

# RELIGIOUS FREEDOM IN THE PEOPLE'S REPUBLIC OF CHINA

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## I. INTRODUCTION

The People's Republic of China has, during the latter part of this century, consistently restricted one's right to religious freedom. Religious rights, as well as other rights, within the People's Republic of China have been the subject of much controversy around the world. Countries like the United States have severely chastised China for not protecting the rights of its citizens. Recent news reports, however, have shown that China's once restrictive view of one's right to religion is expanding to the spirit in which human rights standards were created. China, throughout its domestic legislation, specifically enumerates the right to religious freedom and has been a party to international declarations and covenants protecting an individual's right to religion. During the formation of these domestic and international documents, China was still criticized internationally for not protecting the rights of its citizens. Particularly during the reign of Mao Zedong, China sought to extinguish one's right to practice religion.

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This paper seeks to track China's view of religion through history to determine the definition of religious rights and China's obligations to ensure protection of those rights. Part One of this note seeks to define religious rights and determine China's international legal obligations through declarations and covenants in the protection of those rights. Part Two examines Chinese history to analyze its view of religion, particularly, the role of Confucianism. This also tracks China's early tolerant view of religious rights, its later restriction and condemnation, and its present growing tolerance of religious rights. That tolerance is not complete and China's ambivalence to the protection of religious rights will be considered. Part Three discusses and compares China's domestic legislation with its international obligations to determine whether China embraces the right of religious freedom and whether China complies with international principles. Part Four analyzes the role of Chinese culture and its relation to religious freedom to determine whether the reported tolerance will continue or even expand.

## II. INTERNATIONAL OBLIGATIONS RELATING TO RELIGIOUS FREEDOM

### A. *Definition of Religious Rights*

Internationally, China is a party to several international documents which guarantee the right to religion. One of the early major international documents specifically guaranteeing the right to religion was the Universal Declaration of Human Rights. Article 18 of the Declaration states:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.<sup>1</sup>

The right specified in the Universal Declaration can be read expansively or restrictively. Based on the plain meaning of the article, one has the right to have religious beliefs, practice those beliefs, and to observe and disseminate those beliefs to others. China, at the time the

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1. *Universal Declaration of Human Rights*, G.A. Res. 217A U.N. GAOR 3d Sess., pt. 1., art. 18, at 74, U.N. Doc. A/810 (1948).

Universal Declaration was adopted, was not under Marxist rule, but still adhered to a theory that religious beliefs were superstitious.<sup>2</sup>

Approximately four decades after the adoption of the Universal Declaration, China accepted another declaration which further defines religious rights. In 1981, China as well as other countries, adopted by consensus the Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief (Religious Declaration).<sup>3</sup> Article 6 of the Religious Declaration states:

- (a) To worship or assemble in connection with a religion or belief, and to establish and maintain places for their purposes;
- (b) To establish and maintain appropriate charitable or humanitarian institutions;
- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d) To write, issue and disseminate relevant publications in these areas;
- (e) To teach a religion or belief in places suitable for these purposes. . . ;
- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief; and,
- (i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.<sup>4</sup>

The Religious Declaration is one of the most expansive delineations of the elements of religious rights. Essentially, it declares that

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2. Eric Kolodner, *Religious Rights in China: A Comparison of International Human Rights Law and Chinese Domestic Legislation*, 12 UCLA PAC. BASIN L.J. 407, 416 (1994).

3. *Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion of Belief*. G.A Res. 36/55, U.N. GAOR 36th Sess., Supp. No. 51, at 171, U.N. Doc. A/36/51 (1981).

4. *Id.* at 172, art. 6.

people have the right to have religious beliefs, exercise their beliefs in public or private, fund their beliefs, and ensure the future of their beliefs through religious training. Unlike the Universal Declaration, the Religious Declaration is subject to less interpretation and therefore may have only one expansive view of religious rights. A country's limitation of those rights is all but eliminated in the Declaration. The fact that the Religious Declaration was unanimously adopted is ironic because all countries, including China, would have difficulty adhering to all the rights within the Religious Declaration.<sup>5</sup>

The Universal Declaration and the Religious Declaration, while major international steps in the explication of religious rights, are not binding obligations. Rather, all countries that ascribe to the Declarations essentially aspire to uphold the tenets within them. Even though China adopted the Universal and Religious Declarations, the doctrines they embody are merely a proclamation of the country's aspiration. One could argue that China only grudgingly embraced the Declarations' guarantees to be a part of the international mainstream and therefore has no intention of upholding the doctrine. However, agreements to which China is a party obligate China to assure religious freedom in China. These international obligations also assist in defining the elements of religious freedom.

