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Preface

“Bob” Xiqiu Fu¹

In China since 2008, the party state logic and the social logic have been in a fact-to-face collision such as has not been seen before in the last two decades. Especially after the Olympic Games, such collision has come to a high tide. “Guojinmintui” (“the state advances as the private sector recedes”) in economic, political, cultural and legal domains can be understood as a start of total collision between party state logic and social logic. From the end of 2008 to the end of 2009, three major crackdowns on social logic by party state logic have been observed. The first was the crackdown on Charter 08; the second one was the crackdown on civilian organizations in the OCI (Open Constitution Initiative) Event; the third one was the crackdown on house churches by the party state from September to December 2009. However, the third round of *guojinmintui* ended with the failure of the party-state in cracking down on the social domain, by the end of 2009, while the civilian force won a victory in the sector of house churches. In his article “Elements and Theoretical Base for Rights-safeguarding Mode,” constitutional scholar Fan Yafeng structures, from a macro view, the evolution logic of the social movements in the 2000’s. He outlines the five elements and theoretical base of the rights-safeguarding mode and has introduced the quintessence of the rights-safeguarding movement — the resulting integration mode of the political power and regime revolution.

From September to December 2009, house churches in China suffered a new round of crackdown, as large, local churches including the Linfen Church in Shanxi province, Beijing’s Shouwang Church and Shanghai’s Wanbang Church and such institutions with religious influence in China such as Shengshan

¹ “Bob” Xiqiu Fu, President of ChinaAid; Visiting Professor of Oklahoma Wesleyan University

Institute² were consecutively suppressed. Additionally, ten members of the Linfen Church were heavily sentenced respectively to up to 7 years imprisonment and 2 years reeducation through labor, with the charge of unlawfully occupying agricultural land and the crime of assembling crowds to disturb traffic order. The Linfen Church Case is a typical church case, in that there was non-religious treatment of religious affairs, laws used as tools, and selective law enforcement. In this regard, this edition has published a special coverage of Linfen Church Case, including the Bill of Prosecution by the Shanxi Linfen Yaodu District People's Procuratorate against Yang Rongli and 4 other members of the Linfen Church, the Decision of the Linfen Administrative Committee of Reeducation-through-labor, the Criminal Judgment, the summary of the court trial of Linfen Church Case, and the pleadings of three defending lawyers. Additionally, this edition releases "The Summary of the Seminar on the Linfen Church Case and Religious Freedom" held by Christian lawmen, including the legal analysis on the charges involved in Linfen Church Case, analysis on the overall situation, and elaboration of the relationship of house churches in the rights-safeguarding movement and freedom of belief.

Finally, in "The Crackdown on House Churches is 'Guojinmintui' of Social Domain, Mr. Ding Guquan analyzes the history and inherent logic of the religious policies, pointing out that the crackdown on house churches is a resistance to freedom and legal governance and emphasized that crackdown of house churches and promotion of "guojinmintui" will accelerate the social reform.

² The English name for Shengshan Institute is the Holy Mountain Cultural Research Institute

中国法律与宗教观察

Elements and Theoretical Base for
Rights-safeguarding Mode

Fan Yafeng

Elements and Theoretical Base for Rights-Safeguarding Mode

*Fan Yafeng*³

I will start with such a background as the collision between party-state logic and social logic. In the 20th century, there were two types of party-state logics: party-state logic of KMT and party-state logic of CPC, both of which had one common feature: both were under a framework which integrated the party, government, military, doctrine and a leader. Regarding Mainland China, the party-state logic and social logic over the last three decades can be basically disintegrated into two. During the eleven year of the first period, from 1978 to 1989, the party-state logic and social logic were continuously split up, but before this time the party-state logic and social logic had been linked together. The reform launched by Deng Xiaoping led to the division of party-state logic and social logic. The 1989 Students Movement created the first fierce collision between party-state logic and social logic, resulting in the severe setback of social logic. Over the last two decades, the society has basically developed according to its own logic, inheriting the tradition since the May 4th Movement which itself can be divided into ideological resources and a social movement. Since 2008, the face-to-face collision has appeared between the party-state logic and the social logic which had developed over the last two decades; while *guojinmintui* (“the state advances as the private sector recedes”) in economic, political, cultural and legal domains can be understood as a start of the total collision between party-state logic and social logic. After the 2008 Olympic Games, such collision has come to a high tide. Up to now, three major crack-downs of social logic by party-state logic have been observed. The first was the crackdown of Charter 08 and the second one was the crackdown of civilian organizations in the OCI

³ Dr. Fan Yafeng: President of Holy Mountain Cultural Research Institute, former researcher at China Academy of Social Sciences

(Open Constitution Initiative) Event. The third one was the crackdown on house churches by the party-state from September to December 2009. The third round of *guojinmintui* ended with the failure of the party-state in cracking down the social domain. In 2010, the collision between party-state logic and social logic started an even uncertain state.

1. Five Elements of the Rights-safeguarding Mode

Today, three issues will be mainly discussed: (1) five elements of the rights-safeguarding mode; (2) theoretical base of the rights-safeguarding mode; and (3) resulting integration mode of Chinese social transformation — the integration of political power reform and regime revolution. Today, the seminar intends to summarize the social movements in the 2000s, while I try to structure the evolution logic thereof in a macro view, instead of a demonstration focused on details, with the keynote of raising questions.

In the first part, I will discuss the five elements of the rights-safeguarding – or rights-defense – movement. Since 2003, the right-safeguarding movement has been gradually formed into a social movement, as has is commonly known. Before the Democratic Progressive Party (DPP) was founded, it took a period of less than 7 years for the “self-help” movement of Taiwan to develop – from 1983 and 1990 – while the right-safeguarding movement of Mainland China has so far been in process for six years. In view of democratization cycle, the right-safeguarding movement of Mainland China and the self-help movement of Taiwan are extremely similar. However, friends who know well about the self-help movement of Taiwan told me that by scale and strength, the right-safeguarding movement of Mainland China has far surpassed the self-help movement of Taiwan. We should not be self-abasing about the democratization progress in Mainland. Without doubt, in Taiwan, some people have burned themselves for Taiwan independence; but in the Mainland, some people have also burned themselves for forcible relocation, and the number has been far more than that in Taiwan. In terms of force as well as strength for mobilization, the right-safeguarding movement in Mainland has surpassed the self-help movement in Taiwan. One of the reasons is that the fierce official-civil contradiction caused by the capitalist tendency of influential officials in Mainland

has surpassed far the influence of the limited and weak dictatorship of Taiwan in the official-civil contradiction in those days. Our social situation is different from that of Taiwan. In Taiwan, the economic reform has been oriented by the middle class. After the land reform, in terms of regime, Taiwan has formed an olive-type social structure with the authentic East Asian characteristics. Therefore, with the intensified official-civil contradiction, the right-safeguarding movement of Mainland has surpassed the self-help movement of Taiwan in terms of scale and strength.

To sum up, the Mainland has observed three traditions for democratic transformation: (1) the tradition of the Soviet Union and Eastern Europe; (2) the violent revolution of the Mainland; and (3) the Taiwan Tradition. I have expanded these three traditions into five elements. The tradition of Soviet Union and Eastern Europe includes three models: (1) the Soviet Union Mode (2) the “Charter 77” Mode of Czechoslovakia; and (3) the Polish Solidarity and Catholic Church Alliance Mode.

First, we will discuss the first mode, the top separation mode of the Soviet Union. The Soviet Union Mode is characterized by its quick take-over as well as loss of political power. The political power of CPC is characterized by its long ascent – 28 years – to take over the political power; and it will be a slow process for its system to collapse. Top separation is the core of Soviet Union Mode: Yeltsin and Gorbachev were the sides of one coin, while the top separation mode was the core for the collapse of the whole Soviet Union and East European system. In the study of the collapse of the Soviet Union, the leftists introduced the “revolution from the top.” This statement is extremely accurate because the top leadership of the Soviet Union had internally given up the communist ideology, thus resulting in the top separation. What is the insight this gives for the right-safeguarding mode? Over the last two decades, the CPC top leadership of the Mainland has just summarized the essence of Soviet Union Mode and arrived at a common view of “one boat.” Then, on the premise of “one boat,” how will the factors in the top separation penetrate into the right-safeguarding mode? The right-safeguarding movement has cleverly applied the “dual-core controversy” and absorbed the essence of the top separation

mode. Without doubt, CPC has observed no top separation, but, by grasping the strategic opportunity created in the process of power-taking and handover, we can integrate the elements of the top separation mode into the right-safeguarding movement. The official-civil contradiction and power-structure contradiction are the two contradictions in the Chinese right-safeguarding movement.

The second one is the Charter 77 Mode of Czechoslovakia, which can be deemed an example of literary politics in the transformation of the Soviet Union and Eastern Europe. The influence of this mode on the democratic transformation of Mainland China is mainly represented in the Charter 08 Event. In the Mainland, the civilian forces include four sectors: right-safeguarding, church, democratic movement and “pen society,” while the pen society is the subject of the Charter 08 Movement, which is mainly composed of literary intellectuals of Mainland China and is actually a copy of Charter 77 mode. The Charter 77 mode was subject to the whole atmosphere of the Soviet Union and Eastern Europe. Thus, it is also the reason for the failure of Charter 08 Movement, because it has not taken into account the complex relationship with other four factors. Under such background, it went deep alone, without any theoretical and practical base.

The third one is the Polish Solidarity and Catholic Church Alliance Mode. Such a mode has substantial shape in Mainland China, to which we have not previously given adequate attention. In the Polish Solidarity and Catholic Church Alliance Mode, the Catholic Church did not politicize its church, but always upheld its independent position. One special condition with Poland is that more than 30% of Polish Solidarity leaders were Catholics, while the Catholics shared more than 60% of the Polish population, thus forming the background for the Polish mode. Among the three modes for transformation of the Soviet Union and Eastern Europe, the Polish mode is crucial for the development of the Chinese right-safeguarding movement of Mainland China. In Mainland China, about 30% of the right-safeguarding lawyers are Christians, especially Protestants, thus having formed the actual alliance of the right-safeguarding movement and the house church. Therefore, the relationship between the Chinese house church and right-safeguarding movement is rather similar to the alliance of Polish

Catholic Church and Solidarity. This mode will be the upmost mode for the future Chinese social transformation. In this regard, we are still consciously inadequate. Our problem is the lack of a force alliance similar to Polish Solidarity, as has been determined by the unfavorable condition of organization in the Mainland.

The second example is the violent revolution mode for previous replacement of dynasties in Mainland. Over the last few years, regarding the violent revolution mode, the Wang Bin Event and Yang Jia Case are of the most symbolic significance. Without doubt, the Yang Jia Case is the influence of violent revolution mode. In today's China, the violent revolution mode is practically impossible. Due to the psychology of the mainstream nationals in pursuing changes but fearing disorder, the violent revolution mode has become a legacy to be left behind. Despite this, we have observed inadequate studies on the empire tradition of Shuipo (Water) Liangshan (Mountain) behind the violent revolution mode. Mr. Wu Si pointed that the party state is the top form of empire. In my opinion, temples and rivers and lakes, Jingshan (Mount Jing) and Liangshan (Mount Liang) are isomorphic: Jingshan represents the height of temples, while Liangshan represents the rivers and lakes. They have the same basic thinking mode. As a ruling party, in terms of internal power structure, CPC still follows the Liangshan mode of "winner will take all." The reform of Liangshan mode is the core problem for the whole democratic transformation of the Chinese constitution. For us to part from the violent revolution mode, it is critical to integrate the three modes for transformation of the Soviet Union and Eastern Europe and the Taiwan mode into the transformation mode of Mainland China; and we have to part completely with Liangshan mode in terms of value, system and organization. Otherwise, we cannot achieve the real transformation.

The third mode to be discussed is Taiwan mode which has the most insight for us. I have summarized the Taiwan mode as an interaction mode. Someone proposed that the Taiwan mode is not suitable for Mainland China, because the authority of Jiang Jinguo is essentially different from the post-totalitarianism of Mainland China. It requires for a higher-level summarization, for which I have abstracted three factors.

First, what Taiwan has completely followed in its political transformation is the theory of political market theory and the theory of political entrepreneurship, as is the utmost core theoretical base. Applying the Austrian economics, Professor Huang Chunxing conducted an excellent study on the democratic transformation of Taiwan and his conclusion has been proven by the doctorate thesis of Chen Xiao (from Chinese Academy of Social Science) discussing the authority transformation. In the political transformation of Taiwan, both ruling and opposition parties have accurately measured the suppression cost and tolerance cost, which are both the basic concepts of the political market theory and political entrepreneur theory. With Tocqueville as a grounding point, I consider it as the commercial spirit of Chinese democratic transformation. The three-decade reform launched by Deng has brought a great change to the Chinese thinking, which is represented in the right-safeguarding movement, i.e., learning the theory of political market and theory of political entrepreneur in the political transformation of Taiwan.

Second, it is the organization path. The organization path of Taiwan is represented in two aspects: basic election and magazine distribution. In terms of magazine distribution, one is the *Research Center of Public Policies* (RCPP) and the other is the *Federation of Editors and Journalists* (FEJ). These two paths have just corresponded to the lawmen and literary men. What insight has the organization path brought to us? I have a different opinion from Professor Li Fan: do not hold the low-level elections. Villager election will not bring about any change; but by summarizing the democratization of Taiwan, the government of Mainland has just wanted to completely control the basic democratic election path. The two organization paths for democratic transformation of the Mainland are right-safeguarding movement and the house church. Since the Mainland has no such political eco-environment for literary men to distribute magazines as in Taiwan, up to now, there is no such magazine beginning such as the *Beautiful Island*. Therefore, the pattern of citizen forces in Mainland is composed primarily of the three major sectors of the house church, the right-safeguarding movement, and the Democratic Party, while the pen society is only an auxiliary segment.

Third, the theoretical guidance for Taiwan's street-based movement is the violence marginal theory summarized by Professor Huang Chunxing. Many people have misunderstood it by considering the non-violence of Mainland as no violence. As for Mainland, since we still lack of real and sincere theoretical criticism, the violence marginal theory is an important insight for us.

2. Theoretical Base of the Rights-safeguarding Mode

A theoretical base is required for integration of the above five factors, as is the process of Chinese liberalism. The right-safeguarding movement is further deepened on the basis of the three major theories of the 1990s. The first theory is the civil society theory, to which the theory of Professor Deng Zhenglai has contributed most. The second theory is the legal governance theory, to which Wang Jiafu from the Institute of Law has contributed most. Introduction of the theory for the ruling party to govern the state as per law is, without doubt, the condition precedent for establishment of the core principle of the right-safeguarding movement: legal right-safeguarding. Without the legal governance theory as a guide, our legal right-safeguarding will not have any basis. The legal governance principle is the core principle of the right-safeguarding movement, while the legal right-safeguarding is the core path for Chinese democratization. The third theory is the classic liberalism theory advocated by Mr. Liu Junning, which has shown the biggest influence to the young generation. China has in recent years introduced different branches of liberal democratic theory, such as the social democracy represented by Qin Hui, the aspiration liberalism represented by Li Yinhe, and the liberalism of Rawls. It is a good fortune for the Mainland that we have introduced the classic liberalism that has been on the edge in the west over the years, which is a contribution of profound significance in ideological history made by the platform of the "Public Forum."

In the 2000s, based on the three major theories, we push forward the Chinese liberalism. As a whole, the right-safeguarding mode has five theoretical bases. First, it is the political market theory and political entrepreneur theory, as is an application of Austrian economics. In this regard, Mr. Qiu Feng has in recent years made the most efforts and greatest contributions. Austrian economics is of

extremely important significance for deconstructing the equilibrium economics of Samuelson and building the more brilliant and essential rational mode.

Second, it is the traditional influence of the Christian Testament. Christian ideology, especially the reformed covenant theology, shows a great influence over the right-safeguarding movement in the Mainland. In recent years, we, including Mr. Cao Zhi, Mr. Wang Zhengfei and myself, have made some introductions about the covenant traditions.

Third, it is the theory of spontaneous order and a multi-center order. As Hayek's works are translated and introduced, the study of classic liberalism in the 1990s has been deepened. The later Austerom's idea and Polanyi's idea have also been integrated into the study of a multi-center order and spontaneous order. In my view, common-law constitutionalism can also be included into this theoretical concept. The biggest contribution of this theory is that it has provided a complete social theory. For China to establish a society completely based on freedom, this theory is extremely crucial. Without the theory of spontaneous order and a multi-center order, what we build will be only water without its source and the tree without roots.

Fourth, it is the political view. In recent years, the establishment of Sun Yat-sen's political view that "politics is a public matter" has been extremely important, which has gradually become a common view of the right-safeguarding citizens. Meanwhile, it is also important for absorbing another political view, i.e., application of the political views of Schmitt and Ma Zedong in reverse. China did not take the approach from Weimar Republic to Hitler's fascism because the Chinese middle class, including liberal intellectuals, were already politically mature and relatively decisive. The political decisiveness and enemy-friend division theory of Schmitt and Ma Zedong has urged the Chinese right-safeguarding movement to be politically mature. Based on the above analysis, obviously, some of the Chinese civilian forces dare not to make any political decision. For example, the idea of "we have no enemies" is politically immature. A real powerful liberal democrat has enemies everywhere and his enemy is the dictatorship. The right-safeguarding movement and right-safeguarding mode are respected mainly because of its firm political

decision and its flag of stating the goal even from the beginning. You will not be respected if you have not stated your purpose: on the contrary, you will be only deemed as “playing house.”

Fifth, it is the mean⁴ theory proposed by me, with a hope to integrate the above four points. The mean theory includes the mean integration, mean right-safeguarding and other ideas. The mean integration is to integrate the high and lower strength and the internal and external strength and it is to integrate the rules and resources of Chinese civilian forces. The mean integration can be carried out in three paths: regional integration, hierarchical integration and systematic integration. In the localization of liberalism in China, the mean theory has handled and respected different thoughts over the last decade. In this area, Mr. Qiu Feng and Mr. Yong Miao have done much work. Whether it is called mean liberalism or the right-safeguarding mode, we have properly handled the nationalism, new leftism, cultural conservatism - including Deng Xiaoping’s socialism with Chinese characteristics – and Mao Zedong’s thoughts. In the 2000s, the mean liberals strive to dissolve the tension between liberty and Chinese nature, liberty and tradition, liberty and equality, etc. Leftism and nationalism are approaching the right-safeguarding movement, while the Confucianism opposes neither the basic ideas proposed by the right-safeguarding movement nor the mean liberalism. We also respect the historical contribution of Deng Xiaoping’s reform and thus have not made the mistake of nihilism for historical separation in the relationship with CPC. Thus, we strive for the integrated balance of various values such as liberty, tradition, equality, Chinese nature, depth, and strength.

3. Resulting Transformation Mode: Integration of Political Power and Regime Revolution

In the third part, we will discuss the resulting transformation mode. The resulting transformation mode is to integrate the political power reform and regime revolution.

⁴ Editor’s note: analogically used as the mathematical mean, e.g. *average*.

As for the dynamic analysis of regime transformation, first discuss on the relationship between forces inside and outside the system according to the system-related rules and resources distribution. Second, investigate the critical structure inside the system, i.e., the relationship between economy and politics. Finally, regarding the attitude toward the system, discuss the two solutions - political power reform and regime revolution – and conclude that the resulting transformation strategy of the right-safeguarding movement is relatively mature.

1) Inside and Outside the System

The classification of inside and outside the system is basically similar in meaning to the classification between up-down and down-up and between officials and civilians. There is an extremely high tension between the following two approaches: the in-system mainstream concept of moving from legal governance to democracy, and the off-system approach of the coexistence and interaction of legal governance and democracy. The two modes of classification between inside and outside the system and between political power reform and regime revolution can constitute a rather rich regime transformation solution, as will not be discussed in detail here.

2) Contradictions between economy and politics and between officials and people

The relationship between economy and politics is a critical issue for the regime transformation in China. To some degree, the major crisis of the existing regime is the change of economic structure resulting from the economic reform, as is in contradiction with the rigid political structure. It is inevitable for the authority to gradually open the political monopoly market, as is an assessment acceptable to all. Appointment of non-party personages as ministers is a reflex of limited opening. One important assumption for investigating the Chinese regime transformation is the market logic of political transformation, i.e., similar to the dual-track system of the economic reform, the political dual-track system in the regime transformation is also the realistic mechanism for breaking through the political monopoly in China politics.

Obviously, China has formed the dual-track political market. The crisis of the official political market rests in inadequate capacity of providing public articles and the market-based and privatized governmental behavior. The civilian political market started to take a shape in 1978 and ran into conflict with the official market in 1989, at which time the civilian market was basically abandoned. Due to the dual-track system of political market, a number of political merchants who know well about the status of the two markets and could smartly control the speculative risks soon came into favor. Their buyers and demanders are public opinions. The suppliers and sellers are the elites who possess resources in the old system, including the intellectual elites, economic elites and political elites, respectively holding the lawful resources, economic resources and political resources. Political resources can be further divided into propaganda resources, organization resources and united front resources. The lawful resources and political resources for speculative reselling of state-owned assets may become the important characteristic of Chinese transformation. The authority intends to resell lawful resources to the civilian market in a limited way, as well as to crackdown on the civilian market so as to prevent its growth to becoming a substitution of the official market. The authority's aim is to maintain its existing pattern as a major dealer as well as to meet, in a limited way, the requirements of public opinions, and so to respond to the requirement for political reform in a limited way.

The game rule system for the political process of transition is a highly complex issue. The multilateral asymmetric relationship is the key for understanding this process. Official stance, liberalism, public opinion and world society are the multiple parties of the game. Furthermore, public opinion can also be partitioned into the public opinions of the Mainland, public opinions of Hong Kong, public opinions of Taiwan, public opinions of overseas Chinese and other players; and public opinion can also include different tendencies such as liberalism, populism, nationalism, cultural conservatism, etc. the Sun Zhigang Case has represented the game rules: the response mode for the official crackdown, the civilians making demand in a low tone, and the official making a limited concession; but due to its nature of criticizing, the official continuously cracks down on the Internet and regulates the individuals and platforms

initiating the right-safeguarding campaign, to increase the risk of the game. Yet, the limited violence principle of the authority has in turn continually encouraged the individuals observing such game rule to take risks, and the enthusiasm of the actors in the political market will also continuously create such individuals.

The process of the political market moving from complete monopoly to gradual opening is the opportunity of political windfall profits. The dual-track system inside and outside the system will result in political upstarts. By making political deals with the force outside the system, promoting the civilian market and then operating the official market, those in possession of the rules and resources inside the system will be able to rise rapidly and hold a favorable position in the market of incomplete political competition formed later on.⁵

However, the dual-track system mode of political market needs to consider the implied limitation of the market, i.e., the different characteristics of the political system and economic system.

3) Political power reform and regime revolution

Today, what we discuss is the “L’Ancien Régime et la Révolution” of Tocqueville. Why have we chosen France as the base for discussion? Since regime comes from the French term, *régime*, the Tocqueville’s book title in English is the “Old Regime and the Revolution.” The regime transformation is itself an issue related to revolution. What is surprising in the right-safeguarding mode is that it is a kind of resulting mode between the political power reform

⁵ Here, it is necessary to compare the situation with the regime transformation in the late Qing Dynasty and Yun Shikai, as it may be considered as a successor in such a dual-track system speculation: hence, what is the similarity and difference between today’s political dual-track system and that in the late Qing Dynasty? We can also compare the political dual-track system of China with that of the Soviet Union. Was the speculative success of Yeltsin due to Gorbachev? What is the similarity and difference between China and Soviet Union? Upon its transformation, Soviet Union had not yet formed any group of influential groups, while the group of influential officials in Mainland had already been highly mature. What influences would it bring about for the regime transformation of China?

and regime revolution. The resulting transformation mode is associated with the ruling conscience and rationality. In the opinion of Mr. Ji Weidong, we must admit that Deng Xiaoping's reform has been undertaken under the ruling conscience and rationality. The economic reform in 1992, the slogan inclusion of legal governance proposed in 1997 and the acceptance of human rights and inclusion of property rights in the constitution in 2004 have all been complied with the goal of transformation in China. In the eleven years from 1997 to 2008, legal governance had also achieved substantial progress. Under such circumstances, we have to support the political power reform, but not make the mistake of Ma Zedong's two-extreme thinking of "we oppose what the enemies support" and "we support what the enemies oppose." Were the CPC to have a good command of the mean integration rules, such dichotomy of viewpoint can only place oneself in the "position of a residual person." Failure to understand this is the fundamental reason the overseas democratic movement is increasingly marginalized. The resulting thinking supports the reform of political power and supports all the reforms within the regime, including administrative reform, fiscal and taxation reform, innovation of local democracy and democracy inside the party; otherwise, we will be separated from the mainstream society of China. By adopting the resulting thinking, we can effectively build the biggest alliance of civilian forces inside and outside the system.

Second, when the power and resources for political power reform are exhausted, we have to push forward in a timely way the regime revolution, which is extremely important. Since 2007, we have seen *guojinmintui* of the party-state in all such sectors including politics, economy, culture and law. Even the achievements of the economic reform over the last three decades may not be maintained, not to say the achievements of law and judicial reforms. Under such circumstances, we shall not hesitate to push forward the regime revolution. The resulting mode integrating the regime revolution and political power reform is just the essence of the right-safeguarding movement. After the great French Revolution, human society made the biggest contribution for the regime transformation with a mature non-violent and peaceful regime transformation mode. According to the study of Professor Li Fan, the 1905 Russian Revolution was an important practice of peaceful regime transformation mode; efforts made by Gandhi and

Martin Luther King were also important. In the third round democratization, Taiwan's transformation was also a peaceful regime revolution. The transformations of Indonesia and the Soviet Union and Eastern Europe were all peaceful regime revolutions and color revolutions.

