

Chinese Law and Religion Monitor

July – December 2008

Vol. 4 / No. 2

Table of Contents

Preface, “Bob” Xiqiu Fu.....	3
<i>Document:</i> Citizen Informant Initiative.....	5
Persecution of Protestant Christians in the Approach to the Beijing 2008 Olympic Games.....	9
<i>Document:</i> Covenant Not to Meet.....	23
Case Study: Harassment of a Human Rights Worker, Pastor “Bike”.....	25
<i>Document:</i> Notice of Further Questioning.....	28
Analysis of the Registration System for Religious Groups, <i>Cao Zhi</i>	31
Religious Liberty and Heresy in China – Legal Discussion Initiated from Baicheng Case, <i>Lin Lu</i>	83
Independent Registration and Dependent Registration, <i>Liu Tongsu</i>	103
The Fable of the Wolf and the Sheep: Discussion on Freedom of Religion after the Raid and Response of the Beijing Gospel Church, <i>Wang Guangliang</i>	109
Citizen Democratic Constitutionalism – the Composition of a Citizen Regime, <i>Fan Yafeng</i>	117
Appendix A, Analysis of the Registration System, Table on Ban Articles, <i>compiled by Cao Zhi</i>	137
Appendix B, Analysis of the Registration System, “Banning: Mandatory Measures or Punishment?” <i>Cao Zhi</i>	141
Appendix C, Analysis of the Registration System, “Leaders of Religious Groups Receiving Government Sponsorship,” <i>Cao Zhi</i>	142
Editorial Board.....	144

© China Association, Inc. (ChinaAid). All rights reserved.

Chinese Law & Religion Monitor, ISBN 1554—3013

Copyright © China Aid Association, Inc. (ChinaAid). All Rights Reserved

Address: 1300 Pennsylvanian Ave. NW, Suite 700, Washington, DC 20004

Telephone: 1-202-213-0506

The *Chinese Law & Religion Monitor* is a biannual publication containing policy documents and academic works involving law, religion, and politics in China, with English translation.

No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, electrostatic, magnetic tape, mechanical photocopying, recording, or otherwise, without permission in writing from the copyright holder.

Permission for Other Use: The copyright owner's consent does not extend to copying for general distribution, for promotion, for creating new works, or for resale. Specific written permission must be obtained from the publisher for such copying.

Preface

by “Bob” Xiqin Fu

When the Chinese society faced constitutional choices three times in the 20th century, it frequently veered off course. And now, when the thirty-year economic reform is dying and when the crises affecting the society as a whole are increasingly deepening, the Chinese society is once again facing a new constitutional choice. Will the Chinese people establish a good government through careful consideration, deliberate judgment and free choice, or will it be doomed to determine its political system through chance and force? The article, “Persecution of Protestant Christians in the Approach to the Beijing 2008 Olympic Games,” was published in June 2008, two months before Olympic Games, providing insight into the extensive harassment by government officials for a significant time period leading up to the Olympics. Pressured continued during the Olympics and Paralympics. Some unregistered churches in Beijing were forced to sign a covenant verifying they would not meet during this 3-month period of July – October, and the translation of this covenant is included. The recent experiences of Pastor “Bike” and his family give clear examples of many legal rights which were overlooked by officials in their attempts to limit the influence of a religious, human rights worker. After Pastor Bike’s distributed “Bless China” bracelets, he has been suspected of “illegal business operation,” and summoned for questioning; hence, the recent government document, “Notice of Further Questioning,” is included with its translation.

Registration of religious organizations concerns the two constitutional rights of freedom of religion and freedom of association. However, since the Chinese Communist Party took power in 1949, religious organizations have been classified as social organizations and therefore have been placed under the government’s administration. The government’s classification and the preemptive actions of the administrative entities are contained in the legislation which affects the registration system. This issue is discussed in the “Analysis of the Registration Procedure of Religious Organizations” by Mr. Cao Zhi. First it discusses the intended functions of the registration system – the regulations on religious affairs, regulations on associations, and the rules and procedures of registration. Second, it explores the logic of registration of religious organizations through analysis of two cases involving house churches. It also points out that the system of religious administration is characterized by “politicization,” administrative complexities, confinement within one’s work unit, and simple uniformity of religious organizations. This system not only determines the rules’ functions and logic in the registration of religious organizations, but it also causes for the religious organizations to register in order to get out of the

dilemma. Through the analysis of the political power and China's constitutional structure, the article surmises that Article 36 of the Constitution and the religious regulations are the product of operational logic of the same power and that these share the same content. Finally, on the basis of the above analysis and its arguments, the author proposes his own suggestions on reform from both legal and political aspects.

Though the Chinese Constitution clearly provides freedom of religious freedom, it is confined to "normal religious beliefs and religious activities." Moreover, many religious organizations which are not willing to be registered in the system are labeled as a cult at will, and therefore come under the government's repression. Through analysis of the subject of who has the right to label an organization as a "cult" and the standard of this judgment, scholar Lin Lu explores in detailed description how to prevent some religions or faiths from being labeled as a cult and whether it is necessary to set a legal definition on cult. This paper explores how broad the state's restriction is on the freedom of religion and faith, and whether such a public power should be reasonably held in check. The article also discusses how the media should position itself in reporting cults. From the perspective of the actual situation in China, the article conducts reflections on cults and on freedom of religion and faith.

In this issue, Pastor Liu Tongsu and scholar Wang Guangliang respectively point out that given the current situation house churches in China find themselves in, we must distinguish between "independent registration" and "capitulatory registration," and how the churches should handle the relationship between submission to the secular leaders and submission to God, how the Christians can exist as lambs in packs of wolves, and how the churches can glorify God and benefit humanity.

When the Chinese society faced constitutional choices three times in the twentieth century, it veered frequently off the course. At a time when the thirty-year economic reform has come to an end and is dying and when the crises that affect the society as a whole are increasingly deepening, the Chinese society is once again facing a new constitutional choice. Will the Chinese people establish a good government through careful consideration, deliberate judgment and free choice or will it be doomed to determine its political system through chance and force? In his article "Citizen Democratic Constitutionalism," Dr. Fan Yafeng presents this complicated tension structure through complex descriptions of the relationship between the traditions of Aristotle and the Federalist Papers and the traditions of Hobbes, Ma Zedong and Schmidt with the political metaphor of Leviathan as the breakthrough point. The article discusses the possibility of creatively transforming the governmental structure of the people's democratic dictatorship and establishing a free civil government.

中国法律与宗教观察

Citizen Informant Initiative

Translation of document
followed by picture

Citizen Informant Initiative

The **Citizen Informant Initiative** instructs citizens and organizations to report behavior which endangers national security. The translation of this initiative is below, and the picture of the initiative is immediately after the translation:

Beijing Municipal State Security Bureau Citizen Initiative

Posted Aug 18 2008

Beijing Municipal State Security Bureau

On Citizens and Organizations Informing on Conducts that Endanger State Security

It is stipulated in the “State Security Law of the People’s Republic of China” and its implementing rules that citizens of the People’s Republic of China have the obligations of safeguarding the state security, honor and interests and they must not have the conduct that harms the state security, honor and interests. If you find the following types of conduct that harm the state security, you should inform Beijing Municipal State Security Bureau in a timely manner:

1. Plotting to subvert the government, divide the country and overthrow the socialist system;
2. Working for an espionage organization or accepting a mission assigned by an espionage organization or its agents;
3. Stealing, secretly gathering, buying and illegally providing state secrets;
4. Instigating, luring and bribing state personnel to betray;
5. Organizing, planning or carrying out terrorist activities that endanger state security;
6. Concocting and distorting facts, publishing articles or speeches or producing and disseminating audio/video materials that endanger state security;
7. Engaging in activities that endanger state security by establishing social groups or enterprises;
8. Engaging in activities that endanger state security by utilizing religions;
9. Creating disputes between ethnic groups, inciting ethnic secession and

endangering state security;

10. Individuals from overseas who violate the relevant stipulations and who refuse to listen to admonition and meet without authorization individuals inside China who endanger state security or who are serious suspects of endangering state security.

11. Providing financial assistance, sites or materials to organizations inside China that endanger state security;

12. Providing organizations inside China with financial assistance, sites or materials that are used in activities that endanger state security;

13. People who are not supposed to know state secrets carrying and storing documents, materials and other objects that contain the said state secrets.

Phone number for informants of Beijing Municipal State Security Bureau
phone/fax): 65245781

Mailing address: Office of Letters and Calls for Petition, Beijing Municipal State Security Bureau, 9, Qianmen East Boulevard, Dongcheng District, Beijing.

Reception address: Office of Letters and Calls for Petition, Beijing Municipal State Security Bureau, 9, Qianmen East Boulevard, Dongcheng District, Beijing.

Zip: 100740

July 25, 2008 Seal: Beijing Municipal State Security Bureau

[end of translation]

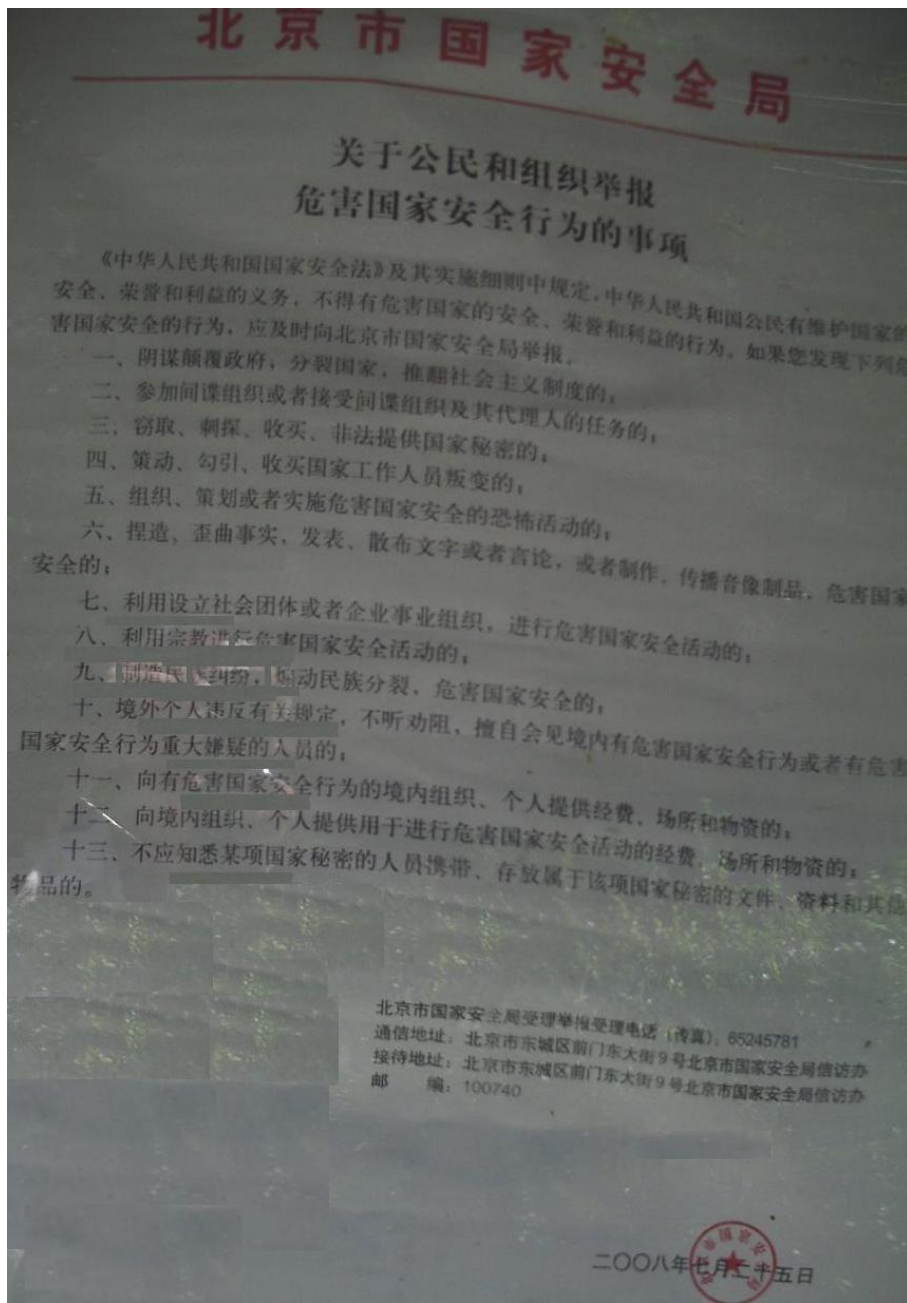


Photo credit: boxun.com

**Persecution of Protestant Christians
in China in the Approach
to the Beijing 2008 Olympic Games**

中国法律与宗教观察

Persecution of Protestant Christians in China in the Approach to the Beijing 2008 Olympic Games

Article Table of Contents

1.	Introduction.....	1
1		
2.	Background.....	11
	2.1. Official Churches.....	11
	2.2. Persecution of the Unregistered Church.....	11
	2.3. Bibles and Christian Literature.....	11
3.	Pre-Olympic Crackdown on Unregistered Protestant Churches.....	12
	3.1. Measures Against Unregistered Churches in Beijing.....	12
	3.2. Increased Measures to Prevent Property Rental to Unregistered Groups.....	13
	3.3. Prohibition of Religious Groups at the Olympics.....	14
	3.4. Forced Labour for Olympic Products.....	14
4.	Trends.....	14
	4.1. Increased Persecution.....	14
	4.2. Rise in Persecution of Foreign Christians.....	15
	4.3. Persecution in Xinjiang.....	15
	4.4. Persecution of Christian Publishers.....	15
	4.5. Prevention of Aid.....	15
5.	Individuals of Concern.....	16
6.	Recommendations.....	21

Introduction

The approach of the Beijing 2008 Olympic Games has been accompanied by a significant deterioration in religious freedom for China's unregistered Protestant Church, also known as the house church.

China continues to seriously restrict religious freedom, requiring religious activity to take place within the confines of the restrictive state-controlled bodies. Those practising their faith outside these bodies risk sanction, with penalties including discrimination, fines, confiscation and destruction of property, arrest, humiliating treatment, torture, imprisonment and forced labour. Alongside these punishments, meetings are raided, Bibles and religious materials are confiscated and churches are destroyed.

Background

Official Churches

Although China permits official, registered churches to function, the government-sanctioned church organisation, the Three Self Patriotic Movement (TSPM), suffers restrictions on selection and training of clergy, location of venues, publications, finances and relationships with Christians abroad. There are also restrictions on working with certain classes of people, including those under age eighteen. Religious education in government-sanctioned seminaries is severely restricted.

Persecution of the Unregistered Church

As a result of the control exercised by the atheist government over TSPM churches, most Christians choose to worship in unregistered churches. However, those belonging to unregistered, and therefore illegal, groups can face many difficulties, including being harassed, humiliated, fined, tortured, imprisoned and subjected to forced labour. Physical assault has left Christians injured, hospitalised and disabled. Meetings have been forcefully dispersed, unofficial church buildings destroyed and property confiscated. New government regulations that came into force in March 2005 renewed the drive to enforce registration. Members of unregistered churches come under particular attack when they are accused of being part of a cult. As their faith is not recognised as belonging to an official religion, house churches can be classified as cults, along with other less conventional groups, and be subjected to harsh penalties.

Bibles and Christian Literature

The Chinese Government allows the official printing of a limited number of Bibles. However, supply is insufficient to meet the needs of the house churches. China allows only one publisher, The Amity Foundation in Nanjing, to print Bibles and a limited selection of Christian materials, but production is

insufficient to meet the needs of the burgeoning Christian population.¹ The Bibles are only distributed through the official TSPM churches making it difficult for house church Christians to obtain Christian materials. It is illegal to sell Bibles at public bookstores and other public facilities. Pastors who have printed Bibles and Christian literature to fill unmet needs have been arrested and imprisoned for operating illegal business practices.

Pre-Olympic Crackdown on Unregistered Protestant Churches

The advent of the Beijing 2008 Olympic Games has been accompanied by a disturbing increase in persecution of unregistered Christians, including the largest mass sentencing of house church leaders in twenty-five years, a level of expulsion of foreign Christians not seen since the 1950's and targeted repression of the Chinese House Church Alliance. At the end of 2007 President Hu Jintao made statements that China has a policy of religious freedom. However, abhorrent abuse of religious believers and regular raids of Christian meetings continue to take place.

In May 2008 two independent sources informed ChinaAid that the Ministry of Public Security has received funding from the Chinese Central Government to increase its campaign of eradicating house churches throughout China.

Reports have been received of planned intensified persecution, with greater control and prevention of large Christian gatherings also anticipated. It is feared that harsher persecution will take place after the Olympics.

Measures Against Unregistered Churches in Beijing

The month of May saw significant measures taken against key unregistered churches in Beijing:

- On May 9, 2008, Pastor Dong Yutao, a leader of one of the largest Beijing house churches, Beijing City Revival Church, was arrested while on his way to collect a shipment of Bibles. He was placed under criminal detention by Beijing Public Security Bureau officials for receiving illegally printed Bibles and religious literature.
- On May 11, 2008, uniformed policemen and plain-clothed detectives broke into the regular worship service at Shouwang Church, in the Huajie Building near the Third Ring Road in Beijing. A plain-clothed law enforcement officer showed his identification

¹ Precise figures for religious believers in China are impossible to obtain. Estimates of house church figures range from 40 million to over 100 million. In January 2007, CAA issued news that a reliable source had informed that Mr. Ye Xiaowen, the director of the State Administration for Religious Affairs, had stated in two internal meetings at Beijing University and the Chinese Academy of Social Science that there are now 130 million Christians in China, including 20 million Catholics.

from Haidian District Bureau of Ethnic and Religious Affairs and ordered the church to stop its activities. Members of the church were ordered to leave the premises as the gathering was illegal.

- On May 25, 2008, at approximately 9:30 am, various house church gathering sites connected to the nearly 1,000-strong Beijing Gospel Church, were raided by officials from four government agencies, including the Bureau of Ethnic and Religious Affairs. The raided sites included those at Longhuayuan Residential Complex, Tiantongyuan Residential Complex, Century Jiayuan Residential Complex, Yangqiao Residential Complex, Ganjiakou Residential Complex and Zhongguancun Residential Complex. Officials forcibly entered and searched the homes of house church members without presenting search warrants or proper documentation and proceeded to confiscate religious materials. Some of those targeted sustained minor injuries from violence by officials. Although the officials' actions were illegal, the house church members complied with their demands, even shaking their hands and pronouncing a blessing on them. Victims of the attacks described the incident in an open letter to government officials, in which they cite various laws which have been breached.¹

While Chinese house churches have long suffered persecution, this is believed to be the first time that the authorities have systematically cracked down on the “third wave churches.” These are churches amongst the more educated and wealthy sections of society with greater awareness of their rights, which generally meet in urban areas and have been tolerated, even though operating under certain restrictions.

Increased Measures to Prevent Property Rental

Many house churches were already being pressurised to stop gathering or to leave Beijing by September 2007 when CAA publicised a new restriction imposed by the Beijing Municipal PSB. The measure was reported in the Beijing Evening News of September 5, which stated: “The Population Management Office of Beijing Municipal Public Security issued a public notice today that in order to raise landlords’ awareness of doing their duties for public security, the police will in the coming days organise the staff in the entire bureau and all the local police stations in an intensive inspection on ‘No rental to five types of prospective tenants.’ The police remind all owners of rental housing properties that they should on their own initiative refuse to rent their properties to ‘five types of prospective tenants.’” The specified groups include “people who engage

¹ For the text of the letter, see <http://chinaaid.org/2008/06/02/beijing-gospel-church%e2%80%99s-public-letter-discussing-the-disruption-of-their-meeting-by-government-officials/> (accessed Nov. 2008)

in religious activities.” Beijing house church leaders identified the move as a new tactic to persecute the house churches before the Beijing 2008 Olympic Games.

Prohibition of Religious Groups at the Olympics

According to reliable internal Chinese government sources’ disclosures to ChinaAid, the Ministry of Public Security of the Chinese Government issued a general nationwide order in April 2007 that all those from China and overseas who will participate in the Olympic Games, including athletes, media and sponsors, are to be strictly checked. The Ministry of Public Security secretly issued a document entitled “Notice on Strict Background Check on Applicants for the Olympic Games and the Test Events.” An eleven-category blacklist is provided. The third category is given as ‘Religious extremists and religious infiltrators.’ The categories are further divided into forty-three groups and Category Three includes: ‘1. Members of illegal religious organisations both in China and abroad. 2. Members who have been caught by the Chinese authorities for engaging in religious activities. 3. People who have given illegal sermons. 4. People who illegally distribute religious publications and video/audio materials. 5. People who have illegally established both in China and abroad religious organisations, institutions, schools, sermon sites and other religious entities.’ The restrictions also apply to those wishing to attend the Beijing 2008 Olympic Games.¹

Forced Labour for Olympic Products

Beijing house church leader Pastor Cai Zhuohua, who was released in September 2007 after serving three years imprisonment for “illegal business practices” for production of Christian literature, was forced to work ten to twelve hours a day making soccer balls for the 2008 Beijing Olympics while in prison.

Trends

In analysing recent measures taken against China’s unregistered Christians, a number of trends appear.

Increased Persecution

In its assessment of the trends of persecution, CAA reported that there was a rise of 18.5% in the numbers of Christians persecuted last year compared with the previous year, with an increase in persecution cases of 30.4%. The analysis highlighted the level of persecution occurring in urban areas, reporting that just under 60% of persecution cases occurred in such areas. The assessment also highlighted the ongoing targeting of house church leaders, with four hundred fifteen reported arrests of such leaders last year.

¹ See also the official website of the Beijing 2008 Olympic Games at <http://www.beijing2008.cn/news/official/bulletin/official/n214387789.shtml> (accessed Nov. 2008). The recent document of fifty-seven Q & A further articulates such controls.

Rise in Persecution of Foreign Christians

China has conducted the largest expulsion of foreign Christians since the 1950's when all foreign missionaries were expelled. In a campaign termed "Operation Typhoon No. 5" over one hundred foreign Christians had been arrested, interrogated and expelled from the country by the end of 2007. Most were western, but Koreans and other nationalities were also targeted. Seventy foreigners with secular business operations were expelled from Xinjiang alone. CAA reports an 833% increase in such expulsions compared with the previous year. Amongst the firms targeted was the British company Jirehouse which ran an operation in Xinjiang. The company's Project Manager, Alimujiang Yimiti, a Uyghur Christian, was accused of engaging in illegal religious activities and tried on May 27, 2008, for endangering national security.

Persecution in Xinjiang

In April 2008, ChinaAid reported that Chinese government officials had launched a strategic campaign, called the "Anti-illegal Christian Activities Campaign," against house church members in Xinjiang. While both Han and Uyghur Christians have been targeted, the plight of the minority Uyghur Christian population is especially harsh as they face persecution on the grounds of both their unusual religious faith and the broader ethnic persecution of the Uyghur people in Xinjiang. Even the limited religious freedoms protected elsewhere in China are further restricted in Xinjiang and there have been repeated arrests and mistreatment of Christians in Xinjiang over an extended period. Of particular concern is the use of national security and separatism charges against religious believers. Prior to the arrest of Alimujiang Yimiti, another Uyghur Christian, Wusiman Yiming, was accused of disclosing state secrets and sentenced. Most recently, on May 16, 2008, Pastor Lou Yuanqi was placed under criminal detention on the charge of inciting separatism, making his the second case of a Christian targeted under separatism charges in Xinjiang.

Persecution of Christian Publishers

A further trend relates to the treatment of those involved with Christian publications. There have been a series of cases where those involved in producing Christian literature have been accused of illegal business practices. Beijing church leaders Pastor Cai Zhuohua and Mr. Shi Weihuan have both been targeted in this manner.

Prevention of Aid

Although China's house church Christians have a strong desire to provide social support and humanitarian aid in China, authorities prevent them from carrying out such work. Government officials have refused aid from house church Christians to help the earthquake survivors in Sichuan Province and even arrested house church members who have volunteered to help those affected by

the disaster. Among the cases was the arrest of three Christians in Mao County, Sichuan Province on May 31 while they were carrying out relief work. On June 1, police raided a house church meeting in Taikang County in Henan Province and interrogated participants about which church members would be taking donations to the earthquake affected area. Six members were held in detention under the charge of sending money to a disaster area in the name of a house church. Police and religious affairs officials stated they would not release them until they each paid a 1,000 Yuan fine. The restriction on religious believers seeking to help survivors has been highlighted in The Wall Street Journal.¹

Individuals of Concern

The following individuals are of current concern.

Mr. Alimujiang Yimiti

Mr Alimujiang Yimiti (Alimjan Yimiti in Uyghur), a Christian Uyghur from Xinjiang, was tried on May 27, 2008, for endangering national security. The court referred the case back to state prosecutors due to “insufficient evidence.” The trial hearing ran for six and a half hours, commencing at 10:00 am and concluding at 7:30 pm, with a recess from 1:00 pm to 4:00 pm. Although initially denied access to his lawyer, Mr. Yimiti was allowed legal representation by two lawyers in court. However, his wife, Gulnuer, who had travelled for hundreds of miles, was prohibited from entering the court on the grounds of the sensitivity of the case. Members of the media were excluded on the same basis. Mr. Yimiti was originally accused of engaging in illegal religious activities when authorities targeted the British company, Jirehouse, which he was working for in a series of closures of foreign companies belonging to Christians in September 2007. He was subsequently taken into detention on January 12, 2008. His family have been deeply concerned regarding his fate due to the serious charges of endangering national security, namely instigating separatism and stealing, penetrating, purchasing and illegally providing state secrets or intelligence for overseas organisations and individuals. Mr. Yimiti’s wife, Gulnuer, has highlighted that he is being persecuted for his faith and that he would not have had access to state secrets as an agricultural worker.

Pastor Lou Yuanqi

Prominent house church leader, Pastor Lou Yuanqi, is detained under the charge of ‘inciting separatism’ in Xinjiang, China. Pastor Lou was summoned by the State Security Bureau to Qingshuihe Township Police Station at 1:00 pm on Friday, May 16, 2008, and interrogated for an hour. At 11:30 pm he was

¹ See <http://online.wsj.com/article/SB121208455251929967.html> (accessed Nov. 2008) or <http://chinaaid.org/2008/05/30/china-aid-relief-effort-reported-by-wall-street-journal-christian-groups-step-delicately-in-sichuan/> (accessed Nov. 2008)

transferred to Huocheng County Detention Centre on the charge of “inciting separatism”. Pastor Lou, who is a house church leader in Qingshuihe Town, Huocheng County in Xinjiang, has been arrested on several previous occasions. On October 20, 2006, Pastor Lou and three other pastors were detained for organising a house church and held for thirty-two days, during which time they were severely beaten on a daily basis by guards and inmates. However, the current incident is the first time that Pastor Lou has been detained under criminal detention and he is likely to face a serious indictment in court. Pastor Lou’s sixteen year old daughter, Lou Nan, was detained on February 28, 2008, for a day, together with ten other minors, when they were discovered attending a Bible study for children. This is the second time the Chinese Government has used a separatist charge against a house church leader in Xinjiang.

Mr. Wusiman Yiming

Wusiman Yiming (Osman Imin in Uyghur), a thirty-five year-old ethnic Uyghur, is a former employee of Xinjiang Pacific Agricultural Resources Development Company Ltd. The company was run by an outspoken Christian American businessman who was expelled from China and had his business shut down. The Detention Notice of the Bureau of State Security states that Mr. Yiming was put under criminal detention on November 19, 2007, on suspicion of disclosing state secrets and held at Hetian District Detention Centre. On November 27, 2007, the Administration Committee on Re-education through Labour of Hetian District sentenced Mr. Yiming to two years of re-education through labour to run until November 18, 2009. The Decision Statement on Re-education through Labour states: “During his work at Luofu County Branch of Xinjiang Pacific Agricultural Resources Development Company, Ltd. from March 1998 to April 2004, he assisted foreigners in illegal activities.” Mr. Yiming’s case was referred to Kashi People’s Court for appeal on April 16 before judges from Hetian City, Xinjiang. However his sentence was upheld. Mr. Yiming’s lawyer, Zhang Kai faced continual harassment as he sought to represent Mr. Yiming. Mr. Yiming’s wife reported that her husband was in a very poor state when she saw him in March as he was suffering from malnutrition and a bad hand injury.

Mr. Shi Weihai

Shi Weihai, a bookstore owner and leader of a house church in Beijing, was arrested on March 19, 2008, for publishing Bibles and other Christian literature. Mr. Shi had been arrested previously on November 28, 2007, but was released on January 4, 2008, due to “insufficient evidence.” He was denied family visits and held at the Beijing Municipal Detention Centre as a “dangerous religious element.” He was also denied access to his lawyer, until late April when they were finally allowed to meet after long negotiations. During the meeting, Mr Shi was interrupted by guards on several occasions and received a warning. His lawyer reported that Mr. Shi, who has chronic diabetes, was in very poor health and that he had allergic symptoms for which there was no explanation. Although his lawyer stated that he is in dire need of medical attention, Mr. Shi

received no medical care or even basic humanitarian treatment. Mr. Shi, whose store is located two miles from the Olympic Village, was printing Bibles and Christian literature without authorisation in response to the great unmet need for such materials in China. Concerns have been expressed that his arrest is part of a wider crackdown on religious groups which the government fears could voice dissent during the Beijing 2008 Olympic Games.

Pastor Dong Yutao

Pastor Dong Yutao, a leader of one of the largest house churches in Beijing, Beijing City Revival Church, was arrested on May 9, 2008, while going to collect a shipment of Bibles. He was placed under criminal detention by Beijing Public Security Bureau officials for receiving illegally printed Bibles and religious literature.

Pastor Li Shentang and 20 other prominent house church leaders

Two hundred seventy house church leaders were arrested on December 7, 2007, in Hedeng District, Linyi City, Shandong Province as they gathered for leadership training. According to an eye-witness, forty to fifty policemen from twelve different towns were involved in the mass detention in December. The pastors were handcuffed in pairs and taken to the police station for questioning. Most were fined and released but seventeen male and four female church leaders were sentenced together to re-education through labour. The leaders were accused of holding an “illegal religious gathering” and the twenty-one labelled as members of an “evil cult.” This is believed to be the largest mass sentencing of house church leaders in China for twenty-five years. The Linyi City Re-education through Labour Commission in Shandong Province simultaneously sentenced the twenty-one church leaders to re-education through labour for terms of fifteen months to three years. Amongst those sentenced were Pastor Li Shentang, fifty-three years old, of Xizhutuan Village, Xianggong Town, Hedong District, Linyi City, Shandong Province and Pastor Ge Xianfu, fifty-nine years old, of Banquan Town, Junan County, Shandong Province, who were sentenced to fifteen months and two years, respectively.

Pastor Wang Weiliang, Pastor Shen Zhuke, Mr Feng Guangliang

Pastor Wang Weiliang, Pastor Shen Zhuke, Mr Feng Guangliang and others were arrested after the destruction of their church in Xiaoshan, Zhejiang Province on July 29, 2006. On December 22, 2006, the People’s Court of Xiaoshan District, Hangzhou City sentenced Pastor Wang Weiliang to three years, Pastor Shen Zhuke to three-and-a-half years and Mr Feng Guangliang to two years imprisonment for resisting the execution of the law by instigating violence. Others received shorter or suspended sentences.

Pastor Zhang Rongliang

Pastor Zhang Rongliang, the leader of the China for Christ Church, is one of the most prominent house church leaders in China. He was arrested without charge

on December 1, 2004, in Xuhai village, Zhengzhou, Henan Province. Eventually he was accused of falsifying a passport, obtaining passports through deception for three of his co-workers and illegal border crossing. He had been wanted for his religious activities for years before his arrest and has previously spent twelve years in prison during five separate detentions. Pastor Zhang was sentenced on June 29, 2006, to seven-and-a-half years' imprisonment for obtaining passports through deception and illegally crossing the national border.

Pastor Zhang Geming and Pastor Sun Qingwen

House church leaders Pastor Zhang Geming and Pastor Sun Qingwen, evangelists from Henan Province, were detained on June 15, 2007, during a worship service in Shandong Province. Four local church leaders were also arrested and then released after paying a 10,000 Yuan fine. Pastors Zhang and Sun were sentenced on June 29, 2007, to one year of re-education through labour for using an evil cult to obstruct the law, to be served in the Re-education through Labour Camp of Jining City in Shandong Province, by the Re-education through Labour Management Committee of the People's Government of Heze City.

Mr. Daniel Ng, Mrs. Eliza Ng, and employees of Enoch Group

Daniel and Eliza Ng are naturalised Australians who were born in Hong Kong and are of Chinese descent. As the owners of Enoch Group, Mr. and Mrs. Ng have worked in China for over twenty years, using business opportunities to serve the Chinese people. A government investigation into their business began on August 21, 2007. On November 12, Guangzhou Municipal Administrative Bureau for Industry and Commerce issued a "Notice of Hearing" announcing that the business licence of the company was revoked. Among the grounds given was that Guangzhou Enoch distributed Christian materials which did not have an approval code from the State. Questioning has focused on religious activities rather than business matters. Interviewees have been beaten. Three members of staff have been detained: Ms. Lin Chunmei and Ms. Chen Guichan were placed under criminal detention on October 29, and Ms. Zhang Qiao was arrested on November 7. Mr. and Mrs. Ng were put under house arrest in Guangzhou on October 12 for thirteen days. They were subsequently allowed to travel in China but are not permitted to leave the country. The multimillion dollar company has been closed.

Pastor Hua Huiqi

Beijing pastor and activist Hua Huiqi was detained on "suspicion of interfering with execution of public duties" and formally arrested by Beijing PSB Chaoyang Branch on February 8, 2007. He was secretly sentenced to six months in prison and released on July 2007. His mother Shuang Shuying, was arrested when she went to visit him and sentenced to two years in prison. Pastor Hua was pressurised to lure Bob Fu, President of ChinaAid, to China and to give names of other Christians and was told that his mother was being held as a hostage and

would be released if he co-operated. On October 1, 2007, Pastor Hua was taken by force to a house rented by his father and placed under house arrest. On October 11, he was beaten unconscious by the PSB and did not recover consciousness until October 14. He was discharged from hospital on October 16 but beaten again the next day. Authorities have continued to keep him under surveillance.

