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A Broken System: Failures of the Religious Regulatory System in the People's Republic of China*

The system for regulating religion in the People's Republic of China ("PRC" or "China") has faced increasing domestic and international criticism in recent years.¹ However, there has been little, if any, improvement in the regulation or protection of religious freedoms in the PRC during the past decades.² This failure to act in the face of increased criticism and international pressure has been attributed to the continued policy of the Communist Party of China ("CPC" or "Party") to bring religious organizations under its control.³ This Comment will show that the current system of religious regulation not only fails to promote internationally recognized principles of religious freedom, but also is counterproductive to CPC and PRC interests as it contributes to the

* An early draft of this Comment was partially adopted for publication in another work with the help of additional authors. See Liu Peng, Brett G. Scharffs & Carl Hollan, *Constitutional, Legislative and Regulatory Change Regarding Religion in China*, in LAW, RELIGION, CONSTITUTION: FREEDOM OF RELIGION, EQUAL TREATMENT, AND THE LAW 247 (Cristiana Cianitto, Cole Durham Jr., Sivio Ferrari & Donlu Thayer eds., 2013). Although both works address the history and current issues of China's policies toward religion, this Comment provides an expanded treatment of those issues and China's regulatory system. Further, this Comment proposes an alternative solution to those offered in the other work, one based on China's regulatory system. References will be made throughout this Comment to those sections that have been published in the other work.

1. The U.S. State Council has designated China as a "Country of Particular Concern" since 1999 due to state-sanctioned religious persecution. See U.S. DEP'T OF STATE, 2011 REPORT ON INTERNATIONAL RELIGIOUS FREEDOM - CHINA (INCLUDES TIBET, HONG KONG, AND MACAU) (2012), available at <http://www.unhcr.org/refworld/docid/502105ce50.html>.

2. See generally Fuk-Tsang Ying, *New Wine in Old Wineskins: An Appraisal of Religious Legislation in China and the Regulations on Religious Affairs of 2005*, 34 RELIGION, ST. & SOC'Y 347 (2006).

3. See YOSHIKO ASHIWA & DAVID L. WANK, MAKING RELIGION, MAKING THE STATE: THE POLITICS OF RELIGION IN MODERN CHINA 9 (2009).

growth of the illegal, underground, and consequently unregulated practice of religion.

Part I of this Comment will outline the development of the religious regulatory system in China since the establishment of the People's Republic of China. Part II will review the current system of religious regulation. Part III will address CPC and PRC policies on religious regulation and the interests and goals of the CPC and PRC. Part IV will illustrate the failures of the current regulatory system and policies in achieving the interests of the CPC and PRC through the history of the Falun Gong in the PRC. Finally, a solution which takes into account both CPC and PRC interests and international standards of religious freedom protection will be proposed.

I. A PRIMER ON THE DEVELOPMENT OF RELIGIOUS POLICY IN THE PEOPLE'S REPUBLIC OF CHINA

Not unlike the histories of religion in other regions, the history of religion in China is comprised of a patchwork of timelines of both benevolence and sordid blunders. As in Europe, many of the religious philosophies that have flourished in China are not native to China.⁴ However, to draw similar conclusions about Chinese attitudes towards religion by comparing China with other regions would be a mistake. Perhaps most influential in the development of PRC and CPC policy has been the history of religion in China during the 150-year period immediately preceding the ascension of the Communist Party. During this time, organized religious societies have been influential factors in civil wars,⁵ rebellions,⁶ corrupt

4. Of the current officially recognized religions in China (Daoism, Buddhism, Islam, Catholicism [Quasi-Roman Catholic], and Christianity [Protestantism]), only Daoism is a native Chinese religion (Confucianism is not recognized as a religion in China, though a debate continues as to whether Confucianism is a religion or a philosophy).

5. *See generally* JONATHAN D. SPENCE, *GOD'S CHINESE SON: THE TAIPING HEAVENLY KINGDOM OF HONG XIUQUAN* (1996) (describing the Taiping Rebellion, a civil war lasting from 1845 to 1864 that claimed the lives of an estimated 20 million Chinese; the movement was rooted in Christianity and its supporters promulgated their quasi-Christian views in conquered territories).

6. *See* JONATHAN D. SPENCE, *THE SEARCH FOR MODERN CHINA 189-93* (3d ed. 1990) (providing a brief overview of the Panthay Rebellion (1856-1873), when the Hui Muslims of western China fought against the central government, and the Dungan Revolt (1862-1877), another Muslim uprising in western China that threatened Chinese control); *see*

principles,⁷ the spread of foreign influence,⁸ and the decline of Chinese traditions and culture.⁹ When these factors are combined with Communist ideology on religion, there is little wonder that the CPC's initial policies were unfavorable and intolerant of organized religious groups and, at times, even of unorganized religious practice. During its sixty-year history, PRC and CPC policy has vacillated between attempts to control religious organizations and attempts to eradicate religion from the lives of Chinese citizens.

A. 1949–1966: Communism and Religion with Chinese Characteristics

From the ashes of political upheaval, instability, foreign domination, and civil war, the Chinese Communist Party and the People's Republic of China rose as Mao Zedong proclaimed that China had "stood up."¹⁰ Despite initial promises that religious freedom would be protected and that religious organization would be left unfettered by the continuing Communist revolutionary struggle,¹¹ Mao and the Communists immediately undertook to

also id. at 231–35 (describing the Boxer Rebellion (1898–1901), which was a Daoist/Qi-gong/Traditionalist uprising with strong religious themes, and showing how the combined weakness of the central government and the strength of the Boxers eventually led to the Emperor fleeing Beijing and foreign troops quelling the rebellion).

7. *Id.* at 414–15 (describing how Chiang Kai-shek, leader of the Nationalist government, altered traditional Confucian Principles to develop some of his ideologies).

8. See W. TRAVIS HANES III & FRANK SANELLO, *THE OPIUM WARS: THE ADDICTION OF ONE EMPIRE AND THE CORRUPTION OF ANOTHER* 222 (2002). As Western nations engaged in "gunboat diplomacy" and forced the Chinese to enter unequal treaties, the foreign nations commonly required the Chinese government to allow Christian missionaries the freedom to travel and proselyte within China.

9. Christian missionaries invited or required Chinese citizens to stop ancestor worship, the worship of idols, polygamy, foot-binding, temple employment, and vegetarian vows. See Eric Reindeers, *Blessed are the Meat Eaters: Christian Antivegetarianism and the Missionary Encounter with Chinese Buddhism*, 12 *POSITIONS* 509, 525 (2004).

10. DAVID SCOTT, *CHINA STANDS UP* 1 (2007) (Immediately prior to the official founding of the PRC, on October 1, 1949, Mao Zedong declared to the Chinese people that China had stood up and would never again be an insulted nation.).

11. See JOHN CRAIG WILLIAM KEATING, *A PROTESTANT CHURCH IN COMMUNIST CHINA: MOORE MEMORIAL CHURCH SHANGHAI, 1949–1989*, at 79 (2012) (stating that

reform every aspect of Chinese life, including religious organizations, dogma, and adherents' beliefs.¹² Moreover, early CPC leaders saw organized religion as posing a direct threat to Communist ideals of self-determinative Chinese sovereignty (or a Chinese rule absent foreign intervention or control) and undivided loyalty to Communism because of the close ties between religion and foreign influence and because religious believers openly displayed loyalty to a social organization other than the Communist Party.

In order to fight these threats of foreign influence and divided loyalty, the Communist Party repurposed the United Front Work Department ("UFWD") in 1940.¹³ The UFWD was first formed when the Communists found themselves necessarily allied with the Kuomintang Nationalists to fight warlord generals following the fall of the Qing Empire and later to fight the Japanese during World War II.¹⁴ The UFWD is a Party Department that falls within the jurisdiction of the Central Committee of the Communist Party. The UFWD was originally created, as its name suggests, as a Party structure that would be responsible for controlling contact with extra-Party (Nationalist) leaders. The Department would ensure that contact with these leaders would be uniform, or united, thereby guaranteeing that struggles with these enemies via a "united front" would result in Communist success. In 1940, the Department was retooled to not only control contact with the Nationalists, but also to control contact with the new Communist enemy; all extra-Communist political parties and groups; locally powerful cliques; friendly armies; and political, economic, and social organizations and figures (specifically including religions).¹⁵

When the People's Republic of China was officially established in 1949, the Communist Party formed the PRC government. The PRC

missionaries and parishioners were initially optimistic about relations with the PRC government, hoping to maintain a "peaceful coexistence").

12. *Id.* at 90; see also Beatrice K. F. Leung, *China's Religious Freedom Policy: The Art of Managing Religious Activity*, 184 CHINA Q. 894, 899 (2005) [hereinafter Leung, *Managing Religious Activity*] (describing how regulations on time and location of religious observance restricted the free exercise of Protestant, Catholic, Buddhist, and Daoist adherents).

13. See LYMAN P. VAN SLYKE, ENEMIES AND FRIENDS: THE UNITED FRONT IN CHINESE COMMUNIST HISTORY 268 (1967).

14. *Id.* at 1-2.

15. See *id.* at 268.

government was created to rule as sovereign over China, though, in reality, Communist Party leaders took up virtually all PRC government posts and used the PRC government as a means to actuate Party rule. With the creation of the PRC government came the creation of the Religious Affairs Bureau (“RAB”), a government agency which would oversee religious adherents and religious organizations. The RAB was created in accordance with the PRC constitutional requirements and fell within the jurisdiction of the State Department.¹⁶ Though falling within the jurisdiction of the State Department, the RAB was primarily accountable to the UFWD.¹⁷ The RAB was responsible for implementing the policy the UFWD created. Thus, religious organizations seeking legal entity status would need to register through the RAB according to the requirements the UFWD established.

Following their rise to power, one of the first acts of the CPC and RAB was to expel all foreign missionaries from China.¹⁸ By 1952 all foreign missionaries had left China.¹⁹ After former missionaries and Western religious society leaders returned home, the CPC pressed for China to move past Christianity towards the Communist ideal of scientific atheism. Chinese scholars sought to undermine Chinese ties to Christianity by equating Christianity with foreign imperialism, foreign domination, the unequal treaties of the nineteenth century, the defeated Nationalist government, and “cultural imperialism.”²⁰

The expulsion of foreign missionaries from China had limited effect in fulfilling CPC interests. The concern of divided loyalties, as well as concerns about the inability of the CPC to control religious groups’ loyalties, led to another, far more sweeping, change in CPC policy toward religion in China. A well-intentioned, though perhaps

16. See PHILIP L. WICKERI, SEEKING THE COMMON GROUND: PROTESTANT CHRISTIANITY, THE THREE-SELF MOVEMENT, AND CHINA’S UNITED FRONT 70–71 (2011) [hereinafter WICKERI, SEEKING THE COMMON GROUND].

