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FIGHTING THE “THREE EVILS”: A STRUCTURAL ANALYSIS OF COUNTER-TERRORISM LEGAL ARCHITECTURE IN CHINA

*Enshen Li**

ABSTRACT

In the aftermath of September 11 attacks, China has not been immune to the global trend of destructive terrorism. However, China’s perceptions of terrorism and legal responses to it greatly diverge from those of other countries. This Article first seeks to understand the cause, source, and impact of terrorist threats in China, known as “Three Evils”—terrorism, extremism, and separatism, through a critical inquiry of the country’s ethnic and religious policies. It then proceeds to delineate China’s legal framework for combating the “Three Evils” to explore the cultural characteristics of the government’s approach against these rising threats. Tracing the evolution of the country’s counter-terrorism laws and policies, this Article argues that China has developed an operational infrastructure composed of four strands to fight terrorism: crackdown, criminalization, control, and cooperation. This framework of “four Cs” operates within a vertically coordinated system by deploying diverse strategies and measures to regulate terrorism-related acts according to their level of severity and risk. While crackdown and criminalization serve mainly as reactive responses to terrorist violence through repression and retribution, control and cooperation are largely used as pre-emptive instruments to prevent substantial terrorist acts through incapacitation and community policing.¹

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¹ Community policing advocates decentralization of command, flexibility of enforcement and broadness of police-citizen interaction in tackling street delinquency. See Jerome Skolnick & David Bayley, *Theme and Variation in Community Policing*, 10 CRIME & JUST. 1, 5 (1988).

INTRODUCTION

In the past two decades, terrorism has emerged as an increasing threat to international peace and security. The September 11 attacks in the United States and the string of large-scale attacks that have occurred worldwide in their wake represent an escalating trend in the breadth and severity of global terrorism.² Like the United States, the U.K., Canada, and other Western countries, China is increasingly exposed to this unprecedented threat that poses a range of challenges to the country's domestic stability. Conceptually diverging from its Western counterparts, China perceives terrorism as, in Beijing's parlance, one of the "Three Evils/Three Evil Forces" together with religious extremism and separatism, which are all interconnected threats to the country's national security and regional stability.³ Since the late 1980s, the cultural and religious differences between the Uyghurs and the Han Chinese have caused a significant upsurge in the frequency and scale of ethno-religious violence in China. Insurgencies have severely and regularly affected Xinjiang—the region in Northwestern China where most Uyghurs live.⁴ More recently, violence has spread beyond the border of Xinjiang and has extended to major cities in the eastern and southern regions of China.⁵ In Beijing, Kunming, and Guangzhou, attackers generate terror by launching targeted assaults on civilians and public property, resulting in mass fatalities and heightened destruction.⁶ Although some of these violent acts are arguably terrorist attacks,⁷ they are characterized by the Chinese government as

² Some of the major terrorist attacks in the West include the 3/11 Madrid train bombings (2004), the 7/7 London Bombings (2005), the 12/12 Sydney Hostage Crisis (2014), and the 13/11 Paris Gun-shooting Attacks (2015). See 7/7 London Bombings: *Memorial for Bus Explosion Victims Unveiled*, BBC NEWS (Sept. 12, 2018), <https://www.bbc.com/news/uk-england-london-45485154>; *Spain Train Bombings Fast Facts*, CNN (Apr. 2, 2018), <https://www.cnn.com/2013/11/04/world/europe/spain-train-bombings-fast-facts/index.html>; Alissa J. Rubin, *Paris: One Year On*, N.Y. TIMES (Nov. 12, 2016), <https://www.nytimes.com/2016/11/13/world/europe/paris-one-year-on.html>; Michael Pearson, *With Two Hostages and Gunman Dead, Grim Investigation Starts in Sydney*, CNN (Dec. 15, 2014), <https://www.cnn.com/2014/12/15/world/asia/australia-sydney-hostage-situation/index.html>.

³ See Martin Purbrick, *Maintaining a Unitary State: Counter-terrorism, Separatism, Extremism in Xinjiang and China*, 48 ASIAN AFF. 236, 244–45 (2017).

⁴ See Martin Wayne, *Inside China's War on Terrorism*, 18 J. CONTEMP. CHINA 250, 250–53 (2009).

⁵ MURRAY TANNER & JAMES BELLACQUA, CHINA'S RESPONSE TO TERRORISM 32–33 (U.S.-China Economic and Security Commission 2016).

⁶ See *id.*

⁷ For example, on October 28, 2013, a car loaded with explosives rammed through barricades in front of Tiananmen Square's gate tower in Beijing and burst into flames. Five people, including the attackers, were killed, and thirty-eight people were injured. The Chinese authorities' claim that the Tiananmen incident was a terrorism-driven attack has been widely questioned by international critics due to the lack of sufficient evidence and the conflicting witness statements indicating otherwise. See Paul Mooney, *The Tiananmen Square Car Crash: Terrorism or Accident?*, FORBES ASIA (Oct. 31, 2013), <https://www.forbes.com/sites/paulmooney/2013/10/31/the-tiananmen-square-car-crash-terrorism-or-accident/#f7a3cb52da19>.

terrorism-driven incidents involving either individuals connected to terrorist organizations or lone attackers. Following Xi Jinping's transition to power in late 2012, terrorism has grown to be a high-priority concern of China's new leadership among the issues surrounding the country's national security agendas.⁸

Several studies examine China's response to terrorism.⁹ Despite scholarly disagreement regarding the causes and manifestations of terrorism in China, most scholars, operating principally from a socio-political point of view, agree that the Chinese Communist Party (CCP) relies on hard and soft power to curb terrorism. For example, Martin Wayne explains that China adopts "an overwhelmingly bottom-up approach" to counter insurgencies in Xinjiang.¹⁰ While harsh measures, such as (para)military action and "Strike Hard" campaigns,¹¹ to manage incidents of unrest have been deployed, other oppressive tactics—such as surveillance, monitoring, and restrictions on movement—have increased under the auspices of the preventive rationale for counter-terrorism after the first decade of the twenty-first century.¹² In parallel with these hard power approaches, the CCP has implemented a spate of domestic policies to address the economic and social roots of terrorism.¹³

Other scholars express a similar view from a slightly different perspective. Liselotte Odgaard and Thomas Nielson, for example, argue that though the CCP implements development strategies aimed at improving the economic standards and social status of ethnic minorities in Xinjiang, China's political structure engages in repression and imposition because of the country's unitary national identity and institutional settings, which "encourages assimilation or exclusion

⁸ See Jeffrey Reeves, *Ideas and Influence: Scholarship as a Harbinger of Counterterrorism Institutions, Policies, and Laws in the People's Republic of China*, 28 *TERRORISM & POL. VIOLENCE* 827, 827–28 (2016).

⁹ See Fu Hualing, *Responses to Terrorism in China*, in *ANTI-TERRORISM LAW AND POLICY* 334 (Victor Ramraj, Michael Hor, Kent Roach & George Williams Global eds., 2012); Michael Clarke, *Widening the Net: China's Anti-terror Laws and Human Rights in the Xinjiang Uyghur Autonomous Region*, 14 *INT'L J. HUM. RTS.* 542 (2010); Elena Pokalova, *Authoritarian Regimes Against Terrorism: Lessons from China*, 6 *CRITICAL STUD. ON TERRORISM* 279 (2013); Liza Steele & Raymond Kuo, *Terrorism in Xinjiang?*, 6 *ETHNOPOLITICS* 1 (2007); Marika Vicziany, *State Responses to Islamic Terrorism in Western China and Their Impact on South Asia*, 12 *CONTEMP. SOUTH ASIA* 243 (2013); Zunyou Zhou, *Chinese Strategy for De-radicalization*, *TERRORISM & POL. VIOLENCE* (2017), <https://doi.org/10.1080/09546553.2017.1330199>.

¹⁰ Wayne, *supra* note 4, at 255.

¹¹ Nicolas Becquelin, *Criminalizing Ethnicity: Political Repression in Xinjiang*, 1 *CHINA RTS. F.* 41 (2004).

¹² Julia Famularo, *Fighting the Enemy with Fists and Daggers: The Chinese Communist Party's Counterterrorism Policy in the Xinjiang Uyghur Autonomous Region*, in *TERRORISM & COUNTER-TERRORISM IN CHINA: DOMESTIC & FOREIGN POLICY DIMENSIONS* 39, 55–68 (Michael Clarke ed, 2018).

¹³ Wayne, *supra* note 4, at 259.

by using force.”¹⁴ Researchers also focus on China’s foreign policy, extraterritorial activity, and social programs for countering terrorism, which indicate the State’s ongoing efforts to develop various moderate and severe measures for achieving social stability in the Xinjiang region, which is rife with ethnic conflict.¹⁵

While current research focuses mostly on China’s social policy and political strategies for countering terrorism, there is a relative dearth of literature that addresses China’s legal response to the so-called “Three Evils.” Starting in 2001, China’s legislative efforts to regulate terrorism have been robust and extensive. Following the 9/11 incidents in the United States, the Chinese government has made several piecemeal amendments to its Criminal Law (CL), Criminal Procedure Law (CPL), and relevant administrative laws regarding the regulation of terrorism.¹⁶ In 2015, the National Security Law (NSL) and the Counter-Terrorism Law (CTL) were enacted to systematize the country’s counter-terrorism legal architecture and bureaucracy, as well as to address a set of key procedural issues that arose from the extraordinary increase in lawmaking. According to Clarke, the introduction of hardened counter-terrorism reflects the country’s declaration of a “war on terror,” as these laws permit Chinese authorities to “deploy significant repressive force, in political, legal, and police/military terms, to confront the perceived threat to Xinjiang’s security posed by Uyghur terrorism.”¹⁷

Drawing on the legislative reform of China’s counter-terrorism policies, this Article will comprehensively delineate the legal architecture adopted by the CCP to tackle terrorism. In doing so, it is imperative to examine how the “Three Evils” have shaped in Chinese political and social contexts and explore why and how China has developed its current discourse regarding terrorism. This social and cultural inquiry serves as a background against which the country’s counter-terrorism laws and policies can be better understood and perceived. This Article focuses on the way in which these counter-terrorism legal instruments have been employed by the state/legal apparatus to the extent that they have evolved,

¹⁴ Liselotte Odgaard & Thomas Nielsen, *China’s Counterinsurgency Strategy in Tibet and Xinjiang*, 23 J. CONTEMP. CHINA 535, 554 (2014).

¹⁵ See Rashid Khan, *Pakistan and China: Cooperation in Counter-Terrorism*, 32/33 STRATEGIC STUD. 70–78 (2012); Thomas Wallace, *China and the Regional Counter-Terrorism Structure: An Organizational Analysis*, 10 ASIAN SECURITY 199–220 (2014).

¹⁶ Zhe Li, *China*, in COMPARATIVE COUNTER-TERRORISM LAW 580, 580–81 (Kent Roach ed., 2015); Zunyou Zhou, ‘Fighting Terrorism According to Law’: China’s Legal Efforts Against Terrorism, in TERRORISM & COUNTER-TERRORISM IN CHINA: DOMESTIC & FOREIGN POLICY DIMENSIONS 75, 80–81 (Michael Clarke ed, 2018).

¹⁷ Clarke, *supra* note 9, at 543.

changed, and developed since the formalization of the counter-terrorism legal system in 2001. The central finding of this analysis contradicts a common conclusion in the existing literature that China's legal strategy for countering terrorism has been harsh and repressive.¹⁸ Specifically, the Article argues that over the last fifteen years or so, the Chinese government has established a culturally distinctive law enforcement model for responding to terrorism, namely a "four Cs" operational infrastructure comprising of *crackdown*, *criminalization*, *control*, and *cooperation*. This vertically coordinated system encompasses a diverse range of legal measures for managing terrorism-related acts according to their level of severity and threat. The system does not draw clear institutional boundaries between each model. Rather, the four work streams are intertwined and consolidated to generate an omni-directional and wide-ranging attack on terrorism. The following are descriptions of each "C":

- (1) Crackdown: the use of suppressive force to respond to large-scale and serious ethno-religious insurgencies.
- (2) Criminalization: the enforcement of ordinary criminal statutes (including the new CTL) against attackers involved in *ad hoc* and individual incidents.
- (3) Control: the application of pre-crime measures and administrative detention to prevent potential risks arising from misdemeanors linked to terror.
- (4) Cooperation: the adoption of the "mass line" policy to mobilize citizens and engage them in the grassroots policing of terrorist threats.¹⁹

Although these four strands aim to pursue a common goal of reducing terrorism, they serve different forms of justice by deploying divergent approaches. In this hierarchical framework, crackdown and criminalization function as reactive instruments to punish and deter terrorist violence through harsh measures. While crackdown delivers repressive justice in the form of suppression and coercion, criminalization operates as a regularized means of retributive justice by processing terrorist offenders in a standard criminal justice

¹⁸ See Nicolas Becquelin, *Criminalizing Ethnicity: Political Repression in Xinjiang*, 1 CHINA RTS. F. 39–45 (2004); Clarke, *supra* note 9; Pokalova, *supra* note 9; Odgaard & Nielsen, *supra* note 14.

¹⁹ The mass line is a political, organizational and leadership method which enables the Party to combine the leadership with the masses. The mass line rests on the need for the Party cadres to have close ties to the masses and depend on them in everything, whilst maintaining the relationship "between leaders and [the] led." See Graham Young, Comment, *On the Mass Line*, 6 MODERN CHINA 225, 228 (1980).

system through prosecution and sentencing. Concurrently, control and cooperation function as pre-emptive responses to potential threats associated with terrorism. While control pursues managerial justice to curtail terrorist threats by incapacitating individuals who represent potential risks to society, cooperation uses “mass line” justice to mitigate the risks of terrorism in the embryonic stage through several community policing initiatives.

This Article is divided into three parts. The first section traces the nature, formation, and extent of terrorist challenges facing China with reference to the State’s ethnic and religious policies in Xinjiang. The Article then provides an overview of counter-terrorism legal reforms in the post-2001 period. Against a legislative context, the Article proceeds to investigate the development of and shifts within the State’s law enforcement operations at a practical level. To this end, this Article analyzes the four strands of the “four Cs” framework individually to scrutinize their formations, transformations, and functionality through a critical review of the collected data. Because China views terrorism-related matters as one of the most sensitive issues in its political system, little information—especially data on terrorist and extremist crimes in Xinjiang—is available in the public domain. To overcome this limitation, the Article draws on a wide range of secondary data from official speeches and Party documents, working papers of law enforcement, statistical data from the Chinese government, media and NGO reports, and scholarly literature written in Chinese and English. Regarding cases of terrorism, separatism, and extremism, this Article relies on the official website of the Supreme People’s Court, China Judgments Online (Zhongguo Caipan Wenshuwang), the Case Information Disclosure System of the People’s Procuratorates (Renmin Jianchayuan Anjian Xinxi Gongkaiwang),²⁰ law enforcement’s public WeChat platform (Gonganju Weixin Gongzhonghao), and media reports as major sources of information.

I. TERRORIST THREATS IN CHINA: THE “THREE EVILS”

In Part I, this Article outlines the historical development of terrorist threats in contemporary China and identifies the driving forces that have shaped their proliferation in the context of the Chinese ethnic and religious policies. China’s initial encounters with ethnic violence that were classified as acts of terrorism occurred in the 1990s,²¹ when the Jiang Zemin administration experienced an increasing number of Uyghur riots and uprisings in Xinjiang (e.g., the 1990

²⁰ The procuratorates are equivalent to the Office of the Prosecutor General in the United States.

²¹ TANNER & BELLACQUA, *supra* note 5, at 24.

Baren uprising and the 1995 Khotan riots).²² While these incidents were labelled as examples of social unrest prior to 2001, China retrospectively portrayed itself as a victim of terrorism by rebranding the incidents as terrorist attacks after 9/11.²³ This shift in public discourse on the ethnic upheavals in China is predominantly because the Chinese government began to view the insurgences in Xinjiang as motivated by ethnic separatism and religious extremism with the assistance of overseas terrorist organizations. According to the official document “East Turkestan Terrorists Exposed” published by the State Council in 2002, more than 200 “terrorist incidents”—which resulted in 162 casualties and 440 injuries—were initiated by the East Turkistan Terrorist Movement (i.e. The Eastern Turkistan Islamic Movement [ETIM]) between 1990 and 2001.²⁴ While many key questions were left unaddressed in the report, such as whether all the deaths and injuries were linked to the officially defined “terrorist incidents,”²⁵ violence in Xinjiang appeared to be a continuing phenomenon associated with increasing ethno-religious conflicts. The violent incidents in the late 2000s seemingly reflected this trend. After a relatively calm period from 2001 to 2007, a new wave of violent attacks hit Xinjiang and even coastal regions of the country. Although there was some uncertainty regarding their nature as terrorist attacks, the Kashi attacks in 2011,²⁶ the Tiananmen incident in 2013 (Beijing),²⁷ the Kunming Railway Station attack in 2014 (Yunnan),²⁸ and the Guangzhou Railway Station incident in 2014 (Guangdong),²⁹ were

²² See Justin V. Hastings, *Charting the Course of Uyghur Unrest*, CHINA Q. 893, 900 (2011). The uprising in Baren took place on April 5, 1990. *Id.* The incident involved a clash between Uyghur militants and local paramilitary forces. *Id.* According to Chinese sources, this uprising was planned, organized, and led by the Eastern Turkistan Islamic Movement (ETIM) to re-establish the “Eastern Turkestan Republic.” *Id.* The ETIM claimed responsibility for the violence. *Id.* The Khotan riots started from a protest that called for the release of an Imam arrested by the police. *Uyghurs Protest in China’s Remote Xinjiang Region*, RADIO FREE ASIA (Apr. 1, 2008), <https://www.rfa.org/english/news/uyghur/uyghur-protest-04012008165807.html>. A violent confrontation soon developed between the protesters and cadres/armed police and caused more than sixty injuries. *Id.*

²³ TANNER & BELLACQUA, *supra* note 5, at 24.

²⁴ Michael Clarke, *China’s ‘War on Terror’ in Xinjiang: Human Security and the Causes of Violent Uighur Separatism*, 20 TERRORISM & POL. VIOLENCE 271, 282 (2008).

²⁵ *Id.*

²⁶ See *China: Unrest in Kashgar, Xinjiang, Leaves 15 Dead*, BBC NEWS (July 31, 2011), <https://www.bbc.com/news/world-asia-pacific-14356532>. On July 30, 2011, two Uyghur men in Kashi hijacked a truck and rushed it into a crowd of pedestrians around a food market. They then got off the truck and used knives to attack civilians, which resulted in six deaths and twenty-eight injuries. One day later, an explosion was set off in a restaurant by a group of armed Uyghurs, and this explosion resulted in four deaths and twelve injuries. *Id.*

²⁷ See Mooney, *supra* note 7.

²⁸ *Id.* On March 1, 2014, a group of people armed with long-bladed knives stabbed and slashed passengers at a rail station in Kunming. This incident left thirty-one civilians dead and more than 140 civilians injured. *Id.*

²⁹ *Id.* On March 6, 2014, a man (with accomplices) stabbed at passersby outside a train station in Guangzhou. Six people were seriously injured. *Id.*

depicted as “rigorously planned, organized, premeditated, violent terrorist act[s]” by Chinese authorities.³⁰ It was believed that the ETIM was responsible for most of these attacks.³¹ Between 2008 and 2016, there were more than twenty violent incidents that caused considerable casualties and social impacts across the country; China officially labelled these incidents as “terrorist attacks.”³²

Although China’s history of experiencing “terrorist attacks” can be traced back to the early 1990s, the state’s official definition of terrorism lacked a legislative basis until the introduction of the CTL in late 2015. In this new legislation, terrorism is defined in Article 3 as:

[P]ropositions or behaviours which attempt to elicit panic in society, threaten public security and violate personal properties, or coerce state organs and international organizations through violence, destruction, intimidation, or other methods to realize their political, ideological and any other purposes’ and contains a more targeted description of terrorist “activities”.³³

Article 4 also states the following:

The state combats all forms of extremism including the incitement to hatred and discrimination and agitation for violence by distorting religious doctrines or other means, so as to eliminate the ideological basis of terrorism.³⁴

Many critics contend that these stipulations are opaque and broad enough to justify the penalization of “almost any peaceful expression of ethnic identity, acts of non-violent dissent, or criticism of ethnic or religious policies.”³⁵ More specifically, the open-ended scope of “advocacy” and vague definition of “extremism” is concerning since the State may misinterpret these terms to facilitate the execution of law enforcement activities against ethnic minorities.³⁶

³⁰ William Wan, *Chinese Police Say Tiananmen Square Crash Was ‘Premeditated, Violent, Terrorist Attack’*, WASH. POST (Oct. 30, 2013), https://www.washingtonpost.com/world/asia_pacific/chinese-police-say-tiananmen-square-crash-was-premeditated-violent-terrorist-attack/2013/10/30/459e3e7e-4152-11e3-8b74-d89d714ca4dd_story.html?utm_term=.361a291b2e41.