#### B. International Treaty Obligations

After supporting the Universal Declaration, which is merely a proclamation that countries have a goal to allow religious freedom, China entered into a binding obligation with the international community granting religious freedom to all its citizens. The International Covenant on Civil and Political Rights<sup>6</sup> (ICCPR), adopted in 1966, further delineates the religious rights of the signatory countries. Article 2 of the ICCPR states that each state shall respect and ensure to all individuals the rights recognized in the present Covenant, without any distinction to religion.<sup>7</sup> Further, Article 18 of the ICCPR expands those rights proclaimed in the Universal Declaration:

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5. It would be interesting to see how the Supreme Court would have decided *Trans World Airlines v. Hardison*, 432 U.S. 63 (1977), in light of the Religious Declaration. In this case, the dissent stated that an employer's responsibility to accommodate one's religious rights should not be unreasonably costly to the employer. The Court defined unreasonably costly as *de minimis*. *Id.*

6. *International Covenant on Civil and Political Rights*, G.A. Res. 2200A, U.N. GAOR 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6136 (1966) [hereinafter ICCPR].

7. ICCPR art. 2.

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 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 . . . to ensure the religious and moral education of their children in conformity with their own convictions.<sup>8</sup>

While some of the religious rights expanded upon in the ICCPR may be seen in other articles within the Universal Declaration, the consolidation demonstrates there are rights fundamental to one's existence and a denial of those rights may have later detrimental effects to the international community.<sup>9</sup> The ICCPR is an example of international documents which acknowledge a respect for individual human rights.

The rights within the ICCPR have no explicit limitations. Instead, the rights guaranteed in the ICCPR are generally limited country to country by their own domestic laws.<sup>10</sup> In China, as well as other countries, one's right to religion is limited by other domestic laws. The "bottom-line" nevertheless, seems clear that religious belief, even if superstitious, should be respected and protected domestically.

### *B. Domestic Legislation*

China, through domestic and international legislation, has acceded to the concept of religion as a fundamental right. The concept's presence is evident in China's earlier Pre-Mao legislation and constitutions. An

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8. ICCPR art. 18.

9. As stated in the United Nations Charter, the purpose for the organization is to protect international stability. U.N. CHARTER art. 1. Denial of fundamental rights may incite another world war and one of the United Nations' purpose is to protect fundamental rights thereby protecting international stability. It will be interesting to see whether the more expansive definition of religious rights as explicated in the Religious Declaration had an effect on China's recent tolerance of religious freedom.

10. For example, in the United States, freedom of speech is a fundamental right, but is limited. The Supreme Court stated in *Dennis v. United States*, 341 U.S. 494 (1951), that in some cases freedom of speech is not unlimited but may be, in certain situations, subordinate to societal values. Religious freedom in America has clashed with other rights. An employer may limit employee's religious observance that imposes more than a de minimis cost to the employer. *Trans World Airlines*, 432 U.S. at 63.

analysis of those constitutions, even if not implemented, gives perspective to what the Chinese people and government consider rights in general.<sup>11</sup> Early constitutions embraced ideas analogous and fundamental to religious freedom. China's first "constitutional" draft, called the Principles, and published by the imperial government in 1908, developed a reform program analogous to essential principles of religion, namely Christianity. The principles that were established were grants or gifts from the Chinese emperor to his people. It is important to note the Chinese constitutions unlike the United States Constitution is not a delineation of rights but a description of the Chinese aspirations of what may be considered rights.<sup>12</sup> As the edict that instigated Chinese constitutional lawmaking states: "The wealth and strength of other countries are due to their practice of constitutional government, in which public questions are determined by consultation with the people. The ruler and his people are as one body animated by one spirit."<sup>13</sup> This concept is analogous to Western religious ideology. In the Old and New Testament, Jews and Christians strive for a oneness with their ruler, God. Further, the Principles grant certain freedoms to people of China, one of which, grants freedom of speech, writing, publication, assembly, and association.<sup>14</sup>

The Principles, however, are merely an interesting insight into the history of Chinese domestic legislation because before their implementation the dynasty fell and the Principles were replaced by the Provisional Constitution in 1913. That constitution was replaced with the Constitution of 1923.<sup>15</sup> In both the Provisional Constitution and the Constitution of 1923, a freedom of religion was established as a political right.<sup>16</sup> The authors of both constitutions recognized the laws established within the constitutions as either rights or freedoms (*quan* and *ziyou* respectively). The Provisional Constitution stated that the people's rights may be limited for the public welfare.<sup>17</sup> Such a distinction is a departure

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11. Andrew J. Nathan, *Political Rights in Chinese Constitutions*, in HUMAN RIGHTS IN CONTEMPORARY CHINA 77 (R. Randle Edwards ed., 1986).