It is misleading to associate revolution with violence. The so-called *revolution* is the essential change of things. In terms of revolution modes, without doubt, we should oppose any violent revolution, but advocate the peaceful regime revolution. In the peaceful regime revolution, what is the direction for the future Chinese society? We will discuss it further in the future. As a whole, by the end of 2009, in the Chinese society, the contradictions between official and civil and between economy and politics had already been completely fierce. In addition, in the collision between the party-state logic and the social logic, the civilian forces won in the sector of the house churches. If you have no force and are internally weak and if you have no solid decisions, then you will be as a lamb to be slaughtered at any time. On the contrary, if we have the will to defend freedom and firmly push forward democracy and legal governance, in the process of promoting democratization of China, we are likely to aggregate small wins for a big win and to develop from guerrilla war to mobile war and then to larger-scale mobile war, so as to break up the whole into parts and paralyze them one by one. We may soon see the democratization of China come to pass, by supporting the liberal school, constraining the conservatives and striving for the speculative school.

From the overall crisis of rules and resources, we may infer the transformation logic of political power reform and regime revolution. The political crisis of Chinese society is the contradiction between the party-governance order and the legal-governance order; the contradiction between the single center and multi-element society; and the contradiction between the hierarchical integrated civil regime and the flat, multi-element and globalized Chinese society. To resolve this crisis, we shall not rely on optimization of internal rules of the organization order, i.e., the promotion of democracy within the party. Instead, we shall rely on change in the integration principle of Chinese society, i.e., the social integration force changes from party governance to legal governance.

Therefore, the ruling party may need a profound spiritual revolution and regime revolution. Political power reform itself constitutes part of the regime revolution. However, the mode and approach for the regime revolution has not yet been defined, while reform and revolution are still in a race with each other. The system reform of political power is gradually close to the extreme of political power reform, thus triggering all the social contradictions aggregated in the gradual reform, while the wise political power reform may lead to the peaceful regime revolution.

The fundamental defect with the party-rule regime is the inadequate care for the relationship between heaven and man, between group and individuals and between body and heart. The key for social transformation rests with each being in a proper position; meanwhile, the social reform of civil right-safeguarding is significant because civil right-safeguarding creates a pressure for changing, making possible the transformation from crisis to peace. The civil right-safeguarding supports political power reform and promotes the regime revolution. The position of the right-safeguarding movement in parallel with the development of political power reform and regime revolution is not contradictory, and implies that the Chinese regime transformation it promotes tends to take the resulting transformation mode.

Today, we who are friends concerning the Chinese democracy and legal governance gather here to discuss the democratization, as has also reflected the governing rationality and conscience of the Chinese Government. In the future studies, we need to continuously summarize experiences and lessons, so as to lay theoretical and practical foundations for the peaceful regime transformation of China, for which we shall make joint efforts.

中国法律与宗教观察

People's Procuratorate Bill of Prosecution

Yaodu District, Linfen City, Shanxi Province

Shanxi Linfen Yaodu District

People's Procuratorate Bill of Prosecution

LSYJXS (2009) No. 596

To: Shanxi Linfen Yaodu District People's Court

Defendant: Yang Rongli, female, born on October 3, 1958, Han, native of Shanxi Huozhou City, university graduate, employee of Old Carder Division of Shanxi Normal University, residing at Rm. 201, Bldg 3, Block C, Xinhe West Road, Yaodu District; suspected of committing the crimes of unlawfully occupying agricultural land and assembling crowds to disturb traffic order, detained on October 11, 2009, by Linfen Public Security Yaodu Branch, arrested on October 21, upon approval of this procuratorate on the second day.

Defendant Wang Xiaoguang, male, born on October 10, 1953, Han, native of Shanxi Hongdong County, graduate of secondary school, staff of Office of Academic Affairs, Shanxi Normal University, residing at Rm. 201, Bldg 3, Block C, Xinhe West Road, Yaodu District; suspected of committing the crimes of unlawfully occupying agricultural land, put under residential surveillance on October 3, 2009, by Linfen Public Security Yaodu Branch, detained on October 11, arrested on October 21, upon approval of this procuratorate on the same day.

Defendant Yang Xuan, male, born on September 2, 1955, Han, native of Shanxi Huozhou City, college graduate, residing at Jinjiazhuang Village, Yaodu District; suspected of committing the crime of unlawfully occupying agricultural land, detained on October 11, 2009, by Linfen Public Security Yaodu Branch, arrested on October 21, upon approval of this procuratorate on the same day.

Defendant Cui Jiaxing, previously named as Cui Qingchang, male, born on June 24, 1965, Han, native of Linfen City, secondary school graduate, Chairman of Linfen Jiaxing Machinery Co., Ltd, residing at Rm. 301, Bldg 3, Residential Block

of Building Material & Cement Factor, Yimin Road, Yaodu District; suspected of committing the crime of unlawfully occupying agricultural land, detained on October 11, 2009, by Linfen Public Security Yaodu Branch, and arrested on October 21, upon approval of this procuratorate on the same day.

Defendant Zhang Huamei, female, born on September 12, 1959, Han, native of Shanxi Fushan County, secondary school graduate, peasant, residing at Unit 2 (from rear right), Zhonganping, Tiantan Town, Fushan County; suspected of committing the crime of assembling crowds to disturb traffic order, detained on October 11, 2009, by Linfen Public Security Yaodu Branch, and arrested on October 21, upon approval of this procuratorate the second day

The case was investigated and finalized by Linfen Public Security Bureau Yaodu Branch, suspecting Defendants Yang Rongli, Wang Xiaoguang, Yang Xuan, Cui Jiaying and Zhang Huamei for the crime of unlawfully occupying the agricultural land and assembling crowds to disturb traffic order, and was transferred to this procuratorate on October 28, 2009 for review and prosecution. Upon acceptance of the case, this procuratorate had notified the defendants of the right to consign a defender, questioned the defendants according to law and reviewed all the case files.

Upon trial, it has been found:

I. Crime of unlawfully occupying agricultural land

On August 13, 2003, Defendant Yang Rongli, Cui Jiaying and Yang Cuilian negotiated with Chu Yuzhu, the branch secretary of Yaodu District Jinjiazhuang, on leasing the land of the village for planting flowers, and signed, in the name of Yang Cuilian and Cui Jiaying, with eight villagers including Chu Yuzhou, the Lease Agreement for Land Use Right for a lot of 14.88 Chinese mu with a term of 20 years.

On November 16 and 20, 2007, Yang Rongli and Wang Xiaoguang successively called on Feng Junying and other division executives for two meetings to discuss and decide on changing the use of the land leased by Yang Cuilian, etc. and building the “Golden Lamp Church.” In May 2008, without obtaining any

approval from the competent authority, Defendant Yang Xuan organized the construction. Although being aware the use of the leased had been changed, Defendant Cui Jiabin still signed, in the name of his company, the Concrete Supply Contract with Shanxi Jusheng Concrete Co., Ltd, and provided the water supply equipments valuing over RMB 20,000, providing the convenience for the unlawful construction. During construction, Yaodu District State Land Bureau, Construction Bureau and other functional department issued several notices for work stoppage, but they refused to execute. As per survey and determination, the “Golden Lamp Church” unlawfully occupied 12.42 Chinese mus of agricultural land, including 6.01 Chinese mus for the unlawful buildings and auxiliary facilities.

2. Crime of Assembling Crowds to Disturb Traffic Order:

On September 13, 2009, the relevant department of Fushan County Government dismantled, according to law, the unlawful building of Guo Yanyan at Xihan Village, Zhangzhuang Town, Fushan Count. Defendant Zhang Huamei notified Defendant Yang Rongli, a believer in Fushan Count and Yang and of Yaodu District “Golden Lamp Church.” In the morning of the same day, Yang hurried to Fushan County and conspired with Zhang. To force Fushan County CPC Committee to resolve the problem, they gathered hundreds of believers, parking the passenger and cargo vehicle mounted with sound system in the center of Provincial Highway 230 at the section of Lin-Gong Line Xihan Village, and instigated hundreds of believers to pray on the road and besiege the police officers regulating the traffic at the scene, causing the traffic jam on the section for 4 hours and disturbing seriously the traffic order.

Evidence for affirmation of the above facts are as follows:

1) Defendants’ statements and explanation; 2) witnesses’ testimonies; 3) appraisal conclusions; 4) documented evidences; 5) video and audio materials; 6) field survey notes.

In our opinion, Defendants Yang Rongli, Wang Xiaoguang, Cui Jiabin and Yang Xuan violated the laws and regulations on land administration and unlawfully occupied agricultural land in a relatively big quantity, causing a huge

damage to the cultivated land and such conduct offended the provisions in Article 342 of the *Criminal Law of the People's Republic of China*; to vent personal spite and achieve the purpose of putting pressure on the government, Defendants Yang Rongli and Zhang Huamei assembled crowds to block traffic and obstructed the public security personnel in exercising their duty according to law, causing serious consequences, and such conduct offended the provisions in Article 291 of the *Criminal Law of the People's Republic of China*. As the criminal facts are clear and evidences are reliably adequate, Defendants Yang Rongli, Wang Xiaoguang, Cui Jiaying and Yang Xuan should be investigated for the criminal liability against the crime of unlawfully occupying agricultural land; Defendants Yang Rongli and Zhang Huamei should be investigated for the criminal liability against the crime of assembling crowds to disturb traffic order. Since Defendants Yang Rongli committed more than one crime, concurrent punishment shall be applied. In accordance with the provisions in Article 141 of the *Criminal Law of the People's Republic of China*, the public prosecution is hereby submitted, requesting the court to condemn according to law.

Prosecutor: Hu Wuping

October 30, 2009

Enclosed:

- 1) Defendant Yang Rongli now detained in Shanxi Xinkang Prison; Defendant Wang Xiaoguang, Yang Xuan and Cui Jiaying now detained in Yaodu District Detention House; Defendant Zhang Huamei now detained in Yucheng County Detention House
- 2) One copy of the list of case evidences and photocopied major evidences.

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中国法律与宗教观察

**Report of the Court Hearing
for the Linfen Church Case**

Personal testimony of some of the defense lawyers

Report of the Court Heart for the Linfen Church

Case

Personal testimony of some of the defense lawyers

Before leaving, all the lawyers were “advised” by the local police over the telephone: “meeting is not subject to our approval and you may all meet them.”⁶ Actually, the lawyers met with all the brothers and sisters except for Yang Rongli. The call [from the local police] may have implied something else: you are all under our control. On the way, the lawyers received a call from the court, saying the court would arrange a meeting with the lawyers. Without attending the meeting, they knew what they meant: everyone would be required to collaborate.

At noon, November 24, the lawyers arrived in Linfen, a city famous for mine disasters. With the city in the dim smog, everyone felt heavy. The taxi driver said it was already a better day. In the afternoon, Lawyer Wang and Lawyer Li went to meet Sister Yang Rongli. Before that, Lawyer Wang had twice requested a meeting, but had been refused for no reason. At that time, Sister Yang was being held in the prison hospital in Taiyuan [Detention Center], which is a four-hour drive from Linfen.

Lawyer Zhang and Lawyer Yang decided to have a look at the Golden Lamp Church also involved in the case. Previously, Lawyer Wang wanted to take a field measurement, but was refused by the police on guard. The Golden Lamp Church is in the suburbs and is five-stories tall, with three pinnacles rising high into the sky. On the middle pinnacle is a cross, showing a grand atmosphere. Such a grand church was unexpectedly [built] by the so-called ‘underground family church.’ There was one armored car parked on the way to the church, obviously obstructing and threatening visitors from coming near. The iron-bar

⁶ Refers to the lawyers’ clients in prison

gate was locked, and there was no sign of people inside. When the lawyers wanted to check out the site, a gang of people suddenly came out, including police in uniforms as well as in casual dress. As Lawyer Wang described, the relevant department issued a notice that no permit would be allowed for checking [out the site]. It was said that an approval was required from the Director of the Public Security Bureau, but he could not be found anywhere. The next time, the officer in-charge said that an approval was required from Deputy Secretary XXX. The lawyers responded that their right to take evidence should be ensured. Besides, the right of taking evidence had nothing to do with the Deputy Party Secretary. The people on guard said that they did not care about this, but only listened to the leader, showing no sign [of willingness to] talk about the truth. When facing those refusing any truth, the law has to keep quiet.

The relatives called in, saying that the court would not issue visitor certificates unless the lawyers were present. The lawyers knew what was intended by this: they were wanted for a meeting. Earlier, the relatives had been notified by the court that only one person from each family would be allowed to attend the hearing and thus only five visitor certificates could be issued. According to law, an open trial should have been undertaken. Since “open” is the basic requirement for legality, the limitation on issuing visitor certificates obviously showed that it would be an “open” trial — under control. Considering the needs of their family members, the lawyers had to approach the court.

They were received by Deputy President Di of the court (being the chief judge on the following day) and Presiding Judge Hou. President Di came straight to the point: “First, tomorrow, we will adequately ensure your right to defend and you may defend as you should; second, tomorrow, the trial shall be in line with the facts of charge in the bill of prosecution and other facts with connection with the case should not be talked about.” “But, what is without connection with the case?” [one lawyer asked]. President Di said again: “We will try to complete the trial before noon.” This last wording was the key point, meaning that everyone should collaborate and complete the formality. I asked, “Have you faced any pressure?” They immediately denied. President Di said, “Because of the H1N1 flu, a small court will be arranged for the trial and thus five visitor

certificates can be issued. H1N1 flu is a good reason for this and is a good excuse for the arrangement of this court.” Being familiar with such controlling measures for open trial and seeing it was already late, the lawyers did not want to say anything more about such false actions. The judges had delivered the message as they were supposed to and agreed to allow the relatives to collect the visitor certificates. Merely four visitor certificates were collected by the relatives according the number specified in the Bill of Prosecution (one relative was not present at that time). It was a creative tactic by the Yaodu District Court in taking the visitor certificates to coerce the lawyers into an arranged meeting.

Meanwhile, Lawyer Wang and Lawyer Li spent four hours in negotiation, but failed to meet [with their client]. It is the statutory right of clients to meet with their lawyers, and meeting is also the assurance for the practice of a lawyer. However, they failed to meet Yang Rongli. Last time, when requesting to meet [with her] in Taiyuan, Lawyer Wang was told to complete the formalities in Linfen and went to Linfen for the formality, but once there, had been obstructed. Now, it would be the last chance to meet [with her] before the trial. Lawyer Wang and Lawyer Li persisted and finally got the approval after 18:00. The meeting lasted more than two hours. Meanwhile, Lawyer Wen met again with Yang Xuan.

In the evening, the lawyers were informed that two of the family members were put under control and had been sent to their domicile. Some other family members were followed. Before that, many of the believers had been advised not to go out the following day. The employer of Yang Kai, the elder brother of Yang Rongli, warned him not to attend the hearing. Yang Kai replied, “It is a matter of family affair that cannot be avoided. I am also a Christian, as I would not deny. You may do whatever you want to.” It had already been a trial without balance, for which the lawyers were worried.

The lawyers stayed together in one place. The lawyers are all Christians. They prayed together in the evening. After the prayers, it was already 22:30. When they were chatting just for a while, power was cut off all in a sudden. It is rare to have power-cut in hotels. They were chatting in darkness. The incident of the power cut kept them on alert.

[The morning of] November 25, the lawyers started off. Once their taxi driver was told to go to the court, he reminded the lawyers that the road to the court was blocked and that he had to drop us off about two or three hundred meters away from the court. On the way, passing by a road blocked by the traffic police, the driver said that the road led to a detaining house. Before reaching there, we had seen from far away a huge number of policemen and different kinds of police vehicles parked at the crossroads. Upon taking off and walking on the road to the court, we found the whole road was occupied by the police: on the sidewalk were the police in casual dress, for it was impossible for so many common people to line up there; on both sides of the road, policemen were standing almost every yard for three or four hundred meters. All of them seemed to be on alert against enemies. Except for the lawyers walking and policemen wandering up and down, no other persons could be seen on the road. Upon seeing such scene, one of the lawyers uttered quietly: "How do you do, comrades! You have worked hard."

The lawyers and the family members coming to attend the hearing were checked once outside the court and again for identification after entering the court. Upon appearing in court, they were checked for the third time. When the security staff wanted to search the bag and check the personal ID cards, the lawyers all refused. The Lawyer's Practice License is an ID credential. A lawyer is permitted as per law to appear in court and its practice merit and professional administration secure his legality. In terms of legal position, a lawyer is equal to a prosecutor and a judge and should not have been checked. According to the relevant stipulation of the Supreme Court, a lawyer should not be checked. The court policeman responsible for security checking was a bit nervous and asked for permits before finally allowing, unwillingly, the lawyers to go through.

For the whole day, only the [Linfen] case was under trial at Yaodu District Court.

The No. 12 Tribunal of Yaodu District Court is on the third floor, where the whole corridor was then controlled by the military police at every entrance. Two

policemen holding anti-riot guns⁷ stood at each end of the corridor. The corridor was almost full of policemen. More than one thousand policemen had been mobilized and allocated along the road and around and inside the court. Due to the Armed Police Act, the armed police were mobilized this time. Such a scene with so many policemen reminded us of a legal proverb: “the laws are silent amidst arms.”

The tribunal was at the end of the corridor. It was obvious that it was deliberately selected for this case. The tribunal had only thirty seats for visitors, with the first row occupied by the court policemen. Only five family members were allowed to enter, while the others were unknown persons. The small tribunal was equipped with four video cameras. The tribunal was so small that the attorneys had place to sit. One court policeman arranged the seats, saying: “bring one more chair.” While saying so, he pointed to the terrace of the tribunal. Lawyer Zhang responded immediately, “That is the area for judges. Attorneys should not be seated due to the respect to the court.” Then, Presiding Judge Hou came in, waving his hand to let the rear two defenders move backward. It may result from the constant style of bullying the weak and fearing the strong.

The pre-hearing preparation was eventually completed. Although the atmosphere was tense outside, a small arena of less than 50 m² was arranged in the court. One would wonder why the court was not so confident about itself. It was obviously a sharp contrast between the powerful violence and the weak legal governance under the people’s democratic dictatorship.

The hearing was originally scheduled to commence at 08:30, but actually started after 09:00. Such delay in commencing had already made it impossible to end the trial as Chief Judge Di had said the night before.

The court members included Vice President Di as the chief judge, Presiding Judge of Criminal Tribunal Hou, and one female judge with the surname of Lu. The Public Prosecutors included Prosecutor Hu, Prosecutor Li and two other females. The defending party had seven persons. Except for the local lawyer Guo, all the other defenders were Christian lawmen from Beijing or Guangzhou.

⁷ This type of gun is typically used by policemen to shoot tear-gas grenades.

The trial was officially started. At that time, everyone wanted to see Yang Rongli. Who was this woman that had worried the local government of Linfen and aroused the court to a state of fighting a big enemy? How would she look, especially after the relevant authorities had implemented the strategy of depreciating and slandering her by different horrible means after October? Even with the information being blocked, it was said that she had been on a hunger strike for twenty days. How was her health? Was she too weak to stand in court?

Yang Rongli was the first to appear. What was surprising and respectful was that she still kept a smile on her face, without any worry and hate. She walked into the court with a smile. Although having experienced the “fierce and frightening storm” for more than two months and looking a bit thinner, she was still full of energy and addressed the lawyers and the judges. With long hair, a pair of glasses, and a keen persistent gaze, she appeared to be of an age that could not be assessed and gave an impression that she was a self-confident intellectual woman. In a fearless and confident manner, she appeared as if she had not been in a court but only in conversation. Yang Rongli was a university student, Class of 1977, and has been fully devoted to Christianity because she was in a Christian family for five generations. The development of house churches in Linfen in recent years, including the construction of Golden Lamp Church is because of Yang Rongli.

Pastor Wang Xiaoguang was calm and peaceful, Yang Xuan was reasonably calm, Cui Jiaxing was slightly unsettled, and Zhang Huamei was in a bad mood. Her defender, Attorney Zhang said, “As compared to meeting her last time, her mood has changed much.”

When the judge was checking the stature [records] of the defendants, even the time [recorded] of them losing their freedom was inconsistent with the actual time of losing their freedom. For instance, Yang Rongli was actually detained and lost her freedom on September 23rd, but the bill of prosecution indicated that it wasn't until October 11th that the Yaodu District Public Security Bureau decided to detain her. In questioning, the chief judge had to say, “According to the bill of prosecution, the stated the time for criminal detention was XXX. Is it a fact?” Answer: “The bill of prosecution said so.” The court did not question at

all if the relevant authorities had followed the proper legal proceedings to restrict the personal freedom of the citizen.

After the Statute was checked, the court members were announced and the right for litigation was declared. Pastor Xiaoguang requested avoidance of the Prosecutor, viewing that the charge of the Public Prosecutor in the bill of prosecution totally failed to comply with the facts. As it was not a statutory reason, the request of Pastor Xiaoguang was rejected.

The court investigation commenced. The defenders requested to have the implements of torture [taken] off the clients, and the court accepted the request. Upon removing the implements, it was observed that they had been given extremely large handcuffs.

The Public Prosecutor read out the bill of prosecution. The five defendants were charged for the crime of unlawfully occupying land and the crime of gathering crowds to disturb the public order, while the fourth defendant, Cui Jiaying, was charged for an additional crime of tax evasion.

The court interrogated the defendants individually. The crime of unlawfully occupying land was first tried, while the charged persons included Yang Rongli, Wang Xiaoguang, Yang Xuan and Cui Jiaying. Cui Jiaying was the first investigated. Cui Jiaying denied the charge. Cui Jiaying spoke in fear and trepidation, but showed his honesty and sincerity. It was initially feared that Cui Jiaying might become a tool for attacking Yang Rongli, but obviously, due to the honesty of Brother Cui in court, the plan of the relevant department failed. During the debate on the charge for the additional crime of tax evasion in the last trial, it was observed that Cui Jiaying was a peasant entrepreneur and had once applied for the EMBA program of Tsinghua University. He was entitled to five national patents, and the enterprise founded by him was entitled to the benefit of tax exemption or reduction as a science and technology enterprise. The Public Prosecutor refused to accept it and had determined the charge for tax evasion only on the basis of an auditor's report. The first time it was mentioned was in the last stage of the court trial. It should have been pointed out earlier so that we would have known this in advance about this lovely brother.

Cui Jiaying said the land was leased because the price was low and because the enterprise required a piece of land. Yang Rongli was not present at that time; she only provided some recommendations, and thus was not a party to the contract; two thirds of the lot were used for planting trees, because the enterprise was originally engaged in the deep-processing of ginkgo trees, and later on changed for manufacturing agricultural machinery because the previous enterprise was earning no money. When the charge was under construction, some villagers came out to obstruct its use because the land was revaluated; during the construction, Cui spent most of his time on study in Beijing, so he basically had no idea about the actual circumstances.

In questioning Cui Jiaying, the Public Prosecutor started, from the very beginning, with some to use some provoking questions, for which the defending attorneys opposed from time to time. Then, the Public Prosecutor started to behave better in asking questions. However, by questioning in such way, the Public Prosecutor aimed at Yang Rongli, but the statement of Cui Jiaying in court had not testified any fact that other defendants committed a crime in the case.

The second person interrogated was Yang Xuan, the elder brother of Yang Rongli, who is also a preacher. Previously, he had been dwelling in Hezhou of Shanxi. During the construction of the church, i.e., as from May 2008, he lived in Linfen, delivering lectures in the church. He was responsible for the safety and quality of the church construction. In the process of interrogating Yang Xuan, Defender II for Yang Xuan called him Mr. Yang Xuan, but for unknown reasons, the word of “Mister” had annoyed the Public Prosecutor that had opposed again and again, viewing that only “defendant” could be used. Actually, in whatever situation, everyone has his or her own dignity. Addressing the client in the defendant’s seat respectively was actually meant to express that he was still entitled to the human rights and the right to be respected and could be in a confident manner in court. The Public Prosecutor still adopted the thinking of guilty deduction. Such thinking had been dominating the investigation, prosecution and trial of the case.

Next was Pastor Wang Xiaoguang. In the church, Wang was mainly responsible for preaching and was basically not involved in governance. In answering the questions of the Public Prosecutor, Pastor Wang had time and again replied that he was only a person devoted to study of the Bible and a bookish person, without any idea about church management which was a headache for him. Therefore, it was completely impossible for him to have participated in making the decision, leasing the land, raising funds and organizing the execution for the church construction.

One scene that had not been expected came out then. The Public Prosecutor was pleased to take out one note pad, saying it was the note pad of Yang Rongli, in which, on the date of XX, Yang Rongli noted the church meeting, indicating the presence of Wang Xiaoguang at the meeting. The said note pad had not been handed over to the court before the trial. Such use of evidence is strictly prohibited in the modern criminal prosecution. Additionally, it was not yet in the stage of cross-examination. Although it was strongly opposed, the court remained permitting the Public Prosecutor to interrogate Wang Xiaoguang according to the context in the diary. The Public Prosecutor charged Pastor Xiaoguang according to the meeting agenda, preaching context and personal emotion noted in the diary. Defender II of Yang Rongli, Lawyer Li asked Xiaohuang about the diary: during the large-scale confiscation, these materials had been all taken away. He was not present at the scene at that time. It was not signed and checked. Based on this, Lawyer Li viewed the procedure of obtaining the diary was entirely law-violating.

Defender II of Yang Xuan expressed his strong indignation against the Public Prosecutor questioning on the basis of the diary: “When hearing the diary read out by the Public Prosecutor just now, it reminded us the times of the Cultural Revolution in which people charged each other by means of privacy disclosure and diary reading. We cannot imagine such thing has happened here today.” Such speech immediately led to the protest of the Public Prosecutor. The judge said in rage and roar: “Defender, mind your wording.” Obviously, mentioning the “Cultural Revolution” stabbed their current pain. “Can the preaching content be taken as evidence? Christian preaching is to read and explain the message of

God and content of the Bible and to talk about the truth for God to save.....” “The defender’s speech has nothing to do with the case,” “Preaching is uttered from the mouth of the Public Prosecutor, why does it have nothing to do [with the case]?” “You cannot talk about anything outside the trial.” It seemed that the trial had especially screened the content relating Christian beliefs. Then the defender went on: “Contribution is a belief act of a believer. According to the Christian belief, a believer will contribute one tenth of his/her earning to the God. Such contribution is a kind of religious act. Such contribution is made to the God, but not to one person or one project. It is for the exclusive use of the church. Therefore, mentioning contribution is a usual behavior...” When contribution was mentioned, they did not interrupt. They seemed to be very interested in the financial affairs of the church.