Ms. Shuang Shuying

Seventy-six year-old Shuang Shuying was detained after seeking the release of her son, Hua Huiqi. She was formally arrested on February 9, 2007. She has serious health problems. Shuang Shuying was sentenced on February 26, 2007, for two years by Beijing Chongwen District People's Court for wilfully damaging public and private property.

Mr. Peng Ming

Peng Ming is an official UNHCR refugee from China who was resident in the U.S. from 2001 and has worked for Chinese democracy, freedom and human rights for many years. In May 2004, Mr. Peng travelled to Thailand and crossed into Burma, from where he was illegally transported to China. He was sentenced to life imprisonment in October 2005 for engaging in terrorist activities, after a series of varying earlier charges. Mr. Peng has very serious health problems. He has suffered with severe kidney stones during his imprisonment, leading to a rapid deterioration in his health. In April 2005 he suffered a massive heart attack. He has not received medical treatment and it is remarkable that he has survived. His lawyer filed for medical parole on December 24, 2007, the second time such an application has been made. His sicknesses have been exacerbated by cruel treatment from prison officials including sleep deprivation and malnutrition. He was severely beaten by a fellow inmate on February 11, 2008. In November 2005 the UN Working Group on Arbitrary Detention adopted an Opinion in which it held that "the deprivation of Mr. Peng Ming is arbitrary, as being in contravention of articles 19 and 20 of the Universal Declaration of Human Rights." The Opinion also states that "the continuously changing charges against Mr. Peng...corroborate that the criminal proceedings against him are a sham covering the actual reasons for his detention. Also Mr. Peng's previous detention in a re-education through labour camp bears out the political motives behind his detention." Mr. Peng's case has also been the subject of repeated representations by U.S. officials and representatives. He is held in a heavily guarded prison cell in Han Yang Prison No. 19 Prison District, Cai Dian District, Wuhan City, Hubei Province, 43010.

Mr. Gao Zhisheng

Prominent Beijing human rights lawyer Gao Zhisheng was secretly removed from his home by Chinese authorities in September 2007 and has been missing since. The incident occurred after Mr. Gao issued an open letter to the U.S.

Congress and Senate in which he highlighted numerous human rights abuses committed in the approach to the Beijing 2008 Olympic Games. Mr. Gao had been sentenced to three years imprisonment, suspended for five years, in December 2006. He has been disappeared since September 2007.

Recommendations

Following his visit to China in 1994, the United Nations Special Rapporteur on Religious Intolerance¹ made a number of recommendations which would assist in bringing China's religious law and practice into line with international standards. These recommendations are from an authoritative impartial source and China should be urged to implement them. They include the recommendations that China should:

- Provide an explicit guarantee of the right to manifest religion and, accordingly, amend the pertinent legal texts, including Article 36 of the Constitution, to provide constitutional guarantees of religious liberty that accord with the definition of religious freedom provided in the 1981 Declaration.
- Adopt a specific provision clearly stating that persons under the age of eighteen have the right to freedom of belief, in accordance with China's obligations under the 1989 United Nations Convention on the Rights of the Child, particularly those arising under Article 14.
- Adopt a text explicitly recognising the right to freedom of belief for everyone, including members of the communist party and other socio-political organisations.
- Abandon the practice of distinguishing between "normal" and "abnormal" religious activities and respect the right of all individuals to freely follow their chosen belief, without interference, subject only to the limitations laid out in international standards, most notably in Article 1(3) of the 1981 Declaration, namely only those that are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.
- Release all those detained for religious reasons.

¹ The title of the Special Rapporteur has since been changed to Special Rapporteur on Freedom of Religion or Belief

- Provide human rights training, particularly on religious freedom, to state officials and judges.
- Post the principal texts on religious freedom in the relevant administrative services concerned, compile and distribute a compendium of texts on religious freedom together with implementation instructions, distribute human rights materials to religious organisations and inform citizens and organisations of appeal procedures available in the event of refusal to register religious organisations.
- Provide education on religious freedom, including at the university level.

In addition it is recommended that China:

- Recognise the right of freedom to choose any religion, including those outside the official organisations and the five recognised religions.
- Rescind the registration system in its present form so that it is no longer a mechanism for controlling religious activity.
- Cease the policy of imposing penalties, including administrative and criminal detention, fines, confiscation of property and destruction of premises, for religious behaviour.
- Establish a dialogue with representatives of the house churches, as requested in the appeal issued by house church leaders on August 22, 1998.
- Maintain follow up contact with the Special Rapporteur on [Freedom of Religion or Belief](#).
- Ratify the International Covenant on Civil and Political Rights and amend legislation and practice to conform to the rights laid out therein.
- Implement effective protection for religious believers from arbitrary detention and abuse by officials and address the impunity of officials who abuse individuals and groups due to their religious beliefs.
- Allow the free movement of religious materials and personnel into and within the country.

中国法律与宗教观察

Covenant Not to Meet
translation of document

Document: Covenant Not to Meet

Background: a number of Chinese house church pastors were forced to sign a written agreement that they would not participate in religious services while the Olympic Games are taking place in China. The document prohibits the churches from gathering in their communities for three months while the Olympics are taking place. Should church members violate these rules they will be subject to the disciplinary actions of the Chinese Government. The translation of this document, drafted by Chinese Government Officials, is below:

Guarantee Statement of Holding No Activities at Christian Gathering Sites on the Temporary Basis during the Olympic Games

1. We will abide by the relevant provisions in the Constitution of the People's Republic of China and Regulations on Religious Affairs and persevere in patriotism and love for one's religion.
2. We will observe the relevant codes of conduct and the law and refrain from doing anything that endangers the society. We will also refrain from organizing and joining illegal gatherings and refrain from receiving donations, sermons and preaching from overseas religious organizations and groups that have a purpose.
3. During the Olympic Games, activities at the gathering sites will be shut down for three months (July 15—October 15)
4. Should we violate the above rules, we will let the relevant agencies handle the case according to law.

Hereby we present our guarantees to _____ Community Neighborhood Committee.

Provided by: _____ of Christian gathering site.

Date: 2008

[end of translation]

中国法律与宗教观察

Case Study: Harassment of a Human
Rights Worker, Pastor “Bike”

“Notice of Further Questioning”

Translation of document
followed by picture

Case Study: Harassment of a Human Rights Worker, Pastor “Bike”

Background: An official government document from Public Security Bureau of Yi Nationality Autonomous County, Shilin, (Kunming city, Yunnan province) is included below, with translation. The document requires Zhang Mingxuan to come for questioning because he is suspected of illegal business operation. Zhang Mingxuan's human rights and religious work stands in stark contrast to the charge of suspicion in this document - the “business” he did was actually distribution of free “Bless China” bracelets – yet the unjust and malicious treatment because of this work which he has received (and which his family has endured!) stands in stark contrast to the freedom of religion promised in the Constitution. To put this governmental document, “Notice of Further Questioning,” into context, below is a summary of Pastor Bike’s background and his experiences during the time period of this publication. This will shed light on the breadth of the harassment toward this man who told ChinaAid staff in February 2008, “I am not against government! I want to promote government!”

Pastor Zhang Mingxuan, known as “Pastor Bike,” is president of the 300,000-member Chinese House Church Association. He converted to Christianity in 1986 and began to work as a missionary in his hometown. In July 1998 he became a sensation when his mission work took him over ten thousand miles throughout twenty-four provinces by bicycle. This is how he has become affectionately known as Pastor Bike. He has also supported and educated orphans and abandoned children. However, he and his family have frequently experienced unjust treatment. He was illegally arrested at least seven times, sent to labor camps three times, locked in an asylum for the insane, and has been imprisoned over twelve times by government officials.

In July 2008, Pastor Bike Zhang was targeted during the pre-Olympic crackdown by being forced to live on the streets. Repeatedly, he and his wife Xie Fenglan were forced out of their home. Each time they attempted to take refuge in another place, Chinese officials would find them again and force them to leave. On July 14, PSB officials arrested them right after they were evicted from a hotel and interrogated without food, drink, or rest. The next day, at 6:00 AM, his wife collapsed due to the stress of torture, but she was not taken to the hospital for five hours. After the release from interrogation, once again local police officials drove them out of the hotel and forced to leave, in spite of alleging to let his sick wife stay in the location. They were forced to live on the streets. When asked why the couple was being expelled from Beijing, officials responded, “Because Bike Zhang met the Americans, and destroyed the harmony of the Beijing Olympic Games.”

The persecution targeting Bike did not stop there. On August 6, two days before the Olympic Games began, Pastor Bike and his wife were detained again. They were taken to resort hotels on a “forced vacation,” designed to ensure that they

could not talk to any foreign media. In respond to their arrest, international petition campaign created in a joint venture between ChinaAid and Voice of Martyrs was launched to sign a petition urging for the immediate release of these Christians. They were released by PSB officials on August 29, but were prohibited from returning to Beijing until the end of the Olympic on September 16. Soon after the three were released from detention, ChinaAid made delivery of a thank-you package to the Chinese Embassy in Washington, containing approximately fifty-seven thousand petition signatories.

By the time Pastor Bike and his wife returned to Beijing on September 21. However, after they rented an apartment, their water and electricity were cut off by government officials, and the landlord was also threatened to evict the couple. Pastor Bike immediately filed a lawsuit against the Chaoyang District Beijing Court to have his utilities turned back on, however, local court and prosecutor office refused to take a case due to lack of eyewitnesses. After naming three officers on Bike's complaint, Bike and his wife were allowed to operate his house church and to have water and electricity service. On September 28, Pastor Bike and his wife had their first peaceful religious service in more than three months.

After this short time of peace, on October 16, Pastor Bike was detained by state security officials in Kunming City, Yunnan province. Also, his family experienced extreme harassment: Zhang Jian, the elder son of Pastor Bike, was severely beaten by PSB officials while his mother watched. Zhang's younger brother was also beaten by PSB officials when he rushed to the aid of his injured brother. When Zhang Jian's mother called the ambulance, the receptionist told her that she had been given orders by government officials not to dispatch any emergency personnel to the Zhang's home. After a prolonged period, a friend of family was able to take Zhang Jian to the hospital to receive treatment. He was so badly beaten that his doctor mentioned that his right eye may permanently lose sight. His son was pressured to sign an agreement affirming that his damages were not serious, and a lawyer who attempted to accompany him to the PSB office for representation was detained by officials.

Also, Bike's wife was evicted from legally rented apartment and the family's furniture was thrown into the streets. Government orders were spread to hotels, requiring that they not host her.

Pastor Bike and his family desire that the government recognize the legality of their actions and treat them according to law. In late October, State Department spokesman Robert Wood, convinced of the unjust nature of the treatment to Pastor Bike, made an official statement saying, *"We are also deeply concerned by the continuing official harassment of Pastor Zhang, a prominent Beijing house church leader, including his arbitrary detention and the forced relocation of his family."*

The above summary of recent events for Pastor "Bike" Zhang Mingxuan provides context for the "Notice of Further Questioning" document.

[“Notice of Further Questioning” of Pastor Bike – translation]

Public Security Bureau of Yi Nationality Autonomous County of Shilin
[Kunming city, Yunnan province]

Notice of Further Questioning

Shi Gong Jing Qu Pang Tong Zi (2008) No. 001

Zhang Mingxuan,

This is to notify you that as you are suspected of engaging in illegal business operation, it is decided pursuant to Article 9 of the “People's Police Law of the People's Republic of China” that further questioning shall be conducted at 21:00 on November 16, 1951.¹ The starting and finishing time of the further questioning shall be from 21:00 on October 16, 2008 to 9:00 on October 17, 2008.

If you think it is illegal for the public security agency and the People’s Police to conduct the further questioning and if you think they have violated your legitimate rights and have caused you harm, you may apply for state compensation at Shilin County Public Security Bureau.

Seal of Public Security Police Station

Seal: Public Security Bureau of Yi Nationality Autonomous County of Shilin

21:00, October 16, 2008

This copy is to be handed over to the person under questioning.

[end of translation]

¹ Note from editor: PSB made a date discrepancy for the beginning date and year of his questioning time.

石林彝族自治县公安局

继续盘问通知书

石公景任盘通字〔2008〕第 001 号

张明造 _____:

你因 涉嫌非法经营，根据《中华人民共和国人民警察法》
第九条之规定，决定于 1951 年 11 月 16 日 21 时予以继续盘
问。继续盘问起止时间：自 2008 年 10 月 16 日 21 时至
2008 年 10 月 17 日 9 时止。




你如果认为公安机关及其人民警察违法实施继续盘问侵犯自
己的合法权益造成了损害，可以向 石林县 县（市、旗、
区）公安（分）局申请国家赔偿。

特此通知。

(公安派出所印章)

2008 年 10 月 16 日 21 时

此联交被盘问人



page intentionally left blank

中国法律与宗教观察

**Analysis of the Registration System for
Religious Groups – with Christian House
Churches as Examples**

by Cao Zhi

Analysis of the Registration System for Religious Groups

- With Christian House Churches as Examples

by Cao Zhi¹

Article Table of Contents

Introduction	33
I. Institutional Functions of Registration	39
1. Registration Procedures.....	39
2. Applicant.....	41
3. Respondent.....	43
4. Summary.....	45
II. Logic of Registration Administration	46
1. 2006 Beijing Watch Church Case.....	46
2. 2006 Anhui Tongling Church Case.....	51
3. Summary.....	57
III. Dilemma in Registration for Relief	57
1. Does registration approval violate the law?	58
2. Religious Administration System.....	60
3. Summary.....	64
IV. Article 36 of Constitutions and Registration System	64
1. Article 36, Legislation Law and Religious Regulations.....	65
2. Generation of Article 36	67
1) Preface of Constitution.....	68
2) Constitution and Amendment.....	69
3) Article 36 and Doc. No., 19 of the CPC Central Committee.....	71
3. “Adminstrate Religions as per Laws” under Power Operation.....	73
4. Summary.....	77
V. Conclusion	79

¹ Bio of Cao Zhi: lawyer; published author, researcher, and editor with focus on the fields of religious freedom, the church-state relationship and public theology.

Introduction

Since 1949 when the Communist Party of China (CPC) took over, religious groups have been classified as social groups and included in the administrative system.

The legislation regarding the registration system, to classify and administrate social groups, includes the following measures: the *Provisional Measures for Registration of Social Groups* (09/09/1950)¹ and *Implementation Rules for Provisional Measures for Registration of Social Groups* (03/23/1951).² As for the administration of Christian groups, the government had then especially formulated these three measures: 1. *Regulations on Registration of Cultural and Education Relief Organizations and Religious Groups Accepting Foreign Subsidies and Being Run with Foreign Capital* (12/29/1950); 2. *Implementation Measures for Registration of Cultural and Education Relief Organizations and Religious Groups Accepting Foreign Subsidies and Being Run with Foreign Capital* (01/11/1951); and 3. *Measures for Treatment of Christian Groups Accepting American Subsidies* (07/24/1951).³

In the 1990s, the administration regulations such as the *Implementation Measures for Registration Administration of Religious Social Groups* (05/06/1991) were first of all formulated, requiring the religious groups to register in accordance with the *Administrative Regulations on Registration of Social Groups* (10/25/1989) (hereafter, the *Regulations on Social Groups*). The latter was abolished when the *Regulations on Social Groups* was promulgated for implementation almost ten years later, on October 25, 1998. Thus, the *Implementation Measures for Registration Administration of Religious Social Groups* lost its legal basis, but in reality it still plays a guiding role for the administrative behavior of the administrations of religions (which are named in the religious legislation as “department of religious affairs”) regarding the establishment of religious groups.⁴ Then such administrative regulations as the *Administrative Regulations on Religious Activity Places* (01/31/1994) and such administrative rules as the *Measures for Registration of Religious Activity Places* (04/13/1994) were implemented, requiring the coordinators of the management organizations of places of religious activity to apply to the administration of religion at the county level and above for registration. Obviously, before the 21st century, at the legislative level of National People’s Congress (NPC) and State

¹ Dates in this article are in [mm/dd/year] format.

² *Provisional Measures for Registration of Social Groups*, passed on September 29, 1950, at the 52nd meeting of the Government Administration Council of the Central People’s Government; *Implementation Rules for Provisional Measures for Registration of Social Groups*, published on March 23, 1951, by the Ministry of Domestic Affairs of the Central People’s Government.

³ Regarding the process of formulating the above regulations, the implementation measures and treatment measures, refer to Chi Nai (editor), *Religious Work of Contemporary China (Part I)*, Contemporary China Publishing House, 1998, pp. 84-86.

⁴ Shuai Feng, Li Jian (editor), *Interpretation of Regulations on Religious Affairs*, Religion and Culture Publishing House, 2005, pp. 40-41.

Council, China had not formulated any comprehensive law and regulation relating to the religious issues. However, now for the registration administration for religious groups and places of religious activity, special administrative regulations and rules have been formulated.

The *Chinese Regulations on Religious Affairs* (hereafter, *Religious Regulations*) was promulgated in 2004 and implemented in 2005.¹ As pointed out in a special article in the *People's Daily*, the *Religious Regulations* is “the first comprehensive administrative rule on religions in China.”² The government defined it as “indicating a major progress has been achieved in the legal construction regarding the religious affairs in China.”³ According to Fu Dianshan, former Vice Chairman of NPC, a Member of the Chinese People's Political Consultative Conference (CPPCC) Standing Committee, and the Chairman of Chinese Catholic Patriotic Association, it is “milestone for the legal construction of religion.”⁴ The registration administration system of religion created sixty years ago is reflected in Article 6 of the rule. Therefore, the administration of religions bases on the *Regulations on Social Groups* (1998) and the *Religious Regulations* (2005) to require religious groups to obtain their legal position through registration.

Because the Christian house churches in mainland China have never been registered since 1949,⁵ the *Religious Regulations* have initiated a crisis for the legal position house churches in terms of administrative regulations. This is the background for the study and investigation of the Paper.

Facing such crisis, the leaders in the Chinese law arena and churches expressed different views. The law arena is represented by Jiang Shihua, Fan Yafeng, Yang Junfeng and Wang Yi. In the opinion of Jiang Shihua, the essence of the registration regulations is requirement that the religious groups must be established upon approval by the government (the administration of religions)

¹ The *Regulations on Religious Affairs* (vide Decree No. 429 of the State Council of the People's Republic of China), passed at the 57th executive meeting of the State Council on July 7, 2004, published on November 30, 2004, and implemented as of March 1, 2005.

² The *People's Daily*, “Protect the rights of citizens for religious belief freedom in accordance with the laws,” December 19, 2004.

³ Shui Feng, Li Jian (editor), *Interpretation on Regulations*, “Chief of Policy and Regulation Department of State Administration of Religious Affairs Replies to Journalist of Chinese Religion on the Regulations on Religious Affairs”, p 205.

⁴ Fu Tieshan, *Milestone for the Legal Construction of Religion*, <http://www.cppcc.gov.cn/rmzxb/mzzj/200507120073.htm>, (accessed Nov. 2008)

⁵ “Christian house churches” as referenced in this Paper means the Protestant house churches, excluding the Catholic underground churches. For the history of Chinese protestant house church in China after 1949, refer to Zhao Tianen and Zhuang Wanfang, *Development History of Contemporary Chinese Christianity (1949—1997)*, Chinese Association of Chinese Evangelical Ministry (publisher), Zhongfu Publishing Co., Ltd (distributor), 1997.

and thus a “government-run religion” is generated.¹ Fan Yafeng pointed out clearly that the government executes the law at random by means of the *Religious Regulations* and uses registration as the basis for restricting the religious freedom of citizens.² Yang Junfeng opines that the *Religious Regulations* benefits religious freedom, regularizes the religious administration, and to some extent elevates the legal hierarchy and legislation quality of the religious legislation; but regarding the procedures, conditions and effects of registration, he also points out that the registration system restricts the religious freedom and the freedom of association.³ Wang Yi regards the registration of house churches as an instrument to protect rights, and tries to change the registration system. He concludes there are five guiding and operational principles: principle of social groups, volunteer principle, procedure principle, independent principle and general principle.⁴

The leaders in the churches are represented by Yuan Xiangchen, his wife Liang Huizhen, Fan Yafeng, Sun Mingyi, Liu Tongsu and Jiang Dengxing. Yuan Xiangchen points out “politics and religion shall be separated absolutely” and does not accept “the state administrates all religious activities through Administration of Religious Affairs.” His view is that if religious groups are “one of the people’s groups,” they will “serve the proletariat politics under the leadership of the Party.” In 1996, he absolutely refused to register.⁵ His wife, Liang Huizhen, refused to register when the *Religious Regulations* were promulgated.⁶ Fan Yafeng was definite in opposition against the registration of

¹ Jiang Shihua, *Protect the rights of citizens or enhance the state control? - Comment on the Regulations on Religious Affairs (2004) of State Council*, <http://www.gongfa.com/jiangshzongjiaotiaoli.htm> (accessed Nov. 2008)

² Fan Yafeng, *The Rise and Survival Difficulty of House Church*, <http://news.boxun.com/news/gb/pubvp/2006/04/200604060139.shtml> (accessed Nov. 2008)

³ Yang Junfeng, *Merits and Defects of the Regulations on Religious Affairs*, <http://www.gongfa.com/yangjzongjiaotiaoli.htm> (accessed Nov. 2008)

⁴ Wang Yi, *My Position in Registration of Hose Churches in China — Discussion on Meeting with Bush*, <http://news.boxun.com/news/gb/intl/2006/05/200605132109.shtml> (accessed Nov. 2008)

⁵ “In this special period for Chinese churches now, the only way is the family gathering to worship the Lord. If you want to have a signboard and an organization, you are on a wrong way, for with the signboard and organization, it will be a people’s group. In China, the people’s groups must be under the leadership of the party. If a church accepts the leadership of the Party, it will not be a Christian church” - Li Diya, *Living Sacrifice—Story of Master Servant Yuan Xiangchen*, Singapore Every Home Crusade. For electronic version, see <http://www.chinasoul.org/wk/huoji/hj-main.htm> (accessed Nov. 2008). Vida Yuan Xiangchen, *On Church*; Jiang Dengxing, *Inheritance and Restoration of Urban House Churches in China*, Shengshan Forum, Public Theology

⁶ In his lifetime, Chaplain Yuan Xiangchen had not given any defined view on the registration after the Religious Regulations was promulgated. It was only after Chaplain Liu Tongsu published his article on the registration that his wife, Liang Huizhen, expressed in an interview the refusal for registration. Therefore, according to the

house churches, not only according to his professional knowledge of politics and law, but more importantly because of his theological position of a battle between the spiritual state and the secular state. According to Fan, Chinese political order is essentially the “people’s religion.”¹ Therefore, for house churches, registration is absolutely not a legal issue as it appears at the surface, but it is an issue of a spiritual battle. He advocates that in the political order of “people’s religion,” due to the involvement in the spiritual battle, peaceful and rational protection of rights becomes part of the church mission: the core approach is a legal litigation, but not political confrontation.²

In Sun Mingyi’s view, house churches in China can be classified into these three types: “secession,” “right-protection factions,” and “dialogue faction.” According to his analysis, “secession” – based on the theological view of “church and world separation” – advocates that church should not be registered, with the view that to register is to comprise to the secular world. The “right-protection faction” opposes registration, with the view that registration through the *Religious Regulations* violates the Constitution and encroaches on the freedom of religious belief. The “dialogue faction” persists on the independence of church, refuses to allow the government from interfering with church affairs, and refuses to join the official church. With this position, it tries to dialogue with the government through registration and establish a suitable relationship between the house churches and the government. Sun concludes that the “secession” and “right-protection faction” responses are controlled by “political phobia”³ and are respectively “self-concealing” and “direct confrontation.” He advocates the “dialogue theory” based on the “doctrine of church” of the Christian theology.⁴

Based on the right of freedom of religious belief specified in the Constitution, Liu Tongsu admits the partial rationality of the registration system and distinguishes between the “refusal to accept the administration of the official church” and “refusal of the registration system.” He “opposes the Constitution-breaking conditions concealed in the prevailing registration system” and “refuses to accept the administration of the official church.”⁵ He advocates

expressions of Chaplain Yuan on the relation between church and politics in the Story of Yuan Xiangchen, the Paper discerned his position on registration. Such judgment has been accepted by Mr. Bai who authored a story on Yuan Xiangchen and Liang Huizhen. Credit is gratefully given to Mr. Bai for the above information and references he provided.

¹ Fan Yafeng, *On People’s Religion*, not published

² Fan Yafeng, during interview with Author, September 1, 2008

³ Sun Mingyi, *Understanding of Chinese Urban House Churches*, 26th ed., 2007

⁴ Sun Mingyi, *Theological Re-thinking on House Churches for Registration*, Apricot Blossom, 2008

⁵ Liu Tongsu, *Significance of Independent Registration*, Shengshan Forum – Public Theology (for the electronic versions of articles cited in the Paper hereinafter, refer to

amendment only to the Constitution-breaking part of the registration system, and he opposes rejection of the registration system.¹ He distinguishes between the independent registration and dependent registration and points out that “registration is not a sign of surrender, but where to register is crucial.”² Therefore, he promotes “independent registration” and supports the “dialogue faction.”³

Jiang Dengxing agrees with Liu Tongsu’s “limited target and proper measures.” However, based on the doctrines of Christianity and the position for disestablishment, he criticizes Mr. Liu for not observing the illegal nature of the registration system in the *Religious Regulations*.⁴ Jiang and Liu cite in their arguments the articles of the Constitution on freedom of religious belief. With this, Jiang testifies the unconstitutional base of registration system in the *Religious Regulations*, while in Liu’s view the *Religious Regulations* are partially unconstitutional. Jiang Dengxing states, “First, it is not agreed that the external environment is ready for the implementation of the registration; second, the Regulations specifies that the government has the right to determine if the existence of a church is legal or not, as is in violation of the Bible and common knowledge.” For this reason, he views that “under the current legal conditions, it is not feasible [to] register.”⁵ Jiang also points out that the theological analysis of Sun Mingyi is wrong, regarding opposition of the “secession” group against registration, because Yuan Xiangchen was not in opposition against the Christians to participate in politics as citizens, but the reason for Yuan opposes registration is because “a church is not a people’s group, but belongs to the heaven and spirit.”⁶

Except for a few house churches registered with Three-Self Patriot Movement (TSPM) church, the mainstream of inland house churches persists in resisting registration. The different “registration views” of the church leaders, discussed above, have influence over different house churches. Therefore, the house churches’ non-registration is due to different reasons. Based on the regulations and analyses above, this Paper views that the countermeasures and measures, adopted by the inland house churches toward registration, are classified into these three types of responses: refusal theory, right-protection theory and dialogue theory. The refusal theory is further divided by the “absolute refusal” of

<http://www.shengshan.org.cn/bbs/viewthread.php?tid=1234&extra=page%3D1>
(accessed Nov. 2008)

¹ Liu Tongsu, *Practice of Independent Registration*, Shengshan Forum – Public Theology

² Liu Tongsu, *Independent Registration and Dependent Registration*, Shengshan Forum – Public Theology

³ Liu Tongsu, *Former Research Fellow of Chinese Academy of Social Sciences*, (regarding registration of Chinese house churches) the Gospel Post

⁴ Liu Tongsu, Shengshan Forum – Public Theology, re: Jiang Dengxing, *Registration is not only a legal question – Response to “Practice of Independent Registration.”*

⁵ Jiang Dengxing, during interview with Author, August 29, 2008

⁶ Jiang Dengxing, *Inheritance and Restoration...*, Li Diya, *Living Sacrifice...*

Yuan Xiangchen (who advocates no registration no matter what circumstance is) and the “relative refusal” of Jiang Dengxing (who refuses the approval-mode registration and accepts the filing-mode registration). The right-protection theory represented by Fan Yafeng is to protect the activity space of house churches by protection of their right, holding the position of non-registration. The dialogue theory supported by Liu Tongsu and advocated by Sun Mingyi is to dialogue with the government by applying for registration on the premises of insisting on the independence of house churches, trying to establish a suitable relationship between the government and the church by taking the advantage this opportunity.

Such assessment and countermeasures of house churches on registration are based on the above different evaluations on the *Religious Regulations* and the registration system. The registration required in the *Religious Regulations*, praised by Fu Tieshan as the milestone for religious legal construction, has been refused by Liang Huizhen, while Fan Yafeng points out the government executed the law arbitrarily by means of the *Religious Regulations*. Scholar Jiang Shihua deems the *Religious Regulations* as an instrument of enhancing the state control, while scholar Yang Junfeng views that the *Religious Regulations* are beneficial to assure the religious freedom. As leaders of Christian house churches, Liu Tongsu views that the registration system is partially unconstitutional while Jiang Dengxing views that the registration system is entirely unconstitutional. Sun Mingyi views that the registration may be used to hold a dialogue with the government, while Jiang Dengxing judges that the current legal environment does not make registration feasible. Fan Yafeng advocates safeguarding the position of house churches through right protection. Obviously, these leaders in the legal field and in the house church movement have different understanding of the current religious legislation included in the *Religious Regulations*, religious administration mode and system, the constitutional article for freedom of religious belief, and the government-religions relationship thereof.

In the legal view, the above divergences are concentrated on one question: what relationship is actually created between religious freedom and the registration system contained in the *Religious Regulations* and the *Regulations on Social Groups*? In other words, does the registration system promote or restrict the religious freedom and thus is it constitutional or unconstitutional? This is the core issue discussed throughout this Paper.

Therefore, in view of the *Religious Regulations*, the *Regulations on Social Groups*, and registration-related rules, the first part of the Paper overviews the mode of the registration, and analyzes the orientation of the parties related to the procedure to confirm the functional possibility of the registration system.

Based on the analyses on the two cases of house churches in 2005 after the *Religious Regulations* was promulgated for implementation, the second part of the Paper investigates respectively how the administration of religions examines and refuses the applicants in the registration procedure and how it will handle the

churches that are not registered. This investigates the logic of the registration administration.

The third part of the Paper assumes that the registration of religious groups initiates administrative litigation, and it discusses the reasons for the failure to resolve this problem, even in the judicial relief mode such as administrative litigation for registration. Its view is that this problem is due to the position of the registration rules in the legal system and the limitation of the judicial review power of the courts, as well as the four features of the religious administration system.

The fourth part of the Paper assumes that Supreme Court may apply Article 36 of the Constitution (Freedom for Religious Belief) to break through the dilemma caused by the registration procedure and rules combined with the *Religious Regulations* and the *Regulations on Social Groups*. Also, it argues, based on the above logic, whether or not Article 36 and the *Religious Regulations* are consistent with each other. By analyzing the Chinese political power and constitutional structure, the Paper concludes that Article 36 and the *Religious Regulations* are the products of the same logic under the same power and have consistent physical contents.

Finally, the Paper summarizes the above analyses and arguments, and presents the recommendations for the feasible reform.

I. Part One: Institutional Functions of Registration

Outline of Part One:

1. *Registration Procedures*
Table 1: Procedure for Registration of Social Groups
2. *Applicant*
3. *Respondent*
4. *Summery*

1. Registration Procedures

The registration system for religious groups takes the registration procedure constructed according to such relevant laws and regulations as the *Religious Regulations* and the *Regulations on Social Groups*. According to Article 6 of the *Religious Regulations*, “the establishment, alternation and cancellation of religious groups shall be registered according to the provision of the Regulations on Social Groups.” In the *Religious Regulations*, Chapter One is “General Provisions,” Chapter Two is “Religious Groups,” and Article 6 is the beginning of Chapter Two. Such arrangement indicates that the “establishment, alternation and cancellation of religious groups” is in a prime position among all the religious affairs in the *Religious Regulations*. Obviously, in view of administration, Article 6 places religious groups in an equal position with the non-religious social groups.

By investigating the *Regulations on Social Groups*, we have observed that the administrative registration procedures for religious groups includes four sequential steps, all of which are undertaken between the Applicant and the Respondent and which includes these three links: application — review — approval (see Table 1):

Table 1: Procedure for Registration of Social Groups

- **Application for establishment** → Review by the relevant authority →
▫ Refusal, or ▫ Approval for establishment as a religious group.
- **Application for preparatory establishment** → Review by the administration of registration → ▫ Refusal, or ▫ Approval for preparation to establish a religious group.
- **Application for establishment** Registration → review by the administration of registration → ▫ Refusal, or ▫ Approval for registration as a religious group.
- **Application for filing** → Filing by the administration of registration → Issuing the Corporate Registration Certificate of Social Group.

For each step in the administrative registration procedure of religious groups, the organizer of a religious group shall apply to the administration. In the first step, the Respondent is the competent administration i.e., the administration of religions. In the following steps, the Respondent is the administration of registration, i.e., the administration of civil affairs.

In the first three steps, the Respondent is entitled to review and approve the application. Therefore, in the administrative registration procedure for religious groups, the application for establishing a religious group shall face three reviews. Once the Respondent refuses to approve or disapproves upon reviewing, the Applicant may not go on to the next step, and thus registration process for that religious groups ends. The fourth step is only a filing formality. Within thirty days upon receipt of the filing documents, the administration of registration shall issue the Corporate Registration Certificate of Social Group to the Applicant.

In case of any preparatory establishment of a religious group without approval or any activity in the name of a religious group without approval, the administration of registration will take action to ban and confiscate the “illegal properties.” Where the activity of the group’s organizer and participants does not constitute a crime, the penalty of public security administration shall be sanctioned. However if their actions constitute criminal behavior, the legal liability shall be investigated.

In this way, the administrative procedure for the registration of religious groups is undertaken between the organizer of the religious group and two administration departments: the administration of religions and the administration of civil affairs. In the four-step administrative procedure for registration, three sequential reviews shall be conducted respectively on the Applicant's submittals, to make the administrative decision of whether or not the Applicant is entitled to apply for preparation or for preparation for establishment of a religious group. The administration of religions and the administration of civil affairs constitute the dual administration review for registration of religious groups.

Hence, the conditions included in the Applicant's submittal become the necessary conditions for obtaining the right to establish a religious group and to undertake the activities in the name of the group, by first going through the review-approval procedure of the Respondent. The review mode and standard of the Respondent becomes the base for judging if the Applicant can be approved for registration and the legal position.

