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BEING UIGHUR . . . WITH “CHINESE CHARACTERISTICS”: ANALYZING CHINA’S LEGAL CRUSADE AGAINST UIGHUR IDENTITY

Brennan Davis*

The Uighur peasants are very eager to take the road of co-operation. . . . Some people claim[ed] that co-operation cannot succeed among the minority nationalities. This is not so.

— Mao Zedong¹

Introduction (United Nations)

In 2016, the Permanent Delegation of the People’s Republic of China to the United Nations celebrated the ten-year anniversary of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).² The Declaration passed with overwhelming support in the General Assembly, and the People’s Republic joined 143 other states that voted in favor of the Declaration.³ Only four states voted against the resolution: Australia, Canada, New Zealand, and the United States.⁴ (All four of these states have since reversed their stances and have offered support of the Declaration.⁵) In commemorating the passing of the Declaration, Counsellor Yao stated “[n]ot all countries have indigenous peoples” and drew a distinction between “indigenous peoples [and] native people.”⁶ For indigenous peoples

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1. Mao Zedong, *Editor’s Notes to Socialist Upsurge in China’s Countryside*, in 5 SELECTED WORKS OF MAO TSE-TUNG 242, 247 (Peking, Foreign Languages Press, 1977).

2. The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the General Assembly in 2007. See G.A. Res. 61/295, Declaration on the Rights of Indigenous Peoples (Sept. 13, 2007).

3. *United Nations Declaration on the Rights of Indigenous Peoples*, UNITED NATIONS: DEP’T OF ECON. & SOC. AFFAIRS, <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> (last visited Sept. 15, 2019).

4. *Id.*

5. *Id.*

6. *Statement by Counsellor Yao Shaojun of the Chinese Delegation at the 15th Session of the Permanent Forum on Indigenous Issues*, PERMANENT MISSION OF THE PEOPLE’S

to exist, as opposed to native peoples, Yao contended, there must be “a legacy [of a] colonial past.”⁷ As a result, he concluded, “China has no indigenous people.”⁸ Yao’s position reveals the inherent weaknesses of the Declaration—the ambiguity of the text. While the Declaration frequently invokes the term “indigenous peoples,” it at no point defines what communities the term is intended to apply to.⁹ It is in China’s interest to assert an intimate and intrinsic link between colonialism and indigenous peoples because China is not considered to have a colonial past.¹⁰ This definition, then, allows the Chinese to criticize countries with colonial legacies, most importantly the United States, for failing to treat native communities with the dignity they are owed while simultaneously being immune to such criticisms. This definition, which benefits China, seems to be accepted broadly as all the states that refused to approve the Declaration at the time of its adoption (Australia, Canada, New Zealand, and the United States) share a colonial past. This suggests that these countries feared the Declaration would open them to unique attacks on the world stage and indicates that these states accept a definition of indigenous people similar to the one proposed by Counsellor Yao.¹¹ In some cases, the dissenting votes were explicit in their feeling that the Declaration afforded rights too substantial to indigenous people within their borders, with New Zealand expressly stating that the Declaration was “fundamentally incompatible with New Zealand’s constitutional and legal arrangements . . . and the principle of governing for the good of all our citizens.”¹² This suggests that

REPUBLIC OF CHINA TO THE UN (May 10, 2016), <http://www.china-un.org/eng/gdxw/t1363984.htm>.

7. *Id.*

8. *Id.*

9. See Declaration on the Rights of Indigenous Peoples, *supra* note 2.

10. See *Colonialism*, STANFORD ENCYCLOPEDIA OF PHIL. (rev. Aug. 29, 2017), <https://plato.stanford.edu/entries/colonialism/> (“[C]olonialism [is used] to describe the process of European settlement and political control over the rest of the world, including the Americas, Australia, and parts of Africa and Asia. . . . The term colonialism is frequently used to describe the settlement of North America, Australia, New Zealand, Algeria, and Brazil, places that were controlled by a large population of permanent European residents.”).

11. *Id.*

12. Naomi Solomon, *Was the New Zealand Government Justified in Voting Against the Declaration on the Rights of Indigenous Peoples?*, 0 TE KĀHUI KURA MĀORI, no. 1, n.d., <http://nzetc.victoria.ac.nz/tm/scholarly/tei-Bid001Kahu-t1-g1-t4.html> (quoting *Declaration on the Rights of Indigenous Peoples: Explanation of Vote by HE Rosemary Banks, New Zealand Permanent Representative to the United Nations*, N.Z. MINISTRY OF FOREIGN AFF. & TRADE (Sept. 13, 2007), <https://web.archive.org/web/20090506090838/https://www.mfat.govt.nz/Media-and-publications/Media/MFAT-speeches/2007/0-13-September-2007.php0>).

in the absence of a clear definition, the colonial-centric definition, which is advantageous for China, has carried the day and allowed the People's Republic to assert that they do not have indigenous people; therefore, China is not bound by the Declaration's principals. As a result, China can happily endorse the Declaration on the Rights of Indigenous Peoples while simultaneously asserting that it is inapplicable to their own "native peoples," of which there are many.

Ethnic Diversity in China

The People's Republic of China is an incredibly diverse nation with fifty-six recognized *minzu*.¹³ These groups range from the widely known to the obscure, and the eleven historically recognized minority groups include "the Mongol, Hui, Tibetan, Uyghur, Miao, Yao, Yi, Korean, Manchu, Li, and Gaoshan (in Taiwan)."¹⁴ Despite this diversity, the Han ethnic group, who comprise over 90% of the country's population, is the community Americans are most likely to envision as a "Chinese person."¹⁵ Despite their superior numbers, the Han do not have a monopoly on meaningful historical and cultural contributions to the various Chinese states. In fact, many of the most memorable "Chinese" Dynasties have been founded, led, and ruled by non-Han people, including the Mongol Yuan Dynasty (1271–1369) and the Manchu Great Qing Dynasty (1636–1912).¹⁶ However, the understanding of these nationalities has evolved over time and has accelerated during the modern era, featuring the end of the Great Qing, the Republican, and the Communist Periods. The Great Qing Dynasty saw the Chinese state expand to unprecedented levels and incorporated all of modern-day China, as well as areas which today belong to North Korea, Russia, and Vietnam, along with Mongolia and Taiwan in their entirety.¹⁷

13. *Minzu*, 民族, is a combination of the words for "people" with the word "zu," which refers to a group of people or things with shared features.

14. Wang Linzhu, *The Identification of Minorities in China*, 16 *ASIAN-PAC. L. & POL'Y J.*, no. 2, 2015, at 1, 9; *see id.* at 9 n.37 ("Generally accepted minorities' were groups that had been repeatedly mentioned in the Chinese Classic literatures or recorded during the Republican period. They were simply considered to 'exist'")

15. THOMAS S. MULLANEY, *COMING TO TERMS WITH THE NATION: ETHNIC CLASSIFICATION IN MODERN CHINA* 1 (2011).

16. *See* John W. Dardess, *From Mongol Empire to Yuan Dynasty: Changing Forms of Imperial Rule in Mongolia and Central Asia*, 30 *MONUMENTA SERICA* 117 (1972–1973) (discussing the formation of the Mongol-led Yuan Dynasty); PAMELA K. CROSSLEY, *THE MANCHUS* 8 (1997) (discussing the Manchus and their eventual conquest of and rule over China).

17. *See Qing Dynasty*, *ENCYCLOPEDIA BRITANNICA*, <https://www.britannica.com/topic/>

During this dynasty, which was governed by the foreign Manchu people, the government viewed China as a coalition of the Manchu—the leadership—and the Han—the manpower—who, together, ruled over several hundred distinct “barbarian” groups roaming the distant provinces.¹⁸

This understanding shifted dramatically following the end of the Great Qing Dynasty and the establishment of the Republic of China. The Great Qing collapsed in 1919, in part, because the Han were unwilling to continue being subjugated by the Manchu.¹⁹ Rather than go on accepting Manchu dominance, especially given the extensive defeats the Great Qing had suffered at the hands of Western governments, the Han rose up under the direction of Sun Yat-sen, the first President of China.²⁰ Sun Yat-sen, after overthrowing the Great Qing, instituted a republican government that was built on his Three Principles—Nationalism, Democracy, and Livelihood.²¹ President Sun’s first pillar of Nationalism was ethnic-nationalism and not patriotic-nationalism.²² He stated that “[d]uring the periods when [the Han’s] political and military prowess declined, they could not escape . . . from the fate of a conquered nation, but they could eventually vigorously reassert themselves.”²³ Further, Sun declared his revolution against the

Qing-dynasty#ref331832 (last updated Oct. 11, 2019).

18. MULLANEY, *supra* note 15, at 1–2 (“Yunnan [was said to be] home to over one hundred distinct peoples, with nearly one hundred more in the neighboring province of Guizhou.”).

19. See John Stuart Thomson, *The Genesis of the Republican Revolution in China from a South China Standpoint*, 3 J. RACE DEV. 316, 320 (1913).

20. See *id.* at 320–21. Sun Yat-sen is an impressively popular figure in China and on both sides of the Taiwanese Straits. Both the Nationalist Party and the Chinese Communist Party claim his legacy and both honor and acknowledge him to be the First President of China. See Agence France-Presse, *Tug of War over China’s Founding Father Sun Yat-sen as Communist Party Celebrates His Legacy*, S. CHINA MORNING POST (Nov. 10, 2016), <https://www.scmp.com/news/china/policies-politics/article/2044782/tug-war-over-chinas-founding-father-sun-yat-sen>.

21. Sun Yat-sen, *Fundamentals of National Reconstruction (1923)*, in 2 SOURCES OF WORLD HISTORY 281, 282–83 (Mark A. Kishlansky ed., 1995).

22. There are two forms of nationalism recognized in history, here I refer to them as patriotic-nationalism and ethnic-nationalism. Both are ways of approaching the concept of a national identity. Patriotic-nationalism presumes all people within the political confines of a country are members of the national identity, regardless of their ethnic, racial, or religious origins. Ethnic-nationalism, however, is more limited. Ethnic-nationalists believe that the national identity is built on shared language, shared culture, and shared religion. These things, in harmony, form an ethnicity. See Jerry Z. Muller, *Us and Them: The Enduring Power of Ethnic Nationalism*, FOREIGN AFFAIRS, Mar./Apr. 2008, at 18, 20.

