

C.2 From the Chinese SARs to its Silk Roads: Essays

Xinjiang in the Crosshairs of Chinese and Global Imaginaries

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The great issue that faced nations emerging from the last great age of territorial empire was that of absorbing minority populations within a large territorial state with no claims to the imperial characteristics that marked global discourse through the beginning of the Second World War.² The issue has been a fertile one in terms of its contribution to the transformation of basic approaches to the organization of power, especially political power, within states since 1918, and now increasingly, within those with control over global production and economic activity in this century. It is also now itself transformed from a focus on *volk* (national, ethnic, religious, etc.) to one focusing on *identity*.³ That in turn is moving from an emphasis on the construction of collective identity (gender, sexual orientation, race, etc.)

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² There is a rich literature. For a taste, see, Iryna Ulaiuk, "Comparative Analysis of Legal Guarantees of Educational Rights of National Minorities and Migrants in Europe," *International Journal on Minority and Group Rights* 21:469-496 (2014);

³ For a taste, see, e.g., Nicolas Carrillo-Santarelli, "Inter-American Court of Human Rights - principle of individual autonomy - right to identity - rectification of gender identity information - protection of different models of the family - evolutionary interpretation - protection of same-sex couples including same-sex marriage," *American Journal of International Law* 112(3):479-485 (2018).

to notions of authority to develop and perform individual identity irrespective of the orthodoxies of community. This quite quickly moving set of societal transformations has significant socio-cultural ramifications.⁴ In the political sphere this is evidenced by strategies to memorialize the protection of collectivities, identities, and their performance, against the state by enacting such orthodoxies into binding law and norms (as has been the arc of human proclivity in this respect for a long time), some with the objective of transforming the structural basis on which the collective itself is organized.⁵

It is in the performance of the rationalization of the power of identity as a local, national, and international orthodoxy, that the state finds itself in the middle. Nonetheless, this arc of transformation has evidenced itself with quite specific national and historical characteristics. In many cases, it is possible to discern something of a common discursive pattern (however badly it might have been implemented from time to time). On the one side, the state has shown a remarkable flexibility in changing with the times when it comes to the construction of and the embedding of identity collectives within the fabric of national life. However, the basic construct of the "deal" on identity has tended to remain unchanged--in return for first toleration and thereafter inclusion, there is an expectation of both loyalty and an expectation of assimilation into a core set of unifying basic norms.⁶

The Americans had their "melting pot."⁷ This is sometimes used as a shorthand for policies of a cultural or political or comprehensive

⁴ Again a rich contemporary literature, for a taste, see, e.g., Belle Derks, Colette Van Laar, and Naomi Ellemers, "The Beneficial Effects of Social Identity Protection on the Performance Motivation of Members of Devalued Groups," *Social Issues and Policy Review* 1(1):217-256 (2007);

⁵ The literature is growing and quite contested. For an important and now classic work along these lines, see, e.g., Iris Marion Young, *Justice and the politics of difference* (Princeton University Press, 1990); for a taste of the contemporary discursive thrust, see, e.g., Jacqueline Nelson and Kevin Dunn, "Neo-Liberal Anti-Racism: Responding to 'Everywhere but Different' Racism," *Progress in Human Geography* 41(1): 26-43 (2016); S Poynting and V Mason, "The new integrationism, the state and Islamophobia: Retreat from multiculturalism in Australia," *International Journal of Law, Crime and Justice* 36: 230-246 (2008)

⁶ There is a rich literature. For a taste, see, e.g., Liliana Riga and James Kennedy, "Tolerant majorities, loyal minorities and 'ethnic reversals': constructing minority rights at Versailles 1919," *Nations and Nationalism* 15(3):461-482 (2009); J Penrose and D Howard, "One Scotland, many cultures: The mutual constitution of anti-racism and place," in *New Geographies of Race and Racism* (C. Dwyer and C. Bressey C (eds); Ashgate, 2008), pp. 95-111.

⁷ It was noted as part of popular culture around the time of the end of the great migrations into the United States before the First World War as recounted in Charles Hirschman, "America's Melting Pot Reconsidered," *Annual Review of Sociology* 9:397-423 (1983). He noted the radicalism of the idea at the time of its popularization when the nation was suffering under a quite distinct set of basic ways of seeing the world and people in it:

In spite of these realities, or perhaps because of them, the melting pot became the symbol of the liberal and radical vision of American society. In a sense, it was a political symbol used to strengthen and

integration of migrants into the political culture of the Republic; in its extreme form assimilation that required the subordination of home state culture and normative orientations to that of the new home states conceived by its elites.⁸ It is now considered taboo in some quarters⁹ in the inter-elite warfare that rages in the contemporary United States. They now speak in terms of the metaphor of the salad bowl¹⁰ which is deployed against the older discursive imagery of cultural pots in which the differentiated masses can be reformed into an undifferentiated new whole.¹¹ Nonetheless, both speak to the fundamental necessity of some sort of integration of successive waves of settlers (however they arrived willingly or unwillingly) into the singular political corpus of a Republic of now amalgamated identities.¹² The salad bowl notion, though, also posits the sometimes immutable (and sometimes mutable) characteristics of difference and toward the edges of its logic suggests either an active (positive) preservation of the old ways in their new environment or the manifestation of emerging self-reflexive identities; and in this way aligned sometimes with emerging identity political-culture discourses. Thus, participation and amalgamation without assimilation

legitimize the ideology of America as a land of opportunity where race, religion, and national origin should not be barriers to social mobility. There is another interpretation of the melting pot symbol, which represents the emphasis on "Americanization" of immigrants around the turn of the century. (Ibid., p. 398).

⁸ See, Shlomo Yitzhaki and Edna Schechtman, "The 'Melting Pot': A Success Story?," *Journal of Economic Inequality* 7:137-151 (2009) ("Societies with large immigration tend to be sensitive to the assimilation of the immigrants into the society. Instead of a fragmented society, divided by ethnic rifts, the preference is for a society where origin ceases to be an identifying characteristic." Ibid., p.137; also noting the embedding of the notion in early 20th century American popular culture).

⁹ See, e.g., William Booth, "One Nation, Indivisible: Is It History?," *The Washington Post* (22 February 1998); available [https://www.washingtonpost.com/wp-srv/national/longterm/meltingpot/melt0222.htm].

¹⁰ See, e.g., Elijah Anderson, "Beyond the Melting Pot Reconsidered," *International Migration Review* 34(1):262-270 (2000) ("In 1999, we have more of a salad bowl than a melting pot. Rather than giving it up, racial and ethnic groups appear to embrace their particularism. In public and to an extent in private life, there is more mixing of people of various groups than there was a generation ago, but at the same time people tend to retain more of their ethnic particularity within these interactions.").

¹¹ See, e.g., Mohamed Berray, "A Critical Literary Review of the Melting Pot and Salad Bowl Assimilation and Integration Theories," *Journal of Ethnic and Cultural Studies* 6(1):142-151 (2019).

¹² This is sometimes subsumed under the older arguments about the ideologies of multiculturalism as a basis for structing political society and managing inter-social behavior taboos. See, Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford, 1996); Bhikhu Parekh, *Rethinking multiculturalism: cultural diversity and political theory* (Palgrave, 2000). Nasir Meer and Tariq Modood, "How does Interculturalism Contrast With Multiculturalism?," *Journal of Intercultural Studies* 33(2):175-196 (2011). Multiculturalism itself has been interrogated and challenged as the arc of development and debate among elite circles in the West has continued to move on. See, e.g., Paul Kelly (ed), *Multiculturalism Reconsidered: 'Culture and Equality' and its Critics* (Polity Press, 2002).

to produce a new understanding of political solidarity within a single state.¹³

The European spoke to being *united in diversity*.¹⁴ They thought well enough of it to make it the motto of its European Union. In both cases, these large multi-ethnic governance units sought to develop a singular demos from aggregations of peoples as concerned about what made them different from their neighbors as in what did not.¹⁵ In the United States that consisted of efforts to align multiple ways of settlers that overwhelmed an original native population that eventually was also urged to join in. In Europe, it was meant to cement the realities of European diversity¹⁶ that was meant to be cemented after the great bout of ethnic cleansing and population movements before 1950 that served the goals of eliminating Prussia from the map and honoring the Soviet's treaty with the Third Reich in 1939, among other reasons. After the 1950s it increasingly included the need for the digestion of new waves of settlers from the *dar al Islam*, Africa, Asia, and Latin America who now sought to call Europe home, and to ensure they felt comfortable in their new residence.

In both cases, migration, settlement, and the duties and responsibilities, much less the expectations of migrants and those who make room for them in migrant target states remains highly controversial and politically explosive. It is bond up in quite contentious issues of migration and settler colonialism, human rights, and human dignity. The connections between migration, settler colonialism, and multiculturalism have yet to be deeply engaged, and each of these terms have become dog whistles for very specific political agendas aimed at protecting or discrediting collectives. More interesting still are the issues around the constitution of political solidarity in multi-identity states, whether the amalgamation of identities are indigenous or the result of

¹³ See, e.g., K. Anthony Appiah, "Identity, Authenticity, Survival: Multicultural Societies and Social Reproduction," In *Multiculturalism* (Charles Taylor and Amy Gutman (eds); Princeton University Press., 1994), pp. 107-148.

¹⁴ "The Symbols of the European Union," CVCE.eu; available [https://www.cvce.eu/en/education/unit-content/-/unit/eeacde09-add1-4ba1-ba5b-dcd2597a81d0/fe7ea7bf-b49d-49db-b06e-a32a06ff1538] ("The term 'united in diversity' refers to Europe, its values and its cultural, religious and humanist heritage. These are values that place two protagonists at the centre of social life: on the one hand, man and his rights and, on the other, the respect for law. For the purposes of interpreting the motto, the most illuminating passage of the preamble is to be found in the fourth recital, which states that the peoples of Europe, while remaining proud of their own national identities and history, are determined to transcend their former divisions and, united ever more closely, to forge a common destiny.").

¹⁵ See, e.g., Jurgen Habermas, "Struggles for recognition in the democratic constitutional state," In *Multiculturalism* (Sherry Weber Nicholsen (trans); Charles Taylor and Amy Gutman (eds); Princeton University Press., 1994), pp. 107-148.

¹⁶ See, e.g., "Interculturalism: A new diversity ideology with interrelated components of dialogue, unity, and identity flexibility," *European Journal of Social Psychology* 50:505-519 (2020).

mass resettlement. Its cultural signification remains in deep flux, and its legal treatment as a matter of international and domestic law remains fluid.¹⁷

And now China.

In August 2021, Qiushi, the theoretical organ of the Chinese Communist Party, reported, through its eponymous "commentator" on the thinking of Xi Jinping and the Chinese leadership core, on the issues of ethnicity and ethnicity policy within China.¹⁸

Xi Jinping rejected both the American notions of melting pot or salad bowl, as well as the European one of united in diversity for a more intimate imagery--the imagery of the family. But not a Western family, but a family that understands the demands of filial duty and one, as well, that is lead and guided by its core--generously its parents. Certainly the temptation to read Confucian elements into this construct of diversity and the discursive basis for dealing with ethnic minorities is overwhelmingly tempting. And its echoes are likely unavoidable. But the concept is essentially a Leninist one--with Chinese characteristics. It replicated the fundamental organization trope of Chinese Leninism--one grounded in the fundamental normative power of *democratic centralism*.¹⁹ And yet, like the thinking in the United States before the close of the last century, the object involves "consolidating the consciousness of the Chinese nation as a community." Consider the five point elements of the ethnic policy:

First, we must comprehensively promote the construction of a shared spiritual home for the Chinese nation (一要全面推进中华民族共有精神家园建设。). . . Second, we must promote the common movement of all ethnic groups towards socialist modernization (二要推动各民族共同走向社会主义现代化。). . . The third is to promote exchanges and integration of various ethnic groups (三要促进各民族交往交流交融。). . . Fourth, we must improve the modernization level of the governance system and governance capacity for ethnic affairs (四要提升民族事务治理体系和治理能力现代化水平。). . .