2. Applicant

According to Paragraph 1, Article 3 of the *Regulations on Social Groups*, religious groups should be qualified as a legal person. Article 10 of the *Regulations* specifies particularly the qualifications of a legal person:

- (1) Having more than 50 individual members or more than 30 institutional members; where it consists of individual members as well as institutional members, the total number of member shall be at least 50
- (2) Having a regular name and relevant organization structure; the name shall be consistent with the service scope and region of member distribution and activities and represent adequately its features
- (3) Having a fixed domicile
- (4) Having the full-time working staffs in compliance with its service activities
- (5) Having the legal assets and financial source (a national social group shall have a working capital of at least 100,000 Yuan; a local social group and a trans-regional social group shall have a working capital of at least 30,000 Yuan)
- (6) Having the capacity to undertake independently the civil liabilities

“Legal person” is actually an organization with the identity, like a natural person, endowed by the state through the law so that it can be independent and autonomous like a natural person and undertake independently the legal liabilities. Simply speaking, a legal person is a group with the qualification as an

independent civil subject.¹ Since a law is a product of the operation of the state's political power, in a sense of positive law, "legal person" has to depend on the state power for existence and position.

The conditions required by the *Regulations on Social Groups* for a legal person - "name," "organization structure," "domicile," "assets and funds" and "capacity for civil liabilities" - originate from Article 37 of the *General Principles of the Civil Law*. The *General Principles of the Civil Law* classifies legal persons into these four types: 1. enterprise as legal person, 2. official organ as legal person, 3. institution as legal person, and 4. social group as legal person. For the first time, the law has used the term, "enterprise as legal person," aiming to create a relatively independent position for the state-run enterprises, for ownership and management right separation, by reforming the administration mode of the government over enterprises² without endowing "enterprise as legal person" (or "legal person") with an autonomous position. Therefore, in the *General Principles of the Civil Law*, the institution of legal person does not entail the independent subject qualification of an organization to participate in civil activities by means of the legal formation technique, but actually is still a unit institution.³ "Legal person" is only an expression of "unit" in the law. With the change in form but not in content, social groups - including religious groups - are still placed in the unit system. In the unit system, the legal person position of social groups, including religious groups, is materially a position of social groups dependent on the unit system.

First of all, take note of these four conditions for a "legal person" specified in Article 10 of the *Regulations on Social Groups*: requirement for the minimum number of members (point 1), requirement for a fixed domicile (point 3), full-time requirement for working staffs (point 4) and requirement for minimum working capital (point 5). These specifications are the requirements of the state (administration) legislators, but not of the organizer of religious groups. In other words, religious believers - citizens - who fail to meet the above conditions will not be entitled to the right to establish a religious group. Furthermore, the requirement for "capacity to undertake independently the civil liabilities" (point 6) excludes the establishment of the religious groups that will not undertake any civil activity or undertake any civil activity in the name of a group. Therefore, the Author's opinion is that the requirement for a "legal person" actually functions to raise the threshold and thus to exclude the "organizations not as legal person" which fail to meet the above conditions; in this way, the "organizations not as

¹ Jiang Ping (editor), *Institutional Theory of Legal Persons*, China University of Political Science and Law, 1994

² Tong Rou, *Historical Tasks of Chinese Civil Law Science in the New Period*, article collection of Tong Rou, China University of Political Science and Law Press, 1996, p. 407

³ Yang Xiaomin, Zhou Yihu, *Unit Institutions of China*, China Economy Publishing House, 2000

legal person” shall not be able to obtain a legal position.¹ Simply speaking, the “legal person” conditions actually function to restrict religious freedom and freedom for association.

Not only is the Applicant required to certify, in the first step of application, that it satisfies the six conditions listed above, but in the second step of application it is also required to submit numerous documents: the application for preparation, the approval document from the administration of religions, the contribution verification report, the certificate of right to use the area, bio data of the organizer and proposed head, the personal identification certificate, and drafted articles for testifying to the administration of civil affairs. According to the Article Sample for Social Groups formulated by Ministry of Civil Affairs under the State Council, the Applicant must state, in the articles, that the social group accepts the service guidance and supervision of the competent authority, the administration of social group registration. The unitary social group organization structure has been designed: general meeting of members (supreme power organ), board of directors (execution organ) and executive board of directors, and appointment conditions and duties and rights of director general, deputy director general and secretary general. It is also required that the election or change of the general meeting of members and director general (legal representative of the social group) in a special circumstance “shall be reviewed by the competent authority and approved by the administration of social group registration.”

It is thus clear that the articles should be actually the expression of the organizers for the principle, organization structure and activities of social groups upon liberal association. However it must be formed per the requirements of the governmental document, and as a result, the articles are formatted at the discretion of administration. The administration document requires that a social group’s organization structure and personnel variation shall be subject to the administrative instruction, without taking “autonomy” but “control-dependence” as the logic for the establishment and activities of social groups. Thus, the establishment and activities of social groups are included in the administration system. By setting up the format and content for the articles of social group in the preparation for registration application of social groups, the government’s Ministry of Civil Affairs requires essentially the social groups to be established must be dependent on the administration. Dual administration is applied for the social groups.

3. The Respondent

As discussed above, in the administrative procedure for registration of religious groups, for Step 1, the administration of religions is the Respondent. For Steps 2 through 4, the administration of civil affairs – as the administration of

¹ Yang Kaile, *Why a ‘legal person’? — Analysis on Laws for Registration of Religious Groups (III)*, <http://www.pacilution.com/ShowArticle.asp?ArticleID=824> (accessed Nov. 2008).

registration – is the Respondent. In the first step of the procedure, by approving or disapproving the application, the administration of religions will determine if the promoter can continue with the procedure. To make this determination, the administration of religions applies a substantial review on the application. The items under review include the number of persons, name, structure, domicile, appointments and qualification of staff, financial funds, and the capacity of civil liabilities of the religious group to be established. The purpose for the review is to assess if the organizer has the capacity to undertake religious activities by establishing a religious group – so in essence, the decision is made of whether or not to give the organizer with the right to establish the religious group. Thus, the operation of this review mechanism – the right to assess if and how to prepare for establishment of a religious group – is to the administration, instead of being an area for self-assessment and self-deciding of the citizens. Obviously, the “(administration) legislator” designs such a mechanism with two considerations: the affair such as establishment of religious groups is so important that general prohibition is a premise; hence, the legislators view that the administration system is more suitable than the religious believers as citizens to assess what conditions should be satisfied to have the capacity to establish a religious group. Thus, the structural elements of religious groups have been specified by the administrative regulations. The necessity and applicability of establishing a religious group will be judged by the administrative bureaucrat. If a religious group can be established depends on the concession of the administrative authority. Then, the structural setup, internal arrangement, and establishment of religious groups are all included in the operations of the administration system.

In Steps 2 through 4 of the procedure, the Respondent is the administration of registration, i.e., the administration of civil affairs. If the Respondent refuses to approve the application in Step 2 or Step 3, the procedure will be ended, leading to the failure of the organizer to establish the religious group. Therefore, the administration of registration also applies the substantial review in Step 2 and Step 3. In addition to determining if the principle of the social group to be established is legal, the administration determines if the service provided by the social group violates the state interests or public interest or invades the rights of others, and if the organizer or the proposed executive officer has committed a crime. The items for review mainly include whether the administration of religions has approved, if the drafted articles comply with the *Sample Articles for Social Group*, if the local administration division has such religious group with the same or similar service scope (making it unnecessary to establish), and whether to establish a regional branch.

If the articles of the social group which has applied for establishment do not include an article as “accept the service guidance and supervision of the competent authority, the administration of social group registration,” or if the propose group’s internal organization, or the duty, authority, and qualification of the proposed executive officer are in conflict with the arrangement of the *Sample Articles for Social Groups*, the administration of registration will not approve the

articles and thus the articles shall come into force and social group cannot be established.

Article 13 of the *Regulations on Social Groups* specifies that where it is unnecessary to establish a social group which offers the same or similar service scope which has existed in the same administrative division, the administration of registration shall not grant its approval for preparation. The premise behind for such a rule is that there shall be only one social group in one service field in one administrative region: i.e., social groups are unitary. So when this rule is executed, the result will be that where one social group already exists in one service field in one administrative region, citizens cannot establish another social group of same or similar services, excluding the competition of social groups. Instead, there is a monopoly of social groups. It is why Article 7 of the *Implementation Measures for Registration Administration of Religious Social Groups* (05/06/1991) specifies “no more than one same or similar religious social group shall be established in one administrative region.”

On such premises, Article 19 of the implementation measures, “No Regional Branch shall be established” is cooperation with Article 7 to establish the hierarchical registration administration system for social groups, that is, that the social groups shall be registered and administrated pre region by the administration of civil affairs under the governments at different levels. With this hierarchical registration administration system, social organizations with same or similar services in different administrative regions cannot become a union body or they cannot independently decide to realize the cooperative relationship in a sense of union. Even for the national, local and basic organizations set up in the name of one social group, their cooperation in terms of services must be arranged and coordinated by the service administrative authorities in the relevant administrative regions through the administrative order and instruction.

In this way, in the administrative procedure for registration of religious groups, the purpose of administration of civil affairs review is to confirm that the established religious groups will agree to accept the service guidance, supervision and administration of the administration of religions and the administration of civil affairs. The religious group’s internal organization, and the duties, authority and qualification of the proposed executive officer shall be subject to the design and arrangement of the government’s Ministry of Civil Affairs. Only one religious group of the same religion shall be allowed in the local administrative region. All religious groups shall be administrated by the local administration of religions to avoid the separation of religious groups (activities) from the control of “residence management.”

4. Summary

These many factors - the registration procedures, administrative licensing, dual permission system, the conditions required for religious groups’ to become a “legal person,” the requirements for contents of articles, the article indicating

social groups’ “unitary” system and the article requiring that “no regional branch shall be allowed” – constitute the administrative registration system for religious groups. Due to its functions, the religious groups’ articles, structure, staffing, activities, and purpose are included in the administration system. Based on this, the nationwide local religious groups are respectively embedded in the structure of the central government – provincial government, local government, and basic government, creating a pattern for religious groups to be dependent on the administration system.

II. Part Two: Logic of Registration Administration

Outline of Part Two:

1. *Beijing Watch Church Case*
Table 2: Development of the Watch Church Case
2. *2006 Anhui Tongling Church Case*

Based on the rules relating to the registration such as the *Religious Regulations*, the *Regulations on Social Groups*, etc., Part One investigates the different rule which constitute the registration system. Additionally, based on the analysis of the administrative registration procedure mode of religious groups, it discusses the functions of the registration system. However, this is only a static analysis of the rules. As for how the registration system and the rules thereof play a part in the actual administration of religious affairs, real cases need to be investigated. Therefore, Part Two will discuss the administrative measures and logic of the registration administration of religious groups, by analysis of two house church cases in 2006.

1. 2006 Beijing Watch Church Case

Table 2: Development of the Watch Church Case

Time	Events
November 30, 2004	Regulations for Religious Affairs promulgated
January 22, 2005	The leaders of Beijing Haidian District Watch Church decided to apply to the government for registration
March 1, 2005	Regulations for Religious Affairs implemented
May 11, 2006	The promoters of Watch Church submitted the application for establishment to Haidian District Office for National, Religious and Overseas Chinese Affairs (ONRO)
May 17, 2006	The District ONRO required the applicant to “consult and apply to the administration of civil affairs according to the actual circumstances”

June 28, 2006	The promoters applied to Social Group Office of Haidian District Civil Affairs Bureau for registration
June 30, 2006	Social Group Office of District Civil Affairs Bureau required that to apply for establishment of a religious group, it is necessary to present the approval document the competent authority, District ONRO
July 3, 2006	The promoters of Watch Church submitted again the application to District ONRO for registration of religious group
July 21, 2006	After the applicant furnished the documents twice, District ONRO issued the Acceptance Notice for Administrative Approval Affairs and Acknowledgement Receipt of Submittals for Approval
August 11, 2006	District ONRO issued the Review Conclusion: the establishment of Watch Church is not approved
October 9, 2006	Regarding the Review Conclusion, the applicant submitted to Beijing Municipal Administration of Religious Affairs the Application for Administrative Reconsideration, with the District ONRO as the party under reconsideration
December 5, 2006	Municipal Administration of Religious Affairs issued the Resolution of Administrative Reconsideration: the administrative decision of District ONRO in not approving the application for establishment of Watch Church is maintained
July 18, 2007	The organizers of Watch Church presented to State Administration of Religious Affairs the Views of Christianity Beijing Watch Church on Church Registration

On January 22, 2005, the leadership of Beijing Haidian District Watch Church decided to apply to the government for registration. After the preparatory work of formulating the articles and enlisting sixty-eight promoters for one and half of years, on May 11, 2006, the promoters the church submitted to Beijing Haidian District Office of National, Religious and Overseas Chinese Affairs (“District ONRO”) their application for establishment of a religious group. On May 17, District ONRO replied in writing, requiring the Applicant “consult and apply to the administration of civil affairs according to the actual circumstances.” On June 28, the promoters applied to Social Group Office of Haidian District Civil Affairs Bureau for registration. On June 30, the office issued a written reply with the requirement that for application of an establishment of a religious group, it is necessary to present the approval document of the competent authority, which is District ONRO for the region.

On July 3, 2006, the organizers of the Watch Church again submitted the application to District ONRO for registration of religious group. After the applicant furnished the documents twice, on July 21, District ONRO issued the Acceptance Notice for Administrative Approval Affairs and Acknowledgement Receipt of Submittals for Approval. On August 11, District ONRO issued the Review Conclusion, with the decision that the to-be-established Watch Church's "proposed chaplain has not been certified by the legally registered municipal religious group; no full-time working staff relating the service activities of the social group, as fails to comply with Paragraph 4, Article 10, the *Administrative Regulations on Registration of Social Groups*." Thus, the application for establishment of Watch Church was not approved. The Review Conclusion recommended that the organizers of the Watch Church contact the Haidian District Committee of the TSPM of the Protestant Church, which has been legally registered and provides similar services, for relevant matters.

On October 9, regarding the Review Conclusion, the applicant submitted to Beijing Municipal Administration of Religious Affairs the Application for Administrative Reconsideration, with the District ONRO as the party under reconsideration, viewing that the particular administrative behavior of the office is in the category of administrative licensing, which violates the legal procedure, applies the wrong legal basis, and lead to serious chaos in the government-religious relationship. The applicant required for cancellation of such administrative behavior. On December 5, the Municipal Administration of Religious Affairs issued the Resolution of Administrative Reconsideration: "the particular administrative behavior of the Respondent is not in the category of administrative licensing, and the certified facts are clear, evidence is practical, legal basis applied is correct, procedure is legal and content is proper." Hence, it was decided to maintain the administrative behavior of District ONRO, in their refusal to approve the application for establishment of Watch Church. On July 18, 2007, the organizers of Watch Church presented to State Administration of Religious Affairs the Views of Christianity Beijing Watch Church on Church Registration. They have not received a response from the State Administration of Religious Affairs.

The organizers ("the Applicant") who applied for the establishment of Watch Church have not yet submitted the administrative lawsuit to the court, but due to the administrative reconsideration, the event still constitutes a case.

With the *Religious Regulations* promulgated, religious groups must apply for registration per the *Regulations on Social Groups*. According to the analysis in the first part above, to apply for registration, the religious groups must be covered under the service guidance supervision system of the administration of religions and the administration of civil affairs: apply four times, accept the three reviews and approvals of the administration of religions and the administration of civil affairs and satisfy the conditions required by the *Regulations on Social Groups* before obtaining the registration and being entitled to the legal position. Such duplicated review and approval aims to ensure the generation of the religious

groups in compliance with the requirement of the administration system so as to achieve the whole control over the religious field. In this case, the Watch Church positively applied for registration under this control background. In view of their response, the organizers hold the position of “dialogue theory.”

However, in the above case, when the organizers initially applied to the local administration of religions, District ONRO, this office required them to consult with and apply to District Administration of Civil Affairs. When, at the request of District Administration of Civil Affairs to obtain the approval from District ONRO, the organizers applied again, District ONRO required them to furnish the documents twice. In the Acknowledgement Receipt of Submittals for Approval issued by District ONRO on July 21, 2006, the organizers were notified: if the submission is incomplete or not in compliance with the statutory form, Notice for Replenishment of Submittals for Administrative Licensing will be issued on the same day. According to the wording of the administrative document, the religious administration system has by itself defined the review and approval of the application of religious groups for registration as the behavior of administrative licensing.

In the registration procedure for establishment of religious groups, the application submitted by the promoters in the case to District ONRO was the first step of this procedure. In the first step of application, the Applicant should testify to the administration of religions that it has satisfied the six conditions as legal person: 1. requirement for the minimum number of members; 2. regular name and organization structure; 3. fixed domicile; 4. full-time working staff relating to the service activities; 5. minimum working capital; 6. capacity to undertake independently the civil liabilities, which can, in practice, be satisfied by the independent properties possessed in the name of proposed religious group. Therefore, the above conditions are basically the requirements of form and quantity, which are all particular and definite standards that can be reached, but cannot be met easily by all persons. For example, if Requirement (4) is designed with the purpose to define and ensure the relevant activities that religious groups can undertake, it should have required the religious groups to have the special working staffs with the capacity to undertake religious activities. However, the problematic question is this: will such capacity and qualification of the working staffs be assessed and decided by the organizers of the religious groups independently or determined by the administration of religions in an administrative manner?

In this case, the rational of the Review Conclusion of District ONRO in refusing the Applicant from establishing the Watch Church is as follows:

According to Paragraph 1, Article 27 of the *Regulations on Religious Affairs* of the State Council, religious personnel who are determined as qualified by a religious body and reported for the record to the religious affairs department of the people's government at or above the county level may engage in professional religious activities.

According to Article 13 of the Regulations of Beijing on Religious Affairs, the identification of religious staffs shall be certified or cancelled legally by the legally registered municipal religious group according to the conditions and procedure specified in the regulations and should be filed with the municipal governmental administration of religious affairs.

The proposed pastor of the Watch Church has not been certified by the legally registered municipal religious groups and is not qualified as the religious staff. Therefore, the Watch Church has no full-time staff working in compliance with its religious activities.

According to the requirement of Article 10 of the *Administrative Regulations on Registration of Social Groups*, one of the conditions to be a legal person which must be satisfied by the social group is to have full-time working staff relating to the service activities.

Watch Church has full-time working staff relating to its religious activities and fails to meet the conditions as legal person and thus cannot be established.

According to the inference of the Review Conclusion, the religious personnel shall be identified by the legally registered religious group, while the administration of religions is only responsible for filing. It seems that the identification of religious personnel is the internal affair of the religious group, while the filing of the authority of religious affairs is only to collect and afterwards file the information for reference.

However, as discussed in the first part above, due to Article 13 of the *Regulations on Social Groups* (an article on unitary or exclusive groups of a specific nature in that region), only one religious group will be allowed in one administrative region. Thus, religious personnel can only be identified by the only religious group that has been established. Such religious group established by law must accept the service guidance of the administration of religions. As one of the major premises for the above inference, Paragraph 1, Article 27 of the *Religious Regulations* has actually taken the procedure of “identification of religious group –filing at the authority of religious affairs” as the premise for “religious personnel to undertake religious activities”, that is, performing **“the obligation for the procedure of religious group identification-filing authority of religious affairs” is an important legal element and “religious personnel obtain the identification to undertake religious activities” is a legal effect.** Simply speaking, failing to file, one can neither be religious personnel nor undertake any religious activities. Such filing is substantially approval or permit.¹

The first step of the registration procedure for a religious group is for the religious group to become a “legal person.” However, satisfying the condition for becoming a legal person, in terms of the full-time staff, will only be

¹ Cao Zhi, *Analysis on Filing Procedure for Religious Personnel*, speech, 2007 Chongqing Religion and Legal Governance Academic Forum

determined by the review and approval of the authority of religious affairs. The procedures established in the *Regulations on Social Groups* and the *Religious Regulations* prove that the review and approval of the authority of religious affairs, regarding the application to establish a religious group, is a situation of administrative licensing. In the case, the Review Conclusion introduced “the legally registered municipal religious group” as pretext and refused the establishment of the religious group for the procedural reason that the Applicant’s “proposed chaplain has not been identified by a religious group” and thus the applicant does not comply with the condition as legal person. In this way, the Review Conclusion tried to show a false impression that the Applicant fails to meet the condition as legal person, while the authority of religious affairs makes only the procedure assessment. Hence, such false impression has been used to cover the administrative licensing aspect of the Review Conclusion. The requirement for “the legal registered municipal religious group” to identify the qualification of the applicant religious group’s working staff put the promoters of the Watch Church into the dual dilemma: were they to give up religious autonomy and accept the disposal of “a legally registered religious group” (and then the authority of religious affairs), or where they to give up the idea of establishing an independent religious group? This scenario begs the question, **before the registration of “the legally registered municipal religious group” for establishment, who will identify its religious personnel? Does this indicate that “the chicken produces the egg and the egg produces the chicken”?** The basis for this circular reasoning is that with the administrative licensing power, the authority of religious affairs determines who can be qualified as religious personnel and who can be entitled to religious freedom to establish a religious group.

Therefore, the determination of District ONRO and Municipal Administration of Religious Affairs that the Review Conclusion is not an example of administrative licensing is not confirmed. The Review Conclusion is substantially a behavior of administrative licensing, which in effect derived the Applicant of the religious freedom to establish a religious group.

2. 2006 Anhui Tongling Church Case

On November 26, 2006, at Labor New Village, Tongling, Anhui, a Christian house churches founded by Wang Xingquan eighty-three years ago has been banned by the local administration of religions and its chapel has been closed down. The administration of religions ordered the church to join Municipal Committee of TSPM Protestant Church. At the strong request of the believers of the church, on December 5, the municipal government held a hearing about

the administrative behavior. After the hearing, the municipal government affirmed the decision of the administration of religions for this ban.¹

The particulars of whether this church was banned because it is not registered have not been proven with the definite facts. However, when these factors are considered – the provisions of investigating the legal liabilities of the social groups undertaking activities without the registration specified in Article 35 of the *Regulations on Social Groups*; the place of religious activity established without the registration specified in Article 43 of the *Religious Regulations*; and the reasoning that the local administration of religions would enforce the law in this way in the said case – it is observed that the church has been banned because they have not registered. Notably, the case took place after the *Religious Regulations* was promulgated for implementation and with the background that the government seeks control over the religious groups through the registration procedure. The Anhui Tongling Church had been in operation for eighty-three years – and had existed before the local Committee of TSPM of the Protestant Church, but it has been banned by Tongling Administration of Religions for the reason of non-registration.

The Watch Church case put the Anhui Tongling Church into a dilemma: the Watch Church had been an active religious organization for decades, but its application for registration as a religious group was rejected. So then, is the church legal or illegal? What position will the *Religious Regulations* and the administration of religions give to the non-registered religious groups? The logic of the law enforcement of the administration of religions in the Anhui Tongling Church Case seems to be helpful to answer the above questions. To this end, it is necessary to first study the nature of “ban,” including the components and legal effect of the “ban” article.

According to the analysis on the “ban” articles in the four administrative laws and the seven administrative regulations (see Appendix A), it is revealed that a “ban” has certain defined features.

A ban is meant for any behavior and activity without administrative licensing or which has exceeded the scope of administrative licensing. Since such behavior or activity is undertaken by a group established without approval, a ban is intended for such group with the purpose to immediately, totally and forever prohibit the existence of such group and terminate such behavior or activity. In order to ensure the realization of such purpose, it is necessary to apply the total and immediate mandatory action against the organizer (or promoter) of such group, such activity and site, the working capital and utilities. Therefore, it is necessary for the administration endowed with the administrative license power over the establishment of such group to initiate the ban. Then, the administration

¹ Case source, ChinaAid, <http://chinaaid.org/2006/12/11/house-church-closed-in-anhui-xinjiang-christians-suffer-in-jail/> (accessed Nov. 2008)

departments which are entitled to take mandatory authority over such activity organizer, site, funds, and utilities will cooperate to finish the work. This information reveals that a ban is substantially the integrated application of administrative behavior: seal up the site, detain the relevant goods, confiscate the illegal income, impose an administrative punishment such as a fine against the organizer or participants, and even investigate the criminal liabilities. Therefore, a ban is an integrated response of government involving several administrative departments and even the public security department, court and Procuratorate. Clearly, ban includes the administrative mandatory measures, administrative punishment, and criminal punishment, which can be imposed separately or collectively, without application of the “proportional principle” which would consider different circumstances. The application of a ban takes total mandatory action against the persons, goods, capital and site relating to the unapproved organizational activities, with the purpose of completely prohibiting the activities and existence of such organization. A ban can not only immediately terminate the activities and existence of the banned objects, but it can also prevent or intimidate the restoration of such groups and their activities in the future by declaring or investigating the administrative liabilities and criminal liabilities of participants or organizers.

Therefore, it appears that a ban is a powerful, total and systematic action of the government against the groups and their activities which do not have permission or licensing control, for public reasons such as public security, public health, public hygiene and public interest. Also, it appears that by deploying all administrative departments and even judicial departments to investigate the administrative liabilities or criminal liabilities of participants or organizers, the goal is to completely prohibit the existence of such groups and substantially restrict the freedom, such as economic freedom, religious freedom, or freedom for association.

Even until now, the legislators, law executors and researchers have been continuously debating whether “ban” should be defined as an administrative mandatory measure or an administrative punishment (see Appendix B) According to the above analysis, it seems this is actually a false question, not only because of the nature, component and legal effect of a ban, but also because of the origin of “ban.”

Soon before the CPC took over the power, the term ban was first present in the *Instructions on Banning the Feudal Secret Societies* issued by North Bureau of CPC Central Committee (02/20/1948). Later, North China People’s Government issued the *Dismissal of All the Secret Societies and Feudal Superstition Organizations* (06/20/1949), requiring that all the organizers of the secret societies register with the public security organs under the local district and county governments, and severely punishing those who failed to registration yet continued with their activities. On the same day, the Social Department of CPC Shandong Branch issued the *Instructions for Handling Feudal Superstition Secret Societies* (06/20/1949), declaring a ban on the “feudal superstition secret societies.”

Since 1949, when CPC Central Committee and Ministry of Public Security started to ban the secret societies nationwide, the word “ban” frequently appeared in the policies of the ruling party and the governmental documents. The former CPC policy propaganda journal, the *Manual of Current Events*, published a special article pointing out that “banning severely reactionary secret societies has become one of our current important tasks to eliminate traitors and prevent spies and suppress reactionary activities.”¹ In October 1950, the Ministry of Public Security distributed the *Circular of the Experiences of Banning Yiguandao in Daixian County, Shanxi*, pointing out “banning the reactionary secret societies is a deliberate political struggle and ideological struggle.” While implementing the *Instructions of CPC Central Committee on Suppressing Reactionary Activities* (03/18/1950), the North China Bureau emphasized from time to time, “Yiguandao and Longhuahui in North China is the most reactionary and destructive secret society, which must be thorough banned.” On December 18, 1950, Beijing Municipality issued the public notice to “ban Yiguandao.” Such banning was thoroughly undertaken with such methods as arresting for public trial, registering personal data of the participants and forcing them to withdraw their membership, closing the temple, internal clearance, etc. On December 20, the *People’s Daily* published an editorial titled “Firmly Ban Yiguandao.”² On February 21, 1951, the Central People’s Government published for implementation the *Regulations of the People’s Republic of China on Punishing the Reactionary*. According to Article 8 thereof, those undertaking reactionary activities by means of feudal secret societies would be sentenced to death penalty or life imprisonment; those causing less impact would be sentenced to an imprisonment of over three years.

From this, it may be observed that use of the ban originated from the political means taken by the CPC to acquire the political power and control the social organizations. It entered, through the policies of the ruling party and the administrative documents of the government and it dominated the operation of the governmental system through the “reactionary political move,” including the administrative registration and sealing up as well as judicial proceedings of arrest and trial. Additionally, the ban is also supported with regulations granting the legality to its highest criminal punishment. This article became Article 99 of the first criminal law of China (07/01/1979): “Whoever organizes or uses feudal superstition, superstitious sects or secret societies to carry on counterrevolutionary activities shall be sentenced to fixed-term imprisonment of not less than five years; if the circumstances are relatively minor, the offender shall be sentenced to fixed-term imprisonment of not more than five years,

¹ Zhang Lin, *Severely ban the reactionary secret societies*, 4th ed., *Manual of Events*, 1950, p. 77. Cited from Zhang Hao and Zhang Ziqin, *Evolution of the Policies of the Communist Party of China on Secret Societies before and after New China was established*, 5th ed., Journal of CPC Guizhou School, 2004.

² Zheng Yonghua, *Banning Yiguandao in Beijing during the Early Period of New China*, 1st ed., Beijing Archives, 2004

criminal detention, public surveillance or deprivation of political rights.” In the Circular of the CPC Central Committee on *Basic Viewpoints and Basic Policies for Religious Affairs in Socialist Period of China* (03/31/1982), Document No. 19, it stated that “no reactionary secret societies and sorcerer and witches that have been banned shall be allowed to restore activities. All that cast spells on people and cheat for money and harm people will be strictly banned and brought to the law.” The background of this statement is the history of banning analyzed above.

The Criminal Law of 1997 changed from the “reactionary crime” wording in the Criminal Law of 1979 to the “crime of endangering the state security.” Additionally, Article 99, which includes, “Whoever organizes or uses feudal superstition, superstitious sects or secret societies to carry on counterrevolutionary activities” of the Criminal Law of 1979 was shifted from Chapter One to Chapter Six (Crimes of Disrupting the Order of Social Administration—Crimes of Disrupting Public Order) and was renumbered as Article 300. Such criminal behavior is defined in three categories: he who “organizes and utilizes superstitious sects, secret societies, and evil religious organizations or sabotages the implementation of the state’s laws and executive regulations by utilizing superstition,” “cheats others, thereby giving rise to the death of people,” or has “sexual relations with women, [or] defraud money and property.” As compared with Article 99 of the Criminal Law of 1979, Article 300 of the Criminal Law of 1997 includes, regarding criminal subjects, “evil religious organizations.” Also the recipients of such criminal behavior were changed from “proletariat dictatorship and socialist institutions” to “state’s laws and executive regulations, human right and properties.” Thus, the objects of the ban were changed from “secret societies” to religious groups, while the reason for a ban was changed from “reactionary” to “disrupting social order” or “invading human rights or properties.”

This logic of changing the ban from political measures and policy terms to legal measures and legal terms was repeated on the controversial issue of Falun Gong.

The Notice of CPC Central Committee about *Party Members not to Practice Falungong* which was issued on July 19, 1999, called on the Party to undertake internally the political struggle against Falun Gong. On July 22, the Ministry of Civil Affairs, Ministry of Public Security and General Administration of Press and Publication issued a notice to ban Falun Gong. On August 29, General Office of State Council distributed the *Guidelines of State Administration of Sports, Ministry of Civil Affairs and Ministry of Public Security on Strengthening the Administration of Health-keeping Qigong Activities*, requiring for “banning firmly the illegal Qigong organizations.” In October, regarding the “crime of organizing and utilizing evil religious organizations,” the Supreme Court and Supreme Procuratorate published the judicial interpretation,¹ in which “evil religious organizations” are

¹ *Interpretation of the Supreme People’s Court and Supreme People’s Procuratorate on Applicable Laws for Criminal Cases of Organizing and Utilizing Evil Religious Organizations*, (SF 1999) No. 18, passed at the 1079th meeting of the Judicial Committee of Supreme People’s Court

defined, including the “Qigong organization.”¹ The Standing Committee of NPC passed the *Resolution on Banning Evil Religious Organization, Governing and Punishing the Evil Religious Activities*, in which “Falun Gong” was defined as “evil religion,”² so that the criminal punishment against the organization and its behavior complies, in the form, with the “principle of conviction and penalty according to law.” In 2001, for the first time, all the standing committee members of CPC Political Bureau attended the National Religious Work Conference, at which Party Secretary General, Jiang Zemin, delivered a speech, emphasizing again the need to strengthen the administration of religions and guide them to adapt to the socialism.³ After 1999, the Supreme Court and Supreme Procuratorate jointly issued the judicial interpretation for “Crackdown [on] the crimes of utilizing evil religious organizations.”⁴ The two judicial interpretations of the Supreme Court and Supreme Procuratorate not only expanded the criminal subjects specified in Article 300 of the Criminal Law of 1997 in terms of interpretation by defining “evil religious organization,” but also these interpretations took on the criminal legislation in the name of legislative power by applying the articles in the acts,⁵ integrating the regulations on evidence of crimes and charges,⁶ enumerating on regulations and describing regulations,⁷ and other legislative techniques. This control over Falun Gong revealed again the governmental behavior of investigating administrative and criminal liabilities initiated by the ruling party – and thoroughly and timely

on October 9, 1999, and at the 47th meeting of the 9th Session of Procuratorate Committee of the Supreme People’s Procuratorate on October 8, 1999, implemented as of October 30, 1999.

¹ *Interpretation of the Supreme People’s Court and Supreme People’s Procuratorate on Applicable Laws for Criminal Cases of Organizing and Utilizing Evil Religious Organizations*, Article 1

² Chairman Jiang Zemin, interview with French journalist *Le Figaro*, October 25, 1999, in which statement was given that “Falungong is an evil religion that harms the society and people.” The *People’s Daily*, *Falungong is an Evil Religion*, by special reviewer, October 28. The 12th Meeting of NPC Standing Committee passed the *Resolution of NPC Standing Committee on Banning Evil Religious Organizations, Governing and Punishing Evil Religious Activities*, October 30.

³ Xinhua News Agency, *National Religious Work Conference held in Beijing*, December 12, 2001

⁴ *Interpretation of the Supreme People’s Court and Supreme People’s Procuratorate on Applicable Laws for Criminal Cases of Organizing and Utilizing Evil Religious Organizations (II)* FS (2001) No. 19, passed at the 1174th meeting of the Judicial Committee of the Supreme People’s Court on May 10, 2001, and at the 87th meeting of the 9th Session of Procuratorate Committee of the Supreme People’s Procuratorate on April 29, 2001

⁵ *Interpretation of the Supreme People’s Court and Supreme People’s Procuratorate on Applicable Laws for Criminal Cases of Organizing and Utilizing Evil Religious Organizations*, Articles 2 and 3; *Interpretation... on Applicable Laws II*, Article 1

⁶ *Interpretation... on Applicable Laws*, Article 2, 4-9; *Interpretation... on Applicable Laws (II)*, Article 1-12

⁷ *Interpretation... on Applicable Laws*, Article 2; *Interpretation... on Applicable Laws (II)*, Article 1

implemented by the State Council (Ministry of Public Security, State Administration of Religious Affairs and other relevant departments), Supreme Court and Supreme Procuratorate and NPC through cooperative application of their respective duties: this method is how the ban executed. The purpose of ban is to prohibit the individual behavior and close the place of the activity.