³¹ RONGXING GUO, CHINA’S SPATIAL (DIS)INTEGRATION: POLITICAL ECONOMY OF THE INTERETHNIC UNREST IN XINJIANG 56–57 (2015).

³² Mooney, *supra* note 7; *see also* TANNER & BELLACQUA, *supra* note 5, at 31–32 (listing major terrorist attacks).

³³ THE INTERNATIONAL CAMPAIGN FOR TIBET, CHINA’S NEW COUNTER-TERRORISM LAW: IMPLICATIONS AND DANGERS FOR TIBETANS AND UYGHURS 48 (2016), <https://www.savetibet.org/wp-content/uploads/2016/11/FIDH-ICT-Chinas-new-counter-terrorism-law-Implications-and-Dangers-for-Tibetans-and-Uyghurs-15-11-2016-FINAL.pdf>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* Extremism was defined in Section 3 of the Xinjiang Regulation on De-Extremization, which was

Like many other Chinese legal principles, the CTL's discourse on terrorism/extremism suffers from much ambiguity, which is most likely the motivation behind the law-making strategy. That is, any intentional omission from the legal definition of terrorism in the CTL is to create room for the Chinese government to legitimately combat any forces deemed as threats to state sovereignty and political legitimacy. By far, China's official stance on terrorist threats has been attributed to the so-called "Three Evils," which are referred to as "[violent] terrorism, [ethnic] separatism[,] and [religious] extremism."³⁷ On many occasions, Party elites and government officials have referred to these three particular threats to flag the State's stern attitude towards "ethnic separatism" and "religious extremism," which, according to Beijing, are conflated with terrorism and generate the most violent incidents in China.³⁸ In a speech at the Shanghai Cooperation Organization summit in 2017, China's Communist Party (CCP) General Secretary Xi Jinping stressed that "the fight against 'the three evil forces' is a long and arduous task."³⁹ Over the last decade, the rhetoric of combating the "Three Evils" has not only dominated China's domestic political and policy dynamics of fighting terrorism, but also informed East and Central Asia's regional strategy for national security with the emergence of the Shanghai Cooperation Organization,⁴⁰ of which China is a *de facto* leader.⁴¹ However, why is it that China perceives "separatism" and "extremism" as the dominant terrorist threats on its soil? In other words, what is the correlation between the State's discourse of governance and the rise of ethno-religious tensions in Xinjiang have led to the recognition of "separatism" and "extremism" as primary terrorist challenges in China? In what follows, this Article will review China's ethnic and religious policies in Xinjiang to uncover the nature, formation, and sources of Uyghur terrorism. The discussion is intended to shed light on the social and cultural conditions of the "Three Evils"

promulgated in 2016 by the Xinjiang People's Congress: "extremism refers to talks and actions that promote radical religious ideals and thoughts, as well as repel and interfere normal production and lives under the influence of extremism." *Id.*

³⁷ Zhao Lei, *Xi Vows to Fight 'Three Evil Forces' of Terrorism, Separatism and Extremism*, TELEGRAPH (June 19, 2017), <https://www.telegraph.co.uk/news/world/china-watch/politics/xi-fights-three-evil-forces-terrorism-separatism-extremism/>.

³⁸ In retrospect, China has linked almost all violent incidents in Xinjiang since the 1990s with the "Three Evils", including the most recent ones in Beijing, Guangzhou and Kunming. See *Commentary: Egregious Accusations Ignore Basic Facts on Xinjiang*, XINHUA (February 13, 2019); TANNER & BELLACQUA, *supra* note 5, at III.

³⁹ Zhao, *supra* note, 38.

⁴⁰ *Id.* The Shanghai Cooperation Organization was created in 2001 by China, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, and Uzbekistan. India and Pakistan joined the organization in 2017. *Id.*

⁴¹ Yuan Jing-Dong, *China's Role in Establishing and Building the Shanghai Cooperation Organization (SCO)*, 19 J. CONTEMP. CHINA 855, 856 (2010).

to understand the building of China's counter-terrorism legal framework and its implications for law enforcement operations that aim to combat terrorism.

A. *Xinjiang and Its Cultural and Social Relevance to Terrorism*

Xinjiang was formally incorporated into China during the Qing Dynasty as part of Emperor Qianlong's effort to expand the empire's northwest frontiers in the mid-eighteenth century.⁴² However, the fall of the Qing Dynasty witnessed the divorce of Xinjiang from the weak central government of the Nationalist Party (Kuomintang).⁴³ Before 1949, there were two short-lived attempts at independence in 1933 and 1944.⁴⁴ Central control of Xinjiang resumed in 1949 when the People's Liberation Army entered the region, and the People's Republic of China was declared.⁴⁵ Five years later, the Xinjiang Uyghur Autonomous Region (XUAR) was formed, but the "independence" of the province, which lasted for centuries, was abolished by the CCP.

Situated in the far-western region of China and home to the Uyghurs, Xinjiang's geographic location, geomorphologic features, and demographic conditions make it one of the most crucial regions in China, both politically and economically.⁴⁶ This area was of great strategic importance to the Chinese authorities since imperial times, and it gains prominence due to Xi's implementation of the eco-political scheme "One Belt and One Road" in 2013.⁴⁷ Notably, this initiative views Xinjiang as a focal communication line that connects China and the West. Also, due to its close proximity to the center of Asia and the cultural commonalities with Islamic states, Xinjiang has introduced pressing challenges to the Chinese central government.⁴⁸ The most salient challenges concern issues regarding

⁴² Gardner Bovingdon, *Xingjian*, in *POLITICS IN CHINA: AN INTRODUCTION* 428, 430 (William Joseph ed., 2d. ed. 2010).

⁴³ MICHAEL CLARKE, *XINJIANG AND CHINA'S RISE IN CENTRAL ASIA – A HISTORY* 30–37 (2011).

⁴⁴ Shohret Hoshur, *Eastern Turkestan Flag Found Among Bodies of Uyghur Attackers in Xinjiang*, RADIO FREE ASIA (Nov. 19, 2013), <https://www.rfa.org/english/news/uyghur/siriqbuya-11192013181239.html>.

⁴⁵ Michael Dillon, *Ethnic, Religious and Political Conflict on China's Northwestern Borders: The Background to the Violence in Xinjiang*, *IBRU BOUNDARY & SECURITY BULL.* 80, 81 (1997).

⁴⁶ Zachary Torrey, *The Human Costs of Controlling Xinjiang*, *DIPLOMAT* (Oct. 10, 2017), <https://thediplomat.com/2017/10/the-human-costs-of-controlling-xinjiang/>.

⁴⁷ Faisal Kidwai, *Xinjiang Rides High on Belt and Road Initiatives*, *CHINA DAILY* (Aug. 8, 2018), <http://www.chinadaily.com.cn/a/201808/08/WS5b6a649ba310add14f384a0c.html>. "One Belt and One Road," which refers to the Silk Road Economic Belt and the 21st Century Maritime Silk Road, is an economic and strategic policy adopted by the Xi administration in 2013 to tie Africa, Eurasia, and Oceania closely through a land route and a maritime route. *Id.*

⁴⁸ Michael Clarke, *China and Uyghurs: The "Palestinization" of Xinjiang?*, 22 *MIDDLE EAST POL'Y* 127,

ethnicity and religion. A prominent ethnic issue is that the Uyghurs often experience identity confusion because they are more ethnically similar to the Turkic peoples in Central Asian countries than to the people of Beijing.⁴⁹ Mostly driven by resentment toward the government's ethnic policies that intend to economically and demographically displace the Uyghur community, separatist movements that seek independence from Beijing have surfaced from the 1990s up to the present.⁵⁰ The religious issue refers to the ideological conflict between Islamic doctrines upheld by Uyghur Muslims and nationalist ideals endorsed by the CCP, which cannot co-exist or be reconciled.⁵¹ Therefore, a number of extremist incidents have taken place in response to the State's tight grip on religious matters in Xinjiang.⁵² In both scenarios, the lack of political avenues for ethnic minorities to voice their dissenting opinions have made terrorist violence a more feasible way to express populist discontent and indignation.⁵³ Indeed, the two issues that arise from Xinjiang's social and cultural dynamics are closely interconnected, which creates conditions ripe for ethnic tensions to erupt in terrorist violence.

1. *China's Ethnic Policies in Xinjiang*

A significant part of Chinese history is a story of assimilation, absorption, exclusion, and cleansing of ethnic groups through incessant wars and government supersession. It was better for imperial rulers to manage ethnic populations as a means of more effectively safeguarding the unity of the empire and the stability of the government. Some perceive the unification of China as largely attributable to the Han identity (except for during the Yuan and Qing Dynasties), which they view as having served as the glue keeping the vast country together geographically and demographically.⁵⁴ However, while the Han identity has been perceived to be a driving factor for ethnic harmony in peaceful times, its weakness has been its limited respect for divergence.⁵⁵

128 (2015).

⁴⁹ Torrey, *supra* note 46.

⁵⁰ Lap-Yan Kung, *National Identity and Ethno-religious Identity: A Critical Inquiry into Chinese Religious Policy, with Reference to the Uighurs in Xinjiang*, 3 RELIGION, STATE & SOC'Y 375, 379–80.

⁵¹ James Dorsey, *Xinjiang: China Ignores the Lessons from the Past*, INT'L POL'Y DIG. (July 11, 2018), <https://intpolicydigest.org/2018/07/11/xinjiang-china-ignores-lessons-from-the-past/>.

⁵² Kilic Kanat, *Repression in China and Its Consequences in Xinjiang*, HUDSON INST. (July 28, 2014), <https://www.hudson.org/research/10480-repression-in-china-and-its-consequences-in-xinjiang>.

⁵³ Pokalova, *supra* note 9, at 292.

⁵⁴ Martin Jacques, *A Point of View: How China Sees a Multicultural World*, BBC (Oct. 26, 2012), <http://www.bbc.com/news/magazine-20083309>.

⁵⁵ *Id.*

Measures adopted across various historical periods tended to privilege the Han culture and ethos and have facilitated the absorption of other ethnic groups into the Han identity.⁵⁶ This is in keeping with China's long-standing ethnic policy of ethnic amalgamation, which conceptualizes China as a "civilization" as opposed to a "nation."⁵⁷ In this ethnic paradigm, the Han identity has not blended with other ethnic identities; rather, the latter have been assimilated and subsumed into the former.⁵⁸ The ethnic policies in Xinjiang under the leadership of the CCP reflect this overarching ethos.

Historically, the Uyghurs have constituted the largest population group in Xinjiang.⁵⁹ Like other ethnic minorities in China, the Uyghurs differ from the Han Chinese in culture, language, and social traditions.⁶⁰ The Uyghurs share a strong ethnic identity with Turkic peoples, who have long enjoyed powers of self-regulation and self-determination in Central Asia.⁶¹ Following the establishment of the XUAR, the Uyghurs firmly believed that their right to autonomous management of Xinjiang should be retained and developed, as promised by the CCP and enshrined in the State's Constitution in the 1950s.⁶² Contrary to what Uyghurs expected, the central government has implemented amalgamative policies to rule Xinjiang that constrain local identities through the perpetration of Han influence in almost every aspect of the Uyghurs' social life.⁶³ This process of "forced assimilation" included a set of repressive social programs that marginalized the Uyghurs in Xinjiang.⁶⁴ For example, the policy of Han migration to Xinjiang has been in effect since the 1950s.⁶⁵ According to official statistics, the Han population in Xinjiang was 6 percent in 1953 and increased from 33 percent

⁵⁶ Jonathan Unger, *Not Quite Han: The Ethnic Minorities of China's Southwest*, 29(3) BULL. CONCERNED ASIAN SCHOLARS 67, 68 (1997).

⁵⁷ Abanti Bhattacharya, *Conceptualizing Uyghur Separatism in Chinese Nationalism*, 17 STRATEGIC ANALYSIS 357, 363 (2003).

⁵⁸ *Id.*

⁵⁹ Anthony Howell & C. Cindy Fan, *Migration and Inequality in Xinjiang: A Survey of Han and Uyghur Migrants in Urumqi*, 52(1) EURASIAN GEOGRAPHY & ECON. 119, 122 (2011).

⁶⁰ Torrey, *supra* note 46.

⁶¹ Debasish Chaudhuri, *China's Policy in Xinjiang, 1948–78*, in XINJIANG – CHINA'S NORTHWEST FRONTIER 56 (K. Warikoo ed., 2016).

⁶² XIANFA [CONSTITUTION] 1982, art. 35, § 116 (China). For example, Article 116 of the Chinese Constitution states that "the people's congresses of national autonomous areas have the power to enact regulations on the exercise of autonomy and other separate regulations in light of the political, economic and cultural characteristics of local ethnicity concerned." *Id.*

⁶³ GARDNER BOVINGDON, *AUTONOMY IN XINJIANG: HAN NATIONALIST IMPERATIVES AND UYGHUR DISCONTENT* viii-ix (2004).

⁶⁴ Pokalova, *supra* note 9, at 284.

⁶⁵ Howell & Fan, *supra* note 60, at 119.

in 1964 to 40.58 percent in 2000.⁶⁶ The number of Han remained relatively stable in the 2000s; the latest 2010 census showed that 40.48 percent of the population was Han, while 45.84 percent of the population was Uyghur.⁶⁷ The repercussions of the influx of Han migrants are twofold. On one hand, the migration has facilitated the economic development of Xinjiang, as it helped the region keep pace with other regions in China as the country pursued market modernization under Deng Xiaoping's economic reforms.⁶⁸ On the other hand, Han migrants have tended benefit from Xinjiang's economic growth to a far greater degree than the Uyghurs.⁶⁹ The government assigned the Han migrants to work through the Production and Construction Corps, a military-civilian organization with mostly Han Chinese members.⁷⁰ Xinjiang's main industries, such as gas, oil, and electric power production, are controlled by Han-dominated work units and companies.⁷¹ These organizations prefer to employ Han Chinese over Uyghurs;⁷² this preferential treatment is now a standard practice not only in private sector, but also in the government sector.⁷³ During the past decades, while the president of the XUAR has mostly been of Uyghur ethnicity, the person appointed as the Party's First Secretary has always been of Han ethnicity.⁷⁴

The CCP also attempts to impose the Han identity on the Uyghurs through language and education policies. As part of assimilative and integrative policy, Beijing promotes Mandarin Chinese as the *lingua franca* in ethnic minority schools.⁷⁵ Although the Constitution stipulates that governmental bodies in ethnically autonomous regions can independently administer education, scientific, and cultural affairs,⁷⁶ the central government has introduced educational programs that enforce compulsory study of Mandarin at all levels of

⁶⁶ Dmitry V. Buyarov, Kireev A. Aleksandrovich & Dryzyaka A. Viktorovich, *Demographic Situation in Xinjiang-Uighur Autonomous Area in the Last Quarter of the Twentieth Century*, 3 GLOBAL MEDIA J. 1, 1 (2016); Stanley Toops, *Demographics and Development in Xinjiang After 1949*, 1–41, 2 (East-West Ctr. Wash., Working Paper No. 1, 2004).

⁶⁷ Stanley Toops, *Spatial Results of the 2010 Census in Xinjiang*, ASIA DIALOGUE (Mar. 7, 2016), <https://cpianalysis.org/2016/03/07/spatial-results-of-the-2010-census-in-xinjiang/>.

⁶⁸ June Teufel Dreyer, *Ethnicity and Economic Development in Xinjiang*, 2(2) INNER ASIA 137, 141 (2000).

⁶⁹ Kung, *supra* note 51, at 380.

⁷⁰ Guo, *supra* note 31, at 16, 18.

⁷¹ *Id.* at 18–21.

⁷² Howell & Fan, *supra* note 60, at 121.

⁷³ *Id.* at 138.

⁷⁴ Bhattacharya, *supra* note 58, at 370.

⁷⁵ Linda Tsung, *Trilingual Education and Practice in Xinjiang*, in EDUCATION IN CHINA 161, 164 (James Leibold & Chen Yangbin eds., 2014).

⁷⁶ XIANFA, art. 119 (1982).

school in the XUAR since the early 1980s, “aiming to making every middle school graduate communicative in Mandarin.”⁷⁷ For instance, it is observed that the formal study of Mandarin started from the third grade of primary school, and further opportunities for Mandarin instruction was available in high school and university.⁷⁸ In 2004, the government of Khotan County issued the policy statement “Concerning the Decision to Vigorously Promote ‘Bilingual’ Education Work,” which explicitly stressed that Mandarin should be established as the sole or primary language of instruction in all elementary or middle schools in Khotan.⁷⁹ In addition, the Chinese government included the official language exam designed to test Mandarin proficiency, the Hanyu Shuiping Kaoshi (HSK), as part of the National College Entrance Examination since 1998.⁸⁰ Students who fail to reach above Level Two in Mandarin on the HSK exam are not eligible to enroll in college or university unless they are willing to take preparatory courses in Mandarin to meet the required standard.⁸¹ Ironically, this government-mandated change has created competition for jobs in Xinjiang between Mandarin and non-Mandarin speakers, particularly as the new linguistic hierarchy established in this region has placed Mandarin speakers in high-status positions.⁸²

It is certainly correct, too, to suggest that the Chinese government has instituted favorable policies toward the Uyghurs.⁸³ Since the 1980s, the Chinese government implemented policies that aim for social equality in areas such as family planning (e.g., the two-child policy),⁸⁴ school admissions (e.g., Uyghur students receive bonus points on the College Entrance Examination),⁸⁵ and law enforcement (e.g., fewer arrests, fewer instances of imposition of the death penalty, and greater lenience for citizens of Uyghur ethnicity than for those of Han ethnicity).⁸⁶ However, the concern that local identities are degraded in favor of the majority-Han identity outweighs the impact of these social welfare

⁷⁷ Eric Schluessel, *‘Bilingual’ Education and Discontent in Xinjiang*, 26(2) CENTRAL ASIAN SURVEY 251, 256 (2007).

⁷⁸ *Id.*

⁷⁹ *Id.* at 257.

⁸⁰ Tsung, *supra* note 76.

⁸¹ *Id.*

⁸² Tsung, *supra* note 76.

⁸³ Shan Wei & Weng Cuifen, *China’s New Policy in Xinjiang and Its Challenges*, 2(3) E. ASIAN POL’Y 58, 59 (2010).

⁸⁴ Barry Sautman, *Preferential Policies for Ethnic Minorities in China: The Case of Xinjiang* 4 NATIONALISM & ETHNIC POL. 86, 88–90 (1998).

⁸⁵ Timothy Grose, *The Xinjiang Class: Education, Integration, and the Uyghurs*, 30 J. MUSLIM MINORITY AFF. 97, 101–02 (2010).