12. David E. Christensen, *Breaking the Deadlock: Toward a Socialist-Confucianist Concept of Human Rights for China*, 13 MICH. J. INT'L L. 469 (1992).

13. Nathan, *supra* note 11, at 84. The Principles were never implemented because the dynasty fell. *Id.*

14. Nathan, *supra* note 11, at 85.

15. Nathan, *supra* note 11, at 86.

16. Nathan, *supra* note 11, at 87; Article 5 and 6 of the 1923 Constitution states: "The people of the Chinese Republic are all equal, without differences of race, class, or religion . . . . The people have the freedoms of speech, writing, publication, and of assembly and association." *Id.*

17. Nathan, *supra* note 11, at 86.

from the Emperor's grants that was published by the imperial government. The rights within the Provisional Constitution are no longer grants given by the emperor but are rights enjoyed by all Chinese people.<sup>18</sup>

The distinctions between grants and freedoms or rights is significant because it illustrates a fundamental difference between China and other democratic countries and what some may consider a profound difference between the imperial government and China today. The distinction between rights, freedoms, and grants may only be a difference in semantics, but it seems clear that China, throughout its domestic legislation, chose its words carefully to avoid individual interpretation. This distinction seems to show China's present and past ambivalence about what the Chinese people can expect in the realm of rights and freedoms.

Even earlier constitutions, as previously discussed, seem to term rights not as fundamental or a high priority, but essentially grants which the government may modify or rescind at any time for the public welfare.<sup>19</sup> That terminology is contradictory, but nevertheless perpetuated in other domestic legislation throughout Chinese history.

After the Constitution of 1923, the Nationalist Party (a period also known as Guomindang) rose to power. The Nationalist Party, led by Sun Yat-sen, introduced the Tutelage Constitution in 1931 which would be replaced by a permanent constitution when the Chinese people reached a certain level of economic, educational, and political status.<sup>20</sup> The Tutelage Constitution accepted the principle of popular sovereignty, but that principle was only during the Tutelage period.<sup>21</sup> The Constitution recognized many freedoms, including equality under the law without regard to race, religion, class, or gender.<sup>22</sup>

While granting freedoms, the Tutelage Constitution, like previous constitutions limited those freedoms with duties. Within the Constitution, citizens were obligated "to obey public officials in the legal discharge of their public duties."<sup>23</sup> Challengers to the duties and advocates of human rights could not find solace within the constitutions because the rights were subordinate to the duties.

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18. *Id.* at 87.

19. *Id.* at 89.

20. *Id.* at 90.

21. Nathan, *supra* note 11, at 91.

22. Andrew J. Nathan, *Political Rights in Chinese Constitutions*, in HUMAN RIGHTS IN CONTEMPORARY CHINA 77 (R. Randle Edwards ed., 1986).

23. *Id.* at 91.

On December 25, 1946, China adopted a permanent constitution.<sup>24</sup> The rights and freedoms delineated within the Constitution of 1946 are the most generous grant in any constitution.<sup>25</sup> But even with all the freedoms, the road to the preservation of those freedoms has yet to be totally realized. The rights within the 1946 Constitution are limited by Article 23 which states that the freedoms and rights listed may be legally restricted to protect others' rights and freedoms, maintain social order, and promote the common good.<sup>26</sup> It seems that the common good is defined as what the government terms it to be. Presently, the common good is Communism.

During the period of "democratic" rule in China, i.e., the Nationalist period, Communism was becoming an integral part of China's political framework.<sup>27</sup> In 1954, the first Communist constitution was introduced.<sup>28</sup> In that Constitution, the right to speech, publication, assembly, and association was explicit in the constitution.<sup>29</sup> The 1954 Constitution was heavily influenced by one of China's most revered and religiously repressive leaders, Chairman Mao Zedong.<sup>30</sup> Chairman Mao, in writing the 1954 Constitution and considering what was good for the Chinese citizens, stated, "We write into our constitution what is feasible now and exclude what is not."<sup>31</sup> Chairman Mao did not grant liberal rights, but aspired to expand rights at some later date.<sup>32</sup>

Subsequent constitutions granted similar freedoms as those granted in the 1954 Constitution. However, in 1975, prior to his death, Chairman Mao, in an attempt to leave his philosophical legacy to the Chinese citizens, created another constitution.<sup>33</sup> After his death, his successor Deng Xiaoping, extricated the Mao loyalists from power and created a new constitution in 1978.<sup>34</sup>

While all versions of the constitution, from the earliest period to the present, place limits on citizen's rights, they all implicitly grant religious freedom. As an example the earliest constitutional draft, the

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24. *Id.* at 93.