¹⁷ See, e.g., Mitch Berbrier, "Assimilationism and Pluralism as Cultural Tools," *Sociological Forum* 19(1):29-61(2004).

¹⁸ 求是网评论员：紧紧抓住铸牢中华民族共同体意识这条主线 来源：求是网 作者：求是网评论员 2021-08-29 15:19:34 (Qiushi.com commentator: firmly grasp the main line of casting a sense of community of the Chinese nation; Source: Qiushi.com Author: Qiushi.com commentator 2021-08-29 15:19:34).

¹⁹ Mao Zedong, "On the Correct Handling of Contradictions Among the People" (February 27, 1957); available [https://www.marxists.org/reference/archive/mao/selected-works/volume-5/mswv5_58.htm] ("This unity of democracy and centralism, of freedom and discipline, constitutes our democratic centralism. Under this system, the people enjoy extensive democracy and freedom, but at the same time they have to keep within the bounds of socialist discipline." Ibid.).

Fifth, we must resolutely prevent major risks and hidden dangers in the ethnic field (五要坚决防范民族领域重大风险隐患。)²⁰

This is not melting pot, but neither is it unity through diversity. It certainly is not a salad bowl. It embodies the notion that ethnicity, like all difference, must serve the common aspirations of the nation under the guidance of a vanguard, but not exist either autonomously or independent of the collective of which it is a part. Difference within may be recognized, difference without cannot. And that likely makes the thrust potentially incompatible with the thrust of cultural movement respecting settler migration in liberal democratic states. Whatever one thinks of the policy from one's home perspective, it is clear that the policy aligns strongly with currents of new era ideology and the evolution of Chinese Leninist principles after 2015. It also points to a further divergence between the sensibilities of the liberal democratic camp and those of Marxist Leninist states, even holding for cultural, contextual and historical difference. It is that gap that is worth studying for their effect and for the way they may affect discussion of the issues at a global level. The essay appears in full below in the original Chinese and in a crude English translation.

These disjunctions are more sharply drawn at the peripheries of the Chinese heartland. It is here that the threat may be drawn most sharply from the center. It is also the place more approachable from the outside as a territory at the edges of sovereignty. Indeed, these issues have been most acutely evident in the Xinjiang SAR,²¹ and given its sensitivity and its great divergence from the practices and expectations elsewhere, also the place where the Chinese approach has been most hotly contested.²² That contestation results from the incompatibility of Chinese policy and those of liberal democratic states whose enterprises have become deeply embedded in economic activity.²³

²⁰ 求是网评论员：紧紧抓住铸牢中华民族共同体意识这条主线 来源 (Qiushi.com commentator: firmly grasp the main line of casting a sense of community of the Chinese nation), *supra*.

²¹ Consider, e.g., Anna Hayes, "Interwoven 'Destinies': The Significance of Xinjiang to the China Dream, the Belt and Road Initiative, and the Xi Jinping Legacy," *Journal of Contemporary China* 29(121):31-45 (2019).

²² See, e.g., Larry Catá Backer, Congressional-Executive Committee on China (CECC) Hearings: Forced Labor, Mass Internment, and Social Control in Xinjiang 17 October 2019), *Law at the End of the Day* (16 October 2019); available [<https://lcbackerblog.blogspot.com/2019/10/congressional-executive-committee-on.html>].

²³ See, Vicky Xiuzhong Xu et al., "Uyghurs for sale: 'Re-education', forced labour and surveillance beyond Xinjiang," The Australian Strategic Policy Institute Limited Policy Brief Report No. 26/2020; available [<https://www.aspi.org.au/report/uyghurs-sale>]. The Report suggested that The Chinese government has facilitated the mass transfer of Uyghur and other ethnic minority citizens from the far west region of Xinjiang to factories across the country. Under conditions that strongly suggest forced labour, Uyghurs are working in factories that are in the supply chains of at least 83 well-known global brands in the

Xinjiang, then, provides an important site for more clearly observing both the realities and the consequences of the application of, in this case, two quite distinct starting points for organizing an understanding of the world. From that it is possible to sketch out consequences for real world application and their effect on peoples.²⁴ It is also possible to begin to develop from that understanding a set of normative principles and expectations around which societies build themselves and protect themselves from threat. To that end it also suggests the way that these very different normative imaginaries shape the construction of threat and the set of alternatives that may be authoritatively and legitimately acceptable as means of meeting those threats. There is no coming together here. There is no likely possibility of a meeting of the minds or of consensus.

These thoughts provide the context around which the essay is constructed. It starts with a consideration of the current state of justification for the central authorities' Xinjiang policy.²⁵ It then considers the evidence of the response from the foreign political community, and principally from the United States, and principally from the Congressional-Executive Commission on China (CECC).²⁶ These efforts, in turn evidence the way that international contestations over national policy can also produce decoupling rather than convergence,²⁷ and a dual circulation strategy to detach an economy that is outward looking from one that looks inward.²⁸

A. The Chinese Defense of its Xinjiang Policies.

It is no secret that, led by the vanguard elements of the liberal democratic camp, there has been an ongoing and increasingly vigorous

technology, clothing and automotive sectors, including Apple, BMW, Gap, Huawei, Nike, Samsung, Sony and Volkswagen. (Ibid. pp 3).

²⁴ For an important discussion of one of those consequences, see, Joel Slawotsky, Letter to the Journal "Is China Guilty of Committing Genocide in Xinjiang?," *The Chinese Journal of International Law* 20:625-635 (2021); available [<https://academic.oup.com/chinesejil/article/20/3/625/6390915?login=tru>]

²⁵ 习近平出席第三次中央新疆工作座谈会并发表重要讲话 新华网 2020-09-28 09:13 [Xi Jinping Attends the Third Central Xinjiang Work Symposium and Delivers an Important Speech; Xinhuanet 28 September 2020]; available [<https://language.chinadaily.com.cn/a/202009/28/WS5f7138cba31024ad0ba7c3b9.html>].

²⁶ See, Congressional Executive Commission on China, Annual Report 2020 (Washington, D.C., December 2020); available [<https://www.cecc.gov/sites/chinacommission.house.gov/files/2020%20ANNUAL%20REPORT%20FINAL%201223.pdf>].

²⁷ Cf., Li Wei, "Towards Economic Decoupling? Mapping Chinese Discourse on the China-US Trade War," *The Chinese Journal of International Politics* 12(4):519-556 (2019).

²⁸ See Zoey Zhang, "What is China's Dual Circulation Strategy and Why Should Foreign Investors Take Note?," *China Briefing* (25 September 2020); available [<https://www.china-briefing.com/news/what-is-chinas-dual-circulation-strategy-and-why-should-foreign-investors-take-note/>].

challenge to the legitimacy of Chinese policy in its heartland peripheries, with a specific focus on its assimilation policies in the autonomous and Special Administrative Regions.²⁹ Those efforts have sought to align the discourses and expectations (in the societal and private law fields) of human rights and sustainability, with national coordinated policy on global production chain decoupling from Xinjiang.³⁰ Businesses in the liberal democratic camp are meant to leery of complicity with Chinese national policy that is condemned by many of their home states.³¹ This is sometimes supplemented with public guidance.³²

The most interesting discursive elaboration of the Xinjiang policy of the Chinese central authorities was set out at the third Central Xinjiang Work Symposium held in Beijing from September 25th to 26th. The Symposium included remarks by Xi Jinping that were reproduced and widely circulated in both Chinese and English (and thus for a national and international audience).³³ Indeed, given the growing strength of foreign engagement with its assimilation policies and practices, it was inevitable that the leadership core of the global Marxist Leninist camp would respond.³⁴

Yet, those are oblique responses to a direct challenge, as China sees it, both to sovereign authority within its own territories as well (and perhaps more importantly) as a direct challenge to the legitimacy and authority of Marxist-Leninism and Party leadership as the basis for its political organization. To answer both Xi Jinping chose a quite pointed venue to deliver a more full-throated defense of Chinese policy, and more importantly of the political ideology and its expression on the ground in

²⁹ The issue. However, eludes robust consensus outside of China. See, e.g., Catherine Putz, "Which Countries Are For or Against China's Xinjiang Policies?: Last week, two coalitions sent competing letters to the UN Human Rights Council criticizing or backing China's Xinjiang policies," *The Diplomat* (15 July 2019); available [https://thediplomat.com/2019/07/which-countries-are-for-or-against-chinas-xinjiang-policies/].

³⁰ See, e.g., François Godement, "Values and the Role of Sanctions in the Europe-China-US Triangle," *Institut Montaigne* (13 April 2021); available [https://www.institutmontaigne.org/en/blog/values-and-role-sanctions-europe-china-us-triangle].

³¹ See, e.g., Claudio Francavilla, "European Parliament Freezes Trade Deal with China: Beijing's Bullying Backfires on Prospects for Closer Ties with EU," *Human Rights Watch* (20 May 2021); available [https://www.hrw.org/news/2021/05/20/european-parliament-freezes-trade-deal-china#].

³² See, e.g., Covington, "U.S. Releases Updated Business Advisory on Xinjiang Human Rights Risk" (15 July 2021); available [https://www.cov.com/en/news-and-insights/insights/2021/07/us-releases-updated-business-advisory-on-xinjiang-human-rights-risk].

³³ Xi Jinping Attends the Third Central Xinjiang Work Symposium and Delivers an Important Speech, *supra*.

³⁴ 以习近平同志为核心的党中央关心新疆工作纪实 [The Party Central Committee with Comrade Xi Jinping at the core cares about Xinjiang work] (24 September 2020); available [http://www.xinhuanet.com/politics/leaders/2020-09/24/c_1126536003.htm].

Xinjiang.³⁵ The official English annotation underlined the prime discursive point:

'Facts have fully proved that China's work on ethnic affairs has been successful,' he said, noting the achievements are the result of the strong leadership of the CPC Central Committee, along with the concerted efforts of the whole Party and all the Chinese people including more than 25 million people from different ethnic groups in Xinjiang... Facts prove that the Party's policies on Xinjiang in the new era, which were developed by the CPC Central Committee since the 18th CPC National Congress, are perfectly right and must be adhered to on a long-term basis, Xi stressed."³⁶

But most telling for communities in the liberal democratic and theocratic governance camp was Mr. Xi's conclusion (absent from the English annotation: "We must adhere to the direction of Sinicization of Islam in Xinjiang and realize the healthy development of religion. It is necessary to do a good job in the field of ideology and carry out the project of cultural invigoration."³⁷

The remarks were conceived as self-consciously important. Unlike many of Mr. Xi's important remarks on New Era ideology and policy, this set of remarks was not immediately published in full. Rather an extended summary was prepared in Chinese, followed by an English language annotation. It's clear that the remarks were meant not just for domestic ears but for those of the liberal democratic camp, but only under the strict guidance of those preparing the annotation. These serve as a basis for some reflection.