17. *Id.*

18. See WICKERI, SEEKING THE COMMON GROUND, *supra* note 16, at 60.

19. *Id.*

20. *Id.* at 62.

mal-aligned, Christian Socialist with close ties to the Communist Party provided the ultimate solution that would allow the Communists to eliminate foreign influence over religious believers and ensure that religious believers' primary loyalties lie with the Party. Reviving an old exit strategy drafted by several Western missionaries in 1892²¹ because many Christian churches were facing certain dissolution due to the block of foreign financial assets sent to China,²² Wu Yaozong (commonly referred to by his "Western" name of Y.T. Wu) began advocating a strategy to ensure the survival of Christianity in Communist China in 1948.²³ In May 1950, Wu and several other Christian leaders met three separate times with the premier of the newly-formed People's Republic of China, Zhou Enlai, and discussed plans to organize what has come to be known as the "Three-Self Patriotic Movement" (the "TSPM").²⁴ In July 1950, Wu and other Christians published "The Christian Manifesto," a political treatise with the principle theme of anti-imperialism.²⁵ The Manifesto "stressed the fact that in the past imperialism has made use of Christianity, and the necessity to purge imperialistic influences from within Christianity itself."²⁶ To accomplish this purge of imperialistic influences, the movement embraced three basic principles: "self-governance," "self-support," and "self-promulgation."²⁷ This total severance of foreign ties would mean that Chinese Christians could only look to Chinese nationals for ultimate terrestrial religious authority; they would reject any support or financial aid from foreign sources; and Chinese Christianity would promulgate itself without the input or aid of foreign missionaries.²⁸

21. See Paul Grant, *The Three Self Patriotic Movement in China*, THE NETWORK FOR STRATEGIC MISSIONS (Jan. 1, 2007), <http://www.strategicnetwork.org/index.php?loc=kb&view=v&id=8345&printerfriendly=Y&lang=>.

22. See KEATING, *supra* note 11, at 89.

23. See GAO WANGZHI, *CHRISTIANITY IN CHINA: FROM THE EIGHTEENTH CENTURY TO THE PRESENT* 344 (1999).

24. *Id.*

25. *Id.* at 343-44.

26. *Id.* at 344 (internal quotation marks omitted).

27. See *id.*

28. Liu, Scharffs & Hollan, *supra* note 1, at 250.

While Wu and his “Christian Manifesto” faced sharp criticism from Chinese Christians for being “too radical,”²⁹ half of the Chinese Christian population (about 400,000 of the 700,000 total Christian believers) accepted the manifesto and the underlying principles of self-sufficiency by 1952.³⁰ Wu’s resulting popularity and clout with CPC officials led to the emergence of the TSPM as the premier Christian ecclesiastical authority in China.³¹ The number of Christians who would not align with the Party-sponsored TSPM dwindled as anti-American movements, motivated by American involvement in the Korean War, the Three-Anti’s Movement, and the Campaign to Suppress Counter-Revolutionaries resulted in public accusation sessions, labor reform sentences, or the execution of anyone accused of espousing non-Communist ideologies.³² The TSPM’s role in the Chinese religious regulation model was solidified in 1958 when the CPC officially dissolved all Protestant sects and unified all Protestant churches as a single faith in an attempt to collectivize religious organizations in the same way all other aspects of Chinese life would be collectivized.³³

The changes in the Chinese Protestant Church would soon spread to other religious organizations. Not long after the release of the TSPM’s “Christian Manifesto,” the Party sought out and tried to mobilize Catholic leaders to endorse the same “three-self” principles Wu and the Protestants had embraced.³⁴ Land Reform Campaigns

29. GAO, *supra* note 23, at 344.

30. *See id.*

31. *Id.* Wu has been strongly criticized by his contemporaries and modern day historians alike for his role in the creation of a Communist-controlled Christian church. In the words of his contemporary: “Wu has been branded by some a heretic or an anti-Christ, while others would question his intentions and integrity as a Christian and wonder if he has not betrayed his faith through the close alliance with the Communist government.” *Id.* at 338. His high position in the Communist-TSPM hierarchy serves as confirmation for some that his motives in leading the Chinese Christian revolution were less than pure.

32. *See* SEBASTIAN HEILMANN & ELIZABETH J. PERRY, MAO’S INVISIBLE HAND: THE POLITICAL FOUNDATIONS OF ADAPTIVE GOVERNANCE IN CHINA 145 (2011).

33. *See* GAO, *supra* note 23, at 347; *see also* Liu, Scharffs & Hollan, *supra* note 1, at 250–51.

34. *See* BEATRICE K. F. LEUNG & WILLIAM T. LIU, CHINESE CATHOLIC CHURCH IN CONFLICT: 1949–2001 84, 86–87 (2004).

reallocated much of the property held by the Catholic Church into PRC and Party control.³⁵ The Anti-Rightist movements of the 1950s and the anti-foreigner sentiment were used to further discredit the Catholic clergy and purge the Chinese Catholic Church of leaders who would not conform to PRC and Party policy.³⁶

In 1956, the only four Chinese Catholic bishops who were not then in prison went to Beijing and met with PRC Premier Zhou Enlai. Zhou promised that if the Chinese Catholic Church severed ties with the Vatican, Chinese Catholics would be free to practice their religion in peace.³⁷ These four bishops organized a nationwide meeting on July 15, 1957, and declared the formation of the Chinese Catholic Patriotic Association (“CCPA”).³⁸ These bishops took upon themselves the leadership positions in the CCPA and released a statement severing any relationship between the CCPA and the Vatican and any loyalty of the Chinese Catholic Church to the Holy See. The following year, the Party’s UFWD and the PRC’s RAB authorized the CCPA to ordain two bishops and eleven priests without the Vatican’s approval. Pope Pius XII responded in June 1958 by condemning the CCPA and the Chinese Catholic Church,³⁹ establishing a strained relationship between the Chinese Catholic Church and the Vatican that has continued for the past fifty-six years.

Buddhism and Daoism lacked the strong hierarchical structures of the Catholic and other Christian faiths; thus, the Party and the PRC had little trouble in establishing an oversight organization to control religious believers.⁴⁰ The Party could not rely on foreign ties in their attacks of Buddhism and Daoism, so they instead attacked the two belief systems as being vestiges of the feudal society China sought to leave behind, as shelters for the Kuomintang rebels, and as remnants of the capitalist class system.⁴¹ It was fairly simple for the Party to establish both the China Taoist Association and Buddhist

35. *Id.* at 88.

36. *See id.*; *see also* Leung, *Managing Religious Activity*, *supra* note 12, at 899–900.

37. *See* LEUNG & LIU, *supra* note 34, at 89.

38. *Id.* at 90.

39. *Id.* at 96.

40. *See* Leung, *Managing Religious Activity*, *supra* note 12.

41. *See id.*

Association of China as oversight bodies to regulate the religious practice of their believers. These associations were organized in 1953 and subscribed to the same “three-self” principles as the TSPM Protestant Church.⁴²

The organization of the Chinese Muslims in western China was accomplished through a slightly different methodology. UFWD and PRC leaders established the Islamic Association of China (“IAC”) in 1953.⁴³ State and Party favoritism gave the IAC the advantage as they gradually grew and absorbed existing Muslim associations, Muslim (*shariah*) courts, and Muslim schools. Similar to the regulations limiting other faiths, “[t]he state . . . [began] to play a significant role in shaping what elements of Islam were to be considered legal, legitimate, and ‘real’ and what practices were illegal and subversive acts of superstition, and outside the narrowed scope of ‘true’ Islam.”⁴⁴

With these Patriotic Religious Associations established, the Communist Party had created the framework for the control of religious observance in the People’s Republic of China. The UFWD and RAB worked within this framework to attempt to build a system by which they could control all religious activity in China.⁴⁵ Aside from a four year span from 1958 to 1962 when the Islamic Association of China was dissolved,⁴⁶ the UFWD and RAB sought to control religious believers through control of the Patriotic Religious Associations. Control was established by encouraging turmoil within these associations, by selecting and promoting leadership that was loyal to the Communist cause, and through political indoctrination.⁴⁷ Moreover, Chinese citizens understood that

42. See André Laliberté, *The Political Consequences of Religious Revival in the People’s Republic of China*, ST. ANTONY’S INT’L REV., Jan. 2004, at 31.

43. Stephen E. Hess, *Islam, Local Elites, and China’s Misteps in Integrating the Uyghur Nation*, USAKY.B. INT’L POL. & L. 407, 412 (2010).

44. *Id.*

45. See Leung, *Managing Religious Activity*, *supra* note 12, at 899–900.

46. See Hess, *supra* note 43.

47. See Leung, *Managing Religious Activity*, *supra* note 12, at 900 (leadership selection); GEORGE N. PATTERSON, *CHRISTIANITY IN COMMUNIST CHINA* 87 (1969) (political indoctrination).

religious believers would always be second-class citizens. “To the question, ‘Can a Christian believe in the New Democracy?’ [Chinese Communist movement] the answer was yes: ‘Yes . . . but he cannot be an official worker in the party or the government.’”⁴⁸

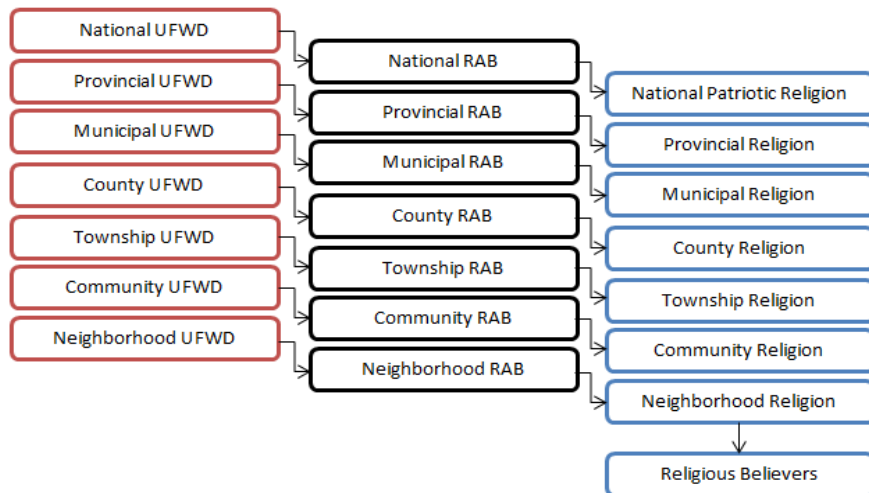


Figure 1: The framework of control over religious believers. The proper titles of certain divisions may vary by locations (e.g., the Shanghai City government operates at the level of other provinces, and intra-city divisions exist down to the neighborhood/street level). While never fully realized in all provinces, this framework shows the relationships of control that were established to regulate religious freedom.

