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## IN SEARCH OF A THEORY OF CULT AND FREEDOM OF RELIGION IN CHINA: THE CASE OF FALUN GONG

Anne S.Y. Cheung\*

**Abstract:** Cult and anti-cult movements have been high drama ever since the close of the twentieth century. The tragedies caused by some minority religious groups and the corresponding government responses force us to question the meaning of freedom of religion and to confront our societal conviction to upholding our acclaimed constitutional values. This Article examines the fundamental concept of freedom of religion and the rights that it entails in the case of the People's Republic of China. China's recent crackdown on Falun Gong, a seemingly benign breathing exercise group, has been bitterly controversial. The case of Falun Gong illustrates that the tension between cults and states reflects not only the aspirations and frustrations of minority religious groups, but also the limitations and inadequacies of international human rights jurisprudence.

### I. INTRODUCTION

Cult and anti-cult movements have been high drama ever since the close of the twentieth century. Although the term "cult" remains difficult to define and sensitive to use,<sup>1</sup> its connotations are familiar to most of us. The 1995 attempt to gas Tokyo's subway by Aum Shinrikyo shocked not only Japan, but the entire world. The protest of Falun Gong members who allegedly set themselves on fire in Beijing in 2000 was a similarly disturbing and controversial act. Such incidents are not limited to Asia. The mass suicide-homicides of the Order of the Solar Temple in Canada, Switzerland and France, and the Waco tragedy in the United States during the 1990s also alarmed many around the world.

These tragedies have triggered global panic and created a climate of suspicion regarding cults. In response to these violent events, various governments blacklisted or banned certain religious groups.<sup>2</sup> Among these,

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<sup>1</sup> Some scholars argue that the term cult should be avoided because it is overloaded with negative stereotypes. See, e.g., James T. Richardson, *Definitions of Cult: From Sociological-Technical to Popular-Negative*, 34 REV. RELIGIOUS RES. 348, 348 (1993).

<sup>2</sup> Examples include France and Belgium, which have blacklisted certain groups as cult or sects and have established official cult-watching units. For a discussion of government cult prevention and

the People's Republic of China (the "PRC") stands adamant in its anti-cult crusade, especially against Falun Gong, a seemingly benign spiritual exercise group.

Since July 1999, the Chinese government has introduced a series of legislative reforms and judicial instructions to outlaw cult activities.<sup>3</sup> Falun Gong was eventually banned in October 1999, and by the end of 2002, tens of thousands of the group's followers were reportedly detained. Approximately five hundred followers have died in custody from torture or injury.<sup>4</sup> The Falun Dafa Information Centre estimates that by July 2003, as many as 750 members had died as a result of torture.<sup>5</sup> Other group members were forced to enter labor camps for re-education or were committed to mental asylums.<sup>6</sup>

Human rights groups often perceive the PRC's crackdown as a serious violation of freedom of religion<sup>7</sup> despite the fact that Falun Gong denies being a religious group,<sup>8</sup> and that Chinese authorities consider Falun Gong a cult rather than a religion.<sup>9</sup> Under international human rights standards, freedom of religion is comprised of two fundamental rights: freedom of religious belief and manifestation of religious belief.<sup>10</sup> While the former is believed to be an absolute freedom, the latter is viewed as a conditional

regulation, see Massimo Introvigne, *Holy Mountains and Anti-Cult Ecology: The Campaign Against the Aumist Religion in France*, 12 SOC. JUST. RES. 365 (1999) and Willy Fautre, *Belgium's Anti-Sect War*, 12 SOC. JUST. RES. 377 (1999).

<sup>3</sup> See *infra* Part IV.D.

<sup>4</sup> Amnesty International, AMNESTY INTERNATIONAL REPORT 2003 - CHINA at <http://web.amnesty.org/report2003/Chn-summary-eng> (last visited Dec. 1, 2003).

<sup>5</sup> The Falun Dafa Information Centre, *Reports of 5 Deaths of Falun Gong Practitioners Emerge from Jilin Province, China*, July 9, 2003, at <http://www.faluninfo.net/displayAnArticle.asp?ID=7584> (last visited Dec. 1, 2003).

<sup>6</sup> For vivid accounts of those who were forced to enter mental asylums, see Robin Munro, *Judicial Psychiatry in China and its Political Abuses*, 14 COLUM. J. ASIAN L. 1, 105 (2000).

<sup>7</sup> See, e.g., B.A. Robinson, *Falun Gong and Falun Dafa*, Dec. 24, 2001, at <http://www.religioustolerance.org/falungong.htm> (last visited Dec. 1, 2003); Human Rights Watch, *U.N. Asked to Intervene to Protect Falun Gong's Rights*, July 22, 1999, at <http://www.hrw.org/press/1999/jul/china2207.htm> (last visited Dec. 1, 2003).

<sup>8</sup> Falun Gong considers itself a *qigong*, or breathing exercise group, which claims to inherit the wisdom of Buddhism, Taoism, and Chinese *qigong*. For further discussion, see *infra* Part IV.B.

<sup>9</sup> In October 1999, Chinese authorities first referred Falun Gong as a cult. See *Jin Gong Zhi Chu jin Cheng Fei Fa Zu Zhi, Bei Jing Xuan Bu Fa Lun Gong Wei Xie Jiao [The Forbidden Group was First Referred as an Illegal Association, Beijing Announces it as an Evil Cult]* SING TAO DAILY NEWS, Oct. 15, 1999 at <http://www.chinainfobank.com> (last visited Dec. 1, 2003). For further discussion, see *infra* Part IV.C.

<sup>10</sup> See generally Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., art. 18, U.N. Doc. A/810 (1948) [hereinafter UDHR]; International Covenant on Civil and Political Rights, Dec. 16, 1966, art. 18, 999 U.N.T.S. 171 [hereinafter ICCPR] (providing distinct rights of freedom of religion and the freedom to manifest one's religion).

right.<sup>11</sup> In response to international allegations that the PRC is violating religious freedom, Chinese authorities could state that this right is not absolute, and that it cannot outweigh other freedoms. Relying on the formula of human rights balancing, Chinese authorities could easily issue the well-rehearsed line that freedom of religion will only be respected if it does not threaten public order, national security, public health or morals.<sup>12</sup>

It may be risky, however, for the Chinese government to engage in the delicate exercise of balancing different types of freedom. This Article argues that the Chinese government suppresses groups like the Falun Gong in part because of the rival ideology to state power that they represent. Chinese authorities' disdain for Falun Gong is reflected by the vocabulary adopted to label this group. In Chinese, the term "cult" is translated into "*xiejiao*," which means evil or perverse doctrines.<sup>13</sup> In labeling certain groups as cults, the Chinese government condemns the nature of these groups, and announces that they lead others on a wrong path, blinding their followers to impartial and sound judgment. From the perspective of the Chinese government, cults are not religious groups that merit protection.

The fundamental implication of the Chinese government's labeling of an entity as a cult is that the group's religion becomes deemed illegal or immoral. Thus, when a group is officially labeled a cult, it is indirectly and intrinsically stripped of its status as a religious entity, and therefore of its right to religious freedom. Impliedly, the government also distinguishes between freedom of belief and freedom of religion. The state asserts that it has the right to intervene if a religious group distorts one's rational reasoning and affects one's exercise of mind. From this perspective, when there is a conflict between the two categories of freedom, freedom of belief prevails over freedom of religion. What remains unanswered is under what authority does the state differentiate between religion and belief, and between cults and legitimate religious groups.

The fate of cults in the Chinese context exposes the inadequacy of the current human rights regime for protecting minority religious groups. The legal concept of religious freedom seeks to reconcile personal religious

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<sup>11</sup> For further discussion, see *infra* Part II.

<sup>12</sup> Article 36 of the Chinese Constitution stipulates that citizens of the People's Republic of China shall enjoy freedom of religious belief, but that "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." Chinese authorities consider the teachings of Falun Gong to disrupt social order and to impair the public health of citizens. See *infra* Part IV.C of this Article and Pitman B. Potter, *Belief in Control: Regulation of Religion in China*, CHINA Q. 317, 331-32 (2003).

<sup>13</sup> As Vermander notes, the Chinese character "xie" denotes all that is "perverse, unbalanced, heterodox or pernicious." Benoit Vermander, *Looking at China Through the Mirror of Falun Gong*, 35 CHINA PERSP. 4, 6 (May-June 2001).

beliefs and practices with prevailing social norms. In this regard, the murky distinction between the manifestation of religious practices and religious beliefs is hardly helpful. Moreover, a state can deny individuals their rights by outlawing their beliefs as non-religious and labeling their religion a cult. Therefore, the ultimate legal conundrums in the cult and anti-cult struggle are appropriately marking the parameters that religious groups enjoy, defining what constitutes a religion, and determining the final decision-maker within this discourse.

This Article situates the Falun Gong debate in the context of freedom of religion within the PRC, and compares it with the general understanding of freedom of religion and cults within international law. Further, in asking what a cult is, this Article argues that the term "cult" is a convenient label imposed by the ruling authority to signify not the spiritual deviance of a particular group, but instead its political threat to state power. The debate over the Falun Gong's status is part of a larger struggle between the PRC's ideological coherence and the rival belief systems offered by religions. The Chinese government's current hostile attitude towards Falun Gong further reveals the precarious position of religion under Communist-Marxist ideology, and China's long tradition of suspicion regarding the potentially subversive nature of religious or quasi-religious groups.

This Article begins by examining the definition of religion and the rights that this specific freedom provides under international law. Part III discusses the meaning of the term "cult," and the challenge posed to legal norms by this category. Part IV analyzes the PRC's efforts to categorize Falun Gong as a cult. This Article concludes that freedom of religion is a highly political and sensitive issue, in part because the very nature of religion invites one to recognize a higher source than the state. The Falun Gong debate not only challenges the ruling Chinese regime, but also the Western human rights ideology of religious freedom.

## II. FREEDOM OF RELIGION: BELIEF VS. MANIFESTATION

Freedom of religion is arguably the oldest of the internationally recognized human rights.<sup>14</sup> It is enshrined in the Universal Declaration, the International Covenant on Civil and Political Rights, the European Convention on Human Rights and the constitutions of various states.<sup>15</sup>

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<sup>14</sup> See David M. Beatty, *The Forms and Limits of Constitutional Interpretation*, 49 AM. J. COMP. L. 79 (2001).

