements run rampant. They establish illegal organizations and try to wrest leadership of the monasteries, Taoist temples and churches from us. . . . At the grassroots level in some places, some people used religion to interfere with government administration, the judicial process and education in schools.")

180. *See LUTZ, supra* note 168, at 18.

181. *See id.* at 20.

recognize other civilizations and, with them, their competing ideologies and values.¹⁸² China was also beginning to become aware of the inequality of the post-Opium War treaties it had entered into with the West in the mid-nineteenth century.¹⁸³ The Chinese transferred the feelings of national humiliation stemming from these events to themselves personally. They associated those feelings of “profound humiliation,” “great suffering,” “foreign insults,” “shame,” and “bowed head” with the advent of the Christian missionary,¹⁸⁴ who, precisely because of his daily involvement with the Chinese, was the closest and most concrete embodiment of the humiliating Western imperialism.¹⁸⁵

As described by Lutz, “[t]he dual role of many missionaries inextricably linked imperialism and missions in the minds of the Chinese.”¹⁸⁶ “For many Chinese, Christianity could never again be dissociated from imperialism.”¹⁸⁷ Foreign religion is still inextricably linked with imperialism for the Chinese government. Little of the emotion of the issue has changed in the last seventy years. Those powerful emotional factors of national and personal humility, which motivated the anti-Christian movements of the nineteenth century and resurfaced in the Anti-Christian Movements of the 1920s, are still on the surface of Chinese-U.S. conflict over freedom of religion today.

C. The Chinese View of Law and Proper Conduct

There are tremendous differences in the way people in the United States and people in China view the rule of law. First,

182. *See id.* at 26.

183. *See id.* at 21-23. Western missionaries, working as interpreters for U.S., British, and French diplomats, used their influence in the treaty negotiations to secure clauses guaranteeing toleration of Christianity and granting extraterritorial rights to Western missionaries and converts, essentially putting both above the reach of Chinese law. *See id.* at 22. The Chinese people of that era came to view the religious freedom obligations of the treaties as an affront to their sovereignty and a *political* tool of the imperialist West. *See id.* China was unable to distinguish between the West’s political and its religious objectives, because “the right to evangelize had been obtained via Western diplomats and gunboats.” *Id.* at 22-23. The same will be true today of the Wolf-Specter bill, if it is passed.

184. *See id.* at 18-19.

185. *See id.* at 285.

186. *Id.* at 26.

187. *Id.* at 285.

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“China is ruled by men more than by law.”¹⁸⁸ From the time of the Zhou Dynasty (B.C.E. 1040-256), the kings were given the religious title, “Son of Heaven.”¹⁸⁹ They were heaven’s representatives on the earth, and held the Mandate of Heaven, as long as they properly fulfilled their duties.¹⁹⁰ The power of the ruler was absolute, and the people had an absolute duty to obey.¹⁹¹ As a result, there was no concept of limiting government powers by law.¹⁹² Although the viability of the Mandate of Heaven has since disappeared,¹⁹³ the idea that the ruler is ultimately more important (more worthy of respect) than the rule has persisted. As a result, Chinese law lacks the same “definiteness” that we expect of law in Western societies.¹⁹⁴ In the West, in theory, our laws “derive from the people so that the natural and political rights of the individual are stressed;”¹⁹⁵ but in China, the needs and rights of *individuals* are subordinate to the *collective*¹⁹⁶ and to the ruler (today, the CCP).¹⁹⁷ As a consequence, Chinese “laws” are in reality more like “‘political instruments’ of the government, designed to achieve some change in societal norm or some specific objective.”¹⁹⁸ As was shown above, with respect to the

188. Britsch, *supra* note 47, at 362.

189. See OVERMEYER, *supra* note 130, at 26.

190. See *id.*

191. See Steven L. Chan, *Differences Between British and Chinese Views of Law Forebode Uncertainties for Hong Kong's People After the 1997 Transfer*, 15 UCLA PAC. BASIN L.J. 138, 176-77 (1996).