B. 1966–1979: *The Dissolution of the Regulatory System*

Beginning as early as 1963, leftist extremists began to persecute religious adherents for their disloyalty towards Communist ideals.⁴⁹ Following a formal notice released by the highest Party body denouncing certain anti-Maoists, the extreme left-wing movement exploded across China.⁵⁰ This “Great Proletariat Cultural Revolution”⁵¹ thrust China into a state of anarchy as groups of

48. PATTERSON, *supra* note 47, at 59.

49. See KEATING, *supra* note 11, at 158.

50. See *id.* at 139.

51. *Id.*

student-aged “Red Guards” roamed the country seeking to destroy the “four olds”: old customs, old culture, old habits, and old ideas. “Religion was one of the early targets of the ‘Red Guards,’ because it typified the problem of the ‘four olds.’”⁵² Unlike previous anti-rightist campaigns, the Red Guards attacked both official and unofficial religious organizations. In August 1966, the Red Guards shut down all religious centers throughout the country, regardless of their standing with the Communist Party. The Red Guards “stormed the headquarters of the [Protestant] TSPM . . . with axes and herd[ed] the entire staff together to confess their ‘crimes.’”⁵³ The UWFD, RAB, and all Patriotic Religious Associations were dissolved and all religious practices were driven underground.⁵⁴

Any citizen found to be or accused of being a religious believer was in danger of persecution by the Red Guard. Scriptures were burned, relics were destroyed, and believers were forced to endure public accusation sessions and torture. The Red Guard also forced celibate leaders to marry, Muslims to eat pork or raise pigs, and Christians to deny their faith.⁵⁵ Many religious leaders and religious believers were imprisoned, tortured, or executed.⁵⁶ Official records from this time are sparse on information;⁵⁷ however, personal histories indicate that most religious believers in China were significantly affected by the Cultural Revolution. Religious leaders who avoided more significant persecution did so by proving connections with the Communist Party.⁵⁸ Ironically, many who survived the Cultural Revolution have said that the persecution only served to strengthen their religious resolve.⁵⁹

52. PHILIP L. WICKERI, RECONSTRUCTING CHRISTIANITY IN CHINA: K.H. TING AND THE CHINESE CHURCH 171 (2007) [hereinafter WICKERI, RECONSTRUCTING CHRISTIANITY].

53. KEATING, *supra* note 11, at 142.

54. See JAMES MILLER, CHINESE RELIGIONS IN CONTEMPORARY SOCIETIES 182 (2006); WICKERI, SEEKING THE COMMON GROUND, *supra* note 16, at 69–70.

55. See WICKERI, RECONSTRUCTING CHRISTIANITY, *supra* note 52, at 171.

56. *Id.*

57. See KEATING, *supra* note 11, at 145.

58. See *id.* at 142–43.

59. See WICKERI, SEEKING THE COMMON GROUND, *supra* note 16, at 185.

C. 1979–2004: Reconstruction of the Religious Regulatory Structure

Following the death of Mao in 1976, the new CPC and PRC leader, Deng Xiaoping, set about to rebuild China. During the Third Plenary Session of the 11th CPC Central Committee, Deng began to re-establish the framework for religious control that had been dissolved during the Cultural Revolution. During this session, the CPC officially re-created the UFWD and RAB.⁶⁰ In 1980 the Patriotic Religious Associations were re-established, “in line with the resumption of the state’s policy of co-opting religion into patriotic, state-controlled religious orders.”⁶¹ Religious adherents set about rebuilding their religious institutions while the CPC sought an answer for dealing with “the religious question” in China.⁶² In answer to the “religious question,” the Central Committee of the CPC released “Document No. 19” in 1982.⁶³ This document acknowledged that “the long-term influence of religion among a part of the people in a Socialist society cannot be avoided,” but also continued to assert that “[r]eligion will eventually disappear from human history.”⁶⁴

The Central Committee explained that they had “restored the activities of the patriotic religious associations” and 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 consolidate and expand the patriotic political alliance in each ethnic religious group; to strengthen education in patriotism and Socialism among them, and to bring into play positive elements among them in order to build a modern and powerful Socialist state.⁶⁵

60. *See id.* at 68–71.

61. Hess, *supra* note 43, at 414; *see also* WICKERI, SEEKING THE COMMON GROUND, *supra* note 16, at 188–89.

62. Cent. Comm. of the Communist Party of China, *Document 19, the Basic Viewpoint on the Religious Question During Our Country’s Socialist Period*, translated in DONALD MACINNIS, RELIGION IN CHINA TODAY: POLICY AND PRACTICE 8–26 (1989), available at http://www.purdue.edu/crcs/itemResources/PRCDoc/pdf/Document_no._19_1982.pdf.

63. *Id.*

64. *Id.*

65. *Id.*

In short, the Communist Party sought to rebuild the framework of control that had existed during the 1950s, encourage religious adherents to submit to the authority of the patriotic religious associations, and to use the influence of the CPC over these religious associations to further Communist ideologies and principles. However, the Party maintained that “[t]he basic policy the Party has adopted toward the religious question is that of respect for and protection of the freedom of religious belief.”⁶⁶

It was also in 1982 that the PRC adopted a new constitution.⁶⁷ Included in the new constitution was Article 36, which purports to guarantee religious freedoms for citizens of the PRC.⁶⁸ This provision states that citizens enjoy the freedom to either believe in or not believe in religion; however, the practice of religion is limited to the practice of “normal religious activities.”⁶⁹ “Normal religious activities” are not defined in the constitution; therefore, the normalcy of religious activity has been defined by UFWD policy and RAB administration.⁷⁰ Moreover, the constitution reaffirms the ideals of the three-self movement for religious organizations.⁷¹

This regulatory framework ultimately led to the development of China’s current unique religious market. Yang Fenggang’s influential essay on the red, black, and gray markets of religion in China offers an excellent model for understanding the religious market in

66. *Id.*; Liu, Scharffs & Hollan, *supra* note 1, at 252–53.

67. See WICKERI, RECONSTRUCTING CHRISTIANITY, *supra* note 52, at 212.

68. XIANFA art. 36 (1982) (China), available at <http://english.peopledaily.com.cn/constitution/constitution.html>.

Article 36. Citizens of the People’s Republic of China enjoy freedom of religious belief. No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion. The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state. Religious bodies and religious affairs are not subject to any foreign domination.

69. *Id.*

70. See Fenggang Yang, *The Red, Black, and Gray Markets of Religion in China*, 47 SOC. Q. 93, 101 (2006).

71. See XIANFA (1982) (China).

China.⁷² Yang describes religious organizations as belonging to one of three separate markets: the red market, which consists of religious organizations aligned with the CPC-sponsored patriotic religious associations; the black market, which consists of religious organizations that the PRC government has officially banned; and the gray market, which consists of religious organizations that are not aligned with the patriotic religious associations, but not officially banned, or religious organizations aligned with patriotic religious associations acting outside legal boundaries.⁷³ This model for understanding religious regulation and practice is helpful for those who are not familiar with the complexities of Chinese law that is often applied unequally according to unspoken, unpublished principles outsiders may not know.

While the structure of the religious regulatory system in China has seen little change since the early 1980s, the policies surrounding religion have changed dramatically. In the 1980s, following the beginning of the collapse of the Soviet Union in eastern Europe, CPC leaders became increasingly worried about “antirevolutionary activities that are undertaken under the cloak of religion,” and foreigners and destabilizing groups “us[ing] religion to turn [their] young people against [them].”⁷⁴ Unfortunately for the CPC leaders who sought to tighten the controls of the UFWD and the State Administration for Religious Affairs (“SARA”) over these potentially subversive organizations, one of the major effects of the Cultural Revolution was that religious organizations were driven underground.⁷⁵ In response, CPC officials vacillated between liberal allowances of religious freedom and tightened policies to gain the loyalty of underground religious groups, to appease Western demands, and to ensure control over religious groups.⁷⁶ The UFWD and RAB also approved the creation of several new Official Religious

72. See generally Yang, *supra* note 70, at 101.

73. See generally *id.*

74. Beatrice K. F. Leung, *Catholic Bridging Efforts with China*, 28 RELIGION, ST. & SOC’Y 185, 186 (2010) [hereinafter Leung, *Catholic Bridging Efforts*].

75. *Id.* at 187.

76. See KEATING, *supra* note 11, at 182–83; WICKERI, RECONSTRUCTING CHRISTIANITY, *supra* note 52, at 220.

Associations, raising the total number of Party-approved religious associations to eight.⁷⁷

Along with the policy reforms of the 1980s came an explosion in religious membership, particularly in Catholic and Protestant membership. The PRC estimated that there were approximately three million Catholics and three million Protestants in China in 1982.⁷⁸ By 1994, the number of Catholics in China had increased to over twelve million, with membership split between the official Patriotic Religious Association and underground Catholic churches.⁷⁹ Protestant church membership saw a later but steady rise in membership, increasing to six million in 1993, to ten million in 1997, and to over fourteen million in 2004.⁸⁰ Much to the disappointment of UFWD and RAB officials, a large percentage of these new religious members joined churches led by religious clergy who had been imprisoned during the Cultural Revolution, who were released during the era of reform, and who ignored CPC directives and chose to operate within the ‘gray market.’⁸¹

In response to increased worries by CPC leadership about the growth of religious groups and their potential to harbor subversive elements that might undermine CPC control, restrictions on religious freedom saw a general increase throughout the early 1990s.⁸² The main thrust of these regulations was to crack down on unofficial religious organizations and to encourage the patriotic religious associations to further “adapt to the socialist regime.”⁸³ Official clergymen were targeted by the Party and State and were sent to RAB conferences for indoctrination seminars, while unofficial

77. WICKERI, RECONSTRUCTING CHRISTIANITY, *supra* note 52, at 221–22; *see also* Leung, *Managing Religious Activity*, *supra* note 12, at 900.

78. Yang, *supra* note 70, at 103.

79. Leung, *Managing Religious Activity*, *supra* note 12, at 905.

80. *Id.*

81. *Id.* at 902; *see also* Hongyi Harry Lai, *The Religious Revival in China*, 18 COPENHAGEN J. OF ASIAN STUD. 40, 48 (2003) (stating that in the early 1990s it was estimated that less than one-fifth of Catholics in China attended the officially recognized Patriotic Church).