25. *Id.*

26. *Id.* at 84.

27. Andrew J. Nathan, *Political Rights in Chinese Constitutions*, in HUMAN RIGHTS IN CONTEMPORARY CHINA 77 (R. Randle Edwards ed., 1986) at 96.

28. *Id.* at 102.

29. *Id.* at 103.

30. Nathan, *supra* note 11.

31. *Id.* at 103.

32. *Id.*

33. *Id.* at 111.

34. *Id.* at 112.



Principles, grant freedom of speech, writing and association. Such implicitly grants freedom of religion because religious freedom encompasses all of those rights. Later constitutions explicitly grant religious freedom. An example is the Constitution of 1923. Such a grant is analogous to rights granted in the First Amendment to the United States Constitution.<sup>35</sup> While the Principles are not explicit in establishing religious rights, its implicit grant displays Chinese officials' ambivalence to delineate religious rights on the one hand, and restrict the expression of those rights on the other.

The right to religion is expressly granted in the most recent constitution, written in 1982. Article 36 of the 1982 Constitution states: "No state organ, public organization or individual may compel citizens to believe in, or not believe in any religion, nor may they discriminate against citizens who believe in or do not believe in any religion."<sup>36</sup> The constitutional guarantee is ironic in the sense that the Chinese government authors considered religious belief superstitious and were therefore limited.<sup>37</sup> The limitations restricted religious beliefs from derogating the Four Cardinal Principles.<sup>38</sup> The Four Cardinal Principles are the adherence to Confucianism, Marxism, Maoism, and Communism.<sup>39</sup> The Chinese government's limitation of the guaranteed rights include the prohibitions against disrupting public order, impairing public health, and interfering with the educational system.<sup>40</sup> In addition, the Government expressly requires in the Constitution that "it is the duty of citizens . . . to safeguard the unity of the country and refrain from acts detrimental to the security, honor, and interests of the motherland."<sup>41</sup> While Confucianism

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35. The First Amendment to the Constitution states: "Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, . . . or the right of the people peaceably to assemble." U.S. CONST. amend. I.

36. Kolodner, *supra* note 2, at 421.

37. Kolodner, *supra* note 2, at 419. Chinese government officials also considered religion as the opiate of the people. *Id.*

38. *Id.*

39. Marxist thought was developed by Karl Marx and adopted by China. Karl Marx, like Chairman Mao rejected individual universal rights and, instead, believed rights were a bourgeois invention to impede socialism. Christensen, *supra* note 12. Maoism, created by Chairman Mao Zedong, adopting his form of Marxism with his own philosophical interpretation, emphasizes incremental subordination until the ultimate subordination, to the Central Committee government that is the Communist government. *Id.* Both Marxism and Maoism believed that communism was the ultimate path to achieve morality, but Maoism highlights those beliefs embraced by Chairman Mao. *Id.*

40. Kolodner, *supra* note 2, at 421.

41. *Id.*

was the first established principle, and a belief Chinese citizens hold dear, belief in the tenets of Confucius is limited by the other three principles. The supremacy of the three other principles over that of Confucianism, seems not to have subordinated the adherence and sacred belief in Confucian thought.<sup>42</sup>

Presently, Chinese regional legislation expressly grants and enumerates religious rights. Article 4 of the Xinjiang Religious Regulation provides:

The masses of religious believers are permitted to conduct all normal religious activities, such as reciting scriptures, giving a sermon on scriptures, conducting religious sermons, practicing abstinence from meat as a religious exercise, saying prayers, burning incense, worshipping Buddha, celebrating mass, and celebrating religious festivals in their own houses, and in places for religious activities.<sup>43</sup>

Religious adherents therefore are granted the right to observe, and manifest their religious beliefs in variety of ways.

Based on international documents and domestic legislation, the right to religion includes the right to have, adhere to, and disseminate religious beliefs. China may limit such rights, but the limitations expressed in domestic legislation are seemingly similar to Western restrictions to fundamental rights. It is primarily practiced in countries like China and the United States where they differ in the protection of those rights. The history of religion in China, via Confucianism, and China's view of rights in general, may offer assistance in determining why China delineates the right to religion yet refuses to aggressively protect that right.