⁸⁶ James Leibold, *Preferential Policies for Ethnic Minorities in China*, in HANDBOOK ON ETHNIC MINORITIES IN CHINA 165, 178 (Xiaowei Zang ed., 2016).

policies, which “are set within the context of the paternalistic and hierarchical approach to ethnic relations adopted by the Chinese authorities.”⁸⁷ Government initiatives that contributed to the cultural and political degradation of the Uyghurs have fueled anti-Chinese sentiment in Xinjiang.⁸⁸ The denial of political opportunities for Uyghurs to repudiate official decisions or seek self-regulation may exacerbate the authoritarian political system in China. As a result, clashes between citizens of Uyghur ethnicity and those of Han ethnicity are more visible and have grown in severity during the Cultural Revolution (1966–76).⁸⁹ Local ethnic minorities and individuals associated with external terrorist forces (e.g., the East Turkestan Islamic Movement) have initiated small-scale riots that have turned into insurgencies protesting and challenging Chinese rule.⁹⁰ For example, during the Yining incident of 1997, protests sparked by the news of the governmental crackdown on attempts to revive Uyghur traditional culture escalated into a rampage involving over one thousand Uyghurs.⁹¹ The protesters torched cars, looted stores, burned national flags, and shouted pro-independence slogans, leaving nine dead and more than one-hundred injured.⁹² Over the last two decades since the violence in Yining, similar riots have regularly broken out in the cities of Xinjiang, including the Urumqi incident, which claimed the lives of approximately two-hundred people in 2009.⁹³ These incidents exemplify the State’s inability to address Uyghur grievances generated by Han-oriented policies, demonstrating the State’s equivalency of ethnic separatism with violent terrorism.

2. *China’s Religious Policies in Xinjiang*

Religion in Xinjiang presents another significant challenge to the CCP’s politics and ideology. In China’s history of state governance, religion has never been a mere ideological issue; rather, it has been a means of social control over people of same religious beliefs and faith. In other words, religion can either uphold or threaten the State’s sovereignty.⁹⁴ While ancient

⁸⁷ Kung, *supra* note 51, at 379.

⁸⁸ Brad Adams, *Devastating Blows: Religious Repression of Uighurs in Xinjiang*, 17 HUM. RTS. WATCH 6–8 (2005), <https://www.hrw.org/reports/2005/china0405/china0405.pdf>.

⁸⁹ Kunal Mukherjee, *The Uyghur Question in Contemporary China*, 34 STRATEGIC ANALYSIS 420, 425 (2010).

⁹⁰ TANNER & BELLACQUA, *supra* note 5, at 19–20.

⁹¹ IAN COOK & GEOFFREY MURRAY, *CHINA’S THIRD REVOLUTION: TENSIONS IN THE TRANSITION TOWARDS A POST-COMMUNIST CHINA* 130 (2001).

⁹² *Id.*

⁹³ Pokalova, *supra* note 9, at 286.

⁹⁴ C. K. KANG, *RELIGION IN CHINESE SOCIETY: A STUDY OF CONTEMPORARY SOCIAL FUNCTIONS OF RELIGION AND SOME OF THEIR HISTORICAL FACTORS* 189 (2016).

China drew influence from Confucianism, Buddhism, and Taoism to inform its ideological system,⁹⁵ Communist China constructed its own narrative: nationalism. Nationalism is a contested concept within the field of political science and sociology. However, nationalism may be defined as “a political principle [that] holds that the political and national unit should be congruent.”⁹⁶

Chinese nationalism may be intrinsically bound with notions of “patriotism;” it entails supporting the Party and its political stability.⁹⁷ Driven mainly by the fear of “national humiliation” inflicted by Western powers in the early decades of the twentieth century, nationalism in the Chinese context includes national and political unity.⁹⁸ Nationalism, in this context, entails not only sovereignty over the homeland, but also loyalty to the CCP’s leadership and commitment to the Party’s discourses and agenda to ensure the country’s prosperity and dignity.⁹⁹ Therefore, in many respects, the Chinese government perceives Uyghur ethnicity and its culture as a hindrance to the promotion of nationalism in Xinjiang.¹⁰⁰ Since approximately 751 C.E. during the Tang Dynasty, Islam spread into the Xinjiang region, influencing Uyghur social and cultural life.¹⁰¹ The Chinese government perceives Muslims’ loyalty to Allah as challenging the atheistic nature of Chinese communism, which threatens the patriotic spirit advocated by Chinese nationalism.¹⁰² Moreover, Islam has functioned as a bridge that connects the Muslim communities in Xinjiang with Muslims beyond the region’s borders in terms of economic, cultural and educational communications.¹⁰³ From the Party’s perspective, the Uyghurs’ established affiliation to Muslim communities in Central Asia has alienated the Muslim Uyghurs from China’s central government and has thus dampened the Uyghurs’ sense of

⁹⁵ See Hong Xiuping, *Confucianism, Taoism, Buddhism Impact Traditional Chinese Culture*, CHINESE SOC. SCI. NET (Jan. 20, 2015), http://english.cssn.cn/research/religious/201501/t20150120_1485513.shtml; MAX WEBER, *THE RELIGION OF CHINA: CONFUCIANISM AND TAOISM 187–89* (1951) (detailing religious values and beliefs in ancient China).

⁹⁶ ERNEST GELLNER, *NATIONS & NATIONALISM* 1 (1983).

⁹⁷ YONGNIAN ZHENG, *DISCOVERING CHINESE NATIONALISM IN CHINA: MODERNIZATION, IDENTITY, AND INTERNATIONAL RELATIONS 89–90* (Cambridge University Press 1999).

⁹⁸ Shameer Modongal, *Development of Nationalism in China*, 2 *COGENT SOC. SCI.* 1, 2–4 (2016).

⁹⁹ Jean-Pierre Cabestan, *The Many Facets of Chinese Nationalism*, 59 *CHINA PERSP.* 1, 7 (2005).

¹⁰⁰ Kung, *supra* note 51, at 379.

¹⁰¹ MICHAEL DILLON, *XINJIANG: CHINA’S MUSLIM FAR NORTHWEST* 10, 11 (2004); Kung, *supra* note 44, at 381.

¹⁰² Kunal Mukherjee, *The Uyghur Question in Contemporary China*, 34(3) *STRATEGIC ANALYSIS* 420, 421 (2010).

¹⁰³ Lillian Harris, *Xinjiang, Central Asia and the Implications for China’s Policy in the Islamic World*, 133 *CHINA Q.* 111, 120–21.

national identity.¹⁰⁴ As such, to better serve nationalism, which is now considered a “civil” religion with ideological supremacy in China, the state relies on a distinct policy to deal with religious issues in Xinjiang, which, according to Kung, “is primarily a policy of control.”¹⁰⁵

In comparison to the CCP’s relatively soft policy towards Islam in Mao’s and Deng’s China,¹⁰⁶ the measures implemented to regulate religious matters in Xinjiang since the 1990s have been more restrictive and invasive. Beginning with Document 19—The Basic Viewpoint and Policy on the Religious Question during Our Country’s Socialist Period—issued in 1982,¹⁰⁷ the Regulation on State Secrets and Specific Classification Limits in Religious Affairs Work issued in 1995,¹⁰⁸ then to the most recent Regulation on Religious Affairs, issued in 2004 and revised in 2018,¹⁰⁹ the Chinese authorities have legitimized and normalized attempts to control Uyghurs’ religious activities. Although the Party claims religious freedom is the underlying principle of the Party’s policy in almost all relevant official decrees, including the Constitution;¹¹⁰ reality tells a different story. International sources claim that State’s control of Islamic activities has been fairly pervasive since Jiang’s term in office, from “the annual training of imams for conformity with a government role, to the destruction of ‘non-conforming’ mosques, to the control of religious publications, to purges of schools.”¹¹¹ From the mid-2000s onwards, more mandatory requirements have reportedly been imposed on Muslims’ religious activities and expressions.¹¹² There is speculation that such administrative measures like the registration of religious venues, approval of the clergy ordination,

¹⁰⁴ Kung, *supra* note 51, at 381.

¹⁰⁵ *Id.* at 377.

¹⁰⁶ *Id.* at 385–86. During the Cultural Revolution, China purged all religions. *Id.*

¹⁰⁷ Kunal Mukherjee, *The Uyghur Question in Contemporary China*, 34 STRATEGIC ANALYSIS 420, 424–25 (2010).

¹⁰⁸ Adams, *supra* note 89.

¹⁰⁹ Julia Famularo, *Fighting the Enemy with Fists and Daggers: The Chinese Communist party’s Counter-terrorism Policy in the Xinjiang Uyghur Autonomous Region*, in TERRORISM AND COUNTER-TERRORISM IN CHINA: DOMESTIC AND FOREIGN POLICY DIMENSIONS 52–53 (Michael Clarke ed., 2018).

¹¹⁰ Art. 36 of the Chinese Constitution states the following: “Citizens of the People’s Republic of China enjoy freedom of religious belief. No State organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion.” XIANFA art. 36 (2018); *see also* Adams, *supra* note 89, at 5; Information Office of the State Council of the People’s Republic of China, *Freedom of Religious Belief in China* (Oct. 1997) <http://www.china-un.ch/eng/bjzl/t168753.htm>.

¹¹¹ Adams, *supra* note 89, at 5.

¹¹² *See* Zhang Qianfan & Zhu Yingping, *Religious Freedom and Its Legal Restrictions in China*, VOLUME BYU. L. R. 783, 790–99 (2011).

restriction on the distribution of religious materials, and other similar measures help maintain authoritative regulation of religious activities.¹¹³ The more recently introduced measures such as prohibiting civil servants from fasting during the month of Ramadan, banning Islamic veils in public places, and forbidding religious names for Muslim babies in Xinjiang indicate that the Party is placing stricter restraints on the religious rights of the Muslim Uyghurs compared to the past measures.

Since 2014, government departments in Xinjiang have prohibited Muslim staff from fasting and engaging in other religious activities during Ramadan.¹¹⁴ This ban has also been extended to include students and teachers.¹¹⁵ While the extent to which this ban applies to the whole province is unknown, in many major cities, including Urumqi, Korla, and Aksu, “all restaurants are ordered to open during Ramadan and people are not permitted to observe the holy month.”¹¹⁶ In February 2015, the Standing Committee of the Urumqi People’s Congress issued the Regulation Banning the Wearing of Items that Mask the Face or Robe the Body in Public Places.¹¹⁷ According to this regulation, it is now forbidden in the city of Urumqi to wear “Mengmian Zhaopeng,” items that mask the face or robe the body. The term is vague and imprecise in the regulation; items may include head coverings, such as hijabs, niqabs, and burkas, and adornments of other types of clothing, such as emblems, objects, memorabilia, logos, or symbols related to Islam.¹¹⁸ This ban is said to be based on “the principles of integrated management, education[,] and guidance,” and its violation is likely to result in administrative and criminal punishment.¹¹⁹ In 2017, the Xinjiang authorities prohibited dozens of names with religious connotations (e.g., “Imam,” “Quran,” and “Jihad”) for newborn babies.¹²⁰

¹¹³ *Id.* at 30–34.

¹¹⁴ Caroline Mortimer, *Ramadan 2017: China Trying to Stop Muslims Observing Holy Month in Restive Xinjiang Region*, INDEPENDENT (May 31, 2017), <http://www.independent.co.uk/news/world/asia/ramadan-2017-china-xinjiang-uyghur-muslim-holy-month-islam-fasting-a7765836.html>.

¹¹⁵ Caroline Mortimer, *Ramadan 2017: China Trying to Stop Muslims Observing Holy Month in Restive Xinjiang Region*, INDEPENDENT (May 31, 2017), <http://www.independent.co.uk/news/world/asia/ramadan-2017-china-xinjiang-uyghur-muslim-holy-month-islam-fasting-a7765836.html>.

¹¹⁶ *Id.*

¹¹⁷ *China Uighurs: Xinjiang Ban on Long Beards and Veils*, BBC NEWS (Apr. 1, 2017), <http://www.bbc.com/news/world-asia-china-39460538>.

¹¹⁸ Timothy Grose & James Leibold, *Why China is Banning Islamic Veils and Why It Won’t Work*, CHINAFILE (Feb. 4, 2015), <http://www.chinafile.com/reporting-opinion/viewpoint/why-china-banning-islamic-veils>; Urumqi Regulation for the Wearing of Masked Veils in Public Places (promulgated by the Standing Comm. People’s Cong. Urumqi Municipality, Dec. 10, 2014, effective Feb. 1, 2015), art. 2, CLI.10.1027957 (PKULAW.CN) [hereinafter Urumqi Regulation].

¹¹⁹ Urumqi Regulation, *supra* note 119, at arts. 4, 10, 11.

¹²⁰ Sophie Richardson, *China Bans Many Muslim Baby Names in Xinjiang: Absurd Edict Part of Growing*

Although this rule has not yet been incorporated in official policy or formal law, it will make a practical impact on both the individual with such name and their families; such practical impact may include denial of government benefits, education, and healthcare stemming from the Hukou System.¹²¹

These policy shifts reflect China's rising concern of "religious extremism" in the Xinjiang region. Since China first encountered insurgencies in Xinjiang, the Chinese government has drawn a direct link between violent attacks and religious extremism.¹²² The major concern hangs over Xinjiang Muslims at risk of being influenced by the ideology of extremist groups in Central Asia.¹²³ In particular, Chinese sources have found that extremist terrorist groups like the East Turkestan Islamic Movement (ETIM) and the Islamic State (ISIS) have recruited Uyghur Muslims as radicalized jihadist fighters through religious propaganda and expansion.¹²⁴ As of 2014, one-hundred and fourteen Uyghur Muslims from Xinjiang were fighting alongside ISIS.¹²⁵ Wang Zuoran, head of the Bureau of Religious Affairs, articulated that "the foreign use of religion to infiltrate [China] intensifies by the day and religious extremist thought is spreading in some areas [of Xinjiang]."¹²⁶ Such rhetoric seems to be the CCP's standard language, employed to relate domestic issues of terrorism to religious extremism. Since 2001, the Chinese government has characterized nearly all the ad hoc or individual violent incidents involving Uyghurs as extremism- or separatism-driven attacks, including the most high-profile attacks, such as the

Restrictions on Uyghurs, HUM. RTS. WATCH (Apr. 24, 2017), <https://www.hrw.org/news/2017/04/24/china-bans-many-muslim-baby-names-xinjiang>.

¹²¹ *Id.* The Hukou System is China's household registration system instituted in the 1950s. CONG.-EXEC. COMM'N ON CHINA, SPECIAL TOPIC PAPER: CHINA'S HOUSEHOLD REGISTRATION SYSTEM: SUSTAINED REFORM NEEDED TO PROTECT CHINA'S RURAL MIGRANTS (OCT. 7, 2005), <https://www.cecc.gov/sites/chinacommission.house.gov/files/CECC%20Special%20Topic%20Paper%20-%20China%27s%20Household%20Registration%20System%20-%20Sustained%20Reform%20Needed%20to%20Protect%20China%27s%20Rural%20Migrants%20-%202010.7.05.pdf>.

¹²² TANNER & BELLACQUA, *supra* note 5 at III.

¹²³ Gerry Shih, *China Defends Its 'People-oriented' Muslim Reeducation Program as Job Training*, WASH. POST (Oct. 16, 2018), https://www.washingtonpost.com/world/asia_pacific/china-defends-its-people-oriented-muslim-reeducation-program-as-job-training/2018/10/16/521964a8-d12b-11e8-a275-81c671a50422_story.html?utm_term=.71d8c35494d8.

¹²⁴ Charlie Campbell, *Uighur Extremists Joining ISIS Poses a Security and Economic Headache for China's Xi Jinping*, TIME (July 21, 2016), <http://time.com/4416585/isis-islamic-state-china-xinjiang-uighur-xi-jinping/> (citing AFP, *Beijing Policies in Xinjiang Driving Chinese Muslims to Join Ranks of Islamic State, Says U.S. Think Tank*, S. CHINA MORNING POST (last updated July 20, 2018, 2:54 PM).

¹²⁵ *Id.*

¹²⁶ Christian Shepard, *China Facing Intensified Threat of Religious Infiltration, Extremism: Official*, REUTERS (Sept. 12, 2017), <https://www.reuters.com/article/us-china-religion/china-facing-intensified-threat-of-religious-infiltration-extremism-official-idUSKCN1BN09Y>.

2011 Kashgar attacks and the 2014 Kunming Railway Station attack.¹²⁷ However, by 2017, “extremism” was defined in the Xinjiang Regulation on De-Extremism, but the definition remains excluded from the CTL.¹²⁸

From the official perspective of the Chinese government, the occurrence of “extremist violence” and “separatist incidents” in and outside Xinjiang is not a result of the State’s oppressive policies.¹²⁹ Rather, the Chinese Government may insist that these violent incidents are instigated by extremist ideals related to Islamic doctrines and supported by overseas radical organizations.¹³⁰ This contention seemed to be more justifiable when ISIS pledged to launch terrorist attacks in China as a new target.¹³¹ In this sense, it is evident that control, supervision, and injunction of religious activities in Xinjiang have become the more optimal and rational methods of eradicating the “root causes” of extremist violence by the government. In addition to the ethnic policies that impacted the rights and livelihoods of Uyghurs, the religious policies in Xinjiang typify the State’s political priorities that emphasize, since the 1900s, state sovereignty and political stability. Subsequently, when ethno-religious tensions threaten these core tenets of the CCP, the government deems the rights and concerns of ethnic minorities as secondary to national security and social cohesion – the priorities of the ruling Party.¹³² However, the friction between Uyghurs and the government creates a dilemma for the CCP: if the State applies harsh approaches to Uyghur Muslims, the CCP may escalate ethnic tensions; if the State relaxes its policies, the CCP may facilitate Uyghur Muslims’ desire for self-determination and self-regulation, resulting in the alienation of Uyghur Muslims from Chinese society.

¹²⁷ Michael Wines, *Deadly Violence Strikes Chinese City Racked by Ethnic Tensions*, N.Y. TIMES (July 31, 2011), <https://www.nytimes.com/2011/08/01/world/asia/01china.html>; Justine Drennan, *Is China Making Its Own Terrorism Problem Worse?*, FOREIGN POLICY (Feb. 9, 2015), <https://foreignpolicy.com/2015/02/09/is-china-making-its-own-terrorism-problem-worse-uyghurs-islamic-state/>.

¹²⁸ Mimi Lau, *How China Defines Religious Extremism and How It Justifies Xinjiang Re-education Camps for Muslims*, S. CHINA MORNING POST (Oct. 13, 2018), <https://www.scmp.com/news/china/politics/article/2168412/how-china-defines-religious-extremism-and-how-it-justifies>.

¹²⁹ See TANNER & BELLACQUA, *supra* note 5, 24–25. In several official documents released in the earlier 2000s, there is no mention of the State’s ethnic or religious policies on invoking violent incidents in Xinjiang. See Michael Clarke, *‘Striking Hard’ with ‘Thunderous Powers’: Beijing’s Show of Force in Xinjiang*, INTERPRETER (Mar. 15, 2019), <https://www.lowyinstitute.org/the-interpreter/striking-hard-thunderous-power-beijings-show-force-xinjiang>.

¹³⁰ Tom Phillips, *‘A Bright Future Beckons’: China Tries to Get Xinjiang to Join the Party*, GUARDIAN (Oct. 9, 2015), <https://www.theguardian.com/world/2015/oct/09/a-brighter-future-beckons-china-tries-to-get-xinjiang-to-join-the-party>.

¹³¹ Robbie Gramer, *The Islamic State Pledged to Attack China Next, Foreign Policy*, FOREIGN POLICY (Mar. 1, 2017), <http://foreignpolicy.com/2017/03/01/the-islamic-state-pledged-to-attack-china-next-heres-why/>.

¹³² Yuchao Zhu & Dongyan Blachford, *Ethnic Minority Issues in China’s Foreign Policy: Perspectives and Implications*, 18 PACIFIC REV. 243, 246.

