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CHINA: Religious Freedom and the Legal System: Continuing Struggle

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The Communist party-state remains determined to maintain control over society, using over the past 20 years an increasing number of laws and regulations as a means to this end. In the field of religion, Ye Xiaowen, Director of the State Administration for Religious Affairs, has publicly stated that "The purpose . . . of strengthening the administration of religious affairs according to law is actively to guide the religions to adapt themselves to socialist society." There is a complex web of laws and regulations on religion under which, to take one example, children may not receive religious education, whatever their parents think. The state claims the exclusive right to decide on what are "normal" religious activities and is effectively pursuing a policy of divide-and-rule towards religious communities. Some religious communities de facto accepted this policy, not foreseeing that the state's repression of Falun Gong would also lead to measures against, for example, the unofficial Protestant community. The Chinese state's relationship with religion can only improve if the state accepts that laws are supreme – even over the party - and protect individuals and society from arbitrary actions by those in power.

In the two decades since it launched the policy of economic reforms and openness, the Chinese government has issued laws and administrative regulations to address the concerns of foreign businesses and governments. At the same time, laws and regulations have also been developed to meet the needs of other burgeoning sectors of society, including religion.

Yet one should not mistake the creation of laws with the establishment of the "rule of law". This concept, often contrasted with the "rule of man", assumes that individuals enjoy certain inalienable rights which laws are meant to protect from the arbitrariness of human rulers. While China's legal system has clearly become more developed than at any time in the short history of the People's Republic, the Communist party-state remains determined to maintain its control over society. Laws and regulations are now important means to facilitate, and even further, that control.

This relationship between government control and laws is captured in an editorial in the state Xinhua (New China) News Agency in December 2001, when the last national conference on religious affairs attended by Jiang Zemin and other Chinese leaders was held: "With regard to the management of religious affairs, the government has gradually moved into the path of legality and standardisation, leading religion and society to mutually adjust and stride."

Ye Xiaowen, Director of the State Administration for Religious Affairs (SARA) since 1995, has stated with even greater clarity the state's intention to maintain and expand its control through the use of legal instruments. "Regulating religious affairs according to law means that the government administers and oversees the enforcement of the laws, regulations and policies concerning religion," Ye declared in a speech to the Central Party School in 1996.

He later explained the state's reasoning in a January 2003 editorial in the Communist Party-run People's Daily: "The purpose of managing religious affairs by law is to safeguard legitimate religion, curb illegal cults, resist infiltration, and crack down on crime." Put simply, this represents not the "rule of law" but the continuation of "rule of man" – or, even more appropriately, the "rule of the Communist Party" – but through legal means.

This move towards "legality and standardisation" reflects the reluctant pragmatism the government has adopted in the era of reform. It is an admission that the Communist Party's past efforts to eradicate religion by force have failed miserably, a failure Ye admitted in 1996: "We cannot eradicate religion by administrative power; nor can we develop religion by the use of administrative power." He added that the "law and regulations governing religion represent the institutionalisation and codification of the policy toward religion."

It is also a recognition that religion will be a social force for a long time to come and one with considerable impact, as former President Jiang Zemin admitted in his speech at the 2001 religious affairs conference. The choice of legal instruments represents a conscious decision to adopt different methods to achieve the party-state's enduring objective: the eradication of religion or, more subtly, its "adaptation" to socialism. "The purpose . . . of strengthening the administration of religious affairs according to law," Ye argued, "is actively to guide the religions to adapt themselves to socialist society."

It is therefore little wonder that the laws and regulations that govern religious affairs (especially on state registration) are more focused on the "management" of religion than the protection of the right to practice religion without state interference. The fundamental legal requirement for religious communities, like other social forces in China, is registration with the government. In May 1991, SARA and the Ministry of Civil Affairs issued a notice to all provincial and local religious affairs offices and civil affairs agencies regarding a document entitled "Implementing Measures on the Management and Registration of Religious Social Organisations," which was modelled on the 1989 "Regulations on the Management and Registration of Social Organisations" that would eventually be updated in 1998.

