

**TAKING THE DELIBERATIVE TURN IN CHINA:  
INTERNATIONAL LAW,  
MINORITY RIGHTS, AND THE CASE OF XINJIANG**

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The United Nations Declaration on Minority Rights, along with other international instruments dealing with minorities, is often lauded as a progressive and exemplary human rights doctrine. This article argues that these documents suffer from a theoretical deficiency for two reasons. The first problem lies in the *de facto* policies and practices states traditionally use as they seek cultural hegemony through the promotion of national cultures, regardless of the language contained in the declarations. The second difficulty with minority rights regimes in international law is the implicit prioritization of political equality over deliberation. By indulging voting and majoritarianism as the determinative qualities of democratic life, the deliberative atmosphere required for genuine cultural integrity is crippled. This article tracks these criticisms through the case study of Uygur claims in China. It concludes by proposing a reorientation in Chinese ethnic law that borrows from the positives of international law as well as the guidance born of liberal culturalist and deliberative perspectives. This eclectic synthesis will hopefully offer insights for future alternatives in the fundamental task of protecting minority cultures worldwide.

## I. INTRODUCTION

It has become the common currency of the early twenty-first century to discuss globalization in terms of its twin processes: integration and fragmentation. As strands of intergovernmental interdependence and cross-cultural cognizance thicken in their intensity and extensity, it is strikingly apparent how the world, coming together as it is under the banners of economic, social, and even political integration, seems to be at the very same time falling apart (Nye 2001; Held 2002). Illustrative of this latter trend has been the growing number of ethnic conflicts and majority-minority contests in the post-Cold War world, as articulated, *inter alia*, by observers participating at the 2002 session of the United Nations Working Group on Minorities (WGM). A brief sampling of claims brought on behalf of minority groups in their home territories include Afro-descendants in Argentina, Kurds in Iraq, Muslims in India, Baha'is in Iran, the Baluchi in Pakistan, Welsh in the United Kingdom, Bhutanese Nepali-speakers in Nepal, Turks in Greece, Hmong in Laos, Pygmies in Congo, as well as others in Sudan, Chechnya, and the former Yugoslavia (United Nations Working Group on Minorities 2002). To be sure, pages of additional claims might be listed in further support of the rising challenge to multiculturalism and its discontents, but the point remains the same. Far from melting, or even forming mosaics, cultural conflict and majority-minority relations appear as truculent and divisive as they have ever been.

The response that has erupted with an almost monopolistic character has been the international human rights movement. Its claims of universality have provided human rights activists with the moral firepower necessary to contravene the boundaries of state sovereignty, though its capacity to enforce has been more humble (Drinan 2001). Human rights law has been especially effective in transforming the character of international law, as seen with the advent of the International Criminal Court and the admission of the individual as a player in the

international legal order. This stems from human rights law's philosophical roots in the liberal tradition's reliance on the individual as the primary unit of analysis. Naturally, the human rights movement that developed in the latter half of the twentieth century focused on the rights of individuals and the leverage they could wield against their home governments.

There is little doubt that the plight of the individual remains today of great concern, and could rightly be regarded as the bulwark and defining sphere of rights regimes in general. This article, however, focuses attention on the extent to which the emphasis on individual rights may have unintentionally created a rights chasm into which the claims of minority groups have now fallen. To this end, section II introduces current international law on minority rights, particularly as articulated in the United Nations (UN) Minority Rights Declaration. Section III critically engages this material and begins to answer the question of whether this currently evolving system of minority rights is theoretically sound. The argument queries whether theories of deliberative democracy might better house a system friendly to majority-minority rights regimes.

Section IV grounds the preceding analysis in a case study that examines the rights claims of Uygurs in China and how those claims coalesce with the current international standards for minority rights. China is the subject of the case study in this article for two reasons. First, China has an ample history of complex minority problems dating back hundreds of years. Second, China of the early twenty-first century is a state in transition between socialism and an end still to be determined. That being the case, the critiques of international law offered in section III are especially susceptible to implementation.

This point may be counterintuitive as one might surmise that it would make more sense to attempt higher order reforms in a state already constituted with the traditional liberal order. This may not necessarily be true, however, since a state like the United States, for example,

could be arguably much more difficult to transform due to ingrained institutional arrangements and practices. In the Chinese petri dish, democratic experimentalism may have more room to breed than might otherwise be expected. On these grounds, section V concludes by assessing the prospects for deliberative democracy and its implications for minority rights in China.