So, what are the legal strategies for addressing the rise of the professed “Three Evils” in China? If the State’s ethnic and religious policies have been repressive—by contributing substantially, if not entirely—to the terrorist challenges since 2001, how has the State’s legal policy lent itself to the fight against terrorism? In Part II and III, this Article will outline the major changes in counter-terrorism legislation following the September 11 Terrorist Attacks and critically analyze the practical framework adopted in the context of these legal shifts. It is important to explore this system to understand how counter-terrorism laws and enforcement operations against terrorism have been carried out in present-day China, a one-party state where the law is closely tied with politics to reflect the Party’s concerns and interests.¹³³

II. REFORMING THE COUNTER-TERRORISM LEGISLATIVE FRAMEWORK IN POST-2001 CHINA

Like its Western counterparts, China has intensified its counter-terrorism laws since 2001. Among a range of legal changes over the past decades, the major reforms include: the amendments to the CL in 2001 and 2011 to re-define terrorism-related crimes and modify terrorism-related sentences; the revision of the CPL in 2012 to adjust the legal authorities’ powers regarding terrorist crimes; and the enactment of the CTL to provide a general legal basis for state laws to combat terrorism. At the legislative level, the Chinese government has strengthened the legal regime that deals with offenses connected with the “Three Evils” in three particular areas: (a) expanding the scope of criminalizing terrorism-related offenses; (b) increasing the police discretion in handling terrorist suspects; and (c) systemizing punishment of terrorist perpetrators.

In the Amendments to the CL, the new terrorist offenses reflect either a global tendency of fighting particular crimes or the local considerations of terrorist threats. First, for example, the 2001 Amendment incorporated the offense of financing terrorism by holding both individuals and units criminally liable for making funds, financial assets, and economic resources available to those who attempt to commit or participate in terrorist acts.¹³⁴ The inclusion of such an offense immediately after 9/11 was to address the requirements under U.N. Security Council Resolution 1373 adopted in September 2001, which

¹³³ See Randall Peerenboom, *What’s Wrong with Chinese Rights: Toward a Theory of Rights with Chinese Characteristics*, 6 HARV. HUM. RTS. J. 29, 33 (1993).

¹³⁴ Zhonghua Renmin Gongheguo Xingfa Xiuzhengan (San) (中华人民共和国刑法修正案 (三)) [Amendment (III) of the Criminal Law of the People’s Republic of China] (promulgated by the Standing Comm. Nat’l People’s Cong., Dec. 29, 2001, effective Dec. 29, 2001), art. 4.

stressed the importance on controlling financial support for terrorism.¹³⁵ Since the 2001 revision, the crime of organizing, leading, and participating in terrorist acts has existed as a principal offense in relation to terrorism.¹³⁶ In 2015, the Ninth Amendment to the CL enacted several measures prohibiting preparatory terrorist offenses with the aim of preventing the occurrence of extreme terrorist activities.¹³⁷ These offenses are related to inchoate offenses in common with a person's general "thoughts or talk" about religious extremism.¹³⁸ "Engagement" with the planning or preparation of any terrorist activities is prosecuted at a much earlier stage than offenses of criminal attempt.¹³⁹ Likewise, the CTL incorporated a list of similar offenses with a lower degree of malice and subjected offenders to custodial administrative sanctions.¹⁴⁰

The revised CPL and the CTL broadened police latitude to interrogate, detain, and control terrorist suspects. The 2012 Amendment to the CPL granted

¹³⁵ S.C. Res. 1373 (Sept. 21, 2011).

¹³⁶ See, e.g., Xingfa (刑法) [Criminal Law] (promulgated by the Standing Comm. Nat'l People's Cong., Mar. 14, 1997, effective Oct. 1, 1997), art. 120.

¹³⁷ Xingfa Xiuzhengan (Jiu) (刑法修正案九) [The Ninth Amendment to the Criminal Law] (promulgated by the Standing Comm. Nat'l People's Cong., Aug. 29, 2015, effective Nov. 1, 2015), art. 120 (2)-(6).

¹³⁸ *Id.* "Article 120(2): Whoever falls under any of the following circumstances shall be sentenced to imprisonment of not more than five years, criminal detention, surveillance or deprivation of political rights in addition to a fine; or be sentenced to imprisonment of not less than five years in addition to a fine or forfeiture of property if the circumstances are serious: (a) Preparing lethal weapons, hazardous articles or other tools for conducting terrorist activities; (b) Organizing training on terrorist activities or actively participating in training on terrorist activities; (c) Contacting any overseas terrorist organization or person for the purpose of conducting terrorist activities; (d) Making a plan or any other preparation for conducting terrorist activities. Article 120(3): Whoever advocates terrorism or extremism or instigates terrorist activities by way of preparing or distributing any book, audio or video materials or any other article advocating terrorism or extremism or by instructing or issuing information shall be sentenced to imprisonment of not more than five years, criminal detention, surveillance or deprivation of political rights in addition to a fine; or if the circumstances are serious, be sentenced to imprisonment of not less than five years in addition to a fine or forfeiture of property. Article 120(4): Whoever, by using extremism, instigates or coerces the public to sabotage the implementation of the marriage, judicial, education, social management or any other system determined in national laws shall be sentenced to imprisonment of not more than three years, criminal detention or surveillance in addition to a fine; be sentenced to imprisonment of not less than three years but not more than seven years in addition to a fine if the circumstances are serious; or be sentenced to imprisonment of not less than seven years in addition to a fine or forfeiture of property if the circumstances are especially serious. Article 120(5): Article 120E Whoever forces anyone else to wear the costume or symbol that advocates terrorism or extremism in a public place by means of violence or coercion, etc. shall be sentenced to imprisonment of not more than three years, criminal detention or surveillance in addition to a fine. Article 120(6): Whoever illegally holds any book, audio or video materials or any other article while obviously aware that it advocates terrorism or extremism shall, if the circumstances are serious, be sentenced to imprisonment of not more than three years, criminal detention or surveillance in addition to a fine, or be sentenced to a fine only."

¹³⁹ *Id.*

¹⁴⁰ See Zhonghua Renmin Gongheguo Fan Kongbu Zhuyi Fa (中华人民共和国反恐怖主义法) [Counterterrorism Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 27, 2015, effective Jan. 1, 2016), art. 80 [hereinafter Counterterrorism Law of the PRC].

police the power to carry out “technical investigation” and “secret detention” prior to trial—powers which are not applicable to ordinary criminal offenses.¹⁴¹ Technical investigation refers to the use of covert measures by police to obtain evidence that can be admissible by courts.¹⁴² Also, secret detention allows police to confine individuals suspected of terrorist offenses at a designated place without issuing a notice of detention to the family if it could impede the investigation.¹⁴³ In addition, the CTL empowers Chinese police to use a cluster of control orders over the course of investigating suspected terrorist acts upon the approval of the chief of public security bodies above the county level.¹⁴⁴ Similar to approaches adopted in the British, Canadian, and Australian counter-terrorism regimes,¹⁴⁵ control orders impose restraints on individuals’ freedom that are not legally challengeable in the CTL or the CPL.¹⁴⁶

The development of China’s counter-terrorism laws is further exemplified by the penal arrangements for terrorist offenses under the CL. In the 2001 Amendment to the CL, the sentencing range for those who organize and lead a terrorist organization was changed from three to ten years to a mandatory minimum of ten years.¹⁴⁷ The Eighth Amendment to the CL, passed in February 2011, identifies terrorism-related crime as an offense involving “special recidivism.”¹⁴⁸ Applicable solely to terrorism-related crimes, organized crimes, and crimes which threaten national security, special recidivism refers to circumstances where an offender recommit an offense at any time after serving the sentence or being granted an absolution, after which the recidivist is subject to a sterner punishment than ordinary re-offenders.¹⁴⁹ To match the new changes in the CL and CTL, criminal and administrative penalties have been regularized to apply to new offenses, such as financing of terrorism and preparatory offenses.¹⁵⁰ The length of punishment for such offenses spans a wide range—from ten days of administrative detention to five or more years of imprisonment.¹⁵¹

¹⁴¹ Xingshi Susong Fa (刑事诉讼法) [Criminal Procedure Law] (promulgated by the Standing Comm. Nat’l People’s Cong., Mar. 14, 2012, effective Jan. 1, 2013), art. 83.

¹⁴² *Id.* at art. 150.

¹⁴³ *Id.* at art. 73.

¹⁴⁴ Counterterrorism Law of the PRC, *supra* note 142, 36 P.R.C. Laws 1, 53.

¹⁴⁵ Kent Roach, *A Comparison of Australian and Canadian Anti-terrorism Laws*, 30 U. NEW S. WALES L.J. 53, 53–85 (2007).

¹⁴⁶ Neither the CTL nor the CPL has established the checks and balances process for affected individuals to seek recourse.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*, P.R.C. Laws 1, 66 .

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*, P.R.C. Laws 1, 66, 120 (1)–(6).

¹⁵¹ Zhonghua Renmin Gongheguo Xingfa (中华人民共和国刑法) [Criminal Law of the People’s

What are the implications of these counter-terrorism laws for “law in action”? In other words, how have China’s law enforcement responses to terrorism been shaped and informed by a series of legislative processes that reflect the values and needs of the state’s national security paradigm? To answer these questions, this Article tests the hypothesis that China has developed a multi-angle and multi-layered mechanism—a “four Cs” model—to combat terrorism. Using publicly accessible data, this Article aims to unfold the trajectory of this tactic and examine its discourse and practical implementation. In particular, this Article emphasizes how crackdown, criminalization, control, and cooperation, albeit not officially labelled as such, have emerged under the rubric of a transformed legal and penal culture that is aligned with the CCP’s new political considerations of social stability and political legitimacy during the post-2001 period.

III. CHINA’S “FOUR CS” COUNTER-TERRORISM STRUCTURE: A MODEL BY DESIGN?

In Part III, this Article will investigate the substance, form, and manifestation of the major measures the Chinese government uses to respond to terrorism. This Article will also reveal the rhetorical and practical shifts in the use of these instruments to illustrate China’s evolving attitude toward and strategy for this increasingly acute threat to the State’s national security and social stability.

A. Crackdown

Throughout the 1990s, heavy-handed measures, characterized by “Strike Hard” campaigns,¹⁵² were China’s primary legal instrument for responding to outbreaks of opposition and violence in Xinjiang.¹⁵³ Since 1996, when China waged a second “Strike Hard” campaign throughout the country to target organized and drug crimes, the Xinjiang authorities have periodically conducted local “Strike Hard” campaigns to crack down on “illegal religious activities” and

Republic of China] (promulgated by Standing Comm. Nat’l People’s Cong., Nov. 4, 2017, effective Nov. 4, 2017) P.R.C. Laws 1, 120 (1)–(6); Counterterrorism Law of the PRC, *supra* note 142, 36 P.R.C. Laws 1, 81.

¹⁵² See generally Susan Trevaskes, *Severe and Swift Justice in China*, 47 BRITISH J. CRIMINOLOGY 23, 23–41 (2007) (noting that “Strike Hard” campaigns are the crackdowns on crime initiated by the Chinese Government since the early 1980s to swiftly and harshly punish criminal offenders).

¹⁵³ Hualing, *supra* note 9, at 344; TANNER & BELLACQUA, *supra* note 5, at 43–44; see *Xinjiang, China’s Restive Northwest*, HUM. RTS. WATCH (1998), https://www.hrw.org/legacy/campaigns/china-98/sj_xnj2.htm#N_2; *China: Human Rights Concerns in Xinjiang*, HUM. RTS. WATCH (Oct. 2001), <https://www.hrw.org/legacy/backgrounder/asia/china-bck1017.htm#Central%20Government%20Policy>.

“separatism.”¹⁵⁴ Beginning with the Rectification of Social Order campaign in 1997, and ending with the Focused Rectification of Religious Places campaign in 2000, the Xinjiang government conducted five consecutive “Strike Hard” campaigns, during which the authorities prosecuted and sentenced thousands of “national separatists” and closed several “illegal religious spots.”¹⁵⁵ In these actions, law enforcement agencies swiftly carried out mass arrests, accelerated trials, and punitive sentencing under the Party’s orders to handle the “violent ethnic acts”. The police action was based on the clarification of basic facts and the verification of basic evidence known as the “two basics.”¹⁵⁶ Despite the Second Amendment introduced by the CPL in 1997 to heighten procedural fairness in criminal proceedings,¹⁵⁷ when it comes to adjudication of ethnic separatists, “the justice system simply performs a ritual, rubber-stamping function of decisions made by the CCP.”¹⁵⁸

The iron-fist strategy has continued to be the dominant legal tool for counter-terrorism in post-2001 China. Evidence shows that while “Strike Hard” campaigns retained its legitimacy in the first few years of the 2000s, it was cautiously invoked as an accepted approach to fighting terrorism over the past decade. This is demonstrated by the fact that since the 2001 “Strike Hard” campaign, the Chinese government has instituted only two counter-terrorism campaigns, first in 2009 and again in 2014, to strike decisively at the “Three Evil Forces.”¹⁵⁹ If the two-year “Strike Hard” campaign in Xinjiang beginning in 2001 can be seen as a continuation of the punitive counter-terrorism policy that prevailed in the late 1990s, then the 2009 and 2014 campaigns represent a strategic shift from overly relying on “high-pressure” tactics to a more judicious application of repressive justice that is only triggered by large-scale ethno-religious insurgencies. An examination of the 2009 and 2014 campaigns will shed some light on this new trend.

Unlike the 2001 crackdown in Xinjiang that was implemented as part of the broader “Strike Hard” campaign, the 2009 “Strike Hard and Rectify” campaign was an emergency response to a massive ethnic riot that erupted in Urumqi, the

¹⁵⁴ Adams, *supra* note 89, at 6.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ Mike Chu, *Criminal Procedure Reform in the People’s Republic of China: The Dilemma of Crime Control and Regime Legitimacy*, 18 UCLA PAC. BASIN L.J. 173, 175 (2000).

¹⁵⁸ Hualing, *supra* note 9, at 344.

¹⁵⁹ See *id.*; Clarke, *supra* note 9, 542–58; Jonathan Kaiman, *Xinjiang Steps up Fight against Religious Extremists in China*, GUARDIAN (Jan. 17, 2014), <https://www.theguardian.com/world/2014/jan/17/xinjiang-religious-extremists-china-terrorism>.

capital of Xinjiang.¹⁶⁰ On July 5, 2009, a peaceful protest of the deaths of two Uyghur migrants during an ethnic conflict in a factory in Southern China turned aggressive when some protesters began to engage in violent actions, such as “smashing up buses, throwing stones and assaulting passersby.”¹⁶¹ The Uyghur protestors reportedly committed assaults and killings in the streets, causing 197 deaths and more than 1700 injuries, with most of the victims being Han people.¹⁶² By blaming Uyghur exiles for instigating and directing this “separatist movement,” the Chinese government resorted to hardline enforcement of state power to “root out crime and eliminate security dangers” in Xinjiang.¹⁶³ It promptly deployed paramilitary force, such as the Chinese Armed Police, to control the spread of violence.¹⁶⁴ Then, a two-month “Strike Hard” campaign was launched to crack down on the attackers and allow the Xinjiang public security authorities to continue the hunt for riot suspects using door-to-door searches and visits.¹⁶⁵ Sharing the same practical procedure with “Strike Hard” campaigns in the past, the 2009 campaign shortened judicial proceedings and lowered the threshold for arrests and convictions, leading to numerous summary adjudications and harsh sentencing of Uyghur suspects.¹⁶⁶ Though the local government released some of the rioters by August 2009, the majority remained incarcerated, and more than four hundred eventually faced criminal charges.¹⁶⁷ As Nuer Baikeli, the then-President of Xinjiang, disclosed, in the next six months, the courts at all levels in Xinjiang tried ninety-seven cases and convicted 198 individuals, of which 26 defendants were sentenced to the death penalty with either immediate execution or a two-year suspension.¹⁶⁸

In 2014, three days after a deadly attack in Urumqi, the Chinese government revitalized the “Strike Hard” campaign.¹⁶⁹ On May 24, 2014, attackers in two

¹⁶⁰ Austin Ramzy, *A Year After Xinjiang Riots, Ethnic Tension Remains*, TIME (July 5, 2010), <http://content.time.com/time/world/article/0,8599,2001311,00.html>.

¹⁶¹ Tania Branigan & Jonathan Watts, *Muslim Uighurs Riot as Ethnic Tensions Rise in Western China*, GUARDIAN (July 5, 2009, 12:53 PM), <https://www.theguardian.com/world/2009/jul/05/china-uighur-riots-xinjiang>.

¹⁶² *Xinjiang Police to Strike Hard*, BBC (Nov. 3, 2009), <http://news.bbc.co.uk/2/hi/asia-pacific/8339367.stm>.

¹⁶³ *Id.*

¹⁶⁴ Edward Wong, *Riots in Western China Amid Ethnic Tension*, N.Y. TIMES (July 5, 2009), <https://www.nytimes.com/2009/07/06/world/asia/06china.html>.

¹⁶⁵ Amnesty International, *Justice, Justice: The July 2009 Protests in Xinjiang* (July 2, 2010), <https://www.amnesty.org/en/documents/ASA17/027/2010/en/>.

¹⁶⁶ *China: Human Rights Concerns in Xinjiang*, *supra* note 155.

¹⁶⁷ Cui Jia, *Riot Woman Sentenced to Death for Killing*, CHINA DAILY (Dec. 5, 2009), http://www.china.org.cn/china/2009-12/05/content_19012714.htm.

¹⁶⁸ Amnesty International, *supra* note 167.

¹⁶⁹ TANNER & BELLACQUA, *supra* note 5, at 43.

cars crashed into shoppers at a street market and set off explosives, leaving the highest toll of casualties in a string of violent attacks since the 2009 riots (thirty-nine people dead and ninety people injured).¹⁷⁰ This incident is likely to be merely the “tip-of-the-iceberg” during 2013–14. Since the Tiananmen attack in October 2013, incidents of ethnic violence multiplied.¹⁷¹ It is believed that there were numerous sizeable riots and uprisings involving anti-government protests, attacks on state institutions, and inter-ethnic clashes in Kashgar, Turpan, Khotan, and other areas in Xinjiang.¹⁷² From the 2013 attack to present day, there have been more incidents than those of the last ten years combined.¹⁷³ In particular, with growing evidence regarding the links between Uyghur terrorist and extremist gangs with “hostile external forces,”¹⁷⁴ China has begun to face intensified terrorist threats from both home and abroad.¹⁷⁵ In this regard, repressive justice, characterized by coercion, imposition, and severity, came to the forefront to convey the message of zero tolerance for crimes that threaten the sovereignty of the state.¹⁷⁶ This one-year strike resulted in the shut-down of 171 “religious training sites” and more than 27,000 criminal arrests in 2014—a rise of around ninety-five percent from the previous year.¹⁷⁷ Similar to the 2009 campaign, the return of speedy prosecution and mass trials coincided with a surge in death sentences and executions. Nearly forty Uyghurs were sentenced to death, half of whom were executed within a period of less than six months.¹⁷⁸

Neither the retention nor the gradual fading of campaign-style justice in the post-2001 counter-terrorism landscape is a surprising phenomenon. On the one hand, China’s traditional culture of criminal justice and punishment has long fostered “Strike Hard” campaigns as a favored approach to crime and public

¹⁷⁰ Guliquikela Keyoumu et. al, *31 Killed in Worst Attack in Years in Xinjiang’s Capital Urumqi*, RADIO FREE ASIA (May 22, 2014, 6:15 PM EST), <https://www.rfa.org/english/news/uyghur/blast-05222014070505.html> (trans. Luisetta Mudie & Mamatjan Juna).

¹⁷¹ Uyghur Human Rights Project, *The Battle For China’s Spirit Islam*, (Aug. 24, 2017, 4:30 PM EST), <https://uhrp.org/uhrp-news-featured-articles/battle-chinas-spirit-islam#sdendnote54sym>.

¹⁷² Michael Clarke, *The Impact of Ethnic Minorities on China’s Foreign Policy: The Case of Xinjiang and Uyghurs*, 53 CHINA REP. 1, 14–15 (2017).

¹⁷³ *Id.*

¹⁷⁴ Michael Clarke, *Is China Facing a Xinjiang Insurgency?*, WALL ST. J. (June 25, 2015, 1:12 PM EST), <https://www.wsj.com/articles/is-china-facing-a-xinjiang-insurgency-1435250274>.