Article 3 of "Implementing Measures" required all religious organisations to first seek the approval of the relevant religious affairs offices before applying for registration with the appropriate level of civil affairs agencies. Although this document did not make this stipulation, many religious organisations, particularly Protestant Christian ones, have claimed that the approval of the local branch of the national – guojia – mass religious organisation – such as the Three-Self Patriotic Movement (TSPM)/Chinese Christian Council (CCC) for Protestants – was required before even approaching the state religious affairs office. Since the 2001 national religious affairs conference, rumours have persisted that the approval of the TSPM/CCC was no longer required. However, a former house church leader told Forum18 News Service that house churches wishing to register must still obtain the approval of the TSPM/CCC before submitting their applications to the authorities.

Article 4 of the document stipulated a series of requirements that organisations must fulfil for registration. First, the applicant must supply to the authorities the name of the organisation, its office location and its "responsible person". Second, the organisation must provide by-laws that do not contradict the Constitution or other state laws. Third, it must demonstrate that it has a legal revenue source. Fourth, it must provide religious doctrines and teachings that can be verified, in accordance with the historical development of religion in China, and not in contravention of the organisation's by-laws. Finally, the membership of the organisations should have "broad representation".

Although this document does not stipulate that the applicant must provide the full membership list with the application, many Protestant Christian groups have claimed they were required to submit the names of all members, which has deterred many from registering. However, even without this stipulation, the regulations are clearly intrusive, especially the provision implying that the state has the right to determine whether the doctrines of a religious organisation are valid. Moreover, should believers desire to register, they may face obstacles from local officials unwilling to recognise them for various reasons. Sometimes, local officials have even "invited" believers to register and then, after they arrived at the government offices with the required documents for registration, promptly arrested them for engaging in "illegal" religious activities.

The state also demands the registration of places of worship. The 1994 "Measures for the Registration of the Places for Religious Activities" stipulate that religious venues must fulfil similar conditions as those for the registration of organisations to be legal entities. The regulations require the applicant wishing to register a religious venue to demonstrate that there is a permanent venue, a regular membership and a legal source of revenue. However, such requirements may be impossible to meet given the difficulty for believers, particularly in the countryside, in gaining the funds and property they need. Even when local officials cannot bar registration through religious affairs regulations, they may still use other regulations such as building and land use codes to prevent the construction of religious sites, as Human Rights Watch notes.

Alongside these registration requirements, the state has promulgated other laws and regulations – including the 1994 "Regulations on Managing Places for Religious Activities"; the 1996 "Measures for the Annual Inspection of Places of Religious Activities"; and the 2000 "Detailed Rules on Implementing the Provisions on Managing the Religious Activities of Aliens in the People's Republic of China" – to solidify the Communist state's control over individual believers, organisations and activities. These regulations permit the government to determine the qualifications of clerics and inspect the internal operations of religious organisations while limiting the ability of believers and communities to propagate their beliefs and interact with fellow believers from other parts of China.

Among the most egregious restrictions is the bar on children under 18 receiving religious education, regardless of whether their parents have given approval. This requirement has been applied most vigorously in Xinjiang and Tibet, where religion is an important component of the respective cultures of the traditionally-Muslim Uighurs and the traditionally-Buddhist Tibetans, who harbour nationalist aspirations. Such nationalist sentiment has provided the Chinese government with an even more urgent reason to enforce this restriction as a part of its campaign to assimilate these minority ethnic groups into the dominant Chinese culture.

In keeping with its persistent concern that religion could become an instrument of foreign anti-China forces, the government in 2000 updated its 1994 regulations governing the religious activities of foreigners in China. Appropriately entitled "Detailed Rules" on the activities of foreign religious persons, the 2000 document imposes sweeping restrictions on the religious activities foreigners can engage in while in China. For example, they can preach only at registered religious venues, and only after receiving "invitations" from state-approved religious groups and approval from the appropriate local government offices. The rules also forbid foreigners from carrying into China religious literature exceeding their personal use. Even more controversial has been the provision forbidding foreigners from appointing religious officials and training religious clerics, a provision clearly imposed with the Roman Catholic Church in mind.

These regulations are not the only ones the state deploys in managing religious affairs. Provisions of the Criminal Law - particularly those punishing "disturbing public order" and "endangering national security" - have been used to justify the government's crackdown on religious organisations and activities. Article 124 of the Criminal Law, which stipulates prison sentences for those who "sabotage any broadcasting, television or public telecommunications facility", has been used in particular against Falun Gong practitioners who have attempted to interfere with Chinese television broadcasts. Charles Li, a Chinese-American Falun Gong practitioner, was convicted in March 2004 under this provision after he admitted to Chinese officials that he had indeed planned to disrupt television programs with Falun Gong messages.