23. *Id.* at 282.

Manchu Great Qing Dynasty as a repetition of the earlier Han revolution against the Mongol Yuan Dynasty.²⁴

Despite the Manchu's impressive nearly three-hundred-year reign over China, Sun was sincere in calling for reconciliation without doubting the righteousness of the revolution he had led. He stated that "[n]o vengeance has been inflicted on the Manchus and we have endeavored to live side by side with them on an equal footing. This is our nationalistic policy toward races within our national boundaries."²⁵ Despite Sun's inclusive language, his ultimate message is clear—the Han have the right to rule China, including the areas populated by minorities. However, they ought not oppress the minorities living within China's borders, for when minority groups gained the reins of government, it was only a matter of time before the yoke of minority governance over Han would be thrown off.²⁶ Sun's Nationalist Party, under the subsequent leadership of Jiang Jieshi, also insisted that there were not hundreds or even dozens of unique ethnic groups, and instead that "the country was home to only one people, 'the Chinese people,' and that the supposedly distinct groups of the republic were merely subvarieties of a common stock."²⁷ The Nationalist Party referred to this single ethnic group as *zhonghua minzu*, using the aforementioned *minzu* combined with *zhonghua* to mean China.²⁸ This ideology was mirrored by the first flag of the Republic of China which was composed of five colored horizontal bars with one color representing one of the five recognized ethnic subvarieties—Han, Manchu, Mongol, Uighur,²⁹ and Tibetan.³⁰ While it may seem contradictory to allege that there are not true distinctions between the Republic's citizens and subsequently adopt a flag featuring those false distinctions, the Nationalists would contend that it was not the five colored bars that were of significance, but rather that they came together to form one flag—the Chinese flag.

24. *Id.*

25. *Id.*

26. *Id.*

27. MULLANEY, *supra* note 15, at 2.

28. *Id.*

29. Technically, the Hui were represented. The Hui are a minority group in China who are predominately Muslim. However, "Hui" (回) at the time referred generally to Muslim people and, when the flag was created, referred to the Muslims in Western China, today the group we identify as Uighurs. It was not until later that Hui took on its modern meaning as referring to a specific ethnic group we now call the Hui, who are distinct from the Uighurs. See SUIHENG ZHAO, A NATION-STATE BY CONSTRUCTION: DYNAMICS OF MODERN CHINESE NATIONALISM 171 (2004).

30. *Id.*

The approach toward identifying and incorporating minorities shifted again following the victory of the Chinese Communist Party in the Chinese Civil War. Initially, the newly established People's Republic of China resolved to identify ethnic groups on the basis of self-identification.³¹ After all, the People's Republic envisioned not a single unified Chinese race with various subdivisions, but rather, the notion of a multicultural, multinational union held together by its sincere belief in socialist principles.³² This proved to be overly idealistic and "[i]n the 1953 national census, over 400 self-reported [ethnic] groups were recorded."³³ This was problematic not only because it was a towering figure which could not be easily reduced to autonomous provinces—similar to the Soviet model—but also because the Communist Party had reserved only 150 parliamentary seats for minority representatives.³⁴ Such a number was intended to be "more than twice the number to which [ethnic minorities] would be entitled on a proportional basis."³⁵

To resolve this discrepancy, the Communist Party assembled hundreds of ethnologists, linguists, historians, sociologists, and archaeologists to identify every minority group in the People's Republic.³⁶ This project later became known as the Ethnic Identification Project, which featured sending the assembled experts out into the countryside and having them identify minority groups, defined as "a historically constituted, stable community of people, formed on the basis of a common language, territory, economic life, and psychological make-up manifested in a common culture."³⁷ This definition was originally offered by Joseph Stalin and later adopted by the People's Republic.³⁸

A simple two-question query determined a group's status. First, was the group a minority population or were they Han?³⁹ Second, if they were not Han, were they independent or a subsidiary of a larger group?⁴⁰ Gradually, this inquiry resulted in the formation of the presently recognized fifty-six

31. See Wang Linzhu, *supra* note 14, at 6.

32. See *id.* at 5.

33. *Id.* at 6.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.* at 7 (quoting JOSEPH STALIN, MARXISM AND THE NATIONAL QUESTION 60 (Bruce Franklin ed., Croom Helm London 1973)).

38. Wang Linzhu, *supra* note 14, at 7.

39. *Id.* at 8.

40. *Id.*

minzu, the Han are included in that fifty-six.⁴¹ Whether you're identified as a Han or a member of a minority *minzu* determines whether an individual has the ability to claim the minority rights guaranteed under the Chinese Constitution.⁴²

The history between the Han and the minority races is convoluted and complex, but consistently marked by Han feelings of superiority and a desire by the ruling government for the minorities either to stay out of China or, more recently, to cooperate for its betterment. During the Dynastic Period, minorities were often generalized as barbarians. During the Republican Period, minorities were urged to embrace their intrinsic Chinese characteristics, and during the Communist Period minorities were identified, registered, and instructed to work together for the advancement of the socialist state.⁴³ Because the definition proposed by Counsellor Yao in his comments on the anniversary of the adoption of the United Nations' Declaration on the Rights of Indigenous Peoples tying indigenous people to colonial history—and drawing a distinction between indigenous peoples and native peoples—the People's Republic has been able to simultaneously embrace documents like the Declaration, while also treating their own indigenous populations as they wish. Too, that treatment can be quite severe.

For instance, the hostile actions of the People's Republic toward indigenous populations in Tibet are widely known of in the United States. Tibet is a province of China located in the rugged terrain of the Himalayan Mountains.⁴⁴ Tibetans are a distinct ethnic group from the Han.⁴⁵ Tibet was annexed into the People's Republic of China in 1950 following a Chinese invasion of the then-independent nation.⁴⁶ The conflict ended with a treaty recognizing Chinese governance in Tibet known as the Seventeen Point

41. *See id.* at 9 (“By 1954 . . . thirty-eight groups received official recognition. . . . [I]n the 1964 census . . . another fifteen minorities [were added to] the so-called ‘family of nationalities.’”) The process was eventually completed in the 1980s.

42. *Id.* at 13.

43. See the lyrics to the popular patriotic song *Love My China*, GOOGLE, <http://www.google.com> (search in search bar for “Love My China” and “lyrics”; then scroll down to click “Translate to English” button) (last visited Oct. 26, 2019) (“Fifty-six constellations, fifty-six flowers, fifty-six brothers and sisters are a family”).

44. Matthew Wills, *Tibet and China 65 Years Later*, JSTOR DAILY (May 23, 2016), <https://daily.jstor.org/tibet-and-china-65-years-later/>. Tibet is either an “Autonomous Region” or a subjugated nation, depending on the political leanings of the claimant.

45. *Id.*

46. *Id.*

Agreement for the Peaceful Liberation of Tibet.⁴⁷ Today, many Tibetans feel as though the Han are constricting their autonomy and threatening their cultural integrity.⁴⁸ The Tibetans oppose Beijing's policies in various ways, with perhaps the most famous and most extreme being self-immolation—with over one hundred acts occurring between 2009 and 2016.⁴⁹

The United States is familiar with the situation in Tibet. In 2008, as the Olympic Torch crossed the world on its way to Beijing for the Summer Games, the route through San Francisco was changed without warning to avoid protests against Chinese treatment of Tibet and Tibetans.⁵⁰ As it turns out, the city was wise to avoid the area; shouting matches erupted between pro-Beijing and pro-Tibet protestors shouting “Go China, Go China” to which the response “Free Tibet, China Out,” was returned.⁵¹

The widely documented disputes between the native Tibetan population and the government in Beijing is but a single instance of a larger problem—the potential for conflict between the Han and the various minority *minzu*. This is not altogether a new concern; indeed “[t]he dissolution of the USSR . . . sounded a warning to communist China [who sought] to avoid further demands for ethnic identification or alteration, which might cause unrest.”⁵² While the situation in Tibet is quite well known, the conflicts between the People's Republic and its minority population is best illustrated today in the Xinjiang Uighur Autonomous Region.

Who Are the Uighurs

The Xinjiang Uighur Autonomous Region, or Xinjiang, is a province in China's northwest-most area, bordering Uzbekistan, Kazakhstan, Turkmenistan, Mongolia, Pakistan, Afghanistan, and Kashmir.⁵³ Xinjiang is a large province that “is a vital component of China's political and

47. *Id.*

48. See Edward Wong, *Tibetans Fight to Salvage Fading Culture in China*, N.Y. TIMES (Nov. 28, 2015), <https://www.nytimes.com/2015/11/29/world/asia/china-tibet-language-education.html>.

49. Wills, *supra* note 44.

50. Maggie Shiels, ‘Houdini Torch’ Relay Disappoints, BBC NEWS (Apr. 10, 2008), <http://news.bbc.co.uk/2/hi/americas/7339923.stm>.

51. *Id.*

52. Wang Linzhu, *supra* note 14, at 11.

53. Matthew Moneyhon, Recent Developments, *Controlling Xinjiang: Autonomy on China's “New Frontier”*, 3 ASIAN-PAC. L. & POL'Y J. 120, 120–21 (2002), http://blog.hawaii.edu/aplpj/files/2011/11/APLPJ_03.1_moneyhon.pdf.

economic stability.”⁵⁴ Xinjiang has a long history of economic importance in China. At one time, the desert region’s many oases provided the lifeblood of the ancient Silk Road; today, the province’s location at the crossroads of Central Asia and its status as a gateway into what will soon be the world’s largest economy ensure it is a potentially valuable trade corridor.⁵⁵ Xinjiang is also valuable in itself because it “contains huge coal and oil reserves, believed to be three times those of the United States.”⁵⁶ For these reasons, Xinjiang is a vital territory to the huge and resource-hungry Chinese economy. Xinjiang is also home to the Uighurs, one of the fifty-five recognized minority *minzu*.⁵⁷ The Uighurs are a Turkic people native to the area and have been empowered by the central government in Beijing to create a supposedly autonomous region.⁵⁸ However, the actual autonomy of the province, whose name literally translates to New Frontier, may be less than what many Uighurs would like.⁵⁹

The Uighurs and the Han are closer to old adversaries than they are old friends. This is due largely to the historic pursuit by various incarnations of the Chinese to sinicize foreign territories and peoples.⁶⁰ Historic efforts of sinicization began with the once progressive notion that all races had the ability to civilize if only they adopted the culture of a civilized people—specifically, for instance, the Han in China. The Uighurs’ proximity to Han power centers ensured they were historically familiar with the Han sinicization efforts. For example, in the 600s, Uighur leaders in Xinjiang sent representatives to the Emperor of the Sui Dynasty to ask for protection from a neighboring state.⁶¹ The Uighur state had collapsed shortly before this time, and the area was ripe for conquest—both by their neighbors and by the more distant Sui.⁶² The Emperor considered the request very seriously because he was eager to expand the Sui; however, he also felt that permitting the “barbarians” into the Chinese polity would weaken the state

54. *Id.*

55. *Id.* at 121.