1. The focus of the CPC continues to be on economic and (collective) social markers as evidence of the success of its policies. In that respect it is important to note the consequences for cross border dialogue. As a result it is quite possible that where the Chinese measure success, others will see in exactly the same data a measure of failure. That difference goes down all the way to the identification and signification of data. It is not just a matter of what data is valued, or even how data is

³⁵ 习近平出席第三次中央新疆工作座谈会并发表重要讲话 [Xi Jinping attended the third Central Xinjiang Work Symposium and delivered an important speech]]; available [http://www.xinhuanet.com/politics/2020-09/26/c_1126544371.htm] [hereafter, "Xi Speech Summary Chinese Original").

³⁶ 习近平出席第三次中央新疆工作座谈会并发表重要讲话 新华网 2020-09-28 09:13 [Xi Jinping Attends the Third Central Xinjiang Work Symposium and Delivers an Important Speech; Xinhuanet 2020-09-28 09:13]; available [https://language.chinadaily.com.cn/a/202009/28/WS5f7138cba31024ad0ba7c3b9.html] [hereafter "Xi Speech Summary English Translation").

³⁷ "Xi Speech Summary Chinese Original", supra ["要坚持新疆伊斯兰教中国化方向, 实现宗教健康发展。要深入做好意识形态领域工作, 深入开展文化润疆工程。"]].

valued, it is a matter of how data is understood. That is nicely exemplified with markers of assimilation.

The general goal of the work is to adhere to the foundation of uniting people's hearts, to forge a sense of community of the Chinese nation, to adhere to the direction of the Sinicization of China's religion, to promote and cultivate core socialist values, to adhere to the people's livelihood to promote high-quality development, and to strengthen the party's work in Xinjiang Leadership. Practice has proved that the party's strategy of governing Xinjiang in the new era is completely correct and must be adhered to for a long time.³⁸

The liberal democratic camp has long ago given up formal processes of assimilation of its non-dominant groups; the Chinese view it as essential to the production of a demos aligned with its conception of a unified polity. But that very process of the narrative of unity--and the way that different aspects of difference as viewed as benign or threatening--illustrates the large gulf that separates the camps. There is no bridging this gap. And the consequences affect their respective approaches both to human rights and its measure.

2. The emphasis on the Sinicization of Islam cannot be underestimated. More importantly that focus applies not just to Islam but to religion in general. Vatican officials, perhaps, ought to be paying as much attention to this approach to Church-State relations as should the ummah (أمة) in its relation to a *sha'b* (شعب). Sinicization of religion is mentioned twice in the speech summary: (1) "We must adhere to the direction of Sinicization of Islam in Xinjiang and realize the healthy development of religion. It is necessary to do a good job in the field of ideology and carry out the project of cultural invigoration" and (2) "The general goal of the work is to adhere to the foundation of uniting people's hearts, to forge a sense of community of the Chinese nation, to adhere to the direction of the Sinicization of China's religion, to promote and cultivate core socialist values, to adhere to the people's livelihood to promote high-quality development, and to strengthen the party's work in Xinjiang Leadership.."

3. The central element of economic development tied to the Sinicization of Xinjiang appears to be a critical element of China's plans for its Belt and Road Initiative. Mr. Xi was said to have noted:

Xi Jinping pointed out that development is an important foundation for the long-term stability of Xinjiang. It is necessary to give full play to Xinjiang's location advantages, drive the construction of the core area of the Silk Road Economic Belt, incorporate Xinjiang's own regional opening strategy into the overall layout of the country's westward opening, enrich the

carriers of opening up, improve the level of opening up, and innovate and open up.³⁹

What makes this particularly interesting is the way that Xinjiang is meant to serve as an overlap zone for China's emerging "Dual Circulation" Strategy.⁴⁰ That has significant ramifications for China's long term internal and external strategies and helps explain why Chinese officials took the trouble in this case of providing a curated summary of the official Chinese summary of the defense by Mr. Xi of China's Xinjiang policies.

4. The ideological element is central to the overall Chinese approach. Xinjiang appears increasingly to serve as a space where the value of New Era principles are to be transposed into action and, to the extent successful as measured by the national yardstick, vindicated.

Xi Jinping pointed out that the original mission of our party is to seek happiness for the Chinese people, including all ethnic groups in Xinjiang, and to seek rejuvenation for the Chinese nation, including all ethnic groups in Xinjiang. Party committees at all levels must align themselves with the Party's strategy for governing Xinjiang in the new era, and consciously maintain a high degree of consistency with the Party Central Committee in terms of ideology and political action.⁴¹

That alone suggests the difficulty of engaging China respecting changes in its policy--to do that would be effectively to challenge not just the Chinese Communist Party Line from the outside but to suggest that either its normative or process legitimacy ought to be called into question.

5. But more than that, the central importance of the political and ideological element also colors the approach to assimilation. Key here for the CPC is not just cultural aspects of a unified nation, but an ideological unification in which Xinjiang ethnic peoples themselves become the instrument of assimilation at the cultural and political levels.⁴²

It is necessary to constantly focus on building a team of high-quality ethnic minority cadres who are loyal to the party and

³⁹ "Xi Speech Summary English Translation," *supra*.

⁴⁰ See, e.g., Kevin Yao, "What We Should Know About China's Dual Circulation Economic Strategy," Reuters (15 September 2020); available [<https://www.reuters.com/article/china-economy-transformation-explainer/what-we-know-about-chinas-dual-circulation-economic-strategy-idUSKBN2600B5>]; Wang Yuzhu, "The Dual Circulation Strategy," China-US Focus (27 October 2020); available [<https://www.chinausfocus.com/finance-economy/the-dual-circulation-strategy>].

⁴¹ "Xi Speech Summary English Translation," *supra*.

⁴² Cf., Aurélie Leclercq-Vandelannoitte, "Interrelationships of identity and technology in IT assimilation," *European Journal of Information Systems* 20(1):51-68 (2011); Michel Foucault, *The Punitive Society: Lectures at the Collège de France 1972-1973* (Graham Burchell (trans) Palgrave Macmillan, 2013).

possess both integrity and ability as an important task. It is necessary to establish a clear employment orientation, and to have full trust, firm solidarity, bold selection, and use of outstanding ethnic minority cadres who are politically strong and daring to assume responsibility. Outstanding performance can be directly promoted and used.⁴³

This acquires a regional character as well: "The Xinjiang Autonomous Region Party Committee is on the front line and must fulfill its main responsibilities and implement its work well. All provinces, autonomous regions and municipalities in the interior of China must do a good job in Xinjiang-related work and support Xinjiang's stability and development."⁴⁴

6. Lastly, it appears Xinjiang may serve as a testing ground for more advance big data social credit systems. Mr. Xi noted: "It is necessary to comprehensively form a social governance system featuring party committee leadership, government responsibility, social coordination, public participation, and rule of law guarantees, and create a social governance pattern featuring joint construction, co-governance and sharing." This is unlikely to happen without a tight network of social credit measures in place designed to reduce the assimilation expectations of the central authorities to measurable bits that can be data harvested, analyzed and then reduced to a rating that produces rewards or punishments in real time.

Nonetheless, this project is neither entirely internal, nor is it merely a reflection of external pressures. To some extent it suggests the trajectories of development of Marxist Leninist theory in the New Era as it relates to the contemporary management of a large and diverse nation. Those conversations necessarily center the Chinese characteristics of the governing ideology from out of which policy is developed, and so developed, engages in a dynamic conversation with theory. At the same time the conversations also must be undertaken with an eye to what lies beyond China, and what has been permitted to directly interact within the Chinese heartland and its peripheries. Yet this is a conversation with a different character. It is one in which China must justify, react, and to some extent adjust its internal apparatus to the realities of living with and engaging in the conversations of its peers and among the great stakeholders in the operation of global production. It is to that wrinkle--so critically important, that we turn to next.

B. Foreign Interventions at the Peripheries of the Chinese Heartland.

China's internal approach is not undertaken in isolation. Since Reform and Opening Up China has opened itself to the complex networks of global production. That has projected Chinese power, and its normative framework out along its Silk Roads. That going out has

⁴³ "Xi Speech Summary English Translation," supra.

⁴⁴ "Xi Speech Summary English Translation," supra-

projected both Chinese public and private power.⁴⁵ At the same time it has brought the world into China. That inward projection came with the decision to open Chinese territories to chains of global production with their leadership core in (mostly) liberal democratic states.

But that embedding within flows of economic activity has made inevitable a clash of normative frameworks through which such economic activity is rationalized and managed. That has produced increasing tensions between the United States and China. Even as the U.S. seeks to ensure that its normative values are projected into China through the enterprises that structure parts of their production chains in and through China,⁴⁶ China has also been more energetically resisting this inward projection while developing strategies of outward values projection itself.⁴⁷ This presents difficult challenges, especially for U.S. companies navigating the increasingly difficult currents of US, Chinese, and International soft law frameworks. "While the early years of developing consensus practices around supply chain human rights responsibilities had focused on the developing world, conflict and weak governance zones, it appears that such principles may be applied now to manage the supply chain practices of enterprises in all states."⁴⁸

Those currents have become far more difficult to manage, and the use of global supply chains as a regulatory object has complicated, the compliance and human rights calculus of companies engaging in work in China and with Chinese companies. But the de-coupling now moving into fuller gear, combined with the increasing popularity of targeted human rights and corruption sanctions as a regulatory tool,⁴⁹ has made

⁴⁵ See, e.g., Malcolm Warner, "On globalization 'with Chinese characteristics'?", *Asia Pacific Business Review* 23(3):309-316 (2017); Betty Feng Jing, Anne Liu Leigh, and Chunyan Jiang, "Parochialism and Implications for Chinese Firms' Globalization," *Management and Organization Review* 15(4):705-736 (2019).

⁴⁶ Barack H. Obama, et al., *Protecting U.S. Interests and Advancing American Values in Our Relationship With China*, Hampton Roads International Security Quarterly (15 January 2009), p. 2829 ("From Tibet to cracking down on democracy and religious freedom activists, China has failed to live up to international standards of human rights. Barack Obama and Joe Biden believe the United States has to be frank with the Chinese about such failings and will press them to respect human rights.").

⁴⁷ Wei Jingsheng, "Liu Xiaobo and China's Humiliation of Obama," *New Perspectives Quarterly* 27(2):13-14 (April 2010).

⁴⁸ Larry Catá Backer, "Human Rights Without Chinese Characteristics and Global Production Chains Within China," *Law at the End of the Day* (24 January 2019); available [https://lbackerblog.blogspot.com/2019/01/human-rights-without-chinese.html].

⁴⁹ See, e.g., Human Rights First, "Targeted Human Rights and Anti-Corruption Sanctions Resources; available [https://www.humanrightsfirst.org/topics/global-magnitsky/resources]; Ben Smith and Joanna Dawson, *Magnitsky Legislation*, Briefing Paper CVBP 8367 (UK House of Commons Library, 13 July 2020); available [https://researchbriefings.files.parliament.uk/documents/CBP-8374/CBP-8374.pdf]; U.S. Department of the Treasury, "Sanctions Programs and Country Information; available [https://home.treasury.gov/policy-issues/financial-

compliance decisions much more complex, the regulatory repercussions much more serious for non-Chinese enterprises whose production chains include work within China or with Chinese enterprises.