192. See *id.* at 176.

193. See LUTZ, *supra* note 168, at 21 (explaining that “[t]he concept of *T'ien hsia*, the Emperor’s mandate to rule all under heaven, ceased to be viable,” when China was forced to acknowledge “the existence and legitimacy of other civilizations”).

194. See Chan, *supra* note 191, at 174.

195. *Id.* at 174.

196. See Louis Henkin, *The Human Rights Idea in Contemporary China: A Comparative Perspective*, in HUMAN RIGHTS IN CONTEMPORARY CHINA 7, 27 (R. Randle Edwards et al. eds., 1986) (“China begins with the society, the collectivity, and concentrates on general (not individual) welfare.”); see also Lucian W. Pye, *The State and the Individual: An Overview Interpretation*, in THE INDIVIDUAL AND THE STATE IN CHINA 16, 17 (Brian Hook ed., 1996) (“The individual [in China] has consistently been seen as merely a disciplined member of some larger group At the core of Chinese ethics and morality there has always been the ideal of depressing self-interest and glorifying self-sacrifice for the collectivity.”).

197. Regarding the subordination of the individual to the state in Chinese culture and history, one author has stated that “[i]t could be that no people have ever outdone the Chinese in ascribing moral virtues to the state or in deprecating the worth of the individual.” Pye, *supra* note 196, at 16.

198. Chan, *supra* note 191, at 174.

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current laws in China safeguarding religious freedom, the purpose of the laws is not so much to protect religion as it is to promote social harmony, increased economic progress, and the eventual demise of religion.

The idea that law is to be an instrument of the state, used when necessary to accomplish policy objectives, is an important key to understanding the behavior of the Chinese government, and to interpreting Chinese promises. One CCP commentator said: "If [international law] is useful to our country, to socialist enterprise, or to the peace enterprise of the world, we will use it. However, if this instrument is disadvantageous to our country, to socialist enterprises or to peace enterprises . . . we will not use it."¹⁹⁹ Consequently, anyone who is looking to international agreement as a means of enforcing religious freedom rights in China will be disappointed. For centuries, China has operated by the rule of men rather than the rule of law. Until significant efforts are made, both from within and without, to establish the rule of law, China's international agreements will provide little deterrence against human rights abuses when those abuses are viewed as necessary for the good of the state.

Similarly, the four Chinese constitutions adopted since 1949 have been described as "more like political programs."²⁰⁰ The Chinese constitution has none of the force of the U.S. Constitution. There are no courts with power to interpret it.²⁰¹ It is little more than a statement of policy, which may be followed, until the ideas or interests of the ruling elite dictate otherwise. Therefore, anyone looking to the Chinese constitution for enforcement of religious freedom rights will be disappointed, until China reaches the point where it views the rule of law as beneficial to the power and prosperity of the state.²⁰²

199. Jay R. Goldstein, Comment, *Chinese and Western Treaty Practice: An Application to the Joint Declaration Between the People's Republic of China and Great Britain Concerning the Question of Hong Kong*, 1 AM. U. J. INT'L L. & POLY 167, 175 (1986).

200. Ann Kent, *Waiting for Rights: China's Human Rights and China's Constitutions: 1949-1989*, 13 HUM. RTS. Q. 170, 177 (1991).

201. See Henkin, *supra* note 196, at 27 ("No independent judiciary or other body exists to insist on an interpretation of the constitution different from that desired by the political organs, or to enforce it against high political authority.").

202. There seems to be notable, recent evidence of China's growing commitment

A further problem with the enforcement of human rights in China is that the whole idea of individual human rights is Western in nature.²⁰³ The traditional Chinese approach to “individual rights” differs from that of the West in that (1) the individual was not defined by a set of rights but by the individual’s relationship within family and village community; (2) the culture was *duty*-oriented, emphasizing obligations to family and society; and (3) those duties were enforced not by *law* but by *li*, or the ethical code.²⁰⁴ So, although Chinese law was not designed to grant individual human rights, individual rights were naturally protected when all people acted properly within the established relationships and according to the (Confucian) ethical code.²⁰⁵

