Fighting the "Three Evils": A Structural Analysis of Counter-Terrorism Legal Architecture in China

Enshen Li

Follow this and additional works at: https://scholarlycommons.law.emory.edu/eilr

Recommended Citation
Enshen Li, Fighting the "Three Evils": A Structural Analysis of Counter-Terrorism Legal Architecture in China, 33 Emory Int'l L. Rev. 311 (2019).
Available at: https://scholarlycommons.law.emory.edu/eilr/vol33/iss3/1

This Article is brought to you for free and open access by the Journals at Emory Law Scholarly Commons. It has been accepted for inclusion in Emory International Law Review by an authorized editor of Emory Law Scholarly Commons. For more information, please contact law-scholarly-commons@emory.edu.
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.\(^1\)

* Enshen Li, Lecturer, TC Beirne School of Law, University of Queensland, Australia. I would like to thank Ms. Euodia Megowan for her excellent editorial assistance. My gratitude also goes to the editors of the Journal for their diligent work and insightful advice.

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).
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


\(^3\) 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

---

10 Wayne, supra note 4, at 255.
13 Wayne, supra note 4, at 259.
by using force.” 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.

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. 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.”

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,

---


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 Xinxí 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 EVILLS”

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). 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. This shift in public discourse on the ethnic upheavals in China is predominantly because the Chinese government began to view the insurgencies 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.

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,” 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, the Tiananmen incident in 2013 (Beijing), the Kunming Railway Station attack in 2014 (Yunnan), and the Guangzhou Railway Station incident in 2014 (Guangdong), were...
depicted as “rigorously planned, organized, premeditated, violent terrorist act[s]” by Chinese authorities. It was believed that the ETIM was responsible for most of these attacks. 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.”

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:

[ propositions 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”.

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.

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.” 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.

---

32 Mooney, supra note 7; see also Tanner & Bellacqua, supra note 5, at 31–32 (listing major terrorist attacks).
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.” 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. 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.” 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, of which China is a de facto leader. 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. 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/. 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. Zhao, supra note, 38. 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. 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 Qianglong’s effort to expand the empire’s northwest frontiers in the mid-eighteenth century. However, the fall of the Qing Dynasty witnessed the divorce of Xinjiang from the weak central government of the Nationalist Party (Kuomintang). Before 1949, there were two short-lived attempts at independence in 1933 and 1944. 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. 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. 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. 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. The most salient challenges concern issues regarding

---

47 Faisal Kidwai, Xinjiang Rides High on Belt and Road Initiatives, CHINA DAILY (Aug. 8, 2018), http://www.chinadaily.com.cn/a/201808/08/W020180808596993103147.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. 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. 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. Therefore, a number of extremist incidents have taken place in response to the State’s tight grip on religious matters in Xinjiang. 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. 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. 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.
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. 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.” 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. 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. Like other ethnic minorities in China, the Uyghurs differ from the Han Chinese in culture, language, and social traditions. The Uyghurs share a strong ethnic identity with Turkic peoples, who have long enjoyed powers of self-regulation and self-determination in Central Asia. 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. 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. This process of “forced assimilation” included a set of repressive social programs that marginalized the Uyghurs in Xinjiang. For example, the policy of Han migration to Xinjiang has been in effect since the 1950s. 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).
58 Id.
60 Torrey, supra note 46.
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.
64 Pokalova, supra note 9, at 284.
65 Howell & Fan, supra note 60, at 119.
in 1964 to 40.58 percent in 2000. 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. 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. On the other hand, Han migrants have tended benefit from Xinjiang’s economic growth to a far greater degree than the Uyghurs. The government assigned the Han migrants to work through the Production and Construction Corps, a military-civilian organization with mostly Han Chinese members. Xinjiang’s main industries, such as gas, oil, and electric power production, are controlled by Han-dominated work units and companies. These organizations prefer to employ Han Chinese over Uyghurs; this preferential treatment is now a standard practice not only in private sector, but also in the government sector. 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.

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. Although the Constitution stipulates that governmental bodies in ethnically autonomous regions can independently administer education, scientific, and cultural affairs, the central government has introduced educational programs that enforce compulsory study of Mandarin at all levels of

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.” 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. 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. 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. 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. 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.

It is certainly correct, too, to suggest that the Chinese government has instituted favorable policies toward the Uyghurs. 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), school admissions (e.g., Uyghur students receive bonus points on the College Entrance Examination), 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). 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).
policies, which “are set within the context of the paternalistic and hierarchical approach to ethnic relations adopted by the Chinese authorities.”

