

China's New Regulation on Religious Affairs: A Paradigm Shift?

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Testimony

of

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New State Regulations on Religion: The Bargaining Begins

Trends in religious affairs are part of a broader trajectory in state-society relations that might be called “outgrowing socialism.” Following a pattern set by the economic reforms, the state still protects and gives special support to its monopoly institutions – what we might call state-organized institutions (“SOIs”) to echo state-owned enterprises (“SOEs”) – while allowing non-state civic institutions to spring up in order to meet demand. These smaller and weaker organizations nonetheless have greater vitality and flexibility and gradually put competitive pressure on the state agencies.

Thus, the unregistered religious organizations have greatly outpaced in growth and popularity the five official monopolies – the so-called “patriotic” religious associations. This, despite the state’s unwillingness to grant them legitimacy -- and periodic efforts to force them to register through the monopoly agencies. This adds to evidence of a more equal relationship developing between the state and society in general, as the state downsizes and a pluralistic society develops. The state can no longer easily suppress or control social organizations, and also finds them useful to lighten the state’s burden in providing social services in ever greater demand.

This is the comparative context for analyzing the new State Council regulations on religious affairs that went into effect on March 1, 2005, in the place of the national regulations of 1994. (Note that the 1994 rules for foreign nationals still apply). Compared with the previous regulations, which focused on the registration and operation of religious sites, there is some improvement in both comprehensiveness and transparency. The new rules are detailed – 48 articles – and systematic in addressing the establishment and registration of religious associations, religious activities, personnel, property and liability. The content of the regulations, however, contains little that could not be found scattered in existing provincial regulations or implementing guidelines. It is more of a “snapshot” of current practice than a step toward more democratic practices, including legislation to protect constitutional rights, that would be expected of China at this stage of development. Nonetheless, the regulations now provide the highest level (State Council) legitimation for existing practices such as large-scale or inter-provincial meetings, publication of religious materials circulated “within religious circles,” acceptance of donations from overseas, and provision of social services to the community. Note that the full meaning and import of these regulations cannot be known until the implementing guidelines are hammered out among contending parties.

The cautious and conservative nature of these regulations is reflected in other regulations and implementing guidelines under review for the social sector – such as the June 2004 set of rules for public and private foundations and the rules for social (membership) organizations and non-commercial institutions. There are also changes underway in the donation law and tax and audit rules that will affect all these various types of social organizations. The application of new rules on property ownership will be critical to all of them, and perhaps the most important will be a law on association reportedly being drafted.

So the good news is that there is a stated intent to treat religious organizations equally with other social organizations rather than as some special kind of threat to the polity. For example, in the model constitution drafted by the China Christian Council to be used as a template for the constitutions of all registered Protestant churches, the Council specifically states that churches in China have a dual nature – that of a spiritual organization and that of a social organization. As social organizations, churches should “abide by China’s constitution, laws, regulations, and policies and should foster social progress, national construction, and the cause of world peace.”²

However, the bad news is that all social organizations are still tightly restricted by intrusive state supervision, including strict quotas for those with national or provincial scope and restrictions about foreign ties. For example, the new foundation regulations require that foundations “must not endanger national security, national unity or the unity of nationalities,” reflecting suspicion about foreign involvement. The new regulations on religious affairs are less subtle, requiring “independence and self-governance” and prohibiting any “foreign domination.” Such warnings seem anachronistic, at a time when foreign-invested companies in China are generating more than half of the value of all Chinese exports.

The intent of the current regulatory approach seems to be reducing the arbitrariness and abuses of local implementing officials while retaining the final authority for defining and applying the rules in the hands of government. Thus, the state alone will define case by case such key terms that were left quite vague in the regulations such as “religious belief” or “normal” religious activities that deserve government protection, on the one hand, or the “state or public interests” or “foreign domination” that would require government intervention on the other hand.

Moreover, there is no requirement to harmonize the new regulations with previous laws, regulations or policy directives that may contradict them, to guarantee constitutional rights. So existing restrictions, including rules set by the monopoly religious associations such as not converting or baptizing minors, very likely will continue. The importance of this lack of coherence can be illustrated by mentioning just a few current policies that impact negatively on free religious practice – ongoing security campaigns against “religious extremism” (the new term for cults, terrorism, and separatism) and “foreign infiltration” (undefined); a propaganda department campaign to foster “atheism and materialism” in the media and education systems (maintaining the privilege of atheism over theistic belief); an organization department campaign to winnow out religious believers from Chinese Communist Party membership rolls; and education department instructions to stop religious activities on university campuses and put a freeze on the development of religious study centers. Thus, the actual environment for religious affairs is highly complex, confusing and intimidating, while implementation is heavily dependant on the locality in

question.

The adoption of these regulations on religious affairs may be most important as evidence that the state is under internal and external pressure to regularize or normalize its relations with religious believers. As with other regulations, we are dealing with a moving target; the drafters and implementers are well aware that they will be engaged in ongoing negotiations and hard bargaining with the various interest groups affected. And no longer are these purely the bureaucratic interest groups, but include the grass-roots religious organizations and international players as well.

It seems that religious believers have won some grudging acceptance by the authorities that they are here to stay and have legitimate interests that must be taken into account. A lot of hard bargaining lies ahead, but having established the necessity of negotiating is a step toward the eventual free exercise of the right of association. In sum, the new regulations offer no guarantees or even probabilities of progress but signal some important possibilities.

1. From commentary presented at "Religion and Cultural Change in China," a seminar at the Brookings Institution, Washington D.C., February 1, 2005.

2. Church Order for Chinese Protestant Christian Churches, December 28, 1996, translation © 2001 M.E. Sharpe, Inc., from the Chinese text, "Zhongguo jidujiao jiaohui guizhang," Tianfeng (Heavenly Wind), No. 2 (1997).