<sup>15</sup> Freedom of religion is protected under several international declarations and covenants. See UDHR, *supra* note 10; ICCPR, *supra* note 10; Declaration on the Elimination of All Forms of Intolerance

Some trace this conviction to the Enlightenment period, when a strong belief emerged that an individual's spiritual existence required special protection by the state,<sup>16</sup> and when one's ability to choose his or her spiritual path became viewed as central to the struggle against oppression and arbitrary state power.

Historical recognition of freedom of religion, however, does not signify that the meaning of religion is clear to scholars in theology, sociology or law. A 1978 study revealed that there were more than 1200 religious groups in the United States alone.<sup>17</sup> Various definitions of religion reflect divergent views of this concept. Some scholars define religion as a belief in the "conception of a supernatural being, world, or force, and the notion that the supernatural is active, that events and conditions here on earth are influenced by the supernatural".<sup>18</sup> Other scholars emphasize that internal conviction must be supported by external practice.<sup>19</sup> Within human rights discourse, religion is generally broadly defined, encompassing "theistic convictions involving a transcendental view of the universe and a normative code of behavior, as well as atheistic, agnostic, rationalistic, and other views in which both elements are absent."<sup>20</sup>

Under international law, the legal definition of religion reflects a deliberate attempt to avoid an ideological or philosophical challenge regarding the content of religious beliefs. It refrains from commenting upon whether religious beliefs are true, acceptable, logical, consistent or comprehensible. Ninan Koshy, the former director of the Commission on International Affairs for the World Council of Churches, reminds us that international human rights instruments are never meant to define religion or determine the category of believers entitled to state protection.<sup>21</sup> Rather, the legal concept is designed to delineate the rights attendant to freedom of religion.

While the content of a particular faith is a personal choice immune from judicial scrutiny, the exercise of the right is not. In fact, the description

and of Discrimination Based on Religion or Belief, G.A. Res. 36/55, U.N. GAOR, 36<sup>th</sup> Sess., Supp. No. 51, art. 6, U.N. Doc. A/36/51 (1981); European Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, art. 9, 213 U.N.T.S. 221.

<sup>16</sup> See MANFRED NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY 312-13 (1993).

<sup>17</sup> See J. GORDON MELTON, *ENCYCLOPEDIA OF AMERICAN RELIGIONS* (1978), *quoted in* RODNEY STARK & WILLIAM SIMS BAINBRIDGE, *THE FUTURE OF RELIGION* 41 (1985).

<sup>18</sup> RODNEY STARK & WILLIAM SIMS BAINBRIDGE, *THE FUTURE OF RELIGION* 5 (1985).

<sup>19</sup> See Jim Stone, *A Theory of Religion Revised*, 37 RELIGIOUS STUD. 177 (2001); SIR JAMES G. FRAZER, *THE GOLDEN BOUGH* 58 (1922).

<sup>20</sup> NATAN LERNER, *RELIGION, BELIEFS, AND INTERNATIONAL HUMAN RIGHTS* 119-20 (2000).

<sup>21</sup> See NINAN KOSHY, *RELIGIOUS FREEDOM IN A CHANGING WORLD* 22 (1992).

of this right is laden with sophisticated meanings and its interpretation is wrought with difficulty. Article 18 of the International Covenant on Civil and Political Rights (the "ICCPR")<sup>22</sup> stipulates that "everyone shall have the right to freedom of thought, conscience and religion."<sup>23</sup> This right embraces "the right to adopt a religion or a belief" and the "right to manifest one's religion."<sup>24</sup> The ICCPR stresses that "no one shall be subject to coercion which would impair his freedom"<sup>25</sup> in this regard.

The underlying implication of freedom of religion is that the right to adopt a religion is a personal choice, and that this right creates a corresponding duty from the state for protection. In carrying out this duty, a state typically maintains a neutral stance towards religion and abides by the principle of church-state separation.<sup>26</sup> This in turn requires the state to uphold a policy of denominational equality and non-discrimination towards all religious groups.<sup>27</sup> In other words, the state has no power to judge or

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<sup>22</sup> In full, Article 18 provides that

1. 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 community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. 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.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

ICCPR, *supra* note 10.

<sup>23</sup> For a discussion of the nuances between the words "conscience, beliefs and religion," see Malcolm D. Evans, *The United Nations and Freedom of Religion: The Work of the Human Rights Committee*, in *LAW AND RELIGION* 35, 39 (Rex J. Ahdar ed., 2000). Evans notes that the ICCPR's express mention of the three terms was intended to protect non-believers from religious fanaticism and to assure the Soviet bloc that "thought" and "conscience" embraced philosophical and scientific thinking that was not religious in nature.

<sup>24</sup> ICCPR, *supra* note 10, art. 18(1).

<sup>25</sup> See *id.* art. 18(2).

<sup>26</sup> The structural separation of secular and religious authority is not a universal phenomenon. Perhaps only the United States has strictly adhered to this doctrine. However, this doctrine does not necessarily require a formal separation between church and state. In Oriental culture, as evidenced in Islam and Buddhism, there may not be an institutional church. In contrast, due to historical, social and religious reasons, there are various types of church-state relationships in the West. For instance, some states have official state religions. Regardless of these differences, a minimum standard is required to protect religious liberty for all and to prevent discrimination based on religious beliefs. See General Comment of the Committee on Human Rights in article 18 of the ICCPR. See also ICCPR, *supra* note 10; Sophie C. van Bijsterveld, *Religion, International Law and Policy in the Wider European Arena: New Dimensions & Developments*, in *LAW AND RELIGION* 163, 170-71 (Rex J. Ahdar ed., 2000).

<sup>27</sup> These are pertinent concerns for the registration of religions and the state support for religions through tax benefits and non-financial mechanisms. See Leszek Lech Garlicki, *Perspectives on Freedom of Conscience and Religion in the Jurisprudence of Constitutional Courts*, 2001 B.Y.U. L. Rev. 467, 478-79.

define religious truths. Ideally, this separation acknowledges separate domains for the church and the state.

As with most rights, the protection of religion is rarely absolute. Under article 18(3) of the ICCPR, freedom of religion must be balanced against public safety, order, health, morals or the fundamental rights and freedoms of others.<sup>28</sup> For our present purpose, it is not necessary to engage in the delicate exercise of this balancing, but rather to note that proper limitations must not be aimed at circumventing one's right to religion. The intention of this balancing is instead to restrict religious conduct that conflicts with others' rights. A distinction is thus drawn between religious belief and its corresponding conduct, including forms of worship, observance, proselytizing, and teaching. The manifestation of religion is under the minute scrutiny of the state, making it a fertile ground for litigation. Famous cases involving religious practices include Amish parents who refused to send their children to state schools,<sup>29</sup> believers who insisted on the use of marijuana in ritual worship,<sup>30</sup> and Christians who transported Bibles into countries that forbid the practice of Christianity.<sup>31</sup>

As the examples above illustrate, the distinction between religious beliefs and manifestation of such beliefs is often artificial. Religious beliefs often require specific doctrinal practices. Furthermore, it is impossible to strip the public dimension from religion; one cannot deny "the social, institutional and communicative aspects of religion."<sup>32</sup> Believers often share their faith together and organize themselves in accordance to their religious precepts. As a result, interpreting religious belief as a purely internal, private and personal conviction denies the reality that such "inner freedom

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See Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, *supra* note 15, art. 2 (specifically prohibiting discrimination by the state). For further discussion, see Donna J. Sullivan, *Advancing the Freedom of Religion or Belief through the U.N. Declaration on the Elimination of Religious Intolerance and Discrimination*, 82 Am. J. Int'l L. 487 (1988).

<sup>28</sup> See *supra* note 22.

<sup>29</sup> *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

<sup>30</sup> *MAB, WAT and J-AYI v. Canada*, Comm No. 570/1993 at <http://www.worldlii.org/int/cases/IIHRL/1994/35.htm>.

<sup>31</sup> For example, in May 2001, a Hong Kong businessman, Lai Kwong-keung, transported more than 16,000 Bibles and other publications from Hong Kong into China for an underground Christian group called the "Shouters." See Greg Torode & Stella Lee, *Don't Meddle, China Tells U.S. in Bibles Row*, S. CHINA MORNING POST, Jan. 9, 2002, at 1. China does not allow the distribution of Bibles without permission. *Id.* The Christian duty of spreading the gospel was not accepted by Chinese authorities. *Id.* Lai was sentenced to two years imprisonment, but was later released for health reasons. *Id.*

<sup>32</sup> van Bijsterveld, *supra* note 26, at 175. For instance, many religions require their followers to worship in temples or in churches, which carries institutional, social and communicative dimensions. Julian Rivers also argues that freedom of religion entails a collective aspect in which religious association should be endowed with a set of rights, immunities, privileges and powers. See Julian Rivers, *Religious Liberty as a Collective Right*, in 4 LAW AND RELIGION: CURRENT LEGAL ISSUES 2001, 227 (Richard O'Dair & Andrew Lewis eds., 2001).



can only be expressed through external manifestation.”<sup>33</sup> Religious beliefs and the manifestation of such beliefs are two sides of the same coin, often impossible to disentangle. Logically, in proscribing religious practices, the state in turn invalidates the integrity of such beliefs.

### III. CULTS AND THE CHALLENGES THEY POSE TO RELIGIOUS LIBERTIES

The distinction between religious beliefs and practices plays a crucial role in the debate regarding cults. Not only have the activities of certain groups become the subject of intense criticism, but the groups themselves have also come under direct scrutiny. For instance, the Chinese government objects to the existence and organization of groups that it labels sects or cults.<sup>34</sup> In doing so, state authorities pierce the boundaries of purported religious neutrality, violating the principles of equality and non-discrimination of religious groups. Logically, the act of balancing religious activities with other state concerns and human rights is unlikely to be carried out in an impartial manner. Before delving into the legal concepts of neutrality, equality and balancing, it is necessary to examine the meaning of the term “cults.”

#### A. *The Meaning of “Cults”*

The terms “cult” and “sect” often conjure negative images. Despite its connotations, “cult” can be a neutral term that is used commonly in sociological and political studies.<sup>35</sup> The term “cult” can be defined as “a community of individuals constituting a minority within a religion that decided to split from that religion.”<sup>36</sup> A distinction between cults and sects may be drawn by defining sects as organizations that have former ties with a religious body, while cults are newly established groups.<sup>37</sup> Under this definition, both groups are deviant religious bodies that are “in a state of

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<sup>33</sup> KOSHY, *supra* note 21, at 24.