Yang Rongli was the last one interrogated. In answering the questions, Yang Rongli gave a clear picture to the cause of the church construction: the original greenhouse had become a dangerous structure; the Seismic Bureau issued a notice for stopping its use. The reason for it to become a dangerous structure was that when the national highway was repaired in 2005 and 2006, it was dismantled twice for which the national highway headquarters compensated 400,000 Yuan. In the final statement, Yang Rongli also mentioned that more than ten rooms were then dismantled positively. To this end, the national highway headquarters appreciated these believers of “Jesus” and wanted to put them on TV. Knowing that TV station was under the control of the atheist ruling party and it should not appear in TV, Yang Rongli had not accepted it.

As the greenhouse for assembling became a dangerous structure, the number of believers increased and the churches in Xiguan and Dongguan of the city area were relocated, many of the believers had no place for assembling, but had to go to the old Golden Lamp Church. Constantly, believers requested to construct a church. Therefore, construction of the church was proposed by everyone and naturally formed. Pastor Wang Xiaoguang had even opposed it. In voting for the church construction, Yang Rongli abstained from voting.

Yang Rongli said, in the process of constructing the church, she once applied and appealed to Linfen Administration of Religious Affairs, Administration of

Land Resources and other departments, but no response was received. As early as years ago, from the leader of the municipal government, it was known that the lot where the greenhouse was located would be changed into industrial land. Besides, near the lot were villas, workshops and landfill yard of Environment Protection Bureau. The villagers also knew the land would be revaluated. The relevant department showed no care for the religious needs of citizens, but now wants to investigate her criminal liability, as is really unfair and is not in compliance with the facts.

After the court investigation for the crime of unlawfully occupying agricultural land ended, the court cross-examination started. It was just the farce in court. Evidence should be affirmed upon cross-examination one by one. But the Public Prosecutor had never thought of cross-examination for evidence. From the start, they read out case files in a huge quantity, some of which could not be found by the lawyers in the court files. In general, it was impossible to carry out cross-examination. Upon a simple calculation, nearly 90% of the evidence had not been handed over to the court. In this regard, the lawyers protested. The judge made it clear that the Public Prosecutor was allowed to go on reading the evidences and thus made it a mere formality. In the stage of cross-examination, the entire trial had materially violated the stipulations for litigation proceedings. The legality of the trial was to be doubted.

The dull atmosphere and ambiguous local dialect made all present feel they were sitting in a dull train. The Public Prosecutor had supplied evidence up to 14:00. Lawyer Li requested the court to arrange for food: "taking food is the basic human right." Upon hearing, all present in court laughed. However, Chief Judge Di insisted time and again to keep on, but everyone wanted to take food and the court order could not be maintained. Obviously, they had well in advance made the severe arrangement for the court procedure, in which even the so-called chief judge was merely a nominal procedure controller. What a ridiculous trial and a show trial! The request of the lawyers received a limited response: a court break for twenty minutes. The court bought sesame seed cake and mineral water. It may also be a maltreatment-type trial that could be recorded in the history: if you want to take food, collaborate with us to complete the trial soon. Although

knowing it would be impossible to change the outcome, the lawyers were merely trying to testify despite the ridicule.

When the court resumed, upon obtaining the relevant evidences through negotiation, the lawyers had a fast glance of the evidences soon before they were taken away. However, some clue was observed: according to the record in Line 3 of Lot Registry on page 264 of the Procuratorate File Volume III, as on April 8, 1999, Lot 5-1 had a total area of 196.30 Chinese mus, including 154.8 Chinese mus of cultivated land, of which 130 Chinese mus were altered for factories and mines purpose and only 24.8 Chinese mus were basic farmland. The Procuratorate failed to provide any evidence for which part of cultivated land was altered for factories and mines and which was the basic farmland. Would it be possible for all the leased land of 14.88 Chinese mus to be basic farmland? In addition, dormitories and workshops had been demarcated as constructed in the addendums on Pages 267, 268 and 269 of Evidence File Volume III presented by the Procuratorate, which were in the category of agricultural house and had nothing to do with the case.

Furthermore, as for the diary of Yang Rongli, since its major context of the diary involved merely the personal prayers and emotion, which was of high privacy, such subjective records could not be taken as evidence and the relevant minutes of meeting were in another type of handwriting, which were copied in paper and pasted to the diary and which could not testified as the personal record of Yang Rongli.

Then, Yang Rongli and Zhang Huamei were tried for the crime of gathering crowds to disturb traffic order.

In court, Zhang Huamei and Yang Rongli described what had happened from 03:00 to the day time on September 13. In interrogating, the attorney of Zhang Huamei proved the happening non-human criminal event. According to the laws and regulations governing the criminal proceedings, a trial shall be suspended in case of observing criminal facts in court. In this regard, the Lawyer proposed to the court to suspend the trial.

In describing the details, Yang Rongli mentioned that upon rushing into the gospel shoes factory, the gang of riots smashed whatever they saw and even hurt the pig fed in the factory. “What law has the pig violated?”

In making a statement, Zhang and Yang were interrupted from time to time, for the savage act of Linfen authority on September 13 could not be made public. However, due to the bloody witness personally experienced by Zhang and Yang, the whole court became quiet to hear a dark tragedy in Linfen.

In the stage of cross-examination, the Public Prosecutor again adopted the mode of supplying evidence with “great power and influence.” However, this time, the Public Prosecutor read out more carefully. Copies of evidences were piled up and there were a huge number of witnesses to be testified with the same context. What they testified was nothing but seeing Yang Rongli and Zhang Huamei at the scene, but they failed to testify that they were “assembling crowds” specified as the components for the crime of assembling crowds to disturb traffic order. “Assembling crowds” is a process of organizing, planning and controlling, but the Public Prosecutor failed to testify such important objective behavior. Lawyer Wang pointed out that the prosecution organ should have evidences of guilty and non-guilty, but the Public Prosecutor failed to mention the bloody case of Fushan. How could the reason for the mass event?? Lawyer Li pointed out that the Public Prosecutor still determined the non-enforcement act of Fushan Authority to mobilize 400 persons as the “lawful act.” It was a wrong determination, for the act of Linfen Authority had gone beyond the scope of law enforcement and was a kind of brute violence, for which the legal liability of the relevant chiefs of Linfen Authority should be investigated, instead of investigating the two believers, Zhang and Yang. The lawyer said: “There is a problem. The masses went on the road spontaneously, for the dismantled church was just by the road. Second, since it was Sunday, the believers would naturally go to church, but the church was destroyed and they had no place but only the road for their service. Third, many were injured and needed to be cured, so an act of emergency took place.”

In the stage of court debate, the court had not organized the debate, but arranged the Public Prosecutor to deliver a rather political condemning speech,

which was not at all a public prosecution, for it was full of terms for dictatorship struggling. As perceived, it was not a court, but a meeting place 40 years ago. What was even strange was that the Public Prosecutor unexpectedly cited such well-known saying as “justice may be delayed, but will not be absent.”

In her self-defense, Yang Rongli explained why she appealed even when the relevant authority of Linfen had promised to compensate an amount of 1.4 million [yuan]. There were three reasons. First, the students of Shanxi Normal University (in Linfen) were advised by the relevant authority not to go to church. Second, Brother Shan Yongchang was released. Third, the believers of Fushan were defined as heretics and were stopped by all means from going for the assembly. Yang said that 1.4 million was accepted, but the believers had not got any peace. What would be the use of this 1.4 million? Nevertheless, this 1.4 million had indicated the attitude of Linfen City.

As for the question of church construction, Yang Rongli talked about the relevant in-charge. Yang Rongli put forward that “church responsibility” and “secular responsibility” was two different things: without any appointment, authorization and salary in the church, how should she undertake any responsibility. The believers perceived Yang Rongli as an in-charge because Yang was enthusiastic and willing for the Lord Christ. Therefore, many believers were willing to approach her to resolve problems and thus she was responsible for memorial service and mediation between man and wife, but her responsibility had nothing to do with power. The believers of Linfen Church had mostly lower education level, so she had to care for and take on many things and loved these brothers and sisters.

As for the question on church construction, Yang Rongli held that the church construction was required by most of the believers. Over the years, some believers had always requested to build a church. The believers voted for church construction, while she abstained from voting.

Wang Xiaoguang held that the Public Prosecutor had supplied evidences in a reversed order so that they seemed to be all true. He requested to summon the

witnesses to appear in court. He also knew that several principles were still under detention.

Yang Xuan held that the land occupied by the church included at least more than two Chinese fens of waste land. The concrete contract mentioned in the evidence supplied by the Public Prosecutor could prove nothing, because the church construction involved more than one hundred contracts for which many people were involved. Besides, he was neither the investor nor beneficiary and had sought no personal interests. The church was invested by sixty thousand believers. It belonged to and benefited the believers.

Such charge was denied by both Cui Jiaying and Zhang Huamei.

The defenders expressed the defending views mainly on whether the occupied land is the basic farmland as defined in the Land Administration Law and Regulations for Protection of Basic Farmland: the basic farmland refers to the land for grains, cotton and hemp, while the occupied land was forest land. Furthermore, before the church was construction, other buildings already existed on the whole block, and thus other occupied land should be put on different defendants.

Lawyer Li set forth that religious land has always been a sensitive issue. With the number of believing masses increasing, the available churches were inadequate, but it was basically impossible to obtain an approval. The case is actually a religious issue. In talking about the Fushan Event, Lawyer Wang responded to the so-called justice of the Public Prosecutor and cited the quotation of Chairman Mao: it is a real justice for the common people to assemble and cry out when feeling wronged.

Lawyer Zhang refuted the attitude of the Public Prosecutor to stating the legal facts in a political manner. Lawyer Zhang finally pointed out that it was an act of emergency for the believers to stay in the road. "If we imagine the person lying on the ground was the mother of the Public Prosecutor, what would the Public Prosecutor do?" It was merely hoped the Public Prosecutor will feel for others and consider the then situation with conscience. Unexpectedly, the Public Prosecutor immediately turned into anger.

In the final statement of the client, Yang Rongli talked rapidly for half an hour and was interrupted by the judge several times. She described the process and reason of appealing and of church construction and also mentioned her experiences of fasting twice in prison respectively for ten days. The authority assigned sixteen policepersons to watch on her. Finally, she also emphasized that if the authority had to sentence, she would undertake all the responsibility. Wang Xiaoguang also indicated that he had a mother aged more than 80 years to care for. He held that he was merely a preacher and had nothing to do with the agricultural land occupied for church construction and hoped the court would respect this. Yang Xuan held that he had not been involved in the unlawful occupation of agricultural land and was only responsible for work execution. Cui Jiaying held that he had neither participated in occupation of agricultural land for church construction nor in making decision and organizing the church construction. As for the charge against his tax evasion, he held that he had replenished the tax payment and no idea about taxation rules and no intention of evading tax. Zhang Huamei held that he did not mean to block the road, but requested the government to cure the injured believers.

After the clients completed the final statements, it was already 21:00, even when the chief judge still decided for a court break of twenty minutes for panel discussion of the collegiate bench. According to the past experiences, the lawyers knew that the conclusion of the case had been already made in advance and the judgment would be soon pronounced. Just as expected, after half of an hour, Yang Rongli was sentenced to four years imprisonment for the crime of unlawfully occupying agricultural and to four years imprisonment for the crime of assembling crowds to disturb traffic order, both adding to seven years imprisonment. Zhang Huamei was sentenced to four years imprisonment. Yang Xuan was sentenced to three and half years' imprisonment for the crime of unlawfully occupying agricultural. Cui Jiaying was sentenced to five and half years imprisonment for the crimes of unlawfully occupying agricultural land and evading tax. Wang Xiaoguang was sentenced to three years imprisonment for the crime of unlawfully occupying agricultural. After the one-day ridiculous trial, the clients and their attorneys all knew it was a religious persecution by tooling the laws, but still showed their deep regrets for the court's treading on the laws by

applying unjust court proceedings, ignoring the truth, going beyond their boundary of conscience and deciding heavy sentence on the believers. However, the clients and their attorneys all showed a calm expression. It was then after 22:00.

Upon walking out from the court, they saw the police force still remaining on the road. All had been determined well in advance and the lawyers had come merely to complete the formalities. However, all this will be subject to a final trial.

中国法律与宗教观察

Defense Statement: Yang Rongli,
a member of Linfen Church

Pleadings (on behalf of Yang Rongli)

Chief Judge and Judges:

Being entrusted by the Defendant, Yang Rongli, Guangdong Luosen Law Firm appoints me as the Defender for Yang Rongli, the Defendant. Upon such appointment, I have approached the court for photocopying all the case files provided by the Public Prosecution Organ and went four times to the House of Detention for meeting with the Defendant. For the first three times, I could not meet with the Defendant for unknown reason. For the fourth time, being facilitated by the court, I had finally met with the Defendant in the late afternoon one day before appearing in court. The meeting lasted about two hours, during which key defense clues were found. Today, I am pleased to have attended this severely-guarded court trial, and, upon completion of the court investigation and according to the evidence shown in court, hereby express the opinions of defending as follows:

First of all, the Defender hereby puts forward a solemn and just protest against the evidence assault of the public prosecution organ and the cross-examination procedure of the court.

According to the laws, the procuratorial organ should submit the “main evidence” of the case, well in advance, to the court, but the public prosecution organ has misinterpreted the “main evidence” as “partial evidence” and then made its random choice of evidence, delaying the presentation of many core evidences till appearing in court; in addition, the Public Prosecutor has failed to positively show to the court many of the core evidences much favoring my client; at the strong request of the Defender to consult the case files, the Defender discovered such core evidence during the court break and indicated the same to the court. Furthermore, more evidence has not been presented to the court or provided to the Defender for checking. If the main evidence should be

presented to the court well in advance, the core evidence should also be presented well in advance. Where the core evidence is not presented till appearing in court, it is typically an evidence assault. Such evidence assault is not allowed even in the civil proceedings. It is entirely unjustified for such evidence assault to have appeared in the even more strict criminal proceedings. Additionally, in terms of the cross-examination procedure, the public prosecutor read out continuously a huge quantity of evidence in one go and then asked the Defender to express the opinions of cross-examination for various evidences in one go, just like throwing 20 apples to the Defender for catching in one time. It is really forcing what one cannot do. Even to make cross-examination of evidence one by one, careful identification is required, but the Defender is required to express opinions on a huge quantity of evidences in one go; how many heads should the Defender have to maintain such memory and responding capacity. It is severely unjust in the procedure.

In terms of entity, the Defender solemnly views: my client is innocent. She has neither committed any crime of unlawfully occupying the agricultural land, nor committed any crime of disturbing the traffic order. Now, the particular defending opinions are expressed as follows:

In terms of the crime of unlawfully occupying the agricultural land, first, the determination of such crime is subject to the occupation of and damage to more than five Chinese mus of basic farmland or more than ten Chinese mus of forest land and to the statutory extent of such damage. The Golden Lamp Church under the charge is positioned in an area of about twelve Chinese mus, which has already been changed to the plantation area for famous and precious trees. One half of the area close to the new National Highway 108 can be hardened: i.e., used to build the fungus greenhouse and the workers' dormitory, which is not in the category of unlawful occupation of land and damage to the soil. The other half is planned for growing ginkgo trees, in which the Golden Lamp Church involved in the case is located. Obviously, the nature of the land occupied by the Golden Lamp Church involved in the case is forest land but not the basic farmland. Besides, the land occupied is sized only by two and half

Chinese mus. Obviously, even if being considered as constructing unlawfully, the Defendant has only violated the law, but not committed a crime.

Second, the Criminal Law specifies the unlawful occupation of agricultural land as consequential offense, but not as behavioral offense. According to the Criminal Law and the Judicial Interpretation, to meet the criminal standard for the crime of unlawful occupation of cultivated, the quantity of unlawful occupation and the quantity of damage must be reached simultaneously, either of which integral. Thus, unlawful occupation and damage are legally two concepts. Definition of unlawful occupation is relatively wide: any occupation of cultivated land without obtaining an approval or by cheating to obtain such approval will be determined as unlawful occupation of cultivated land; furthermore, the occupation of cultivated land must be a behavior of “relatively large quantity”. For instance, “relatively large quantity” refers to the unlawful occupation of basic farmland by more than 5 Chinese mus or the unlawful occupation of other cultivated land than basic farmland by more than 10 Chinese mus.

Therefore, unlawful occupation of cultivated land does not necessary mean any damage to the cultivated land which needs to meet the condition for the quantity of land damaged. According to Article 3 of Article 3 of the Interpretation of Issues Regarding Particular Application of Laws in Trying Criminal Cases of Destroying Land Resources issued by the Supreme People’s Court, it is specified as “huge damage to the cultivated land”: it means any material damage or serious contamination to the plantation condition for more than five Chinese mus of basic farmland or more than ten Chinese mus of other cultivated land than the basic farmland due to the actor’s unlawful occupation of cultivated land for constructing any kiln, tomb or house, excavating sand, quarrying, mining, borrowing, dumping solid waste or undertaking other non-agricultural construction.

Third, near the Golden Lamp Church, a large number of buildings have been construction, such as factories, solid waste treatment plant, etc. According to the information provided by the Defendant, a large area of land including the church has long ago been planned as an industrial area.

In general, the Golden Lamp Church has occupied only two and half Chinese mus of forest land, around which is the greenhouse and temporary dormitory for staffs. The case is merely a general law-breaking case and has not substantially constituted a criminal offense. The bill of prosecution charging the Defendant for “unlawful occupation of cultivated land,” “relatively huge quantity” and “huge damage to the cultivated land” observes no adequate basis and thus should not be accepted.

A copy of core evidence found during the court break indicates the land in connection with the case is located in a block of nearly two hundred Chinese mus, of which only about twenty Chinese mus are basic farmland and more than one hundred mus are the land for factory and mine. No evidence shows that the Golden Lamp Church under the case is just in the basic farmland. On the contrary, as per available planning, the lot where the Golden Lamp Church is located has been planned as the factory and mining area. According to another core evidence, of the twelve Chinese mus of land (initially fourteen Chinese mus) leased for the Golden Lamp Church, one half is legally hardened for construction of fungus greenhouse (which is later on used for gathering) and the workers’ dormitory and the other half is for plantation of ginkgo trees. Obviously, the hardened portion was originally legal, without unlawfully occupying the agricultural land. The Golden Lamp Church was built within the lot for ginkgo forest, the nature of which is forest land but not basic farmland.

Especially as for the evidence provided by the public prosecutor regarding the nature, area and damage extent of the occupied land, the Defender views: such evidence fails to meet the basic requirement for evidence: in case of failing to meet the standard for evidence of civil cases, it will not comply with the evidence standard for criminal cases. According to Article 29 of the *Regulations on Evidences for Civil Proceedings* issued by the Supreme People’s Court,

As for the appraisal issued by any appraiser, the judge shall examine if it meets the following: (1) name or title of the consigner and content of consigned appraisal; (2) materials consigned for appraisal; (3) basis for appraisal and scientific and technical means used; (4) description of appraisal process; (5) definite appraisal conclusions; (6) description of

the appraiser's qualification for appraisal; (7) signature and official seal of the appraisal personnel and appraisal organization.

Unfortunately, the evidence provided by the public prosecution organ has neither been signed by the appraisal personnel and stamped with the official seal of the appraisal organization nor attached with the description of the appraisal description of the appraisal organization and personnel. Thus, it is not qualified at all as the formal essentials and content of appraisal conclusions and is inadequate as the basis for determining the case.

The certification standard for a criminal case excludes the reasonable suspicion, while the certification standard for a civil case is the high popularity. The aforementioned huge facts are adequate for common people to suspect: the case does not involve any criminal offense at all.

As for the crime of gathering to disturb the traffic order, the Defender views: since the case involved no public servant in executing the public affairs, there were no essentials for constitution of such crime; furthermore the event took place because the government violated the law first; it is a legal and reasonable response for people, upon being unjustly treated, to gather and request the government to resolve the problem; the road was blocked only for four hours, causing no material consequence.

First, hindering the working staffs of the state for public order from executing the public affairs such as regulating the traffic and guiding the public order is the essential fact for constitution of the crime. But, for the case in question, no evidence testifies that any working staff of the state was present on the scene to execute the public affairs. Without any public affair executed, how could the execution of public affair be hindered? Various evidences have shown that the so-called public servants present at the scene were only in casual dress and had not shown their stature of public servants at all or any act of executing the public affairs; especially, when the public requested them to execute the public affairs, they had gone away. Therefore, in terms of constitution essentials, the charge is not established at all.

Second, the event of road blockage happened for a good reason. The event resulted from the rude enforcement of the government, causing the injury to more than 30 common people and losses to some properties. Later on, through negotiation, Linfen Complaint Letter and Request Handling Office reached agreement with the representative of Linfen House Church, Yang Rongli, the Defendant of the Case: the government would compensate RMB 1.4 million, as has indicated the nature of the event.

Third, the public reaction was really an extremely reasonable and rational reaction. The place where the government applied rude enforcement was just near Lin-Fu Highway involved in the case; it was also reasonable for the injured people to gather on the road, waiting for being sent to hospital for medical treatment. Even if the people gathered to request the governmental leaders to come out for settlement of problem, it was also a reasonable request of the people. It was reasonable and rational for the people suffering a lot to cry and disturb on the road. Volume V of Mao Zedong's Selected Works (page 313-329) told a story:

Years back, in Henan Province, an airport was planned for construction at a place. Without making prior arrangement for the peasants and without explaining clear, they forced the peasants to move away. The peasants in the village said, if you use a stick to move the nest of a sparrow and take it down, the sparrow would also make several cries. Deng Xiaoping, you also have a nest. If I damage your nest, would you have to make several cries?There are many similar matters. Now, some person feels that he has captured the world and can sleep without any worry and can act against law and reason. For such person, the mass oppose him, throw stones on him and knock him with hoes. I think he deserves it and favor it most. Besides, sometimes, problems can only be resolved by beating.

As for the case in question, as for the official acting against law and reason, Chairman taught us: the people can oppose him and even can hit him with stones and hoes. Since, in the case, the people were merely gathering to request peacefully the government to resolve the problem, what was wrong with this?

Fourth, the road was blocked only for four hours, and thus, with consideration to the cause of the case, injured people, speculating people, people around and watching, nature of the road and other factors, the consequence was not so serious.

In general, in view of the legal essentials, the charge for the crime of unlawful occupation of agricultural land had no adequate essentials regarding the nature, area and damage extent of the land; the charge for the crime of gathering and disturbing the traffic order had no essentials regarding the act of hindering the public servants from executing the public affairs. Additionally, the event happened for a good reason, causing no material consequence and the reaction of the people was reasonable and rational. Therefore, the Defending Attorney hereby declares again: my client, Yang Rongli is innocent.

The above is hereby put forward to Yaodu District Court.

Wang Hongjie

Attorney of Guangdong Luosen Law Firm

November 25, 2009

中国法律与宗教观察

Defense Statement: Wang Xiaoguang,
a member of Linfen Church

Pleadings

Chief Judge and Judges:

Upon consignment by Wang Yunxiang, the son of the Defendant Wang Xiaoguang, Beijing Han Horizon Law Firm has assigned me to act as the Defender for Wang Xiaoguang and participate in the litigation activities of the case. Before the hearing, I have carefully studied the bill of prosecution instituted by Linfen Yaodu District People's Procuratorate vide LSYJXS (2009) No. 596, consulted, in detail, part of the case files and met the Defendant Wang Xiaoguang according to law. In pursuant to the facts and the provisions of relevant laws, the pleadings are hereby brought forward as follows:

I. Objective cause for the case is the objective reality that there are more believers but fewer churches

According to Article 36 of Constitution of the People's Republic of China, "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." Such freedom naturally includes the freedom to possess an activity place; for, without such activity place, the religious freedom specified in the Constitution can only be engaged in idle theorizing. As the number of believers increases, the contradiction of "more believers but fewer churches" becomes increasingly prominent. As for the current case, the Linfen family Churches have tens of thousands of believers, but most of them can only gather at home, because such family churches cannot at all build churches through a lawful approach. They are not qualified as a legal person. Defendant applied, several times, to the administration of religious affairs for construction of a church, but the administration cannot at all resolve

this problem, as is the fundamental cause of the case. Wang Xiaoguang is innocent.

II. The investigation organ and procuratorial organ have materially violated the legal proceedings

1. According to Para. 2, Article 98 of the *Procedure Regulations for the Public Security Authority to Handle Criminal Cases*, the “public security authority shall not set up any special arena for residential surveillance to keep any criminal suspect in custody in disguise and shall not enact any residential surveillance at any detention house, administrative lockup, indwelling room or other working areas of the public security authority.” By keeping Wang Xiaoguang under residential surveillance at Linfen Detoxification Center, the investigation organ has materially violated the above provision.

2. According to Article 112 of the *Criminal Procedure Law of the People’s Republic of China*, “during a search, the person to be searched or his family members, neighbors or other eyewitnesses shall be present at the scene.” Its Article 115 specifies clearly:

All seized articles and documents shall be carefully checked by the investigators jointly with the eyewitnesses and the holder of the articles; a detailed list shall be made in duplicate on the spot and shall be signed or sealed by the investigators, the eyewitnesses and the holder. One copy of the list shall be given to the holder, and the other copy shall be kept on file for reference.

Since Wang Xiaoguang was not present at the scene when the investigation organ was searching and seizing the personal belongings of Wang Xiaoguang, its behavior has materially violated the above provisions.

3. According to Article 150 of the *Criminal Procedure Law of the People’s Republic of China*,

After a People’s Court has examined a case in which public prosecution was initiated, it shall decide to open the court session and try the case, if the bill of prosecution contains clear facts of the crime accused and, in

addition, there are a list of evidence and a list of witnesses as well as duplicates or photos of major evidence attached to it.

Since the public prosecutor had not submitted any list of witnesses, the attorney failed to request in advance for appearance of any witness. In court, the attorney already requested the witnesses for testifying in court and now requests again the witnesses for testifying in court. Additionally, failing to read the testimony from Feng Junying and Yang Xiulian, the witnesses for accusing Wang Xiaoguang, the public prosecutor has materially violated the provisions of Articles 47 and 157 of the *Criminal Procedure Law of the People's Republic of China*.