56. *Id.*

57. *Id.*

58. *Id.* at 121–22.

59. *Id.* at 123–24.

60. Pamela Kyle Crossley, *Thinking About Ethnicity in Early Modern China*, LATE IMPERIAL CHINA, June 1990, at 1, 2. Here, sinicize means to make Chinese in character or form; it is the Chinese equivalent to the term Americanize.

61. Shao-yun Yang, *Reinventing the Barbarian: Rhetorical and Philosophical Uses of the Yi-Di in Mid-Imperial China, 600–1300*, at 45 (2014) (unpublished Ph.D dissertation, University of California, Berkeley) (on file with author).

62. *Id.*

both militarily and culturally.⁶³ The Emperor concluded that the Uighurs would be loyal to the Sui Dynasty if the dynasty protected them from their neighbors, saying “[w]e have relieved their poverty and provided them with sustenance when they were weak. Their gratitude will surely have gone as deep as the marrow of their bones.”⁶⁴ This understanding demonstrates that the historic policy of sinicization was believed to first take hold in a barbarian culture by affording the barbarians economic advantages and incentives. Such a paternalistic approach was commonplace at the time, and it was common knowledge that “[b]arbarians, too, are human beings. If they are governed with moral power, they can become like members of the family.”⁶⁵

Despite the Emperor’s hopes, the Uighurs did not respond to his moral power. Within a decade of his decision to protect them from their neighbors, the Uighurs raided Chinese frontier settlements.⁶⁶ The Emperor was displeased with his revelation, and he said that “[t]he barbarians are faithless After making a covenant with us, they suddenly brought an army to trample on our frontier territory. We can take advantage of this opportunity to rebuke them for breaking the [previous] agreement”⁶⁷ Even here, the intimate relationship between paternalism and sinicization is illustrated as the Emperor rebuked the Uighurs as disobedient children—rather than confronting them as an invading rival state.

Eventually, the conflict wore down even the basic assumptions that civilization was cultural and not racial, with one of the Emperor’s advisors lamenting that the Uighur barbarians “have no regard for gratitude—that is their inborn nature.”⁶⁸ While the statement suggests that the Sui eventually determined that civilization was innate, rather than acquired, it is still true that it was important to the Chinese state to discuss “civilization” as a trait which could be learned. This idea, that even barbarians could be civilized

63. *Id.*

64. *Id.* at 48.

65. *Id.* Here, “moral power” refers to the innate authority the ancient Chinese believed was possessed by Emperors so long as they maintained the Mandate of Heaven, a complex notion that does not need to be discussed extensively here. Suffice to say that “moral power” comes not only from governing justly, but also by upholding traditional cultural practices and partaking in many culturally significant religious and social ceremonies native to Han conceptualization. Therefore, the phrase “moral power” itself betrays some preference toward Han peoples.

66. *Id.* at 53.

67. *Id.* at 54.

68. *Id.* at 59.

through cultural assimilation has been rhetorically central to the interactions between the Han and minorities for centuries.

While the Chinese state has enjoyed substantial control over Xinjiang since the Han Dynasty (202 BC–220 AD), the first dynasty to make a significant effort to integrate the region was the Great Qing.⁶⁹ It was the storied Emperor Qian Long (1711–1799) who formally incorporated the region into the territorial boundaries of the Chinese state and first employed the existing political structures in efforts to govern the region.⁷⁰ This consolidation was met with various uprisings against the Chinese, perpetrated mostly by Uighur Muslims waging holy wars against the foreign infidels.⁷¹ Despite Qian Long's efforts, these rebellions, combined with the lack of political will by his successors, ensured that the region was never fully incorporated into the Chinese state. Even today, there is a clear distinction between Xinjiang and much of the rest of China.⁷² This cultural separation was exasperated after the fall of the Qing Dynasty in 1911 and the ensuing period of civil war and Japanese invasion. This invasion so severely weakened the Chinese hold on Xinjiang that, in 1944, during the height of the Chinese Civil War between the Nationalist and Communist parties, Xinjiang declared independence and the founding of the East Turkestan Republic.⁷³ This Republic was rooted in ethnic nationalism and religious fervor but was ultimately short-lived.⁷⁴ In 1949, shortly after their victory in the Civil War, the soldiers of the People's Liberation Army marched into Xinjiang and put an end both to the Republic and to any dreams of independence.⁷⁵

Initially, Beijing offered these conquered Uighurs promises of autonomy and self-determination (an ironic promise to a region it just invaded) in hopes that independent minority republics would voluntarily join with the People's Republic in pursuit of strength in unity.⁷⁶ However, due to the machinations of the Soviet Union, Mongolia secured independence, which the People's Republic was forced to recognize, after securing victory in the

69. Moneyhon, *supra* note 53, at 125.

70. *Id.*

71. *Id.*

72. *Id.* at 126.

73. *Id.* at 126–27.

74. *Id.* at 127.

75. *Id.*

76. *Id.* at 130.

Civil War.⁷⁷ This was part of the broader conflicts in the Sino-Soviet relationship, which scholars attribute to Stalin's hesitance to fully embrace the People's Republic because he feared he could not effectively dominate Mao.⁷⁸ Mao feared that this relationship would lead Stalin to sever parts of what had formed the Great Qing Dynasty from the People's Republic so that the Soviet Union could more effectively dominate the smaller states.⁷⁹ In response, Mao declared that Beijing's policy toward the Uighurs and the other recognized minorities would change—the minority communities would be able to retain their language and culture, as well as continue to control their own affairs so long as they did not seek to undermine the territorial integrity of the People's Republic.⁸⁰ In effect, the policy shifted from self-determination to the prioritization of the unity of the Chinese state.

Despite Mao's assurances, major changes were destined to come to Xinjiang in the early Communist Period. Shortly after Mao's change of policy, the People's Republic moved to end the area's practice of Sharia Law and to "disassemble the Islamic court system," which was one that both the Great Qing and the Nationalist had intentionally left undisturbed.⁸¹ The People's Republic also brought the promised socialist land reform to Xinjiang, upending centuries of feudal tradition. Land that had been traditionally reserved for ownership and management by the region's religious institutions was incorporated into these programs and redistributed to peasants; this cut deeply into the revenue of mosques and religious workers who were then forced to rely on charity to continue their work.⁸² Additionally, the amount of "cultivated land area nearly doubled between 1955 and 1960" due to the efforts of government programs.⁸³ While Uighurs may have reasonably found the destruction of their traditional courts to be offensive, and while the impoverishment of their religious institutions was a genuine cause for concern, the Communist Party was not entirely set on a course of cultural annihilation.

77. See Sergey Radchenko, *The Truth About Mongolia's Independence 70 Years Ago*, THE DIPLOMAT (Oct. 22, 2015), <https://thediplomat.com/2015/10/the-truth-about-mongolias-independence-70-years-ago/>.

78. Frederick H. Hartmann, *The Meaning and Implication of the Sino-Soviet Split*, NAVAL WAR C. REV., Nov. 1967, at 14, 21.

79. Moneyhon, *supra* note 53, at 131.

80. *Id.* at 132.

81. Rian Thum, *Uyghurs in Modern China*, in OXFORD RESEARCH ENCYCLOPEDIA OF ASIAN HISTORY 9 (David Ludden et al. eds., 2018).

82. *Id.*

83. *Id.* at 10–11.

During this same period, the People's Republic began to record and transcribe Uighur music and dance rituals to ensure these customs would be preserved.⁸⁴ At the same time, Beijing devoted funds to the restoration of various cultural heritage sites around the region and collected and recorded Uighur folklore, while also working with the Uighurs to provide Latin scripts for their language.⁸⁵ Generally, Beijing has attempted to preserve aspects of Uighur culture not considered threatening while undermining aspects, such as their Islamic faith, which Beijing distrusts. In addition to undercutting the religious courts and traditional funding schemes, the People's Republic, during Mao's Cultural Revolution (a period of general upheaval), targeted the Uighur's Islamic faith was targeted with special intensity. During the Cultural Revolution, religion was declared a cultural vice in need of abandonment, and as a result, "Islamic practice [became] almost impossible. Islamic schooling was gone; mosques were converted to party offices; religious texts were confiscated or destroyed; and shrine veneration could only be carried out in secret."⁸⁶

Many scholars have alleged this promise of self-government beneath the umbrella of the Chinese state was the first insidious step toward returning to a policy of sinicization and that "[b]y casting minority integration in familial terms and by renegeing on the promise of the right to secede, the [Chinese Communist Party] paved the way for the creation of autonomous minority regions."⁸⁷ These regions sought to pacify the potentially volatile desires of the minority *minzu* "by sustaining their own customs, religion, language, and limited self-government until the immigration of Han Chinese slowly changes the makeup of the population."⁸⁸ This theory is not without merit related to the historic development of Chinese rule in Xinjiang as Han settlement in Xinjiang has proven a consistent focus of the People's Republic. In fact, the Chinese Communist Party annexed Xinjiang in 1949. In 1953, Han residents made up 6.1% of the population, and by 1964, the Han made up 32.9%.⁸⁹ Not only were Han flooding into Xinjiang, but as they arrived, the native resident Uighurs and Kazakhs migrated to the Soviet Union and Afghanistan in large numbers.⁹⁰

84. *Id.* at 9–10.