<sup>34</sup> Before the rise of Falun Gong, Chinese authorities had been wary of different groups with strong religious and political overtones, especially in Tibet and Xinjiang. See Potter *supra* note 12, at 322. Folk religions have also been suppressed in rural villages. See Lung Jing Yu, *Xin Zhong Guo Dui Hui Dao Men De Dou Zheng [The Struggle of New China Against Hui Dao Men]*, in FA LUN GONG YU XIE JIAO [FALUN GONG AND CULT], 213-14 (Chen Hong Xing & Dai Chen Jing eds., 1999).

<sup>35</sup> Because law is not supposed to rule on the specific content of religious dogma, as discussed in Part II, strictly speaking “cult” is not a legal term. Nevertheless, as shown within this Article, the term bears significant legal implications.

<sup>36</sup> LERNER, *supra* note 20, at 7.

<sup>37</sup> See STARK & BAINBRIDGE, *supra* note 18, at 25.

relatively high tension with their surrounding socio-cultural environment.”<sup>38</sup> In other words, they are marginal groups that form a social subculture. The modern terms “new religious groups,” “emergent religious groups” or “minority religious groups” are perhaps less judgmental descriptions of the nature of cults.

Bizarre as they may seem to the outsider, cults do not necessarily reflect the “evilness” assumed in Chinese language.<sup>39</sup> The term “cult” denotes only the level of contemporary social acceptance towards certain groups. In fact, many mainstream religions were yesterday’s cults when they were first founded. Prominent religious leaders like Augustine, Martin Luther, and John Calvin did not share the religious views of those in power and were regarded as deviant figures in their day.<sup>40</sup> The definition and perception of a cult varies by time and place. Indeed, today’s cults may one day become mainstream religions.

Despite the neutral historical meaning of a cult as a marginal religious group, the implication of perversion that is often attributed to cults should not be overlooked. In essence, the word “cult” signifies a lack of acceptance and level of tension between a minority religious group and society at large. Cults are groups that reject societal norms and are also rejected by society. In its mildest form, these groups may be seen as mystical or idiosyncratic. However, when antagonism escalates, these groups may become troublesome and undesirable in the eyes of the majority.<sup>41</sup> A single tragedy or egregious example of fraud may especially distort the popular conception of cults.<sup>42</sup>

A definition of cult has emerged in contemporary culture, as understood by most in society and within the media. The following traits characterize groups commonly viewed as cults:

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<sup>38</sup> *Id.*

<sup>39</sup> See Vermander, *supra* note 13.

<sup>40</sup> See FRANKLYN S. HAIMAN, RELIGIOUS FREEDOM 4-5 (1977).

<sup>41</sup> The elements of being mystical, idiosyncratic and undesirable are the marks of subculture deviance in sociological studies. See STARK & BAINBRIDGE, *supra* note 18, at 49.

<sup>42</sup> Gruesome examples of cult tragedies include Aum Shinrikyo’s 1995 release of nerve gas into Tokyo subway, which killed twelve people and injured 6000. The Japanese government used public funds to purchase property owned by the group and refused to allow group members to register as residents. See Center for New Studies on New Religions, at <http://www.cesnur.org/2003/aum-01.htm> (last visited Dec. 1, 2003). Reverend Moon of the Unification Church (the Moonies) was convicted by the U.S. Court for tax evasion.

The bias against religious sects may also result in wrongful convictions. Three members of the Ananda Marga group were wrongfully convicted for planning the Hilton bombing in Australia, and spent seven years in jail. The notorious case of Lindy Chamberlain involved a Seventh Day Adventist who was convicted of murdering her own child, and was found innocent only after spending three years in prison. For discussion of the last three examples, see James Richardson, *Minority Religions (“Cults”) and the Law: Comparisons of the United States, Europe, and Australia*, 18 U. QUEENSLAND L.J. 183, 188-99 (1995).

1. relatively newly-formed groups that present a distinct alternative to dominant patterns, and perceive themselves as elitist societies;
2. strong authoritarian and charismatic leadership, in which the founding leader is often self-appointed and not accountable to the members;
3. aggressive proselytizing methods and use of psychological methods to recruit and indoctrinate its members;
4. systematic inducement of powerful experiences and fulfillment of members' personal needs;
5. a strong sense of "insiders" and "outsiders" and a high degree of conformity and commitment;
6. a tendency to see themselves as legitimated by a long tradition of wisdom of practice of which they are the current manifestation;
7. a lack of benefit to members or the society from the wealth gathered by such groups.<sup>43</sup>

These widely perceived beliefs regarding cults are not without problems. Obviously, terms such as "indoctrination," "psychological manipulation" and "authoritarian leadership" are vague and difficult to define. These characteristics can be found within many religious groups that are not considered cults. Despite the difficulty in establishing a comprehensive definition, one scholar posits that "it is this popular use of the term [that] has gained such credence and momentum that it has virtually swallowed up the more neutral historical meaning of the term from the sociology of religion."<sup>44</sup> Furthermore, due to its loaded meaning, those in authority may easily use the term "cult" as a social weapon against groups that they consider threatening.<sup>45</sup>

#### *B. Cults and Challenges Within the Legal Arena*

When the tension between cults and mainstream society reaches such a level that a government decides to persecute cult activities or even to

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<sup>43</sup> These characteristics are a combination of the definitions articulated by Ellwood, Robins and Anthony and the Cult Information Centre. See Robert Ellwood, *The Several Meanings of Cult*, THOUGHT LXI (241):212-24; T. Robbins & D. Anthony, *Deprogramming, Brainwashing and the Medicalization of Deviant Religious Groups*, 29 SOC. PROB. 283-97, quoted in James T. Richardson, *Definitions of Cult: From Sociological-Technical to Popular-Negative*, 34 REV. RELIGIOUS RES. 348, 351 (1993). See Cult Information Centre, *What is a Cult?*, at <http://www.cultinformation.org.uk/faq.html> (last visited Dec. 1, 2003).

<sup>44</sup> Richardson, *supra* note 1, at 348.

<sup>45</sup> *Id.* at 352.

outlaw certain groups, the protection of religious freedom should be at its height. The distinction between freedom of religious belief and manifestation of this belief, both of which are core constituents of the right to freedom of religion, is crucial. Yet, under this scenario, the category of "religious freedom" becomes incoherent. Innocuous beliefs and practices are proscribed as dangerous, and state protection is withdrawn. Although manifestations of religious beliefs are subject to restriction by the state, as discussed in Part II, the state must determine the appropriate scope of such limitations. Specifically, when members of a religious group practice their faith in an objectionable manner, can the state condemn that group as a cult and outlaw the group on the basis of its belief?

International human rights jurisprudence indicates that a state lacks such authority. Under international law, "religion" is a "purely factual and nonjudgmental description,"<sup>46</sup> that is premised on equality and neutrality. If freedom of religion is not contingent upon the objective truth of a specific belief, cults should not exist as a legal category under international human rights standards. The principle of religious freedom requires that all religions be treated equally before the law. The principle of neutrality also minimizes the extent to which the state can encourage or discourage any religious belief. Within this analytic framework, "discrimination is carried to the extreme when the law declares religions or denominations to be unlawful."<sup>47</sup>

When a state imposes this narrow concept of religious freedom, it may deliberately do so to describe certain groups as illegitimate cults, and thus unworthy of protection. Once branded a cult, the state nullifies that group's beliefs, despite the state's theoretical duty to remain neutral with respect to the content of the belief system in question. Under this binary approach, a state can suppress genuine spiritual beliefs and practices by labeling groups cults, such that they fall outside the official category of "religion."

No one would deny that some past cult activities have amounted to disturbing and immoral criminal acts. Rather than categorically banning marginal groups, governments would be better served by monitoring, or outlawing if necessary, the harmful activities of these religious organizations. This is the policy adopted by the European Union (the "EU"). In its 1996 Resolution on Cults in Europe, the EU differentiated cults and new religious movements from religions and sects.<sup>48</sup> While the EU

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<sup>46</sup> STEVEN D. SMITH, *FOREORDAINED FAILURE: THE QUEST FOR A CONSTITUTIONAL PRINCIPAL OF RELIGIOUS FREEDOM* 80 (1995).

<sup>47</sup> KOSHY, *supra* note 21, at 46.

<sup>48</sup> European Union Preparatory Acts, Resolution on Cults in Europe, Official Journal C78, Mar. 18,

failed to define “cult,” it clearly warned members to guard against the intolerable activities of such groups. Objectionable activities listed by the EU include “maltreatment, sexual abuse, unlawful detention, slavery, the encouragement of aggressive behavior, propagation of racist ideologies, tax fraud, illegal transfers of funds, trafficking in arms or drugs, violation of labor law and the illegal practice of medicine.”<sup>49</sup> The EU stopped short of calling for a complete ban of cults, thereby beginning to move beyond the binary opposition of religions and cults. Under this structure, all religious groups, whether marginal or mainstream, enjoy state protection of their beliefs and practices, unless their activities themselves prove harmful.

Despite this ideal, many nations resort to overarching bans on certain minority religious groups. Pragmatically, a state may consider it more efficacious to outlaw an entire group because of the objectionable and harmful activities that the state believes to inherently stem from the group’s doctrine. When a state declares a cult a non-religious group, as the French and Chinese governments have done,<sup>50</sup> these groups are not provided with the protections guaranteed under the concept of freedom of religion. Inevitably, one cannot escape scrutinizing the activities, the nature and the beliefs of certain groups. Freedom of religion may then be reduced to a narrow and restricted concept, as is the case in the PRC.

#### IV. CHINA: FREEDOM OF RELIGION – BUT WHAT RELIGION?

The problem of Falun Gong is only a recent instance of the ruling Chinese authority adopting an intolerant stance towards an emergent

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1996. Article 9 stipulates that:

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or its community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.
2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedom of others.

<sup>49</sup> *Id.* para. E.