Therefore, according to the analyses on the articles of the prevailing laws and regulations for ban and the historical origin of ban in China, it seems that ban is actually the mandatory governmental action (of legislation, administration, and judicial systems) taken by the ruling party and its government. This action is taken against the social groups which are substantially threatening its ruling position, opposing its government policy, and hindering the execution of its policies, and against those organizations which have not been registered, i.e., are without the administrative licensing. This action is taken with the goal to terminate the organized activities of such groups and cancel completely the existence of such groups or organizations, to then be able to control the society.

3. Summary

This is why the mode of investigating the legal liabilities in essence is a ban, as specified in Article 35 of the *Regulations on Social Groups* on social groups undertaking activities without registration and in Article 43 of the *Religious Regulations* on religious activity places and religious schools established without registration. This is the logic for why Anhui Tongling Church, which had been in operation for eighty-three years, failed to register and was banned. The Watch Church's application for registration was rejected for the same basic reasoning that Anhui Tongling Church failed to register and was banned. This basic reasoning is that to register means to accept and to be included in the dual administration system of the administration of religions and the administration of civil affairs. This is why the administration of religions required, in the cases of the Watch Church and Anhui Tongling Church, for them to join the Committee of TSPM of the Protestant Church, though the former "recommended" and the latter "ordered."

III. Part Three: Dilemma in Registration for Relief

Outline of Part Three:

1. *Does registration approval violate the law?*
2. *Religious Administration System*
3. *Summary*

The Anhui Tongling Church and Watch Church advocated their right to legal position of religious groups by applying to the administrative hearing and administrative reconsideration. In the case of Anhui Tongling Church, upon hearing the case, the Municipal Government affirmed the ban against the church – which had a history twenty-six years longer than that of the Republic. In the

case of the Watch Church, the Municipal Administration of Religious Affairs ignored the administrative document of District ONRO as indication of “administrative licensing,” opining that such behavior is not in the category of “administrative licensing.” Also, it set aside the claim that District ONRO failed to notify the Applicant of the right for administrative reconsideration and administrative litigation, affirming the proceedings had been handled legally. If the administration-dominated administrative hearing and the limitation of the administrative reconsideration proceeding led to such dilemma for the registration of religious groups in these two cases, will the administrative litigation be able to resolve such dilemma? If not, what is the actual reason? This is the question to be studied in the third part of the Paper.

1. Does registration approval violate the law?

In administrative litigation, the court may approve an appeal on occasion of any of five particular administrative actions: abuses of authority, misfeasance, inadequate major evidence, wrong application of laws and regulations, and violation of the statutory proceeding.

Abuses of Authority: Since according to the *Religious Regulations* the administration of religions is entitled to the executive power for religious affairs, the option of “abuses of authority” can be excluded.

Misfeasance: “Misfeasance,” i.e., abusing the discretion, applies in case where the discretionary actions of the administration and its working staffs violate the principle of administrative rationality within the scope of authority.¹ In Part One of this Paper, it was clearly shown that the registration rules for religious groups are as follows where a religious group refuses to be included in the guidance and supervision management system of the administration of religions and the administration of civil affairs (**legal requirements**), the administration of religions will not grant the registration (**legal consequence**). The non-registered religious groups (**legal requirements**) shall not be allowed to set up the religious activity places and to hold religious activities; otherwise, they will be banned by the administration of religions (**legal consequence**). Hence, here the legal requirements set by the *Regulations on Social Groups* and the *Religious Regulations* are not satisfied, the administration of religions must refuse the registration and ban the group. In this proceeding, the administration of religions has neither the power to determine the satisfaction of legal requirements nor the choice to determine independently the legal consequence, i.e. no space for law execution. The right of the religious administration is only to apply mechanically the applicable regulations, as is the “constrained administration,” instead of “discretionary administration.” Therefore, the registration relief of religious groups is not applicable to the reason of “misfeasance.”

¹ Zhu Xinli, *New Definition of Administrative of Abuse of Duties and Power*, 3rd ed., Law Study, 1994

Inadequate main evidence: regarding “inadequate main evidence,” when religious groups refuse to be included in or belong to the guidance and supervision management system of the administration of religions and the administration of civil affairs (a fact), in other words when religious groups pursue the position of autonomy, this will become the evidence for the administration of religions to reject the registration and to ban. Therefore, if religious groups advocate the independent and autonomous position through administrative litigation, how can it be possible to conclude that the administration of religions has “inadequate main evidence”?

Wrong Application of Laws and Regulations: Similarly, the function of the registration system of the *Religious Regulations* and the *Regulations on Social Groups* is to have those religious groups which accept to be included in the guidance and supervision management system (of the administration of religions and the administration of civil affairs) to be registered for a legal position; otherwise, they will be rejected for registration and deemed as illegal groups. Hence, the administration of religions executing the law according to this reasoning will not have any problem of “wrong application of laws and regulations.”

Violation of Statutory Proceedings: In Part One of this Paper, Institutional Functions of Registration, it was discussed that the registration process consists of four sequential applications, of which the first three consist the three links: application, review, and refusal or approval. Since the review and approval is an internal procedure, a passive administrative action, actually the only action of the administration which affects the Applicant is being refusal or approval. Obviously, it is impossible for the administration of religions and the administration of civil affairs to “violate the statutory procedure.” Furthermore, even if in the two cases discussed in this Paper, the administration of religions failed to notify the Applicant of their right to submit the administrative reconsideration – or administrative litigation in case of appealing the administrative behavior – it will not be possible to effectively relieve the religious groups from the dilemma of registration, because the administration of religions may still use the same reasoning, to make the same particular administrative behavior as the previous particular administrative behavior.

According to the above analyses, the organizers of religious groups will face a dilemma in trying both to submit an administrative litigation and to pursue the judicial relief. This dilemma is not only due to the limitation of the relief procedure, but more importantly due to the registration system built by the *Religious Regulations* and the *Regulations on Social Groups*, which is not only the basis for how administrative law is executed in the administrative procedure of registration, but it is also the basis that must be applied by the judge without any review during registration litigation. Consequently, the administrative licensing power in the registration management is not constrained; the relevant human right cannot be protected after all. Then, is such registration administration a product of abeyance of the religious administration system or incompliance with the existing system?

2. Religious Administration System

In 1949, the CPC changed from a revolutionary party to a ruling party and the state administration power system was directly derived from the party and the army organization system. Based on this, these three documents issued by CPC Central Committee defined the institution for the party's control of the administration system: 1. the *Decision to Organize the CPC Committee within the Central People's Government*, 2. the *Decision to Establish the CPC Organization with the Central People's Government*, and 3. the *Decision for Strengthening the Leadership of Central Committee over the Government (Draft)*. The political power structure for the party to control the government was established accordingly.¹

One of the ways for the ruling party to carry out its political authority in the society is to rebuild social order. In the *Declaration at the First Plenary Session of Chinese People's Political Consultative Conference*, Mao Zedong pointed out how to rebuild the order: "we shall be further organized. We shall organize absolutely most of Chinese people in the political, military, economic, cultural and other different organizations so as to overcome the non-organization state of Old China, maintain the people's government and the people's liberation army with the collective force of the great people and build an independent, democratic, peaceful and united rich and strong new China."² CPC tried to form a "collective force" by keeping different people in different organizations united to assist the government in achieve the political target: "build a New China." This begs the question, how should such organization in the religious field be formed, to build such order?

In 1950, the ruling party and government initiated the mass patriot movement in the religious circle: anti-feudalism in Buddhism (including Tibetan Buddhism), Taoism and Islam, anti-imperialism in Christianity and Catholicism; with "counterrevolutionaries" as the standard to distinguish the "foe and friend."³ In such mass movement, the purpose was to eliminate those who objected to the ruling party and government's religious policies and its political authority, through accusing, identification and punishment of "reactionary crimes."

In 1950, the Government Administration Council promulgated the *Provisional Measures for Registration of Social Groups*, indicating that "religious groups" were one of the six major social groups that must be registered, and including various measures for implementation such as the following: enforce the dismissal of those failing to register; prohibit the registration of "reactionary groups" for establishment; cancel the registration of and dismiss the registered groups with

¹ Lu Feng, *Origin and Formation of Chinese Unit System*, 5th general ed., Quarterly Journal of Chinese Social Sciences, Hong Kong, November 1993

² Ma Zedong, *Long live the union of Chinese people*, September 30, 1949

³ Chi Nai, (Editor), *Religious Work of Contemporary China (Part I)*, Contemporary China Publishing House, 1998, pp 72-110

“reactionary behavior.” Also, groups requesting the registration for establishment must be obliged to accept the guidance of the government and assist the government.¹ For instance, in 1951, the Government Administration Council pushed the *Regulations for Registration of the Cultural and Education Relief Organs and Religious Groups Accepting Foreign Subsidies and Being Run with Foreign Capital, Implementation Measures for Registration of the Cultural and Education Relief Organs and Religious Groups Accepting Foreign Subsidies and Being Run with Foreign Capital and Treatment Measures for Christian Groups Accepting American Subsidies*, which, for the reason of “anti-imperialism,” enforced the Chinese Christian groups to separate from the foreign churches and to register.² Additionally, upon experiencing the land reform, anti-feudalism, suppression of anti-revolution, banning of reactionary secret societies and folk secret religions, Taoism existed in the form of China Taoism Association when Ministry of Internal Affairs approved to issue the Registration Certificate of Social Group numbered SZ No. 002.³

Therefore, actually only those religious leaders who supported and obeyed the patriot movement would be deemed as partners participating in the united front of the ruling party. Then, the central government pushed such leaders from different factions of one religion to be merged to form a unitary national religious group. According to the administrative order, the local governments at all levels supported such leaders from different factions of one religion in their respective administrative regions to be merged to form a unitary local religious group. The articles of such religious groups included a statement of acceptance of leadership of the government, and willingness to assist the government in executing the religious policy. The leaders of such religious groups were included, as representatives of the social religious circle, at the political consultative conferences at different levels in the political structural arrangement. They undertook the political functions of “political consultancy, democratic supervision and participation in politics” under the leadership of the ruling party.⁴ Leaders of such religious groups were listed in the administrative and

¹ *Provisional Measures for Registration of Social Groups*, passed on September 29, 1950, at the 52nd administration meeting of the Government Administration Council under the Central People’s Government, especially Article 4 thereof. *Implementation Rules for Provisional Measures for Registration of Social Groups* (Ministry of Internal Affairs under Central People’s Government on March 23, 1951), especially Articles 8 and 10. Fan Baojun, (editor): *Association Legislation and Social Group Management*, Guangming Daily Press, 1989, pp 119-123; p123-127.

² Chi Nai. *Contemporary China (Part I)*, pp. 84-86

³ Chi Nai, *Contemporary China (Part I)*, pp. 353-354

⁴ The phrase, “People’s Democratic United Front” from the Preamble of the 1954 Constitution was expressed as “Patriot United Front” in the Preamble of 1982 Constitution, in the organizational form of Chinese People’s Political Consultative Conference; the affirmation of the 4th constitutional amendment for “the multi-party cooperation and political consultancy institution led by the Communist Party of China

institutional staffing, for which the fund was included in the state financial budget (see Appendix C). Different administrative departments of “registration” and “guidance” constituted the dual administration over the religious groups. Through the religious groups, the government directly implemented the administration, and such religious groups hence became the extension of the governmental administrative system in the religious circle. Therefore, such religious groups were included in the political system controlled by the ruling party as well as in the administration system of the government. National religious group and local religious groups of one religion appeared to be one religious organization system, but were actually controlled by the party organization and government organizations at different levels due to the subordination relationship with the party organization system and the administration system.

The government executed these four clear steps toward the religious groups:

First the government assessed and identified the nature of religious groups according to its ideological standard. Based on this, the mass movement was used to restructure the religious groups in compliance with its requirement. The mechanism the government used to decide which religious groups would be entitled to the legal position is the registration system, the rules of which include the following: prohibit the registration of reactionary groups; cancel the registration of groups in opposition; dismiss the groups opposing the registration. All these led to the premise of obeying the government, if a social group wishes to exist legally.

Second, the government endows the religious groups in a legal position due to abeyance with identity as a partner of the ruling party, and includes them in the political consultative conference as the only representative of the religions from the religious circle. Such design orientation of “politicalization of religious groups” provides the justification for the ruling party to rule, as well as to ensure the support of the religious groups included the organization system of “political consultative conference” to its religious policy.

Third, through the administrative staffing arrangement, the leaders of patriot religious groups have their funds provided from the state financial budget. In this way, with the authority of religious affairs and the administration of civil affairs act respectively as the competent authorities of the religious groups and the administration of registration, religious groups are included the administrative system of “competent registration, dual responsibility and hierarchical management” to become the extension of the administration system to the basic in terms of religious administration. The subordinate position of religious groups to the government led to the “administrative tendency of religious groups.”

will exist and develop for a long term” indicated the political function of Chinese People’s Political Consultative Conference in the constitutional institution of China.

Fourth, the effective mode of labor work division acquired successfully by the capitalist institutions depending on market was copied by Soviet Union to promote the industrialization and it was followed by the Chinese ruling party.¹ The socialist reform in partnership with the socialist industrialization enforced the implementation of nationalization of such resources as land, housing, enterprises, etc. Thus, enterprises were placed under the administration's control and the central planning management system was established. With the residence registration institution as the controlling measures of centralized purchase and sale, and the labor institution and collective welfare distribution institution of "unified distribution," this led to the total dependence of laborers to the employment, i.e., the individual dependent on the state.² Based on this, according to the different functions of production, the ruling party divided different organizations in governmental organs, institutions and enterprises. The social groups, including religious groups, are included in the administration category of governmental and institutional units in terms of administration.³ The "unitization of religious groups" was thus formulated. (See Table 4 on the following page.⁴)

Remainder of page intentionally left blank

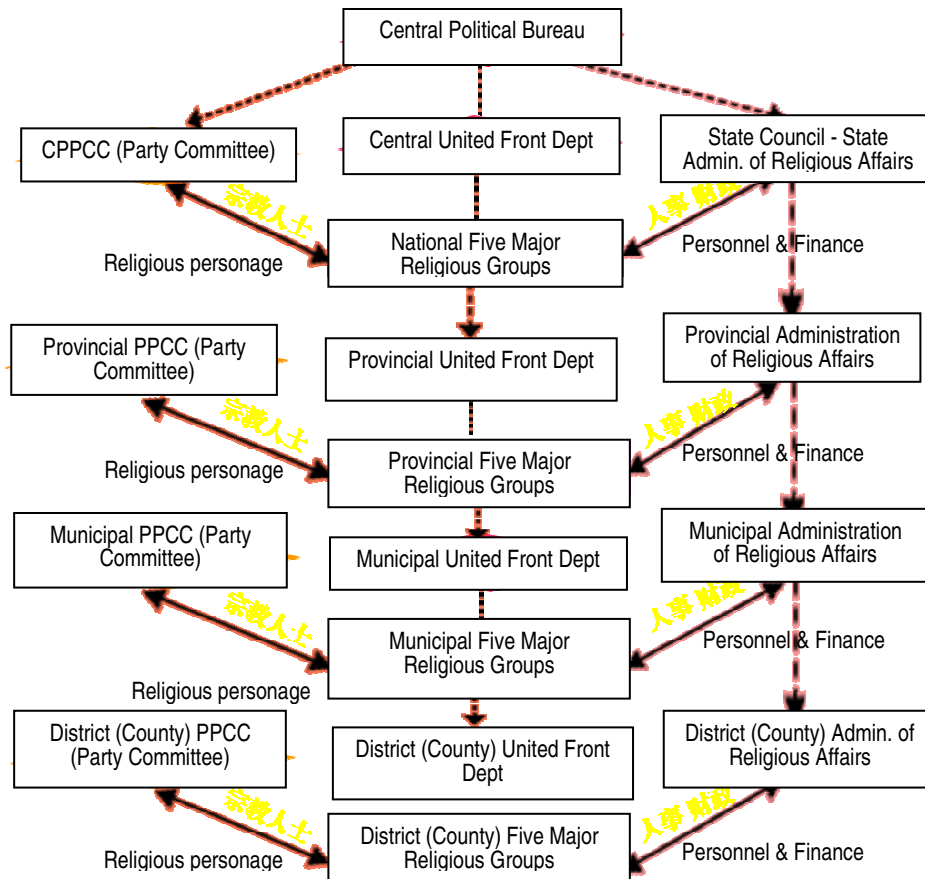
¹ Jeffrey Sachs, Hu Yongtai, Yang Xiaokai, *Economic Reform and Constitutional Transformation*, <http://www.gongfa.com/xianzhengzhuanguiyangxk.htm> (accessed Nov. 2008)

² Lu Feng, *Chinese Unit System*, 1993

³ Yang Xiaomin, Zhou Yihu, *Unit Institutions*, 2000

⁴ Credit is gratefully given to Wang Guanglaing for technical support he provided in preparing the table.

Table 4



3. Summary

The politicalization, administrative oversight, and unitization of religious groups have formed and consolidated the unitary feature religious groups. The process of molding the four features of Chinese religious groups is also the building process of Chinese religious administration system, which not only determines the functions and logic the registration rules of religious groups registration, but is also the source for the relief difficulty in registration of religious groups.

IV. Part Four: Article 36 of Constitutions and Registration System

Outline of Part Four:

1. *Article 36, Legislation and Religious Regulations*
2. *How Article 36 was Generated*
3. *“Administrate Religions as per Law” under Power Operation*
4. *Summary*

From the above analyses, the following argument may be drawn: the Chinese religious administration system is the base for the *Religious Regulations* and the *Regulations on Social Groups* to build up the registration system for religious groups, and thus the relief dilemma for registration of religious groups is created: religious groups must depend on the administrative system, and only through it can religious groups be established, places of religious activities be set up, and religious activities can become “legal” - otherwise, all such is “illegal.” Thus, only the religions which are dependent on the government, commonly known as the “official religions,” can become the “legal” religions. Hence, will the Chinese Constitution Paragraph 3 (State protects the normal religious activities), Article 36 (Freedom for Religious Belief) be superfluous? In terms of litigation relief, even the Supreme Court may directly apply the constitutional article of “freedom for religious belief” to break through the dilemma in establishment of religious groups caused by the unconstitutional *Religious Regulations* and the *Regulations on Social Groups*. Then, if such assumption is established, first of all it must be decided if Article 36 of the Constitution is consistent with the *Religious Regulations*, the *Regulations on Social Groups*, and the religious administration system.

1. Article 36, Legislation Law and Religious Regulations

Article 36 (Freedom of Religious Belief) of the Constitution is included in Chapter Two (Basic Rights and Obligations of Citizens) of the Constitution. It is expressed in four paragraphs after the electing right (right of being elected) and the rights to freedom of speech, publication, gathering, association, parade, and demonstration – but it is listed before human rights. Such sequence and number of paragraphs indicate adequately the weight of freedom of religious belief in the constitutional basic right system. Therefore, the advantageous position of religious belief freedom right in the constitutional basic right system indicates that the Constitution shall restrict the legislation right and administration right relating to the religious belief freedom. For instance, according to Article 8 of the Legislation Law, “mandatory measures and penalties involving deprivation of citizens of their political rights or restriction of the freedom of their person” shall only be governed by law.

However, it is important to observe the first sentence of Paragraph 3 of Article 36: “The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state.” This first sentence indicates that the only “normal religious activities” will be brought into the protection of the state; the following sentence define what is “abnormal” through limitation of religion (activities): religious activities shall not disrupt public order, impair the health of citizens or interfere with the educational system of the state, i.e., the religious activities violating this prohibiting regulation are abnormal religious activities. It is the function of the state to protect the health of citizens, educational system and social order. Legislation and law enforcement is the mechanism for the state to implement its functions

by applying its political power. Hence, the state justifies its exercises of power to define the religious (activity). Therefore, it appears that Paragraph 3, Article 36 of the Constitution actually authorizes the state to control religion, instead of constraining or prohibiting.

Therefore, this gives insight into why in terms of “only formulating the law,” Article 8 of the Legislation Law has not mentioned at all the “freedom of religious belief.” Will such silence of the legislators indicate that the law (system) shall not regulate the freedom of religious belief? Of course not! The promulgation and implementation of such administrative regulations as the Religious Regulations has proven again this is a wrong supposition.

Hence, can the “freedom of religious belief” be included in Article 8 (10) of the Legislation Law (other affairs on which laws must be made by the National People's Congress or its Standing Committee)? If such supposition is established, according to Article 9 of the Legislation Law, the *Religious Regulations* as the administrative regulations must be authorized by the National People's Congress or its Standing Committee. However, the *Religious Regulations* have not shown the existence of such authorization (proceeding). It proves that the legislation right has no supervision over the administrative (legislation) right. Therefore, we would ask if in China, with the people's representative congress as the fundamental institution and with the National People's Congress as the supreme state power organ, how has such institutional “leak” been generated?

Paragraph 2, Article 56 of the Legislation Law elevates “administrative functions and powers of the State Council as provided for in Article 89 of the Constitution” in parallel with the law, which has become one of the two “bases” for formulating administrative regulations. The difference between formulating administrative regulations per functions and power, and formulating administrative regulations per law is this: the former refers to the executive power, while the latter refers to the initiative right on major matters. “Initiative right on major matters” is a synonym of “exclusive legislative power” of the National People's Congress or its Standing Committee.¹ It appears to be a difference between executive power and exclusive legislative power, but is substantially the distribution between the NPC and State Council in terms of legislative authority on public affairs. Thus, the executive power within the religious administration system defines the religious affairs within the “administrative function and power of the State Council.” The administrative legislation based on this can be separated from the control of legislative organ. This is the legislative reasoning or governmental institution arrangement logic for generating the *Religious Regulations*.

¹ Xu Anbiao, *The Allocation of Legislation Authority by the Legislation Law*, Legal Daily, 06/04/2000; Zhang Chunsheng, *Interpretation of the Legislation Law of the People's Republic of China*, Law Press, 2000, p. 169

From the above analyses, it is observed that first, Paragraph 3, Article 36 of the Constitution sets up a just reason for the power of the state to control religion. Articles 8 and 9 of the Legislation Law have totally ignored the advantageous position of freedom of religious belief in the basic right lineage of the Constitution, without equally treating the freedom of religious belief and political right and human right, but instead placing it otherwise. Thus, the legislative organ gives up the minimum review power and protection duty in terms of religious freedom. Since Paragraph 2, Article 56 of the law further endows the State Council with the power for independent legislation, i.e., formulating administrative regulations according to the administrative functions and authority, it has further led the legislative organ to lose the power of supervising the administrative organ in terms of the matter. Therefore, the constitutional acceptance of the state power to control religions has gradually been changed into the unitary power of the administrative system to control religions. Such political power arrangement designed by the Constitution and Legislation Law is the governmental institution base for the justification of the *Religious Regulations*.

2. How Article 36 was Generated

As proved in the above analyses, the arrangement of authority - designed in Article 36 of the Constitution and in Legislation Law Articles 8 and 56 - is the governmental-institution base for the state and administrative control of religions. The *Religious Regulations* is the product of the power movement in such governmental-institution structure. But does Article 36 of the Constitution and the *Religious Regulations*, as an administrative regulation have the consistent purpose and content? It is necessary to separately investigate the process of procedure generation and the origin of their contents.

Hence, this part of the Paper needs first of all to study how Article 36 of the Constitution was generated. This is a premise for assessing why it has selected the state to define the religious limits. This investigation begins by looking at the constitutional structure as well as, more importantly, the investigation of the relationship of Chinese politics and religion.

According to Liu Xiaofeng, the party politics of China was created in the traditional Confucian mode of the method of politics-religion integration. When the doctrine of the religious political party becomes the legal base for the Constitution – to control the constitutionalism instead of regulating the political party with the Constitution, this promotes the emergence of the state-system religion.¹ Based on this, it appears that “the doctrine of ‘people democratic dictatorship’ and the form of ‘class struggle – mass movement’ to achieve this doctrine integrates ‘people’ into the centralized pyramid-structure ‘peoples’ republic’ and formed the ‘people religion’ that has been extended in China up to

¹ Liu Xiaofeng, *Prolegomenon of Modern Social Theory*, Shanghai Sanlan Bookstore, 1998, pp. 485-486.

now.”¹ In the domain of religion, the particular reflex of “centralized pyramid structure” is the religious administration system. This proposition of the “people religion,” and a clear picture of the Constitution’s preamble, of the formality of amending the Constitution, and of the relationship between the religious administration system and religious legislation system, will not only aid in thoroughly understanding the origin and development of Article 36 and its relation with the religious legislative system, but this will also help to understand the relationship between Chinese politics and religion.

1) Preface of Constitution

The Chinese Constitution has these components: the Preamble; Chapter One, General Principles; Chapter Two, The Fundamental Rights and Duties of Citizens; Chapter Three, The Structure of the State; and Chapter Four, the National Flag, The National Emblem, and the Capitol.

The Preamble includes thirteen paragraphs starting with “revolution” in Paragraph 1, indicating that “revolution” is the tradition of the Chinese people, as to provide the justification of historical implication for “revolution.” In Paragraph 2, based on the sufferings of Chinese people in modern history, it introduces “national independence, liberation and democracy and freedom” as a goal for the Chinese people. Paragraphs 3 through 5 explain that the 20th century is the struggle history of the Chinese people to achieve this goal: the revolution of 1911 failed to achieve this historical task. It was after the CPC, with Mao Zedong as its leader, completed new-democratic revolution and founded the People’s Republic of China, that Chinese took control of state power. The achievement of socialist construction has been made under the leadership of the CPC. The CPC obtained the holy position to lead the state, historically granted. Insistence on the four basic principles to build the state becomes a historical conclusion (Paragraphs 6 and 7). To distinguish the domestic and foreign “foe-friend relationship” and focus on the “patriot united front” of Paragraph 10 and its organization of “Chinese People’s Political Consultative Conference” with the goal to stress the justification of the leadership of the CPC with the alliance of all classes (Paragraphs 8 through 12). Finally, it ends with an overview of the constitutional content and position in the Chinese law system and constitutional obligations (Paragraph 13).

With “people” of all nationalities as the subject, in the introduction of the last century of history, the Constitution’s preamble applies such key words as “revolution,” “state,” “the Communist Party of China,” “new-democratic revolution,” “socialism” and “people democratic dictatorship” to create a mysterious interpretation of the relationship between “people,” “the Communist

¹ Cao Zhi, *Study on Citizen Concept of Beijing Christians Part III, People Religion*, speech, Handong University International Law School’s “Religion and Legal Governance” International Academic Seminar, South Korean, 2008. Credit is gratefully given to Fan Yafeng for his guidance and help in theology and politics regarding the “people religion.”

Party of China,” and the “state” with the “revolutionary” rules and the success of revolution.

It states the course of the “revolution” and the story of “people,” builds up the proposition of “the origin, present and future of the state,” argues that people are the only source of the political power, that people’s sovereignty creates the state, and that the just base of the state lies in the people’s democratic dictatorship. The state system of the “people’s democratic dictatorship” classifies the interest appeals per class and, with the class struggle as the principle, requires the pyramid state power structure of “Chinese people-workers, soldiers and soldiers-Proletariat Dictatorship-the Communist Party of China-leader” (Mao Zedong). The Communist Party of China becomes the sole and everlasting representative of the people’s sovereignty, while the past, present and future of the state shall all be under the ruling of the CPC, as is the base for the living prospects of Chinese people. Hence, the deduction of such logic is that this deified the CPC.

With the people’s sovereignty principle implemented by the modern people’s democracy, and the institutional system setup for the Constitution to arrange the political power, the ruling party will naturally formulate and amend the Constitution, as a fundamental method to testify that it is the executor of the people’s sovereignty and to interpret the justice of changes in political order.

2) Constitution and Amendment

Actually, by means of its interpretation of the “people sovereignty” and exclusive political power, the CPC dominated the constitutional procedure of 1954 Constitution and designed the political-governance institution excluding the national political consultative conference from the state power structure.¹ So, it has become a political-governance convention for the ruling party to declare, through the Constitution, that its political changes spring from the justice endowed by the people sovereignty: e.g., 1975 Constitution (Preamble) and 1978 Constitution (Preamble). The political order, i.e., Proletariat Cultural Revolution, which was affirmed in the two constitutions was denied by 1982 Constitution and restored to 1954 Constitution. However, deleting the ruling errors, and affirming the reform achievement to consolidate the ruling position of the ruling party, or accepting the social common view to maintain the ruling position of the ruling party - such formality is still required to fabricate that the political power of the ruling party finds its source in the people’s sovereignty. Also, due to the expectation for the constitutional stability, the custom of frequent amendment and non-frequent Constitution change has been adopted, for the change of political order.

¹ Xiao Beisheng, *Ziggags behind Constitution Formality: from the Common Outline to the 1954 Constitution*, 2nd ed., Modern China Studies, 2003, p. 138
http://www.usc.cuhk.edu.hk/wk_wzdetails.asp?id=2249 (accessed Nov. 2008)

According to Article 64 of the Constitution, “Amendments to the Constitution are to be proposed by the Standing Committee of the National People’s Congress or by more than one-fifth of the deputies to the National People’s Congress and adopted by a vote of more than two-thirds of all the deputies to the Congress.” However, Professor Lin Laifan pointed out that before the statutory procedure is initiated, there is another “conventional additional procedure,”¹ which is summarized sequentially below according to the previous amendment documents:

The National Conference of the CPC decides to make an amendment → The NPC Party Group requests to CPC Central Committee for amendment and members of CPPCC request for amendment → the NPC Party Group proposes to establish CPC Central Committee Amendment Group and submit the amendment report → the CPC Central Committee approves → the Amendment Group defines the proposed draft of constitutional amendment to be submitted to executive members of the Political Bureau of CPC Central Committee → the CPC Central Committee (Political Bureau) passes and distributes to the party committees of all provinces, autonomous regions and municipals directly under the central government, party groups (committees) of departments of CPC Central Committee and ministries and commissions of the central government, General Political Department of Military Committee, party groups of all people groups and members and candidate members of CPC Central Committee for views and suggestions → the CPC Central Committee calls on the non-Party personages for discussions and experts for discussion for views and suggestions → Members of CPC Central Committee proposes to NPC Standing Committee for amendment → the NPC Standing Committee decides to present the amendment draft to NPC for review → the NPC passes.

Obviously, the procedure of constitutional amendment is initiated and controlled by the ruling party through its organization system, and the amendment principle and content is defined by the ruling party. Simply speaking, this procedure is as follows: the CPC Central Committee initiates the amendment and defines the amendment content → the NPC passes the amendment.² Such an up-down

¹ Lin Laifan, *Mutual-benefit Justice: Regulation Spirit of 4th Amendment*, <http://kbs.cnki.net/forums/15111/ShowThread.aspx> (accessed Nov. 2008)

² As stated by Xu Congde, the fourth amendment was from “down-up,” a difference from the previous three. However, we have noticed that the following facts indicate the core procedure of the amendment still remains “CPC Central Committee initiates and defines the amendment content—NPC passes.” On October 14, 2003, the 3rd Plenary Session of the Party’s Sixteenth National Conference passed the *Proposal of CPC Central Committee for Partial Amendment of the Constitution*. The sixth meeting of Standing Committee of the 10th NPC (held from December 22 - 27) included in the agenda the discussion the *Proposal of CPC Central Committee* and listened to the explanation of the *Proposal* by Wang Zhaoguo on behalf of the CPC Central Committee. Then, based on the *Proposal*, the NPC Standing Committee drafted the proposal for review of the

procedure within the hierarchical organization system does include, in the administrative control mechanism, the discussion, NPC review and other democratic procedures. Such procedure is designed not only to ensure the policy of the ruling party can be written in the Constitution and amendment, but also to utilize the position of NPC and Constitution and the democratic form of NPC review and amendment procedure to create the democratic source and thus to consolidate the ruling position of the ruling party through the policies of the ruling party, as expressed in the Constitution and its amendments. Therefore, the amendment procedure is based on the leadership of the CPC and it is initiated and dominated by CPC to fabricate the execution of people's sovereignty and consent of the people, with a fundamental purpose to propagate and consolidate the supposed justice of CPC's ruling in the past, present and future.

Obviously, the power structure for the CPC to control the state is the base for the program and policy of the ruling party to control the state behavior. The CPC monopolizes the construction of the amendment, and dominates the constitutional amendment procedure, as this is how it approaches its program and policy entitled with "people's sovereignty" to justify its entrance into the Constitution. Exclusive political power is the requirement for the ruling party to acquire the exclusive ideology as well as the result of implementing the ideology in political realization. As we know, the Confucian perspective does not interpret and discuss the source of the supreme power of a community, but depends on such assertive and vague concept as "fate" to grant the justice for violent struggle result of "one who wins will be the king and one who lost will be a bandit." In the modern China, "people sovereignty" replaced the concept of "fate"; "revolution" rules and its successful result turned the "one who wins will be the king and one who is lost will be the bandit" into the historical rules; "constitution (amendment)" replaced "heaven (earth) worship." The consistence between the traditional Confucianism and modern people's dictatorship is not a secular public acceptance, but proof for the legality of such power through formality.

3) Article 36 and Document No. 19 of the CPC Central Committee

Paragraph 1, Article 36 of the Constitution originated from Article 88 of the 1954 Constitution.¹ The Circular of the CPC Central Committee on the *Basic Viewpoints and Policies for Religious Affairs in Socialist Period of China* (03/31/1982),

constitutional amendment (draft) and the constitutional amendment (draft) to be submitted to the second meeting of 10th NPC for review.

¹ "Chinese citizens are entitled to the freedom of religious belief. This is the consistent policy of Marxism, Leninism, Mao Zedong thoughts on religious belief. The draft restores and develops the relevant provisions of 1954 Constitution, with more definite details," - Peng Zhen, *Explanation for Draft Amendments to the Constitution of the People's Republic of China*, at the 23rd meeting of the Fifth NPC Standing Committee on April 22, 1982

Document No. 19,¹ becomes the base for Paragraphs 2 through 4, Article 36 of the Constitution through the ruling party's constitutional power and dominating constitutional procedure.