85. *Id.*

86. *Id.* at 10.

87. Moneyhon, *supra* note 53, at 33.

88. *Id.*

89. Thum, *supra* note 81, at 11.

90. *Id.*

Resistance to these changes originated in the Maoist Era (1949–1976), but the first noteworthy efforts to resist the incoming Han and to undermine the gradual assimilation efforts of the Han came in the Deng Era (1978–1989); this came after the death of Mao and the opening up of the People’s Republic under Deng.⁹¹ This resistance encouraged Uighurs to rediscover their cultural heritage and exploit the new legal and financial framework implemented by Deng. These economic reforms led to wealthier communities; Xinjiang’s GDP skyrocketed, gaining 139% under Deng.⁹² The period also saw local scholars reading, appreciating, and re-popularizing the works preserved by the earlier efforts of the Communist Party, along with new works produced by Uighurs in the Soviet Union.⁹³ Additionally, the Uighurs migrated back toward their religious roots, and in the first decade of the Deng Era, they built thousands of new mosques, returned to an Arabic alphabet, reestablished religious educational institutions, and were left free to practice their faith, though not as publicly as during the Republican Period.⁹⁴ During this era, the promise made by Mao—minimal involvement in cultural affairs at the cost of the ability to secede—seemed mostly realized. However, this cultural rebirth was not destined to last as shifting desires in Xinjiang and new fears in Beijing combined to bring an end to the flourishing period.

In the late 1980s and early 1990s, the People’s Republic experienced a spirit of protest across the nation, perhaps brought on by Deng’s reforms in economics and politics. Xinjiang was not immune to this sweeping spirit, most infamously illustrated by the Tiananmen Square Protests of 1989.⁹⁵ In the 1980s, protests became more common as the government’s presence was lessened. This relaxed government presence resulted in new protests,

91. Deng Xiaoping led a period of economic and political reform, loosening the Communist Party’s control over the daily lives of its citizens. See Kjeld Erik Brødsgaard, *Economic and Political Reform in Post-Mao China*, 1 COPENHAGEN PAPERS E. & SE. ASIAN STUD. 31, 41 (1987) (“Deng identified five major obstacles to political reform and democratization: bureaucracy, overconcentration of power, patriarchal methods, lifelong tenure of leading posts, and various kinds of privileges. In order to combat these phenomena and introduce reforms in the political sphere it was necessary to ‘fully practice people’s democracy; ensure that all people truly enjoy the right to manage, through various effective forms, state affairs and particularly local state power at the grass-roots level and the various enterprises and institutions.’”) (quoting Deng Xiaoping).

92. Thum, *supra* note 81, at 12.

93. *Id.*

94. *Id.*

95. *Id.*

which occasionally resulted in violence.⁹⁶ It was also during this period that Uighurs, in small but organized numbers, began to call for greater autonomy and independence in the formation of a new Islamic State.⁹⁷ In 1990, Uighurs assembled in the village of Baren and “chanted Islamic slogans and later attacked police with firearms and homemade bombs.”⁹⁸ This was in the wake of the Tiananmen Square Protests of 1989, which devolved into the Tiananmen Square Massacre. Deng Xiaoping had already demonstrated that political liberation should only be tolerated to a point. In many ways, Deng’s philosophy, therefore, did not represent an actual change from Mao’s, but, instead, moved the limits of tolerability. Those who threatened the integrity, sovereignty, and security of the state were still subject to extreme, violent repression in the Deng Era. Beijing’s concerns were only heightened and vindicated in the wake of the collapse of the Soviet Union, their model for minority autonomous regions.⁹⁹ Following the Tiananmen Square Protests, combined with the other protests ongoing across the People’s Republic and abroad, the Communist Party concluded that the “religious revival [in Xinjiang] threatened Chinese Communist Party control of Xinjiang.”¹⁰⁰ This determination proved determinative for future relations between Beijing and Xinjiang.

After the Baren protests, the Communist Party responded with sanctions directly aimed at the resurgent religious institutions. The construction of new mosques was halted or slowed, and the religious education that had begun to flourish was curtailed.¹⁰¹ The efforts to end these new social movements resulted in the Uighurs being all the more determined to pursue them. The Uighurs continued to reincorporate their traditional culture, especially secular aspects, into their daily lives.¹⁰² Additionally, the Uighurs imported foreign ideas of Islamic piety and generally became more religious in the wake of the People’s Republic’s efforts.¹⁰³ Conflict became inevitable as Beijing attempted to hasten the Uighur assimilation and the Uighurs attempted to distance themselves from the Han dominated Communist Party. Throughout the 1990s, the protests that had been

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*

101. *Id.*

102. *Id.* at 12–13.

103. *Id.* at 13.

ongoing since the mid to late 1980s were suddenly coupled with regular “riots, bombings and assassinations.”¹⁰⁴

By the early 2000s, the People’s Republic was facing a significant problem. A little known Muslim minority existing in the energy-rich periphery of the Chinese state was resorting to extremist efforts to accomplish its separatist ideas and pursue its own political agenda with violence, often directed against the Han civilian population in the region. On September 11, 2001, Muslim hijackers associated with Al Qaeda attacked the United States in the largest and most costly terrorist attack in American history. In response, President George W. Bush declared, “A great people has been moved to defend a great nation. . . . Our military is powerful, and it’s prepared. . . . America and our friends and allies join with all those who want peace and security in the world, and we stand together to win the war against terrorism.”¹⁰⁵ The People’s Republic positioned itself among America’s friends and aligned with the United States on the issue of fighting terrorism. This alliance resulted in the People’s Republic taking an aggressive new role in Xinjiang and framing their actions to force the Uighur population into submission as part of an international war against terrorism.¹⁰⁶

Presently, most violence in Xinjiang is either unorganized or loosely organized at best, and it typically takes the form of attacks against state representatives, party officers, and police stations due to grievances, which are ultimately local concerns.¹⁰⁷ However, the less frequent—but more organized—attacks are widely known. In 2014, Uighur separatists attacked the Kunming train station with knives, resulting in the deaths of thirty-one civilians and four Uighur attackers.¹⁰⁸ This onslaught garnered national and international attention and condemnation.¹⁰⁹ The People’s Republic’s response to this period of violence has focused on increasing the presence of security forces in the region and the amount of Han in the area.

104. *Id.*

105. *Statement by the President in His Address to the Nation*, WHITE HOUSE: PRESIDENT GEORGE W. BUSH (Sept. 11, 2001), <https://georgewbush-whitehouse.archives.gov/news/releases/2001/09/20010911-16.html>.

106. Jacques deLisle, *9/11 and U.S.-China Relations*, FOREIGN POL’Y RES. INST. (Sept. 3, 2011), <https://www.fpri.org/article/2011/09/911-and-u-s-china-relations/>.

107. Thum, *supra* note 81, at 14.

108. *Id.*

109. *Id.*

Beijing has admitted that since 1999, their goal has been “to adjust the proportions of the populations of different ethnic groups in Xinjiang.”¹¹⁰ Today, the Han make up approximately 40% of the total population of Xinjiang.¹¹¹ Additionally, economic development has increasingly benefitted the new Han settlers, rather than the indigenous Uighurs. For instance, Uighurs have been effectively pushed out of now Han-dominated metropolitan areas, with 98% of Han in Xinjiang living in urban centers and 90% of Uighurs living in rural areas.¹¹² Even so, the few Uighurs who still reside in major cities are “confined to poor, ghetto-like communities . . . in the shadow of new high-rise office buildings.”¹¹³ This introduces an urban-rural element to complicate the already tenuous cultural relationship. While the Uighur have become more devout to their Muslim faith, the Han tend to be secular, and neither group is generally able to speak the other’s language.¹¹⁴ The increasing tension, coupled with the growing volume of Han in the region, resulted in violent riots in the city of Urumqi in 2009.¹¹⁵ The Urumqi Riots began as peaceful protests before devolving into violent riots where Uighurs killed Han settlers indiscriminately; the Han responded in kind.¹¹⁶ In response, the People’s Armed Police entered the region and established checkpoints and guard stations, while the city of Urumqi was effectively shut down.¹¹⁷ The internet across Xinjiang no longer functioned, and the Uighurs outside the city were forced to obtain travel passes to move about the province.¹¹⁸

What Is Happening to the Uighurs

The People’s Republic has always framed government efforts as “campaigns.” The Great Leap Forward and Cultural Revolution are two such campaigns. The most noteworthy campaign impacting Han-Uighur relations in Xinjiang is the Strike Hard Against Violent Terrorism, or the Strike Hard Campaign.¹¹⁹ The Strike Hard Campaign focused on deploying

110. Dana Carver Boehm, *China’s Failed War on Terror: Fanning the Flames of Uighur Separatist Violence*, 2 BERKELEY J. MIDDLE E. & ISLAMIC L. 61, 85 (2009).

111. *Id.*

112. *Id.* at 86–87.

113. *Id.* at 86.

114. *Id.* at 87.

115. Thum, *supra* note 81, at 14.

116. *Id.*

117. *Id.*

118. *Id.*

119. Boehm, *supra* note 110, at 64.

military or paramilitary forces to Xinjiang and “tightening restrictions on cultural expression and religious practice.”¹²⁰ Because of historical tensions, this campaign has caused Uighurs to fear that the Communist Party’s “ultimate goal is to overrun their homeland, outlaw their Muslim faith, and erase their cultural distinctiveness altogether.”¹²¹ While the Strike Hard Campaign initially began in the late 1990s as part of the response to violent resistance in Xinjiang, it was reinvigorated in the wake of the September 11 attacks, and it is the foundation of Communist Party actions in the region today.¹²²

The Strike Hard Campaign is an aggressive assault on Uighur cultural heritage. Local authorities acting under the guidance of the Campaign have taken to “burning Uighur historical literature, imprisoning Uighur authors, banning traditional music with Muslim references, and forbidding instruction in the Uighur language at Xinjiang University.”¹²³ This has been justified as an effort to destroy literature promoting separatist ideas and to punish the people who created it; however, the Campaign seems to interpret everything acknowledging a separate Uighur identity as promoting separatist ideas.¹²⁴ Another key feature of the Strike Hard Campaign is to disrupt the practice of illegal religious activities and to undermine the extremist religious forces in the area.¹²⁵ This practice has resulted in the closure of illegal religious centers and the arrest of numerous individuals.¹²⁶ The state has also acted against those who translate the Quran into Uighur, accusing them of preaching separatism.¹²⁷

The People’s Republic has also made it more difficult for Uighur Muslims to live out their faith. For instance, as part of the Campaign, fasting was outlawed in schools and government offices, and students were instructed to break their fasts.¹²⁸ The Campaign also targeted the heart of the religion by mandating that all imams must attend compulsory political education classes to provide them with “a clearer understanding of the

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.* at 82.