<sup>50</sup> In 1998, the French government established the Mission to Fight Cults. In 2001, the French Anti-Cult Law prohibited the existence of 170 religious groups. See Massimo Introvigne, *Holy Mountains and Anti-Cult Ecology: The Campaign Against the Aumist Religion in France*, 12 SOC. JUST. RES. 363 (1999). The French Anti-Cult Law was adopted on May 30, 2001. English translation of the law can be found on the website of Center for Studies on New Religions, at [http://www.cesnur.org/2001/fr\\_law\\_en.htm](http://www.cesnur.org/2001/fr_law_en.htm) (last visited Dec. 1, 2003). Similarly, the Communist Party of China has long operated a registration system for religious groups. Since 1999, the Chinese government has enacted a series of legislative reforms and judicial instructions to outlaw cult activities and ban certain groups. Detailed discussion of the Chinese position is covered in Part IV. Arguably, the U.S. government has also adopted the extreme approach of outlawing cults. See Richardson, *supra* note 42.

religious group. This approach can partly be attributed to patterns in Chinese history and Marxist-Communist teachings that disavow the existence of a transcendent spiritual realm.<sup>51</sup> One common ambition shared by Chinese rulers, ancient and new, is to contain and control new religious groups, and if necessary, to uproot them in their early formative days.<sup>52</sup> The Chinese Communist Party's (the "CCP's") response to Falun Gong is one consistent with China's experience.

#### A. *Lasting Lessons from History*

Scholars have argued that the CCP's desire to gain total control over religious activity stems from a deep-rooted fear and keen awareness that religious groups, especially quasi-religious or popular religious groups, often have potentially subversive power.<sup>53</sup> The danger of religious groups to the political order is particularly worrisome because spiritual leaders and religious beliefs have played powerful roles in mobilizing rebel forces. Further, protests often take the form of popular "cross-class" and "cross-territorial" campaigns.<sup>54</sup> Religious groups do not merely advocate for emancipation from the material world, but also often promote an alternative order of righting wrongs in present social systems.

The perceived threat of religion within China pre-dates the Maoist era.<sup>55</sup> Chinese history is replete with examples of uprisings with religious overtones that are often motivated by political concerns. The Taiping Rebellion in 1850 and the Boxer Uprising in 1900 cost the Qing Dynasty dearly, and eventually contributed to its downfall.<sup>56</sup> In the fourteenth

<sup>51</sup> See Alan Woods, *Marxism and Religion*, at [http://www.marxist.com/Theory/marxism\\_and\\_religion.html](http://www.marxist.com/Theory/marxism_and_religion.html) (last visited Dec. 1, 2003).

<sup>52</sup> See David A. Graff, *State Making and State Breaking*, in *A MILITARY HISTORY OF CHINA* 39 (David A. Graff & Robin Higham eds., 2002); C. K. YANG, *RELIGION IN CHINESE SOCIETY* 218-43 (1961).

<sup>53</sup> See, e.g., Elizabeth Perry, *Challenging the Mandate of Heaven: Popular Protest in Modern China*, 33 *CRITICAL ASIAN STUD.* 163 (2001); Kelly Thomas, *Falun Gong: An Analysis of China's National Security Concerns*, 10 *PAC. RIM L. & POL'Y J.* 471, 484-89 (2001).

<sup>54</sup> Perry, *infra* note 53, at 169.

<sup>55</sup> The Han Dynasty was troubled by the Taoist Yellow Turban rebellion, the Yuan (the Mongols), the White Lotus Group and various other religious sects. For an interesting account, see Graff, *supra* note 52; YANG, *infra* note 52.

<sup>56</sup> Both the Taiping Rebellion and the Boxer Uprising were social movements that were militaristic in nature and reflected religious fanaticism. The Taiping Rebellion lasted from 1850 to 1864, raging over sixteen Chinese provinces, destroying more than 600 cities and causing the death of at least 25 million people. The Taiping Group was led by Hong Xiuquan, who claimed to receive visions from God and to be the brother of Jesus. Hong established himself as the Heavenly King, attracting many followers in a time when China was plagued by foreign invasions, natural disaster, widespread political corruption and economic hardship. Hong was able to gather a revolutionary army, with the main goal of toppling the Manchu government. Due to internal rivalry, the Taiping forces eventually fell apart and lost to the Imperial forces. For details, see IMMANUEL C.Y. HSU, *THE RISE OF MODERN CHINA* 221-49 (2000). After

century, Zhu Yuanzhang, the first Emperor of the Ming Dynasty, was a mendicant monk and a member of the militant religious group the White Lotus Sect before coming to power.<sup>57</sup> After he became Emperor, he quickly outlawed the White Lotus group and other popular religious sects, forcing them underground.<sup>58</sup> Since the Ming Dynasty, cults and quasi-religious sects have often been banned under Chinese criminal law.<sup>59</sup>

Chinese uprisings often began as patriotic movements against invaders,<sup>60</sup> or as revolts against an oppressive internal government.<sup>61</sup> These uprisings often proved devastating at the declining period of a dynasty. The fact that religious responses to societal and political problems may easily be transformed into political opposition movements has imparted important lessons upon the modern Chinese government. The elaborate scheme of control devised by the CCP has its roots in the Nationalist KMT Government (Guomindang). A common ideology between both regimes is that an anti-religion movement is necessary to stamp out superstition and to push for modernization.

Sun Yat-sen, the founder of modern China and himself a Christian, was careful to provide a clear demarcation between the state and the

the Taiping era, China continued to suffer under foreign imperialism and the incompetence of the Manchurian government.

Against this background, the Boxers quickly came to power. The Boxers were known as Yi-he Quan, the "Righteous and Harmonious Fists," because their members practiced old-style calisthenics. The Boxers appealed to a superstitious populace, practiced magic arts, and claimed to be immune to bullets. Instead of opposing the Qing dynasty, the Boxers blamed foreigners and their Chinese collaborators. With this approach, the Boxers attracted a large following and were eventually entrusted by the Manchurian court to fight foreign troops. In 1900, thinking that they could rely on the mystical power of the Boxers, the Manchurian court declared war on foreign forces in China. Ironically, this action hastened the downfall of the Qing Dynasty and worsened the scramble of concessions by foreign forces in China. The Eight Allied Forces (Japan, Russia, Britain, the U.S., France, Austria, Italy, and Germany) charged into Beijing and forced China to sign various unequal treaties. For a colorful account, see DIANA PRESTON, *THE BOXER REBELLION* (2000).

<sup>57</sup> The White Lotus Sect was first organized about A.D. 1250 during the Yuan dynasty when China was ruled by the Mongol dynasty. The group dedicated itself to overthrowing foreign rule and to restoring the leadership of the Han race.

<sup>58</sup> Dung Xiao Han and Zhou Yi Wen, *Ming Qing Min Jian De Jin Ben Te Dian Ji Zheng Fu De Chu Zhi Cuo Shi* [*The Basic Characteristics of Popular Religious Groups in Ming and Qing Dynasty and Government Policy*], in FALUN GONG YU XIAN JIAO [FALUN GONG AND CULT] 216, 220 (Chen Hong Xing & Dai Chen Jing eds., 1999).

<sup>59</sup> *Id.*

<sup>60</sup> This phenomenon was evidenced by the attempts to overthrow the Mongols and the Manchus. Similarly, the Boxer Uprising was directed against Westerners.

<sup>61</sup> Toward the end of the Han dynasty, there were two great Taoist rebellions against the government and the Yellow Turbans: one in 184 B.C. and the other in 189 B.C. Between 477 and 535 A.D., during the reign of Northern Wei, there were eight attempts at armed rebellion led by Buddhists in less than sixty years. Even during the Tang dynasty, the conflict between Buddhist monks and the ruling regime over taxation and conscription was a top governmental concern. See YANG, *supra* note 52, at 112.

church.<sup>62</sup> Subsequent leaders of the KMT regime, however, feared and resented religious groups. These feelings were due in part to the widely held perception that foreign missionary groups in China were convenient tools for the infiltration of Western imperialism and militarism.<sup>63</sup> Another factor explaining governmental hostility towards religious groups was that rural areas were dominated by quasi-religious and folk religious groups. Accordingly, significant resources were beyond the reach of the new government. General Yuan Shikan, having assumed power in 1912 after Sun relinquished his rule, was determined to uproot the institutional foundations of religion in rural villages in the name of modernization and eradication of superstition.<sup>64</sup> When the Nationalist Government regained control in 1927, it continued its drive to end superstition and to wipe out popular religious or quasi-religious groups.<sup>65</sup>

What survives under the contemporary PRC Criminal Code is not only the concept of the cult but also the unique term "*hui dao men*,"<sup>66</sup> which is often translated as secret society, superstitious society or triad. First used in the mid-Ming dynasty,<sup>67</sup> this term signifies and embodies two different types of organizations. "*Hui men*" refers to quasi-religious groups with a militant nature. These groups are secret militant and political organizations with religious overtones. These groups practice martial arts, believe in supernatural forces and rely on magic spells and charms. "*Dao men*," on the other hand, refers to groups that rely on prayers and superstitious practices.<sup>68</sup> These are secret religious organizations with a nationalistic cast. Despite the fact that "*hui dao men*" may have a different meaning in modern times, the continued use of this term reflects the militant nature and subversive potential of certain religious groups within the PRC.

Although the CCP only currently allows five religious orders,<sup>69</sup> the KMT devised a classification system that defined and bound the arena for

<sup>62</sup> See discussion in PRASENJIT DUARA, *RESCUING HISTORY FROM THE NATION* 99 (1995).

<sup>63</sup> See *id.* at 103-4.

<sup>64</sup> For example, in Ding county of Zhili province, the number of temples declined from 432 in 1900 to 116 in 1915. *Id.* at 97.

<sup>65</sup> Decrees were passed to outlaw certain practices. See, e.g., *Fei Chu Bu Shi Xing Xiang Wu Shi Kan Yu Ban Fa* [The Procedure for the Abolition of the Occupations of Divination, Astrology, Physiognomy and Palmistry, Magic and Geomancy] was passed in 1929. See also *Qu Di Jing Ying Mi Xin Wu Pin Ye Ban Fa* [Measures on Suppressing the Operation of Selling Superstitious Goods]. A decree ordering those who sold superstitious merchandise to change their occupation was passed in 1930. See 4 COLLECTIONS OF THE LAWS OF THE CHINESE REPUBLIC [ZHONGHUA MIN GUO FA GUI HUI BIEN] 794-96 (1933).

<sup>66</sup> See Criminal Code of the People's Republic of China [C. CRIM.] art. 300 (Fr.).

<sup>67</sup> See Lung Jing Yu, *Xin Zhong Guo Dui Hui Dao Men De Dou Zheng* [The Struggle of New China Against Hui Dao Men], in *FALUN GONG AND CULT*, *supra* note 58, at 212-13.

<sup>68</sup> *Id.*

<sup>69</sup> See *infra* text accompanying note 103.