In its fourth part, this document (Document No. 19), which for the first time presented a complete statement about the religious policy of the ruling party, expounded the content of "freedom of religious belief":

Citizens enjoy the freedom to believe in religion as well as the freedom not to believe any religion; enjoy the freedom to believe this or that religion; within one religion, enjoy the freedom to believe in this faction or faction; enjoy the freedom of not believing in the past but believing now and the freedom of believing in the past but not now.

This paragraph appeared to be generous, but actually it is unitary, accepting the freedom to believe or not to believe and to believe any religion, but without mentioning the preaching, religious publication, religious personnel, religious site and religious schools, which is just a footnote to the Paragraph 2, Article 36 of the Constitution.

The fourth part of Document No. 19 also instructed the following:

Socialist state power shall never be used to promote any religion or to prohibit any religion as long as it is a normal religious belief and religious activity. Meanwhile, religion shall not be allowed to intervene with state administration, the administration of justice and school education. It is absolutely prohibited to force any person, especially children aged below 18 years, to believe any religion, become a monk or nun or Taoist priest and learn scriptures in temples. It is absolutely prohibited to restore any abolished religious and feudal privilege and religious compression and exploitation institutions. It is absolutely prohibited to utilize the religion to oppose the leadership of the party and socialist institutions and damage the state unity and domestic national union.

Paragraph 3 of Article 36 of the Constitution originates from the paragraph above, as it reads, "The state protects normal religious activities. No one may make use of religion to engage in activities that...interfere with the educational system of the state." The phrases, "May make use of religion to engage in activities that disrupt public order, impair the health of citizens..." and "may make use of religion to engage in **anti-revolution** activities" from the 1982 Constitution (Draft) (which was later on deleted)² is sourced from the requirement of Party 10 of the said document, "firmly crack down all law-breaking criminal activities and anti-revolution destructive activities in the name of religion and different **superstition activities** that are not in the

¹ See the website of Administration of Religious Affairs: www.sara.gov.cn.

² Peng Zhen, *Explanation for Draft Amendments*.

category of religion and endanger the national interests and people's life and properties.”

Paragraph 4 of Article 36, which indicates religious bodies and religious affairs are not subject to any foreign domination, is a summary of the following content in Part 10 of the document:

...Firmly insist on the principle of independent, autonomous and self-run church, firmly resist the intent of international religious reactionary force to re-control the religion in China, firmly refuse the interference of any foreign church and religious personage in our religious affairs, never allow any foreign religious organization (including the institutions under its control) to preach in any mode or ship and scatter religious brochures in volumes.

Document No. 19 of the CPC Central Committee not only entered the Constitution through Constitution formality to become Article 36, but was also executed in three methods through the religious administration system: 1. executed in the organization system of the ruling party at different levels, per requirement delivered “up-down” in the form of political party document; 2. executed in the administrative system at different levels, per order delivered “up-down” in the form of internal administrative document, e.g., the *Circular of State Administration of Religious Affairs and Ministry of Public Security on Stopping and Treating the Illegal and Law-breaking Activities by Making Use of Christianity*, requiring that the printing, publication and distribution of Christian books shall be approved by the governmental competent department at and above the provincial level and 3. particularized in the patriot religious groups system in the form of resolutions of the social groups: e.g., the three specific management institutions (specific area, specific point and specific period) originated from the provisions of Yunnan Committee of TSPM of Christian Church. The pyramid power structure relationship – between the ruling party's organization system, administration system and patriot religious groups system – executed the religious policy of the ruling party in the mode of up-down order – abeyance. Article 36 of the Constitution and the religious administration system are both created and formulated by the ruling party, with the goal that the religious order obey the state. The creation and expression methods are different: the method of creation is expressed in the constitutional abstract article through the constitutional form, while the method of expression is represented in the system structure with the features of “politicalized,” administrative, unitized and unitary religious groups through the political behavior.

3. “Administrate Religions as per Laws” under Power Operation

The law that changed the method of expression of the ruling party's religious policy, as executed in the political order, was not the constitutional amendment to Article 13, “the People's Republic of China implements the law for governing the state and builds a social law-governed state,” but rather it was Document No.

6 of CPC Central Committee, the *Circular of the CPC Central Committee and State Council for Carrying out Religious Work* (02/05/1991).

Because of the political crisis due to the events of June 4, 1989, and in consideration of the role of church and Christians in anti-extreme power in East European Change, the CPC associated and assumed the possibility for the domestic religion organizations to threaten its ruling. Hence, in order to prevent any “peaceful transformation,” the ruling party, pursuing a policy of “stability above all,” attached unprecedented importance to the religious affairs: the 1990 National Religious Work Conference was convened by the State Council for the first time, at which the *Circular of the CPC Central Committee and State Council for Carrying out Religious Work* was discussed. After this, for the first time, the Secretary General of CPC, Jiang Zemin, simultaneously met with the leaders of the five major religions and delivered an important speech. The *Circular* was discussed at the executive meeting of the Political Bureau of the CPC Central Committee, and then it was officially distributed.¹

The Circular promoted the continued execution of Document No. 19, but with the purpose of fighting against the “peaceful transformation.”² Therefore, as compared with Document No., 19, the administration measures are more particularized and show more mandatory features.

Document No. 6 introduced for the first time the directive “to manage the religious affairs according to law” and for the first time also commanded to “administrate the religious affairs for the purpose of including the religious activities into the scope of law, regulations and polices,” requiring the government to administrate and supervise religions by “legal” means in these four aspects: the places of religious activity, preaching and educational activities, external contact, and religious legislation. First, all the religious activity places are

¹ Zhao Tianen and Zhuang Wanfang, *Contemporary Chinese Christianity*, 1997, p. 545. Also, Jiang Zemin, *Maintain the Stability and Continuity of Party’s Religious Policies* (01/30/1991), website of State Administration of Religious Affairs: www.sara.gov.cn

² As stated in its Preface: “practice proves that the religious policies of the party and the government are correct and the religious work has been successful as a whole, but it shall be noted that the overseas opposing forces have always made use of religion to constantly carry out the penetrating and destructive activities against China. The national separatists also make use of religion to instigate the disturbance and trouble, attack the leadership of the Party and socialist institutions and damage the reunification of the motherland and national unity. Minority hostile elements in some places are rampant in activities, establish illegal organizations and strive with us for the leadership of temples and churches; some illegally run scripture schools, monasteries and seminaries to strive for the youngster with us. Some of the temples have restored the religious feudal privileges, compression and exploitation that have been abolished. It is also observed in basic areas where religion has been used to interne with the state administration, with justice and school education.” Refer to *Circular of the CPC Central Committee and State Council for Carrying out Religious Work* (02/05/1991), refer to the website of State Administration of Religious Affairs: www.sara.gov.cn.

required “to register according to law.” The existing religious activity places shall be registered and new ones shall be approved; legal protection shall not be provided without registration and without approval. Spontaneous preaching activities must be stopped, and unlicensed religious schools are to be banned. Religious external contacts shall be basically subject to such procedures as approval, review and circulation by the provincial government or State Administration of Religious Affairs. It is clearly specified to “speed up the religious legislation.” State Administration of Religious Affairs and the governments of all provinces, autonomous regions and municipal directly under the central government are required to formulate the regulations.

During 1990-1999, two administrative regulations were formulated and then were published simultaneously by the State Council on January 31, 1994: *Administrative Regulations for Religious Activities of Foreigners within the Territory*, Decree No. 144 of the State Council, and *Administrative Regulations on Religious Activity Places*, Decree No. 145 of the State Council.¹ The State Administration of Religious Affairs formulated four rules: the *Implementation Measures for Registration Administration of Religious Social Groups* (05/06/1991), *Measures for Registration of Religious Activity Places* (04/13/1994), *Measures for Annual Inspection of Religious Activity Places* (07/29/1996) and *Measures for Religious Schools to Engage Foreign Professionals* (11/19/1998).²

In the same decade, at the local legislation level, Xinjiang and nine other provinces, autonomous regions and municipals directly under the central government formulated the comprehensive local regulations.³ Gansu and six other provinces and autonomous regions formulated the comprehensive local governmental rules.⁴ Regarding the management of religious personnel, the

¹ Invalid with the *Regulations on Religious Affairs* promulgated

² *Implementation Measures for Registration Administration of Religious Social Groups* (05/06/1991), *Measures for Registration of Religious Activity Places* (04/13/1994), and *Measures for Annual Inspection of Religious Activity Places* (07/29/1996) have now been abolished.

³ *Administrative Regulations of Xinjiang Uygur Autonomous Region on Religious Affairs* (passed on 07/16/1994), *Regulations of Shanghai on Religious Affairs* (passed on 11/30/1995), *Administrative Regulations of Heilongjiang on Religious Affairs* (passed on 06/12/1997), *Administrative Regulations of Hainan Province on Religious Affairs* (passed on: 09/26/1997); *Regulations of Chongqing on Religious Affairs* (passed on 10/17/1997); *Regulations of Zhejiang Province on Religious Affairs* (passed on 12/06/1997); *Regulations of Jilin Province on Religious Affairs* (12/19/1997); *Regulations of Liaoning Province on Religious Affairs* (passed on 11/28/1998); *Regulations of Anhui Province on Religious Affairs* (passed on: 10/15/1999).

⁴ *Provisional Administrative Regulations of Gansu Province on Religious Affairs* (promulgated on 11/16/1991, for implementation); *Provisional Administrative Measures of Xizang Autonomous Region for Religious Affairs* (passed on 12/09/1991, and promulgated on 12/20/1991 for implementation); *Provisional Administrative Regulations of Hubei Province on Religious Affairs* (passed on 10/29/1992); *Provisional Administrative Regulations of Guangxi Zhuang Autonomous Region on Religious Affairs* (passed on 03/02/1994); *Provisional Administrative Regulations of Ningxia Hui Autonomous Region on Religious Affairs* (published on 06/07/ 1994 for

three provincial governments of Xinjiang, Hebei and Sichuan formulated local governmental rules and Qinghai Province formulated the local regulations. Regarding administration of the religious activity places, the four provinces of Henan, Qinghai, Shandong and Tianjin formulated their local regulations; the three provincial capitals of Wuhan, Chengdu and Kunming formulated their local regulations; and nine provinces including Fujian, Guizhou, Liaoning, Shaanxi, Anhui, Shanghai, Neimeng and Jiangsu formulated the governmental rules. In one decade, except for Beijing¹ and Shanxi,² twenty-nine provinces, autonomous regions and municipals directly under the central government completed their religious legislation, of which sixteen provinces, autonomous regions and municipals directly under the central government adopted, for their comprehensive regulations and rules, the ten-chapter structural arrangement which includes general provision, religious groups, religious activities, religious activity places, religious personnel, religious education (or schools), religious properties, religious foreign affairs, legal liabilities and supplementary provisions.

In 2001, for the first time, all the standing committee members of CPC Political Bureau attended the National Religious Work Conference, at which the Party Secretary General, Jiang Zemin, delivered a speech. He included directive to “administrate the religious affairs according to law” as one of the basic tasks for the religious work in the new century, saying to “administrate the religious affairs according to law with the aim to protect the legal behavior, stop illegal behavior, resist permeation and crack down crimes.”³ At the meeting, Zhu Rongji, Premier of the State Council, directed to “continue with promoting the construction of religious legal system and further include the administration of religious affairs on to the institutionalized and legalized track.”⁴ Document No. 3 of CPC Central Committee in 2003 directed to definitely speed up the formulation of the *Regulations on Religious Affairs*.⁵ Hence, the *Regulations on Religious Affairs* were promulgated on the basis of the ruling party’s religious policy, the requirement of the State Council and the local religious legislation.⁶ The *Regulations*’ structure, content arrangement and licensing procedure are basically consistent with the religious regulations and rules of the aforementioned sixteen provinces, autonomous regions and municipals directly under the central government religion.

implementation); *Administrative Regulations of Yunnan Province on Religious Affairs* (passed on 12/02/1997); *Administrative Measures of Jiangxi Province for Religious Affairs* (passed on 01/05/1998)

¹ *Regulations of Beijing on Religious Affairs* published on July 18, 2002, and amended on July 28, 2006

² *Regulations of Shanxi on Religious Affairs* promulgated on July 29, 2005

³ Xinhua News Agency, *National Religious Work Conference held in Beijing*, Dec. 12, 2001

⁴ Xinhua, *Work Conference*, Dec. 12, 2001

⁵ Ye Xiaowen, *Preface for Interpretation of Regulations on Religious Affairs*; Shuai Feng, Li Jian, *Interpretation of Regulations*, 2005, pp. 40-41

⁶ Ibid

Obviously, the CPC directed “the government shall carry out the administration and supervision over the execution and implementation of the relevant religious law, regulations and policies,” to “legalize” the religious policy so that its measures of governing religion can be “modernized” with the “times” and the method for expressing this basis of control of religion can shift from “policy documents” to “regulations and rules.” There was also directive to organize the legislation from the central government to local governments, including the local people’s congress legislation and administrative legislation, to “administrate the religious affairs according to law,” and to warn religious groups and their believers or use means of administrative punishment or criminal punishment. The above process shows that the ruling party controls the administrative function and power legislation of the State Council, the legislation of the local people’s congress system, and the administrative legislation of the local government systems, linking with Article 36 of the Constitution, particularizing the definition the article (freedom of religious belief) for religion. Simply speaking, it becomes the “normal” standard of religious activities. Therefore, in this sense, the *Religious Regulations* created an operational procedure standard for religious activities defined in Article 36 of the Constitution, while the registration procedure for religious groups is only one of them.

4. Summary

Upon observing Article 36 in terms of the constitutional structure, we find that the preamble of the Constitution fabricated the relation between the people sovereignty and the CPC. Consequently, the people’s democratic dictatorship justifies the CPC’s monopoly of the political power and its control of the state. Hence, by taking the advantage of the Constitution’s first chapter “General Provisions,” the ruling party arranges the political system and state tasks. Under this background, we can properly understand why Paragraph 3 of Article 36 chooses the state to define and limit religion and religious activities. Additionally, since the ruling party testifies that its power is sourced from the people’s sovereignty, and since it justifies its changes in its political order in the modern democratic society through the Constitution and amendments, the religious policy of the ruling party has been included in this formality into the Constitution, to obtain expression in the constitutional texts. The religious policy is implemented through the party’s organization system, the government and religion administration system and patriot religious group system; the approach used for the fulfillment of this policy has developed first from administrative documentation and order now to the regulation and rule system, with the purpose remaining unchanged: the state is to ensure that religious activities are “normal.”

The Preamble of the Constitution states that because the CPC “persists in truth,” and brings the past and present revolutionary achievement of the nation and the state, the future hope of the people and state can only be in the leadership of the CPC. Such empowerment justifies the CPC monopolizing the

political power forever. The fabricated historical proposition becomes transcendent in an imaginative sense and cannot be proven as false, as this is the fundamental reason for the ruling party to control the speech. Hence, as the provider of “truth,” the political obligation of the ruling party is to formulate norms for the expression and behavior of people in all fields. As a receiver of “truth,” the political obligation of the Chinese people is to believe and obey forever the ruling of the CPC in all aspects. Such political belief integrates and unifies the Chinese people. Therefore, in the above sense, the Preamble of the Constitution is a kind of “belief statement.” As discussed above, through the Constitution and any amendment, the ruling party can both control the authority of the Constitution and amendment (because of its exclusive position of political power) and it can delete its political errors and add reform or social common view by designing its political order. The purpose of this is to declare and propagate the justification for the ruling party to execute the people’s sovereignty and consolidate and maintain its ruling position. Obviously, the Constitution and the amendment process have a kind of formality. The establishment of the political party-state power structure and unit system is the organizational network for the ruling party’s program and policy to be executed at all levels of the society and by all individuals.

The Preamble of the Constitution encompasses the doctrine of belief. Within this context, the Constitution and amendments are a formality for change. The pyramid “up-down” relationship of the “ruling party – government – society – individual” is to build and stabilize the political order of China in a broad sense of the Constitution. This political order is substantially “people religion.” The promise that “State protects the normal religious activities” complies with the logic for the Preamble of the Constitution, in effect to deify the CPC and to require the religions and their activities with the political community shall obey the representative of the supreme political power. The CPC clearly has monopolized political power, since the rights of Constitution and its amendment process, legislation right, administrative function and power, and local government power (derived from such political power) all exist and operate to consolidate and maintain the ruling party’s position of the ruling party. To this end, Article 36 of the Constitution, the Legislation Law, the *Religious Regulations*, the *Regulations on Social Groups* and local religious legislation all aim to create a kind of religious order to be included in the political order and the state structure in which the ruling party monopolizes the political power, so that it may become part of the political function and thus serve the construction of a political order deifying the CPC. The “people religion” nature of such a political order determines that the relationship between Chinese politics and religion is dependent on all “institutional religions” to the “people religion” rather than “ruling the religion with politics.”¹ Therefore, in such a relationship of politics

¹ The two methods of Yang Qingkun in analyzing the religions in Chinese society: institutional religion and diffused religion has enlightened much for the Paper to position on the Chinese politics-religion relation. Refer to Yang Qingkun: *Religions in Chinese*

and religion, Article 36 of the Constitution (freedom of religious belief) is determined by the “people religion.”

Therefore, the creation and setup of Article 36 of the Constitution benefits the power arrangement generated by the *Religious Regulations*. To realize the purpose of Article 36 to control the religion, the *Religious Regulations* designs particular operational procedure, while the religious administration system provides administrative organization and relevant structural religious groups to link the two and accomplish the purposes of the two.

V. Part Five: Conclusion

The registration of religious groups involves the two major constitutional rights of religious freedom and freedom of association. Based on the *Regulations on Social Groups* and the *Religious Regulations*, the registration system of religious groups consists of seven major elements: 1. the administrative licensing nature of registration procedure, 2. dual licensing system, 3. conditions for becoming a legal person, 4. the arrangement of the article, 5. exclusive article for social groups, 6. “no regional branches,” and 7. “banning” measures. The purpose is to ensure that the religious groups depend on the administrative system and it.

The registration system of religious groups is operated particularly by the administration of religions. The investigation of the Paper on the cases of the Beijing Watch Church and the Anhui Tongling Church indicates that the logic of registration administration is that the administration of religions exercises the administrative licensing right for approving the registration. They require the religious groups to obey the guidance and supervision management of the administration of religions and the administration of civil affairs; otherwise, registration shall not be granted. For the Christian house churches, to “obey the service guidance and supervision management of the administration of religions and the administration of civil affairs,” means to belong to or depend on the TSPM church system. Religious groups which do not have registration shall not have a legal position, shall not establish religious activity places, shall not hold religious activities, shall be banned by the administration of religions ban, and shall not exist. The raids on house church in May 2008, the “May Storm” not only displays this logic, but also illustrates the failure of “dialogue theory.”¹

The *Religious Regulations* provides for the judicial relief method of administrative litigation, but, since the *Religious Regulations* and the *Regulations on Social Groups*, as administrative regulations constituting the base of the registration system, are the

Society—A Study on the Modern Social Function and Historical Factors of Religion, translated by Fan Lizhu, et al, Century Publishing Group Shanghai People’s Publishing House, 2007.

¹ Yang Shengshan, *Who are the foes and friends of House Church—On Serial Events of House Churches being suppressed in May 2008*,

http://chinaaid.org/chinese_site/press_release_detail.php?id=5459

sole basis which the judge cannot review but rather must apply, the administrative litigation cannot relieve the religious groups which are pursuing the independence and autonomy from the dilemma of registration.

Such status quo of administrative monopolization and helpless relief is fundamentally due to the religious administration system, and its “politicalization,” administration, unitization and “singularization” of religious groups. This religious administration system determines the structural arrangement and organization of rules of the registration system for religious groups.

Instead of assuming that the supreme court may directly quote Article 36 of the Constitution, i.e., “freedom of religious belief” to grant the religious believers with constitutional relief, it is better to discuss if Article 36 of the Constitution is consistent with the *Religious Regulations*. Due to certain authorizing factors – Paragraph 3, Article 36 of the Constitution (which is actually authorizing rather than restricting or prohibiting the state from controlling the religion) as well as the improper protection or ignorance of the Legislation Law for “freedom of religious belief” and the authorizing of the State Council to formulate the administrative regulations according to its function and power – the power of the government to control the religion has been constitutionally authorized and the power of the government to administrate the religion through administrative legislation is separated from the legislative supervision. This power arrangement, designed by Article 36 of the Constitution and Legislation Law (Article 8 and 56), is the political-system base for the state-administrative control of religion. The *Religious Regulations* is the product in this political structure for the operation of power. In this sense, the *Religious Regulations* has been supported by Article 36 of the Constitution.

“The doctrine of ‘people democratic dictatorship’ and the form of ‘class struggle-mass movement’ to achieve this doctrine integrates ‘people’ into the centralized pyramid-structure ‘peoples’ republic’ and formed the ‘people religion’ that has been extended in China up to now.” The Preamble’s expression of the doctrine of “people democratic dictatorship”; the Constitution-amendment procedure; and the “politicalized,” administrative, unitized and unitary administrative system of religious groups have created the relationship between politics and religion, with different institutional religions depending on the “people religion.” Article 36 of the Constitution necessarily must be part of such a relationship between politics and religion.

Because the ruling party controls the Constitution-amendment procedure, the religious policy formulated in its Document No. 19 became the source for Article 36 of the Constitution on “freedom of religious belief.” Because the ruling party controls the operation of political power, the religious policy formulated in its Document No. 6 constitutes the religious legislation system of “administrate the religion according to law” through different forms or mutual integration of the Legislation Law, administrative regulations, administrative

rules, interpretation of the supreme court, local regulations and local governmental rules. The *Religious Regulations* were generated in this system and becomes ruling power. This is why the government considers it as “symbolizing the great achievement has been realized in the legal construction of China in terms of religion.”

The constitutional structure which created the political order of “people religion,” especially the Preamble and general provisions of the Constitution, has already specified that the social groups, especially religious groups, must be the “people’s groups” dependent on “people religion.” Regarding this, Yuan Xiangchen insightfully pointed out that “church is not a people’s group.” The registration system built by the *Regulations on Social Groups* and the *Religious Regulations* is only an institutional design for particularly implementing the constitutional spirit of “people religion.” Therefore, in this sense, the function of the registration system is not in conflict with the Constitution and its article on “freedom of religious belief,” but rather it is in cooperation with it. Generally speaking, the former runs in front, while the latter stands behind to relax. Therefore, Article 36 of the Constitution is consistent with the *Religious Regulations*.

The legal position of the religious groups is the gate of entrance for the religious autonomy and religious freedom. The choice of the state to hold an open and multi-element position or to adopt a restricted and closed route for the legal position of religious groups determines the level of control to the gate.. Definitely, Article 36 of the Constitution, the religious administration system, and the *Religious Regulations* have restricted this route and blocked the autonomy of religious groups. And, unfortunately, the registration system for Chinese religious groups is a big lock on the entrance gate.

Therefore, to get rid of this dilemma for religious groups, the governor and citizens have to think about the following three approaches: how can this lock be opened? How can this lock be removed? How can this gate be dismantled?

These three approaches are the three choices set up according to different difficulties in operation, different stages, different objects and different functions.

The reform at the legal level should first of all abolish the legal person requirement for religious groups, cancel the *Sample Articles for Social Groups*, change the administrative licensing registration into filing, and abolish the mode of investigating legal liabilities through banning.

Regarding lawsuit procedures, especially administrative litigation and criminal litigation, the law enforcement method of the administrative departments executing the administrative punishment and criminal punishment by means of “banning” should be changed. The method of consulting and debating with the law enforcing officials in litigation should include citizen participation, with the purpose to elevate the health and kindness of the legislation and even the social

order. This is a neutral approach for mediation between the religious groups and the government.

Tax-exemption benefit should be granted to the religious groups which volunteer to register. The religious groups and activities which are not registered should not be deemed illegal in a sense that would prohibit or intervene with their autonomy. A legal subject qualification, for religious groups to undertake the religious activities in the secular society, should be created: legislators should allow the religious groups to voluntarily and independently decide their structure and mode of activity, on the premise of respecting the autonomy and tradition of religious groups.

Article 36 of the Constitution should be amended, and the state should have certain obligations. For example, the state shall not formulate any legislation or institution for establishment or discrimination of religious groups. The principle of “non-establishment” should be accepted, that is, no “religion” (religious group) shall be allowed to dominate the political power, but any religion or religious group may and should put forward their constructive criticism and suggestions about the execution of political power. The government should not become the arbitrator between religions or religious groups in terms of religious belief. However, the government can and should execute necessary and considerable interference over the religious behavior affecting the public order or public interests, provided such public order or public interests must be particularly and definitely specified.

Credit: Thanks to Dr. Fan Yafeng, director of Zhongfu Shengshan Cultural Research Institute, and Mr. Li Fan, director of the World and China Institute, for their criticism on the draft of the Paper. Their views helped me to improve the article structure and raise the quality of the draft. Dr. Fan Yafeng has especially helped me in my survey and study. I much appreciate his generosity and endurance. When I was too busy with writing to visit the library, Li Jing, Ma Anna, Chang Ying and Liao Huiting helped me to borrow the books and references required in my writing. I would like to extend my thanks to them. What has made me most grateful is that, during my writing and survey, Luo Qing came from her native town to Beijing, to care for and encourage me. On September 5, 2008, she asked me a question about “power above obedience,” which opened my eyes to a truth which profoundly affected my own life and beliefs and is also incorporated into this paper.

中国法律与宗教观察

Religious Liberty and Heresy in China –
Legal Discussion Initiated
from Baicheng Case

by Lin Lu

Religious Liberty and Heresy in China

- Legal Discussion Initiated from Baicheng Case*

By Lin Lu¹

Outline:

1. **Definition of Concepts**
 - 1) *Etymology of "Heresy"*
 - 2) *Qualitative Definition of "Heresy"*
 - 3) *Freedom for Religion or Belief*
 - 4) *Rethinking the Definition and Standard for Heresy*
2. **Status of Heresy in China**
 - 1) *Viewpoint One: Support Orthodoxy and Expel Heresy*
 - 2) *Viewpoint Two: Implement the Anti-Heresy Law as Soon as Possible*
 - 3) *Role Played by the Media*
3. **Chinese Criminal Law on Heresy**
 - 1) *Evolution of Chinese Legislation on Punishing the Organized Crimes of Heresy*
 - 2) *Justification for Criminal Act to Specify the Heresy Crime in Organized Crime*
 - 3) *Practical Legal Analysis regarding Crime and Non-crime of Baicheng Case*
4. **Fulfill the Freedom of Religious Belief Guaranteed by Constitution**
5. **Conclusion**

Synopsis: Heresy² is a common issue all over the world. However, the international society has no uniformed and practical academic standard for how to define heresy. By analyzing how heresy can be defined and assessing this standard, this Paper discusses how to prevent certain religions or belief from being simply defined as heresy, and discusses if it is necessary to make any legal quantitative definition of heresy. To crackdown on heresy, to what extent will the state then restrict the religion or belief? How should such public power be rationally constrained? How should the media cover this topic of heresy? By

* Appreciation is hereby extended to the friends at Yanguang Salon, who have provided various valuable views and suggestions for the Paper. In case of any defect in the Paper, the experts and readers are kindly requested to point out and correct.

¹ Bio of Lin Lu: Chinese human rights lawyer and religious freedom scholar in Beijing

² Note from editor: as the author explains later in the Paper, "[H]eresy...has no accurate corresponding word in the western languages. The closer ones are only the English word 'cult' and the ancient French 'sect,' which however cannot be translated simply into 'Heresy.'"

analyzing the Baicheng Case and other conditions in China, the Paper considers heresy especially in connection with freedom for religion or belief.

Key topics: Baicheng Case, assessment of a standard for heresy, restriction of public power, neutral feature of media.

The Luoyang Public Security Bureau put Dr. Bai Cheng (a Christian returning from the USA) into criminal detention, suspecting that he had participated in organized heretical activities. Afterwards, two more Christians were detained in the same case. According to the public security authority, while preaching, Bai Cheng propagated about a “shouting group” which has been defined as heresy, and thus, it was alleged that he committed a crime by violating the provisions in Article 300 of the Chinese Criminal Law.

What actually is heresy? Academic circles at home and abroad have no uniformed definition. No organizations consider themselves heretical, so heresy has been externally defined. What or who has the right to define a religious organization as heretical? What standard should be used to define it? If the government defines it, would such a definition be legal? If a social organization or religious organization defines heresy, what effect will such a definition have? Is it necessary to make a legal definition of heresy? Or should punishment be exercised on the criminal acts of the members of heretical organizations, according to requirements of criminal law, without cracking down on “heresy” as such. The criminal law corresponds with the principle of statutory crime and punishment: an act will not be a crime if the law has not specified so, and no punishment will be exercised if the law has not specified so. In view of the prevailing laws in China, organized crime will be strictly specified according to the law, to distinguish between crime and non-crime. Regarding any activities of organizing a crime and using heresy to organize a crime, the relevant crimes should be limited to the scope specified by the criminal law, and this should not be arbitrarily expanded for a crackdown, which would thus violate the principle of rule by law.

1. Definition of Concepts

1) Etymology of “Heresy”

The word “heresy” in Chinese is typically a derogatory term which has no corresponding word in western society. Historically, when “heresy” was used by the Chinese ruling class, it referred to the certain harm or threat caused by the current politics and society, especially that of organizations affecting the state political power. According to incomplete statistics, since the Han Dynasty (when Taoism was founded), about two hundred private folk religious organizations have been regarded as heresy by the rulers in different dynasties, of which ninety percent emerged after the Ming Dynasty. After the liberation, most of the

reactionary superstitious sects specified by the government are associated with these folk private religions, branded as heretical in nature.¹

“Xiejiao” – heresy – has no accurate, corresponding word in the western languages. The closest ones are only the English word “cult” and the ancient French “sect,” which, however, cannot be simply translated as “heresy.” The former means mainly the organization of personal worship and cultism, while the latter refers to the new or cult churches. The *Oxford Advanced Learner’s Dictionary of Modern English with Chinese Translation* defines it this way: “heathenism, heresy, normally deemed as the religion or religious sector going to the extreme or being forged, the followers of which are normally living a common life under the leadership of a leader with dictatorship and extreme charm.” According to the *Webster New International Dictionary*, “cult” means a religion regarded as unorthodox or spurious, “also: a minority religious group holding beliefs regarded as unorthodox or spurious: sect.” According to Spanish scholar Rodriguez, so-called heresy means the following: “All groups or organizations appearing in the nature of religion, culture or others, requiring their members to absolutely be loyal or devoted to one person or idea, while their leaders are trying all measures of operating, inducing and controlling for their personal purpose to damage the families of the followers and the social environment.”²

2) Qualitative Definition of “Heresy”

Currently, most countries have not quantitatively defined heresy, because the Constitution protects the freedom of citizens for religion or belief. The state is obliged to be neutral and to not discuss whether a religious belief is right or wrong. The government has no right to test whether a belief is true. Most of the western European countries and many states in America do not allow registration authorities to carry out a thorough review of the articles of the religious organizations which have applied for registration. However, the non-quantitative definition does not necessarily mean that the government will not take action. Governments of all countries will support regulation against heresy. There are two measures to achieve this purpose:

(1) the government could use laws to punish any harmful expression of belief, such as cheating based on religion but the law should not prohibit the dissemination of any religious belief.³ According to this viewpoint, “in a state of constitutionalism, the government has no natural power to define if the religion is correct or wrong. Due to lack of convincing epistemological standard, the efforts made to define these problems that may not be defined may easily lead to

¹ Duan Qi, *Study on Heresy: Basic Features of Heresy*, <http://www.chinanews.com.cn/2001-03-02/26/74977.html> (accessed Nov. 2008)

² *Brief Discussion on Terrorism of Heresy*. For more see http://blog.people.com.cn/blog/log/showlog.jspe?log_id=1174274096386806&site_id=15769 (accessed Nov. 2008)

³ Zhang Qianfan, Zhu Yingping, *Freedom for Religious Belief and Legal Restriction: Theory and Reality in China*

abusing the power and the deviation from the basic objectives of rule by law and constitutionalism.”¹ The USA government does not define if any belief is right or wrong, but if a member of the heretical organization commits a crime, he will be punished.

(2) Carry out special anti-heresy legislation and establish the relevant institution to crackdown the heresy. For instance, France formulated the *Anti-heresy Act* and established the Heresy Crack-down Committee of different departments under Prime Minister.

China has always handled the problem of heresy in a political way. In China, it is common to identify whether a religious belief is right or wrong and whether it is beneficial or harmful. The secular society and the government form the final judgment to decide if the religion is correct or harmful, and thus has the right to restrict and prohibit the religious activities through the law or regulations.² The connotation and denotation of the concept of heresy will change with social development, change of ruling class and, change of certain historical conditions: historically, the concept of heresy can change.³ In China, the rulers of different feudal dynasties, without exception, considered the religious sects as heretical – deeming that these groups used religion as tool against the ruling or political organizations - mainly to protect their political rule. In Chinese history, heresy was basically determined by the ruling groups or leading religious groups in the different dynasties. The basis for their determination was that heresy was against society and tradition, that it opposed the rights of the social ruling groups, or that it was an extreme religious sector which had deviated from the orthodox religion. Some viewpoints even noted that in Chinese history, any heretical organization had a political purpose, leading to the inherent standard of distinguishing between orthodox religion and heresy. In other words, the conclusion was that heresy is an extremist force which uses the name and means of religion.

The political treatment of religious affairs has been extended in the religious policies of New China. According to *Basic Views and Basic Policies for Religious Affairs of China during the Socialist Period* (vide Document No. 19) in 1982, “to insist on assuring all the normal religious activities means to insist on cracking all the criminal activities and reactionary activities covered with the coat of religion at the same [time].”

Our policy is to undertake the international friendly communication in terms of religion as well as to firmly resist the penetration of any opposing force in the foreign religions....It is necessary to insist on

¹ Zhang Qianfan, *Bridge between Chinese and Western Constitutionalism: Brief Discussion on the Constitutional Problems for Administration of Religious Activities in China*, edited by World Religious Affairs Research Institute, Chinese Academy of Social Science, Collection of Theses from International Academic Seminar of Religion and Legal System, 2004, p. 23.