Government initiatives that contributed to the cultural and political degradation of the Uyghurs have fueled anti-Chinese sentiment in Xinjiang. 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).

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. 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. The protesters torched cars, looted stores, burned national flags, and shouted pro-independence slogans, leaving nine dead and more than one-hundred injured.

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. 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. While ancient

---

87 Kung, supra note 51, at 379.
89 Kunal Mukherjee, The Uyghur Question in Contemporary China, 34 STRATEGIC ANALYSIS 420, 425 (2010).
90 TANNER & BELLACQUA, supra note 5, at 19–20.
92 Id.
93 Pokalova, supra note 9, at 286.
China drew influence from Confucianism, Buddhism, and Taoism to inform its ideological system. Communistic 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.”

Chinese nationalism may be intrinsically bound with notions of “patriotism;” it entails supporting the Party and its political stability. 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. 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. Therefore, in many respects, the Chinese government perceives Uyghur ethnicity and its culture as a hindrance to the promotion of nationalism in Xinjiang. Since approximately 751 C.E. during the Tang Dynasty, Islam spread into the Xinjiang region, influencing Uyghur social and cultural life. 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. 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. 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

96 ERNEST GELLNER, NATIONS & NATIONALISM 1 (1983).
98 Shameer Modongal, Development of Nationalism in China, 2 COGENT SOC. SCI. 1, 2–4 (2016).
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. 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.”

In comparison to the CCP’s relatively soft policy towards Islam in Mao’s and Deng’s China, 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, the Regulation on State Secrets and Specific Classification Limits in Religious Affairs Work issued in 1995, then to the most recent Regulation on Religious Affairs, issued in 2004 and revised in 2018, 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, 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.” From the mid-2000s onwards, more mandatory requirements have reportedly been imposed on Muslims’ religious activities and expressions. There is speculation that such administrative measures like the registration of religious venues, approval of the clergy ordination,
restriction on the distribution of religious materials, and other similar measures help maintain authoritative regulation of religious activities.\textsuperscript{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.\textsuperscript{114} This ban has also been extended to include students and teachers.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{119} In 2017, the Xinjiang authorities prohibited dozens of names with religious connotations (e.g., “Imam,” “Quran,” and “Jihad”) for newborn babies.\textsuperscript{120}

\textsuperscript{113} Id. at 30–34.


\textsuperscript{115} Id.

\textsuperscript{116} Id.


\textsuperscript{119} Urumqi Regulation, supra note 118, at arts. 4, 10, 11.

\textsuperscript{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 Zuoan, 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

122 TANNER & BELLACQUA, supra note 5 at III.
125 Id.
2011 Kashgar attacks and the 2014 Kunming Railway Station attack. However, by 2017, “extremism” was defined in the Xinjiang Regulation on De-Extremism, but the definition remains excluded from the CTL.

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. 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. This contention seemed to be more justifiable when ISIS pledged to launch terrorist attacks in China as a new target. 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. 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.

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.³³

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.³⁴ 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

---
stressed the importance on controlling financial support for terrorism.\textsuperscript{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.\textsuperscript{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.\textsuperscript{137} These offenses are related to inchoate offenses in common with a person’s general “thoughts or talk” about religious extremism.\textsuperscript{138} “Engagement” with the planning or preparation of any terrorist activities is prosecuted at a much earlier stage than offenses of criminal attempt.\textsuperscript{139} Likewise, the CTL incorporated a list of similar offenses with a lower degree of malice and subjected offenders to custodial administrative sanctions.\textsuperscript{140}

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

\begin{footnotes}
\item[135] S.C. Res. 1373 (Sept. 21, 2011).
\item[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).
\item[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.”\textsuperscript{139}
\item[139] Id.
\end{footnotes}
police the power to carry out “technical investigation” and “secret detention” prior to trial—powers which are not applicable to ordinary criminal offenses. Technical investigation refers to the use of covert measures by police to obtain evidence that can be admissible by courts. 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. 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. Similar to approaches adopted in the British, Canadian, and Australian counter-terrorism regimes, control orders impose restraints on individuals’ freedom that are not legally challengeable in the CTL or the CPL.

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. The Eighth Amendment to the CL, passed in February 2011, identifies terrorism-related crime as an offense involving “special recidivism.” Applicable solely to terrorism-related crimes, organized crimes, and crimes which threaten national security, special recidivism refers to circumstances where an offender recommits 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. 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. The length of punishment for such offenses spans a wide range—from ten days of administrative detention to five or more years of imprisonment.

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.
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, were China’s primary legal instrument for responding to outbreaks of opposition and violence in Xinjiang. 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


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).