82. Leung, *Catholic Bridging Efforts*, *supra* note 74, at 187.

83. *Id.*

clergy were arrested.⁸⁴ Jiang Zemin, then the CPC and PRC leader, explained to the UFWD what this adaptation to the socialist regime would entail: “This type of adaptation does not require religious adherents to abandon theism and religious beliefs. . . . [Rather,] [t]hey should alter those religious systems and doctrines which do not go along with socialism”⁸⁵ During this same period there were periodic crackdowns against Buddhists in Tibet and Muslims in Xinjiang, which the PRC government said were instigated by “religious activities [that] threatened national security.”⁸⁶

A similar nationwide regulatory tightening on unofficial religious organizations occurred just a few years later after the explosion of the Falun Gong movement and the subsequent crackdown by CPC and by PRC authorities to suppress the movement.⁸⁷ Fenggang Yang asserts that the increased regulation of religious practice during this period has directly led to the burgeoning of the “gray” and “black” religious organizations during this same time.⁸⁸ Whether or not CPC leaders saw this same correlation, in December 2001 Jiang Zemin spoke to a group of CPC and PRC officials and dramatically changed CPC religious policy. In his speech, Jiang spoke of religion as a phenomenon that will survive for a long time and recognized that religion may have a significant social stabilizing effect.⁸⁹ This change in religious policy would lead to a new era of religious regulation.

D. Recent Developments in Religious Regulation

After Jiang Zemin stepped down from power, Hu Jintao assumed the top position in both the Communist Party and PRC government. Hu’s tenure was defined by some as “responsive authoritarianism”: a more populist, accountable, and law-based system of governance that sought to maintain the status quo where possible, but reacted authoritatively in response to social problems.⁹⁰

84. *Id.*

85. *Id.*

86. Leung, *Managing Religious Activity*, *supra* note 12, at 906.

87. Yang, *supra* note 70, at 113.

88. *Id.* at 99.

89. Leung, *Managing Religious Activity*, *supra* note 12, at 910.

90. THOMAS LUM & HANNAH FISCHER, CONG. RESEARCH SERV., HUMAN RIGHTS IN CHINA: TRENDS AND POLICY IMPLICATIONS I (2009).

During Hu's tenure, religious activity in both registered and unregistered religious organizations increased.⁹¹ Hu advocated for all Chinese citizens, including religious citizens, to promote the development of a "harmonious society" in an attempt to increase the social stability of China and the legitimacy of the Communist Party.⁹² Communist leaders also began "to acknowledge the positive role that Christianity can play in promoting social development, yet remain[ed] deeply suspicious and fearful of its potential power as a source of autonomous organization."⁹³ As Hu prepared to step down and appoint a new generation of leaders in 2012, many scholars in China were optimistic that Xi Jinping, the front-runner for assuming Hu's position, would implement religious reforms that would lead to greater religious freedom in China. However, following Xi Jinping's appointment to power, China has increased, not decreased, the restriction of religious practice in China.

During 2014 in particular, it seems that an unpublished policy change originating in the highest echelons of Communist leadership has resulted in a renewed crackdown on religious organizations. More troubling, however, is that these recent waves of crackdowns have resulted in the suppression of black-market religious organizations, gray-market religious organizations, and even the officially and legally recognized red-market religious organizations.

One black-market religious group that was specifically targeted in 2014 is the Eastern Lightning Church, or the Church of Almighty God. Although the church was defined as a "heretical cult" during the mid-1990s, suppression of the group was renewed after May 28, 2014. On that day, six members of the Eastern Lightning Church approached a woman in a McDonald's restaurant in Shandong Province and asked for her phone number. When the woman refused, the believers beat the woman to death in the restaurant.⁹⁴

91. *Id.* at 4.

92. Holbig, Heike, *Remaking the CCP's Ideology: Determinants, Progress, and Limits under Hu Jintao*, 38 J. OF CURRENT CHINESE AFF. 35, 50-51.

93. See LUM & FISCHER, *supra* note 90, at 13.

94. *1,500 Cult Members Arrested in Past Two Years, China Says After McDonald's Killing*, SOUTH CHINA MORNING POST (June 11, 2014),

However, much more troubling have been the recent crackdowns against formally recognized or formerly formally recognized religious organizations during 2014. The first significant suppression began in late 2013, when a pastor in Henan Province was told by local authorities that officials intended to repossess the property where his church stood.⁹⁵ When the pastor, Zhang Shaojie, refused to comply with government orders, he was arrested.⁹⁶ Although Zhang was a pastor for a TSPM church and had operated within the law, officials designated the church as a “heretical cult,” disbanded the organization, and charged Zhang and several followers with crimes under Article 300 for participating in an illegal cult.⁹⁷

The suppression of Christian organizations, even legally recognized organizations, also took place on a greater scale in Zhejiang Province during 2014. The first major incident took place in April, when the government demolished a \$4.7 million chapel that was recently built by a legally recognized TSPM church.⁹⁸ Although the government had previously approved of the construction of the church building, government officials inexplicably declared the building illegal and ordered its demolition.⁹⁹ The demolition of Christian structures has continued since June 2014, when local officials began destroying crosses on Christian churches and detaining any religious believers who defy the removal orders.¹⁰⁰ Chinese officials claim that these crosses were

<http://www.scmp.com/news/china/article/1529931/1500-cult-members-arrested-china-says-after-woman-beaten-death-mcdonalds>.

95. Tom Philips, *Christian Leader Jailed for 12 Years amid Chinese Church Crackdown*, THE TELEGRAPH (July 4, 2014), <http://www.telegraph.co.uk/news/worldnews/asia/china/10945422/Christian-leader-jailed-for-12-years-amid-Chinese-church-crackdown.html>.

96. *Id.*

97. *Id.* See *infra* note 169 and accompanying text describing the enactment of Article 300.

98. Zoe Li, *China Denies Church Demolition Is Persecution of Christians*, CNN WORLD (May 2, 2014), http://www.cnn.com/2014/05/01/world/asia/china-church-demolished/index.html?hpt=hp_t2.

99. *Id.*

100. Andrew Jacobs, *China Removes Crosses from Two More Churches in Crackdown*, N.Y. TIMES (July 28, 2014), http://www.nytimes.com/2014/07/29/world/asia/china-moves-against-2-churches-in-campaign-against-christianity.html?_r=0.

removed and buildings destroyed as a response to violations of zoning ordinances.¹⁰¹ Some sources state that these crackdowns are part of a recently issued but unpublished directive to “eradicate” unregistered gray market religious organizations within the next ten years.¹⁰² A recently released statement by Wang Zuoan, the Director of SARA, where Wang states that China will soon redefine Chinese Christian theology to be more compatible with socialism¹⁰³ confirms that there has been a recent shift in policy, although the exact purpose or effect of this change may not be understood for years.

The renewed repression of religious beliefs is not limited to repression of Christian religious organizations. China also received substantial criticism when officials in the Muslim-majority Xinjiang Province forbade school children and government employees from fasting during Ramadan, the Muslim holy month.¹⁰⁴ According to some sources, those who refused to comply with the ban from fasting were force fed by government officials.¹⁰⁵ These restrictions contributed to a significant increase in violence and unrest in the region that led to the deaths of hundreds of Muslims and resulted in further restrictions, such as bans against beards and religious clothing on public buses.¹⁰⁶

101. Ian Johnson, *Church-State Clash in China Coalesces Around a Topped Spire*, N.Y. TIMES (May 29, 2014), <http://www.nytimes.com/2014/05/30/world/asia/church-state-clash-in-china-coalesces-around-a-topped-spire.html>.

102. Katrina Lantos Swett & M. Zuhdi Jasser, *Commentary: China's Grim Religious Freedom Problem*, WASH. POST (July 29, 2014), http://www.washingtonpost.com/national/religion/commentary-chinas-grim-religious-freedom-problem/2014/07/29/bf5133e0-1756-11e4-88f7-96ed767bb747_story.html.

103. *China Plans Establishment of Christian Theology*, CHINA DAILY, http://usa.chinadaily.com.cn/china/2014-08/07/content_18262927.htm (last updated Aug. 7, 2014).

104. Ishaan Tharoor, *China's War on Ramadan Sees Muslim Students Forced to Break Fast*, WASH. POST (July 11, 2014), <http://www.washingtonpost.com/blogs/worldviews/wp/2014/07/11/chinas-war-on-ramadan-sees-muslim-students-forced-to-break-fast/>.

105. Kabita Maharana, *Ramadan 2014: China Force Feeds Muslim Students to Break Fast During Holy Month*, INT'L BUS. TIMES (July 12, 2014), <http://www.ibtimes.co.uk/ramadan-2014-china-force-feeds-muslim-students-break-fast-during-holy-month-1456367>.

106. *China: 96 Killed Last Week in Xinjiang*, USA TODAY (Aug. 2, 2014), <http://www.usatoday.com/story/news/world/2014/08/02/china-96-killed-last-week-in->

II. THE CURRENT RELIGIOUS REGULATORY SYSTEM OF THE PEOPLE'S REPUBLIC OF CHINA

Structurally, there has been little change from the regulatory structure re-established in the early 1980s. The national-level Religious Affairs Bureau has since been renamed the State Administration for Religious Affairs (“SARA”), though the name remains unchanged at other administrative levels.¹⁰⁷ Religious associations seeking legal entity status are subject to the jurisdiction of several executive agencies, generally including both SARA or the appropriate RAB and the Ministry of Civil Affairs, which administers the affairs of social organizations.¹⁰⁸ Additionally, all religious organizations that are not affiliated with a Patriotic Religious Association (and some that are) receive some oversight from the Ministry of Public Security, which is the public police administration in China.¹⁰⁹ This is because religious organizations that are not recognized as sub-entities to a patriotic religious association do not have any legal entity status within China.¹¹⁰ The Ministry of Public Security exercises some jurisdictional oversight over these organizations as “illegal groups.” Finally, the PRC State Department has created the Institute of World Religions (“IWR”) as a department within the Chinese Academy of Social Sciences (“CASS”). The IWR is a state-sponsored think-tank that produces scholarship and research on religion policies and practices.¹¹¹ This

xinjiang/13532061/; *Chinese City Bans Islamic Beards, Headwear, and Clothing on Buses*, THE GUARDIAN (Aug. 6, 2014), <http://www.theguardian.com/world/2014/aug/06/chinese-city-bans-islamic-beards-head-wear-and-clothing-on-buses>.

107. See CHRISTOPHER MARSH, RELIGION AND THE STATE IN RUSSIA AND CHINA: SUPPRESSION, SURVIVAL, AND REVIVAL 211 (2011).

108. See KIM-KWONG CHAN & ERIC R. CARLSON, RELIGIOUS FREEDOM IN CHINA: POLICY, ADMINISTRATION, AND REGULATION 10–11 (2005).

109. *Id.* For an in-depth analysis of the current Chinese religious regulatory structure, see *id.*

110. While it is not expressly forbidden for a religious organization to be granted legal entity status in the PRC without aligning with a Patriotic Religious Association, there are no such groups who have been granted legal entity status.