² Ibid

³ He Binsong, *On Modern Heresy*, Law Review No. 2003-5

the principle of establishing churches independently, autonomously, firmly prevent any international religious reactionary force from controlling our religion again, firmly refuse any foreign church and religious personage to interfere with our religious affairs, never allow foreign religious organizations (including any institution under their control) to preach in China in any form or ship and distribute any religious brochures in a large quantity and in a hiding way.¹

This policy of cracking down on the reactionary elements and criminals and prohibiting foreign religious forces from interfering has again reflected the political treatment of religious issues. The so-called “reaction” is not strict legal concept, which can be applied to whatever is against the authority of the ruling group.²

On October 9, 1999, the Supreme People’s Court and the Supreme People’s Procuratorate issued the *Interpretation for the Guidelines of Applying the Laws to the Criminal Cases of Organizing and Utilizing Heresy to Organize Crimes*, specifying that a heretical organization means any illegal organization established in the name of religion, “qigong,” or other, which deifies the prime element; and uses, produces and distributes the superstition to enchant and cheat others, control members, and harm the society.

3) Freedom for religion or belief

The freedom of thought, conscience, religion or belief is without doubt one of the most important human rights – a right that is fundamental. The constitutions of different countries and international covenants have almost all granted protection to this right. According to the first amendment draft of the U.S. Federal Constitution, “Congress shall not be allowed to legislate for religion establishment and shall not be allowed to legislate to prohibit the freedom of religious activities.”

Article 18.1 of the *International Covenant on Civil and Political Rights* (ICCPR) stipulates:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in

¹ *Basic Views and Basic Policies for Religious Affairs of China during the Socialist Period*, Part 10 and Part 11

² According to Paragraph 3, Article 35 of Constitution Amendment Draft (1982), “The state protects normal religious activities. No one may make use of religion to engage in reactionary activities or activities that disrupt public order, impair the health of citizens or interfere with the educational system of the state.” In 1982, the adopted constitution deleted the term of “reactionary activities.”

community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

Article 18.3 of ICCPR specifies:

Freedom to manifest one's religion or beliefs 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.

(1) The right for religious belief freedom is not endowed by the state, but based on personal features or features of religious organizations. According to the Covenant, religious liberty is part of human right, while its justification does not depend on how the law of a state will define it. The state can only restrict the religious affairs within the allowed scope. Such legal restriction must be subject to such limitations as are prescribed by are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

(2) The extensive definition of religion is in the Covenant.

Article 18 protects theism, atheism and any spiritual state not connected with any religion or belief - which is of great significance for atheists, agnostics, skeptics, and others. Belief or religion should be extensively interpreted. Religious liberty does not only protect “conventional religions,” but also small organizations, new organizations, opposing groups, church separators, extremists or fundamentalists. Simply speaking, it protects all the religious organizations.

The Chinese Constitution has specified the freedom for religious belief. Article 36 of the Chinese Constitution makes the following directives:

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

The *Regulations on Religious Affairs* implemented in 2005 has set up strict restrictive measures for freedom of religious belief. Article 3 of the *Regulations* specifies the following:

The State, in accordance with the law, protects normal religious activities, and safeguards the lawful rights and interests of religious bodies, sites for religious activities and religious citizens. Religious bodies, sites for religious activities and religious citizens shall abide by the Constitution, laws, regulations and rules, and safeguard unification of the country, unity of all nationalities and stability of society. No organization or individual may make use of religion to engage in activities that disrupt public order, impair health of citizens or

interfere with the educational system of the State, or in other activities that harm State or public interests, or citizens' lawful rights and interests.

Unfortunately, in China, the freedom of religious belief is only limited to the “normal religious belief and religious activities.” The term “normal” is ambiguous, and the *Regulations* have not given a legal definition of “normal religious activities.” Instead, adherence to so-called “normal religious activities” is required if the activity will be protected. Essentially, this term has given the government the discretion to restrict or define the scope for the right of religious belief freedom for organizations and followers. More seriously, this governmental discretion is not subject to any system or procedure. China gives a narrow legal definition to “religion.” What is “legal” religion? Since New China was founded, the positions of five institutional have been accepted in China: Buddhism, Taoism, Islamic, Catholicism and Christianity. The freedom is accepted for the citizens to establish any religion. Now new religion is allowed to be established and developed in China, and except for the five major religions and the ten major traditional religions accepted in the world, others will generally be accepted as legal religions: of course, in current conditions, they are not allowed to survive and develop legally in mainland China.

Has such narrow definition of religion restricted the religious freedom of Chinese citizens? In China, the so-called legal religious organizations are limited only to the eight major patriotic religious organizations representing the five major religions, i.e., the national church leading organizations under the leadership of CPC, while others have to be included in these eight major organizations before acquiring the “legal” positions and undertaking the religious activities. In addition, regarding Christianity, the preachers have to have preaching certificates issued by the authority, and they shall not be allowed to preach in other regions. If they fail to abide these regulations, the gathering at which they preach it will be deemed as an illegal gathering. In a minor case, they will be detained and penalized, and the government justifies this by a charge of disturbing the social order. In a serious case, a criminal investigation shall be undertaken. In general, even though the Constitution assures the freedom for religious belief, in practice, the orientation of legislation and law enforcement controls the freedom for religious belief, instead of protecting the freedom for religious belief.

4) Rethinking the Definition and Standard for Heresy

First, is heresy a religion? Heresy is essentially within the category of religion. According to Professor He Binsong, according to the western definition of religion or the Chinese definition of religion, we cannot exclude heresy from religion as a social phenomenon. It is morally and legally an evil religion. However, essentially, an evil religion is also a religion. We cannot exclude bad men as men, though they are morally and legally bad men, murderers and

pillagers. In view of the essence of man, a bad man is also a man.¹ Therefore, it is not scientific to say that heresy is not a religion and thus is protected under the Constitution on freedom for religious belief. In our opinion, we should protect freedom for religion or belief and restrict the organizations which violate the law. Meanwhile, the acceptance of heresy within the category of religion does not necessarily allow the harmful behavior of heresy. Naturally, heresy should be governed, but not through discriminative subjective regulations. The criminal acts of heresy should be punished according to the particular regulations that have been violated.

Second, are all heretical organizations also politically extreme organizations? Heresy is first of all a religion. No matter how strange or extreme its doctrine is, it shall not be punished or regulated unless its activities have harmed the state, the society and the legal rights of others. Furthermore, not all heresy organizations have political appeal. Only those involved in politics might be against government or play as a tool of certain political force. Heresy is not by nature an illegal organization or criminal organization. At this time, the laws of some states do not exclude heresy from the legal organizations or punish it as a criminal organization. However, heresy is an evil religious organization, or evil organization, as has been commonly accepted by people of the countries all over the world.²

Third, who has the right to define if a religion or belief should be categorized as heresy? What is the standard to use for such a definition? First of all, the governmental definition has no justification, for the government is not authorized to define heresy. The government has no right to interfere with the inherent spiritual freedom of citizens, but can only crackdown on the external behavior if it is criminal behavior. If the government did have this authority, it would naturally crackdown on any group which endangered the ruling party – with justification that it is a heretical organization. Article 300 of the *Criminal Law* and its *Interpretation* has not specified how to assess if a self-described religious organization, “religion, qigong or others” is a heretical organization. Most critically, as a constitutionalism state, the government has no natural right to define a religion as right or wrong.³ Second, the definition of heresy should be the task of a religious organization, as is a natural result of protecting religion and criticizing cults. The word *heresy* can be used only in the field of religion, and thus the standard of definition is naturally the orthodox doctrine. Third, the

¹ He Binsong, *Modern Heresy*

² Ibid.

³ Zhang Qianfan, *Bridge between Chinese and Western Constitutionalism: Brief Discussion on the Constitutional Problems for Administration of Religious Activities in China*. Collection of Theses from International Academic Seminar of Religion and Legal System, held in Beijing on October 17-19, 2004, by World Religious Affairs Research Institute of Chinese Academy of Social Science, School of Law of Emory University, Global Law Research Institute of Washington University in St. Louis, and European law research institute of University of Trier

relevant position of media coverage needs to be examined for its effectiveness. In a society with multi-element interests and imperfect protection for freedom of expression, it is hard for the media to be neutral. The media is often controlled by the political orientation.

2. Status of Heresy in China

Regarding the heresy problem in Mainland China, Phoenix Media is the non-governmental media with most concerns. The 11th edition of Phoenix Weekly (2006) has carried out massive coverage about three servants, including “one underground church and sixteen homicide cases,” “Xu Wenku and his Kingdom of Religion,” and “Reality of Religion in a Rural Village.” Its 13th edition of 2007 again carried the introduction of “Support the Orthodoxy and Expel the Heresy,” as well as other articles including, “Heresy Survey in Villages of Western Mainland China” and “What is Heresy?” From these reports, we can reconsider some viewpoints and discuss the role of media in covering the relevant issues.

1) Viewpoint One: Support Orthodoxy and Expel Heresy¹

According to the “Support the Orthodoxy and Expel the Heresy” view being influenced by Marxism and Leninism, the earlier Chinese authority considered that religion is a tool of the ruling class to weaken the people and a product from the period of undeveloped science and culture. However, this viewpoint has been refuted. The only way, instead, is to support religious organizations that benefit the social stability and the life of the common people, fill up the gap of belief, and control heresy at the source.

In his blog, *Urgent to Rebuild Religion and Morality with Attention*, Qiu Zhenghai wrote:

Proper guidance and support for the development of the conventional religions will not only benefit the rebuilding of ethic value, but also will benefit to regulate and eliminate pathogen in the field of religion. Meanwhile, as compared with the western society, the conventional religions observe a great development space in the Chinese society. Generally, the initial social spiritual demand will most regard the conventional religions as the appealing object, while the conventional religions have been pressed in China for a long time and are in a period of restoration or building.

Regarding tactics for “rebuilding,” in Mr. Qiu’s perspective is that to “Regulate the idea and start with Buddhism first” seems to become the basic orientation for people to think. The phrase, “Regulate the Idea” means recovering the original position of the conventional religions. In this regard, it is necessary to

¹ Zhou Jianing, *Support Orthodoxy and Expel Heresy*, Phoenix Weekly, No. 2007-13, p. 3

regulate and clear the distinctions between the conventional religions and the new religions with cultish features (especially those cults with destructive features¹) and promote the normal and healthy religions, as may be the idea to support the orthodoxy and eliminate the heresy. As for “Start with Buddhism first,” it means to begin with the features of oriental cultures. It is to focus on promoting and supporting Buddhism with the oriental features. The existing Buddhism complies with the oriental cultures as well as can temporarily avoid the political factor between Catholic Vatican and Beijing.²

These viewpoints benefit the protection of “orthodoxy,” but do not comply with the national conditions of China. As discussed above, Chinese “orthodoxy” is only limited to the five major institutional religions. Legal religious organizations are also limited to the organizations registered with the eight major patriotic religious organizations. Such quantitative definition of “orthodoxy” is actually a discrimination of other non-registered religions or religious organizations. “Start with Buddhism First” introduced by Mr. Qiu to promote Buddhism is not a consideration of oriental cultures, but a discrimination of other religions. As for the religious affairs, the state should keep a neutral position: neither establish or support one religion by means of legislation or administration nor ban the freedom for religious activities. On the other hand, though people have become more and more aware of the importance for the belief to be allowed, since the reform and “opening up,” Chinese society’s quest is growing for the rare belief. According to some scholars, it is a natural trend for mankind to seek spirit and belief, which cannot be controlled. It is also a basis for the religious liberty to be based on the inherent demand of humanity. However, the government of atheism essentially prefers to restrict the development of religion, viewing that with the size of orthodoxy developing excessively fast and believers becoming excessive in number, such will cause an unfavorable impact on the social administration of the government. It is impossible for the government persisting on Marxism and Leninism and maintaining the concept of scientific development to encourage the development of orthodoxy. It is also childish to think that the heresy will be controlled at the source as long as the orthodoxy is developed. In the world, there are many states that have really assured the freedom for religious belief, but it does not necessarily mean the heresy has been effectively controlled!

2) Viewpoint Two: implement the Anti-heresy Law as soon as possible³

Should the law regulate the problem of “heresy”? In other words, it is necessary to formulate a special *Anti-heresy Act* to cope with “heresy” organizations? Or is it

¹ In the article *Urgent to Rebuild Religion and Morality with Attention** Qiu Zhenghai views that the cults include some organizations of destructive features, commonly known as “heresy.” (*<http://blog.ifeng.com/article/1220787.html>, accessed Nov. 2008)

² Qiu Zhenghai, “*Rebuild Religion*

³ Kan Yanhui, *What is Heresy?* Phoenix Weekly, No. 2007-13, p. 27

necessary to resolve the law-breaking criminal act of heresy organizations through crimes such as intentional murder, cheating, etc?

According to the article “What is Heresy?” published in Phoenix Weekly, during the two congresses in 2007, Maser Gentong, Vice Chairman of Chinese Buddhism Association, proposed that the state’s legislative organs should integrate the existing anti-heresy laws and regulations, define the standard and scope for heresy, and implement the *Anti-heresy Act* as soon as possible. In the legal circle, the option of some scholars is that China has formulated some objective legal regulations and judicial interpretations, but that these are not special laws for punishing and controlling heresy and so it is necessary to establish a legal system to fight against heresy. According to this viewpoint, the most common and effective method to resolve the heresy problem is to apply the legal measures. However, will the application of legal measures mean the formulation of an anti-heresy act?

Chinese scholars will always mention France when talking about the successful experiences overseas. The French anti-heresy act has broken the ice for the legislation against heresy. In 2002, the French National Assembly passed the first anti-heresy law of special significance in the world, *Abou D Birka Act*. With this, France became the first state in the world to apply a special law to punish and govern the activities of heresy organizations. The law has specified, in particular, heresy organizations and heresy activities. As for heresy organizations that committing a crime, e.g. harming human life, illegal medical practice, misleading advertisements, or smuggling, the high court has the right to ban them. France has established a Heresy Crack-down Committee of different departments under Prime Minister, to monitor, control and review the new religious organizations, work out the relevant name list of organizations which have the nature of heresy, and carry out the special legislation for regulation. However, when the French “Name List of Heresy Organizations” was published, many unbearable cases emerged in the public and private sectors. The French anti-heresy policy has led to unprecedented discrimination and non-tolerance to the organizations of nonconventional religious belief, and has violated the international covenant and European covenant. The covenants specify that the state is obliged to protect the rights of freedom for religious belief.

The approach of France to eliminate heresy is an opposite approach from the position of most of the European Union (EU) states. In Europe, the response of the EU, European Parliament, and some of the states is to show concern over events of successive heresy activities of collective suicides, murders and attacks in USA, Europe and Asia. Will it be necessary to design and execute certain particular policy for those non-conventional religions to prevent the further happening of these tragedies? There are different views about this. According to eleven of the Member countries of the EU, the harm of heresy (sects) for individuals, families, and the democratic system of the state has not reached such extent for drastic action. According to these states, the problems of new religious organizations can be resolved with the existing legal system or by adopting a

special legal act when it is necessary. Consequently, they have not adopted any political or legislative measures in conflict with the terms of International Human Rights Convention relating to the protection of freedom of religion and belief, such as Article 18.3 (scope and circumstances for allowed restriction) and Article 4.2 (freedom for religious belief as a non-derivable right). For instance, Paragraph 2.83 of 1996 State Security Department Annual Report published by Holland in 1997 is titled, “Religious Organizations,” and includes the following text: “as for the events overseas due to the involvement of religious organizations, we have studied the extent of such threat from these organizations. Up to now, no sign shows [that] the new religious organizations in Holland have constituted any serious threat to the state safety, democratic system or other major interests of the State.” This is a re-statement about the governmental position of Holland in 1984: “In general, new religious organizations are not subject to the real threat to the public spirit and health.” In 1998, Switzerland also reached a similar conclusion.¹

However, four of the EU member countries have decided to take relevant action, including to two German-speaking states (Germany and Austria), one French-speaking state (France) and one multi-lingual state which is deeply influenced by France (Belgium). Austria has established an information and file center regarding the new religious organizations and distributed booklets including the relevant information about new religious organization. In its Parliament, Germany has established a special committee and issued one report. According to the report, Scientology shall be placed under monitoring, but up to now, no legal action has been taken against the new religious organization. Different types of booklets warning the people against the new religious organizations have been printed and distributed.²

Will China implement the method of France, to take such action against heresy? In the Author’s opinion, the approach to resolve the problem should not be to copy the French mode.

First, the French method for eliminating heresy violates the international conviction relating to the protection of freedom of religion or belief, so it is not worth promoting. As discussed above, the approach of striking heresy by making special legislation, setting up special governmental organ, and even listing the names of heresy organization, is not applicable, for it will not only cause discrimination and non-tolerance, but also violates the obligations in the international conviction for the states to protect the right for freedom of religion and belief. This regulatory measure is not in a proper proportion with the purpose to be achieved and will often be causation for invasion of human rights. Second, China has its unique religious status. For instance, China accepts only the registered religious organizations and protects the “normal” religious activities. Hence, will the behavior of believers who gather without registration

¹ Willy Fautré, Allain Garay, and Rves Nidegger, *Heresy in French Region of Europe*

² Fautré, Garay, and Nidegger, *Heresy in...Europe*

be considered illegal religious activity? Will it be possible to assess the religious organization without registration as heresy? How to define quantitatively “orthodox” and “evil”? Who will define such? What procedure can assure the justification of such quantitative definition? Any formulation of an anti-heresy act before resolving the above questions may cause more discrimination and may cause for some common religious organizations to be defined as heretical and to receive negative response from the government.

3) The Role Played by Media

A broad consideration of the media articles listed above reveals the various tendencies of media in report about heresy. For instance, in the report regarding the three-servant case, the media has not distinguished the internal religious behavior and external, criminal acts which violate law, but, instead, has given a general definition and presented such titles as “one underground church and 16 homicide cases” and “Xu Wenku and his Kingdom of Religion” and included such wording as “support the orthodoxy and expel the heresy,” “regulate the ideas and start with Buddhism first,” which is not neutral wording. In a society with multi-element interests and imperfect protection of freedom of expression, it is critically important for the non-governmental media to keep neutral in their report and to keep from being controlled by the political orientation. Media is an important source for the public to obtain information about heresy, and the media’s portrayal of heresy will affect directly how much the public understands about the issue. Lack of adequate understanding of the national conditions of China about religion will often lead to the inappropriate speeches. Lack of independence will often become the auxiliary tool for political purposes. The final consequence of this will be that the folk media and the government will jointly interfere with the freedom of citizens for citizen religion or belief.

3. Chinese Criminal Law on Heresy

As mentioned, since heresy is under religious definition, any legal definition of it will not be suitable. Regarding the criminal law, the following section will analyze China’s legislative evolution, discuss the justification of deeming heresy as an organized crime, and eventually analyze the Baicheng Case in combination with the prevailing laws of China.

1) Evolution of Chinese Legislation on Punishing the Organized Crimes of Heresy

After the establishment of New China, in February 1951, China started the movement of suppressing reactions. The central people’s government published the *Regulations of the People’s Republic of China on Punishment of Reactionary*, specifying that “any person undertaking any reactionary activity by using the feudal superstitious sect will be sentenced to death or life imprisonment; in case of any light circumstance, a[n] imprisonment of three years or above will be sentenced.” The Criminal Law of 1979 has applied two articles to specify, respectively, the “reactionary crime” and crime of disturbing the social administrative order.

Organizing and utilizing feudal superstition to undertake any reactionary activity is a crime with the reactionary purpose. However, with the political, economic and social development of the state, it is difficult to define the reactionary crime in practice. The Criminal Law as amended in 1997 eliminated the reactionary crime. The Criminal Law of 1997 specified the crime of organizing and utilizing superstitious sects, heretical organizations in the “crime of disturbing the social administrative order,” and included the term of “heresy organization,” for which two crimes have been defined: the crime of organizing and utilizing the superstitious sects and heresy to organize and utilize the feudal superstition to damage the law; and the crime of causing any death by organizing and using the superstitious sects, heretical organization, and using feudal superstition. With “Falun Gong” and other organizations in mind, on October 30, 1999, the standing committee of NPC reviewed and passed the *Decision to Ban the Heresy Organizations and Prevent and Punish the Heresy Activities*. On the same day, the Supreme People’s Court and the Supreme People’s Procuratorate issued the *Interpretation for the Guidelines of Applying the Laws to the Criminal Cases of Organizing and Utilizing Heresy to Organize Crimes (Interpretation I)*, defining the concept of “heresy organization” and the application of law on different criminal conducts when in connection with organizing and using heresy organizations to commit different crimes. Less than two years later, on June 10, 2001, the Supreme People’s Court and the Supreme People’s Procuratorate issued the *Interpretation for the Guidelines of Applying the Laws to the Criminal Cases of Organizing and Utilizing Heresy to Organize Crimes (Interpretation II)*. On May 20, 2002, the Supreme People’s Court and the Supreme People’s Procuratorate issued the *Interpretation for the Guidelines of Applying the Laws to the Criminal Cases of Organizing and Utilizing Heresy to Organize Crimes (Interpretation III)*, specifying details about the imperfect parts of *Interpretation II*.¹

2) Justification for Criminal Act to Specify the Heresy Crime in the Organized Crime

Organized crime is a kind of extremely serious criminal case, which has drawn the common concerns of different countries all over the world. Regarding the serious social hazard of such crime, the law will often regulate and control the subject. Organized crime is defined as a behavioral offense, not requiring that the organization has committed law-breaking criminal behavior; even if a crime has not been committed, organizing, instructing or participating in such a criminal organization will also constitute a particular crime. Since New China was founded, the legislative body has not defined the concept of organized crimes, but generally it defined the organizational methods of organized crimes, defining the criminal organizations undertaking the organized crime.² The Criminal Law of 1997 specified two crimes relating to relevant superstitious

¹ Lu Jianping (editor), *Comparative Study on Organized Crime*, Law Publishing House, 1st ed., June 2004, pp. 14-15

² *Ibid*, pp. 246-248

sects, heretical organizations, and feudal superstitions: the crime of organizing and utilizing superstitious sects and heresy to organize and utilize feudal superstition to damage the law; and the crime of causing death by organizing and using the superstitious sects, heretical organization, and use of feudal superstition. The previous section has discussed the method for heresy regulation: punish with regard to law-breaking criminal behaviors, instead of defining the criminal subject. Will the regulating heresy, as subject of the crime, be discriminatory? Heresy is essentially not in the category of religion, and not all heretical organizations are criminal organizations or cause serious social hazards needing to be defined as behavioral crime for punishment. Additionally, the implementation rules of the Criminal Law have specified all possible criminal actions, such as intentional murder, intentional harm, and cheating. A feasible method is to punish criminal behaviors of heretical criminal organizations (instead of discriminating against them by identifying heresy itself as criminal): thus, by the criminal and administrative punishment, the state targets those persons in organizations of belief who are really threatening the public safety or health, instead of legally discriminating the whole religious organization as criminal.

3) Practical Legal Analysis regarding Crime and Non-crime of Baicheng Case

As mentioned above, most of the western states would not provide a quantitative definition of heresy. We also support this approach. But, under the current legal system of China, it is of great significance how to prevent certain religious organizations from being defined as heresy, and to distinguish the crime and non-crime of heresy. Due to China's special historical circumstances, it is really necessary to distinguish between crimes relating to heresy from the behavior of non-registered religious organizations – without arbitrarily defining unregistered religious organizations as heresy. The behavior of Dr. Bai Cheng, in gathering with other Christians to study the Bible, is actually within the normal religious activity of Christians, which is protected under the Constitution and will not cause any harm to the rights of the state, society and others. However, it has been identified as “illegal gathering and illegal teaching” and even named as heresy entitled the “Shouting Sect” for crackdown.

China implements the principle of statutory crime and punishment. An act will not be a crime if the law has not specified so and no punishment shall be exercised if the law has not specified so. The crime of a heretical organization should be only limited to the relevant scope of “organizing and utilization of heretical organization” as specified by the Criminal Law, without any arbitrary expansion. Article 2 of *Interpretation I* has specified all the criminal behaviors of organizing and utilizing the heresy organizations:

“(1) assembling to siege and impact the state organs, enterprises and institutions, disturbing the order of the state organs, enterprises and institutions for work, production, operation, teaching and research; (2)

illegally hold the gathering, parade, demonstration, foment, cheat and organize other members or others to assemble to siege, impact, occupy and disturb the public arenas and the places for religious activities, disturbing the social order; (3) refuse the banning by the relevant department or resuming or establishing separately the heresy organization though being banned by the relevant department or continuing with the heresy activities; (4) foment, cheat and organize other members or others not to perform the statutory obligations, causing serious consequences; (5) publish, print, photocopy and issue any publication promoting the heresy and print the logos of heresy organizations.”

Article 1 of *Interpretation II* specifies such circumstances as the following:

“(1) produce and disseminate more than 300 copies of the heresy brochures, pictures, slogans and newspaper, more than 100 books, more than 100 copies of CD, video, tapes; (2) produce and disseminate the DVD, VCD and other parent disks promoting the heresy; (3) use the Internet to produce and disseminate the information of heresy organizations; (4) hang banners, posters or write or spray slogans in the public areas to promote the heresy, causing serious social impact; (5) produce and disseminate again after being punished for producing and disseminating the heresy brochures.”

In the process of teaching, Bai Cheng has never executed any of the above criminal behaviors, has never mentioned Li Changshou to other Christians, has never promoted the doctrine of the Shouting Sect, or used the authentic book translated by Li Changshou, “Restore the Bible.” Instead, he has been teaching the Bible commonly used in Chinese Christian churches. Bai Cheng has collected one or two books relating to Li Changshou, but it not would constitute a crime. According to point five of the *Interpretation III*, a crime shall be constituted by holding and carrying any heresy brochures for the purpose of dissemination and the quantity thereof reaches the standard specified in Item (1), Paragraph 1, Article 1 of the *Interpretation II*. Bai Chen has not propagated the “Shouting Sect” and the quantity of books relating to Li Changshou has not reached the criminal standard. Thus, he has not constituted any crime. The behavior of Bai Cheng collecting USD 400 from brothers and sisters as contribution has not violated the laws of China.

4. Fulfill the Freedom of Religious Belief Guaranteed by Constitution

The key to really strike heresy, as well as to prevent invasion of human rights, is to carry out the freedom for religious belief under the protection of the Constitution. First, allow the house churches to independently register, so that house churches will become more transparent. Recently in some regions, the

house churches have resulted in the cults and even heresy, such as the Follower Club, Oriental Lightening, etc.¹ which is closely associated with the underground status due to the high-pressure policy. The high-pressure policy of the government has led many of the churches to a difficult position. The house churches should be allowed to independently registration, to bring their beliefs out into the open and reduce the occurrence of heresy. Second, strictly define illegal gatherings, without defining as illegal gatherings – or arbitrarily, as heretical – those the religious activities of religious organizations which are unwilling to register with the eight major organizations. The government should not be allowed to detain and penalize them in the name of disturbing the social order or even to sanction a sentence. Third, abolish the qualification system for religious staff (including the approval system for the trans-regional teaching of the staffs) and the approval system of religious activities. Due to policy restrictions, the pastoral care of orthodoxy is not adequately positioned, while this leakage has been utilized by heresy by means of “door-step visits and care everywhere.”

To carry out freedom for religious belief under the protection of the Constitution, it is necessary to provide the relevant appeal channels. Where there is a right, there ought to be room for relief appeal. A right without relief is not a real right. Currently in China, the punished has channel to appeal for relief. The lack of constraints on the public power will naturally lead to abuse of the power. In this kind of system, any organization might at any time be punished under charge of heresy. The crime of any heresy member should be subject to the legal procedure so that the suspected has the chance for public appeal or hearing. Internal documents or measures should not be used only to regulate the criminal activities of heresy. The punishment which is not transparent cannot possibly be justified.

5. Conclusion

Baicheng Case has provided various perspectives and questions for the problem of heresy. Freedom for religious belief is one of the basic human rights accepted now in the world. The problem of heresy should be handled in respect to the value of human right. The government has no right to define heresy, for heresy is a religious term. When reporting about the problem of heresy, the media shall remain neutral, without any deviation and without becoming a tool of interfering

¹ The word of heresy generally refers to moral ethics instead of doctrine, especially the control over the freedom of life and property of church friends in the name of religion and the force on the church friends to cause harm to the society or others in the name of religion. Cult is not within the administrative scope of the government, but is defined by the church. A cult has the right to survive: if the church does not agree, it has to confute it with the truth, instead of crackdown with administrative measures. But it is different for heresy. Once it commits any activity which breaks the law, harming the public order and the life or property safety of citizens, it will naturally be under the control of the national laws. Therefore, it has to be regulated by the State.

with the freedom of citizens' religion or belief. The idea of "supporting the orthodoxy and eliminate the evil" may easily cause the discrimination against the religious belief, which can be hardly carried out in such complex religious affairs. The French approach of establishing the special legislation against heresy has violated the international conviction and has not been agreed to by most of the states, and it has failed to comply with the actual conditions in China. Therefore, it cannot be precisely copied. The members of heretical organizations must be punished according to their criminal behaviors. The basis for any law-breaking and criminal cases is to be based on the behavior instead of the spiritual religious belief. The Criminal Law attaches importance to the principle of statutory crime and punishment. Consistent with the stabilization of the criminal law, it is necessary to adequately distinguish the criminal and non-criminal standard in the criminal punishment, to avoid arbitrarily expanding the scope and targeting general religious organizations defined as heresy. Additionally, it is also necessary to provide the relevant relief channels. Strengthening constraint on power works to assure just and public procedures.

In general, to really resolve the heresy problem in China, hard high-pressure policy shall not be applied, but the relevant provisions of ICCPR shall be carried out to practically strengthen the protection of the freedom for right for religion and religious belief. It is necessary to sincerely implement the idea of rule by law; accept the independent or collective, open or private expression of citizens for their freedom of religion or religious belief in the modes of service, discipline, practice and doctrine; prevent any invasion of human rights during punishment of criminal behaviors. It is a serious and long-term task for China.

page intentionally left blank

中国法律与宗教观察

Independent Registration and
Dependent Registration

by Liu Tongsu

Independent Registration and Dependent Registration

by *Lin Tongsu*¹

Huge Rocks in the Storm

When Hurricane V (the internal reference for the Chinese nationwide crackdown on house churches) was spinning throughout Beijing, some of house churches have gone with the wind. Under pressure, one church went for registration with the Three-self Patriotic Movement (TSPM) of the Chinese Protestant Churches, to be registered as an official church. Their action was immediately cited by the authority as an example to guide other house churches toward TSPM registration. Another church applied for the official registration due to the pressure, which has also caused some of the other churches to doubt. Recently, one “overseas-return” organization also applied for registration as “Beijing Chinese Protestant Church Calvary Chapel.” On November 18, 2007, when the chapel held the first service, the major leaders of Beijing TSPM were present for congratulation. Compared with thousands of house churches in Beijing, these three churches are only the minority, but this movement has spawned serious thought by churches at home and abroad.

During Hurricane V, the tactics of the ruling authority became clear, to “press down house churches and support the three-self strength.” Then, all the house churches in Beijing were required to approach the TSPM for registration. In October, the second wave of pressure was launched; the first priority was to urge these house churches to register with the TSPM. One church – which was ordered to stop holding services in May – inquired directly about the purpose of such force, due to the repeated disturbance of the state security authority: “What actually do we have to do?” The reply – the bottom line – was this response: “Approach the ‘three-self’ [TSPM] for registration.”

Such house churches, having persisted for years under this kind of pressure, have not yet been pressed down. The aforementioned church that begged for the official “bottom line” has immediately restored its bottom line: it not approach the TSPM for registration. However, it has somewhat affected some “boundary parts” of the house churches and the overseas gospel organizations relating to the house churches. The three churches mentioned at the beginning, which plan to register or have registered with the TSPM, have the following features: 1. These churches have members who will return from overseas: though churches of this kind are called “overseas-returning church (or fellowship),” actually, those returning from overseas are only minority of the church membership. However, their key staffs are naturally from overseas. 2. The churches have been recently established. 3. Most of the church members are new believers. 4. The church

¹ Bio of Lin Tongsu: A scholar on law and religion in China, now residing in America

members are most young professionals. 5. The executive staffs of these churches were originally from Taiwan. From the above features, it is observed that the affected components of the house churches may partially disperse.

The ruling authority has also applied the pressure tactic on the institutions and individuals coming to China from overseas. In Shanghai, Neimenggu and Hunan, the authority has set the ground rules for the institutions or individuals coming for gospel or training: if anyone insists on organizing any activity in house churches, the authority will take action against him; if anyone is willing to take such activity at TSPM, the authority will guarantee the provision of better and bigger arena and organize more people to attend. In Neimenggu, a gospel institution from the USA agreed to cooperate with the TSPM for a joint operation, and the authority kept its commitment. The directors of local religious affairs bureau, civil affairs bureau and cultural bureau were present to give congratulations. With such inspiration, the overseas gospel institution stood solidly. In the opinion of some institutions, the gospel has been delivered no matter with whom we are cooperating. However, within the context of the whole gospel service in China, has such cooperation expanded the dissemination of gospel? Consider this situation: You purchase ten tickets to see a play. At the entrance of the theatre, one rogue stops you, saying: "I will let you go in as long as you get me the other nine tickets from your friends." Will you say: "I helped him to snatch nine tickets, but one of us has gone inside for the play?" On the whole, have you increased or reduced the number who watched the play by watching the play alone? For the good of the group, you have to help the nine friends to go through barrier and enjoy the play all together. Your partner has been slapped on the face by someone; but you have immediately given up cooperation with your party and instead joined the slapping person – only because he gave you a few sweets. Is this rational? Where is your conscience?"

The Author has met more than one hundred successful chapels in Beijing, most of which are the churches for professionals. Currently, most of the churches of this kind have firmly persisted on the basic tradition of house churches. However, since the gospel movement is new in Beijing, the ratio of new believers is comparatively high. It is quite natural for some of them not to be aware of the spiritual component in some critical occasions. Since those returning from overseas have been baptized for a long time and some of them have gained the title of chaplain, they almost always become the leaders. If these overseas guests intentionally or unintentionally lead to a wrong direction, a real problem will appear. The three churches mentioned at the beginning, which plan to register or have registered with the TSPM are examples of this. Most of those coming from overseas maintain comparatively deep relationship and appreciation for the house churches, but they have different experiences of life. And sometimes, different experiences will lead to different positions. Within the trend of advancing the development of gospel movement in China, a minority of these people have come to mainland China for personal advantage. "Buy-out" may be an improper word of expression, but the intentional or non-intentional

heart of utility will naturally lead to enslavement as an opportunist. The new churches with a high ratio of new believers may be deceived by the wording of these people. Years ago concern was expressed that some business-like people from overseas moved among house churches. Such worry has now been proved well-founded.