### III. THE HISTORY OF RELIGION AND CHINESE CULTURE: CONFUCIANISM

China has embraced a view that religion is analogous to superstition and, as Chairman Mao termed, an opiate of the people.<sup>44</sup> Confucianism, a belief and adherence to Confucian teachings, was developed in China over a period of thousands of years, beginning in 551

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42. *Id.*

43. Kolodner, *supra* note 2, at 427.

44. Kolodner, *supra* note 2, at 419-20.

BCE.<sup>45</sup> Confucius, the man, believed and preached about morals, and created a belief system that is deeply ingrained in Chinese thought. Confucianism is no more or less superstitious than Christianity, Buddhism, or Islam. Each religion bases its belief in a central person who espouses morality, forms of social order,<sup>46</sup> and a way of life.

It has been argued that Confucianism and the culture it espouses may be the central problem for China's violation of religious and human rights.<sup>47</sup> Such an argument is fallacious because rather than espousing a denial of human rights, Confucius embraces social rights. For example, in China, Confucius teaches that no man is an island, but an element within the community.<sup>48</sup> The family is central to Chinese society. Confucius advocates five cardinal relationships: (1) parent and child, (2) ruler and subject, (3) husband and wife, (4) old and young, and (5) friend and friend.<sup>49</sup> These relationships create the Chinese social system. Confucius believed societal harmony was the highest aspiration,<sup>50</sup> and that people should strive through moral growth and education to obtain "ren," and higher moral excellence or humanity.<sup>51</sup>

The five cardinal relationships advocated by Confucius are similar to fundamental relationships in other religions, in particular Christianity. For instance, the Ten Commandments advocate honoring parents, spouses, friends, and God.<sup>52</sup> Confucius' relationships, while not a religion, espouse

45. Kolodner, *supra* note 2, at 415; Franz Michael & Yuan-li Wu, *Introduction: An Overview, in HUMAN RIGHTS IN THE PEOPLE'S REPUBLIC OF CHINA 1-6* (Yuan-li Wu et al. eds., 1988); Ta-ling Lee, *Red Guards and Political Dissidents (II): Victims Beyond a Generation, in HUMAN RIGHTS IN THE PEOPLE'S REPUBLIC OF CHINA 211-32* (Yuan-li Wu et al. eds., 1988).

46. An example of social order would be the theory of communal accountability in Christianity and other religions.

47. Christensen, *supra* note 12. According to commentators, the Confucian view of the collective over the individual reflect China's continual denial of individual religious rights on the one hand while embracing Confucian ideologies, which are similar to other religious ideologies, on the other. *Id.* See also Kolodner, *supra* note 2.

48. Christensen, *supra* note 12, at 487.

49. Christensen, *supra* note 12, at 489.

50. *Id.*

51. *Id.*

52. *Exodus 20* (New International Version). Specifically, when God gave Moses the Ten Commandments He said:

You shall have no other gods before me . . . , Honor your father and your mother, so that you may live long in the land . . . , You shall not commit adultery . . . , You shall not give false testimony against your neighbor. You shall not covet your neighbor's house. You shall not covet your neighbors' wife . . . , or anything that belongs to your neighbor . . . .

the same principles embraced in religions. The similarity between Confucius' principles and "Western" religions exemplifies an inconsistency of Chinese thought that religion is analogous to superstition.

Confucian thought is present in China today, although China has undergone tremendous changes from a monarchy, to nationalist, to communist. Confucianism was even present during the reign of Mao Zedong, one of China's most revered leaders. Chairman Mao has even advocated respect for the five cardinal relationships. He has said that all people must "belong to some party, some class, or some nation, and man participates as a social being in every sphere of the actual life of society."<sup>53</sup> During Chairman Mao's religiously repressive period, Mao, like his predecessors, seemed ambivalent in their view of religious freedom and their desire to extricate China from religious thought, and the view of the people who revered Confucius. On the one hand, Mao desired to rid the country of the superstitious thought and on the other hand, seemed powerless to manifest his desire.

It seems that Mao's ambivalence recognizes a fundamental principle in relation to religion that denial of other forms of religious beliefs is effectively denying Chinese belief in Confucius. All major forms of religion require that which Confucius and Chairman Mao embrace, a sense of societal harmony and moral growth through healthy relationships. Such an acknowledgment may be the reason why Chairman Mao during his reign only condemned instead of repudiated religious practices and thereby religious freedom.