The effect is to augment enterprise responsibility to engage in robust human rights due diligence⁵⁰ compliance actions as part of their responsibility to respect human rights under the UN Guiding Principles for Business and Human Rights framework⁵¹ (augmented by an increasing number of diligence mandates in the UK,⁵² France,⁵³ Australia,⁵⁴ Germany,⁵⁵ and other places⁵⁶ respecting specific human rights harms), by adding a layer of mandatory sanctions based due diligence based on targeted sanctions produced by administrative

sanctions/sanctions-programs-and-country-information] (Chinese Military Companies Sanctions and Global Magnitsky Sanctions).

⁵⁰ See, Shift, UN Guiding Principles Reporting Framework, “Human Rights Due Diligence,” available [https://www.ungpreporting.org/glossary/human-rights-due-diligence/] last accessed 31 December 2021 (“An ongoing risk management process that a reasonable and prudent company needs to follow in order to identify, prevent, mitigate and account for how it addresses its adverse human rights impacts. It includes four key steps: assessing actual and potential human rights impacts; integrating and acting on the findings; tracking responses; and communicating about how impacts are addressed.”).

⁵¹ United Nations, U.N. Guiding Principles for Business and Human Rights (New York and Geneva 2011); available [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf]. The UNGP were endorsed unanimously by the UN Human Rights Council in 2011 and have become the central element in discussion around issues of business and human rights. It’s so-called 2nd Pillar (corporate responsibility to respect human rights) elaborates a system of markets driven systems for compliance grounded in the human rights framework developed with its center in the International Bill of Human Rights.

⁵² UK Modern Slavery Act of 2015; available [https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted].

⁵³ “France: Natl. Assembly adopts law imposing due diligence on multinationals to prevent serious human rights abuses in supply chains,” Business and Human Rights Resource Centre; available [https://www.business-humanrights.org/en/latest-news/france-natl-assembly-adopts-law-imposing-due-diligence-on-multinationals-to-prevent-serious-human-rights-abuses-in-supply-chains/] (last visited 30 December 2021).

⁵⁴ Australia, Modern Slavery Act of 2018 No. 153; available [https://www.legislation.gov.au/Details/C2018A00153] (last accessed 29 December 2021).

⁵⁵ Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten Vom 16. Juli 2021; available [https://perma.cc/8JUX-ET2Q]. Explained in English in “Germany: New Law Obligates Companies to Establish Due Diligence Procedures in Global Supply Chains to Safeguard Human Rights and the Environment,” Library of Congress (17 August 2021); available [https://www.loc.gov/item/global-legal-monitor/2021-08-17/germany-new-law-obligates-companies-to-establish-due-diligence-procedures-in-global-supply-chains-to-safeguard-human-rights-and-the-environment/]

⁵⁶ The European Union is currently considering a supply chain due diligence law grounded in the transnational enforcement of international human rights standards. See, e.g., Ruth Seltzer, “The EU’s new supply chain law – what you should know,” AEB (22 July 2021); available [https://www.aeb.com/intl-en/magazine/articles/eu-supply-chain-law.php].

officials under an authority delegated to them by national legal schemes designed to achieve specific normative objectives.

In the last several years, these incompatible trajectories have coalesced within the Chinese periphery. In particular, Xinjiang has proven to be both a test of China's internal policies--and of the effectiveness of the implementation of the CPC Party Line in accordance with its spirit--but also of the project of human rights internationalism driven by the evolving system of international law and norms developed mostly through the U.N. system. The United States has been at the vanguard of Western efforts to characterize Chinese policies in Xinjiang as incompatible with Western (and international) principles, not the least of which are human rights principles.

In this context, the U.S. Congressional Executive Commission on China has played an outsize role. In the process they have participated in the development of an interesting set of technologies--of the interlinking of public and private, and of hard and soft law measures--as a means of pressuring China directly as well as indirectly through its influence on U.S. connected global production chains. Now, it appears, others in the Western camp are beginning to align with American policy in the operation of their global production chains, especially, when they transact the Xinjiang region. There have been two principal vectors for Western financial pressure--both contemporary examples of societal 2nd Pillar exercises of corporate responsibility to respect human rights autonomous (though not unconnected with) of states.

The first had its genesis in the role of non-governmental organizations and their role of monitoring of enterprises (against the standards of human rights principles as they envision them) and transparency (in the form of reporting to inform enterprise, consumer, and investor decision making in markets). In March 2020, the Australian Strategic Policy Institute (ASPI) identified 83 foreign and Chinese companies directly or indirectly benefiting from the use of Uighur workers outside Xinjiang through what they described as potentially abusive labor transfer programs.⁵⁷ The Report suggested that

The Chinese government has facilitated the mass transfer of Uyghur and other ethnic minority¹ citizens from the far west region of Xinjiang to factories across the country. Under conditions that strongly suggest forced labour, Uyghurs are working in factories that are in the supply chains of at least 83 well-known global brands in the technology, clothing and

⁵⁷ Vicky Xiuzhong Xu et al., Uyghurs for sale: 'Re-education', forced labour and surveillance beyond Xinjiang (The Australian Strategic Policy Institute Limited Policy Brief Report No. 26/2020; available [<https://www.aspi.org.au/report/uyghurs-sale>].

automotive sectors, including Apple, BMW, Gap, Huawei, Nike, Samsung, Sony and Volkswagen.⁵⁸

Now the Swedish company Hennes & Mauritz AB (H&M) has issued a statement declaring that "it was halting transactions with a Chinese yarn producer that owns the factory where Uighurs are allegedly being forced to work. The company also said it will no longer procure cotton from China's Xinjiang Uygur Autonomous Region."⁵⁹ The action was interesting in at least one respect:

A report by the Australian Strategic Policy Institute think tank, published in March, pointed to H&M as one of the beneficiaries of a forced labor transfer program through their relationship with the dyed yarn producer Huaifu Fashion Co's (華孚時尚) factory in Anhui Province. However, H&M said in a statement that it had never had a relationship with the factory in Anhui, nor Huaifu's operations in Xinjiang.⁶⁰

While the effects may be slow, they are appearing to be gaining some momentum--something that ought to concern Chinese officials tasked with meeting these accusations, and western enterprises, responsible for mitigating human rights risk in the face of accusations such as these. This state of affairs if allowed to continue without response may well threaten China's objectives for its Belt & Road Initiative as well as push forward and globalize the disentanglement strategy pursued by the US in which western enterprises are being guided to shift their production chains out of China.

The second touches on the role of state and state related financial institutions in furthering international human rights objectives consonant with national policy applied through their commercial or financial activities in (in this case investment) markets. The Norwegian Pension Fund Global is an important international actor in this area.⁶¹ The Pension Fund Global has turned its attention to enterprises

⁵⁸ Ibid., p.3.

⁵⁹ AFP News Service, "H&M cuts ties with Chinese supplier over accusations of 'forced labour'," Hong Kong Free Press (16 September 2020); available [<https://hongkongfp.com/2020/09/16/hm-cuts-ties-with-chinese-supplier-over-accusations-of-forced-labour/>].

⁶⁰ "H&M Cuts Ties to Chinese Supplier," Taipei Times (17 September 2020); available [<https://www.taipeitimes.com/News/biz/archives/2020/09/17/200374354>] ("H&M did concede that it has an "indirect business relationship with one mill" in Shangyu in Zhejiang Province, belonging to Huaifu. "While there are no indications for forced labor in the Shangyu mill, we have decided to, until we get more clarity around allegations of forced labor, phase out our indirect business relationship with Huaifu Fashion Co, regardless of unit and province, within the next 12 months," H&M said" Ibid.).

⁶¹ Discussed in Larry Catá Backer, "Sovereign Investing and Markets-Based Transnational Rule of Law Building: The Norwegian Sovereign Wealth Fund in Global Markets." *American University International Law Review* 29(1): 1-122 (2013).

which may contribute to the human rights violations of others, including states. The Pension Fund Global's action must be understood within a broader European context, one driven, to some extent, by the work of influential global NGOs. These have targeted European companies in their role as overseers of the norms of global production (though not the masters of the development of those norms--a task left to public bodies).⁶²

The particular target in this case was Hikvision Digital Technology Company, a Chinese enterprises with global operations, one which generates ESG reports and other relevant documents. In a press release⁶³ the Pension Fund Global announced its recommendation that Hikvision be excluded from its investment universe. "The recommendation concerns Hikvision's role in the mass surveillance of the population in the Xinjiang region of China."⁶⁴ The recommendation was meant to signify more than to cause direct effect--that is, the recommendation was meant to be projected as an intervention in regulatory space about the relationship between international standards and (in this case Chinese) companies.⁶⁵

Unlike the direct relationship of alleged human rights harms within a supply chain, the Pension Fund Global targeted those who make that harm possible or contribute to its maintenance. In this case, the Norwegian SWF examined the complicity of those who make state and private surveillance possible. The case is interesting not just in the narrow context of the situation in Xinjiang, but also with respect to the parameters within which western enterprises (and the states within which they operate) may also set up systems for the surveillance and data

⁶² (see, e.g., Amnesty International, *Out of Control: Failing EU Laws for Digital Surveillance Exports* (2020); available [https://www.amnesty.org/en/documents/EUR01/2556/2020/en/]. In the Press Release announcing the Report, it was noted: "Europe's biometric surveillance industry is out of control. Our revelations of sales to Chinese security agencies and research institutions that support them are just the tip of the iceberg of a multi-billion Euro industry that is flourishing by selling its wares to human rights abusers, with few safeguards against end-use abuses," said Merel Koning, Senior Policy Officer, Technology and Human Rights at Amnesty International." Amnesty International, Press Release: EU companies selling surveillance tools to China's human rights abusers (21 September 2020); available [https://www.amnesty.org/en/latest/news/2020/09/eu-surveillance-sales-china-human-rights-abusers/].

⁶³ Norway, Council on Ethics, Press Release: Hangzhou Hikvision Digital Technology Co Ltd (18. September 2020); available [https://etikkradet.no/hangzhou-hikvision-digital-technology-co-ltd-2/]. The text of the recommendation is available [https://files.nettsteder.regjeringen.no/wpuploads01/blogs.dir/275/files/2020/09/Hikvision-Recommendation-English.pdf].

⁶⁴ Ibid.

⁶⁵ Ibid. "On 11 September 2020, the Council received a letter from Norges Bank stating that the Bank will not process the recommendation because the company is no longer in the Fund's portfolio. The Council therefore decided to withdraw its recommendation on 15 September 2020."

harvesting of individuals, institutions and others. It is a pity that the Pension Fund Global will likely not venture too far in that direction.

The notice and the action were odd, in the sense of representing a somewhat unusual chain of decisions. The most critical aspect of that chain appears to have been the proactive elimination of the potentially offending company from the SWF's investment portfolio. The decision, however, is still potentially useful as a warning. Here that warning goes to the reception of Chinese companies outside of China in the context of allegations of human rights abuses within China.

Taken together, the actions suggest a two prong strategy, in the private (markets driven) management of human rights harms in the context of confronting systems whose own approach to human rights may be incompatible with those who would hold those actors to account by their own standards. The first targets outside (foreign) companies doing business in the territory and in the context in which harm is alleged internally. The second is to make it more difficult for Chinese enterprises to access capital (or at least to seek to raise the cost of capital) where Chinese companies seek investment outside of their home territory and financial institutions. In a sense the markets driven strategy provides a more effective means of surrounding China, and at less expense, than any traditional effort of political containment. But one ought to be prepared for countermeasures as well.