## **II. CONTEMPORARY MINORITY RIGHTS IN INTERNATIONAL LAW**

The Universal Declaration of Human Rights, the pivotal human rights instrument of the twentieth century adopted by the General Assembly in 1948, makes no reference to minority rights. Indeed, outside of Article 27 of the International Covenant on Civil and Political Rights (ICCPR), ratified in 1966, there was very little mention of minority rights in the international community until the end of the Cold War (Hannum 1990). Despite its omission from the Declaration, the General Assembly was nonetheless aware of a need to somehow address the minority question, and subsequently requested the UN Economic and Social Council to produce a thorough study on minorities. The eventual product of these deliberations was the formulation of an article that could be housed in the forthcoming International Bill of Rights, now known as the two International Covenants on civil and political rights, and on economic, social, and cultural rights.<sup>1</sup> The final text of Article 27, the first and most explicitly *legal* text regarding minority rights, reads: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language” (ICCPR 1966).

With the end of the Cold War, the last decade of the twentieth century witnessed a veritable explosion in minority rights pronouncements. The UN Minorities Declaration, the Council of Europe’s Framework Convention on Minority Rights, and the OSCE’s High

Commissioner on National Minorities together present the broadest treatment that the concept of minority rights has ever received. This holds true both at the international and regional levels. However, it should be kept in mind that while the Minorities Declaration represents the moral posture of the UN General Assembly, it is not legally binding on any state.

The Minorities Declaration consists of nine articles and follows suit with Article 27 of the ICCPR in its individualistic orientation. Like Article 27 of the ICCPR, the Declaration also underscores the importance of cultural, religious, and linguistic independence in its Article 2, though it frames the rights in a positive way, using the phrase “have the right to” as opposed to “shall not be denied the right to” in Article 27. It additionally issues the right to effectively participate in cultural, religious, social, economic, and public life. Article 3 provides that the rights of minorities may be exercised individually as well as in community and that no disadvantage shall result from either their exercise or non-exercise.

A number of substantive obligations are placed on states in Article 4. These include:

[the duty] to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards...to take adequate opportunities to learn their mother tongue or to have instruction in their mother tongue...[and] to consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country (UN Minorities Declaration 1993).

Articles 5, 6, and 7 deal with the obligation of states to plan and implement national policies and programs which will cater to the interests of minorities, and emphasize the need for international cooperation. The Minorities Declaration sets these rights in their international context in Article 8. It provides that the exercise of the Declaration should not collide with the rights to equality found in other instruments like the Universal Declaration, or other duties articulated in various treaty obligations. Lastly, Article 9 provides that the United Nations and its specialized agencies shall contribute towards the full realization of the Minority Rights Declaration. The focal point

for minority rights work at the United Nations is WGM, created by the Sub-Commission in 1995 to help in the implementation process of the Declaration.

### **III. MINORITY RIGHTS AND DEMOCRATIC THEORY**

To best predict how the international law on minority rights may be used in future circumstances to address minority claims on the ground, it is essential to first expose its flaws. This analysis does not claim to be exhaustive, and examines two particular problems regarding the possibility for minority rights law to correct entrenched majority-minority problems. First, the law alone fails to incorporate the criticisms of a liberal culturalist position which asserts that governments, liberal as well as illiberal, actively promote societal cultures that can displace minority ones, despite the presence of minority-related legal regimes. The second problem concerns a conspicuous lack of provisions in the minority instruments that would account for systemic deliberative procedures and arrangements. Deliberative democrats argue that mainstream versions of democratic process, which underpin the Minorities Declaration, cannot adequately resolve perennial moral disagreements.

#### **Liberal Culturalism**

Will Kymlicka begins his argument against the capacity of a traditional liberal framework (which informs international minority rights law) by explaining that the liberal state has traditionally viewed culture in the same way that it has viewed religion—with benign neglect (Kymlicka 2002). One of the staple elements of the liberal state has been professed neutrality regarding the right of individuals to pursue and define their own particular life chances and conceptions of the good life. This policy of neutrality is taken one step further in the realm of

religion, in which a liberal democracy not only turns a blind eye, but actively enforces a strict separation of church and state. It follows that the liberal state would view culture in the same way, refraining from promoting any one culture above any others through legitimating processes, yet allowing for the free expression of all. In this way, the burden of proof falls with the minority group to show why it is that the neutral position of the state should be disturbed in favor of preferential cultural policies.