“separatism.” 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.” 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.” Despite the Second Amendment introduced by the CPL in 1997 to heighten procedural fairness in criminal proceedings, when it comes to adjudication of ethnic separatists, “the justice system simply performs a ritual, rubber-stamping function of decisions made by the CCP.”

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.” 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.
158 Hualing, supra note 9, at 344.
capital of Xinjiang. 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.” 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. 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. It promptly deployed paramilitary force, such as the Chinese Armed Police, to control the spread of violence. 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. 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. 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. 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.

In 2014, three days after a deadly attack in Urumqi, the Chinese government revitalized the “Strike Hard” campaign. 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.
163 Id.
166 China: Human Rights Concerns in Xinjiang, supra note 155.
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). 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. 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. From the 2013 attack to present day, there have been more incidents than those of the last ten years combined. In particular, with growing evidence regarding the links between Uyghur terrorist and extremist gangs with “hostile external forces,” China has begun to face intensified terrorist threats from both home and abroad. 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. 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. 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.

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

---


173 Id.


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


This strategy of social control borrowed from the “class struggle” rationale during Maoist China and thrived in the economic reform era. 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. On the other hand, since the early 2000s there has been a gradual shift toward the temperance of repressive justice in China. 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. 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. 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.” 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. Perceived as a crucial move towards social harmony, the “Combining Leniency and Severity” policy advocates a nuanced approach to penalizing offenders. At one end of the spectrum, light punishment should be widely applied to the majority of offenses that cause limited harm and social consequences. At the
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 fulfill 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.
192 See Trevaskes, 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).
197 Tanner & Bellacqua, supra note 5, at 44.
that the law should be enforced under its own leadership, 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. 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. 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.” The aim was to avoid the misuse of excessive force against religious and ethnic minorities.

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. 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.
203 TANNER & BELLACQUA, supra note 5, at 53.
204 Id.
emerged.\textsuperscript{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.

\textbf{B. Criminalization}

With the strengthening of terrorism laws since 2001, China has justified criminalization with strong legal grounds.\textsuperscript{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,”\textsuperscript{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,\textsuperscript{209} a vast majority of

\textsuperscript{206} Id.

\textsuperscript{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, \textit{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.

\textsuperscript{208} Clarke, supra note 9, at 551.

\textsuperscript{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, \textit{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. Charges of additional violent crimes, such as homicide and explosion, were levied against suspects depending on the acts suspects were engaged with. Though these offenses mostly existed prior to 2001, lawmakers have subsequently reframed their definition and elements in the counter-terrorism legislative reforms. 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. To be fully retributive, the punishment must be proportionate to the gravity of the crime. In the “Strike Hard” campaigns, the use of draconian sanctions was accentuated by the excessive application of the death penalty. 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

---


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.


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. 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, Kuanyijiyian, Kuanzhongyouyuan, Yanyijikuan).”

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. 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. 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. 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. The co-offenders, who were likewise charged organizing, leading, and participating in terrorist acts, were sentenced to death.

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.


220 Id.


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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{226}

The reformed counter-terrorism laws confer police with greater power to detain suspects for crimes related to terrorism \textit{incommunicado} and in secret locations.\textsuperscript{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.\textsuperscript{228} The fundamental condition is that the suspect is discovered when committing a preparatory offense, substantial offense, or immediately after committing an offense.\textsuperscript{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.\textsuperscript{230}

\begin{footnotesize}
\begin{enumerate}
\item See id.
\item See THE INTERNATIONAL CAMPAIGN FOR TIBET, \textit{supra} note 33, at 5–6.
\item Id. at 18.
\item See \textit{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.
\item 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.
\item CRIMINAL PROCEDURE LAW, art. 80 (China).
\item Id.
\item Id. art 83.
\end{enumerate}
\end{footnotesize}
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,” 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.” 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. Under residential surveillance, police may impose measures such as electronic monitoring and irregular inspections, among other forms of surveillance, during the investigation.

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 permission 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.

231 Id.
232 Zhou, supra note 16.
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.\footnote{Id.}

In substance, these restrictive measures share many similarities with preventive detention and control orders used in the counter-terrorism frameworks of some Western jurisdictions.\footnote{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).} Despite targeting different types of terrorist threats, the pre-crime tools used in Western countries may be preventive in nature.\footnote{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).} 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.\footnote{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).} 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.\footnote{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.} 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.\footnote{Id. art. 85.} 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.\footnote{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 Australia and the U.K., the issuing authority—usually the judiciary—balances the probabilities of “making the order [substantially] assist
in preventing a terrorist act against” or “the person [involved] has provide training to, or received training from, a listed terrorist organization.” 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. 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.