111. VINCENT GOOSSAERT & DAVID A. PALMER, THE RELIGIOUS QUESTION IN MODERN CHINA 321 (2011).

section will provide a more in-depth view of the current religious regulatory system in China.¹¹²

A. The Communist Party of China and Religious Regulation

As discussed in the previous sections, the CPC is the ruling political party in China. Currently the Party structure responsible for monitoring and regulating religion in China is the United Front Work Department. Within the UFWD, the Second Department of the UFWD specifically oversees Religious and Minority Affairs in the PRC.

The UFWD is a department that operates under the direct supervision of the CPC's Central Committee,¹¹³ which oversees the national structure of the CPC.¹¹⁴ Within the Second Department there are three major divisions: one managing religion, one managing minority affairs, and the third is a "personnel office."¹¹⁵ Within the religious division there are several offices that specialize in managing the religious affairs of different religions. Each office has between four and eight cadres. This division, and each respective office, has the responsibility of creating religious policy based on the directives of Party leaders in the Central Committee or higher bodies.¹¹⁶

While the control the CPC has over religious affairs is more appropriately explored in the following sections that deal with the PRC regulatory structure and the government-sponsored private organizations, the role of the Party and the UFWD in regulating

112. For a graphical representation of the current religious regulatory system in China, see *infra* Figure 2.

113. LAWRENCE R. SULLIVAN, HISTORICAL DICTIONARY OF THE CHINESE COMMUNIST PARTY 266 (2012).

114. *Id.* at 43–44.

115. Chinese: 人事部 (*renshibu*). Though *renshibu* is typically translated as "human resources department," the *renshibu* in the Second Department fills a very different role. The *renshibu* does not handle the employee affairs of the Second Department; instead, the *renshibu* controls the advancement and selection of religious leaders and personnel. To avoid confusion, it has been suggested this alternate translation is appropriate.

116. All information is based on personal communications with former cadres of the UFWD.

religious affairs ought not to be overlooked. All control and decision making pertaining to the religious regulatory system is held by the Party and the UFWD. Thus, the CPC regulatory structure could be thought of as the “brain” of the Chinese regulatory system. All actions carried out by the PRC regulatory structure, and ultimately all actions and doctrine of official Chinese religious organizations, originate in the policy statements from CPC leadership and the UFWD. Any organization hoping to affect or influence Chinese religious policy should focus efforts on this decision-making locus of the Chinese religious regulatory system.

B. The People’s Republic of China and Religious Regulation

The People’s Republic of China refers to the government structure of China. It is notable that the constitution of the PRC stipulates that the PRC is to operate “under the leadership of the Communist Party of China and the guidance of Marxism-Leninism and Mao Zedong Thought.”¹¹⁷ Therefore, while the PRC regulatory structure is the “face” of religious regulation, it might be appropriately thought of as the body of religious regulation in China—inseparable from the “mind” (the CPC), but unable to act absent command from the CPC. The PRC government acts as an agent of the CPC leadership and the methods of CPC control will be outlined in this section.

Similar to the structure of the U.S. government, the PRC has several branches of government. It is notable that the role of the legislative branch of the PRC, the National People’s Congress, is “[t]o enact and amend statutes”;¹¹⁸ however, to date, the National People’s Congress has failed to pass any legislation protecting religious freedom. This is significant because it means that all religious regulation that is done through agency regulation, which is less authoritative than legislative statutes, cannot be appealed through the judicial system until after the agency-provided appeals process has been exhausted, and depends in greater part on agency discretion for enforcement. The State Department is the executive branch of the PRC and is the main source of religious regulation in

117. XIANFA Preamble (1982) (China).

118. *Id.* art. 67, § 2.

the PRC. Several agencies within the State Department have influence on religious regulation: SARA, the Ministry of Civil Affairs (“MCA”), and the Ministry of Public Security (“MPS”).

SARA was organized shortly after the establishment of the PRC and is accountable to both the State Department and the UFWD.¹¹⁹ Specifically, the State Department oversees “business matters”—things like budgets, payroll, etc.—while the UFWD oversees “policy matters”—things like agency regulations, administrative approvals, etc.¹²⁰ Within SARA there are nine departments.¹²¹ Among the general bureaucratic offices are the four business departments, with each business department being responsible for overseeing specific religious organizations. The first business department oversees Buddhism and Taoism;¹²² the second, Catholicism and Protestantism;¹²³ the third, Islam;¹²⁴ and the fourth, other religions.¹²⁵ These business departments are responsible for drafting regulations and overseeing the administrative approvals for religions within their jurisdiction.

Furthermore, each business department houses a CPC Party Branch to which all Party members belong. During weekly Party Branch meetings, the Party Branch Secretary relays policy information from the UFWD to SARA officers. SARA is the national-level organization for religious affairs. Below SARA at the province, county, city, etc., levels are the Religious Affairs Bureaus (“RABs”). Depending on their location, the amount of funding, and the religious population, RABs may or may not have separate

119. WICKERI, *SEEKING THE COMMON GROUND*, *supra* note 16, at 70–71.

120. Information is based on personal communications with former cadres of the UFWD.

121. GENERAL AFFAIRS OFFICE OF SARA, <http://www.sara.gov.cn/nsjg/index.htm> (last visited Dec. 30, 2012).

122. GENERAL AFFAIRS OFFICE OF SARA, <http://www.sara.gov.cn/nsjg/ywys/index.htm> (last visited Dec. 30, 2012).

123. GENERAL AFFAIRS OFFICE OF SARA, <http://www.sara.gov.cn/nsjg/ywes/index.htm> (last visited Dec. 30, 2012).

124. GENERAL AFFAIRS OFFICE OF SARA, <http://www.sara.gov.cn/nsjg/ywss/index.htm> (last visited Dec. 30, 2012).

125. GENERAL AFFAIRS OFFICE OF SARA, <http://www.sara.gov.cn/nsjg/ywss2/index.htm> (last visited Dec. 30, 2012).

business departments to oversee certain religious groups. In other areas where funds are insufficient to operate these parallel entities, the RAB does not exist and the UFWD directly fills the role of the RAB.¹²⁶ The MCA also plays a role in regulating religious affairs as it oversees all social organizations.¹²⁷ While the MCA does not issue religion-specific regulations, all religious organizations are subject to the same regulations as all other social organizations. Thus, the PRC maintains a dual oversight over legally organized religious groups. Some legally organized religious groups are also subject to oversight by other government agencies where the State Department determines that the activities of the religious organization fall within the jurisdiction of the agency. For instance, many Taoist temples receive oversight from the China National Tourism Administration, and not by SARA.¹²⁸ In August 2014, one Buddhist temple seeking to avoid an edict by the local government to open its doors to tourists instead shut down operations.¹²⁹

The MPS is a PRC agency tasked with maintaining public order. The role of the MPS is similar to the role of the FBI in the United States; accordingly, the MPS should theoretically involve itself in legally organized religious groups' affairs only when there has been criminal conduct. However, the MPS's involvement in religious affairs is far more extensive. This is because the PRC government has been very restrictive in its allowance of religious groups to obtain legal-entity status. To date, only eight religious associations have obtained legal-entity status.¹³⁰ Thus, every religious group that exists outside of these eight associations is an "illegal group" that falls within the jurisdiction of the MPS. Many of the reports of

126. CHAN & CARLSON, *supra* note 108, at 11–12.

127. *See id.*

128. Xu Yunpeng, *Unregulated Commercialization: How Does this Lead to Nirvana?*, CHINA ECON. NET (Aug. 18, 2014, 9:18 AM), http://views.ce.cn/view/ent/201408/18/t20140818_3372616.shtml.

129. Lu Chen, *Buddhist Temple in China Shuts Doors to Avoid Tourists*, EPOCH TIMES (Aug. 17, 2014, 7:25 PM), <http://www.theepochtimes.com/n3/886583-buddhist-temple-in-china-shuts-doors-to-avoid-tourists/>.

130. WICKERI, *SEEKING THE COMMON GROUND*, *supra* note 16, at 222–23; *see also* Leung, *Managing Religious Activity*, *supra* note 12, at 900.

infringements on religious rights specify that the persecution was done by agents of the MPS.¹³¹

Interagency disputes between the MPS, MCA, and SARA have been reported, resulting in some religious groups receiving different directives and treatment from different agencies. This is in part due to the status of SARA as a government administration, rather than a ministry. Because a ministry holds higher power within the Chinese bureaucratic system, MPS agents have been reported to ignore SARA directives in their suppression of groups the MPS deems illegal.¹³² This inter-agency conflict is further complicated by what has been referred to as the “stove-piping effect.”¹³³ The stove-piping effect is a bureaucratic phenomenon “in which individual ministries and other hierarchies share information up and down the chain of command, but not horizontally with each other.”¹³⁴ Thus, local Public Security, Civil Affairs, and RAB officials are likely not aware of the conflict in policies for the treatment of certain religious groups.

The CPC maintains control over these several government agencies through the Party Branches that exist within individual departments and offices, as well as through the nomenklatura system.¹³⁵ Nomenklatura was derived from the Soviet model of Communism and describes the practice of the CPC of strategically appointing important officials to both Party and PRC government posts.¹³⁶ As the CPC has exclusive control over the appointment of certain positions, PRC officials are loyal to the Party, as opposed to being loyal to the government or the people. Through both the nomenklatura system and the Party Branches, the CPC maintains absolute control over the PRC government. Thus, the PRC

131. See CHAN & CARLSON, *supra* note 108.

132. *Id.*

133. SUSAN V. LAWRENCE & MICHAEL F. MARTIN, CONGRESSIONAL RESEARCH SERVICE, UNDERSTANDING CHINA’S POLITICAL SYSTEM 10 (2012).

134. *Id.*

135. Hon S. Chan, *Cadre Personnel Management in China: The Nomenklatura System, 1990–1998*, 179 CHINA Q. 703 (2004).

136. *Id.*

government is in effect an agent of the CPC, working only to actuate the policies of the CPC leadership.