124. *Id.*

125. *Id.* at 94.

126. *Id.*

127. *Id.*

128. *Id.* at 95.

party's ethnic and religious policies."¹²⁹ This notion extends naturally from another Campaign push that prohibited worship outside of government-sanctioned mosques, which were operated by government-approved organizations and staffed by government-recognized imams.¹³⁰ Further, these imams were not permitted to criticize government policies.¹³¹ While many Uighurs do accept these institutions as a part of life, many others reject them for not being truly representative of the faith.¹³² Ironically, the atheist Communist Party rejects alternatives as not only illegal, but also heretical institutions.¹³³ The Campaign has called on Uighur Party members to reject Islam even more fiercely than the general public.

There is no distinction in the People's Republic between the government and the party, and the few Uighurs in government or in the Communist Party are forbidden from attending religious festivals or ceremonies without first seeking permission from their supervisors, followed by a subsequent report.¹³⁴ This requirement is a safeguard in addition to the structural systems designed to keep the religious from holding membership in the party. As the Communist Party is officially atheist, it is impossible to join the party and adhere to any religion, including Islam.¹³⁵ This notion has been enforced by consistently removing Muslims who have found their way into the party from membership.¹³⁶ Party membership is a significant advantage in the People's Republic; not only does it enable one to work for the massive state infrastructure in more lucrative positions, but it also unlocks many social advantages. However, Uighurs are effectively forbidden from enjoying any of these benefits unless they forsake their faith, something many are unwilling to do. These harsh policies have encouraged Uighurs to immigrate abroad—many to Afghanistan—in an effort to practice their faith, where they then become involved in militant Islam and later bring those attitudes back to Xinjiang.¹³⁷

In 2018, the Communist Party resolved to advance the “cultural protection and development” of Xinjiang and to end the long simmering

129. *Id.* (quoting AMNESTY INT'L, PEOPLE'S REPUBLIC OF CHINA: CHINA'S ANTI-TERRORISM LEGISLATION AND REPRESSION IN THE XINJIANG UIGHUR AUTONOMOUS REGION 16 (Mar. 2002)).

130. *Id.* at 97.

131. *Id.* at 97–98.

132. *Id.*

133. *Id.* at 97.

134. *Id.* at 95.

135. *Id.*

136. *Id.* at 96.

137. *Id.* at 100.

conflict with decisive action.¹³⁸ In a November 2018 whitepaper published by the People's Republic State Council Information Office, the party noted that it had "worked to modernize ethnic cultures," and that it had always "respected [the Uighur's] freedom of religious belief."¹³⁹ This benevolence, the party clarified, was rooted in the maxim that the ethnic cultures of minority *minzu* "make up an inseparable part of the Chinese culture."¹⁴⁰ However, the Party stated that this does not mean that the Uighurs are free to practice their culture, especially their faith, without interference. Indeed, "[a]dapting to local society is essential for the survival and development of any religion Religious circles in Xinjiang are encouraged to promote social harmony and development as well as cultural progress"¹⁴¹ This promotion is executed by searching for principals and tenants in a particular faith—Islam, for instance—who can "contribute to China's development and conform to China's traditions."¹⁴²

In a self-described attempt to protect the valuable cultural heritage of Xinjiang, the Communist Party has forced over a million ethnic Uighurs into camps for reeducation.¹⁴³ The policy behind this seems to be that Uighurs are entitled to cultural protection, which extremism endangers; thus, the party has imprisoned an estimated 11.5% of the Muslim population of Xinjiang between the ages of twenty and seventy-nine.¹⁴⁴ Initially, the party denied the existence of these facilities, but as evidence continued to mount, they conceded and admitted that they had opened a number of "vocational training centers" where "trainees" learn job skills and lead "colorful lives."¹⁴⁵ In the few instances where China has offered looks inside these camps, they show Uighurs who have renounced their

138. ST. COUNCIL INFO. OFFICE OF THE PEOPLE'S REPUBLIC OF CHINA, CULTURAL PROTECTION AND DEVELOPMENT IN XINJIANG (2018).

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. Editorial Bd., *China Is Creating Concentration Camps In Xinjiang. Here's How We Hold It Accountable*, WASH. POST (Nov. 24, 2018), https://www.washingtonpost.com/opinions/china-is-creating-concentration-camps-in-xinjiang-heres-how-we-hold-it-accountable/2018/11/23/93dd8c34-e9d6-11e8-bbdb-72fdbf9d4fed_story.html.

144. *Id.*

145. Nectar Gan, *Xinjiang Uyghurs: China Boasts of Its Protection and Support for Cultures in White Paper*, S. CHINA MORNING POST (Nov. 15, 2018), <https://www.scmp.com/news/china/politics/article/2173484/xinjiang-uyghurs-china-boasts-its-protection-and-support-cultures>.

faith and now are working in the camps as factory workers.¹⁴⁶ The party is proud to provide jobs for these detained people, as it seeks to forge the Uighurs into “a disciplined, Chinese-speaking industrial work force, loyal to the Communist Party,” according to officials.¹⁴⁷ The same officials also outlined in reports that the camps would produce clothing that would then be sold in stores across the People’s Republic and that inmates may be expected to continue working at these facilities even after they are released from the camps.¹⁴⁸

These camps seem to be part of the tradition of the old re-education through labor camps that were popular during the Cultural Revolution; these camps saw intellectuals and the socially and politically elite who were forced to move to the countryside to farm with the peasants so they could better understand Mao Zedong Thought.¹⁴⁹ In an interview, the Governor of Xinjiang stated that “[t]he purpose of [the camps] is to fundamentally eliminate the environment and soil that breeds terrorism and religious extremism and eliminate the terrorism activities before they take place.”¹⁵⁰ Detainees are required to learn Mandarin and are also instructed “to accept modern science and enhance their understanding of Chinese history and culture.”¹⁵¹ Presumably, this includes understanding how Uighur culture properly fits into the grander framework of Chinese culture. The governor also marshalled graduates from these facilities to offer their insights. One woman said that “[t]he government didn’t give up on me. It has actively saved and assisted me, giving me free food, accommodation and education. I will cherish this opportunity and become a person useful to the country and society.”¹⁵² Additionally, the governor insisted that those who underwent the educational training purged themselves of “extremist thought” through activities such as art and sports and left the facilities with “notably enhanced national consciousness.”¹⁵³

146. Chris Buckley & Austin Ramzy, *China’s Detention Camps for Muslims Turn to Forced Labor*, N.Y. TIMES (Dec. 16, 2018), <https://www.nytimes.com/2018/12/16/world/asia/xinjiang-china-forced-labor-camps-uighurs.html>.

147. *Id.*

148. *Id.*

149. *Id.*

150. Lily Kuo, *Internment Camps Make Uighurs’ Life More Colourful, Says Xinjiang Governor*, GUARDIAN (Oct. 16, 2018, 3:18 AM), <https://www.theguardian.com/world/2018/oct/16/internment-camps-make-uighurs-life-more-colourful-says-xinjiang-governor>.

151. *Id.*

152. *Xinjiang Official Defends ‘Education Centers’ for Uighur Muslims*, BBC NEWS (Oct. 16, 2018), <https://www.bbc.com/news/world-asia-china-45872356>.

153. *Id.*

Interviews with Uighurs who no longer live in China have painted a starkly different picture. According to Uighurs, even small actions can result in a sentence at one of these camps. Suspicious behaviors include having a beard, abstaining from alcohol or cigarettes, grieving publicly when one's parents die, refusing to attend public struggle sessions,¹⁵⁴ refusing to denounce yourself or members of your family at said sessions, owning a compass, complaining about local officials, or knowing or being related to someone who has done any of the suspicious activities.¹⁵⁵ Once imprisoned, the experience can become brutal. One inmate described being restrained to a chair so that he was immobilized, prevented from sleeping, beaten with batons, and stabbed with needles.¹⁵⁶ The inmate also described being forced to share a room with forty-five other detainees and said there was so little room they were forced to sleep in shifts.¹⁵⁷ Other eyewitnesses say that detainees are forced to sing propaganda songs, and if they refuse, they are not fed.¹⁵⁸ Others report being interrogated for extensive periods, as long as three days, prior to being sent to the facilities.¹⁵⁹ Inmates are expected to condemn the three evil forces of separatism, extremism, and terrorism, and "if you couldn't recite [songs and slogans, the guards] wouldn't allow you to eat, sleep, or sit."¹⁶⁰ Additionally, inmates were often

154. Struggle sessions are a uniquely Chinese phenomenon closely associated with the Chinese Cultural Revolution. See Massoud Hayoun, *Photos: Fathers of Chinese Leaders at Revolutionary 'Struggle Sessions,'* ATLANTIC (Mar. 21, 2012), <https://www.theatlantic.com/international/archive/2012/03/photos-fathers-of-chinese-leaders-at-revolutionary-struggle-sessions/254870/> ("In such sessions, everyone from politicians to teachers would be dragged before a large audience and forced to humiliate themselves with withering self-criticism, denunciations of their friends and allies, and pleas for forgiveness.").

155. Tanner Greer, *48 Ways to Get Sent to a Chinese Concentration Camp: Something Terrible Is Happening in Xinjiang,* FOREIGN POLICY (Sept. 13, 2018, 10:40 AM), <https://foreignpolicy.com/2018/09/13/48-ways-to-get-sent-to-a-chinese-concentration-camp/>.