During the period of Mao's reign, the explicit grants of freedom were severely limited by the Four Principles. The limitations, while severe and inhumane, at their most brutal form did not extinguish the "superstitious" religious thought. The Communist Party permitted religion as a necessary evil for the time until, they hoped, religious thought would die a natural death.<sup>54</sup> Under Chairman Mao, who attempted to destroy religion, belief in higher powers grew.<sup>55</sup> When Chairman Mao attempted to eradicate religious exercises and beliefs, Chinese citizens privately turned to religion for relief during the repressive time.<sup>56</sup> According to

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These Commandments are analogous to Confucius' five cardinal principles because the Commandments implicitly embrace certain relationships, husband and wife, friend and friends, children and parents, and ruler and subject (i.e., God and humans). *Id.*

53. Christensen, *supra* note 12, at 491.

54. Franz Michael, *Non-Chinese Nationalities and Religious Communities, in HUMAN RIGHTS IN THE PEOPLE'S REPUBLIC OF CHINA* 268, 281 (Yuan-li Wu et al. eds., 1988).

55. *Id.*

56. Michael, *supra* note 53, at 283.

reports during Chairman Mao's repressive period, religion in China grew to an unofficial number of ten to twenty million adherents.<sup>57</sup> Such religious growth exemplifies that while one may hope to diminish, denigrate, or destroy one's right to religion, some rights are so fundamental not even the Four Cardinal Principles can destroy them.

Within China's borders, the Chinese government embraced the view of religion as a superstition. While this view was applicable and manifested during its most restrictive times, it has not been maintained by the Chinese citizens. The citizen's view of and reverence to Confucius may be the guarantees to the right to religion for other religious adherents. Confucianism and its analogy to other forms of religion, in addition to the death of Chairman Mao, may be factors for China's tolerance and acceptance of other religious views.<sup>58</sup> The three other Cardinal Principles do not have the history or the reverence Confucianism has sustained through the thousands of years and therefore, the possibility that the other Principles, while presently supreme, may eventually die the death Chairman Mao predicted and hoped for religion.

#### IV. CHINESE INTERNATIONAL COMPLIANCE

Domestically and internationally China has obligated itself to the protection of religious freedom. Presently, China seems to be striving for compliance on the one hand while attempting to eradicate religious view on the other. The Chinese government's current doctrines show that the historical view of religion is still accepted. Government documents indicate that religion is still only tolerated subject to China's socialist order.<sup>59</sup> Freedom of religion is still illegal for those who subscribe to Communist ideology. As one Chinese government document states: "the fact that our Party proclaims and implements a policy of freedom of religious belief does not, of course, mean that the Communist Party members can freely believe in religion . . . . There can be no doubt at all that they must be atheists."<sup>60</sup> Juxtaposed against China's mandate for its citizens to adhere to Communist ideology is China's mandate that all citizens have the right to believe or not to believe in religion, as is manifested in its domestic documents. The Chinese government continues

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57. *Id.* Officially, the Chinese government states the numbers are estimated at 6 million. *Id.* While the numbers in comparison to the billion of Chinese citizens is small, the growth is an obvious frustration to Mao's desire to eliminate religious thought.

58. The discussed tolerance in China in light of repressive intolerance is not a drastic change but still constitutes tolerance.

59. Kolodner, *supra* note 2, at 417-18.

60. *Id.* at 419-20.

to discourage religious beliefs while they tolerate religious beliefs. These seemingly contradictory policies are inexplicable unless one considers that their discouragement may be an act in futility. China, through its domestic legislation, seems to acknowledge that religious freedom, whether it is a grant or an inalienable right, must be given to its citizens. The Chinese government has always discouraged religious thought terming it as an opiate or superstition. Yet Chinese citizens still adhere to religion and such may be proof of futility. Despite the government's desire to eradicate religious beliefs and their attempt at that goal, religious beliefs seem to be inextricably linked to China's history and culture. The government's prohibition and restriction of religious rights does not seem to be a battle the government will win.

China's concession of the battle can be seen in news reports indicating that China is on the road to the protection of religious rights. Tibetan officials are reporting that China's laws guaranteeing religious freedom are being implemented in the spirit in which the laws were enacted.<sup>61</sup> Most encouragingly, are reports in Tibet that Tibetans have enjoyed freedom of religious rights over the past ten years.<sup>62</sup> A Tibetan regional government official has asserted that the Chinese government has complied with international agreements, namely the Universal and Religious Declarations.<sup>63</sup> According to Zhou Dunyou of the Regional Nationalities Affairs Commission, a government organization, the right to religious freedom is being implemented in the spirit in which the laws were created.<sup>64</sup> Such an assertion does not seem to be accurate based on other recent news reports. In Tibet, the Dalai Lama's choice for Buddhism's spiritual leader has been rejected by Chinese government officials.<sup>65</sup> The conflicting news reports seem to indicate that while Chinese officials want the world to believe religious rights are protected in China, in practice they are not. The Chinese government on the one hand explicitly states that religious rights shall be protected, and even generates news reports to reflect this fact, while on the other hand it interjects its control whenever those religious rights are manifested.