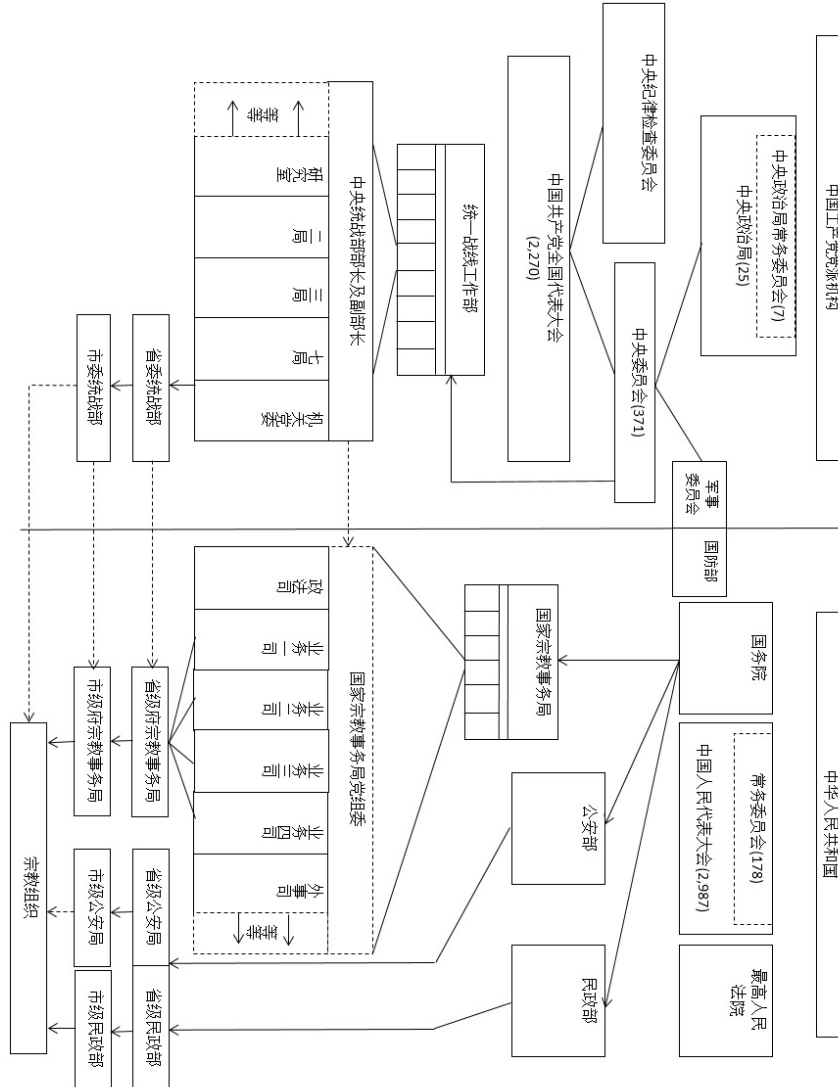


Figure 2.1 – A graphical representation of the Chinese Communist Party and Chinese government structures (in Simplified Chinese).

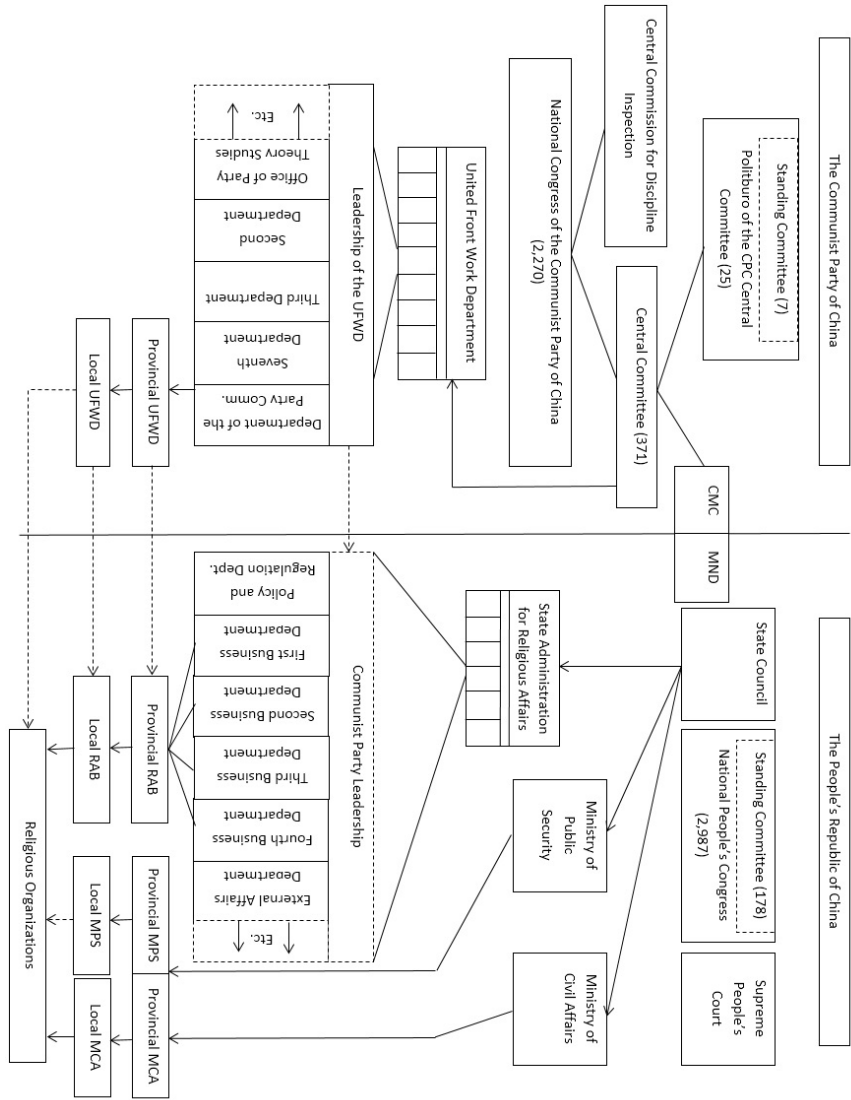


Figure 2.2 - A graphical representation of the Chinese Communist Party and Chinese government structures (in English).

C. Official Patriotic Religious Associations and Religious Regulations

The Patriotic Religious Associations that were created in the 1950s and recreated in the 1980s remain the only officially legal avenue for religious practice. Today, the eight Patriotic Religious Associations are the only legally recognized religious organizations in China.¹³⁷ There are also only five recognized religions in China: Buddhism, Taoism, Protestantism, Catholicism, and Islam. These five recognized religions coincide with the first three of SARA's business departments,¹³⁸ leaving all other "cults," "illegal groups," or "non-recognized religious groups" to be governed by the remaining fourth business department.

The Patriotic Religious Associations have a large following, though generally not as large as the following of their "underground" counterparts.¹³⁹ However, the Patriotic Religious Associations serve an important role in religious regulation in China. Similar to the PRC, the Patriotic Religious Associations are subject to CPC power by *nomenklatura*. Leaders of the Patriotic Religious Associations are chosen by the Personnel Office of the Second Department of the UFWD. Even after leaders have been appointed by the UFWD, the UFWD disperses policy and doctrinal statements that leaders are expected to adhere to. Religious leaders have also been required to attend "training sessions" to learn about the confluence of their religion and Communist doctrine. After these training sessions the leaders take a written test, and if they fail they are removed from their post.¹⁴⁰

Though many Chinese do not attend the official Patriotic Churches, these Patriotic Religious Associations establish a legal outlet for religious expression that the CPC and PRC can control. CPC and PRC officials use the existence of these officially recognized religions to deflect claims by domestic and international

137. WICKERI, SEEKING THE COMMON GROUND, *supra* note 16, at 222–23; *see also* Leung, *Managing Religious Activity*, *supra* note 12, at 900.

138. *See supra* notes 124–126.

139. *See* Hongyi, *supra* note 81, at 48 (stating that in the early 1990s it was estimated that less than one-fifth of Catholics in China attended the officially recognized Patriotic Church).

140. ROBERT KUHN, HOW CHINA'S LEADERS THINK: THE INSIDE STORY OF CHINA'S REFORM AND WHAT THIS MEANS FOR THE FUTURE 371–72 (2010).

human rights critics, by claiming that the Chinese have the freedom to join any religious organization, so long as it is an organization the Party approves. Because there is a legal outlet for religious observance, official CPC and PRC policy has been to suppress any religious groups that do not belong to these officially recognized associations.¹⁴¹ However, it is not practicably possible for the UFWD, SARA, or MPS to suppress all illegal groups; thus, a large number of religious groups operate outside the law within a range of tolerance from enforcing officials. Still, there are many more groups that are actively denounced in CPC policy and suppressed by PRC officials.

D. The Three-Market Model and Religious Regulation

In a 2006 article, Yang Fenggang explained the current religious market in China with his “three-market model.”¹⁴² The Chinese religious market consists of three markets: the red market, the black market, and the gray market. The red market is the legal market for religious worship. This is the legal outlet for religious observance that the CPC and PRC have created through the establishment of the Patriotic Religious Associations, which is overseen by the RABs, SARA, and the UFWD.¹⁴³ The black market is the illegal market. Often referred to as “evil cults” in CPC statements, these are the groups that are actively denounced by the CPC and actively suppressed by the PRC through the MPS.¹⁴⁴ Perhaps the most well-known of these groups is the Falun Gong, discussed below.¹⁴⁵

Yang defines the gray market narrowly as simply those members of legally recognized religious groups acting outside the law¹⁴⁶—for example, members of the legally recognized Protestant church who proselytize off of church premises.¹⁴⁷ However, a much larger

141. Leung, *Catholic Bridging Efforts*, *supra* note 74, at 187.

142. *See* Yang, *supra* note 70, at 93.

143. *Id.* at 97.

144. *Id.*

145. *See* Liu, Scharffs & Hollan, *supra* note 1, at 256.

146. *See* Yang, *supra* note 70, at 97.

147. *Id.* at 109.

segment of religious observance should be categorized as operating within the gray market. This segment is comprised of those religious groups who operate without legal protection, but whose practice is tolerated by the CPC and PRC. Examples of these groups could include local Buddhist, Taoist, or Shamanistic temples, Uyghur Muslims, Tibetan Buddhists, certain underground Protestant and Catholic churches, and religions that have no recognition in the PRC, such as the Eastern Orthodox Church and the Baha'i. These groups should be categorized as operating within the gray market because they operate within a zone of legal uncertainty. So long as they ruffle no feathers, they are allowed to hold religious services and, in some cases, even own land. However, they have no legal rights; they exist by the grace and tolerance of enforcing officials, making their existence tenuous at best.¹⁴⁸

In his explanation of the Chinese religious market, Yang makes three propositions. First, “[t]o the extent that religious organizations are restricted in number and in operation, a black market will emerge in spite of high costs to individuals.”¹⁴⁹ Second, “[t]o the extent that a red market is restricted and a black market is suppressed, a gray market will emerge.”¹⁵⁰ And third, “[t]he more restrictive and suppressive the regulation, the larger the gray market.”¹⁵¹ Yang does well to prove each proposition; however, the remainder of this Comment will prove an additional proposition: To the extent that admittance into the red market is restricted, a large gray market will eventually lead to the emergence of a larger black market.¹⁵²

III. CPC AND PRC POLICY AND THE RED, GRAY, AND BLACK MARKETS: A CASE STUDY

The history of the Falun Gong in the PRC illustrates this final proposition. The Falun Gong is a quasi-religious *qigong* group that has been brutally suppressed by the CPC and PRC authorities for the past decade. *Qigong* is a process for meditation, self-cultivation, and

148. See Liu, Scharffs & Hollan, *supra* note 1, at 256–57.

149. See Yang, *supra* note 70, at 98.

150. *Id.*

151. *Id.* at 99.