156. Alexandra Ma, *What It's Like Inside the Internment Camps China Uses to Oppress Its Muslim Minority, According to People Who've Been There,* BUS. INSIDER (Sept. 1, 2018, 8:23 AM), <https://www.businessinsider.com/life-inside-china-internment-camps-for-uighur-minority-in-xinjiang-bbc-report-2018-8>.

157. *Id.*

158. *Id.*

159. Simon Denyer, *Former Inmates of China's Muslim 'Reeducation' Camps Tell of Brainwashing, Torture,* WASH. POST (May 17, 2018), https://www.washingtonpost.com/world/asia_pacific/former-inmates-of-chinas-muslim-re-education-camps-tell-of-brainwashing-torture/2018/05/16/32b330e8-5850-11e8-8b92-45fdd7aaef3c_story.html.

160. *Id.*

fed pork and forced to drink alcohol if they were suspected of being religious extremists.¹⁶¹

The plight of the Uighurs may cause one to reasonably wonder whether the Communist Party has actually moved away at all from their ancient strategies employed by the dynasties against “foreign barbarians.” Recall the Sui Dynasty Emperor considering whether or not to admit the Uighurs into the protection of the Dynasty. He and his court were confident that if they extended economic wealth to the Uighurs, then they would repay the Han with immense loyalty. When loyalty failed to manifest, he then rebuked the Uighurs. He even questioned whether the entire project was unnecessary as perhaps treachery was the Uighurs’ inborn nature.

There are substantial parallels between that story and the present challenges faced by the Uighurs. The Communist Party moved into Xinjiang initially with hopes that the Uighurs would join them voluntarily in the socialist struggle. To encourage loyalty to the state, the Communist Party invested heavily in the region, and the economy has improved substantially under the administration of the People’s Republic (though perhaps not as fast as the Han-dominated coastal regions). However, the Communist Party, much like the Sui Emperor, was rebuffed and the loyalty, or willing assimilation, they anticipated did not materialize. Instead, both the Communist Party and the Sui Emperor felt attacked for their generosity. The party, as well as the Emperor, resolved to rebuke the Uighurs, and while the Emperor did so with military force, the party has done so with large-scale incarceration and even more violently forced assimilation. While there are certainly substantial divergences between the Communist Party and the Sui Dynasty and their experiences, it is difficult to ignore the somewhat cyclical nature of the present dispute in Xinjiang.

The ongoing actions of the People’s Republic toward the Uighurs are cruel and unacceptable. However, when it comes to what can be done, we may find that options are quite limited, especially domestically. The People’s Republic claims to be a nation built on the rule of law; however, their legal principals allow for a great deal to be done in the name of preserving the integrity and sovereignty of the state. An examination of the development of Chinese law affecting indigenous peoples demonstrates how their historically robust protections have been consistently weakened by the Communist Party’s rulership, creating the current situation in Xinjiang.

161. *Id.*

The Jiangxi Soviet

The origin of the Communist Party's minority *minzu* laws trace their way back to the Chinese Civil War, when the Communist Party was little more than a band of guerrilla fighters attempting revolution. In 1927, the Communist and Nationalist parties agreed to a momentary truce, setting aside their ideological differences to come together as Chinese people and resist the invasion of the Japanese Empire.¹⁶² However, this alliance was not destined to last; during a brief lull in hostilities against Japan, the Nationalists saw an opportunity to exterminate the Communists and ensure their continued governance over China if the Japanese did not prevail in the parallel conflict.¹⁶³ Jiang Jieshi, leader of the Nationalist party, acted on this opportunity and on April 12, 1927, ordered Nationalist troops to ambush their unsuspecting communist allies.¹⁶⁴ The Communists were attacked across the nation, centering in Shanghai, and suffered immense casualties, with as many as 5000 missing, many presumed dead.¹⁶⁵ This betrayal forced the Communist Party to evacuate from the urban centers, which were controlled either by the Nationalist or the Japanese, and retreat into the mountainous countryside as the Civil War resumed in earnest. The Communist Party established a defensible position in the rural Jiangxi Province and began to regroup there. It was during this period that the Communist Party first turned its attention to the issue of indigenous peoples' rights.¹⁶⁶

The Constitution of the Jiangxi Soviet was the first document the Communist Party endorsed as a model of what government would look like in a then-hypothetical People's Republic of China.¹⁶⁷ However, the document was prepared during a time of conflict when the Communist and Nationalist parties both offered competing ideas for what the future of the Chinese state could and should be. For this reason, the Constitution was as much a platform as it was a legal document. The Communist Party hoped that Constitution's progressive nature would encourage people across the

162. Chang Liu, *Making Revolution in Jiangnan: Communist and the Yangzi Delta Countryside, 1927–1945*, 29 MOD. CHINA 3, 5 (2003).

163. See Paul R. Gregory, Hsiao-ting Lin & Lisa Nguyen, *Chiang Chooses His Enemies*, HOOVER DIGEST (Apr. 21, 2010), <https://www.hoover.org/research/chiang-chooses-his-enemies>.

164. *Id.*

165. *Id.*

166. Chang Liu, *supra* note 162, at 6.

167. See FUNDAMENTAL LAWS OF THE CHINESE SOVIET REPUBLIC (Martin Lawrence Ltd., 1934).

country to rally to their cause. Specifically, the Communist Party was aware that the Nationalist's grasp on the periphery of the country—including Mongolia, Tibet, and Xinjiang—as especially tenuous. Therefore, if the Communist Party could earn the loyalty of these minority groups far from the center, its numbers would not only be replenished but would, for the first time, make significant territorial gains against the Nationalists. This would pinch the Nationalists between the Communists in the west and the Japanese coast. Mao, one of the leaders of the Jiangxi Soviet, was explicit that his ambition was to attract the minorities of China to his cause by offering them extensive rights under Communist rule.¹⁶⁸

The Jiangxi Constitution provides “[t]he Soviet government of China recognizes the right of self-determination of the national minorities in China, their right to complete separation from China and the formation of an independent state for each national minority.”¹⁶⁹ This is a profound promise. As has been established, both Xinjiang and Tibet presently have noteworthy populations desiring freedom from the governance of the People's Republic, and both regions certainly could benefit from such generous language. During the Jiangxi Soviet Era, the Communist Party attempted to portray itself as the ultimate ally to minority groups across the country, and promises of “complete separation” and “independent states” were an excellent strategy for such an endeavor. Of course, today the Communist Party considers separatism to be one of the “three evils” Uighurs are forced to denounce, but this would not be so had the Jiangxi Soviet been adopted into the People's Republic, as the party initially said it would be. The Jiangxi Constitution also stated the People's Republic would “encourage the development of national culture and of the respective national languages of these peoples.”¹⁷⁰ This statement is another ironic promise given that, today, the use of the Uighur native language may be grounds to send individuals to internment camps for reeducation and to learn Mandarin. The promises enshrined in Article 14 make the Jiangxi Constitution one of the most progressive documents ever drafted in the realm of indigenous peoples' rights, surpassing even the United Nations' Declaration on the Rights of Indigenous Peoples. Of course, it is easier to make promises than to act on them.

The Jiangxi Soviet's constitution endured even as the Communists fled Jiangxi because of the advancing Nationalists. However, after World War

168. Moneyhon, *supra* note 53, at 130.

169. FUNDAMENTAL LAWS OF THE CHINESE SOVIET REPUBLIC, *supra* note 167, at 22.

170. *Id.*

II, the Communists abandoned political philosophizing to resume full-scale hostilities against the Nationalists. Eventually, the Communist Party prevailed over its Nationalist foes and forced Jiang's party to retreat to Taiwan in 1949.¹⁷¹ In the same year, the Communist Party consolidated its control over the state's periphery.¹⁷² Still, the Jiangxi Soviet had not made minority nations eager to submit to the Communist Party or join the People's Republic, even with the promise of eventual self-determination. The People's Republic brought both Tibet and Xinjiang into the state only after invasion and conquest.¹⁷³

The advent of the Communist Party brought with it benefits and detriments to Xinjiang. While arable land was expanded and the economy grew explosively in the early Maoist Period, there were also large influxes of ethnic Han into the area.¹⁷⁴ Today, the Uighurs make up only 45% of the population, while the Han make up 40%—the effect of decades of relocation policies.¹⁷⁵ The Maoist Period also brought with it the Great Leap Forward, the Korean War, and the Cultural Revolution, all of which were disasters for the People's Republic. Xinjiang was equally affected by the resulting famines and mass starvation.¹⁷⁶ While the Uighurs were not necessarily fond of the Maoist Period, there do not seem to have been major protests, though this may have been due to the tight control the government had over the people. However, it does seem that during this period “the Uighurs began to feel marginalized in their own land, and viewed the increasing integration with China as a threat to their cultural survival.”¹⁷⁷ These feelings would be vindicated following the response of the People's Republic to the Uighurs' cultural renaissance in the Deng Period.

171. *The Uighurs: A History of Persecution: Hearing Before the Subcomm. on Int'l Organizations, Human Rights and Oversight of the H. Comm. on Foreign Affairs*, 111th Cong. 19 (2009) (statement of Ms. Kara Miriam Abramson, Advocacy Director, Congressional-Executive Commission on China).

172. *Id.*

173. *Id.* at 23 (statement of Ms. Felice D. Gaer, Chair, U.S. Commission of International Religious Freedom).

174. *Id.*

175. British Broad. Corp., *Xinjiang Profile – Full Overview*, BBC NEWS (Nov. 17, 2016), <https://www.bbc.com/news/world-asia-pacific-16913494>.

176. This is a vast oversimplification of the Maoist Era; however, oversimplifications are, to some extent, necessary in any paper of limited scope.

177. Natasha Parassram Concepcion, *Human Rights Violations Against Muslims in the Xinjiang Uighur Autonomous Region of Western China*, HUM. RTS. BRIEF, Fall 2000, at 19, 19, https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1474&context=hr_brief.