"true religious worship."<sup>70</sup> In general, temples dedicated to sages and worthy men of the past were permitted, while temples dedicated to legendary deities and animistic spirits were suppressed.<sup>71</sup> By the 1930s, altars to wind, rain, mountains and rivers had largely disappeared.<sup>72</sup> Popular religious groups, such as the Boxers, the White Lotus, the Red Spears, and the Small and Big Sword societies, were outlawed as cults because they used magic and charms. In addition, all temples had to be registered and their management monitored by state officials.<sup>73</sup> Registration of all religious bodies, their leaders, places of activities, and their finances was also required.<sup>74</sup> In addition to targeting popular religion, the KMT government was equally rigorous in overseeing religious activities in the cities and guarding against the spread of Christianity.<sup>75</sup> All universities, including Christian institutions, were required to register with the Nationalist Government.<sup>76</sup> Religious writings were forbidden from display in the library of any religiously sponsored schools.<sup>77</sup> National law regulated Bible reading within schools<sup>78</sup> and many Christians were barred from governmental positions because of their faith.<sup>79</sup>

This large-scale campaign was done in the name of modernization, secularization and science. Yet Prasenjit Duara, a distinguished Chinese historian, argues that the hidden intention of the Nationalist Government was most likely to displace power from religious groups, especially in the

<sup>70</sup> See Prasenjit Duara, *Knowledge and Power in the Discourse of Modernity: The Campaigns Against Popular Religion in Early Twentieth-Century China*, 50 J. OF ASIAN STUD. 67 (1991).

<sup>71</sup> Although temples dedicated to Confucius were allowed, annual commemoration ritual dedicated to him was outlawed. See *Fei Zhi Si Kong Jiu Dian Ling* [Abolishing of Rites to Confucius], in 12 COLLECTIONS OF THE LAWS OF THE CHINESE REPUBLIC [ZHONGHUA MIN GUO FA GUI HUI BIEN] 155 (1933) (enacted 1929). Explanation of various gods and deities was contained in the law book, and their status of "legitimacy" under the KMT regime was also stated. See *Zong Jiao Si Miao* [Religion Temples], in 4 COLLECTIONS OF THE LAWS OF THE CHINESE REPUBLIC [ZHONGHUA MIN GUO FA GUI HUI BIEN] 807-27 (1933) (enacted 1929).

<sup>72</sup> YANG, *supra* note 52, at 367.

<sup>73</sup> Laws on the Monitoring of Temples, in 4 COLLECTIONS OF THE LAWS OF THE CHINESE REPUBLIC 814 (1933) (enacted 1930); *Si Miao Deng Ji Tiao Li* [Laws on the Registration of Temples], in 4 COLLECTIONS OF THE LAWS OF THE CHINESE REPUBLIC 814 (1933) (enacted 1929).

<sup>74</sup> See YEARBOOK OF THE MINISTRY OF THE INTERIOR [NEI ZHEN NIAN BU] 132-48 (1936) (containing a list and details of various religious organizations).

<sup>75</sup> DUARA, *supra* note 62, 103-04.

<sup>76</sup> WING TSIT CHAN, RELIGIOUS TRENDS IN MODERN CHINA 169 (1953).

<sup>77</sup> *Jiao Hui Xue Xiao Tu Shu Guan Bu De Chen Lie Zong Jiao Shu Bao Ling* [Decree on Not Allowing Missionary Schools to Display Religious Books and Periodicals], in 9 COLLECTIONS OF THE LAWS OF THE CHINESE REPUBLIC [ZHONGHUA MIN GUO FA GUI HUI BIEN] 175-78, (1933) (enacted 1932).

<sup>78</sup> *Cha Jiao Hui Xue Xiao Ying Xing Zhu Yi Ge Dian* [Points to be Noted When Inspecting Missionary Schools], in 9 COLLECTIONS OF THE LAWS OF THE CHINESE REPUBLIC [ZHONGHUA MIN GUO FA GUI HUI BIEN] 175-78 (1933).

<sup>79</sup> CHAN, *supra* note 76, at 169.

powerful local villages.<sup>80</sup> In particular, state control over revenues generated from religious properties allowed the government to extend its grip over the collective property and resources of rural villages.<sup>81</sup> Temples' income and properties were often confiscated to relieve the financial stringency of the government.<sup>82</sup>

When the CCP established the PRC in 1949, it inherited the KMT's anti-religious sentiment and refined its administrative system to strictly govern religious activities.<sup>83</sup> Despite the differences in scale and extent of control over religious affairs between the KMT and CCP regime, the CCP government proved equally eager to gain total political dominance over religion. The CCP devised a registration system for religious groups and a policing system to oversee religious affairs.<sup>84</sup> One commentator remarked that freedom of religion in the PRC is better understood as "religion management,"<sup>85</sup> in which state dominance over religion is beyond dispute.

### B. *China's Marxist Socialist Style of Religion Management*

One may wonder why the PRC, as a communist state, would allow any religious freedom. It is indeed true that from a Marxist perspective, religion is the "opiate of the masses" and that religion is antagonistic to the fundamental nature of socialist atheism. However, realizing that it is impossible to eliminate all religious beliefs, the CCP conceded that religion must be tolerated as an inevitable consequence of human civilization and of China's long historical march to a communist utopian state.<sup>86</sup> Hence, boundaries of tolerance are clearly marked. Religion is allowed only if it

<sup>80</sup> Duara, *supra* note 70, at 79.

<sup>81</sup> DUARA, *supra* note 62, 97-98.

<sup>82</sup> See YANG, *supra* note 52, at 368.

<sup>83</sup> See discussion *infra* Part IV.B.

<sup>84</sup> The Bureau of Religious Affairs of the State Council is responsible for overseeing all religious matters. The Religious Affairs Department is responsible for monitoring religious matters at provincial levels.

<sup>85</sup> Liu Peng, *Church and State Relations in China: Characteristics and Trends*, in CHURCH & STATE REL. IN 21<sup>ST</sup> CENTURY ASIA 41, 55 (Beatrice Leung, ed., 1996).

<sup>86</sup> For example, under the Regulations on the Administration of Sites for Religious Activities (Decree No. 145 of the State Council of the PRC, Jan. 31, 1994), all religious activities must be conducted at registered sites and must conform to laws and regulations. See HUMAN RIGHTS WATCH/ASIA, CHINA: STATE CONTROL OF RELIGION 11 (1997), at <http://www.hrw.org/reports/pdfs/C/CHINA/CHINA97O.PDF> (last visited Dec. 1, 2003). The Chinese government has promulgated the Provisions on the Administration of Religious Activities of Aliens within the Territory of the People's Republic of China (Order of the State Council of the PRC, No. 144, Jan. 31, 1994), under which foreigners must comply when practicing their religion in China. Registration Procedures for Venues for Religious Activities (Religious Affairs Bureau of the State Council, May 1, 1994) stipulates the detailed rules and process applicable to religious sites and individual practitioners. *Id.*

does not disturb political stability and economic development. As early as 1982, before the problem of Falun Gong arose, the CCP announced that religion should always be in line with Marxism, Leninism, and Maoism,<sup>87</sup> and subject to the approval of the CCP leadership and to registration by government officials.<sup>88</sup>

Consequently, the PRC's demarcation between the state and the church is understood in a very different manner from the established doctrine under international legal jurisprudence. As addressed in Part II, the doctrine of separation of church and state implies that the state should abstain from ruling on the content of religious truths.<sup>89</sup> Although it may not be the primary interest and intent of the Chinese government to substantiate the content of any specific religion, religious groups are undoubtedly subordinate to the CCP leadership. Under Chinese rule, religion should never interfere with state administration, including the judiciary and state education.<sup>90</sup>

Similarly, although freedom of religion is enshrined in the Chinese Constitution, its understanding is different from the international standard.<sup>91</sup> Since 1982, freedom of religious belief has been protected under article 36 of the Chinese Constitution.<sup>92</sup> Prima facie, the wording and style of article 36 closely resembles article 18 of the ICCPR, which provides the right to religion and provides certain limitations on governmental action.<sup>93</sup> Upon

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<sup>87</sup> Central Committee of the Chinese Communist Party, *Guan Yu Wo Guo She Hui Zhu Yi Shi Qi Zong Jiao Wen Ti De Ji Ben Guan Dian He Ji Ben Zheng Ce* [Concerning the Fundamental Perspectives and Basic Policies on Religious Matters in my Country During the Socialist Period, March 1982], SAN ZHONG QUAN HUI YI LAI ZHONG YAO WEN JIAN XUAN BIAN [IMPORTANT DOCUMENTS SINCE THE THIRD PLENARY SESSION OF THE ELEVENTH CENTRAL COMMITTEE MEETING OF THE COMMUNIST PARTY] 1125 (SHANGHAI: PEOPLE'S PRESS 1982) [hereinafter IMPORTANT DOCUMENTS].

<sup>88</sup> The Religious Affairs Bureau of the State Council is responsible for monitoring the registration of religious organizations, venues for religious activities, religious training, selection of clergy, publication of religious publications and funding for religious activities. *Id.* at 1238.

<sup>89</sup> KOSHY, *supra* note 21.

<sup>90</sup> IMPORTANT DOCUMENTS, *supra* note 87, at 1126.

<sup>91</sup> Although China has signed the Optional Protocol to the International Covenant on Civil and Political Rights in October 1998, it has not ratified the instrument. For a record of the status of ratification of U.N. human rights treaties as of November 2003 see the U.N. website at <http://www.unhchr.ch/pdf/report.pdf> (last visited Dec. 1, 2003).

<sup>92</sup> See P.R.C. CONST. art. 36 (1993), available at <http://www.qis.net/chinalaw/prcon93.htm> (last visited Dec. 1, 2003).

<sup>93</sup> Article 36 states:

- (1) Citizens of the People's Republic of China enjoy freedom of religious belief.
- (2) 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.
- (3) 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.

closer examination, however, it is evident that the Chinese wording and understanding differs from that within the international instrument.

First, article 36(1) of the Chinese Constitution states that "the citizens of the People's Republic of China enjoy the freedom of religious belief," but not freedom of religion as a whole. It is not clear whether the adoption of the term "freedom of religious belief" is deliberate. Following the logic of article 18 of the ICCPR, religious beliefs only refer to the private realm of religious thought, conscience, and belief.<sup>94</sup> Any exercise outside this realm is subject to state scrutiny.