152. Liu, Scharffs & Hollan, *supra* note 1, at 257.

paraphysical healing.¹⁵³ It is often practiced through meditation, breathing techniques, and slow-motion martial arts. *Qigong* has existed in China long before the post-Cultural Revolution resurgence of *qigong* groups. Jiang Weiqiao (1873–1958) was an influential leader of secularizing the *qigong* techniques that existed in Taoism, Buddhism, and Confucianism.¹⁵⁴ In the 1950s the CPC was very open to the practice of *qigong*, seeing it as a science and type of Chinese medicine.¹⁵⁵ In 1950 alone, over seventy *qigong* groups were founded and established as legal-entities within the PRC.¹⁵⁶

Beginning in 1979, literally tens of thousands of Chinese declared themselves *qigong* masters and began to organize *qigong* groups.¹⁵⁷ Some of these groups were rather large, building “education centers,” “research centers,” and hundreds to thousands of “cultivation points.”¹⁵⁸ There was perhaps nothing unique about the Falun Gong when they first organized in 1992. The Falun Gong registered with the China Qigong Research Society to form a legal entity.¹⁵⁹ So long as they conformed to the limits against religious practice, they could operate within the red market of social organizations. However, as Falun Gong spread across China, their message adopted increasingly religious overtones.¹⁶⁰ Thus, the Falun Gong transitioned from the red market to the gray market. For a few years the Falun Gong retained their status as a legal social organization, but operated outside the law by practicing religion. Practically, the Falun Gong had no choice but to operate within the gray market because China only recognizes five religions and the Patriotic Religious Associations described above—any other religious group is considered an “evil cult” and suppressed.¹⁶¹ By 1996, the

153. See GOOSSAERT & PALMER, *supra* note 111, at 117.

154. *Id.*

155. *Id.* at 120.

156. *Id.*

157. See Yang, *supra* note 70, at 111.

158. *Id.*

159. Beatrice Leung, *China and the Falun Gong: Party and Society Relations in the Modern Era*, 33 J. CONTEMP. CHINA 761, 767 (2003) [hereinafter Leung, *Falun Gong*].

160. See Yang, *supra* note 70, at 113.

161. See Leung, *Falun Gong*, *supra* note 159, at 764.

Falun Gong's religious message became too overt for the MCA and the China Qigong Research Society to ignore and the Falun Gong's legal-entity status was revoked.

There are two important observations to make about the Falun Gong between 1996 and 1999. First, the Falun Gong lacked designation as a legal entity, yet continued to function—largely without CPC or PRC interference.¹⁶² Second, because of the lack of legal-entity status, the CPC and PRC were left without many options for regulating the activities of the Falun Gong.¹⁶³ Because the MCA and China Qigong Research Society had dissolved the Falun Gong's status as a legal-entity, they no longer had prerogative to monitor or limit the actions of the Falun Gong. While the MPS could be enlisted to disband the group, the Falun Gong were not yet seen as a threat to CPC and PRC power or social stability, and the negative international reaction to the forceful suppression of a peaceful group served as a deterrent for such an extreme measure. Because of these factors, the Falun Gong fell through the cracks of religious regulation and were able to operate essentially unregulated. This existence in legal uncertainty—existing without legal rights, but within the scope of tolerance of CPC and PRC officials—is the definition of a group operating within the gray market of religious regulation, which is why these organizations should also be properly understood as groups within the gray market defined by Yang.

It was this operation within the gray market, beyond the careful watch of CPC and PRC structures for controlling social groups, that allowed the Falun Gong to grow rapidly.¹⁶⁴ By 1999, the Falun Gong had grown to a membership of over 2.1 million known members.¹⁶⁵ Of those, approximately one-third, or 700,000, were also members of the CPC.¹⁶⁶ On April 25, 1999, an estimated 10,000 to 30,000 Falun Gong members encircled the CPC headquarters in Beijing to protest the refusal of SARA to allow the Falun Gong to register as a religious group. PRC President and

162. See Yang, *supra* note 70, at 113.

163. See Leung, *Falun Gong*, *supra* note 159, at 779.

164. *Id.* at 779–80.

165. THOMAS LUM, CONGRESSIONAL RESEARCH SERVICE, CHINA AND FALUN GONG 3 (2006).

166. *Id.*

General Secretary of the CPC, Jiang Zemin, was “shocked by the affront to Party authority and ordered a crackdown.”¹⁶⁷

The Party response came on July 21, 1999, when Jiang Zemin issued a directive to dissolve the Falun Gong and arrest the leadership.¹⁶⁸ Through examining this Party response to an external threat, the Party’s control over the PRC government apparatus and “private” entities becomes glaringly apparent. The *Renmin Ribao* [*People’s Daily*] is the Chinese national newspaper, yet reports directly to the Central Committee of the CPC. The *Renmin Ribao* was quick to describe the Falun Gong movement as the most serious political incident since the Tiananmen Incident in 1989.¹⁶⁹ The PRC’s legislative body, the National People’s Congress, also responded by amending an “anti-cult law,” known as Article 300, that was effective retroactively, labeling the Falun Gong as an “evil cult,” and giving the MPS authority to suppress the group.¹⁷⁰ Soon thereafter, several other *qigong* groups were similarly labeled as “evil cults” and were similarly suppressed.¹⁷¹ Within the first two years of the crackdown, between 150 and 450 group leaders were arrested and sentenced to prison terms of up to twenty years.¹⁷² Under Party direction, the MPC also detained between 10,000 and 100,000 practitioners and forced them to serve one to three year terms in “labor re-education” camps. According to PRC law, “labor re-education” is not a criminal punishment, but an administrative punishment, enforced by the State Council or ministries within the State Council (such as the MPS). Therefore, citizens may be detained in “labor re-education” camps for up to three years without being charged with a crime and without trial.¹⁷³

167. *Id.* at 4.

168. *Id.*

169. Leung, *Falun Gong*, *supra* note 159, at 763.

170. LUM, *supra* note 165, at 4. *See supra* Part I.D. for a brief discussion of recent application of article 300 in the PRC.

171. Yang, *supra* note 70, at 113.

172. LUM, *supra* note 165, at 4.

173. *Id.* at 5.

Since the CPC's edict that the Falun Gong is an "evil cult," there has been an ongoing struggle between the Falun Gong and the CPC. The Falun Gong has continued to release reports about arrests, tortures, and executions done by order of CPC and PRC officials.¹⁷⁴ Meanwhile, reports are released periodically of Falun Gong protests in the PRC, including, most notably, the staging of self-immolations in public places.¹⁷⁵ Despite Party and State efforts to suppress the movement, the Falun Gong has not been eradicated. The group continues to operate in China within the religious black market.¹⁷⁶ Gradually, as more groups have been added to the CPC's list of "evil cults"¹⁷⁷ and have been similarly suppressed, these groups have similarly moved operations underground into the black market.

IV. MEETING PARTY AND STATE INTERESTS THROUGH A MORE EFFECTIVE REGULATORY STRUCTURE

The difficulties the CPC and PRC have had in dealing with the Falun Gong and other "evil cults" serves as proof that the current religious regulatory system has failed to meet CPC and PRC interests.¹⁷⁸ The main interest of the CPC is maintaining¹⁷⁹ as evidenced by the increased funding towards maintaining social stability is strong evidence that the CPC views their ability to maintain social stability as one of the most important keys to

174. *Id.*

175. Leung, *Falun Gong*, *supra* note 159, at 779; *see also* J. David Goodman, *A Self-Immolation in Tiananmen Square Is Reported*, N.Y. TIMES (Nov. 16, 2011) <http://thelede.blogs.nytimes.com/2011/11/16/a-self-immolation-in-tiananmen-square-is-reported/> (describing the self-immolation attempt in Tiananmen Square and discussing past self-immolations done by members of the Falun Gong); Elisabeth Rosenthal, *Former Falun Gong Followers Enlisted in China's War on Sect*, N.Y. TIMES (Apr. 5, 2002), <http://www.nytimes.com/2002/04/05/world/former-falun-gong-followers-enlisted-in-china-s-war-on-sect.html> (describing the self-immolation attempts in Tiananmen Square of people who claimed to be part of the Falun Gong).

176. Leung, *Falun Gong*, *supra* note 159, at 781.

177. For a partial list of groups banned as "evil cults" as of 2006, *see* Yang, *supra* note 70, at 107-08.

178. *See* Liu, Scharffs & Hollan *supra* note 1, at 257.

179. *See* Russell Leigh Moses, *So Much for Stability: Reality Catching Up With the Communist Party*, CHINA REAL TIME REP., WALL ST. J. (Nov. 5, 2012), <http://blogs.wsj.com/chinarealtime/2012/11/05/so-much-for-stability-reality-catching-up-to-the-communist-party/>.

retaining power over the Chinese people. In 2009, funding towards maintaining social stability nearly matched the funding of the Party military.¹⁸⁰ Since 2009, funding towards maintaining domestic stability has increased by 11.5 percent.¹⁸¹ Traditionally, the CPC has seen religious organizations, or any social organization other than the CPC, as a threat to CPC power because these groups have the ability to indoctrinate organization members and mobilize these members for their own purposes.¹⁸²

In an attempt to prevent religious organizations from serving as an incubator for anti-Communist ideologists to use in breeding social unrest, the CPC created the current system of control with the hope that it would create a highly-regulated legal outlet for religious observance.¹⁸³ By creating CPC-controlled religious associations, the CPC had hoped to be able to control religious practice from the top down; by creating the PRC's SARA and RABs, the CPC hoped to control religious practice from the bottom up. However, the CPC's primary method of maintaining control over religious groups—strictly limiting the number of religious groups and controlling the leadership of the groups—is one of the main contributors to the failure of this system of control. Ultimately, the failure of this regulatory system is the inability of the CPC and PRC to effectively regulate groups who do not fit within the narrowly-defined categories the system is meant to control.¹⁸⁴ Using Yang Fenggang's model, the current religious regulatory system is able to regulate groups within the red market, and has structures in place to suppress the groups operating in the black market. However, this regulatory system has no method to regulate groups within the gray market—both those that exist as “radical branches,” or red-market

180. Cheng Li, *The End of the CCP's Resilient Authoritarianism? A Tripartite Assessment of Shifting Power in China*, 211 CHINA Q. 595, 616–17 (2012).

181. *Id.* at 617.

182. Thomas David DuBois, *Religion and the Chinese State: Three Crises and a Solution*, 64 AUSTL. J. INT'L AFF. 344, 347 (2010); Liu, Scharffs & Hollan, *supra* note 1, at 257.