III. The public prosecutor accused Wang Xiaoguang with unclear facts and inadequate evidence

1. The bill of prosecution accuses: “on November 16 and 20, 2007, Yang Rongli and Wang Xiaoguang successively called on Feng Junying and other division executives for two meetings to discuss and decide on changing the use of the land leased by Yang Cuilian, etc. and building the ‘Golden Lamp Church.’” But the public prosecutor holds no adequate evidence to support the above charge:

1) Wang Xiaoguang attended only one meeting.

Wang Xiaoguang attended only the first but not the second meeting. At the first meeting, Wang Xiaoguang expressed his opinion that the church should be constructed only when the necessary formalities have been completed and the one story should be built due to the inadequate economic strength.

2) The meetings were not convened by Wang Xiaoguang.

None of the testimonies and evidence provided by the public prosecutor to the court can prove that the above two meetings had been convened by Wang Xiaoguang.

3) Since Wang Xiaoguang was only responsible for preaching but not administration in the church and had no power to decide on changing the use of leased land.

(1) The evidence provided by the public prosecutor to the court can prove that Wang Xiaoguang was only a teaching staff at church mainly responsible for preaching but not administration and had no decision-making power and could not change the use of land. Wang Xiaoguang could not decide whether to build a church.

(2) The evidence provided by the public prosecutor to the court can prove: first, Wang was not involved in land leasing; second, Wang had not participated in any activity of raising funds and goods for construction of the church; third, Wang was not involved in the design and construction of the “Golden Lamp Church”;

Taken together, Wang Xiaoguang subjectively had no intention to occupy and destroy the agricultural land and objectively neither had any decision-making power nor participated in leasing the land, changing the use of land and building the church. Thus his behavior has not constituted any crime of unlawfully occupying the agricultural land.

2. No evidence shows the damage extent of the involved land

According to the Amendment II of the *Criminal Law of the People's Republic of China*, a crime of unlawfully occupying agricultural land involves a huge amount of involved land as well as causes “damage to a huge amount of agricultural land.” Para. 2, Article 3 of *the Interpretations of Applicable Laws in Trial Hearing on Criminal Cases of Damaging Land Resources* issued by the Supreme People's Court has explicitly specified “causing damages to a huge amount of cultivated land,” which means that by unlawfully occupying the cultivated land for building kilns, tombs or houses, excavating sand, mining, borrowing, dumping solid waste or undertaking non-agricultural construction, the actor causes any serious damage or contamination to the planting conditions of more than five Chinese mus of basic farmland or more than ten Chinese mus of other cultivated land than basic farmland. Has the planting condition⁸ of the land involved in the case been seriously damaged? This is an extremely professional issue, but the evidence of

⁸ Editor's note: this is reference to the condition of the land specific to planting future crops, e.g. the soil structure and/or seedbed.

the public prosecutor has not provided any explanation in this regard. In view of a common sense, as long as the auxiliary building without any foundation is pulled down, the land can be immediately restored for cultivation, without causing any damage to the planting condition or “serious damage.” Most of the so-called “hardened surface” has been merely paved with one layer of bricks. It cannot be at all considered as “hardening” for the land can be immediately restored for cultivation when the bricks are removed. Therefore, it is not a question of any damage to the planting conditions. Has the main building caused any “serious damage to planting conditions”? For this, professional appraisal is required and it should be judged by experts.

Chief Judge and Judges, finally, I would like to raise a crucial question: as early as in April 2008, the construction of “Golden Lamp Church” started. Why had the investigation organ not then registered the case and carried out the investigation, but captured Wang Xiaoguang after the “Fushan” bloody case and before the 60th anniversary? Obviously, it has resulted from the wrong thinking of legalizing a religious issue, making laws a tool and using the law to crack down and revenge religious citizens. It is really regretful for such event to have happened in “Yaodu,” one of the origins for Chinese civilization, today when ruling the country by the law is included in the Constitution and legal governance and democracy has become the global trend.

In view of the above, Wang Xiaoguang has been unjustly treated and innocent. The court is requested to declare according to law: Wang Xiaoguang is innocent and should be immediately released!

November 25, 2009

中国法律与宗教观察

Defense Statement: Zhang Huamei,
a member of Linfen Church

Pleadings: Zhang Huamei

—Defense for rights, freedom and conscience

In pursuant to the provisions of law and authorization of the client, the Attorney Zhang Kai has consulted part of the case files regarding Zhang Huamei suspected of the crime of assembling crowds to disturb traffic order, and, as per consignment of the client and assignment of Beijing Yijia Law Firm, hereby presents the pleadings on the case as follows.

According to the desire of the Client and legal judgment of the Attorney, the pleadings will be elaborated in two parts: Part One is the legal analysis on freedom of belief, freedom for assembly and non-infringement of conscience focusing on regular analysis; Part Two is the empirical analysis of the case with the theory of crime constitution as the background.

Part One: Freedom of Belief, Freedom for Assembling and Non-infringement of Conscience

1. Basic Fact:

(The basis for judgment of the fact: the bill of prosecution furnished by the Public Prosecutor, statements of the clients Zhang Huamei and Yang Rongli in court and part of the case files).

“At about 03:00, September 13, 2009, more than 400 persons rushed into Fushan County Gospel Shoe Factory, injuring several people and pushing down by force the shoe factor which has been since long used for service gathering of Christians. As the following day was the service gathering day of Christians, many Christians came and also some others upon hearing the event. The injured masses and other Christians withdrew on to the road adjacent to the shoe factory. On the road, some people were rescuing the injured and some were praying.

Afterwards, Christians Zhang Huamei and Yang Rongli were charged for a crime of assembling crowds to disturb traffic order.”

In a legal view of freedom of belief, freedom of expression and non-infringement of conscience, without doubt, the background of the case was related to the basic rights of citizens – after the freedom of belief was infringed, citizens consciously protested and relieved in a way that would not violate their conscience. Just as my client Zhang Huamei said, “We have been forced to do so.” Then, [both] what position freedom of belief should hold under the legal framework and what relief to grant after such right is infringed [which] will be within a rational and legal scope is a constitutional issue to be emphatically analyzed by the case.

1) Legal analysis of belief freedom

In my opinion, one truth is self-evident: “religious belief should be guided only through rationality and belief, but not through force or violence. A state should grant such freedom with adequate tolerance and such tolerance should adequately allow the religious activities without violating the human common conscience.”

In the case, Zhang Huamei and some believers of Fushan region often undertook religious activities in the self-built gospel “shoe factory,” mainly service, Bible chanting and praying. However, in court, both Zhang Huamei and Yang Rongli have addressed such a fact as this: at 03:00, September 13, 2009, over 400 persons with red stripes on arms and iron bars and knives in hands rushed into the shoe factory, smashing, beating and killing (two pigs), and deployed bulldozers to level the gospel shoe factor. Afterwards, we came to know that it had been done by Fushan County Government.

Such behavior is a direct violent interference of the secular power with belief freedom and the face-to-face conflict between the power on the earth and the heavenly power of believers. In the eye of the believers, depriving their freedom of belief is just depriving the position of their kingdom, and is a fight between heaven and hell. Infringing the site of their religious activities just setting up a twig on their way to the heavenly kingdom. Thus, they would naturally express

their anger. The praying of believers on the road may be a most peaceful and rational expression, which it is believed should be understood and tolerated at any time.

In terms of law, religious belief freedom includes the freedom of religious activities. Such born nature will naturally surpass the custody of the secular power, as is the category with which the law can do nothing. Such right must be granted with understanding, respect and tolerance by the state composed of people.

Since public power is exercised naturally with its boundary, human basic right for speech, conscience and belief is naturally the final curtain of public power. If this curtain is drawn open, it will naturally disclose the absolute failure of naked tyranny and private power. Two hundred years ago, American master politicians Jefferson, Madison and others had enlightened us to such truth. "To erect a 'separation wall between politics and religion' is completely the root of free society."

In such space with the strict boundary, once one side extends its arm into the territory of another side, it will naturally result in a confusion of order between the two sides. In the case, obviously, the arm of the power on the earth has extended its arm into the palace of the heaven, thus causing the confusion of order on the earth.

Thus, how can the believers be blamed for disturbing traffic order? Religious freedom is a privilege of man subject to heaven. Man is first of all man of a nature, then man of a society and further man of a state. Rights have been gradually discovered in the progression of mankind, but not statutory.

The state cannot become the original point of value and it needs to become a boat carrying the happiness and peace of the public instead of being the changing Leviathan with a sharp sword in hand. Its core value should be to protect the freedom and equality of the public, instead of harming or depriving arbitrarily such freedom. When such basic function of the state fails or changes, the public under its custody should be allowed to give up part of the obligations in the preset contract and then turn back the function of the state to its original

position. Of course, such give-up is based on following and obeying the higher legal spirit.

2) Legal dimension of expression freedom

Essentially, freedom for statement and petition is all in the criterion of expression freedom.

The First Amendment to the U.S. Constitution states that it is not allowed to “abridge... the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” Such right of statement and petition is an open declaration of the public affairs. After Fushan Church was violently infringed, the core purpose of praying on the road was not to assemble, but to protest such violent act. Such protest is within the tolerance of common people as well as complies with the common knowledge.

Objectively, it may cause a traffic jam on the road, but, in view of the ranking of rights, such public order protected under the *Criminal Law* should naturally give way to the expression freedom protected under the Constitution. Additionally, human right, property right and freedom of belief believers were then abridged violently by the government ruling the secular power. They were even restricted in assisting and medical rescue. Obviously, the normal relief of public power was then completely ineffective.

Praying on the road was to peaceably and kindly express anger and protest when the relief of public power failed. This should have been the mode to be mostly understood and tolerated.

3) Legal analysis of non-infringement of conscience

American Supreme Court Justice Holmes said, “the life of the law has not been logic, but experience.” Such experience refers to the judgment of our common conscience and knowledge.

Jurisprudence is dead, muddy water, but its partial unbalance and self-updating space must be tolerated to maintain its vigor. In the case, as for the “traffic order” to be protected by the crime of assembling crowds to disturb traffic order,

such social order is not natural, but must be absolutely protected, while non-infringement of conscience is natural, but must be absolutely obeyed. Such obedience is based on that people are individual subjects, but not slaved by the state power.

Upon occurrence of such severe incident of violence, the believers adopted the open and non-violent disobedient relief for the purpose of seeking for changes of law and policy. Such disobedience based on belief and morality would obviously become the source of lasting and stable force. If even such peaceful and rational protest is under the custody of the *Criminal Law*, it will naturally lead to deeper hatred and pursuant of an irrational way out.

Let us just think: if those believers being beaten had left quietly, without expressing any protest or rescuing the injured, this would be what really makes us fear.

In view of the foregoing, the charge of assembling crowds to disturb traffic order involved in the case should be cautiously deployed, for it is extremely easy to conflict such natural rights as belief freedom, expression freedom and disobedience out of conscience, while the charge must take into account the cause of action. It is a charge integrated with act of assembling crowds and certain public order, while assembling crowds covers a kind of common will, which will be expressed through a normal channel in a democratic society and of which the expression must be tolerated. When such expression channel is blocked or fails, we should adequately allow and tolerate the public to express this in a way without violating the human common conscience.

Part Two: Empirical Analysis of Procedure and Entity

The following is the second part of my pleadings for the case, in which, with the criminal constitution theory as background and based the causes and facts, empirical analysis is made on the case in terms of procedures and entities.

1. The trial violates the law in terms of procedure.

During and before the court trial of the case, law-breaking procedure has been observed in various aspects:

1) Right-to-defense of attorney was abridged in disguised form

(1) Restriction for consulting and photocopying case files

The base for an attorney to adequately exercise the right to defense is the complete cognition and consulting of the case files.

In the case, before appearance in court, we had only consulted and photocopied extremely limited case files, which are only one tenth of the evidence materials provided by the procurator in court.

According to Article 36 of the *Criminal Procedure Law*, “defense lawyers may, from the date on which the People’s Court begins to examine a case for prosecution, consult, extract and duplicate the judicial documents pertaining to the current case and the technical verification material, and may meet and correspond with the criminal suspect in custody.” According to Article 34 of the *Law on Lawyers*, “as from the date when the People’s Court accepts the case, the attorney has the right to consult, extract and photocopy all the materials in connection with the case.” In the case, before appearance in court, the court of first instance failed to provide to the lawyer all the case files for photocopying. During the court of first instance, the court had given its consent for post-court photocopy, but the judge changed his mind and eaten his words, by refusing, for no reasons, our request to consult and photocopy the materials.

By refusing our request to consult and photocopy the case files, the judge of first instance had actually set barriers for the lawyer to exercise the right to defend and abridged, in a disguised form, the right of the lawyer to defend.

(2) The meeting right of the lawyer was illegally abridged

After the first instance, the lawyer approached Yicheng Detention House to meet the client Zhang Huamei according to law, but was refused for the reason that the superior instruction is required for any sensitive case. Head of Yicheng Detention House informed: meeting will be allowed only upon obtaining the signature from Director of Criminal Section of Linfen Intermediate Court, but, during the period of petition, the case files had not been handed over the Intermediate People’s Court, why is an approval required from a superior court?

Such act has not only violated the law in restricting the attorney to meet with his client, but has been suspected to violate the independent juridical trial.

(3) The attorneys had been interrupted several times in expressing the pleadings

During the court trial, almost all the attorneys had been interrupted by the judge and restricted in terms of speech context, as has materially interfered with the normal right of the attorneys to defense. Protests of the Public Prosecutor due to the questioning of the defenders had been basically accepted by the judge, while the protests of the defenders against the Public Prosecutor had all been determined as invalid, as is obviously a prejudice.

2) Evidence preparation and cross-examination procedure had materially violated the law

(1) Evidences had not been adequately presented.

During the court trial, the Public Prosecutor listed a huge number of witness testimonies, but failed to read out one by one. Before that, the defender had not either consulted the relevant materials of such testimonies.

Additionally, during the first instance, the judge had innocently stopped the Public Prosecutor from reading out the evidences. To this end, the defender had expressed protests in court, but the judge had paid no attention to the lawful provisions. Consequently, a huge number of evidences had not been presented or had been “omitted.”

Presentation of evidences and cross-examination is an extremely sincere legal issue. How can it be omitted? According to Article 55 of the *Interpretation of the Criminal Procedure Law*, “evidences must be verified as true in court through such court investigation procedures as presentation, identification and cross-examination; otherwise they shall not be taken as the basis for judgment.” Even the cross-examination procedure had been omitted in the court of first instance, as has materially violated the legal provisions on trial procedures in China.

(2) Illegal fabrication of interrogation records.

As for the interrogation records of the case, the lawyer had only seen them before appearance in court and only a limited part of them, but most of the interrogation records had not been prepared in compliance with the law.

According to the provisions in Articles 91 and 95 of the *Chinese Criminal Procedure Law*, in interrogating the criminal suspects, at least two investigators should be present; upon accepting the interrogation records, the criminal suspects shall sign or stamp on them and the investigators shall also sign in the records. However, in the records that could be consulted, we had basically not seen any signature of the investigators.

Therefore, the interrogation records prepared by the investigation organ lacked the necessary procedure and thus such interrogation records could neither be presented as evidences in court during the cross-examination nor taken as the evidence basis for the judgment of the case.

(3) Witnesses failed to appear in court

As for the charges against the five defendants, the Public Prosecutor listed a huge number of witness testimonies, but none of the witnesses had appeared in court. According to the provisions of the *Criminal Procedure Law*, the witnesses must appear in court and their testimonies must be cross-examined by the Public Prosecutor, the victim, the Defendant and the defender before being taken as the basis for judgment.

According to Article 141 of the *Interpretation of the Supreme People's Court on the Criminal Procedure Law of the People's Republic of China*, "witnesses should appear in court to testify"; upon complying with the following circumstances, as per permission of the People's Court, the witnesses may not appear in court: (1) non-adult; (2) suffering from serious disease or being disabled during court trial; (3) their testimonies will not have any direct decisive effect on trial; (4) other reasons.

However, in the case, for a huge number of testimonies, the concerned witnesses had not appeared in court. Since the providers of such testimonies failed to

appear in court, it was totally impossible to be cross-examined by the Public Prosecutor, the victim, the Defendant and the defender. Therefore, such testimonies shall not be taken as the basis for trial and judgment.

(4) Violation of the statutory principle for evidence

According to the requirements of the statutory principle for evidence, the title of evidence and acquisition procedures are all statutory. But, in the case, a copy of “Explanation of Situation” was presented as evidence. In terms of its context, this evidence was an appraisal conclusion for it had defined the nature and quantity of land involved in the case, but failed completely to comply with the requirements of appraisal conclusion.

A. According to Article 121 of the *Chinese Criminal Procedure Law*, the investigation organ should notify the appraisal conclusion to be taken as evidence to the criminal suspect and the victim. But, in the case, the investigation organ had not been observed in performing such procedure.

B. According to Article 238 of the *Procedure Regulations for the Public Security Authority to Handle Criminal Cases*, the appraisal conclusion must be signed and stamped by the appraiser with the appraisal qualification. In the case, we have seen the stamp of the appraisal organization, but not the signature of the appraiser.

C. According to Article 144 of the *Interpretation of the Criminal Procedure Law*, the appraiser should appear in court to read out the appraisal conclusion, except where the People’s Court has permitted not to appear in court. Upon appearing in court, the appraiser must present the true appraisal opinions. Before explaining about the appraisal conclusion, the appraiser should sign on the letter of undertaking for true explanation of appraisal conclusion. In the case, no appraiser had appeared in court.

(5) Illegal preparation of audio and video materials

According to the provisions of the *Chinese Criminal Procedure Law* on the audio and video evidences, to prepare the duplicate and photocopies of documents, take photos and records of material evidences and record relevant evidences, the preparers shall be at least two persons. Provision of evidence duplicate, photocopy and picture and audio and video items should be attached with the description of preparation and explanation for the location of original copies or materials, which shall be signed or stamped by the preparers.

In the case, the Public Prosecutor provided a huge number of pictures and video materials, but failed to provide any explanation for the process of preparing such audio and video materials. Thus, the said pictures and audio and video materials had been illegally prepared and could not be taken as the basis for trial and judgment of the case.

2. Constitutive requirements against the entity law

The defense regarding the entity law is only meant for the bill of prosecution of the Public Prosecutor, but not its wording of prosecution, for such wording lacked the legal logic inference and rigid demonstration and appeared to a big-character poster during the “cultural revolution.”

Examples are hereby provided for explanation:

1) The indictment of the Public Prosecutor reads: “thanks for the attention of the superior leaders.” To this end, we would like to question: what are the leaders thanked by the Public Prosecutor? Is it an administrative interference with judicature?

2) The Public Prosecutor stated: “the five defendants are here to receive the trial by the people.” This is obviously the language of the “cultural revolution.” We call it “People’s Court,” but the subject is the court but the people. Thus, the defendants were trialed by the court. The Public Prosecutor had superseded the concept by using such abstract term of people to promote its justice, as if the judge failed to determined the defendants as guilty, he would become the enemy of the people. Obviously, the political terms were used to apply pressure on the judge.

3) The Public Prosecutor stated: “defendants instigate the masses ignorant of the fact.” On July 29 of this year, Xinhua News Agency published a commentary titled as Limited Use of “Ignorant of the Fact” for the Massive Events. Afterwards, on August 28, CPC Yunnan Provincial Committee Propaganda Department issued a document not allowing titling the masses with “ignorant of the fact.” However, paying not attention, the Public Prosecutor again determined “the masses as ignorant of the fact.”

The Public Prosecutor called the behavior of Christians to build a local church as a “crazy behavior.” Obviously, the Public Prosecutor showed no basic respect to the Christians and even can be assessed as anti-religious person. Such wording with an insulting nature appearing in the bill of prosecution will affect the justice and objectiveness of the bill of prosecution provided by the Public Prosecutor. From the above, one would have to doubt the trueness of the evidences provided by the Public Prosecutor.

Regarding the bill of prosecution of the Public Prosecutor, the following pleadings are presented:

1) The bill of prosecution indicated: “on September 13, 2009, the relevant department of Fushan County Government dismantled the unlawful buildings of Guo Yanyan located at Xihan Village, Zhangzhuang Xiang, Fushan Count according to law.”

In view of the above, two points need to be doubted and defended:

(1) The statement expressed two important meanings: 1. the houses possessed by Guo Yanyan were unlawful buildings; 2. it was lawful for the government to dismantle them.

However, the determination of the two goes beyond the power and capacity of Yaodu District Procuratorate. It needs to be determined by the national state land administration, urban construction and planning department and other relevant authorities. But, according to the statement of the client and the case files we have consulted, none of the aforementioned authorities had determined the houses possessed by Guo Yanyan as unlawful buildings. The lawful

dismantling by the governmental department should not be determined by the procuratorate. But, the procuratorate had bypassed the power of the state land administration.

According to the in-court statements made by some of the defendants: at midnight, hundreds of persons with sticks and bars in hands rushed into the building, beating whoever they saw, injuring several persons and damaging many things. How could Yaodu District Procuratorate say it is “dismantle according to law”? Since it were a lawful action, we would ask which country’s law Yaodu District Procuratorate has followed? What kind of law is it? According to which article of the law? We would also ask Yaodu District Procuratorate what is the duty of the procuratorate. Is it to determine a building as unlawful? Since the building was determined as unlawful, why would it stand in court as the Public Prosecutor?

(2) Determination of the “fact” should be the focus of the case, as will be associated with whether the act of my client Zhang Huamei is proper and legal.

However, during the court trial, whenever questioning about this point, the five defenders had been interrupted by the judge or the procurator. In the case files, we failed to obtain any particular information about the dismantling by the government.

In court, the defendant stated the governmental act of dismantling showed violence, and I requested to suspend the trial, for the government was suspected of breaking the law and even committing a crime, but it was rejected by the judge for the reason that the charge of only two persons would be not established.

Obviously, if it is legal or illegal should be determined in a separate case.

2) According to the statement in the bill of prosecution: “Defendant Zhang Huamei intended to notify the believers of Fushan Count and Defendant Yang Rongli from Yaodu District “Golden Lamp Church.” Early morning of the same day, Yang approached Fushan County for conspiracy with Zhang. To force the party committee of Fushan County to settle the problem, they intended and

gathered hundreds of believers, parked the pickup mounted with the sound system in the center of Provincial Highway 230 at Xihan of Lin-Gong line and instigated hundreds of believers to pray on the road and besiege the public security officers present to regulate the traffic order, causing a traffic jam at the section for 4 hours and materially disturbing the traffic order.”

In view of the language structure of abstracted bill of prosecution, the document was full of commas, while the fact involving my client Zhang Huamei was only: Zhang Huamei notified Yang Rongli, Yang.... In other words, according to the determination of the fact in the expression of the bill of prosecution, Zhang had merely notified Yang Rongli. In terms of sentence structure, the subject for all other behaviors was Yang but not Zhang Huamei. Would one person be judged as guilty merely because of one notice? It is really ridiculous.

3) In terms of the crime of assembling crowds to disturb traffic order, according to the provision of Article 291 of *Chinese Criminal Law*, the act of the ringleader to assemble crowds to block traffic or damage traffic order, resist and obstruct the state public order administrators to exercise their duties according to law, causing serious consequences. According to Article 97 of the *Chinese Criminal Law*, “ringleader” in the law refers to a criminal element who plays the role of organizing, planning or directing a criminal group or a crowd assembled to commit a crime.

As per statement of Zhang Huamei in court, she was actually present at the scene, but she was not the organizer and plotter. As we know, that day was Sunday, on which Christians would go for service. Thus, it was normal for so many believers to come. Besides, in the wee hours of the morning when the event took place, numerous Christians were beaten badly and disabled. Christians call brothers and sisters among each other. Out of such emotion of believers, many of the believers went to take care of the injured. Therefore, obviously, the assembly of these Christians had not been organized by my client Zhang Huamei, because, as a country woman with an education background of merely primary school, Zhang Huamei was unable to organize thousands of people to block the traffic.

Objectively, we have not observed any particular act of the Defendant to organize, plot and command.

4) The charge requires for “resist and obstruct the state public order administrator to exercise the duties according to law.”

As my client Zhang Huamei indicated in court, they saw a state public servant who was in casual dress and showed no intention for administration of public order. It was purely reasonable for my client not to confirm such person as the public order administrator out of the human instinct of prevention.

Furthermore, the procurator failed to present any legal and complete evidences indicating the act of my client Zhang Huamei to “resist and obstruct the state public order administrators to exercise the duties according to law.”

Therefore, determination of Zhang Huamei for the crime fails to comply with the legal provisions and thus the punishment for the crime shall not be made.

5) Urgent danger prevention

According to Article 21 of the *Criminal Law*, criminal responsibility is not to be borne for damage resulting from an act of urgent danger prevention that must be undertaken in order to avert the occurrence of present danger to the state or public interest or the rights of the person, property rights, or other rights of the actor or of other people.

During the court trial, Zhang Huamei and Yang Rongli both stated that in the small hours on September 13, 2009, hundreds of people with sticks and bars in hands rushed into the gospel shoe factory, pushing down the workshop, injuring several persons. Even 120⁹ refused to provide any rescue. Under such circumstance, the believers could do nothing, but prayed and helped the injured. They had done so on the roadside because the gospel shoe factory had been smashed down. Thousands of believers naturally gathered on the road by the smashed building. Praying is the mode of Christian to provide rescue in danger. Such act was merely a kind of rescue, being in compliance with the legal

⁹ Editor’s note: 120 is a number to call for emergency medical care

constitutive requirements for urgent danger prevention, for which no criminal liability should be borne.

In view of the above, the case involves such major subjects as freedom, rights and conscience of citizens. In a general view of the entire case, it was felt the factors outside the case were extremely complex because it was of profound social background which had interfered with the judicial independence followed by the collegiate bench. Therefore, as a lawyer, I have to be worried. We expect the court will follow the real spirit of the legal governance as well as make a convincing judgment in accordance with the law and in compliance with conscience. The judges are requested to make necessary consideration according to the actual conditions, for the judgment of the case will not merely be associated with the dignity of the judge, but also will be recorded in the religious history as sign of glory or shame in the legal governance of China.