The US has emerged at the forefront of this movement. The target has been the Uighur population of the People's Republic of China whose treatment has been increasingly criticized by American officials, including especially starting in its current phase during the Trump Administration through the influential CECC⁶⁶ and civil society groups. In July 2020, the US Commerce Department

added to its economic blacklist 11 Chinese companies implicated in what it called human rights violations in connection with China's treatment of Uighurs in Xinjiang. The department said the companies were involved in using forced labor by Uighurs and other Muslim minority groups. They include numerous textile companies and two firms the government said were conducting genetic analyses used to further the repression of Uighurs and other Muslim minorities. * * * It was the third group of companies and institutions in China added to the US blacklist, after two rounds in which the Trump administration cited 37 entities it said were involved in China's repression in Xinjiang.⁶⁷

⁶⁶ Congressional Executive Commission on China, "Forced Labor, Mass Internment, and Social Control in Xinjiang (17 October 2019);available [https://www.cecc.gov/events/hearings/forced-labor-mass-internment-and-social-control-in-xinjiang].

⁶⁷ See, e.g., "US adds 11 companies to economic blacklist over China's treatment of Uighurs," CAN via AFP/Reuters (21 July 2020);available

This came days after the US Attorney General criticized some of the more influential US companies by name, in the tech and entertainment fields, for serving as the American face of the "black hand" of Chinese interference in the American homeland.⁶⁸ China had earlier announced retaliatory measures against US elected officials.

The trajectories have only intensified in the first years of the Biden Administration. That was made clear very early in his administration during the course of what turned out to be a quite contentious meeting of senior Chinese and U.S. officials.⁶⁹ Two giants peering across a wall into each other's back yards. For the U.S. the Chinese peripheries are not merely sites of domestic concerns, but places that affect and thus must be judged against, the expectations of the (foreign) international order. "We'll also discuss our deep concerns with actions by China, including in Xinjiang, Hong Kong, Taiwan, cyber-attacks on the United States, and economic coercion toward our allies. Each of these actions threaten the rules-based order that maintains global stability. That's why they're not merely internal matters and why we feel an obligation to raise these issues here today."⁷⁰ The Chinese position was clear as well. There was neither any room for the injection of international norms within the Chinese heartland or its peripheries, and the United States was in no position to champion them.⁷¹

[<https://www.channelnewsasia.com/world/us-china-blacklist-more-firms-sanctions-xinjiang-uyghurs-707466>].

⁶⁸ Amanda Macias and Lauren Feiner, "AG Barr slams U.S. tech companies for becoming 'pawns of Chinese influence'," CNBC (16 July 2020); available [<https://www.cnbc.com/2020/07/16/barr-slams-us-tech-for-becoming-pawns-of-chinese-influence.html>].

⁶⁹ "Secretary Antony J. Blinken, National Security Advisor Jake Sullivan, Chinese Communist Party foreign affairs chief Yang Jiechi And State Councilor Wang At the Top of Their Meeting," U.S. Department of State (transcript of remarks of a meeting 18 March 2021 at Anchorage, Alaska); available [<https://www.state.gov/secretary-antony-j-blinken-national-security-advisor-jake-sullivan-chinese-director-of-the-office-of-the-central-commission-for-foreign-affairs-yang-jiechi-and-chinese-state-councilor-wang-yi-at-th/>] (hereafter "Alaska Meeting").

⁷⁰ Anchorage Meeting, *supra* (quoting Secretary Blinken).

⁷¹ *Ibid.*

On human rights, we hope that the United States will do better on human rights. China has made steady progress in human rights and the fact is that there are many problems within the United States regarding human rights, which is admitted by the U.S. itself as well. The United States has also said that countries can't rely on force in today's world to resolve the challenges we face. And it is a failure to use various means to topple the so-called "authoritarian" states. And the challenges facing the United States in human rights are deep-seated. They did not just emerge over the past four years, such as Black Lives Matter. It did not come up only recently. So we do hope that for our two countries, it's important that we manage our respective affairs well instead of deflecting the blame on somebody else in this world. (Quoting Chinese Communist Party foreign affairs Director Yang Jiechi).

The ideological positions taken--the aggressions and defenses were then quickly transposed into policy affecting economic and political relations. In the United States that translated into the centering of the religious dimension of Chinese policies in Xinjiang.⁷² At the center of these efforts were the development of public law that is meant to build a wall between liberal democratic economic activity and the objects of Chinese policies in Xinjiang. The centerpiece is the Uyghur Forced Labor Prevention Act.⁷³ Signed into law by President Biden on 23 December 2021.⁷⁴ The Act bans identified imports from the Xinjiang Uyghur Autonomous Region, and imposes sanctions on foreign individuals responsible for forced labor in the region. The Act, then, in effect, targets market actors for their complicity and directly penalizes Chinese actors for the implementation of Chinese state policy. It includes lists of entities in Xinjiang identified as connected with forced labor policies the discouragement of which is the object of the Act and against complicit foreign entities.

The object is identity perhaps more than religion, but in the United States and other places, the two cannot be distinguished to any useful effect. The CECC Report heightened their focus on the restrictions on Islam among Hui Muslim individuals and communities which are viewed as aligning with restrictions experienced by Uyghurs and other Muslim

⁷² Congressional-Executive Commission on China, Hui Muslims and the “Xinjiang Model” of State Suppression of Religion (March 2021); available [https://www.cecc.gov/sites/chinacommission.house.gov/files/documents/CECC%20Staff%20Report%20Hui%20Muslims%20and%20the%20Xinjiang%20Model%202021-03-26_FINAL.pdf].

⁷³ Uyghur Forced Labor Prevention Act (“To ensure that goods made with forced labor in the Xinjiang Uyghur Autonomous Region of the People's Republic of China do not enter the United States market, and for other purposes,;” PL 117-78; H.R. 6256); available [https://www.congress.gov/bill/117th-congress/house-bill/6256]. The Act is discussed in greater detail infra in connection with the efforts of the Congressional Executive Joint Commission on China.

The official summary notes its policy focus:

The Forced Labor Enforcement Task Force shall report to Congress a strategy for preventing the importation of goods produced in China using forced labor. The strategy must contain certain information, including a list of entities (1) producing goods in Xinjiang using forced labor; or (2) working with the government in Xinjiang to move forced labor or Uyghurs, Kazakhs, Kyrgyz, or members of other persecuted groups out of Xinjiang. The U.S. Customs and Border Protection shall generally presume that goods produced by these entities and certain other entities, including those sourcing material from Xinjiang or involved with Chinese government forced labor programs, are barred from importation into the United States. An importer may rebut this presumption by establishing, with clear and convincing evidence, that the good in question was not produced wholly or in part using forced labor. The bill also expands existing asset- and visa-blocking sanctions related to Xinjiang to cover foreign individuals and entities responsible for serious human rights abuses in connection with forced labor. (Ibid).

⁷⁴ White House Press Release: Bill Signed: H.R. 6256 (Briefing Room (23 December 2021)); available [https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/23/bill-signed-h-r-6256/].

minorities in the Xinjiang Uyghur Autonomous Region (XUAR). Thus a move from ethnic to religious focus as a potentially challenging collectivization beyond the authority of the political vanguard. The Report noted that in addition to being detained along with Uyghurs, Kazakhs, Kyrgyz, and others in the XUAR's mass internment camps, Hui Muslims are subject to what some have called the "Xinjiang Model" of intrusive and repressive religious policies. This policy shift is due in part to Chinese officials' conflation of Islamic identity and extremism and the Chinese government's campaign to "Sinicize" Islam, and by doing so to strip it its foreign element.⁷⁵

Indeed, Xinjiang provides an excellent context in which dominant elements of the US core of leadership can develop a potentially discourse on rights that distinguish the US variant of the liberal democratic system, plugged into the international human rights project mostly situated within the UN's special procedures apparatus (but distinct from it),⁷⁶ from the Chinese Marxist Leninist variation exemplified by Chinese policy in Xinjiang. It also provides a basis for meaning making that adds a layer of judgment about the meaning of that policy and the signification of its implementation on the ground that sharpens the distinctions between liberal democratic and Marxist Leninist approaches to rights, the authority of states, and the scope political interactions with ethnic and socio-cultural communities.

But part of the difference in approaches touches on the relationship between markets and the state apparatus. That difference can be exploited by key actors within liberal democratic orders. This is especially possible in the context of the application of global principles of human rights (as developed through the UN apparatus at least), the distinction between the governance of the *societal sphere* (markets based and structured through private law arrangements), and the *governmental or political sphere* (the sphere of governmental authority grounded in political authority and expressed through traditional law and rulemaking by elected officials, courts and the administrative apparatus of states interlinked with their regional and international apparatus). The operative structures of this interlinkage and its strategic connections were nicely developed (through underappreciated by liberal democratic actors who championed the privilege of one or the other of these two

⁷⁵ Ibid., ("Reports have also indicated the rise of Salafism, an ultra-conservative Sunni sect, in both the Hui and Uyghur Muslim communities, and described government actions to limit the growth of Salafism in China due to concerns over its alleged ties to extremism. . . . Chinese government has called on Muslims throughout China to promote "sinicization" and resist the "Arabization," "Saudization," and the "generalization of halal" in their communities.)Ibid, pp. 6-7).

⁷⁶ Ingrid Nifosi, "The UN Special Procedures in the field of human rights. Institutional history, practice and conceptual framework," *Duesto Journal of Human Rights* 2:131-178 (2005); Philip Alston, Jason Morgan-Foster, William Abresch, "The Competence of the UN Human Rights Council and its Special Procedures in relation to Armed Conflicts: Extrajudicial Executions in the 'War on Terror',"19(1):183-209 (2008).

spheres) in mechanisms like the *UN Guiding Principles for Business and Human Rights*.⁷⁷

It appears, however, that elements of the CECC have begun to understand how one might engage these dual levers to project power across borders and to strengthen (and discipline) a specific norm enhancing narrative that aligns with national policy (and presumably national political and normative values). To that then, the leadership of the CECC has recently engaged in a two track approach to projecting power and asserting pressure against Chinese policy and policy implementation in Xinjiang. The first track seeks to affect the societal sphere by putting pressure on market actors to evidence fidelity to national (and perhaps international) human rights values in accordance with a specific application, in their market transactions. In this case CECC chose a high value target-- the endorsement deals of NBA players that are deemed to enhance the ability of Chinese authorities to continue to augment their implementation of what to the US are objectionable policies in Xinjiang. The mechanics are societal. CECC produced a "noisy" and much publicized letter to the National Basketball Association, which was then widely reported through key press organs in the United States.⁷⁸

Simultaneously, in a second track, CECC's leaders sought to enhance the public law foundation of private sector markets driven nudging. To that end they introduced legislation, the *Uyghur Forced Labor Prevention Act*,⁷⁹ a version of which was signed into law in December 2021 by President Biden.⁸⁰ It does two things. First it serves to develop an authoritative narrative embedded in law (through the preamble and its findings). This is a tactic that has become quite important in the way that the US legislature seeks to develop authoritative signification, that is the way that an authoritative interpretation of facts is developed by the political authorities in the United States.⁸¹ Second, it serves to enhance a legal framework for decoupling trade that is connected to "all goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang [SAR], or by persons working with the Xinjiang [SAR]

⁷⁷ United Nations, *Guiding Principles for Business and Human Rights* (NY and Geneva, 2022).