Kymlicka asserts that if one engages in a critical appraisal of actual policies, they would inevitably find that “this idea that liberal-democratic states are indifferent to ethnocultural identities is manifestly false...[and that] the religion model is altogether misleading as an account of the relationship between the liberal-democratic state and ethnocultural groups” (Kymlicka 2002, 345). In fact, liberal states intentionally and deliberately promote a “societal culture” of tightly interconnected policies and programs that tells citizens what language they need to speak and what institutions they must serve in able to successfully integrate (Kymlicka 2002). Kymlicka calls this process one of nation-building because liberal states *de facto* encourage citizens to view their chances of achieving the good life as intimately tied up with participation within the state’s institutional framework and its practices. Kymlicka’s conclusion is that far from a position of neutrality or benign neglect, liberal states build *nations* through a liberal nationalism and its attendant societal culture (Kymlicka 2001).

This sort of scenario dramatically changes the equation for minority rights. Instead of being required to rebut a presumption against state interference, Kymlicka’s argument asserts that the presumption should actually work *for* minorities because of the intrinsic pressures they face in the liberal project of state-sponsored nation-building. The liberal goal of individual freedom and autonomy—the capacity to meaningfully choose one’s preferred life chances

among social practices—is determined by our societal culture. As Kymlicka has argued, it is *illiberal* to force minorities to choose, based on the context of the state’s societal culture. Minorities have their own distinct societal culture that informs the value of social practices, and it is therefore imperative for the state to progressively allow for minorities to maintain distinctive societies.

### **Deliberative Democracy**

At the outset of this thumbnail sketch, it is important to note that deliberative democracy is not a field with central and necessarily harmonious perspectives. Various authors have various views on what exactly deliberative democracy means, and to what ends its powers should be focused. Nonetheless, it is possible to distill representative, meaningful ideas, even if they are basic and broad. James Fishkin nicely describes the obstacle deliberative democrats have set as their standard problematic. Democracy, at least as it has traditionally been articulated in the United States, houses values such as political equality, avoidance of a tyranny by the majority, and deliberation, which have historically been filtered through the process of representation. Unfortunately, these three values do not easily mesh, and have in fact often proved irreconcilable (Fishkin 2001).

Fishkin explains that political equality—the practice of giving equal consideration to everyone’s views—seems to logically be at odds with the value of deliberation (Fishkin 2001). The principle of political equality demands that representative government mirror, as close as humanly possible, the interests of its citizens. The framers of the U.S. Constitution were not only concerned with how such representation of views could take place in a large country, but equally with the extent to which mass representation would result in less informed and nuanced decisions



as would come about from smaller, more elite deliberative bodies. Fishkin writes, “[t]he mirror image suggests an approximation to what the people all assembled would decide if they could somehow all gather together and have their votes counted equally. The difficulty...is that the people in a nation-state cannot all gather together, at least for purposes of deliberation” (Fishkin 2001, 224).

Political equality also runs up against the value of non-tyranny by the majority, since the principle naturally lends itself to a system of aggregation, and ultimately, the memorialization of voting and referenda as the quintessential modes of democratic process. The result has been the impoverishment of public debate, a colossal decrease of informed citizens, a lack of incentives to become informed, and a wholesale devaluation of the democratic process. Deliberative democrats, despite their differences, are confronted with the challenge of reconciling these apparent collisions of democratic value, so that the conceptual eclipse of deliberation and its attendant societal decay might be abridged. “The deliberative turn represents a renewed concern with the authenticity of democracy: the degree to which democratic control is substantive rather than symbolic, and engaged by competent citizens” (Dryzek 2001, 1).

The advantages of such a reorientation are not simply academic, and should begin to make sense within the context of minority rights. Kymlicka himself notes that if minority groups are to believe in the legitimacy of the state and have a meaningful impact on government policy in a majoritarian electoral system, “it will be through participating in the formation of public opinion, rather than through winning a majority vote” (Kymlicka 2002, 292). A theory of deliberative democracy strives to reestablish a mode of communication that allows for the flowering of multiculturally discursive modes that are currently silenced. It also seeks to vivify democratic life through an accommodation of argumentation, rhetoric, emotion, testimony, and

storytelling (Dryzek 2000; Young 1996). Deliberative democracy thus lends itself to an appreciation of diversity and multiculturalism absent in the classic liberal notion of a constrained public reason (Guttman 1996; Passerin d'Entreves 1999).

In sum, democratic theory cannot supply us with the rules society requires to enable minorities to successfully navigate the harsh world of majoritarian politics, for this is the province of law. What democratic theory can do, however, is reconfigure the harshness and degree to which politics is necessarily majoritarian. As it is presently situated, liberal political theory serves, at best, as an awkward basis for the international law on minority rights and should be supplemented by new theory, if not replaced altogether. It is not the content of minority rights which most necessarily warrants contestation, but its packaging. The provisions of the Minorities Declaration are important, and indeed likely essential to the proper functioning of multinational society. These provisions are necessary, but not sufficient. As long as instruments like the Minorities Declaration operate against background norms studded with deliberative deficits, minority problems will persist.