In dealing with Falun Gong, as provided in the September 1999 volume of Chinese Law and Government, the Chinese government has also accused Falun Gong practitioners of violating specific provisions in the "Law of the People's Republic of China on Assembly, Parades, and Demonstrations" and the "Regulations for Punishments with Respect to the Administration of Public Security of the People's Republic of China."

Thousands of believers of many faiths have also been sentenced to "re-education through labour camps" – laogai – through the administrative legal system, which is under the jurisdiction of the state public security system, thus ensuring that accused believers have no opportunity to defend themselves in a court of law.

All these regulations or, more appropriately, restrictions were framed in line with the state's view of religion. While the Communist state has conceded the enduring nature of religion and its considerable impact on society, it has accepted this view only reluctantly. While recognising that coercion has not led to the demise of religion, the state remains intent on controlling this social and ideological force. It must therefore act to arrest the further development of religion while permitting some "freedom" for those religious communities the state has already recognised. This leads us to the question of "cults".

Even before the emergence of Falun Gong, Chinese legal provisions had already begun to address the problem of "cults". Article 36 of the Constitution stipulates that the state protects "normal" religious activities. Article 300 of the Criminal Law provides punishments for those who "organise or make use of superstitious sects, secret societies, or heretical organisations, or utilise superstition to disrupt the implementation of state laws and administrative rules and regulations". In October 1999, in response to Falun Gong's defiance, the Standing Committee of the National People's Congress issued a decision on "Banning Heretical Organisations, Preventing and Punishing Cult Activities". Despite legal provisions on "cults" and "sects", the government has not defined these concepts clearly. Indeed, in practice, officials often seem to equate "illegality" with "cults". This is why, in the aftermath of the government's crackdown on Falun Gong, local officials labelled as "cults" many non-Falun Gong religious organisations that had not registered, thereby justifying official repression against them.

However, there is an even bigger issue here. By claiming the right to determine what constitute "normal" religious activities and what are "cults", the state has effectively adopted a divide-and-conquer strategy towards religious communities. Religious communities have historically disagreed over doctrines and the orthodoxy of their faith, leading to mutual recriminations that some are "heretical" while others are "orthodox". However, in the face of the government crackdown on "cults," many religious groups have distanced themselves from the targets of government repression in the hope of establishing themselves as legitimate "normal" religious groups in the eyes of the political authorities. This is why many unofficial Protestant house churches decided to remain silent even as the government cracked down on Falun Gong. As one house church leader later lamented, these churches did not foresee the spillover effect that the state's repression of Falun Gong ultimately had for the unofficial Protestant community.

At least for now, the Communist state continues to treat laws and regulations as instruments to further its control over religion. An important reason stems from the fact that the country is still ruled by the Communist Party, which claims atheism as its religion. Hence the constitutional provision proclaiming that "no state organ, public organisation 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." Communist Party documents continue to remind party cadres that party membership and religion are incompatible. Over 20 years after Deng Xiaoping initiated reforms, the Communist Party remains insistent, at least on the surface, on this. In an article entitled "Hold Fast to Atheism, Oppose Pseudo-Science" in the January 2004 issue of Qiushi (Seeking Truth), a leading party publication, a member of the People's Political Consultative Committee attacked the rise of the "new theism" that includes "pseudo-qigong".

Given this, it would seem that the Chinese state's relationship with religion can improve only if the Communist Party either embraces religion or accepts that the "rule of law" means that laws must be supreme, even as regards the party, or both. The alternative is a China that is no longer ruled by the Communists. However, even then, any new rulers must recognise and accept that laws are indeed subject to no individual. In this case, China's long history of the "rule of man" does not bode well for the future. Finally, it is always important that laws are able to protect the rights of individuals, which is clearly not the case with China's existing laws and regulations.

These tensions will not be resolved overnight. To borrow from the title of an article by Canadian scholars Ronald Keith and Zhiqiu Lin in the September 2003 issue of The China Quarterly, the relationship between religion and law in China will be a continuing "struggle" for the foreseeable future.

For more information, see Forum 18's survey of the prospects for religious freedom at

http://www.forum18.org/Archive.php?article_id=292

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<http://www.nationalgeographic.com/xpeditions/atlas/index.html?Parent=asia&Rootmap=china>

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