⁷⁸ See, e.g., David Brunnstrom and Michael Martina, "NBA Stars Urged to End China Endorsements Over Forced Labor," U.S. News & World Report (via Reuters) (1 June 2021); available [https://money.usnews.com/investing/news/articles/2021-06-01/nba-stars-urged-to-china-endorsements-warned-over-forced-labor]; Robert Delaney, "NBA stars pressed to end China sportswear endorsements over Xinjiang," South China Morning Post (2 June 2021); available [https://www.scmp.com/news/china/diplomacy/article/3135698/nba-stars-pressured-end-china-sportswear-endorsements-over].

⁷⁹ Uyghur Forced Labor Prevention Act (UFLPA) HR 1155 (117th Cong. 1st Sess. 2021); available [https://www.congress.gov/117/bills/hr1155/BILLS-117hr1155ih.pdf]

⁸⁰ Discussed above and passed as HR 6256.

⁸¹ UFLPA § 2 (Findings); § 1 as finally enacted.

government."⁸² This is to be undertaken in a coordinated way with the principal partners of the US.⁸³ This is combined with a mandate to the administrative apparatus of state to develop and report to Congress on a strategy for meeting legislative objectives.⁸⁴

Most interesting is § 6 of the UFLPA, which seeks to tie U.S. policy (and the principles underlying them) to the core premises of international (criminal) law. It directs the US Secretary of State to "determine if the practice of forced labor or other crimes against Uyghurs, Kazakhs, Kyrgyz, and members of other Muslim minority groups in Xinjiang Uyghur Autonomous Region of China can be considered systematic and widespread and therefore constitutes crimes against humanity or constitutes genocide as defined in subsection (a) of section 1091 of title 18, United States Code", ⁸⁵ and then to reach out to international organs and allies as well as with non-governmental organizations.⁸⁶ And, of course, at the end of all of this is the embedding of the findings and actions within the increasingly important system of targeted sanctions overseen by the government⁸⁷ as well as to enhance the markets effects of disclosure of business dealings for the protection of investors.⁸⁸ As finally enacted there is as well a formal alignment of private efforts (through supply chain due diligence guidance) and the legal proscriptions in the Act.⁸⁹

And these nicely frame the implementation of the two thrust policy in the context of Xinjiang. *Besiege Wèi to rescue Zhào* (圍魏救趙, Wéi Wèi jiù Zhào).⁹⁰ This was the core (perhaps inadvertently stumbled

⁸² UFLPA § 4(a). As finally enacted §3(a) empowers the Customs Commissioner to "apply a presumption that, with respect to any goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region of the People's Republic of China or produced by an entity on a list required by clause (i), (ii), (iv) or (v) of section 2(d)(2)(B)-- (1) the importation of such goods, wares, articles, and merchandise is prohibited under section 307 of the Tariff Act of 1930 (19 U.S.C. 1307); and (2) such goods, wares, articles, and merchandise are not entitled to entry at any of the ports of the United States".

⁸³ UFLPA §§3(2), (3); as enacted in §4(b)(2), (3).

⁸⁴ Ibid., §5; as enacted in §2(c).

⁸⁵ UFLPA §6 (a)(1); as substantially amended to include only reference to human rights violations generally in §4(b).

⁸⁶ UFLPA § 7.

⁸⁷ UFLPA § 8.

⁸⁸ UFLPA § 9; these mirror disclosures already emerging in areas such as modern slavery acts in other states.

⁸⁹ As enacted, the measure includes a direction to produce a "A plan for working with private sector entities seeking to conduct supply chain due diligence to prevent the importation of goods mined, produced, or manufactured wholly or in part with forced labor into the United States." PL 117-78, *supra*, §4(c)(2).

⁹⁰ *Besiege Wèi to rescue Zhào* (圍魏救趙, Wéi Wèi jiù Zhào) (三十六計) (Stefan H. Verstappen, *Thirty Six Strategies* (1999); *Stratagem No. 2*, p. 11))

Duke Wen of Qin had decided to invade Wei, so he called in the feudal nobles to lay out his plans for attack. However, he was interrupted by the laughter coming from one of the nobles named Kong Zichu. "May I ask the source of your amusement?" asked the duke. "I was laughing

upon) strategy carried over from the Trump Administration. What makes it potentially far more effective is the mechanisms for its operationalization--the coordinated application of administrative (legal) and societal (market) measures that strikes at a discursive (at least externally) weak point. Both are used to draw normative distinctions between systems--to emphasize their irreconcilable differences on normative grounds, and to pressure choices among stakeholders to choose sides. Where between the late 1990s and 2016 the effort had been to overcome difference on both sides, the move since 2016 appears now clear--to emphasize difference and to use that difference strategically to constitute and empower global spheres within which either of the two camps can serve as the center.

The Americans are appearing to be striking where China is most vulnerable (China's economic engagement in global production--the spouse who is left to be pursued by a lover after her husband leaves in the "besiege Wei to rescue Zhao stratagem)) at the moment when China sought to pursue a set of very pretty objects of desire (the maiden gathering mulberry leaves in the form of Chinese internationalism and discursive dominance). But in this strategy the incentives on both sides is a further decoupling and a greater precision in the definition of the borders between the two imperial systems--the borders of which will be marked by control of global chains of production rather than by the now antiquated markers of empire (race, territory, physical control, etc.). Understood in this way, and combined with the other activities of the US referenced before, Xinjian now serves as the great markers of the wall of separation that is more visibly being built. At the same time it suggests the resilience both of US normative counter strategies against the remarkable development of Chinese normative internationalism and its projection through the Belt & Road Initiative.

And that leads to the framing of the contemporary lens through which the United States situates both China and the application to its interior the exterior structures of global norms. In an age of pandemic, the most appealing metaphors are viral. This is certainly what the Congressional-Executive Commission on China appears to believe, at least what may be driving its hearings: *Techno-Authoritarianism: Platform for Repression in China and Abroad*.⁹¹ The announcement of the hearing says it all.

Techno-authoritarianism poses a serious threat to traditional

at a man in my neighborhood and some gossip I heard," replied Kong. "It seems one day he was walking home with his wife when he spotted a lovely maiden gathering mulberry leaves by the roadside. No sooner did he escape his wife to go flirt with the girl when, upon turning around, he saw another man making love to his wife. I was just thinking about the story and I couldn't help but laugh. (Ibid., p. 14).)

⁹¹ Congressional Executive Commission on China, Event: "Techno-Authoritarianism: Platform for Repression in China and Abroad," (17 November 2021); available [<https://www.cecc.gov/events/hearings/techno-authoritarianism-platform-for-repression-in-china-and-abroad>].

notions of privacy, democratic governance models globally, and the future of an open and free internet. The Chinese government's embrace of mass biometric collection technologies underpins the most pervasive surveillance state the world has ever seen. The Chinese model of extensive censorship and surveillance continues to spread to governments with poor human rights records that repress and control populations through technology made in China.⁹²

This hearing were meant to cast a very public light on the human rights and strategic impact of the technology of mass surveillance and censorship as employed and exported by the People's Republic of China, including its use in the Xinjiang SAR and efforts to influence and shape digital and telecommunications rulemaking and standard setting in international bodies. The thrust of the program was quite clear.

First, Chinese approaches to state coordinated or directly undertaken surveillance are incompatible with at least the principles of liberal democratic constitutionalism. *Second*, the Chinese approach, like COVID, cannot be contained within China (note this undertone which is unmistakable and quite brilliantly used here); this COVID type virus creating a political pandemic is labelled "techno-authoritarianism." *Third* Techno-authoritarianism is strong enough and alluring enough to threaten the (delicate) health of global (and within liberal democracy more or less traditional) notions of privacy, democratic governance and an open and free internet. Successful attacks on these three elements of liberal democracy will either weaken or kill its spirit, leaving its body to be re-animated by the demon possessor of techno-authoritarianism. *Fourth*, this powerful virus has a well-known DNA: (mass bio metric collection technologies underpinning a comprehensive system of surveillance and censorship). *Fifth*, the virus is particularly potent in governmental bodies with weakened immune systems--governments in conflict zones and governments in weak governance zones. *Sixth*, in the absence of a vaccine against techno-authoritarianism the COVID protocols of containment, safe distancing, mask wearing and constant hand washing would be necessary, now applied to the virus corrupting the normative basis of healthy government. *Seventh*, it is to that task that our front line workers--the great liberal democratic vanguard must both better understand the disease, and better protect the community of nations from its ravages.

⁹² Ibid (event summary statement). The hearing was livestreamed and recorded to the CECC's YouTube Channel; available [https://www.youtube.com/channel/UCRAT_7MlzUoIORIjhYBTzHA]. Witnesses included Geoffrey Cain, author of *The Perfect Police State: An Undercover Odyssey into China's Terrifying Surveillance Dystopia of the Future*; Samantha Hoffman, Senior Analyst, Australian Strategic Policy Institute; Yaqiu Wang, Senior Researcher on China, Human Rights Watch; and Jonathan Hillman, Senior Fellow, Center for Strategic & International Studies. Their statements may also be accessed.

From a discursive perspective, this is an excellent approach to putting forward the political project of the United States and its internationalist project. In a way that parallels the ambitions and perhaps the operationalization of the Chinese Marxist Leninist International project delivered through the bacillus of the Belt & Road Initiative, the United States has not been shy about announcing its now more global friendly America First policy vaccine: The "Biden-Harris Administration has made clear that revitalizing democracy in the United States and around the world is essential to delivering for the American people and meeting the unprecedented challenges of our time. As President Biden has said, defending America's democratic values is inseparable from advancing our national interest."⁹³

In its form as Liberal Democratic internationalism, with the United States as its core of leadership, the U.S. would again assume its global leadership role, even if, as is becoming clear, it is over a quite distinct imperial jurisdiction that exists beyond the reach of the emerging Marxist Leninist imperial project of the Chinese state organs and its vanguard.⁹⁴ That project requires sharpening difference (liberal democratic normative values versus Chinese techno-authoritarianism) as much as it suggests the need for a theory of difference (supplied certainly by academics on both sides of the border) in the form of (liberal democratic) theories of "authoritarian constitutionalism"⁹⁵ and its judgment of illegitimacy at least from the perspective of liberal democratic constitutionalism). It is no surprise, then, that in the run up to the December 2021 Democracy Summit hosted by the United States, its apparatus, including CECC would focus on distinguishing the higher order values of liberal democracy from what it sees as the threatening characteristics of a coherent competing system. In this case that centers on notions of authoritarianism (for which the CECC hearing add a useful element) to corruption, to the respect for human rights understood from a liberal democratic orientation.⁹⁶

⁹³ US Dept of State Summit for Democracy (Washington, D.C., 9-10 December 2021); available [https://www.state.gov/summit-for-democracy/] ("Democracy doesn't happen by accident. We have to defend it, fight for it, strengthen it, renew it." Ibid., Quoting President Biden Feb 2021))

⁹⁴ Larry Catá Backer, *The Problem of Data Infrastructure in an Age of Post-Global Empire--The Criminal Litigation Against Huawei for Racketeering and Other Crimes*, Law at the End of the Day 13 February 2020); available [https://lcbackerblog.blogspot.com/2020/02/the-problem-of-data-infrastructure-in.html].

⁹⁵ See, e.g., Roberto Niembro Ortega, "Conceptualizing Authoritarian Constitutionalism," *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* 49(4):339-367 (2016); Helena Alviar García, *Sciences Po, France and Günter Frankenberg* (eds.), *Authoritarian Constitutionalism* (Edward Elgar, 2019); Mark Tushnet, "Authoritarian Constitutionalism," *Cornell L. Rev.* 1000:391 (2015); Günter Frankenberg, "Authoritarian Constitutionalism – Coming to Terms with Modernity's Dreams and Demons," *Goethe Universität Faculty of Law Research Paper No. 3/2018*; available [https://d-nb.info/1156326621/34].