#### **IV. XINJIANG: UYGUR RIGHTS AND HAN POLICIES**

The argument has thus far presumed that international law poses a respectable hope for dealing with minority claims and conflicts through a standard and objective set of rules, but suffers from an uninformed sense of how minority claims actually operate in the light of democratic theory. This presumption must be tested in order to marry the abstract shadows of the theoretical world with empirical study. Though ethnic conflicts and minority struggles abound, the case of China offers a peculiar environment in which a state is experiencing exceptional economic growth, political stability, and the absence of any sort of democracy, be it liberal or illiberal. In this way,

China offers a kind of *tabula rasa* for democratic experimentalism, not because it lacks a political heritage and tradition (China disputably has one of the longest political traditions of any known civilization), but for the plain reason that it has not yet democratized. This section first examines the background on Chinese ethnic policy, and follows with a discussion of how the Uygur minority has fared under that policy.

### **Background on Chinese Ethnic Policy**

When most Westerners imagine China and its inhabitants, they likely envisage large numbers of an incredibly homogenous block of people. This block is the Han ethnicity, which comprises 92% of the overall Chinese population of 1.3 billion (U.S. Department of State 2002). Despite this overwhelming dominance, China nonetheless encompasses a number of minority peoples who together add up to tens of millions.<sup>2</sup> Many of these peoples have been partitioned into autonomous regions lying at the geographical peripheries of the Chinese state, due in part to the influence of Soviet ethnic policy borrowed by the Chinese.

The largest is the Xinjiang Uygur Autonomous Region, located in the far northwest, north of Tibet. It borders Uzbekistan, Kazakhstan, and Turkmenistan to the west, Mongolia to the northeast, and Pakistan and Afghanistan to the southeast. Xinjiang is an enormous area, spanning the space of Germany, France, and Italy combined. Xinjiang's human diversity is impressive like its geography—it is home to a number of nationalities, including the Han, Hui, Kazaks, and Mongols. The largest of these groups is the Uygur population (seven million), who are almost entirely located within the Tarim Basin region of the province in the south, barricaded by the imposing Tianshan Mountains in the north.

Six hundred miles long, and home to the Taklimakan Desert, one of the largest deserts in the world, the region has long made for hard living. Unfortunately, the Uyghurs have an extended and bloody history of convulsed assimilation with the Han majority in the rest of China. To some extent, conflict has resulted from the tangible differences between Uyghur and Han. Uyghurs, for example, have always identified strongly with religion, first with Buddhism, and then Islam. Uyghurs are also a Turkic people, physically discernable by their darker features and coarser hair from the Han.

Between 1800 and 1861, Uyghurs revolted under Chinese rule seven times, not including several other smaller uprisings.<sup>3</sup> The attendant battles between Han, Manchu, and minority nationalities were incredibly violent. Referring to one of the uprisings during the mid-1840s, Jack Chen writes, “[f]or three years after that tragedy, the waters of the Terek were undrinkable, polluted by the rotting corpses in its course. And for thirty years after, the refugees’ bones could be seen on the approaches to the pass” (Chen 1977, 135). According to Chen, the first good night’s sleep came to the peoples of Xinjiang on 20 October 1949 when the first units of the People’s Liberation Army of the newly minted People’s Republic of China (PRC) marched into Urumchi, Xinjiang’s capital (Chen 1977). From that day forward, Xinjiang began its trek, along with the rest of the country, towards the ideological and administrative framework that would capture the Chinese imagination. It would also mark the beginnings of the Chinese plan for Autonomous Regions.

In 1954, China’s first National People’s Congress adopted a constitution. It reads, in part:

All nationalities of China are united in one great family of free and equal nations. It prohibits discriminatory and oppressive acts against any nationality and forbids any action that may undermine unity among them. All nationalities are free to use and foster their own spoken and written languages and to preserve or reform their own customs and habits. Through its various provisions, it ensures that all national minorities living together in compact communities in a given area may exercise their right to regional autonomy (PRC Constitution 1954).

This program resulted in the creation of five autonomous regions throughout China, based on the Soviet model of ethnic division and compartmentalization, which would be given certain rights in order to preserve their cultural, religious, and ethnic integrity.<sup>4</sup> However, it is likely that these concessions were part of a broader plan of consolidation and caution rather than a real interest in multiculturalism (Wang 1999). First marked by a gradual and pluralist policy, the Chinese Communist Party (CCP) changed its tune with the Great Leap Forward, which began in the mid-1950s and triggered a radical shift towards assimilation of minority cultures (Wang 1999). Mandarin, the official Chinese language, was formally introduced into the autonomous regions, minority cadres were formed, and local expressions of nationalism were forcibly put down.