中国法律与宗教观察

People's Court Criminal Judgment

Yaodu District, Linfen City, Shanxi Province

Shanxi Linfen Yaodu District People's Court

Criminal Judgment

(2009) YXCZ No. 654

**Public Prosecution Organ: Linfen Yaodu District People's
Procuratorate**

Defendant Yang Rongli, female, born on October 3, 1958, Han, native of Shanxi Huozhou City, university graduate, employee of Old Carder Division of Shanxi Normal University, residing at Rm. 201, Bldg 3, Block C, Xinhe West Road, Yaodu District; suspected of committing the crimes of unlawfully occupying agricultural land and assembling crowds to disturb traffic order, detained on October 11, 2009, by Linfen Public Security Yaodu Branch, and arrested on October 22 of the same year; now detained in Shanxi Xinkang Prison.

Defender Wang Hongjie, attorney, Guangdong Luosen Law Firm

Defender Li Fangping, attorney, Beijing Ruifeng Law Firm

Defendant Cui Jiaxing, male, born on June 23, 1965, Han, native of Linfen Yaodu District, secondary school graduate, legal representative of Linfen Yaodu District Jiaxing Technology Innovation Co., Ltd, residing at Rm. 301, Bldg 3, Residential Block of Building Material & Cement Factor, Yimin Road, Yaodu District; suspected of committing the crime of unlawfully occupying agricultural land, detained on October 11, 2009, by Linfen Public Security Yaodu Branch, and arrested on October 21 of the same year; now detained in Linfen Yaodu District Detention House.

Defender Guo Xingzhi, attorney, Shanxi Pingyang Law Firm.

Defendant Zhang Huamei, female, born on September 12, 1959, Han, native of Shanxi Fushan County, secondary school graduate, peasant, residing at Unit 2 (from rear right), Zhonganping, Tiantan Town, Fushan County; suspected of committing the crime of assembling crowds to disturb traffic order, detained on October 11, 2009, by Linfen Public Security Yaodu Branch, and arrested on October 22 of the same year; now detained in Yucheng County Detention House.

Defender Zhang Kai, attorney, Beijing Yijia Law Firm.

Defendant Yang Xuan, male, born on September 2, 1955, Han, native of Shanxi Huozhou City, college graduate, residing at Jinjiazhuang Village, Yaodu District; suspected of committing the crime of unlawfully occupying agricultural land, detained on October 11, 2009, by Linfen Public Security Yaodu Branch, and arrested on October 21 of the same year; now detained in Linfen Yaodu District Detention House.

Defender Wen Yu, attorney, Guangzhou Square Strategy Law Firm.

Defender Cheng Zhunqiang, male, born on May 9, 1974, Han, native of Guangzhou, employee of Beijing Athos Culture Co., Ltd, residing in Company's Residential Block, Xintang, Guangzhou.

Defendant Wang Xiaoguang, male, born on October 10, 1953, Han, native of Shanxi Hongdong County, graduate of secondary school, staff of Office of Academic Affairs, Shanxi Normal University, residing at Rm. 201, Bldg 3, Block C, Xinhe West Road, Yaodu District; suspected of committing the crimes of unlawfully occupying agricultural land, put under residential surveillance on October 3, 2009, by Linfen Public Security Yaodu Branch, detained on October 11 of the same year, and arrested on October 21 of the same year; now detained in Linfen Yaodu District Detention House.

Defender Yang Peng, Beijing Han Horizon Law Firm.

Whereas through the bill of prosecution vide LSYJXS (2009) No., 596, accusing the defendants: Yang Rongli, Wang Xiaoguang, Yang Xuan and Cui Jiaxing of a crime of unlawfully occupying agricultural land and accusing the defendants

Yang Rongli and Zhang Huamei of a crime of assembling crowds to disturb traffic order; through the additional bill of prosecution vide LSYJXS (2009) No. 2, accusing Defendant Cui Jiaying of a crime of evading tax, Linfen Yaodu District People's Procuratorate instituted the public prosecution to the court respectively on November 2 and 11, 2009. According to law, the court established the collegiate panel for public trial. Linfen Yaodu District People's Procuratorate assigned its procurators Li Jun, Hu Wuping, Xing Jian and Guo Xiaoyan to appear in court to support the public prosecution. Defendant Yang Rongli and her Defender Wang Hongjie and Li Fangping, Defendant Cui Jiaying and his Defender Guo Xingzhi, Defendant Zhang Huamei and her Defender Zhang Kai, Defendant Yang Xuan and his Defender Wen Yu and Cheng Zhunqiang, Defendant Wang Xiaoguang and his Defender Yang Peng, Witnesses Zhang Jinfeng and Yu Xiaomei appeared in court for participation in litigation. Now, the trial has been concluded.

Public Prosecution Organ charged:

Defendants Yang Rongli, Wang Xiaoguang, Cui Jiaying and Yang Xuan violated the laws and regulations on land administration and unlawfully occupied agricultural land in a relatively big quantity, causing a huge damage to the cultivated land and such conduct offended the provisions in Article 342 of the *Criminal Law of the People's Republic of China*; to vent personal spite, Defendant Yang Rongli and Zhang Huamei assembled crowds to block traffic and obstructed the public security personnel in exercising their duty according to law, causing serious circumstances and being the ringleaders, and such conduct offended the provisions in Article 291 of the *Criminal Law of the People's Republic of China*; Defendant Cui Jiaying violated the relevant administrative regulations of the tax law, evaded the tax in a huge amount being more than 30% of the taxable amount, by means of excluding revenues on account books, and such conduct offended the provision in Article 201 of the People's Republic of China.

As the criminal facts are clear and evidences are reliably adequate, Defendants Yang Rongli, Wang Xiaoguang, Cui Jiaying and Yang Xuan should be

investigated for the criminal liability against the crime of unlawfully occupying agricultural land; Defendants Yang Rongli and Zhang Huamei should be investigated for the criminal liability against the crime of assembling crowds to disturb traffic order; Defendants Cui Jiaying should be investigated for the criminal liability against the crime of tax evasion. Since Defendants Yang Rongli and Cui Jiaying committed more than one crime, concurrent punishment shall be applied. Public Prosecution Organ provided to the court such evidences proving the defendants guilty as defendant's statements, witnesses' testimonies, appraisal conclusions, documented evidences, materials, field survey notes and requested the court to condemn according to law.

Defendant Yang Rongli argued:

1. The construction project was proposed by all, she was not the in-charge and the construction meeting was chaired by all, at which everyone spoke;

2. She submitted an application of the relevant department, but received no reply;

3. She participated in signing the land lease agreement and its supplementary agreement, but had neither signed nor paid any land rent;

4. On September 13, upon receiving a call from Zhang Huamei, she went to Fushan, but had not organized the relevant people;

5. She had not stood on the vehicle to shout with a microphone;

6. She had not asked the persons of Yaodu District, but they went there themselves;

7. At that time, no public security personnel were present on the spot to control and guide the traffic. Her behavior constituted no crime.

The defense opinions of the defender for Defendant Yang Rongli:

1. The damaged farmland was not cultivated land, but forest land;

2. Textual examination was for the *1999 Farmland Registration* needed to testify the status of the existing land;

3. The notebook was acquired by unlawful search and could not be taken as evidence;

4. Defendant Yang Rongli conducted unlawfully, but had not constituted any crime;

5. At that time, no police was seen on duty.

Based on the fore-mentioned, Defendant Yang Rongli is innocent.

Evidence provided by the defender of Defendant Yang Rongli to the court include:

1. The testimony and authentication of Witness Yu Meizi; (1) she saw the police car and a policeman in casual dress;

2. Dozens of people were lying on the ground and assembling on the road without any person to command.

Defendant Cui Jiaxing argued:

1. He had unlawfully occupied any agricultural land, committed faults, but had violated the law;

2. He failed to timely charge the account, as was not an act of evading tax but only lack of legal knowledge. Such conducts would not constitute the crime of unlawfully occupying the agricultural land and the crime of tax evasion.

The defense opinions of the defender for Defendant Cui Jiaxing:

1. Defendant Cui Jiaxing had not participated in any meeting about changing the use of the leased land; even if there was really any problem, it would be only a fault, without constituting a crime;

2. The charge for tax evasion was not established, for it was only an act of tax evasion; even if an offense was established, it should be an institutional act. Therefore, Defendant Cui Jiaying should be given a lighter and lesser punishment.

Evidences provided by the defender of Defendant Cui Jiaying to the court include: testimony and authentication of Witness Zhang Xiaofeng: during the construction work of National Highway 108, she heard Cui Jiaying that the leased land was used for construction of buildings; she also heard it was compensated and the compensation of the national highway was not in custody of Cui Jiaying personally.

Defendant Zhang Huamei argued:

1. The land he purchased was legal;
2. He had not committed the crime of assembling crowds to disturb traffic order.

The defense opinions of the defender for Defendant Zhang Huamei:

1. Public Prosecution Organ failed to provide any evidence for conspiracy of Defendants Zhang Huamei and Yang Rongli;
2. Zhang Huamei was unable to organize and lead 2,000 people for assembly, and thus was not a ringleader;
3. No traffic control authority was not present to administrate and regulate.

Defendant Yang Xuan stated:

1. The land was a piece of wasteland;
2. He had only signed a supply contract for concrete, which had nothing to do with the unlawful occupation of land;

3. He was neither the organizer, the investor, the lessee, nor an undertaker of the particular construction work;

4. During construction, he was only responsible for the work quality, as was his duty. Such act would not constitute a crime.

The defense opinions of the defender for Defendant Yang Xuan:

1. The land was not the occupied basic farmland;

2. Yang Xuan was not a responsible person;

3. Actual size was not discriminated for the area of land occupied for the building;

4. The notebook was unlawful evidence and should not be used as evidence.

Therefore, Defendant Yang Xuan had not committed any crime.

Defendant Wang Xiaoguang defended:

1. The occupied farmland was in the category of forest land, but not basic farmland;

2. He was only responsible to deliver lectures, but not responsible to manage any affair and had not been involved in the particular construction, and thus had not committed the crime.

The defense opinions of the defender for Defendant Wang Xiaoguang:

As the case occurred for good reason, and Defendant Wang Xiaoguang had not been involved in the construction work, his act would not constitute any crime.

Upon trial, it has been found:

I. Crime of unlawfully occupying agricultural land

On August 13, 2003, Defendant Yang Rongli, Cui Jiaying and Yang Cuilian negotiated with Chu Yuzhu, the branch secretary of Yaodu District Jinjiazhuang, on leasing the land of the village for planting flowers, and signed, in the name of Yang Cuilian and Cui Jiaying, with eight villagers including Chu Yuzhou, the Lease Agreement for Land Use Right for a lot of 14.88 Chinese mu with a term of 20 years, for which the notarization was made.

From August to November 2007, Defendant Yang Rongli called several times Feng Junying and others to discuss changing the use of the leased land and construction of a large-scale building; Defendant Wang Xiaoguang and others participated in the meeting; Defendant Wang Xiaoguang proposed to build only one floor. Finally, at the meeting, by voting, it was decided to carry out the construction work on the leased land.

In March 2008, the construction work of a large-scale building started on the lot without obtaining the approval from the relevant department and completing any formalities for engineering works.

To raise funds for the construction, Defendant Yang Rongli arranged for funding; on various occasions, Defendants Yang Xuan and Wang Xiaoguang encouraged the concerned people to donate; during construction, by providing the water supply equipment with a value of over 20,000 Yuan at no cost of the works, Defendant Cui Jiaying provided convenience for the unlawful construction; Defendant Yang Xuan was responsible for the construction work. He contacted the construction team and signed, in the name of Linfen Yaodu District Jiaying Technology Co., Ltd of Defendant Cui Jiaying, with Shanxi Jusheng Concrete Co., Ltd, the Concrete Supply Contract to organize building materials for the unlawful construction work.

After the works started, villagers went several times to stop the construction, but failed; meanwhile, Yaodu District State Land Resources Bureau, Construction Bureau and other functional departments issued several stoppage notices, but Defendant Yang Rongli and others organized the construction personnel and the innocent masses to resist the law enforcement and refuse to execute the stoppage notices.

In December 2008, the foregoing unlawful building was completed. On July 16, 2009, as per coordination and arrangement of Defendant Yang Rongli, Defendant Cui Jiaying and others signed with the original 8 villagers a supplementary agreement to the land lease agreement for additional rent and agreement for construction.

As per determination, the said unlawful building occupied the agricultural land by 12.42 Chinese mus in total, including the building area of 6.01 Chinese mus.

Evidence testifying to the foregoing facts include:

1. Statement made by Defendant Yang Rongli during the investigation of the case, confirming: (1) in August 2003, the land was leased, for which notarization was made; (2) the land was leased to plant flowers and economic forest; (3) the construction of the building was studied and decided in the meetings convened for major persons; Wang Xiaoguang also participated in the meeting; (4) of the construction fund, 1/3 was borrowed and the rest was raised from the volunteers. (5) The construction started in March 2008 and was basically completed in July and August of the year.

2. Statement made by Defendant Wang Xiaoguang during the investigation of the case, confirming: (1) he was only responsible for delivering lectures; (2) his wife, Yang Rongli was the leader; he only participated in one construction meeting and recommended to first complete all the formalities and to build one storey due to the funding problem; (3) some of the funds were raised from the volunteers and some were borrowed, for which the receipt was issued by Yang Rongli; (4) the works started in March 2008 and completed before 2008 Christmas.

3. Statement made by Defendant Yang Xuan during the investigation of the case, confirming: (1) he was responsible to deliver lectures; (2) his younger sister, Yang Rongli was the chief responsible for all the construction works; (3) the works prepared as from November 2007, started in May 2008 and completed in December 2008, without undertaking any formalities; (4) he was responsible for

the work construction and quality and safety and signed, in the name of Jiaxing Company, the concrete contract with Linfen Jusheng Batching Company; (5) he heard that Yaodu District State Land Resources Bureau and Planning Bureau had issued the orders to stop the work.

4. Statement made by Defendant Cui Jiaxing during the investigation of the case, confirming: (1) together with Yang Rongli and Yang Cuilian, he approached the village party secretary for the land lease and then signed the agreement in his and Yang Cuilian's names, but all had been discussed and decided mainly by Yang Rongli; (2) after August 2004, all the matters of the leased land were up to Yang Rongli to decide; he had paid the rent for one year only; (3) the works were totally taken on by Yang Rongli and no formalities had been undertaken; (4) the water supply system was sponsored by him; (5) in May 2009, he and Yang Rongli negotiated with the villagers about the rentals and he signed on the supplementary agreement.

5. The testimony of Witness Yang Cuilan, confirming: (1) in August 2003, Yang Rongli asked her to lease the land, for which she, together with Yang Rongli, Cui Jiaxing, negotiated and she and Cui Jiaxing signed the agreement; (2) Yang Rongli organized meetings to decide on the construction work, of which she attended only one; (3) Wang Xiaoguang participated in the meetings for studying and discussing the construction work; (4) during the preparatory period, on various occasions, Yang Rongli, Wang Xiaoguang, Yang Xuan and others raised funds from the volunteers; (5) the works were taken on mainly by Yang Xuan; (6) during construction, the villagers obstructed; Yang Rongli asked her to write the power of attorney for her to handle the obstruction of the villagers; (7) she heard the law enforcement department came for investigation, but Yang Rongli organized relevant people especially to obstruct the law enforcement.

6. The testimony of Witness Liang Xiangjiao, confirming: (1) along with Wang Xiaoguang, Yang Hongzhen and others, participated in the meeting for discussion on the works, chaired by Yang Rongli; (2) Yang Rongli had the habit of keeping diaries.

7. The testimony of Witness Feng Junying, confirming: (1) the meetings for the building was chaired by Yang Rongli; Wang Xiaoguang and Yang Rongli proposed for a new building; Wang Xiaoguang said that only one story would be built because of inadequate funds; (2) Yang Rongli entrusted me and Liang Xiangjia to authorize, in personal name, Yang Xuan to take on the construction; (3) before and after the works, the District's governmental departments of land and urban construction approached the work site to obstruct the construction for several times.

8. The testimony of Witness Chu Yuzhu, confirming: (1) in July 2003, Yang Rongli and Yang Cuilian, Cui Jiaying discussed with him about leasing the land; on August 13, as representatives, Yang Cuilian and Cui Jiaying signed the agreement with my villagers and made notarization; (2) in April 2008, upon discovering that foundation was made for construction of a building, for several times, he organized villagers to stop it, but failed. Later on, the two parties signed a supplementary agreement to increase the rental.

9. The testimony of Witness Jin Xingji, confirming: (1) at that time, Jiaying Machinery Factory wanted to lease the land for plantation of famous and precious flowers, they leased his cultivated land by 1.605 Chinese mus; (2) before being leased, the 1.605 Chinese of land was the cultivated of his family for planting crops; (3) in 2007 when the foundation was made, villagers went to stop it and ran into conflict on various occasions and finally negotiated with Yang Rongli to increase the rental.

10. The testimony of Witness Jin Xing, confirming: (1) in 2003, he leased the cultivated land of 0.86 Chinese mus to Cui Jiaying and Yang Cuilian, when they said to plant flowers and notarization was made; (2) in January 2008, they started to build fences and building and assigned some persons for 24-hour guard; (3) during construction, he went to Cui Jiaying and Yang Cuilian but stopped by others.

11. The testimony of Witness Wang Zaigeng, confirming: (1) in July 2003, he leased the cultivated land of 1.2 Chinese mus to Jiaying Machinery Factory for nursery plantation; (2) his land was the cultivated land for crops before being

leased; (3) in 2007 when they excavated for foundation, villagers went to stop but failed and later on came to know about it after the house was built.

12. The testimony of Witness Duan Hongrui (legal representative of Shanxi Jusheng Concrete Co., Ltd), confirming: in March 2008, Yang Xuan approached his company for negotiation to purchase concrete and his company signed a concrete supply agreement with Jiaying Machinery Factory. Later, when his company was notified by the relevant department that the works of Jiaying Machinery Co., Ltd were unlawful and was required to stop the concrete supply, he stopped the supply.

13. The testimony of Witness Wang Li (the in-charge of one construction team in Taiyuan) , confirming: (1) in the end of 2007, Yang Xuan contacted his construction team for building works; (2) each time to settle the work payment, Yang Rongli signed before he collected the money.

14. Notebook of Defendant Yang Rongli, confirming: she called several meetings for construction of a building on the leased on and arranged for funding, etc.

15. Land lease agreement, land lease supplementary agreement and notarization, verifying: on August 13, 2003, Defendant Cui Jiaying and others signed with 8 villagers of Jinjiazhuang the land lease agreement and made notarization and on July 15, 2009 the supplementary agreement was signed for the land lease agreement.

16. Concrete supply agreement, verifying: for the unlawful construction, Defendant Yang Xuan organized building materials.

17. Instruction of Defendant Yang Rongli for the work arrangement of Defendant Yang Xuan on November 28, 2007, verifying: (1) Defendant Yang Rongli was in charge; (2) upon authorization, Defendant Yang Xuan was fully responsible for the construction work of the unlawful building.

18. List of articles and documents detained by Linfen Public Security Bureau Yaodu Branch, verifying: Linfen Public Security Bureau Yaodu Branch

detained the notebook and other articles of Defendant Yang Rongli and the list was signed by Wang Xiaoguang of the articles and witnesses.

19. Explanation for the status of construction on the occupied land issued by Linfen Yaodu District State Land Resources Bureau, verifying: (1) as per site survey of Yaodu District State Land Resources Bureau, the total land area occupied by the unlawful building was 12.42 Chinese mus; (2) the occupied land was in the category of cultivated land as basic farmland and was not in compliance of the overall planning for the land utilization.

20. Survey and boundary map of the land occupied by the building involved in the case, verifying: the total occupied land area for the unlawful building 12.42 Chinese mus and the land area for the building was 6.01 Chinese mus.

21. Statistical sheet of registration for the defined protected lots in 1999 Linfen Jiade Town Jinjiazhuang Basic Farmland Protection Area, verifying: the land occupied by the unlawful building involved in the case was in the category of basic farmland.

22. Verified as per video materials for the status of the damaged farmland.

23. Site survey and investigation notes, plan and pictures, verifying: location and current appearance of the damaged farmland.

24. Stoppage orders and notices issued by Linfen Yaodu District State Land Resources Bureau and Construction Bureau, audio and video materials for stopping the unlawful construction and acknowledgement for delivery of the official documents, verifying: process for the departments to order the stoppage of the unlawful building involved in the case and delivery of relevant documents.

25. Notice of Linfen Yaodu District Urban Construction Supervision Brigade, verifying: the fact of ordering the stoppage of unlawful building involved in the case.

26. The household registration credentials of the five defendants, verifying the basic ID status of the defendants

The foregoing evidence has been supplied and cross-examined in court for the confirmation of the court.

II. Crime of assembling crowds to disturb traffic order

On September 13, 2009, the relevant department of Fushan County Government dismantled, according to law, the unlawful building of Guo Yanyan (daughter-in-law of Defendant Zhang Huamei) at Xihan Village, Zhangzhuang Town, Fushan County. During the period, Defendant Zhang Huamei called Defendant Yang Rongli and other persons in Yaodu District and Fushan County for circulation of the status.

At about 09:00 on September 13, Defendant Yang Rongli approached to the spot of the event. In order to force the party committee and government of Fushan County, Defendant Zhang Huamei proposed for assembling the people on the road. After Defendant Yang Rongli agreed, the two assembled more than one thousand people from Yaodu District and Fushan County on Provincial Highway 230 at the section of Lin-Mo Line Zhangzhuang Town Xihan Village; parked the passenger and cargo vehicle mounted with sound system on the road; Defendants Zhang Huamei and Yang Rongli used the amplifier to instigate the persons at the scene to besiege the police officers that were at the scene to regulate the traffic, causing the traffic jam on the section for 4 hours and disturbing seriously the traffic order.

Evidence testifying to the foregoing facts include:

1. Statement made by Defendant Yang Rongli during the investigation of the case, confirming: (1) on September 13, assembling on the road for more than 4 hours; (2) 1,000 - 2,000 persons came to Fushan.

2. Statement made by Defendant Zhang Huamei during the investigation of the case, confirming: (1) on September 13 when her cloth shoes workshop was dismantled, she telephoned Yang Rongli and Feng Junying and also asked others

to inform the brothers and sisters in Fushan Count; (2) at 09:00, leading others, Yang Rongli came to Fushan to see the scene; (3) at that time, 1,000 - 2,000 persons were gathering, she proposed to stay on the road and asked others to park vehicles on the road and Yang Rongli agreed; (4) on the road, with a speaker, Yang Rongli called out and she also called out to have the county government to settle the problem; (5) she saw Li Haibo, Hua Qiang and others from the public security bureau coming to the scene and pushed and pulled Li Haibo.

3. The testimony of Witness Feng Junying, confirming: (1) in the morning of September 13, Zhang Huamei called, saying an accident happened in Fushan and asking them to go to Fushan; (2) Yang Rongli asked more than 500 persons to go to Fushan; (3) Yang Rongli organized the assembly; (4) the sound system mounted on the pickup was traversed on the road.

4. The testimony of Witness Liang Xiangjiao, confirming: (1), Zhang Huamei called the people in Yaodu District to go to Fushan; (2) hundreds of people from Fushan gathered on the road, packing the vehicles across the road, people lying on the road till 15:00; the road was really blocked, with the vehicle mounted with the sound system parked in the center of the road.

5. The testimony of Witness Liu Xiaofang, confirming: Guo Yanyan led a dozen of people holding flags in hands, Zhang Huamei led two dozens of people to the entrance of Nanhan Village; one pickup mounted with the sound system followed, many people walked to the entrance of Nanhan Village; some were lying and some kneeling in the center of the road; Zhang Huamei was also kneeling on the ground.

6. The testimony of Witness Guo Yinglong, confirming: (1) the assembling people headed by Zhang Huamei kneeled in the center of the road, instigating us to block the road so as to force the county leaders to come out and give a rely; if the reply was not satisfactory, appeals would be made to the provincial and central government; she said that if seeing the administrative enforcement units, retain them; (2) another woman was also calling out and instigating the masses to block the road.

7. The testimony of Witness Li Qixing (bus driver), confirming: at 09:50 September 13, 2009, when driving to the entrance of Xihan Village, Fushan County, he saw hundreds of people blocking the road, with about 50 vehicles blocked.

8. The testimony of Witness Xu Xiang (bus ticket seller), confirming: at 11:00, September 13, 2009, when driving from Linfen to near Xihan Village of Fushan County, found the road completely jammed, saw about 1,000 people standing on the road and saw one woman calling out with a speaker.

9. The testimony of Witness Cheng Min (taxi driver), confirming: at 13:00, September 13, 2009, driving to send someone from Fushan to Linfen, he found people blocking the road at the section of Xihan Village, and he was blocked for about one hour.

10. The testimony of Witness Wang Jianjun (news worker), confirming: 12:00, September 13, 2009, when driving to Nanhan Village, he saw the traffic jam, hundreds of people holding umbrellas and some shouting slogans.

11. The testimony of Witness Li Haibo (Deputy Director of Fushan County Public Security Bureau), confirming: at 09:00, September 13, 2009, he was on duty and the commanding center reported hundreds of people assembled blocking the road at Xihan Village. He arranged the traffic policy team and Zhangzhuang Police Station to assign staffs; as the traffic jam was not timely cleared, along with Ma Xing, Political Instructor of Patrol Police Brigade, Hua Qiang, Team Member and Lu Luming, the driver driving the police car with the plate number J-L7218, he approached the scene. When they arrived at the site, Zhang Huamei seized Hua Qiang, saying, "The murder is here." The assembling people followed and rushed over and then threatened him, pushing and pulling him into the crowds for several minutes. In order to prevent the event from expanding, he led the police officers out from the scene.

12. The testimony of Witness Ma Xing (policeman), verifying: September 13, 2009, along with Deputy Director Li Haibo, Hua Qiang and Lu Ming, he went to the road site at scene at Xihan Village. He saw dozens of people besieging Hua Qiang and pushing and shoving Deputy Director Li.

13. Site survey and investigation notes, illustration and pictures of Fushan County Public Security Bureau and certificate of Fushan Highway Administration, verifying: (1) the place of the case was Provincial Highway 230 Lin-Mo Section at Xihan Village, Zhangzhuang Town, Fushan County230; (2) the spot of the crime.

14. Emergency Registry of Fushan County Public Security Bureau, verifying: 09:40, 2009, Fushan County Public Security Zhangzhuang Police Station received the order from 110 for emergency handling.