Second, under article 36(3), the Chinese Constitution does not protect the manifestation of religion. The state only protects "normal religious activities."<sup>95</sup> No one can make use of religion to "disrupt public order, impair the health of citizens or interfere with the educational system of the state."<sup>96</sup> Seemingly, this provision is similar to article 18(3) of the ICCPR, where balancing of rights and other concerns are built into the legal instrument.<sup>97</sup> However, under the Chinese Constitution, religious activities must fulfill the threshold requirement of being "normal" before they can claim any protection. Thus, the scope of protection is much narrower under the Chinese Constitution than under the ICCPR.

In addition, article 36(4) forbids foreign domination of religious bodies or their affairs.<sup>98</sup> The CCP fears that religious or missionary groups may be used to disguise infiltration by foreign powers.<sup>99</sup> Religious groups could conceivably engage in espionage and counterrevolutionary acts that endanger state interests, harm the life and property of citizens, and propagate superstition.<sup>100</sup> The paramount concern of the CCP is to strengthen its leadership, as demonstrated by the fact that "it is forbidden to use religion to oppose the CCP's leadership and the socialist system, to undermine the unity of state and various nationalities."<sup>101</sup>

The Chinese government prescribes only five religions from which their citizens may choose:<sup>102</sup> Buddhism, Taoism, Catholicism, Protestantism,

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(4) Religious bodies and religious affairs are not subject to any foreign domination.

*Id.* art. 36.

<sup>94</sup> KOSHY, *supra* note 21.

<sup>95</sup> P.R.C. CONST. art 36(3) (1993).

<sup>96</sup> *Id.*

<sup>97</sup> ICCPR, *supra* note 10, art. 18(3).

<sup>98</sup> P.R.C. CONST. art. 36(4) (1993).

<sup>99</sup> IMPORTANT DOCUMENTS, *supra* note 87, at 1236-37.

<sup>100</sup> *Id.* at 1235, 1237.

<sup>101</sup> *Id.* at 1238.

<sup>102</sup> *Id.*

and Islam.<sup>103</sup> This limitation of choices, rather than a complete ban on religious worship and activities, may be seen as a compromise by the ruling authorities. It may also be viewed as a choice to grant basic recognition and minimum protection to organized religions. Yet this system also facilitates the monitoring of religious groups and activities. The more established and organized a religious institution is, the easier it is for the state to exercise control.

At the national level, the Bureau of Religious Affairs of the State Council oversees all religious matters, including control of religious organizations.<sup>104</sup> At the provincial municipal levels, the Religious Affairs Department assumes these responsibilities.<sup>105</sup> Thus, the timing, the size, and the frequency of religious activities are under the supervision of state departments.<sup>106</sup>

Despite official recognition of the five religions, the Chinese government discourages and at times suppresses the “underground” sects within these religions. For instance, the “Patriotic Church” of Catholicism is the lawful church in the PRC, while the “underground church” is considered illegal because it insists that the Pope is its leader.<sup>107</sup> Similarly, the “Three-Self Churches” of Protestantism are officially recognized, while the “house churches” hold unofficial private meetings with their “self-proclaimed evangelists.”<sup>108</sup> Freedom of religion as a personal belief is accorded little weight within this framework because the manifestation of religious beliefs must conform to the government’s administrative scheme. The quarantine of religions into five denominations and the distinction between legitimate “high” churches and underground “low” churches further illustrates that religion is a highly malleable concept designed to give Chinese authorities maximum latitude in suppressing subversive religions and maintaining state control.

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<sup>103</sup> *Id.* at 1236. Only five religions are endorsed under different provincial regulations. See *Shang Hai Shi Zong Jiao Shi Wu Tiao Li* [Shanghai City Religious Affairs Regulations], at <http://www.chinainfobank.com/IrisBin/Text.dll?db=FL&no=11235&cs=15047812&str=> (last visited Dec. 1, 2003). The Heilongjiang Province also includes Orthodox Christianity, see *Zong Jiao Shi Wu Hei Long Jiang Sheng Zong Jiao Shi Wu Guan Li Tiao Li* [Heilongjiang Province Religious Affairs Regulations], at <http://www.chinainfobank.com/IrisBin/Text.dll?db=FL&no=16682&cs=13969847&str=> (last visited Dec. 1, 2003).

<sup>104</sup> IMPORTANT DOCUMENTS, *supra* note 87, at 1230.

<sup>105</sup> *Id.*

<sup>106</sup> *Id.*

<sup>107</sup> Liu Peng, *supra* note 85, at 47.

<sup>108</sup> *Id.*

### C. The Challenge Posed by Falun Gong

Given concerns about social stability and the ideological coherence of the Marxist state, the rise of Falun Gong from a seemingly benign group founded in 1992 to a well-organized and highly efficient force in 1999 alarmed the CCP leadership.<sup>109</sup> As discussed above, the PRC's intolerance of religious sects is historically consistent with China's past.<sup>110</sup> The rise of Falun Gong must, however, also be understood in the context of the economic and political reforms of post-Mao China.<sup>111</sup> Although Chinese society has become more affluent, the gap between the rich and the poor has also widened. The gradual economic restructuring and withdrawal of state funding for health protection has resulted in the marginalization of seniors and intellectuals and the layoffs of many workers.<sup>112</sup> In the midst of rapid social restructuring, Falun Gong condemns the moral corruption of the contemporary world and advocates detachment from worldly success. Its transcendent ideals give meaning to suffering. Falun Gong involves a set of *qigong* breathing exercises that are believed to strengthen one's mind and body.<sup>113</sup> These beliefs partly explain why this para-religious or spiritual group is so appealing to the Chinese public during a time of economic growth.<sup>114</sup>

Falun Gong was founded in 1992 by Li Hongzhi, who was known as Master Li. Falun Gong, literally translated as "the practice of the wheel of the Dharma," is a breathing exercise group that claims to inherit the wisdom of Buddhism, Taoism and Chinese *qigong*.<sup>115</sup> Falun Gong members adamantly deny being part of a religion, cult or sect.<sup>116</sup> Rather, the group

<sup>109</sup> After the first mass protest by Falun Gong members in April 1999, Chinese authorities started a widespread campaign against the group. By the end of 1999, 35,000 members had been arrested. See Vermander, *supra* note 13, at 4-6. See also discussion *infra* Part IV.D.

<sup>110</sup> See *supra* Part IV.A.

<sup>111</sup> See David Palmer, *The Doctrine of Li Hongzhi, Falun Gong: Between Sectarianism and Universal Salvation*, 35 CHINA PERSP. 14 (2001); Nancy N. Chen, *Healing Sects and Anti-Cult Campaigns*, CHINA Q. 506 (2003).

<sup>112</sup> Chen, *supra* note 111, at 507-08.

<sup>113</sup> For discussion of the teachings of Falun Gong and its successes, see Palmer, *supra* note 111, at 20-22.

<sup>114</sup> *Id.* at 21.

<sup>115</sup> LI HONGZHI, *FALUN GONG*, ch. II, pt. I, at [http://www.falundafa.org/book/eng/flg\\_2.html](http://www.falundafa.org/book/eng/flg_2.html), (trans., 4th ed. 2001).

<sup>116</sup> See the comments of the Falun Gong spokesperson in Australia, Caroline Lam, *quoted in* Religious Tolerance.org, *Falun Gong & Falun Dafa*, at <http://www.religioustolerance.org/falungong.htm>, and the interview with the Hong Kong Falun Gong spokesperson, Jiang Hongzhang. See Xiao Hei & Commission of the Hong Kong Catholic Diocese, *Po Huai She Hui Yi Huo Dai Dong She Hui Jin Bu? Zhuan Fang Xiang Gang Fa Lun Gong Fo Xue Hui Fa Yan Ren Jian Hong Zhang* [Disturbing Society or Bringing Society to Process – Interview with Hong Kong Falun Buddhist Organization Spokesperson Jiang Hungzhang], JUST. & PEACE NEWSL. 14 (Apr. 2001).

advances Falun Dafa (the Great Law), a spiritual movement that aims to cultivate one's mind and body and that is based on the motto of "truth, benevolence and forbearance."<sup>117</sup>

After seven years in existence, the Falun Gong made headlines on April 25, 1999. Ten thousand followers gathered for twelve hours outside Zhongnanhai, the Chinese leadership compound, to protest an academic journal article that warned of the dangers posed by PRC cults<sup>118</sup> and the mounting pressure from the government.<sup>119</sup> China's top leaders were immediately alarmed because the protest was the largest systematic gathering since the 1989 Tiananmen student movement. What was more worrying was that Falun Gong was believed to have attracted tens of millions of followers, with a network extending from the PRC to the United States, Canada, Australia and Europe. Falun Gong arguably represents the greatest internal threat that the Chinese government has faced in the post-Mao period, and has proven particularly resilient despite the government's systematic crackdown.<sup>120</sup> Falun Gong's threat to the established Chinese order is evidenced by the fact that the group continues to mobilize new members and command undaunted loyalty, despite being outside the prescribed religious categories and the institutional framework of the CCP leadership. To the authorities, it does not truly matter whether Falun Gong is a religious sect or a qigong (breathing exercise) group; in the eyes of the government, so long as Falun Gong is perceived as having subversive potential, it must be uprooted. As noted by Vermander, "Falun Gong epitomizes the subversive potential of any religious, para-religious or spiritual movement once it escapes from the legal or ideological framework."<sup>121</sup>

#### D. *From an Illegitimate Organization to an Evil Cult*

The PRC's anti-cult campaign against Falun Gong gathered momentum gradually. When the first large-scale silent protest occurred in

<sup>117</sup> LI HONGZHI, *supra* note 115.

<sup>118</sup> See Vermander, *supra* note 13, at 4 & 12.

<sup>119</sup> In 1996, the News Publication Board banned sales of Falun Gong publications. See *Zhong Hua Ren Min Gong He Guo Xin Wen Chu Ban Chu Guan Yu Chong Shen You Guan Fa Lun Gong Chu Ban Wu Chu Li Yi Jian Tong Zhi* [News Publication Board, Notice Concerning Publication of the Works of Falun Gong] (July 24, 1996 & Aug. 16, 1996), at <http://www.chinainfobank.com/IrisBin/Text.dll?db=FL&no=26247&cs=9732689&str> (last visited Dec. 1, 2003).

<sup>120</sup> Falun Gong claims to have 70 million members in China and 30 million overseas. The official figure is estimated to be around 3 million members.

<sup>121</sup> Vermander, *supra* note 13, at 7.