Because the role of Chinese law was to serve the interests of the state rather than those of the individual, an independent judiciary never came into existence in traditional Chinese society.²⁰⁶ This “underdevelopment” of China’s legal institutions is a significant barrier to enforcement of Western-type religious freedom rights. In sum, the “Chinese courts are beholden to government authorities, their decisions are subject to informal party review, and they have few autonomous enforcement powers.”²⁰⁷ In addition, “[m]ost judges lack university legal education, and many are believed to be corrupt [by Western standards].”²⁰⁸

Another problem with the attempt to assert Western-type individual human rights in the People’s Republic of China is that the people themselves have a deep-rooted belief in the system of ethics and the relational, duty-oriented approach toward society described above.²⁰⁹ Even in the Republic of China on Taiwan, where fifty years of evolution have led to the

to the establishment of the rule of law. *See infra* note 237 and accompanying text.

203. *See* Winston Hsiao, Comment, *The Development of Human Rights in the Republic of China On Taiwan: Ramifications of Recent Democratic Reforms and Problems of Enforcement*, 5 PAC. RIM L. & POL’Y J. 161, 164 (1995).

204. *See id.* at 165-66.

205. *See id.* at 166.

206. *See id.* at 168.

207. Robert F. Dodds, Jr., *State Enterprise Reform in China: Managing the Transition to a Market Economy*, 27 LAW & POL’Y INT’L BUS. 695, 717 (1996) (citations omitted).

208. *Id.*

209. *See* Hsiao, *supra* note 203, at 169-70.

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institution of a “fully Westernized legal system,”²¹⁰ the people are reluctant to assert their individual rights against the state.²¹¹ This phenomenon is difficult for the Western mind to comprehend, but must be considered when discussing the issue of human rights in China:

[In Taiwan,] despite constitutional and statutory provisions granting individuals the right to sue the state for any deprivation of rights, Chinese society as a whole has not claimed or asserted that power. . . . An individual who sues another has placed his interests above those of the group, and thus faces strong disapproval. Consequently, people are not accustomed to suing each other, much less suing the “paternalistic” state.²¹²

Lastly, the influence of Confucian teachings is key to understanding how law is viewed in China,²¹³ as well as understanding how the United States may help in China’s process of gradually establishing a more definite and permanent rule of law. Confucius stressed the importance of the ideal *moral gentleman*, one who “takes rightness for his basic nature.”²¹⁴ In that process, the individual must cultivate the two moral and humanist values of (1) *ren*, a moral feeling toward others (“being humane”), and (2) *yi*, a form of integrity (faithfulness, loyalty, and justice).²¹⁵ The relationship between the development of this human ideal and the development of law in China has been described in the following way:

This process [of self-development] fostered a constant struggle between *li*, which is Confucian social harmony, customary norms of behavior, and ruling by example, and *fa*, which is the written or enacted law of the legalists. *China has continually leaned towards li over fa* because it includes the normative rules of morality and proper behavior.²¹⁶

210. *Id.* at 169.

211. *See id.* at 170.

212. *Id.*

213. *See Chan, supra* note 191, at 175 (“The Confucian emphasis on personal relationships, honesty, high moral standards, and loyalty to one’s group affects every aspect of individual and organizational life in China.”).

214. CHRISTIAN JOCHIM, CHINESE RELIGIONS 123 (1986).

215. *See generally* Chan, *supra* note 191, at 175; JOCHIM, *supra* note 214, at 123-25.

216. Chan, *supra* note 191, at 175 (citation omitted) (emphasis added).

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In English it could be said that China has always leaned toward proper conduct over law. That explains why, as one author has noted, “the CCP’s attempts to create a formal legal system is [sic] still influenced by the Confucian preference for social pressure over the use of [legal] force.”²¹⁷ Those responsible for U.S. policy on religious persecution in China should understand Chinese faith in the superiority of *li* (proper conduct) over *fa* (written laws). Confucius taught:

If you govern the people by laws [fa], and keep them in order by penalties, they will avoid the penalties, yet lose their sense of shame. But if you govern them by your moral excellence, and keep them in order by your dutiful conduct [li], they will retain their sense of shame, and also live up to this standard.²¹⁸

This formula for effective governance could serve as a guide for those in Congress who feel that the United States must not “keep silent” any longer but instead “take action” against religious persecution and human rights abuses abroad.