15. Stoppage notice of Fushan County Urban-rural Construction Bureau and return receipt, "Report on Disposing the Unlawful Building Guo Yingrong at Xihan Village, Zhangzhuang Town," Notice of Fushan County State Land Resources Bureau on Order to Stop the Law-breaking Behavior and the return receipt, verifying: the building of the case removed according to law was unlawful building and the fact of delivering the documents.

The foregoing evidence has been supplied and cross-examined in court for the confirmation of the court.

III. Crime of Tax Evasion

On March 23, 2004, in the name of contributing jointly with Yang Rongli, Defendant Cui Jiaxing established Linfen Yaodu District Jiaxing Machinery Processing Co., Ltd. On April 15, 2008, the company registered the alteration as Linfen Yaodu District Jiaxing Technology Innovation Co., Ltd.

During the period from January 2005 to June 2009, by means of excluding the payments and advance received in the account, Defendant Cui Jiaxing evaded the tax by 301,604.47 Yuan, with the evaded tax amount being 64.41% of tax payable.

During the court trial, Defendant Cui Jiaxing's family members positively rendered tax amount of 50,000 Yuan.

Evidences testifying to the foregoing facts include:

1. Statement made by Defendant Cui Jiaying during the investigation of the case, confirming: (1) Jiaying Company was established by him personally, for which Defendant Yang Rongli had not made any actual contribution and was not involved in the operation and management of the company; (2) as the company was a small-scale tax payer, he acted as its cashier and the accountant Sun Jinyu maintained the account according to this instruction; (3) he evaded tax by selling equipments to other companies with issuing any VAT invoice but only receipt; (4) he had no objection to the fact of tax evasion verified by the tax auditing report; (5) he had used all the tax amounts payable for the company's product research and development.

2. Corporate Business License of Linfen Yaodu District Jiaying Machinery Processing Co., Ltd, verifying: the company was established on March 23, 2004, of which Defendant Cui Jiaying had been the legal representative.

3. Application of Company's Alteration of Registration and Corporate Business License of Linfen Yaodu District Jiaying Technology Innovation Co., Ltd, verifying: on April 20, 2008, Jiaying Company was renamed and Defendant Cui Jiaying was its legal representative.

4. Tax Registration Certificate and accounting vouchers of Jiaying Company and tax payment records of the taxation authority, verifying: the relevant tax affairs of Jiaying Company.

5. Taxation Auditing Report issued by Shanxi Xinghua Tax Agent Firm Linfen Yaodu District for Jiaying Machinery Processing Co., Ltd, verifying: from 2005 to June 2009, Jiaying Company evaded the taxes amounting to 301604.47 Yuan, which was 64.41% of the tax payable.

6. Relevant vouchers regarding the illicit money of 50,000 Yuan rendered by Defendant Cui Jiaying's family member.

The foregoing evidence has been supplied and cross-examined in court for the confirmation of the court.

On the explanations and reasons for the defense raised by Defendant Yang Rongli and her [legal] defenders for the innocence of Defendant Yang Rongli, as per investigation:

1) On unlawful occupation of agricultural land:

1. The testimonies of several witnesses and the personal diary of Defendant Yang Rongli are adequate to testify that she was the main responsible person in the process of constructing unlawfully the building;

2. Her explanation that she had applied to the relevant department but failed to get a reply cannot be the reason for her to unlawfully occupy land;

3. From the testimony of the villagers of Jinjiazhuang, it is known that before being leased, the said lot was cultivated land used by 8 peasant households of Jinjiazhuang for planting agricultural crops, it is an objective fact that the land was basic farmland, *1999 Farmland Registration* was true and effective; with reference to the explanation of Yaodu District State Land Resources Bureau about the construction on the occupied land of the building involved in the case, it is adequate to testify that the said land is the basic agricultural cultivated land;

4. As the notebook of Defendant Yang Rongli was acquired by the investigators in searching and detaining according to law and the list of the detained was signed by the article holder Wang Xiaoguang and witnesses, such act of obtaining evidences is lawful and effective and Defendant Yang Rongli accepted, in court, the ownership of the notebook; thus the notebook should be used as evidence for the case;

5. As verified in the explanation of Linfen Yaodu District State Land Resources Bureau about the Construction on the occupied for the building involved in the case, survey and measure map of the occupied land, Lot Registration of Protective Land in 1999 Linfen Jiade Town Jinjiazhuang Basic Farmland Protection Zone and other evidences, the act of Defendant Yang Rongli and others to unlawfully occupy 12.42 Chinese mus of cultivated land is not a general law-breaking act and constituted a crime, for which the criminal

liability should be investigated. In view of the foregoing, Defendant Yang Rongli had been active, from the stage of leasing the land, in participating in deciding all the matters and had known the property of the leased land; upon intending to carry out the construction work, raised funds, organized them for construction, actively pursued to change the use of the land, objectively causing a serious damage to the plantation conditions of the land: her act has constituted the crime of unlawfully occupying agricultural land.

2) On assembling crowds to disturb the traffic order:

1. Defendant Zhang Huamei verified the people from Linfen (Yaodu District) were brought by Yang Rongli and others; Witness Feng Junying also verified that Yang Rongli asked more than 500 to go to Fushan for assembly;

2. Defendant Zhang Huamei verified that Defendant Yang Rongli used the speaker to call out; Witness Liang Xiangjiao verified Yang Rongli held a speaker to call out;

3. Police officers Li Haibo and Ma Xing verified that they had been besieged and pushed and shoved by several persons;

4. Other evidences verified that Yang Rongli and others organized blocking the road for several hours and actually caused the traffic cut-off and blockage of numerous vehicles;

5. The stoppage notices of Fushan County Urban-rural Construction Bureau and State Land Resources Bureau verified that the building of Guo Yanyan in Fushan was a lawful building. Therefore, the act of Defendant Yang Rongli in league with others to instigate and assemble crowds to block the traffic and oppose and obstruct the policy from maintaining the order has constituted a crime of assembling crowds to disturb traffic order. In summary of the above, the court will not adopt the arguing opinions and defense reasons of Defendant Yang Rongli and her defenders that failed to comply with the facts and the laws.

On the explanations and defense reason raised by Defendant Cui Jiaying and his defender for the innocence of Defendant Cui Jiaying, as per investigation:

1. Upon knowing the change of the use of his leased land, Defendant Cui Jiaying was still active in helping the unlawful construction, providing free water supply equipment, upon completion, signing the supplementary agreement with the villagers and thus subjectively held a mindset of pursuing the construction of a building on the said cultivated land.

2. As Defendant Cui Jiaying confessed in the stage of case investigation for his act of tax evasion and held no objection to the tax auditing report, his explanation for failing timely charge the account and not knowing the law cannot be taken as the reason for illegal impediment; as for the reason considered by the Defender that the tax evasion was an institutional offense, according to the facts proven through investigation by the court, the tax amount evaded was owned by the institution and was the institutional interest and thus it should be determined as an institutional offense. Therefore, the act of Defendant Cui Jiaying to gang up with others in unlawfully occupying 12.42 Chinese mus of agricultural land; evaded the tax for Jiaying Company in a huge amount being more than 30% of the tax payable has constituted the crime of unlawfully occupying agricultural land and the crime of tax evasion. In view of the above, the reason raised by his [Cui Jiaying's] Defender that the tax evasion was an institutional offense complies with the facts and the law; it is hereby adopted by the court, but all other explanations and reasons fail to comply with the facts and the law and shall not be adopted by the court.

On the explanations and defense reasons raised by Defendant Zhang Huamei and her defenders for the innocence of Defendant Zhang Huamei, as per investigation:

As verified by Witnesses Feng Junying, Guo Yinglong and others, Defendant Zhang Huamei gathered people and led in blocking the road; Defendant Zhang Huamei confessed, during the case investigation, that she besieged and pushed and shoved the police officers. Therefore, the act of Defendant Zhang Huamei

to gang up with others, for her illegal purpose, to organize and instigate the masses to disturb the traffic order and resist the police officers in executing their duties has constituted the crime of assembling crowds to disturb traffic order. Therefore, the explanation and defense reasons of Defendant Zhang Huamei and her Defender fail to comply with the facts and the law and shall not be adopted by the court.

On the explanations and defense reason raised by Defendant Yang Xuan and her defender for the innocence of Defendant Yang Xuan, as per investigation:

The explanation of Defendant Yang Xuan for part of the leased land as wasteland cannot be testified with any relevant evidence; he had confessed, during the case investigation, about the fact that during construction, he was mainly responsible for the construction work, quality and safety, but withdrew such confession in court without any factual evidence; as verified by Witness Duan Hongrui and Wang Li, during construction, Defendant Yang Xuan organized the building materials and contacted the construction team; as verified by Witness Yang Cuilian and Feng Junying, Defendant Yang Xuan was responsible for the construction work. Based on the foregoing, the act of Defendant Yang Xuan subjectively knowing the illegality of the construction and objectively implementing a series of unlawful construction works has constituted a co-crime of unlawfully occupying agricultural land jointly with Defendant Yang Rongli and others. Therefore, the explanation and defense reasons of Defendant Yang Xuan and his Defender fail to comply with the facts and the law and shall not be adopted by the court.

On the explanations and defense reason raised by Defendant Wang Xiaoguang and his defender for the innocence of Defendant Wang Xiaoguang, as per investigation:

The act of Defendant Wang Xiaoguang to actively participate in the meeting discussion in the preparation stage and encourage others to donate for the

purpose of raising funds has constituted the crime of unlawfully occupying agricultural land. The explanation and defense reasons of Defendant Wang Xiaoguang and his Defender fail to comply with the facts and the law and shall not be adopted by the court.

Verdict:

In view of the foregoing, in the opinion of the court, as Defendant Yang Rongli, Yang Xuan, Cui Jiaying and Wang Xiaoguang violated the laws and regulations on land administration in changing the use of leased agricultural land into construction land without the approval of the administration of state land resources, resisted the investigation of the relevant department and unlawfully occupied agricultural land of 12.42 Chinese mus, causing damage to cultivated land in a big quantity, their act has constituted the crime of unlawfully occupying agricultural land; for the purpose of coercing the relevant department, Defendant Yang Rongli and Zhang Huamei organized more than one thousand persons to block the traffic for 4 hours, causing disorder to traffic, the two defendants used the amplifier to control and instigate the participants to oppose and obstruct the policy from regulating the traffic, causing serious circumstances, for which Defendants Zhang Huamei and Yang Rongli were ringleaders, such act has constituted a crime of assembling crowds to disturb traffic order; as the legal representative of a limited liability company, Defendant Cui Jiaying violated the national laws and regulations on taxation in evading the tax of 301,604.47 Yuan by means of excluding the payments or advances received from the account, which was in a huge amount and was more than 30% of the tax payable, such act has committed the crime of tax evasion; whereas Defendant Cui Jiaying acted in evading tax in the name of Jiaying Company and the income from tax evasion belonged to the company, as is in compliance with the characteristic of committing a crime in the institutional name and seeking interests for the institution in the institutional offense, it is an institutional issue; as the direct responsible executive of the company, Defendant Cui Jiaying shall undertake the relevant criminal liability. The court hereby affirms the charge accused by Public Prosecution Organ and criminal facts are established. As Defendant Yang Rongli

and Cui Jiaying have committed more than one crime, the cumulative punishment shall be applied; Defendant Wang Xiaoguang played a secondary and subordinate role in the criminal process of unlawfully occupying agricultural land and, as an accessory criminal and shall be given a lesser punishment according to law; as the relatives of Defendant Cui Jiaying positively rendered the tax of 50,000 Yuan for Defendant Cui Jiaying, Cui Jiaying can be given a lesser punishment as per actual conditions according to law.

In view of the foregoing, in pursuant to provisions specified in Articles 342, 291, 201(1), 211, 25 (1), 27, 69 and 64 of the *Criminal Law of the People's Republic of China*, the judgment is made as follows:

1. Defendant Yang Rongli has committed the crime of unlawfully occupying agricultural land and is hereby sentenced to four years imprisonment, plus a penalty of thirty thousand Yuan; has committed the crime of assembling crowds to disturb traffic order and is hereby sentenced to four years, both adding up to seven years imprisonment plus a penalty of thirty thousand Yuan. (The prison period shall start from the execution date of the judgment, with one day of detention setting off one of prison period for the previous detention before the judgment: i.e., through October 11, 2009 to October 10, 2016.)

2. Defendant Cui Jiaying has committed the crime of unlawfully occupying agricultural land and is hereby sentenced to three years and six months imprisonment plus a penalty of thirty thousand Yuan; has committed the crime of tax evasion and is hereby sentenced to three years imprisonment plus a penalty of thirty thousand Yuan, both adding up to five years and six months imprisonment plus a penalty of fifty thousand Yuan. (The prison period shall start from the execution date of the judgment, with one day of detention setting off one of prison period for the previous detention before the judgment: i.e., through October 11, 2009 to October 10, 2015.)

3. Defendant Zhang Huamei has committed the crime of assembling crowds to disturb the traffic order and is hereby sentenced to four years imprisonment. (The prison period shall start from the execution date of the judgment, with one day of detention setting off one of prison period for the

previous detention before the judgment, i.e., through October 11, 2009 to October 10, 2013.)

4. Defendant Yang Xuan has committed the crime of unlawfully occupying agricultural land and is hereby sentenced to imprisonment of three years and six months plus a penalty of ten thousand Yuan. Defendant Yang Xuan. (The prison period shall start from the execution date of the judgment, with one day of detention setting off one of prison period for the previous detention before the judgment, i.e., through October 11, 2009 to October 10, 2013.)

5. Defendant Wang Xiaoguang has committed the crime of unlawfully occupying agricultural land and is hereby sentenced to four years imprisonment plus a penalty of ten thousand Yuan. (The prison period shall start from the execution date of the judgment, with one day of detention setting off one of prison period for the previous detention before the judgment: i.e., through October 11, 2009 to October 10, 2012.)

6. 251,604.47 Yuan of tax amounts evaded by Defendant Cui Jiaying shall be pressed for payment afterwards according to law.

In case of objecting this judgment, an appeal may be submitted, through the court or directly, to Linfen Intermediary Court within ten days as from the next date of receiving this judgment. In case of a written appeal, one original copy and two duplicate copies of the appeal petition should be furnished.

Chief Judge: Di Pigong

Judge: Hou Peng

Judge: Lv Ning

November 25, 2009

Clerk: Zhang Wensheng

中国法律与宗教观察

Summary of the Seminar on Linfen Church Case and Religious Freedom

Chinese Christian Rights Defense Lawyers Association

Summary of the Seminar on Linfen Church Case and Religious Freedom

Chinese Christian Rights Defense Lawyers Association

On November 21, 2009, the Christian Lawyers Association convened the “Seminar on Linfen Church Case and Religious Freedom,” which was attended by more than ten people, including scholars and lawyers Fan Yafeng, Xia Kejun, Chen Yongmiao, Li Fangping, Zhang Kai, Jiang Tianyong, Dai Jinbo and Wu Chenglian. The meeting was divided into two parts. In the first part, Dai Jinbo introduced the Linfen Church Case and its latest developments and made a primary legal analysis on the charges, setting forth the primary defense points. Afterwards, the members of Christian Lawyers Association and guests commented on and discussed this speech. In the second part, the constitutional scholar Fan Yafeng made a primary analysis on the current overall situation. Professor Xia Kejun analyzed the current rights-defense movement of house churches and freedom of belief, from the angle of time and spatial perspectives.

First, Dai Jinbo introduced in detail the cause, process, and developments of the Linfen Church Case. In the wee hours of September 13, 2009, in Fushan county of Linfen city, nearly four hundred policemen and governmental officials rushed into the “Gospel Shoes Factory,” the complex of the Linfen Church, beating the believers, damaging property, and destroying dozens of houses with bulldozers. After the bloody attack took place, in the afternoon of the same day, a video was posted online, with footage of thousands of Christians praying openly at the entrance of the county government building and appealing to the authorities that they would repent of such an act. In the morning of September 17, Brother Shan Yongchang of the Linfen Church was arrested by the authorities because he released the information of the Linfen Church Case via text message. In the afternoon of September 19, the Director of Linfen Municipal Public Security Bureau and Yang Rongli, a leader of the Linfen Church, along with two other staff members, negotiated and reached an agreement: the authorities agreed to

compensate an amount of 1.4 million Yuan (RMB) and to allow the church to rebuild. However, the authorities refused to release Brother Shan Yongchang and threatened the brothers and sisters of the church that if they still insisted to participate the gathering as a house church, they would be banned with the minimum assurance. They also threatened the student believers of Shanxi Normal University not to participate in the gathering of the house church in Linfen. For these reasons, Yang Rongli and others refused the amount of 1.4 million RMB and hoped to appeal to a higher authority for settling the problem.

On September 23, the Golden Lamp Church located in Linfen was surrounded by the armed police. On September 25, Yang Rongli and six other staff members were detained by the police on their way to Taiyuan, Shanxi, for appeal. Meanwhile, the church leadership staff members were under 24-hour monitoring or house arrest. The developments continued to worsen. On October 8, Pastor Wang Xiaoguang's home was confiscated. On October 11, nine church staff members, including Yang Rongli, were detained for criminal offenses, but the families of only four had been notified that they were detained for a criminal offense. Five more staff members, including Yang Rongli, were detained, but the authority had not presented any legal formalities. Afterwards, the bill of prosecution stated that Yang Rongli, Wang Xiaoguang, Yang Xuan, Cui Jiaxing and Zhang Huamei were all arrested on October 22 as per approval of Yaodu District People's Procuratorate on October 21.

On October 29, in testifying about the religious freedom situation in China at a U.S. Congressional hearing, one of the rights-defense lawyers mentioned the Linfen Church Case in Shanxi. However, on November 11, the procuratorate promptly addressed the case to the court. To this end, several of the rights-defense lawyers in USA shortened their trip in the USA and immediately returned to China.

Meanwhile, lawyers Wang Hongjie and Yang Peng in China took over the case and went to Shanxi to meet the clients. Due to various obstructions, lawyer Wang Hongjie failed to meet his client Yang Rongli, but Yang Peng met with his client, Pastor Wang Xiaoguang. Time was so short for the preparation for the

Linfen Church Case; the concerned lawyers received the notice that the hearing would be held on November 24.

Dai Jinbo reported that the five clients in the case were suspected of two offenses: unlawful occupation of agricultural land and gathering to disturb the traffic order. The crime of unlawful occupation of agricultural land was charged against the Golden Lamp Church, but not the Gospel Shoes Factory of Fushan Church, which was removed. The crime of gathering to disturb the traffic order was charged because of the thousands of people who prayed together in Fushan on September 14. Regarding the five clients, Yang Rongli was charged for unlawful occupation of agricultural land and gathering to disturb the traffic order. As the leader of the Fushan Church, Zhang Huamei was charged for gathering to disturb the traffic order. The other three persons – Wang Xiaoguang, Yang Xuan and Cui Jiaying – were all charged for unlawful occupation of agricultural land. Cui Jiaying was later additionally charged with tax evasion.

Dai Jinbo then made a legal analysis of the charges of unlawful occupation of agricultural land and gathering to disturb the traffic order, and put forth the primary defense views. In terms of the unlawful occupation of agricultural land, he mentioned that according to Articles 342 and 346 of the *Criminal Law* as revised in 1997 and the Amendment II of the *Criminal Law of the People's Republic of China* published in 2001, the crime of unlawfully occupying agricultural land refers to any act of any organization or individual violating the law and regulations on land administration to unlawfully occupy agricultural land such as cultivated land and forest land and to change the usage of the agricultural land occupied in a very significant way, causing a great damage to the agricultural land. The stipulation of the *Criminal Law* on the crime of unlawfully occupying the agricultural land is a blank charge. Therefore, the crime of unlawfully occupying the agricultural land is subject to the offense of the land regulations, while the particular characteristics of the behavior have been stipulated in the land regulations.

Then Dai Jinbo analyzed the constituent elements of the said crime and stressed the additional demonstration required as to whether constituting a crime rested in the objective aspect of the crime. Particularly, “violation of law and

regulations on land administration” refers to the violation of such laws and regulations as the *Law of the People’s Republic of China on Land Administration and its Implementing Rules*, the *Law of the People’s Republic of China on Rural Land Contract* and the *Regulations on Protection of Basic Farmland, the Agricultural Law, Grassland Law, Forest Law*, etc. “Unlawful occupation of agricultural land” means the act of occupying any agricultural land without obtaining the statutory approval, registration for certificate and confirmation of the land use right (which is usually reflected in occupying without approval), occupying more than approved and occupying by cheating for an approval. The act of unlawful occupation is first reflected in the act of violating the administrative regulations, i.e., such act violates the prohibited practices specified by the laws and regulations on the land administration. For instance, according to the amended *Law on Land Administration*,

It is prohibited to occupy the cultivated land to build kilns or tombs or to construct, excavate sand, quarry, mine and borrow on the cultivated land without permission; it is prohibited to occupy the basic farmland to develop forest and fruit business and excavate for feeding fish; organizations and individuals are prohibited to spoil and waste the cultivated land.

The act of unlawfully occupying cultivated land and forest land “is generally reflected in multiple modes, but it mainly includes [these] types,” which follow below:

(1) The actor possesses the use right of cultivated land and forest land, but unlawfully changes the statutory usage of the occupied land. For instance, without obtaining the statutory approval, a peasant excavates a fish pond in his contracted land (basic farmland). (2) The actor occupies any cultivated land and forest land of which he possesses no use right and changes the statutory usage of the occupied land.

However, occupation of agricultural land by violating the law and regulations on land administration does not necessarily mean the constitution of a criminal offense. Only when such occupation exceeds the scope of administrative punishment, shows any material social hazard, and reaches to the extent of

investigation for criminal liability will the charge of unlawfully occupying the agricultural land as specified in Article 342 of the *Criminal Law* apply. However, the crucial difference between the regulation-breaking and criminal offense rests “in the quantity of changing the usage of and the extent of damaging the occupied cultivated land and forest land.” According to Paragraph 1 of Article 3 of the *Interpretation of Issues Regarding Particular Application of Laws in Trying Criminal Cases of Destroying Land Resources* issued by the Supreme People’s Court, “unlawful occupation of cultivated land in a ‘relatively huge quantity’ means any unlawful occupation of basic farmland by more than five Chinese mus or other cultivated land than basic farmland by more than ten Chinese mus.”¹⁰ Obviously, according to the above provision, two circumstances are in the category of unlawful occupation of cultivated land in a “relatively huge quantity”: (1) occupying unlawfully more than five Chinese mus of basic farmland; (2) occupying unlawfully more than ten Chinese mus of other cultivated than basic farmland.

As for the prosecution against the clients for unlawful occupation of agricultural land, first, regarding the offending subject, it is required to observe and study in detail who is suspected of unlawfully occupying the agricultural land. For instance, in Linfen Church, Pastor Wang Xiaoguang is only responsible for the Bible teaching and is not involved in the administrative affairs of the church. He did not make the decision to construct a church. Since he was not responsible for this, how could he become the subject of unlawfully occupying the agricultural land? Yang Xuan was only responsible for construction of the church and for the errors in construction and thus he is not qualified either as an offending subject for the charge of unlawful occupation of agricultural land. Cui Jiaxing only signed, in his name, the lease agreement of land use right with eight local peasants, for planting flowers. Afterwards, in the name of his company, he purchased the concrete for construction of the church and provided water supply equipment, but this is not evidence testifying that he was the subject responsible for unlawfully occupying the agricultural land.

¹⁰ Editor’s note: 10 mus = approx. 1.647 acres

Second, the nature of the agricultural land occupied by Linfen Golden Lamp Church is extremely important, because it will be associated with a crime conviction and measurement of the punishment – based on whether the occupied land is basic farmland or other cultivated land than basic farmland. First, initially, upon negotiating with the local Party Secretary Chu Yuzhou, the lease agreement for land use right was signed, in the name of Cui Jiaying, with eight villagers including Chu Yuzhu, for the reason of planting flowers. As the local Party Secretary, Chu should know that the basic farmland cannot be used for planting flowers. Furthermore, it is said that after the agreement was signed, another auxiliary document was provided certifying the said land had been transformed to industrial land. Actually, one waste treatment station and other buildings had been built near the church. Therefore, the land was not basic farmland at all. The provisions of Paragraph 2 of Article 11 of the *Rules for Protection of Basic Farmland* follow:

As for the defined basic farmland conservation area, the government at the county level will set up the protection sign and announce the same in the public; the administration of land of the government at the county level will establish the file and copy the same to the administration of agriculture at the same level. No organizations and individuals shall be allowed to damage or change, without permission, the protection sign of the basic farmland conservation area.

In other words, the basic farmland conservation area should have the protection sign; however, such a sign was not present at the scene. Besides, the Decision of the State Council on *Deepening the Reform and Regulation of Land Administration* (vide the State Council's No. 28 Document) also emphasizes, "Basic farmland shall be allocated to the lot and the peasant household, and indicated in the land ownership certificate and rural land contract right certificate." In other words, if the lawyer could obtain the land contract right certificate for the lot, it can also be testified whether or not the lot is the basic farmland.

Concerning the area of agricultural land "unlawfully occupied," the Bill of Prosecution states, "As per measurement, 'Golden Lamp Church' unlawfully occupies 12.42 Chinese mus of agricultural land, of which 6.01 Chinese mus were used for unlawful buildings and auxiliary facilities." As a matter of fact,

according to the disclosure of the construction designer, the main hall of the Golden Lamp Church is 40m×40 m, which is equal to about 2.4 Chinese mus. With the auxiliary facilities, the total area is more than three Chinese mus. In addition, the greenhouse used then for planting flowers was paved with one layer of bricks on the ground. Therefore, obtaining the evidence for the area of unlawfully occupied land is extremely important. However, the governmental authority has assigned the armed police to guard the church and it is entirely impossible for the lawyer to get evidence. Therefore, this is a headache. In his defense, the lawyers must question the relevant evidence provided by the prosecutor, because, according to the provisions of the prevailing criminal law, only the act of unlawfully occupying more than ten Chinese mus of cultivated land other than basic farmland will constitute a crime. This is a crucial point.