Taken together, the 1993 PRC Constitution and the Law on Regional Autonomy (LRA) of 1984 flesh out contemporary ethnic policy in China. As Mathew Moneyhon describes, Chinese ethnic policy presents a kind of “give and take” between the central Chinese government and the autonomous regions (Moneyhon 2002). This is probably best understood in the simple yet pervasive notion that the autonomous regions have powers of self-government over all sorts of affairs, but which are hamstrung by regulation and the need for approval by the central government. “Self-government” refers to the ability to, among other things, regulate and govern language, education, and religious and cultural affairs. The CCP is likewise committed to an affirmative approach to minorities, extending economic and educational benefits to those who fit the bill.

The bottom line, however, is that while Chinese ethnic law comes very close to approximating much of the content of minority rights in international law, it is widely regarded as a sham (Hannum 1990; Sautman 1999; Moneyhon 2002). Where the law gives, it inevitably also takes away. The Constitution and the LRA are both constructed such that grants of power

are tied to prior CCP approval. Moneyhon concludes that “[u]nder this system, the autonomous areas begin to appear more like ‘political eunuchs.’ At the provincial level, the power to pass legislation is not contingent upon prior NPC approval, and therefore, the autonomous regions actually enjoy less legislative autonomy than ordinary provinces” (Moneyhon 2002, 138).

### **The Uygur Predicament**

China has a long and troubled record concerning its minorities, but in recent years has developed a program of ethnic preferential policies that in many ways mirror the admonitions of the UN Minorities Declaration. Unfortunately, Chinese ethnic policy may not accomplish what its progenitors have hoped. Indeed hopes have been high, as the preamble of the LRA illustrates: “Regional national autonomy embodies the state’s full respect for and guarantee of the right of the minority nationalities to administer their internal affairs and its adherence to the principle of equality, unity, and common prosperity for all its nationalities (LRA 1984).” Sadly, this ebullient language may have been over-stated.

Of all the minorities in China, the Uyghurs present one of the most severe cases of discontent, as the following exchange between a Han and Uyghur painfully demonstrates.

Wang tried to take things in hand, saying, ‘Xinjiang is your place, and it’s ours. You can’t separate [things].’ Now Rehile was really agitated; her lips trembled and angry tears welled in her eyes. She said she had learned that very day that a gang of Han toughs had raped a young Uyghur woman. Why, she wanted to know, couldn’t Han men rape their own kind? Wang again sought common ground: ‘Hans and Uyghurs are all one family.’ Rehile, indignant, contradicted her: ‘No, they’re not. Hans are Hans. Uyghurs are Uyghurs. They’re not the same. Originally I didn’t hate any [nationalities]—Qazaq, Han, Uyghur—I didn’t hate any of them. But after seeing that girl...I began to hate. Now I hate them.’ (Bovingdon 2002, 51).

Interestingly, there is a degree of contention regarding the extent to which Uyghurs can claim a distinct ethnic continuity, but based at least on Gardner Bovingdon’s ethnographical work, the Uyghur identity has crystallized in opposition to the Han (Bovingdon 2002). This development, while somewhat consistent with the rhetoric of a many-flowered China in official

PRC documentation, collides with the prospects for a post-socialist, great Han nation. “[T]he CCP’s ideological project in Xinjiang—to win recognition as the sole legitimate representative of Uyghur interests and to make Uyghurs think of themselves as Chinese (*jonggolug*) and citizens of the PRC—has not been successful” (Bovingdon 2002, 44). Unable to imagine themselves as part of the Han nation, Uyghurs have spent half a century figuring out that they have deep disagreements with the CCP about what their identity should mean and, more importantly, what it will mean.

Uyghur resistance to Han domination, according to Bovingdon, has taken four forms, all variously at odds with Chinese ethnic law as it is presently constituted. By and large, however, this subversive activity goes on behind closed doors due to the increasingly stringent restrictions on political disagreement.

The first form of resistance claims a distinct non-Chinese Uyghur identity. The second condemns the inequity of a deeply ethnically segmented politico-economic system. The third identifies the vast distance between the theory and practice of ‘minzu regional autonomy,’ claiming the system is a sham. Each of these three modes of critique lays groundwork for the fourth, which regards any form of Han rule over Uyghurs as unacceptable (Bovingdon 2002, 46).