V. TOWARD A BETTER U.S. RESPONSE

The approach taken by Congress in the Wolf-Specter bill is one of “governing the people by laws,” and “keeping them in order by penalties.”²¹⁹ Confucius taught that the result of that form of governance is that the people will “avoid the penalties, yet lose their sense of shame.”²²⁰ It should be clear that China will avoid the penalties and yet lose its sense of shame if the United States takes this step.

There are several reasons why the Wolf-Specter bill, if enacted, will fail (in China) to obtain its objective of relieving religious persecution. First, the Wolf-Specter bill will be viewed by the Chinese government as an attempt by the United States to govern the internal policy of the People’s Republic of China under the guise of religion. Such interference with the sovereign power of the nation which was once the Middle

217. *Id.*

218. *Id.* (alteration in original) (quoting THE ANALECTS OF CONFUCIUS WITH HIS DISCIPLES AND CERTAIN OTHERS, Vol. I, Book II Concerning Government, Ch. III, 8 (Lady Hosie ed. & William Edward Soothhill trans., Oxford Univ. Press 1937)).

219. *Id.*

220. *Id.*

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Kingdom, the *center country* of the world, will not be tolerated. The sanctions contemplated by the bill are simply inconsequential, a mere annoyance, in comparison to what China sees that it has to lose if it bends to the will of the United States.

China still stings under the memory of the unfair mid-nineteenth century treaties that it entered into with the West. It remembers the perceived national and individual humiliations that it suffered at the hands of economic imperialism. It is conscious today of the very real threat of cultural imperialism. These are real concerns, which the United States too easily brushes off. In short, the Wolf-Specter bill will fail to affect positively the level of religious freedom in China, because China would rather suffer the economic impact of U.S. sanctions than suffer the ideological impact of ceding some of its policy power to the United States.

Second, the government of China is fundamentally, ideologically, opposed to the progress of religion; such opposition is built into the framework of Marxism/Leninism/Maoism. Economic pressure, or any other kind of pressure from outside China, cannot change that fundamental reality. Furthermore, China is not ignoring the question of religious freedom. It is intensely concerned with the question of religion but is dealing with the problem in its own way. As long as the current government remains in power, any expansion of religious freedom in China must be according to the terms of the government, and consequently will be motivated only by the desire to unite the "believers and non-believers" in order to increase social harmony, and thus productivity. If the Chinese government can be convinced that religious freedom will promote the stability and economic growth of the country, then religion will be tolerated as a means to an end.²²¹ Religious freedom will probably not be viewed as an end worthy in itself for a long time.²²²

221. As long as Western powers try to force religious freedom on China, though, the Chinese government will associate religion with imperialism, and view it as a political tool of the West.

222. Though the Chinese government is not likely to let go of its animosity toward religion anytime soon, there is evidence that officials within the Communist party are beginning to recognize religion's potential utility. Recently, Li Ruihuan, Chairman of the National Committee of the Chinese People's Political Consultative

Third, religious freedom cannot now be advanced in China by appealing to Western ideas about the freedom of the individual. For the Chinese (both the government and the governed), the collective is more important than the individual. That reality is compounded by the fact that China lacks the judicial institutions necessary to enforce individual rights, even if the people of China were willing to assert them. Respect for the rule of law must be established before the proclaiming of individual human rights in China will have any meaning. Establishment of the rule of law is also necessary before China's own constitution and the international agreements it enters into will begin to produce a more binding effect on its internal policy.

The way China perceives its relationship with other members of the international community is not bound up by laws and legal relationships but by proper conduct and personal relationships. That is why the Wolf-Specter bill will have such a devastating impact on the progress of U.S. interests in China. Whether or not the same would be true of the United States' relationships in other parts of the world, the Wolf-Specter bill will be a heavy blow to the already strained relationship between the United States and China. And until the rule of law is further established in China, there is almost nothing else to base cooperation on besides that relationship.