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. If the police decide not to file a case, then the control order must be removed. This is clearly indicative of a de facto tool for assisting the investigation of police. 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. For example, consider the contrast in crackdown practice as evidenced by the timelines. The suspects who plotted the Tiananmen attack on October 28, 2013

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.
were arrested ten days after the incident. The suspects were not prosecuted until May 30, 2014 and were not tried until June 13, 2014. 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. After a seven-and-a-half month investigation, the suspects were tried by the Urumqi Intermediate Court on December 8, 2014.

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. 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. 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. This becomes even more problematic in “national secret or security” cases.

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. 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.
253 Id.
256 See SIDA LIU & TERENCE HALLIDAY, CRIMINAL DEFENCE IN CHINA: THE POLITICS OF LAWYERS AT WORK (2016).
dressing. As shown in the excerpts of the court reports on several trials, 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.

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. 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. 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. 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., Joiner 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/2014-09-13/02393084176.shtml.


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. 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. 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. In the U.K., a national counter-terrorism strategy called the CONTEST has been established around the themes of “pursuit” and “prevention.” This strategy entails the detection and investigation of threats at the earliest possible stage to disrupt terrorist activities before they can endanger the public. 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].” This policy objective has transformed much of the counter-terrorism legislation introduced

264 TANNER & BELLACQUA, supra note 5, at 78–79.
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.\textsuperscript{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.\textsuperscript{271} Moreover, there are also other concerns regarding the prosecution and sentencing of preparatory offenses in association with terrorism.\textsuperscript{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.”\textsuperscript{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.\textsuperscript{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.\textsuperscript{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.\textsuperscript{276}


\textsuperscript{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 (Jiuliuliu), control (Guanzhi), and fixed-term imprisonment. These new terrorism offenses include the following:\(^ {284}\)


\(^{278}\) 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).


\(^{281}\) 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).
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. 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. Created during Maoist China, administrative, custodial measures initially served the purpose of solving non-antagonistic contradictions among the working class and peasants. 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. In the CTL, Article 80 states that the police may incarcerate participants of the following activities for more than ten days—and less than
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

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.\(^\text{293}\) 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.\(^\text{294}\) All the charged offenses in China involved either the propagation of terrorism and extremism or the possession of things related to extremism.\(^\text{295}\) 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.\(^\text{296}\) In April 2016, the first case of CTL, Article 80 violation was reported in Ji’nan, Shandong Province.\(^\text{297}\) In this case, Mr. Wang XX was arrested for visiting foreign websites that contained violent videos of ISIS engaging in fights and committing beheadings.\(^\text{298}\) Mr. Wang received a fifteen-day public order detention on the basis of illegally possessing items related to terrorism and extremism.\(^\text{299}\) 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 offences 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.


\(^{298}\) 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.


\(^{306}\) 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. 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. 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. 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 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.\(^\text{311}\) 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.\(^\text{312}\) Specifically, Xi encouraged legal bodies to “rely upon the masses to carry out all kinds of activities of preventing and regulating terrorism.”\(^\text{313}\) 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 “propagandists” (Xuanchuanyuan) and “guards” (Anquanyuan) to identify and discover terrorist threats and to adopt measures that deal with terrorism in an emergent situation.\(^\text{314}\)

Yet, it was not until 2016 that citizenry participation in combating terrorism was legitimized in the CTL.\(^\text{315}\) 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.\(^\text{316}\) 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


\(^{313}\) Id.


\(^{315}\) Anti-terrorism Law of the PRC, supra note 277, Art. 8–9.

\(^{316}\) Id. at Art. 9.
counter-terrorism." 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. 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. Such partnerships can provide a framework for engaging citizens to assist police with the identification of potential terrorist threats and infrastructural vulnerabilities. The Chinese strategy for community engagement diverges greatly from others in several respects. First, while Western states engage with selective communities, China seeks to engage with a range of communities in sensitive localities regardless of race, ethnicity, and religion. In Xinjiang, for example, local police and security agencies have built strong connections with residential committees of each community in urban areas. 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. Since 2012, rural Xinjiang has adopted a policing model of “one village, one police officer.” 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. 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).
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.
³³⁰ TANNER & BELLACQUA, supra note 5, at 65.
³³¹ See id.
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

---


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.


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.
349 See Jia, supra note 190.
350 See id.
352 See id.
353 See Chen, supra note 249.
354 See id.
355 See id.
to deliver de-radicalization messages and shape the public attitude toward terrorism. 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.

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.
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.