183. Leung, *Falun Gong*, *supra* note 159, at 779.

184. *Id.*

organizations acting in violation of the law, and those in the gray market that are tolerated by officials despite having no legal entity.¹⁸⁵

Ironically, while the CPC sought to control religious organizations to prevent radical groups in fomenting social unrest, the gray market that has been created by the current regulatory system has the effect of fomenting this exact type of social unrest. Under the current regulatory system, groups that exist within the gray market have three options: first, they can join the legal red market if they are willing to appoint Party-approved leaders, adopt Communist-defined doctrine, and become a part of a patriotic religious association; second, they can continue to operate within the gray market indefinitely; or third, they can radicalize and join the black market. Currently, groups who attempt to make the transition from the gray to red market have only one choice—to submit to the leadership of a Patriotic Religious Association and, ultimately, to the Communist Party itself. Needless to say, this option is less than appealing to the vast majority of religious groups as it would require the group to accept CPC-initiated changes in its leadership and doctrine.¹⁸⁶

The majority of religious groups operating within the gray market naturally opt to attempt to continue operations within the gray market. However, the CPC and PRC's attempt to substitute tolerance of the religious group for legal recognition of the religious organization is not only theoretically problematic,¹⁸⁷ but also practically problematic for the CPC and PRC as well. First, organizations that exist within the gray market have no legal-entity status. While this does limit the ability of the group to organize and operate, this also is very problematic for reporting and regulation. As these organizations are already operating outside of the law, they rarely, if ever, conform to reporting procedures designed to assist the RAB in regulation of the religious group. Moreover, even if a group were to obtain the permission of the local RAB to assemble, there is no reporting process within the RAB or codified methods of RAB

185. See Liu, Scharffs & Hollan *supra* note 1, at 257–58.

186. See *id.* at 258.

187. See W. COLE DURHAM, JR. & BRETT G. SCHARFFS, *LAW AND RELIGION: NATIONAL, INTERNATIONAL, AND COMPARATIVE PERSPECTIVES* 433 (2010) (describing these theoretical problems in a Moldovan case).

surveillance or regulation of these groups that exist within the local RAB's zone of tolerance.¹⁸⁸

Second, religious organizations that operate within the gray market cannot operate within the gray market indefinitely.¹⁸⁹ The Falun Gong is an excellent example of the inability of an unregulated group to exist within the CPC's zone of tolerance indefinitely. The CPC crackdown on the Falun Gong had several motivations, but among them was the fear of a social organization the size of the Falun Gong that had the ability to mobilize so many citizens to their cause. However, at 2.1 million members, the Falun Gong was still (relative to China) a small group.¹⁹⁰ Moreover, the vast majority of members participated in Falun Gong out of curiosity, for health benefits, or for socialization and had no intention to participate in social disruption.¹⁹¹ Yet somehow this organization was able to scare top CPC and PRC officials into a response that would eventually become every bit as infamous as responses in Tiananmen, Tibet, and Xinjiang. Furthermore, religious organizations with far fewer adherents, such as the Shouwang Church in Beijing, have been blacklisted and persecuted under Article 300's "anti-cult" provisions.¹⁹² In the case of both the Shouwang and the Falun Gong, CPC crackdowns came after CPC leadership became suddenly aware of a well-organized group that was previously unknown. These groups had been able to expand and organize without alerting CPC authorities because of the existence of the gray market. Groups that seek to continue to operate within the gray market indefinitely will

188. See Liu, Scharffs & Hollan *supra* note 1, at 258.

189. *Id.* at 258–59.

190. Twelve years after the establishment of the Falun Gong, membership totaled 2.1 million. The Underground Catholic Church boasted approximately 6 million members within twelve years of its establishment. See Leung, *Managing Religious Activity*, *supra* note 12, at 905.

191. Leung, *Falun Gong*, *supra* note 159, at 765–66.

192. For example, the Shouwang Church is an Underground Protestant Church with only around 1,000 members, yet this group was blacklisted in 2010 when the CPC discovered that the Shouwang were preparing to send approximately 200 leaders to an international evangelical conference. See Ursula Gauthier, *Why Do Christian Groups in China Put Authorities on Red Alert?*, TIME, June 2011, available at <http://www.time.com/time/world/article/0,8599,2075386,00.html>.

always be at risk that CPC authorities will be suddenly alerted to the group's activities and will label the group an "evil cult," making the choice to stay within the gray market impossible.¹⁹³

Groups operating within the gray market also foment social unrest when group members become frustrated with their treatment under the law. As the economy has slowed, many members of the middle class, who have stopped profiting from the country's economic success, have turned to gray market religious organizations to fulfill their basic needs.¹⁹⁴ However, the CPC's current system of regulation suppresses these gray market organizations, and recent studies in China suggest that when "middle-class Chinese begin to feel that their voices are being suppressed, that their access to information is unjustly being blocked or that their space for social action is being unduly confined, increased political dissent may begin to take shape."¹⁹⁵ Studies have also shown that this political dissent within the middle class has increased in recent years as the economy has slowed.¹⁹⁶

The gray market directly contributes to the social unrest the current regulatory system is intended to prevent as groups operating within the gray market transition into the black market, whether voluntarily or by edict of CPC officials. By both marginalizing and actively suppressing these groups, the CPC creates the very type of opposition groups the religious regulatory system was intended to obviate. In the case of the Falun Gong, suppression efforts by the CPC and PRC that marginalized group members had drastic consequences. Adherents who initially attended Falun Gong activities for health benefits or socialization¹⁹⁷ became radicals who believed that "[t]o suffer and even die for the promotion of Falun Gong is regarded as a golden opportunity for self-fulfillment and should be embraced with gratitude."¹⁹⁸ "Like the Holy War in the Islamic faith, to die for the religious cause is a martyrdom bec[ome]

193. See Liu, Scharffs & Hollan *supra* note 1, at 258–59.

194. Leung, *Falun Gong*, *supra* note 159, at 771–72.

195. Li, *supra* note 180, at 606.

196. *Id.*; Liu, Scharffs & Hollan, *supra* note 1, at 259.

197. Leung, *Falun Gong*, *supra* note 159, at 766.

198. *Id.* at 780.

a way to obtain the ultimate fulfillment of life.”¹⁹⁹ And, since the crackdown on the Falun Gong movement, there have been many who sacrificed their life fighting against the CPC and PRC suppression of the Falun Gong. The sad irony of the situation is that these people and groups became radicalized in response to the system of regulation the CPC set up to prevent radical groups and people from disrupting public order.²⁰⁰

It is also untenable for the PRC to continue to regulate religion under this paradigm, even if there were radical changes in CPC policy and groups were no longer actively suppressed under Article 300. Theoretically, Chinese officials could decline to suppress gray-market groups, even when they expand beyond the current zone of tolerance they operate within. However, the result of this system, even if it was better than the status quo, would be a patchwork of decentralized and unequal religious regulation as officials from different regions would enforce their own laws. Whereas the current religious regulatory system was created in order to centralize control over religion, this development would only undermine Chinese interests.

Therefore, the CPC and PRC would be best served by altering the current system of religious regulation instead of simply selectively enforcing it. While ultimately many human rights advocates and western Christians hope that China will ultimately implement a wide-sweeping change that would grant all citizens religious freedom, such a drastic change is very unlikely to occur in the foreseeable future. However, a less drastic change could be successful in preventing additional black market groups from undermining social stability. Thus, the PRC should instead alter current practice and allow for gray market religious organizations to receive legal recognition without submitting to the authority of the patriotic religious associations. If gray market religious organizations were provided with an opportunity to register as legal organizations, there would be an incentive for these religious organizations to obey

199. *Id.*

200. *See* Liu, Scharffs & Hollan *supra* note 1, at 259.

religious regulations. Moreover, after granting legal entity status, SARA and the PRC would have more tools to regulate the newly-legalized religious organizations—tools that are not as blunt and heavy-handed as the current practice of prosecuting organizations and believers under Article 300.

V. CONCLUSION

There has been much criticism of the religious regulatory system of the CPC and PRC. The CPC has built a framework of controlling agencies and exercised power over the legal “red market” of religious activity through the use of these agencies and the *nomeklatura* system. The design of the CPC in creating these devices for control has been to ensure Communist control over religious organizations to prevent these groups from incubating anti-Communist groups and subverting Communist control over the Chinese people.

This system of regulation and control has had success in bringing a certain segment of religious organizations under CPC control. However, a large “gray market” of religious organizations also exists within China. These organizations exist outside of the boundaries of the religious regulatory system of the PRC. Because officials are unwilling or unable to enforce the harsh regulations the PRC has established for dealing with all groups that operate outside the religious regulatory system, this religious gray market has grown to become extremely large. While official policy has been to suppress these groups absolutely, many groups operate within a range of tolerance established ad hoc by local enforcing officials. These groups that operate outside of the religious regulatory system often operate under limited or no supervision by PRC officials.

This status quo of allowances, tolerances, and crackdowns cannot continue. The current religious regulatory system has no methods for groups operating within the gray market to legalize their activities. Furthermore, as can be shown by the transition of religious groups such as the Falun Gong and Shouwang Church, which were previously tolerated by officials and operated within the gray market, organizations that operate within the gray market cannot hope to continue within the gray market indefinitely. As gray market organizations expand, CPC officials eventually forfeit tolerance and

criminalize these groups' activities. Groups that are forced into the black market contribute to social unrest, becoming the types of groups that the current religious regulatory system was intended to prevent.

CPC and PRC officials must address these problems, as the gray market will continue to expand and the potential for future unrest will increase. The best way for CPC officials to prevent gray-market religious organizations from joining the black market is to create a method for gray market religious organizations to legalize their organizations and join the red market without having to submit to controls on doctrine and leadership. If CPC officials implement this change into the current system, legitimate religious organizations will enter the legal market, allowing for the religious regulatory system to properly regulate these groups, which will prevent these groups from being forced into the black market.²⁰¹

As CPC officials often cite to historical examples of unrest and rebellion as reasons that religion must be suppressed and controlled, they should also hearken back to the failure of policies implemented by the Qing Emperor in quelling social unrest among the Muslims. Then, a Manchu official warned the Emperor: "Among the Moslems, there are certainly evil ones, but doubtless, there are also numerous peaceful, law-abiding people. If we decide to destroy them all, we are driving the good ones to join the rebels, and create for ourselves an awesome, endless job of killing the Moslems."²⁰² Today, CPC officials ought to note that their continued attempts to suppress religious activities will only drive law-abiding people to join the law-breakers, creating an "awesome, endless job" of suppressing dissident groups.

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201. Liu, Scharffs & Hollan, *supra* note 1, at 265-66.

202. WEN-DJANG CHU, THE MOSLEM REBELLION IN NORTHWEST CHINA 1862-1878: A STUDY OF GOVERNMENT MINORITY POLICY 57 (1966).

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