¹⁷⁵ TANNER & BELLACQUA, *supra* note 5, at 33.

¹⁷⁶ *China Announces Net Results of Xinjiang ‘Strike Hard’ Campaign*, UCANEWS (Nov. 25, 2014), <https://www.ucanews.com/news/china-announces-net-results-of-xinjiang-strike-hard-campaign/72479>.

¹⁷⁷ James Areddy, *Xinjiang Arrests Nearly Doubled in ‘14, Year of Hard Strike Campaign*, WALL ST. J. (Jan. 23, 2015, 6:26 PM EST), <https://blogs.wsj.com/chinarealtime/2015/01/23/xinjiang-arrests-nearly-doubled-in-14-year-of-strike-hard-campaign/>; UCANEWS, *supra* note 142.

¹⁷⁸ *China Announces Net Results of Xinjiang ‘Strike Hard’ Campaign*, UYGHUR AM. ASS’N. (Nov. 25, 2014, 4:56 PM EST), <https://uyghuramerican.org/article/china-announces-net-results-xinjiang-strike-hard-campaign.html>.

unrest.¹⁷⁹ This strategy of social control borrowed from the “class struggle” rationale during Maoist China and thrived in the economic reform era.¹⁸⁰ When terrorist violence accumulates to the point that it poses an imminent threat to the State’s national security and sovereignty, a campaign-style crackdown represents a quick solution which entails the mobilization of legal and (para)military forces to react to overt threats of violence.¹⁸¹ On the other hand, since the early 2000s there has been a gradual shift toward the temperance of repressive justice in China.¹⁸² This is partly because the Chinese authorities now realize that the suppressive approach to crime produces a brutalizing effect rather than a productive effect on social stability and legal order.¹⁸³ Despite the reduced crime rate during and following the campaigns, the “Strike Hard” techniques were given greater priority over local judicial resources, social management, and policing work.¹⁸⁴ More remarkably, the needs of the Hu Jintao administration to quell deteriorating social inequalities and conflicts as a result of corruption, social injustice, and economic stagnation among others have led to the birth of the new criminal and penal policy of “Combining Leniency and Severity.”¹⁸⁵ This new policy was introduced in 2006 against the backdrop of the CCP’s pursuit of a “harmonious society,” which necessitates stability, order, and a harmonious relationship between the people and the State.¹⁸⁶ Perceived as a crucial move towards social harmony,¹⁸⁷ the “Combining Leniency and Severity” policy advocates a nuanced approach to penalizing offenders.¹⁸⁸ At one end of the spectrum, light punishment should be widely applied to the majority of offenses that cause limited harm and social consequences.¹⁸⁹ At the

¹⁷⁹ SARAH BIDDULPH, LEGAL REFORM AND ADMINISTRATIVE DETENTION POWERS IN CHINA 13–14 (2007).

¹⁸⁰ *Id.* at 43–44.

¹⁸¹ Michael Clarke, ‘Striking Hard’ with ‘Thunderous Powers’: Beijing’s Show of Force in Xinjiang, INTERPRETER (Mar. 15, 2019), <https://www.lowyinstitute.org/the-interpreter/striking-hard-thunderous-power-beijings-show-force-xinjiang>.

¹⁸² See Susan Trevaskes, *The Shifting Sands of Punishment in China in the Era of the ‘Harmonious Society’*, 32 L. & POL’Y 332–61 (2010).

¹⁸³ Biddulph, *supra* note 181, at 142–43.

¹⁸⁴ *Id.*

¹⁸⁵ Yuegen Xiong, *Social Inequality and Inclusive Growth in China: The Significance of Social Policy in A New Era*, 20 J. POVERTY & SOC. JUS. 277, 282–83 (2012); Trevaskes, *supra* note 184, at 332–33.

¹⁸⁶ Kin-man Chan, *Harmonious Society*, in INTERNATIONAL ENCYCLOPEDIA OF CIVIL SOCIETY 821 (Helmut Anheier & Stefan Toepler eds., 2008).

¹⁸⁷ Elissa Nesossi & Susan Trevaskes, *Framing Imprisonment Studies in China: Ideology, Law and Politics*, in LEGAL REFORMS AND DEPRIVATION OF LIBERTY IN CONTEMPORARY CHINA 339 (Eilsa Nesossi, Sarah Biddulph, Flora Sapio & Susan Trevaskes eds., 2016).

¹⁸⁸ Trevaskes, *supra* note 184, at 338.

¹⁸⁹ *Id.* at 337.

other end, harsh punishment should be reserved only for crimes that cause significant damage and are motivated by extreme malice.¹⁹⁰

Although terrorist crimes are positioned at the higher end of this new penal range,¹⁹¹ a criminal justice culture geared toward leniency and proportionality is progressively taking shape in contemporary China.¹⁹² Evident changes include, but are not limited to, the reduction of crimes punishable by the death penalty,¹⁹³ the decrease in the number of executions,¹⁹⁴ the adoption of community corrections,¹⁹⁵ and “criminal reconciliation.”¹⁹⁶ Therefore, while the Party elites have credited crackdowns for the reduction of ethnic violence in Xinjiang,¹⁹⁷ there is a subtle indication of the State’s counter-terrorism philosophy which the CCP has been making increasing reference in law and justice.¹⁹⁸ This is particularly evident in its repressive legal action against terrorism, particularly in the midst of enhancing counter-terrorism laws and making them discernible to law enforcement. Such a trend was gradually perceptible when President Xi called for the “rule of law with Chinese characteristics” as an ideological instrument to fulfil a vision for the nation’s future that he called the “Chinese dream.”¹⁹⁹ Although Xi’s perception of the rule of law reflected the CCP’s belief

¹⁹⁰ See *id.* 332–61.

¹⁹¹ 4 LIN LI, THE CHINA LEGAL DEVELOPMENT YEARBOOK 224 (2010).

¹⁹² See Trevasques, *supra* note 184.

¹⁹³ In the Eighth (2011) and Ninth Amendment to the CL (2015), Chinese removed twenty-two crimes under the death penalty, of which most were non-violent offenses. See LIN LI, THE CHINESE ROAD OF THE RULE OF LAW 63 (2018).

¹⁹⁴ International human rights groups estimated a reduction in the number of executions by more than fifty percent has taken place since the 2001 anti-crime crackdown, with the average being 5000 convicts put to death each year over the period of 2002–2013. See, e.g., *Criminal Justice*, DUI HUA FOUND. (2014), https://duihua.org/wp/?page_id=136 (last visited Oct. 30, 2018).

¹⁹⁵ Zhonghua Renmin Gongheguo Xingfa Xiuzhengan (Ba) (中华人民共和国刑法修正案 (八)) [Amendment (VIII) of the Criminal Law of the People’s Republic of China] (promulgated by the Standing Comm. Nat’l People’s Cong., Feb. 25, 2011, effective May. 1, 2001), art. 38. Community corrections were initiated in 2003 as a pilot program in only six developed cities and provinces and were employed nationwide in 2009. See Xue Yang, *Community Corrections Programs in China: New Forms of Informal Punishments?*, 19 ASIAN-PACIFIC L. & POL’Y REV. 50, 51.

¹⁹⁶ Zhōnghuá R. . .mín Gòngh. . .guó Xíngshì Sùsòng Fà (San) (中华人民共和国刑事诉讼法修正案 (三)) [Amendment (III) Criminal Procedure Law of the PRC] (promulgated by Nat’l People’s Cong., Mar. 14, 2012, effective Jan. 1, 2013), art. 277–279. Criminal reconciliation is the Chinese version of a victim-offender reconciliation program. It was legalized in 2006 as a formal approach to handling criminal matters. Robert Weatherley and Helen Pittam, *Money for Life: The Legal Debate in China about Criminal Reconciliation in Death Penalty Case*, 39 ASIAN PERSPECTIVE, 277, 279 (2015).

¹⁹⁷ TANNER & BELLACQUA, *supra* note 5, at 44.

¹⁹⁸ Zunyou Zhou, *China’s Draft Counter-terrorism Law*, 15 CHINA BRIEF (2014), <https://jamestown.org/program/chinas-draft-counter-terrorism-law/>.

¹⁹⁹ Susan Trevasques, *Weaponizing the Rule of Law*, in CHINA IN JUSTICE: THE CHINESE EXPERIENCE 123–25 (Flora Sopia, Susan Trevasques, Sarah Biddulph & Elisa Nesossi eds., 2017).

that the law should be enforced under its own leadership,²⁰⁰ the State reinstated the importance of law in regulating social relations and promoting social stability that rests on strict administration of law and judicial fairness.²⁰¹ As such, during the height of the 2014 campaign, the central government issued the Notice Regarding Crackdown on Violent Terrorist Activities in Accordance with the Law, which established law (e.g., the CL) as the guiding principle for campaign operations.²⁰² In September 2014, a set of practical guidelines were put forth by the Ministry of Public Security, the Supreme People's Court, and the Supreme People's Procuratorate to instruct law enforcement in Xinjiang on better distinguishing between ordinary religious activities and "illegal religious extremism."²⁰³ The aim was to avoid the misuse of excessive force against religious and ethnic minorities.²⁰⁴

Nevertheless, given the unrelenting challenge China has faced in fighting ethnic and religious terrorism, the campaign model of law enforcement operations is unlikely to disappear entirely but will likely remain as a last resort in response to catastrophic terrorist attacks, such as individual terrorist attacks which cause disastrous casualties or extreme terrorist attacks that occur in short intervals and cause deleterious consequences. Alternatively, a more likely outcome is that repressive justice will gradually lose ground and give way to other counter-terrorism measures that align with the State's new political concerns and legal considerations. This prediction is based on the observation that in the majority of violent incidents handled over the last decade, criminalizing terrorism through a standard criminal justice system has become a routine practice for dealing with the most popular forms of terrorism in China today, which are, most notably, small-scale or individual attacks.²⁰⁵ In contrast to "Strike Hard" campaigns, in which terrorism is understood as a "politically-oriented" crime and is addressed with suppression, the criminalization of terrorism tends to equate terrorist offenders with common criminals who commit offenses against civilians and thus removes the political message from law enforcement actions. As lone-actor and random attacks have become more frequent, a pattern of terrorist and extremist violence in post-2001 China has

²⁰⁰ *Id.* at 125.

²⁰¹ *Id.* at 130–32.

²⁰² *Xinjiang Notice of Strike-Hard Campaign on Terrorism* (May 26, 2014), <https://www.chinalawtranslate.com/xinjiang-notice-of-strike-hard-campai/?lang=en> (containing translations of a notice regarding a government crackdown on violent terrorist activities in Xinjiang).

²⁰³ TANNER & BELLACQUA, *supra* note 5, at 53.

²⁰⁴ *Id.*

²⁰⁵ Hu Ping, *Six Major Characteristics of Terrorism in China with Special Characteristics*, HUM. RTS. CHINA (Aug. 18, 2015), <https://www.hrchina.org/en/china-rights-forum/six-major-characteristics-terrorism-china-special-characteristics>.

emerged.²⁰⁶ Criminalization has been employed as the dominant legal response to low-level terrorist offenses and a second-line of defense in China's "four Cs" counter-terrorism structure. Criminalization appears to differ from crackdown in form. However, they essentially are two sides of the same coin since they both pursue the prosecution and punishment of perpetrators as the principal objectives of justice. While criminalization acts as a more "rational" and "civilized" model of retributive justice dealing with terrorism, it bears a practical affinity with crackdown in terms of its violation of individual rights and disregard of due process. Therefore, if crackdown is a semi-legal instrument in response to the pressing concerns of ethno-religious insurgency, then criminalization is a "legalized" process which, nevertheless, only epitomizes the superficial and cursory compliance with procedural requirements of criminal proceedings stipulated in counter-terrorism laws.

B. Criminalization

With the strengthening of terrorism laws since 2001, China has justified criminalization with strong legal grounds.²⁰⁷ On the surface, the practical model of criminalization focuses on processing terrorist suspects in the criminal justice system according to law. In some practices, criminalization is different from crackdown. First, criminalization of terrorism seems to entail more explicit charges against the accused in comparison to crackdown. Unlike campaign-style justice, in which suspects are often charged with imprecise crimes ranging from "teaching the Koran," "illegal religious activities," "political offenses," and "possession of wrong books,"²⁰⁸ in the criminalization process individuals suspected of terrorist acts are charged with clearly-worded crimes. In the four most high-profile terrorist cases reported by mass media,²⁰⁹ a vast majority of

²⁰⁶ *Id.*

²⁰⁷ Over the past two decades, the Chinese government has revised and passed a spate of laws on Counter-espionage, National Security, National Intelligence, Counter-terrorism, Cybersecurity and Foreign NGO Management, and not to mention the two instrumental pieces of legislation – the CL and the CPL. Such interconnected package of counter-terrorism, national security and law enforcement legislation repeatedly obligates citizens, organizations and companies to provide cooperation and support for police activities that tackle terrorism. See Murray Tanner, *Beijing's New National Intelligence Law: From Defense to Offense*, LAWFARE (Jul. 20, 2017) <https://www.lawfareblog.com/beijings-new-national-intelligence-law-defense-offense>.

²⁰⁸ Clarke, *supra* note 9, at 551.

²⁰⁹ It should be noted that the extent to which terrorist cases are fully disclosed as to their details is unknown. See HUM. RTS. WATCH, *China: Disclose Details of Terrorism Convictions: Overboard Counterterrorism Legal Framework Opens Door to Abuses* (Mar. 16, 2017, 7:45 PM EDT), <https://www.hrw.org/news/2017/03/16/china-disclose-details-terrorism-convictions>. These four cases are the Hotan/Kashgar attacks (2011), the Beijing Tiananmen Attack (2013); the Kunming Railway Station attack (2014) and the Urumqi Train Station Attack (2014).

suspects were charged with two specific crimes: the crime of organizing, leading, and actively participating in terrorist activities and the crime of endangering public safety.²¹⁰ Charges of additional violent crimes, such as homicide and explosion, were levied against suspects depending on the acts suspects were engaged with.²¹¹ Though these offenses mostly existed prior to 2001, lawmakers have subsequently reframed their definition and elements in the counter-terrorism legislative reforms.²¹² While the most evident change is the expansion of the provisions that criminalizes a variety of activities, these newly devised offenses have provided more legal certainty and clarity than the old “politically-dimensioned” offences to facilitate the state prosecution of offenders in the name of terrorism.

In addition, criminalization differs from crackdown by serving retributive justice, whereas crackdown aims to deliver suppressive justice.²¹³ To be fully retributive, the punishment must be proportionate to the gravity of the crime.²¹⁴ In the “Strike Hard” campaigns, the use of draconian sanctions was accentuated by the excessive application of the death penalty.²¹⁵ Criminalization, on the contrary, reduces penal punitiveness by penalizing terrorist offenders in a rational manner. Although capital penalties have remained prevalent in the punishment of terrorist offenders, they have been used more cautiously, with increasing transparency in death penalty administration, capital sentencing decisions, and media coverage, to minimize the substantive and procedural

²¹⁰ See *China Sentences Four to Death over Xinjiang Attacks*, BBC (Sep. 15, 2011) <https://www.bbc.com/news/world-asia-pacific-14926413>; Megha Rajagopalan and Ben Blanchard, *China Sentences Three to Death for Tiananmen Square Attack*, REUTER (Jun. 16, 2014) <https://www.reuters.com/article/us-china-attacks-trial/china-sentences-three-to-death-for-attack-at-tiananmen-square-tv-idUSKBN0ER0A920140616>; *Four Sentenced in China over Kunming Station Attack*, BBC (Sep. 12, 2014); Tim Hume and Dayu Zhang, *55 Sentenced before 7,000 Onlookers at Terror ‘Show Trial’ in Chinese Stadium*, CNN (May. 29, 2014).

²¹¹ *Id.*

²¹² *Zhonghua Renmin Gongheguo Xingfa Xiuzhengan (San)* (中华人民共和国刑法修正案 (三)) [Amendment (III) of the Criminal Law of the People’s Republic of China] (promulgated by the Standing Comm. Nat’l People’s Cong., Dec. 29, 2001, effective Dec. 29, 2001), art. 120. Under this Article, a person charged with terrorist offences can be charged with homicide, explosion and kidnapping as connected offences.

²¹³ Suppressive justice involves the excessive use of coercive measures and punitive sanctions with little regard to procedural protections and rights. See generally HAROLD TANNER, *STRIKE HARD! ANTI-CRIME CAMPAIGNS AND CHINESE CRIMINAL JUSTICE, 1979-1985* (1999) (discussing China’s reform of their criminal justice system).

²¹⁴ Donald Hermann, *Restorative Justice and Retributive Justice: An Opportunity for Cooperation or an Occasion for Conflict in the Search for Justice*, 16 SEATTLE J. SOC. JUST. 71, 80–81 (2017).

²¹⁵ According to Amnesty International, during the 2001 Hard Strike campaign beginning in April, there “at least 2,960 people were sentenced to death and 1,781 executed in the first three months of the campaign between April and July. This figure is higher than that of people executed around the world in the last three years. See *China: ‘Strike Hard’ Anti-crime Campaign Intensifies*, AMNESTY INT’L (July 23, 2002), <https://www.amnesty.org.uk/press-releases/china-strike-hard-anti-crime-campaign-intensifies>.

injustice of capital sanctions. More notably, in criminalizing terrorist offenders, harsh penalties are not indiscriminately and erratically applied as they are in crackdowns.²¹⁶ Instead, the legal apparatus metes out death sentences and even lengthy imprisonment in a way that reflects the individual's degree of criminality and personal circumstances. This indicates the authorities' attempt to abide by the penal policy of "Balancing Leniency and Severity" when sentencing serious crimes in a more nuanced manner, as it involves "the application of, when appropriate, *relatively* harsher penalties in some minor cases and *relatively* lighter penalties in some serious cases (Yanzhongyoukuan, Kuanyijiyuan, Kuanzhongyouyan, Yanyijikuan)."²¹⁷

For example, in the case of the 2014 Urumqi market bombings, the Urumqi Intermediate Court adjudicated and sentenced thirteen Uyghur offenders after a seven-month police investigation.²¹⁸ Despite facing the same charges, six of the offenders were sentenced to death, two were sentenced to a suspended death penalty with a two-year reprieve, and two were sentenced to imprisonment for ten years.²¹⁹ When explaining the sentencing decisions in the judgement, the trial judges emphasized the role that each accused individual played in the attack and stressed the degree to which their individual roles contributed to the damaging consequences, which determined their different sentences.²²⁰ In other cases, the offenders' personal circumstances were taken into consideration as essential factors in sentencing. In the sentencing of the offenders involved in the Kunming Railway Station attack, the China's Supreme People's Court sentenced a female offender to life in prison because she was pregnant while being detained before the trial.²²¹ The co-offenders, who were likewise charged organizing, leading, and participating in terrorist acts, were sentenced to death.²²²

²¹⁶ *China: Disclose Details of Terrorism Convictions: Overboard Counterterrorism Legal Framework Opens Door to Abuses*, HUM. RTS. WATCH (Mar. 16, 2017, 7:45 PM EDT), <https://www.hrw.org/news/2017/03/16/china-disclose-details-terrorism-convictions>. In this report, four terrorism-related cases handled in 2016 were observed and the sentences of seven offenders varied from case to case, ranging from the exemption of criminal penalties to three years of imprisonment. *Id.*

²¹⁷ SUSAN TREVASKES, *THE DEATH PENALTY IN CONTEMPORARY CHINA* 214 (2012).

²¹⁸ Megha Rajagopalan & Ben Blanchard, *China Executes 13 People for 'Terrorist Attacks' in Xinjiang*, REUTERS (June 16, 2014, 7:57 AM), <https://www.reuters.com/article/us-china-attacks-idUSKBN0ER19220140616>.