⁹⁶ Summit for Democracy Summary of Proceedings (23 December 2021) Statements and Releases; available [https://www.whitehouse.gov/briefing-

And yet these differences are much more blurred, and it is not clear that the liberal democratic system itself has not already developing a means of living with very similar viruses of a liberal democratic sort. And the liberal democratic virus is as much a threat to it as the virus of techno-authoritarianism as the other way around. What connects them are the techniques of viral infection--or at least the characterization of the techniques as infectious.

The scope of these techniques are already becoming clear. It is the difference in their application that makes all the difference. Western biometric surveillance is not unknown.⁹⁷ Nor is privatized surveillance foreign to the management of populations in public-private alignments.⁹⁸ Techno-control based on data and the protection and ideologies of its integrity⁹⁹ for the project of governance appears to know no ideology.¹⁰⁰ And crisis appears to make authoritarians of us all.¹⁰¹ To the grand hierarchies of public sector driven techno-authoritarianism, liberal democracy offers the banality of techno-control that appears both natural and client driven¹⁰² with an overlay of management by the

room/statements-releases/2021/12/23/summit-for-democracy-summary-of-proceedings/] ["leaders from 100 governments announced a wide range of commitments and pledges in support of democratic renewal centered on the Summit's three themes of: (1) strengthening democracy and defending against authoritarianism; (2) fighting corruption; and (3) promoting respect for human rights."].

⁹⁷ See, Larry Catá Backer, *Automated Law-- Microsoft 's "Insight Computing System,' the Power to Manage Labor, and the Intimacy of Emerging Regulatory Forms, Law at the End of the Day* (1 December 2020); available [https://lcbackerblog.blogspot.com/2020/12/automated-law-microsoft-s-insight.html].

⁹⁸ See, Larry Catá Backer, *Automated Law--Questions and Answers on Data Driven AI Enhanced Governance and the Emerging Instruments of Social Control, Law at the End of the Day* (4 February 2020); available [https://lcbackerblog.blogspot.com/2020/02/automated-law-questions-and-answers-on.html].

⁹⁹ See, Larry Catá Backer, *Automated Law: The Problem of Data Integrity Moves (if only for a Moment) to Center Stage, Law at the End of the Day* (11 February 2020); available [https://lcbackerblog.blogspot.com/2020/02/automated-law-problem-of-data-integrity.html].

¹⁰⁰ See, Larry Catá Backer, *Automated Law: The Problem of Data Integrity Moves (if only for a Moment) to Center Stage, Law at the End of the Day* (11 February 2020); available [https://lcbackerblog.blogspot.com/2020/02/automated-law-problem-of-data-integrity.html].

¹⁰¹ See, Larry Catá Backer, *Automated Law and COVID-19: Data Driven Measures With National Characteristics In China and Israel and the Future of the Law-Governance Complex, Law at the End of the Day* (24 March 2020); available [https://lcbackerblog.blogspot.com/2020/03/automated-law-and-covid-19-data-driven.html].

¹⁰² See, Larry Catá Backer, *Automated Law: The Banalities of Constructing a Social Credit Style Rating System with Western Characteristics, One Well Meaning Intervention at a Time, Law at the End of the Day* (23 February 2020); available [https://lcbackerblog.blogspot.com/2020/02/automated-law-banalities-of.html].

state.¹⁰³ At bottom, whatever the character of society's normative master and whatever the elegance of the systems put in place to align norm with the seamless techniques of internalized control with external disciplinary measures, the fundamental issue of control, and of its power, remains a political and ultimately a systemically fundamental problem.¹⁰⁴

The real fear, then, may be of convergence¹⁰⁵--one that would neither serve the interests of liberal democracy nor of Marxist Leninist internationalists in their drive for empire.¹⁰⁶ Or perhaps better put--the contests to which CECC (and its Chinese analogues) expend so much energy may in the end be irrelevant to the trajectories of power and its mechanisms.¹⁰⁷ "This is fertile ground for the development of a new form of law making, that is for the emergence of automated law. This form seamlessly fuses the normative objective with consequences built around measurable success in meeting those objectives."¹⁰⁸ The management of heartland and periphery, then, becomes to some extent fractured and reconstituted along the lines of global production, and within those eddies of spaces that remain untouched by these flows. Within those streams of governance--some open to the outside and some less so--that notions of internal affairs and external interference become a much more complicated concept.¹⁰⁹

¹⁰³ See, Larry Catá Backer, *Automated Law--The Empire of European Human Rights Law (May) Strike Back*, *Law at the End of the Day* (5 February 2020); available [https://lcbackerblog.blogspot.com/2020/02/automated-law-empire-of-european-human.html].

¹⁰⁴ See, Larry Catá Backer, *Automated Law: Who Ought to Have the Right to Authoritatively Misread Emotion?*, *Law at the End of the Day* (16 February 2020); available [https://lcbackerblog.blogspot.com/2020/02/automated-law-who-ought-to-have-right.html].

¹⁰⁵ See, Maya Wang, "China's Techno-Authoritarianism Has Gone Global: Washington Needs to Offer an Alternative," *Foreign Affairs* (8 April 2021); available [https://www.foreignaffairs.com/articles/china/2021-04-08/chinas-techno-authoritarianism-has-gone-global].

¹⁰⁶ See, Larry Catá Backer, *Automated Law and Social Media Platforms as Private Administrative Agencies: On Amnesty International's New Report--"Let us Breathe!": Censorship and criminalization of online expression in Viet Nam"* (2 December 2020); available [https://lcbackerblog.blogspot.com/2020/12/automated-law-and-social-media.html].

¹⁰⁷ See, Larry Catá Backer, *Data Driven Pandemic and the Ascendancy of Simulated Reality as the New Political Space: The Administration of Disease and the Disease of Administration in the Light of COVID-19*, *Law at the End of the Day* (28 April 2020); available [https://lcbackerblog.blogspot.com/2020/04/data-driven-pandemic-and-ascendancy-of.html].

¹⁰⁸ See, Larry Catá Backer, *Automated Law--Questions and Answers on Data Driven AI Enhanced Governance and the Emerging Instruments of Social Control*, *Law at the End of the Day* (4 February 2020); available [https://lcbackerblog.blogspot.com/2020/02/automated-law-questions-and-answers-on.html].

¹⁰⁹ See, Luke Barr, "Justice Department announces 4 Chinese military officers indicted in Equifax hack: Officials say some 150 million Americans were affected," *ABC News* (10 February 2020); available [https://abcnews.go.com/Politics/justice-department-announces-chinese-military-officers-indicted-equifax/story?id=68884204]. See, generally, Larry

This is not to minimize the critical importance of normative difference. Quite the reverse--the normative gulf between liberal democracy and Marxist Leninist democratic expression is profound and not growing smaller. Yet there even as these normative differences are growing, a growing convergence in the techniques that each society employs to more deeply embed its normative project. And the judgement of the character of the toolkits used may be more complicated even as they reflect and are reflected in the normative values of the systems whose interests they serve. And that may be the most valuable function of these events; not to suggest the obvious, that the Chinese system furthers its norms comprehensively through the application of its political economic model enhanced by the possibilities (sometimes transformative) of tech. Rather its value lies in its ability to distill and highlight what the U.S. sees in itself in the mirror that is China. And then the hard task begins--the task of aligning the ideal extracted from the insights of difference to its practice within the political economic model of this Republic and those others in its camp.

The response from the Chinese side appears to be emerging on two fronts. The most direct and obvious is the policy of blocking legislation and reciprocal sanctions.

China has announced retaliatory sanctions against three Republican lawmakers and a US ambassador as the row over Uighurs treatment in Xinjiang continues. Chinese Foreign Ministry spokesperson Hua Chunying told a regular press briefing on July 13 that the “corresponding sanctions” have been imposed on Senators Marco Rubio and Ted Cruz, Congressman Chris Smith, and the US ambassador-at-large for international religious freedom, Sam Brownback.¹¹⁰

Chinese officials have taken the position that opening up merely constitutes an invitation to abide by local rules. It follows that inward projections of U.S. norms through their private enterprises constitute a serious interference with Chinese internal affairs; the Americans, on the other hand, viewed that engagement as bound up with their responsibility to project and apply international norms.¹¹¹

Catá Backer, *The Problem of Data Infrastructure in an Age of Post-Global Empire--The Criminal Litigation Against Huawei for Racketeering and Other Crimes, Law at the End of the Day* (13 February 2020); available [<https://lcbackerblog.blogspot.com/2020/02/the-problem-of-data-infrastructure-in.html>].

¹¹⁰ Kunai Gaurav, “China Announces Retaliatory Sanctions On US Envoy, Lawmakers Over Xinjiang Row,” *Republic World* (13 July 2020); available [<https://www.republicworld.com/world-news/china/china-announces-retaliatory-sanctions-on-us-envoy-lawmakers-over-xinj.html>]

¹¹¹ Kunai Gaurav, “China To Take ‘reciprocal Measures’ After US Sanctions Senior Chinese Officials,” *Republic World* (10 July 2020); available

Perhaps more interesting has been the longer term and more fundamental decision to adopt policies of detachment from the system that produced this conflict-contradiction in the first place. In this case the decoupling is functional rather than territorial: China attempts to create two economic models operating in the same territory but in different spaces. It is the equivalent of the One Country Two Systems idea but here reshaped to focus on two economic systems operating within one country. It appears to be based on the objectives of preserving Chinese core ideology and autonomy at home while consolidating its management of global production and consumption chains through the hub and spoke framework of BRI.¹¹² That consolidation now has a name—the Dual Circulation Strategy.

The Dual Circulation strategy puts the West in the cross hairs of China in the way that Xinjiang has put China in the crosshairs of the West.

This new worldview sees the continued decoupling of global supply chains as an enduring trend, and so Beijing now seeks to attempt a new “big thing”—balancing emphases on both internationalization *and* self-sufficiency (自力更生) that marks China’s own version of “hedged integration.” This model entails engaging international capital, financial, and technological markets when advantages can be gained while simultaneously bolstering indigenous capabilities to avoid overreliance on the global economy—due to national security concerns or the vagaries of global economic cycles.¹¹³

Again, the core objective is to bring the sensibilities of the Belt and Road Initiative--its construction of a world order with China at the center

[<https://www.republicworld.com/world-news/us-news/china-to-take-reciprocal-measures-after-us-sanctions-senior-chinese.html>] (Contrast Chinese Foreign Ministry spokesperson: “We firmly reject US sanctions on Chinese officials. The wrong move is serious interference in China’s internal affairs and detrimental to China-US relations. China decides to impose reciprocal measures on US institutions & individuals with egregious behaviors on Xinjiang;” with U.S. position “The United States is taking action today against the horrific and systematic abuses in Xinjiang and calls on all nations who share our concerns about the CCP’s attacks on human rights and fundamental freedoms to join us in condemning this behavior,” the State Secretary Mike Pompeo in a statement.”).