However, with God still steering, this hurricane wave will not overturn the ship. Perhaps God provided this opportunity so that we would think in the spirit and restate clearly and rationally both the life essence and the believing position of house churches, so that the many new believers can understand the life tradition and self-identity of house churches. In the inheritance of church tradition, the direct demonstration of life is naturally the first priority. Nevertheless, the systematic and clear expression of doctrine is a necessary instrument. If we fail to systematically and rationally state our believing position and point out the fundamental difference between the house churches and the TSPM, the new believers will naturally doubt. The TSPM has misleading premise, to which we cannot rightly respond just by shouting slogans. Sometimes, pressure is also a blessing. The stormy waves wash away the mud and sand and clean the rocks.

A Certain Kind of Registration

The registration of the three churches mentioned at the beginning seems bring a puzzling scenario about registration. Those opposing registration might respond, “See, to register is to surrender!” Actually, on the contrary, this phenomenon has clarified many of the questions. The courteous reception given to the churches who registered with the TSPM has instead indicated that the churches which are striving for **independent** registration have not surrendered. The first house church applying for the independent registration in Beijing, the house churches known for independent registration, and the large house churches applying for independent registration in Xi’an have not been entitled to any courteous reception by the authority, but have been pressured to different extent. Obviously, registration in and of itself is not a sign of surrender, but instead, the question of *where* to register is critically important. In Beijing, the well-known church has been severely pressured only because it insisted to apply for independent registration. Obviously, the authority advocates only for registration at the TSPM. If a church dares to apply for independent registration, the authority will be more severe toward it than toward those churches which fail to apply for registration.

What is the essence of church? Is it a certain belief or a defined material shape? Naturally, it is belief. With this defined, it will not be difficult to classify the registration. What is the TSPM? Some people would say it is a church and some would say it is a governmental organ. However, either way, there will be no difference about registration. If the TSPM is titled as a “church,” it is only a forged believing community following wrong doctrine. If a house church registers with the TSPM, it means that the house church will join a forged

believing community and consequently have to give up its true belief – which is its essence. If the TSPM is a state administration, it is only an administration of a type of belief. Thus, to register with the TSPM is to allow the state organ to administrate a type of belief and to surrender the most important belief. Therefore, it is to give up the essence of belief. No matter if the TSPM is a community of belief or a state organ administrating the belief, once a house church registers with it, it will lose its essence of belief and thus surrenders.

The government is the representative of the social community. A house church should register with the governmental legal department only as a general social organization, and thus it allows the government to administrate its external action (i.e., the non-inherent belief) as other social organizations, to accept its external existence as a part of the society. Such registration involves the external action of the church, but not the belief. Therefore, a church registered in this way has not given up the essence of its belief, but it has its independent identification legally protected. Such registration is not surrender. All democratic states in the world have a similar registration system. The mainstream gospel churches will neither avoid such registration nor deem such registration as surrender of belief. In China, such registration system is not available. House churches are striving for the right of independent registration. Their purpose is to establish such a just registration system, to achieve and protect the right to believe which God has endowed.

At this time, the Chinese churches and society are both experiencing a fundamental change, in which the house churches shall identify its own position and prepare the countermeasures to face such change. The registration and the government-church relationship thereof are the important aspect of this change. Therefore, distinguishing independent registration from registration entailing surrender is a major problem of determining the future orientation of house churches and gospel movement. When this problem is resolved, the house churches will develop normally in the mainstream society without selling their independence.

page intentionally left blank

中国法律与宗教观察

**The Fable of the Wolf and the Sheep:
Discussion on Freedom of Religion
after the Raid and Response
of the Beijing Gospel Church**

by Wang Guangliang

The Fable of the Wolf and the Sheep - Discussion on Freedom of Religion after the Raid and Response of the Beijing Gospel Church

*Wang Guangliang*¹

If men will not be governed by God, they will be ruled by tyrants — William Penn

On May 25, 2008, the Beijing Gospel Church had several of its chapels raided by the governmental departments, with staff from the municipal religious affairs bureau, national and religious affairs commission of districts, state security brigades of district public security bureaus, and the cultural commission.² This raid not only disturbed the service being held by the believers, but also, the governmental officials ordered the believers to immediately stop the gathering. The officials also took videos, searched the rooms, and apprehended books – without considering the privacy of these believers. The officials directed the Christians who were present to register their personal information. The officials acted in a rough manner and even turned over the table and acted in threatening manner. Without doubt, their acts trampled the citizens' right for the freedom of religious belief and their religious activities, and violated the Constitution. It has also damaged the Christians' expectation for the policy of the central government on the religious freedom.

The Beijing Gospel Church promptly issued the Public Statement of Beijing Gospel Church on the Disturbance of Service Gathering, and distributed it extensively on the internet. The statement was re-published by many friends through the web who care for the house churches. In the statement, the Gospel Church told the public the truth of the event, indicating their firm belief in the rational legality of the gathering, citing words from the Bible to state the importance of the public gathering, and arguing against the force of the governmental departments. More importantly, the statement's proposals include protection of legal rights. The statement has provided a beautiful witness for house churches and won an excellent battle for the Lord.

This event has also much affected the Author, as it is a reminder that the Chinese gospel and democracy shall not be achieved easily. The Chinese religious policy was meant to utilize the religion as well as to eliminate the religion. The system of the Three-Self Patriot Movement (TSPM) is a tool for the Chinese

¹ Bio of Wang Guangliang: Lawyer; researcher for private research institute with focus on China's religious and human rights policies

² Note from editor – except for the final paragraph, text is changed from first person to third person

Government to control and manipulate Christianity. This momentary grace of the ruling party is not reliable. According to Professor Wang Yi, a real church shall try all possible efforts to refuse the interference and interruption of secular power over the church affairs. Today, the house churches must determine their own responses about how to survive and develop under the control of an atheist government, how to handle the relation between obeying the ruler and obeying their God, how to be a sheep among wolves, and how to glorify the God and benefit the people.

1. The Wolf's Rule: The Wolf will eat the Sheep

There is a tale about the wolf and the lamb. In order to eat the lamb, one wolf accused the lamb of polluted the river from which the wolf drank. The lamb replied, "I am downstream from you. How could I have made your water dirty?" The wolf said again, "You are a bad guy, because you spoke slandered me last year." The lamb felt wrongly accused, and responded, "I was not born last year."

According to one viewpoint, as long as the Christians and the church do what they should and abide by the law, the government ought to be aware of the benefit which Christians provide and should not interfere with their religious activities. However, what is the reality? As Psalms One reads, the Christians are required not to follow the tricks of the evildoer, stand in the way of the sinner and sit in the seat of the obscener. Also, the evil doers will not only do evil, but would also pull others down "into the water" and make use of the human weakness to prove they are the best in the world. They want to attach Christians in this way - it is the trick of the evildoer. If we fail to be aware of this scheme, we shall be passively waiting instead of fighting for good against the evildoer.

Is religious liberty a right? In view of the citizens' will, the answer is without a doubt, "Yes!" However, a problem follows: will the government deem the freedom for religious belief as the right of citizens? This is a big doubt. In view of the legislation and law enforcement, the communist party will usually take religion as a tool to be utilized. In contrast, in view of the wording they have used, their purpose is to use the positive factors of the religion. In other words, the government will make a deal with the religious sector: you are free for religious belief on the premise of obeying the governmental arrangement: the factors of when to gather, where to gather, who should preach, and how many areas for such a gathering are allowed shall all be controlled by the government; otherwise, the gathering shall be illegal and may be banned. This view dictates that the religious activities are to acquiesce to the political activities and that the authority of the God is inferior to the power of the government - as has been a tradition of China over thousands of years. The so-called religious establishment with the religions is to achieve the political purpose with the religions. The religious belief has never been elevated to the level of citizens' rights.

The right to worship God is not bestowed by the ruler. No matter if being inborn or endowed legally by the ideological form of the authority (or endowed by man), such right has nothing to do with bestow of the government: it is either

bestowed by God or obtained by striving. If it is an inborn right, no artificial law will be able to deprive it. If it is an artificial right, it will be a kind of covenant between citizens, which is endowed with absoluteness and exclusion that cannot be invaded. Either way, such a right shall not be changed at random, restricted at random or even trampled at random. It also means that for Christians, by accepting the right of worshiping God, received from the grace of God, we shall have no right to dispose of it, but to use it according to the good will of God. If such right is invaded, we are obliged to protect it by all our effort. As the Gospel Church included in their Public Statement, “we are not in conflict with the government or in battle with any governmental official....By wearing the uniforms endowed by the God, we can resist the tricks of the devil (slander, separation, threat and charge). We will listen to the voice of the Lord, without being inspired and utilized by the devil.” It is required that “brothers and sisters shall witness bravely their own belief and get ready for whatever cost.”

Ronald Reagan says that what history has taught us is that it is foolish to compromise with the opponent or to act only at one’s own wish. To do either would be to betray our past and throw away our freedom.

2. Participation of Christians in Politics is for the Sheep to Defeat the Wolf

Some Christians would not be involved in politics, trying to show the purity of their belief. However, non-participation in politics is, in actuality, a kind of participation. Politics is a process of social governance. In order to complete the mission assigned by Jesus Christ, Christians will naturally access the public arenas and handle different people and matters. Society is not an enclosed monster. As long one is dealing with social affairs, one has to participate in politics. One important aspect of political involvement is handling the relationship with the power holder.

The political view of Christian is a passive state view. Politically, they are not representing any political group, but view the whole state and nation, and the whole history of God’s salvation work. This is what the Chinese Christians may find difficult to overcome because they have been educated about the class and limitation of individuals since their birth. This existing barrier is difficult to surpass. However, they have to be aware that such imposed class and limitation is totally different from the limitation in the Holy Bible. The former is man’s standard, and the latter is God’s standard. Therefore, Christians should systematically understand the relationship between the authority of the power holder and the abeyance of that power.

First, consider the power of the authority over Christians and the Christians’ response. Apostle Paul said, “Let every person be subject to the authorities over him, for there is no authority except from God.”¹ However, we should also notice this verse: “But Peter and the apostles answered, ‘We must obey God

¹ Romans 13:1

rather than any human authority.”¹ To which authority is this referring? Will a warlord controlling one area be the authority? Will it be a person with high standing and who makes orders, or those rulers and governmental officials who have obtained the power through legal procedure and who have performed their duties according to the law? According the Biblical context, Paul obviously meant the latter. We are subject to the power holder, “For he is a servant of God to you for good...For he is a servant of God, an avenger for wrath to him who practices evil”²; “for they are God’s officers, attending constantly to this very thing.”³ From these words, we may observe that the power holders are only the temporary workers of God. As independent individuals and citizens, Christians are not subject to the authorities to be completely united them, but are subject to them for social governance; otherwise, Christians would not be called citizens, but servants. Second, Christians have the right to criticize the authorities with direction and unction from God. Since the power holder has no absolute authority, all those with authority above him are judging by means of the acts of God. Therefore, when the power holders deviate from the truth of the Bible, even though they have not directly offended the rights of Christians, Christians are obliged to criticize the government. Only by doing so can they show the truth of the Bible; otherwise, they will be blamed for turning black into white. Third, Christians should also actively affect politics and reform the society.

As for Beijing Gospel Church, first, we know that such gathering is legal and totally in compliance with the Bible, as well as one of the natural rights for Christians. Therefore, it cannot be derived. Second, the religious activities should not encroach on the social order and public security and should abide by the public norms. Therefore, Christians also abide by the law and accept the discipline, if both of the following conditions are met: 1. the religious activities encroached on the public order, and 2. the law itself is justified. Actually, the Gospel Church does not satisfy either condition. Therefore, the term, “being illegal without registration,” which was set up by the governmental departments is not justified. On the contrary, it restricted the freedom of citizens for religious belief and deprived the God-endowed right of citizens to worship. Third, this group will not only continue to gather, but will also criticize severely the illegal actions of the government. Through these rights protection actions, which is also part of the subjection referred to above, therein these Christians will promote the government, to improve its work, which will bless other churches and individual Christians

The political involvement of Christians includes three mutually-dependent aspects: obey the political power, criticize the political power, and reform the political power. The three aspects are all equally important. Christians should not focus on the politics themselves, but on the words of God. They must live

¹ Acts 5:29

² Romans 13:4

³ Romans 13:6

according to the doctrine of God, care about politics according to the doctrine of God, and thus become witnesses for the truth of God.¹

3. The Right of Christians is the Weapon Endowed by God

By exercising the rights of citizens, Christians are doing duties for God. He has endowed humanity with so many rights of freedom, but there is both the right and the responsibility that these rights of freedom are fought for against those who illegally restricted the rights of citizen, to recover the rights which have been given and to exercise the right to worship God. Without complete religious freedom, Christians cannot exercise exclusive belief in God nor freely carry out the duties for God - and thus will violate the imperative of God. Jesus Christ requires men to love the Lord our God, with all their heart and the efforts of their will and to love others as themselves: this is deemed the imperative. To do so, personal beliefs should not be surrendered because of demands by human authority, for no excuse will be allowed. To love others, opportunities to help orphans and widows should not be neglected, but shall rather the capacity and right endowed by God should be actively exercised.

Christians are striving for the right also for those who do not believe. A review of the events in China since 1949 clearly reveals that Christians have not been the only group that has been suppressed or the group that has received the most serious suppression. This is why the proper jurisdiction of the political power is stressed throughout this article. If being subject to all the orders issued by the government, and accommodating or keeping quiet about all the actions taken by the government, is the response of citizens, this will without doubt, enable the evil to be done. Today, the government may insist on religious liberty as its basic policy, for they need citizens to form a united line with them. Tomorrow, they may also ban the religious belief as feudal superstition for they have united most of those that do not believe in God and have become the absolute authority in the world. Only by striving for rights and promoting appropriate boundaries on the government can the church and common people be protected. During the Cultural Revolution, many of Christians comprised, became weak, and fell down; but the honest and kind servants of God were insisting on the truth and fighting to their death. Lin Zhao was one of them. In prison, she wrote a letter with her blood, saying:

As a human, I am struggling for my complete, just and clean life, as is without doubt. As a Christian, my life belongs to my God and my belief. All is meant to insist on my road, or my route, a route for the servant of God! The route of Christ! This young man paid a heavy cost with his life for you.²

Can it be said that Lin Zhao did not love the country and was not subject?

¹ Chen Zuoren, *Christians and Politics*, www.stephanchanweb.org (accessed Nov. 2008)

² Cited from Yu Jie, *Like Sheep among Wolves: on How Christians will Insist on Belief in the Unfair World*

How should it be accessed – if one is exercising the proper right? How should legal rights and illegal rights be defined? After Beijing Gospel Church published their statement (referred to above), some of the Christians questioned this response, taking the view that it is illegal for house churches to hold their services before registration, and that the white book of the State Council and the works of Director of Religious Affairs Bureau which were cited in the statement seem to have no legal basis. Actually, this is still the question about to whom the church is subject. First, Christians have a right to gather, the right of which shall not be a derived right. Whether or not to register is a question to be discussed on a premise which does not restrict the gathering. Second, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Constitution of the People’s Republic of China have all specified the right of religious freedom for citizens. The former two have also specified that such right includes the open and private activities of worshipping according to the group’s doctrine. The administration regulations and rules which restrict such right of citizens are a not legally adequate and not rational. Third, it does not mean that the house churches will not register, but that they cannot register or have to be registered under the system of the TSPM as such is not in compliance with the general policy of Christianity, “autonomy, self-support and self-preaching.” Those who have fulfilled their obligation of being subject but have not obtained the legal identification through registration, they can naturally go on with gathering.

Conclusion: be subject but not weak

Is the essence of passive treatment toward the right of belief a passive or weak response? Is the insistence of the Protestant unregistered churches meant to maintain their independence under God, or to compromise or even feel ashamed of the gospel - without any principle? It is not so easy to reply these questions, for they can reveal the weak points in our heart. However, if not depending on the experiences of Jesus Christ, how can we obtain any spiritual output? House churches are for the public, not to be hid “underground.” We are the sons of the brightness and thus should exercise our right without hiding and fearing. Since love includes no fear, why should we worry in exercising the right? Let us say with confidence and love that we are Christians and we have the right to gather. All those that resist the God will be destroyed by the God! We also request God to give us braveness to face those who do not believe in God and say, “Repent ye, for the Kingdom of Heaven is at hand!”¹

¹ Matthew 3:2

page intentionally left blank

Citizen Democratic Constitutionalism –
the Composition of a Citizen Regime

by Fan Yafeng

中国法律与宗教观察

Citizen Democratic Constitutionalism

– The Composition of a Citizen Regime

Fan Yafeng¹

Was *Book of Changes* originated in the medieval? Had the writer of *Book of Changes* any worry? – Copulative of Zhouyi, *Book of Changes*, Part One

Outline:

I. Three Metaphors of Regime

1. *Leviathan (Sea Fish)*
 - 1) *A Giant, a Machine and an Organism*
 - 2) *Internal and External*
 - 3) *Justification and Legality*
2. *Party-State Mother*
3. *Constitution Mother*

II. Possibility for Citizen Democratic Constitutionalism

1. *From Contradictory Complex of Opposites to the Neutral Complex of Opposites*
2. *Elements of Citizen Democratic Constitutionalism*
 - 1) *Heaven and Earth*
 - 2) *Water and Fire*
 - 3) *Continent and Ocean*

III. Citizen Democratic Constitutionalism and Social Covenant

1. *Harmony and Covenant*
2. *People's Sovereignty and Human Rights*
3. *Complex of Opposites for Provisional Constitution*
 - 1) *From People to Citizens*
 - 2) *From Democratic Dictatorship to Democratic Constitutionalism*
 - 3) *From Workers-Peasants Alliance to Republic*
 - 4) *From Political Party Monopoly Representation to the Competitive Representative System*
 - 5) *From Society to Individual*

IV. Conclusion

¹ Dr. Fan Yafeng is the President of Holy Mountain Cultural Institute and a researcher at China Academy of Social Sciences

The *People's Democratic Dictatorship*, written by Ma Zedong in 1949 to commemorate the twenty-eighth anniversary of Communist Party of China (CPC), educed the legality of the new democracy by reviewing history. By quoting the will of Sun Yisen, this article talked about calling up the masses and striving together to fight Jiang and to acclaim Mao. Then, with interpretations and citations, it freely refuted and argued. Finally, it discussed theoretical keynotes of people's democratic dictatorship theory. The article is smooth and powerful. However, for almost sixty years since 1949, the problem of constitutionalism which has puzzled China for one hundred years has not yet been resolved.

Have the Chinese people established an excellent regime through deliberation and free choice, or have they determined their political organization in a natural response to opportunity and force? This is a question dealing with the opening, development, change and conclusion of Chinese political doctrine as well as the Author's discussion perception of the fundamental issue of citizen democratic constitutionalism.

The inherent tension of the Paper lies in the complex correlation between the tradition of Aristotle and the federalist, and the tradition of Hobbes, Mao Zedong and Schmidt – with Hobbes as an important bridge between ancient and modern, liberalism and conservatism, political philosophy and political theology. Beginning with the political metaphor of Leviathan, the Paper intends to demonstrate, primarily, this complex tension structure. The second part of the Paper discusses the **possibility of creatively transforming the regime structure from the people's democratic dictatorship to a free citizen democratic constitutionalism structure**. The third part of the Paper presents the natural corollaries of the arguments from the first and second parts.

I. Three Metaphors of Regime

The question initiated by the metaphor in *The Leviathan* by Thomas Hobbes constitutes the opening for the argument and logic of this Paper. First, the order of regime is an organism, a giant, a multi-center order, and a covenant community. Second, the three kinds of relationships behind the regime metaphor are God and man, man and nature, ruler and ruled. Third, the questions involve the two elements of continent and ocean, initiated by Leviathan as a big fish in the sea; the four elements of earth, water, fire and wind; and the free Chinese regime.

1. Leviathan (Sea Fish)

1) A Giant, a Machine and an Organism

In *The Leviathan* of Hobbes, the Leviathan has three images: Artificial Man, Earthborn God and King of Pride. Leviathan appeared three times when God

was present and the role of God was constantly strengthened. Artificial Man resulted from God's artistry in creation (nature). Earthborn God had always been under the protection and guard of God. King of Pride was named by God.¹ Regarding Hobbes' three representative discussions about the State of God, these three instances of giving names imply the major significance of theology-politics. The main imagery behind Artificial Man is nature and the artificial, the art of man; this primarily correlates to how the "promiser" creates the national personality which is the personality and the humanity of the Leviathan. The main imagery behind Earthborn God is the immortal God: Leviathan is the only god standing side by side with Immortal God, but he is mortal, as this is the requisite for Leviathan to be a god and in this is his deity. The main imagery behind King of Pride is the intense emotions – pride and fear – in humanity toward God and heaven and earth; the primary meaning is that the Leviathan possesses great strength to overcome pride, but he will also corrupt or die because of pride. Because Leviathan is comprised of humanity and deity, the name, King, indicates the spirit of Leviathan – his sovereignty. Therefore King of Pride correlates to the spiritual dynamic Thus, Artificial Man, Earthborn God, and King of Pride can correlate to the Son, the Father and the Holy Spirit, while the three names of Leviathan can also be interpreted as the three conditions of Leviathan. Compared with God, Leviathan is also a trinity.

Similar to how God was represented by Moses, the High Priest, Jesus Christ, and the apostles, the Leviathan also appears as man, god and king: this feature indicates the trinity of the Leviathan between natural and artificial, god and man, heaven and earth. This trinity is inherent in the Leviathan. There is only one Leviathan, but he can be man, god and king at the same time, corresponding to the trinity relationship of **natural-artificial, god-man and heaven-earth**. However, the three identities of Leviathan are not perfect, instead, they have defects. As a man, he is artificial. As a god, he is mortal. As a king, he is proud. Thus, "artificial, mortal and proud" accurately describes the imperfect status of the Leviathan. These imperfections declare the difference between the Leviathan and the real man, god and king, and acknowledge the possibility that he may corrupt and die.

The triple roles of Leviathan have not only defined his nature, but also have indicated the purpose of the triple roles, that is, the motivation for him to have the triple roles. Artificial Man is defined as a man against nature. Earthborn God is defined as being against the immortal God. King of Pride is defined as being against pride and (more importantly) against heaven (God) and especially earth (Christian state/church). Hence, in essence, the truths displayed in the Leviathan can be basically formulated as follows:

¹ Wang Li, *State and Justice: Interpretation of Leviathan*, p. 121-132, Century Publication Group, Shanghai People's Publishing House, 2008. The Author is very grateful for the inspiration of the solid research done by Wang Li on the concept of this Paper.

Politically, it is necessary to build a political formation against nature, God, the Christian church and the dark kingdom.

Such a political formation must educe a new political principle from natural emotion and natural rationality, with “nature” as hype, by means of divine law (natural law), on the basis of adequate understanding of humanity, natural emotion and nature. Based on this new political principle, the purpose is to unify the Christian churches so that the religion obeys and serves politics and natural rationality, to eliminate the dark kingdom.

Such a political formation will have the nature of man, the power of a god and the pride of a king, and is the unity of man, god and king. However, since it is essentially an artificial object, it cannot avoid having defects. The biggest defect of an artificial object is that it will die. Leviathan is a political formation created deliberately by Hobbes: the state.

Leviathan is man, but superior to a man (to a natural person). Leviathan is a god, but inferior to God. Leviathan is a king, but a proud king, being fearless toward the “earth,” but fearful toward “heaven.” **“Man, god and king” not only disclose the trinity of Leviathan in terms of identity, but also indicate a specific god-man order.** In terms of his three roles, the **Leviathan is fundamentally a man, then a king, and finally a god. The Leviathan represents the ingenuity of Hobbes in conceiving images of natural-artificial, god-man and heaven-earth.** The portrayal on the title page of *The Leviathan* (1651) accurately expresses the meaning of the Leviathan:

His base is on the earth, but he lives on the mountain, indicating his scorn to all the forces on the earth, including the cities and towns (symbolizing the secular life) and churches (symbolizing the spiritual life). Meanwhile, the mountain reminds people of the Mount Sinai where Moses listened to the inspiration of God. After all, Leviathan is the only Earthborn God that compares with God. He wears an imperial crown, a symbol of his kingship. He holds a sharp sword in one hand, testifying he has great power to defend peace. He holds a truncheon in the other hand, testifying that he controls the religious power to edify the believers. His armor is composed of various images of men - his subjects who granting him with authority. Their faces are towards to him, clearly expressing their obedience and appeal for his protection. The five-aspect contrast at the lower part of the title page indicates that the opposition between the secular power and the spiritual power must be correctly resolved, while the way to resolve this is to endow the supreme power to the Leviathan, that will then decide the right and wrong and will assess the good and the bad. The basis, then, is that “there is no power at all that will surpass the existing state.”

The Leviathan is a natural conclusion educed accurately by means of natural rationality. The conclusion centrally expresses the rational principle and political principle. “This discussion is impartial and is not greedy,” without any other

method to test and verify the result. “This truth violates neither the benefit of people nor their interest and thus is favored by everyone.”¹

The image of Leviathan further develops further to be a giant, a machine and an organism, inspiring the imagination of different regimes.

2) Internal and External

Hobbes mixes God with man, giant and machine to create Leviathan. He adopts an egotistical attitude towards the divine signs, classifying the divine signs as public affairs to be decided by Earthborn God and the freedom of thought as private affairs to be decided by man. The Leviathan leads to dichotomy of the internal and external. This concept has been distinctly observed and discussed in depth by Spinoza, initiating the “private and public difference,” as it is the origin for the liberalism of prioritizing private rights. This internal and external division has even until now caused the lack of civil virtue – it has led to inadequate public participation. Freedom becomes the pronoun of ill-temper and power becomes the pronoun of desire.

3) Justification and legality

A neutral technical state is a consequence of Leviathan. Therefore, Schmidt says liberalism suppresses justification with legality. The overflow of positivism is closely associated with this.

We can find at least two connections of political philosophy from Hobbes: one is from Hobbes to Marx and Lenin, and further to Mao Zedong and Schmidt; and the other is from Hobbes to Locke to the federalist.

Hobbes embodies the trend of secularization for modern Christianity. Hobbes discussed extreme conditions, such as the war of all with all. Schmidt did similar things. The party-ruled regime of mainland China is closely connected with the conventional political thought from Hobbes to Schmidt. The complex effects of Hobbes’ thoughts are embodied in the intrigue correlation of absolutism with communism and fascism.

The party-ruled regime – which originated in Germany, developed in Soviet Russia, and flourished in mainland China in the twentieth century – is the continental regime of European continental countries and another deformation of the Roman tradition and Christian tradition. The theory of dictatorship deems the abnormal state of politics as a normal state. Mao Zedong’s theory (in his late years) under the proletarian dictatorship required continual revolution.

Though Hobbes’ Leviathan is only a failed Utopia (according to Schmidt), the complexity of Hobbes lies in that it has initiated modern political philosophy. The nuclear words of liberalism such as natural state, natural right, covenant, and other ways of proof, originated from Hobbes and were a major inspiration to American constitutionalism. The “mainstream right” modern approach is the

¹ Wang Yi, *State and Justice*

British and American Leviathan approach, while the party ruling from Russia to China is a deviation – a side door approach.

In China however, the deviation of Hobbes' Leviathan has become orthodox. Creative transformation is possible through the right approach of stepping back to Aristotle, and going to Locke and the federalist through Aristotle. Taking into account the complex torsion of Leviathan concepts, this process will promote self-awareness and build consciousness of the Chinese tradition of freedom. Hence, during the process of regime transformation appropriate reference to the states' regime in the past should be achieved, so as to build a Chinese regime with lasting political stability for the long-term welfare of the Chinese citizens.

2. Party-State Mother

The metaphor of party-state mother created by Mao Zedong is a Chinese version of the Leviathan. The party-state mother is Leviathan in the course of absolutism. The first metaphor of China was the “sleeping lion” of Napoleon, while Mao Zedong preferred the metaphor of China Giant. In his critical strategic deliberation with three armies cooperating and the two wings constraining the Central Plains in the civil war of China, Mao considered the Shandong battlefield and Shanbei battlefield as two arms and Nanjing region as the chest of KMT state. The founding of the People's Republic of China was the date of birth for party-state mother. The people turned over for liberation. The Chinese people stood up. China observed a great change. All these are the memories left by the party-state mother for China.

Party-state mother is Artificial Man. Sovereignty is the soul of the Leviathan, while party power is the soul of party-state mother. As a founder, Mao Zedong was a man, and his creation is the party-state mother. As the father of the party state, Mao Zedong pursued these two things: to establish a state and establish a religion. With dictatorship, he succeeded in establishing a state, but failed in establishing a religion, and constitutionalism was only an add-on of the state establishment. The party state of Mao Zedong developed from an Artificial Man eventually to an Artificial God, which sent Mao Zedong to the altar during the Cultural Revolution.

Party-state mother is also an Earthborn God. Regarding this, Mao Zedong said, CPC is “like a man, with his infancy, youth, adult and older ages. The Communist Party of China is no longer a child or a teenager, but an adult. Man will die when getting old. So will a party.”¹

3. Constitution Mother

The key for the transformation from party-state mother to constitution mother lies in the awareness of the motherland – which depends on the consciousness of the motherland's children, i.e., individual citizens – to achieve the change

¹ Mao Zedong, *On People's Democratic Dictatorship, Selected Works of Ma Zedong*, Vol. 1, p. 1357

from the step-mother to birth-giving mother. The party-state mother is a stepmother, while the constitution mother is a birth-giving mother. China Giant is just a motherland, while the image of motherland is changing from the party-state mother to the constitution mother. Various systems are legally integrated to rebuild the Chinese economic order, political order, cultural order and social order and establish a spiritual order and public order. It is a historical opportunity for the spirit of Chinese law. The spirit of Constitution as a fundamental law is the spirit of heaven and earth. The way of the Constitution is the way of heaven and earth. Therefore, learning the Constitution is really the way for individuals and China to be honorable and dauntless.

The constitution mother is a mother-like life-giving body, yet an artificial body. The constitution mother cares for the body and will of every citizen, in a way of natural law and will (“Tian Dao”) and disposition of God. The political body of the constitution mother is the citizen regime. The constitution mother is the mother of earth, whose spirit’s source has long been deep in China’s heart. As the mother of motherland, China Giant is changing from party-state mother to constitution mother. The **constitution mother is the spirit of earth!**

II. Possibility for Citizen Democratic Constitutionalism

According to Aristotle, a regime is a “functional organization of state to define the arrangement of the supreme ruling mechanism and political power as well as to conclude the purpose the state and all its individuals are desiring.”¹ Citizen democratic constitutionalism is a regime of democratic constitutionalism created due to the citizen action, i.e., a citizen regime. How will citizen democratic constitutionalism be possible? The development of a citizen regime involves such issues the establishment of a state by violence, definition of government relationship of governance by covenant, covenant signing and authorization, and covenant performance.

1. From Contradictory Complex of Opposites to the Neutral Complex of Opposites

Complexio oppositorum (a complex of opposites) is a core concept of Schmidt in discussion of the Roman Catholic Church.

An order has three modes: hierarchy, organism and multicenter.² As a contradictory complex of opposites, the party-ruled regime of Mainland China is an integration of hierarchy and organism, which can be therefore considered a hierarchical organism. It is a single-center order. A neutral complex of opposites is a kind of multi-centered order and a community based on social covenant. The

¹ Aristotle, *Politics*, p. 1289a

² Elazar, *Christian Testament Tradition*, edited and translated by Cao Zhi, <http://www.gongfa.com/caozhicovenant.htm> (accessed Nov. 2008)

source of its body is from the common view of understanding the will of heaven (“Tian Dao”), existential reality (“Zhen Ru”), and divine guidance and natural law. Its political body is closely associated with the body and will of every citizen. The neutral complex of opposites is citizen democratic constitutionalism. This is a theoretical base for Chinese community, integrating the economic community, political community, cultural community, social community and legal community. The relationship between the force of power and the covenant leads us to a question of the elements for a regime.

2. Elements of Citizen Democratic Constitutionalism

Using the four Greek elements – soil, water, air and fire – the political scientist Li Guoji tried to study the Western political and legal traditions and their complex evolution. According to the Western universe theory, man, political body and nature are one universe of the same structure and different sizes, and each of them is composed respectively of the four elements – soil, water, air and fire. In this sense, the key for regime-building, as the supreme legislative action, lies in integrating the aforementioned four elements and keeping them in a good order. This is a basic study, dealing with several schools and disciplines such as law, politics, philosophy, theology and history.

The only profound and critical subject in the Book of Job is the issue of sovereignty and justice. In Judaism, the Israelite are named as the voters of God with a real implication: universe is created by God as the representative of sovereignty by force, but he and the Israelite are in a special provisional constitution relationship to be governed by means of expressions. Just like God appearing and speaking before Job and his mollifiers, it is a “special God state” governed as per covenant as mentioned by Hobbes, which he symbolized with the ocean monster. On the contrary, God and other nationalities are completely in a relationship ruled by fortune and force. It is the “natural God state” ruled by force as mentioned by Hobbes, which he symbolized with the land monster, Behemoth.¹

The Leviathan is a creative masterpiece of humanity made by man copying the cosmic creation of God or a political body resulting from human “deliberation and free choice.” It is named a “special God state,” because **it is a state obtained by force yet a political state governed per covenant**, instead of a state obtained by force and ruled by force. The legislation of the Leviathan is originated from the voter tradition of Judaism. Particularly, it is composed of two elements: the tradition of Creationism (**violence, corresponding to fire**) and the tradition of Covenant (**words, corresponding to air**). Regarding Creationism, its political implication is that the Creator, as the representative of sovereignty, possesses the absolute monopoly over its creatures (mainly the land

¹ Lin Guoji, *Hobbes and Book of Job*, <http://www.gongfa.com/lingjyuebojiyuhuobusi.htm> (accessed Nov. 2008)

and man who is made of soil), and as such can apply bodily or material pain or deprivation to any creature who violates the order directed by the representative of sovereignty or the order of justice. The potential political purpose is to oppose noble forces that create any difficulties for the supreme sovereignty. The tradition of Monotheism is fundamentally a kind of the cosmological tradition opposing nobility, and thus it is a kind of tradition beneficial for democracy.