²¹⁹ Edward Wong, *8 Sentenced to Death for Attacks in Western China*, N.Y. TIMES, (Dec. 8, 2014), <https://www.nytimes.com/2014/12/09/world/asia/8-sentenced-to-death-for-terrorist-attacks-in-western-china.html>. The Uygher offenders were charged of the crime/s of organizing, leading, and participating in terrorist acts and the crime of bombing. *Id.*

²²⁰ *Id.*

²²¹ Shannon Tiezzi, *China Executes 3 for Deadly Kunming Attack*, DIPLOMAT (Mar. 24, 2015), <https://thediplomat.com/2015/03/china-executes-3-for-deadly-kunming-attack/>.

²²² *Id.*

Because criminalization deals with terrorist acts within the purview of criminal law, one may assume that the minimal guarantees of criminal proceedings ought to be honored during the criminal proceedings for terrorist offenders.²²³ If the “Strike Hard” campaigns represent a politicized process of criminal justice that essentially coerces legal authorities to handle cases with little regard for legal legitimacy, then the criminalization process fulfills some rudimentary elements of procedural justice. However, it is a far cry from a genuine form of proceduralism; the criminal proceedings for terrorist suspects provide inadequate safeguards for some of the most fundamental rights that suspects are entitled to under both international human rights norms and domestic criminal procedures.²²⁴ As various international non-profit organizations have claimed, China’s terrorism laws have not appropriately tackled the procedural issues from the perspectives of legality, due process, and individual rights.²²⁵ In many respects, the status quo of criminalizing terrorist suspects is paying lip-service to the procedural requirements that are selectively stressed for the sake of formality—for example, the use of restrictive pre-trial measures.²²⁶

The reformed counter-terrorism laws confer police with greater power to detain suspects for crimes related to terrorism *incommunicado* and in secret locations.²²⁷ Article 80 of the 2012 CPL first states that police may detain an individual who is suspected of committing a crime if one of the prescribed conditions is satisfied.²²⁸ The fundamental condition is that the suspect is discovered when committing a preparatory offense, substantial offense, or immediately after committing an offense.²²⁹ In addition, Article 83 states the following:

After being taken into custody, . . . the family of the detainee shall be notified of the detention within 24 hours after the detention, unless the notification cannot be processed or the detainee is involved in crimes endangering State security or crimes of terrorist activities, and such notification may hinder the investigation.²³⁰

²²³ See *id.*

²²⁴ See THE INTERNATIONAL CAMPAIGN FOR TIBET, *supra* note 33, at 5–6.

²²⁵ *Id.* at 18.

²²⁶ See *generally id.* at 16. Restrictive pre-trial measures refer to arrest, detention and residential surveillance. They all involve some element of loss of liberty, whether minor or substantial.

²²⁷ Zhonghua Renmin Gongheguo Xingfa Xiuzhengan (San) (中华人民共和国刑事诉讼法修正案(三)) [Amendment (III) Criminal Procedure Law of the PRC art. 83.

²²⁸ CRIMINAL PROCEDURE LAW, art. 80 (China).

²²⁹ *Id.*

²³⁰ *Id.* art 83.

While the provision allows the notification of pre-charge detention to be waived in cases involving “terrorist activities” and if such “notification may hinder the investigation,”²³¹ it is written vaguely. Therefore, this gives wider discretion for authorities to misuse or overuse their detention power. The lack of a clear definition of “investigation” in law, as well as the diversity of judicial interpretations, can lead to the virtual disappearance of criminal suspects, or “secret detention.”²³² This is particularly likely upon detention, when police may exercise the discretion to place a suspect under residential surveillance at a designated location other than the suspect’s domicile, if police determine that residential surveillance at the suspect’s domicile could impede the investigation of cases connected with terrorism.²³³ Under residential surveillance, police may impose measures such as electronic monitoring and irregular inspections, among other forms of surveillance, during the investigation.²³⁴

Control orders are a new form of restrictive measures set out in the CTL. Pursuant to Article 53, those suspected of terrorist acts are subject to a variety of limits on liberties, such that suspects:

- (1) Must not leave their city or county of residence, or designated residence, without per, mission of public security organ;
- (2) must not participate in large scale mass activities, or engage in specified activities
- (3) must not ride on public transportation or enter specified venues without approval by the public security organs;
- (4) must not meet or communicate with specified persons[;]
- (5) periodically report on activities to the public security organs;
- (6) hand over passports or other entry and exit documents, [identification] cards or drivers’ licenses to the public security organs organ for keeping.²³⁵

²³¹ *Id.*

²³² Zhou, *supra* note 16.

²³³ Zhōnghuá R. .nmin Gòngh. .guó Xíngshì Sùsòng Fǎ (中华人民共和国刑事诉讼法)[Criminal Procedure Law of the People’s Republic of China] (promulgated by Nat’l People’s Cong., Mar. 14, 2012, effective Jan. 1, 2013), art. 73 [hereinafter Criminal Procedure Law of the PRC].

²³⁴ *Id.*, art. 76.

²³⁵ Counterterrorism Law of the PRC, *supra* note 142, art. 53.

Under control orders, as with detention, police are empowered to apply electronic supervision and routine checks to monitor whether suspects are conforming to the conditions of restriction.²³⁶

In substance, these restrictive measures share many similarities with preventive detention and control orders used in the counter-terrorism frameworks of some Western jurisdictions.²³⁷ Despite targeting different types of terrorist threats, the pre-crime tools used in Western countries may be preventive in nature.²³⁸ The aim of pre-crime tools is to place restraints, prohibitions, and obligations on individuals to protect members of the public from the risk of a terrorist act.²³⁹ In contrast, restrictive measures in China are used to facilitate law enforcement activity by depriving the suspects' individual freedoms. In other words, during the criminalization process of terrorist offenses, these restrictive measures operate as investigative instruments—rather than as a reaction to the caused harm—when applied to suspects of particular terrorist offenses and subject to custody.

These restrictive measures are investigation-oriented because the powers to construe and apply them are concentrated in the hands of the police. In the CPL, for example, police enjoy the sole power to detain terrorist suspects.²⁴⁰ Moreover, whether the family members should be notified of a suspect's detention is exclusively determined by the police's estimation of the probability that issuing such a notification will obstruct the investigation.²⁴¹ This protocol departs significantly from the preventive ethos of most liberal democracies, where restrictions are made based on an evaluation of the likelihood and degree of a threat.²⁴² In Australia and the U.K., the issuing authority—usually the judiciary—balances the probabilities of “making the order [substantially] assist

²³⁶ *Id.*

²³⁷ See, e.g., Stephanie Blum, *Preventive Detention in the War on Terror: A Comparison of How the United States, Britain, and Israel Detain and Incapacitate Terrorist Suspects*, IV HOMELAND SECURITY AFF. 1–30 (2008); Lisa Burton & George Williams, *What Future for Australia's Control Order Regime*, 24 PUB. L. REV. 182, 182–208 (2013).

²³⁸ Clive Walker, *The Reshaping of Control Orders in the United Kingdom: Time for A Fairer Go, Australia*, 37 U. MELB. L. REV. 143, 150 (2013).

²³⁹ See generally Katherine Nesbitt, *Preventive Detention of Terrorist Suspects in Australia and the United States: A Comparative Constitutional Analysis*, 17 PUB. INT. L.J. 39, 39–97 (PARENTHETICAL).

²⁴⁰ Zhonghua Renmin Gongheguo Xingshi Susongfa Xiuzhengan (San) (中华人民共和国刑事诉讼法修正案 (三)) [Amendment (III) Criminal Procedure Law of the PRC], *supra* note 185, art. 80.

²⁴¹ *Id.* art. 85.

²⁴² Lucia Zedner, *Fixing the Future? The Pre-emptive Turn in Criminal Justice*, in REGULATING DEVIANCE: THE REDIRECTION OF CRIMINISATION AND THE FUTURES OF CRIMINAL LAW, 46, 46 (Bernadette McSherry, Alan Norrie & Simon Bronitt eds., 2008).

in preventing a terrorist act against” or “the person [involved] has provide training to, or received training from, a listed terrorist organization.”²⁴³ Such a decision is made in light of relevant documentation provided by the police and prosecution, including, but not limited to: a statement of the facts, a summary of the grounds on which the order should be issued, and the preventive detention/control orders of the individual under concern.²⁴⁴ In the Chinese paradigm, however, the absence of judicial participation in the decision-making process grants the police unfettered power to control the detention process; the enforcing and issuing body are the same legal authority—the police. This is emblematic of the reality that pre-charge custody in China is not determined on the basis of risk prediction but is designed to cater to the needs of more productive law enforcement of police. The fact that Chinese suspects can be questioned and interviewed further demonstrates that the approach for pre-charge custody is guided by investigative concerns and heavily controlled by police.²⁴⁵

The rhetoric of favoring investigation over other considerations also dominates the use of control orders. The CTL specifies that following a control order, the police must file a case after they conduct an initial investigation of the facts of the crime and establish suspicion of the detained person.²⁴⁶ If the police decide not to file a case, then the control order must be removed.²⁴⁷ This is clearly indicative of a *de facto* tool for assisting the investigation of police.²⁴⁸ Information is scarce in the fourteen cases regarding the lengths and conditions of the restrictive measures. But, in all fourteen cases, it is reasonable to believe that every accused and convicted person was placed under solitary confinement until the commencement of their trials, as there are no reports that indicate their early release.

It is evident that in all fourteen cases, the police undertook investigatory activities for a sufficient period of time to prepare for prosecution.²⁴⁹ For example, consider the contrast in crackdown practice as evidenced by the timelines. The suspects who plotted the Tiananmen attack on October 28, 2013

²⁴³ Andrew Lynch, *Thomas v. Mowbray: Australia's War on Terror Reaches the High Court*, 32 MELB. U.L. REV. 1182, 1185–86 (2008).

²⁴⁴ See ALEX CONTE, HUMAN RIGHTS IN THE PREVENTION AND PUNISHMENT OF TERRORISM, 551 (2010).

²⁴⁵ Criminal Procedure Law of the PRC, *supra* note 185, art. 48.

²⁴⁶ Counterterrorism Law of the PRC, *supra* note 142, art. 54.

²⁴⁷ See *id.*

²⁴⁸ See *id.*

²⁴⁹ See Tom Phillips, *Chinese 'Terrorists' on Trial for Deadly Tiananmen Attack*, TELEGRAPH (June 13, 2014) <http://www.telegraph.co.uk/news/worldnews/asia/china/10897645/Chinese-terrorists-on-trial-for-deadly-Tiananmen-attack.html>.

were arrested ten days after the incident.²⁵⁰ The suspects were not prosecuted until May 30, 2014 and were not tried until June 13, 2014.²⁵¹ In some less high-profile cases, such as the Urumqi Railway Station bombing, which caused three deaths and seventy-nine injuries, eight suspects were arrested on May 1, 2014.²⁵² After a seven-and-a-half month investigation, the suspects were tried by the Urumqi Intermediate Court on December 8, 2014.²⁵³

Despite a stark contrast in the crackdown practice—in that law enforcement agencies were mandated to prosecute several suspects in a short amount of time, details on how the investigation was carried out remained unclear.²⁵⁴ Specifically, none of the publicly accessible information revealed the suspects' enjoyment of their right to legal representation during the investigatory stage. Though there may have been some level of legal assistance involved in the process, to what extent it safeguarded the accused's legal entitlements—such as access to evidence and witnesses as well as the right against self-incrimination—remained unknown.²⁵⁵ As a recurring theme of the Chinese criminal justice system, the restrictions imposed on legal defense throughout the entire criminal process and the threat of criminal prosecution that hangs over any defense lawyer prevented the lawyers from discharging the legal duties of defense prescribed in CL.²⁵⁶ This becomes even more problematic in “national secret or security” cases.²⁵⁷

However, during the adjudicative process, the suspects in each of the fourteen cases were legally represented and provided with interpreters. But, not all of the court trials were held openly (e.g., the trial of the Tiananmen attack) in that the authorities prohibited the media and public audience to attend.²⁵⁸ This prompts the question as to whether the procedural protections afforded during trials can really serve as something more meaningful than a gesture of window

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² Ben Blanchard, *China Says Three Killed in Attack at Xinjiang Train Station*, REUTERS (Apr. 30, 2014, 8:52 AM), <https://www.reuters.com/article/us-china-xinjiang-blast/china-says-three-killed-in-attack-at-xinjiang-train-station-idUSBREA3T0HX20140430>.

²⁵³ *Id.*

²⁵⁴ See *Deadly China Blast at Xinjiang Railway Station*, BBC (Apr. 30, 2014), <https://www.bbc.com/news/world-asia-china-27225308>.

²⁵⁵ *China: Disclose Details of Terrorism Convictions*, HUM. RTS. WATCH (Mar. 16, 2017), <https://www.hrw.org/news/2017/03/16/china-disclose-details-terrorism-convictions>.

²⁵⁶ See SIDA LIU & TERENCE HALLIDAY, *CRIMINAL DEFENCE IN CHINA: THE POLITICS OF LAWYERS AT WORK* (2016).

²⁵⁷ MIKE MCCONVILLE, *CRIMINAL JUSTICE IN CHINA: AN EMPIRICAL INQUIRY* 169 (2011).

²⁵⁸ Evan Osnos, *Tiananmen Mystery: Can China Hold an Open Terror Trial*, NEW YORKER (Oct. 31, 2013) <https://www.newyorker.com/news/news-desk/tiananmen-mystery-can-china-hold-an-open-terror-trial>.

dressings. As shown in the excerpts of the court reports on several trials,²⁵⁹ there seems to be a high threshold for prosecution that necessitates the collection of solid evidence. In contrast to the evidential burden of “basic facts” in the campaign-style model, more adequate physical and verbal forms of evidence, such as forensic evidence, victim statements, and audio materials, were requested and presented by the prosecution over the course of the adjudications in an attempt to build a strong case. Yet, the undisclosed data on how the terrorist suspects’ rights were recognized and guaranteed in relation to the police acquisition of evidence—particularly the confessions under restrictive measures—casts doubt on the admissibility and legality of incriminating oral evidence. Similarly, in cases in which the convicted offenders expressed an objection to the convictions and/or sentences (e.g. the Kunming Railway Station incident), the convicted offenders’ rights to appeal were exercised, although the convictions were upheld by higher courts in all such cases.²⁶⁰

Compared to crackdown, criminalization is at the forefront of China’s legal response to terrorism. It is not only engineered by the CCP’s rethinking of the adverse effects that the draconian approach has had on social stability inside and outside Xinjiang, but also pushed by the Government to bring the regulation of terrorism more in line with the recent terrorism law reforms that pursue a “rule-of-law” strategy for counter-terrorism.²⁶¹ However, in China’s one-party state, law, particularly criminal law, has been deeply embedded in the CCP’s political ethos and has largely served as a manifestation of political will and as a lever of social control.²⁶² Despite calls for the rule of law and judicial fairness in Hu’s and Xi’s administrations, law in the criminal justice system has never been able to distance itself from political influence and interference.²⁶³ Counter-terrorism laws are not an exception. When terrorism, extremism, and separatism are perceived as impeding and tenacious challenges to state sovereignty and national security, the CCP will most likely reform the terrorism laws without restraints

²⁵⁹ As terrorist cases are considered as the national secret in China, the complete court reports are inaccessible to the public. However, some Chinese media reports have published the excerpts of the court reports on several high-profile incidents. See, e.g., *Joinder Trials for Two Terrorist Attack Cases in Urumqi*, GANSU DAILY (GANSU RIBAO) (Dec. 9, 2014), <http://cpc.people.com.cn/n/2014/1209/c87228-26171515.html>; *The Female Terrorist Was Not Sentenced to Death Due to Her Pregnancy*, BEIJING DAILY (XINJING BAO) (Sept. 13, 2014), <http://news.sina.com.cn/c/2014-09-13/023930841766.shtml>.

²⁶⁰ *China Upholds Death Penalty for Three Who Led Mass Stabbing in Kunming*, GUARDIAN (Oct. 31, 2014), <https://www.theguardian.com/world/2014/oct/31/death-penalty-china-mass-stabbing-court-kunming>.

²⁶¹ Susan Trevaskes & Elisa Nesossi, *Control By Law*, in CONTROL (Jane Golley, Linda Jaivin & Luigi Tomba eds., 2017).

²⁶² See *id.*

²⁶³ See *id.*

and without regard of the norms for the State's actions to fight terrorist threats.²⁶⁴ The legislative modifications are relied upon as "lawful" vehicles to carry and deliver the CCP's paradigm shifts in counter-terrorism. This may explain the absence of due process considerations in the Chinese criminalization process of terrorist acts. This explanation shows, particularly, that China's due process is not devised to strike a balance between civil liberties and national security in comparison to many counter-terrorism law developments in Western jurisdictions attempt to do.²⁶⁵ In short, it is more precisely a process that justifies and legitimizes the use of state authoritarian power to penalize acts that endanger the Party's political stability under the cloak of legality.

C. Control

China's general strategy for countering terrorism encompasses not only ex-post approaches to terrorism, which focus on generating the effects of deterrence and denunciation, but also the ex-ante responses to combating terrorism, which aim to disrupt and prevent terrorism. As mentioned earlier, Western states have shifted towards the use of pre-emptive counter-terrorism strategies in the last decade. Many Western states have championed prevention as a cornerstone of counter-terrorism policy.²⁶⁶ In the U.K., a national counter-terrorism strategy called the CONTEST has been established around the themes of "pursuit" and "prevention."²⁶⁷ This strategy entails the detection and investigation of threats at the earliest possible stage to disrupt terrorist activities before they can endanger the public.²⁶⁸ Australia has followed suit despite its relatively limited experiences with domestic and overseas terrorism. In 2006, the then Attorney-General Phillip Ruddock stressed that the task of the Australian government "is to work even harder at detection and prevention of [terrorism]."²⁶⁹ This policy objective has transformed much of the counter-terrorism legislation introduced

²⁶⁴ TANNER & BELLACQUA, *supra* note 5, at 78–79.

²⁶⁵ See Fu Hualing, *China's National Security Law: The Danger of an All-Encompassing National Security Framework*, HUM. RTS. CHINA (Aug. 31, 2015), <https://www.hrichina.org/en/china-rights-forum/chinas-national-security-law-danger-all-encompassing-national-security-framework>.

²⁶⁶ Kent Roach et. al, *Introduction to GLOBAL ANTI-TERRORISM LAW AND POLICY 1* (Victor Ramrai et al. eds., 2005).

²⁶⁷ Charlotte Heath-Kelly, *Counter-terrorism and the Counterfactual: Producing the 'Radicalization' Discourse and the UK Prevent Strategy*, 15 (3) BRIT. J. POL. & INT'L REL. 394, 395 (2013). The "PREVENT" strategy is a set of British counter-terrorism initiatives, a stand of the "CONTEST" strategy, first introduced in 2003 and revised several times over the last decade. The strategy is comprised of four work streams, known as prevent, pursue, protect, and prepare. *Id.*

²⁶⁸ *Id.*

²⁶⁹ Philip Ruddock, *A Safe and Secure Australia: An Update on Counter-Terrorism*, 2 ORIGINAL L. REV. 40, 40 (2006).

after 2001 towards early intervention and detection to avert terrorist threats.²⁷⁰ In the past two decades or so, there have been growing concerns of the imposition of pre-crime measures like the control orders, preventive detention orders, as well as more restrictive approaches.²⁷¹ Moreover, there are also other concerns regarding the prosecution and sentencing of preparatory offenses in association with terrorism.²⁷²

Similar to Western states, China has used preventive measures to fight terrorism in the face of increasingly frequent and descriptive attacks. As a highlight of China's counter-terrorism law reforms, the preventive rationale is particularly articulated in the CTL that "counter-terrorism efforts adhere to the principles of combining specialized efforts with the mass line, emphasizing prevention, combining punishment and prevention and anticipating the enemy's moves, and remaining proactive."²⁷³ Depicted as a "preventive law" in tandem with the CL that punishes those who have committed terrorist offences, the CTL develops a preemptive framework to identify, manage, and control the threat that terrorism represents.²⁷⁴ In a speech at the Telephone and Television Conference with the National Counter-terrorism Leading Small Group in January 2016, the Secretary of the Central Political and Legal Committee Guo Shenkun reiterated the importance of proactive policing and pre-emption in China's counter-terrorism legal arsenal.²⁷⁵ Guo urged law enforcement agencies to "Strangle the Baby in the Cradle," meaning "[to] hit when it is early, small and only the beginning of a trend (Dazao, Daxiao, Damiaotou)" before terrorist threats become larger.²⁷⁶

²⁷⁰ Tamara Tulich, *Prevention and Pre-emption in Australia's Domestic Anti-terrorism Legislation*, 1 INT'L J. CRIME, JUST. & SOC. DEMOCRACY 52, 52 (2012).