A turning point for Uyghurs came in 1990 with the Baran Incident. Apparently sparked by a government announcement withholding permission to build a mosque, Uyghurs protested, rioted, and ultimately attacked the local police station (Wilkenfeld and Boomgaard 2000). To be sure, autonomy laws and Han-Uyghur relations had never been consistently agreeable, but after this surprising explosion of anti-CCP sentiment, the noose began to tighten (Harris 1993; Dreyer 1994; Dillon 1995; Bovingdon 2002). In the years since, Human Rights Watch and Amnesty International have both released a number of reports criticizing China for abusing Uyghur rights to freedom of expression, religion, and association, not to mention cultural and other minority rights (Amnesty International 2002; Human Rights Watch 2002). In 1996 the CCP released what has become the cornerstone of central government policy in Xinjiang, known as “Document #7,”

which was directed towards the heavy curtailment of religious activity and the general reinforcement of security and military provisions.

In February 1997, the situation worsened as Uygurs marched in peaceful protest. The People's Armed Police moved in and attacked the protestors. The ensuing *melée* resulted in the deaths of both police and protestors, numbering somewhere between scores and hundreds. In the next few weeks, hundreds of Uygurs were arrested, and separatists subsequently detonated two bombs on public buses, coinciding with Deng Xiaoping's funeral. The CCP responded with harsher measures and restrictions, culminating with the Strike Hard campaign of April 2001, in order to effectively respond to the triple threat of separatist movements, terrorism, and religious extremism. This particular campaign has been subject to searing criticism by both Human Rights Watch and Amnesty International for flagrant human rights abuses (HRW 2002; Amnesty International 2002).

Worse still, the CCP has used the attacks of 11 September as justification for new and harsher measures to deal with the triple threat in Xinjiang. Amnesty International makes the case in their report, *China's Anti-Terrorism Legislation and Repression in the Xinjiang Uygur Autonomous Region*, that new amendments to the Criminal Law will lead to "incommunicado detention, torture, denial of all rights to due process, unfair trial, and the likely imposition of the death penalty" (Amnesty International 2002, 1). Regardless of whether Chinese fears are justified, or are a pretense for further building the Han nation, it is a fair conclusion that minority rights in Xinjiang do not track the discourse on minority protections and autonomy within the Chinese system itself (Sautman 1999; Hannum 1990). Section V pinpoints some of the problems in play and briefly outlines ways in which future trends might make for a more reconciled multinational China.



## V. CHINA AT THE CROSSROADS: PRESCRIPTIONS

Bovingdon has observed that Uygur resistance has taken four forms: rejection or repudiation of (1) assimilation, (2) the CCP's claim that all nationalities experience political and economic equality, (3) alleged autonomy in Xinjiang, and (4) adherence to the territorial integrity of the Chinese state. These claims can be reduced to wishes for cultural independence and prosperity within China, on the one hand, and secession on the other. International law does not offer much hope for Uygurs in achieving either of these ends. First, Chinese ethnic law already resembles, *prima facie*, the prescriptions of the UN Minorities Declaration. It would therefore be of little use to recommend Chinese incorporation of international minority rights as a remedy for Uygur discontents. Second, international law remains oblivious to the challenges minorities inherently face in the liberal framework upon which documents like the Declaration draw. The way forward for Uygurs necessitates an eclectic approach: taking the positives from international law while heeding its critics.

Tackling the question of secession first, it is certainly a wish held by some number of Uygurs, as the existence of separatist groups indicates. However, at least for the purposes of this article, we will presume that there is a very limited right in international law to secession and that the accommodation of rights and interests under a minority rights framework is morally preferable (Buchanan 1990; Hannum 1998). As for assimilation, inequality, and cultural independence, Uygurs deserve better than the persecution and marginalization they have experienced at the hands of Han chauvinism, or the meager application of a confused set of international minority prescriptions. At least three directives are in order to effect positive change in Xinjiang. These prescriptions include a prerequisite emphasis on individual rights, a

reorientation of the 1984 Law on Regional Autonomy and a theoretical change of perspective regarding the relationship between minority rights, societal cultures, and deliberation.