If only the quantity of unlawfully occupied agricultural land reaches the statutory requirement, it does not necessarily constitute commission of a crime. Another necessary condition for constitution of a crime is if it causes a statutory hazardous consequence. According to Paragraph 2 of Article 3 of the *Interpretation on Destroying Land*, the “huge damage to the cultivated land” means any material damage or serious contamination to the planting condition of more than five Chinese mus of basic farmland or more than ten Chinese mus of cultivated land other than the basic farmland due to the actor’s unlawful occupation of cultivated land for constructing any kiln, tomb or house, excavating sand, quarrying, mining, borrowing, dumping solid waste or undertaking other non-agricultural construction. Obviously, “huge damage to such agricultural land as cultivated land and forest land” mainly refers to the material destruction or serious contamination caused to the condition for agricultural planting of cultivated land, original planting of forest land or the planting condition of forest due to change of cultivated land and forest for other purposes: for instance, causing any damage to the planting layer of cultivated land and forest land, complete and partial loss of potential to plant, desertification, salinization and water and soil erosion making further cultivation impossible. “Only in the circumstance in which the area of unlawfully occupied agricultural land reaches the statutory standard and such occupation results in material hazardous consequence will such act comply objectively with the

criminal constitution as a crime of unlawfully occupying agricultural land as specified in the Criminal Law.” Therefore, the lawyers may defend that the occupied land than that on which the church is located has not caused any material damage and contamination to the planting condition of the agricultural land. Special attention and question should also be addressed to the relevant evidence provided by the prosecutor.

In general, in the case, the suspected clients have neither acted to unlawfully occupy agricultural land nor committed any criminal crime even if they had unlawfully occupied the agricultural land. Therefore, our concept of defense is the defense for innocence.

As for the charge against Sisters Yang Rongli and Zhang Huamei for gathering to disturb the traffic order, according to Article 291 of the *Criminal Law of China*, the crime of assembling crowds to disturb traffic order refers to the material act of the ringleader assembling crowds to block the traffic or undermine traffic order, or resist or obstruct state security administration personnel who are carrying out their functions according to law. Objectively, an actor committing a crime of assembling crowds to disturb traffic order shall simultaneously meet the following circumstances to a serious degree. In other words, the following three conditions shall be met:

- (1) The act of assembling crowds to disturb traffic order, i.e., assembling more than 3 persons to block the traffic or undermine the traffic order;
- (2) The act of resisting by violence or non-violence, i.e., the act of resisting and obstructing, by violent or non-violent means, state security administration personnel who are carrying out their functions according to law (when the believers were then praying openly on the road, no state security administration personnel in uniform were carrying out the functions according to law and thus the clients had not conducted any act of resisting and obstructing the state security administration personnel); and
- (3) Serious circumstances resulting from assembling crowds to disturb traffic order.

First, we should come back to the scene to analyze the reason of the event on September 13. In the early morning hours, many believers of Fushan Church were beaten, the authority demolished dozens of buildings and many believers were injured. However, in the morning when these believers were sent to the hospital, the authority did not allow the hospital to treat the injured. When the religious freedom of believers was severely infringed, the condition of religious properties was severely damaged, and the life and health of many believers was threatened, the behavior of thousands of believers praying openly on the road was a kind of emergency behavior to seek the life and health of the believers. According to the following, from Article 21 of the *Criminal Law*:

Criminal responsibility is not to be borne for damage resulting from an act of urgent danger prevention that must be undertaken in order to avert the occurrence of present danger to the state or public interest or the rights of the person, property rights, or other rights of the actor or of other people.

The current situation was the injured people could not be treated in a timely way and the road was blocked to keep the injured people being treated in a timely way. As compared to the public order in danger, obviously, protection of life was more important and urgent. Time was of the essence! The beaten believers were not treated for one night and had to be left on the road. Such action, gathering to pray, was peaceful and proper.

Furthermore, in this emergency – facing the governmental authorities' bad behavior of rudely beating up the believers and demolishing the houses by force – the local believers acted appropriately and reasonably in protesting the governmental authorities who did not allow the hospital to treat the believers beaten up by the armed police and in praying to request that the government repent and mend its ways for its illegal act and behavior of infringing materially the belief freedom, properties and human rights of citizens; because the Constitution endows the citizens with the rights to public opposition in such ways as assembling, parading and demonstrating. When the government behavior experienced by the citizens is a departure from justice, citizens can exercise their constitutional rights; when being illegally and violently treated and attacked, it was impossible to expect the believers to express their views with

typical order. Therefore, in view of the constitutional rights being infringed, the behavior of the believers was not in violation of the law. Therefore, in our opinion, the clients had not committed a crime of assembling crowds to disturb the traffic order and the two clients charged of such crime are innocent.

Dr. Fan Yafeng, who has participated in right protection of and defense for various religious cases, compared the similarities of the Cai Zhuohua Case in 2005 with the current case. Both cases have shown three features: **religious problems became non-religious, the law became a tool, and the enforcement consequently became selectively executed.** These three concepts disclose the essence of the two cases. In the pleadings, the lawyers should stress on the essence of infringing the right to religious freedom. In their demonstrations, the lawyers should not only present the internal demonstration at the level of the *Criminal Law*, but also the external demonstration at the level of the Constitution and the Administration Law. The case was suspected for the crime of assembling crowds to disturb traffic order because right to religious freedom was infringed and the rights of properties and life and health were infringed before that. The crime of unlawfully occupying agricultural land is associated with construction of the church. House churches cannot legally obtain the lawful stature of their church.

This is the key of the problem. First, since the government does not recognize the legal stature of house churches, they cannot obtain the legal permission to construct a church, print and distribute publications, etc., and are thus forced to break the law generally, while the government can carry out the enforcement of these laws selectively by means of tooling the law. Both the Cai Zhuohua Case and the Linfen Church Case have experienced such selective enforcement. Since appealing, assembling, parading and demonstrating are the basic rights of the citizens, the open prayer of thousands of believers in Fushan complies with the principle of legal governance. We should not be cheated by law being used as a tool and should not believe the brothers and sisters have violated the law – because the application of the church to build a hall cannot be approved at all. Development of the house churches involves the two frameworks of the Constitution and the Law: construction of the church violates the law and

regulations that are irrational and unconstitutional, but complies with the Constitution and the principle of legal governance and complies with the Bible. Arbitrating religious freedom with the law as a tool is the essence of Linfen Church Case, i.e., infringing the religious freedom of citizens by charge for a crime of unlawfully occupying agricultural land and assembling crowds to disturb traffic order.

The religious case will result in three types: trial, control and witness. The fundamentalist house churches have only one pervasive thought: as long as the church is being compelled, it must be a control and there must be a breakthrough inside the church, which is really ridiculous. So far as I know, the Linfen Church is just the witness.

Lawyer Zhang Kai briefly classified the case in terms of facts and law and explained the problems with the legal proceedings and the legal entities. He said that the files in his hand included the “Explanation for Land Occupied by the ‘Golden Lamp Church’ for Construction” issued by the state land bureau, which was taken as the appraisal conclusion in the list of evidence. Appraisal conclusions are strictly stipulated by the laws. However, the explanation issued in the name of the state land bureau could not be regarded as an appraisal conclusion. In view of the substantive law, Zhang Huamei was being suspected for a crime of disturbing the traffic order, but the crime of disturbing traffic order only punishes the ringleaders. No evidence in his files testified that Zhang Huamei was a ringleader. In view of the legal value assessment, Zhang Kai also emphasized the fact that when the believers had their rights infringed, but failed to get any normal reprieve, their behavior complied with the human common conscience, which is within the tolerance of people.

Lawyer Yang described that when handing over the defense’s evidence, the procuratorate had not handed over the testimony of such witnesses as Feng Junying, which states that Pastor Wang Xiaoguang called them for a meeting to discuss and decide to change the original usage of the leased land and construct the Golden Lamp Church. Wang Xiaoguang said he had attended only one meeting and Yang Rongli said Wang Xiaoguang was only responsible for teaching and had no decisive power on the decision to construct the church. He

was not involved in the subsequent funding, construction, and establishment of the hall. On the other hand, Yang mentioned the “Explanation” issued by the state land bureau also mentioned the concerned cultivated land as basic farmland and the area of the occupied land. Therefore, this “explanation” is rather critical. Although in a general case, the procuratorate may also present such explanation and the court would also accept it, we should rule out the testifying effect of such explanation because it does not comply with the rules for evidence.

Lawyer Chen Yongmiao supplemented Yang’s account with the following information: since all basic farmland is subject to land planning, which is always published in advance, we may approach the superior authority to check the land planning of the said lot so as to testify that the lot was not in the category of ‘basic farmland.’ If this is true, the state land bureau has made a false testimony and its whole conclusion should be abolished.

Cheng Zhunqiang said that, as for his client Yang Xuan, the bill of prosecution had one sentence saying that he organized the construction and the whole evidence was only a piece of paper. He also mentioned that the current land administration system restricted the needs for land turnover and consequently the peasants had no freedom in terms of land. Besides, in China, serious problems are observed with land administration in many places.

Lawyer Li Fangping emphasized that the clients had not committed a crime, because, first of all, in terms of the area of the unlawfully occupied land, there are still many questions. He further urged that [the legal counsel] should pay attention to how to determine the hardened area and whether the cultivated land could be restored. In addition that macro view, he urged them to “defend at a higher level”:

The Constitution assures the freedom of citizens for religious belief, but according to the land planning, the religious land requires a special approval which can only be obtained upon completing several procedures including the administration of religious affairs. But, nowadays, the limited churches cannot meet the demand of believers for their religious life, while the house churches are qualified as a religious body under the current legal system and cannot obtain

any approval for it. But, the realistic demand of house churches to undertake activities of belief actually and really exist. Therefore, religious land is related to the religious belief freedom protected by the Constitution. In view of the substantive law and case facts, the clients involved in the case have not committed a crime. In terms of proceedings, the case has various points that can be overturned. However, some major evidences have not been provided to the lawyers and a credential is casually obtained as the appraisal conclusion. The case observes various problems in terms of proceedings.

Dr. Fan Yafeng voiced his agreement with lawyer Fangping that the issue of land for religious activities is a good concept to press forward. Lawyer Jiang Tianyong observed the following:

Religious freedom is the first freedom, but in China, assurance of religious freedom and land for religious activities requires special approval. Such special approval is not the result of legal governance. Consequently, the first freedom is not secured by the law, but by special approval characterized for human governance. Thus, it naturally results in such contradiction today. Through this case, we should disclose to the whole world that the control over religious affairs in China is not a mean of legal governance, while such mode of controlling house churches today has become a bottleneck and a hard nut that cannot be broken.

In the second part of the meeting, Dr. Fan Yafeng and Professor Xia Kejun analyzed the overall situation.

Dr. Fan Yafeng summarized the three crackdowns applied by the Chinese Communist Party and State (Party and State) over the civil society after the 2008 Olympic Games. The first one was the pressure on the Charter 08 Movement, which was represented by the arrest of Liu Xiaobo. The second one was the law license revocation of rights defense lawyers and shuttering of the Open Constitution Initiative. The tide came when Xu Zhiyong was arrested and released. The third one was to pressure the house churches. Of the third one, the first stage was the Linfen Church Case and the second stage was the outdoor assembly of Beijing's Shouwang Church, eviction and banning of Shanghai's

Wanbang Church. Currently, this stage is under development. Professor Du Guang interpreted the crackdown on the house churches from two angles. One is the infringed civil rights and the other is the battle between reform and anti-reform, which is interpreted by Dr. Fan as the battle between organization and non-organization. Upon appearance of the Charter 08, Mr. Liu Junning saw that someone said it was a dangerous embryonic formation of a party program. After the 2008 Olympic Games, taking the advantage of toxic milk powder event, the Open Constitution Initiative formed an attorney group of more than 110 lawyers. In 2009, for the case of Deng Yujiao, two attorneys were assigned to his case in the name of Open Constitution Initiative; and the case of Deng Yujiao was extremely influential, which made the Party and State feel threatened by the Open Constitution Initiative. Therefore, after the case of Deng Yujiao and after the July 2009 unrest in Xinjiang, the two spiritual control systems of the Party and State in Tibet and Xinjiang have completely declined. The total solar eclipse, which happens once every five hundred years, also had a great psychological impact on them. On the surface, the members of the Party and State leadership are atheists, but on a deeper level they are superstitious and idolatrous; and afterwards they launched a large-scale encircling and suppressing these regions due to their “unsafe sense.” This is the cause of Open Constitution Initiative Event. Twenty days after the Event ended on August 23, the Linfen Church Case in Shanxi province happened on September 13. Therefore, in summary, from Charter 08 to the Open Constitution Initiative Event and suppression of rights-defense lawyers, to the crackdown on house churches, the correct interpretation acknowledges the conflicting elements of reform and anti-reform, rights-defense and rights infringement, and organization and non-organization.

In terms of time, the crackdown on house churches can be divided into three stages. The first stage was from September to early November 2009, during which the Party and State gained and totally won except that in the late period of this stage, the witness of the rights-defense lawyers in U.S. Congress played a big role. Ten days after that, the situation changed sharply. The authority made a mistake in assessing the situation, overestimating their capacity and perceiving they had made a deal with President Obama, and selected a wrong time to press down the city church. During this period, the Shouwang Church, the Wanbang

Church and the Shenshan legal team, and the Linfen city Church basically properly responded. After President Obama's departure, the situation may become even worse.

Dr. Fan then talked about five contradictions in understanding the position of house churches. The most important contradiction is the difference between spiritual and temporal. The major consequence of the crackdown on house churches is the total collapse of the Communist "spiritual control" system: after the July unrest in Xinjiang, the spiritual control system of the Party and State in Xinjiang and Tibet has collapsed. Communism can smoothly rule China for sixty years mainly because of its spiritual background. Through the national spiritual war, such spiritual background is also reflected in the war between the party state and the holy state in terms of land, people, the Lord's sovereignty and the party state's sovereignty. Both Dr. Fan and Pastor Tianming considered the current situation as a spiritual war and an Exodus for the Chinese house churches. However, their understanding differs regarding the stage for Exodus: according to Pastor Tianming, Beijing's Shouwang Church is now in a stage of the open field, but he considers house churches still in the Red Sea, experiencing the miracles of crossing the Red Sea.

In view of the temporal dimension, Dr. Fan put forward four such contradictions – the contradictions between the government and people, between the world and China, between the two cores, and between central and local. He said that the crackdown of Charter 08 stopped due to the internal conflict of the power system, which is now rather profound and tends to be intensified. Xu Zhiyong was released mainly due to the political pressure from the world and China. The strength of the crackdown on the house churches is much more powerful than the first two.

In case of analyzing the seven spheres of civil society sectors, the first sector is the Internet media, which is adequately mobilized. The second is the legal profession, which is also properly mobilized. The third is the house churches, which can be internally mobilized. The fourth is the basic rights-defense, which is mainly meant for appealing to the higher authority and community. The fifth is the citizen diplomacy, in which the house churches are rather strong. We may

observe that the neutral rights-defense route has primarily made certain achievements. We can see that it is hard for the party state to control the critical battle with the house churches: love among brothers will shake the world. We hope all the house churches, including Wanbang, Shouwang, Linfen and Autumn Rain (in Chengdu, Sichuan) and other house churches, will form a proper opportunity to integrate the urban churches and rural churches, as just complies with the pattern of four corners and one center.

Professor Xia Kejun analyzed the current situation as regards time and space. In terms of space, he mentioned three spaces: (1) the space under the total control of the party state's ideology; (2) the public space, which is not yet adequate and is a fuzzy zone; (3) the religious space, which is a space of belief. From these three spaces listed above, we may look at the three events Yafeng has just talked about: (1) crackdown of Charter 08, which is associated with the first space because only one ruling party is allowed: two parties are now allowed to play the game; (2) the Open Constitution Initiative Event: attempt to make the public space to shrink; (3) Linfen Church Case, which is a problem in the religious space of belief.

Professor Kejun said that regarding the evolution of churches in association with the theology of the Bible, there are two aspects we may discuss. One is the strict discussion on political theology. The other is the discussion of such political theology placed in a public space, which is also a discussion of the social possibilities in China. House churches have expanded, in number of people, from the private space of the family to a public space. The additional increase of the number of people will naturally result in formation of its own new space. The space will naturally grow. The problem with Chinese house churches is still a problem of the domain between families and the state, and thus it is rather difficult to acquire a public space. In practice, the public space in China is the court. It is hard to transform such public space as court into a space of belief. The first step is for the house churches to exist by breaking through the blockage of the state. With the number of people increasing, a church will lease and even buy an office building as the second step towards the public space because such public space can accommodate so many people. However, what is

really critical is the third step of moving from the public space into the space of belief, before being released from being controlled by the state law and from being pressured at any time in the public space.

From a theological perspective, God selected such a unique family as Abraham's, as is the problem with one-family church. The second step is to develop from one family into a community with corporate identity, analogous to Israel's Jewish nationality, needed for the salvation from Egypt. In China, will urban churches or rural churches be able to undertake the mission of Exodus? This is the second step. The third step comes to the nation. In the third step, moving from family and nationality to nation, there will be definitely a national "war." To understand this from a spatial angle, the first space is the space of church in house churches. The second space is street-based. To explain this more definitely, for the remarkable circumstance for house churches to cross the Red Sea, water makes walls on both sides of them – such water is the second space of street-based space. The third space is square-based. The space of belief can only be established by moving from the space of court to the street-based space, and to cross such public space and enter into the open square-based space.

In terms of time, if house churches only make Sunday sacred but no other time, Chinese churches are not undertaking any fundamental mission in the culture of China. External division is the division of public space or between society and state. The internal division is the division between Abraham and Lot in the family of Abraham. After Exodus, it is the division between Aaron's idol worship and Moses. Buying an apartment is only an act in a public space, but not yet entering the space of belief. Only when the holy domain of belief is established will the space of belief be established. The house churches will not be limited to a public space and will be pressured. Only when the square-based space is established may we see the final result.

According to Chen Yongmiao, the thinking of Professor Xia Kejun is full of Heidegger's style. It is not a problem to think about space in terms of philosophy, but it is suspected of making the common world holy. According to him, Chinese house churches face a major problem: interior obedience to the dark

power and autocracy. Facing Pilate, Jesus was subject to his control, but he was never internally bound. It is the integration of political mysticism and autocracy.

Professor Xia Kejun emphasized further, “House churches failed to break away from the control of the state because the space of belief had not been established.”

According to Dr. Fan Yafeng, Professor Xia has grasped the crucial point of the problem: “Shouwang Church started with a family and then entered a plaza. Upon losing the plaza, it moved into the square. After assembling in the square twice, it returned to the theatre. These places are of important spiritual significance. Proposal to construct a hall is an effort to strive for space.

“Actually, the Linfen Church situation is similar to Shouwang Church and is also associated with land. Is the determination of the crime of disturbing the traffic order also striving for space? Therefore, unlawful occupation of land, disturbance of traffic order, and land lease of water and the hall construction are all a question of space. But now the major problem is that political theology and public theology of Exodus has not yet been perfected. What house churches should really possess should be a free space of belief in parallel with construction of a hall and/or buying an office building. In such space of belief, the tangible religious assets and intangible free space should be integrated. It is a question of developing a space of belief. Simultaneous construction of such public space and belief space is a theological problem for the Chinese churches. The current party state will surely crack down on churches, because a Party State will not tolerate with one mystic nation. Crossing the Red Sea is actually to walk from the public space controlled by the Party State to establish the self-owned space of belief.

“Therefore, it is not necessary to move from house to plaza or from house to street. However, for the existence of the church, it is essential to move from the house to that corporate state under the Lord’s leadership. Now, it is wrong for us to fix eyes on the plaza, theatre and square, which are all in the non-spiritual dimension. In a long-term view – for Chinese churches take homes as a temporary dwelling place – house churches must be really independent from the State and from those families existing for churches. The church is a group of

people called out by God and the place where the church worships is the holy mountain of God. The dwelling for the holy mountain involves the mysterious relationship between mountain and sea in the Chinese culture. In other words, to establish the holy mountain, it is necessary to cross the Red Sea of Communism. By now, we have no clear picture of the public space and the thinking of the belief space. However, according to him, it is improper for the Chinese churches to distinguish the mainstream and the edge.

“It is worthwhile to further discuss the war between nations and the constitutional problem. Deuteronomy was the ancient constitution of Jews. As for China, various points of house churches can be interpreted in various ways. For instance, the act of Shouwang Church is no longer the mode of dialog, but a typical mode of rights-defense, .e.g. interaction. At present, such temporary balance point for indoor assembly is also interaction achieved through street-based action. Such interaction is achieved when all make a concession. However, how can the problem of house churches be eventually resolved?

“A rights-defense lawyer needs to play a double role: he is a defender as well as a constitutionalist. ‘Rights-defense’ is added before the title of lawyer because he also plays a role of constitutionalist. The Cai Zhuohua Case used the court as an approach to walk out from the house, while Shouwang Church took the plaza and square as an approach to walk out from the house. It may be hard for the two extremes of such dialog to create a new space. However, the group of Christian defense lawyers takes the move from house to court as the main line and deems the integrated rights-defense mode including media network as another idea for the transformation of political-religious relationship.”

中国法律与宗教观察

Linfen Administrative Committee of
Reeducation-through-labor: Decision
for Reeducation-through-labor

**Linfen Administrative Committee of Reeducation-through-labor
Decision for Reeducation-through-labor**

[2009] LLJZ No. 110

Gao Qin or Gao Fuqin, female, born on July 15, 1970, with the ID Card No. of 142601197007157363, Han, graduate of secondary school, unemployed, with the registered household at Jindian Police Station, Yaodu District, Linfen, Shanxi, residing at No. 013 Lancun, Jindian Township, Yaodu District

Facts and Evidence:

Yaodu Branch affirmed: on September 13, 2009, the relevant authority of Fushan County Government dismantled the unlawful buildings of Guo Yanyan at Nanhan Group, Xihan Village, Zhangzhuang Xiang. In the early hours of the day, in collusion with Yang Rongli, Zhang Huamei (the two persons treated separately), Li Shuangping, Yang Honzhen, Feng Junying and Zhao Guoai, Gao Qin organized various people block, for 4 hours, the Provincial Highway 230 (Lin-Mo) at Xihan Village, Zhangzhuang Xiang, Fushan Count, thus severely disturbing the traffic order.

Upon hearing and finding:

On September 13, 2009, the relevant authority of Fushan County Government dismantled the unlawful buildings of Guo Yanyan at Nanhan Group, Xihan Village, Zhangzhuang Xiang. To this end, in the early hours of the day, in collusion with Yang Rongli, Zhang Huamei (the two persons treated separately), Li Shuangping, Yang Honzhen, Feng Junying and Zhao Guoai, Gao Qin organized, by holding the loud speaker in turn, various people to block, for 4 hours, the Provincial Highway 230 (Lin-Mo) at Xihan Village, Zhangzhuang Xiang, Fushan Count, thus severely disturbing the traffic order.

The above facts are verified through such evidence as statement of Gao Qin, interrogation record of Li Shuangping, Feng Junying and Zhao Guoai, testimony of witnesses and field investigation record.

In the opinion of the Committee, the case should be affirmed, with clear facts and adequate evidence, that Gao Qin assembled masses to disturb the traffic order. In pursuant to Paragraph 4, Article 10 of the Provisional Measures for Reeducation through Labor, it is hereby decided to apply the two-year reeducation-through-labor to Gao Qin. As the case meets the condition for hearing, Gao Qin has been notified of the right for hearing, but has not demanded for such hearing. Since Gao Qin had been detained before the reeducation-through-labor is decided, each day of such detention shall write off one day of reeducation-through-labor accordingly.

In case of refusing to accept this decision, within sixty days upon receipt of the decision, request to Linfen Municipal People's Government or Shanxi Administrative Committee of Reeducation-through-labor (at 3 Shangguan Lane, Taiyan) for administrative reconsideration, or, within three months upon receipt of the decision, directly submit an administrative lawsuit to the People's Court.

November 26, 2009

**Linfen Administrative Committee of
Reeducation-through-labor**

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中国法律与宗教观察

The Crackdown on House Churches
is “Guojinmintui” of Social Domain

Ding Guquan

The Crackdown on House Churches is “Guojinmintui” of Social Domain

*Ding Guquan*¹¹

The restructuring of Shanxi’s coal mine industry, including the acquisition of land by State-owned enterprises (SOEs) at high real estate price with huge loss of profit for the private-owned enterprises (POEs) has triggered a new round “guojinmintui,” “the state advances as the private sector recedes,” in the economic domain. In this tidal current, the government is the leader, the private enterprises are nationalized and, with the help of power, SOEs possess money and the position of monopoly. With their constitutionality as part of the state-owned economy giving them the leading position and the “moral advantage,” the SOEs (representing the state) have swallowed the future of POEs and private economy in this “capitalization of power.” The article in *Sohu Business* entitled “Guojinmintui Rises” has as its subheading, “This round of guojinmintui triggered by administrative power and policy will have nothing to do with technical progress and systematic innovation, as has caused worries about the future reform orientation.”¹²

However, what has recently been eye-catching in Shanxi province is not only the trend of the new round of *guojinmintui* in the economic domain exemplified in the coal industry restructuring, but also the public concern over the *guojinmintui* in the social domain, triggered by Shanxi Linfen Church Case: on September 13, 2009, the beating and destruction at Fushan complex in Linfen city, Shanxi, shocked the whole world. On November 1, 2009, as Beijing Shouwang Church was not allowed to renew the lease of its assembly place, due to the officials’ pressure on the owner, nearly eight hundred believers had to pray in the snow in

¹¹ Ding Guquan is a practicing Chinese lawyer in Beijing and an international advocate for religious freedom

¹² See <http://business.sohu.com/s2009/guojinmintui/>, accessed April 2010

the open air. Then on November 3, 2009, under the claim that it was an “unlawful assembly,” the Shanghai Public Security Bureau and Religious Affairs Bureau banned Shanghai Wanbang Church; on the same day, Associate Research Professor of the Institute of Law under Chinese Academy of Social Science (CASS) and the house church rights-defense leader, Dr. Fan Yafeng, was refused for renewal of employment by the CASS for the “political” reasons. Chinese house churches suffered from this new round of crackdown and were pressured to join the Three-Self Patriotic Movement Church¹³ (Three-Self) or be eliminated. This is the third round of *guojinmintui* action of the government in the social domain after cracking down the thoughts of Charter 08, and the right-defense lawyers group and NGOs represented by the Open Constitution Initiative (OCI).