Initially, even though the Jiangxi Soviet's Constitution had not been adopted by the People's Republic and a new Constitution was still being drafted, the Uighurs enjoyed some of the freedoms they were promised by the old constitution. Prior to the Cultural Revolution's efforts to purge religion, the Uighurs were "entitled to practice their religion unhindered, for it was part of their 'national culture.'"¹⁷⁸ While this freedom to practice was limited, the Uighurs seemed generally satisfied with the arrangement. Nevertheless, the Cultural Revolution would soon sweep over the nation, including in Xinjiang. During the Revolution, religious belief would be declared a societal sickness in need of annihilation.¹⁷⁹ The Uighurs, therefore, experienced two great betrayals between the end of the Second World War and the beginning of the Cultural Revolution. The first came when the People's Republic abandoned its promise of self-determination and invaded Xinjiang, forcibly annexing the region. The second came during the Cultural Revolution, when the rights of the Uighurs to practice their faith was rescinded. These two events demonstrate the fading promises of Jiangxi and the coming reality of Communist Party rule in Xinjiang.

The Jiangxi Soviet's Constitution was an aspirational model the rest of the world could look toward insofar as its promises to indigenous people; however, the Communist Party rejected it shortly after taking control of mainland China. Instead of modifying the Jiangxi Soviet so that it could retain the spirit of many of its foundational principles, the Communist Party resolved to build an entirely new Constitution for its entirely new country. The new Constitution of the People's Republic would extinguish the last embers of the Jiangxi Soviet's Constitution, replacing Jiangxi's limitless promises with contingent assurances that individuals' rights would be upheld so long as they do not too greatly interfere with assimilation. When the Communist Party drafted the Jiangxi Constitution, they were focused on winning a war, but when they drafted the People's Republic's Constitution, they were focused on building a powerful, unified state.

178. C. P. FitzGerald, Notes and Comment, *Religion and China's Cultural Revolution*, 40 PAC. AFFAIRS 124, 127 (1967).

179. *See id.* at 124 (noting that due to the Cultural Revolution "the policy of moderate tolerance which had marked government treatment of the main religions in China is now at an end").

Present Constitution

The People's Republic of China's Constitution is very long, comprised of four chapters and 138 articles.¹⁸⁰ While the American Constitution exists mostly as a series of principles, which are ultimately somewhat vague and in need of interpretation, the Constitution of the People's Republic aims to effectively answer almost any question that may be raised. In fact, Americans may say that the Chinese Constitution is more akin to the United States Code than to the United States Constitution.

In its earliest passages, the Chinese Constitution asserts “[t]he State respects and protects human rights.”¹⁸¹ However, the Chinese Constitution does not place the entirety of this responsibility on the state alone, but it also admonishes the people to do their part for the safety of the state. Specifically, the Constitution states that “[e]very citizen is entitled to the rights and at the same time must perform the duties prescribed by the Constitution and other laws.”¹⁸² The consequences of this are clear—the Chinese people are entitled to human rights, or, at least, human rights as defined by China. The Chinese Communist Party can therefore legally shun, curtail, or limit rights either within the Constitution itself or through supplementary legislation.

The government's ability to limit the definition of human rights is especially clear in the realm of religion. Citizens “enjoy the freedom of religious belief” and may not be compelled “to believe in, or not to believe in, any religion: nor may [the State] discriminate against citizens who believe in, or do not believe in, any religion.”¹⁸³ Yet, the State only “protects normal religious activities,” and these are activities which do not “disrupt the public order, impair the health of citizens or interfere with the educational system of the State.”¹⁸⁴ The Communist Party has interpreted the “normal religious activities” clause to apply only to state-recognized churches. For this reason, the Uighurs must worship at mosques approved by the state, just as Christians must worship at either the state-sanctioned Catholic or Protestant associations. Any worship outside these contexts falls outside the normal religious practices constitutionally protected.

180. See *History of Amendments to China's Constitution*, CGTN (Jan. 18, 2018), https://news.cgtn.com/news/784d6a4d79677a6333566d54/share_p.html.

181. XIANFA art. 33, § 3 (1982) (China).

182. *Id.*

183. XIANFA art. 36, §§ 1, 2 (1982) (China).

184. XIANFA art. 36, § 3 (1982) (China).

Additionally, religions in China are “not [to be] subject to any foreign domination.”¹⁸⁵ The result of this full article is to give Chinese citizens the freedom of religion but only insofar as the State is prepared to tolerate it; where there is a rational reason to believe that a particular religious practice, or even religion, undermines one of the three government interests, or alternatively where the religion is too heavily influenced by foreigners, the State can and will crack down on its practice. In fact, the Constitution later explicitly states, “Citizens of the People’s Republic of China, in exercising their freedoms and rights, may not infringe upon the interests of the State, of society or of the collective”¹⁸⁶ This sentence clearly communicates what the other articles suggested implicitly—the rights of the people are subservient to the rights of the State. Such a notion provides a fundamental foundation for understanding how Chinese law interprets human rights and how that interpretation will affect China’s views on the rights of indigenous peoples.

The Chinese Constitution sharply departs from the language used by the preceding Jiangxi Constitution on the matter of China’s nationalities. The Jiangxi Constitution assured the nationalities that “[t]he Soviet government of China recognizes the right of self-determination of the national minorities in China, their right to complete separation from China, and the formation of an independent state for each national minority.”¹⁸⁷ The Chinese Constitution, on the other hand, aggressively did away with any promises of self-determination or the complete separation previously guaranteed. In place of these promises, the Chinese Constitution declared that “[i]t is the duty of the citizens of the People’s Republic of China to safeguard the unification of the country *and the unity of all its nationalities*.”¹⁸⁸ The Uighurs, like all other nationalities in China, went from having the guarantee of self-determination and, if desired, independence under the old Jiangxi Constitution to suddenly having a duty to advance and maintain their integration with the Chinese central state.

185. *Id.* Historically this “foreign domination” has been directed mostly toward the Vatican; however, the Pope and the Chinese have recently reached an agreement which saw the Pope formally acknowledge the legitimacy of bishops presiding over the previously excommunicated Chinese Catholic Patriotic Association. See Nicole Winfield, *Pope Urges Chinese Catholics to Trust, Reconcile After Deal*, ASSOCIATED PRESS (Sept. 26, 2018), <https://www.apnews.com/f1527472e44c4f9687bf5d4daa2ebfb3>.

186. XIANFA art. 51 (1982) (China).

187. FUNDAMENTAL LAWS OF THE CHINESE SOVIET REPUBLIC, *supra* note 167, at 22.

188. XIANFA art. 52 (1982) (China) (emphasis added).

The new Constitution recognized that indigenous populations may be unwilling to trade self-determination for complete incorporation, and therefore, offered an olive branch in the form of the autonomous regions. They were assured that these regions would be led by representatives of the same nationality as those governed and would “independently administer educational, scientific, cultural, public health and physical culture affairs in their respective areas”¹⁸⁹ So, the new Constitution seemed to suggest that the local populations can still govern issues of local concern without outside interference, but international relations and economic decisions would still be made in conjunction with the interests of the State.¹⁹⁰ Further, local regions were free to “employ the spoken and written language or languages in common use in the locality.”¹⁹¹ While this may initially sound like a fair, even if unsatisfying arrangement, the Constitution becomes significantly less friendly toward the rights of minorities in the last article of the section, and it does so quietly. It notes that one of the obligations of the State is to provide “financial, material, and technical assistance to the minority nationalities to help accelerate their economic and *cultural development*.”¹⁹² This is the supreme law of the land in China and therefore acts as a suitable frame for discussion about how the law in mainland China has evolved and what this evolution means for the rights of indigenous peoples.

Recent Legal Changes

When the existence of the vast internment camps first became widely known to the global public, the People’s Republic denied their existence.¹⁹³ However, the evidence of the camps’ existence continued to accumulate and eventually forced Beijing to acknowledge their existence. After their acknowledgement, the Xinjiang Uighur Autonomous Region moved to

189. XIANFA art. 119 (1982) (China).

190. The autonomous regions were also empowered to collect their own taxes and handle much of their own finances. XIANFA art. 117 (1982) (China). However, this is not necessarily cause to celebrate as it is common in China for localities or provinces to be given the power to tax which will enable the central government to contribute less substantially to those same regions—this leads to wealth for wealthy regions and stagnant poverty for those less fortunate areas.

191. XIANFA art. 121 (1982) (China).

192. XIANFA art. 122, § 1 (1982) (China) (emphasis added).

193. Lily Kuo, *From Denial to Pride: How China Changed Its Language on Xinjiang’s Camps*, GUARDIAN (Oct. 21, 2018), <https://www.theguardian.com/world/2018/oct/22/from-denial-to-pride-how-china-changed-its-language-on-xinjiangs-camps>.

enact legislation legitimizing the camps. Xinjiang had previously possessed legislation outlining how the government could respond to terrorism as a result of the Strike Hard Campaign; nonetheless, in the wake of international outcry against the camps, they amended the regulation to acknowledge and endorse the camps. The revisions state that “[g]overnments at the county level and above can set up education and transformation organizations and supervising departments such as vocational training centers, to educate and transform people who have been influenced by extremism.”¹⁹⁴ This revision was designed to address specifically the complaints that the People’s Republic had been acting without legal authorization. The previous version of the law had identified numerous “manifestations of extremism” including many of things characteristic of Uighurs, such as “having ‘abnormal beards,’ refusing to watch television or listen to radio, and preventing children from receiving national education.”¹⁹⁵

Despite the changing law, many observers have rejected the legal authorization and have asserted that “international human rights law is clear, no matter how much China tries to ‘legalize’ the impermissible.”¹⁹⁶ Others have gone even further, asserting that “[w]hat the Chinese (government) is doing is illegal on every front: under international law, under their own constitution, under criminal procedures, [and under] autonomy law.”¹⁹⁷ Others have pointed to China’s counter-terrorism law which permits a maximum of fifteen days detention without charge, which the camps have routinely exceeded.¹⁹⁸

Still, an examination of these claims in light of the Constitution of the People’s Republic will quickly demonstrate that these actions are legal under Chinese law. Firstly, it is the duty of the People’s Republic to ensure that separatism does not have room to grow in the country and that nothing jeopardizes the unity of the various *minzu*. It is also clear that the rights of the citizenry are subservient to these ends. The Constitution expressly states

194. Nectar Gan & Mimi Lau, *China Changes Law to Recognise ‘Re-education Camps’ in Xinjiang*, S. CHINA MORNING POST (Oct. 10, 2018, 5:15 PM), <https://www.scmp.com/news/china/politics/article/2167893/china-legalises-use-re-education-camps-religious-extremists>.