²⁷¹ See Andrew Ashworth and Lucia Zedner, PREVENTIVE JUSTICE 144–70 (2014); Svetlana Tyulkina & George Williams, *Combating Terrorism in Australia through Preventive Detention*, in REGULATING PREVENTIVE JUSTICE: PRINCIPLE, POLICY AND PARADOX (Tamara Tulich, Rebecca Ananian-Welsh, Simon Bronitt & Sarah Murray eds.) 136–52 (2017).

²⁷² See Zoe Scanlon, *Punishing Proximity: Sentencing Preparatory Terrorism in Australia and the United Kingdom* 25 CURRENT ISSUES CRIM. JUST. 763, 763–83.

²⁷³ Anti-terrorism Law of the People's Republic of China 2015 (中华人民共和国反恐怖主义法) [Counter-Terrorism Law] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 27, 2015, effective Jan. 1, 2016), Art. 5, Order No. 36 of the President of China [hereinafter Anti-terrorism Law of the PRC].

²⁷⁴ Xie Wei & Zhang Lujing, *Zhuanjiacheng: Quanmin Fankong shi Jianguo Yilai Fankong Fangbao de Zuigao Jibie* [Experts State: A People's War on Terrorism Serves as a Top Level of Counter-terrorism Approach Since the Founding of PRC], ZHONGGUO GONGCHUANDANG XINWEN WANG [CCP NEWS NET] (June 10, 2014, 14:51), <http://theory.people.com.cn/n/2014/0610/c40531-25129607.html>.

²⁷⁵ See Xinhua, *Guojia Fankong Lingdao Xiaozu he Gonganbu Lianhe Zhaokai Dianshi Dianhua Huiyi* [National Counter-terrorism Small Group and the Department of Public Security Jointly Held TV and Telephone Meeting] 新华社 [XINHUA NEWS AGENCY], (Jan. 17, 2016, 16:21), http://news.xinhuanet.com/politics/2016-01/17/c_1117800329.htm.

²⁷⁶ *Id.*

If the utility of restrictive measures in China's counter-terrorism sphere, as explained earlier, does not represent a tenant of prevention, perhaps a more appropriate way to understand the State's move toward risk management of terrorism is to explore the state's rationale for enacting a suit of preparatory offenses in terrorism laws. In recent years, the legislative changes made to control terrorism have created a distinct set of terrorism offenses that are constructed around proof of conspiracy and attempt.²⁷⁷ The new counter-terrorism statutes mirror an ideological turn in Western counter-terrorism legislation towards the interruption of a terrorist act at a very early stage by penalizing a preparatory act leading to it.²⁷⁸ In Australia, for example, the Criminal Code of 1995, Division 101 set out the preparatory offenses to establish criminal responsibility long in advance of a completed terrorist act.²⁷⁹ Offenses such as possession and collection of items or creation documents "connected with terrorism, the engagement of a person in, or assistance in a terrorist act" are criminalized and involve lengthy imprisonment.²⁸⁰ China's legal policy of state interventions is different from that of Australia both structurally and methodologically. In particular, the revised CL and the CTL have classified preparatory offenses in two categories that are subject to different sanctions according to the degree of "seriousness."²⁸¹ While more "serious" preparatory offenses amount to criminal penalties, less "serious" preparatory offenses are dealt with by an administrative mode of punishment.²⁸²

In 2014, the Ninth Amendment to the CL included a spate of offenses that are directed not only at assisting terrorist acts, but also at an individual's "thoughts or talk" related to terrorism and extremism.²⁸³ Though the new inclusion refers mostly to the acts at the preparatory stage of terrorism, it nevertheless carries formal criminal responsibilities and punishments, namely criminal detention (*Jiuli*), control (*Guanzhi*), and fixed-term imprisonment. These new terrorism offenses include the following:²⁸⁴

²⁷⁷ See generally Zhonghua Renmin Gongheguo Xingfa Xiuzhengan (中华人民共和国刑法) [Criminal Law of the People's Republic of China] (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 1, 1997, effective Mar. 14, 1997), Order No. 83 of the President of China [Criminal Law of the PRC, Order No. 83].

²⁷⁸ See *id.*

²⁷⁹ Tulich Tamara, *Prevention and Pre-emption in Australia's Domestic Anti-terrorism Legislation*, 1(1) INT'L J. CRIME JUST. 52, 52 (2012).

²⁸⁰ *Criminal Code Act 1995* (Cth) div 101 ss 101.4–101.5 (Austl.).

²⁸¹ See Criminal Law of the PRC, Order No. 83, *supra* note 281; Anti-terrorism Law of the PRC, *supra* note 277, art. 5.

²⁸² See *id.*

²⁸³ See Criminal Law of the PRC, Order No. 83, *supra* note 281 (stating the criminal laws of the People's Republic of China).

²⁸⁴ See Criminal Law of the PRC, Order No. 83, *supra* note 281, art. 120 (2)–(6).

- (1) Preparing weapons, dangerous items, and other tools to commit terrorist acts; organizing or actively participating in training connected with terrorist acts; liaising with overseas terrorist organizations or personnel to commit terrorist acts; and plotting or engaging in other preparations to commit terrorist acts.
- (2) Propagating terrorism or extremism or instigating terrorist acts by way of distributing books, videos, audio, or other materials or lecturing or releasing information that promotes terrorism and extremism.
- (3) Coercing the general public to harm the operation of legally established systems of marriage, justice, education, and social management.
- (4) Forcing others to wear or adorn clothes or signs that propagate terrorism or extremism in public places through violence or coercion.
- (5) Illegally possessing books, videos, audio, or other items that propagate terrorism or extremism.

Apart from the criminal liability of preparatory offenses, the administrative detention system functions as the second tier of control to target a lesser degree of similar acts which are deemed as administrative perpetrations as opposed to criminal offences.²⁸⁵ Characterized as an adjunct to criminal punishment, administrative detention is governed by an array of administrative regulations in parallel with the criminal justice system and positioned in the framework of police power.²⁸⁶ Created during Maoist China, administrative, custodial measures initially served the purpose of solving non-antagonistic contradictions among the working class and peasants.²⁸⁷ With decades of legalization and institutionalization in the penal system, administrative detention is now a multi-level penal system in which the Public Order Detention (*Zhian Juliu*) targets street-level transgressions and the Detention for Education (*Shourong Jiaoyang*) and Compulsory Detoxification Detention (*Qiangzhi Jiedu*) targets prostitution and drug abuse.²⁸⁸ In the CTL, Article 80 states that the police may incarcerate participants of the following activities for more than ten days—and less than

²⁸⁵ See BIDDULPH, *supra* note 181.

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.* at 283.

fifteen days if the offense does not constitute a crime—under the Public Order Detention:

- (1) Advocating terrorism or extremism, or inciting the commission of terrorist or extremist acts;
- (2) manufacturing, disseminating, or unlawfully possessing items that advocate terrorism or extremism;
- (3) Compelling others to wear or bear clothes or symbols that advocate terrorism or extremism in a public place;
- (4) Supplying support, aid, or facilitation to the advocacy of terrorism or extremism or the commission of terrorist or extremist activities, such as by providing information, financing, supplies, labor services, technologies, or venues.²⁸⁹

It is manifest that these administrative contraventions overlap—to a great extent—with some preparatory offenses outlined by the CL despite minor variations in wording. However, what distinguishes the Public Order Detention from the criminal penalization is the level of criminality of the offenses, which is left undefined in either the CL or the CTL. Within the CTL, Article 81 affords the police the power to jail those who are engaged in offenses that make use of extremism (for five to ten days) if the offense is not serious enough to warrant a crime and only causes minor consequences.²⁹⁰ Reflecting the Government's depiction of extremism as one of the three sources of terrorism, these punishable offenses are fairly broad, ranging from “forcing others to participate in religious activities, or provid[ing] property or services to religious venues or religious personnel” and “obstructing the staff of state organs” to “other use [of] extremism to undermine the implementation of the national legal system.”²⁹¹

Although criminal punishment of preparatory offenses concerning terrorism is available, China seems to lean towards administrative custody as a more regular approach to addressing potential terrorist/extremist risks.²⁹² The data collected from the Case Information Disclosure System of the People's Procuratorates and China Judgment Online indicates that there were only a

²⁸⁹ Counterterrorism Law of the People's Republic of China, (中华人民共和国反恐怖主义法) [Counterterrorism Law of the People's Republic of China] (promulgated by Standing Comm. Nat'l People's Cong., Dec. 27, 2015, effective Jan. 1, 2016) 36 P.R.C. Laws 1 (China).

²⁹⁰ *Id.*

²⁹¹ Anti-terrorism Law of the PRC, *supra* note 277.

²⁹² See BIDDULPH, *supra* note 181.

handful of individuals charged with preparatory offenses were processed in the criminal justice system between August 2017 and September 2018.²⁹³ This is a sharp contrast to the over two hundred individuals who were successfully prosecuted for planning, supporting, or inciting terrorism in the U.K. between 2001 and 2008.²⁹⁴ All the charged offenses in China involved either the propagation of terrorism and extremism or the possession of things related to extremism.²⁹⁵ Notwithstanding China's long-standing history of not recording administrative offenses in its official legal database, a review of information on media reports and the police's public WeChat platform illustrates the predominant use of the Public Order Detention to sanction individuals engaged in minor acts associated with terrorism and extremism.²⁹⁶ In April 2016, the first case of CTL, Article 80 violation was reported in Ji'nan, Shandong Province.²⁹⁷ In this case, Mr. Wang XX was arrested for visiting foreign websites that contained violent videos of ISIS engaging in fights and committing beheadings.²⁹⁸ Mr. Wang received a fifteen-day public order detention on the basis of illegally possessing items related to terrorism and extremism.²⁹⁹ Wang's case marks the beginning of a host of cases handled by the Chinese police through administrative detention; in Kunming—the capital city of Yunnan

²⁹³ By searching keywords “terrorism” in the Case Information Disclosure System of the Chinese Procuratorates, the results indicated that there were eight cases prosecuted by the procuratorates nationwide. However, no records on the relevant trials were shown by searching “terrorism” in China Judgment Online. It is perhaps due to the fact that China has treated information on terrorism-related offenses as the “state secret.” See HUM. RTS. WATCH, *China: Disclose Details of Terrorism Convictions* (Mar. 16, 2017, 7:45 PM EDT), <https://www.hrw.org/news/2017/03/16/china-disclose-details-terrorism-convictions> [hereinafter *China: Disclose Details of Terrorism Convictions*]. The website for the Case Information Disclosure System of the Chinese Procuratorates <http://www.ajxxgk.jcy.gov.cn/html/index.html>. For the website for China Judgement Online, see CHINA JUDGMENT ONLINE, <http://wenshu.court.gov.cn/Index> (last visited Mar. 9, 2019). It is noted that by searching keywords “terrorism and extremism” in one of the privately-funded case law databases, see JUFA ANLI, <https://www.jufaanli.com/>. The results indicate that there were ten cases involving the violation of Art. 120 (2)–(6) of the CL prosecuted and tried between 2016 and 2018. *China: Disclose Details of Terrorism Convictions*, *supra* note 235.

²⁹⁴ Yahya Birt, *Promoting Virulent Envy: Reconsidering the UK's Terrorist Prevention Strategy*, 154 RUSI J. 52, 52 (2009).

²⁹⁵ There are five cases related to the propagation of terrorism and extremism and three cases related to the possession of matters related to extremism.

²⁹⁶ The results of typing keywords “administrative detention” and “terrorism” in China's primary search engine “Baidu” show a long list of cases involving the imposition of public order detention on individuals engaged in acts which breach Article 80 of the CTL. WeChat is a messaging and social media application widely used in China, equivalent to Facebook, Twitter or Instagram. Ministry of Public Security opened its official WeChat platform in 2013 to release first-hand information on policing, criminal cases and social management.

²⁹⁷ See Yang Jiaojiao, *Ji'nan She Fankongfa Diyi'an* [*The First Case Concerning the CTL in Ji'nan*] FAZHI RIBAO [LEGAL DAILY] (Apr. 26, 2016, 1:52 PM), http://www.legaldaily.com.cn/index/content/2016-04/26/content_6602490.htm?node=20908.

²⁹⁸ *Id.* The name of the suspect is intentionally concealed by the police. *Id.*

²⁹⁹ *Id.*

province, for example, between 2016 and 2018, the local authorities filed 224 administrative cases in relation to the CTL, in which twenty-three individuals were detained.³⁰⁰ A wide range of acts triggered this police-led custody; but, most of the offenses relate to watching and distributing “extremist” videos on social media.³⁰¹

The tendency of tackling preparatory offenses administratively is likely to grow in salience under China’s calls for the prevention of terrorism. This is mainly because the Chinese authorities has long employed administrative detention as an efficient and cost-effective approach to policing low-level offenses since its inception in the 1950s.³⁰² The exclusive use of administrative detention by the police allows for great practical flexibility, thus augmenting its popularity among a range of crime control tools in contemporary China. As exhibited in its regulation of drug abusers, prostitutes, urban migrants, and, particularly, dissidents (e.g., *Falungong* practitioners) over the past few decades, administrative detention has evolved to be more oriented towards risk control and prevention, rather than to punishment and rehabilitation.³⁰³ It is founded on an ideal of management as a primary response to those who are perceived as threats to public order and political stability.³⁰⁴ More specifically, administrative custody and its pattern of minimizing risk—together with the penal approach to preparatory offenses in the CL—has considerable affinity with selective incapacitation, a managerial mode of punishment depicted as the “clearest example of the new penology’s method” in the Western criminal justice system.³⁰⁵ Like selective incapacitation, which aims to identify “average offenders,” “high-risk offenders,” and “career criminals” and impose different levels of penalty accordingly, China’s administrative detention system aims to classify low-risk offenders and then subject them to Public Order Detention while investing in long-term forms of control over high-risk offenders through criminal sanctions (e.g., fixed-term imprisonment).³⁰⁶

³⁰⁰ *Kunming Handled 224 Administrative Cases in relation to the CTL and 23 Individuals were Detained*, PEOPLE NET (Aug. 23, 2018, 8:32 AM) <http://yn.people.com.cn/n2/2018/0823/c378439-31966460.html>.

³⁰¹ *Sichuan Publicized 9 Typical Cases of Terrorism Offences, Seventy Percent Involves Spreading Terrorist Violence Virtually*, CHINA NEWS (Dec. 20, 2016) http://www.12377.cn/txt/2016-12/20/content_9233029.htm.

³⁰² See BIDDULPH, *supra* note 181, at 45.

³⁰³ See *id.*

³⁰⁴ *Id.*

³⁰⁵ Malcolm Feeley & Jonathon Simon, *The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications*, 30 CRIMINOLOGY 449, 458 (1992).

³⁰⁶ See BIDDULPH, *supra* note 181.

However, the ambit and application of administrative detention, just as restrictive measures, is not scrutinized by a judicial review process nor is it open to procedural checks and balances, except for the right of the detained to apply to the same decision maker for reconsideration.³⁰⁷ Such unencumbered and unsupervised discretion enables the police to impose liberty restraints whenever the police sees fit. From a pre-emptive perspective, the elastic utility of administrative detention accords with the requirement to facilitate liability to arise at points in time prior to a substantial terrorist act. More markedly, administrative detention extends the reach of the CL to penalize similar acts with a lower level of harm and severity in the domain of police powers.

D. Cooperation

While compulsion and incapacitation have become essential to prevention, community engagement and civic participation are also pivotal in facilitating the enactment of pre-emptive measures. Following several violent attacks planned and initiated by home-grown terrorists, the United States, the U.K., and Australia have acknowledged that community cooperation is central to preventing terrorist acts.³⁰⁸ The reason lies, partially, in the fact that terrorism and traditional crime are inextricably linked; so, a traditional approach to crime control, such as community policing, can be seamlessly transited to addressing terrorism-related crime. More likely than not, the advent of the domestic risks posed by the radicalization of (young) Muslims has led Western authorities to envisage the role communities ought to play in mitigating the risks of terrorism and extremism. The U.K., for instance, has seen police and security agencies engage with Muslim communities in an effort to eradicate social support for extremism and to transform communities into an external partner for intelligence and information gathering.³⁰⁹ The establishment of the Muslim Contact Unit based in various metropolitan areas in London in the wake of the September 11 attacks is an example of the U.K. police partnering with Islamic leaders and organizations to “help thwart extremist attempts to recruit young British Muslims to violent jihad.”³¹⁰

³⁰⁷ Zhian Guanli Chufa Fa [Law of the People’s Republic of China on Penalties for Administration of Public Security] (promulgated by the Standing Comm. Nat’l People’s Cong., Aug. 28, 2005, effective Mar. 1, 2006), P.R.C. Laws art. 120.

³⁰⁸ Rachel Briggs, *Community Engagement for Counter-terrorism: Lessons from the UK*, 86 INT’L AFF. 971, 971 (2010).

³⁰⁹ Vikram Dodd, *Special Branch to Track Muslims across the UK*, GUARDIAN (July 20, 2005, 7:24 PM EDT), <https://www.theguardian.com/uk/2005/jul/20/religion.july7>.

³¹⁰ *Id.*

The notion of community-centered counter-terrorism has also become prominent in China. Unlike the U.K., in which the rise of community engagement in counter-terrorism is likely due to several factors (e.g., the Preventing Violent Extremism Initiative, the publication of the updated CONTEST strategy, and even the retirement of Tony Blair), the policy-making of community-based approaches to terrorism in China—an authoritarian state—is no more than a process that reflects the will and desire of the CCP's top leadership.³¹¹ Xi Jinping, during the 14th Group Study of the Politburo of the CCP Central Committee in 2014, began to proclaim his ideal of a “people’s war” on terrorism.³¹² Specifically, Xi encouraged legal bodies to “rely upon the masses to carry out all kinds of activities of preventing and regulating terrorism.”³¹³ In Xinjiang, where terrorist threats are most acute, the policy of engaging the general public in counter-terrorism has been upgraded as an underlying strategy to prevent ethnic violence and religious extremism. Li Minghui—Deputy Secretary of the Party Committee of Yili Prefecture, stressed at the end of 2015 that members of the general public should serve as both “propogandists” (*Xuanchuan yuan*) and “guards” (*Anquanyuan*) to identify and discover terrorist threats and to adopt measures that deal with terrorism in an emergent situation.³¹⁴

Yet, it was not until 2016 that citizenry participation in combating terrorism was legitimized in the CTL.³¹⁵ In the context of promoting the use of community cooperation to combat terrorism, this new counter-terrorism law enforces a legal obligation on citizens and organizations to tip off police whenever suspicion of potential terrorist acts or individuals arises.³¹⁶ Furthermore, governments at the county and town levels are encouraged “to guide relevant units, village and residential committees to establish local counter-terrorism force and organize the team of volunteers to assist and cooperate with state authorities in regard to

³¹¹ See Angela Quartermaine, *Discussing Terrorism: A Pupil-inspired Guide to UK Counter-terrorism Policy Implementation in Religious Education Classroom in England*, 38 BRIT. J. RELIGIOUS. EDUC. 13, 17, 21 (2016); Blair Announces Retirement Plans, RTE, <https://www.rte.ie/news/2007/0510/88822-blair/> (last updated May 10, 2007, 10:46 PM).