April 1999, the authorities did not immediately condemn the group as an evil cult. Despite the fact that Li Hongzhi called for a dialogue with the Chinese government on May 3, 1999 while abroad in the United States, and that silent protests sprang up in Beijing and other major cities in China in June 1999, on July 22, the government took only the relatively minor step of declaring Falun Dafa Research Society an illegal organization.<sup>122</sup> However, by the time that five alleged Falun Gong members attempted to set themselves on fire in Tiananmen Square on January 23, 2000, the group had already been labeled an "evil cult."<sup>123</sup> In the eyes of the government, this act of self-immolation only confirmed the official view that Falun Gong encouraged extreme and suicidal behavior.

Between the April 1999 Zhongnanhai gathering and the ultimate condemnation by the Chinese authorities in early 2000, a full scale attack on Falun Gong was marshaled, with the full backing of legal instruments from the ministries of the State Council,<sup>124</sup> the Supreme People's Court and the National People's Congress. In June 1999, the Chinese Communist Central Committee established a special "610 Office" to formulate and execute policies against Falun Gong.<sup>125</sup> The 610 Office is the highest authority to

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<sup>122</sup> This classification was based on the technical point that Falun Gong had never registered with the Ministry of Civil Affairs. Ironically, it was the desire of Falun Gong to seek registration and official recognition that triggered the government crackdown.

<sup>123</sup> The People's Daily, the party press, described Falun Gong as an evil cult in October 1999. See Special Commentator, *Fa Lun Gong Jiao Shi Xie Jiao [Falun Gong is an Evil Cult]*, PEOPLE'S DAILY, Oct. 28, 1999, at 1, at [http://202.99.23.245/mrb/199910/28/newfiles/col\\_19991028001094\\_zyp1.html](http://202.99.23.245/mrb/199910/28/newfiles/col_19991028001094_zyp1.html) (last visited Dec. 1, 2003).

<sup>124</sup> July 1999 was tension-filled in China. The Central Committee issued a formal notice that all Communist Party members were forbidden from practicing Falun Gong. See *Zhong Gong Zhong Yang Guan Yu Gong Chan Dang Yuan Bu De Xiu Lian Fa Lun Da Fa De Tong Zhi [The Notice from Chinese Communist Party to All Communist Members that it is Forbidden to Practice Falun Dafa]*, PEOPLE'S DAILY, July 23, 1999, at [http://fpeng.peopledaily.com.cn/19990723001001\\_TopNews.html](http://fpeng.peopledaily.com.cn/19990723001001_TopNews.html) (last visited Dec. 1, 2003). The Ministry of Civil Affairs formally announced that Falun Dafa was an illegal society because it had never registered. In addition, Falun Gong was allegedly responsible for "illegal activities, propagating superstition, deceiving the public, inciting and causing public disturbances and disrupting social security." *Zhong Hua Ren Min Gong He Guo Min Zheng Bu Guan Yu Qu Di Fa Lun Da Fa Yan Jiu Hui De Jue Ding [Decision of the Ministry of Civil Affairs of the People's Republic of China Concerning the Banning of the Research Society of Falun Dafa]*, July 22, 1999, at <http://www.chinainfobank.com> (last visited Dec. 1, 2003). The Ministry of Public Security also banned all Falun Gong activities, including the posting of signs and images, assembly of Falun Gong members, and the spreading of rumors that would disturb social order. *Zhong Hua Ren Min Gong He Guo Gong An Bu Tong Gao [Decision of the Ministry of Public Security of the People's Republic of China Concerning the Banning of the Research Society of Falun Dafa]*, July 22, 1999.

<sup>125</sup> The office is officially titled the "Office of the Leadership Team to Handle the Falun Gong Issue," but is better known as the "610 Office." The name "610" was derived from the date of its establishment. The office is often compared to a terrorist group. See World Organization to Investigate the Persecution of Falun Gong, *Committee to Investigate the Crimes of China's '610 Office' in the Persecution of Falun Gong*, Feb. 23, 2003, at <http://www.upholdjustice.org/English.2/610%20crimes.htm> (last visited Dec. 1, 2003).



monitor Falun Gong, and is above the law, the courts, the procuratorial organs, public security organs and the government.

On October 15, 1999, communicating through its official television station, Chinese authorities referred to Falun Gong for the first time as "a cult with heavy religious connotation".<sup>126</sup> The adoption of this label demonstrates Chinese authorities' escalation of hostility and resentment toward the Falun Gong. Under the new proclamation, Falun Gong was no longer merely a group that spread superstition ("*mixin*") and belonged to the comparatively innocuous category of "pejorative, trivializing neologism," and "primitive."<sup>127</sup> In contrast, "cult" ("*xie*") is heterodoxy, an absolutely undesirable standing. On October 28, 1999, the *People's Daily* again confirmed that "Falun Gong is an evil cult"<sup>128</sup> in full detail. The Chinese government claimed that more than 1400 followers died because they rejected medication or committed suicide due to their Falun Gong beliefs. The concepts of "good" and "evil" were used to delineate between socially acceptable religions and cults, which the government could suppress and eradicate.

On October 30, 1999, the Standing Committee of the National People's Congress (NPC) colored the terms of the Criminal Code to reflect this official stance and issued a lengthy interpretation of article 300 of the Code.<sup>129</sup> The 1997 Criminal Code of the PRC already stipulated that one who forms or uses superstitious societies or heretical cults, or uses superstition to undermine Chinese law shall be sentenced to three to seven years imprisonment. If the circumstances are especially serious, the Code provides that an individual shall be sentenced to at least seven years of imprisonment. Those who set up or use superstitious sects and heretical cults or superstition to deceive people and cause death are subject to the same penalty. The October 1999 NPC interpretation specified that "heretical cults, operating under the guise of religion, qigong or other forms" that "disturbed social order, endanger public health and property, or jeopardize

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<sup>126</sup> *Jin Gong Zhi Chu Jin Cheng Fei Fa Zu Zhi, Bei Jing Xuan Bu Fa Lun Gong Wei Xie Jiao* [The Forbidden Group was First Referred as an Illegal Association, Beijing Announces it as an Evil Cult], SING TAO DAILY NEWS, Oct. 15, 1999, at <http://www.chinainfobank.com> (last visited Dec. 1, 2003).

<sup>127</sup> See Duara, *supra* note 70, at 76 (discussing the concepts of *xie* and *minxin* in the context of the KMT's attempt to curb popular religion in the 1920s and 1930s).

<sup>128</sup> Special Commentator, *supra* note 123. Because the *People's Daily* is the Party newspaper, this statement was understood to be the official line.

<sup>129</sup> *Quan Guo Ren Min Dai Biao Da Hui Chang Wu Wei Yuan Hui Guan Yu Qu Di Xie Jiao Zu Zhi Fang Fan He Cheng Zhi Xie Jiao Huo Dong De Jue Ding* [Decision of the Standing Committee of the National People's Congress on Banning Heretical Cult Organizations, and Preventing and Punishing Cult Activities] (adopted at the 9th Meeting of the NPC, October 30, 1999), at <http://www.chinainfobank.com> (last visited Dec. 1, 2003) [hereinafter Decision of the Standing Committee].

economic development should be severely punished.” It also emphasized that group leaders should bear greater responsibility for the actions of their followers.<sup>130</sup> The Supreme People’s Court and the Supreme Procuratorate breathed specificity into the Criminal Code by defining heretical organizations or evil cults as those illegal groups that have been found (1) using religion, qigong or other names as a camouflage; (2) deifying the leading members; (3) deceiving people by molding and spreading superstitious ideas; and (4) recruiting and controlling members and endangering society.<sup>131</sup>

In November 1999, the Supreme People’s Court notified all Chinese courts that all judicial officers should implement the NPC interpretation regarding heretical organizations, uphold the party line and apply the law in the interest of maintaining social stability.<sup>132</sup> On November 30, 1999, the first case against Falun Gong members came to trial before the Intermediate People’s Court in Haikou. The four defendants were sentenced to two to fourteen years imprisonment for organizing illegal gatherings and spreading Falun Gong doctrine.<sup>133</sup> On December 26, 1999, harsher punishment was passed by the Beijing Intermediate Court, when the four top organizers of Falun Gong were sentenced to seven to eighteen years imprisonment. All of the defendants were CCP members and were charged with “obstructing justice, causing human deaths in the process of organizing a cult and illegally obtaining state secrets.”<sup>134</sup> Falun Gong estimated that between July

<sup>130</sup> Decision of the Standing Committee, *supra* note 129.

<sup>131</sup> *Liang Gao Fu Ze Ren Da Xin Hua She Ji Zhe Wen Zheng Que Shi Yong Fa Lu Yi Fa Da Ji Xie Jiao Zu Zhi Fan Zui Huo Dong* [Explanations of the Supreme People’s Court and Supreme People’s Procuratorate Concerning Laws Applicable to Handling Cases of Organizing and Employing Heretical Cult Organizations to Commit Crimes] (adopted at the 1079th Meeting of the Judicial Committee of the Supreme People’s Court, Oct. 9, 1999 & the 47th Meeting of the Ninth Procuratorial Committee of the Supreme People’s Procuratorate, Oct. 8, 1999).

<sup>132</sup> *Zui Gao Ren Min Fa Yuan Guan Yu Guang Che Quan Guo Ren Da Chang Wei Hui “Guan Yu Qu Di Xie Jiao Zu Zhi, Fang Fan He Chang Zhi Xie Jiao Huo Dong De Jue Ding” He Liang Yuan Si Fa Jie Shi De Tong Zhi* [Notification by the People’s Supreme Court on the Implementation and Judicial Interpretation on the “Decision of the Standing Committee of the National People’s Congress on Banning Heretical Cult Organizations, and Preventing and Punishing Cult Activities”], at <http://www.chinainfobank.com/IrisBin/Text.dll?db=FL&no=27889&cs=7410613&str=> (last visited Dec. 1, 2003).

<sup>133</sup> *Zui Gao Ren Min Jiang Cha Yuan Gong Bao, Bei Gao Ren Song Yue Sheng, Chen Yuan, Jian Si Long, Liang Yu Lin Zu Zhi, Li Yong Xie Jiao Zu Zhi Po Huai Fa Lu Shi Shi, Tao Tuo Yi An* [Supreme People’s Procuratorate, Concerning the Case of Defendants Song Yuesheng, Chen Yuen, Jiang Shilong, Liang Yulin Organizing and Making Use of Evil Cult to Break the Law], Nov. 30, 1999, at <http://www.chinainfobank.com/IrisBin/Text.dll?db=FL&no=45690&cs=9144552&str=> (last visited Dec. 1, 2003).