This description is given of the situation in America:

The state building blueprint of the federalists appeared to have, with Leviathan concept of Hobbes, the completely same starting point (war) and action step (establish a social covenant based consent) and the same spiritual intention: i.e., try to overcome the natural 'luck and strength' (i.e., the 'natural state' of Hobbes), the recycle rule of rising and dying of different ancient and modern regimes and establish an everlasting ocean empire.¹

The American constitutional choice has artificially made the **Constitution**. The American Constitution harmonized the water element and fire element, i.e., the proper treatment of the peace and war relationship.

The spontaneous order theory of Hayek can be deemed as the life-body theory of constitutionalism, while citizen regime is a kind of spontaneous order as well as a life body.² **The citizen regime is citizen-based political body, the construction of political body and constitutional structure.** A citizen regime's composition has a developmental nature. For a citizen regime to integrate the regime elements in China, it is necessary to consider various relationships such as heaven and earth, water and fire, mountain and swamp (continent and ocean).³

1) Heaven and Earth

The relationship between heaven and earth is a suitable correlation to the relationship between classical and modern. As the secularized and rationalized spirit, the modern aspects can be primarily considered the spirit of earth. The human-focus of humanism ignores the heaven-earth and god-man relationships, leading to a crisis in the body-heart relationship, man-nature relationship and god-man relationship.

¹ Lin Guoji, *Limitless in Limit: War Vision of American Founders*, <http://www.gongfa.com/lingjimeiguojianguozechanzhengshiye.htm> (accessed Nov. 2008)

² In the *Principles of National Economics*, taking money as an example, Mengele discussed the thoughts of order without purpose or order without intention. Classification of organism and life body will not be discussed any more.

³ The theoretical base for the five-system two-field neutral society of the regime five-element theory will be thoroughly discussed by the Author in other chapters of *Citizen Regime Theory*. The five-element framework of citizen regime shall be further elaborated.

The American Constitution is classical as well as modern. In the framework of the American Constitution, the state establishment and religion establishment are the issues of two states, while legislation is the communication between these two states. Therefore, the traditional Chinese “heaven, earth and man” needs to include the dimension of the god-man relationship, to resolve the problems of surplus inherence and inadequate transcendence. The method for citizen democratic constitutionalism to transcend the conflict between classical and modern is to handle the problem of the Chinese regime by means of the heaven-earth relationship with time and space unification and an updated god-man covenant relationship.

2) Water and Fire

American constitutionalism is observed with the image-absorbing concept of *Book of Changes*. To acquire by force correlates to the symbol of fire, while covenant of words correlates to the symbol of water. The reform between water and fire comes from Hexagram “Ge” (Reform) and Commentary “Tuan” (Words).

Upon reforming, water and fire will be harmonized; with two women living together, they will not be matched, as has to be reformed. Credit is required. Reform and believe it. Please in a civilized manner, reform for a right thing but properly and the regret will disappear. The reform of heaven and earth will take place at four. The Tang and Wu revolution complies with the heaven and man. Reform will resolve all problems!

And consider these descriptive words: “Water with fire means reform. King follows the same to make a calendar to identify the time.” In the twentieth century, China experienced five revolutions, such as the 1911 revolution, May 4th ideological revolution, communist revolution, Cultural Revolution, etc., but it was difficult to harmonize water and fire, due to the lack of the “Holy Words of covenant” to govern. For instance, the Chinese revolution of communism mainly depends on swamp and fire: swamp corresponds to weapon and pen, while fire corresponds to the ideological form of communism. Communism was acquired by force and governed by the quotations of Chairman Mao. Obviously, the neither the words of the constitution nor the testament can be neglected.

The water-fire relationship of the citizen regime is the relationship between war and peace and the relationship between violence and non-violence. A good regime should be acquired by force but governed by covenant, while the integration of force and covenant is the harmonization of water and fire. In the relationship of water and fire, as elements of the free citizen regime, water is superior to fire. The classical Chinese Rule-of-rite regime has always held as its purpose the doctrine of pleasing the king. Therefore, Laozi considered a war lord as fearsome instrument, while the couplet in Wuhou Temple reads: “those who can convince psychologically will naturally eliminate the opposite with worry and doubt. Since the ancient times, those knowing how to fight a war

would prefer to resolve problems with a war. Those failing to judge the situation would always make mistakes in administrating strictly or flexibly.”¹ The citizen regime should also be acquired by force and governed by covenant, as complies with the Chinese traditional political approach of first “taking” and afterward maintaining² (which is in contrast to the regime pattern of the party-state institution, of establishing by force and conserving by force), and it refers to and expands the benefit of having harmony and the damage of not having a covenant.

3) Continent and Ocean

Hobbes’ Leviathan is a big fish in the sea created by God. The deepest place of earth and ocean is where God blows. The ocean is good, for it complies with the sequence created by the God: in the first day was light and darkness, in the second day was the air and sea, and in the third day was the fertile earth. In the first three days, the God created the form. The sequence of the elements given is fire, wind, water and soil.³

The temperament of Chinese regime develops from the continent to the ocean. The party-state mother is not a mother living by the sea but instead one who comes down from the Loses Plateau. If the party-state mother is of continental temperament, the constitution mother should be of ocean temperament. In the twentieth century, the party governance of KMT was of more ocean temperament, jumping forward on the island of Taiwan and becoming the sea fish leaping over the three-gorge of democracy. How will the singing of the mainland rooster be merged into the roaring of the sea’s waves?

III. Citizen Democratic Constitutionalism and Social Covenant

The challenge of the classical republic regime is to handle the relationship between nobility and the common people. For the modern republic, the challenge has changed to the issue of authorization and consignment, i.e., the relation between the ruler and the ruled. This issue is primarily resolved by agreeing to establish a social covenant. The social covenant method has mastered the spiritual form of modernity: i.e., individual orientation, rationality, and consent of will theory, inter-subjectivity and other features.⁴ The regime method of the citizen democratic constitutionalism will still take the social covenant as the core relationship model.

¹ Zhao Fan, Couplet of “Psychologically Oriented” in Wuhou Temple, Qing Dynasty.

² Hanshu (History of the Han Dynasty) Lu Gu, “Tang and Wu rebelled to acquire and maintained rationally. Combination of weapon and pen is an art of lasting.”

³ Genesis 1:1-13. Reference to Genesis in *Tyndale New Testament Commentaries Series*

⁴ Bao Limin, *Modern Social Covenant Theory, Edition and Selection Explanation*, Phoenix Publishing and Media Group, Jiangsu People’s Publishing House, 2007

1. Harmony and Covenant

The Covenant Theory and Harmony Theory constitute the complex tension, while the representative proposition of Harmony Theory is the integration of various irreconcilable contradictions, such as the “organic unification of the party’s leadership, people’s democracy and rule by law.” Therefore, the harmony theory lost the negative dialectic meaning of Mao Zedong’s contradiction theory and thus the harmony theory is different from the “harmonious but different” meaning of the traditional Chinese philosophy. The harmony theory has become the theoretical method of social relationships – but without many theoretical and practical difficulties, due to the simple and elementary harmony. The relationship of harmony and covenant is represented in being in a covenant due to harmony, or being harmonious for the covenant. Without a covenant, especially the constitutional covenant, the contradiction between elite and public, official and people, man and nature, and state power and citizen right cannot achieve a complex of opposites through the intermediary changes. The boundary of its integrated balance is a neutral approach.

However, the theory of citizen democratic constitutionalism does not agree with Lin Guoji’s *Covenantal Political Theology of Casual Existing Theory*, but rather adopts the Biblical political theology of predestination route from Augustine to Calvin.

2. People’s Sovereignty and Human Rights

According to Aristotle, political rights are the real condition for citizen qualification. Political rights should take the actual contribution to the organization as the standard. Citizens shall be entitled to the rights according to their obligation. Fortune, family background, talent and virtue and collective majority coexist in a state. The goal for the standard for entitlement of political rights is according to the citizen’s contribution the state.¹

The question of the classical regime is what a good regime is, with virtue as the foundation. The modern regime is based on rights. The citizen democratic constitutionalism begins by basically harmonizing the classical and modern neutral approach. Therefore, the basic orientation is the balance between rights and virtue and the parallel accord between human rights and sovereignty.²

3. Complex of Opposites for Provisional Constitution

Mao Zedong’s establishment of a state by violence included two dimensions: regional integration and class differentiation, i.e., the countryside surrounds the cities. To further regional integration, class differentiation and integration would take the route of class struggle, accompanied by the formation of these three, key weapons: party construction, armed struggle, and unified front. The people’s democratic dictatorship is the practical and theoretical conclusion of this concept.

¹ Aristotle, *Politics*, Vol. Chapter 9-13, translated by W. Enyu, Commercial Press, 1997

² The conflicting relation between sovereignty and rules is handled in another article, *Institutional Arrangement of Citizen Regime*

Its contradictory complex of opposites is a body with CPC leaders as the head, the machine of state violence as the feet and the worker-peasant alliance and socialism as chest and belly.

According to the Author, the Chinese style of liberalism faces two major challenges: 1. the Confucian paradox, i.e., the relationship between tradition and freedom; and 2. the Mao Zedong paradox, i.e., the public recognition of Mao Zedong, which is much different than the value of liberalism. The essence of the Mao Zedong paradox is the relationship between the Communist new tradition and freedom. The Confucian paradox has been basically resolved, while the Mao Zedong paradox is the focus for the Paper. In the Paper, the structured, neutral, theoretical approach toward rules and resources is applied to resolve the Mao Zedong paradox in the following way: consider Mao Zedong's thoughts and institutional background as one kind of rules and resources, while the reformers try to transform into a constitutionalism structure: they try to apply complex – but exquisite – constitutional techniques and understanding to rebuild China's regime order on an abstract stratum of neutral complex of opposites. In this creative transformation, the citizens are the actors; the transformation to the neutral complex of opposites is carried out on the state-party system's contradictory complex of opposites; people are changed to citizens; the complex of opposites of the democratic dictatorship is changed into the complex of opposites of democratic constitutionalism; the regional alliance is changed to the elite and public republic; the monopolized intergenerational inheritance mechanism is changed to the competitive voting mechanism. In other words, the transformation is from people to citizen, from dictatorship to democratic constitutionalism, from worker-peasant alliance to republic, from power monopoly to competitive institution, from social-focused to citizen-focused. The citizen regime deems citizens as head, the elite and public republic and freedom of citizens as the body, and the democratic constitutionalism's regime procedures as the four limbs.

1) From People to Citizens

Mao Zedong defined the concept of people this way: “What does people mean? In China, at this stage, they include the workers, peasants, urban petty bourgeoisie, and national bourgeoisie.”¹ Obviously, this is a concept of classifying foes and friends. Thus, there is a difference between the peoples' internal conflict and the foe-friend conflict. With “the people” changed to citizens, the political view and philosophical view will be changed. In other words, the political theology of classifying foes and friends will be changed to the political concept of politics for the public; the contradictory negative

¹ Mao Zedong, *Democratic Dictatorship*, Vol.1, p.1364

dialectics will be changed to the neutral dialectics of foe-friend harmony for resolution.¹

Citizens referred to herein denotes all free individuals, whom this Paper stresses are the actors. As actors, all citizens are to promote the development of a new order and new structure of the democracy constitutionalism, even though they are unaware of this in their actions, democratic constitutionalism will be still the non-intentional order of their actions. For example, the action of Zhang Mingxuan (a Christian from Henan) to protect the rights of church has promoted the religious freedom. Brave people in Chongqing have promoted protection of citizens' property. In addition, numerous people are taking action to protect the rights of the Chinese people. Citizens' actions cultivate the virtues of citizens. Through the activism of citizens, the Chinese social rules and norms can be restructured to follow the principle of freedom. Consequently, the structure of citizen democratic constitutionalism will burst forth and gradually grow strong.

2) From Democratic Dictatorship to Democratic Constitutionalism

Dictatorship is a paraphrase of the Latin word "dictature," which originally meant limitless power. This was originally the name of Roman supreme executive officer, and was used to especially refer to the ruler with absolute power. Dictatorship was originally an abnormal institution of the Roman Republic when encountering a war: i.e., suspend the republic temporarily and endow the military commandar with short-term dictatorial power that would not be restricted by the Roman laws. When the war ended, the dictator would be relieved of his office and would hand over the power back to the parliament. Dictatorship was an emergency means applied during a war. Therefore, it differs from the autocracy, a conventional system of dictatorship deployed in Persia and other regions and in the imperial Rome thereafter. In the Roman Republic, once the war had ended, the parliamentary democracy would resume as normal. Robespierre said once that dictatorship "is a state of war between freedom and its foe, while the constitutionalism is the regime of freedom successful in a period of peace." The parliament committed to not investigate the ruler's behavior during the dictatorship. Later on, this was borrowed by Jacobins and Blangy.² However, according to Maxism, the essence of a state is just the dictatorship of certain class. Mao Zedong developed the prolectariat dictatorship to the people's democratic dictatorship "or people's democratic

¹ Contradiction is relation. The Contradiction Theory of Ma Zedong can be included in the framework of neutral new relationism. As for the transcendence of neutral doctrine over contradiction, refer to my *Citizen Regime Theory* (Chapter Ten: "Domain of Significance and Public Domain").

² Qin Hui, *What is the Proletariat Dictatorship?*
<http://star.news.sohu.com/20080806/n258636872.shtml> (accessed Nov. 2008)

autocracy.” It is described as “mutual combination of democracy for the people and dictatorship for reactionalists is the people’s democratic dictatorship.”¹

Similar to church organization, the party-state system also has political and public features as well as the contradictory complex of opposites, between democracy and dictatorship and between people and savior. Such political and theological semantic rule structure has been unconsciously deployed in the new legal rules in the economic reform during the last thirty years. These following quotes discuss the unity of opposites between democracy and legal system: “without democracy, there will be no socialism and there will be no socialist modernization.”² “In order to assure the people’s democracy, we must strengthen the legal system. We must systemize and legalize the democracy so that such system and law shall not change due to the change of leaders or due to the change of the leaders’ views and attention.”³ Nevertheless the relationship between democracy and rule by law is actually the relationship between democracy and constitutionalism in Chinese tradition. The balance between democracy and constitutionalism is the essence of the western political tradition. The conflict between the two creates an inherent contradiction which is associated with such contradictions as those between sovereignty and human rights, state and society, and passive freedom and positive freedom – issues which have created the basic style of the western traditional political doctrine.⁴ The creative tension composed of constitutionalism and democracy will become the internal vigor of citizen democratic constitutionalism. The challenges initiated by this, such as the judiciary and democracy, the justification of investigations which violate the Constitution, and the relationship between ruling and judgment, will increase and solidify the inherent complexity of the citizen regime and its capacity to cope with the gradual changes.

3) From Workers-Peasants Alliance to Republic

According to Aristotle, the spirit of mass regime is freedom. Different types of mass regimes are composed of different people with different natures and different portfolios with different democratic functions and positions. An excellent regime should include principles so that the group with the supreme governing power will have maximum people and generous resources. For its lasting political stability, the mass regime should adopt a mild, neutral doctrine, without confiscating the properties and raising the tax to expel the rich, controlling the meeting funds, etc., and depending on the rich and the public to jointly aid the poverty-stricken people.

¹ Mao Zedong, *Democratic Dictatorship* Vol. 1, p. 1364

² *Selected Articles of Deng Xiaoping*, Vol. 2, p. 168

³ *Ibid*, p. 146

⁴ Tong Dezhi, editing notes for *Constitutionalism and Democracy*, Phoenix Publishing and Media Group, Jiangsu People’s Publishing House, 2007

A hybrid regime will seek a balance of quality. If the masses esteeming the quantity are stronger than the rich esteeming the quality, it will be natural to establish a mass regime or otherwise an oligarchic regime. If the power of the middle class exceeds that of common people and the rich, i.e., the joint power of the quantity and quality, or exceeds only one of the two, a republic regime may be established.

China's citizen democratic constitutionalism will obviously establish a hybrid regime to achieve the balance between such principles of property and quantity; the balance between such elements as monarch, noble and democracy; and the balance between the regime-balance of honor and morality. The fractured and unbalanced Chinese social structure can be balanced by a hybrid regime. The principle of the citizen regime entails freedom, equality, justice, and neutral doctrine, to name some. Therefore, a citizen regime is an intermediary regime balance. In this regard, a citizen regime needs to be supported with citizen ethics and citizen education. The task of citizen ethics is to cultivate the citizens with these principles of the regime, including honor and morality.

A citizen regime will properly handle the relationship between elite and public, which is a "relationship of opposition" between nobles and common people in a classical regime. Since the political transformation of China is a complex undertaking – integrated with the triple relationship of pre-modernity, modernity and post-modernity and the triple relationship of rule-of-rite, party-rule and rule by law – this conflicting relationship between the elite and public creates a great difficulty for China's freedom regime to achieve the republic. The opposition between the strong group and the weak group and the opposition between elite and public will be gradually moved to the republic through freedom, equality and justice established per principle of the regime.

4) From Political Party Monopoly Representation to the Competitive Representative System

The political party monopoly is based on the representative theory, i.e., representing the people. This representative theory is rather similar to the political theology of Schmidt. According to Schmidt, the Catholic Church is politically based on public and politics. The key is the representative concept and the concept for complex of opposites. God embodies the belief and theological paradox, while as the intermediary and representative of the God, the Catholic Church generates profound legal meaning. According to Schmidt, the representative system of the modern parliament has the tension between the limited government and sovereignty. As for representatives, the medieval sovereignty representative is the heart, while the modern sovereignty representative is the whole body, i.e., the Leviathan. The modern representative system has no ruler. The politics of the medieval church has embodied the will of God, while the people's sovereignty of the modern representative system has embodied the will of people.

The representative theory has constituted a serious conflict of rules with human rights and property rights and the conflict between right and interest, representing mainly the interests – that is, productivity, culture and interest - while the Chinese constitutional amendments have constantly included the words of “rights.” Such is not only the conflict of concepts in the political philosophy, but more importantly, it represents the tension between the political theology of representative system and political philosophy.

5) From Society to Individual

The citizen-focused concept will not be discussed anymore here except to reference the article of Gan Yang, *Citizen-focused and Unified Constitutionalism for State Establishment*.¹

Creating citizen democratic constitutionalism is the overall discriminated unification of regional integration, stratum integration and system integration. For the three mutually-corresponding rules and resources, the structural development focuses on the system integration, i.e., the construction of democracy, constitutionalism and rule by law to promote the stratum republic (republic of elite and public) and regional integration (the unification of the east and the central west, mainland and Taiwan). With the neutral doctrine, citizen democratic constitutionalism will achieve the unity of opposites of different relationships between democracy and constitutionalism and between human rights and people’s sovereignty, while the elite and public unity of opposites approaches the republic. The three main weapons for the creation of citizen democratic constitutionalism are the citizen rights protection, governing of constitutionalism, and peaceful transformation.²

The foundation of China’s freedom regime must develop from the theology of Mao Zedong and Schmidt’s politics to the political theology and neutral doctrine,³ to implement citizen democratic constitutionalism and to build a free China of democracy constitutionalism with competitive ruling founded on the republic.

¹ See <http://www.gongfa.com/ganyangxianzhengliguo.htm> (accessed Nov. 2008)

² Regarding the citizen rights-protection movement, refer to the series of commentaries by Fan Yanfeng, *Civil Right Theory*, <http://www.gongfa.com> (accessed Nov. 2008) Regarding constitutional governance and peaceful transformation, refer Fan Yafeng’s speech, *The Political and Legal System and Approach for China’s Constitutionalism*, <http://www.gongfa.com/fanyfzhengfaxibeida.htm> (accessed Nov. 2008)

³ The detailed argument and analyses on theology of politics and political theology will be further discussed in other articles. Regarding neutral doctrine, refer to Fan Yafeng, *Theory of Citizen Regime* (not published), Chapter 11, “Neutral Doctrine and Citizen Regime.”

IV. Conclusion

Each of the three times that the Chinese society faced the opportunity select constitutionalism in the twentieth century, its direction was deviated: the late Qing constitutionalism reform was defeated by the republic revolution. The imperial restoration of the republic caused the war of warlords, and the two ruling brothers fought with each other after the Japanese were defeated, leading to the Party rule on mainland China. And now, with the perspective that the thirty-year economic reform is over and the social overall crisis has deepened, Chinese society again faces the choice for constitutionalism. How can deviation into a wrong way be avoided? The answer is to build an excellent government without depending on opportunity and force, but instead on careful thought and free choice – to make the decision for free politics and the choice for constitutionalism. To build a free citizen regime in China, deliberation and good experience shall be required.

page intentionally left blank

中国法律与宗教观察

Appendix A: Table on Ban Articles

**Appendix B: Banning: Mandatory
Measures or Punishment?**

**Appendix C : Leaders of Religious Groups
Receiving Government Sponsorship**

compiled and authored by Cao Zhi

The appendixes accompany *Analysis of the
Registration System*

Appendix A

Table 3: Supplement to *Analysis of the Registration System for Religious Groups*

Below are the **“ban” articles in the four administrative laws**, 1. Food Hygiene Law; 2. Construction Law; 3. Blood Donation Law; and 4. Law on Medical Practitioners; and **analysis on the seven administrative regulations**: 1. Administrative Rules on Medical Institutions; 2. Measures for Banning Illegal Financial Institutions and Illegal Financial Service Activities; 3. the Administrative Regulations on Registration of Social Groups; 4. Administrative Regulations on Printing Industry; 5. Measures for Investigating, Punishing, and Banning Unlicensed Business Operations; 6. Regulations on Safety Supervision of Special Equipment; and 7. the Regulations on Religious Affairs.

[#] TYPE /NAME OF LAW (REGULATION) /BANNING ARTICLE

1. Law

Article 40 of Food Hygiene Law. Decree No. 59 of Chairman, 1995

If anyone, in violation of this Law, engages in food production or marketing without obtaining a hygiene license or with a forged hygiene license, such production or marketing shall be banned; the illegal gains shall be confiscated and a penalty of not less than one time and not more than five times the illegal income shall concurrently be imposed; if there are no illegal gains, a penalty of not less than 500 Yuan and not more than 30,000 Yuan shall be imposed. If anyone alters or lends his hygiene license, his hygiene license and the illegal gains shall be confiscated; and a penalty of not less than one time and not more than three times the illegal gains shall concurrently be imposed; if there are no illegal gains, a penalty of not less than 500 Yuan and not more than 10,000 Yuan shall be imposed.

2. Law

Paragraph 3, Article 65 of the Construction Law. Decree No. 91 of Chairman, 1997

Contracting a project without obtaining the human quality certificate shall be banned and imposed a fine; where there are illegal gains, they shall be confiscated.

3. Law

Article 18 of Blood Donation Law. Decree No. 93 of Chairman, 1997

Where a unit or individual commits any of the following acts, its or his act shall be banned by the administrative department for public health under the local people's government at or above the county level, its or his illegal gains shall be confiscated and it or he may also be fined not more than 100,000 Yuan; if the act constitutes a crime, it or he shall be investigated for criminal responsibility according to law: (1) collecting blood unlawfully; (2) a blood donor centre or medical institution sells donated blood; or (3) unlawfully making arrangements for another person to sell blood.

4. Law

Article 39 of Law on Medical Practitioners. Decree No. 5 of Chairman, 1998

Institutions for medical treatment established without approval or medical practice by non-practicing doctors shall be banned by the health administration departments of the people's governments at or above the county level with the illegal income, medicines and equipment confiscated and with a fine of less than 100,000 RMB Yuan; practicing doctors shall have their practicing certificates revoked; liabilities for compensation shall be born by the doctors who have caused injuries to the patients; criminal liabilities shall be investigated and prosecuted according to law in case of criminal offenses.

5. Administrative Regulation

Article 44 of Administrative Rules on Medical Institutions. Decree No. 149 of the State Council

In case of practicing without obtaining the C4 Practicing License of Medical Institutions, the health administration departments of the people's government at and above the county level will order it to stop practicing, confiscate its illegal income and medicines and instrument and impose a penalty as per actual circumstance. (Note: Official Reply of Ministry of Health on Implementation of Administrative Rules on Medical Institutions [WF]F, 1998, No. 15] points out that according to the views of NPC Legal Work Committee, "order it to stop practicing" in Article 44 of the above regulations shall be deemed as "ban".)

6. Administrative Regulation

Measures for Banning Illegal Financial Institutions and Illegal Financial Service Activities. Decree No. 247 of the State Council

Article 12: as for any illegal financial institution and illegal financial service activity, upon investigation and affirmation by the People's Bank of China, make a decision to ban, declare such financial institution and financial service activities as illegal, order it to stop all service activities and issue the public notice.

Article 22: In case of establishing any illegal financial institution or undertaking any illegal financial service activity, criminal liability will be investigated if it constitutes a crime; if no crime is constituted, the People's Bank of China will confiscate the illegal income and impose a penalty being at least one time but five times of the illegal income; impose a penalty of at least 100,000 Yuan but less than 500,000 Yuan in case of having no illegal income.

7. Administrative Regulation

Article 35 of Administrative Regulations for Registration of Social Groups. Decree No. 250 of the State Council

If a social organization engages in preliminary activities without approval, or if it carries out activities in the name of a social organization without being registered, or if a social organization whose registration has been cancelled continues to carry out activities in the name of the social organization, then the registration and management agency will ban the organization and confiscate its illegal assets; in criminal cases, criminal penalties will be applied in accordance with the law; in non criminal cases, a public security sanction may be imposed in accordance with the law.

8. Administrative Regulation

Paragraph 1, Article 34 of Administrative Regulations on Printing Industry. Decree No. 315 of the State Council

Any printing enterprise established without approval and any printing activity without approval will be banned by the public security authority and administration of industry and commerce according to the statutory duties and prints and illegal income and special tools, equipment for illegal activities will be confiscated. Where the illegal business amount exceeds RMB 10,000, impose spontaneously a fine of at least 1 time but less than 10 times of the illegal business amount; where the illegal business amount is less than 10,000 Yuan, impose spontaneously a fine of at least 10,000 Yuan but not more than 50,000 Yuan; in case of a criminal offense, criminal liabilities will be investigated according to law.

9. Administrative Regulation

Article 14 of Measures for Investigating, Punishing and Banning Unlicensed Operations. Decree No. 370 of State Council

Unlicensed business operation will be banned and imposed with the confiscation of illegal income by the administration of industry and commerce; in case of a criminal offense, criminal liabilities will be investigated according to the criminal law; in case of non criminal offense, a penalty imposed spontaneously; the tools, equipment, raw materials, products (commodities) and properties used for unlicensed business operation will be confiscated, along a penalty.

10. Administrative Regulation

Article 64 of Regulations on Safety Supervision over Special Equipment. Decree No. 373 of the State Council

Any design activity of pressure container without license will be banned and imposed with a fine by the administration of safety supervision over special equipment; in case of any illegal income, it will be confiscated; in case of any criminal offense, the responsible executive and other direct responsible persons will be investigated for criminal liabilities according to the provisions of the Criminal Law on illegal business operation crime and other crimes.

11. Administrative Regulation

Paragraph 1, Article 43 of Regulations on Religious Affairs. Decree No. 426 of the State Council

Where a site for religious activities is established without approval, or a site originally for religious activities continues to carry out religious activities after its registration as such has been cancelled, or an institute for religious education is established without approval, the religious affairs department shall ban such site or institute and confiscate the illegal gains; the illegal houses or structures, if any, shall be disposed of by the competent construction department according to law. If any act in violation of public security administration is committed, an administrative penalty for public security shall be imposed according to law.

Appendix B

Supplement to *Analysis of the Registration System for Religious Groups*

by Cao Zhi

Banning: is it an administrative mandatory measure or an administrative punishment?

Interpretation of Food Hygiene Law specifies the following:

The so-called banning means administrative punishment undertaken by the health administration departments to terminate the illegal business operation of the foodstuff producers and managers that fail to obtain or forge the hygiene license to undertake food production and operation activities and modify and let out the hygiene license. Such mode may be taken as issuing public notice, confiscating or destroying the food and raw material, confiscating tools, etc.

The *Official Reply on How to Interpret Application and Apply “Ban” in the Food Supervision* issued by Ministry of Health in 1996 specifies the following:

Ban in Article 40 of the Hygiene Law means the administrative punishment taken by the administration of health to terminate the food production and operation of the producers and managers that have fail to obtain hygiene license in accordance with law or forge the hygiene license by confiscating, sealing up and issuing public notice.

However, the *Official Reply on the Problems in Execution of the Administrative Regulations on Medical Institutions* issued by Ministry of Health on December 8, 1998 has this to say:

For the health administration departments to ban the unapproved establishment of medical institutions or the illegal behavior such as medical practice of non practitioners is a kind of administrative mandatory measure, but not a administrative punishment, which shall not be subject to the provision of Article 42 of the Administrative Punishment Law for hearing. Where the Food Hygiene Law and other laws and regulations involves banning the illegal production and business, this official reply shall prevail.

The Interpretation of the Construction Law also specifies that banning is a kind of administrative mandatory measure. The above references are sourced from Li Chunlai, *Discussion on Legal Nature of Banning*, China Quality Technology Supervision (2008, 3rd Edition). According to the Grand Justice of the Supreme People’s Court, “ban” in Paragraph 3, Article 65 of the Construction Law is a kind of administrative mandatory measure. Refer to Huang Chidong, Liang Shuwen (editor): *New Interpretation of the Construction Law and Auxiliary Regulations (Part II)*, People’s Court Press, 2000, p. 2622. Obviously, there are different definition of “ban” by NPC and the administration department.

Appendix C

Supplement to *Analysis of the Registration System for Religious Groups*

by Cao Zhi

Leaders of Religious Groups Receiving Government Sponsorship

“Leaders of “partnering” religious groups were listed in the administrative and institutional staffing, for which the fund was included in the state financial budget.” The evidence below from survey and data affirms the above statement:

1. Direct Evidence:

1) At the 2007 Chongqing Academic Seminar of Religion and Legal Administration, Master Yuanchi, Executive Director of Chinese Buddhism Association pointed out that the staffing of Chinese Buddhism Association is included in the administrative staffing by the government. Of the one hundred and four staffs, only seven or eight are believers. “For Chinese Buddhism Association (Head Office) and its subordinate China Buddhism College and Jinling Scripture Engraving Division have been granted by the State with the full-time staffing quota of respectively 45, 49 and 10. Of the carders and staffs at Chinese Buddhism Association and China Buddhism College, 95% are non-believers. There are few monks, but they are not enlisted, while the work archive relation of the enlisted staffs are directly with the governmental administration of religions.”

2) At the 2007 Chongqing Academic Seminar of Religion and Legal Administration, the Deputy Director of Chengqing Commission of National and Religious Affairs, Hong Daoyuan, disclosed that the Chongqing Municipal Government grants annually the budget fund of 200,000 Yuan to the city-level religious groups and the monthly life subsidies of 400 Yuan to the leaders of these religious groups.

2. Indirect evidence (three documents):

1) Paragraph 2, Article 1 (“Scope of Social Groups”) of the *Regulations of Beijing for Administration of Social Groups*, which was printed and distribute on November 11, 1986, by General Office of CPC Beijing Committee and General Office of Beijing Municipal People’s Government, has these statement:

In the Regulations, the social groups exclude the labor union, youth league, women's federation, youth federation, federation of industry and commerce, association of China Taiwanese, overseas Chinese federation, association of sciences, federation of social sciences, federation of literature and All China Sports Federation Beijing Branch and other people's mass groups enlisted by the central government with the administrative and institutional staffing, such religious groups as Buddhism association, committed of patriot movement of the Protestant Church, groups organized with the governmental organs, military force, enterprises and institutions.

And Paragraph 4, Article 5 ("Review of Existing Social Groups") has the following directive:

The people's mass groups and religious groups defined by the central government to be enlisted in administrative and institutional staffing shall be reviewed by the office of the municipal organization staffing committee. As for the social groups not defined by the Central Government but enlisted in administrative and institutional staffing and included in the financial budget, their staffing and fund will be gradually resolved by the municipal institutional staffing committee and municipal finance bureau as per different particular circumstances.

2) Indirect evidence is also found in Article 5 of *Provisional Measures of Beijing for Registration of Social Groups*, which was printed and distribute on November 11, 1986, by General Office of CPC Beijing Committee and General Office of Beijing Municipal People's Government.

3) Indirect evidence is also found in Article 4 of *Provisional Measures of Shenzhen for Administration of Social Groups and Organizations* was which promulgated on July 20, 1987, by Shenzhen People's Government.

Editor in chief: “Bob” Xiqu Fu, President of ChinaAid, Visiting Professor of Oklahoma Wesleyan University

Assistant Editor: Jenny McCloy

Editorial board:

“Bob” Xiqu Fu, President, ChinaAid; visiting professor, Oklahoma Wesleyan University

David Aikman, Professor, Patrick Henry College; former reporter, *Time* magazine in Beijing

Tony Carnes, senior news writer, *Christianity Today*

Faith McDonald, Director of religious liberty programs, Institute of Religion and Democracy

Deborah Fikes, Interim Director, Institute of Chinese Law and Religion

Graham Walker, President, Patrick Henry College

Fan Yafeng, President, Holy Mountain Cultural Institute; researcher, China Academy of Social Sciences

Li Baiguang, Beijing Gong Xin Law Firm

Li Heping, Beijing Global Law Firm

Li Jianqiang, Shandong Huaguan Law Firm

Li Jingsong, director, Beijing Yitong Law Firm

Li Subin, Beijing Yitong Law Firm (formerly)

Teng Biao, lecturer, China University of Political Science and Law

Arthur Waldron, Lauder Professor of International Relations, Department of History, University of Pennsylvania

Wang Yi, Professor of Law, Chengdu University

Zan Aizong, freelance reporter and writer

Zhang Xingshui, Beijing Jingdin Law Firm

Welcome to the websites of ChinaAid: www.ChinaAid.org and www.MonitorChina.org

Conclusion of English version