There is hope for full freedom of religion in China, but it will take some time, and it will not be as easily obtained as the drafters of the Wolf-Specter bill expect. There are three things that must occur in order for religious freedom to be able to begin to grow in China. First, there must be a change from within, a fundamental shift in the expectations of the Chinese people. The world view that the United States would like to secure to the Chinese people as their inalienable right (by economic force) is such a foreign idea to the vast majority of people in China now that they would hardly know how or be inclined to make use of it, even if it was in the United States'

Conference and a member of the Political Bureau Standing Committee of the CCP Central Committee, noted that "[m]any religious doctrines such as those concerning ethics and morals are consistent with the trends of social development and the promotion of cultural and ethical progress in the country." *China Continues to Promote Freedom of Religious Belief*, XINHUA ENG. NEWSWIRE, Jan. 23, 1998, available in 1998 WL 2785391.

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power to give. There has to be a change in expectations and an exchange of *freedom ideas* before freedom in the American way of thinking can be valued, or even received.²²³

One way to facilitate that shift is to promote access to the outside world, through study abroad, low-level business contacts, mutual foreign investment, and political dialogue. By shutting down economic ties with China, the Wolf-Specter bill runs the risk of foreclosing one of the only ways the United States has of increasing the access of the Chinese people and the Chinese government to the "American values" that Congress is so concerned about promoting. The U.S. effort at promoting religious freedom must be done from within the context of a friendly relationship, or it will be incomprehensible to China, except in terms of ulterior motives.²²⁴

Increased access to the rest of the world will also help promote the second fundamental change that must occur: the establishment of the rule of law. The more that China becomes integrated into the global economy, the more it will of necessity learn to be governed by law. As business contacts increase between the two countries, China will learn that it cannot operate in the larger economic community, which it has largely been left out of, unless it is willing to abide by the rule of law.²²⁵

223. Unlike the approach of the Wolf-Specter bill, the argument here supposes that freedom cannot be enacted by government fiat, and that it will not automatically appear from nothing when barriers to its exercise are removed. Instead, this discussion supposes that freedom must grow from within (perhaps with outside nourishment) and that *ideas* are freedom's sun and rain. Although it is doubtful whether such an organic process can be rushed, there is some evidence that freedom ideas are taking root in China at an unprecedented rate. See Michael C. Davis, *Chinese Perspectives on Human Rights*, in HUMAN RIGHTS AND CHINESE VALUES 3, 4 (Michael C. Davis ed., 1995) ("If one looks beyond the rather dire Chinese human rights record of recent years and considers *the world of ideas* in China as an indication of emerging values, there is room for some optimism that human rights conditions and protection in China may eventually improve." (emphasis added)); see also *infra* text accompanying note 247.

224. For historical examples of China's misinterpretation of the motives of Western missionaries, see *supra* Part IV.B (discussing China's anti-imperialism/anti-Christian movements); see also *supra* note ** and accompanying text (quoting the statement of director of China's Bureau of Religious Affairs that "Claims that China practices 'religious persecution' are . . . based on ulterior motives").

225. There is already some evidence that China's increased involvement in the world economy in the last 15 years has helped strengthen the rule of law. See Brian Hook, *Reshaping the Relationship between the Individual and the State in China: Issues in the Approach to a New Equilibrium*, in THE INDIVIDUAL AND THE STATE IN CHINA 1, 6 (Brian Hook ed., 1996) ("[T]he reform and opening out policies, which in

Chinese Courts will then naturally be given broader jurisdiction, more binding authority, and will expand in number and ability to meet the increased legal needs of an expanding market economy. The significance of this change is that it will take place not in the vacuum of an ideological discussion but day-by-day at every level of society. As the need for outside *information* (technological, economic, political, and legal) becomes ever more critical, it will be impossible for the Chinese government to contain the flow of *news* (via the Internet and personal contacts with foreigners) to the Chinese people. If the United States is able to leave some room for China to retain its dignity as it enters this new, more open relationship,²²⁶ it may be possible to avoid the anti-imperialist reaction that accompanied China's increased commerce with the West almost a hundred years ago.²²⁷ Although aspects of Western culture will flow into China, aspects of Eastern culture will flow back to the West. China then will not feel the humiliation of cultural exploitation by the West, but will see the mutual transformation as an inevitable result of the interaction of friendly nations.