1. The Three-self Church and the House Church: “SOE” and “POE” in Religious Domain

To understand the difference between the Three-Self Church and the house church in China, it is necessary first of all to know about the religious policy under the guidance of the CPC’s “united front” theory after 1949. Since socialist China, with Marxism, Leninism and Mao Zedong’s thoughts as the official orthodox guide, had extremely excluded other opinions, religions and cultures, religion was deemed as an opium for the people, and Christianity and Catholicism were regarded as the anti-communism tool of imperialism.

Thus, the religious policy of the CPC in the early period of the PRC aimed to, on the one hand, strive for and unite the believers of different religions to actively participate in the anti-America patriotic movement and attract them for construction of Socialist China, and, on the other hand, to carry out the Marxist education for religious believers, by indirect means, so as to make religion deteriorate and weaken and gradually move to communism.”¹⁴

¹³ Editor’s note: the author explains the TSPM later in the article

¹⁴ Zhao Tianen and Zhuang Wanfang, *Development History of Modern Chinese Christianity*, Zhongfu Publication Co. Ltd, p. 13

Under such background, the Three-Self reform movement rose.

However, the birth of Three-Self reform declaration was closely related to the three conversations of the then-Premier Zhou Enlai with the delegation led by Wu Yaozong. On May 2, 1950, during the first conversation with Wu Yaozong and others, Zhou Enlai pointed that the Chinese religious group should do the following:

- 1) Launch the anti-imperialism patriotic movement, clearing the relationship with imperialism and the Christian believers acting willingly as the running dogs of imperialism over the last century;
- 2) Abide by the constraints, with no preaching in the streets;
- 3) Stay independent and develop on its own force, and establish a church that is self-governing, self-supporting, and self-propagating.¹⁵

Being “instructed” by Premier Zhou, Wu Yaozong drafted the Christian “Reform Declaration,” which has been revised eight times, but has not been accepted, in terms of its drafting and publication, by any national religious organization. In those days, after reading the Declaration, some church leaders in Shanghai opined this Declaration was too political and could not represent the position of the Christian circle. The final draft of the Declaration was reviewed by Zhou Enlai and approved by the Government Administration Council. By taking the advantage of this Reform Declaration signatory movement, Wu Yaozong made National Christian Council of China a name only, while he began, separately, to organize another national Christian institution. The outburst of Korean War accelerated the control of the government over the religious groups. By taking advantage of the movement of resisting U.S. aggression and adding Korea, Wu Yaozong established the preparatory committee for National Committee of Three-Self Patriotic Movement of the Protestant Churches in

¹⁵ Ditto, p. 21, cited from Luo Guanzong (editor), *Selected Works of Three-self Patriotic Movement of the Protestant Churches* (1950-1992), (Shanghai: National Committee of Three-self Patriotic Movement of the Protestant Churches in China, 1993), pp. 475-476

China and was elected as the chairman of the new Christian leading institution. Thus, the embryo of “SOE” in the belief domain was formed.

Being supported and encouraged by the government, the Three-Self reform movement launched by the Three-Self preparatory committee launched the campaign of accusing Christianity and cut off the relationship of Chinese churches with foreign missions. In addition, the Three-Self reform movement deepened to mandatorily confiscate or take over the church properties, to force Christians to participate in political study, and to restrict the churches and believers.

Without any surprise, people would not doubt but that the Three-Self preparatory committee was only a church name under the control of the government and a tool of politics. Also, many of the church leaders viewed that Wu Yaozong was a “non-believer,” believing in a social gospel, i.e. salvation by good works. These independent churches and self-established churches had determined the nature of the Three-Self, without any guidance from the foreign missions: Therefore, they had naturally refused to cooperate with “non-believers” or join the Three-Self and thus became a barricade of the Three-Self reform movement. In such a context, the “Jesus Family” became the object of the first crackdown and in April 1952, the Jesus Family of Mazhuang was dissolved. It was the prelude, as other independent churches met the same fate. In 1954, the National Committee of Three-self Patriotic Movement of Protestant Churches in China (the Three-Self Church) was officially established. Afterwards, a number of church leaders and believers who refused to join the Three-Self Church – such as Wang Mingdao, Nie Xisheng, Lin Xiangao, Yuan Xiangchen and Xie Moshan – were arrested and put into prison. Meanwhile, however, the believers had not given up their beliefs and organized private house assemblies. Although church activities were restricted and regulated, such a mode was spreading quietly nationwide. The spontaneous “POEs” (House Churches) were springing up all over the country.

During the Cultural Revolution, the Three-Self Churches, as open churches, were also closed down. Due to the close-down of “SOEs” in the belief domain, a large number of believers and a limited number of preachers from the

Three-Self also joined the house churches. The ten-year turbulence of the Cultural Revolution did not eliminate Christians in China, but instead the number grew continuously. Where believers were pressured, the might of the Gospel became increasingly obvious, the number of believers increased sharply, and the vitality of house churches, as “POEs” cared for and conserved by God, was extremely strong.

Upon the end of the Cultural Revolution, the CPC Central Committee resumed execution of the religious policy before the Cultural Revolution, and restored the Three-Self Church and established China Christian Council in 1980. The Three-Self Church and China Christian Council were the “two churches” for Christian in China. However, as the national Christian institutions of China, the “two churches” failed to meet the belief demands of the people; but they continued attempt to accomplish the goal of a united front and formulated such regulations restricting the religious freedom as the “three specifications” policy, the “eight prohibitions” and the “ten prohibitions.” On one hand, the Three-Self churches as “SOEs” tried to meet the spiritual demands of nationals. On the other hand, they also strived to include the house churches into their control, to execute the united front policy and to monopolize the preaching rights of Christians. Nevertheless, as the Three-Self preachers said upon visiting churches in different areas, “the Three-Self Church not only failed to deliver the gospel and help churches to flourish, but actually played a role in restricting, controlling, monitoring and hindering the delivery of the gospel.”¹⁶

Meanwhile, under the pressure of the Three-Self Church, the house churches grew in the hardship and were active to find methods to break through the difficult position. The mainstream house churches viewed that the Three-Self was not a church, but still an organization which implemented the united front goal of the CPC authority and was subject to the administration of religious affairs. In their opinion, the Three-Self took the government as its head, while the house churches insisted on taking Jesus Christ as their ruler; they upheld the teaching of the Bible, followed the mission of delivering the gospel, developed the churches, persisted in the road of the cross to comply with the teaching of

¹⁶ Ditto, p. 402, cited from *China Watch*, Vol. 61 (07/1984), p. 3

the Bible in being obedient to the government, and insisted on the principle of political-religious separation.

Upon discussing the church belief, the Vice President of Nanjing Institute of Theology, Dr. Wang Aiming, said the following:

The “National Committee of Three-self Patriotic Movement of Protestants in China” is basically an organization of people’s group, but not a church organization. This legal national organization of churches representing the vast believers in front of the government and the public has no nature of church. This is the root for many problems. The legal authority the government endowed to the “two churches” will eventually make, in turn, the legal administration of the government an empty slogan, while huge facts have indicated that if it develops according to the existing mode, the beautiful desire of the government for the “two churches” to become a “bridge” between the government and the believing masses will naturally become a kind-hearted desire only.¹⁷

Facts have also proven this point: the Baixiang Missionary Case of Wenzhou, Zhejiang, was the internal dispute in the church due to the “administration” of the government, which caused severe separation and opposition between many believers in the church and with the church committee supported by the “Two Churches.” On October 23, 2009, the Wuhan Municipal Administration of National and Religious Affairs broke the door to enter Jiangfu District Enguang Church, organized false believers to act as “representatives of believers” to mandatorily announce the “retirement” of Pastor Wu Qixi, and formed the “new leadership” of the church with the false believers in compliance with the will of the “Three-Self” leaders. Due to their corrupted power, disorderly management, and defected and inadequate “products,” the Three-Self churches as the “SOEs”

¹⁷ Wang Aiming, “On Church Belief: Thinking about Basic Issues with Chinese Protestant Church Theology,” *Nanjing Theological Review* (Vol. 4, 2008), cited from <http://www.shengshan.org.cn/article/gonggongshenxue/20090301/429.html>, accessed April 2010

in the belief domain continued to lose their competitiveness and their only advantage was the monopolized position endowed by the government. However, belief is unlikely to be completely monopolized by the state. The constant growth of house churches, while under pressure, has just shown the flourishing vitality of such independent “POE” in the belief domain. Especially since the 1990s, with the urban house churches increasing in number, and more and more young people and intellectuals becoming believers, the influence of house churches has constantly expanded. As the “POEs” in the belief domain, house churches have grown constantly in number and now gradually moved out into the open. In view of the influence of “enterprises,” the Three-Self churches have failed to compete with the house churches.

2. The *Guojinmintui* under the Slogan of Political-Religious Harmony

Upon moving into the open, the house churches immediately faced a problem: the opening of house churches as the “POEs” in the belief domain directly challenged the monopoly position of the Three-Self church, the “SOEs.” This would naturally make the “SOEs,” including their behind-the-scenes boss, the government, quite unhappy. The powerful government naturally wanted to eliminate or take over such “POEs” as these house churches. The Regulations on Religious Affairs was officially implemented by the State Council in 2005 to serve this purpose. However, this approach still shows a limited effect. It was under such background that since June 2009 when Chengdu Administration of Civil Affairs banned the Autumn Rain Church, the governmental departments have consecutively suppressed and even tried to eliminate the local largest churches as Shanxi Linfen Church, Beijing Shouwang Church and Shanghai Wanbang Church, and gospel institutions with the most influence in China such as the Shengshan Institute. In the process of pressuring these, the authority observed that it was impossible to eliminate them and tried to force these churches to register to join the Three-Self so as to “nationalize” them.

To “nationalize” house churches, it is necessary to create the legality and justice of such a goal. How to complete the task of infringing and restricting the

freedom of citizens' religious belief under the flag of freedom for religious belief is really a question of "level." The new director of the State Administration of Religious Affairs has also made efforts in this regard. Upon discussing the local political-religious relationship in China, he said the following:

As a whole, the new political-religious relationship in China includes the following four contents: (1) the state respects the freedom of citizens for religious belief and protects the normal religious activities; religious activities can be undertaken within the scope allowed by the national laws and policies, without intervening in the implementation of such state functions as administration, judiciary and education. (2) The state treats and deems different religions equally and the state power shall not be used to compel one religion or support one religion; no religions shall surpass the special position enjoyed by other religions in terms of law. (3) In order to safeguard the public interests and the fundamental interests of all the nationals including the believers, the government administers, according to law, the religious affairs involving the national interests and public interests, but shall not intervene in the internal affairs of religious groups; religious organizations shall not refuse, in the name of political-religious separation, to obey the legal administration of the government. (4) The political-religious separation is implemented, but like other citizens, the believing citizens are also entitled to the equal rights in the political, economic, social and cultural areas; and it is not allowed to create any inequality of rights and interests due to different religious belief. Representatives of religious organizations can participate in political life through lawful channels, e.g., expressing social opinions, putting forward views and suggestions for administration of state affairs and social affairs, management of economic and cultural causes especially religious affairs and implementing the democratic supervision, and by participating in the people's representative congress and political consulting conference at different levels.

Additionally, he also emphasized: “such new political-religious relationship is based on the political-religious separation principle and oriented for political-religious harmony.”

As for the above four “contents” give by the Director of State Administration for Religious Affairs, the author also wants to discuss briefly as follows:

First, how has China respected the freedom of citizens for religious belief? In China, except for Article 36 of the Constitution, specifying that citizens enjoy the freedom of religious belief, there is not yet a single law stipulated by the NPC or its Standing Committee to actually safeguard the freedom of citizens for religious belief. Such administrative regulations as the Regulations on Religious Affairs stipulated by the State Council in 2004 has been published with a fundamental purpose to crackdown on “POEs” in the belief domain such as house churches and to provide a legal basis for its selective enforcement of laws. Those with a clear mind have a clear picture of the essence of its registration system. “Religious activities can be undertaken within the scope allowed by the national laws and policies” is meant to cover up its irrational restriction of religious freedom and is nothing but laws used as a tool. Restricting religious activities based on administrative permission not only violates the spirit of the Constitution to protect the freedom of citizens’ religious belief but also violates the legal governance principle.

Second, as for “the state treats and deems different religions equally and the state power shall not be used to compel one religion or support one religion; no religions shall surpass the special position enjoyed by other religions in terms of law,” the author agrees with what Director Wang said. However, during the Roundtable Conference on Buddhism in Mainland, Taiwan, Hong Kong and Macao held in Sanya, the former director of State Administration of Religious Affairs Ye Xiaowen said, “As a governmental department in service for religious sphere, the State Administration of Religious Affairs will actively support and energetically help in the deepened exchange and cooperation between Buddhism circles of Mainland, Taiwan, Hong Kong and Macao, and jointly participated in

organizing the ‘World Buddhism’.”¹⁸ He also exclaimed, “How great Buddhism of China really is! A great country will definitely uphold the great Buddhism and the great Buddhism will definitely benefit and please the great country! We will praise highly: Great China has Buddha!”¹⁹ The State Administration of Religious Affairs participated in organizing the World Buddhism Forum and made a public message with high acclaim, “the great country will definitely uphold the great Buddhism,” exclaiming, “Great China has Buddha!” Commenting on this matter, the scholar Guo Yanjun opined, “The relevant party and governmental organs and leaders of Hainan directly planned, organized and participated in construction and consecration of Guanyin Icon, without any constitutional and legal basis and against the constitutional spirit, showing passive consequences in various aspects.”²⁰

As a contrast to the above example, the Shanxi Linfen Church applied for permit to construct a church, but the government refused to approve. The assembly arena built by the church was dismantled violently by the government, which also proceeded to heavily punish the church leaders for the charge of unlawfully occupying the agricultural land. Beijing Shouwang Church had no assembling place because the owner was forced not to lease out his space to Shouwang. Shanghai Wanbang Church was banned by the Shanghai authority due to failure to register with the government. These consecutive facts have indicated that the

¹⁸ “Round-table Conference on Buddhism in Mainland, Taiwan, Hong Kong and Macao held in Sanya,” Xinhua.net, April 23, 2005, http://news.xinhuanet.com/newscenter/2005-04/23/content_2869510.htm (accessed April 2010)

¹⁹ Ye Xiaowen, “Contribute for Social Harmony and Brighten World Peace,” cited from *China Religion*, Vol. 5, 2005, see <http://www.sara.gov.cn/GB/jqgy/jld/ldjh/yexiaowen/7f7c3a2a-566e-11da-9bfd-93180af1bb1a.html> (accessed April 2010)

²⁰ Guo Yanjun, “What principle China should follow in dealing with the political-religious relationship: Start with the Construction and Consecration of Sanya Guanyin Icon”, *The Law*, Vol. 6, 2005 (cited from <http://www.pacilution.com/ShowArticle.asp?ArticleID=705>, accessed April 2010)

reality does not match what the Director said. Director Wang is expected to perform well in implementing what he has said.

Third, “the government administrates, according to law, the religious affairs involving the national interests and public interests.” What are the social public interests? Safeguarding the freedom of citizens for religious belief is the biggest social public interest. Without any legal authorization and surpassing its administrative authority, the *Regulations on Religious Affairs* constrains the freedom of citizens for religious belief, and thus the State Council has itself infringed the social public interests. The administrative authority has played a double role as legislator and law enforcer, without any supervision over its power, as will naturally result in corruption. When the lower-rank administrative regulations and local regulations violate the Constitution with the utmost legal effect and obstruct safeguarding of the freedom of citizens for religious belief, such regulations are against the Constitution and the law. By abiding by the Constitution with the supreme legal effect, the religious organization has acted as an excellent social group abiding by the disciplines and laws, and thus exemplifies praiseworthy behavior of citizens with excellent quality.

Fourth, how is one to understand how to take the political-religious separation principle as the foundation and the political-religious harmony as the value orientation? In China, house churches are the healthy force promoting social harmony in China, while the current so-called political-religious disharmony is essentially due to the total control of religion by the government, as is the “harmony” they want. Talking about harmony without legal governance shows no difference from a fruitless approach. Enhancement of the government’s constitution-violating regulation over the religious organizations – in the slogan of political-religious harmony – will only make more people aware of the essential significance of “harmonious China.”

Generally, covering up the crackdown and control of the government over the house churches with the slogan of political-religious harmony, forcing numerous house churches to register to join the Three-Self and including them in the regulatory system of the governmental Administration of Religious Affairs is the essence of the current religious policy and imperfect religious laws and

regulations. Refusing to accept the legal position of house churches and continuing to pressure them by different means is nothing but another farce of *guojinmintui* played in the social domain.

3. Crackdown on House Churches: What does this Social Domain of *Guojinmintui* Imply?

1) The crackdown on house churches involves a controversy between infringement and right-safeguarding

House churches result from the pursuit of citizens for belief freedom, while the right for freedom of religious belief is a basic human right that everyone should enjoy. According to Article 18 of the Universal Declaration of Human Rights, “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” This provision indicates that everyone enjoys not only the freedom of belief, but also the freedom of participating in religious activities. In understanding the freedom of religious belief, the Chinese government has stressed more on the first freedom,²¹ but has constrained the second freedom – which is a more essential element. Essentially, the crackdown on house churches is the infringement of rights by power. Striving for the freedom of citizens for religious belief is an important part of the civil right-safeguarding movement.

The Regulations on Religious Affairs published in 2004 by the State Council has been stipulated just to constrain the essential freedom of citizens for religious belief. Its stipulation for safeguarding the legal rights and interests of religious groups implies that any religious group without registration will be considered

²¹ *Basic Viewpoints and Basic Policies on Religious Affairs in Socialist Period of China* issued and distributed by CPC Central Committee in 1982 [vide ZY (1982) No. 19] has provided a relatively particular explanation about freedom of religious belief. The document pointed out that “citizens enjoy freedom of believing or not believing in religion; freedom of believing in this or that religion; freedom of believing in this or that school of one religion; freedom of not believing in religion in the past but not now or believing in religion in the past, but not now.”

illegal, while its rights and interests will not be protected by the law. Its constraints on the locations and facilities for religious activities and the administrative permit's effect religious staff members' legal rights and interests are unlawful restrictions on the space in which believers can undertake the religious activities and the qualification of religious staff members.

According to Article 1 of the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* adopted by General Assembly of UN in November 1981, "No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice. Freedom to manifest one's religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others." Obviously, in administrating the national religious affairs, the government limits the freedom for religious belief according to the administrative regulations of the State Council instead of the law stipulated by NPC and its standing committee. However, such limitations are not meant to protect public safety, order, health or morals or fundament rights and freedoms of others. Since, in undertaking their religious activities, the nonregistered religious organizations may not necessarily endanger the public safety, order, health, morals or fundament rights and freedoms of others, it is not legally justified to limit the freedom of citizens for religious belief by means of registration.

Such limitations by the national political power on the freedom of citizens for religious belief in this way will definitely endanger the justice and legality of the political power. In such era of moral decline, environment contamination, fierce official-civil disagreements and public protests, with the background of extremely serious economic crisis and social crisis, the justice and legality of political power has been questioned - not only due to the ideological bankruptcy of the state, but more important due to the strong, continuous crackdown on house churches by the government. With such a background context, if the government continues cracking down on the house churches, the deprivation of citizens' rights for freedom of religious belief will naturally deepened the ruling crisis of the political power.

2) The crackdown on house churches is a kind of refusal for legal governance of freedom

The disaster of the Cultural Revolution is due to “lawlessness and godlessness.” It is considered “lawless” because even the Constitution which should have the supreme legal effect is also only a piece of blank paper; and with the Constitution in hand, Li Shaoqi (the late president of China) opposed but failed to stop the violent criticism. It was said to be “godless” because its struggling philosophy of “fight against the heaven and earth with endless joys,” which ignores the objective law, has eliminated the human conscience and caused death to untold people and deeply wounded many hearts. However, such “lawless and godless” times have failed to stop the development of the house church. Suppression of churches and believers in the times of rule-by-man resulted in the increasing number of believers, the extremely miserable fate of the rulers, and the questioned justice of the political power.

Since the reform and opening-up was launched, the party state tried to substitute the rule-by-man with the legal governance so as to prevent any tragedy similar to the disaster of the Cultural Revolution, to improve the living of people and to maintain the ruling position of the governing party. The so-called “reform” is nothing but only the social reform led by some opening up in the economic domain. Over the last three decades, this reform has not involved reform of the political system, while the control of the state over the social domain, such as NGOs and space for belief, has been extremely severe. In terms of the religious issue, the development from rule-by-man to legal governance has experienced a process from the policy of the CPC Central Committee to the rules of the departments under the State Council and to administrative regulations of the State Council. *Basic Viewpoints and Basic Policies on Religious Affairs in Socialist Period of China* issued and distributed by CPC Central Committee in 1982 [vide ZY (1982) No. 19] – Document No. 19 – is the most important document for the formation of the existing religious administration system of China.

Compared to the previous religious policies, Document No. 19 of CPC Central Committee is milder and more open. However, in this document, the interference and limitation in and on religions is still obvious. The Document has

again emphasized that the places of religious activities, patriotic religious organizations, religious schools and other religious affairs must be subject to the leadership and administration of the party and the government. The *Notice on Carrying out Religious Work* issued by the CPC Central Committee and the State Council in 1991 (also known as Document No. 6) stressed to “punish and govern according to law and enhance the administration.” This is a sign for the religious work of the party and the government to change from reliance on policies to legal governance. The subsequent religious regulations formulated by the State Council – such the *Implementing Measures for Registration of Religious Groups for Administration* (1991), *Administrative Rules for Religious Activities Places* (1994), the *Administrative Regulations of the People’s Republic of China for the Religious Activities of Foreigners in China* (1994), *Measures for Registration of Places for Religious Activities* (1994), *Measures for Annual Inspection of Places of Religious Activities* (1996), *Implementing Rules for the Administrative Regulations of the People’s Republic of China for the Religious Activities of Foreigners in China* – and the religious regulations formulated by the local governments at the different levels are the efforts and practices for the legal administration of religious work. The Regulations on Religious Affairs promulgated by the State Council in 2004 indicated the peak of legal governance for the government to enhance the religious administration by means of the legalized tools.

The Regulations on Religious Affairs has made it convenient for the authority to carry out selective law enforcement in cracking down on house churches, but the legalization of religious administration has also failed to deal with the religious affairs properly. The conflict between the existence of a large number of non-registered religious groups and the prevailing religious administration system has not yet been resolved. In addition, more and more registered religious groups have also observed different problems, and more and more registered religious groups have also tried to get rid of the constraints from the current religious administration system. Due to the failure of the religious administration system, the infringement on freedom for religious belief by the government has also caused an increasingly worse impact on its international image. Consequently, the government started to crack down on unregistered religious groups like the house churches by non-religious means – using secular charges to

disguise the obstruction on religious freedoms. Such cases, from the Xiaoshan Missionary Case and Cai Zhuohua Case in 2005 to the Shanxi Linfen Church Case in 2009 have typically reflected the feature of non-religious treatment of religious affairs.

However, so-called legal governance with its toolkit of laws as well as the attack-strategy of non-religious treatment of religious affairs has resisted both freedom and legal governance. Such resistance not only fails to achieve the legal administration of religion, but also harms the justice and legality of the government's position. Even banned by the governmental authorities, Shouwang Church and Wanbang Church still insist on assembling. Such persistence in belief has objectively indicated the failure of the prevailing religious administration system and also expressed the realistic necessity and urgency to achieve the freedom of religious belief according to the legal-governance principle.

3) The crackdown on house churches and the promotion of *guojinmintui* in the social domain will speed up the social reform

In 2008 when the financial turbulence burst forth, the world economy experienced a heavy blow, and China was not exempt. In this situation where the export level has seriously withered and the Chinese industrial system focusing on the processing industry did not effectively adjust, China observed a huge bottleneck for its economy, with a huge number of POEs going bankrupt and the national fiscal revenues dropping sharply. Under such circumstances, it is also impossible to increase tax revenues sharply, as has been proven by the massive protest in Nankang, Jiangxi. Therefore, the new round *guojinmintui* triggered by the coal business restructuring or “integration” in Shanxi is actually intent to gain at the expense of the POEs. It is legal in terms of the prevailing constitution, because China implements mainly the public-ownership system and the coal resources after all belong to the state, but this restructuring is snatching resources from some of the rich and influential officials; and the resulting social conflicts will stoke even more deeply and extensively the contradiction between officials and common people and even between the central and local governments.

However, under this background, promotion of *guojinmintui* also in the open social domain is a kind of indirect deprivation and restriction of public freedom. However, as a group of believers, house churches will not give their rights for belief despite infringement by the authority. Although this group of “Citizens of Heaven” is not so interested in this state on the earth, they will never fear the hierarchy on the earth: “There is no fear in love.” Since house churches are upheld despite suppression due to the God in whom they believe, more people are conquered by the love and kindness of Jesus; because facts have proven that the “lawless and godless” elimination of religious belief has, on the contrary, promoted the growth in the number of believers. Under the legal administration mode guided by policies, the space for religious belief is still under review; in the meanwhile, for this, the government has exhausted the extent of its justice and legality. Such a paradox which can hardly be understood is sourced from that wisdom of heaven.

Social reform is usually due to a deepening crisis. The contradictions aggregated in the political system’s role behind the reform of economic and social systems have become the “bad old practices that die hard.” The current practice of the authority still insists on *guojinmintui* in the economic domain to gain even more economic resources for maintaining its governance; this is not different from drinking poison to quench thirst, and is at cost of exhausting the justice and legality of its ruling. If we may say that the *guojinmintui* in the economic domain is based on the constitution and is likely for promotion, the tide of *guojinmintui* in the social domain – by suppressing the house churches contrary to the constitution and legal-governance principle – is a practice against the historical tide, with a purpose to be hardly achieved. Thus, once having any leakage, the boat can be scarce fixed, with a likely result of accelerating the pace for “social reform” and burying the actors in the vast tide. The principle of “water can carry but also overturn a boat” has been understood by all the rulers since the era of Emperor Taizong of Tang. Therefore, the approach for the ruling government to change its fate is only to find a way for the social domain by adopting the legal-governance principle in the regulated water-governance mode. Only in this way can it find a way out.

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