<sup>134</sup> *Po Huai Fa Lu Shi Shi Zhi Ren Si Wang Fei Fa Huo Qu Guo Jia Mi “Fa Lun Gong” Xie Jiao Ju Zhi Yi Fa Zhi Cai* [Breaking the Law, Causing the Death of Others and Stealing State Secrets, the Prime Organizers of Falun Gong were Sentenced According to the Law], PEOPLE’S DAILY, Dec. 27, 1999, at <http://search.peopledaily.com.cn/Detail.wct?SelectID=6697&RecID=11> (last visited Dec. 1, 2003). The

1999 until the end of 2001, 6000 members were sentenced without trial, 100,000 were sent to re-education camps, and several thousands were sent to mental asylums.<sup>135</sup>

Chinese legal studies scholars have criticized the Chinese government's response as excessive. Kelly Thomas argues that the protection of national security would not have justified the government's response to Falun Gong activities.<sup>136</sup> Randall Peerenboom further points out that it is a serious violation of the rule of law for the Supreme People's Court to instruct lower courts to abide by the party line and to reject civil cases involving Falun Gong.<sup>137</sup>

#### *E. In What Sense is Falun Gong "Evil"?*

The repression of Falun Gong demonstrates the CCP's intolerance towards an emergent populist movement whose spiritual appeal rivals the state ideology. Its reaction further proves that a group's doctrine is often irrelevant because the state defines a group's "evilness" according to its ability to challenge the established authority. The fact that Falun Gong is a newly emerging fringe group in high tension with the government makes it particularly dangerous. What Falun Gong challenges is not orthodox religious understanding, but the CCP leadership. First, Falun Gong exceeds the permissible framework without registration. Second, it dares to protest in large groups to seek a dialogue with the authorities as if it were on equal footing with them. Third, the group enjoys overseas support to the increasing alarm of the CCP. The size of Falun Gong's membership, its efficiency, and its determination to fight back are unprecedented in the Chinese Communist era. Although it may be true that the group does not have a formal political agenda, its posture resembles that of an emerging political group.

The purging of Falun Gong in the PRC not only exposes the determination of the Chinese government to repress a perceived rival, but also reveals the problematic concept of freedom of religion under international law. Human rights jurisprudence marks a definite line between the seemingly absolute right to freedom of religious belief and the limited right of manifestation of these beliefs. Regardless of the Chinese government's ulterior political motives, the crackdown on Falun Gong

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convicted members were Li Chang, Wang Zhiwen, Ji Liewu and Yao Jie.

<sup>135</sup> See webpage of Falun Gong, at <http://minghui.org/gb/death.report.html> (last visited Dec. 1, 2003).

<sup>136</sup> Thomas, *supra* note 53.

<sup>137</sup> See RANDALL PEERENBOOM, CHINA'S LONG MARCH TOWARD RULE OF LAW 91-102 (2002).

proves that the division between these two concepts is to some extent arbitrary. The Falun Gong practice may be unorthodox to many. Because their behavior is questionable and problematic in the eyes of the ruling regime, the authorities can easily magnify the bizarre effects of such practices and thus sway public opinion. Legitimacy to suppress the group's beliefs and its allegedly harmful teachings will thus be grounded. Once Falun Gong is labeled a cult, it is ousted from the legitimate category of religion. In doing so, the ruling authorities successfully mobilize and utilize the popular concept of cult. As a result, protection of religion is overshadowed and overtaken by alarmist concerns regarding cults.

In its anti-Falun Gong activities, the Chinese government has effectively directed attention to the cult-like attributes of this group. Falun Gong fits the common stereotypes of a cult, meeting six of the seven cult characteristics detailed in Part III.<sup>138</sup> Falun Gong is a relatively new group that claims a long tradition of wisdom, is led by a strong and self-appointed charismatic leader, requires a high degree of commitment, aggressively proselytizes, and systematically induces powerful experiences among its members. True followers do not use medicine, believing that "therapeutic care only changes the outward form of illness, which actually grows out of a subtle body in a deep space that is untouched by treatment."<sup>139</sup> The Chinese government has claimed that more than 1400 followers died because they rejected medication or committed suicide due to their Falun Gong beliefs.<sup>140</sup> Armed with this evidence, the government persuasively convinced many that this group is "evil" because it spreads superstition and encourages practices adverse to public health. In the end, Falun Gong has been condemned as an evil cult, not only in the eyes of the rulers but also in the eyes of a large majority of the Chinese public.

Despite the fact that Falun Gong does not identify itself as a religious group, possibly due to the narrow interpretation that the PRC adopts for such groups, its characteristics are closely related to the aspiration of religion. While it is true that *qigong* is a slow breathing exercise that is intended to strengthen one's mind and body, Falun Gong also aims to purify one's heart and lead one to salvation. Unlike other *qigong* masters, Li claimed that he was "initiated into the Great Buddhist Law at the age of four by the Master of Complete Enlightenment; by the age of eight, he already possessed immense supernatural powers."<sup>141</sup> The *Fa* of Falun Gong also claims to be

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<sup>138</sup> See *supra* note 43 and accompanying text.

<sup>139</sup> See Palmer, *supra* note 111, at 20.

<sup>140</sup> Special Commentator, *supra* note 123.

<sup>141</sup> See Palmer, *supra* note 111, at 18.

the embodiment of the teachings of the entire cosmos, including those from Buddha, Dao and all gods, and is only manifested through Li Hongzhi.<sup>142</sup> Those who believe in Falun Gong dedicate themselves to the exclusive practice of this exercise as a means to achieve enlightenment.<sup>143</sup> In this sense, manifestation and belief are united. Disciples of Li also focus exclusively on Li's exercises and writings. It is forbidden "to mix even the slightest thought of another qigong method"<sup>144</sup> with Falun Gong and it is "absolutely forbidden" to read religious and medical classics.<sup>145</sup> Despite the fact that Falun Gong denies being a religious body, its strong emphasis on exclusivity, loyalty and salvation qualify it as a quasi-religion.<sup>146</sup>

A genuine consideration of a group's religious belief is simply impossible because every religion or spiritual group has mystical elements. A close examination of a belief system may only magnify its idiosyncrasies and provide further grounds for government intervention. However, for legal instruments to limit ruling regimes to the examination of manifestations of beliefs, and not the conviction of such beliefs, is equally inadequate because these concepts are inextricably intertwined.

## V. CONCLUSION

Freedom of religion has always been a highly politicized concept. As illustrated by one scholar, religion consists of a belief in power higher than man and an attempt to propitiate or please this power.<sup>147</sup> Religious belief naturally overrides secular state authority, and the desire to please a higher power also implies that state order may have to be ignored at critical moments. Logically, devout followers of religious groups are likely to become political dissenters if their beliefs are threatened or are in fundamental conflict with the existing political regime. The Chinese government understands the innately defiant character of religious groups and accordingly views religious groups as competitors for power and unwilling political subordinates.

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<sup>142</sup> Li Hongzhi, Falun Buddha Fa, Lecture at the First Conference in North America, (Mar. 29-30, 1998), at [http://www.falundafa.org/book/eng/north\\_america.htm](http://www.falundafa.org/book/eng/north_america.htm) (last visited Dec. 1, 2003).

<sup>143</sup> See Palmer, *supra* note 111, at 19 (explaining the teachings of the Falun Gong).

<sup>144</sup> *Id.* See also LI HONGZHI, ZHUAN FALUN [TURNING THE LAW WHEEL] 56-57 (Universe Pub. Co.) (1999), available at <http://www.falundafa.org/book/eng/doc/zflus.doc> (last updated Mar. 2000).

<sup>145</sup> Palmer, *supra* note 111, at 20. See also LI HONGZHI, *supra* note 144, at 115.

<sup>146</sup> See Vermander, *supra* note 13, at 10.

<sup>147</sup> STARK & BAINBRIDGE, *supra* note 18 (quoting SIR JAMES G. FRAZER, THE GOLDEN BOUGH (1922)).

The merciless crackdown on Falun Gong by Chinese authorities reflects leaders' hostility towards, and fear of, this group. It does not matter what the ultimate nature of this breathing exercise group is, nor what it does; in labeling Falun Gong an "evil cult," the government makes known its disapproval. "Cult" signifies a label of deviance from the ruler's perspective.<sup>148</sup> Moreover, "cult" is not only a sentence passed on this group; it is also a warning to others that no one should be associated with group members because they are "enemies of the people."

When the Chinese government intervenes and labels Falun Gong a cult, it reasserts its central position in the lives of the group's followers, who have already been filled by spiritual conviction. If Falun Gong has challenged the leadership of the CCP, the government has also attacked the core beliefs of Falun Gong followers. Thus, the competition for power that takes place within the mind of each follower parallels the competition of power between politics and religion in the public arena. This inner struggle may easily generate a mass response in the public arena. Religious groups have an inherent sanctioning power on political authority and have a decisive role in maintaining existing political regimes. While a state can impose legal sanction on a religious group, a religious group can provide moral and social sanction for the state.

This struggle between the state and religion is not unique to the PRC. Nor are the particular implications of the suppression of Falun Gong limited to China. The Falun Gong controversy highlights the inadequacy of current international human rights jurisprudence to deal with similar problems caused by cults or new religious movements. This Article has pointed out that neither freedom of religion nor the conditional right of manifestation of religion is a reliable legal concept for the protection of groups like Falun Gong. Paradoxically, the suppression of Falun Gong also reveals how quickly the Chinese government has used Western human rights ideology to justify its decisions and to consolidate its power. The ruling regime strategically moved away from the Maoist strict management mode of religious control to a flexible containment strategy. China's ruling regime plays with the human rights rhetoric of public health and morality, and suppresses Falun Gong in the name of anti-superstition, secularization and modernization, with the full use of existing legal instruments.

In sum, Falun Gong represents not only a mass revolt against governmental control in the PRC, but also a resistance "with Chinese

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<sup>148</sup> Although Tsai did not discuss the concept of the cult, he presented an interesting analysis on Falun Gong within the context of Emile Durkheim's deviance and labeling theory. See WEN-HUI TSAI, *CLASS STRUGGLE AND DEVIANT LABELING IN MAO'S CHINA* 246-49 (Edwin Mellen Press) (2001).

characteristics” against the dominant Western mode of “religious freedom.” The Falun Gong debate calls into question international standards and the human-rights based ideology. Until the tension between religious belief and its manifestation can be satisfactorily resolved, we will continue to witness state manipulation of freedom of religion in order to subvert religious groups.