The third change that must occur is that the United States must back away from the use of force in its attempt to influence Chinese policy on religious freedom. This change is necessary to pave the way for the previous two changes. In Confucian thought, social order is achieved by means of a fixed number of specified relationships, which are based on "status, level of intimacy and situational context."²²⁸ It is important to note that these relationships define power, and are "vertically oriented with the power disseminated from the top-down."²²⁹ Four of the five traditional relationships are "unequal" in that they require the parties to conform to predetermined dominant and

15 years have . . . enabled the PRC to re-enter the mainstream of world trade . . . are increasingly exposing the PRC to international legal norms, standardized accounting systems, and recognized auditing practices.").

226. According to one view, the whole thrust of Chinese history over the past one and a half centuries has been the search for dignity and independence. China chose communism in order to pursue that end; it might just as easily have chosen democracy. It might *still* choose democracy—the real driving force is emancipation (or, in China's view, wealth and power). See Hook, *supra* note 225, at 3.

227. See *supra* Part IV.B.

228. See Chan, *supra* note 191, at 176.

229. *Id.* at 176 n.232.

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subordinate roles. The four unequal relationships are father to child, elder brother to younger brother, husband to wife, and ruler to subject.²³⁰ The only relationship of equals available to an individual under Confucian thought is that of friend to friend.²³¹ China will resist U.S. interests as long as it perceives that the United States is trying to take for itself the role of ruler and force China to play subject. The United States must seek, if at all possible, to help China perceive the relationship as one of friend to friend. All other Confucian relationships are predetermined by the unknowable "heaven" of Confucian thought; consequently, the dominant-subordinate relationships cannot be altered without causing disharmony. But the relationship of friend to friend is one that is chosen by human beings, and is presumably beyond the purview of the fates. Neither friend stands above the other in power. They are bound together not by any duty imposed on them but out of a duty they chose.

The United States has the chance to choose the relationship it will create with China in the next decade. One does not have to agree with Chinese policy or approve of China's actions to recognize that if the United States wants to promote individual human rights in China, it must back away from force.

During the early November 1997 House debate on the nine pieces of anti-China legislation mentioned above,²³² Representative Bereuter, who voted against the legislation, said: "The objective that everyone will profess so loudly on this floor today will come in time if we do not blow it. Making China our adversary will not advance political [or] religious rights"²³³ There are signs that China wants to change, but the United States must not "blow it." It must step back and give China room to make the change. Recently, Chinese Minister of Justice Xiao Yang expressed China's hope to reform its political system. He said, "it appears to be out of step with the times to continue to follow the methods of the war era."²³⁴ Xiao called the establishment of greater socialist democracy a "historical

230. *See id.*

231. *See id.*

232. *See supra* note 87 and accompanying text.

233. 143 CONG. REC. H1 0054, H 10060 (daily ed. Nov. 5, 1997).

234. *China Reforming Political System*, JAPAN POL'Y & POL., Dec. 1, 1997, available in 1997 WL 8244220.

leap” with deep repercussions for China, necessary both for the long-term development of the economy and for political stability.²³⁵ “From theory to practice we must establish . . . the reform and opening of our leadership.”²³⁶ Finally, regarding the legal system, Xiao said: “We must continue to reform and perfect the judicial system, raise the quality of the judicial team, strengthen the system of responsibility among judicial personnel . . . overcome local and ministerial protectionism and realize legal justice.”²³⁷ Admittedly those are grand words, but it is undeniable that China has made real progress in some areas in recent years.²³⁸

One significant and encouraging recent example of political change occurring from within the Chinese government is a document written November 20, 1997, by Fang Jue, a businessman and former deputy director of the planning commission in the coastal city of Fuzhou, China.²³⁹ The document is entitled “China Needs a New Transformation—The Democratic Faction’s Program Proposals.”²⁴⁰ The “proposals” outlined in the document call for unprecedented reform measures: elections at all levels of government, freedom of the press and religion, a further opening of the economy to foreign companies, and a pro-American foreign policy.²⁴¹ Although only Fang’s signature appears on the document, he claims that the proposals are the result of “a series of discussions with pro-democracy members of the Chinese Communist Party,