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61. *China: Official Claims Tibet Enjoys "Full Freedom in Religious Belief"*, Oct. 1, 1994, available in LEXIS, Nexis Library, BBC Monitoring Service: Far East [hereinafter *Tibetan Religious Freedom*].

62. *Id.*

63. *See supra* notes 1, 3 and accompanying text.

64. *Tibetan Religious Freedom*, *supra* note 61.

65. *Human Rights in Tibet Never Better, Says China*, Nov. 15, 1995, available in LEXIS, Nexis Library, Agence France Presse.

Other reports indicate that the Chinese government is increasingly tolerant of Western religious ideology, such as Catholicism.<sup>66</sup> The Chairman of the Chinese Catholic Patriotic Association, Bishop Zong Huaide, while acknowledging the need for continued progress, commends the government for its recent tolerance of religious beliefs. According to the reports, Catholic seminaries have been established in China's capital Beijing, Shanghai, Shenyang, Wuhan, Chengdu, Xian, and Shijiazhuang.<sup>67</sup> Local experts attribute the recent tolerance to reform and new open door policies. However, not all parts of China are embracing religious tolerance.<sup>68</sup> Provinces in northern Heibi, Shaanxi, and Gansu are still practicing Catholicism underground in fear of the government's hostile repression.<sup>69</sup> In contrast, the organization the Institute of Islam Theology has established several religious schools.<sup>70</sup> Despite repression in some parts of the country, China has seemingly accepted and expressly acknowledged the right to religious freedom.

Chinese toleration of religious rights has only been recently accepted. After the death of Chairman Mao, his successor Deng Xiaoping, has allowed the reconstruction of religious shrines and allowed the Chinese press to celebrate religious diversity,<sup>71</sup> but Xiaoping's permissiveness cannot, according to Communist doctrine, change the basic communist goal. Deng Xiaoping was an integral part of constructing the 1982 Constitution which explicitly grants the right to religious freedom.<sup>72</sup> Present compliance or tolerance of religious freedom may be related to economic development in China. Currently, China is encouraging Western business within its borders.<sup>73</sup> Westerners with their differing religious beliefs are aware of China's past persecution of those who exercise the constitutionally guaranteed freedom of religion.<sup>74</sup> China has seemingly acknowledged that guaranteeing religious rights has its practical

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66. *China: Senior Bishop Hails Progress*, Sept. 22, 1992, available in LEXIS, Nexis Library, South China Morning Post.

67. *Id.*

68. *Id.*

69. *Id.*

70. Kolodner, *supra* note 2, at 420.

71. Kolodner, *supra* note 2, at 420; Michael, *supra* note 54, at 284.

72. Nathan, *supra* note 11, at 115.

73. Diane F. Orentlicher & Timothy A. Gelatt, *Doing Business in China Public Law, Private Actors: The Impact of Human Rights on Business Investors in China*, 14 NW. J. INT'L L. & BUS. 66, 68 (1993).

74. Orentlicher & Gelatt, *supra* note 73, at 68.

advantages.<sup>75</sup> Additionally, China, in a effort to continue trade relations with the United States, may have awakened to the fact that a guarantee of fundamental rights is a guarantee to Most Favored Nations' trading status with the United States.<sup>76</sup> Many private business' that trade with China have included a human rights guarantee in their contracts.<sup>77</sup> While the guarantee may be the least effective means, and probably has the least effect in the changing tide in China, it is interesting to note that Westerners who seek to do business with China have included religious rights within their business contracts.

China's desire to have an economically productive government may have the ultimate effect on the government's benevolence to its people in the area of religious freedom. However, China has always had religious rights included either implicitly or explicitly in their domestic legislation. Such inclusion may ultimately relate to its view of humanity through the eyes of Confucius and the long developing respect and reverence for Chinese culture.

## V. CHINESE CULTURE AND THE FUTURE OF RELIGIOUS FREEDOM

Confucian tenets and their similarity to other religious tenets indicate that, barring another leader like Chairman Mao, religious tolerance in China may continue. The Chinese government has seemingly acknowledged, through the Four Cardinal Principles, that Confucianism is inextricable to Chinese culture and no amount of repression can separate one from the other. Proof of this acknowledgment is exemplified in Chinese constitutions and reports indicating that most Chinese citizens adhere to Confucianism. As an example, in the 1980s the Chinese government in concession to the presence of Confucianism and other religious beliefs, expended 140 million yuan (equivalent to 20 million dollars) to the restoration of religious shrines.<sup>78</sup> The 1990s indicate that religious tolerance may continue. Chinese officials released a Chinese

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75. For example, China wants to host the 2000 Olympics. The United States, in an effort to protect human rights has opposed China's bid without human rights guarantees. *Id.* at 73.