### **Old-Fashioned Human Rights**

This first point is neither profound nor novel, but the foundational power of its logic is undeniable: The CCP must immediately cease from its alleged practice of human rights abuse in Xinjiang, regarding traditional individual rights. Human Rights Watch and Amnesty International both report outstanding instances of violations of the rights to expression, association, due process, and religion. Of course, these are veteran issues in China, and there is great sensitivity regarding the pointing of fingers by international groups at ostensibly “issues of national concern.” Regardless, there is no sense in contemplating means for reconfiguring Chinese minority policy as long as traditional human rights abuses run rampant. After all, the rights of minorities to cultural, ethnic, religious, and linguistic freedom rely on a collective sense that draws from an individualist moral basis of justification. The protection of traditional human rights in China, therefore, may be a function of the willingness of the CCP to relinquish its association with corporate group rights. Minority rights in China, according to this view, cannot proceed without individual rights first protected.

### **Updating the Law on Regional Autonomy**

As Sautman has suggested, the Law is outdated in its reliance on a state-centered socialist economy and prescriptions for economic equality between nationalities (Sautman 1999). Partly due to its historical rooting in traditional modes of transportation, communication, and general infrastructure, Xinjiang joined the PRC a step behind the slightly more developed rest of the

mainland. In the 1970s and early 1980s, Xinjiang was growing at almost the same rate as the rest of China. Today, it is growing at nearly half that rate (Sautman 1999, 285).

Xinjiang should benefit from much stronger preferential policies, which would afford its citizens a much-needed leg up in the competitive Chinese market. Without renewed and augmented assistance, Xinjiang growth might continue in absolute terms, but relative to other parts, stagnate. If China continues in its rapid economic growth, leaving Xinjiang behind in its financial wake, Uygurs will have that much more incentive to regard themselves as outsiders. Sautman refers to this as an increasing “ethnic psychological imbalance that can emerge as an unfavorable factor for unity and stability” (Sautman 1999, 287).

The LRA’s articles on political participation, which currently allow little more than token administration by minorities in the regional peoples’ congresses, are similarly inadequate. It is clear that stipulations in the LRA regarding minority nationality members sitting on such congresses have little genuine impact on the right to self-government (Hannum 1990; Sautman 1999; Moneyhon 2002). At least until China democratizes, the CCP should expand its preferential policies to include the placement of Uygurs in positions of genuine power and decision-making. While such a move would certainly be threatening to a government that is actively involved in the suppression of “Uygur separatism,” it would likely have a much greater chance of reconciling Uygurs to an existence as part of the Chinese state than the CCP’s Strike Hard campaign. Allowing Uygurs spots in the upper echelons of CCP administration would also undercut potential Uygur claims for secession under international law. At present, Uygurs could make a relatively strong case for a deprivation of self-government, one of Hannum’s nascent justifications for secession (1998).

## **The Need for New Theory**

The third directive suggests that the Chinese government should adopt a deliberative approach to minority rights cognizant of three conceptual realms: international law, the impact of Han nationalism on Uyghurs, and the promise of deliberative discourse in place of CCP-generated newspeak.

### **1. Individuals Need to Become Part of the Chinese Puzzle on Ethnic Policy**

For all its weaknesses, international law still introduces the individual as a bedrock unit for the protection of minority rights, a move that is essential for human rights in general. Despite international law's other failings, the CCP must begin the process of integrating the individual, at least to a limited extent, into the Chinese rights framework. It seems highly unlikely that a minority rights regime can flourish if individuals do not have the right to not only exit the group, but make claims independent of it as well (Kymlicka 2002). Thus, Chinese minority policy should borrow from international law's individualism, as well as its substantive emphasis on effective political representation and self-government.

### **2. Han Chauvinism Must Be Derailed**

It is imperative that the Chinese government heed the liberal culturalist warning regarding state-sponsored societal culture. Kymlicka notes that liberal democracies promote a particular societal culture that pressures minorities to buckle under them. In the case of China, Han chauvinism is a much more explicit project of nation-building that has put Uyghurs under severe demands. As

academics and international human rights groups have demonstrated, Uygurs are faced with imprisonment and torture when they attempt to assert their own cultural independence.

This takes us back to the first and primary goal of protecting basic human rights, but its implications, following liberal culturalism, are deeper. Instead of being urged to respect the UN Minorities Declaration's assertions on cultural and religious respect, not to mention Chinese laws on the subject, the Chinese government must be encouraged to follow a liberal culturalist perspective that views culture as a context that determines individual choices and practices. This demands positive assertions regarding the protection of minority cultures, and not merely passive restraints or "benign neglect." Otherwise, the promotion of the Han nation will continue to alienate Uygurs, further inflame hostilities, and ultimately contribute to the cycle of violence.