³¹² Zeng Wei, *Xi Jinping LiangYue 15 Ci Ti Fankong: Tuchu ‘Dixian Siwei’ ‘Qunfang Qunzhi’* [Xi Jinping Speaks 15 Times about Counter-terrorism, Highlighting ‘Bottom-line Thinking’ and ‘Public Prevention and Mass Force’], RENMIN WANG (PEOPLE’S NET) (Apr. 28, 2014), <http://politics.people.com.cn/n/2014/0428/c1001-24952160.html>.

³¹³ *Id.*

³¹⁴ Chen Yuhai, *Xinjiang Yili Qidong ‘Quanmin Fankong’ Xuanchuan Jiaoyu Huodong* [Yili, Xinjiang, Initiated Activities on Educating and Propagating Counter-terrorism through the Masses], XINGJIANG PING’AN [XINJIANG PEACE] (Oct. 27, 2015), http://www.chinapeace.gov.cn/2015-10/27/content_11277012.htm.

³¹⁵ Anti-terrorism Law of the PRC, *supra* note 277, Art. 8–9.

³¹⁶ *Id.* at Art. 9.

counter-terrorism.”³¹⁷ These political and legislative arrangements have generated the rise of a government-led public network of prevention and surveillance implemented at the grassroots level in China. Many focal areas, such as Xinjiang, Beijing, and Shanghai, have carried out community policing practices of outreach and cooperation with communities, aiming to involve citizens as active players as opposed to indifferent bystanders in protecting and serving communities at risk of radicalization.³¹⁸ There are four major aspects of China’s cooperative counter-terrorism model: (i) engagement, (ii) mobilization, (iii) education, and (iv) media.

1. Engagement and Mobilization

Effective community policing involves developing partnerships between law enforcement institutions and citizens.³¹⁹ Such partnerships can provide a framework for engaging citizens to assist police with the identification of potential terrorist threats and infrastructural vulnerabilities.³²⁰ The Chinese strategy for community engagement diverges greatly from others in several respects. First, while Western states engage with selective communities,³²¹ China seeks to engage with a range of communities in sensitive localities regardless of race, ethnicity, and religion.³²² In Xinjiang, for example, local police and security agencies have built strong connections with residential committees of each community in urban areas.³²³ Since most violent conflicts occur between the Uyghurs and the Han Chinese, both the Uyghur and Han Chinese communities are closely tied with security agencies through dialogue and inquiry.³²⁴ Since 2012, rural Xinjiang has adopted a policing model of “one village[,] one police officer.”³²⁵ Located in a village police station, a police officer is required to live in the village for twenty-four hours to foster effective communication with village residents and coordinate local public security.³²⁶ As of 2016, there were approximately eight thousand police officers with more than

³¹⁷ Art. 74 (2), *CTL*.

³¹⁸ Tanner & Bellacqua, *supra* note 5, at 16, 41.

³¹⁹ *Id.* at 37–78.

³²⁰ *See id.*

³²¹ *See Briggs, supra* note 312, at 976.

³²² Tanner & Bellacqua, *supra* note 5, at 37–78.

³²³ *See id.*

³²⁴ *See Shan Dan & Wang Ding, Qingbao Fankong Beijing Xiade Xinjiang Shequ Jingwu Gongzuo Yanjiu [Research on Community Policing in Xinjiang Within the Context of Intelligent Counter-terrorism]*, 10 FAZHI YU SHEHUI [RULE L. & SOC’Y] 157, 158 (2016).

³²⁵ *See Li Xinting, Fankong Beijingxia Xinjiang Shishi Nongcun Shequ Jingwu Zhanlv Xianzhuang yu Sikao [The Current Strategic Situation and Thinking of Community Policing in Rural Xinjiang in the Context of Counter-terrorism]*, 6 YUNNAN JINGGUAN XUEYUAN XUEYUAN XUEBAO [J. YUNNAN POLICE C.] 44, 45 (2016).

³²⁶ *See id.*

thirty-four thousand auxiliary police (*Fujin*) assigned to rural communities to maintain public safety in the countryside of Xinjiang.³²⁷

Second, an important goal of engagement in Western community-based counter-terrorism is to build trust with minority communities through an open and honest dialogue—an essential way to collect intelligence.³²⁸ Therefore, a major obstacle in community engagement in the U.K. and Australia is the lack of trust among Muslims with the authorities to operate with bias or prejudice.³²⁹ On the contrary, China's efforts to boost community cooperation are not concerned with accruing community trust and confidence. This is because a community in China, unlike many communities in most liberal democracies, functions as an administrative organ rather than a self-reliant and self-directing society.³³⁰ Structurally, residential committees in China are empowered by local governments to govern the designated communities.³³¹ The residential committees operate in a way that represents local authorities, as they undertake massive administrative duties, including conducting the population census and marriage registration.³³² Any activities related to community management are directed and guided by local authorities within the governmental administrative agenda.³³³ Residential committees are required to seek approval from governmental administrative agencies to engage in community affairs.³³⁴ In this regard, engagement with communities in China may be easier than in the West in the sense that it is not through trust building and mutual gain, but rather through administrative order and legal demand. The administrative nature of Chinese communities enables them to operate virtually as an agent of the government, so that these communities are obligated to gather intelligence and collect information on terrorism.

The top-down structure of Chinese communities also elucidates the efficacious mobilization of the masses in support of the State's counter-terrorism tactics. For example, in Beijing, a citywide web of community cooperation has been weaved between local police stations (*Paichusuo*) and delegates of

³²⁷ *See id.*

³²⁸ *See* Aziz Huq, *The Political Psychology of Counterterrorism*, 9 ANN. R. L. SOC. SCI. 71–94 (2013).

³²⁹ *See* Adrian Cherney & Jason Hartley, *Community Engagement to Tackle Terrorism and Violent Extremism: Challenges, Tensions and Pitfalls*, 27 POLICING & SOC'Y 750, 753 (2017).

³³⁰ TANNER & BELLACQUA, *supra* note 5, at 65.

³³¹ *See id.*

³³² *See* Li Jinfeng & Li Jinbao, *Zhongguo Shequ Fazhan de Lishi, Xianzhuang ji Wenti Tanxi* [*The Exploration of the History, Status and Problem of the Development of the Chinese Community*] 14 CHANGCHUN KEJI DAXUE XUEBAO [J. CHANGCHEN U. SCI. & TECH.] 65, 67 (2004).

³³³ TANNER & BELLACQUA, *supra* note 5, at 65.

³³⁴ *Id.*

communities, including residential committees, neighborhood volunteers, and retired elders since 2016.³³⁵ It is reported that the Beijing government recruited a team of 100,000 people to act as the “ears” and “eyes” of police on the street to detect terrorist threats and vulnerabilities across urban and rural communities in China’s capital city.³³⁶ A similar model is used in Xinjiang by relying upon high-tech measures rolled out by the authorities to surveil and monitor residents and visitors in the community.³³⁷ There is evidence that many local authorities have widely employed surveillance cameras and machines with ID cards, faces, and retinal scanning capabilities across the region.³³⁸ Coupled with many supervisory tools including frequent police checkpoints and identification verification systems at gas stations, the legal requirement of installing a GPS in every vehicle has made Xinjiang the “world’s most heavily guarded place,” as the region exists under a stringent community-police security network.³³⁹

2. Education and Media

Indeed, an essential aspect of community-based counter-terrorism is the education of communities on violent terrorism, extremism, and the prevention. The belief that local authorities should invest in people rather than on projects to shape community knowledge has engendered programs in Western states that seek to provide Muslims a full range of education services. Under the “PREVENT” strand of the U.K. CONTEST strategy, the Department for Business, Skills, and Innovation and the Department of Education has committed to a host of activities in schools and universities to reduce the risk of radicalization through religious education commensurate with the U.K.’s democratic beliefs.³⁴⁰ Equivalent to the Community Awareness Program in the U.S., the U.K. has also initiated educational programs in Muslim communities

³³⁵ Liu Yang, *Beijing 10 Wan ‘Xiaorenwu’ Qianfu Fankong, Baokuo Songshuigoing Baojiyuan [100,000 ‘Nobodies’ Counter Terrorism Covertly in Beijing, Including Water Deliverymen & Cleaners]* XINJING BAO [NEW BEIJING DAILY] (July 28, 2014), <http://www.chinanews.com/gn/2014/07-28/6429818.shtml>.

³³⁶ See Liu Yang, *Beijing 10 Wan ‘Xiaorenwu’ Qianfu Fankong, Baokuo Songshuigoing Baojiyuan [100,000 ‘Nobodies’ Counter Terrorism Covertly in Beijing, Including Water Deliverymen & Cleaners]*, XINJING BAO [NEW BEIJING DAILY] (Jul. 28, 2014) <http://www.chinanews.com/gn/2014/07-28/6429818.shtml>.

³³⁷ Josh Chin Cl. .ment Bürge, *12 days in Xinjiang: How China’s Surveillance State Overwhelms Daily Life, Bus. Standard* (Dec. 21 2017), https://www.business-standard.com/article/international/12-days-in-xinjiang-how-china-s-surveillance-state-overwhelms-daily-life-117122100143_1.html.

³³⁸ See Josh Chin, *Twenty Days in Xinjiang: How China’s Surveillance State Overwhelms Daily Life*, WALL ST. J. (Dec. 19, 2017) <https://www.wsj.com/articles/twelve-days-in-xinjiang-how-chinas-surveillance-state-overwhelms-daily-life-1513700355>.

³³⁹ Lin Ping, *Xinjiang Dangju Kuangda Fankong Shuzihua Jiankong Wuchu Buzai [Xinjiang Authorities Expand Counter-terrorism, Digital Surveillance is Everywhere]*, ZIYOU YAZHOU DIANTAI [RADIO FREE ASIA], (Dec. 19, 2017) <https://www.rfa.org/mandarin/yataibaodao/shaoshuminzu/yl-12192017123111.html>.

³⁴⁰ See Angela Quartermaine, *Discussing Terrorism: A Pupil-inspired Guide to UK Counter-terrorism Policy Implementation in Religious Education Classroom in England*, 38(1) BRIT. J. REL. EDU. 13–29 (2016).

to increase their awareness of extremist threats and train them to respond to such threats.³⁴¹

China's educational initiatives take it one step further than the U.K. model by engaging nearly all social classes and adopting more extensive programs under the umbrella of community-based counter-terrorism.³⁴² Following the introduction of the CTL, Xinjiang has engrained counter-terrorism education into the social life of communities.³⁴³ In March 2016, the XUAR government issued a legal regulation, the Notice on Deepening the Study and Propagation of the CTL to Fully Promote Social Stability, which introduced a wave of comprehensive public education activities across this Western province.³⁴⁴ Most remarkably, there are three prominent features of the regulation.

Firstly, the educational programs are tailored to the needs of various target groups. For the Party cadres and civil servants, the XUAR government and Party schools at all levels are required to incorporate the study of the CTL as pivotal content of political training.³⁴⁵ Unlike Western state authorities, who are presumed to engage in a high level of vigilance, state officials in China urgently need education to enhance their understanding of the severity of terrorism and improve their capability to respond to terrorist threats. Moreover, the study of the CTL is compulsory in the preliminary and middle schools curricula to prevent the influence of radicalization on students.³⁴⁶ Likewise, Xinjiang government officials have reportedly demanded imams to receive political and

³⁴¹ See generally Angela Quartermaine, *Discussing Terrorism: A Pupil-inspired Guide to UK Counter-terrorism Policy Implementation in Religious Education Classroom in England*, 38 BRIT. J. RELIGIOUS EDUC. (2016) Community Awareness Program is a neighborhood-based program which equips local residents with knowledge and tools to identify and prevent terrorism and criminal activity within the community. See generally, Rick Landre, Mike Miller & Dee Porter, *GANGS: A HANDBOOK FOR COMMUNITY AWARENESS* (1997).

³⁴² See TANNER & BELLACQUA, *supra* note 5, at 37–78.

³⁴³ See Ben Blanchard, *China's Xinjiang to Use Entertainment, Possibly Dancing and Singing, in Terror Fight*, REUTERS (Feb. 25, 2016) <https://www.reuters.com/article/us-china-xinjiang/chinas-xinjiang-to-use-entertainment-possibly-singing-and-dancing-in-terror-fight-idUSKCN0VY0CI>.

³⁴⁴ *Xinjiang Will Use Cultural and Recreational Activities in Terror Fight*, Radio Free Asia (Feb. 25, 2016) <https://www.rfa.org/mandarin/yataibaodao/shaoshuminzu/nu-02252016115418.html>.

³⁴⁵ See *Xinjiang Xuexi Guanche Fankongbu Zhuyifa Tuijin Xinjiang Shehui Wending he Changzhi Jiu'an [Xinjiang Studies and Implements the Counter-terrorism Law to Promote Social Stability and Everlasting Safety]*, CHINESE NEWS (ZHONGGUO XINWEN) (Aug. 5, 2016), <http://www.chinanews.com/gn/2016/08-05/7963051.shtml>.

³⁴⁶ See Jia Mengyan, *Wurumuqi Shi Jiaoyu Xitong Xuexi Guanche Liangbu Fankong Fagui [The Educational System in Urumqi Studies and Implements Two Counter-terrorism Regulations]*, WURUMUQI WANBAO [URUMQI NEWSPAPER] (Aug. 15, 2017), <http://xj.people.com.cn/n2/2016/0815/c188514-28835653.html>.

legal education, and have encouraged them to preach in an “appropriate” manner that refers to the risks of terrorism and extremism.³⁴⁷

Secondly, to further to these arrangements, the role of professionals and experts is valued and integrated in the implementation of education. Over the past year, Xinjiang’s villages have commenced a program entitled “Lawyers’ Legal Propagation of De-radicalization.”³⁴⁸ It focuses on expounding the CTL and the risk of radicalization to the rural population.³⁴⁹ The participating program lecturers, chosen from legal practitioners based in Xinjiang, are tested for their political faithfulness and should have considerable experience in dealing with terrorism-related cases.³⁵⁰ In the meantime, law enforcement agencies, including police, prosecutors, and judges, have frequently organized workshops on how to identify and prevent terrorist threats through representative cases that have been recently finalized.³⁵¹ These workshops are often held in public venues, such as factories, stadiums, and playgrounds, where terrorist suspects were once tried and executed during the “Strike Hard” campaigns.³⁵²

Lastly, legal authorities have relied heavily upon mass and social media as a crucial venue whereby the influence of de-radicalization education can be dispersed and expanded.³⁵³ Traditional media channels, including TV, newspapers, radios, and the internet, in Xinjiang have played a major role in educating the public by launching special programs and proposals to annotate the CTL.³⁵⁴ Digital screens, billboards, and TV screens on buses repeatedly play videos that promote counter-terrorism.³⁵⁵ An innovative design of Xinjiang counter-terrorism education is the local governments’ initiation of cultural propagation activities to ramp up education through entertainment.³⁵⁶ Typically, activities involving song and dance routines and comedic skits are encouraged

³⁴⁷ See TANNER & BELLACQUA, *supra* note 5, at 52.

³⁴⁸ *Xinjiang Justice Bureau Commends Outstanding Individuals in Advocating De-Extremism*, SINA.NET (May 27, 2016) <http://finance.sina.com.cn/sf/news/2016-05-27/111231512.html>.

³⁴⁹ See Jia, *supra* note 190.

³⁵⁰ See *id.*

³⁵¹ See The Supreme People’s Court of Xinjiang, *Xinjiang Fayuan Gongzuo Niandu Baogao 2015 [The Annual Report on Judicial Work in Xinjiang 2015]*, XINJIANG FAYUAN WANG [HIGHER PEOPLE’S CT. OF XINJIANG PROVINCE] (Jan. 13, 2016) <http://www.xjcourt.org/public/detail.php?id=20168>.

³⁵² See *id.*

³⁵³ See Chen, *supra* note 249.

³⁵⁴ See *id.*

³⁵⁵ See *id.*

³⁵⁶ See Ben Blanchard, *China’s Xinjiang to Use Entertainment, Possibly Dancing and Singing, in Terror Fight*, REUTERS (Feb. 25, 2016), <https://www.reuters.com/article/us-china-xinjiang/chinas-xinjiang-to-use-entertainment-possibly-singing-and-dancing-in-terror-fight-idUSKCN0VY0CI..>

to deliver de-radicalization messages and shape the public attitude toward terrorism.³⁵⁷ The use of these activities reflects the State's growing recognition that one way to prevent "behavioral, attitudinal, and emotional responses" to terrorism is to influence the human response through an effective program of communications.³⁵⁸

CONCLUSION

This Article examines China's legal framework for combating terrorist threats, or the "Three Evils," after 2001. It first provides an account of the cause, source, and impact of the "Three Evils" and the connections of the "Three Evils" to the state's ethnic and religious policies in Xinjiang. While it is undeniable that terrorism in China has been associated with regional extremist and separatist organizations, the "Three Evils" stem largely from China's authoritarian policies that impose forced assimilation at the expense of compromising the cultural and religious rights of the Uyghur minority population.

This Article investigates the evolution, structure, and form of legal responses to terrorism in post-2001 China. By tracing the transformations of counter-terrorism legislation and policy, this author contends that China's approach to terrorism has diversified and become a multidimensional framework comprising four measures: crackdown, criminalization, control, and cooperation. These measures operate concomitantly to target and address terrorism-related acts based on their different levels of gravity, associated risks, and objectives. In short, crackdown measures are used to suppress ethno-religious riots, which are conceived by the Government to be the most severe acts of terrorist violence. Criminalization incorporates terrorist offenders into the criminal justice system with an impact on moderating penal harshness. The very essence of criminalization is centered on the conviction and sentencing of offenders. However, both crackdown and criminalization fail to address the issues of legal legitimacy and procedural justice. Comparatively, control and cooperation have a different aim. Control focuses on preventing a future risk of terrorism by incapacitating an individual who may commit a substantial terrorist act. Conceptualized as preparatory offenses, these pre-crime acts are predominately punished by administrative detention in China's police system. While administrative detention is a custodial penalty, its function extends beyond the traditional penal purposes and is concerned with the management of risk posed

³⁵⁷ *See id.*

³⁵⁸ *See* National Research Council of the National Academies, MAKING THE NATION SAFE: THE ROLE OF SCIENCE & TECH. IN COUNTER-TERRORISM 270-72 (2002).

by individuals imprisoned for preparatory offenses. Finally, cooperation promotes reliance on community forces to identify and dispel potential risks of terrorism at the street level. Currently, a police-community relationship that rests on mobilization and education exists in China's violence-prone areas and offers a preview of what can occur nationwide.

Whereas this "four Cs" system may temporarily appear to be effective and attractive to the CCP leaders, it is likely to be problematic. The most divisive issue perhaps lies in the impact of current counter-terrorism practices on Xi's endeavor to reclaim political legitimacy through the "rule of law with Chinese characteristics." From Hu's political narrative of a "socialist harmonious society" to Xi's appeal to "the Chinese dream and social stability," the CCP strived to maintain the regime's legitimacy, which was once at a high-level due to economic success but has since declined due to increasingly acute social stresses. The advocacy of the rule of law is seen as a remedy for social disparities and contradictions, thus providing a method to achieve the ultimate goal of consolidating the authority of the CCP. However, as this analysis suggests, law enforcement's response to terrorism in China is at odds with the minimum standards of the rule of law in spite of the State's distinctive interpretations of this legal notion within its political and social contexts. Punitive and repressive justice undermine the core values of due process and legality, and they constitute an evident contravention of individual liberties and privacy.

While there is a need for engaging in a fine *balancing act between security and liberty* in the West, China's heavy emphasis on punishment and prevention of terrorism as the essential prerequisites to social and political stability continues to fuel the policy that privileges national security over individual rights. This policy serves to augment the State's existing authority-led counter-terrorism powers. As a result, the "four Cs" framework is unlikely to advance the CCP's pursuit of a rule of law state that is conducive to the preservation of political legitimacy. Ultimately, the continuing use of this system will almost assuredly undermine the state's legitimacy in an era in which a growing crisis of public trust is emerging.