235. *See id.*

236. *Id.*

237. *Id.*

238. *See* 143 CONG. REC. H10054, H10059 (daily ed. Nov. 5, 1997) (statement of Rep. Hamilton) (“[L]ooking over the last 25 years, China has evolved from a country ostracized by much of the world to a more acceptable and accepted member of the global community, although it is not there yet, by any measure.”); *see also id.* at H10060 (statement of Rep. Bereuter) (At “the village level, it would seem that a remarkable transformation has taken place without anyone noticing. Village elections, once the sole domain of local communist party functionaries, have in many but far from all cases, suddenly become contested events—with noncommunists elected to some posts.”).

239. *See generally* Steven Mufson, *Former Chinese Official Advocates Democracy; Businessman Stands Alone Behind Proposed Reforms But Says He Has High-Level Support*, WASH. POST, Jan. 12, 1998, at A13, available in 1998 WL 2461538.

240. *See id.*

241. *See id.*

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including Central Committee members.”²⁴² If that claim is true, then the document signals a *very* significant development.

Wei Jingsheng, China’s top political dissident, released from prison in November 1997, has called Fang’s document a “ground-breaking policy statement” and urges the international community to take note of this “major political signal.”²⁴³ He explains that “[n]ever before in China has a document advocating democratic reform come from within the ranks of the Communist Party.”²⁴⁴ Conservative forces in the CCP have by no means signed on to what they must see as over-hasty and over-broad proposals, but Fang asserts that the document “reflects the political views of a new generation of government officials in their forties and fifties, views that differ dramatically from those held by the Communist Party veterans in their seventies and eighties who occupy key leadership positions.”²⁴⁵ But perhaps most tellingly of all, though the platform statement has been distributed to members of the CCP Central Committee, and the government is thought to have more than two thousand political prisoners in jails and labor camps at present, it has taken no action against Fang’s set of program proposals.²⁴⁶ The example of Fang Jue seems to indicate that the world of ideas regarding freedom is growing in China.²⁴⁷

There are still many areas of China’s conduct that the United States may justifiably be dissatisfied with, but there are areas for positive growth between the two countries. The United States must carefully choose which battles it is willing to fight. As stated by the National Council of the Churches of Christ, “not all encroachments on religious freedom rise to the level of persecution. And, even when they do, we must be careful to act in a way that alleviates rather than aggravates

242. *Id.* Fang says that “a couple of hundred of them [CCP members], most at ‘upper middle’ levels, have participated in informal discussions [leading to the formulation of Fang’s platform statement] over a period of time.” *Id.*

243. Wei Jingsheng & Liu Qing, Editorial, *Signal From China*, WASH. POST, Feb. 1, 1998, at C9, available in 1998 WL 2465237.

244. *Id.*

245. *Id.*

246. See Mufson, *supra* note 239 at A13.

247. For the importance of ideas in the development of freedom, see *supra* note 223 and accompanying text.

the problem.”²⁴⁸ The NCCC also made the very profound point that “some measure of *humility* is required as we act to stop religious persecution outside the United States. . . . ‘Although we cherish the American model of religious liberty and its meaning for us, we recognize that it is not the only model.’”²⁴⁹

VI. CONCLUSION

China lacks the kind of religious freedom that we espouse in the West, and there are serious and brutal human rights violations in China connected with that lack of freedom. But the approach contemplated by the Wolf-Specter bill will aggravate rather than relieve the problem. At this crossroads, the United States must extend the hand of friendship to China in those areas where there is common ground, and in so doing, exercise a portion of faith in the Confucian teaching that “if you govern them by your moral excellence, and keep them in order by your dutiful conduct, they will retain their sense of shame, and also live up to this standard.”²⁵⁰

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248. 143 CONG. REC. E1760, E1761 (daily ed. Sept. 16, 1997).

249. *Id.* (emphasis added) (quoting the General Secretary of the NCCC).

250. Chan, *supra* note 193, at 175.