195. *Id.*

196. *Id.*

197. Paul Eckert, *Uyghurs, Legal Experts Dismiss Chinese Legal Move to Justify Re-education Camps*, RADIO FREE ASIA (Oct. 11, 2018), <https://www.rfa.org/english/news/uyghur/camps-law-10112018192530.html>.

198. *Id.*

that “[i]t is the duty of citizens of the People’s Republic of China to safeguard the unification of the country and the unity of all its nationalities.”¹⁹⁹ This duty imposes an obligation on the citizens to advance the principles of unity. The state has the obligation to “combat local national chauvinism” and “do its utmost to promote the common prosperity of all the nationalities.”²⁰⁰ This language empowers the state to determine what policies must be pursued to promote the common prosperity of the various *minzu* and then confer the obligation to pursue that policy to the people. Likewise, the people do not have a right to practice religion freely but only the ability to practice normal religions and only then when they do not “disrupt public order,” which is another determination Beijing is empowered to make.²⁰¹ Citizens do enjoy freedom from arrest “except with the approval or by decision of a people’s procuratorate or by decision of a people’s court.”²⁰² That said, procuratorates are themselves appointed at the local level.²⁰³ For this reason, we can conclude that the legal change does authorize the arrests and that the People’s Republic could reasonably draw a distinction between arrest and detainment.

These conclusions are not surprising. The Constitution of the People’s Republic places the authority of the state—the peoples’ democratic dictatorship—in a position of paramount importance. The rights of the people exist but are ultimately subservient to the state, and the state is tasked with ensuring the territorial integrity of the People’s Republic almost above all other things. Thus, it is only natural that the People’s Republic would have the legal authority under Chinese law to erect these camps and wage this war of cultural annihilation, especially because it is in the name of mitigating separatist efforts.

International Response to Xinjiang

The international community has been surprisingly vocal about the situation in Xinjiang; yet, these numerous complaints have not materialized into any action. Alongside the standard outcry by international human rights organizations, there have been several statements by prominent politicians around the world criticizing Beijing for their policies in Xinjiang and calling on the People’s Republic to bring their actions against the

199. XIANFA art. 52 (1982) (China).

200. XIANFA pmb. (1982) (China)

201. XIANFA art. 36 (1982) (China).

202. XIANFA art. 37 (1982) (China).

203. XIANFA art. 101 (1982) (China).

Uighurs there. In April 2018, Senator Marco Rubio and Congressman Chris Smith urged the American Ambassador to China, Terry Branstad, to call for an investigation of Beijing's actions in Xinjiang.²⁰⁴ This effort has not yet materialized into any actual action. In May, when the People's Republic prevented President Dolkun Isa of the World Uyghur Congress, a government-in-exile group calling for the independence of Xinjiang, from speaking before a United Nations conference on indigenous peoples' rights, United States representative Kelley Currie complained that the Chinese were unfairly keeping Mr. Isa from speaking.²⁰⁵ Mr. Isa was eventually permitted into the United Nations building on his third attempt after being escorted out twice previously at China's urging.²⁰⁶

United States Vice President Mike Pence lamented the internment of the Uighurs while speaking at a religious freedom conference in July of 2018.²⁰⁷ Still, the Vice President devoted only forty of the speech's 3500 words to the issue of Xinjiang.²⁰⁸ Additionally, Muslim leaders around the world have been even less engaged with the issue and "[n]o Muslim nation's head of state has made a public statement in support of the Uighurs this decade."²⁰⁹ Senator Marco Rubio, this time aided by sixteen other Congressmen, attempted again in August to push the United States to take action against China and calling for the United States to impose sanctions against ranking Communist Party leaders in Xinjiang.²¹⁰ This request was not acted upon.

That the United States has not taken meaningful action against the People's Republic for their actions in Xinjiang should not be surprising. Even if not for the fact that the United States is currently headed by an

204. *East Turkestan: US Senator Marco Rubio Calls for Investigation of Incarcerations and Surveillance of Uyghurs*, UNREPRESENTED NATIONS & PEOPLES ORGANIZATION (Apr. 6, 2018), <https://unpo.org/article/20728>.

205. Colum Lynch, *U.S. Once Jailed Uighurs, Now Defends Them at U.N.*, FOREIGN POLICY (May 25, 2018), <https://foreignpolicy.com/2018/05/25/u-s-once-jailed-uyghurs-now-defends-them-at-u-n/>.

206. *Id.*

207. *Remarks by Vice President Pence at Ministerial to Advance Religious Freedom*, WHITEHOUSE.GOV (July 26, 2018), <https://www.whitehouse.gov/briefings-statements/remarks-vice-president-pence-ministerial-advance-religious-freedom/>.

208. *Id.*

209. Nithin Coca, *Islamic Leaders Have Nothing to Say About China's Internment Camps for Muslims*, FOREIGN POLICY (July 24, 2018), <https://foreignpolicy.com/2018/07/24/islamic-leaders-have-nothing-to-say-about-chinas-internment-camps-for-muslims/>.

210. Josh Chin & Eva Dou, *American Lawmakers Push to Sanction Chinese Officials over Xinjiang Camps*, WALL ST. J. (Aug. 29, 2018), <https://www.wsj.com/articles/lawmakers-push-to-sanction-chinese-officials-over-xinjiang-camps-1535554800>.

administration not especially interested in conflict over human rights, the United States would still be hesitant to engage the People's Republic.²¹¹ Benito Mussolini is attributed with having said "[t]he League [of Nations] is very well when sparrows shout, but no good at all when eagles fall out."²¹² He was conveying the idea that international agreements and organizations are more adept at corralling and punishing smaller states than they are at doing the same against great powers. This is an astute observation. As was pointed out, Muslim nations' heads of state have not condemned China's actions in Xinjiang, and this is because "[m]any Muslim governments have strengthened their relationship with China or even gone out of their way to support China's persecution."²¹³ This is a natural consequence of the People's Republic potent economic might. It is difficult to muster the political will to confront such a powerful state that indisputably makes a more profitable friend than adversary.

The Role of Indigenous Peoples' Law

Indigenous peoples' law may not help the Uighurs. It is conceivable, if not likely, that even should the world suddenly view the entire struggle of the Uighur people through the lens of indigenous people law, that nothing about China's actions toward Xinjiang would change. There is no reason to believe that they would do anything other than ignore the United Nations Declaration on the Rights of Indigenous Peoples. Nevertheless, that does not mean that there is no value in reconsidering who the world should classify as indigenous and tearing down the distinctions between indigenous and native peoples, as proposed by Counsellor Yao.

Counsellor Yao put forward, in his speech honoring the anniversary of the United Nations Declaration on the Rights of Indigenous Peoples, that there was a distinction between indigenous and native populations. He contended that not all countries have indigenous peoples and that indigenous peoples are uniquely tied to Western colonial history. Largely, the world seems to agree with him, which is why the states that most resisted the Declaration were those Western states with bloody colonial pasts. Even so, there is no need for this distinction.

211. See generally Suzanne Nossel, *It's OK That Trump Doesn't Care About Human Rights: America Still Does*, FOREIGN POLICY (June 19, 2017), <https://foreignpolicy.com/2017/06/19/its-ok-that-trump-doesnt-care-about-human-rights/>.

212. Quoted in John Christian Bailey, *Between Yesterday and Tomorrow: Discourses of Europe in Germany 1939–1950*, at 82 (2008) (unpublished Ph.D. dissertation, Yale University).

213. Coca, *supra* note 209.

The Uighurs of Xinjiang are clearly an indigenous population by any fair definition of the word. Further, the stereotypical indigenous peoples would no doubt look at the current situation in Xinjiang-as Beijing attempts to force out their religion, language, and culture, and seeks to forcibly assimilate them into the cultural majority-and would not see painful reminders of their own pasts. The cultural extermination ongoing in Xinjiang and Tibet are of precisely the kind that efforts like the United Nations Declaration on the Rights of Indigenous Peoples was drafted to address. Catastrophes are inevitable when a cultural minority is governed by an unrestrained majority. We have seen this story before in the United States. We will see it again elsewhere. And while it is true that it does not matter how the world labels China's actions in Xinjiang, there is no reason that crimes against indigenous communities should sting more than crimes against human rights; the mistake lays in focusing on what Mussolini would call the eagles and not the sparrows.

The People's Republic of China is a massive economy and an emerging superpower, but they are unique in this role. The vast majority of indigenous peoples, defined in a way that does not draw distinctions between indigenous and native as Counsellor Yao does, are more akin to sparrows than they are to eagles. The world believes there is value in recognizing the specific rights and interests of indigenous communities—if it did not there would be no need for specific declarations and organizations concerning them—and the world should therefore not shy away from applying the label “indigenous peoples” broadly. There is no reason that an individual should hear the word indigenous and think more quickly of New Zealand than Tibet. And there is no reason why expanding the world's understanding of indigenous peoples should necessarily harm the interests and ambitions of those groups presently recognized as such. And perhaps broadening the coalition of indigenous peoples could itself have intrinsic benefits for those communities and humanity more broadly.

Conclusion

At present, there are approximately one million men and women being unjustly held in internment camps in China's far western region of Xinjiang. This represents the cumulation of decades, or perhaps even centuries, of assimilation-oriented policies by the Han toward minorities in general and Uighurs specifically. The People's Republic has relied on creative interpretations of what groups constitute indigenous peoples to sidestep the issue and assert that there are no indigenous people in the

People's Republic of China. This is an absurd claim given the vast ethnic diversity the People's Republic boasts of. While the People's Republic is likely protected from feeling actual consequences for their mass interment policies due to their substantial power on the world stage, and thus there is likely little that one can reasonably expect to be done for the Uighurs to mitigate their present plight, there is value in using the Uighurs to better understand that the struggles endured by indigenous and native populations are substantially similar. It is possible that correcting our understanding of the term could assist the world in confronting other states who, like China, do have indigenous peoples not traditionally thought of as such, and who are acting against them in ways rising to the level of cultural genocide. This is itself sufficient cause to seek a realignment of our understanding of indigenous people to a more inclusive standard.