76. *Id.* at 77. Under United States legislation, if China fails to promote fundamental human rights including freedom of expression and religion, the United States can deny China Most Favored Nation status. *Id.*

77. For private businesses to trade with China, they must adhere to a code-of-conduct bill which inter alia states that United States Economic Projects in China should ensure that decisions concerning employment in such projects do not entail discrimination based on religion. Orentlicher & Gelatt, *supra* note 73, at 85.

78. Kolodner, *supra* note 2, at 420; Michael, *supra* note 54, at 284.



Protestant, Li Jiayao, from jail six months early for good behavior.<sup>79</sup> Although the release of Li Jiayao was delayed because of pending investigation, his early release is encouraging and shows signs of a potential death to China's early repressive past.<sup>80</sup>

Aspects of China's repressive past sometimes creep into the country's future. While Westerners can be encouraged that China seems to be changing its act, repression still exists in some respects. The same news source that reported the early release of the Chinese prisoner, reports that Chinese Premier Li Peng has signed decrees that ban unauthorized religious ceremonies.<sup>81</sup> Westerners, however, can be encouraged with recent reports that the government has authorized national publication of a quarterly magazine sponsored by the governmental agency, Religious Affairs Bureau [RAB].<sup>82</sup> According to *Religious Quarterly*, Chinese officials hope that the national publication will dispel the claims that China persecutes its believers.<sup>83</sup> However, Chinese believers are not satisfied with the governmental publication.<sup>84</sup> However, Ling Haicheng, a Beijing based researcher at the Buddhist Association in China, remarked of the national publication: "The magazine is supposed to have something on government policies and opinion but I can't see anything remarkable or new at all."<sup>85</sup> In fear of religious persecution after the union of China and Hong Kong, officials in Hong Kong indicated that after 1997, Chinese officials will cooperate in the spirit of goodwill and protect the right of religious freedom.<sup>86</sup> Additionally, other reports indicate that relations with the Vatican and Buddhists in Tibet are easing.<sup>87</sup> According to reports, the basis for the new ties between China and the Vatican concern the impending union of Hong Kong and China.<sup>88</sup>

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79. *China: Early Freedom for Bible Man*, Mar. 11, 1994, available in LEXIS, Nexis Library, South China Morning Post.

80. *Id.*

81. *Id.*

82. *China: "Last Resort" Religious Quarterly Dispels Few Doubts Over Freedom of Worship*, Sept. 10, 1995, available in LEXIS, Nexis Library, South China Morning Post.

83. *Id.*

84. *Id.*

85. *Id.*

86. *By Libby-Jane Charleston*, May 31, 1995, available in LEXIS, Nexis Library, South China Morning Post.

87. *China: Links with Vatican Strengthen*, Sept. 30, 1995, available in LEXIS, Nexis Library, South China Morning Post; *China: Tibet Passes Rules on Religious Freedom*, Apr. 29, 1995, available in LEXIS, Nexis Library, Reuter News Service-Far East.

88. *China: Links with Vatican Strengthen*, *supra* note 87.

The future of religious rights in China are encouraging. The reasons for China's new tolerance and the hope for continued, expanding, and legitimate tolerance are many and center primarily around China's economic needs. The death of Chairman Mao and the rise to power of his successor Deng Xiaoping, a less repressive leader than Chairman Mao and one who accepts the role of religion within the Chinese community, are other reasons for the recent tolerance. China's continued and expanding links with other cultures, will also assist with their tolerance which may even grow to accept religious rights within its borders. All present signs point to that assertion.

## VI. CONCLUSION

Although the latter part of the twentieth century indicates otherwise, the People's Republic of China has always recognized one's right to religious freedom. That right includes the right to believe, worship, and teach others of one's religious inclination. Religious rights, as defined through international and domestic documents, seem to be fundamental rights because they incorporate aspects fundamental to one's existence. While religious rights were repressed during the Mao period, nearly twenty years after his death, China seems to manifest the view of religious tolerance overtly to the world while repressing the view domestically. The reasons for such tolerance may be arguable but they relate to China's growing economic needs as well as the expanding communication and business links with other cultures. China's own culture, based on the tenets of Confucianism, also embrace one's right to religious freedom. Belief in Confucius, however, is also contrary to China's adherence to Communism. Confucianism has survived thousands of years and its death is not soon forthcoming. It seems Confucianism will outlive Communism. China's recent practices are encouraging and support the theory that religious rights as well as other human rights may expand if China continues on its current track.