### **3. Genuine Deliberation among Nationalities Must Be Encouraged**

CCP rhetoric regarding the unity and apparently utopian quality of interactions between various nationalities should be replaced by a more genuine discourse reflective of vying interests and preferences. Though this sounds like an idealized solution, its realization should come not through systemic substitutions, but small and incremental changes to the political fabric. Presumably, China will someday bend under the global momentum pushing in democracy's favor. At such a time, it is preferable that Chinese democracy emerge from a landscape already acquainted with the advantages, for majorities and minorities, of dedicated deliberation, rather than adopt a liberal program patterned after most Western democracies habitually hostile to the deliberative impulse.

Examples initially demand, again, the allowances of freedom of expression and association as a threshold. At this stage in China's development, there is likely nothing that

would prove a greater assistance to the deliberative impulse and its sibling, trust, than freeing citizens, Uyгур and Han alike, from the fear of retribution for politically unpopular speech. For example, Uyгур political speech is extremely unpopular, but for Uyğurs to seriously integrate into the Chinese nation, their interests and preferences must be heard. Perhaps a precursor to such allowances would be a relaxation of CCP propaganda on the unity among Chinese peoples and the establishment of government-sponsored regional dialogues. This course of action does not require the adoption of a full-fledged democracy. It calls for the modest beginnings of a Chinese discourse that would relieve ethnic tension and conceivably pave the way for Uyğur capacity to impact policies, not through the artificial and temporary means of preferential policies, but by convincing their neighbors of the merits of their views.

## **VI. CONCLUSION**

The world, or at least those components of it that participate in the establishment of international rules, has begun the process of creating a system for righting wrongs perennially done to minorities. History shows that this process built speed after the fall of the Iron Curtain and has reached its present level of prescription in the United Nations Minorities Declaration. The Declaration, illustrative of other international instruments on minority rights, is unfortunately not an emblem for emulation due to its confusing reliance on the liberal individualism of human rights law. This confusion is a practical problem for two reasons.

First, its adherence to individual rights blurs the fact that minority rights derive their justificatory power from an aggregation of interests that no individual alone could muster. Thus, minority rights law, couched in language that does not properly address itself to its inherent divergence from the rest of human rights law, seems doomed to logical obstacles that will inhibit

its application on the ground. Second, international law suffers from a lack of perspective informed by liberal culturalists and deliberative democrats. Regardless of the extent to which ethnic, cultural, religious, and linguistic rights are asserted, as long as states are free to either expand in the promotion of societal cultures or indulge in voting and majoritarianism as the determinative qualities of democratic life, minority rights will remain threatened.

With the case of China, Uygur rights continue to be threatened despite protections already in place as part of the state's policy on ethnicity and autonomy. It is suggested here that in order for China to assuage an increasingly volatile situation in Xinjiang, it should begin by devolving minority corporate rights into individual ones and reform its autonomy laws. This, supplemented by an increase in preferential policies that would boost economic opportunity for Uygurs as well as place them in positions of power within the CCP infrastructure, would go some way in bringing credence to its program on regional autonomy and parity. Subsequent steps would include the respect for basic human rights, the installation of national policies cognizant of the affirmative dangers of Han nationalism, the relaxation of CCP propaganda, and the cultivation of a genuine discourse that would reflect the preferences of all Chinese citizens, including its minorities.

China promises to be a site of exciting opportunity for democratic experimentalism in the near future. It has slowly begun liberalizing its economy, and though there is much disagreement concerning its political future, it is certainly not out of the question to surmise the rise of democracy. The question then becomes, what type of democracy will it be? As we look to how this might evolve, it should be underscored that this is *not* a puzzle with exclusively Chinese implications. Its implications are global. As the mountain of growing literature on the topic has announced, the system of political organization known as liberal democracy has a lot of

problems, and the search is on for answers. Hopefully, the Chinese solution, whenever it comes, will not be so stingy as to only answer the call of the Uyghurs, but the needs of the world and its legal order as well.

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## NOTES

<sup>1</sup> For a description of the history of Article 27, see Patrick Thornberry, *International Law and the Rights of Minorities* (1991) ch. 15, as well as Francesco Caportoti's study.

<sup>2</sup> These groups include the Zhuang (16 million), Manchu (10 million), Hui (9 million), Miao (8 million), Uyghur (7 million), Yi (7 million), Mongolian (5 million), Tibetan (5 million), Buyi (3 million), Korean (2 million), and other smaller ethnicities.

<sup>3</sup> Many of these rebellions were led by the *khodjas*, militant Muslims who, when in power, often treated the inhabitants worse than the Qing rulers they had replaced. See Chen, 133-143 for an overview of these very bloody years.

<sup>4</sup> The autonomous regions included Inner Mongolia, Ningxia, Guansi, Tibet, and Xinjiang.

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