¹¹² 分析国内外新冠肺炎疫情防控形势 研究部署抓好常态化疫情防控措施落地见效 研究提升产业链供应链稳定性和竞争力 (Analyze the situation of domestic and foreign COVID-19 epidemic prevention and control, research and deploy the implementation of normalized epidemic prevention and control measures, and study and improve the stability and competitiveness of the industrial chain and supply chain); May 15, 2020 07:18 Source: People’s Daily Online - People’s Daily; available [http://cpc.people.com.cn/n1/2020/0515/c64094-31709627.html?mc_cid=28966ada58&mc_eid=902fe70bde] (Hereafter “Analyze the Situation”).

¹¹³ Jude Blanchette, “Dual Circulation and China’s New Hedged Integration Strategy,” Center for Strategic and International Studies (CSIS) (24 August 2020); available [<https://www.csis.org/analysis/dual-circulation-and-chinas-new-hedged-integration-strategy>].

through which all trade , social, and cultural development might be coordinated. It requires a two prong strategy The first is focused on the primary place of the center--the new core of leadership--for global economic integration.

[The new nationwide system takes national development and national security as its fundamental goals. Through scientific overall planning, concentration of strength, optimization of mechanisms, and coordinated research, the centrally coordinated allocation of resources and the effective use of resource benefits during the organization and implementation of major national science and technology projects.] ¹¹⁴

Aligned with this core focus is the continued and strategically coordinated focus on global economic relations. "Close contact with the open world. Economic globalization has increasingly made the world an organic whole, which means that the development of science and technology and high-tech industries must be innovated in an open system, taking into account the allocation of global factors. " ¹¹⁵

The strategy, then, permits the creation of a space within which the projections of liberal democratic pressure--either with respect to the rules of trade or with respect to the use of trade to further normative positions with respect to human rights, religious rights and the like--can be resisted without too much risk. Just as the United States and its liberal democratic camp are seeking ways in which they can diversify production while continuing to exploit the internal *Chinese* market, so the Chinese are seeking ways in which they can diversify, their economic model protecting the heartland even as they build strong trade and production routes throughout the world. The construction of both will make it much harder to assert significant pressure outside their imperial jurisdiction. Within the new empires, however, influence and authority will be augmented.

But decoupling also has an ideological and normative element. It is paired with a significant delegitimization and differentiation project aimed at the heart of the great human rights project driven by liberal democratic states since the last third of the 20th century. That intent was quite clearly underlined in an "Opinion Piece" published 26 March 2021

¹¹⁴ Analyze the Situation, *supra* ("新型举国体制以国家发展和国家安全为根本目标, 通过科学统筹、集中力量、优化机制、协同攻关, 在国家重大科技项目组织实施过程中集中协调配置资源、有效发挥资源效益。").

¹¹⁵ *Ibid.*, (与开放的世界紧密联系。经济全球化使世界日益成为一个有机整体, 这意味着科学技术和高新技术产业的发展必须在一个开放的体系中进行创新, 考虑全球要素配置。).

in the People's Daily.¹¹⁶ It ends with an aggressive statement of the Chinese position:

The trick of pretending to be a "human rights teacher" in a few Western countries has long been unsuccessful, and the hypocrisy is well known in the world. These Western countries are advised to remove their pretense, abandon the Cold War mentality of using human rights as a tool for realizing hegemony, face up to their own human rights issues, strengthen dialogue and cooperation based on the principle of mutual respect, and truly contribute to the healthy development of the cause of human rights in the world.¹¹⁷

It takes a very specific line--that human rights discourse in the West is actually a weapon of neo-colonialism most useful for permitting leading liberal democratic states to interfere in the affairs of Marxist Leninist and developing states.¹¹⁸ This Opinion Piece summarizes, in a quite concise form, the character of China's response to months of push back by the liberal democratic camp and the organs of the United Nations, especially those tasked with the protection of its decades long project of developing a common framework for human rights (and now sustainability and climate change), for Chinese actions in Hong Kong and its Xinjiang policy. It comes immediately after the contentious meeting between Chinese and American officials in Anchorage, Alaska in which both sides took to lecturing each other on the nature and state of human rights in their respective states, and from the respective perspectives of quite distinct human rights ideologies.¹¹⁹

If the Alaska meeting was a dress rehearsal of the central authorities new exposition of Socialist Human Rights in relation to the orthodox position of the liberal democratic camp and elements of the

¹¹⁶ “人权教师爷”的把戏演不下去了（钟声）] (The Trickery of "Human Rights Teacher" can't go on (bell tolling)), People's Daily (26 March 2021); available [http://opinion.people.com.cn/n1/2021/0326/c1003-32060977.html] (“The few Western countries that call themselves "human rights teachers" often make irresponsible remarks about the human rights situation in other countries, but no matter how high their tone is, they cannot offset their own bad deeds.”)

¹¹⁷ Ibid.

¹¹⁸ Ibid., (“少数西方国家惯于打着“人权”幌子行干涉主义之实，在世界上造成大量人道主义灾难，早已引起国际社会强烈不满。” (“The fact that a few Western countries are accustomed to conduct interventionism under the guise of "human rights" has caused a large number of humanitarian disasters in the world, which has long aroused strong dissatisfaction in the international community.”)).

¹¹⁹ Partial transcript of remarks at Alaska Meeting, *supra*. See also “How it happened: Transcript of the US-China opening remarks in Alaska,” Nikkei Asia (19 March 2021); available [https://asia.nikkei.com/Politics/International-relations/US-China-tensions/How-it-happened-Transcript-of-the-US-China-opening-remarks-in-Alaska]; Thomas Wright, “The US and China finally get real with each other,” Brookings (22 March 2021); available [https://www.brookings.edu/blog/order-from-chaos/2021/03/22/the-us-and-china-finally-get-real-with-each-other/]

United Nations Human Rights apparatus,¹²⁰ then this Opinion Piece provides a more derisive attack on the legitimacy of the human rights orthodoxies of the West and of its expression international human rights law. And indeed, it appears that taking a page from the liberal democratic camp, the Chinese authorities have decided that the road to the construction of a narrative of legitimacy of its own approach to human rights must be built on a foundation of a narrative of the illegitimacy of the current orthodox principles of human rights. From the Chinese perspective it serves as a well-deserved tit-for-tat for years of Western indifference to and rejection of its own approaches to human rights. For the West it ought to raise alarms that the age when it could assume that it was the undisputed vanguard of developing human rights norms and consensus is now perhaps more meaningfully challenged.

But both the carefully prepared response of the Chinese delegation to the purported provocations of the Americans in Alaska and the "Opinion Piece" does more than indulge in a politics of illegitimacy. It also contains within it an equally concise window on the emergence of a Socialist approach to human rights--one that has been years in the making. The fundamental approach has already been endorsed by international human rights organs.¹²¹ At its center is the notion of mutually advantageous cooperation embedded in an approach to human rights founded on core principles of prosperity and stability and measured by collective needs and responsibilities. Within this Socialist approach, the individual is de-centered, and political and civil rights are understood as a function of a responsibility to further economic, social, and cultural rights for the collective, to which the individual, like the state, has an obligation to further.

The twin pillars of the current Chinese campaign, then, are based on a two thrust approach. The first is the campaign to de-legitimize the construction of human rights as they have been developed since 1947 through the instruments and policies of international organizations reflecting the constitution traditions of liberal democratic states. This is nicely illustrated in the Opinion Piece--a very clever provocation.¹²² The second, and more positive thrust is the effort to put forward a Socialist alternative that expresses a Marxist Leninist conceptualization of human rights. This is still very much a work in progress, but progress is being made.¹²³ Its scope is global--focusing on the development of a socialist

¹²⁰ See, Alaska Meeting, *supra*.

¹²¹ For a discussion, see Larry Catá Backer, "China," in *Tipping Points in International Law: Critique and Commitment* (Jean d'Aspremont, and John Haskell (eds.), Cambridge University Press, 2021), pp. 52-73.

¹²² Cf., "Understanding Chinese "Wolf Warrior Diplomacy" (Interview with Peter Martin); National Bureau of Asian Research (22 October 2021); available [<https://www.nbr.org/publication/understanding-chinese-wolf-warrior-diplomacy/>].

¹²³ China State Council, White Paper: The Communist Party of China and Human Rights Protection – A 100-Year Quest (25 June 2021) (Official English translation); available

human rights with Chinese characteristics as well as the principles for “advancing human rights around the world.”¹²⁴

Wang Yi's exposition in Anchorage provides a hint at what may be coming--assuming that the position was not merely a propaganda stance. It contrasts U.S. and Chinese style democracy, and then frames core concepts around that conceptual chasm. When Wang Yi declares that “Our values are the same as the common values of humanity. Those are: peace, development, fairness, justice, freedom and democracy” he means that from the perspective of Chinese style democracy. That points toward building a moderately prosperous society and the elimination of poverty for a community firmly behind the vanguard party.

There is no doubt much more to come. In the meantime these are worth careful study, a study enriched within the discursive contexts of contemporary American and Chinese internal conversations. Both point to efforts at transformative change; neither state will be the same five years from now; but they seem to be moving in opposite directions. It may be small comfort to note that these movements appear to move both back to doctrinal and ideological positions with more affinity to the 1970s than to the 2010s. But of course it is far too early to tell. The danger for both is that the transformation in which both states find themselves will prove more self-destructive than positively transformative. Still transformation never guarantees direction; and direction is better judged from the future than in the present.

C. Conclusion.

In 2021, Joel Slawotsky noted, somewhat controversially among people with strong attachment and fidelity to a specific application of liberal democratic imaginaries:

The imposition of strict discipline in Xinjiang raises interesting and timely issues regarding the intersection of international law, global governance, and a State's autonomy with respect to measures taken in furtherance of a government's obligation to ensure and maintain public order. In essence, China's position is that her policies are required to promote the success of a minority group and ensure compliance with law. While the means used might fail to comport with current Western liberal values, the measures taken do not constitute genocide. Moreover, the aims of China's policies are inherently at odds with the *raison d'être* of genocide. Therefore, as more fully

[<https://global.chinadaily.com.cn/a/202106/25/WS60d51ed7a31024ad0bacb65e.html>]

¹²⁴ Ibid., Chapter 6. The focus is on economic development and the distribution of societal wealth, as well as ensuring protection for stability within which people may feel protected in their participation in the task of developing productive forces within a society that has good values.

discussed below, claims that China is committing genocide in Xinjiang should be rejected.¹²⁵

Whatever its character, its implementation has sharpened the divisions between China and many in the liberal democratic camp. That is hardly surprising. But what makes it far more potent (beyond the way that one approaches the issue of the cost to individuals of collective policy) is the way that national policy can create a site for international contestation of national policy. Xinjian reminds us that however much a state may claim otherwise, in this century borders remain porous to a large extent.¹²⁶

That porosity creates a space where national policies may meet and contestations may result. Xinjiang provides an excellent example. Xinjiang is undoubtedly a part of China; but China has opened the SAR to the rivers of global production chains. That opening brings with it the requirements and approaches of other states and international collectives with it. And they meet in Xinjiang precisely because their effects can now be felt all along the chains of production. It is in that contestation within Xinjiang but along global production chains that the growing distance between Chinese and U.S. imaginaries about the organization of society and the extent of governmental authority to rectify social structures, behaviors, and organization, become apparent as a matter of norm, law, and international relations.



¹²⁵ Joel Slawotsky, Letter to the Journal "Is China Guilty of Committing Genocide in Xinjiang?," *supra*, p. 626.

¹²⁶ Larry Catá Backer, "The Structural Characteristics of Global Law for the 21st Century: Fracture, Fluidity, Permeability, and Polycentricity," *Tilburg Law Review* 17(2):177-199 (2012).

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Xinjiang in the Crosshairs